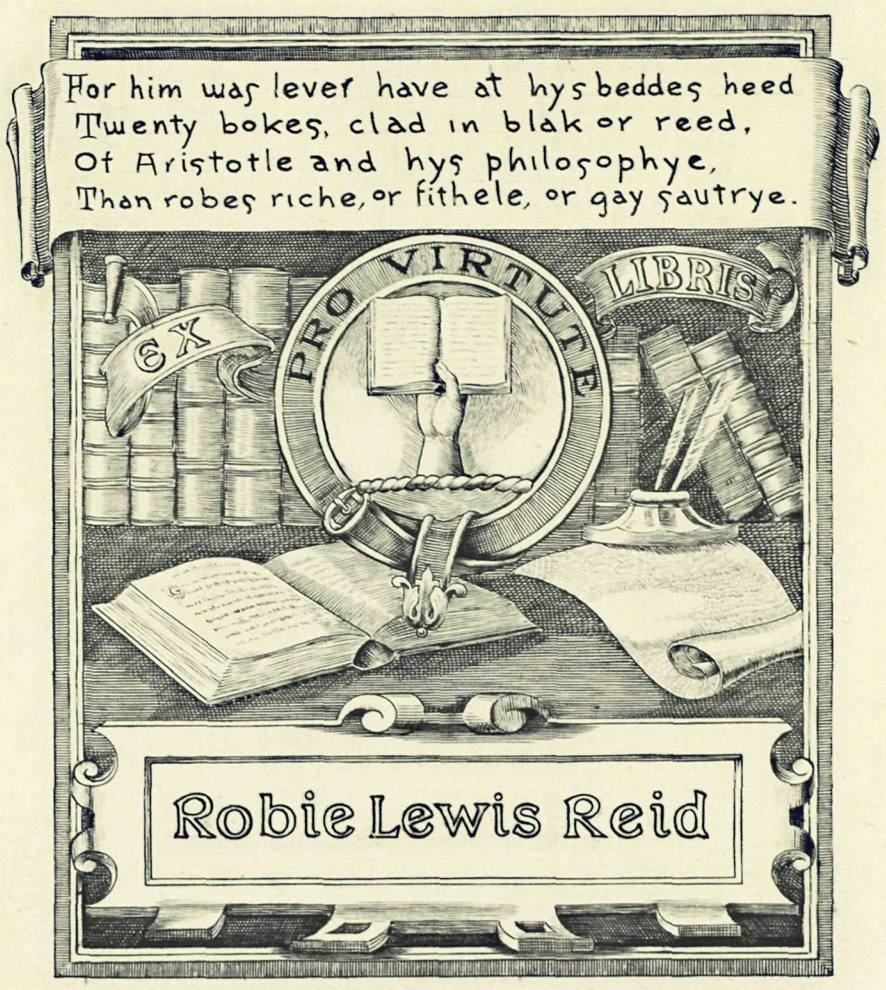

The F. W. Howay and R. L. Reid
Collection of Canadiana
The University of British Columbia

Liber

Reid

OREGON INDEMNITY.

CLAIM OF

Chief Factors

AND

Chief Traders

HUDSON'S BAY COMPANY.

OREGON INDEMNITY.

Claim of Chief Factors and Chief Traders of the Hudson's Bay Company, thereto, as partners, under Treaty of 1846.

1892.

153,423
HR
F5515
08

INDEX.

Page.

Synopsis 5-9

ACCOUNTS :—

H. B. C. with Chief Factors and Chief Traders 19-21
American Case 12-18
British Case 12-14
Chancery, judgment in 53

CHIEF FACTORS AND CHIEF TRADERS :—

Deed Poll (of Partnership) 1821 22-26
Deed Poll (continuing) of 1834 31
Paid (share) on surrender by H. B. C. to Crown in 1869 32
Partnership 18-39, 55
Status, as per evidence of Governor Sir G. Simpson and Right Hon. Sir Edward Ellice 34-39

CLAIMS :—

Treaty Indemnity 12-18
Chief Factors and Chief Traders in H. B. C. 6-26, 34-39
Correspondence, *ad rem*, between Chief F's and Chief T's .. 42-49
Credits as per Deed Poll 20-21
Debits as per Deed Poll 20
Deed Poll (of Partnership) 1821 18-26
Deed Poll, continued in 1834 31
Establishments (Trade) 14-26, 34

EVIDENCE, *ad rem* :—

Before Commons Committee, 1857 ..... 15-34, 35
Sir G. Simpson 15, 34
Right Hon. Sir E. Ellice 35, 37
Hudson's Bay House, London 20, 53
Huskisson, M. P., Hon., Protocol, 1826 13
Judgment in McTavish *et al.* vs. H. B. C. in Chancery 53

LANDS IN FUR TRADE :—

British Columbia 14
London, England 20, 53
Oregon 12-18, 38, 42
Puget's Sound 15, 45
Treaty purview 12, 15
Law of case 52

McLEOD (JOHN, "SENIOR," CHIEF TRADER) :—
Claim 56
Credential of present Claimant 56
Special Service *ad rem* 27-30

NEW HUDSON'S BAY COMPANY :—
Basis of purchase, 1863 40
Bill of Sale 40
Oregon Indemnity not included 42
Standing, *ad rem* 40-53

PARTNERSHIP :—
Charter (Appendix A.) 57
Deed Poll of 1821 22-26
Deed Poll, continued, 1834 31
Letters, &c., of H. B. C. in 41-48
Real estate 14, 20, 53
Rebates by "New" H. B. C 49

REPORTS (OFFICIAL) *ad rem* :—
Brown (Hon. G) Canada 41
Delegates (Cartier and McDougall) C 40

SETTLEMENT :—
Delay in 55
Statement for 56
Ships, &c., in Assets 20
Stock of H. B. C 38

TREATY (OREGON) OF 1846 :—
Extracts 12
Indemnity 12-14, 41
What 12-18
Whom to 12-18, 38, 51

TREATY OF 1825 :—
Protocol 13, 14
Subjects of Britain 12-18

SYNOPSIS

—OF—

Claim of Chief Factors and Chief Traders of the Hudson's Bay Company, as partners, in

THE INDEMNITY

UNDER

THE OREGON TREATY

BETWEEN

GREAT BRITAIN and THE UNITED STATES OF AMERICA.

FACTS.

1. On 15 June, 1846, Treaty was made between Great Britain and the United States of America, under which the former ceded to the latter all claim in or to the region, known as Oregon, south of the 49th degree of North Latitude, west of the Rocky Mountains to the Pacific, comprising all that part of the watershed of the Columbia south of said latitude, the basin of Puget Sound—land and water—and all the rest of the Pacific Slope south as far as California.

2. All this vast region was then entirely in the possession and control of the Hudson's Bay Company, under a strong military organization necessary to their trade operations, including several strongly fortified forts with cannon ; also large farms for raising grain and farm stock—the whole estimated (fairly) by the Company at five thousand acres under culture. For all this, the Company claimed one million pounds sterling. *See* on this point the evidence of Sir George Simpson Governor of the Company, as hereinafter cited.

3. The cession was of the whole territory and establishments, forthwith.

4 Thereon an indemnity was stipulated to "all British subjects" for all property and rights then—as the Treaty textually states—"already lawfully acquired"—amongst them, specifically, to the "Hudson's Bay Company", as then being. That Company had—as admitted in the Treaty—lawfully acquired "possessory rights" on the whole land, to wit under Crown License from Britain for exclusive Indian trade throughout the region from 1821 to the date of the Treaty.

5. The Company's claim, at the Treaty, for these "possessory rights," was one million pounds sterling.

The American Government declined to pay so much, but offered one million *dollars*. This, the Company declined to accept.

There it remained in abeyance for over twenty-one years: not from any default to move in the matter on the part of the Company or the said British subjects concerned—all powerless *per se*, to enforce due settlement—but from the shere neglect of the two Governments to do justice in the matter, notwithstanding the urgence of the said claim by the Company or, at least, by the said chief factors and chief traders, from time to time.

6. That in or about March, 1868, over twenty years after the Treaty, the "New" (the present) Company—as appears by their own admission when repeatedly applied to by the claimants—formally accepted and recieved the said indemnity from the Government of the United States.

That such acceptance by them could, legally, only be as necessary *gestor negotiorum* in trust for said beneficiaries (at date of Treaty aforesaid) or their legal representatives.

7. That the indemnity in question accrued and determined, absolutely, at once and forever, at such date; for the *real and only loss* was to the Company as *then* being, with its chief factors and its chief traders *then* being: and which could not, in the nature of things, accrue to the Company as *subsequently* constituted, or to *any other* chief factors or chief traders in it, who never had any right in the property so ceded.

8. That addressed on the subject, in enquiry, by the Chief Factors and Chief Traders of 1846 from time to time, the Hudson's Bay Company—both that being before the sale of 1863 to the so called New Hudson's Bay Company, and the latter—answered with a promise of "*due consideration*" of the claims of the said Chief Factors and Chief Traders, or their legal representatives in the matter "when"—as

promised by them in terms—the Company's claims and the American Government under the Oregon Treaty are (*id est*, should be) "settled.'

That, however, to a similar enquiry, by certain retired Chief Factors so interested, the answer of the New Company, by their Secretary, was in direct denial. This, with other letters on the subject, are given, at length, in the present pamphlet, with other evidence, showing how the matter stands.

9. That by the Original Deed Poll of Partnership, of date 26th March 1821, continued in 1834, to an "unlimited period," and unchanged as to Chief Factors and Chief Traders till 1871, these were *partners* in the concern to all intents and purposes, for "loss" as well as profit, and were, rateably, charged, in debit, annually, for all property, real and personal, in the trade and concern, as appears by full citation on this head, in the present pamphlet, from the said Deed Poll.

10. That by the said original deed of partnership, the whole "concern"—including all plant and realty, in England as well as in America—was divided into 100 shares, whereof 40, subdivided into eighty-fifths, were to belong entirely to the Chief Factors and Chief Traders for the time being, in the proportion of two eighty-fifths to a Chief Factor and one eighty-fifth to a Chief Trader.

11. That the whole property—stock, and plant, and realty of the Company was made by its Trade; save what realty—over and above their trade posts with incidental farm and building sites—they got as a consideration for their surrender, besides the £300,000 sterling, from Canada in 1869.

That moreover, in the accounts annually rendered to the Chief Factors and Chief Traders, according to the terms of the original Deed Poll—as cited in present pamphlet—they were *debited* with all realty as well as plant, goods, monies and all expenses in the trade, and also with *interest* thereon, at 5 per centum per annum, said interest payable *only* to the 60 shares aforesaid—viz, "Stock-holders" proper. That as to such "Stock-holders"—*eo nomine*—or as a distinct and separate interest, in the concern, there is no mention in the original or any other organic deed of the partnership concern. That that partnership was integral, and for the trade in question alone, and that the rights in question were alone so acquired.

12. That there was no right, franchise, or holding in any way by the company, "Old" or "New" in question, as to the subject of indemnity

aforesaid, save as a Trading Company, under the Charter and Crown License herein set forth, or alluded to.

13. That therefore only the said Company—as being at the date of the said Treaty, and as then, in severalties, constituted, viz, the Chief Factors and Chief Traders in their respective shares, and the holders of the other sixty shares (out of the hundred aforesaid)—were in their respective shares, severally, at the end of the then current year, viz, 1st June 1847, or *so soon thereafter*, in like current trade year for such accounting, as the indemnity in question should be paid, entitled to receive such indemnity.

14. That the delay in arriving at a final assessment of damages or loss, *actual*, for indemnity, did not cancel, nor derogate to such right and claim, accrued, and actually due and stipulated at the date of the Treaty.

That at and ever after the date of the Treaty, the then determined right of indemnity aforesaid, obtained and held, and continued to hold as to the said partners, then being; and in case of their death before payment became due and payable in due course, to their legal representatives.

15. That the position of the Company, as a Company *per se*, was from the necessity of the case, merely, as *gestor negotiorum*, in agency and trust: and as such, accountable to the principals concerned, in due course.

That as to that course, it is specifically prescribed in the deed of partnership cited.

16. That that course, as an obligation under the deed, is of the essence of the contract or covenant of partnership. That it enjoins and imperatively requires an annual rendering of accounts, to each partner to 1st June in each year. See citation, on this point, from Deed Poll, clause 2.

17. That in the Bill of Sale or Schedule of Assets (total) of the "Old" Company to the "New" in or about 1st July 1863, as herein more fully set forth, the said indemnity, or claim, thereto was—*very properly*—not included, as in fact, *it did not belong to the Company* (vendor) as *then* being.

18. That the present (the "New") Company paid nothing for it.

That moreover, by a system of "*rebates*," out of what monies and property they got, under, or under colour of their purchase from the

old Company, they have, by several millions of pounds worth, been fully recouped for the one million and a half pounds (sterling) by which they *in toto*, bought out the "Old" Company then (1st July 1863) being.

That in face of such facts, the retention of said indemnity money and refusal to pay over the same to duly accredited claimants is simply illegal.

LAW.

That as to the law of the case, it is really too obvious for discussion. Authorities are cited as to the legal character of the "Possessory rights' in question, in internatioual relations, which are certainly conclusive.

As to the more domestic question of the rights of the Chief Factors and Chief Traders relatvely to the Hudson's Bay Company *quoad* realty in England, viz proceeds of sale of the Company's House (Office) in Fenchurch street, London, a decision, in Chancery, is given, of date 26th February 1868, in London, most positively, and strongly as possible, in the sense contended for in the present instance.

How the legal opinion referred to, about or *after* the date of that decision—reported, at length, in the London *Times* 27th February 1868—in refusal, by the Company, of such claim, could disregard such high judicial decision on such point, in its bearing *a fortiori* on the present case, remains to be seen. The case referred to is given in this pamphlet as reported, viz, MacTavish et al. *vs.* The Hudson's Bay Company.

OREGON INDEMNITY.

TREATY OF 1846

—BETWEEN—

GREAT BRITAIN AND THE UNITED STATES OF AMERICA.

Shares of Chief Factors and Chief Traders of the Hudson's Bay Company in said Indemnity.

PRESENT POSITION OF THE CLAIM.

TREATY

Dated 15th June, 1846.—Ratified London, England, 7th July, 1846.

EXTRACTS.

ARTICLE III.

"In the future appropriation of the Territory south of the 49th parallel of North Latitude as provided in Article I. of the said Treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who might be *already* * in the occupation of land or other property lawfully acquired within the said Territory shall be respected."

ARTICLE IV.

"The farms, lands and other property of every discription belonging to the Puget Sound Agricultural Company on the North side of the Columbia River, shall be confirmed to the said Company. In case, however, the situation of those farms and lands should be considered by the United States to be of public importance, and the United States should signify a desire to obtain possession of the whole or of any part thereof, the property so acquired shall be transferred to the said Government at a proper valuation, to be agreed on between the parties."

CLAIM OF THE HUDSON'S BAY COMPANY.

These "Possesory Rights" were, as explained by SIR GEORGE SIMPSON, Trade Governor of the Company, when examined before the Commons Committee of 1856-7 on the subject, acquired by them under License from the Crown for exclusive trade in that region. The answers on this point are to questions Nos "1108" to "1124" in the official (blue book) report of said Committee.

---

*The italisization, here and elsewhere in this pamphlet, is by the author, in argument.

They were essentially trade rights, and possessions, viz of lands "*as* in fee simple". The admissions of the United States authorities on the subject, including the published opinions of the Secretary of State, for the time being, of that Government, and conducting for it the negotiations leading to the Treaty, viz, the Honourable Daniel Webster, and after him, at a stage subsequent to the Treaty, the opinion of the Honourable Mr. Stanton, Attorney General for the United States. To these may be added, as advanced at the time, the following judicial decisions *ad rem* by the Supreme Court, U. S. : 6 Cranch 87-8 ; Wheaton 535 ; 9 Peters 74 ; 13 Peters 192 ; also, specially, the judgment of Mr. Justice Catron in Smith vs. Clarke, 13 Peters, 201.

Also, on the other side, but in perfect concurrence, the opinion of the Honourable Justice Charles Dewey Day, of the Canadian Bench, on the part of Great Britain, for indemnity.

The former declare, unanimously, as to the status of these "Possessory Rights" : the latter does so, too, and further, specifically declares as to, and in favor of the rigths of the Chief Factors and Chief Traders of the Hudson's Bay Company, as constituent *partners* of that body and entitled to share in the indemnity accordingly—the whole as now, herein, urged.

As to the nature and legal character, and political bearing of these claims, an extract is offered from the memorial or statement of the case, as laid by Judge Day on behalf of the Hudson's Bay Company as British subjects in the purview of the Treaty, before the Commissioners appointed by the respective Governments to take evidence and report as to the value of the rights and subjects for Indemnity in question.

On the particular question of the position and rights of the Fur Traders, *id est*, interest arising from the Fur Trade itself on the region in question, Judge Day, on page 18 of his memorial and argument, states :

Clause 7. " The British statement annexed to the protocol of the 16th December" (November?) "of 1826 *, distinctly and repeatedly affirms the establishement and possession of posts as well to the Southward as to the Northward of the Columbia river *by British subjects* † (neceessarily meaning

---

* By the Right Honourable Mr. Huskisson, M. P , with reference to Treaty of 1825, with Russia.

† The only "British subjects"—yea the only White men of any nationality then there, were the Officers and Servants of the Hudson's Bay Company, which then included those of the then extinct North West Fur Company and the writer's father as partner and Chief representative there of the Hudson's Bay Company proper. M. McL.

the North West and Hudson's Bay Companies) ; and in strong and pointed terms avows the determination of the Government to protect the interest and establishments which British industry and enterprise have created both as regards settlement, freedom of trade, and navigation.

Clause 8. "The country known as Oregon, extented far to the north of the 49th parallel of North Latitude. It reached to the 54th degree and was all included in the claim of the United States. The establishments of the Hudson's Bay Company over the whole region originated in precisely the same manner and under the same circumstancs as those on the Columbia River. They were indeed parts of the entire system of settlements in Oregon, comprehended in the recognition already stated. And the British Government granted in its confirmations of title to lands there, 3080 acres of land in Vancouver's Island,* which, as shown by actual sales, were worth more than the whole of the present Land Claim at Fort Vancouver."

The Lands referred to were held in and for the *Fur Trade*, and were accounted for as such in the Company's annual accounts to the partners, viz, trade partners, as well as to the holders of the 60 shares out of the 100 shares forming the whole stock or capital of the Company as hereinafter stated and explained. That the lands were so held, in and for the *Fur Trade*, appears clearly from the following circular on the subject from the Secretary (Fraser) of the Company, addressed to the Chief Factors and Chief Traders of the Company, on their enquiry on the subject :

Extract. "In reply, I am directed" (*id est* by the Board of Directors of the Company in London) "that the first sale of the *Fur Trade Lands* was in 1853. Since that period sales have been effected every year down to 1861, inclusive, with the exception of 1857, when there were no sales : *and the proceeds of such sales have invariably been carried to the credit of the* FUR TRADE, *for the oufit during which the sales were effected.*"

The cost of such lands, like all cost and outlay by the Company as per rule of partnership agreement, *ad hoc*, as hereinafter shown, had been charged to the *debit* of said trade accounts, and therefore, by the same rule, the proceeds of sale had to go to the *credit* side.

---

* Present site of the City of Victoria, and Harbour of Esquimault.

EVIDENCE, AS TO THE "POSSESSORY RIGHTS", GIVEN TO COMMONS COMMITTEE OF 1856-7.

Examination of Sir GEORGE SIMPSON, Trade Governor in America, of the Hudson's Bay Company.

Question 1108—(by Right Honourable Edward Ellice, M. P. Member of Committee). You have possessory rights, I believe, under the Treaty (Oregon Treaty)?

Ans.—Yes.

Q. 1109—(By Roebuck M. P.). But has not Oregon been given up by Treaty?

Ans.—By that Treaty our possessory rights are retained.

Q. 1110.—What possessory rights have you?

Ans.—We have various establishments, pasture grounds, hunting grounds. We claim very large possessory rights.

Q. 1111.—Have you not also the free navigation of the river?

Ans.—Yes.

Q. 1112.—(Roebuck). What do you mean by possessory rights? do you mean rights under the charter?

Ans.—Rights as British subjects *previously* to the Treaty.

Q. 1113.—Had you possession of land?

Ans—We had possession of land.

Q. 1114.—How did you acquire it?

Ans.—Under License to trade.

Q. 1115.—But that is not possession of land?

Ans.—Yes, under the Licence to trade we had various possessions in the country.

Q. 1116.—Do you understand that a license to trade gives you possession of the land?

Ans.—We understood so.

Q. 1117.—What is the interpretation which you give to the words 'right to trade'—that it gives rights to *land*?

Ans.—We conceive so.

Q. 1118.—In fee simple?

Ans.—I do not say under what tenure, but we consider that it gives us a right to the land.

Q. 1119.—So that when you received by charter from the Crown a monopoly to trade over certain portions of territory, you believe that the whole of that territory was ceded to you?

Ans.—No!—not the whole of the territory that we trade over, but the territory we bring into cultivation.

Q. 1120.—How much land did you bring into cultivation in Oregon?

Ans.—I really cannot tell.

Q. 1121.—Did you bring 100 acres?

Ans.—Five thousand acres.

Q. 1122.—Into cultivation?

Ans.—Yes.

Q. 1123.—And those are all the possessory rights which you have?

Ans.—We have various establishments all over Oregon; we have them in various parts of the Columbia River and Puget Sound.

Q. 1124—(Right Hon. Edward Ellice). Are you aware that, in addition, there is the Puget Sound Company who also have those rights reserved under the Treaty?

Ans.—Yes,—that is an offshoot of the Hudson's Bay Company; an Agricultural Establishment formed by the Hudson's Bay Company, or parties connected with or interested in the Hudson's Bay Company encouraged by the Government of the day."

LEGAL AND POLITICAL CHARACTER OF SUCH POSSESSORY RIGHTS.

OPINION OF HON. DANIEL WEBSTER, SECRETARY OF STATE U. S. of A. AS TO SAME;

ALSO OF HON. ATTORNEY GENERAL STANTON, U. S. A.

In page 35 of his memorial, *ad hoc*, Judge Day quotes, approvingly, in support of his argument, the following admissive avowal on the part of Mr. Webster when in negotiation for the Treaty. The doctrine is, and has ever been, since the organization of the great American Republic, one of cardinal public policy in it, based on the principle—one of natural law—that the primitive wild becomes his who first in good faith, and honourable endeavour, utilizes it to public weal, while primarily serving, probably, merely personal behest.

In American phraseology it is known as "Squatter Sovereignty": a claim repugned in general European polity; but supremely respected in the virgin field of all America. In this connection it is ever to be borne in mind, that the region in question—traversed so far back as 1804-5 by the National United States Expedition, for exploration and national capture and annexation under Lewis and Clarke, in sequence to the primal discovery of the before then (to all civilized nations) mythic "Great River of the West", by Captain Gray, of the Commercial Marine of the United States of America, with his ship "*Columbia*," on 22nd May 1792 and who thereby, *nem. con.* gave baptism to that river, and the vast region—the richest in the world, saith the writer, who for years was a traveller through it, and sojourner there with his father, and saw, and in time gave tongue to the world of its wondrous wealth.

From 1792 to the Treaty, it was, practically a "No Man's Land"—save of the primitive "lords"—the swarming bands of utmost savagery—who then, invincibly, held it.

Quoad Britain and the United States, in so far as, from Discovery and commercial utilization, and settlement (if any) any national "rights were acquired, it was common"—or "disputed"—territory. *Till the Treaty it was not in the national domain of either power.*

On that plane—as a basis—were the rights and claims in question discussed; and the Indemnity claimed, and awarded. Thus, the Treaty was—from the nature of the case—*sui generis*—a law unto itself, in this

regard ; evoking, in the settlement of its incidental matters—such as the Indemnity—a special regard of, and into the special, and, in many respects, exceptional circumstances of the case. In such interpretation, the parties themselves, to the Treaty, are best exponents, and to one *for the other*, in adverse position, there can be no objection ; it is highest evidence.

In this sense the writer advances the following quotation from Mr. Webster, who conducted the negotiation on the part of the Government of the United States :

" The local extent "—said he—" of these Possessory Rights it may be in some degree difficult to fix or define. They must depend upon facts, and the nature of the occupation ; *wherever there has been a possession, according to the use originally intended, there, and to that extent, the possessory right attaches.*"

On the same point, Judge Day, in the same page (35) of his memorial gives the opinion of another eminent member of the United States Government, viz, Attorney General Mr. Stanton, when, long after the Treaty, finally dissussing it for the determination of the amount of the indemnity to be paid. This was, more particularly, on the legal aspects of the case, as avowed by himself, in arriving at or advising such determination.

EXTRACT

" The term of the Treaty "Possessory Rights", being a relative " term, is to be interpreted *according to the subject-matter, the nature and* " *purpose of possession*, EVEN IN CASE OF INTRUDERS WITHOUT COLOR OF " TITLE, *holding against the rightful owner.* Settler's possessions have " been defined in the State of Pennsylvania,—where such claims have " been much discussed—as embracing the whole of an unceded tract " where the settler has entered, claiming and exercising ownership, put- " ting up buildings, clearing and fencing more or less, using it according " to the custom of the country. " * * *

Closing with the emphatic admission, in his own words : " For it " has been repeatedtly decided" (here giving the authorities already stated, viz Cranch, Wheaton and Peters, and referring to others) "de " cided by the Supreme Court of the United States, as a *settled principle* " that the right of occupancy is as *sacred as a fee simple*, and that the " *possessors of hunting grounds* are to be protected in their possession, " *although the fee vested* in the State. The right of occupancy in hunting

"grounds has been protected by the political power and respected by the "Courts. So"—as said Mr. Justice Cation, in *Smith vs. Clarke*, 13 Peters 201—"this Court, and the State Courts, have universally held." So, it may be said, have all Courts and all States, in America, where, throughout, the hunter has ever been the *proto-pioneer of settlement.* Giving in his bold adventure; life in hand; his all of earth; oft in suffering dire; and his coffinless bones unhonoured, to the emprise of his race. Thus it was, in a sense, with the writer's father, in those very wilds, so won by him and the brave band he there led. But, to proceed with the argument.

POSITION AND RIGHTS

OF CHIEF FACTORS AND CHIEF TRADERS IN THE HUDSON'S BAY COMPANY AT DATE OF THE TREATY.

This is governed by the "Deed Poll" by and between "the Governor "and Company of Adventurers of England trading into Hudson's Bay" (their Charter name) "of the First Part; and certain persons therein "described as William McGillivray, of Montreal, in the province of "Lower Canada, Esquire; Simon McGillivray, of Suffolk Lane, in the "City of London, Merchant; and Edward Ellice, of Spring-Gardens, in "the County of Middlesex, Esquire, who *together with* certain other per-"sons therein"—to wit in "Indenture" of the same date, between the "same parties—"referred to, are thereinafter described as being there-"for or then engaged in *co-partnership* in carrying on a trade, in pur-"chasing and receiving, by way of barter from the Indians in Upper "and Lower Canada, and *in the other parts of North America*, or under "the name or firm of NORTH West Company, of the Second Part." The Indenture and Deed Poll bear date 26th March 1821.

The Deed Poll goes on to say, in explanation of the subjects, scope and manner of carrying out the said "partnership," and in difinition of the rights, joint, several, and relative of the said parties, as follows:

Clause 1. "It is, amongst other things, provided and agreed, by and between the parties to the Indenture now in recital, that the trade in purchasing and receiving, by way of barter, from the Indians, furs, peltries, and other articles thereinbefore mentioned to have been theretofore carried on by the said Governor and Company, and the said North West Company, as herein mentioned, should for the space of twenty-one years, commencing with the outfit of the year 1821, and ending with the returns of the outfit of the year 1841, but subject, nevertheless, to certain terms thereinafter contained, be carried on by and in the name of the said Gover-

nor and Company, and their successors, exclusively, as well in the territory of the said Governor and Conpany, *as in any other part or parts of North America*, which might from time to time be fixed upon by the said Governor and Company, and their successors ; and that the business of the said concern in England, should be transacted at the Hudson's Bay House, in London, or at such *other* place or places as the said Governor and Company, and their successors, should from time to time think fit, and that the said Governor and Company, and their successors, *and the said parties thereto, of the second part, should respectively provide one equal share of the Capital Stock to be employed in carrying on the said trade under the Indenture now in recital*, and to be made up in the manner therein mentioned, and the *expenses*, from, and after the time therein mentioned, and during the said term of tweny-one years, of *all the establishments* of the said Governor and Company, and their successors in *England* and in the *territory granted by their Charter*, and *also in their establishments in any other part or parts of North America* where the said trade should be carried on under the Indenture now in recital, including in such expenses the salaries of the Governor and Committee of the said Hudson's Bay Company, and of their Governors, to be by them appointed, for their territories in Hudson's Bay, and of *all* Officers for the time being, both at home and abroad, of the said Governor and Company, and their successors, and including also divers other expences enumerated in the Indenture now in recital, and *all other expenses*, and ALL LOSSES OR DAMAGES, which should or might be incurred or sustained in carrying on the said trade, or in any wise relating thereto, should from time to time, and previously to the division therein, and in part thereinafter mentioned of the clear gains and profits of the said concern, be paid, allowed and borne, *by, and out of the proceeds of the current returns arising from the said trade ;* and in case the same should be deficient, then one moiety thereof to be paid by the said Governor and Company, and their successors, and the *other moiety thereof by the said parties thereto of the second part ;* with a declaration that no expense relating to colonization, and not thereinbefore expressly provided for, or any concern or business which should be carried on by the said Governor and Company, and their successors, for their benefit, separate from the said trade or concern under the Indenture now in recital, was to form any charge under the Indenture now in recital."

SHARES AND ACCOUNTS.

Clause 2 in recital in Deed Poll in preamble, reads thus :

"And it was also provided, that the clear gains and profits arising from the said concern hould *be divided into* ONE HUNDRED EQUAL SHARES, FORTY SHARES *whereof* were to belong to such persons as should from time to time be, by the said Governor and Company, appointed *Chief Factors* and *Chief Traders* for the purposes of the said trade, and to such persons as should thereafter be appointed to succed them : *it being thereby declared to be the true intent and meaning of the parties thereto, that the said forty shares should always be appropriated as a remuneration to the persons actually employed in conducting the trade in North America*, or as a temporary provision to persons retiring from such employment. Provided, that as often as there should be a total *loss* upon the returns of any one year, forty equal one-hundredth shares of such total loss should be *set off and made good out of the said forty shares*, so to be appropriated as foresaid, of the gains and profits arising from the trade of the said concern in the ensuing year or years, until such forty shares of *loss* should have been fully made good.

That inventories of such trading goods, and stores, as on the first day of June, or the usual period in every succeding year, during the said term of twenty-one years, may remain on hand at the serveral depots, stations or posts in North America, to be occupied in carrying on the said trade, as the part undisposed of to the Indians of the outfit of the year then immediately preceding, and shall be made a charge in the accounts of the oufit of the year then next following, and the same goods, provisions, and stores shall be considered as part of the outfit of the year then next following : provided always, that in such inventories and *valuations* shall be included *all debts* which, on such first day of June, or such usual period, may be owing to the said concern, from traders, clerks, guides, interpreters, canoemen, and labourers, except Indians, for advances and supplies, and that such debts shall be valued at a fair estimate; but debts due from Indians shall be included without any valuation being put on them.

AND it was thereby further provided, that for the purpose of ascertaining from time to time the gains and the profits, or as the case might be, the losses of or to the said concern and the *true state and condition of the stock and capital of the said concern*, a general account should on the 1st day of June, during the continuance of the said concern, be stated and made out in the manner following (that is to say) :—In stating and making out such account on the 1st day of June 1823, there should be placed on the

DEBIT.

side of the said account, the amounts of the respective valuations, to be made as therein mentioned, and which were to form part of the outfit of the year 1821, as therein mentioned, of the goods, provisions, stores, supplies, and other articles, of which inventories were to be taken as therein mentioned, and which were to form part of the outfit of the year 1821, as therein mentioned, TOGETHER WITH INTEREST AT £5" (FIVE POUNDS STERLING) PER CENTUM PER ANNUM, *on such amounts*, from the 1st day of June 1821 to the 1st day of June 1823, and also the amounts of the charge to be respectively made as therein mentioned by the said parties, in respect of the goods, provisions, and stores ordered and to be ordered for the outfit of the year 1821, as therein mentioned. *together with interest* at the same rate, on the sums forming such amounts, from the respective times of the payment of the same sums to the 1st day of June 1823, and also the amounts of the valuation to be made as therein mentioned, of the debits which might be owing from traders, clerks, guides, interpreters, canoemen, labourers end other persons besides Indians, as therein mentioned, on the said 1st of June, or at the respective usual period next succeeding to tne date of the said Indenture, for taking inventories as therein mentioned, *together with interest* at the same rate, on such amounts on the 1st day of June 1821 to the 1st day of June 1823 : AND *also* the amounts of the *valuation*, to be made as therein mentioned, of the *Hudson's Bay House, in London*, with appurtenances, and of the *ships* of which a valuation was to be madeas therein mentioned, *together with interest* at the same rate on such amount for the period last aforesaid, and also the amounts of such of the *expenses to be incurred* up to the 1st day of June 1822 in *respect of the establishments of the said Governor and Company, and their successors ;* and in respect of the said *trade and otherwise* as therein mentioned, as were to be paid, allowed and borne *by and out of the current returns arising from the said trade or otherwise*, as therein mentioned, *together with interest at the same rate* on the amount of such expenses from the respective times of payment thereof up to the 1st day of June 1823 :

AND there should be placed on the

CREDIT

side of the account the amount of the valuation, to be made at therein

mentioned, of such trading goods, provisions, and stores as on the 1st day of June, of the usual period of closing the spring trade of 1822, might remain on hand at the said several depots, stations or posts as aforesaid, and of the debts to be included in such valuation as aforesaid, and also the amount of the then value of the *Hudson's Bay House, for the time being, in London*, with its appurtenances, and *any other property* which should belong to the concern on the 1st day of June 1822, *together with interest* at the rate aforesaid on *both amounts*, from the said 1st day of June 1822 to the 1st day of June 1823, and *also the next amount to arise from the sale of the furs, peltries, and other articles* to be received as the returns of the outfit of the year 1821 *after deducting* all expenses attending or relating to the sale thereof, *together with interest* at the same rate on the sums forming such net amount, from the respective prompt" (sic) "days of the sale of the said furs, peltries, and other articles to the 1st day of June 1823, and that the *balance* of the said *general account* should, in the event of such balance being on the *credit* side of the said account, be *deemed to be* the gains and profits of the outfit of the year 1821 ; and the balance of the said interest account should be divided and paid, one moiety to the Hudson's Bay Company and *the other moiety to the parties* thereto of *the second part*, their executors or administrators ; and that the general account to be stated and made out on the 1st day of June 1824, *and on every succeeding 1st day of June during the continuance of the said concern*, should be stated and made out, and *adjusted and settled, upon the like principle* as the account to be stated and made out on the 1st day of June 1823 and in the same manner as far as circumstances would admit, in regard to the details and particulars thereof : And after every such general account should be settled, the clear gains and profits or the losses, as the case might be, should be divided amongst and be *paid* to or by the parties entitled or liable under the said Indenture to receive or bear the same ; and if from any cause the said gains and profits or losses should not be paid at the expiration of fourteen days after such 1st day of June, then with *interest* at £5 per centum per annum, *from the expiration of the said fourteen days*, but subject, to the provisions therein contained, in regard to the non-delivery by the said parties thereto of the second part, their executors, and administrators, of possession of such depots, and premises as therein mentioned."

The above extracts are taken from the copy of the said Deed Poll, with the official endorsement thereon as being for John McLeod, senr. C.T. (Chief Trader) of and belonging to the writer's father and in his possession, rightfully, as administrator of his estate: the document is a printed one.

The only other clause in its preample is with regard to the appointment of "Governors"—so therein called—to wit two, on fixed salaries —not as partners—to co-operate with the trade partners (Chief Factors and Chief Traders) to—as the Deed said— "form a Council, and be competent to carry into effect all acts authorized by the Charter, and to execute all By-laws and regulations that might be made by the Governor and Company from time to time ; the said Councils of Chief Factors and Chief Traders to determine the necessary outfits and arrangements of the season."

TRADE PARTNERS.

Under the 4th clause in the said Deed Poll, certain persons—twenty-five are named for appointment forthwith—as "Chief Factors for the superintendence of the said trade, as well within the territory of the said Governor and Company granted by the said charter creating the said Company, as *other parts* of North America where the said trade might be carried on under the said Charter and the said recited Indenture or either of them." These are words of that clause :

Clause fifth, runs thus : "And whereas the said Governor and Company are about to appoint by commission under their common seal" certain persons—twenty-eight—amongst them, by name in the Deed, "John McLeod" (father of the undersigned) who had, for ten years, just before, been a leading officer doing eminent service for the Hudson's Bay Company, in its struggle with the North-West Company. In defining in this clause the general status of these persons in the Company, the text of the Deed is as follows : "To be *Chief Traders* for conducting the said trade in their respective departments under the Governor and Council thereinbefore referred to, and also hereinafter mentioned, as well within the said territories of the said Governor and Company so granted by their said charter as aforesaid, as *other parts* of North America where the said trade might be carried on under the said charter and the said recited indenture or either of them."

The appointment was made forthwith accordingly, while the said McLeod was in supreme charge of the English River District, then the most important and most keenly militant in the Hudson's Bay Company's field of service.

In remuneration, and as stipulated price for such service, it was solemnly, and in covenant, stated in the said Deed—Clause 4th—"And whereas the said Governor and Company are desirous of appointing" (sic) "the *said forty shares* of the clear gains and profits arising from the said concern and *so reserved*, to be appointed by them" (sic) "under and by virtue of the said recited Indenture, and of making such conditions, rules, laws, and regulations for the benefit of the said trade, and of the parties interested therein under the same Indenture, as are thereinafter contained in that behalf."

The Deed Poll then goes on to say :

"NOW KNOW YE—that the said Governor and Company do hereby declare and direct that the said *forty shares* shall be subdivided into

other shares for the benefit of the several persons respectively mentioned and named in the several articles hereinafter contained in that behalf, and that the same shall be held and the said trade and concern shall be carried on and managed under the restrictions, rules and regulations hereinafter contained that is to say :

" ARTICLE I. The said forty shares of the said *partnership* concern " shall be divided into eighty-five shares of equal amount.

" II. Each of them, the said twenty-five persons to be appointed Chief Factors as aforesaid, shall, if his appointment to the office of Chief Factor as aforesaid shall take place, be entitled to *two* of the said eighty-five shares, for *profit* and *loss*, and in case of *loss* shall in manner aforesaid, be liable to *make good the same* ; and if the same shall not take place, or upon his death, or removal from office, the same or the like shares, both for profit and loss shall devolve upon the person who for the time being, and from time to time shall succeed him in such office of Chief Factor as aforesaid; it being the true intent and meaning of this article that each person who, for the time being, shall fill the office of Chief Factor to the said concern, shall during his continuance to fill the office, in case the said concern shall so long continue, be interested in *two* of the said eighty-fifth shares in the said concern, both for profit and loss, *as a compensation for his performance of the duties* hereby, or by the aforesaid Indenture imposed or to be imposed on him as such Chief Factor.

" III. Each of them, the said twenty-eight persons, so to be appointed CHIEF TRADERS as afoseraid, shall, if his appointment to such office of Chief Trader as aforesaid, shall take place, be entitled to ONE *of the said eighty-fifth shares, for profit and loss,* and in case of loss shall in manner aforesaid, be *liable to make good the same*, and if the same shall not take place, or upon his death or removal from office, the same or the like share shall devolve upon the person who, for the time being, and from time to time, shall succeed him in such office of Chief Trader as aforesaid ; it being the true intent and meaning of the present article that each person who for the time being, shall fill the office of Chief Trader to the said concern, shall, during his continuance to fill such office, in case the same concern shall so long continue, be *interested* in the *one* eighty-fifth share in the same concern, *both for profit and loss*, as a *compensation for his performance of the duties* hereby, or by the said recited Indenture, imposed upon him as such Chief Trader as aforesaid.

"IV. The remaining seven shares of the said eighty-five shares, both of profit and loss, shall be appropriated as follows, namely—four of such seven shares shall be reserved to be given to the old servants, now or lately, in the employment of the said Governor and Company, in such proportions, and with, under, and subject to such restrictions and regulations as the said Governor and Company shall think proper for a period not exceeding the first seven years of the said concern and the three remaining shares shall be disposed of to such persons lately employed by the said North-West Company, and then having an interest in the concern of the same Company as the said William McGillivray, Simon McGillivray and Edward Ellice, or the survivors or survivor of them, or the executors and administrators of such survivor shall think proper, and for the like period of seven years."

The article closes with provision as to said seven shares under Article XXXVI, following, of the Deed Poll, as to vacancies of Chief Factors and Chief Traders, which being unnecessary to the present argument, need not be cited.

In case of the death of a Chief Factor or Chief Trader during service the provision, as to his interest and succession is stated thus in the Deed Poll:

" ARTICLE XXV. In the event of the death of any Chief Factor or Chief Trader, his representatives shall be entitled to the benefit of his share or shares, as the case may be, under Article II or III to the end of the year in which he died, such year being considered as ending on each first day of June, and if such death shall happen, *before* the party dying shall have wintered in North America *five years* his representatives shall have in addition an half of such share or shares for four years, from the end of the year in which the party shall die, and if his death shall happen *after* having wintered *five* years then *his representatives* shall be put on the same footing *as if the party had retired*, and been entitled to a six year's interest in the said concern under Article XXIV." [That is with one whole share of two eighty-fifths, or one eighty-fifth, as the case may be, for one year after that of death, and half for next six years.]

That article, on this point, runs thus:

" And in case of a party retiring after wintering five years, he shall be allowed to hold his share or shares, as the case may be, for *one year after his retirement*, and half of his said share or shares for the next succeeding six yeras, to be respectively held by him and his representatives respectively during the respective periods mentioned in this Article."

Under Articles 25 and 26 a power of sale, with right of pre-emption to the Company, under notice, is given to Chief Factors and Chief Traders, and their representatives.

With regard to the rendering and payment of the annual accounts a special Article, numbered XXXII in the Deed Poll, runs thus:

"And by the same or like outward-bound ships of the season, each Chief Factor, Chief Trader, and each Clerk respectively, in the service, shall have his private account transmitted to him, and the balance shall be either paid to him by bills drawn by him, and made payable in London, on every fifteenth day of April, or be paid to any person authorized as his agent to receive the same, and to settle such account or accounts, for the time being, on the same being made up on each first day of June aforesaid, or if the said party prefer to leave such balance in the hands of the said Governor and Company, and notify the same to them, they will either allow him lawful interest for the same, or, at the option of the said Governor and Company, invest the same in the purchase of Parliamentary Stock, and receive, and when received, credit his account with dividends thereof."

Article XXXIII provides:

"No Chief Factor or Chief Trader who may retire, or the representatives of such of them as may die, shall after such retirement or death, be at liberty, or have any right to inspect or question the accounts mentioned in Article XXXI" (viz, annual accounts to residents in North America) "but shall respectively be concluded as to them, by the certificate of the said Governor and Company as to their correctness, as far as respects their shares and interest respectively."

Article XXXIV requires registry in the books of the Governor and Company of Instruments of assignment of shares or interest of Chief Factors and Chief Traders or their representatives, within eighteen months after the "assignee's title or claim shall issue."

Article XXXV requires Chief Factors and Chief Traders to enter, within certain prescribed times, "into a covenant or agreement with the "said Governor and Company for the due observance and performance "by them the said Chief Factors and Chief Traders, of all the Con- "ditions, Agreements, Rules and Regulations mentioned and contained "in these presents; and also all other rules and regulations to be from "time to time duly made pursuant to the said recited Indenture, and "the terms thereof, as far as the same shall be applicable to them "respectively; *And for the payment to the said Governor and Company "of one thousand pounds as liquidated damages for every wilful breach* of "such conditions, agreements, rules, and regulations, by the parties so "respectively covenanting, and for the acceptance by them respectively "of the several provisions hereby made, or to be made for them and "every such appointment shall be voidable in case by the appointee "therein named shall omit or refuse to enter into such covenant or "agreement, within the time hereinbefore mentioned on that bahalf."

The last Article (XXXVI) of the Deed Poll is important as giving its *imprimatur* to the whole "Covenant and Agreement" as being

essentially synallagmatic, and relatively obligatory on bothparties : with an admission, express or implied, of the dominancy of the Trade interest in the said " Concern "—so called—as more particularly represented by the Chief Factors and Chief Traders. The text—*ipsissima verba*—of that article is as follows :

" The several articles, matters, and things thereinbefore contained, shall be binding on the said Governor and Company, and shall continue in force during the said concern as for as relates to articles I, II, III, IV, XV, XXII, XXIII, XXIV, XXV, XXVIII, XXIX. XXXI and XXXII, without any right on the part of the said Governor and Company, or their Committee for the time being, to defeat, alter or vary the same, either in the whole, or in part, *without the consent, in writing, of the majority of Chief Factors and Chief Traders* for the time being, respectively and as far as relates to the remaining articles contained in these presents, unless in the meantime, and until determined, altered, or varied by the said Governor and Company, in conformity to their power reserved to them under their said Charter, or the said recited Indenture, and until sufficient notice thereof to be given by the said Governor and Company of such determination, alteration, or variance ; and all persons having any interest, or being in anywise entitled, for the time being, under the said articles, or any of them, shall or may be entitled to *proceed against the said Governor and Company, in case of any breach on their part, of any one or more of the said articles.*"

JOHN McLEOD, "SENIOR",

CHIEF TRADER H. B. C.

The said John McLeod, named in the said Deed Poll, as one of the Chief Traders to be forthwith appointed, was thereafter forthwith appointed, and with as little delay as possible, did all that was required by the said Deed Poll and recited Indenture, to constitute him a partner in the said "Concern" as aforesaid, with its incidental rights, obligations, and liabilitiles as aforesaid.

That he did so, appears, incontestably, from thefact:

That when in incidental sequence to the coalition of the two rival fur companies in question, formal delivery under inventories, had to be made of all the trade posts, and trade property generally of the North-West Company on the West side of the Rocky Mountains to "the Governor and Company of Adventurers of England trading into Hudson's Bay", the said John McLeod, alone, with no other *garde de corps* than his wife and two young children—the writer one of them—was selected and specially delegated to make such acceptance and formally assume proprietary possession in the name and behalf of that company. He had ever been, since his engagement with the Hudson's Bay Company, in 1811, a leading officer of that body in their field of contest with the North-West Company; and as proved by abundant official record, judicial and parliamentary, and as now matter of history in foreign standard authorities—with every success.

The service, then, in 1822, required of him, viz., to cross "the mountain," and the Pacific Slope to the sea, and there, formally, receive the sword of surrender from a whilome foe—who, on the East side of their rampart of enterprise, had felt the edge of his service in the van of the fight, was one of special danger and difficulty. As proved before the Commons Committee of 1857, by the testimony of Sir George Simpson and others, two-thirds of the total Indian population on the fields of work of the two Companies, were on the West of the Rocky Mountains; where, up to 1822, the Hudson's Bay Company had had no trading establishments, and where the North-West Company, and a few American (U.S.) Fur Traders, and on the Coast, the Russian Fur Company, to the exclusion of the Hudson's Bay Company, alone held the Indian trade of the country.

The Indians themselves were, in those times especially, ever a most dangerous element to deal with, being naturally independent, turbulent, and hostile, and ever to be guarded against, at arms—night and day—and in every position and movement, throughout the country. Add to that the fact that during the six years immediately preceding, viz., ever since 1816 when by the capture of Fort William, on the western shore of Lake Superior, by the Earl of Selkirk, and of the whole line of trade forts of the North-West Company, along the Red River, the Assiniboine, and northward to the McKenzie Basin, chiefly under the leading, in the field, of said McLeod, from 1815 to 1821, the sole line of supply for the trade of the Pacific Slope of the North-West Company had been cut off, and the trade itself there paralyzed ; for that company had no shipping to supplement it by way of the Pacific. The result was that the whole native population of the West were exasperated to wildest hostility, against the Whites, and the Whites themselves huddled in their fastened forts, starving more or less, some killed, and ever under arms in guard, held their own with a heroism which no "Indemnity"—in money—could adequately compensate or honour.

The instructions, from the Supreme Directorate in London to said McLeod as they appear in original in the hands of the writer—was to at once proceed to Fort George (formerly Astoria) at the mouth of the Columbia, and there, in concert with certain leading partners or officers of the North-West Company, included as Chief Factors or Chief Traders of the new Hudson's Bay Company or "Coalition" as it was by themselves, more strictly properly called, to reorganize and *specially to extend to the Coast and Ocean beyond* (what the North-West Company never had done) the general trade of the company. This, then and there, he (McLeod) with his few colleagues there, then, viz., Dr John McLoughlin and James McMillan, the sole Chief Factor and Chief Traders, respectively then there, most effectively did.

In that difficult task, the part of the sole representative proper, then there, of the Hudson's Bay Company, was exceptionally difficult. It was, however, thoroughly accomplished; to the utmost satisfaction and perfect approval of the Company, as represented at its Supreme Trade Council held in York Factory in July, 1826, where, then, said McLeod, personally, delivered his report, traversing, for the purpose, the continent from ocean to ocean, in a manner and under physical difficulties, probably unparalleled in the story of travel, and which has envoked

special public record, in various ways. Amongst these, as authoritative, and emanating from one master of the subject, and universally recognized as a distinguished *expert* in such work, the writer would here give, as evidence *ad rem*, and as proper to the present argument, the report of Mr. Sandford Fleming, C. M. G., &c., of the expedition in question, in his Presidental Address (as President of the Royal Society of Canada) in 1889, under the general head "Expeditions to the Pacific," pp. 113-114:

"TRAVELS OF MR. JOHN MCLEOD, 1822-1826."

"After the union of the Hudson's Bay Company with the North-West Company, in 1821, Mr. John McLeod was the first officer to cross the Rocky Mountains from the east.

Mr. McLeod entered the service of the old Hudson's Bay Company in 1811, and for the ten years previously to the union of the two, he was a zealous participant in the contest with the North-West Company. He was detailed to accompany and assist Lord Selkirk's first brigade of colonists from York Factory to Red River; and he established trading ports at a number of places in the prairie region, to intercept the trade of the rival company.

Mr. McLeod when *selected* by the united companies to proceed to the West side of the Rocky Mountains, was stationed at Green Lake, about 200 miles north of Fort Carlton. He set out in 1822, with his wife and two young children. He reached Athabasca River, and crossed the Mountains by the Athabasca Pass to the Columbia, and descended the river to its mouth. In the following years he was engaged at different posts in trade operations; during this time he left Kamloops, followed the Thompson, and descended the Fraser to the Strait of Georgia. *Mr. McLeod was in the Columbia district when it was decided to change the headquarters of the company.* Fort George was open to some objections, and another site was finally selected on the northern bank of the river, about a hundred miles from the mouth. At this point a new central post was established in 1825, *on a large and permanent scale.* called, in honour of the famous navigator, Fort Vancouver. The new headquarters of the company were placed on the northern bank of the river, in order that it might be indisputably on British soil: *there was no probability, at that date, of the intercolonial boundary being established to the north of the Columbia.*

In March 1826, Mr. McLeod left Fort Vancouver to proceed eastward. He was accompanied by Mr. Edward Ermantinger, and Mr. Douglas the distinguished botanist.

The crew consisted of sixteen men, two of whom were Sandwich Islanders. Their route took them to Okanagan and Spokane. They ascended the Columbia to Boat Encampment, the river at the time being much obstructed by ice. The Mountains were crossed by the Athabasca Pass, then covered with deep snow, * and with much difficulty and some

---

* "DEEP SNOW."—For four hundred miles below Boat Encampment the river in rising spring flood—where not in lake—was between walls of snow, perpendicular, from six to ten feet in depth, and in the Upper Arrow Lake, the ice had to be broken through with axes. Ermantinger and Douglas, and three calves and three pigs—the first of their kind in the region—had been left with one of the two boats of 8 men each, at Spokane, about 500 miles below Boat Encampment.

At Boat Encampment - eastern end of the 80 miles of Pass, the snow was deeper still, increasing to the summit (6025 feet above sea) to *thirty feet* under foot, with a slope at *Grand Cote* of 78°. The party--master and men, had to cut their leather trousers into snow shoes for the terrible climb--the writer with them.

M. McL.

danger, the party reached Jasper House on May 5th. Here he was detained owing to the confinement of his wife, which had taken place in February, the family having proceeded thither the previous October. On horses being sent forward from Edmonton they continued their journey, and reached that station on May 17th. From Edmonton, they embarked in the spring brigade of boats to follow the Saskatchewan and the chain of waters to Hudson Bay. They reached York Factory in July, having crossed the continent in three months and twenty days. *Mr. McLeod was in the service of the Hudson's Bay Company when he died, in* 1849, *at the age of sixty-one.*"

Though after 1826 he took no personal part in the service of the company on the west side of the Mountains, he invested liberally, out of his private means, to the extent of five hundred pounds, in the Puget Sound Agricultural Association in 1835, and which enterprise was a material factor in advancing not only the said company's interests, but those of trade and settlement generally, throughout the region coming within the scope of the indemnity in question.

That as to the special value of the services in question of said McLeod and his local coadjutors aforesaid in pioneer development of the natural and general economic resources of the whole Pacific Slope, reference may be made to the highly laudatory record, strictly founded on authenticated fact, of such standard historical works as Bancroft s (H.H.) " British Columbia," and his work " The North-West Coast of America," and also in Appleton's Cyclopœdia of American Biography, *verbo*, " McLeod, John, Canadian Explorer and Trader."

It was for such, and such like service, that as a *quid pro quo*, the indemnity in question was awarded ; and to which the imperial pledge of the Protocol of 1825-26, already alluded to, was given. At that time, and up to it, the said McLeod *alone* was the duly delegated and special representative of all British interests involved in so far, as he was, on the occasion, part and parcel a constituent unity of the Hudson's Bay Company ; and in the measure of his personal and private interests in such co-partnership, he, of *all others*, was best entitled to compensatory consideration for such service. Having never forfeited such consideration, it is inconceivable that he or his should, in this regard, be ignored, or denied such right. The service was one of most imminent personal peril, extreme difficulty, and great hardship, yet he braved all, and did all, with marked and commendatory success.

These are not merely the words of his son, and constant companion in such service, and *yet living witness* of such facts, but of historical and official record, foreign as well as home.

His well earned right to a Chief Factorship was disregarded, but, certainly, from no fault of his. As he ever lived so, he died; doing his duty ; blameless, and ever perfectly.

CONTINUATION OF DEED POLL OF 1821.

From 1821 to 1834 no change was made in the relations of the said parties to the said Indenture and Deed Poll, but in the latter year, a reconstruction of the partnership was made owing to the fact, that many, if not most of the trade partners from the North-West Company, and some from the Hudson's Bay Company, had in course, and according to the provisions of the said Indenture and Deed Poll, ceased to have any actual interest in the associate "concern." That reconstruction—using the term merely in the sense of a supplemental continuance of the original partnership of 1821—was made after due notice to, and in consultation with the Chief Factors and Chief Traders (said McLeod among them) then being, in accordance with article XXXVI, already cited, of the Deed Poll.

The following was the resolution on which such continuance was based and made :

EXTRACT FROM MINUTES

"At a Court of Proprietors of Hudson Bay Stock, held at the Hudson's Bay House on Friday, the 7th March, 1834."

"Whereas the co-partnership created by the indenture of the 26th day of March, 1821, was thereby agreed to be continued for a term of 21 years, to end with the returns of the outfit 1841, has been some years passed dissolved (*save and except so far as related to the* 40 *shares appointed by a deed poll of the same date and hereinafter referred to*), and the whole of the partnership, effects and concern are and have for some time centered wholly in the Governor and Company of Adventurers of England trading into Hudson's Bay, and the trade and concern thereof has been and still is carried on by them exclusively and for their own benefit, *save and except, and without prejudice to the rights and interests of the persons entitled to the* 40 *shares under the said deed poll* : AND WHEREAS IT IS DEEMED EXPEDIENT THAT THE SAID TRADE AND CONCERN SHALL BE CONTINUED FOR AN UNLIMITED PERIOD."

CHIEF FACTORS AND CHIEF TRADERS PAID ON SURRENDER TO CANADA.

That "*unlimited period*" was continued until interrupted by political exigencies incident to the surrender on 19th November, 1869, by the Company to "Her Majesty, and for Her Majesty," "of all or any" (*sic* in the deed) "of the *lands*, *territories*, rights, privileges, liberties, "franchises, powers and authorities whatsoever, granted or purported to "be granted by the said Letters Patent" (to wit: Charter of Charles II.) "to the said Governor and Company, within Rupert's Land—provided "that nothing in the said Act contained shall prevent the said Governor "and Company from *continuing to carry on in Rupert's Land, or else-* "*where, trade and commerce.*"

That surrender—it is to be remembered—was solely, substantially, of the *territorial* rights or claims of the Company; for as to the "liberty" and "franchise" of trade and commerce to the Company, it was left unimpaired, to be used in common with the world; and the principle of monopoly was properly, legally, constitutionally, and in paramount political behest, ignored and tacitly denied. According to constitutional polity, it had become effete.

In 1871, under circumstances which need not here be stated, the company paid in cash and at once £107,055 sterling—say $520,287—to the *Caief Factors* and *Chief Traders then being*, and holding their position, precisely and wholly, on the terms and conditions of the original Indenture and Deed Poll of partnership, of date 26th March, 1821 and continued by the deed, in the same sense, of 7th March, 1834, aforesaid, for an "unlimited period."

That £107,055 covered *one-third* of the total amount, viz.: of the £300,000 sterling received from Canada in full, and final payments of the said surrender with its conditions; and the balance of the £107,-055, viz.: £7,055 may be fairly presumed to have been for *interest* at five per centum per annum, as per Deed Poll aforesaid, on that capital of £100,000, from the fifteenth day of June, 1870, after the fourteen days from date (1st June, 1860,) for annual accounting thereof to said partners, according to said Deed Poll. To make a full two-fifths (40·100th), one-fifteenth more (£20,000 stg.), would have been paid, but not having been so, was, presumably, conventionally compensated by the substitution of a fixed salary to these officers in lieu of the less

certain "profits" of their trade, as affected by the change in it under the surrender.

In any case they—the Chief Factors and Chief Traders of 1871 received—as a matter of right—*their two-fifths*, out of the "gains and profits" of the "concern" of the year 1869; and that in these, *of and for that year*—as could not otherwise be legally done—the said *land* price, *pro rata* was included. The writer says "land price," for Canada bought and got only the land.

The application of this fact, in the present argument, will appear further on.

The writer may here, for the nonce, state that on this subject of settlement with the Chief Factors and Chief Traders of 1869–71, he speaks not from direct personal knowledge—but from thoroughly credible sources, including the beneficiaries themselves, and from published public statements on the other side. As understood by him, and as stated to himself by at least one of these beneficiaries, the payment in question had a very intimate connection with this very matter of Oregon Indemnity. How, and to what effect remains for other dealing.

STATUS

OF CHIEF FACTORS AND TRADERS AS OTHERWISE ADMITTED BY THE COMPANY.

On this head, in supplement to what has already been advanced on it, the following evidence is presented :—

TESTIMONY

of Sir George Simpson, Governor, in America, of the Hudson's Bay Company, as reported by the Commons Committee of 1857, as to their territory and function.

Question 703.—(Chairman)—I believe you hold an important situation in the administration of the Hudson's Bay Company?
Ans.—I do.

Q. 704—What is it?
Ans.—I have been Governor of their territories for many years.

Q. 705.—How long have you held that situation?
Ans.—Thirty-seven years I have been their principal representative.

Q. 706.—(Edward Ellice). As Governor the whole time? *
Ans.—Yes; I have held the situation of Hudson's Bay Company's Governor the whole time.

Q. 707—(Chairman). What is the nature of your authority in that capacity?
Ans.—The supervision of the Company's affairs; the presiding at the Councils in the country; and the principal director of the whole interior management.

* * * * * *

Q. 710—What is the nature of the Council which you have mentioned?
Ans —The principal officers of the Company, the Chief Factors, are members of Council. If there is not a sufficient number of Chief Factors the number is made up by the Chief Traders, who are the second class of *partners*, and all matters connected with the trade are discussed and *determined* at this Council.

Q. 711.—What is the nature of the authority of the Council as distinguished from your own; are they merely advisers?
Ans.—They are advisers, and they give their opinions and *vote* upon any question that may be under discussion.

Q. 712.—Does the ultimate authority and decision reside in you solely, or is it with you in conjunction with the Council?
Ans.—With me in conjunction with the Council.

Q. 713.—Do you mean that they could outvote you and prevent your doing anything which you thought proper?
Ans.—*They could outvote me*, but it has never been so †; in the absence of the Council my authority is supreme †; in travelling through the country, or giving any direction connected with the management of the business, my authority must be acted on until it be annulled or disallowed by the Council or the Company. †

---

* Sir Edward, the chief founder of the Colalition, knew that there was a slight exaggeration in the statement, viz.: as to the time, which should have been 35 or 34 years and also as to his being "principal representative." He was merely a salaried officer at £1,200 per annum.

† Scarcely true. Know facts to the contrary. M. McL.

* * * * * *

Q. 1261. What may be the Salary of the superior officers?
Ans.—The factors and traders have an interest in the trade; *they are partners.*

EVIDENCE *ad rem*

of The Right Houourable Sir Edward Ellice Baronet, M.P., P.C., a member of the Committee, examined as a witness.

EXTRACT FROM REPORT.

To question 5784.—Latter part of his answer which is essentially historical and thoroughly true.

ANSWER.

"In this state of things," (after describing the prostrated condition of all the rival fur companies in the field, each in insolvency or verging on it, he proceeds to say: "I think about 1819 or 1820, Lord Bathurst, then Secretary for the Colonies, sent for me to consult me whether it was possible to do anything towards promoting a union between the companies.* I undertook the matter, not only at his request, but from obvious considerations of interest, having become under considerable engagements for one of the companies; and after a very difficult negotiation, I succeeded in uniting the interests of the various parties, and inducing them to agree to carry on the trade after that agreement under the Charter of the Hudson's Bay Company.

At the same time I suggested to Lord Bathurst to propose a Bill to Parliament which should enable the Crown to grant a *license of exclusive trade* (saving the rights of the Hudson's Bay Company over their territory †) "as well over the country to the east, as over that beyond the Rocky Mountains and extending to the Pacific Ocean, so that any competition which was likely to be injurious to the peace of the country should be thereafter prevented.

From the said different arrangements sprung the present Hudson's Bay Company, which is more in fact, a *Canadian* than an English Company in its origin.

The Act thus passed, and under it the company have since carried on the trade throughout the Indian Territories *beyond* their boundaries, *exclusively by virtue of the license.*

The license, granted in 1821—renewed with supplementary provisions in 1838, and continued to 1859, when it expired by effluxion, assumed British domain (*dominium*) from the Arctic shore to latitude 42 degrees north, embracing the whole Columbia valley. In 1825

* As he elsewhere explains in his testimony before the Committee, his father had been one of the chief furnishers in goods and money, in Canada (Montreal) to the Fur Companies distinguished as the "X.Y," Company, with Sir Alexander McKenzie and other Canadians at its head, subsequently incorporated with others in the same trade and trade field as the North-West Company. That on the death of his father he (Sir Edward) succeeded to, and took up that interest--a large one.

M. McL.

† Limited according to their Charter, to "All the lands and Territories upon the "Countries, Coasts and confines of the Seas, Bays, Lakes, Rivers, Creeks and Sounds, in "whatsoever latitude they shall be, that ly (sic) *within* the *entrance* of the streights commonly called *Hudson's Streights*" .... "and that the land be from thence reckoned and reputed as one of our Plantational Colonies in America, called *Rupert's Land.*" (*Sic* literally) in the Charter, Clause 9th.

M. McL.

under treaty with Russia, there was a modification as to the region since known as Alaska, where the Company traded and had permanent trade posts. Immediately after that treaty the company—under the new arrangement ~~in condition~~—carried on an "exclusive trade" with the Indians even in Alaska, far north and west as Cross Sound, under lease from the Russian Fur Company; with whom their relations were—af er the treaty—ever amicable. The local centre of all this Pacific Slope and Pacific Coast and Ocean Trade, extending from *Yukon* and *Sitka* in the North and North-West to *San Diego* in California, and, in the same connection far Ocean-wards as the Sandwich Islands was, in 1822–24, at Fort George (formerly Astoria) at the mouth of the Columbia; and after that, Fort (and Port) Vancouver, about 90 miles farther up, on the north side, within tide water. In view of this fact, the *cession*, under the Treaty of 1846, *quoad* the trade and its, so called, and emphatically admitted possessory rights, of the associated British Trade Companies in question, was, practically, of the *whole* vast and *then exceedingly profitable* trade—Inland, Coast, and Ocean,—of that land and sea—the richest in the world, so far as the writer knows, and whereof, having seen, he can attest to.

That fact is a material one in arriving at the proper estimate of the Indemnity in question, and in determining to whom the same is due. The Treaty practically destroyed the Trade; or, at least, so curtailed it, and so hampered its operations—rendering comparatively useless its expensive ships and coast craft, including the first steamer vessel in the Pacific—so as to allow little for profit in the concern, and actually, as the annual accounts to the Chief Factors and Chief Traders in question rendered showed, reducing "profits" to scarcely living wages—in the case of Chief *Traders*, with their only "*one*-eighty-fifth," certainly so. That what with *increasing debits* in the annual accounts rendered them, *principal and interest*, for idle, rotting trade plant, ships, and trade posts, &c.; waste of goods, &c., thrown out of the trade by the sudden contractions of its *field* of work; and worse still, by the extremely new penurious and even wrongful charges by the company, in London, against their partners in America, of the very food—food of the wild—necessary to the *children* of these same "Chief Officers," as, at least, was the case, with the *writer's father in latter years*, the poor *Traders'* balances grew gradually less, till many, who could, abruptly left the service to try elsewhere, their fortune, or live elsewhere in some

comfort, while those who, from long habit in the country and trade, and with large families could not do so, had to submit to the ever grievous burden of increasing cares and diminishing hopes of peace and comfort in the evening of life. Thus suddenly, into his grave, still in harness after nearly *forty years* of such service, dropt that "Veteran Fur Trader" as the historian Bancroft calls him, in his "British Columbia"—"John McLeod" "H.B.C." *His balance* as *per such* account, ~~had,~~ without any extravagance on his part—for his habits were ever simple and temperate—was a paltry one thousand pounds or little more, with little else between his widow and her little ones—girls mostly—to save them from starvation; and that in a world of strangers; for by the rules of the company, no Factor nor Trader, or his family, could without special permission, live on "their territory" on leaving the service. On this point—one that applies more particularly to that class—"*second* class," as it has been termed—of trade or "wintering" partners, much more might, with propriety, and in common justice be said in the present argument. Constituting, as a class, the operative founders and chief promoters of the enterprise in question—one of national emprise in import—they, of all others in it, are best entitled to, not only fair, but to even preferential consideration. As a class, in the times in question, they were undoubtedly *under*-paid. With the Chief Factor, with his double share, it was otherwise. He had no more strain on his means; no higher life to maintain. All—as Sir Edward Ellice in his evidence before the committee of 1857, most thruthfully said—were "*gentlemen*," selected as such, for the service—one essentially militant and gubernatorial—kings among savages—generals and governors among white men in arms and struggle *a outrance*—so, in *those* early times, in battle ever *was* it, in the far wild lands.

EVIDENCE—Continued—of Sir Edward Ellice, *ad rem*, before Commons Committee of 1857.

Question 5791.—Will you have the goodness to state to the Committee what was the constitution of the Company after the union?

Ans.—The agreement for the participation of the new Company was, that the Canadian Companies whose interests had been before united, and the stockholders of the Hudson's Bay Company should have, as nearly as possible, equal shares. It was then necessary to consider the interests of the *gentlemen in the interior who conducted the trade on both sides*; and it was decided that whatever profits should arise from the trade carried on by the Hudson's Bay Company, for the joint interest of the parties, should be divided into 100 shares, and that 40 *of these shares should be allotted to the gen-*

tlemen in the interior who commanded the Posts, and superintended the general interests of the Company, but who supplied no capital.* It was provided that a certain number of these shares should be given as whole shares to the higher rank of servants, if they may be so called, Chief Factors, and that *half a share* should be given to a certain number of gentlemen in the immediate rank below them called Chief Traders.

Question 5792.—Is that the system upon which the trade of the territory *has been conducted up to this time* ?

Ans.—*That is the system under which the trade has been conducted from* THAT TIME TO THIS."

* Not true. The N. W. C.—of which the majority of the Chief Factors + Chief Traders were the contributors—put in all their trade, plant and establishments—worth at least, half a million pounds sterling. The H.B.C. Chf Fs + Chf Ts were largely creditors of that Co (HB) for several years arrears of salary, and were so earning, on their shares as partners. M. McL.

STOCK OF THE CAMPANY.

On this subject, in answer to question 5802, this most authoritative witness (Sir Fdward Ellice), says : " The stock of the Company, at the union, was £400,000—since increased by money and profits carried to stock, to half a million, at which it then stood."

STATEMENT BY THE WRITER

as to this matter of " Stock." In the case of the Canadian Companies it was entirely made and based on the *profits of the trade.* Their principle of partnership was *service*, on capital, principal and interest, charged to the partnership in the trade ; which partnership was on the principle (French Canadian), of " *Commandite*" in which the *total liability* to creditors is, jointly and severally, in persons named and published to that effect. These, in the present case, would correspond with the " Stock " proprietary of the Hudson's Bay Company.

This Stock proprietary, Canadian and British, is, *per se* distinct from the 100 shares aforesaid, which represent the whole " Concern," and all its property, real and personal, and franchise, in, and for the *trade* in question ; and for which alone, in its terms, the Charter of Charles II. was granted to " The Adventurers of England *trading* into Hudson's Bay." The Canadian Company or Companies—self-constituted under the common law of their country (Lower Canada)—were in the same and a wider field in the same or like objective interest. As to the question of strict legality of such a combination, on grounds of public policy, that is not in the present case. As to all the parties in the " arrangement " (as Sir Edward very correctly technically calls it), "legal or not," *quoad* themselves, all and each in it are bound by their own mutual bond.

As to the particular question of Oregon Indemnity, the Imperial Act of Parliament allowing the license aforesaid, and the Treaty itself

* Not true. The N. W. C.—composing three-fifths of the Chief Factors and Chief Traders named in, and parties to, the original deed-poll of 1821—put in, at the same time, all their property in the trade, including about or over 100 trade posts, stock, and plant, worth, then, over £500,000 stg. Ellice and the two McGillivrays (Simon and William) and their respective partners were merely suppliers of goods to, and agents of the N. W. C., creditors, as such, of that Co., taking payment by the arrangement, in stock of the H. B. C., increased for the purpose.

The other Chief Factors and Chief Traders, in said deed-poll, were of the Hudson's Bay Company—creditors, largely, for arrears of salary, and who had, in the troubles—as, at least, had said McLeod—fully earned such partnership. M. McL.

cover the question of public policy, and, incidentally, they cover all personal right in that relation.

Coming back to the matter of Stock. It is to be observed, 1. That it is proper, nominally, solely to the 60 shares aforesaid. 2. That as to the Canadian share (by far the larger) in it, it is solely, the result "gain and profit" of the trade in question. 3. That as to the Hudson's Bay Stock, proper, it, also, is entirely of the "profit" of trade in question, with the exception of two small sums, one of £10,500 paid in some time before or about 1720, *not* for the trade, but only to *nominally* increase, to a treble amount, their market stock of the day; and also another amount of only £3,100, (three thousand one hundred pounds sterling) for like purpose, and which, possibly, is the "money" so imputed, referred to by Sir Edward in his answer just cited. The *Trade* did not benefit from such outlay; and makes no claim to it—though, in fact, the *Trade* made the stock and its "rise"—the whole of it.

These statements are made as to the Stock and Trade Shares in question as they stood at the time of sale and transfer, viz.: on or about 1st July, 1863, by the "Old Hudson's Bay Company" to the "New" and present Hudson's Bay Company—so called.

In the present case there is no claim to such stock or any part of it, nor to an iota of what the "New" Hudson's Bay Company of July, 1863, aforesaid—the present one—acquired by its purchase and payment, in cash, to the so called "old" Hudson's Bay Company. The subject of the present claim (Oregan Indemnity) was *not in the Bill* (of sale) as made and agreed on between the said parties, viz.: the Hudson's Bay Company, as amalgamated on 26th March, 1821, and the "International Financial Society who bought them out. The facts on this point are clear, and well known to the present Company and incontestable. Let us glance at them briefly.

BASIS AND SUBJECT OF PURCHASE, BY THE NEW COMPANY.

According to the *Prospectus* issued to the public by the New Company at the time of their purchase (July, 1863), and stated on 2nd July, 1863, by the late Duke of Newcastle, as Colonial Secretary, in the House of Lords as reported in the London Times of 3rd July, 1863, the total purchase money was one million five hundred thousand pounds sterling (£1,500,000 sterling.)

That, according to the official letter of the delegates (Sir George Cartier, and Hon. W. McDougall, C. B.) of the Canadian Government, to the Colonial Office, in February, 1869, in concluding the negotiations for the surrender aforesaid, * the *Bill of Sale* as *made up by the "Old" Company* and *accepted by the New* was as follows :

"1. The Assets (exclusive of Nos. 2 and 3) of the Hudson's Bay Company, recently and specially valued by competent valuers at	£1,023,569
2. The landed territory (not valued)	.....
3. A cash balance of	370,000
	£1,393,569"

The deficit, and blank for "landed territory" was therefore £106,431. That small sum could not, reasonably, be assumed to cover, or apply in any measure to the "Hudson's Bay Territories" proper, "Rupert's Land," the company's claim as to which, in absolute freehold, was emphatically denied by the Canadian Government, and *not* then, (2nd July, 1863) admitted or sustained by the Imperial Government, but left in abeyance. There were, then, lands of great value, on the *west* side of the Rocky Mountains, which, some years before, had been *bought* by the Hudson's Bay Company from the Crown, amongst them 3,080 (three thousand and eighty) acres since forming, or included in the site of the City of Victoria and Harbour of Esquimault, B. C., and ever entered and accounted for in the general fur trade accounts of the Company. Such asset might well amount to the £106,431.

As to what was included in the first item (£1,023,569) of the above "Bill of Sale," we have an authoritative statement in the official report *ad hoc* to the Government of Canada *ad hoc* in London, England, viz. : the Hon. George Brown, a member of that Government in 1865.†

* Sessional Papers, Canada, 1869, No. 25.
† Journals, Legislative Assembly, Canada, 1865, Vol. 25, p. 48.

EXTACT FROM SAID REPORT.

"I drew Mr. Cardwell's attention to the fact, that the prospectus declared that the assets of the New Hudson's Bay Company, *exclusive of landed territory*, had been recently valued by competent valuers at £1,073,569 sterling, and that these assets were further explained to consist of 'goods in the interior, on shipboard, and other stock in trade, including 'shipping, business premises, and other buildings, necessary, for carrying 'on the fur trade.' I pointed out that in addition to this large amount of convertible property, 'a cash balance,' derived from the old Hudson's Bay Company was spoken of in the prospectus; and that other large landed possessions, *besides* those in the *East* of the Rocky Mountains and North of the American line, were thus set forth in the prospectus as being part of the property purchased by the new company. In *addition* to its *chartered* territory, the Company possess the following valuable landed property: several plots of land in British Columbia, occupying most favorable sites at the mouths of rivers, the titles to which have been confirmed by Her Majesey's Government; farms, building sites in Vancouver's Island; and in Canada, ten square miles at La Cloche, on Lake Huron, and tracts of land at fourteen other places.

In addition to all this, I directed Mr. Caldwell's attention to the fact that the Hudson's Bay Company held a claim against the American Government, and which was at that moment under consideration by arbitrators, for the surrender of their rights on the Pacific, south of the boundary line established under the Oregon Treaty. I stated, on information that had reached me, but without personal knowledge of its correctness, that the American Government had expressed its willingness to pay one million dollars for the extinction of that claim, but that the company rejected it, and were in expectation of receiving a much larger amount."

It may be here stated that in or about August 1867—or about then, four years after the purchase—the final award, under the Treaty, was "*Four million dollars to the Hudson's Bay Company*," *eo nomine*, and besides that, *one million one hundred thousand dollars to the Puget Sound Agricultural Association*; which latter claims had—previously—between July, 1863, and the date of the award—been speculatively bought up by certain parties at *one-tenth* their face value, in principal, and transferred—on what terms is not known beyond the inner circle of the transaction—to the *New* Hudson's Bay, who, as admitted by their own official response (by their Secretary) of date 16th November, 1865, to the enquiry on the subject of Messrs. Robert S. Miles, William Sinclair, George Barnston and John Swanston (all retired Chief Factors of the Hudson's Bay Company, personally and privately, like the aforesaid John McLeod, holders of stock in that Association), and which stock, since 1837, had ceased to yield any dividend whatsoever. Deceived, like these gentlemen, in the matter, and hopeless of realizing thereon, otherwise, the writer as administrator of his father's estate, sold out his five shares (£500) for one-tenth, viz.: $250. That was in August 1863. But that apart.

The present claim is *only* on the award to the Hudson's Bay Company—*id est*—Company as it was *at the date of the Treaty* ; according to the text of that document as being and having been " already in the " occupation of land or other property lawfully acquired within the Territory " (in question), " south of the 49th parallel of latitude."

THE NEW HUDSON'S BAY COMPANR (OF 1863) NEVER BOUGHT OREGON Indemnity :

INDEMNITY TO THE "OLD" HUDSON'S BAY COMPANY (OF 1846).

This appears in every aspect of the case, and especially from the following standpoints :

1. The treaty determined the facts and relative rights and positions of the parties and all persons incidentally therein concerned, as they then were, and *had been up to the date of the treaty*. Its terms and tenor specifically state so.

2. That as to indemnity it was not, in any degree or sense prospective, but retrospective, as to its subject and purviews.

3. That the matter of *amount* of indemnity—as before said—was necessarily one of enquiry with unavoidable delay ; but that it was a mere *assessment*, enuring to the parties to whom, *at the date* of the treaty, the right of indemnity accrued, fully and finally.

4. That the subject of it being, by it, taken, entirely, absolutely, and at once, out of the " possession " and jurisdiction of the Hudson's Bay Company, and of Great Britain itself, and appropriated wholly, and solely, to the United States of North America—a foreign nationality—it could not, after the treaty, in the nature of things—*ratione rei, et juris*—belong to, or be under the control, in any sense or way, of that company or of any subjects of Great Britain. That the company being itself but the creature of an English Royal Charter, could claim no more as to such matter than any British subject or the British Government itself.

5. That by and in virtue of the treaty and in accordance with the special terms and organic conditions of the Indenture and Deed Poll of 1821 aforesaid, as continued by Deed Poll of 1834 aforesaid, the indemnity in question, in its *integrity*, accrued to the said company as *then*

being, in its several distinct parts ; in its several personalities ; in its several constitutent entities—by *devolution* of estate, on death, as it were ; for, from the moment of Treaty, the matter of it, viz : the "possessory rights" in question, became *nil* to the *company as a company*. As a corollary, they, as a company, could claim nothing in a proprietary or beneficiary sense, from it, after that. Necessarily—for proper collation and payment to the *several* partitioners in such estate—the national award had to be paid over to the company—not for *self* appropriation—but simply in *trust*, for distribution according to their respective rights of these several beneficiaries.

6. That this, or the like, seems to have been the view of the matter by the "*old*" Hudson's Bay Company, as appears by their answer some three months before their sale to the "New" (the present) Hudson's Bay Comdany, to the letter, in enquiry as to the proposed sale, in relation to the rights of Chief Factors and Chief Traders in the company. The subject of enquiry then was not, specially, that of indemnity—Oregon Indemnity, alone—but included the larger one of all rights, *territorial* as well as trade, on the surrender in question. The correspondence on this subject was included, with other papers, in a memorial (without date, but evidently of the sale in July, 1863, in question) by certain retired Chief Factors, viz : Robert S. Miles, William Sinclair, James Anderson, George Barnston and John Swanston, to the Right Honourable Mr. Cardwell, Secretary of State for the Colonies, in advocacy and defence of their interests. The memorial is too long for present citation, and it may suffice for the present point, and in explanation of the immediate ground for the memorial as applicable to the present argument to give the following extract from it :

EXTRACT.*

Clause 5. In the present state of selling and exchange of the Hudson's Bay Company's affairs, we consider it required by justice, likely to prevent evil, and tending towards a wiser course to place our interests under the immedi.te protection of Her Majesty's Government. We feel assured that better consideration will be had from it than from any Board in Fenchurch Street.

The old company sold their "perpetual succession," and us along with it suddenly, and without previous notice to the Governor or to the Trade, and by that act introduced a most disturbed state of feeling and business."

"6. We would have apprized the late Duke of Newcastle of this danger, *but a lett r of assurance from the old Board, of which copy is herewith enclosed, lulled us into security*, and enabled that concern to compass its purpose without representation on our part."

---

* Return, printed on address of House of Commons, Canada, 18th November, 1867 Sessional Papers, Canada, 1st Sess., 1st Parl., 1867.

COPY OF SAID LETTER.

"HUDSON'S BAY HOUSE,
LONDON, 27th February, 1863.

GENTLEMEN—I am directed by the Governor and Committee to acknowledge the receipt of a memorial (forwarded through Mr. Chief Factor Barnston), dated Montreal, 28th January, 1863, under date 7th February.

In reply, I have to state that communications have passed between the company, on the subject of the surrender of the whole, or a part of the lands held under the charter; but that it is utterly at variance with the facts of the case, that "the only question remaining unsettled is the amount "of indemnity to be paid for the surrender." On the contrary, the Governor and committee have reason to believe that Her Majesty's Government have no intention of preferring any vote in Parliament for such a purpose.

The Governor and committee are at a loss to conceive how the interests of the commissioned officers of the company can be considered as unrepresented, and I am directed to express their surprise that such a statement should have emanated from gentlemen who have been so long connected with the service and who ought to be satisfied; that *now, as ever*, the Governor and committee consider themselves *equally* bound to protect the interests of *the Fur Trade as those of the proprietors.*

The Chief Factors and Traders, whether on the active or retired list, may rest assured that should any surrender of the charter be made, of which, at present there is not the least probability, *their* interests will be at least as carefully protected by the Governor and committee as they could be by any arrangements such as are shadowed forth in the memorial.

In all the communications with the Colonial Office, in the evidence before the Committee of the House of Commons, and in any declaration made in the two Houses of Parliament by any friends of the company, it has been invariably stated that should the company surrender their chartered rights they would expect compensation for the officers and servants as well as to the proprietors.

Under these circumstances the Governor and committee, while admitting the rights of the memorialists to make enquiries as to regulations supposed to affect their pecuniary interests, cannot refrain from expressing their regret, that in the present instance they should have affixed their name to this document upon anything so unreliable as mere newspaper reports.

I am, &c.,
THOMAS FRASER,
Secretary.

GEORGE BARNSTON, Esq.
WM. SINCLAIR, Esq.
JOHN SWANSTON, Esq.
JAMES HARGRAVE, Esq.
ROBERT MILES, Esq.
JAMES ANDERSON, Esq.

In another letter, published with the same Parliamentary Return, on the same subject, we have, from the same quarter, viz.: the Chief Factors on the retired list aforesaid, the following explicit statement, not only as to their claim on the surrender in question, or contemplation at the date of the letter, but on the Oregan Indemnity also.

LETTER OF CHIEF FACTOR, ROBERT S. MILES, TO A. G. DALLAS, ESQUIRE, GOVERNOR, H.B.C.

" BROCKVILLE, 14th August, 1867.

SIR,--I am in receipt of my account current from the Hudson's Bay House, of date 1st June last, and am somewhat surprised at not receiving therewith any communication respecting the proposition made by you when in Brockville two years ago, in your capacity of Governor in Chief of the territories and settlements of the Hudson's Bay Company, for the final settlement by them with the retired officers of the company, which by you, was thought desirable at that time from the various changes that would and must occur under the new arrangements of the concern. The proposition agreed upon and accepted by us, to be made was on a last ten years average of the one eighty-fifth dividends of the concern, which, commencing with the outfit, 1853, and ending with the outfit, 1862, give £466.5s. 6$\frac{7}{20}$d. The transfer of the company took place in 1863, and whether you wait for the completion of that outfit to commence with outfit 1854, and end with the outfit 1863, by the tenor of the first dividend of 1863, and taking into consideration the returns which must have remained in the South from the loss of the ships, the result cannot vary much from this statement, viz. ;

	£. S. D.
Outfit 1853	335.12.3
do 1854	690.18.2
do 1855	872.10.1
do 1856	339. 9.5½
do 1857	479. 3.9
do 1858	475.15.0½
do 1859	259.11.3½
do 1860	248. 1.8
do 1861	207. 8.6
do 1862	353. 5.1
Ten years	£4,662.15.3½
Average	£466. 5.6½

I therefore, as also do those of the undersigned officers, who have requested me to write to you thereon, wish to know, without reserve. if the company close with us on their terms.

When the country on the *West* side of the Mountains was claimed under *Treaty* by the *American Government*, the Northern and Southern Councils were advertised by our departed late friend, Governor Sir George Simpson, that a claim of one million pounds sterling would be made on that Government for the possessory rights acknowledged by the Treaty, and that the *proportion thereof would accrue to the commissioned officers conformable to their interests.* We now see that the claims of British Companies on the American Government have been awarded as follows :— To the Bay Company $4,000,000, and the Puget Sound Agricultural Company $1,100,000. *We therefore beg to submit that our claim on the former is not cancelled by the transfer of the old company to its present possessors.*

In reference to the affairs of the Puget Sound Agricultural Company, those of us who held stock in that concern, and from its commencement only received two small dividends, rested satisfied that the agents there appointed by us, or their successors, would see us righted under whatever settlement the United States Government would make. When the

Secretary of the Company * asked us to dispose of our shares at par without interest, † we think he should at the same time *not have kept us in ignorauce* of the claims that would be submitted to the American Government therefor ; and we are surprised we should have been treated in this ambiguous manner, after the solicitude held out by the company at the period of its formation, of which I have copies in my possession. The Secretary of the company, however, has now, our *stamped* receipts which at the same time, we look upon as a most illiberal transaction by the individuals that took this ingenerous advantage of our position.

The late Directors were very indignant (vide their letter of the 27th February, 1863) that the retired officers should have ever considered them unmindful of their interests, and even went so far as to tell us that there was no idea of a transfer of the concern being made ; how these assertions have been verified the present company can tell.

You are still, Sir, connected with the company, and I await an early reply.

I remain, &c.,

A. G. DALLAS, ESQ. ROBERT S. MILES.

We the undersigned subscribe and concur with the expression of the sentiments hereinbefore set forth in our behalf and at our request.

WILLIAM SINCLAIR,
GEORGE BARNSTON,
JOHN SWANSTON.

OTHER LETTER IN SAID RETURN.

" HUDSON'S BAY HOUSE,
LONDON, 16th November, 1865.‡

GENTLEMEN—I am directed by the Governor and committee to acknowledge receipt of your letter of the 26th October, transmitting copy of a letter addressed to Mr. A. G. Dallas, on the 14th August last by retired Chief Factor Miles, to which, you say you have received no answer, and which you now submit to the Board, and request a distinct and early reply.

---

* Meaning Secretary of the Hudson's Bay Company, for the enterprise was—as Sir George Simpson testified before the Commons Committee of 1857—an " off-shoot " of that company, and was inlcuded in its annual accounts with its partners.

M. McL.

† This Puget Sound *Agricultural* Association--such was its name---was got up for general supplies of food---cereal and animal, grain, beef, tallow, pork, &c for Russian and American Coast Trade as well as for the Fur Trade of the H B.C. It was got up at the instance of the Hudson's Bay Company, but was an enterprise apart from that company. It was started at a capital of £200,000 sterling, in shares of £100. Ten per cent. paid on subscription. The principal subscribers and promoters were Chief Factors and Chief Traders, who had had some experience in the Pacific Slope, amongst them the writer's father. As appears by examination of his back annual accounts current from the Hudson Bay Company, in which this item was included, the only dividends ever paid them---the stock holders was---as Mr. Miles says, " two small ones," viz. : at its commencement. These *were* only 5 per cent. per annum on the *one-tenth* paid up, and which Mr. Miles refers to as " par "---meaning par on amount *paid*. There were no other calls. The enterprise must, presumably, have *paid well in some quarter*, for now, in 1867, the *New* Hudson's Bay Company thereon---as reported by Mr. Miles--drew $1,100,000 (one million one hundred thousand dollars) under the Oregan Treaty on *that head alone*. How the Hudson's Bay Company. the trusted agent of those original promoters, could thus, by a *suppressio veri* and " ambiguity " of misrepresentation to their principals, do such a thing may well surprise Mr. Miles and the other Chief Factors signing his protest. The writer---as elsewhere stated---was similarly " surprised. " That was just after the sale of July 1863, when the negotiations were *in camera* in the matter, with no means nor power to the principals concerned to investigate, as per regulation of the company (H.B.C.) already cited, precluding such enquiry.

M. McL.

‡ So in printed return, but, evidently, should be 1867.

Your letter having been taken into consideration at the meeting of the Board, held on Tuesday, the 14th instant, the following resolution was unanimously agreed to :—

" *Resolved*, That the Governor and committee decline to entertain the request of the gentlemen who sign this letter—no authority was given to make any offer or proposal, such as is recited by them—that at the time *when the Governor and committee offered to purchase the Puget's Sound shares referred to in their letter*, no fresh action whatever had been taken by them with reference to the claim of the United States Government. *The offer was made* in perfect fairness and good faith, and was accepted voluntarily by the parties concerned.

I am, &c.,
THOMAS FRASER,
Secretary.

To Messrs.
R. S. MILES,
WM. SINCLAIR,
GEORGE BARNSTON,
JOHN SWANSTON,
Retired Chief Factors, H B Company."

OTHER LETTER from the New Hudson's Bay Company, to said George Barnston, on same subject as published in pamphlet, page 6, of said Barnston, under head :

" The Oregon Treaty
and the
Hudson's Bay Company."
In 1868.

Date omitted. Probably after 4th March, 1868, or about then.

COPY.

" SIR,—I am desired by the Governor and committee to acknowledge your letter of 21st ult., claiming your share of the compensation awarded by the American Government to the company for their possessory rights in Oregon, and in reply I am to inform you that the whole case was submitted to eminent Counsel, who advised the Board that the officers had no claim on the company.

I am, Sir, &c., &c., &c.,
W. ARMIT,
Secretary."

ANSWER, from the same New Company, to undersigned McLeod, in same matter.

LETTER OF MCLEOD.

" BUCKINGHAM,
County of Ottawa,
Feb. 8, '68.

To the Governor,
Deputy-Governor
and Committee of the Honourable
Hudson's Bay Company.

GENTLEMEN—As representative, under Letters of Administration obtained in England, of the estate of my father, the late John McLeod, senior,

who died in your honourable company's service in July, 1849, one of the Chief Traders named in the Deed Poll of 1821, and who continued so to the day of his death, I beg respectfully to enquire whether his estate will be credited with his share (an " $\frac{1}{85}$ " as per Deed Poll) on the amount awarded, or about to be awarded by the American Government to the Hudson's Bay Company for their " possessory rights " in Oregon?

If so, I would humbly ask that the " account current " be, as formerly, sent to me, either directly, or through your company's agency in Montreal.

The share, as I view the case, accrued at the date of the Treaty. I was not aware of the position of the claim until the production, during the present Session, of certain papers on the subject before the House of Commons here. From them, it would appear that there is some difference of opinion as to the relative rights of the parties interested. For my own part though, as a barrister, holding a very strong opinion in the case, were the claims I represent my own personally, I would, under the circumstances of the case, feel inclined to forego much, in the way of compromise, to avoid the cost and inconvenience of a judicial test, but my position being mainly, if not wholly, merely fiduciary (I, with other children then of age, having in 1849 or 1850, renounced in favour of the widow and minors, of whom, only two daughters, still unmarried, are the survivors), I feel that a very limited discretionary power, in that way, is left to me.

The position I feel it my duty to take is, that the indemnity in question falls, properly, under the head of " clear gains and profits of the concern ;" that it accrued *at the date* of the treaty ; and that the *totality* of the " 40-100ths " of it belonged to the Chief Factors and Chief Traders of that body then being, and to the " retiring interests " of such partners, according to the terms and provisions of the Deed Poll of 1821, in force (by continuance) at the time, viz : in the proportion of $\frac{2}{85}$ for each Chief Factor and $\frac{1}{85}$ for each Chief Trader.

I have the honor to be,
Gentlemen,
Your very humble servant,

MALCOLM MCLEOD,
Admr. estate late John McLeod (senior),
Chief Trader Hon. H. B. C."

ANSWER.

" Hudson's Bay House,
London, March 4th 1868.

SIR,—I am directed by the Board to acknowledge the receipt of your letter of the 8th ultimo, and to inform you in reply that the subject will receive *due consideration* when the company's claims on the American Goveanment, under the Oregon Treaty, are settled.

I am, Sir,
Your obedient servant,

JNO. G. SMITH,
Secretary.

Malcolm McLeod, Esq.,
Buckingham, County of Ottawa."

The italicization of "due consideration" is, by the present writer. Evidently, at the time there was no intent of repudiation. It would be hard to suspect for a moment, that a body of gentlemen—successors of

Prince Rupert and his noble co-corporators of the Royal Charter which gave them name, and corporate existence, deliberately intended thus "to make promise to the ear, and break it to the hope." Not thus was it with the *old* Hudson's Bay Company—than whom—Canadian and English—no more honorable a body of men ever walked this earth; and to whose character in this regard; with all men, civilized, and savages, is due, most largely, their conquest of Northern North America from Ocean to Ocean, from Mexico to the North Pole. But to proceed with the argument.

In these somewhat extended extracts—but unavoidably so—from the correspondence and record of negotiations in this matter, the writer, would for the present, point to these two incontrovertible deductions, and facts~~, in fact,~~ viz.: (*a*) That the "old" Company in *entirely excluding*, in their Bill of Sale to the new, the item and matter of Oregon Indemnity, considered that it had ceased to be, or that it had never been, an asset of the *Company*, *per se*, after the Treaty; but from the date of the Treaty, and as the immediate effect of it, in, at once *destroying the trade*, throughout the region in question, and thereby, to *that Trade*—and nothing else—causing immediate *real loss*—accrued, at once, to the several parties, in their individualities concerned in it. The Treaty is, specifically in that sense, and although the name "Hudson Bay Company" is used in it, it is so—*sub modo*—in the sense of a trust or agency, merely.

(*b.*) That what was due to, and really belonged, in determined right, to the partners—trade and "propriety"—of the company in 1846 could not, in common sense, not to say reason, law or equity, belong to trade—totally different—of 1868. Such a violation of obvious right cannot be covered, legally, or in common ethics by any "Counsel" however "eminent." It was not—is not—a question of *law*, but simply of meum and tuum absolute, and not of debt as between debtor and creditor. To proceed to another point under this general head of non-purchase, by the *New* Company, of this Oregon Indemnity~~, seventhly~~:

REBATES, &c.

7th, The *New* Company bought, as aforesaid, by a cash payment of one million and a half pounds sterling. They forthwith put the whole on the London Stock market at two millions of pounds sterling in 100,000 sharss of £20 each. On these up to 1886, an aggregate *rebate* of £7

per share was paid : making a reimbursement of £700,000 out of the £1,500,000 of original purchase money. Add to that (if not included in the £700,000) the £300,000 sterling received on the surrender of 1869, and we have a balance on that of £500,000. But in this, as per bill of sale aforesaid, there was a "cash," "in hand," item of "£370,000." That left an actual cash outlay of only £130,000. Covering this we have—as admitted by themselves—the one million sterling—or, as stated in American currency, four millions of dollars to the Hudson's Bay Company, and one million one hundred thousand dollars to the Puget Sound Agricultural Association bought up, "in a way," as already stated, for one-tenth—a clear gain of one million dollars on this last item alone.

Add to that the valuable city building sites, and other most valuable selected lands in British Columbia, worth, probably, at least, another million pounds for the localities where held, viz., city of Victoria, Port of Esquimault, Port Simpson, Kamloops, and other interior fast rising city and town sites, are, estimatively, the most valuable in the Dominion of Canada.

Finally add to that the enormous grant of land on the "surrender," viz., "45,160 acres" of trade-post sites, including "500 acres" of the most valuable part of the "city of Winnipeg," worth at least, twenty five millions of dollars, "500 acres" at and about "Lower Fort Garry," worth, at least, two millions of dollars, and "500 acres," at "White Horse Plain," close by Winnipeg, worth, at least, another two millions of dollars ; and last, and certainly not least, the "one-twentieth" of all that peerless wheat field of the world, from Red River, Lake Winnipeg, to the summit of the Rocky Mountains (700 miles) with an average breadth of say 400 miles—an aera of 280,000 square miles, say 180,000,000 acres ; one-twentieth of which is nine millions of acres, worth, at present local values, at least twenty millions of dollars.+ Besides that they have the whole "trade plant," including ships steam and sailing, valued, mutually, by the respective valuators of the two companies (old and new) at £1,023,569 sterling. That stock—practically rebated in full, and far beyond—stands to day, in London's Money Market, at a premium probably unequalled in the courts of Mammon, past or present.

This statement, astounding as it may seem, is strictly within public record. As to the internal matters bearing on this point of *rebate*, I

+ Say, in all, $100,000,000 of the national domain!
For what?

would refer, as to incontestible authority, to the admirable, and most thoroughly correct work of Sir Edward W. Watkins, Baronet, under the caption, "Canada and the States," published in 1887. The subject of rebate is given by him in page 128. The whole work, especially his chapters under the heads, "Negotiations for Hudson's Bay Property," and "Re-organization of Hudson's Bay Company," is, from his own particular standpoint in the matter, essentially authoritative on the subject, for his was a leading part throughout the whole negotiations, and he gives the facts with a candour and liberality which commends itself to general regard. According to his statements, and there is no reason to doubt them, he was the first to organize the Syndicate of *American* and English capitalists to solve the problem arising from the refusal of the British Government to adopt the earnest advice of its Secretary for the Colonies (the Duke of Newcastle), supported by the elder Baring (Lord Wolverton), to expropriate, out of the national purse, the territories in question, to national behest. The task was an extremely difficult one; and unfortunately for the poor worthy traders in question they had no special advocate to see to their particular interests in the controversy. They, in the way indicated by the memorial to the Right Honourable Mr. Cardwell, as Secretary of the Colonies, already alluded to, made an effort in that direction, but, seemingly, with no effect. In like interest, in advance, the writer, personally, on 5th June, 1862, addressed himself to His Grace the Duke of Newcastle, with better effect for it was at once acceptively responded to, as may appear from his speech in the House of Lords (4th July, '62), as reported in Hansard Vol. 167, pp. 1409–11, and which really started the movement in question. The writer holds His Grace's personal acknowledgment of the service, and his immediate action thereon was his response to the appeal.

Having thus gone over the whole ground of the matter, the question suggests itself: How did this "New Company"—so called—acquire the treaty rights in question, of the Hudson's Bay Company as then being? According to their own title, indenture and accompanying schedule of assets, the subject was very properly, not included. The omission was not a mistake, accidental or otherwise. All the *res gestae* of the transaction precluded that idea; the price given emphatically ignored it; it was not in their bond at all; was not an accidental accretion, for it was something finally determined as a right *seventeen years before* their purchase; a right, a thing—not then in the power of the

company, as a company, to sell. From the organic agreement of that company, it had bocome *singula singulis*, the particular, private, personal property of the constituent members of the company as then, at the date of treaty, being. The old company, jointly and severally, took that stand in the matter, throughout. In doing so, the old stockholders knew they were acting in the spirit as well as the letter of their bond with the trade partners, in whom—as they ever gratefully, practically admitted—they lived, and moved, and had their being as a Fur Trading Company of Northern America. Some of these old stockholders may be in the new company, but it yet remains to be learned whether they repudiate their traditions in this regard. They certainly cannot well be suspected of suggesting any doubt on the subject, and sheltering themselves under the cover of an *ex parte*, "legal opinion" of *their own* "eminent counsel."

LAW OF THE CASE.

As before observed—the present is not—or, at least, should not be—a case for the courts of law, or even of reference to "eminent counsel," for the facts and the words of the bonds, as clearly expressive of the consensus *ad rem* of the parties in the case, speak for themselves. In such case, the formulated agreement of parties, while within the bounds of public polity—as in the present instance—makes and determimes relative law and right in the matter *quoad* the parties. In this sense, under the Original Indenture, and Deed Poll of partnership of 1821 as continued in 1834, to an "unlimited period," the award, became—I repeat—the actual and personal property of *each* partner (trade or "proprietory" so-called) in the measure of his "share," from the moment of the passing of the Treaty, and in case of his death before payment thereof, devolved to his succession. That—as the writer contends, and as the venerable and intelligent Chief Factors above named have so unanswerably urged—is the indisputable law and right of the case. It was competent, of course, for those gentlemen, to go into the courts about it. That they forbore from doing so, is no derogation to their right. Pending assessment: lulled by old and recurrent assurances, they waited, till, in course, they died, leaving—some of them in scant poverty—widows and orphans to gather thereof, as best they might. To these—in their poverty—the courts of England, in such a matter, against such a power as the Hunson's Bay Company of to-day, with its grasp of millions untold, are inaccessible. The challenge is a mockery.

CASE IN POINT.

In the whole record of judicial procedure—so far as the writer knows; and his readings professionally, French as well as English, in that line for over half a century, have been almost exceptionally large—there is not a single case—he ventures to say—exactly in its details in point. But there is one case in which on the same original indenture and Deed Poll, and between the same or like parties, an issue of relative rights in question has been finally decided. The report of the judgment appeared in the London Times of 27th February, 1868.

REPORT (*London Times, 27th February, 1868*).

(*Before Vice-Chancellor Sir W. P. Wood.*)

MACTAVISH *et al.* VS. THE HUDSON'S BAY COMPANY.

"This was a suit by the plaintiffs, on behalf of themselves and other Chief Factors and Chief Traders of the Hudson's Bay, claiming to have the advantage of a rise in the value of the Hudson's Bay House in Fenchurch Street. Under the provisions of a Deed Poll, dated in June, 1834, the Chief Factors and Chief Traders, who are the officers having the control of the company's affairs in the Hudson's Bay Territory in North America, are entitled to a certain share in the annual gains and profits of the company and for the purpose of estimating these gains and profits in each year there was to be placed on the debit side of each annual account of the value of the Hudson's Bay House in London two years back, with interest on such value at 5 per cent. for two years, and on the credit side of such account the value of the Hudson s Bay House one year back, with interest at 5 per cent. for one year. From 1834 to 1865 there had been placed on both of the annual accounts a fixed sum of £18,872. 5s. 4d., as the value of the Hudson's Bay House. The company being about to sell their old house in Fenchurch Street, and remove to Lime Street, the attention of the plaintiffs was called to the increase in the present value of the old house, over its value in 1834, and they filed this bill to have the old accounts rectified, and the future accounts taken upon the principle provided by the Deed Poll.

Mr. Giffard, Q. C., and Mr. Horton Smith were for the plaintiffs; Mr. Druce, Q. C., Mr. Montague Bere (of the Common Law Bar) and Mr. Thurstan Holland for the company.

The Vice-Chancellor said it was shown by the admissions of the company that there had been a gradual rise in the value of the house, and that it was worth £36,000 more in 1865 than it had been in 1834. But from 1834 to 1860 there had been no very material increase in its value, the chief rise having taken place between 1860 and 1865. *Under these circumstances the accounts must be rectified* from 1860, and in the accounts for that and the five following years a gradual increase of £6,000 in the value of the house in each year *must be entered in the accounts which were to be taken under the provisions of the Deed Poll.*"

That judgment has never been questianed; never appealed from; sound and just, so it stands as declaratory of English law *ad hoc.* It applies, *a fortiori*, to the present case, for, if as to *realty*, mere bricks and mortar in the heart of London, England—where these "hunters" and Indian traders of the American Wild had no hand—these rights, so adjudged, accrued, certainly, in the same "partnership concern," they, likewise, did so, as to matter and franchise made and acquired solely by their service, with its incidental peril of life, and oft life itself, in that far off wild, the Pacific Slope,—"solely"—because, as to the necessary "capital" for the work, that principal and interest was rateably charged to them, and they *paid* it, and thus made it their own. So, of the whole concern, as per bond. Thus, in the stipulated measure of their right, they were, during the continuance of the above cited organic indenture and Deed Poll of partnership of 1821, to all intents and purposes, *proprietors* in all matters, and rights, corporeal and incorporeal, in their integrity, one and indivisible, according to the nature, aim and objective purposes and *raison d'être* of the *Company; id est*, company "without prejudice" (as says the Deed Poll of 1834) "to the rights and interests of the *persons entitled* to the forty shares" (of Chief Factors and Chief Traders) "under the aforesaid Deed Poll of 26th March, 1821."

It is to be remarked, in this connection, that the present claim, *nomine* John McLeod, Senior, Chief Trader—so designated in the Company's books and accounts—was—as before shown—one of the Chief Traders, party, as such, to the said original Deed Poll. That in this regard *his* position, at the date of the Treaty, was, if not *unique*, at least stronger, and entitled, perhaps, to a closer consideration in accordance with the strict letter and spirit of the original Indenture and Deed Poll of partnership, viz., of 1821.

The Chief Factors and Chief Traders above cited and referred to, apart from said McLeod, were all of subsequent appointment, and none of them were parties, directly or indirectly to the said original instruments.

Further than that, the claims of these latter include—in lump, as it were, with that on the Oregon Indemnity—share, as per Deed Poll of "1834," in the *whole* "concern"—east, as well as west side of the Rocky Mountains—territorial and trade.

This appears, more particularly, from the letter of Mr. Miles and other "*retired*" Chief Factors, of date 14th August, 1867, above cited.

As to that, or any claim, territorial or trade, *beyond* what passed under the Oregon Treaty, the said McLeod estate, prefers no claim. Its interest in the concern expired with returns to outfit 1857.

DELAY IN SETTLEMENT.

For this, the two Governments—sole parties in the Treaty—are alone at fault—*in morâ*. Neither the Hudson's Bay Company, nor any British subjects therein concerned, had the power to enforce settlement, nor even to move the two Governments, or either of them, to finally carry out the *Treaty* in the matter of Indemnity in question. Therefore no prescription can legally run against the claimants.

On the other hand : That since the settlement, by payment to the New Hudson's Bay Company in 1867 or 1868, no prescription can be acquired from the said claimants as (*a*). They were not notified of it, nor placed *in morâ* as to it, in any way by the said New Hudson's Bay Company, who, in taking the money (the four millions of dollars) simply appropriated the whole to their own sole use : (*b*) That the money paid by the United States Government, in question, is not of the nature of a debt—as between debtor and creditor, or liability—but is the absolute property of the claimants, in deposit and trust, in the hands of said company, for delivery, on demand to claimants as sole proprietors thereof ; that such detention conveys no title ; is not subject for prescription ; comes not under the statute of Limitations.

STATEMENT OF CLAIM

Of Estate John McLeod, Senior, Chief Trader, Hudson's Bay Company, on "Oregon Indemnity."

Under Treaty, 15th June, 1846.

Indemnity to said company, as being at date of Treaty.		$4,000,000
"Forty-hundredths" (2-5ths) thereof, as per Deed Poll of 26th March, 1821		1,600,000
One eighty-fifth of same under said Deed Poll—Principal	$18,823.52 say	£3,873.3.0½stg.
Interest from 15th June, 1868, to 15th June, 1892*	22,588.08 say	£4,648.19.9stg.
Total	$41,411.80	£8,522.2.9½stg.

Credential of Undersigned.

Letters of Administration, in London, England, in 1849, to him—then barrister, in Montreal, Canada—as eldest son of said John McLeod, deceased.

Letters (copy of notice) lodged with the company, at their office, London; approved; and, thereon, ever after, all accounts to said estate, to him rendered and, on draft, duly paid to authorized agent, viz: firm, then, of Gillespie, Moffat & Co., London. Letters and authority never questioned. Administration still holds.†

Malcolm McLeod,
(Q.C., &c., Ex-Judge.)

Ottawa, Canada, August, 1892.

---

* As to interest, clause 2, towards end, as already cited, of the Deed Poll of 1821, provides: "And if from any cause the said gains and profits or losses should not be paid at "the expiration of fourteen days after such first day of June" (every year as per said Deed, same clause), "then *with interest at £5 per centum per annum, from the expiration of the "said fourteen days.*"

The delivery to and the receipt by the company, is assumed, on their acknowledgement, per letter cited of the company, to have occurred in or about March 1868. See letters of the company's different Secretaries—Fraser, Smith, and Armit, above cited.

M McL.

† In some such like cases the jurisprudence of England has accorded compound interest, and in some cases with option to claim profits during delay of payment.

APPENDIX A.

[Extract—Clause 16th—from Charter of Charles II. to "the Governor and Company of Adventurers of England, trading into Hudson's Bay."]

"AND Our Will and Pleasure is, and we do also ordain, that it shall and may be lawful, to and for the said Governor for the time being, or his Deputy to be one, to ADMIT† INTO, AND BE OF THE SAID COMPANY, *all such Servants or Factors*, of or for the said company, and all such others, as to them, or the most part of them present, at any court held for the said company, the Governor or his Deputy, being one, shall be thought fit and agreeable with the orders and ordinances made and to be made for the Government of the said company."

EXTRACT.

Clause 1st (Organic)—after preamble.

"NOW KNOW YE, that we being desirous to promote all endeavours that may tend to the public good of our people, and to encourage the said undertaking"—to wit, as therein stated—"for the discovery of a "new passage into the South-Sea, and for the finding of some trade for "furs, minerals and other considerable commodities"—"have of our especial Grace, certain knowledge, and mere motion, given, granted, ratified and confirmed, and by these presents for us, our heirs and successors, do give, grant, ratify and confirm, unto our said cousin Prince Rupert," (and seventeen others, including twelve titled noblemen, four "Esquires," and one John Portman, "citizen and Goldsmith of London,") "that they, *and such others as shall be admitted into the* "*Society* as is hereafter expressed shall be one body corporate and "politique, in deed and in name, by the name of the Governor and "company of adventurers of England, trading into Hudson's Bay."*

---

* Commonly, briefly, called The Hudson's Bay Company.

† The H. B. C. could not, by law, combine or coalesce with its rival the N. W. C. save by such admission, integrally, under the charter of the former. The continuing deed-poll of 1834 was in that sense. To have attempted a partnership otherwise, would have been *ultra vires*, and entailed forfeiture of charter, at common law, in public polity.

M. McL.

PURCHASED 17th January 1925

FROM A. H. O'Brien

PLACE OF PURCHASE Toronto

PRICE 10.00

LATER CATALOGUED PRICES

0-100

d

8

10 m/