

# THE TRANSFER OF ARCTIC TERRITORIES FROM GREAT BRITAIN TO CANADA IN 1880, AND SOME RELATED MATTERS, AS SEEN IN OFFICIAL CORRESPONDENCE<sup>1</sup>

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## A. The Transfer

On June 23, 1870, the territories of the Hudson's Bay Company were formally transferred to the Dominion of Canada by Imperial order in council.<sup>2</sup> A statute of the Canadian Parliament had already made provision for the creation therefrom of the new province of Manitoba.<sup>3</sup> Afterwards, the name Northwest Territories was generally applied to what was left of former Rupert's Land plus the old North-Western Territory, these being the lands that had been subject to the transfer. Canada's right to administer the Northwest Territories as such was not thereafter seriously in doubt, especially after the British North America Act of 1871 had been passed.<sup>4</sup> What remained uncertain was the extent of the territories granted to her, since the limits of Hudson's Bay Company territory had never been conclusively settled. Equally uncertain was the status of the islands north of the mainland.

These uncertainties, and particularly the second one, were shortly to become sources of considerable concern. Two apparently innocent requests for concessions of arctic territory in 1874 — one by a British subject and the other by an American — seem to have set in motion the tangled succession of developments outlined below. These led to the transfer of all remaining British North American arctic territories to Canada in 1880, but as it turned out, this was not the end of the matter, and there followed years of doubt and confusion over the status of these northern regions.

On January 3, 1874, a Mr. A. W. Harvey, then at South Kensington, London, wrote a letter to the Under Secretary of State for the Colonies which began with the following question: "Can you inform me whether the land known as Cumberland on the West of Davis Straits belongs to Great Britain and if it does — is it under the Government of the Dominion of Canada?" He added that he would like to know because he had been carrying on fisheries there for the past two years and expected to erect some temporary buildings.<sup>5</sup> On January 15 he wrote a second letter saying that he was leaving London in a short time and therefore would be glad to have the information he had asked for.<sup>6</sup>

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The following day Assistant Under Secretary for the Colonies Sir H. T. Holland, replying for Colonial Secretary Lord Kimberley, informed Mr. Harvey<sup>7</sup> rather vaguely that a reference to the Hudson's Bay Company had revealed<sup>8</sup> that the land in question had not been part of the company's territory prior to the transfer of 1869-1870, nor did it appear to have been part of Canada before Confederation. Lord Kimberley suggested that Harvey ask the Board of Admiralty whether the land had ever been taken possession of on behalf of the Crown.

About a month later, on February 10, Lt. William A. Mintzer of the U.S. Navy Corps of Engineers wrote a letter to Mr. George Crump, Acting British Consul at Philadelphia, applying through him to the British Government for a tract of land twenty miles square in Cumberland Gulf, for the purpose of carrying on a mining industry.<sup>9</sup> The application was forwarded by Mr. Crump to Foreign Secretary Lord Granville,<sup>10</sup> and passed on by his department to Lord Carnarvon, who had just taken office as Colonial Minister with the new Disraeli administration in early 1874.<sup>11</sup>

The applications evidently aroused some discussion among British Government officials, as the following brief excerpts from Colonial Office files reveal. One, written to Sir H. T. Holland on April 22, ends: "If this territory does not belong to Canada as seems probable might it not be annexed with advantage to obviate possible future inconvenience".<sup>12</sup> Another, dated April 25, suggests:

"It would be desirable to ascertain the views of the Dominion Govt I think before the FO give any answer. We must remember that if this Yankee adventurer is informed by the British FO that the place indicated is not a portion of H.M. dominions he would no doubt think himself entitled to hoist the "Stars and Stripes" which might produce no end of complications."<sup>13</sup>

On April 30 Lord Carnarvon enclosed Mintzer's application in a secret dispatch to Governor General Lord Dufferin of Canada, for confidential communication to his ministers, and raised the question whether or not "the territories adjacent to those of the Dominions on the N. American Continent, which have been taken possession of in the name of this Country but not hitherto annexed to any Colony or any of them should now be formally annexed to the Dominion of Canada." Carnarvon added that the British Government would of course reserve for future consideration the course that should be taken, but would not be disposed to authorize settlement in any unoccupied British territory near Canada, unless the Canadian authorities were prepared to assume the responsibility of maintaining law and order.<sup>14</sup>

Enclosed also was a report by Hydrographer of the Admiralty Frederick Evans,<sup>15</sup> dated April 20, which had been prepared in response to a request from the Colonial Office for information,<sup>16</sup> particularly as to whether the territory referred to by Lt. Mintzer had ever been taken possession of on behalf of the Crown. The report gave a brief geographical and historical description of the territory in question, but admitted "Our knowledge of the geography and resources of this region is very imperfect."

Evans did note, however, that the coast some distance north of Cumberland Gulf had been visited in 1818 by Captain Ross of the British Navy, who had taken possession "in the usual form" at Agnes Monument, 70°30'N. 68°W.

On August 26 Lord Carnarvon sent another secret dispatch to Lord Dufferin containing copies of the correspondence his department had had with Mr. Harvey and saying, "I should be glad to receive an expression of the opinion of yourself and of your Ministers in regard to this application as well as on the similar one referred to in my despatch above mentioned."<sup>17</sup> During the interval that had elapsed since his first letter was written, Mr. Harvey had moved to St. John's, Newfoundland, and had renewed his application, asking for a square mile of land for buildings and mining as well as fishing rights, but he had received a rather discouraging response. On August 25 Under Secretary for the Colonies Mr. R. G. W. Herbert had replied to him, saying that Lord Carnarvon felt obliged to consult the Governor General of Canada regarding the matter, but was not very hopeful that the desired concessions could be granted.<sup>18</sup>

On November 4 Dufferin sent a reply, also secret, to Carnarvon's dispatches of April 30 and August 26, which indicated that the latter's proposition had been favorably received by the Canadian authorities.<sup>19</sup> Enclosed was a copy of an approved order in council, dated October 10, which stated that "the Government of Canada is desirous of including within the boundaries of the Dominion the Territories referred to, with the islands adjacent."<sup>20</sup>

Several important features would appear to emerge from the correspondence thus far—the feeling in official circles in both Great Britain and Canada that there were still British territories north of the Dominion that had not yet been annexed to any colony, the willingness of the British Government to turn these territories over to Canada, the willingness of the Canadian Government to accept them, and the doubts of both governments as to what their boundaries might be.

Carnarvon's next dispatch,<sup>21</sup> dated January 6, 1875, included a rather barren report by the Hydrographer of the Admiralty<sup>22</sup> and a lengthier, more informative one done by his own department,<sup>23</sup> both having been submitted during the December preceding. From the evidence of the latter, he wrote:

"... it appears that the boundaries of the Dominion towards the North, North East and North West are at present entirely undefined and that it is impossible to say what British territories on the North American Continent are not already annexed to Canada under the Order in Council of the 23rd of June 1870, which incorporated the whole of the territories of the Hudson's Bay Company, as well as the North Western territory in the Dominion."

Later in his communication he requested the advice of the Canadian ministers respecting the form of the proposed annexation, and suggested that an act of the British Parliament might be suitable. He also asked that the Canadian ministers specify the territorial limits of the lands to be annexed. This point had been discussed in his own department's minute,

which after referring to the 141st meridian separating British and American territory in the west, continued:

"To the East the British Territories might perhaps be defined to be bounded by the Atlantic Ocean, Davis Straits, Baffin Bay, Smith Sound and Kennedy Channel. But even this definition wld' exclude the extreme North West of Greenland, which is marked in some maps as British territory, from having been discovered probably by British subjects. To the North, to use the words of the Hudson's Bay Co. in 1750, the boundaries might perhaps be, 'the utmost limits of the lands towards the North Pole.'"

This would appear to be the first time, in this correspondence at least, that these easterly and northerly limits were mentioned. In view of subsequent developments respecting the definition of Canada's arctic boundaries, the suggestion assumes a certain importance.

After some delay, which prompted a further letter from Lord Carnarvon on March 27 asking for a response to the above communication,<sup>24</sup> Lord Dufferin sent his reply<sup>25</sup> on May 1. Enclosed was a copy of a Canadian order in council,<sup>26</sup> which agreed that the northern boundary of Canada had never been defined and that it was impossible to say what British territory had not already been annexed to Canada. Then, after stating its approval of the boundaries proposed, the order recommended:

"To avoid all doubt it would be desirable that an Act of the Imperial Parliament should be passed defining the Boundaries East and North as follows

'Bounded on the East by the Atlantic Ocean, and passing towards the North by Davis Straits, Baffins Bay, Smiths Straits and Kennedy Channel including such portions of the North West Coast of Greenland as may belong to Great Britain by right of discovery or otherwise.

On the North by the utmost northerly limits of the continent of America including the islands appertaining thereto.'

The order in council concluded with a request that no action be taken until after the next session of the Parliament of Canada, because acquisition of the new territories would "entail a charge upon the revenue," and should therefore have the sanction of the Canadian Parliament.

Lord Carnarvon replied<sup>27</sup> on June 1, acknowledging receipt of the above and agreeing to comply with the request for delay. However, the requisite action was not taken by the Canadian Parliament during its next session, and official correspondence on the subject seems also to have lapsed until August of the following year. Canadian Minister of Justice Edward Blake, at this time in England, sent a note to Lord Carnarvon<sup>28</sup> with an extract from the New York Times enclosed, the latter announcing the organization of an expedition under Lt. Mintzer to mine graphite and mica in Cumberland Sound. The report indicated that the project was to be under the auspices of the American Government. The Colonial Office replied to Blake<sup>29</sup> on August 22, acknowledging his letter and asking if the Canadian authorities had taken or intended to take any further action in accordance with their order in council of April 30, 1875. Blake in his answer had to admit that he did not know of any action taken, nor was he

able to tell the intentions of the Canadian Government, but he would submit the matter for discussion upon his return home.<sup>30</sup>

Three weeks later Lord Carnarvon sent a copy of the correspondence with Blake to Lord Dufferin, adding, "In view of the probable annexation within a short time of this and other northern territories to Canada, H. M. Govt do not propose to take any action in reference to this expedition unless expressly asked to (do) so by the Dominion Govt."<sup>31</sup> A further communication from Lord Carnarvon<sup>32</sup> enclosed an extract taken by the London Times of October 27 from the New York Times, announcing the return of Mintzer's expedition from Cumberland Sound with approximately fifteen tons of mica estimated to be worth five to twelve dollars a pound.<sup>33</sup>

After another lengthy interval Carnarvon wrote to Dufferin on October 23, 1877,<sup>34</sup> sending him nineteen charts of the North American Arctic which had been provided by the Admiralty in response to a Canadian request of August 29 preceding. Another letter from Carnarvon, bearing the same date, appears to demonstrate the minister's growing irritation at the lack of progress in bringing the project to a conclusion.

"With reference to my Despatch, No. 297 of this days date, I have the honor to request that you will recall the attention of your Ministers to the correspondence noted in the margin . . .

From reports which have appeared in the Newspapers I have observed that the attention of the citizens of the United States has from time to time been drawn to these territories and that private expeditions have been sent out to explore certain portions of them, and I need hardly point out to you that should it be the wish of the Canadian people that they should be included in the Dominion great difficulty in effecting this may easily arise unless steps are speedily taken to place the title of Canada to these territories upon a clear and unmistakable footing.

I have therefore to request that you will move your Ministers to again take into their consideration the question of the inclusion of these territories within the boundaries of the Dominion, and that you will state to them that I shall be glad to be informed, with as little further delay as may be possible, of the steps which they propose to take in the matter."<sup>35</sup>

Dufferin's reply,<sup>36</sup> dated December 1, informed Carnarvon that he had referred the matter to his ministers, who had passed an order in council<sup>37</sup> on the subject, a copy of which was enclosed. The order in council observed that nothing had been done subsequent to the earlier one of April 30, 1875, because "there did not seem at that time any pressing necessity for taking action," and then went on to recommend that "as the reasons for coming to a definite conclusion now appear urgent" resolutions should be submitted at the next parliament authorizing the acceptance of the territories in question. No explanation was offered as to why, in the committee's view, the "reasons for coming to a definite conclusion" were so much more urgent in November 1877, than in April 1875.

A letter of February 22, 1878,<sup>38</sup> from W. R. Malcolm of the Colonial Office to the law officers of the crown, raised the question as to whether an Imperial act would be the most desirable method of making the transfer.<sup>39</sup>

After noting that an Imperial act had been suggested, Mr. Malcolm continued:

"I am desired to enclose copies of opinions delivered by the Law Officers of the Crown dated respectively the 8th of November 1866 and the 8th of May 1871<sup>40</sup> and I am to state that as it would appear to be lawful for Her Majesty to annex territory by Letters Patent to a Colony having representative Institutions provided the assent of the Colonial Legislature is signified thereto it seems to the Secretary of State that the object in view might be effected by Letters Patent followed by Legislation in the Parliament of the Dominion without having recourse to the Imperial Parliament."

In accordance with the proposal embodied in the Canadian order in council of November 29, 1877 the transfer was brought up in the next session of parliament and the outcome was a joint address to the Queen from the Senate and House of Commons, passed on May 3, 1878.<sup>41</sup> The resolutions were moved in the House of Commons by the Hon. David Mills, Minister of the Interior, and supported strongly by members from both sides of the House, including Prime Minister Mackenzie and Leader of the Opposition Sir John A. Macdonald. One lone member, the Hon. Peter Mitchell of Northumberland, N.B., voiced strong opposition, maintaining that the acquisition would be both expensive and useless.<sup>42</sup>

The address stated in a résumé that doubts existed regarding the northern boundaries of Canada, that these doubts should be removed as soon as possible, that the British Government had offered to transfer the territories in question to Canada, that the offer had been accepted, and consequently, to remove all doubts, it was desirable that "an Act of the Parliament of the United Kingdom of Great Britain and Ireland should be passed defining the North-Easterly, Northerly, and North-Westerly Boundaries of Canada, as follows . . ." The description of the desired boundaries following this passage was essentially similar to that contained in the order in council of April 30, 1875, except that it made no direct reference to possible British territories in northwestern Greenland, and did establish a specific western boundary along the 141st meridian.

The question of whether an Imperial act was necessary to accomplish the transfer was again raised in Sir Michael Hicks-Beach's letter of July 17, 1878 to Lord Dufferin (Sir Michael having replaced Lord Carnarvon at the Colonial Office on February 4).<sup>43</sup> After acknowledging receipt of the joint address of May 3, and referring to the request for an Imperial act, Sir Michael continued:

"I have been in communication with the Law Officers of the Crown on this subject<sup>44</sup> and I am advised that it is competent for Her Majesty to annex all such territories to the Dominion by an Order in Council, but that if it is desired after the annexation has taken place to erect the territories thus newly annexed into Provinces and to provide that such Provinces shall be represented in the Dominion Parliament recourse must be had to an Imperial Act; since, as I am advised, the Crown is not competent to change the legislative scheme established by the British North America Act 1867 (30 and 31 Vict: c.3).

I therefore propose to defer tendering to Her Majesty any advice upon the subject of the address of the Senate and House of Commons until I am informed whether it will meet the views of your Govt that letters Patent be passed for annexing these territories to the Dominion leaving the question of Imperial legislation for future consideration if it should be thought desirable to erect any such territories not now belonging to the Dominion into Provinces."

Lord Dufferin's reply,<sup>45</sup> dated October 8, enclosed a memorandum prepared by Minister of Justice Rodolphe Laflamme<sup>46</sup> and an order in council<sup>47</sup> concurring in it. These documents indicate that the Hicks-Beach proposal had been received rather doubtfully by the Canadian authorities, who clearly were by no means convinced of its soundness. The main points of disagreement were set forward very ably by the Minister of Justice in his memorandum.

Briefly reviewing the circumstances leading up to the situation, he noted that the joint address of May 3, 1878, had requested an Imperial act to make the transfer, while the law officers now advised that an Imperial order in council would be sufficient. He then pointed out that a principal reason for requesting Imperial legislation had been that Lord Carnarvon himself had suggested it in his dispatch of January 6, 1875. However, apart from this, the Canadian Government still doubted that an order in council would have validity, and continued to regard an Imperial act as preferable. In their belief, the only power for extending the limits of Canada was given by section 146 of the B.N.A. Act of 1867, where specific provision was made for the annexation to Canada by order in council of Newfoundland, Prince Edward Island, British Columbia, Rupert's Land, and the Northwest Territory. The two northern territories had been duly annexed in 1870 under the terms of section 146;<sup>48</sup> if they in fact included the territories under discussion nothing further needed to be done, but if they did not then resort to further Imperial legislation would be advisable, since the powers given by section 146 might be exhausted in this area. For this reason, and because the boundaries of Rupert's Land and the Northwest Territory were "unknown", it had been thought better to "avoid all doubt in the matter" and obtain an Imperial act.

So far as the other issue was concerned, respecting the law officers' belief that an Imperial act would be necessary if it were desired after the transfer to create provinces from the new territories, the Canadian authorities were much less troubled. The memorandum simply drew attention to the B.N.A. Act of 1871,<sup>49</sup> which had granted the Canadian Parliament the right both to administer territories forming part of the Dominion but not included in any province, and to create new provinces therefrom. The minister surmised that "the attention of the Law Officer of the Crown was probably not directed to this Statute."

In spite of Hicks-Beach's lack of enthusiasm for an act of parliament to bring about the transfer, the Colonial Office proceeded to draw up a bill for this purpose, and sent a draft copy<sup>50</sup> of it to the Secretary of the Admiralty on January 18, 1879. The accompanying letter<sup>51</sup> asked for any observations

the Admiralty might have on the matter, and particularly any suggestions that would help to define more accurately Canada's new boundaries. It recognized, however, that it was asking for the virtually impossible since the northern boundary was "utterly unknown", and it was "with the view of meeting this difficulty that the N. and N.E. boundaries (had been) left so vague". The key passage in the draft, which appears the more significant both because it gave open expression to official uncertainties and because the bill was never enacted into law, began as follows: "The Dominion of Canada shall include all British Territory (if any) which is not already admitted to the Union nor part of the Colony of Newfoundland and which is situate within the following boundaries . . ." The description of boundaries that followed was almost identical with that given in the Canadian joint address of May 3, 1878. Even allowing for the vagueness admitted in the letter, it is evident that this description was considerably more precise than the one that ultimately replaced it in the document finally adopted.

The reply from the Admiralty<sup>52</sup> enclosed a commentary on the draft bill, with a proposed amendment, which had been prepared by Admiralty Hydrographer Frederick Evans,<sup>53</sup> and in which the Lords of The Admiralty concurred. Evans expressed doubts whether Britain should presume to claim all territory up to the northernmost extent of the archipelago, noting that British explorers had reached no further than the entrance to Smith Sound (about 78°30'N.) prior to 1852, while Americans between that date and 1873 had penetrated beyond the 82nd parallel. However, the British arctic expedition of 1875-1876 had then gone some distance beyond the most northerly point reached by the Americans. His amendment, to replace the draft bill's definition of boundaries, ran as follows:

"On the East the Atlantic Ocean, which boundary shall extend towards the North by Davis Straits, Baffin's Bay and Smith's Sound as far as the parallel of 78° 30' of North Latitude, including all the islands in and adjacent thereto, which belong to Her Majesty by right of discovery or otherwise. Thence on the North the boundary shall be the parallel of 78° 30' North Latitude, to include the entire continent to the Arctic Ocean, and also the islands in the same Westward to the one hundred and forty first Meridian West of Greenwich; and thence on that Meridian Southerly till it meets on the N. N. W. part of the continent of America the United States territory of Alaska."

Thus, if the hydrographer's statement had been adopted, no mention would have been made of the most northerly territories, and the British claim would have stopped at 78°30'N.

During the next few days there was an interesting exchange of comments among Colonial Office officials,<sup>54</sup> including a tartly worded suggestion from Hicks-Beach to the effect that members of his department should not propose Imperial legislation without his sanction.<sup>55</sup> Mr. Blake of the department expressed grave doubts about the wisdom of attempting as precise a delimitation of northern and northeastern boundaries as the hydrographer proposed, and stated his preference for leaving them indefinite.<sup>56</sup> This idea

was put forward still more specifically by Under Secretary Mr. Herbert in a memorandum to the minister commenting on the latter's desire to avoid a bill:

"I see the objection to legislation very clearly: on the other hand I fear that without it there will be no means of establishing the right of Canada to territories which are believed to be British but the boundaries of which have never been authoritatively defined.

If a Bill is found to be unavoidable, perhaps it might take the less assailable form of a measure 'to declare that all territories and places in North America now belonging to the Crown, but not hitherto specially included within the boundaries of the Dominion, shall be so included.'"<sup>57</sup>

Sir Michael agreed with this suggestion, remarking that such a form would be best whether the case were dealt with by a bill or an order in council.<sup>58</sup>

The memorandum of the preceding year by the Canadian Minister of Justice and the related documents were all sent by the Colonial Office to the Law Officers of the Crown on February 26. An enclosed letter<sup>59</sup>, written by Mr. Herbert, drew attention to the Canadian authorities' preference for an Imperial act, and their opinion that, once the territories had been properly transferred, the B.N.A. Act of 1871 would be sufficient to permit the Dominion to create provinces therefrom. The law officers were asked to state if they believed further Imperial legislation necessary, and the letter concluded "It appears to Sir Michael Hicks Beach to be for obvious reasons undesirable to have recourse to legislation by the Imperial Parliament unless such a course is unavoidable." What the "obvious reasons" might be was not further enlarged upon.

The reply of the law officers,<sup>60</sup> dated April 3, confirmed their former opinion that Her Majesty could by order in council annex the territories in North America belonging to the Crown to Canada. So far as the other matter was concerned, regarding the erection of such territories into provinces, they admitted that their "attention had not been drawn" to the B.N.A. Act of 1871, and they thought that this statute would in fact give Canada full executive and legislative authority over these territories after their annexation.

The substance of the law officers' report was communicated by Hicks Beach to the Marquis of Lorne,<sup>61</sup> who had succeeded Lord Dufferin as Governor General in November 1878. Sir Michael added:

"I shall be prepared, therefore, should your Government desire it, to take the necessary steps forthwith for effecting the annexation to Canada of the territories in question by Means of an Order of Her Majesty in Council; — but as Imperial Legislation is not necessary for this purpose it will of course not be advisable to have recourse to it."

Evidently fearing that reservations might still be held in Canada about the proposed order in council, Sir Michael wrote a further, confidential note to the Governor General<sup>62</sup> just one day later, which reveals clearly his anxiety that the change be accepted.

"Referring to my Desp. no. 106 of the 18th inst't. intimating the opinion of the Law Officers of the Crown respecting the annexation of certain territory to Canada by means of an Order in Council, I anticipate that your Gov't will share the satisfaction with which I have received this advice. There are obvious reasons which make this course of action preferable to attempting to secure the same object by the introduction of a Bill into the Imperial Parl't. Questions might be raised in the discussion of such a measure which might, in the great press of business, not improbably lead to the abandonment of the project; and I shall be glad to learn that your Gov't concur in my proposal to obtain an Order in Council for the purpose."

The Governor General's reply,<sup>63</sup> written more than 6 months later on November 5, enclosed a copy of an order in council<sup>64</sup> approved the day before. The order embodied a memorandum by Prime Minister Macdonald, which stated that the information about the opinion of the law officers respecting the annexation was "in the highest degree satisfactory" and requested an order in council of Her Majesty's Government for the purpose of such annexation.

On February 6, 1880 the Colonial Office sent to the law officers a draft copy of the proposed order in council,<sup>65</sup> requesting their opinion as to whether it would be "proper and sufficient" for its purpose. The draft was practically identical with the order as finally approved,<sup>66</sup> except that the effective date of the annexation, which had not yet been decided upon, was left out. It is noticeable that the description of the boundaries of the territories to be annexed abandoned earlier attempts at more precise delimitation and employed the extremely vague terminology that appeared in the final order in council. There appears to be no record of a reply from the law officers; it may be presumed, however, that their endorsement was given, in view of the above-mentioned similarity of the draft to the order as finally passed.

A draft copy of the order was sent on July 24 to Sir John A. Macdonald, who was in England at the time, with the request that he suggest an effective date for the annexation. Macdonald's reply on July 28<sup>67</sup> indicated that he thought the precise date immaterial, but should Lord Kimberley (the new Colonial Secretary) approve, he would suggest the first of September following. This date was immediately inserted in the draft and Lord Kimberley sent a copy on the same day to the Lord President of the Council, with the request that it be submitted to Her Majesty at the council's next meeting.<sup>68</sup>

The order in council<sup>69</sup> was approved only three days later, indicating that it was handled without delay. Since it is unquestionably one of the key documents in the entire story of Canada's effort to acquire title to these northern regions, it is worth reproducing in full.

"At the Court at Osborne House, Isle of Wight,  
the 31st Day of July, 1880.

Present:

The Queen's Most Excellent Majesty,  
Lord President,

Lord Steward,  
Lord Chamberlain.

Whereas it is expedient that all British territories and possessions in North America, and the islands adjacent to such territories and possessions which are not already included in the Dominion of Canada, should (with the exception of the Colony of Newfoundland and its dependencies) be annexed to and form part of the said Dominion.

And whereas, the Senate and Commons of Canada in Parliament assembled, have, in and by an Address, dated May 3, 1878, represented to Her Majesty 'That it is desirable that the Parliament of Canada, on the transfer of the before-mentioned territories being completed, should have authority to legislate for their future welfare and good government, and the power to make all needful rules and regulations respecting them, the same as in the case of the other territories (of the Dominion); and that the Parliament of Canada expressed its willingness to assume the duties and obligations consequent thereon;'

And whereas, Her Majesty is graciously pleased to accede to the desire expressed in and by the said Address:

Now, therefore, it is hereby ordered and declared by Her Majesty, by and with the advice of Her Most Honourable Privy Council, as follows:—

From and after September 1, 1880, all British territories and possessions in North America, not already included within the Dominion of Canada, and all islands adjacent to any of such territories or possessions, shall (with the exception of the Colony of Newfoundland and its dependencies) become and be annexed to and form part of the said Dominion of Canada; and become and be subject to the laws for the time being in force in the said Dominion, in so far as such laws may be applicable thereto.

(sgd) C. L. Peel."

Lord Kimberley sent the approved order to the Marquis of Lorne in a dispatch dated August 16,<sup>70</sup> and it was published in *The Canada Gazette* on October 9. Thus the formalities connected with the transfer were finally brought to a conclusion.

## B. Comments

The correspondence summarized above appears to give a fairly clear picture of the rather involved negotiations leading to the transfer. However, several aspects of it merit further comment.

1. One of these is the extraordinary amount of time required to complete the transfer. The first official suggestion of a transfer was apparently made by Lord Carnarvon in his dispatch of April 30, 1874, and afterwards a sense of urgency is sometimes discernible in the remarks of officials on both sides of the Atlantic,<sup>71</sup> yet well over six years elapsed before the order in council was finally signed on July 31, 1880. The most obvious explanation, evident from the correspondence, is undoubtedly the correct one; the British and Canadian authorities spent a good deal of time trying to determine what territories would be subject to the transfer, and then encountered more delay trying to decide whether an Imperial act or order in council should be used to effect it. Furthermore, it was a move initiated by British rather than Canadian statesmen, the Dominion Government for a considerable

time showed little interest or concern, and it fell to the lot of a few Imperial officials, principally colonial ministers Carnarvon and Hicks-Beach, to push matters along and occasionally prod the rather indifferent Canadians into action.

2. The absence of precise territorial delimitation in the order as finally constructed has aroused comment,<sup>72</sup> and is certainly inconsistent with the earlier attempts to avoid leaving anything in doubt. The Colonial Office enlisted the help of the Hudson's Bay Company, the Admiralty, and the Canadian Government, as well as its own personnel, in order to determine what arctic territories were British property; and throughout most of the correspondence the quest continues for an exact definition of the territories being transferred. It is also evident in the Canadian joint address of May 3, 1878; and the remarks of the members who spoke during the debate when the address was accepted indicate their belief that a major benefit of the transfer from Canada's point of view would be the clarification of her northern boundaries. Nevertheless, all such attempts were abandoned at the end, and in the final order the British authorities resorted to the almost meaningless expression "all British territories and possessions in North America, not already included within the Dominion of Canada, and all islands adjacent to any of such territories or possessions . . . (with the exception of the Colony of Newfoundland and its dependencies) . . ."<sup>73</sup> in naming the territories subject to the transfer. Why the change?

Here again the answer or much of it seems obvious. Dr. King suggests<sup>74</sup> that Great Britain doubted the validity of her title to all the lands within the limits that had been proposed, and hence declined to make a precise delimitation, although she did want to transfer to Canada whatever possessions she had in this quarter. Holmden, who in general agrees with King, observes that the British did not know which of their arctic territories had not already been annexed to Canada, and that in any case an exact definition could not be given of territories that were then still largely unknown. For these reasons, he is sure, the order in council was intentionally phrased in imprecise terms.<sup>75</sup> All these points are borne out by the correspondence, which indicates that at the start the authorities wanted a precisely worded document, and gave up only when it became obvious that this would be impossible to achieve in satisfactory fashion. It is also clear that the Admiralty hydrographer's report of January 23, 1879, with its suggestion that the British claim stop at 78°30'N. in deference to American explorations farther north, caused second thoughts about the wisdom of an exact claim. At any rate this marks the approximate point where attempts at precise delimitation were abandoned.

Whether there were other, more obscure reasons for the change is difficult to say. The British authorities may have been genuinely reluctant to claim territories where the American title might be stronger than their own, or possibly, in more Machiavellian fashion, they may have hoped that by an indefinite claim rights could be gained, in the passage of time, that

Britain did not at the moment possess. There is the further possibility, mentioned by neither King nor Holmden, that they may not have wanted to give up all chance of a claim to part of Greenland, and so avoided precise geographical delimitation in order to keep that prospect open for the future.<sup>76</sup> Whatever the full explanation may be, the vagueness of the order in council as finally adopted gave rise later on to serious doubts as to what had actually been transferred to Canada.

3. Another apparent inconsistency, mentioned by King<sup>77</sup> and discussed at some length by Holmden,<sup>78</sup> is the abandonment by the Imperial authorities of an act of parliament (which they themselves had suggested in the first place) in favour of an order in council, to bring about the transfer. Again there appears to be no real mystery involved, in the light of what is revealed in the correspondence. An act was suggested by Lord Carnarvon on January 6, 1875, and during early negotiations it was assumed on both sides of the Atlantic that this device would be used. On February 22, 1878, shortly after Hicks-Beach had become Colonial Secretary, the alternative suggestion of an order in council was made at his direction, with reference to earlier opinions given by the law officers of the crown in rather similar cases, on November 8, 1866, and May 8, 1871.<sup>79</sup> On two later occasions (May 28, 1878 and April 3, 1879), the law officers reaffirmed that a transfer by order in council would be valid (thus removing the doubt that had bothered the Canadian authorities); whereas the Canadian Minister of Justice cited the B.N.A. Act of 1871 as evidence that Canada could create provinces from the new territories once the transfer had been completed (thus clearing up the point that had escaped the law officers themselves). In the end both sides were satisfied that the order in council was in all respects adequate, and Sir Michael, who appears to have been the chief sponsor of the change, had won his point. His motives are indicated in several of his letters, notably that of April 19, 1879, where he speaks of "obvious reasons which make this course of action preferable" and worries over the possibility that "questions might be raised in the discussion of such a measure (i.e. an act) which might, in the great press of business, not improbably lead to the abandonment of the project". There is perhaps room for a certain amount of curiosity about his "obvious reasons" and what it was he actually feared most — delay or defeat in parliament, excessive or unfavourable publicity, a strong public reaction against the project in either Great Britain or the United States — but it at least seems clear that he preferred the order in council because he thought it would be quieter, faster, and more certain of passage.

4. Another feature that seems rather odd is that the law officers could have overlooked the B.N.A. Act of 1871, since it had been passed to meet a situation rather similar to that which they were anticipating when they gave their opinion (May 28, 1878) that further Imperial legislation would be necessary after a transfer by order in council if it were desired to create provinces from the new territories. The circumstances surrounding the passing of this act are briefly as follows.

In 1870, while the Manitoba Bill was under discussion, the question was raised as to whether the Parliament of Canada had authority thus to create provinces from unorganized territories and to give them representation in the Dominion Senate and House of Commons.<sup>80</sup> The matter was taken under consideration, and on January 3, 1871 Governor General Lord Lisgar sent Colonial Secretary Lord Kimberley<sup>81</sup> an approved minute of council<sup>82</sup> on the subject, with an attached report, dated December 29, 1870, from the Minister of Justice (Sir John A. Macdonald). In his report Macdonald noted the difficulty that had arisen and the fact that the B.N.A. Act of 1867 did not specifically provide for the representation of the territories in the federal parliament, and then recommended that

“the Earl of Kimberley be moved to submit to the Imperial Parliament at its next Session, a Measure —

1. Confirming the Act of the Canadian Parliament 33rd Vict. chap. 3 above referred to as if it had been an imperial Statute and legalizing whatever may have been done under it, according to its true intent.

2. Empowering the Dominion Parliament from time to time to establish other Provinces in the North Western Territory . . . and also empowering it to grant such Provinces representation in the Parliament of the Dominion . . .”.

A suggested draft of the requested bill was sent by Lord Kimberley to Lord Lisgar on January 26,<sup>83</sup> and a Canadian order in council was passed on February 27,<sup>84</sup> embodying the substance of Kimberley's draft in another that Lisgar returned to him on March 2.<sup>85</sup> The draft bill, in slightly changed form, was inserted in a joint address to the Queen from the Senate and House of Commons on April 13,<sup>86</sup> and sent by the Governor General to Kimberley on April 18.<sup>87</sup> The B.N.A. Act of June 29, 1871, followed.<sup>88</sup> The sections most relevant here read as follows:

“Whereas doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in Territories admitted, or which may hereafter be admitted into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

Be it enacted . . . .

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament . . . .

4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.”

The act also stated (section 5) that both the Rupert's Land Act and the Manitoba Act were to be deemed “valid and effectual for all purposes whatsoever”.<sup>89</sup>

Thus, if the B.N.A. Act of 1867 had failed to give Canada the power to create provinces from territories that had been or might be annexed to it, the act of 1871 would seem to have remedied this deficiency.

5. A subsequent development of interest here was the enactment of the Colonial Boundaries Act in 1895.<sup>90</sup> A copy of this act was sent to Canada, accompanied by a copy of a circular from Colonial Minister Joseph Chamberlain that read as follows:

"The Law Officers of the Crown having recently reported that where an Imperial Act has expressly defined the boundaries of a Colony, or has bestowed a Constitution on a Colony within certain boundaries, territory cannot be annexed to that Colony so as to be completely fused with it, as, e.g., by being included in a province or electoral division of it without statutory authority, it followed that certain annexations of territory to Colonies falling within the above category which had been effected by Order in Council and Letters Patent, accompanied by Acts of the Colonial Legislatures, were of doubtful validity, and this Act has been passed to validate these annexations, and to remove all doubts as to Her Majesty's powers in future cases."<sup>91</sup>

The act itself is very short. The main clause is given below.

"Where the boundaries of a colony have, either before or after the passing of this Act, been altered by Her Majesty the Queen by Order in Council or letters patent, the boundaries as so altered shall be, and be deemed to have been from the date of the alteration, the boundaries of the colony."

It also provided that the consent of a self-governing colony must be obtained for the alteration of its boundaries, and a schedule listed the self-governing colonies, including Canada, which were subject to this provision.

Dr. King, who does not seem to have been aware of the B.N.A. Act of 1871, takes note of the Colonial Boundaries Act, and seems to conclude that it was passed because doubts remained respecting the validity of the transfer in 1880.<sup>92</sup> Holmden disagrees with this interpretation, saying that by the time the order in council of July 31, 1880 was passed, the authorities in both Great Britain and Canada were satisfied that the transfer was legal, although unquestionably there were still doubts regarding the territorial boundaries of the lands transferred in both 1870 and 1880. He believes that although the Colonial Boundaries Act would clear up any doubts about the validity of the transfer in 1880, yet it was not "intended to apply to Canada".<sup>93</sup> It seems to me that Holmden is generally correct, but nevertheless the essential point here is something rather different. That is to say, the order in council of 1880 handed over certain territories to Canada merely as territories, leaving the Dominion to administer them and erect them into provinces at her discretion under the authority of the B.N.A. Act of 1871, but the Colonial Boundaries Act was intended to deal with territories that supposedly had been, to borrow Chamberlain's phrase, "completely fused" with colonies as parts of provinces or electoral divisions, by Imperial orders in council. That being the case, the act could hardly have been designed specifically to correct flaws in the transfer of 1880.<sup>94</sup>

6. In line with his view that it was a doubtful transfer, King says that Canada took no steps to govern or incorporate the added territory between 1880 and 1895 and implies that uncertainty as to Canadian ownership may explain the lack of action on the part of the Canadian government.<sup>95</sup> Again Holmden disagrees, remarking that King did not have access to all the papers connected with the transfer.<sup>96</sup> He refers to a correspondence between the Canadian Minister of Justice and officials of the Hudson's Bay Company, during the period from July 31, 1880 to September 23, 1882. The minister tried to obtain information about the inhabitants of the northern regions, but the Company men could give him little, and finally he recommended that no action be taken to legislate for these regions until they became sufficiently populated to make this step necessary. The minister's recommendations were embodied in the following order in council,<sup>97</sup> which was forwarded to the Earl of Kimberley on September 25, 1882.<sup>98</sup>

"The Committee of Council have had under consideration a Despatch dated 16th August 1880, No. 131, from The Earl of Kimberley, enclosing an Order of Her Majesty in Council dated the 31st of July 1880, annexing to the Dominion of Canada from the 1st September 1880 such British possessions in North America (with the exception of the Colony of Newfoundland and its dependencies) as are not already included in the Dominion.

The Minister of Justice to whom the said Despatch was referred with a view to endeavour to obtain information regarding the occupants of the country North and North West of Hudsons Bay, and their habits and pursuits, reports that immediately after the reference he entered into a correspondence with the principal officer of the Hudson's Bay Company on the subject, and that gentleman very kindly caused Circulars to be addressed to such of the Agents of the Company as were likely to be able to furnish information on the points under consideration. On the 22' of July last the Chief Executive Officer of the Company, Mr. James Grahame, addressed a letter to him, the Minister, informing him that the parties to whom he had referred the enquiries were unable to furnish the required information.

The Minister is not aware of any other source where such information as is desired may be sought, and he advises that no steps be taken with the view of legislating for the good government of the country until some influx of population or other circumstance shall occur to make such provision more imperative than it would at present seem to be.

The Committee concur in the report of the Minister of Justice and advise that a copy of this Minute when approved be transmitted to Her Majesty's Secretary of State for the Colonies."

Thus Holmden's contention (contrary to King's) that Canada had accepted charge of these territories in 1880 and failed to legislate for them between that date and 1895, not because of doubts as to the validity of the transfer, but because she could find no need for any legislative or other action, would appear to be validated.<sup>99</sup>

### C. Conclusion

The documents referred to in the preceding pages appear to throw a good deal of light upon the transfer, its background, and certain other

matters related to it. Whether they leave anything of importance unsaid is a question. It is clear that Britain decided, after receiving two embarrassing and potentially troublesome applications for land and other privileges, to make Canada the proprietor of all British possessions in this area that had not already been placed under Canadian jurisdiction. There could possibly be something to Holmden's suggestion that Great Britain believed such a transfer would enable her to appeal to the Monroe Doctrine for settlement in case of a dispute with European powers.<sup>100</sup> It was an American, however, who made the original non-British application for a concession, and it is evident that the major concern of the British authorities was with the United States.<sup>101</sup> They may have thought that by quietly transferring Britain's rights in this region to Canada they would be in a better position to forestall or defeat any attempt by the United States, whether based upon the Monroe Doctrine or not, to assert American sovereignty there. Furthermore, the fact of the transfer might in itself imply that the territories in question were subject to measures of sovereignty and control, both before and after the transaction was completed.

Regarding the legal status of the transfer, the total evidence of the preceding pages would certainly indicate that, although it was attended by a good deal of delay and confusion, the transfer itself was valid enough as a voluntary gift to Canada of whatever rights Britain possessed. What was in doubt, then and later, was the completeness of Britain's own title at the time of the transfer, as well as the extent of the territories subject to the transaction. Holmden puts the matter succinctly enough: "The Imperial Government did not know what they were transferring, and on the other hand the Canadian Government had no idea what they were receiving."<sup>102</sup>

Canada's various attempts to organize and delimit the new territories began in 1895, when a Dominion order in council was passed creating the four provisional districts of Ungava, Yukon, Mackenzie, and Franklin, the last-named including the archipelago.<sup>103</sup> Her long effort to bring them under effective administration and control began about the same time or shortly afterwards, with the Wakeham, Low, and Bernier voyages to the Arctic, and the establishment of mounted police posts at various places on the mainland and later in the islands. However, all this is outside the scope of the present article.

<sup>1</sup>Most of the material in this article has been drawn from documents in the Public Archives, Ottawa. Primarily these documents comprise (a) microfilm records of the Colonial Office Papers, and (b) a case labelled "Interior Dep't., *Arctic Islands Documents, Reports on Sovereignty, Memoranda, Maps,*" which contains much of the same material, although each has some the other lacks. Most of the citations below refer to the former. In addition to the correspondence in the case, I have found extremely useful the memorandum accompanying it, which was prepared by Hensley R. Holmden, Associate Archivist in charge of the Maps Division, in 1921. In general I have tried, as much as seems appropriate, to let the documents speak for themselves. I am indebted to members of the Archives staff for much help in locating materials and otherwise facilitating the writing of the article.

<sup>2</sup>*Imperial Order in Council (June 23, 1870). See in Statutes of Canada, 35 Vict., (1872), p. lxiii-lxxxiii.*

- <sup>3</sup> *Statutes of Canada*, 33 Vict., c. 3 (Manitoba Act, May 12, 1870).
- <sup>4</sup> *Statutes of Great Britain*, 34-45 Vict., c. 28 (June 29, 1871). See below, at Ref. 49, 88.
- <sup>5</sup> *Colonial Office Papers*, Series No. 42 (henceforth cited as C.O.42), Vol. 734, p. 419. Harvey to Colonial Office (Jan. 3, 1874).
- <sup>6</sup> *Ibid.*, p. 421-2. Harvey to Colonial Office (Jan. 15, 1874).
- <sup>7</sup> *Ibid.*, p. 423-4. Holland to Harvey (Jan. 16, 1874). Draft copy.
- <sup>8</sup> *Ibid.*, p. 420. Lampson to Holland (Jan. 12, 1874).
- <sup>9</sup> *Ibid.*, Vol. 732, p. 178-9. Mintzer to Crump (Feb. 10, 1874). The close relationship of the Harvey and Mintzer applications in respect to time, place, and purpose is evident, and arouses curiosity as to whether there had been any contact, friendly or otherwise, between the two men.
- <sup>10</sup> *Ibid.*, p. 177. Crump to Granville (Feb. 20, 1874).
- <sup>11</sup> *Ibid.*, p. 176. Foreign Office to Colonial Office (March 28, 1874).
- <sup>12</sup> *Ibid.*, Vol. 731, p. 51. W.D. (?) to Sir H. T. Holland (April 22, 1874). This document, and the one following, are in the Archives microfilm, but not in the case *Arctic Islands Documents* . . .
- <sup>13</sup> *Ibid.*, p. 52 (April 25, 1874). Signature illegible.
- <sup>14</sup> *Ibid.*, Vol. 731, p. 58-60. Carnarvon to Dufferin (April 30, 1874). Draft copy.
- <sup>15</sup> *Ibid.*, p. 55-7.
- <sup>16</sup> *Ibid.*, Vol. 732, p. 180-1. Holland to Secretary of the Admiralty (April 13, 1874). Draft copy.
- <sup>17</sup> Carnarvon to Dufferin (Aug. 26, 1874). From handwritten copy in case *Arctic Islands Documents* . . .
- <sup>18</sup> H. R. Holmden, *Memo re the Arctic Islands* (Ottawa: Public Archives manuscript, 1921), p. 3-4. I have not been able to locate Herbert's letter in the Archives documents, but Holmden must have seen it, because he quotes from it verbatim. Nor have I seen any record of a reply to Mintzer.
- <sup>19</sup> C.O. 42, Vol. 730, p. 5-6. Dufferin to Carnarvon (Nov. 4, 1874).
- <sup>20</sup> *Dominion Order in Council*, P.C. No. 1248 (Oct. 10, 1874).
- <sup>21</sup> C.O.42, Vol. 731, p. 196-9. Carnarvon to Dufferin (Jan. 6, 1875). Draft copy.
- <sup>22</sup> *Ibid.*, p. 189-95 (Dec. 2, 1874).
- <sup>23</sup> *Ibid.*, p. 179-85 (Dec. 19, 1874).
- <sup>24</sup> *Ibid.*, p. 200. Carnarvon to Dufferin (March 27, 1875). Draft copy.
- <sup>25</sup> *Ibid.*, Vol. 736, p. 393. Dufferin to Carnarvon (May 1, 1875).
- <sup>26</sup> *Dominion Order in Council*, P.C. No. 46D (April 30, 1875).
- <sup>27</sup> C.O.42, Vol. 736, p. 396. Carnarvon to "The Officer Adm. the Govt." (June 1, 1875). Draft copy.
- <sup>28</sup> *Ibid.*, Vol. 747, p. 476-7. Blake to Carnarvon (Aug. 15, 1876).
- <sup>29</sup> *Ibid.*, p. 479-80. Colonial Office to Blake (Aug. 22, 1876). Draft copy.
- <sup>30</sup> *Ibid.*, p. 369. Blake to Colonial Office (Aug. 23, 1876).
- <sup>31</sup> *Ibid.*, p. 371. Carnarvon to O.A.G. (Sept. 13, 1876). Draft copy.
- <sup>32</sup> *Ibid.*, p. 373. Carnarvon to Dufferin (Nov. 1, 1876), Dispatch No. 324. Draft copy.
- <sup>33</sup> Holmden, *op. cit.*, p. 10, draws attention to a statement by Donald Smith (afterwards Lord Strathcona) in Canada, *House of Commons Debates* (May 3, 1878), p. 2392, to the effect that the cargo was worth \$120,000. Smith did not identify the Mintzer expedition by name, but there is little doubt it was the one to which he referred.
- <sup>34</sup> Dispatch No. 297 (Oct. 23, 1877).
- <sup>35</sup> Dispatch of Oct. 23, 1877. Both this document and the preceding one are reproduced in handwriting in the case *Arctic Islands Documents* . . ., but do not appear to be in the Archives microfilm.
- <sup>36</sup> C.O. 42, Vol. 749, p. 788-9. Dufferin to Carnarvon (Dec. 1, 1877).
- <sup>37</sup> *Dominion Order in Council*, P.C. No. 922D (Nov. 29, 1877).
- <sup>38</sup> C.O. 42, Vol. 749, p. 793-5. Malcolm to attorney general and solicitor general (Feb. 22, 1878). Draft copy.
- <sup>39</sup> This doubt is now raised in the correspondence for the first time, so far as I can tell.

Holmden, *op. cit.*, p. 14, is obviously in error when he asserts that it was first brought up in Hicks-Beach's letter of July 17, 1878.

<sup>40</sup> Below, Ref. 79.

<sup>41</sup> C.O. 42, Vol. 753, p. 391-4. See the text of the joint address also in Canada, *Senate Debates* (May 3, 1878), p. 903; and in W. F. King, *Report upon the Title of Canada to the Islands North of the Mainland of Canada* (Ottawa: Gov't. Printing Bureau, 1905, p. 9-10). King was Chief Astronomer of the Dominion.

<sup>42</sup> Canada, *House of Commons Debates* (May 3, 1878), p. 2386-94. Holmden, *op. cit.*, p. 11, says that some of the official correspondence on the subject had been secretly shown to Macdonald the day before.

<sup>43</sup> C.O. 42, Vol. 753, p. 395-7. Hicks-Beach to Dufferin (July 17, 1878), Dispatch No. 184. Draft copy.

<sup>44</sup> See Ref. 38 above; and C.O. 42, Vol. 754, p. 531-3. Law Officers to Hicks-Beach (May 28, 1878).

<sup>45</sup> *Ibid.*, Vol. 754, p. 142. Dufferin to Hicks-Beach (Oct. 8, 1878). Dispatch No. 247.

<sup>46</sup> *Ibid.*, p. 145-51 (Aug. 30, 1878).

<sup>47</sup> *Ibid.*, p. 143-4. *Dominion Order in Council*, P.C. No. 1162D (Oct. 2, 1878).

<sup>48</sup> *Imperial Order in Council*, June 23, 1870 (above).

<sup>49</sup> *Statutes of Great Britain*, 34-35 Vict., c. 28 (*The British North America Act*, June 29, 1871). See sections 2 and 4 (below, at Ref. 88).

<sup>50</sup> C.O. 42, Vol. 754, p. 156-9.

<sup>51</sup> *Ibid.*, p. 152-5. Colonial Office to Secretary of the Admiralty (Jan. 18, 1879). Draft copy.

<sup>52</sup> *Ibid.*, Vol. 759, p. 24-5. Admiralty to Colonial Office (Jan. 28, 1879).

<sup>53</sup> *Ibid.*, p. 26-32. Hydrographer's Report (Jan. 23, 1879).

<sup>54</sup> *Ibid.*, p. 19-23.

<sup>55</sup> *Ibid.*, p. 20 (Feb. 6, 1879).

<sup>56</sup> *Ibid.*, p. 19 (Jan. 29, 1879).

<sup>57</sup> *Ibid.*, p. 22 (Feb. 10, 1879).

<sup>58</sup> *Ibid.*, p. 22 (Feb. 20, 1879).

<sup>59</sup> *Ibid.*, p. 33-9. Colonial Office to Law Officers of the Crown (Feb. 26, 1879). Draft copy.

<sup>60</sup> *Ibid.*, p. 195-8. Law Officers to Hicks-Beach (April 3, 1879).

<sup>61</sup> *Ibid.*, p. 199-201. Hicks-Beach to Marquis of Lorne (April 18, 1879), Dispatch No. 106. Draft copy.

<sup>62</sup> *Ibid.*, p. 202-3. Hicks-Beach to Marquis of Lorne (April 19, 1879). Draft copy.

<sup>63</sup> *Ibid.*, Vol. 758, p. 11-12. Marquis of Lorne to Hicks-Beach (Nov. 5, 1879). Dispatch No. 315.

<sup>64</sup> *Ibid.*, p. 13-14. *Dominion Order in Council*, P.C. No. 88E (Nov. 4, 1879).

<sup>65</sup> C.O. 42, Vol. 758, p. 8-10, 15. Colonial Office to Law Officers of the Crown (Feb. 6, 1880). Draft copy.

<sup>66</sup> Below, at Ref. 69.

<sup>67</sup> C.O. 42, Vol. 765. A.S. Dennis to Colonial Office (July 28, 1880). Acknowledged in *ibid.*, Colonial Office to Macdonald (July 31, 1880).

<sup>68</sup> Lord Kimberley to Lord President of the Council (July 28, 1880). Copies of documents cited in this and the preceding reference are in the case *Arctic Islands Documents*, but evidently not in the Archives microfilm.

<sup>69</sup> *Imperial Order in Council* (July 31, 1880). See in C.O. 42, Vol. 764, p. 329; also *The Canada Gazette*, Vol. XIV, No. 15 (Oct. 9, 1880), p. 389; and W. F. King, *op. cit.*, p. 10.

<sup>70</sup> C.O. 42, Vol. 764, p. 330. Kimberley to Marquis of Lorne (Aug. 16, 1880), Dispatch No. 131. Draft copy.

<sup>71</sup> More evident, in the case of the Canadians, during the later stages of the negotiations. E.g., see the remarks about the need for speedy action by Mackenzie, Mills, and Macdonald in the House of Commons on May 3, 1878.

<sup>72</sup> E.g., W. F. King, *op. cit.*, p. 4-8; H. R. Holmden, *op. cit.*, p. 11-13, 17ff.; A. E. Millward, *Southern Baffin Island* (Ottawa: King's Printer, 1930), p. 12-13.

<sup>73</sup> If taken at face value this would presumably include British Honduras, Bermuda, the Bahamas, and the British West Indies. So far as I know no one has ever raised the question as to whether all these possessions were inadvertently handed over to Canada at the time of the transfer!

<sup>74</sup> W. F. King, *op. cit.*, p. 6.

<sup>75</sup> Holmden, *op. cit.*, p. 11-12.

<sup>76</sup> See Colonial Office minute of Dec. 19, 1874 (above). In this connection it is perhaps worth recalling that the Nares expedition had been active in northwest Greenland in 1875-1876, and had explored farther along the northern coast than any other expedition up till that time. Lt. Greely of the U.S. Army did not begin his expedition to the same region until 1881.

<sup>77</sup> King, *op. cit.*, p. 5.

<sup>78</sup> Holmden, *op. cit.*, p. 14 ff.

<sup>79</sup> L.O., 10568/66 Cape (Nov. 8, 1866), and L.O., 4558/71 Cape (May 8, 1871). The first advised that the annexation of "Nomansland" to Natal, which had been brought about in 1863-4 by means of letters patent and a local ordinance, had been lawful, and that the proposed annexation of the Penguin Islands to Cape Colony could also be effected by the Crown. The second advised that the annexation of Chief Waterboer's territory to Cape Colony could similarly be effected by the Crown. In each of the proposed annexations, according to the law officers, Her Majesty's action should be accompanied by an act of the local legislature.

<sup>80</sup> Both the order in council cited below (*see* Ref. 82) and the attached report by Macdonald say that the question was raised "during the last Session of the Canadian Parliament". I do not see any direct reference to it in the debates, except that on May 4 Mr. Mills asked "if the Government intended to ask the Imperial confirmation of the power of this Bill", and Macdonald replied that there was "some doubt in this respect about the appointment of Senators". Mr. Wood thought that "with the exception of Senators the provisions of the Bill would be embraced under an Imperial Order in Council". *House of Commons Debates* (May 4, 1870), cols. 1361-2.

<sup>81</sup> C.O. 42, Vol. 696, p. 2-4. Lisgar to Kimberley (Jan. 3, 1871). Dispatch No. 1.

<sup>82</sup> *Dominion Order in Council*, P.C. No. 503 (Jan. 2, 1871). *See*, with Macdonald's report, in C.O. 42, Vol. 696, p. 8-13.

<sup>83</sup> C.O. 42, Vol. 696, p. 5-6. Kimberley to Lisgar (Jan. 26, 1871). Dispatch No. 341.

<sup>84</sup> *Dominion Order in Council*, P.C. No. 416B (Feb. 27, 1871).

<sup>85</sup> C.O. 42, Vol. 697, p. 18-19. Lisgar to Kimberley (March 2, 1871). Dispatch No. 53.

<sup>86</sup> Canada, *Journals of the Senate* (April 13, 1871), p. 154-5, gives the complete text. *See also House of Commons Debates* (April 13, 1871), cols. 1081-2.

<sup>87</sup> C.O. 42, Vol. 697, p. 516-7. Lisgar to Kimberley (April 18, 1871). Dispatch No. 86.

<sup>88</sup> *Statutes of Great Britain*, 34-35 Vict., c. 28 (June 29, 1871).

<sup>89</sup> Holmden, *op. cit.*, p. 20-2, emphasizes the differences between the Canadian draft or drafts and the final act, and says that the Imperial authorities, refusing to accept the former, composed the latter themselves. It is true that there are differences, but most of them are of minor importance, and essentially the Kimberley draft, the Canadian drafts of Feb. 27 and April 13, and the final act are similar in import if not in structure. Note also that the Kimberley draft, which Holmden does not mention, set the pattern for the Canadian drafts. Holmden did not see the joint address of April 13, nor, apparently, did he see a note from the Colonial Office to the Secretary to the Treasury (C.O. 42, Vol. 697, p. 22-4, May 2, 1871), which shows clearly that the British authorities were in fact trying to meet the wishes of the Canadian Government.

<sup>90</sup> *Statutes of Great Britain*, 58-59 Vict., c. 34 (July 6, 1895).

<sup>91</sup> Chamberlain to Officer Administering the Government (July 26, 1895).

<sup>92</sup> W. F. King, *op. cit.*, p. 5, 8.

<sup>93</sup> Holmden, *op. cit.*, p. 23-6. Perhaps he meant that the Imperial authorities, in passing the act, did not have Canada primarily in mind. The act must have been intended to be applicable to Canada, since Canada was one of the self-governing colonies

named in the accompanying schedule. See also A. E. Millward, *op. cit.*, p. 12.

<sup>94</sup> See Great Britain, *Parliamentary Debates*, 4th Series, 58-59 Vict., Vol. xxxv (June 25-July 6, 1895), Cols. 46-7, 195. Speaking in the House of Lords on July 1, the Marquess of Ripon, outgoing Secretary of State for the Colonies in the defeated Rosebery Administration, said in reference to the proposed measure: "Some small islands have been added to New Zealand; and the boundaries of some Australian colonies have been altered. The doubts relate to cases of that kind."

Three days later the following exchange took place in the House of Commons:

"Dr. Clark asked whether under this Bill Cape Colony and Natal would be able to extend their borders without reference to that House.

The Secretary of State for the Colonies (Mr. J. Chamberlain, Birmingham, W.) replied in the negative."

<sup>95</sup> W. F. King, *op. cit.*, p. 6, 8.

<sup>96</sup> Holmden, *op. cit.*, p. 23.

<sup>97</sup> *Dominion Order in Council*, P.C. No. 1839 (Sept. 23, 1882).

<sup>98</sup> C.O. 42, Vol. 772, p. 182-3. Sir W. J. Ritchie (Administrator) to Kimberley (Sept. 25, 1882). Dispatch No. 28.

<sup>99</sup> A. E. Millward, *op. cit.*, p. 13, interprets Lt. A. R. Gordon's three voyages in 1884, 1885, and 1886 as being connected with Canada's assumption of responsibility in the newly transferred territories. I can find little to justify this supposition, since, as Gordon's narratives and Millward's own quotations and comments make clear, the voyages were designed primarily to gather information about navigation in Hudson Strait, and they penetrated no farther north. See Gordon's three *Reports*, for 1884, 1885, and 1886, issued under the authority of the Minister of Marine and Fisheries, in the departmental annual reports.

<sup>100</sup> Holmden, *op. cit.*, p. 12-13.

<sup>101</sup> See Blake of the Colonial Office to Bramston in C.O. 42, Vol. 759, p. 19 (Jan. 29, 1879): "The object in annexing these unexplored territories to Canada is, I apprehend, to prevent the United States from claiming them, and not from the likelihood of their proving of any value to Canada."

<sup>102</sup> Holmden, *op. cit.*, p. 12. See also V. Kenneth Johnston, "Canada's Title to the Arctic Islands", *The Canadian Historical Review*, XIV, No. 1 (March 1933), p. 24-41, esp. p. 29. Johnston questions that Britain's title to all the islands was perfect by the end of the nineteenth century; nevertheless he seems to consider that the transfer as such had been valid. E.g. ". . . the British government, by order-in-council in 1880, transferred to Canada all British territories in North America except Newfoundland and its dependencies . . ." He then adds, evidently following King, that the order "was confirmed by imperial statute in 1895". Yvon Bériault, *Les Problèmes politiques du Nord canadien*, University of Ottawa doctoral thesis (Montreal: Bernard Valiquette, 1942), makes several references to the transfer (e.g., p. 100, 101, 111, 112, 113) and raises questions about it, but otherwise does not go into detail.

<sup>103</sup> *Dominion Order in Council*, P.C. No. 2640 (Oct. 2, 1895).