

1 March 1822 ^{11th June}

A. R. Mendenhall

My dear Sir

I have carefully read
over Mr. Draper's Evidence and
its appendix again. What has crea-
ted the confusion is the idea that
the ^{boundary} ~~limit~~ proposed by the H.B. Co.
at the Treaty of Ryswick, namely
53° N. Lat. or Albany River.
was to be ^{the} boundary all across
the Continent. Now no such
boundary was proposed or referred
to under that treaty; the country
west of Albany River being un-
known was totally unprovided
for.

The first time any limit was proposed
for this part of the country was
during the negotiations under the
Treaty of Utrecht, when the 49th

parallel was proposed. Mr Draper
may however have had in his mind
the extension of the Ryerick line
of 53, to the Rocky Mountains &
this would account for the an-
swer to question 4090. & his pointing
to the Map, which I distinctly re-
member his doing & running a line
from the north end of Lake Winnipeg
westward to the Rocky Mountains.
Turn now to question 4209. If
53 is to be the line which Canada
is in Mr Draper's opinion entitled
to for which he is prepared to go.
how do you reconcile this notion
with his asking, that Canada be
"permitted" ~~to~~ as an experiment
to colonize this ^{very} district - the
H.B. Co's monopoly continuing
while the experiment is being
made. Either this district belongs
to Canada, by the very assertion

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of its frontier, in which case it
can no more abrogate its functions
of government over it than any
other portion of the Province -
or it does not belong to Canada -
in which case we cannot suppose
that Mr. Drake meant to extend
the frontier to 53° -

In either case the people of Red
River & their rights, not to speak
of the Indians are utterly sacrificed.
& I think that both the Aborigines
Protection Society ^{who} have so long ad-
vocated the annexation of Red River
to Canada, & myself individually
whose business & duty it is to ~~assert~~
^{assert the rights} ~~of the Settlement~~
^{but grounds} have ~~ought~~ to complain of its
being so unceremoniously thrown
overboard. Mr. Drake has cer-
tainly a right to make the best
bargain he can for Canada.

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we have the same right to make the best bargain we can for Red River & to appeal if necessary to the people of Canada, whose views Mr. Draper does not even profess to represent.

I propose to raise the question in such a way during my Examination, as to Compel Mr. Draper to clear up the strange ^{fumble} ~~proposition~~ ~~involving~~ ~~in~~ ~~his~~ ~~proposition~~ (supposing your view of the frontier to be correct) involved in the proposition, that these ^{new colonies} ~~new colonies~~ shall be governed, 1st as a Territory or some thing of that kind under the control of the Colonial Office 2^d as a theatre for a "contingent" Experiment to colonize & settle in on the part of Canada" and 3^d as a preserve of the H.B.C. while that contingency lasts, "the right of exclusive trade to exist" while "the contingency exists" — and all this in a Territory which is the hypothesis, an integral part of Upper Canada.

(138/231a

I cannot for the life of me, see how
this Territory is to be governed at
all with these three Experiments
going on at the same time & Mr
Drazen, is far too clear-headed a
man to propose anything so unprac-
ticable. I adhere to my opinion that

Mr Drazen does not go far enough
that he limits the right of Canada
to the parallel of 49° ^{only} as the limit
which has ever ^{been} proposed between
the French & English possessions (on
this part) - that he is asking our
Government to take from the H.B. Co.
^{the country} up to the north end of Lake Winnipeg
& govern it as a Territory, in such
a way, as to fit it for future annexa-
tion to Canada - or to use his own
words (Question 4070) "assuming as a
point of policy that the territory is
to become Canadian hereafter."

In answer to Sir J. Pakington (2^d 4/13/4)
he says distinctly, (while he admits
that what he says is at variance with
the opinion of the Executive Council) "I do
not know by what authority we can
extend west of the Mississippi unless
you give it us." — and of course Red
River & the Saskatchewan are west
of the Mississippi."

I am writing in a hurry & do not know
whether I have succeeded in making
myself understood; but the whole thing
has been to ^{my} mind, from the first, as clear
as a sunbeam. Mr. Draper believes
or fears, that the fact (certainly of con-
siderable importance) that the British
Government backed the H.B. Co., in
their claim ^{at the Red River} for the 49th parallel, as against
France, will be looked upon as amount-
ing to an acknowledgment of that claim;
he sees that if Canada demands the
frontier of 53° & the Company ^{obtain} ~~from~~
the line of 49°. Canada must pay for
the difference (see Question 4177)

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What he is driving at, is to get our Government to take that Territory from the Company; he is temporizing & procrastinating, in order to get the decision of the Committee, that the Red River & Assiniboine valleys ~~are~~ be taken from the Company, ^{delayed} before the legal question comes on, in order that, if the question of frontier is decided in favour of the H.B.C. (that is the 49th parallel), the compensation to which the C.B. will ^{be} ~~that~~ ^{be} ~~can~~ be entitled, will fall upon us.

He has not the courage to ask, in so many words, that the Imperial Government, shall buy the new Territory & give it to Canada; but he wishes to mix up Canada in such a way with it that, eventually the Colonial Office will be obliged to give it to Canada.

My complaint against Mr. Draper

is that he is trifling with the Committee
in this matter. It is an uncommonly
clever game on the interest of Canada
& I believe that poor Mr. Labouchere
has not the remotest conception
of ~~what~~ ^{where} the Chief Justice is leading
him.

There are two ways in which the
legal question can be taken up
1st on the ground that the Grant
of King Charles 2^d is invalid in toto
having been granted without the
sanction of Parliament, & in contravention
of the Statute of James 1st against
Monopolies.

2^{dly} on the ground of assuming
the validity of the Charter & conceding
that the Company have rights of some
kind in Hudson Bay - that those
rights do not extend to the limits
claimed by the Company -
Now to take the question on the

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as Mr Draper writes to J. P. 138/246
second issue, appears to me, as it has
always appeared - nothing less than
sacrificing the whole question. The
Company will of course claim what
they did before - the 4th parallel -
- they have in their favour, the fact, the
importance of which it is impossible to
over-rate, that the English Government
acquiescing in their claim, did make
this very demand for them at the Treaty
of Utrecht. As a lawyer Mr Draper
cannot be blind to the immense signi-
ficance of such an acknowledgment.

If you look at Appendix No 7. you will
perceive what I mean. & I think you
will agree with me, that there will
be no getting over the distinct & formal
acknowledgments of the Company's claim
as far as our Government is concerned,
in the instructions to the English Commissioners
here alluded to.

I am tired of telling every body that
there is no hope for the question except
on the first issue - the total invalidity
of the Charter on the ground of its non

confirmation by Parliament & the
other part of the same Country by
the French King.
Mr Oraper evades this issue & views
with alarm the notion of abrogating
the rights of the Company at once. I can
understand his reasons for this alarm,
but if no other means can be found of
governing the Country what is easier
than to re-grant the Exclusive
Prize for a limited period on
terms more favourable to the India
Company than Canada cannot
be more easily & effectively administered.
At the same time he says that if in the discussion
of the frontier, the larger question should
come up, he does not see how this is
to be avoided; but if the Company's claim
is established to the frontier of 49 or even
54 then can the larger question come
up without supposing that the Court
after giving its decision in the Company's favor
under one view, will go back & reverse
its decision under another view.
It is clear from various parts of Mr Oraper's
evidence that he considers the Charter itself
invalid. Why in the name of common sense
does he not take the question in this case

instead of taking it up as a question of frontier when the chances
he will be cast. How can the Court be expected to decide on the
question of the frontier if the larger question should come up?