enforcement of the higher and larger interest, against the lower and narrower one; but I deny that any well established case can be found in the English Books in which such a rule has been applied to the settlement of conflicting rights by Arbitration between litigant parties standing upon equal footing. The Arbitration in the present case may be said, in one sense, to be of a public nature because it is authorised by a Public Statute, and involves the rights of two great Provinces. That description of publicity attached also to the appointment and character of the Commissioners and Arbitrators under the authority of the Treaties and of the Canada Trade Act and Canada Bill mentioned on a former page, and their duties were eminently of a public nature; yet it has been seen that special provision was deemed necessary in all these instruments to legalize a decision by any number less than the whole. But wherein does this Arbitration differ in essential character and effects from an Arbitration between two individuals? If, a Legislature should by Statute make a similar provision for the division of property between individuals A and B, it would not be a public matter in the sense assumed by the decision of the two arbitrators. If instead of individuals it was between two Municipal Corporations, it would still be a mere Arbitration for the settlement of rights appurtenant to them as individual bodies. Its nature is not changed by the Corporation being two Provinces instead of two municipalities or two individuals; the simple object is to settle conflicting rights between equal parties. There is here no such *public nature* as justifies the departure from the primary rule concerning ordinary Arbitrations, in order to introduce the exceptional one, for the *public nature* contemplated in the cases in which the exceptional rule is applied, is that in which the public authority was to be enforced against the private interests, and not that kind of publicity which depends simply upon the importance and dignity of co-equal litigant parties.

To put the point in another form. If the submission to Arbitrators had been the mutual act of the two Governments, by a proper instrument, without the interposition of the Imperial Parliament, (for that interposition was not at all necessary to enable the Governments of Ontario and Quebec to settle their differences in that manner) in what respect would the Arbitration then have differed from an ordinary one between individuals? What principle of a public and higher interest paramount to a private and lower one could be found to justify a departure from the plain language of the submission. But in point of fact the interposition of the Imperial authority introduces no new principle. It was made at the instance of the two Provinces, and founded upon their mutual agreement, and is in effect simply a formal expression of that agreement as an instrument duly executed under seal would be. But I will pursue the topic of this particular decision of the two Arbitrators on the right of the majority to decide no further, for, as already stated, their opinion, although erroneous, is not of importance to the material question of the illegality of their final award.

The point raised by the first question, relating to the absence of the third Arbitrator when the decision was given, will, in order to prevent repetition, be treated under the second and third questions, to the former of which I now proceed.