

IN RE ARBITRATION BETWEEN ONTARIO AND QUEBEC.

trators; whereupon the counsel for Quebec declared that that Province would no longer be a party to the arbitration and withdrew.

Further, each of the two arbitrators now present was, since the retirement of the arbitrator for Quebec, served, while in the city of Montreal, with a writ issued from the Superior Court of the Province of Quebec, the purport of which is to prohibit them from the further exercise of their functions until a new arbitrator should be named for that Province, or to shew cause to the contrary on the 1st of September next.

The arbitrators noticed that neither the letter of Mr. Chauveau nor the application of the counsel for Quebec named any time within which it was expected such new appointment would be made.

The retirement of the Quebec arbitrator took place, on the 9th July. Mr. Chauveau's letter is dated on the 19th, and on the 22nd the writ was obtained and served. But up to this moment the arbitrators are not informed that any new arbitrator is appointed, nor in fact that it is the intention of the government of Quebec to make a new appointment.

If the government of Quebec has power under the statute to appoint another arbitrator, and if it is their intention to do so, they have had more than reasonable time for the purpose, since their acceptance of Judge Day's resignation. It was the indefinite character of the delay asked for, which induced the arbitrators to refuse it. The writ which was issued and served almost immediately after that refusal is equally indefinite and might tend to create the impression that delay in completing the award and not to obtain a reasonable time to appoint another arbitrator was the object really desired.

It appears to me, unskilled as I am in legal technicalities, taking an equitable, common sense view of the question, to be beyond any reasonable doubt that no provincial tribunal has, or can claim any jurisdiction to examine into or decide any question referred to arbitration by the 142nd section of the British North America Act of 1867, and it may be confidently asserted that the Imperial Parliament intended the award to be absolutely final. But other and not unimportant legal questions (even if not really difficult) present themselves which, if insisted on, must be determined by some competent tribunal.

Can one of the arbitrators who has undertaken and entered upon the duties assigned by the statute, and who is under no mental or physical disability, retire from or abandon these duties before completion? This question is not one on which the other arbitrators can be expected to express an opinion.

It is, however, connected with the perhaps, more strictly legal enquiry: Does the Act of the Imperial Parliament authorize the withdrawal of an arbitrator with or without the concurrence of the party who appointed him? and does it provide for the substitution of another in his place? Again, are the arbitrators who (though respectively appointed by the governments of the Dominion and of the two Provinces) derive all their power and authority from the Imperial Statute, amenable to any government or local tribunal in matters falling strictly within the scope of their powers and duties.

The statute itself does not in terms confer any

authority whatever with regard to the reference on any tribunal but the arbitrators. Can there then by implication arise a power to delay, which might be so exercised as to defeat the object of the enactment? The parties interested are the Provinces of Ontario and Quebec. Can either of them as a matter of legal or moral justice call upon one of its own courts to interrupt or control the proceedings of a jurisdiction created for the sole purpose of deciding rights and interests as between the two Provinces?

If so, the authority must belong equally to the courts of either Province, and what would be the effect of a not impossible conflict between them in their directions to the arbitrators or otherwise?

These and perhaps other questions are opened by the events above stated.

They have been seriously and dispassionately considered, and not the less that their determination may involve personal responsibility to an extent which could not be and was not anticipated when the arbitrators accepted their appointment.

I feel, however, that the first duty of the arbitrators is to make a just award; that they are not responsible for the embarrassment which the present state of things has given rise to, and which adds greatly to their responsibility while it increases, if possible, their anxiety to do right.

By simply performing what they believe to be their duty, if they do anything (while impartially exercising their best judgment) that may be looked upon as prejudicial to the interests of Quebec in the voluntary absence of counsel for that Province, the just responsibility cannot be charged upon them.

If in proceeding they act illegally, their award will not be binding and can do no injury. If it should be binding the loss of the judgment and assistance of an arbitrator for the Province of Quebec, however much the remaining arbitrators may regret it, and especially that they are deprived of the valuable aid of the arbitrator who has resigned, is not their fault. The withdrawal was his act and it has been deliberately adopted by his government, who have taken legal steps in one of their own Courts by their Attorney-General, to stop further proceedings. They have thus placed the arbitrators in the invidious position of either retracting their refusal to grant indefinite delay to the Province of Quebec, or of being placed in conflict with one of the highest tribunals of that Province.

As a public functionary in the matter, as well as in my private capacity, I desire to evince in every proper way my profound respect for the court whose process has been served on the arbitrators. But it appears to me they cannot without a virtual abdication of their functions as arbitrators accept as a justification for a departure from their previously declared opinion, the preliminary order of prohibition (which I venture to think will not be finally confirmed) of a tribunal of that Province whose arbitrator's course has unnecessarily brought about this complication. I am of opinion that the arbitrators will best discharge the trust reposed in them by proceeding with the reference, and making, without unnecessary delay, an award which shall divide and adjust the debts, credits, liabilities, assets and properties of Upper and Lower Canada.