for Ontario demanded that the counsel of both governments should have the decision communicated to them in obedience to the order made.

On the first day of this meeting, in July, at Montreal, the fact of the receipt of this communication from the government of Quebec was announced. A demand was then made on behalf of the government of Quebec that counsel should be forthwith heard on the question of unanimity, and after denial by the counsel for Ontario of the right of the government of Quebec to make any communication to the arbitrators, which was not at the same time made to the counsel or government of Ontario, and a demand made that the decision arrived at should be first declared, the question was submitted, and the arbitrators decided by a majority that Quebec should be heard on the point of unanimity.

The question was therefore argued at length before the arbitrators by

George Irvine, Q. C. (Solicitor General for Quebec), and *Ritchie*, Q.C., for the Province of Quebec :—

The decision of the arbitrators, to be valid, must be the unanimous judgment of the three arbitrators, for by the 142nd section of the British North America Act three arbitrators are appointed, and no provision is contained that the award of the majority shall be binding, and the submission being to three, each must join in the award. Anterior to the Imperial Act the precise terms contained in the 142nd section had been virtually agreed upon between the Provinces : (see the 16th Resolution of the Quebec Conference, as it passed in the Parliament of the late Province of Canada) ; and the English law must interpret the Imperial statute so far as it can be interpreted : Watson on arbitration, 64 ; Caldwell on arbitration, 202 ; Paley on agency, 117.

The Canadian Interpretation Act, which provides that when a power is delegated to three or more persons, the decision of the majority shall be valid, does not apply to the Imperial Act, but is confined to the Canadian statutes, and no such clause is to be found in any Imperial statute.

J. Hillyard Cameron, Q.C., and *Hon. E B. Wood* (Treasurer of Ontario), for the Province of Ontario, *contra* :—

In cases of private arbitration, unless there is a power reserved to the majority, the award must be unanimous. That is the rule of the common law, although not of the French law, which makes the arbitrators a Court where the majority may decide. It is not pretended that at common law when the submission is to three arbitrators with no reservation of power to the majority two can execute a valid award in matters of ordinary private arbitration ; but such is not the law in matters of a public nature. The Interpretation Act has a powerful bearing on the interpretation of the 142nd clause (see the 129th clause of the British North America Act). The Dominion Parliament are given power to deal with the public debt and property. The whole of the questions before the arbitrators in respect to that public debt and property must be considered by the light of the statutes which were passed by the Dominion, one of which is the Interpretation Act Not only therefore are all laws left in force, but the question of the public debt and property is to be left to arbitrators, who are to decide according to the Interpretation Act.

The clear intention of the Legislature in having three arbitrators was that the majority should govern, and this is consonant with common sense and every day experience of arbitrations between private persons, and the Legislature had the possible difficulties arising from a disagreement between the arbitrators for the different Provinces in view when they appointed three arbitrators, one of whom was unconnected with either Province, and was, in effect, as an umpire.

Putting the matter upon the strictest basis as a matter of private right, the arbitrators had a right to deal with it according to the light cast upon it by the statutes of the country ; but it is not necessary to deal with it on this narrow basis, for, independently of such considerations, it is not a matter of private interest and private arbitration, but a matter of public rights and reference to public arbitration, and therefore the decision of the majority must conclude the minority. This is admittedly the execution of a public trust ; and is not the exercise of a power within the ordinary meaning of the rule regarding subjects of purely private interest : *Grindley v. Barker*, 1 Bos. & Pul 229 ; *The King v. Whitaker*, 9 B. & C. 648 ; *Cortis v. Kent Water Works Co.* 7 B. & C. 314 ; see also Co Litt, 181 (b) ; Roll. Ab. 329 ; Caldwell on arbitration, 2nd Amer. ed. pp. 202, 203 and, 204, note (1) and cases there cited ; Paley on Agency, 3rd Amer. ed. pp. 177 and 178, note (g) and the cases there cited, particularly *Croker v Crane*, 21 Wend. 211, 218 ; *Ex parte Rogers*, 7 Cowen, 526, 530, and note (a) ; *Woolsey v. Tompkins*, 23 Wend. 324 ; *Damon v. Inhabitants of Granby*, 2 Pick. 345.

Shortly after the above argument Judge Day resigned his appointment, which was accepted by the government of Quebec, and a *supersedeas* was issued under the seal of that Province, discharging him from further duties as arbitrator.

On the 21st July, the day appointed for giving judgment, it was objected on behalf of the Province of Quebec that no further action could be taken in the matter owing to the resignation of one of the arbitrators, there not being in fact the three required by the Act. The counsel for Quebec, being overruled in this, stated that they withdrew from the arbitration, and the judgment of the remaining arbitrators was then delivered by the

Hon J. H. GRAY :—At our last meeting a question was raised by the counsel for Quebec, under instructions from their government (a copy of the Order in Council having been transmitted to each of the arbitrators) which would then have been decided but for the abrupt withdrawal of Judge Day, and our subsequent immediate adjournment, namely :—"That it is essential to the validity of any decision to be given by the arbitrators that their judgment should be unanimously concurred in" It remains for me now to express the decision of the arbitrators on that question.

It is to be regretted that a position of this important character should not have been taken before it was known that there was a division o opinion between the arbitrators ; and it may wel