

2nd. That the Arbitrators have no power or authority to enter upon any inquiry into the relative state of the debts and credits of the Provinces of Upper and Lower Canada respectively, at the time of their Union, in 1841, into the Province of Canada.

3rd. That the division and adjustment between Ontario and Quebec of the surplus debt beyond \$62,500,000, for which under the 112th section of the "B. N. A. Act, 1867," Ontario and Quebec are conjointly liable to Canada, shall be based upon the origin of the several items of the debts incurred by the creation of the assets mentioned in the 4th Schedule to that Act, and shall be apportioned and borne separately by Ontario or Quebec, as the same may be adjudged to have originated for the local benefit of either; and where the debt has been incurred in the creation of an asset for the common benefit of both Provinces, and shall be so adjudged, such debt shall be divided and borne equally by both.

4th. That where the debt under consideration shall not come within the purview of the 4th Schedule,—whether the same shall or shall not have left an asset,—reference shall be had to its origin, under the same rule as in last preceding section laid down.

5. That the assets enumerated in the 4th schedule of the B. N. A. Act, 1867, and declared by the 113th section to be the property of Ontario and Quebec conjointly, shall be divided and adjusted, and appropriated or allowed for, upon the same basis.

6th. That the expenditure made by creation of each of the said assets shall be taken as the value thereof; and where no asset has been left, the amount paid shall be taken as the debt incurred, the arbitrators having no right to enter into or adjudicate upon the policy or advantages of expenditures or debts incurred by authority of, and passed upon by Parliament.

7th. It is therefore ordered, that in accordance with the above decision, the counsel for the said Provinces of Ontario and Quebec do proceed with their respective cases.

Judge Day dissented from this judgment in the following words:—

The undersigned arbitrator dissents from the foregoing decision of the Honourable D. L. Macpherson and the Honourable J. H. Gray, two of the arbitrators appointed under the B. N. A. Act, 1867.—

Because the said decision purports to be founded on propositions which, in the opinion of the undersigned, are erroneous in fact and in law, and inconsistent with the just rights of the Province of Quebec;

Because the relation of the Provinces of Upper and Lower Canada, created by the Union of 1841, ought to be regarded as an association in the nature of a universal partnership, and the rules for the division and adjustment of the debts and assets of Upper and Lower Canada under the authority of the said Act ought to be those which govern such associations in so far as they can be made to apply in the present case;

Because the state of indebtedness of each of the Provinces of Upper and Lower Canada at the time of the Union of 1841 ought to be taken into consideration by the Arbitrators, with a view to charge the Provinces of Ontario and Quebec respectively with the debt due by each of the Pro-

vinces of Upper and Lower Canada at that time; and the remainder of the surplus debt of the late Province of Canada ought to be equally divided between the said Provinces of Ontario and Quebec;

Because the assets specified in Schedule No. 4, and all other assets to be divided under the authority of the said Act, ought to be divided equally according to their value;

And thereupon the undersigned presents an award and judgment based upon his foregoing propositions, and upon the reasons assigned in this printed opinion—in the terms following:—

The arbitrators under the British North America Act, 1867, having seen and examined the propositions submitted on the part of the Provinces on Ontario and Quebec respectively for the division and adjustment of the debts and assets of Upper Canada and Lower Canada under the authority of the said Act, and having heard counsel for the said Provinces respectively upon each of the said propositions, after due consideration thereof, are of opinion that the propositions submitted in behalf of the Province of Ontario do not, nor does either of them, furnish any legal or sufficient rule or just basis for such division and adjustment; and they do award and adjudge that the said division and adjustment ought to be made according to the rules which govern the partition of the debts and property of associations known as universal partnerships in so far as such rule can be made to apply; and the arbitrators having also heard counsel for the Provinces of Ontario and Quebec respectively upon the objection made in behalf of the former Province to the 'jurisdiction and authority' of the arbitrators to inquire into the state of debts or credits of the Provinces of Upper and Lower Canada prior to the Union of 1841, or to deal in any way with either the debt or credit with which either Province came into the Union at that time, and duly considered the same, are of opinion that the said objection is unfounded, and that they have authority, and are bound by the provisions of the said Act, to inquire into the state of the debts and credits of the Provinces of Upper Canada and Lower Canada existing at the time of the Union of 1841, and so to deal with them as may be necessary for a just, lawful and complete division and adjustment of the debts and assets of the said Provinces. And thereupon it is ordered that the counsel for the Provinces of Ontario and Quebec do proceed, in accordance with the foregoing judgment to submit such statements in support of their respective claims as they may deem expedient."

The above judgments were by the three arbitrators ordered to be entered in the minute book, and to be communicated to the counsel for the two Provinces respectively.

About the 16th June the arbitrators severally received from the government of Quebec a minute of Council of that Government, expressing the opinion of the law officers of the Crown of Quebec, "that it was essential to the validity of any decision by the arbitrators, that their judgment should be unanimously concurred in."

The publication of the decision was therefore postponed until the action of the arbitrators could be determined on this point at their next meeting, which was to take place at Montreal on the first Tuesday in July, though the arbitrator