

At the time of Confederation, anything due under the said Treaties had apparently been already paid, and anything that could be claimed in the future under the said Treaties was a part of the said Trust which the Province of Ontario was bound to carry out. See also the Indian Act, C. R. S., ch 43, s. 41; 29-30 V., c. 20; 31 V., c. 42, ss. 6, 7.

Such has always been the contention of Quebec, and especially before the first Board of Arbitrators in 1869. The Quebec case, which is quoted in full in the Answer of Ontario, says:—

“By Section 109 of the above Act, all lands are made over to the Province within which they are situated, subject, however, to any trust existing in respect thereof, and to any interest other than that of the Province in the same. These annuities being the price unpaid of the lands themselves, are a charge on them. The contract between Government and the Indians ought to be governed by the same rules as similar contracts between Individuals. The lands, being within the Province of Ontario, became, under said Section 109, the property of that Province, subject, however, to the interest of the Indians in the same. This interest is the payment of the annuities stipulated as a compensation for the lands ceded. It might also be called a trust, the administration of which is left to the Dominion, the legal guardian of the Indians Ontario, receiving the lands and the arrears due for those sold, is subject to all legal and equitable claims which may exist on them. It should therefore be charged with the principal of the annuities.”

True, Ontario answered, that in 1846 the Indian annuities were made a special charge, in Schedule B. of 9 V., c. 114, upon the Consolidated Revenue, and that the Indian lands had been released from the same. It is also true that by their award the arbitrators disposed of the Indian annuities as follows:—“That all lands in either of the said Provinces of Ontario and Quebec respectively surrendered by the Indians in consideration of annuities to them granted, which said annuities are included in the debt of the late Province of Canada, shall be the absolute property of the Province in which the said lands are respectively situate, free from any further claim upon or charge to the said Province in which they are so situate by the other of the said Provinces.”

Quebec submits that, in 1846, the Indian lands were not released, as alleged by Ontario, and that at all events the trust and lien existing upon them under the several treaties was never set aside and annulled; in fact, could not be set aside without the consent of the Indians, parties to the said treaties.

As to the award of 1870, Quebec also submits that the arbitrators had no power to declare the Indian lands “free from any further claim upon or charge to the said Province in which they are situate,” as by Section