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 of opinion between the arbitrators; and it may well be assumed that it would hardly have escaped the attention of so accomplished a jurist as Judge Day, the Arbitrator of Quebec, had he deemed it tenable, or that he would, under the circumstances of the decision, have undoubtedly brought it to the notice of his co-arbitrators. The learned Judge heard the argument, but left with us no expression of his opinion, save that the arbitration was one of a public nature. The views, therefore, now delivered are those of the remaining arbitrators, and consequently of a majority.

In matters of private reference the law is plain, that unless the terms of the submission provide that a majority may rule, all must agree in the award, or it would not be binding. The impracticability in private affairs of working out an arbitration, if unanimity was essential, led to the adoption, in almost all cases of submission, of the majority clause, or the alternative provision of an umpire. So essential to the successful conducting of an arbitration has this become that in the ordinary forms of arbitration bonds, or of rules of reference, one of these clauses is almost always found inserted. Without such clause, in private arbitration it is admitted unanimity is required.

The point now is—Does the same rule apply to public references or arbitrations?—to which class it is conceded, the present inquiry belongs—the 142nd section of the B. N. A. Act, 1867, under which the arbitration is held, containing no such clause.

Mr. Irvine, the Solicitor General for Quebec, has properly narrowed the question to this point.

Mr. Ritchie, in his argument for Quebec, cited Caldwell on Arbitration, p. 102, to prove the undoubted position as to private arbitrations. In the note to that page by the able American editor, who republished the work in the United States, we find the following remarks:—

"There is a wide distinction to be observed between the case of a power conferred for a public purpose and an authority of a private nature.—In the latter case, if the authority is conferred on several persons, it must be jointly exercised, while in the former it may be exercised by a majority."

Further on, at p. 202, he says that referees appointed under a statute must all meet and hear the parties, but the decision of the majority will