

personal character, occupies a position which, in the opinion of many, should have debarred him from sitting on such a tribunal, and the two Senators accepted the position pledged to support the United States' contention.* It will be seen, in view of the facts above stated, that a solemn farce was enacted in agreeing to leave the matter to the adjudication of six "impartial jurists of repute." As to the good taste or otherwise of these three American Commissioners accepting the position is a matter purely for their own consideration. If they could have been said to be impartial, they would not have been chosen.

The Canadian Government appointed as its two representatives Sir Louis Jetté, Lieutenant-Governor of Quebec, and Mr. Justice Armour, of the Supreme Court of Canada, formerly Chief Justice of Ontario. The lamented death of the latter left a vacancy which was filled by the appointment of Mr. A. B. Aylesworth, K.C. The Lord Chief Justice of England was the third of the British Commissioners.

It is quite evident from what has been said, that the United States so arranged the constitution of the tribunal that they could lose nothing. This was so plain to us in Canada that our Government protested against the partisan jurists appointed by the United States Senate. The British Government, however, without regard to this protest, agreed to the terms proposed by the United States Government.

It may have been quixotic, perhaps, for the Canadian Government under such circumstances to have acted up to the letter and spirit of the treaty of 1903 by nominating representatives who were in every way "impartial jurists of repute": but the course they took will stand to their credit in international annals. It might have been well perhaps if they had, under the circumstances, refused to send any Commissioners. But, be this as it may, these six took upon themselves the burden of the enquiry. Theoretically, they composed a court of six judges, each member of equal authority with the others. As a matter of convenience, and out of courtesy to his position, the Lord Chief Justice of England was appointed Chairman.

The functions of the Court so formed are clearly and accurately set out in the dissenting judgment of Sir Louis Jetté: "The character of the functions which have been confided to us is clearly

* As to this see 39 C.L.J., p. 171.