

annuity to the Indians. The Dominion Government has paid the annuities since 1867, and claims to be reimbursed therefor by Ontario.

*Held*, affirming the award of the arbitrators, that the payment of the annuities was a debt or liability of the Province of Canada assumed by the Dominion under the B.N.A. Act.

*Held* also, reversing the said award, that the provision in the treaties as to increased annuities, had not the effect of burdening the lands with a "trust in respect thereof," or "an interest other than that of the Province in the same" within the meaning of said sec. 109, and therefore Ontario held the lands free from any trust or interest, and was not solely liable for repayment to the Dominion of the annuities, but only liable jointly with Quebec as representing the said Province of Canada.

Appeal allowed with costs.

*Irving*, Q.C., *S. H. Blake*, Q.C., and *J. M. Clark*, for Province of Ontario.

*Robinson*, Q.C., and *Hogg*, Q.C., for the Dominion of Canada.

*Girouard*, Q.C., and *Hall*, Q.C., for Province of Quebec.

Quebec.]

[Feb. 18.]

DRYSDALE v. DUGAS.

*Nuisance—Livery stable—Offensive odors from—Noise of horses—Damages.*

An action for damages was brought by a householder against the proprietor of a livery stable adjoining his premises which, it was claimed, constituted a nuisance, from the offensive odors proceeding from it, and from the noise made by the horses at night. The pleas to the action were that the stable was a necessity to the residents of the place, and that it was built according to the most improved modern methods of drainage and ventilation. The trial judge found that the odors and noise were a source of injury and gave judgment for the householder with damages for past damage, and a separate amount for damages in the future unless the cause of offence were removed at a certain time. The Court of Queen's Bench affirmed the first holding, but reversed that as to future damages.

*Held*, GWYNNE, J., dissenting, that if the stable was offensive to the plaintiff he could recover damages for the inconvenience caused thereby, and the two Courts having found that the cause of offence existed, their judgment should be affirmed.

Appeal dismissed with costs.

*Greenshields*, Q.C., for the appellant.

*Robidoux*, Q.C., for the respondent.

New Brunswick]

[Feb. 18.]

CITY OF ST. JOHN v. CAMPBELL.

*Municipal corporation—Repair of streets—Non-feasance—Elevation of sidewalk.*

In the city of St. John, N.B., a sidewalk on one of the streets adjoining private property had been covered with asphalt whereby it was raised considerably above the level of the private way. After a time water dropping from a