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 Provinces 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 for Ontario demanded that the counsel of both governments should have the decision communicated to them in obedience to the order made.

On the first day of this meeting, in July, at Montreal, the fact of the receipt of this communication from the government of Quebec was announced. A demand was then made on behalf of the government of Quebec that counsel should be forthwith heard on the question of unanimity, and after denial by the counsel for Ontario of the right of the government of Quebec to make any communication to the arbitrators, which was not at the same time made to the counsel or government of Ontario, and a demand made that the decision arrived at should be first declared, the question was submitted, and the arbitrators decided by a majority that Quebec should be heard on the point of unanimity.

The question was therefore argued at length before the arbitrators by

George Irvine, Q. C. (Solicitor General for Quebec), and *Ritchie*, Q.C., for the Province of Quebec:—

The decision of the arbitrators, to be valid, must be the unanimous judgment of the three arbitrators, for by the 142nd section of the British North America Act three arbitrators are appointed, and no provision is contained that the award of the majority shall be binding, and the submission being to three, each must join in the award. Anterior to the Imperial Act the precise terms contained in the 142nd section had been virtually agreed upon between the Provinces: (see the 16th Resolution of the Quebec Conference, as it passed in the Parliament of the late Province of Canada); and the English law must interpret the Imperial statute so far as it can be interpreted: Watson on arbitration, 64; Caldwell on arbitration, 202; Paley on agency, 117.

The Canadian Interpretation Act, which provides that when a power is delegated to three or more persons, the decision of the majority shall be valid, does not apply to the Imperial Act, but is confined to the Canadian statutes, and no such clause is to be found in any Imperial statute.

J. Hillyard Cameron, Q.C., and *Hon. E B. Wood* (Treasurer of Ontario), for the Province of Ontario, *contra*:—

In cases of private arbitration, unless there is a power reserved to the majority, the award must be unanimous. That is the rule of the common law, although not of the French law,