

IN RE ARBITRATION BETWEEN ONTARIO AND QUEBEC.

gifts (donations). The husband and wife may make dispositions in favour of heirs, or make themselves mutually heirs to one another. They may conclude an agreement respecting the succession by which they reciprocally promise and accept the gift of their fortune. To these agreements respecting succession between husband and wife the disposition relative to contracts in general are applicable. Many of the provisions of the Code apply to the dissolution of Marriage by divorce.—*Law Magazine.*

ONTARIO REPORTS.

CANADA REPORTS.

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law.)

IN THE MATTER OF THE ARBITRATION BETWEEN THE PROVINCES OF ONTARIO AND QUEBEC, IN THE DOMINION OF CANADA.

The British North America Act, 1867—Resignation of one arbitrator—Unanimity of arbitrators not necessary—Arbitration on public matters—Writ of prohibition from court of one Province.

Held, that as "The British North America Act, 1867," confers powers to the arbitrators appointed thereunder of a public nature, such powers may be exercised by the majority, and a joint award is therefore unnecessary.

The jurisdiction of the courts of one of the litigant Provinces to interfere to stay the proceedings on the arbitration, by writ of prohibition considered, and held that there is none.

[Ottawa and Montreal, February—July; Toronto, Aug., 1870.]

The British North America Act, 1867, section 142, enacts that "The division and adjustment of the debts, credits, liabilities, properties, and assets of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada, and the selection of the arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or in Quebec."

Under the provisions of this enactment the following persons were appointed arbitrators: The Hon. D. L. Macpherson for the Province of Ontario, The Hon. C. D. Day for the Province of Quebec, and the Hon. J. H. Gray, a resident of the Province of New Brunswick, for the Dominion of Canada.

The arbitrators had several meetings, being attended by Hon. J. H. Cameron, Q.C., as counsel for the Province of Ontario (assisted by Hon. John Sandfield Macdonald, Q.C., Attorney-General for Ontario, and Hon. E. B. Wood, Treasurer of Ontario), and by T. Ritchie, Q.C., Esq., as counsel for the Province of Quebec (assisted by Hon. Geo. Irvine, Q.C., Solicitor General for Quebec.)

On the 28th May the arbitrators met to give a preliminary decision to form a basis for the preparation of their final award. The arbitrators disagreed however as to this basis, Mr. Macpherson and Col. Gray agreeing, and Judge Day dissenting.

This preliminary award of the majority, though not delivered for some time after the above date, was as follows:—

"The Arbitrators, under the B. N. A. Act, 1867, having carefully considered the statements made, and the propositions submitted by and on the behalf of the Provinces of Ontario and Quebec, and having heard counsel at length thereupon, do award and adjudge as follows:

1st. That the Imperial Act of Union, 3rd and 4th Victoria, chap. 35, did not create in fact or in law any partnership between Upper and Lower Canada, nor any such relations as arise from a state of co-partnership between individuals.

2nd. That the Arbitrators have no power or authority to enter upon any inquiry into the relative state of the debts and credits of the Provinces of Upper and Lower Canada respectively, at the time of their Union, in 1841, into the Province of Canada.

3rd. That the division and adjustment between Ontario and Quebec of the surplus debt beyond \$62,500,000, for which under the 112th section of the "B. N. A. Act, 1867," Ontario and Quebec are conjointly liable to Canada, shall be based upon the origin of the several items of the debts incurred by the creation of the assets mentioned in the 4th Schedule to that Act, and shall be apportioned and borne separately by Ontario or Quebec, as the same may be adjudged to have originated for the local benefit of either; and where the debt has been incurred in the creation of an asset for the common benefit of both Provinces, and shall be so adjudged, such debt shall be divided and borne equally by both.

4th. That where the debt under consideration shall not come within the purview of the 4th Schedule,—whether the same shall or shall not have left an asset,—reference shall be had to its origin, under the same rule as in last preceding section laid down.

5. That the assets enumerated in the 4th schedule of the B. N. A. Act, 1867, and declared by the 113th section to be the property of Ontario and Quebec conjointly, shall be divided and adjudged, and appropriated or allowed for, upon the same basis.

6th. That the expenditure made by creation of each of the said assets shall be taken as the value thereof; and where no asset has been left, the amount paid shall be taken as the debt incurred, the arbitrators having no right to enter into or adjudicate upon the policy or advantages of expenditures or debts incurred by authority of, and passed upon by Parliament.

7th. It is therefore ordered, that in accordance with the above decision, the counsel for the said Provinces of Ontario and Quebec do proceed with their respective cases.

Judge Day dissented from this judgment in the following words:—

The undersigned arbitrator dissents from the foregoing decision of the Honourable D. L. Macpherson and the Honourable J. H. Gray, two of the arbitrators appointed under the B. N. A. Act, 1867.—

Because the said decision purports to be founded on propositions which, in the opinion of the undersigned, are erroneous in fact and in