

with its alleged cash on hand at the Union and during the whole period of the Union, being upwards of 26 years, treating all things as equal; and then at the end of the quasi partnership, first charging Ontario with so much of the excess of debt over \$62,500,000, as was the alleged debt of Upper Canada at the Union, added to the alleged cash of Lower Canada at that time; and then after deducting this sum from the excess of the debt, dividing the balance equally between the two Provinces. (The proposition of Quebec here referred to, is stated at full length in the argument of the Hon. Mr. Wood, on the discussion of the modes of division proposed by Ontario and Quebec.) Messrs. Casault & Ritchie, on behalf of Quebec, objected to an argument and decision of this point to be taken by itself alone, contending that such a course would be exceptional.

After hearing Counsel on both sides as to whether this point should be argued and a decision thereon had at this stage of the Arbitration, in order to the expediting of the business before the Arbitrators, the Arbitrators reserved judgment until their next meeting.

The Arbitrators then adjourned until Monday, the 20th, at 11 a. m.

MONDAY, 20th February, 1870.

Arbitrators met.

Present: All parties as before.

The Arbitrators declared their opinion that it was not desirable to interfere, with the ordinary mode of proceedings in such cases, and therefore, they would not at present hear the argument upon the point, separate and alone raised by Messrs. Cameron & Wood, and objected to by Quebec.

By agreement the Counsel then proceeded to the argument on the claim of Quebec to charge against Ontario the capital of the Indian annuities granted for the cession by the Indians of lands in Ontario.

Messrs. Casault & Ritchie were heard on the part of Quebec, and Messrs. Cameron & Wood on behalf of Ontario.

Messrs. Casault & Ritchie's argument was as follows:—

"The British North America Act of 1867 reserves to the Parliament of Canada the exclusive legislative authority in matters relating to Indians. This rendered necessary the change in the statement of liabilities of the principal of the annuities payable to Indians as a compensation agreed upon both by deeds and treaties for the lands in Upper Canada which they surrendered to Government. The annuities amount to \$31,064, and have since the surrender been a permanent charge on the Canadian budget. They are capitalized at 5 per cent., forming \$621,280, and are just as now stated the price or consideration stipulated by the Indians for the surrender of large tracts of lands in Upper Canada. Information as to the quantity of these lands remaining unsold, and the arrears due on the 30th June, 1867, on those previously sold will require to be obtained, which has yet has not been done. By Sec. 109 of the above Act all lands are made over to the Province within which they are situated *subject, however, to any trust existing in respect thereof, and to any interest other than that of the Province in the same.* These annuities being the price unpaid of the lands themselves are a charge on them. The contract between the government and the Indians ought to be governed by the same rules as similar contracts between individuals. The land being within the Province of Ontario, became under said Sec. 109 the property of that Province, subject, however, to the interest of the Indians in the same. This interest is the payment of the annuities stipulated as a compensation for the lands ceded. It might also be called a trust, the administration of which is left to the Dominion, the legal guardian of the Indians. Ontario receiving the lands and the arrears due for those sold, is subject to all legal and equitable claims which may exist on them. It should, therefore, be charged with the principal of the annuities. It would be manifestly unjust to require Quebec to share in paying for these lands which will be the effect of the capital being allowed to remain in the statement of liabilities unless compensation is required from Ontario for the lands and arrears representing the capital of these annuities."

The argument of Mr. Wood, contra, was as follows:—