

It is a question of jurisdiction and of illegal usurpation of powers. Let us compare the authority given, with the fact of its execution. The authority, by the precise terms of the Statute, is given to three Arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada. The fact is, that this authority has been executed while there were only two Arbitrators, the one chosen by the Government of Ontario, and the one chosen by the Government of Canada. It was to be a tribunal composed of *three*, not of *two* only; and the point now, is not as to the right of a majority in a complete tribunal to decide against a dissentient opinion, whether in the presence or absence of the dissentient; but it is, whether, when a tribunal has ceased to be legally constituted, any number of the individuals who composed it can proceed to exercise its powers.

It would seem to be enough to state this question without saying anything to negative the proposition contained in it. No reasonable course of argument can be made to sustain it, and certainly no authority can be produced in its justification. If two could proceed after the tribunal was rendered incomplete by the vacancy of one of its members, then, logically, one alone could have proceeded if there had been two vacancies; for if the expression of the law "Arbitrament of three" can be construed into the Arbitrament of two, when there is no third, then it may just as reasonably be construed into the Arbitrament of one, if one alone remained; for the two cannot adjudge as a majority, because after the occurrence of the vacancy they constitute the whole tribunal, and there can be no question of majority. So, also, after the occurrence of two vacancies there could be no question of majority, for the remaining Arbitrator would constitute the whole tribunal, and could therefore decide as sole judge. There is, in fact, no argument which can be urged in support of a judgment by the two, which would not, in the case put, equally support a judgment by one.

No man will have the hardihood to deny that if the vacancy were caused by death or inevitable accident, the two remaining Arbitrators would have been estopped from proceeding. But if it be objected that the vacancy in this case was caused by the voluntary act of one of the parties, (the Government of Quebec) the answer is, that this, if true, would be of no importance. The only essential fact was the vacancy;—of the causes of the vacancy, or the means by which it had occurred, the remaining two Arbitrators had no authority to enquire.

The tribunal of which they were members, had been reduced to a number less than that required by the law for its legal constitution; and they had nothing to do but to wait until the proper number should be supplied. That any mind trained to the investigation of legal questions can hesitate upon such a point is to me unintelligible. But it is noticeable that no express opinion is hazarded upon it. The two Arbitrators went on without adverting to this vital question, either overlooking its importance, or erroneously believing that it had been settled by their judgment on the right of a majority to decide.

I have said that if the vacancy were caused by the voluntary act of the Government of Quebec, it would make no difference; and, moreover, that the remaining two Arbitrators had no authority to decide upon this point. But if, as they seem to have supposed, they had a right to decide, and did decide it, then their decision was radically wrong upon the facts.