

authority conferred upon them by the B. N. A. Act. Moreover that the debt, together with all the assets, were merged into the common fund and liabilities of the the new province of Canada created in 1841, and that it can no longer be distinguished from the general debt, and has, in fact, been paid and discharged. From these conflicting pretensions arise two questions :

1st. Whether the arbitrators are restricted by the terms of the B. N. A. Act from going at all into the examination of any particulars of debt, or asset of either Province, which existed before 1841.

2nd. If they can go into such examination, whether by any particular circumstances or general rule of law, they are debarred from taking this debt into consideration in the division and adjustment of the debts and assets under the provisions of section 142.

If the former of these questions be decided in the negative it will of course render unnecessary any answer to the latter.

It is to be observed, with respect to these questions, that although they naturally arise in dealing with the relation of the Provinces as a partnership, yet they exist independently of that relation and must have come up for consideration even if origin of debt or comparative population could have been made the basis of the division.

1st.—The first question then is whether the Arbitrators are restricted, by the terms of the B. N. A. Act, from going at all into an examination of any particulars of debt or asset of either Province which existed before 1841.

It is urged by the counsel for Ontario that the terms of the Act preclude an enquiry into any matters anterior to 1841, in the same way that Arbitrators would be confined within the limits of time specified in a submission of conflicting accounts between private parties.

It cannot be pretended, however, that there are in the Act any words of direct and express limitation of the investigation to debts and assets which have originated since 1841.

The argument on the subject rests upon inferences deduced from the character and general purport of the whole Act, and the comparison and construction of different portions of it.

In support of the view taken in behalf of Ontario, the preamble and the 6th section of the Act seem to be chiefly relied upon ; but after a careful consideration of both these I am unable to discover