sion thereof. The President of the United States of America, and Her Majesty the Queen of Great Britain and Ireland, solemnly and sincerely engage to consider the decision of the commissioners, or umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them respectively; and to give full effect to such decisions without any objection, evasion, or delay, whatsoever; it is agreed that no claim arising out of any transaction of a date prior to February 8, 1853, shall be admissible under this convention.

ARTICLE III. Every claim shall be presented to the commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the commissioners *differing in opinion thereupon*, and then, in any such case, the period for presenting the claim may be extended not exceeding three months longer The commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting, which meeting shall be held in the city of Washington.

ARTICLE IV. All sums of money which may be awarded by the commissioners, or by the arbitrator or umpire, on account of any claim, shall be paid in coin, or its equivalent, by the one government to the other, as the case may be, within eighteen months after the date of the decision without interest.

ARTICLE V. The high contracting parties engaged to consider the result of the proceedings at this commission as a full, perfect and final settlement of every claim upon either government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention, and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said commission, shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled, and thenceforth inadmissible.

ARTICLE VI The commissioners, and the arbitrator or umpire, shall keep an accurate record, and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ a clerk, or other persons to assist them in the transaction of the business which may come before them. A secretary and clerks are to be appointed conjointly. The whole expenses of the commission, including contingent expenses, shall be defrayed equally between the two governments

ARTICLE VII. The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty, and the ratifications shall be exchanged at London as soon as may be, within twelve months from the date hereof.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the fourteenth day of January, A.D. eighteen hundred and sixty-nine.

CLARENDON, [L. S.]
REVERDY JOHNSON, [L. S.]

THE DEBT OF CANADA AND QUEBEC AND ONTARIO.

THE ARBITRATION.

(Continued.)

TREASURY DEPARTMENT,
Toronto, Dec. 5, 1868

SIR,—Unavoidable absence from Toronto, and other pressing matters connected with the business of the Legislature, now in Session, have prevented me from sooner replying to your letter of the 31st November

I shall regret if putting my views in the formal shape in which they appear in my letter of 9th November shall have the effect of embarrassing or delaying the final conclusion which I am most desirous of reaching —the determining the debt of the late Province of Canada, and the ascertaining of the debts, credits, liabilities, properties, and assets of Ontario and Quebec, in order to their speedy division and adjustment, as provided by the British North American Act.

Permit me to say, that all the points raised in my letter of 9th November had formed the subject of oral discussion, and, until I received your letter of the 22nd November, I was led to hope, from what transpired in those discussions, that you were prepared to acknowledge the justice of the changes proposed in the "Statement of Affairs," and that you might be induced to incorporate those changes in a "Revised Statement of Affairs, and Rules to govern transactions since 30th June, 1867."

But the tenor of your letter of the 3rd November dispelled all such hopes.

As, therefore, the items upon which we differed were large, and, as I saw no reason for believing that any satisfactory conclusion would be arrived at by further personal interviews, and, as the public at large, whose servants we are, were alone interested, and had a right to know the views of parties charged with the grave responsibilities involved in the points of difference under consideration, I conceived it to be my duty, in the interest of the public and for the purpose of effecting an early settlement, to state formally the views I had sought to impress upon you and the Auditor in the informal interviews we had had on the subject.

I am not convinced that I was wrong; indeed, I was doing what you yourself suggested, "Either finally to accept the statement of debt as furnished, or place the Dominion Government formally in possession of the points in respect of which I had objections."

You do not misinterpret me in the estimate you form of my sincere desire to act both liberally and fairly with all sections of the Dominion

I will now proceed to notice briefly the five points to which you have given special prominence in your letter of the 21st November.

GREAT WESTERN RAILWAY DEBT.

I fully agree with you that by the British North America Act, "tested even by the strictest rules of legal construction, railway debts are the absolute property of the Dominion, just as are stocks, cash, bankers' balances and securities for money," *but are to be taken in reduction of the public debt of the late Province of Canada.* It is not arguable, that the money owing by the Great Western Railway is not a debt, and if a debt, then a "security for money." Therefore, confining ourselves to the record, the conclusion is inevitable, that while the debt is the property of the Dominion, it must go in reduction of the debt of the late Province of Canada. No argument against this conclusion can be derived from the third schedule to the British North American Act In that schedule is a general enumeration of the property which should belong to the Dominion If it be conceded that the words "mortgages and other debts due by Railway Companies" were intended to include and do include railway debts in the late Province of Canada, such a concession is in perfect harmony with the construction for which I contend. Such debts are the property of the Dominion, "*but shall be taken in reduction of the debt of the late Province of Canada.*" It is open to argument, I admit, but viewed in the surrounding circumstances, and interpreted in connection with the whole Act, it is manifest, I think, that the "railways, railway stocks, mortgages and the third schedule, have no reference whatever to other debts due by railway companies," mentioned in railways, railway stocks, mortgages, or debts due by railway companies in the late Province of Canada But as you do not appear to entertain the opinion that the third schedule has any material bearing upon the construction to be given to the clauses of the Act with respect to the subject now under consideration, I forbear mentioning the numerous arguments which crowd upon in support of the proposition, that the third schedule has no reference to the railways railway stocks, mortgages or debts due by railway companies in the late Province of Canada, and that what I am now contending for is not in *conflict* but in *harmony* with even a contrary construction of thn third schedule.

I know nothing of the fact outside the record, from which you derive your chief argument in respect of the railway debts in controversy. I for one am of opinion, that but little was, or will be, added to the wealth or revenues of the Dominion by the acquisition of the New Brunswick and Nova Scotian railways It will, I submit, be quite enough for Ontario to contribute, by its taxes, the larger portion of the expenses which will have to be annually taken from the Dominion exchequer, to maintain and run these railways without being called upon to give up $4,359,272 03 of good debts, under the pretence that it is just and equitable, so to do, as a set off against railways, which will be a constant drain upon the revenues of the Dominion. If railways, much more favourably situate for business, can barely pay running expenses, under the management of private companies, what is to be expected of those Eastern Railways under the management of the Government? Ontario, as you very properly state, will have to bear the larger portion of the taxation of the Dominion, and will, therefore, have to pay the larger portion of the large sum to be expended for the construction of the Intercolonial Railway—a work which, when completed, will also, I fear, prove to be a constant drain upon the revenues of the Dominion; therefore, I submit that the sacrifices Ontario has made, and is prepared to make, are sufficient without requiring her to add to the many concessions she has already made, the large sum of $4,359,272.03. I see neither law, equity or justice in the demand.

I will, hereafter, remark upon the special debts of the Grand Trunk and Northern Railways.

BANK OF UPPER CANADA.

Aside from the observations I made in my letter of the 9th November, and from the argument derived from the plain reading of the statute, permit me to call your attention to the obvious distinction drawn in the 107th section of the British North American Act between a "banker's balance" and "cash." This distinction, so clearly marked, renders it unnecessary for me to say anything on the arguments you have drawn from the supposition and assumption that "cash" and "banker's balances" means one and the same thing. Notwithstanding your suggestions to the contrary, I am informed that the Government of the late Province of Canada did not pass any Order in Council (I question if they had the power to do so) by which the payment or this claim was prejudiced or postponed. It is, therefore admitted that, upon and after the formation of the Government at Ottawa, this claim was good, that there were sufficient assets to meet it without proceeding against the shareholders at all, and that a writ of extent would have realized the claim in full.

I make no remark on the doubt you express as to whether or not the whole assets must not have been first realized before a proceeding by extent could have been effectually taken. It seems to me to call for none.

Then, while the claim was admittedly good—assets sufficient—writ of extent issuable—the Ottawa Government intervene and assume this claim, and by its legislation last session, 31 Vic, cap. 17, without the consent of the Government of Ontario, deal with in such a way as to deprive itself of all the advantages which it had, and which were abundant to enable it to obtain the full particulars of the whole claim. I hardly think it now rests with the Government at Ottawa to say that it is *now* a doubtful claim and that it ought not to be called upon to take it at a par in reduction of the debt of the late Province of Canada. It would be quite impossible, *now*, for the Dominion to subrogate Ontario in all the rights the Dominion had prior to the Act of last session.

The proposition, therefore, that Ontario shall take the claim, and assume it as part of the liability of Ontario, has no significance.

TRUST FUND INVESTMENTS.

I by no means admit the conclusiveness of your arguments in respect of trust fund investments. The considerations you offer had not escaped my attention, but it seemed to me that the Act was too plain and explicit to admit of treating these investments in the manner you proposed, and I must confess I see nothing in your observations to induce me to change the opinion I had formed on the subject. However, as these investments are not so hopelessly bad as to be beyond the possibility of recovery, I do not think it worth while pertinaciously to insist upon an iron rule of construction as to their disposition. Were these investments the only grounds of difference, I am disposed to think a compromise might be arrived at satisfactory to all parties.

Your observations to the effect that the principle I propose would comprehend all debts, good, bad and doubtful have, I think, but little force when considered in connection with the remarks I made in my letter to you on the 9th November, "that I was not unaware that there were many debts to which I had not alluded, and which it might be claimed should go in reduction of the debt, but that these debts by special legislation, sheer neglect and other causes, were perfectly worthless, and that it would be unreasonable to ask to have them allowed in reduction of the debt." Of course I referred to the Grand Trunk Railway *capital* debt and the Northern Railway *capital* debt, which had been practically wiped out by legislation. These make up the major part of the $29,315,000 you mention.

Do you contend that these railway debts (I mean the capital debt of the Grand Trunk and Northern Railways) were set off as something substantial against the railways in New Brunswick and Nova Scotia by the framers of the scheme of Confederation? If not, if in fact legislation had practically blotted them out, if all parties treated them as obsolete, what inconsistency is there then in my so treating them in the construction of the British North America Act?

In this connection I wish to call your attention to the fact, that the Grand Trunk Railway Bonds ($248,406 33) stand upon an entirely different footing from what you call Grand Trunk Railway capital. The debt arose long subsequent to the construction of the Railway. The Government made advances to that Railway, and under the arrangement Act of 1862, these bonds were issued. The Northern Railway bonds ($248 333.33) are also the result of a compromise under the Act by which the advances made to that Railway were practically wiped out for certain interest in arrear They are emphatically securities for the payment of money.

They might have been sold at any time in the market, even the day before Union Act came into operation; therefore, in respect of these bonds of the Grand Trunk and Northern Railways, it seems to me there can be no controversy.

Indeed, as they are included in the Consolidated Fund Investment Account, all of which ($997,666 72) I proposed to deduct from the public debt, and to which proposition you have offered no objection, I assume you assent to the correctness of the views advanced, as well in respect of these Railway bonds as of all the other items in the Consolidated Fund Investment Account.

INDIRECT DEBT.

I suggested as the simplest mode of dealing with the Indirect Debt to strike it all out of both sides of the "statement of affairs." To this you offer as a ground of objection, that the Dominion is primarily liable, Technically you are correct Practically you are in error. The law, in each case, makes it obligatory upon each institution or concern on whose behalf the advance was made through debentures by the late Province of Canada, to provide for the payment of the interest and debt of these debentures. However, as the institutions or funds on the credit of which $150,400 debt excepted was created will, without reduction and free from these charges, come to the Provinces, there is no reconcilable conflict in respect of the "Indirect Debt."

Common School Fund, U. C. Grammar School Fund, Superior Education Fund, Lower Canada including Superannuated Teacher's Fund and Normal School Building Fund, and Upper Canada Building Fund.

I do not think the Government of Ontario have any authority to deal with these funds as you propose. Its action would be *ultra vires*. If the people of Ontario should decide to have these funds invested it may be, and most likely would be that they could invest them in good securities at 6 per cent. Your Government owes these monies. Instead of paying the principal you propose to pay 5 per cent in perpetuity. I am not prepared to say the people of Ontario will accept this proposition. I note what you say about 5 per cent on all transactions between the Dominion and the Provinces. That rule does not apply to debts owing by Dominion to third parties, as is the case with the debts under consideration. As these funds are for public purposes, it may be that Ontario and Quebec may sweep them away altogether, and merge them in the general revenues of the Provinces and provide by annual grants or otherwise for the objects contemplated by the creation of these special funds. By doing so it would save much labour and many complications. I repeat your proposition in respect of these funds has nothing to do with ascertaining the debt of the late Province of Canada, and cannot at present be entertained.

I think I have now noticed, but not so much at length as I would desire to do, had I time, the main points in your letter. I say nothing in regard to the "Rules." I am of the opinion that by oral discussion we could agree upon some principles which would work justice to all parties. But I am reluctantly compelled to say that I greatly fear the "Rules" propounded by you will be found, when put to the *test*, to work injustice. I repeat, I think it unwise to commit