

the arbitration was adjourned until the next day. Soon after the adjournment writs of prohibition against further proceeding in the arbitration, issued from the Superior Court of the Province of Quebec by Judge Beaudry, were served on both the arbitrators, who however met pursuant to their adjournment, and then further adjourned to meet in Toronto, in the Province of Ontario, on the 4th August, 1870. Soon after this last adjournment a writ of *quo warranto* was served on Mr. Gray, calling on him to shew cause why he should not cease to exercise jurisdiction as arbitrator for the Dominion, on the ground that he had become a resident of Ontario.

On the 4th August the arbitrators met for the purpose of considering the questions arising on the service of the writ of prohibition, and as to what further action they should take in the premises.

On the 5th August they again met, and delivered the following judgments as the result of their deliberations:

**Hon D L MACPHERSON.**—The two arbitrators now present meet under circumstances calling for the most careful circumspection and thoughtfulness.

The Province of Quebec is not represented before them. The counsel for Ontario calls upon them to proceed with the evidence and to make their award.

The retirement of the arbitrator for Quebec, sanctioned by the Government of that province, was formally communicated to the arbitrators when they met at Montreal on the 21st July last, by an official letter from the Premier and Secretary, the Honourable Mr. Chauveau, in which he further preferred the extraordinary request that the remaining arbitrators "will be pleased to stay further proceedings until such time as they receive notice as to their intentions from the government of this province,"—the Province of Quebec.

A request to stay proceedings until the government of Quebec should determine whether they would appoint another arbitrator was shortly afterwards made by the counsel for that Province, and was upon consideration refused by the arbitrators; whereupon the counsel for Quebec declared that that Province would no longer be a party to the arbitration and withdrew.

Further, each of the two arbitrators now present was, since the retirement of the arbitrator for Quebec, served, while in the city of Montreal, with a writ issued from the Superior Court of the Province of Quebec, the purport of which is to prohibit them from the further exercise of their functions until a new arbitrator should be named for that Province, or to shew cause to the contrary on the 1st of September next.

The arbitrators noticed that neither the letter of Mr. Chauveau nor the application of the counsel for Quebec named any time within which it was expected such new appointment would be made.

The retirement of the Quebec arbitrator took place, on the 9th July. Mr. Chauveau's letter is dated on the 19th, and on the 22nd the writ was obtained and served. But up to this moment the arbitrators are not informed that any new arbitrator is appointed, nor in fact that it is the intention of the government of Quebec to make a new appointment.

If the government of Quebec has power under the statute to appoint another arbitrator, and if it is their intention to do so, they have had more than reasonable time for the purpose, since their acceptance of Judge Day's resignation. It was the indefinite character of the delay asked for, which induced the arbitrators to refuse it. The writ which was issued and served almost immediately after that refusal is equally indefinite and might tend to create the impression that delay in completing the award and not to obtain a reasonable time to appoint another arbitrator was the object really desired.

It appears to me, unskilled as I am in legal technicalities, taking an equitable, common sense view of the question, to be beyond any reasonable doubt that no provincial tribunal has, or can claim any jurisdiction to examine into or decide any question referred to arbitration by the 142nd section of the British North America Act of 1867, and it may be confidently asserted that the Imperial Parliament intended the award to be absolutely final. But other and not unimportant legal questions (even if not really difficult) present themselves which, if insisted on, must be determined by some competent tribunal.

Can one of the arbitrators who has undertaken and entered upon the duties assigned by the statute, and who is under no mental or physical disability, retire from or abandon these duties before completion? This question is not one on which the other arbitrators can be expected to express an opinion.

It is, however, connected with the perhaps, more strictly legal enquiry: Does the Act of the Imperial Parliament authorize the withdrawal of an arbitrator with or without the concurrence of the party who appointed him? and does it provide for the substitution of another in his place? Again, are the arbitrators who (though respectively appointed by the governments of the Dominion and of the two Provinces) derive all their power and authority from the Imperial Statute, amenable to any government or local tribunal in matters falling strictly within the scope of their powers and duties.

The statute itself does not in terms confer any authority whatever with regard to the reference on any tribunal but the arbitrators. Can there then by implication arise a power to delay, which might be so exercised as to defeat the object of the enactment? The parties interested are the Provinces of Ontario and Quebec. Can either of them as a matter of legal or moral justice call upon one of its own courts to interrupt or control the proceedings of a jurisdiction created for the sole purpose of deciding rights and interests as between the two Provinces?

If so, the authority must belong equally to the courts of either Province, and what would be the effect of a not impossible conflict between them in their directions to the arbitrators or otherwise?

These and perhaps other questions are opened by the events above stated.

They have been seriously and dispassionately considered, and not the less that their determination may involve personal responsibility to an extent which could not be and was not anticipated when the arbitrators accepted their appointment.

I feel, however, that the first duty of the arbitrators is to make a just award; that they are