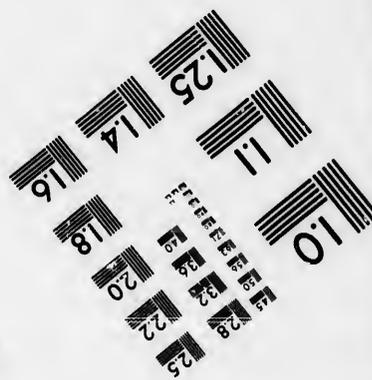
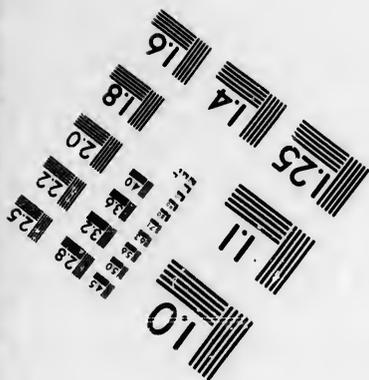
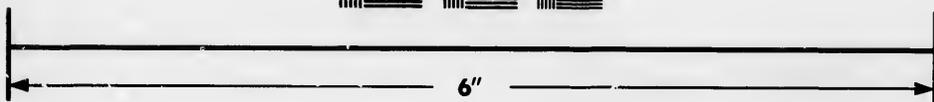
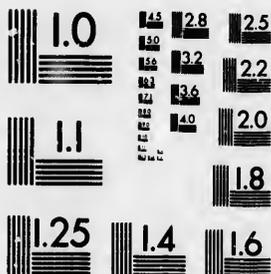


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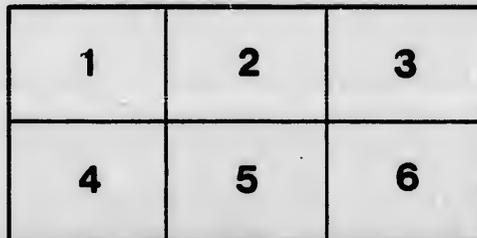
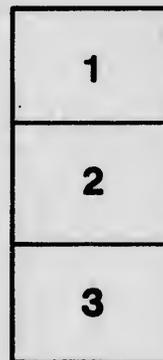
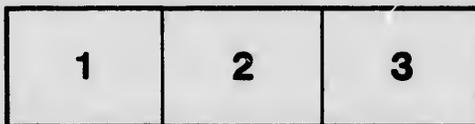
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ARBITRATION

BETWEEN

ONTARIO AND QUEBEC,

UNDER THE

BRITISH NORTH AMERICA ACT, 1867.



QUEBEC :

1870.

ARBITRATION
BETWEEN
ONTARIO AND QUEBEC,
UNDER THE
BRITISH NORTH AMERICA ACT, 1867.



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ARBITRATION
BETWEEN
ONTARIO AND QUEBEC,
UNDER THE
BRITISH NORTH AMERICA ACT, 1867.

The Hon. Edmund Burke Wood, Treasurer of the Province of Ontario, appears for the Province of Ontario.

The Hon. Christopher Dunkin, the Treasurer of the Province of Quebec, appears for the Province of Quebec.

Mr. Ritchie, of Montreal, and Mr. Casault, of Quebec, appear as Counsel for the Province of Quebec.

The Hon. John Rose, the Minister of Finance, being present, produces and files copies of certain Minutes of Council in reference to the subject matters to be submitted to the Arbitrators, marked severally A and B, and dated respectively the 29th July and 17th August, 1869.

The Treasurers of Ontario and Quebec file a memo. relative thereto, which is as follows:

“The Treasurers of Ontario and Quebec state that the above Orders in Council have not yet been formally acted on by their respective Governments; but assent to their sooner being received, filed and considered *ad interim*, under reserve of their right hereafter to communicate to the Arbitrators such action of their Governments as shall be taken in the premises.

(Signed.)
“

E. B. WOOD,
CHRIST. DUNKIN.

During the proceedings, Mr. Langton, the Auditor General, is sent for and questioned as to the matters under consideration.

After discussion, the Arbitrators adjourned until Thursday, the 2nd of September, at 10 A.M.

THURSDAY, SEPTEMBER 2ND, 1870.

The Arbitrators met :—Present as before, with the exception of Messrs. Ritchie and Casault.

After discussion, the following statements were directed to be prepared by the Auditor General, and submitted and sent, as follows :

The Arbitrators direct that the following statements be prepared :

1st. A statement in detail by the Auditor General of the assets enumerated in the 4th schedule of the Union Act, with such observations in explanation thereof, as he may think necessary.

2nd. That this statement be communicated to the Treasurers of the two Provinces, and that they be called upon either to admit its correctness, as enumerating the total assets to be divided under the Act, or to lay before the Arbitrators, in writing, such statements as may enable the Arbitrators to judge of its accuracy and to add to or amend it, if necessary.

3rd. That a further statement be prepared by the Auditor of the sums which the Municipal Fund of Upper Canada and of Lower Canada, respectively, and all other accounts in the statements to be so prepared have yielded, yearly, from the 1st January, 1863, up to the 1st July, 1867, respectively, and shewing the annual percentage on the capital which has been paid on each, with any other statement of facts bearing on the value of the several items in the said statements which he may think necessary, and that this be communicated to the Treasurers of the two Provinces and to the Arbitrators soon as possible.

The Arbitrators adjourned to Wednesday the 22nd day of September, at noon.

By mutual concurrence, the meeting for the 22nd Sept., was further postponed to Thursday the 7th October.

And again further postponed to the 23rd October.

SATURDAY, OCTOBER 23RD, 1869.

The Arbitrators met :—Present,

Hon. J. H. GRAY,
Hon. Judge DAY,
Hon. D. L. MACPHERSON.

Mr. Dunkin, for Quebec.

Mr. Wood, for Ontario.

The Hon. J. Hilyard Cameron appears as Counsel for Ontario.

After discussion,—Adjourned to Monday 25th, at 11 a. m.

MONDAY, OCTOBER 25TH, 1869.

The Arbitrators met. Present:—The Arbitrators, all.

Messrs. Wood and Cameron, for Ontario, Messrs. Dunkin and Ritchie, for Quebec.

After discussion, adjourned until to-morrow, at 10 A. M.

TUESDAY, OCTOBER 26TH, 1869.

The Arbitrators met. Present as before.

After discussion, adjourned until 11 A. M., to-morrow.

WEDNESDAY, OCTOBER, 27TH, 1869.

The Arbitrators met. Present as before.

The Hon. Mr. Dunkin announced that he had resigned the office of Treasurer of Quebec, in accordance with the statement made by him informally, on Monday last, and, this day Mr. Casault appeared with Mr. Ritchie, on behalf of Quebec.

Mr. Casault stated that the Hon. Mr. Irvine, a member of the Quebec Government, was to have been present, but was prevented by unforeseen circumstances from attending; but that the Hon. Mr. Chauveau, the Premier, intended to be in Ottawa, to-day, and that until receiving instructions from him Mr. Ritchie and himself declined to assume any definite responsibility in the matter, resulting from the change in Mr. Dunkin's position.

Mr. Wood, the Treasurer of Ontario, and Mr. Cameron with him, stated that they were prepared to proceed on behalf of Ontario with full responsibility for the Government of Ontario.

Adjourned until 5. P. M.

Met at 5. P. M. All present, (and Mr. Chauveau.)

The Arbitrators made the following order:—

The Counsel for the Provinces of Quebec and Ontario shall prepare and print their respective cases, and communicate them to each other for such observations in response as they may deem necessary. The cases shall be communicated to the Arbitrators, (together with an authoritative declaration by the Governments of Quebec and Ontario respectively, of their agreement with the Dominion Government in the matter of the amount of the debt of the Province of Canada,) on or before the fifteenth day of January next. The Arbitrators may order either *mero motu*, or upon the suggestion of Counsel, an oral argument upon such points as they may deem necessary.

The Arbitrators then adjourned their next meeting to the day of the opening of the next Dominion Parliament, at noon.

TUESDAY, FEBRUARY 15TH, 1870.
11½ o'clock, A. M.

The Arbitrators met pursuant to adjournment ;

Present:—Hon. J. H. GRAY,
Hon. Judge DAY,
Hon. D. L. MACPIERSON.

Also, Hon. Mr. Chauveau, and Messrs. Casault, Ritchie and Mr. Drolet on behalf of Quebec.

Hon. Messrs. Wood and Cameron not having appeared on behalf of Ontario ;

Arbitrators adjourned until Thursday, the 17th, at noon.

THURSDAY, FEBRUARY 17TH, 1870.

Arbitrators met pursuant to adjournment in the Rooms of the Civil Service Board.

Present:—The Arbitrators, all ; also, Mr. Chauveau, and Messrs. Casault, Ritchie, Drolet and Mr. Robertson, the Treasurer of Quebec, on behalf of Quebec ;

The Hon. Mr. Wood, the Treasurer of Ontario, and Hon. Mr. Hilyard Cameron on behalf of Ontario.

It appears that the cases of the two Provinces, had been respectively interchanged and also sent to the Arbitrators as required by the order of the 27th Oct. last, but that no statement had been furnished of any settlement by the Provinces with the Dominion Government, as to the definite amount of the debt, as required by that order.

Counsel then addressed the Arbitrators as to the preliminary objection raised as to their jurisdiction over the debts and assets in the 4th schedule!

The Arbitrators reserved judgment until to-morrow.

Adjournment until to-morrow, at 11 A.M.

FRIDAY, FEBRUARY 19TH, 1870.

The Arbitrators met, pursuant to adjournment.

Present :—All parties, same as yesterday.

The Arbitrators delivered their judgment upon the point argued yesterday, and made the following order.

[See judgment in the appendix marked A.]

“The Arbitrators having heard Counsel upon the objection raised on behalf of the Government of Quebec, to their jurisdiction over the subject matter of the assets enumerated in Schedule 4 of the B. N. A. Act, 1867, and duly considered the question, are of opinion and do adjudge that the assets so enumerated make part of the property and assets, the division and adjustment whereof has been referred to them under the provisions of the section 142 of the said Act, and that they have, by virtue of the said Act, authority to divide and adjust the same.”

Mr. Cameron, on behalf of Ontario, then proposed to go into the argument upon the proposition as to the mode for the division pointed out in the case stated by Quebec, sub-division 3, page 5.

Messrs. Casault and Ritchie, on behalf of Quebec, objected, contending that such would be an exceptional course.

After hearing the Counsel on both sides, as to whether the hearing the argument on that point and a decision thereon at this stage of the arbitration, would or would not expedite the business, the Arbitrators reserved judgment until their next meeting.

The Arbitrators then adjourned until Monday, the 20th, at 11 A.M.

MONDAY, FEBRUARY 20TH, 1870.

The 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 that therefore they would not at present hear the argument upon the point raised by Mr. Cameron and objected to by Quebec.

By agreement the counsel then proceeded to the argument on the claim of Quebec to charge against Ontario its capitalised portion of the "Indian Annuities," page 8 of the Quebec statements.

Mr. Ritchie and Mr. Casault having been heard for Quebec ;

Mr. Cameron for Ontario.

Argument closed ; and Arbitrators adjourned until to-morrow, at 11 A. M.

TUESDAY, FEBRUARY 21st, 1870.

The Arbitrators met. Present as before, with Mr. Chauveau and Mr. Beaubien.

Counsel selected and proceeded with argument as to the mode of distribution.

Mr. Cameron commenced urging the modes pointed out in Nos. 1 and 2, of the Ontario statements. Local debts and population.

Mr. Casault, of Quebec, to be heard in reply to-morrow.

Arbitrators adjourned until to-morrow, at 11 A. M.

WEDNESDAY, 22ND FEBRUARY, 1870.

The Arbitrators met. Present as before. Mr. Casault heard in reply to Mr. Cameron on the point.

Arbitrators adjourned to Friday, 25th.

FRIDAY, 25TH FEBRUARY, 1870.

The Arbitrators met. Present as before.

Mr. Ritchie in support of Mr. Casault ; Mr. Cameron and Mr. Wood in reply. Mr. Casault again, explanatory and supplementary.

The Arbitrators adjourned to to-morrow at noon.

SATURDAY, 26TH FEBRUARY, 1870.

The Arbitrators met and considered the questions submitted, and agreed that it was necessary to take time to look into the points and arguments

raised; to declare such their decision to the Counsel at the meeting on Monday next.

MONDAY, FEBRUARY 28TH, 1870.

Arbitrators met and declared to the Counsel and Treasurers of the two Provinces, the decision at which they had arrived. That they should now adjourn, and notify the Counsel at some future day when they would be prepared to meet again.

The Arbitrators adjourned accordingly.

TREASURY DEPARTMENT.

Quebec, November 11, 1868.

SIR,

Will you be so good as to forward me, as soon as possible, a statement showing the quantity of Indian Reserved Lands transferred to the Crown Lands Department when the system of Indian Annuities was adopted, the quantity sold, and the price, with the arrears due on such sales, the 1st July, 1867.

This information is required for use before the Arbitrators, and an early reply will much oblige.

Your very obedient Servant,
(Signed,) J. G. ROBERTSON,
Treasurer.

Hon. S. RICHARDS,
Crown Lands Commissioner, &c., }
Toronto.

AUDIT OFFICE, OTTAWA.

November 21, 1869.

SIR,

I am instructed by the Minister of Finance to inform you that he has received a statement of the Province debt from the Treasurer of Ontario, including all the items which, according to his view, should be included in it or deducted from it; and shewing the amount at which he sets down hydraulic rents and road securities, the detail of which was not settled at the conference at Montreal; the Minister of Finance wishes that you would cause a similar statement to be prepared, shewing your view of the debt, or your reasons for claiming any change in points not already settled. He thinks that it would conduce to a speedy settlement of this long pending

question, which he is anxious to take up and decide, if you were to communicate with the Treasurer of Ontario, so that the whole of the contentions of each Government should be before the Dominion Government, with the reasons which each may give for assenting to, or dissenting from, the views of the others.

I have the honor to be, &c.,
(Signed,) JOHN LANGTON,
Auditor

HON. J. G. ROBERTSON, }
Treasurer, }
Quebec. }

Quebec, 25th November, 1869.

SIR,

Will you be so good as to forward me as soon as possible, a statement shewing the quantity of Indian Reserved Lands transferred to the Crown Lands Department, when the system of Indian Annuities was adopted; the quantity sold and the price with the arrears due on such sales the 1st July, 1867.

This information is required for use before the arbitrators, and an early reply will much oblige

Your very obedient Servant,
(Signed,) J. G. ROBERTSON,
Treasurer.

Hon. S. RICHARDS, }
Asst.-Commissioner, Crown Lands, }
Toronto. }

TREASURY DEPARTMENT, ONTARIO,

Toronto, 26th Nov., 1869.

SIR,

Your letter of the the 11th instant, to the Commissioner of Crown Lands was by him, this morning, handed to me to answer.

You ask the Commissioner to forward to you "a statement showing the quantity of Indian Reserve Lands transferred to the Crown Lands Department when the system of Annuities was adopted, the quantity sold and the prices, with the arrears due on such sales, the 1st July, 1867."

In reply, I have to say that the management of any "Indian Reserve Lands transferred to the Crown Lands Department," was, prior to Confederation, under the control of the Indian Affairs Branch of that Department, and since Confederation has been under that of the Department of the Secretary of State for Canada, with whom are all the books, documents and papers relating to Indian affairs,

The proceeds of the sale of any such "Indian Reserve Lands transferred," go, as I am informed, to the credit of the Indians making the transfer; therefore the information you ask for cannot be obtained from the Crown Land Department, Ontario.

I have the honor to be, etc.,
(Signed,) E. B. WOOD,
Treasurer.

The Hon. J. G. ROBERTSON, &c., }
Quebec. }

DEPARTMENT OF CROWN LANDS.

Toronto, 30th November, 1869.

SIR,

In reply to your letter of 25th instant, I have to state that your letter of the 11th instant was handed to the Hon. Mr. Wood, Treasurer of Ontario, and I am informed was answered by him on 25th instant, which answer you have no doubt received before this date.

Your obedient Servant,
(Signed,) S. RICHARDS,
Commissioner

HON. J. G. ROBERTSON,
Treasurer of Quebec, }
Quebec. }

Quebec, 30th November, 1869.

SIR,

Your favor of the 26th instant, respecting the Indian Reserve Lands duly received.

The information I wished for, was however not those Indian Reserve Lands, which the Federal Government took to manage and dispose of for the Indians, but those Indian Lands transferred to the Crown Lands Department, and which were treated as Crown and Clergy Lands, in fact sold as any Common Crown Lands, in compensation for which the Government agreed to pay an annuity to the Indians, and to provide for which it is now proposed to establish a capitalised fund from which such annuity shall be paid.

The information sought for in mine of the 10th instant, respecting these, will much oblige me.

(Signed,) J. G. ROBERTSON,
Treasurer, P. Q.

Hon. E. B. Wood, }
Treasurer, }
Ontario. }

QUEBEC, 30th November, 1869.

SIR,

Might I ask of you the favor to procure for me a statement of the Indian Reserve Lands, which were transferred to the former Government of United Canada, and placed under the control of the Crown Land Department, and treated as Crown Lands :

1. The quantity of lands thus transferred ;
2. The value of such lands ;
3. The quantity sold, or value thereof ;
4. The arrears due on any such lands on the 1st July, 1867.

It is of importance that I should obtain this information in the interests of Quebec, and your information on these points will much oblige me.

(Signed.) J. G. ROBERTSON,
Treasurer.

HON. H. LANGEVIN,)
&c., &c., &c.,)
Ottawa.)

TREASURY DEPARTMENT, ONTARIO,

Toronto, 3rd December, 1869.

SIR,

I have the honor to acknowledge the receipt of your letter of the 30th November, in respect to Indian Lands surrendered to the Crown. By reference to your letter to me of 11th ult., you will see, that it is quite a different thing from Indian Reserve Lands transferred to the Crown Lands Department. I have referred your letter to the Commissioner of Crown Lands for a reply. I may remark that, all Lands in Ontario, and, for ought I know, those or most of those in Quebec, once belonged to the Indians who ceded them to the Crown under different treaties. If you ask for a statement of what those Lands were, what pensions were agreed to be given to the Indians for the cession of them, and how much of them still remains unsold, and for an account of outstandings on lands sold, it strikes me the preparation of this statement will be attended with very great labor and expense, and, perhaps, will necessitate another statement shewing what Crown Lands Ontario had at the Union in 1840, and how much has been realized from them which was applied to public purposes in which alone Quebec is interested.

I have the honor to be,
(Signed.) E. B. WOOD,
Treasurer.

The Hon. J. G. ROBERTSON,)
Treasurer of Province of Quebec,)
Quebec.)

Quebec, 4th Dec., 1869.

SIR,

I have the honor, by instruction of the Treasurer of Quebec, to acknowledge your letter of the 24th ultimo, and to say, with reference to the statement of the Province debt by the Hon. Minister of Finance, that the same shall be prepared and submitted with the least possible delay.

(Signed.)

JOSEPH ELLIOT,

Asst.-Treasurer.

JOHN LANGTON, Esq.,)
Auditor,)
Dominion of Canada, }

DEPARTMENT OF THE SECRETARY OF STATE,
Indian Branch,
Ottawa, 8th of Dec., 1869.

SIR,

I have the honor to inform you in reply to your letter of the 30th ultimo that, since the Union of the Provinces of Upper and Lower Canada took effect, no Indian Lands in Western Canada were conveyed to the Crown with a view to their being dealt with as Crown Lands, excepting those embraced by the treaties with the Lake Superior and Lake Huron Indians, effected by the Hon. W. B. Robinson, in September, 1850, and on account of which an annuity of \$2,000 is paid to the Lake Superior Indians, and one of \$2,400, to the Lake Huron Indians.

The quantity of land actually covered by these treaties has not been determined, nor could very readily be computed with accuracy, as the rear boundaries of the territory covered by them have never been laid off by survey.

The quantity sold can only be ascertained by reference to the Crown Lands Department at Toronto, as also the value of the sold and unsold surrendered lands, and the amount of arrears due them, on the 1st July, 1867.

You will receive herewith a schedule of the various annuities paid over periodically to the Indian Office from the Public Funds, with a view to their being distributed for the benefit of the various lands.

I have the honor to be,

Sir,

Your obedient Servant,

(Signed.)

HECTOR L. LANGEVIN,

Secretary of State.

The Hon. J. G. ROBERTSON,

Treasurer,
Province of Quebec,
Quebec.

P. S.—Herewith you will receive also a statement of the lands as mentioned in the treaties with the Indians, and in respect to which the annuities referred to have been, and continue to be, paid annually.

(Signed,)

HECTOR LANGEVIN,
Secretary of State.

EXPENDITURE AUTHORIZED BY STATUTE.

INDIAN ANNUITIES.

Chippewas of Beausoleil.....	\$ 1716 74
Mississaguas of Skrigog.....	391 90
Chippewas of Snake Island.....	844 64
Chippewas of Saugeen.....	2500 00
Chippewas of the Thames.....	2400 00
Mississaguas of the Credit.....	2090 00
Mohawks of the Bay of Quinte.....	1800 00
Chippewas of Walpole Island.....	1800 00
Moravians of the Thames.....	600 00
Chippewas of Rama.....	1806 00
Mississaguas of Rice and Mud Lakes.....	2568 10
Mississaguas of Alhwick.....	2570 00
Chippewas of Sarnia.....	2600 00
Chippewas of Rawash.....	2932 62
	<hr/>
	\$26,620 00

NEW INDIAN ANNUITIES FOR WHICH A VOTE IS REQUIRED UNDER ROBINSON TREATY OF 1850.

Lake Huron Indians.....	\$ 2400 00
Lake Superior Indians.....	2000 00
	<hr/>
	\$ 4400 00
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There was also paid as consideration in money a sum of.....	\$16,640 00

LOWER CANADA—ANNUAL GRANT FOR BENEFIT OF INDIANS.

Annual appropriation under provisions of Acts 14 and 15 Viet., ch. 106.....	\$ 4000 00
Supplementary grant by annual vote of Parliament.....	400 00
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	\$ 4400 00

INDIAN OFFICE,
Ottawa, 8th Dec., 1869. }

INDEMNITIES ALLOWED TO THE UNDERMENTIONED TRIBES.

NAMES OF TRIBES.	ANNUITIES.	SURRENDER.
Mississaguas of Skigog..... Mississaguas of Rice and { Mud Lakes..... }	\$ 391 90 2568 10	} The tract of land ceded by the Mississaguas of Skigog Rice and Mud Lakes, situate in Newcastle district, contg. 1,951,000 acres, in 1818.
Beausoleil Indians Chippewas of Rama..... Chippewas of Snake Island...	1726 74 1806 00 844 64	} These lands formerly composed the tribe known as the Chippewas of Lake Huron and Simcoe, and surveyed in 1818, 1,542,000 acres.
Chippewas of Saugeen..... Chippewas of Kawash.....	2500 00 2932 62	} Surrender of the southerly portion of the Saugeen tract in 1836.
Chippewas of the Thames....	2400 00	} In 1819 surrendered 552,190 acres on the north side of River Thames.
Mississaguas of the Credit....	2090 00	} In 1818 surrendered 648,000 acres, Mississaguas Tract, Home Dist.
Mohawks of Bay Quinte.....	1800 00	} In 1820 surrendered 33,280 acres, Mohawk Township, Midland Dist.
Chippewas of Sarnia.....	3000 00	} In 1827 surrendered 2,182,049 acres situate in the London and Western dist.
Chippewas of Walpole Island Moravians of the Thames....	1400 00 600 00	} In 1836 surrendered 25,000 acres situate in the township of Zone.
Mississaguas of Alnwick.....	2570 00	} In 1822 surrendered Block of Lands situate in Johnston, Midland and Newcastle District, composing 2,748,000 acres.
Total	\$22620 00	

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NEW ANNUITIES UNDER THE ROBINSON TREATY.

Tribes on Lake Huron.....	\$2,400 00
" " " Superior	2,000 00
	<hr/>
	\$4,400 00
	<hr/>

The cessions to the Crown in consideration of which the within named annuities are paid, comprehend chiefly the old settled Districts of Upper Canada, whereon the greater part of the lands have, many years since, either passed into patents, or the lands have been sold. In the counties of Huron, Bruce and Simcoe there are lands upon which some instalments remain no doubt to be paid, and in the rear of the counties of Victoria, Northumberland, Hastings, Lennox and Addington, there are lands of inferior quality still unsold, and considerable quantities are of unsaleable quality.

With regard to the lands on Lakes Huron and Superior, in consideration of cessions of which the new annuities are paid under the Robinson treaty, they are chiefly valuable for minerals.

As respects the general question of the annuities, it should be borne in mind that the Government of Canada entered into engagements with the Imperial Government under which it assumed and guaranteed the payments.

The lands referred to in this memorandum which remain unsold are the property of the Province of Ontario, and are at the disposal of the Government of that Province, and the lands which have been sold or granted, have been so sold or granted as Public Lands.

(Signed,) W. S.

June 3, 1869.

TORONTO, 18th December, 1869.

SIR,

I have the honor to enclose herewith a revised statement of the debt of the Province of Canada. It is a copy, with amounts extended, of that given by me to your Auditor in October last.

I have the honor to be,

Sir,

Your obedient Servant,

(Signed,)

E. B. WOOD,

Treasurer.

HON. J. G. ROBERTSON, }
Treasurer of Quebec, }
Quebec. }

ONTARIO REVISED STATEMENT, SHEWING THE DEBT OF THE LATE PROVINCE OF CANADA.

	\$	cts.	\$	cts.	\$	cts.	\$	cts.
L I A B I L I T I E S .								
Direct Debt assumed by Dominion, 3 rd June, 1867, P. Act. 1867, page 1.....							62,734,797	63
Indirect Debt assumed by Dominion, 30th June, 1867, as follows :								
Upper Canada Building Fund Debentures.....			36,800	00				
Montreal Court House do			95,600	00				
Law Society do			16,000	00				
Aylmer Court House do			2,000	00				
							150,400	00
SPECIAL FUNDS BEARING INTEREST.								
Indian Fund.....			1,810,110	61				
Common School Fund.....	1,733,224	47						
Less 1/3 of receipts from Common School Lands, sold during the existence of the Upper Ca-								
nada Improvement Fund, from the day of the abolition of that Fund, to 1st July, 1867.....	124,635	18	1,608,539	29				
Less—Investments (Quebec Turnpike Trust).....	58,000	00						
Arrears of Interest.....	29,580	00	87,580	00				
					1,520,959	29		
Upper Canada Grammar School Fund.....			362,769	04				
Less—Investments (City of Hamilton Debentures).....			50,000	00				
					312,769	04		
Upper Canada Building Fund.....			1,578,505	96				
Less—Investments (City of Hamilton Debentures).....	30,000	00						
Arrears of Interest.....	10,800	00						
Amount charged in error to Consolidated Fund expended on account of Luanic Asylum	65,617	55						
Buildings, Toronto, in the years ended 30th June, 1866, 1867.....			106,417	55				
					1,472,591	41		
Lower Canada Superior Education Fund.....			377,251	33				
Less—Investments, (Huron and Bruce Debentures).....	19,400	00						
Do do (City of Hamilton Debentures).....	10,000	00	29,460	00				
			61,761	84			347,551	53
Normal School Building Fund.....			61,761	84				
Carried over.....			61,761	84			62,885,197	63

REVISED STATEMENT, SHEWING THE DEBT, &c—Continued.

LIABILITIES.		\$	cts.	\$	cts.	\$	cts.
Brought over.....				61,761	84	5,464,081	88
Supraannuated Teachers' Fund.....				2,700	88		
Compensation to Seigniors, (Capital).....						64,462	72
Seigniorial Indemnity to the Townships, (Capital).....						3,113,100	02
Widows' Pensions and uncommuted Stipends, Upper Canada.....						756,710	00
Do do do Lower Canada.....						50,143	81
Do do do do.....						4,126	31
MISCELLANEOUS LIABILITIES, PAYABLE IN CASH.							
Court Houses, Lower Canada,.....						4,061	20
Montreal District Council.....						3,912	63
Public Works (Special).....						12,711	93
Municipalities' Fund, Upper Canada,.....						382,553	06
Upper Canada Grammar School Income Fund.....				36,167	65		
Less—Arrears of Interest on Investments, (City of Hamilton Debentures).....				18,000	00		
Upper Canada Improvement Fund, (prior to abolition by Order in Council).....		5,180	04				
Less—Receipt in former years reversed.....		60	96				
Receipts of Common School Lands : sold during the existence of the Upper Canada Improvement Fund, from the day of the abolition of that Fund, to 1st July, 1867.....		124,635	18	5,119	08		
Do. on Crown Lands Sold and Money so received.....		101,721	63	226,456	86		
Compensation to Seigniors, (arrears).....						231,375	91
Balances of Special Appropriations, (Ontario).....						72	25
Do do (Quebec).....						218,473	37
Amount paid by Ontario for Surveys ordered prior to 30th June, 1867.....						99,482	20
Do Quebec do do.....						7,074	01
Ten per cent on Purchase Money, (\$181,062.50) of the Canada Land and Emigration Company to be repaid to the Company as per agreement for the Construction of Roads.....						7,951	53
Less—Paid thereon by the Province of Canada.....				18,106	25		
				5,177	83		
						12,923	37

Seigniorial Indemnity to the Townships..... 130,347 29

1,048,011 57

2,000,000 00

Less—Paid in excess by the Province of Canada..... 12,923 37

Seigniorial Indemnity to the Townships.....					130,347 29					
Banking Accounts, 30th June, 1867, assumed by Dominion.....									1,049,011 37	
Public Works (special) debited to Public Works.....									5,096,415 22	
Capitalization of Annuities.....									7,588 05	
Discount at which £73,000 Stg. debentures taken from the Bank of Montreal at par, per agreement, were placed in the Sinking Fund.....					46,184 66					
Less—premium at which £12,501 13s 4d due to the Sinking Fund, 30th June, 1867, might have been invested.....					20,507 42					15,377 24
Expenditure on account of the late Province of Canada, to the 30th June, 1868, Public Accounts 1868.....					1,535,675 43					
Less Militia Clothing and Equipments, and Improved Firearms.....					278,651 03					
Unexpended Warrant cancelled.....					64 05					
This sum twice included.....					2,044 80					
Gratuities to officials and other employees of the Senate, charged in said Expenditure.....					22,819 10					
					203,578 98				1,232,096 45	
									\$78,737,846 48	
DEDUCTIONS.										
Consolidated Fund Investment Account being excess of par value of Consolidated Canadian Loan Debentures assumed from the Bank of Upper Canada.....						5,333 33				
Expenses of Delegation to England.....					12,000 00					
Receipts of the Dominion, on account of the late Province of Canada, to 30th June, 1868, Public Accounts 1868.....						491,743 01				
Consolidated Fund Investments.....						997,666 72				
Composition Bank of Upper Canada Debt.....						500,000 00				
Northern Railway Special Account.....						30,976 70				
Cataract Property.....						6,584 54				
Hydraulic and other Rents.....						101,784 44				
Reeds and Harbours.....						202,377 63				
Sinking Fund of Imperial Guaranteed Loan.....						651,333 32				
Do Canadian Consolidated Loan.....						1,207,222 26				
Cash and Banking Accounts transferred to Dominion.....						1,161,250 61				
									5,698,292 56	
Allowed by B. N. A. Act.....									\$73,039,553 92	
Excess over \$62,500,000.....									62,500,000 00	
									\$10,539,553 92	

Quebec, 29th December, 1869.

SIR,

Enclosed, please receive statements of the debt of the late Province of Canada, prepared in accordance with the terms agreed upon at the Montreal conference.

(Signed,)

J. G. ROBERTSON,
Treasurer.

Hon. E. B. Wood, }
Treasurer, }
P. O. }

QUEBEC REVISED STATEMENT, SHEWING THE DEBT OF THE LATE PROVINCE OF CANADA.

	\$	cts.	\$	cts.	\$	cts.	\$	cts.	
LIABILITIES.									
Direct Debt assumed by Dominion 30th June, 1867, P. A. '67, page 1.....									
Indirect debt, 30th June, 1867:									
U. C. Building Fund Debentures.....							30,800	00	
Montreal Court House Debentures.....							95,600	00	
U. C. Law Society do							16,000	00	
Aylmer Court House do							2,000	00	
								150,400	00
SPECIAL FUNDS BEARING INTEREST.									
Indian Fund.....							1,310,110	01	
Common School Fund.....							1,733,924	47	
Less—Investments (Quebec Turnpike Trust).....	58,000	00							
Arrears of Interest.....	29,380	00			87,580	00			
							362,769	04	
							50,000	00	
U. C. Grammar School Fund.....							1,578,898	96	
Less—Investments (City of Hamilton Debentures).....									
U. C. Building Fund.....	30,000	00							
Less—Investments (City of Hamilton Debentures).....	10,800	00							
Arrears of Interest.....									
Amount charged in error to Consolidated Fund expended on account of Lunatic Asylum Building*, Toronto, in the years ended 30th June, 1866 and 1867.....	65,617	55							
							106,417	55	
L. C. Superior Education Fund.....							377,251	53	
Less—Investments (Huron and Bruce Debentures).....	19,400	00							
Do do (City of Hamilton).....	10,000	00							
							29,400	00	
L. C. Normal School Building Fund.....							347,851	53	
L. C. Superannuated Teachers' Fund.....							61,761	84	
Compensation to Saigniers—(Capital).....							2,700	88	
							3,113,100	02	
Carried over							8,766,329	80	
							62,885,197	63	

Expenditure on account of the late Province of Canada to the 30th June, 1868, per Public Accounts, 1868 1,535,675 43

Less—Militia clothing and equipments, and improved Firearms.....	275,651 03		
Unexpended Warrant cancelled.....	64 05		
This sum twice included.....	2,044 80		
Gratuities to officials and other employees of the Senate, charged in said expenditure.....	22,819 10		
		305,578 98	1,232,096 45
			\$78,623,146 43
DEDUCTIONS.			
Consolidated Fund Investment Account, being excess of par value of Consolidated Canadian Loan Debentures assumed from the Bank of Upper Canada.....	5,353 33		
Expenses of delegation to England.....	12,000 00		
Receipts of the Dominion an account of the late Province of Canada to 30th June, 1868, per Public Accounts, 1868.....	491,743 01		
Consolidated Fund Investment.....	997,666 72		
Bank of Upper Canada to be taken per agreement at.....	500,000 00		
Northern Railway Special Account.....	30,976 70		
Catawaqui Property.....	6,584 54		
Hydraulic and other Rents.....	101,781 44		
Roads and Harbours.....	292,377 63		
Sinking Fund of Imperial Guaranteed Loan.....	681,353 32		
Do do Canadian Consolidated Loan.....	1,207,222 26		
Cash and Banking Accounts transferred to Dominion.....	1,461,250 61		
			5,668,292 56
Allowed by B. N. A. Act.....			\$79,924,852 87
Excess over \$82,550,000.....			62,500,000 00
			\$10,424,853 87

The foregoing is a statement of the debt made up as sanctioned per order of the Honorable Privy Council, dated the 17th August last. Should Ontario not approve of this account, and insist upon deviating from the terms agreed upon by its own representatives, as well as by those of the Dominion and the Province of Quebec, Quebec contends that the negotiation is to be opened anew, and that each and the whole of the items of the statement of affairs must be subject to revision.

(Signed,) J. G. ROBERTSON,
Treasurer.

TREASURY DEPARTMENT,
Quebec, 21st January, 1870.

QUEBEC, 29th Dec., 1869.

SIR,

Enclosed please receive statement of the debt of the late Province of Canada, prepared according to your request.

(Signed,)

J. G. ROBERTSON,
Treasurer.

JOHN LANGTON, Esq., }
Auditor, }
Ottawa. }

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QUEBEC, 31st Dec., 1869.

SIR,

I have the honor on behalf of the Honorable the Treasurer of the Province, to request that you will be pleased to procure him, as soon as convenient, a copy of the document, known under the name of the Robinson Treaty (connected with the Indian Annuities) as well as that of any one of the contracts or deeds with the Indians in October, 1818.

(Signed,)

GASPARD DROLET,
Auditor.

Hon. H. L. LANGEVIN,
Minister of Public Works, &c., }
Ottawa. }

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,
Indian Branch,
Ottawa, 5th January, 1870.

SIR,

Your letter of the 30th ult., addressed to the Hon. H. L. Langevin, C. B., having been transferred to this Department, I beg to enclose herein, as requested :

1. Copies of the Robinson Treaty with the Ojibewas of Lake Huron, dated 9th October, 1850 ; and
2. of the Treaty with the Ojibewas of Lake Superior, dated 7th of that month and year ;—as well as of the surrender, dated 17th October, 1818, made by the Chippewa Indians, of 1,592,000 acres of land, within what was known as the "Home District" ; and
3. of the surrender by the Mississagua Indians, of the tract known as the "Mississagua Tract," in the said "Home District."

I am, Sir,

Your obed't. Servant,

(Signed,)

JOSEPH HOWE,
Secretary of State.

GASPARD DROLET, Esq., }
Provincial Auditor, }
Quebec. }

TREASURY DEPARTMENT, ONTARIO,
Toronto, 7th January, 1870.

SIR,

I have the honor to acknowledge the receipt of your communication of the 28th ult., enclosing "Statement of the Debt of the late Province of

Canada," which you say is "prepared in accordance with the terms agreed upon at the Montreal Conference." It differs from the statement I sent you only in two items, viz: Canada Land and Emigration Company, about which there can be no doubt, as you will see by reference to the terms of purchase as set forth in the "Return of the Correspondence and Agreement made by the late Province of Canada with the Canada Land and Emigration Company," which I send you by this day's mail; and as little doubt, I think, exists as to the item of U. C. Improvement Fund, as you will, I think, be compelled to admit when you examine the Statute 16 Vic., cap. 159, and the Orders in Council passed respecting the same, recorded in the Sessional Papers of the late Province of Canada, 1863, Vol. 22, No. 16, and the Report of the Special Committee of the Assembly of Ontario, now in the printer's hands, and a copy of which I will forward as soon as obtained.

I have the honor to be, &c.,
(Signed,) E. B. WOOD.

The Hon. J. G. ROBERTSON, &c.

TREASURY DEPARTMENT, ONTARIO,

Toronto, January 12th, 1870.

"U. C. Improvement Fund."

SIR,

I have the honor to forward for your consideration a copy of a letter written to the Minister of Finance on the 2nd of November last, and also the printed Report of the Select Committee referred to in my letter to you of the 7th, instant, on the subject of the "U. C. Improvement Fund."

I have the honor to be,
Your obedt. Servant,
E. B. WOOD.

Hon. J. G. ROBERTSON,
Treasurer, }
Quebec. }

QUEBEC, 22nd January, 1870.

SIR,

I have the honor to acknowledge the receipt of your letter of the 7th and 12th January instant, referring to the amounts which you pretend should be added to the statement of the debt of the Province of Canada as due, one to the Canada Land and Emigration Company, and the other to the Upper Canada Improvement Fund, and also the Report of the Select Committee on the Land Improvement Fund, and the Return to an Address of the Legislative Assembly of Ontario, respecting the purchase of the Townships *en bloc* by the Canada Land and Emigration Company.

A careful and attentive perusal of these documents, as well as of Chap. 23 of the Consolidated Statutes of Canada, leaves no doubt in my mind that the pretensions of Ontario are unfounded and inadmissible.

The claim of the Canada Land and Navigation Company is at best but a contingent one, the existence of which depends upon the construction of the roads, and which moreover may be compensated by the forfeiture or extra price of 2s. 6d. per acre which the Company is bound to pay as a penalty for non-performance of settlement duties during the time specified. If, owing to recent action of the Government of Ontario, it is found proper to discharge the Canada Land and Emigration Company, as it demands by its Petition of the 22nd August, 1868, from its obligation, the Province of Quebec cannot be called upon to contribute, which it would, if that sum was added to the debt of the Province of Canada.

The whole, under the British North America Act, 1867, passed with the lands to Ontario, which is bound to meet the claim if any is hereafter made good, and to enforce the execution of the contract, or get the extra price stipulated as a penalty for its non-fulfilment.

As to the sum which you propose to add to the amount set down in the statement of affairs as due to the Upper Canada Improvement Fund. The Fund under the Law and the Order in Council was to be composed, not of the amounts *due* by the purchasers of the Lands, but of those *received* by the Crown Lands Department during its existence. The Receiver-General, under the Order in Council, could set apart, as therein directed, only the amounts which he had actually received.

Independently of these considerations the introduction of such pretensions, not alluded to in the Conference at Montreal, would involve the reopening of the whole question as respects the surplus debt, which if once done, it is impossible to say where it might end.

As I have before said, if such question is reopened the whole ground may have to be gone over, when Quebec will claim the privilege of putting in claims for consideration in the discussion of the same.

(Signed) J. G. ROBERTSON,
Treasurer, P. Q.

HON. E. B. WOOD,
Treasurer of Ontario }
Toronto. }

QUEBEC, 22nd January, 1870.

SIR,

I have the honor to enclose, for your information, my reply to the Hon. E. B. Wood, Treasurer of Ontario, respecting his statement of the surplus debt of Canada, dated November 20th, 1869, which, I hope, will be found satisfactory, as showing that the statement heretofore sent by me of such surplus debt was correct.

It may be proper to remark here, that the pretensions now put forth by Mr. Wood, not being urged at the conference of the representatives of the three Governments in Montreal, are inadmissible. Otherwise the whole question may have to be reopened, as between the Dominion Government and the two Provinces respecting surplus debt; a proceeding which would necessarily involve the discussion of all claims which might be put forth by either Province, of any description, thus rendering the proceedings agreed on at Montreal useless.

(Signed,)

J. G. ROBERTSON,
Treasurer, P. Q.

To the HON. SIR FRANCIS HINCKS,)
Minister of Finance, &c.,)
Ottawa.)

TREASURY DEPARTMENT,
Toronto, 26th January, 1870.

SIR,

Your letter of the 19th instant, duly received. In reply I beg to say that a copy of the printed Report therein referred to, was sent to your address and must, I presume, have miscarried, as you say you have not received it. I send by this day's mail a copy of the Report.

Your obedient Servant,
(Signed.)

E. B. WOOD,
Treasurer.

The Hon. J. G. ROBERTSON,)
Treasurer,)
Quebec.)

AUDIT OFFICE, OTTAWA,
February 4th, 1870.

SIR,

I am instructed by the Minister of Finance to furnish you with a statement of the debt of the Province as it now stands in our books, in which no deduction has as yet been made for arrears of Hydraulic Rents and Road Securities. Taking the balance as in your statement without these deductions or that claimed by you on account of gratuities in the Senate, all which are reserved for future consideration, it would stand at..... \$10,754,835 04
Deduct accounts erroneously charged against the Province in 1867-8 on account payments against old appropriations which had already been charged against the debt, and credited to Ontario and Quebec respectively, viz :

Colonization roads, Quebec.....	\$ 3,127 00	
Agricultural Instruction, Ontario.....	100 00	
		3,227 04
		<hr/>
		\$10,748,608 04
Add—Glyn, Mills & Co., suspense account.....		17,498 28
Baring, Bros. & Co.		32,788 34
Expenditure 1868-9, as per statement.....	\$23,379 90	
Less—Receipts.....	1,237 37	
		22,142 53
Expenditure to Dec. 31st, 1869.....	\$8,944 62	
Less—Receipts.....	972 90	
		7,971 72
		<hr/>
		\$10,820,008 88

The suspense accounts consist of certain old questions in the Agents accounts as to the correctness of which doubt had arisen. They have been brought under the notice of the Agents by successive Ministers of Finance, and they are now admitted by us. The whole amount has already been deducted from the debt in the banking accounts and is now written off.

I have the honor to be your, &c.,
(Signed,) JOHN LANGTON,
Auditor.

J. G. ROBERTSON, Esq., }
Treasurer, }
Quebec. }

OTTAWA, 16th Feb., 1870.

SIR,

As it is necessary to proceed with the arbitration between the Provinces of Ontario and Quebec, that the amount of surplus debt of the former Province of Canada, over the \$62,500.00 assumed by the Dominion, should be ascertained and agreed upon, at as early a period as possible, I have to suggest that the representation of the two Local Governments interested should address the Honorable Finance Minister of the Dominion, requesting a conference, with as little delay as possible, for the purpose of considering the question of such surplus debt.

Perhaps a joint note from yourself and me might answer the purpose, or if you make arrangements with Sir Francis, I will be ready to meet him and yourself at any time you may fix. The earlier the better.

(Signed,) J. G. ROBERTSON,
Treasurer P. Q.

Hon. E. B. WOOD, }
Treasurer, P. of O. }

AUDIT OFFICE,
Ottawa, Feb. 1870.

MY DEAR SIR,

Referring to our conversation yesterday, as to the \$47,689.04 included in the history of the Seigniorial Legislation, and which you said had not been apparently credited to the Superior Education Income Fund, I beg to state the facts. The interest on the capital of the Seigniories of the Jesuits' Estates is properly credited to the Income Fund in the Public Accounts. This sum of \$47,689.04, however, ought never to have been included by me in the statement of the origin of the debt. It was taken from the report of the Commissioners; but it is not arrears of interest due at the time of the passing of the Act, in which case it might have been included in the capital for which they were compensated, but it is the interest accrued upon that capital after the passing of the Act, as calculated by the Commissioners, and which is duly credited to the Income by us in a modified form. My statement of this origin of the debt only dealt with the capital, and this amount should certainly not have been included any more than I included the interest on the \$600,000 and the second indemnity to U. C.

(Signed,)

JOHN LANGTON.

G. DROLET, Esq.

March 1st, 1870.

MY DEAR SIR,

The amount of contingent expenses of the Arbitration up to this time, which it was agreed yesterday should be paid by the Provinces of Ontario and Quebec in equal parts, is \$50.

If therefore you will give the bearer \$25 for Quebec, it covers, as far as I at present know, the charges for messengers, clerk, paper, &c.

Yours, &c.
(Signed,)

J. H. GRAY,
For the Arbitrators.

The Hon. the Treasurer of Quebec.

OTTAWA, 3rd March, 1870.

SIR,

I have the honor to request that all such information as may be required by any Member of the Ontario Government, or other person on behalf thereof, on matters relating to, or bearing upon, the arbitration now pending between that Province and the Province of Quebec, for any department or officer of the Dominion Government, may also be furnished and sent to the Quebec Government.

Of course the same rule to be followed as to communicating to the Ontario Government any information which the Quebec Government may

require. The intention being that all information which either of the said Provinces may require from any Department or Officer of your Government should be communicated to the other Province, in order that both may have the fullest opportunity of making preparations for continuing these cases before the Arbitrators.

Your attention to this will much oblige,

(Signed,)

J. G. ROBERTSON,
Treasurer, P. Q.

The Hon. SIR FRANCIS HINCKS,
Finance Minister, &c., &c., }
Ottawa. }

OTTAWA, 3rd March, 1870.

SIR,

Allow us to call your attention to the fact that since the 17th August last, when an approximate statement of the debt of the late Province of Canada was adopted by the Honorable the Privy Council of the Dominion, and partially concurred in by the respective Governments of Quebec and Ontario, many claims so called against the late Province have been submitted to, and paid by the Dominion Government, without the assent or concurrence of the Local Government first had and obtained.

We wish it to be understood for the future, that any such claims, before being entertained by the Dominion Government, should first be submitted to the Local Governments of Ontario and Quebec, and approved of by them respectively, before being charged to the late Province of Canada, or to Ontario and Quebec, or either of them.

The reasonableness of this course will be apparent when you consider that the Provinces of Quebec and Ontario are expected to pay such and the least that we demand is that our respective Governments should have an opportunity of deciding whether the claims presented are reasonable and just before being held responsible for them.

(Signed,)

E. B. WOOD,
Treas., Ont.

(Signed,)

J. G. ROBERTSON,
Treas. Quebec.

Hon. SIR FRANCIS HINCKS,
Finance Minister, }
Ottawa. }

OTTAWA, 23rd March, 1870.

SIR,

With regard to our conversation this morning respecting the propriety of obtaining, from the Dominion Government, possession of the Municipal Loan Fund books, in the Honorable Receiver-General's Department for Ontario and Quebec respectively, allow me to say :

That I see no impropriety in your obtaining the books containing the accounts connected with the Upper Canada Municipal Loan Fund, and in my obtaining those books which contain the accounts of the Lower Canada Municipal Loan Fund, in order that the respective Governments of Ontario and Quebec may be better able to ascertain the true standing of the accounts against the respective Municipalities in each Province respectively.

It is to be clearly understood, however, that the possession of the books in question by either Province is not to be considered as thereby giving any exclusive claim to the Fund or accounts due thereon, to the particular Province, which may obtain those books, or as establishing any claim or distinction of property, but that the Funds shall be dealt with by the Arbitrators appointed to decide as to the decision of debts and assets between Ontario and Quebec, as if the said books had been kept in the possession of the Dominion Government, and that each Province agrees to and with the other that such distribution, as may be made by the Arbitrators, shall, as respects such Municipal Loan Funds, be carried out fully and to all interests and purposes, and that the possession of the said books, shall in no wise be construed by either Province as giving to them respectively any special claim to the amount due by Municipalities which said books may respectively contain. In case the Arbitrators should request these books to be laid before them and subject to their control, it is understood that they shall be produced in the same condition as they now are.

On your acceptance of these propositions, and your concurrence in my views, expressed in writing to me, I will join you in a letter to the Dominion Government, requesting the delivery of said books.

(Signed,)

J. G. ROBERTSON,
Treasurer, P. Q.

Hon. E. B. Wood, }
Treasurer, }
Ontario. }

OTTAWA, 24th March 1870.

SIR,

I have the honor to acknowledge the receipt of your note of the 23rd instant, respecting the Municipal Loan Fund books, Upper Canada and Lower Canada, and in reply I have to say that I assent to the terms and conditions contained in your note with respect to the books, as they are substantially the same as proposed in my letter to ex-Treasurer Dunkin, of the 19th of January, 1869.

I shall be ready at any time to join with you in a letter to the Dominion Government requesting the delivery of the books.

Permit me to call your attention to the fact that you have not referred to the securities I mentioned to you as being held by the Receiver-General on account of certain Trust Funds. I think it would be for the interest of both Provinces that these should, subject to similar terms as those stipulated in respect of the M. L. F. books, be placed in the hands of the respective Treasurers of the Provinces.

I have the honor to be, &c.
(Signed) E. B. WOOD.

Hon. J. G. ROBERTSON,
Treasurer of Quebec,
Ottawa. }

OTTAWA, March 25th, 1870.

SIR,
The undersigned, acting for the Governments of Ontario and Quebec respectively, have to request that you will deliver to us, the Municipal Loan Fund books, in the hands of the Dominion Government, viz: the Upper Canada books to Mr. Wood, and the Lower Canada books to Mr. Robertson, an arrangement having been made between the undersigned to the effect that this will not interfere with the arbitration pending between said Provinces, or the decision which may be come to by the Arbitrators.

We are, your most obedient Servants,
(Signed) E. B. WOOD,
Treasurer, Ont.
(Signed) J. G. ROBERTSON,
Treasurer, Quebec

Hon. Sir FRANCIS HINCKS,
Minister of Finance, &c.,
Ottawa. }

GLENBROOK, 13th April, 1870.

MY DEAR SIR,
I have received from Mr. Wood a pamphlet containing an elaborate argument upon the question submitted to the Arbitrators at their last session. I suppose copies have been sent either to you or to the Counsel for Quebec, but this might not yet have been done. I have thought it right to inform you that I, and as I presume, the other Arbitrators have received copies.

I remain, my dear Sir, &c.,
(Signed) CHAS. D. DAY

Hon. JOSEPH G. ROBERTSON.

OTTAWA, 2nd May, 1870.

MY DEAR SIR,

The Honorable Treasurer of Ontario has issued a pamphlet purporting to be "his argument, before the Provincial Arbitrators, on the mode proposed for the apportionment of the excess of debt and division of assets between Ontario and Quebec," which I have reason to believe has been forwarded to you. I have only seen a copy within a few days past, and have had no opportunity of consulting with the Counsel for Quebec upon the statements put forth by Mr. Wood. I also fail to perceive how the pamphlet in question can be viewed as a report of the speech actually made by Mr. Wood before the Arbitrators.

I have therefore to request that time be given me to confer with the Counsel for Quebec and to prepare an answer to the pamphlet referred to, should it be thought necessary, before consideration is given to *ex parte* statements of Mr. Wood, or my decision come to, relative to the matters in issue between the two Provinces, now before the Arbitrators.

(Signed,)

J. G. ROBERTSON,
Treasurer, P. Q.

Copy sent to

Col. GRAY,
Judge DAY,
Mr. McPHERSON.

OTTAWA, May 5th, 1870.

SIR,

Will you have the goodness to cause to be prepared and forwarded to me the following statements, at your earliest convenience :

1st. The amount of the debt of Upper Canada at the time of her Union with Lower Canada in 1841, distinguishing floating debt, if any, from debentures, and the dates, amount, rate of interest and maturity of the latter.

2nd. The different payments made on account of the said debt, with their respective dates, and the sources from which the moneys so paid were derived, whether from the ordinary revenue fund or from some special fund, or from the proceeds of debentures, consols, loan, overdrawn accounts or negotiation of any security whatever.

3rd. The date, amount, rate of interest and maturity of the debentures issued, if any to redeem, and pay off any debentures of the late Province of Upper Canada or any part of her floating debt.

4th. The amount of ordinary revenue of each year during which part of said debt of Upper Canada was paid, exclusive of negotiation of loans, or debentures of consols negotiated, if any, during each of the said year, as well ordinary as extraordinary, including moneys expended for public or local works, and moneys expended on account of capital as well as of revenue account.

(Signed,)

J. G. ROBERTSON,
Treasurer, P. Q.Hon. SIR FRANCIS HINCKS,
Minister of Finance,

Ottawa.

FINANCE DEPARTMENT,

OTTAWA, 10th May, 1870.

Sir,

Referring to your communication, dated the 5th instant, I find on reference to the Books of this Office, that the Public Debt of Upper and Lower Canada at the period of the Union in 1841, does not correspond with the statements which appear in the appendix to the Journals of the House of Assembly for 1847, and beg to submit a memorandum of the apparent discrepancies, with such explanations as are afforded, on looking into the particular items of which the statements are composed.

Per appendix referred to, the Debt of Upper Canada is shown to be as under, viz :

No.	Description	Sterling.			Currency @ 4s. 6d.		
		£	s.	d.	£	s.	d.
1	Sterling Debentures.....	869,650	0	0	966,277	15	6½
2	Debentures payable in Canada.....				213,671	11	2½
3	Due to Banks.....				26,000	0	0
4	Do to London Agents (estimated).....	31,595	10	10	33,166	3	1½
5	Welland Canal.....				117,800	0	0
6	Insurrection losses.....				40,000	0	0
	Total debt Upper Canada.....				£1,398,855	9	10½
	Equal to.....				\$5,595,421.99		

Per the Public Accounts, the Debt of Upper Canada is thus given :

Description	Sterling.			Currency @ 4s. 6d.		
	£	s.	d.	£	s.	d.
Sterling Debentures.....	838,850	0	0	932,055	11	1
Debentures payable in Canada.....				289,541	1	2½
Due to Banks.....				26,000	0	0
Do to London Agents.....				39,964	19	7½
Total.....				£1,287,564	11	10½
Or.....				\$5,150,258.37½		

ITEM No. 1.—The difference of £30,800 stg. is thus explained, that amount of Debentures having been issued prior to the Union, but not negotiated until 1843, as appears by a letter from Messrs. Baring & Co., dated 3rd June, 1843.

	CURRENCY.		
	s.	d.	
ITEM No. 2.—The amount per Appendix to Journals, 1847, is.....	£213,671	11	2½
To which add Debentures issued 24th August, 1841, on account "Home District Roads," in statement in Public Accounts to 31st Dec., 1841.....	660	0	0
Also, Welland Canal Debentures, since cancelled by exchange for those issued under Act, 7 Vic., Cap. 34, say £117,800.....	75,212	10	0
Total per Public Accounts to 31st Dec., 1841...	£289,544	1	2½
ITEM No. 4.—Per Appendix the amount (estimated) is.....	£35,106	3	1½
But per Public Accounts.....	£39,964	19	7¼
The difference being probably accruing interest on Debentures.			

ITEMS Nos. 5 & 6.—It will be observed on reference to Item No. 2, that the Welland Canal Debentures, then outstanding were to be replaced by those authorized under Act 7 Vic., Cap. 34, the latter being dated 1st Jany., 1843, and not appearing as a debit until issued to the insurrection losses treated in like manner.

It would be difficult to give precise answers to the questions respecting the particular funds out of which the liabilities were liquidated, or to furnish other details as enumerated, but beg to refer you to a statement of the annual redemption of debentures (issued prior to the Union, to be found in the Public Accounts of 1867, in *Part 2, No. 45, Fo. 54 to 56*, such having been redeemed under Act 12 Vic., Cap 5, which authorises the issue of other debentures to the like extent, and submit herewith statements Nos. 1 and 2, showing the annual state of the Public Debt from the Union, both direct and indirect, distinctively, and also an *Abstract (No. 3)* of the Public Debt of Upper and Lower Canada on 10th Feby., 1841, prepared during the first Session, 1st Parliament, 5 Vic., 1841, and signed respectively by the Inspector-Generals up to that date.

I have the honor to be,

Sir,

Your obedient Servant,

WILLIAM DICKINSON,

D. I. G.

Hon. J. G. ROBERTSON, }
 Treasurer, }
 Province of Quebec. }

No. 1.

ANNUAL STATE OF THE PUBLIC DEBT from 1841 to 1868.

YEARS.	DIRECT DEBT.		INDIRECT DEBT.		TOTAL.	
	\$	Cts.	\$	Cts.	\$	Cts.
1841.....	5,735,279	90	.....	.....	5,735,279	90
1842.....	6,551,436	23	.....	.....	6,551,436	23
1843.....	9,083,389	52	.....	.....	9,083,389	52
1844.....	12,143,203	43	.....	.....	12,143,203	43
1845.....	13,731,877	78	.....	.....	13,731,877	78
1846.....	14,748,914	48	111,906	48	14,860,820	96
1847.....	15,374,459	27	410,194	47	15,814,953	74
1848.....	15,860,442	98	648,802	18	16,509,245	16
1849.....	16,342,536	13	644,802	18	16,987,338	31
1850.....	18,049,874	95	732,690	58	18,782,565	53
1851.....	17,807,847	53	2,673,625	25	20,481,472	78
1852.....	18,664,773	05	3,690,640	55	22,355,413	60
1853.....	18,485,162	72	7,929,304	55	25,514,527	27
1854.....	17,415,797	15	21,436,036	63	38,851,833	78
1855.....	17,242,516	13	28,612,671	22	45,855,217	35
1856.....	18,813,214	92	29,944,404	63	48,757,619	55
1857.....	21,470,256	52	30,864,655	30	52,334,911	82
1858.....	21,430,975	17	30,161,129	98	51,592,405	15
1859.....	25,535,031	16	28,607,013	30	54,142,044	46
1860.....	47,690,432	49	17,902,037	32	65,592,469	81
1861.....	50,141,974	34	15,184,503	98	65,326,478	32
1862.....	6,138,567	68	428,839	97	67,567,407	65
1863.....	64,361,382	57	874,266	64	65,238,649	21
1864.....	62,688,991	11	874,266	64	62,963,257	75
1865.....	60,886,784	47	857,866	64	61,744,651	11
1866.....	60,561,014	86	848,456	64	61,409,471	44
1867.....	62,734,797	63	*348,456	64	63,583,254	27
1868.....	78,714,735	06	.....	.....	78,714,735	06

* Assumed by Dominion.....	\$150,400	00	
Transferred to Ontario and Quebec.....	698,055	64	
			\$848,456 64

No. 2.

RECAPITULATION of the Public Debt at the close of each Financial year from the Union, 1841 to 1868 inclusive.

	£	s.	d.	£	s.	d.	\$	cts.
1841.								
Sterling Debentures issued.....				1,020,600	16	8		
Currency do				413,219	1	2		
				1,433,819	17	10	5,735,279	99
1842.								
Issued Currency Debentures.....	85,850	0	0					
do 1½ Million Loan.....	118,939	3	4					
				204,789	3	4		
				1,638,609	1	2	6,551,136	23
1843.								
On account Baring & Co.....	37,473	6	9					
do 1½ Million Loan.....	593,889	19	8					
do	875	0	0					
				632,238	6	5		
				2,270,817	7	7	9,083,389	52
1844.								
On account Glyn & Co., Welland Co.....	77,030	3	9					
do 1½ Million Loan.....	743,096	15	10					
				820,126	19	7		
Less—Welland Canal Debt redeemed, to be reissued.....	£59,641	0	0					
Less—issued.....	4,467	10	0					
	55,173	10	0					
				764,953	9	7		
				3,035,809	17	2	12,143,263	43
1845.								
On account Glyn & Co., Welland Co.....	16,714	8	11					
do 1½ Million Loan.....	368,804	2	11					
Quebec Turnpike Debentures.....	12,250	0	0					
	397,768	11	9					
Less—U. C. Deb. redeemed.....	600	0	0					
				397,168	11	9		
				3,432,969	8	11	13,731,877	73
1846.								
On account Glyn & Co., Welland Co.....	821	5	0					
Do English Loan, 9 V., c. 66.....	168,638	0	6					
Do Public Works.....	83,400	0	0					
Do U. C. Debentures.....	1,400	0	0					
				254,259	5	6		
				3,687,228	14	5	14,748,914	48
1847.								
On account Public Works, 9 V., c. 66.....	86,086	1	11					
Do Canal do	70,300	0	0					
				156,386	1	11		
Carried forward.....				3,843,611	16	4	15,274,459	27

No. 2.—Continued.

year

cts.

9 99

6 23

9 52

3 43

7 73

14 48

59 27

	£	s.	d.	£	s.	d.		cts.
Brought forward.....				3,343,614	16	4	15,374,159	27
1848.								
On account Provincial Debentures, U. C.....	75	0	0					
Do do do L. C.....	16,231	13	4					
Public Works, 9 Vict.....	105,189	5	3	121,195	18	7		
1849.								
Stg. Debentures on account Public Works..	127,141	13	4	3,965,110	14	11	15,860,142	98
Do various Acts.....	135,767	9	11					
Do 11 Vict. cap. 9.—Small Debentures..	47,285	0	0					
	310,194	3	3					
Less—Redeemed.....	21,660	0	0					
				288,594	3	3		
Deduct this amount being derived from Premiums on account of 1½ millions Loan, say Sterling.....£138,606 11 11				4,253,704	18	2		
Currency.....£168,638 0 6								
Less—Balance on account of Negotiation, Exchange, &c.....	567	3	0	168,070	17	6		
See Public Accounts, 31st January, 1850.								
Imperial Guaranteed Loan.....	1,525,000	0	0	4,085,634	0	8	16,342,536	13
Debentures Principal and Interest, payable in England.....	1,366,165	1	0					
Do do Canada.....	759,258	19	8					
Do do Small Debentures..	135,210	0	0					
	4,085,634	0	8					
1850.								
Issue Sterling Debentures.....	519,760	0	0	4,085,634	0	8		
Less—Currency Debentures redeemed.....£37,922 15 11								
Do 11 Vict., cap. 9..... 55,002 10 0								
	92,925	5	11	426,831	14	1		
Issue Special Funds.....	161,200	10	11	4,512,168	14	9	18,019,874	95
1851.								
Redeemed 11 Vict., cap. 9	78,072	10	0					
Do Sterling Debentures.....	5,718	6	7					
	83,790	16	7					
Less—Provincial Debentures issued.....	23,283	19	6	66,506	17	1		
Less.....				4,151,361	17	8	17,807,847	53
Issue Special Funds.....	668,406	6	3					
1852.								
Issue Sterling Debentures.....	66,080	4	2					
Do Currency do	149,891	3	5					
	215,971	7	7					
Less—11 Vic., cap. 9, redeemed.....	1,710	0	0	214,231	7	7		
				4,666,193	5	3	18,661,743	05
Carried over				4,666,194	5	3	18,661,773	05

No. 2.—Continued.

	£	s.	d.	£	s.	d.	\$	cts.
Brought over				4, 66, 193	5	3	18,661,773	05
Issue Special Funds	922,600	2	9					
1853.								
Redeemed Currency Debentures	45,937	0	0					
Do 11 Vic., cap. 9	312	10	0					
	46,279	10	0					
Less—Issued Sterling Debentures	1,376	13	4					
				41,902	16	8		
Consolidated Municipal Loan Fund	492,850	0	0	4,621,230	8	7	18,185,162	72
Issues, Special	1,264,491	2	9					
Do Grand Trunk	1,102,058	13	4					
1854.								
Redeemed Sterling Debentures	260,973	0	0					
do. by do.	6,363	12	10					
do. 11 Vic., cap. 9	2	10	0					
Less				267,341	2	10		
				4,353,949	5	9	17,115,797	13
Special Intercolonial Railway	4,176,092	9	10					
Municipal Loan Fund, 16 Vic., cap.	1,172,916	13	4					
	5,359,009	3	2					
1855.								
Redeemed 11 Vic., cap. 9	59	0	0					
do. Current Debentures	120,761	1	9					
	120,811	1	9					
Issued sterling Debentures	77,498	6	8					
Less				43,312	15	1		
				4,310,636	10	8	17,242,546	13
Mutual Loan Fund	1,651,166	13	4					
Railway and Specials	5,502,001	2	9					
	7,153,167	16	1					
1856.								
Issued Sterling Debentures	432,710	16	8					
Redeemed Current do	40,043	12	9					
				392,667	3	11		
				4,703,303	14	7	18,313,211	92
Municipal Loan Fund	1,985,915	6	8					
Railway and Specials	5,500,185	16	6					
	7,486,101	3	2					
1857.								
Issued Sterling Debentures	671,824	3	4					
Redeemed Current do	10,963	15	4					
				661,260	8	0		
				5,367,561	2	7	21,470,246	52
Municipal Loan Fund	2,211,323	0	0					
Railways, Ac.	5,501,540	16	6					
	7,716,163	16	6					
Carried forward				5,367,561	2	7	21,470,246	52

No. 2.—Continued.

		\$	cts.	\$	cts.	\$	cts.
						21,470,256	52
	Brought forward.....						
	1858.						
	Issued Sterling Debentures.....			3,281,826	65		
	Redeemed Currency do.....			331,108	00	2,960,718	65
						21,430,975	17
	Municipal Loan Fund.....	8,067,792	00				
	Railways, &c.....	22,393,637	98				
		30,461,429	98				
	1850.						
	Issued Sterling Debentures.....			1,519,140	00		
	Redeemed Currency do.....			415,084	01	1,104,055	99
						25,535,031	16
	Municipal Loan Fund.....	7,440,565	32				
	Railways, &c.....	21,166,447	98				
		28,607,013	30				
	1860.						
	Inscriptions Consolidated Canadian Loan.....			2,326,154	07		
	Issued Sterling Debentures.....			20,181,231	77		
				22,507,385	84		
	Debentures Redeemed Currency			351,984	51	22,155,401	33
						47,690,432	49
	Municipal Loan Fund.....	2,936,536	01				
	Railways, &c.....	14,965,501	31				
		17,902,037	32				
	1861.						
	Sterling Debentures.....			2,130,300	01		
	Inscription do.....			524,778	93		
	Canada Currency Debentures.....			96,462	91	2,751,541	85
	Redeemed					50,441,974	34
	Municipal Loan Fund.....	\$395,730	67	6,899,061	33		
	do.....	3,300	00	2,275,815	00		
	Railways, &c.....	14,785,473	31	5,910,566	67		
		\$15,184,503	98				
	Carried over.....					50,441,974	34

No. 2.—Continued.

	\$	cts.	\$	cts.	\$	cts.
Brought over.....					50,141,974	34
1862.						
Sterling Debentures.....			15,019,537	67		
Inscription do.....			181,555	06		
Canada Currency Debentures.....			121,600	07		
Canada 5 p.c., new.....			773,800	00	16,696,593	34
					67,138,567	68
Consolidated.						
Special accounts.....	428,839	97				
Grand Trunk Railway.....	15,142,633	34				
Great Western do.....	2,310,500	00				
Northern do.....	2,311,666	67				
Consolidated Municipal Loan Fund, U. C.....	7,294,800	00				
Do. do. do. L. C.....	2,279,115	00				
1863.						
Redeemed Imperial Guaranteed Loan.....			2,920,000	60		
do Sterling Debentures.....			223,528	44		
			3,143,528	44		
Issued Inscription.....	78,353	33				
do Currency.....	290,990	00				
			369,343	33		
Less.....					2,774,185	11
Indirect Debt.....	874,266	64			64,364,382	57
1864—Half-Year.						
Redeemed Imperial Loan.....			2,725,333	33		
do Sterling Debentures.....			224,590	23		
			2,959,923	56		
Issued Inscription.....	227,348	76				
do Currency.....	447,183	34	674,532	10		
Less.....					2,275,391	46
Indirect Debt.....	874,266	64			62,088,991	11
1865.						
Redeemed Imperial Loan.....			973,333	33		
do Sterling.....			356,789	37		
do Currency.....			83,833	33		
Carried Forward.....			1,393,956	03	62,088,991	11

No. 2.—Continued.

		\$	cts.	\$	cts.	\$	cts.
				1,393,956	03	6,2088,991	11
	Brought forward.....						
	Issued Inscriptions.....			191,749	39		
	Less.....					1,202,200	64
	Indirect Debt.....	857,866	64			60,886,784	47
	1866.						
	Redeemed Sterling Debentures.....			255,000	00		
	do. Canada Currency.....			214,336	33		
	Issued Inscriptions.....			469,336	33		
	Loss.....			143,566	66	325,769	67
	Indirect Debt.....	848,456	64			60,561,014	80
	1867.						
	Issued Inscription.....			96,647	13		
	do.			2,236,516	15		
	Redeemed			2,353,183	28		
				179,380	45	2,173,782	83
	Indirect Debt.....	848,456	64			62,734,797	63
	1868.						
	Issued Inscription.....			702,260	00		
	do. Canada Currency.....			670,660	00		
	Redeemed Sterling.....			1,372,920	00		
				704,693	33		
	STERLING MISCELLANEOUS.						
	Sterling N.S.....	5,642,200	00				
	do. N.B.....	4,886,620	00				
				10,828,820	00		
	CURRENCY DEBENTURES.						
	New Brunswick.....	216,900	00				
	Dominion Stock	1,993,872	00				
	Provincial Notes, N.S.....	552,325	79				
	Savings Banks.	1,686,126	31				
	Insurance Deposits	33,666	66	4,482,890	76	15,979,937	43
						78,714,735	06
	Add—Special Funds, (Indirect Debt).....					150,400	00
	Total per Public Accounts, 30th June, 1868.....					78,865,135	06

No. 3.

First Session, 1st Parliament, 5 Victoria, 1841.

Abstract Statement of the Public Debt of Upper Canada, 10th Feby., 1841.

	Currency.			Sterling @ 4s, 6d.		
	£	s.	d.	£	s.	d.
Debentures payable in Upper Canada.....	213,671	11	2½	192,304	8	1
Do. London.....				838,850	0	0
Due to Messrs. Glyn & Barings.....				31,595	10	10
Do. to Bank Loans.....	26,000	0	0	23,400	0	0
ADDITIONAL DEBENTURES 1841.						
Welland Canal.....	117,800	0	0			
Insurrection Losses.....	40,000	0	0	142,020	0	0
* Total Sterling.....				1,228,109	18	1
* Total Currency.....				1,364,633	5	5½

(Signed,)

JNO. McAULAY.

INSPECTOR GENERAL'S OFFICE,
Kingston, 20th July, 1841. }

Abstract Statement of the Public Debt of Lower Canada, to the 9th day of
February, 1841.

	Amount Authorised.			Amount Received.		
	Currency.			Currency.		
	£	s.	d.	£	s.	d.
Harbour, Montreal.....	80,575	0	0	77,475	0	0
Do. Dredging Machine.....	5,000	0	0	1,500	0	0
Chambly Canal.....	35,000	0	0	15,000	0	0
Totals Currency.....	120,575	0	0	93,975	0	0

(Signed,)

JOS. CARY,
Inspector-General of Accounts.

KINGSTON, 20th July, 1841.

* See Quebec Factum for explanation of Lower Canada Debt.

OTTAWA, 11th May, 1870.

MY DEAR MR. DUNKIN,

I beg to call your attention to page seven, under heading "Capitalization of Assets," of a pamphlet purporting to be Mr. Wood's argument before the Provincial arbitrators appointed to decide upon certain matters relating to Ontario and Quebec, and to say whether the statements in said paragraph respecting an agreement to the valuation of assets belonging to said Province are correct.

That is, whether you, or any one on behalf of the Province of Quebec assented to such valuation. In other words, whether you the then Treasurer of the Province of Quebec assented to the auditor of the Dominion Government or any other person up to this time valuing or pretending to value the assets referred to.

As you were present at all the meetings of the Arbitrators while you held the said office, you will be able to give me all information relative to the paragraph in question.

(Signed,)

J. G. ROBERTSON,
Treasurer.

Hon. C DUNKIN, }
Ottawa. }

OTTAWA, 19th May, 1870.

MY DEAR ROBERTSON,

I am vexed beyond measure to have had to let a week pass before answering your note.

Even now I have not time to read any more of Mr. Wood's pamphlet than the passage you refer to. If the rest is like that, it will ill repay study.

I can hardly imagine a more ridiculous pretension than the one there set up. The official entry of the arbitrators, (of which I have procured and enclose a copy,) must be conclusive as to it. The auditor was ordered to make two statements; the one of the 4th schedule assets, as understood by him, the other, of the Municipal Loan Funds "and all other amounts." The former was ordered as the basis of discussion as to what was or was not the meaning of the 4th schedule; and it was ordered to be communicated to the Treasurers, for them to admit, control, or correct, and amplify it, at pleasure. The latter was to serve as a like basis for discussion of the value of each asset or fund to be dealt with, whether in the 4th schedule or not. There was no order for communication, because there was thought to be no need to require the Treasurers to say more on that head, than they saw fit, or to say it sooner than they might chose.

But how could Mr. Langton's valuations have been meant for authoritative, where his very enumeration of the things valued was declared matter of actual contestation?

The fact was that on the 2nd, Judge Day proposed to require the two Treasurers to put in (each for his Province) a statement of the assets, and to be dealt with, as they understood them, and of the value of each. This course I was willing to have followed; but not anxious for. Mr. Wood objected, and the Judge did not press his view.

After some desultory conversation, all our communications were (by agreement) informal, the order as adopted was put into words by Mr. Kose; accepted by Judge Day as a fair equivalent for his first idea, and adopted by the Commissioners; Mr. Wood alone expressing some dissatisfaction.

I have no hesitation in saying that no one at the time so much as suggested the idea that Mr. Langton's second statement was to have any character of authority whatever, nor do I believe that any one then thought of it in that light, or could have done so.

Mr. Wood himself evidently has even now no idea of treating it as authoritative, save only in so far as it may suit his book to do so, and the arbitrators can only smile at the pretension.

Yours very faithfully,
(Signed,) CHRISTOPHER DUNKIN.

MONTREAL, 26th May, 1870.

The Arbitrators met.

A letter from Messrs. Casault and Ritchie, Counsel for Quebec, addressed to the Arbitrators was received; enquiring whether the two printed pamphlets, one purporting to be: "Mr. Wood's argument before the Arbitrators," the other styled: "Proceedings of the Provincial Arbitrators, Ontario and Quebec," are to be received by the Arbitrators?

Secondly.—Whether the publication of the latter had been authorized by them, and whether such Report is correct?

Whereupon—The following minute was agreed upon:

First.—That the said pamphlets had been received, but had not been accepted by the Arbitrators as part of the proceedings before them.

Secondly.—That the publication of the pamphlet styled: "Proceedings of Provincial Arbitrators, Ontario and Quebec," was not authorized by them, and that they are not prepared to enter into a comparison of the alleged Report with their Record of Proceedings.

Thirdly.—That a copy of this minute be forwarded to the Counsel both for Ontario and Quebec.

QUEBEC, 6th June, 1870.

MY DEAR SIR,

There is rather an important question arisen in my mind relative to the Arbitration now pending between Ontario and Quebec, which I take the liberty of bringing before you at this time, as a decision upon it should be arrived at before the promulgation of any judgment by the Arbitrators upon the preliminary points submitted for their consideration at Ottawa.

I allude to the point whether the decision upon the matters referred by the British North America Act, 1867, by the Arbitrators, should not be a unanimous decision, that is whether if any award or judgment should be rendered by only two of the Arbitrators, it would be in accordance with said act, or be inoperative and prove a nullity.

I am of opinion that the act requires the decision of the *three* Arbitrators, that is that it should be concurred in by them all, otherwise it would be useless, and if any doubt exists as to the correctness of my judgment on this point, would not the Arbitrators prefer to have the question argued before them by counsel.

Pending any decision upon the points now under consideration by the Arbitrators, it appears to me that the point referred to, should first be decided upon before any conclusion is arrived at or communicated to the Provinces, on the preliminary points submitted.

Holding the views I do upon the necessity of a unanimous decision being arrived at by the Board of Arbitrators, I should feel it my duty in case of an adverse decision upon this point, or a decision given by only two of the Arbitrators on any point submitted, to advise the Government of Quebec to decline continuing before the Arbitrators, or to concur in any such decision feeling that it would be liable to attack and might be set aside.

The serious evils and complications which would arise from a decision given not in accordance with the law, however favourable to Quebec such decision might be, are so manifest that I dare not risk such result if possible.

I trust you will not consider this an improper time, before any decision has been come to by the Arbitrators on the questions before them, to urge upon them the propriety of their coming to a full understanding, upon the question whether the act does or does not make a unanimous decision imperative, and also to urge that counsel be heard on the subject, if the Arbitrators hold views adverse to mine, or think that good results would follow a full discussion by counsel before them. I have communicated the foregoing to your colleagues and shall be glad to hear the result.

(Signed,)

J. G. ROBERTSON,
Treasurer.

Hon. D. L. McPHERSON, }
Toronto. }

[A copy of the same letter was sent to Col. J. H. Gray, Ottawa, and Judge Day.]

JUDGMENT.

The Arbitrators under the British North America Act, 1867, having carefully considered the statements made, and the propositions submitted by and on behalf of the Provinces of Ontario and Quebec, and having heard Counsel at length thereupon, do award and adjudge as follows:

1st. That the Imperial Act of Union, 3rd and 4th Victoria, Chapter 35, did not create in fact or in law any partnership between Upper and Lower Canada, nor any such relations as arise from a state of co-partnership between individuals.

2nd. That the Arbitrators have no power or authority to enter upon any inquiry into the relative state of the debts and credits of Upper and Lower Canada respectively, at the time of their Union in 1841 into the Province of Canada.

3rd. That the division and adjustment between Ontario and Quebec, of the surplus debt beyond \$62,500,000 for which, under the 112th Section of the "British North America Act, 1867," Ontario and Quebec are conjointly liable to Canada, shall be based upon the origin of the several items of the debt incurred by the creation of the assets mentioned in the 4th schedule to that Act, and shall be apportioned and borne separately by Ontario or Quebec as the same may be adjudged to have originated for the local benefit of either; and where the debt has been incurred in the creation of an asset for the common benefit of both Provinces, and shall be so adjudged, such debt shall be divided and borne equally by both.

4th. That when the debt under consideration shall not come within the provisions of the 4th schedule, whether the same shall, or shall not have left an asset—reference shall be had to its origin, under the same rule as in last preceding section laid down.

5th. That the assets enumerated in the 4th schedule of the British North America Act, 1867, and declared by the 113th section to be the property of Ontario and Quebec conjointly, shall be divided and adjusted and apportioned or allowed for, upon the same basis.

6th. That the expenditure made by the creation of each of the said assets shall be taken as the value thereof; and where no assets have been left, the amount paid shall be taken as the debt incurred, the Arbitrators having no right to enter into or adjudicate upon the policy or advantages of expenditures or debts incurred by authority of, and passed upon by Parliament.

7th. It is therefore ordered, that in accordance with the above decision, the Counsel for the said Provinces of Ontario and Quebec, do proceed with their respective cases.

(Signed,)

J. G. GRAY,

D. L. MACPIERSON,

Montreal, May 28th, 1870.

NOTE.—The above judgment, although dated 28th May, 1870, was not rendered until the 9th July, 1870, after Judge Day had resigned as one of the Arbitrators.

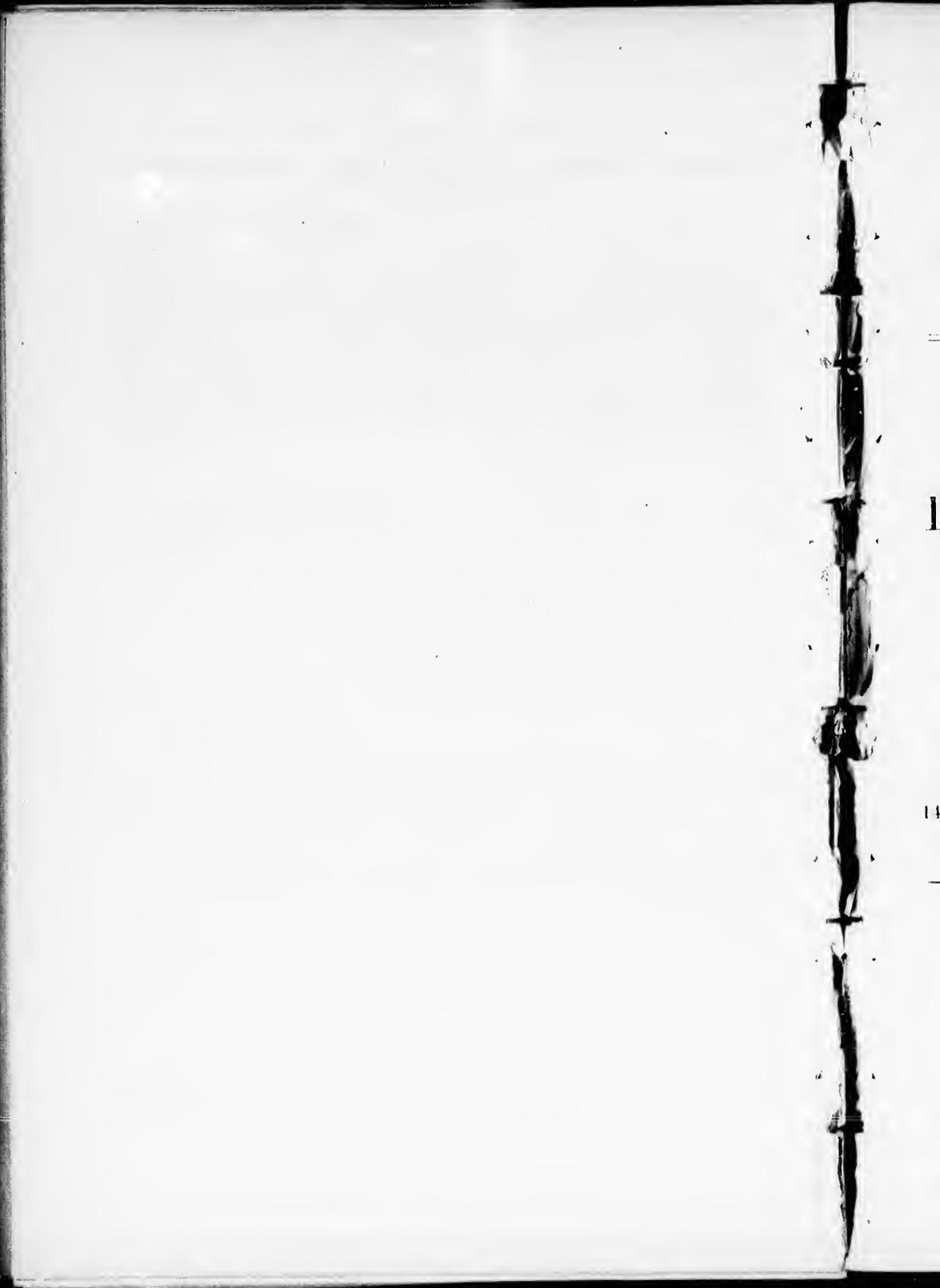
ARBITRATION BETWEEN ONTARIO AND QUEBEC, UNDER THE BRITISH
NORTH AMERICA ACT, 1867.

Montreal, 9th July, 1870.

The undersigned, of Counsel for the Province of Quebec, hereby respectfully represents that the Honorable John Hamilton Gray, the Arbitrator appointed by the Government of Canada, under the provisions of the British North America Act, 1867, has become, and now is disqualified to act as Arbitrator in this matter, inasmuch as he the said Honorable John Hamilton Gray, is now, and for a considerable time past has been, a resident in Ontario, and prays that all proceedings upon this Arbitration be stayed, until the Government of Canada shall have appointed a duly qualified Arbitrator, in the place and stead, of the said Honorable John Hamilton Gray, so disqualified as aforesaid.

(Signed.)

THOS. W. RITCHIE,
Q. C.,
Of Counsel for Quebec



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REPORT IN THE MATTER
OF THE
DIVISION AND ADJUSTMENT
OF THE
DEBTS AND ASSETS
OF
UPPER CANADA AND LOWER CANADA,
UNDER THE
142ND SECTION OF THE BRITISH NORTH AMERICA ACT, 1867.

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IN THE MATTER OF THE
DIVISION AND ADJUSTMENT
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OF
UPPER CANADA AND LOWER CANADA,
UNDER THE
142ND SECTION OF THE BRITISH NORTH AMERICA ACT, 1867.

OPINION OF THE ARBITRATOR APPOINTED BY THE GOVERNMENT OF QUEBEC.

The elaborate argument with which the Arbitrators have been favored, respecting the principle and mode of the division and adjustment of debts and assets to be made by them, under the provisions of the B. N. A. Act, 1867, has been carefully considered, and I think it right in stating the conclusions at which I have arrived, to explain at some length the grounds and process of reasoning, upon which these conclusions seem to me to be justified.

In the discussion of the subject we must of course start with the 142nd Section of the Act, from which all the powers of the Arbitrators are derived.

It is enacted in that section "that the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators." The Act lays down no rule or mode for the division and adjustment, but leaves the subject with the simple provision contained in these few words.

In consequence of this silence of the law, the Counsel for the Provinces of Ontario and Quebec, respectively, have submitted several suggestions as to the principle under which the division should be carried out, and have in their printed cases presented these suggestions in the form of four distinct propositions; of these, three are presented on the part of the Province of Ontario, and one on the part of the Province of Quebec.

The first proposition, found on page two, of the printed case of Ontario, is that the division shall be made according to the "Proportions of local debts."

The second, that it shall be made according to the "Proportion of population in the two Provinces," and, the third, that it shall be made according to the "Proportion of capitalized assets" of each Province.

The last proposition, No. 3, may be at once disposed of in order to avoid further reference to it.

It is admitted by both parties that it can only be adopted as a mode of division by mutual consent, and as no such consent has been given, it cannot of course be entertained. The only observation I have to make upon it is, that the valuation of the assets presented in the proposition is utterly unsound and delusive, and if in a later stage of the proceedings it should be found expedient in carrying out whatever principle of division may be adopted, to follow in some degree the idea which underlies the statement of figures there given, an entirely different standard of value must be adopted.

The fourth proposition, the only one submitted on the part of the Government of Quebec, is to be found on the 3rd page of the printed case under No. 111. It is "to treat the case as one of ordinary partnership, and apply "the rules which govern the partition of partnership estates." It is the business of the arbitrators, either to adopt one or other of these propositions, with such modifications as may seem to them just; or if in the course of their investigations a better rule of division should be found, to substitute such rule, although it may differ materially from them all.

Before entering upon this difficult branch of the duties of the arbitrators, it is proper to declare my opinion that their office is not representative or diplomatic. They are not delegates or commissioners to settle the question of division by negotiation and compromise, each acting for his own Government and bound to obtain for it all the advantages he can; but as arbitrators, their character and duties are judicial, and this character implies that the governing rule of division, whatever it may be, must secure a true and just equality, so that one Province may obtain no advantage at the expense of the other. It follows then that the duty of the Arbitrators is to make the division and adjustment confided to them, not according to any fanciful or arbitrary notion of expediency or convenience, but in conformity with some fixed and recognized principle. And this principle of division, be it observed, must not be confounded with the mode of division. They are very different things. The principle must be uniform, controlling the whole subject, while the mode may be varied to suit the difference of circumstances. In other words, having settled the principle upon which the whole division and adjustment shall be based, it may then be allowable to apply different modes of dealing with particular debts, or assets, according to origin or locality, or other consideration, as the convenience of one or other of the parties may suggest. Taking for guidance this view of the duties to be performed, I proceed to examine the first and second proposi-

tions submitted in behalf of Ontario, and afterwards that submitted on the part of Quebec.

1st Proposition.—With respect to the first of these propositions, that the divisions should be made according to the “Proportions of local debts,” it may safely be affirmed that although it suggests a mode of proceeding which might under certain limits and modifications be convenient, yet it is purely arbitrary and furnishes no principle or rule upon which the whole division of debts and assets could be carried through. To give it an apparent reasonableness, it must rest upon the assumption that the local debt has been incurred by an expenditure which has been for the local and exclusive benefit of the Province against which it is charged. But in very many instances such an assumption would be unfounded. It frequently occurs that there is no asset corresponding to the debt, and that expenditures made from mixed motives, have produced no more advantage to the section of the Province in which they were made than to the other, and too often have produced none at all.

But even if this mode of division could be applied as a rule in dealing with the debts, it must break down in dealing with the assets. The giving to one section of the Province or the other an asset created out of the common fund, merely because it is situated in that section, is obviously not reasonable, and might lead to the greatest injustice; all the really valuable assets might be situated in one section, and those in the other be of little productive worth. The possibility of such a result of inequality shows that although this may be occasionally a convenient mode it cannot be adopted as a uniform principle of division. To answer that an equality might be preserved by making the difference of value chargeable in favor of one Province against the other, is to give up the proposition, and to adopt another rule, namely, one of equalization, and this of itself shows that it is unsound and insufficient.

But the truth is that the locality of the debts or assets has really nothing to do with the principle of division. Every asset situated in, or originated for, one Province, but created by the joint funds of the two, belongs *totum in toto et totum in qualibet parte* to both in equal undivided portions.

“The Upper Canada building fund” is as much the property of Quebec as of Ontario; each has contributed equally to its creation, and as the money so contributed belonged as much to the one Province as to the other, so does the fund itself. If it were a convenient arrangement in the distribution of the assets to assign the Upper Canada Building Fund to Quebec, or the Municipal Fund of Lower Canada to Ontario, there is no reason of exclusive right why it should not be done, the sole consideration being one of convenience and not of legal right. All, then, that can truly be said in favour of this proposition is, that it may be convenient in some instances to assign a certain debt or asset to the one Province or the other, on account of its locality and the greater facility of dealing with it, but each of such particular assignments must be made upon reasons which are special to itself.

The foregoing detail of considerations relating to this proposition has been given in order to show how imperfect it is, and how utterly incongruous with any correct or logical notion of the division to be made, but it might have been at once dismissed upon the broad ground that it is a mere arbitrary contrivance for dealing with the matter, or rather a part of the matter, before us, and is not based upon any principle of right, or any recognized law or usage in the partition of property held in partnership, or other form of community or joint tenancy. As, then, there is in this proposition no principle suggested which is sufficient for carrying out a just and complete division of debts and assets under the authority of the B. N. A. Act, it cannot be accepted.

2nd Proposition.—The second proposition, that of basing the division upon the "Proportion of population," is not less liable to objection than the preceding one. In itself it is not sustained more than the other by any recognized law or usage, nor does it rest upon any fixed foundation.

The latter defect is obvious. The relative proportion of the population in the two Provinces is continually shifting. It was one thing in 1841, and is entirely another thing now. If the division had been made within a year from the former date nearly two-thirds of the debts and assets would have fallen to Lower Canada, although that Province owed nothing and the assets of Upper Canada were then of no available value; if a few years later, one-half; if in 1861, four-ninths: and if it were to be postponed for ten years longer, perhaps one-third. In short, it varies from year to year, and unless it be assumed that the rights of the parties are shifting with every death and birth, it is difficult to understand how they can be dealt with upon so unstable a basis.

This mode of division is not defensible upon the ground of equity, for it might happen that the local debt of the smaller population would be much greater than that of the more numerous, or that the debt of the larger population would far exceed in amount the proportionate difference of numbers between the two. In either of these cases the division, if by population, would work a manifest injustice. If, for example, the smaller population were in number 1,000,000, with a local debt of \$2,000,000, and the larger population were 3,000,000, with a local debt of \$2,000,000 also, the division by population would impose upon the latter three-fourths of the whole debt, that is to say, its own local debt and \$1,000,000 of the local debt of the former.

Nor can the equity of such a rule be vindicated upon an assumption that the ability of a country to pay depends necessarily upon the number of its population, for such an assumption cannot be sustained. It would not be difficult to cite numerous cases to show that it is not justified by experience or history.

But the conclusive objection to the proposition, as affording a rule of division in the present case, is that it is inconsistent with, and indeed contradictory to, the principle upon which the Union of 1841 was based. It is obvious that the two Provinces were treated in the Re-Union Act of 1840,

as separate Governments, with fixed rights between them as units, and without regard to the difference of population. Not only was the population of Lower Canada, then nearly one-half more than that of Upper Canada, (the former being in round numbers 663,000, and the latter 465,000), but its revenue and its assets were also very much greater; yet the representation was equal for both Provinces, and an absolute equality of debts and assets created during the Union was established between them. This rule of Union settles by necessary implication the rule of division. The law which in case of dissolution was to govern the distribution of the debts and assets created during the subsistence of the Union, was then fixed upon an unequivocal basis of equality, and cannot now be set aside for any other—much less for that other (namely comparative population), which was then pointedly rejected.

The chief argument in support of this second proposition, (proportion of population) rests upon the fact that in several instances population or something nearly approaching it has been made a basis for the Legislative distribution of public moneys.

Thus, the appropriation for common schools is made dependant upon the number of inhabitants.

The distribution of the Municipal fund in Upper Canada was according to the number of ratepayers.

And by the B. N. A. Act, 1867, the subsidy to the several Provinces was based in part, but not wholly, upon capitation.

Of all these, as well as of the sum granted to the Eastern Townships of Lower Canada, by way of indemnity under the Law for abolishing the feudal tenure, it may justly be said that they were particular rules created by the Legislature for special cases, each having some peculiarity not belonging to the other.

The first, population absolutely, as the more people there are of course the more children are to be educated; the second, ratepayers, a limited class of persons very different from general population; the third a combination of capitation with other circumstances.

The rule in each case was adapted to the special circumstances of that case, and to extend these rules or either of them, from the particular case to a general application for the regulation of rights of an entirely different nature, would be to violate palpably the plainest laws of reason and of logical inference.

A division according to population might be a convenient and speedy mode of bringing the present controversy to a conclusion, if such division were to be effected by negotiation and compromise; but as it neither rests upon any legal principle, nor is sanctioned by any agreement of the parties, the arbitrators, even if the objections to it were less conclusive, cannot entertain it in face of the rule clearly established by the Act of 1840, that the

equality during the Union must be absolute between the Provinces as units, without reference to the difference of their population.

The foregoing propositions then suggest no principle under which the division and adjustment required by the 142nd section of the Act can be carried out. The arbitrators are, therefore, left to seek one, first, in the declared intentions of the parties, and if there be no indication of their intention, then it must be looked for in the system of law and equity common to both countries.

With respect to the intentions of the parties, it has been already shewn, on a former page, that they are indicated by the terms of the Re-Union Act of 1840. In section 12 of that Act, it was provided that the representation should be equal, in section 50, that all duties and revenues of the two Provinces should form one consolidated fund for the public service of the Province of Canada; and in section 56, that the interest upon the debt of each Province should form the second charge upon this Consolidated Revenue. But the population of the two Provinces at that period was nearly as three to two in favor of Lower Canada, and its revenue was much in excess of all its liabilities, while that of Upper Canada, burdened with a debt of over five and a-half million of dollars, shewed an annual deficiency of over \$200,000.

The provisions of the Act of 1840, in connection with these facts, shew that during the continuance of the Union there was to be an equality of advantages, without regard to the inequality of circumstances. All the liabilities of each Province were to be paid out of the Consolidated Revenue. There was, indeed, no other source from which they could be paid after the particular revenue of each Province had been merged in that general one.

As the Union was expected to be perpetual, no provision was made for its dissolution; but there can be no doubt that the equality contemplated in its formation carries with it necessarily upon severance a like equality, without reference to population or other advantages, in the division of all debts and assets created during its subsistence; and this rule of division resulting from the only source which can be regarded as authoritative and applicable to the precise question, is coincident with that which the law of both countries would afford in the absence of other guide.

In view of that law and of the Act of 1840, with the resolutions of the Legislatures of the respective Provinces which preceded it, the Union effected by the latter was certainly in the nature of a contract, and there is but one recognized denomination of contracts to which this relation of the Provinces towards each other can be assimilated; that is the contract of partnership—not a partnership in the more technical meaning which the convenience of commerce, acting upon the doctrine of the courts, has attached to the term, but in its older and broader signification,—the *Societas* of the Roman Law, which is the source of the whole law of Partnership in Europe and America.

The adoption of the rules which govern the disposition of the property

of such associations involves the acceptance, in a qualified degree, of the proposition submitted on the part of Quebec; but it is not to be inferred that the arbitrators necessarily accept the form and details which are presented in connection with that proposition. Indeed it must be understood that in dealing with the questions now before them, it is intended only to settle the principle of division and adjustment, and not to pronounce any opinion upon the correctness of the figures or other statements to which such principle may apply.

The Union then of Upper and Lower Canada in 1841 must be regarded substantially as an association in the nature of a partnership. It might be assimilated to a variety of associations and forms of community of property falling under this general name, such as the community between husband and wife, and certain relations of joint ownership, which are known in the older law, and are all included under the generic term *Societas*.

A definition of that contract which has been accepted by the highest authorities as at once concise and complete is furnished by a distinguished Civilian after a review of all those which had been given by his predecessor. Under this definition, partnership (*Societas*) is a contract by which parties consent to place something in common, with a view of sharing in the gain or benefit which may arise therefrom.

The relation of the Provinces to each other was more strictly analogous to the universal partnership—the *Societas universorum bonorum*—than to any other kind of association. It answers every condition of that division of universal partnership in which the revenues and sources of income of the parties are united into a common fund for the benefit of both. In fact language, similar to that of the 50th section of the Union Act of 1840 might have been used in a private agreement for the formation of such a co-partnership. The revenues of the respective Provinces, it says, shall form a consolidated fund for the service of the Provinces of Canada. In such associations the participation in what is acquired during the partnership, in the absence of agreement on the subject, is equal under the Roman as it would be under the English law; although a different rule obtained in France, and is adopted by the modern code in that country.

This kind of community is as old as society itself, and instances of universal partnership constantly occur, not only in times of great antiquity, and under the civilization of Greece and Rome, but also in Europe during the earlier and middle ages. They have become of rare occurrence in the present day in which partnerships are mostly commercial; but a true and just spirit gives vitality to the principles which lie at the bottom of this relation, and these principles, carefully and fairly applied, will carry out with absolute completeness a division of all the interests before us, as thoroughly as if the conflicting rights had been those of two obscure individuals, instead of two large and populous Provinces; for they do not rest upon any respect of persons, but upon that larger and firmer basis of abstract right which is unchanging and of universal application.

The dignity of the parties, or the character of the instrument—a public statute—by which they were united, must not be regarded as presenting any difficulty or in any manner affecting this view of their relations.

There were, of course, broad political considerations involved in the Union, but in so far as the financial position is concerned, the Provinces of Upper and Lower Canada were neither more nor less than great corporations, and the principles which apply to their joint contribution of capital in the formation of the Union, and to the partition upon its dissolution, differ in no wise from those applicable to any other corporations, which combine and use their common property for their common convenience and profit.

I think, then, it cannot reasonably be doubted that the only course which is sound in principle, and will be found safe and effectual for carrying out a true division and adjustment of the debts and assets to be disposed of, is to regard the relation of the late Provinces, substantially, as a universal partnership, without necessarily applying to it the merely technical rules which have been created by the peculiarities and requirements of commercial partnerships.

The treatment of the Union as an association of the description indicated above, involves an examination of the rights and liabilities of each of the Provinces under the general rules of law appertaining to that kind of relation, and the consideration, among other questions, of one which is deemed to be of so much importance that it has been submitted in an isolated and prominent form, and the arbitrators have been urged by both parties to give a distinct preliminary opinion upon it. It is the question of the disposal of the debts and assets of the Provinces which existed at the time of the Union in 1841. It has been presented and argued chiefly with reference to the debt then due by Upper Canada. The amount of that debt was between five and six millions of dollars. It had been contracted chiefly in the construction of public works which were then unfinished and unproductive, and there were no available assets for meeting the debt or the annual interest upon it.

The pretension of Quebec respecting this debt is, that it makes part of the debts and assets which are to be dealt with, and that the arbitrators cannot disregard it in distributing the liabilities which each Province is to assume.

On the other hand it is contended in behalf of Ontario, that the arbitrators cannot deal with this debt because it existed prior to 1841, within which date, it is said, their investigation must be confined, and beyond which they cannot go without exceeding the 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 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 on 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 in either or in both together, whether taken in connection with section 142 or alone, any words or form of expression from which the conclusion contended for could, by the most liberal implication, be derived. The inducements in the preamble, and the provision in the 6th section appear to me to relate to subjects entirely unconnected with that under consideration and not in any degree to effect it, except perhaps that the names Upper Canada and Lower Canada, contained in that section, may help to explain the meaning of the same names in section 142.

The fact is that the question must be decided upon the terms of this section (142.) If the authority given by it does not include a right to examine and decide all the debts and assets, whether they originated before 1841 or since, it cannot be supplied by implication from other portions of

the law. These other portions may be used to explain and interpret the true meaning of that section, but they cannot be used either to extend or to restrict the authority which is given by it.

Bearing in mind, then, that the section 142 is the only source and measure of the authority of the arbitrators, let us enquire what it says:

"The division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada shall be referred to the arbitration of three arbitrators."

These terms it must be admitted are of the broadest and most comprehensive character—debts and liabilities, credits, property and assets—no qualification as to character or origin of any of them, no mention or indication of any limited time. Do not these terms necessarily convey an authority, and impose a duty of dividing and adjusting all the debts and assets, not a part of them only? Can the arbitrators, in the face of words of such large import, refuse to consider any particular of these debts and assets, or place upon themselves a restriction as to time which the law has not placed?

But not only has the law not placed such a restriction, its language is positive in the opposite sense. Observe that the debts and assets to be divided are not those of Canada but are those of *Upper Canada* and *Lower Canada*.

The use of these names is an unequivocal expression of the intention of the law. Had the term, debts and assets of *Canada*, been used, there might possibly have been a colorable ground for argument—that those debts and assets which originated in that Province during the Union were alone intended; but the use of the terms "debts and assets of Upper Canada and Lower Canada," puts the matter beyond controversy.

This form of designating the debts is the same as that found in the Union Act, 1840, particularly in the 56th section, by which the interest of the public debt of the Provinces of Upper Canada and Lower Canada, "or either of them," is made a charge upon the Consolidated Revenue of Canada, and unless the debts and assets of those Provinces, anterior to the Union of 1841, as well as since, were intended by the B. N. A. Act, the form of expression adopted in it is grossly inaccurate.

But that these names, Upper Canada and Lower Canada, were not used unadvisedly in this connexion will be manifest from a reference to other portions of the Act.

In section 6, we have the first definition in the Act of the names Upper Canada and Lower Canada. They were respectively parts of Canada, and are now Ontario and Quebec. This section as well as the language of the act, and indeed the whole course of legislation from 1841 to 1867, establish beyond the possibility of reasonable controversy the identity of Upper Canada with Ontario, and of Lower Canada with Quebec. In section 104

we have a reference to the public debt of the late Province of *Canada*. In section 109 the same form of expression is used, "Lands, &c., of the Province of *Canada*." In section 112 Ontario and Quebec are made conjointly liable to the Dominion for the "debt of the Province of *Canada*," and in section 113, the assets are described as "assets of the Province of *Canada*."

This form of expression is critically correct in all the places where it is used. The words, *of Canada*, are carefully chosen to indicate the precise thing intended; but, on coming to the 142nd section, in which the Act was dealing with the rights of the two Provinces *inter se*, there is a marked difference of expression. It is no longer the debts and assets of *Canada*, but the debts and assets of each section which comprised that Province, *Upper Canada and Lower Canada*, thus plainly taking away any ambiguity which the use of the name *Canada* might possibly have caused as to the comprehensiveness, both with regard to matter and to time of the authority and duty of the arbitrators. Indeed, if in putting a meaning upon the words of the 142nd section, it were necessary to exclude an examination, either of the debts and assets existing prior to the Union of 1841, or of those created during its subsistence, the exclusion under a strict reading would be rather of the latter than of the former; for in this section alone are they designated as debts and assets of Upper Canada and Lower Canada, while throughout all the other portions of the B. N. A. Act they are called debts and assets of *Canada*. The sound and complete interpretation, however, undoubtedly is, not to adhere to the letter but to accept the broader signification, and regard both the separate rights and interests which existed before the Union of 1841, and any others which may have originated afterwards, as making together the true subject matter with which the arbitrators have to deal.

There are certain general circumstances which might be stated to show that not only is the pretension that the arbitrators cannot deal with any matter which originated anterior to 1841 negatived by the terms of the B. N. A. Act, but that on less technical grounds that pretension is inadmissible. These considerations, however, may more properly be taken up under the second question which must now be considered.

2nd. Whether by any particular circumstances, or by any general rule of law, the arbitrators are debarred from dealing with this debt in the division and adjustment of the debts and assets under the provisions of section 142.

It is urged in behalf of Ontario that by the law of Partnership, in the absence of any agreement or declaration to the contrary, the contributions of the two Provinces, parties to the Union, are presumed to have been equal, whatever may have been the actual inequality of their assets at the time; that these assets and the debts were joined and merged in one common stock, and the equality so established by presumption of law cannot now be examined or disturbed.

In support of such conclusive presumption, and recognition of the

equality of contribution, reference is made to several sections of the Act of 1840, and more particularly to section 56, by which both interest and principal of the public debt of each of the Provinces of Upper and Lower Canada are made a charge upon the Consolidated Revenue of the Province of Canada.

In this view of the subject it is evident from what has already been said that I cannot concur. It seems to me that a sufficient answer is given to it by the exposition on the preceding pages of the clear import of the language used in the 142d section of the B. N. A. Act; that *all* the debts and assets of Upper and Lower Canada, as well before as since 1841, are to be divided and adjusted. This answer would dispose of the conclusive presumption of equality of contribution, even if that rule were applicable in the present case. But it does not apply, for a debt which one partner owes before he enters the partnership, and for which the partnership becomes liable to the outside creditor, is not a contribution to the capital stock. In other words, debts are not assets, and the rule cannot be stretched from the one to the other so as to treat a debt as a contribution to the common fund.

To say that by law, the contributions shall be presumed equal, when the contrary is not specially declared, is a very different thing from saying that on dissolution of the partnership one of the parties shall be charged with the debt or a portion of the debt due by the other before the partnership began.

The contributions are presumed to be equal in order to justify the rule that, in the absence of special agreement, the shares in the profits are equal but the equality of the shares does not create a presumption of equality of contributions so conclusive that it may not be overthrown by patent facts. The true meaning then of the rule invoked is not that the contributions shall be presumed to be equal when the inequality is certain and the degree of it manifest and precise, but that, in the absence of special agreement, the shares in the benefits of the partnership shall, by presumption of law, be equal notwithstanding the inequality of contributions. For instance, if the contribution of one partner were formally declared to be \$10,000 and of the other \$5,000 but without any stipulation as to the proportion of their respective shares in the profits, the rule of equality of shares might perhaps be applied; but it will not be contended that in such case there would be a presumption of equality in the contributions which would override the positive declared fact of their inequality.

Now what are the facts before us? Documents of the gravest authority—the public accounts—shew what the debts and what the assets of the Provinces of Upper Canada and Lower Canada respectively were at the time of the Union in 1841. These accounts were made up officially by the two Governments, and are, therefore, to be received as formal declarations by the parties of the precise condition of the affairs of each at that time. They shewed a great inequality, and notwithstanding that inequality it was settled by agreement direct or implied, and part of which took the form of statute law, that the benefits and liabilities of the partnership, arising from their political Union and the consolidation of their revenues were to be

equal during its continuance, which was then expected to be perpetual. But this agreement did not change the patent and declared fact of the inequality of contributions, and much less did it constitute an undertaking on the part of Lower Canada to pay out of its separate revenue, after the dissolution of the partnership, the half or any other portion of this debt of Upper Canada. It may be added, that, even if the amount of this debt had been really paid during the Union, which it was not, it would make no just difference in the present position of the parties toward each other, for the result of such payment would be that so much was taken out of the common fund for the payment of the particular debt of Upper Canada, which would otherwise have been applied to the discharge of the common debts, and thus the present amount to be divided has been increased to the sum, in round numbers, of \$10,500,000, instead of the \$5,000,000, which it would have been, supposing the debt of Upper Canada to have been \$5,500,000.

But to pursue this branch of the question a little further. By the terms of the Union Act, 1840, sec. 56, the debts of Upper Canada and Lower Canada are spoken of, and certain provision is made for them, under the description of the "public debt of the Provinces of Upper and Lower Canada, or either of them," out of the Consolidated Revenue of Canada. They are kept apart, two debts, one of each Province—the precise amount of each was known, and there is no declaration in the Act by which they are fused together, or their identity as separate and distinct liabilities is lost. They were kept distinct in the public accounts of 1841, made up after the Union, and were brought before the Legislature in the same distinct form, upon a motion to that effect in 1847, and this distinction is recognized and preserved in statutes posterior to that period. By one of these Statutes (12 Vict., C. 5) authority is given to issue debentures, to redeem the debt of Upper Canada and by another (22 Vict., C. 84, 1858) provision is made for issuing Provincial stock for redeeming such debentures.

The change of form of this debt, by putting it in the shape of debentures or securities for public loans, which may have been used to pay off its precise figures, makes no difference. It is still the debt which Upper Canada added to the joint indebtedness of Upper and Lower Canada, and the question now is, not whether Upper Canada shall pay it to Lower Canada, but substantially whether Lower Canada shall pay the debt of Upper Canada to a third party. It is true that by the section 56 of the Union Act of 1840, the payment of the interest of the debts of Upper and Lower Canada was made a second charge on the Consolidated Revenue; and the principals of these debts were included in the general terms of the sixth charge upon it. This was a matter of course, for, as the revenues of each Province made up the revenue of United Canada, there was no other source from which the interest could be paid or the principal be guaranteed; but this necessary arrangement was made for the protection of the public creditor, and has no influence or bearing upon the rights of the Provinces *inter se*. Of course the creditor was to be paid, and he was paid the interest out of the Consolidated Revenue during the Union; but the principal was never paid out of the consolidated revenue or really discharged, it was only carried on by new loans,

and, when, on the separation of the Consolidated Revenue into the two particular revenues, the question arises out of which of these this debt of Upper Canada is to be paid, the answer surely cannot admit of hesitation as between the two Provinces that the debt of Upper Canada is to be paid out of the revenue of Upper Canada.

Before concluding the investigation of the subject of the liability of one Province for the debts of the other, after the dissolution of the Union, more particular reference should be made to the specific provisions of several sections of the Act of 1840. These are sections 50, 55, and 56. In the first of these, section 50, it is provided that all the duties and revenues of the said Provinces shall form one consolidated fund to be appropriated for the public service of the Province of Canada and subject to the charges mentioned in the following sections. These charges are specified in the sections numbered from 51 to 56, and are all made charges specifically upon the "*Consolidated Revenue Fund*." They embrace of course all the liabilities which at that time and before were charges on the separate revenue of each Province, and some others created by the Act itself. Among them, in section 56, was the interest on the public debt of each of the Provinces of Upper and Lower Canada, which was the second charge; and at the end of the clause is a general declaration that all other charges, which may be construed to include the principals of these debts, should form the sixth charge *upon the rates and duties levied in the Province of Canada*. Now the result of this phraseology is not that the Province of Upper and Lower Canada individually were made jointly liable for each other's debts then existing, but the liability was charged upon a special fund, that is, upon "*the rates and duties levied in the Province of Canada and making up its Consolidated Revenue Fund*." But by the dissolution of the Union this special fund ceased to exist before any payment had been made out of it, of the principals of the debts, and with its extinction, the charge upon it necessarily terminated. The extinction of this fund is so absolute that not only has the consolidation ceased, but the rates and duties from which the common revenue was derived have ceased to appertain to either province. The separate revenue of each being now derived from newly created sources of an entirely different character. I do not believe that any law can be found, or any legal inference be suggested under which after this extinction (and in the absence of express stipulation) one Province can be held to pay the debt of the other from its particular revenue derived from sources which did not, and could not exist at the date of the union of 1841, or at any time during its continuance. On the contrary, it seems to me clear that the effect of the dissolution was not to leave either Province liable for the debt of the other, but to replace each in so far as its particular liabilities were concerned, in the same position in which it was prior to the formation of the Union.

The silence of Lower Canada during the Union, with respect to this debt has been urged as amounting to a kind of waiver by that Province, or rather as an acknowledgment and admission of its joint liability; but the fact, if fact it be, that no claim was made, can have no such signification; no claim was possible, it would have been a simple absurdity. The basis of

the Union, as has been shewn, was an absolute equality in the benefits to be derived from the common revenue during its continuance. Upon that basis Lower Canada had no right to demand anything from Upper Canada, on the score of its debt. The latter Province was not then and is not now the debtor of the former. Indeed, there could be during the Union no creditor and no debtor as between the two sections of the Province of Canada, for that Province alone represented the whole debt. The common revenue was applied to the common liabilities, and the question of the separate liabilities of the one Province or the other to outside creditors, could only come up after they were severed and each had resumed its original individual condition. To sum up the statement in a few words: the debt of Upper Canada was chargeable to the Consolidated Revenue while the Consolidated Revenue subsisted, but when it became extinct and the revenue of each Province became separate and returned to it, the debt of each Province also returned, and is chargeable upon its particular revenue.

I have thus explained my view of the legal aspects of the questions submitted; and upon a careful consideration of the relation of the parties and of all the circumstances, it seems to me that the equity of the case is also in favor of admitting an examination of the debts and assets existing at the time of the Union in 1841. As a test of the reasonableness of this, let us suppose that the Union, instead of enduring for 26 years, had been severed within a few months after its formation, would not the pretension in such case that Lower Canada was bound in the division to assume half of the great debt of Upper Canada have been manifestly and startlingly unjust? But the injustice is in reality the same now as it would have been then.

It is matter of history that Upper Canada, whatever her undeveloped resources may have been, was in a condition of great financial embarrassment, in 1841, and it is not too much to say that she was rescued from a calamitous crisis by the union with Lower Canada.

It is stated in the life of Lord Sydenham, pp. 133-4, upon the authority of the Parliamentary papers of 1840, that:

“In the summer of 1839, Upper Canada was on the eve of bankruptcy, with an annual revenue of not more than £78,000. The charge for the interest of its debt was £65,000, and the permanent expense of its Government £55,000 more, leaving an annual deficiency of £42,000 while the want of a seaport deprived it of the power of increasing its revenue in the usual and least onerous way by the imposition of duties * * * and the ruinous expedient which had been adopted of late of paying the interest of the public debt out of fresh loans could no longer be repeated.”

The Imperial Government to help Upper Canada out of the “condition in which it was impossible to continue,” brought about the union of Upper Canada and Lower Canada.

And again Lord Sydenham in his letters of 20th November and 8th December, 1839, pp. 144, 150, says:

"The finances are more deranged than we believed even in England. The deficit £75,000 a year, more than equal to the income. All public works suspended. Emigration going on fast from the Province. Every man's property worth only half what it was. The Union offered the only means of recruiting its finances by persuading Great Britain to help the Upper Canada Exchequer."

The foregoing extracts, to which others equally strong might easily be added, shew how urgent the necessity was, from which the Union relieved the Upper Province. How then can it be pretended that Lower Canada, without any stipulation to that effect and without having received any ostensible compensation or equivalent, ought to bear half of the debt of Upper Canada—and that—notwithstanding that free from debt herself, she brought with her in her treasury nearly \$190,000 against nothing in that of the other Province.

It is true that while the Union lasted this debt remained a common liability, and would always have so remained, if the union had been, as was intended, perpetual; yet now that the severance has come and the debt has to be paid to the outside creditor represented by the Dominion, it does not seem reconcilable with any standard of reason or justice that it should be paid by Lower Canada.

The debt was the debt of Upper Canada, and it makes no difference that it has changed its form once or twice or oftener during the Union; for if the figures be correctly stated at five and a half millions, the fact stands out that at this day it more than doubles the amount of the surplus of debt to be divided.

I am of opinion, then, upon the whole case—

1st. That the propositions Nos. 1, 2, 3, submitted in behalf of Ontario, are inadmissible.

2nd. That the rules of division and adjustment should be those which govern certain partnerships or associations, to which the Union of the Provinces must be assimilated, in so far as those rules can be made applicable to the circumstances of the case.

3rd. That the arbitrators have authority, under the provisions of the B. N. A. Act, to examine into the state of indebtedness of each of the Provinces of Upper Canada and Lower Canada as it existed at the time of the Union of 1841.

4th. That they are not legally debarred by any particular circumstances of the case or any general rule of law from entering upon such examinations.

C. D. DAY.

DISSENT AND JUDGMENT BY THE ARBITRATOR APPOINTED BY THE
GOVERNMENT OF QUEBEC.

The undersigned Arbitrator dissents from the judgment of the Hon. D. L. Macpherson and the Hon. J. H. Gray, two of the Arbitrators appointed under the B. N. A. Act of 1867.

1. Because the said judgment purports to be founded on propositions which in the opinion of the undersigned are erroneous in fact and in law and inconsistent with the just rights of the Province of Quebec.

2. Because the relation of the Provinces of Upper and Lower Canada, created by the Union of 1841, ought to be regarded as an association in the nature of a universal partnership, and the rules for the division and adjustment of the debts and assets of Upper and Lower Canada under the authority of the said Act, ought to be those which govern such associations in so far as they can be made to apply in the present case.

3. Because the state of indebtedness of each of the Provinces of Upper and Lower Canada at the time of the Union of 1841 ought to be taken into consideration by the Arbitrators, with a view to charge the Provinces of Ontario and Quebec respectively, with the debt due by each of the Provinces of Upper and Lower Canada at that time; and the remainder of the surplus debt of the late Province of Canada ought to be equally divided between the said Provinces of Ontario and Quebec.

4. Because the assets specified in schedule 4, and all other assets to be divided under the authority of the said Act, ought to be divided equally according to their value.

5. And thereupon, the undersigned presents an award and judgment based on his foregoing propositions, and upon the reasons assigned in his printed opinion in the terms following, which, in accordance with his view of the case, ought to be rendered.

The arbitrators under the B. N. A. Act, 1867, having seen and examined the propositions submitted on the part of the Provinces of Ontario, and Quebec respectively, for the division and adjustment of the debts and assets of Upper and Lower Canada, under the authority of said Act; and having heard Counsel for the said Provinces respectively upon each of the said propositions; after due consideration thereof, are of opinion that the propositions submitted on behalf of the Province of Ontario do not, nor does either of them, furnish any legal or sufficient rule or just basis for such division and adjustment, and they do award and adjudge that the said division and adjustment ought to be made according to the rules which govern the partition of the debts and property of associations known as universal partnerships, in so far as such rule can be made to apply. And the Arbitrators having also heard counsel for the Provinces of Ontario and Quebec respectively upon the objection made on behalf of the former Province to the "jurisdiction and authority" of the Arbitrators to "enquire into the state of the debts

or credits of the Provinces of Upper and Lower Canada, prior to the Union of 1841, or to deal in any way with either the debts or credits with which either Province came into the Union at that time" and duly considered the same, are of opinion that the said objection is unfounded, and that they have authority and are bound by the provisions of the said Act to enquire into the state of the debts and credits of the Provinces of Upper Canada and Lower Canada, existing at the time of the Union of 1841, and so to deal with them as may be, necessary for a just, lawful and complete division and adjustment of the debts and assets of the said Province. And, thereupon, it is ordered that the counsel for the Province of Ontario and Quebec do proceed, in accordance with the foregoing judgment, to submit such statements in support of their respective claims as they may deem expedient.

(Signed,)

C. D. DAY,
Arbitrator.

SUMMARY of reasons assigned by the Arbitrator appointed by the Government of Quebec, for his resignation and withdrawal from the Arbitration.

My reason for withdrawing from the Arbitration is that I regard the decision adopted on the 28th May last by the Honorable Messrs. Macpherson and Gray, Arbitrators, as erroneous and unjust in its character and tendency.

The decision as shown by the reasoning in my printed opinion, is not based on any known or recognized principle, and cannot be sustained by any legal precedent or argument. It is an invention for the particular case, suiting well the interests of one of the Provinces but irreconcilable with the rights of the other. In carrying out such a decision I could, of course, take no part.

But until the decision was officially pronounced it had not the irrevocable binding force of a judgment. The opinion was known, but it did not become the property of the parties until its formal promulgation. This it was the duty of the Arbitrators in the discharge of a great public trust to withhold, for so long as it was not given, they might in their endeavor to arrive at a just conclusion upon the whole case, control the decision and admit other rules and modes which would aid in that endeavour.

In the form which the investigation was likely to assume upon a known difference of opinion, liberty, for taking a wide range was indispensably necessary for arriving at a harmonious result, and when this object of paramount importance was sacrificed by narrowing down the examination and confining it to the inflexible rule of this erroneous Judgment, I became satisfied that no final result could be arrived at which would satisfy the honest claims of Quebec or the general sense of justice in the Dominion, and that it was my obvious duty to withdraw from the Arbitration and tender a resignation of my appointment.

C. D. DAY.

Montreal, 9th July, 1870.

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OPINIONS OF THE ARBITRATORS

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OPINION OF THE ARBITRATOR

APPOINTED BY THE

PROVINCE OF ONTARIO.

The 142nd Section of the "British North America Act, 1867," refers the division and *adjustment of the debts, credits, liabilities, properties and assets* of Upper Canada and Lower Canada to arbitrament.

It will not be difficult to show that the terms "Upper Canada" and "Lower Canada," in the section quoted, were adopted for the purpose of stating, in short form, that the limits and boundaries of the Provinces which formerly constituted Upper Canada and Lower Canada, were assigned respectively to the new Provinces of Ontario and Quebec.

By the Union of 1841, the Provinces of Upper and Lower Canada were formed into and became one Province by the name of the Province of Canada, and so continued until that Province was, together with the Provinces of Nova Scotia and New Brunswick, formed into the Dominion of Canada. The *Dominion*, so formed, was divided into four Provinces, two of which were named respectively, Ontario and Quebec; and that part of the Province of Canada which *formerly* constituted the Province of Upper Canada, was then constituted the Province of Ontario; and the part which *formerly* constituted the Province of Lower Canada, was constituted the Province of Quebec.

It is contended, therefore, that the 142nd Section should be read as if the words Ontario and Quebec were respectively substituted for "Upper Canada" and "Lower Canada," because

(1.) By the Union Act of 1840, those two provinces were consolidated into one; and while that Act was in force, they continued to be one Province, *i.e.* the Province of Canada.—*Preamble and Sec. 3, Sec. 5, Sec. 6.*

(2.) The Dominion is formed out of *three* Provinces, Canada, Nova Scotia and New Brunswick; and the *Dominion* is divided into four Provinces; so that Upper and Lower Canada were absorbed into the Province of Canada, and ceased to have a separate existence. The Province of Canada is absorbed into the Dominion, and two new Provinces, Ontario and Quebec, are created by a division of certain defined parts of the Dominion, which parts are referred to as having respectively "*formerly constituted*" the Provinces of Upper and Lower Canada.

(3.) Under the 109th Section of the British North America Act, all lands, mines, minerals and Royalties belonging to the three united Provinces at the union, and all sums then due and payable in respect of such lands, &c., are declared to belong severally to the four Provinces, into which the Dominion is divided. If under this section any sums are due which, as credits, require division and adjustment, they will not come within the language of the 142nd Section, unless "Ontario" and "Quebec" are read in place of "Upper Canada" and "Lower Canada."

(4.) Unless this construction be adopted, no provision has been made for the division and adjustment of any debts, credits, liabilities, properties and assets which may have accrued since 1841, and which are under the British North America Act, vested in either of the Provinces of Ontario or Quebec.

(5.) The 110th Section, by the words "Each Province," refers to each of the four Provinces into which the Dominion is divided.

(6.) Should any local legislation be necessary to facilitate the complete execution of any award under the 142nd Section, it must be enacted by the respective Legislatures of Ontario and Quebec, which Provinces, and not the former Provinces of Upper Canada and Lower Canada, will take the benefits and be charged with the liabilities given or imposed by such award.

Such then, it is submitted, is the true reading of the 142nd Section; and if the true reading, it follows as a matter of course that the Arbitrators have no authority to enquire into the transactions, assets or liabilities of Upper and Lower Canada prior to, or at the time of their Union in 1841.

THE SURPLUS DEBT.

A Consolidated Revenue Fund was formed for the Dominion out of all duties and revenues over which the respective Provinces of Canada, Nova Scotia and New Brunswick had power of appropriation, subject to some reservations to the Provincial Legislatures, and on this fund the annual interest of the public debts of those three Provinces was made a charge.

All assets connected with such portions of the Public Debt of EACH PROVINCE, as are assumed by such Province, are to belong thereto, and the Dominion assumes all the debts and liabilities of the Provinces, existing at the time of the union; but Ontario and Quebec are made conjointly liable to the Dominion for the excess of the debt of the Province of Canada over the sum of \$62,500,000, and for five per cent. interest thereon.

On the discussion of the adjustment of the surplus debt, it has been contended on the part of the Province of Ontario, that the debt of the late Province of Canada in excess of \$62,500,000, should be divided between and charged upon Ontario and Quebec, upon one of the following bases—*B. N. A. Act, 1867, Sec. 110, Sec. 111, Sec. 112:—*

1. In the ratio of the debt contracted for the local purposes of each Province to the excess,

2. In the ratio of the respective populations of the two Provinces.

3. In the ratio of the values of the assets of Quebec and Ontario, capitalized on the average of interest they produced for the last four years and a half.

Each of these proposals was resisted on the part of the province of Quebec, and after discussing each, the following proposition was advanced by Quebec:—"The plainest, easiest, and it may be said, the only just and practicable way of settling the question is, to treat the case as one of ordinary co-partnership, and apply the rules which govern the partition of partnership estates—rules which are the same in the old Roman and the modern English and French law."—*Quebec case, page 5.*

This proposition does not in terms assert that the relation of partnership ever did exist between the Provinces of Upper and Lower Canada, either under the union of 1841, or at any other time. It certainly did not exist before that union, and it as certainly was not created by the "Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada." And yet, having launched it, its authors proceed as if the relation was conceded or might be assumed, in their assertion that it, the proposition, "has the advantage over all of other modes; that being the one which governs the relations of man with man in *similar positions*, it cannot give rise to grounds of complaint, nor to suspicions of favour, unfairness or injustice." The sentence is a little obscure, but its meaning apparently is, that if the former connection between Upper and Lower Canada is dealt with as having been on the footing of an ordinary partnership, it would be governed by the same rule which governs the relations of man with man in similar positions. But without the admission or assumption that the two Provinces were in a position similar to that of two men who had become partners, upon terms agreed on by them, there is no foundation in *existing facts* for this proposition.

It stands thus:—It is asserted for Quebec that in cases of ordinary partnership there are well known rules which govern the partition of partnership estates. This is of course admitted. For Quebec it is urged that those rules should be applied, and should guide the arbitrators in the division and adjustment to be made by them.

For Ontario, it is asked why? And the answer is, because of the advantage of having as a guide for decision, "the rules which govern the relations of man with man in *similar positions*." For Ontario it is immediately said, our position is not similar to that of man with man in an ordinary partnership, to which relation the rules invoked apply; for in our case no partnership existed, nor was any agreement ever made that there should be one. You are seeking to try the questions submitted to the arbitrators—by applying legal rules, which were framed to govern a state

of facts, which, in our case, never has existed. To which for Quebec it is only replied, that it would be a great advantage to be guided by these rules.

If in such a state of things the arbitrators are asked "to treat the case "as one of ordinary partnership," it is asking them to assume and exercise a greater authority than is committed to them, for their authority is to deal with things as they exist, by such rules as are applicable to them. If it is put upon the footing of analogy between the case submitted under the Statute, and that of an ordinary co-partnership, the answer is that there is no analogy between the union of the two Provinces of Upper and Lower Canada in order to provide one Government for both, and an ordinary partnership, the basis of which is an agreement to share the profits to arise from some business or undertaking.

No doubt great advantages were expected to arise from that union, but not *profits*, in the sense that word has in relation to an ordinary partnership.

The arguments on which this proposition is sought to be maintained, seem rather to resolve themselves into objections to the propositions advanced on the part of Ontario, coupled with the assertion that it is the plainest, easiest, and indeed the only just and practicable mode of settling the question. Doubts may arise whether it is just to apply a rule, however plain and easy, when in order to such application it is found necessary to assume a foundation which is imaginary, and to ignore the scope and effect of an Act of Parliament by which alone this partnership could have been created, if such a measure were designed.

But supposing the proposition as to the rule for decision is conceded, it becomes necessary in order to sustain the conclusions desired by the Counsel for Quebec to make a further assumption of fact—namely, that it was the intention on which the partnership was formed that each Province (or partner) should bring into the common stock an equal amount of Capital, and that the one which was deficient in this respect should be charged with the amount of the deficiency, with interest thereon, as a debt due to the firm, and then at the close of the co-partnership, on the division of the assets, that debt should be deducted from the share and interest in the assets of the partner so indebted; but it must be remembered that in the absence of agreement or proof of intention to the contrary, the laws of partnership provide that co-partners shall participate equally, at the dissolution of their partnership, in the results of the same, whether these be assets or liabilities, without regard to any inequality, no matter how great, in the amount originally contributed by each to the Capital Stock.

The Imperial Act of 1840, which united Upper and Lower Canada, affords the best evidence of the terms and conditions of the Union. 3 and 4 Vict., cap. 35. It cannot be contended that this Act was passed to create a union for a limited period or for temporary purposes. The dissolution of the Union was not contemplated, far less provided for. Its leading provisions were meant to be permanent, (though liable to be changed), as to

financial matters especially, by transferring all the revenues of Upper and Lower Canada into a consolidated revenue fund for the Province of Canada; by charging the annual interest of the debts of both of these Provinces upon this consolidated fund; and by providing that the creation of this consolidated fund should not affect the payment thereof of any sums theretofore charged upon the rates and duties already raised, or to be thereafter raised for the use of either of the three Provinces of Upper or Lower Canada or of Canada; and further, the Statute of Canada (4 and 5 Vict., ch. 33, sec. 5 and 6) which was passed to facilitate the negotiation of a loan to be contracted by the Province of Canada, in England, authorized the payment out of the proceeds of such loan of any debentures (and interest thereon,) of the late Provinces of Upper and Lower Canada, then due or to become due, and the redemption of any such debentures. If any remain unpaid, it can arise only from the omission of the holders to present them.

Political considerations alone brought about this union. It certainly was not one of them to create a co-partnership in an adventure of pecuniary profit and loss, nor yet was it intended to clog the new political body with reservations founded upon the financial position of its component parts. It did not recognize any difference between them, out of which any future claim could be raised by one against the other. The British North America Act is an advance upon the former Union, not a retrogressive proceeding. It neither revives the old Provinces of Upper or Lower Canada, politically or financially, nor professes, nor was intended to clothe Ontario or Quebec with any rights, interests, claims or liabilities, which respectively belonged to the two former Provinces as such. As a mode of describing the boundaries of each of the new Provinces, it refers to those of the old, but the effect is the same as if the various lines, courses and other descriptive limits, which had been previously assigned to Upper and Lower Canada respectively, had been repeated as forming the respective boundaries of Ontario and Quebec. They are simply territorial descriptions. The claims now advanced on the part of Quebec existed before this Act was passed, or not at all, and they are exclusively founded on the alleged difference between the financial positions of Upper and Lower Canada. It cannot be assumed that the British Parliament was ignorant of the financial position, any more than of the political position of those two Provinces. The Governor-General's message on the subject of a loan proves the contrary (4 and 5 Vict., cap. 33.) With the knowledge of both, the Act was passed in a form which, so long as it remained unchanged, not only rendered it impossible to advance such a claim against any one, but rendered it impossible to treat it as having an existence; and the Provincial Parliament of Canada must have also known the financial position of the two Provinces at the time of their Union, yet they make no reference to it when authorizing the payment of their several debentures.

Further, according to the argument advanced on behalf of the Province of Quebec, Upper Canada came into that Union in actual debt to the extent of nearly \$6,000,000, while Quebec had a balance of nearly \$190,000 at her credit; and it is pointed out for observation that the former Province,

which, at the formation of the Union, had a population only about one-half of that of Quebec, left it with a much larger number of inhabitants than Quebec then had, as well as with an annual subsidy from the Dominion exceeding that given to Quebec by the sum of \$230,620. It should have been added that the subsidy was governed by the population (which the Imperial Parliament adopted as the proper method of settling the ratio,) the increase of which, though undeniably aided by the Union, is even more attributable to the advantages of climate and soil which Upper Canada possesses. It may have escaped the observation of those who advanced that argument, that the increase of an industrious and thriving population increases commerce and public revenue, and it is at least probable that this consideration had been present to the minds of the statesmen under whose auspices the Union of 1841 was brought about, and that they, neither, overlooking not disregarding any inequality which might have existed at that period in the situation of the two Provinces, anticipated the then not very distant time, when the natural advantages of Upper Canada, utilized by the energy of its inhabitants, whose number was being steadily increased by immigration, would afford an ample compensation for any present deficiency. In fact, some of the observations of the advocates for Quebec have confirmed this foresight, rather than sustained the insinuation of injustice which their language conveys.

These observations, which, though lengthy, are far from being exhaustive, are offered as leading to the following conclusions :

(1). That the proposition of the Counsel for Quebec involves the assumption that the British North America Act has the effect of conferring upon the Provinces of Ontario and Quebec the respective claims, and subjecting them to the respective liabilities of the former Provinces of Upper and Lower Canada, an assumption which is manifestly fallacious, since it is founded upon the erroneous idea that the creation of a new Province out of the territory which at some former period had been a Province, but had long ceased to be so, operates as the resuscitation of the old Province, together with all its rights and claims—although the political constitution of the new Province differs in many very material respects from that of the former.

(2). That the claim of the Province of Quebec on the Province of Ontario never could have arisen or existed while the union of Upper and Lower Canada continued ; that, strictly speaking, that union has never been dissolved ; for the Province of Canada, which contained Upper and Lower Canada, was constituted integrally a part of the Dominion, and the subsequent division of the Dominion cannot legally be held to be a reconstruction of the two old Provinces, without some clearly expressed intention of the Legislature to that effect, and there is no such expression.

(3). That besides setting up this claim, untenable on the grounds above stated, the Counsel demand the decision of it upon certain rules of law which govern in a litigation between private individuals, who have carried on the business of an ordinary co-partnership. This demand is also untenable because :

(a). There was not, in fact or in law, any partnership between Upper and Lower Canada before the passing of the Act of 1840, and most clearly no partnership is created by that Act.

(b). The relations between the Provinces of Ontario and Quebec are exclusively under the British North America Act, and do not, in the most remote degree, resemble the relations between individual partners, and ought not to be governed by rules applicable to such cases.

(4). That an agreement on the part of Ontario to admit the application of the rule would involve the admission, for the purpose of the decision, of the existence of those relations to which such rules apply.

(5). That the simple admission of a partnership is no admission of the agreement of terms on which the partnership was entered into, and that it is by no means a universal practice, and it cannot be presumed without proof, that the two partners agreed to contribute equally to the common stock.

(6). That if it were open to the advocates for Quebec to found a claim against Ontario, upon any ground existing prior to the Union in 1841, the principal facts of the claim form but a part of the question which would call for the consideration of the Arbitrators; Ontario would then demand that examination should be made into the contributions of each Province to the common capital, through the public revenue, from 1841 to 1867; and would confidently insist that the advantages which accrued to the whole Union were, in a much larger proportion than one-half, the result of the developments of the agricultural and commercial resources of Upper Canada during the twenty-six years of the Union, and which had more than fulfilled the expectation of the Legislature which had united the Provinces on the assumption or principle of perfect equality between them.

“*High political reasons,*” (to employ an expression used by the leading counsel for Quebec), which led to the establishment of equality of representation when there was inequality of population, may equally have led to the assumption of equality—as they undoubtedly did—of financial position; and if it be argued that no sufficient cause existed to justify the Imperial Parliament in these assumptions, the obvious reply is, that this tribunal was not created for the purpose of hearing and determining such a question, and that a power to settle the division and adjustment of the debts, credits, liabilities, properties and assets of two Provinces, does not extend to an enquiry into the justice or expediency of Acts of Parliament.

Having so far discussed the only proposition which the advocates for Quebec have advanced, it becomes necessary to examine those which have been propounded on the side of Ontario.

There are three bases of adjustment suggested:—

1. The ratio of the debt contracted for the local purposes of each Province to the excess of the debt over \$62,500,000.

2. In the ratio of the respective populations of the two Provinces.

3. In the ratio of the values of the assets of Ontario and Quebec, capitalized on the average of interest they produced for the four and a half years, ending on 30th June, 1867.

In endeavouring to select the most fitting mode of apportioning the surplus debt between Ontario and Quebec, it seems desirable to find some basis for resting on which would combine some of, if not all, the following conditions :—

1. That it either exists in point of fact, or is at least the result of existing facts.

2. That it is capable of being ascertained with reasonable certainty.

3. That from its nature it is applicable to the solution of the question in difference.

4. That it cannot easily be constructed to suit a particular purpose, or to produce a particular result; and

5. It would be more satisfactory if it had been adopted for a similar or in an analagous proceeding by an authority entitled to the highest respect.

Examining the first of those proposals by these conditions, it would appear to meet the first three, and possibly the fourth also, though this condition rather applies to matter of detail than to such as belong to general principles.

On the other hand, the answer put in on behalf of Quebec to the case of Ontario, together with the case itself, shews a wide difference of opinion as to what ought to be considered debts incurred for local purposes; and that answer suggests that under that description would fall the expenditure made during the union for the local advantage of the respective Provinces, and which has left no assets to represent such outlay, and this contention would bring up the question already adverted to, whether the 142nd section of the "British North America Act," contemplates an investigation into expenditure made between 1841 and 1867. Certainly during that period, any more than now, there were no Provinces of Upper and Lower Canada; the enquiry is between Ontario and Quebec.

Moreover, on the part of Quebec, it is contended, while opposing this mode, that if it be adopted, it would be necessary to go back to the union of the two Canadas, and take into account their respective debts and credits at that time; examine in detail all the expenditure incurred since; note especially the Province for which, or in whose interest it was incurred, and determine thereby the share of each.

The object of this contention is to make a charge of some 6,000,000 of dollars against Ontario. This topic has already been partially referred to, but it is necessary to subject it to further examination.

It is submitted on the part of Ontario, that the Imperial Statute of 1840 deals with the two Provinces which it re-unites, upon an assumption of their equality. The time is long passed for considering whether that assumption would have been made but for the peculiar circumstances of the time; but conceding that the statute was passed under the pressure of what was then felt to be a political necessity,—conceding, also, (for the purposes of this discussion,—that the assumption was ill-founded in fact—it is none the less obviously the fundamental principle of the Act., that though the Legislature abstained from entering into a particular recital of those matters which gave rise to the necessity, “that provision should be made for the good government of the Provinces of Upper and Lower Canada,” they declared that the provisions should be such as might “secure the rights and liberties, and promote the interests of all classes of Her Majesty’s subjects within the same,” and that the formation of the two Provinces into one was the provision they considered expedient,

The evidence that the equality of the two Provinces was assumed is both negative and positive.

Negative in this—that the Act does not contain one word which is inconsistent with it.

Positive in this :—

(1.) The equality of representation. Sec. 12.

(2.) From the forming of all duties and revenues over which the respective Legislatures of Upper and Lower Canada had a power of appropriation, into one consolidated revenue fund, to be appropriated for the public service of the Province of Canada. Sec. 5.

(3.) From the charge of one general sum of £45,000 on this consolidated revenue to be specially appropriated according to a schedule, from which it is plain that inequality in *amount* as between Upper and Lower Canada was disregarded. Equality in sufficiently providing for the administration of justice in each, according to their respective systems of jurisprudence and the exigencies of each, was maintained. Sec. 52.

(4.) From the recognition and maintenance of existing charges on the duties collected, or to be collected, for the use of Upper or Lower Canada, without any reference to the equality in amount of those charges. Sec. 55; and,

(5.) From the charge of the annual interest of the public debt of both Provinces on the consolidated revenue, without reference to the amount of the debt due by each.

It is true, as was pointed out in the arguments of the learned advocates for Quebec that this Act only provides in terms for the payment of the interest—not the principal of the debt of the two Provinces; but the distinction is only one of words—and if it had any substance, the Provincial Statute 4 and 5 Vict., ch. 33 meets it, after a recital that the Legislature had

taken into serious consideration the "present state of the public debt of this Province," by authorising the raising of a loan to be partly applied to "the payment in full of all and every the public debentures of the late Provinces of Upper and Lower Canada," which were then due, and for the redemption of any such debentures, on agreement with the holders thereof. This Act, therefore, provides for the payment of the debentures of Upper and Lower Canada, and must be construed as an extinction of the debts for which those debentures were given—even if a new obligation arose, which could not be, when the two Provinces had ceased to exist, and therefore could incur no new liability. The only new obligation actually incurred, was that of the Province of Canada to pay off the new loan, but there is not a word in 4th and 5th Vict., which imports a then present or future liability—or any present or future consequence—if these debentures of Upper Canada, so paid off or redeemed, exceeded in amount those of Lower Canada, or *vice versa*. In fact it was admitted in argument that so long as the union of the two Provinces existed, the claim now set up never could be advanced; nor could it be (it was also admitted), had the whole debt of the Province of Canada been assumed absolutely by the Dominion.

The right to advance it, inevitably rests, therefore, on the argument that by giving to Ontario and Quebec respectively the territorial boundaries which formerly belonged to Upper and Lower Canada, either the rights of each as against each other and the liabilities of each to the other devolve on the new Provinces, or that whatever inequality existed between the financial positions of those two Provinces at the time they were blended into one, may now form the foundation of a demand by one against the other, which the arbitrators, under the "British North America Act, 1867," can entertain and decide upon.

On the presumed effect of the last mentioned statute, Quebec claims a right to examine the respective financial positions of Upper and Lower Canada at the date of their union, in order to establish that Upper Canada, at that time, owed a large public debt, and to make that debt an item of credit on this arbitration. Ontario contends—in addition to the previous observations on this head, which are also connected with those on the assumption of partnership relations,—that the arbitrators cannot entertain this question without assuming to review the Imperial and Provincial Statutes, and to correct or supply what, according to their opinion, may be the injustice or the defects of either or both of them.

The delay that would result from making the enquiries and examinations that would seem indispensable if this mode of settlement be adopted, would render it objectionable, even if it should not be found impracticable, (as the advocates for Quebec assert it would be), to make those enquiries now.

It therefore becomes a duty to seek some other method against which the same or equally weighty objections cannot be urged.

THE CAPITALIZATION OF THE ASSETS of Ontario and Quebec respectively, does not seem to present a *principle* on which the "division and adjustment" of the important matters submitted to the Arbitrators could be satisfactorily based. It is not necessary, therefore, to discuss it at any length, and it may be as well to proceed to consider the third mode suggested by Ontario, that of *population*.

THE POPULATION resident within the limits which are now assigned to the Provinces of Ontario and Quebec, which limits are respectively identical with those of the former Provinces of Upper and Lower Canada, was ascertained by the census of 1861; and that census has been recognized and acted upon by the British North America Act, sec. 118.

No suspicion can be attached to that census as having been influenced by the prospect of Confederation, or of the questions now to be disposed of; and it is beyond the reach of change or modification. No greater certainty as to the actual population at that date is attainable, and though an attempt might be made to arrive at the population in 1867, or at the present time, by approximation, the result would be more or less uncertain, and the next succeeding census might shew it to be far from the truth.

It would, therefore, be safer to adopt the census of 1861.

Adopting that census, the number of the population in the Provinces of Ontario and Quebec (referring to their limits as above stated), is a fixed fact. Any ratio derived from it rests, therefore, on a well established foundation.

It is worthy of notice that the British North America Act adopts population according to the census of 1861, as the basis of a re-adjustment of the representation in the House of Commons of Canada. The learned advocates for Quebec have not opposed the adoption of population, as the ground work of a ratio, on any intrinsic grounds. Their objection is extrinsic, and reduced to its simplest terms, is that the adoption of this ratio would not give to Quebec the advantages they are instructed to contend for; or to change the form of expression, would give to Ontario rights which they are instructed to endeavor to withhold from her.

No attempt has been made to shew on *general grounds* that a ratio based on population is inapplicable or unjust. The argument is based exclusively on a reference to the financial position of Upper and Lower Canada prior to, and at the union of 1841. If that argument is ill-founded the proposition as to population is wholly unanswered.

Now, in propounding this argument, the advocates for Quebec irrelevantly recur to their partnership theory, which has already been examined and remarked upon. It is not proposed here to travel again over that ground. It is enough to repeat in substance: (1) That Ontario denies that the Union of 1841 was a partnership or intended to be one, or to be regulated by the principles applicable to that legal relation; and challenges the production of a single clause in the Act of 1840 which will support that

theory. (2) That Ontario asserts that the Act of 1840 was framed upon the union of two Provinces,—previously independent of each other, though the common subjects of a supreme authority,—on the footing and terms of perfect equality, financial as well as political; and that the Act itself contains abundant internal evidence of that intent. (3) That the British North America Act does not create any claims which had no existence either when the Act of 1840 was passed, or during the twenty-six years it was in force; and that if Lower Canada could have advanced no such claim against Upper Canada before the British North America Act was passed, that Act gives no such claim to the Province of Quebec against Ontario.

The advocates of Quebec, in illustrating their argument, almost seem to assume, that after the union of Upper and Lower Canada, it was the right of the Lower Province, and if so the duty of the Legislature to have granted appropriations out of the Public Funds to her in proportion to her then existing population as compared with the population of Upper Canada. But they can scarcely contend seriously that the Legislature of United Canada could, in financial matters, act upon the assumption that the two United Provinces had each a separate existence, and could claim rights adversely, as it were, to each other, and base a pecuniary demand upon the difference in population between the two sections of the United Province.

While the Union Act was in force such a claim was impossible, and it is submitted that not a clause, not a word of the British North America Act countenances such a pretension now. It is not overlooked that when a grant of money was made for the purpose of extinguishing the feudal tenure in one section of the Province, a sum was granted by way of equivalent or indemnity to the other section where that tenure did not exist. But it is unnecessary to dilate upon a point so thoroughly well understood, or to demonstrate that it does not affect the argument just advanced.

The proposal for the counsel of Quebec to connect with the application of the principle of population—the taking into account the respective financial position of Upper and Lower Canada at the union in 1841, in order to qualify the results which the adoption of the ratio of population to the division and adjustment entrusted to the Arbitrators would produce—might almost be held to indicate a wish if not an intention to neutralize the principle altogether. One thing is quite clear: whatever the intention may have been, it would have that effect. It is a repetition of the claim on which it has been endeavoured to bind the Arbitrators by the law of partnership—an attempt to get behind the Imperial Statute of 1840, and to open questions which that Statute was intended to close, and thus indirectly to render population nugatory as a basis of settlement.

At every stage of the discussion, in advancing their single proposition, and in opposing, or in effect evading the propositions made on behalf of Ontario, the same object presents itself. This is, the endeavor to charge Ontario as in debt, at the union of 1841, in some six millions of dollars—not indebted to Lower Canada, that would be a hopeless pretension—but in

debt ; to insist that so long as that union continued, the debt would continue ; and that because the British North America Act created a confederation of three Provinces into a Dominion, which Dominion was divided into four Provinces, two of which had severally the limits belonging to Upper and Lower Canada before the Union ; because those two Provinces, though under different names, and with different legislative powers, and, with regard to one, with a different constitution, had the limits of the Provinces which were united in 1841, severally assigned to them ; therefore the debt which Upper Canada owes has become a debt of Ontario, and in dividing and adjusting the debts, credits, liabilities and assets of the *Province of Canada*, the Province of Quebec may take the same benefit from that indebtedness of Ontario as if it had been a debt originally due to Quebec.

For Ontario, the conclusion is in every form entirely denied.

On the whole, it is with the utmost confidence submitted that the ratio deduced from population, as ascertained by the census of 1861, is, of all the modes suggested, the most *just* ; for when liabilities have to be laid upon a whole people, who possess so equally the means of paying as the people of Ontario and Quebec do, what can be more equitable than to distribute them *per capita* ? It would carry with it all the conditions set forth above, as desirable to be kept in view in deciding upon a basis for the division of the surplus debt. It is submitted also that it commends itself as the most simple mode—the most certain—the least open to suspicion, or possibility of partial or unfair dealing, and the most free from reasonable objection ; that if adopted as the basis, it must be adopted *pur et simple*, for to connect it with considerations which have no bearing upon it, or which have not arisen from it, is in fact to merge it, instead of to act upon it ; to set it up nominally, but utterly to destroy its practical effect.

My opinion, therefore, is that the Arbitrators must proceed with the division, on the basis of the population of Ontario and Quebec, as shewn by the census of 1861.

D. L. MACPHERSON,
Arbitrator.

MONTREAL, May, 1870.



OPINION OF THE ARBITRATOR

APPOINTED BY THE

DOMINION GOVERNMENT.

It is claimed on behalf of Quebec, and resisted on behalf of Ontario, that the Arbitrators should enquire into the state of the debts and credits of the Provinces of Upper and Lower Canada—prior to the Union of 1841—treat that Union as a partnership and charge each Province with the amount of debt with which it entered the Union, dividing the balance only. And it is further demanded by the Counsel of both Provinces that the Arbitrators should determine as a preliminary to further proceedings, not only that point, but also the mode by which the division and adjustment should be made.

The powers of the Arbitrators are to be found in the 142nd section of the British North America Act, 1867. They are limited to the division and adjustment of the debts, liabilities, credits, properties and assets of "Upper Canada and Lower Canada" by the Imperial Act of Union of 1840 united, and called "Canada;" by the British North America Act, 1867, again separated, and called "Ontario and Quebec."

The 109th, 112th, 113th, 135th, 136th, 138th, 140th, 142nd sections of the British North America Act, particularly, and the general scope and tenor of the whole of that Act, shew that throughout the same, the terms "Upper and Lower Canada," and "Ontario and Quebec," are synonymous—meaning the same territory, used as appellatively in a different sense to indicate a different period in their history, but proving that they are the same Provinces which from 1841 to 1867, constituted the one Province of "Canada."

Upper and Lower Canada, *as such*, did not exist in 1867;—if, therefore, those terms are to be construed only in their strict literal sense, the Arbitrators would have no power to deal with any debt or asset created since 1841; but, by the 113th section, the assets enumerated in the fourth schedule, belonging at the time of the Union with New Brunswick and Nova Scotia in 1867 to the Province of "Canada," are made the property of Ontario and Quebec conjointly.

The assets enumerated in the fourth schedule are shewn to be assets created during the Union of the two Provinces of Upper Canada and Lower Canada, from '41 to '67, by debts incurred by Canada, and locally expended in what had been Upper or Lower Canada, as the case might be; and the division and adjustment of these debts and these assets are by the 142nd section, to be settled by the Arbitrators,

Thus, *primarily*, what is to be disposed of, is what has originated since 1841,—and practically there would be nothing for the Arbitrators to do, were it not so.

But the main question to be settled is, whether in adjudicating upon these debts and assets the Arbitrators can take into consideration the "*status quo*" of the two Provinces, *at the time of* the Union in 1841. Whether the Union of 1841 should be treated as a partnership, what each brought in, taken an account of and valued, and at the dissolution in 1867, restored—then that the difference remaining, either of burden or profit, should be equally divided or apportioned between the two.

This main question, for better elucidation, may be subdivided into two questions :

1st. Whether the Union of 1841 can be treated as a partnership at all ?

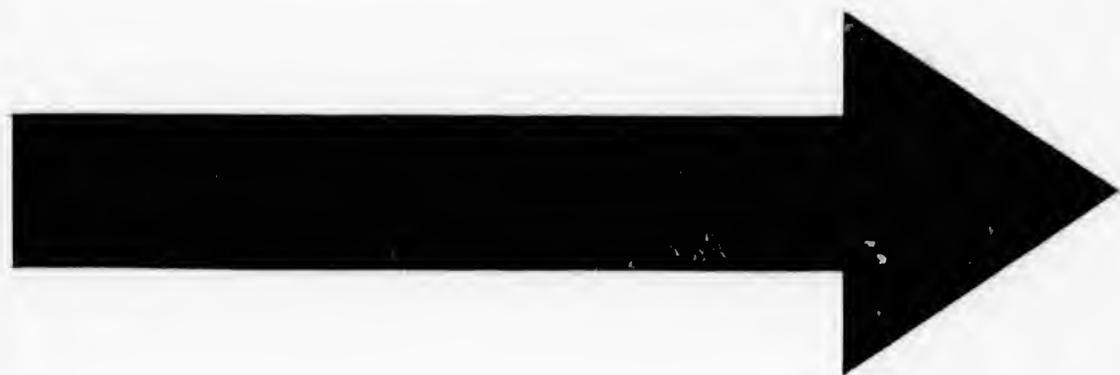
2nd. If so, what were its terms as evidenced by the Act constituting the Union, and the construction put upon those terms by the parties themselves ?

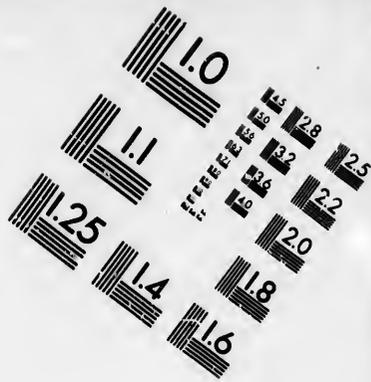
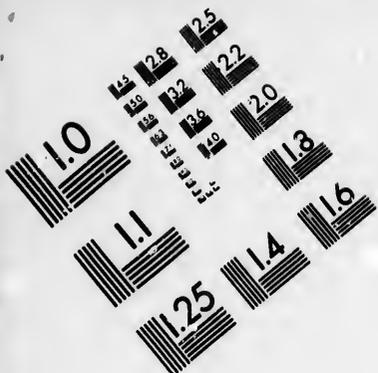
1st. The Union of 1841 sprung from a political necessity. It was not an agreement between the parties, but an act proceeding from the paramount authority, and operating "*per inritum*." It was not brought about at the instance of Upper and Lower Canada : The latter could hardly be said to have assented to it,—her people had no voice in the matter,—there was then in Quebec neither Assembly nor Legislature. It lacks all the elements, the preliminary terms and conditions, the reservations and provisions, which are indicative of mutual considerations. Abrupt as to its commencement, it was indefinite as to its duration, dependant not upon its own will or its own pre-arrangement for its termination, but upon the same paramount authority which created it. The plain fact is, the British Imperial authority made the union for Imperial purposes, and in accordance with the then policy of the Empire, dictated its own terms and imposed them upon the two Provinces ; and in its charter (" Act to reunite the Provinces of Upper and Lower Canada, and for the Government of Canada, July, 1840,") plainly showed that their separate identity was no longer to exist—the distinction of language was done away with (sec. 41) and it is difficult to conceive a more complete thorough Legislative merger than was carried out by that Act. It would be impossible, therefore, in the face of this Act, to say that a partnership did exist, or that a future division of effects was to take place. The difference between the Imperial Act of 1840 and that of 1867, is so striking, that it renders the foregoing conclusion irresistible. In the one, identity is preserved throughout every line—in the other, it is destroyed. The one union is Legislative—the other is Federal. That in a word covers the whole ground—one destroys individuality—the other preserves it.

2nd. But assuming that it might be regarded as a partnership ; that Quebec was not an unwilling partner to the union ; and that the absence of preliminary conditions was not owing to any such cause as before referred

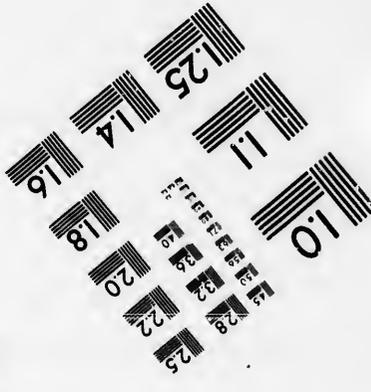
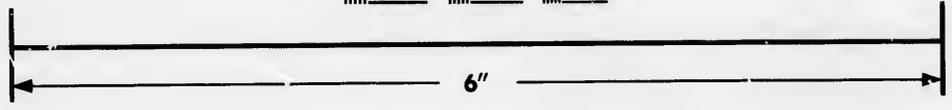
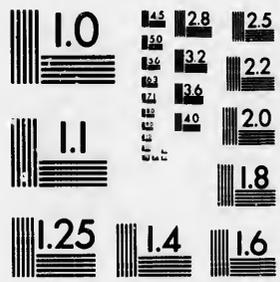
to, but that on the contrary it was a union, a partnership mutually entered into with every care and precaution—then, what were its terms, evidenced by the parties themselves before the union, by the Imperial statute constituting the union, and by the construction put upon those terms and that statute by the parties themselves during its continuance?

In 1839 the Special Council of Lower Canada, which, whether it represented the people or not, was, at any rate, the *de facto* Government of the Province and the only body vested at the time with Legislative power, passed certain resolutions relative to the union of the two provinces, affirming its desirability, and declaring with reference to the debt with which it was alleged that Upper Canada would enter the union, "that regard being had to the nature of the public debt of Upper Canada, and the objects for which *principally* it was contracted, viz., *the improvement of internal communications alike useful and beneficial to both Provinces*, it would be just and reasonable that such part of the said debt as had been contracted for this object should be chargeable on the revenue of both Provinces." At the meeting of the Legislature of Upper Canada, held shortly afterwards, this proposition was referred to by the Governor-General in a message setting forth the policy on which the union was to be framed; and thereupon an address was unanimously passed, praying for a re-union of the Provinces on the basis, amongst other things, "*that the public debt of this Province (Upper Canada) be charged, after the Union, on the joint revenue of the United Provinces.*" Thus it would appear that the question of the debt of Upper Canada, at that time, was not a point omitted to be considered; but that on the contrary, the Province of Quebec, then Lower Canada, whose Counsel now urge that this debt should be taken as an outstanding charge against the other Province, at that time declared that the expenditures for which that debt was incurred were of a nature so beneficial to itself that the debt should be charged on the revenue of both,—which declaration was accepted and acted upon by the other Province. Can it then, after the union was entered into, based upon that declaration—after it has been acted upon for six and twenty years, with that declaration standing on record, unrepealed between the two—turn round and say, at the dissolution, that the original debt must now be charged? I apprehend not. But if we go further, following up this idea, upon an examination of the Imperial Act, 3 and 4 Vic., c. 35, entitled, "An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada, July, 1840," we find no statement of the existing debts or assets of either Province, no provision for ascertaining or adjusting them in any way, no reference to what either Province brought in, or to what liabilities either might be subject, no indication that such a point was ever thereafter to be raised or considered; but on the contrary, by the 49th section we find that the provisions which were then existing under the Imperial Act, 3rd Geo. 4th, c. 119, intituled "An Act to regulate the trade of the Provinces of Lower and Upper Canada, and for other purposes relating to the said Provinces," for the appointment of Arbitrators "*to hear and determine certain claims of the Province of Upper Canada upon the Province of Lower Canada—and to hear any claim which might be advanced on the part of the*





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Province of Upper Canada to a proportion of certain duties therein mentioned, and for prescribing the course of proceeding to be pursued by "such Arbitrators," are repealed, with all matters in the same Act contained, dependant upon the said provisions. We find that the said Imperial Act further provides that all duties and revenues over which the respective Legislatures of Upper or Lower Canada at that time had power of appropriation, were thenceforth to form "one Consolidated Revenue Fund," and that thenceforth all sums theretofore charged upon the rates and duties levied and collected for the use of either Upper or Lower Canada were to be paid out of the said "Consolidated Revenue Fund," for such time as had been appointed by the several Acts of the Legislature of the Province, by which such charges were severally authorised (55th sec.)

These provisions in the Act itself would shew that the "*status quo*" was not at that time, and was not thereafter, to be a matter of consideration. But if we look to the acts of the parties themselves, we find that during the whole period of the Union, from 1841 to 1867, no construction tending to that view was put upon the Imperial Act: no separate accounts, for purposes of apportionment, were kept of how much each Province yielded to a particular source of Revenue—of the Customs or Excise coming from each separately—of the funds out of which pre-existing claims on either Upper or Lower Canada were paid. New liabilities were substituted for the old without distinction of Province, and a process of obliteration, with the Legislative sanction of all parties, may be said to have gone on from the time of the Union of 1841, with reference to the old debts of Upper and Lower Canada previous to that Union. In the Act of 1859, introduced by Mr. Galt, 22 Vic., c. 14, respecting the "Public Moneys, Debts and Accounts," and which changed the pre-existing state of the old debts, no distinction is made—new securities varying in amount, rate of interest, and time of payment are authorized. The debentures constituting the public debt of the Province of Canada, or of either of the then late Provinces of Upper or Lower Canada, were to be redeemed or purchased on account of the Province (of Canada), from time to time, as the interests of the public service required. Throughout that Act there is nothing to show that at any time thereafter a distinct account of, or a separation, or division, of the debts or assets of Upper or Lower Canada, either before the Union, or at the time of the Union, or during the Union, could be required or contemplated. A thorough merger was realized—as indivisible as a perfect fusion of two articles of the same character could possibly be made. It is true that frequently, as a debt or asset was created for local expenditure or benefit in one of the old Provinces, a corresponding debt or asset was created for local expenditure or benefit in one of the old Provinces, a corresponding debt or asset was created for the other; but that was a matter of political expediency. In reality, at this day, there is not a debt of any consequence of Upper or Lower Canada, *as such*, in existence. Had the idea of separate pecuniary interests ever been contemplated, it must be presumed it would have taken some definite shape, or in some way been acted upon. Whenever the interests or wishes of the country demanded, the Imperial Act of 1840 was amended or altered by further Imperial

legislation, or subsidiary local legislation, as required ; as in the instance of the restoration of the French language—the disposition of the clergy reserves—the alteration of the Constitution of the House by a two-thirds vote ; but in no case, either of Imperial legislation, or of legislation by the local Parliament, do we find that the pecuniary state of the two Provinces at the time of the Union in 1841, or the amounts they relatively brought into the Union, were considered as the basis on which legislation, or a division or apportionment of the public revenue or debts or assets, was to be founded,—and the only tribunal then existing to determine the claims of Upper Canada upon Lower Canada was abolished with all matters dependent upon the Act which constituted it ; thus destroying the very means by which a part of such apportionment or division could be arrived at, if ever it became necessary. Surely nothing could be stronger to shew that a fusion, and not a partnership, was to exist.

Thus, if it were possible to try out the Union of two great Provinces, springing out of and based upon political considerations, by the rules of a trading corporation, we cannot find in the articles of Union, or in the construction put upon those articles by the parties themselves, anything that would indicate a distinction or division of interests at any time, or ought but the most perfect community of goods, extending equally throughout the whole—as was wont to be said in the old Norman French, in the case of joint tenants, "*per my et per tout*."

For these reasons, therefore, I do not see how the Arbitrators can take, as a starting point, the "*status quo*" of Upper and Lower Canada at the time of the Union in 1841, as to their pecuniary position, even if that could be agreed upon, (which is far from being the case) ; or as it is put in the Quebec *factum*, viz : "That each Province ought first to assume, from the "excess of debt, a sum equal to its own debt when it entered the Union "in 1841, and the balance ought to be equally divided." To do so would be ignoring the legislation of the Imperial Parliament, and of the parties themselves by the legislation of their own Canadian Parliament. It must be presumed that the Imperial Parliament first, and secondly the Canadian Parliament, which subsequently had in charge the interests of both Upper and Lower Canada, took into consideration all the points which would be fair between the two Provinces, *balanced the equivalents*, and did what was best for the common interests of both ; and that both parties, by their continued acquiescence in, and their silence as to this point, during the twenty-six years of their Union, assented to that action. For the Arbitrators, then, to enter into a discussion of the debts and assets prior to 1841, in order to determine how the Provinces stood with reference to each other (and that would clearly have to be done), would be superseding all this action. To take the debts and assets, even when a settlement had been arrived at, as they relatively stood between the two Provinces, and proceed to adjudicate upon the difference only, treating that difference as an asset or a debit on one side or the other, would be doing what the Provinces, in their United Legislature, had not, during the whole time of their Union, deemed proper to do for themselves. To enter into a discus-

sion of what were the relative merits of each party at that time—what were the equivalents which formed the consideration of the Union (assuming, for the sake of argument, that it had been brought about by the voluntary action of the parties, and not by Imperial authority)—what inducement Quebec had to take Ontario, with its great debt, as is alleged—would be calling upon the Arbitrators to determine whether the Union was judicious or not.

Those points are not submitted to us. We must deal with the question as it stands—take the assets mentioned in the 4th Schedule, the debts arising out of them, and any other debts that may be fairly shown to come within the purview of our powers, and divide and adjust them upon principles that would be fair both to Ontario and Quebec. I do not hold that we are to be tied down to the strictest letter of the law, as if adjudicating upon matters between private individuals, who in courts might demand that rigid rule. The very fact of being named as arbitrators implies a latitude, and we are to apportion and adjust these matters so as to make a fair division.

As we cannot take the proposition of a partnership, submitted by Quebec, we must examine the modes of division and adjustment submitted by Ontario.

The first proposition, the suggested capitalization of assets, is abandoned by all parties. Indeed, to take as the true criterion of the value of assets, a valuation based upon the average returns of four and a half years, some of which returns were dependent not upon the ability of the municipalities to pay, but the political inexpediency of enforcing payment, seems too absurd to require consideration.

A division according to population certainly seems the simplest, and is undoubtedly the most expeditious mode; but from the arguments advanced up to this time, I do not see my way clear—in the absence of any agreement between the Representatives of Ontario and Quebec—to adopt it. It has been argued it would not be just or fair—it may be added, perhaps it might be practically impossible. It would be hard to apportion an asset purely local in its character, and available only as belonging to the locality. Again, the contribution towards the burden of a debt must depend upon local legislation, and there is no controlling power to make one Province so shape its legislation as to raise contributions for the other. The powers of the arbitrators will close with their award, and that award must be so made that it can stand entirely *per se*, and not be dependent in any way upon ulterior action by either of the parties to the arbitration. It must give the asset, it must assign the burden—clear and unequivocal, whatever it may be, the asset must become the undoubted property, and the debt the undoubted burden of one Province or the other, as the case may be.

The only remaining mode which has been suggested, is to look at the origin of the debt and asset and decide individually upon each according

to its merits. The time or the difficulty that may be occupied or arise in this mode does not touch the question, nor do I think that in so deciding we are to be tied down to the strictest rules of law. I do not think we can go behind the law which originated the debt or asset; with the policy of its origin we have nothing to do. The legislature for the time being had the authority, and had before it the circumstances which induced the enactment. No *ex post facto* opinion can invalidate that legislation; where the law is positive as to how the debt or asset shall be taken or regarded, we must be governed by it; where it is not, we may, after hearing the arguments, estimate the debt or asset and balance between the parties. In the absence of any agreement between the representatives of Ontario or Quebec, my decision, as at present advised, is in favor of this mode.

J. H. GRAY.

Montreal, May, 1870.

GOVERNMENT HOUSE,
Quebec, 6th June, 1870.

SIR,
I have the honor to enclose for the information of His Excellency the Governor General, a copy of an Order in Council of the Executive Council of the Province of Quebec, in relation to the Arbitrators selected for the division and adjustment of the debts, credits, liabilities, properties and assets of Upper and Lower Canada.

I have the honor to be,

Sir,

Your obedient Servant,

N. F. BELLEAU,
Lieutenant-Governor of
the Province of Quebec.

The Hon. JOSEPH HOWE,
Secretary of State,
for the Provinces. }

COPY OF A REPORT of a Committee of the Honorable the Executive Council, approved by His Excellency the Lieutenant-Governor in Council, on the 6th June, 1870.

No. 130.

On the disqualification of the Honorable J. H. Gray, }
to act as Arbitrator, under the British North }
America Act of 1867. }

The Honorable the Treasurer of the Province reports, that it is the opinion of Napoléon Casault, Esq., Q.C. (which said legal opinion was ap-

proved and confirmed by the Law Officers of the Crown) that, whereas the 142nd section of the British North America Act of 1867 enacts, that the division and adjustment of the debts, credits, liabilities, properties, and assets of Upper Canada and Lower Canada shall be referred to the arbitration of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada, and that the arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or in Quebec, and that whereas the Honorable J. H. Gray has resided for more than one year and has now become a resident in the Province of Ontario and has become thereby disqualified to act as such arbitrator, it has become the duty of this Province to object to the said Honorable John Hamilton Gray acting as such arbitrator.

The Honorable Treasurer recommends that a despatch be transmitted to His Excellency the Governor General, acquainting His Excellency, with the views of this Government, and requesting the appointment of another arbitrator in the place of the said John Hamilton Gray.

The Committee concurs in the foregoing report and submit the same for the Lieutenant-Governor's approval.

Certified,

FELIX FORTIER,
Clerk Ex. C.

GOVERNMENT HOUSE,

Quebec, 6th June, 1870.

SIR,

I have the honor to transmit you herewith, for the information of His Excellency the Governor General, a copy of an order of the Executive Council of the Province of Quebec, in relation to the award to be rendered by the Arbitrators selected for the division and adjustment of the debts, credits, liabilities, properties and assets of Upper and Lower Canada, and to request His Excellency to be pleased to bestow immediate attention upon the representations of the report.

I have the honor to be,

Sir,

Your obedient Servant,

N. F. BELLEAU,
Lieutenant-Governor of
the Province of Quebec.

Hon. Jos. Howe,
Secretary of State,
for the Provinces, Ottawa. }

COPY OF A REPORT of a Committee of the Honorable the Executive Council, approved by His Excellency the Lieutenant-Governor in Council, on the 6th June, 1870.

No. 151.

On the requirements of the British North America)
Act of 1867, respecting the Judgment of the Ar-)
bitrators.

The Honorable the Treasurer of the Province reports, that it is the opinion of the Law Officers of the Crown, that whereas the one hundred and forty-second section of the British North America Act of 1867, enacts that the division and adjustment of the debts, credits, liabilities, properties and assets of Upper and Lower Canada shall be referred to the arbitration of three arbitrators, it is essential to the validity of any decision to be given by such arbitrators that their judgment should be unanimously concurred in.

He therefore recommends, that a despatch be transmitted to His Excellency the Governor-General, with the views of this Government, and requesting that no judgment of the said arbitrators, which is not so unanimously concurred in, be received.

The Committee concur in the following Report, and submit the same for the Lieutenant-Governor's approval.

Certified,

FELIX FORTIER,
Clerk, E. C.

GLENBROOKE, 14th June, 1870.

SIR,

I have the honor of acknowledging your letter of the 6th instant, received this day, accompanied by a copy of an Order in Council of the same date: "On the requirements of the British North America Act, of 1867," respecting the judgment of Arbitrators.

I have the honor to be

Sir,
Your obedient Servant,
CHS. D. DAY.

To R. J. JOLICOEUR, Esq.,)
Asst. Prov. Secy.)

OTTAWA, 20th June, 1870.

SIR,

I have the honor to acknowledge the receipt, this day, of your letter of the 6th June instant, forwarding a copy of an Order in Council of the

Executive Council of the Province of Quebec, in relation to the award to be rendered by the Arbitrators chosen for the division and adjustment of the debts, credits, liabilities, properties, and assets of Upper and Lower Canada.

I have the honor to be,

Sir,

Your obedient Servant,

JOSEPH HOWE,

Secretary of State

for the Provinces.

Hon. Sir N. F. BELLEAU,
Lieutenant-Governor,
Quebec. }

SECRETARY'S OFFICE,

Quebec, 11th July, 1870.

SIR,

I have the honor to enclose, for the information of His Excellency the Governor General, a copy of an Order passed by the Executive Council of the Province of Quebec, bearing date the 7th day of July instant, respecting the Arbitrators chosen for the division and adjustment of the debts, credits, liabilities, properties and assets, of Upper and Lower Canada, and to request His Excellency to be pleased to give his attention to the representations contained in the said order.

I have the honor to be,

Sir,

Your obedient Servant,

N. F. BELLEAU,

Lieutenant-Governor.

The Hon. JOSEPH HOWE,
Secretary of State
for the Provinces, Ottawa. }

Copy of a Report of a Committee of the Honorable the Executive Council, approved by His Excellency, the Lieutenant-Governor in Council, on the 7th July, 1870.

On the disqualification of the Honorable }
J. H. Gray, to act as Arbitrator under }
the British North America Act of 1867. }

The Honorable the Treasurer of the Province, reports that it is the opinion of Napoléon Casault, Esq., Q. C., (which said legal opinion was approved and confirmed by the Law Officers of the Crown) that, whereas, the 142nd Section of the British North America Act, of 1867, enacts that

the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada, shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada, and that the Arbitrator chosen by the Government of Canada, shall not be a resident either in Ontario or in Quebec, and that whereas the Honorable J. H. Gray, has resided for more than one year, and has become a resident in the Province of Ontario, and has become thereby disqualified to act as such Arbitrator, it has become the duty of the Province to object to the said Honble. John Hamilton Gray acting as such Arbitrator.

The Honorable Treasurer recommends that a despatch be transmitted to His Excellency the Governor-General, acquainting His Excellency with the views of this Government, and requesting the appointment of another Arbitrator in the place of the said Honble. John Hamilton Gray.

The Committee concur in the following report, and submit the same for the Lieutenant-Governor's approval.

Certified,

FÉLIX FORTIER,
Clk., E. C.

MONTREAL, 9th July, 1870.

SIR,

I have the honor of transmitting herewith my resignation of the appointment of Arbitrator, under the 142nd Section of the British North America Act, of 1867. I do so with regret, but I am satisfied from the broad and irreconcilable differences of opinion which exist between my colleagues and myself on points of essential importance that I cannot hope to be of any further service in the business of the arbitration. The course which they propose to follow appears to me necessarily to lead to great injustice, and is so entirely contrary to my conviction of what the public interests require, that I cannot concur or consent to take part in it.

I have the honor to be,

Sir,

Your most obedient Servant,

CHAS. D. DAY.

To the Honorable
P. J. O. CHAUVEAU,
Provincial Secretary. }

MONTREAL, 9th July, 1870.

SIR,

I have the honor to declare my resignation of the appointment of Arbitrator by the Government of Quebec, under the 142nd section of the

British North America Act, of 1867, and respectfully request that His Excellency the Lieutenant-Governor will be pleased to accept the same.

I have the honor to be,

Sir,

Your obedient Servant,

CHS. D. DAY.

To the Honorable P. J. O. CHAUVEAU, }
Provincial Secretary.

SECRETARY'S OFFICE,

Quebec, 11th July, 1870.

SIR,

I have the honor to acquaint you, for the information of His Excellency the Governor General, that the Honorable Chas. D. Day, has resigned his position as Arbitrator selected by the Government of the Province of Quebec, under the 142nd section of the British North America Act, 1867, and to request His Excellency to be pleased to order that the two other Arbitrators suspend their labors, until the Government of Quebec have come to a decision respecting such resignation, a matter which is now under consideration.

I have the honor to be,

Sir,

Your obedient servant,

N. F. BELLEAU,

Lieutenant-Governor.

The Hon. JOSEPH HOWE, }
Secretary of State
for the Provinces, Ottawa.

SECRETARY'S OFFICE,

Quebec, 11th July, 1870.

SIR,

I have the honor by command of His Excellency the Lieutenant-Governor to inform you, that the Honorable Chs. D. Day has tendered his resignation as Arbitrator of the Province of Quebec, under the 142nd section of the British North America Act, of 1867, and to request that you will be pleased to stay proceedings until such time as the Government of Quebec, who have the said resignation under consideration, have come to a decision upon the subject.

I have the honor to be,

Sir,

Your most obedient Servant,

PIERRE J. O. CHAUVEAU,

Secretary.

The Honorable D. L. MACPHERSON.

SECRETARY'S OFFICE,

Quebec, 11th July, 1870.

SIR,

I have the honor by command of His Excellency the Lieutenant-Governor, to inform you, that the Honorable Chas. D. Day has tendered his resignation as Arbitrator of the Province of Quebec, under the 142nd section of the British North America Act, of 1867, and to request that you will be pleased to stay proceedings until such time as the Government of Quebec, who have the said resignation under consideration, have come to a decision upon the subject.

I have the honor to be,

Sir,

Your obedient Servant,

PIERRE J. O. CHAUVEAU,

Secretary.

The Honorable J. H. GRAY.

SECRETARY'S OFFICE,

Quebec, 13th July, 1870.

SIR,

I have the honor to acknowledge receipt of your letter of the 9th instant, tendering your resignation as Arbitrator named for the Province of Quebec, under the 142nd Section of the British North America Act, of 1867.

His Excellency the Lieutenant-Governor, whilst desiring me to express his high appreciation of the important and valuable services so ably rendered by you, on the Commission of the Arbitration, and to offer you his most sincere thanks for the same, directs me to say that he has taken the matter into his most serious consideration, and that as soon as he comes to a decision upon it, he will immediately cause you to be made acquainted with its purport.

I have the honor to be,

Sir,

Your obedient Servant,

PIERRE J. O. CHAUVEAU,

Secretary.

The Honorable CHS. D. DAY, }
Toronto. }

OTTAWA, 13th July, 1870.

SIR,

I have the honor to acknowledge the receipt of your despatch, dated the 11th July instant, acquainting me for the information of His Excellency

the Governor General, that the Hon. Chs. D. Day has resigned his position of Arbitrator, chosen by the Government of the Province of Quebec, under the 142nd section of the British North America Act, 1867, and requesting His Excellency to be pleased to order that the other Arbitrators suspend their labors, until the Government of Quebec shall have come to a decision on such resignation.

I have the honor to be,

Sir,

Your obedient servant,

E. A. MEREDITH,

Under Secretary of State
for the Provinces.

The Hon. Sir N. F. BELLEAU,
Lieutenant-Governor,
Quebec. }

OTTAWA, 13th July, 1870.

SIR,

I have the honor to acknowledge the receipt of your despatch dated the 11th July instant, transmitting for the information of His Excellency the Governor General, a copy of an order passed by the Executive Council of the Province of Quebec, respecting the arbitrators chosen for the division of the debts, &c., of Upper and Lower Canada.

I have the honor to be,

Sir,

Your obedient Servant,

E. A. MEREDITH

Under Secretary of State
for the Provinces.

The Hon. Sir N. F. BELLEAU,
Lieutenant-Governor,
Quebec. }

COPY OF THE REPORT of a Committee of the Honorable the Executive Council, approved by the Lieutenant-Governor in Council, the 19th July, 1870.

No. 168.

On the resignation of the Hon. C. }
D. Day, Arbitrator for Quebec. }

The Honorable the Secretary, by a memorandum dated the 19th July, 1870, recommends that the resignation tendered by the Hon. Charles Dewey Day, of his office of Arbitrator chosen by the Province of Quebec, under the 142nd section of the British North America Act, 1867, be accepted.

The Committee concur in the foregoing recommendation, and submit the same for the Lieutenant-Governor's approval.

Certified,

FELIX FORTIER,

The Honorable the Secretary
of the Province of Quebec. }

C. E. C.

[COPY.]

In the matter of Arbitration between the Provinces of Quebec and Ontario.

The undersigned Arbitrators, in the above matter, have adjourned until Thursday, the fourth day of August, 1870, then to meet at Osgood Hall, Toronto, at twelve o'clock, noon, to proceed with the Arbitration.

(Signed.) D. L. MACPHERSON.
" J. H. GRAY.

Montreal, 23rd July, 1870.

[COPY.]

In the matter of the Arbitration between the Provinces of Ontario and Quebec.

The undersigned Arbitrators have adjourned the proceedings of the arbitration to Wednesday, the 17th August next, at 3 P. M., at Osgood Hall, Toronto, and the Governments of the Provinces of Quebec and Ontario are notified, that notwithstanding the writ of prohibition served upon the Arbitrators the undersigned will proceed with the consideration of the matters of the arbitration, on the day and at the place above named, peremptorily.

(Signed.) D. L. MACPHERSON,
" J. H. GRAY,
Arbitrators.

5th August, 1870.

In the matter of the arbitration between the Provinces of Quebec and Ontario.

The undersigned Arbitrators have adjourned the proceedings of the arbitration to Wednesday, the 17th August, at 2 P. M. at Osgoode Hall, Toronto, and the Governments of the Provinces of Quebec and Ontario are notified that notwithstanding the writ of prohibition served on the arbitrators, the undersigned will proceed with the consideration of the matters of the arbitration on the day and at the place above named peremptorily.

D. L. MACPHERSON,
J. H. GRAY,
Arbitrators.

Toronto, 5th August, 1870.

SECRETARY'S OFFICE,

Quebec, 8th August, 1870.

SIR,

I have the honor to forward to you, for the information of His Excellency the Governor General, a copy of a document signed by the Honorable Messrs. Gray and Macpherson, received by the Secretary of the Province. I deem it to be my duty at the same time to draw the attention of His Excellency the Governor General and the Federal Government, to the unjust and illegal conduct both of the Arbitrator chosen by the Government of Canada and of the Arbitrator chosen by the Province of Ontario, and respectfully to request, on behalf of the Government of this Province, the interference of the Federal Government.

N. F. BELLEAU,
Lieutenant-Governor.

The Honorable, the Secretary of
State, for the Provinces, Ottawa. }

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES.

No. 390.

Ottawa, 11th August, 1870.

SIR,

I have the honor to acknowledge the receipt this day of your despatch, of the 8th August, 1870, enclosing a copy of a document signed by the Honorable Messrs. Gray and Macpherson the Arbitrators chosen by the Governments of Canada and Ontario respectively, protesting against the conduct of these gentlemen and requesting the intervention of the Federal Government.

I have the honor to be,
Sir,

Your obedient Servant,

E. A. MEREDITH,
Under Secretary of State.

To the Honorable Sir N. F. BELLEAU, }
Lieutenant-Governor, }
Quebec. }

TORONTO, September 5th, 1870.

SIR,

As Arbitrators under the British North America Act, 1867, we have the honor herewith to enclose for the Government of Quebec, the award made by us.

The award has been made in triplicate and sent also to the Governments of the Dominion and Ontario.

We have the honor to remain,

Sir,

Your obedient Servants,

J. H. GRAY.

D. L. MACPHERSON.

To the Honorable,
The Secretary of the
Province of Quebec. }

To all to whom these Prèsents shall come :

The Honorable JOHN HAMILTON GRAY, of the City of St. John, in the Province of New Brunswick, and the Honorable DAVID LEWIS MACPHERSON, of the City of Toronto, in the Province of Ontario ;

SEND GREETING :

Whereas, by the British North America Act, 1867, it is enacted that the division and adjustment of the debts, credits, liabilities, properties, and assets of Upper Canada and Lower Canada shall be referred to the arbitration of three Arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada.

And whereas, the said John Hamilton Gray was duly chosen under and in accordance with the provisions of the said Act as Arbitrator, by the Government of Canada, the said David Lewis Macpherson, by the Government of Ontario, and the Honorable Charles Dewey Day, of Glenbrooke, in the said Province of Quebec, by the Government of Quebec.

Now therefore, the said Arbitrators having taken upon themselves the burthen of the said Arbitration, the said John Hamilton Gray and David Lewis Macpherson, being a majority of the said Arbitrators, DO HEREBY award, order and adjudge of and upon the premises, as follows, that is to say :

1. That the amount by which the debt of the late Province of Canada exceeded, on the 30th day of June, one thousand eight hundred and sixty-seven, sixty-two millions five hundred thousand dollars, shall be and is hereby divided between and apportioned to, and shall be borne by the said Provinces of Ontario and Quebec respectively, in the following proportions, that is to say : the said Province of Ontario shall assume and pay such a proportion of the said amount as the sum of nine millions eight hundred and eight thousand seven hundred and twenty-eight dollars and two cents bears to the sum of eighteen millions five hundred and eighty-seven thousand five hundred and twenty dollars and fifty-seven cents. And the said Province of Quebec shall assume and pay such a proportion of the said amount as the sum of eight millions seven hundred and seventy-

1870.

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eight thousand seven hundred and ninety-two dollars and fifty-five cents bears to the sum of eighteen million five hundred and eighty-seven thousand five hundred and twenty dollars and fifty-seven cents.

2. That the assets hereinafter in this clause enumerated shall be, and the same are hereby declared to be, the property of and belong to the Province of Ontario, namely :

1. Debt from the Upper Canada Building Fund to the late Province of Canada (enumerated in the fourth Schedule to the said British North America Act, 1867, as Upper Canada Building Fund, Lunatic Asylums, Normal Schools.)

Lunatic Asylums.....	\$ 30,800 00
Normal Schools.....	6,000 00
	<hr/>
2. Debt from the Law Society, Upper Canada, to the late Province of Canada.....	\$ 36,800 00
3. Debts to the late Province of Canada under the Consolidated Municipal Law Fund of Upper Canada.....	\$156,015 61
4. Debt from the Agricultural Society, Upper Canada, to the late Province of Canada.....	3,792,136 39
5. Debt from the University Permanent Fund to the late Province of Canada.....	4,000 00
	1,220 63

3. That the assets hereinafter in this clause enumerated shall be and the same are hereby declared to be the property of and belong to the Province of Quebec, namely :

1. The debt from the Aylmer Court House to the late Province of Canada for six per cent., provincial debentures issued on account of the said Court House, and assumed by the Dominion of Canada, and charged in the debt of the late Province of Canada.....

And for certain charges paid by the said late Province of Canada in respect of the said Court House.....	2,000 00
	1,239 70
	<hr/>
2. Debt from the Montreal Court House to the late Province of Canada for six per cent., Provincial Debentures issued on account of the said House, and assumed by the Dominion of Canada, and charged in the debt of the late Province of Canada.....	\$ 3,239 70
	95,600 00
	<hr/>
For advances made to the said Court House by the said late Province of Canada.....	\$ 98,839 70
	18,996 21
	<hr/>
	\$114,596 21

3. Debt from the Kamouraska Court House to the late Province of Canada for balance of certain charges in respect of the said Court House, paid by the late Province of Canada.....	201 27
4. Debt from the Royal Institution, otherwise McGill College, to the late Province of Canada of the balance of a loan made by the said late Province to that institution..	7,790 00
5. Debt under the Consolidated Municipal Loan Fund of Lower Canada to the late Province of Canada.....	2,939,429 97
6. Advances made in excess of the Legislative School Grant (described in the fourth schedule to the said British North America Act, 1867, as "Lower Canada Legislative Grant").....	28,494 73
7. Debt to the late Province of Canada under the Quebec Fire Loan.....	264,254 65
8. Debt to the late Province of Canada for advances made to or on account of certain municipalities in the county of Témiscouata, (described in the said fourth schedule as "Témiscouata Advance Account.").....	3,000 00
9. Debt from the Education Office in Lower Canada to the late Province of Canada, for the balance unpaid of a defalcation in the said office to the said late Province, (described in the said fourth section as "Education East.").....	290 10
10. Debt from the Building and Jury Fund, Lower Canada, to the late Province of Canada, for loans and advances made to it by the said late Province of Canada..	116,475 51
11. Debt from the Municipalities Fund of Lower Canada to the late Province of Canada, for advances made to, or on credit of that Fund, (described in the said fourth schedule as "Municipalities Fund.").....	484,244 33
12. Debt from the Lower Canada Superior Education Income Fund to the late Province of Canada, for advances made from time to time by the said late Province.....	234,281 46
13. Montreal Turnpike Trust.....	188,000 00

4. And as to the said Montreal Turnpike Trust the said Arbitrators further find, award and adjudge as follows: *Whereas* the said sum of one hundred and eighty-eight thousand dollars is secured by Debentures issued upon the credit of the said Trust and guaranteed by the late Province of Canada, and the said Trust has hitherto met the payments upon such Debentures and the payment thereof has therefore not been assumed by the Dominion of Canada nor has the said sum of one hundred and eighty-eight thousand dollars been charged by the said Dominion in the debt of the late Province of Canada, which charge if made would increase by one hundred and eighty-eight thousand dollars the excess of the said debt on the thirtieth day of June, one thousand eight hundred and sixty-seven above sixty-two millions five hundred thousand dollars.

Now, therefore, the said Arbitrators having assigned the said Trust as an Asset to the said Province of Quebec do hereby adjudge and award, that the said Province of Quebec shall hereafter indemnify, protect and save harmless the said Dominion and the said Province of Ontario against any charge upon or payment by the said Dominion in respect of the said Debentures or the said guarantee, or in respect in any other way of the said Trust.

5. That the following special or Trust Funds and the moneys thereby payable including the several investments in respect of the same or of them, are, shall be, and the same are hereby declared to be the property of and belong to the Province of Ontario, namely :

1. Upper Canada Grammar School.
2. Upper Canada Building Fund.
3. Upper Canada Municipalities Fund.
4. Widows' Pensions and uncommuted Stipends, Upper Canada, subject to the payment of all legal charges thereon.
5. Upper Canada Grammar School Income Fund.
6. Upper Canada Improvement Fund
7. Balance of Special Appropriations in Upper Canada.
8. Surveys ordered in Upper Canada before 30th June, 1867.
9. Amount paid and payable by Upper Canada to the Canada Land and Emigration Company.

6. That the following Special or Trust Funds and the moneys thereby payable including the several investments in respect of the same or any of them, are, shall be, and the same are hereby declared to be, the property of and belong to the Province of Quebec, for the purposes for which they were established namely :

1. Lower Canada Superior Education Fund.
2. Lower Canada Superannuated Teachers' Fund.
3. Lower Canada Normal School Building Fund.
4. Widows' Pensions, and uncommuted stipends, Lower Canada : subject to all legal charges thereon.
5. Balance of Special Appropriation in Lower Canada.
6. Surveys ordered in Lower Canada before 30th June, 1867.
7. That from the Common School Fund as held on the thirtieth day of June, one thousand eight hundred and sixty-seven, by the Dominion of

Canada, amounting to one million, seven hundred and thirty-three thousand, two hundred and twenty-four dollars and forty-seven cents, of which fifty-eight thousand dollars is invested in the Bonds or Debentures of the Quebec Turnpike Trust, the said sum of fifty-eight thousand dollars being an asset mentioned in (the said fourth schedule of the British North America Act, 1867, as the Quebec Turnpike Trust) the sum of one hundred and twenty-four thousand six hundred and eighty-five dollars and eighteen cents shall be and the same is hereby taken and deducted and placed to the credit of the Upper Canada Improvement Fund, the said sum of one hundred and twenty-four thousand six hundred and eighty-five dollars and eighteen cents, being one-fourth part of moneys received by the late Province of Canada between the sixth day of March one thousand eight hundred and sixty-one, and the first day of July one thousand eight hundred and sixty-seven on account of Common School lands sold between the fourteenth day of June one thousand eight hundred and fifty-three, and the said sixth day of March one thousand eight hundred and sixty-one.

8. That the residue of the said Common School Fund, with the investments belonging thereto as aforesaid, shall continue to be held by the Dominion of Canada, and the income realised therefrom from the thirtieth day of June, one thousand eight hundred and sixty-seven, and which shall be hereafter realized therefrom shall be apportioned between and paid over to the respective Provinces of Ontario and Quebec as is directed by the fifth section of Chapter twenty-six of the Consolidated Statutes of Canada with regard to the sum of two hundred thousand dollars in the said Section mentioned.

9. That the moneys received by the said Province of Ontario since the thirtieth day of June, one thousand eight hundred and sixty-seven, or, which shall hereafter be received by the said Province from or on account of the Common School Lands set apart in aid of the Common Schools of the late Province of Canada shall be paid to the Dominion of Canada, to be invested as provided by section three of said Chapter twenty-six of the Consolidated Statutes of Canada. And the income derived therefrom shall be divided, apportioned and paid between and to the said Provinces of Ontario and Quebec respectively, as provided in the said fifth section of Chapter twenty-six of the Consolidated Statutes of Canada, with regard to the sum of two hundred thousand dollars in the said section mentioned.

10. That the Province of Ontario shall be entitled to retain out of such moneys six per cent., for the sale and management of the said lands, and that one-fourth of the proceeds of the said lands sold between the fourteenth day of June, one thousand eight hundred and fifty-three, and the said sixth day of March, one thousand eight hundred and sixty-one, received since the thirtieth day of June, one thousand eight hundred and sixty-seven, or, which may hereafter be received, after deducting the expenses of such management as aforesaid, shall be taken and retained by the said Province of Ontario for the Upper Canada Improvement Fund.

11. The Crown Land Suspense Account, amounting to one hundred and

twelve thousand seven hundred and forty-eight dollars and sixty-three cents, and the Crown Lands Department account, amounting to two hundred and three thousand and eighty-nine dollars and seventy-six cents, being the items so described in the Public Accounts of the late Province of Canada, having been omitted respectively from the statement of the debt of the said Province in such accounts, and from the assets in the fourth schedule to the British North America Act, 1867; the said Arbitrators award and adjudge that the said Province of Ontario shall satisfy all claims, and receive all moneys, in respect of the said Crown Lands Suspense Account, and the said Crown Lands Department, connected with or arising from lands situated in the said Province of Ontario. And that the said Province of Quebec shall satisfy all claims, and receive all moneys, in respect of the said Crown Lands Suspense Account, and the said Crown Lands Department, connected with or arising from lands situate in the said Province of Quebec.

12. As to the Montreal Harbour, the said Arbitrators find that the debt due on account of four hundred and eighty-one thousand four hundred and twenty-five dollars and twenty-seven cents, secured by debentures issued by the Montreal Harbour Commissioners, has not been charged in the statement of the debt of the late Province of Canada.

And they award and adjudge that, should the Dominion of Canada hereafter pay anything, by reason of the liability of the said Dominion on account of the said debentures, the said two Provinces shall repay to the said Dominion any sums so paid in the same proportion respectively, as the said Provinces are hereinbefore directed to bear and pay the excess, on the thirtieth day of June, one thousand eight hundred and sixty-seven, above sixty-two million five hundred thousand dollars of the debt of the late Province of Canada.

13. That all the lands in either of the said Provinces of Ontario and Quebec, respectively, surrendered by the Indians in consideration of annuities to them granted, which said annuities are included in the debt of the late Province of Canada, shall be the absolute property of the Province in which the said lands are situate, free from any further claim upon or charge to the said Provinces in which they are so situate, by the other of the said Provinces.

14. As to all the personal property, being the joint property of the said Provinces of Ontario and Quebec, not hereinbefore specially mentioned or dealt with, and not appropriated by the said British North America Act of 1867, including the Library of Parliament at Ottawa, the Arbitrators find that it is not expedient to divide the said properties, or to divert them from the public purposes for which they are used and required by the Dominion of Canada. They therefore find and award that the value of the said properties is and shall be taken to be two hundred thousand dollars, and that the Dominion of Canada may retain and acquire the same properties on payment to the said Provinces of the said sum of two hundred thousand dollars in the same proportion as is mentioned in the first para-

graph hereof in respect of the excess of debt of the late Province of Canada on the thirtieth day of June, one thousand eight hundred and sixty-seven above sixty-two millions five hundred thousand dollars "that is to say:" To Ontario the sum of one hundred and five thousand five hundred and forty-one dollars, and to Quebec the sum of ninety-four thousand four hundred and fifty-nine dollars, and upon such payment the Dominion of Canada shall become the absolute owner of the said properties. But should the Dominion of Canada not so acquire the said properties within two years from the date of this award the Province of Quebec may acquire the said properties by the payment to the Province of Ontario within two months from the expiration of the said two years of the sum of one hundred and five thousand five hundred and forty-one dollars. And should the Province of Quebec not so acquire the said properties within the time aforesaid, the Province of Ontario shall within three months next thereafter pay to the Province of Quebec the sum of ninety-four thousand four hundred and fifty-nine dollars, and shall thereupon become the absolute owner of the said properties.

15. That the several sums awarded to be paid and the several matters and things awarded and directed to be done by or with regard to the parties to this reference respectively as aforesaid shall respectively be paid, received, done, accepted and taken as and for full satisfaction and discharge and as a final end and determination of the several matters aforesaid.

In witness whereof the said John Hamilton Gray and David Lewis MacPherson, two of the said Arbitrators, have hereunto set their hands this third day of September, in the year of Our Lord, one thousand eight hundred and seventy.

J. H. GRAY,
D. L. MACPHERSON.

Signed and published the third day of September, 1870, in presence of Christopher Robinson of the City of Toronto, Barrister at Law. }

FRED. FINCH,
of the city of Toronto,
Law-Stationer. }

Copy of a Report of a Committee of the Honorable the Executive Council, approved by the Lieutenant-Governor in Council on the twelfth September, 1870.

On the pretended judgment or award rendered and made by the Honorable J. H. Gray and the Honorable D. L. MacPherson, two of the Arbitrators appointed to decide as to the division and adjustment of the debts, credits, liabilities, etc., of Upper and Lower Canada.

The Honorable the Treasurer of the Province in his report dated the ninth of September, instant, (1870), sets forth that a copy of a pretended

judgment or award rendered and made by the Honorable J. H. Gray and the Honorable D. L. MacPherson, two of the Arbitrators appointed to decide as to the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada, bearing date, at Toronto, the third day of September, instant, and signed by the said parties, has been forwarded to the Honorable Provincial Secretary for the information of the Quebec Government.

That inasmuch as the Quebec Government have already, by intimation to the Federal Government and by legal proceedings before the law tribunals of the country protested against the said two Arbitrators proceeding with the arbitration when there was no Arbitrator appointed by the Province of Quebec, and against any further action on the part of the said Honorable J. H. Gray, on account and because of his residing in the Province of Ontario against the true spirit and intent of the British North America Act of 1867, and inasmuch as the Quebec Government did not and does not acknowledge the right of the said two Arbitrators, jointly to act or of the said Hon. J. H. Gray, individually to act in the premises, and that all the Acts and proceedings of any kind whatsoever, had or done by them or either of them are illegal, null and void and of no force or effect whatsoever, in law or equity.

And inasmuch as the said pretended judgment or award (even if the said two arbitrators had a right to act without an arbitrator for the Province of Quebec, and if the said Honorable J. H. Gray were not disqualified by law from sitting or acting as arbitrator) is manifestly unjust to the Province of Quebec, and manifestly and clearly rendered and made in the interests of Ontario, Quebec having too large a portion of the surplus debt to pay and being awarded less than her just and equal share of the assets mentioned in said British North America Act of 1867, it is therefore unjust, illegal, null and void.

The Honorable Treasurer therefore recommends, that on behalf of the Quebec Government, a despatch be forwarded to the Federal Government protesting against any force or validity being given to the said pretended judgment or award, of the said two arbitrators, by the Federal authority, and advising of the intention of the Quebec Government to appeal for redress and justice, in every constitutional mode, which it is the privilege of British subjects, under the British Crown to exercise when suffering under injustice or wrong from the hands of any.

The Honorable Treasurer also recommends that the receipt of the said pretended judgment or award from the said two arbitrators be acknowledged at the same time protesting against it, as not being rendered and made, in good faith, or in accordance with law and equity, and as being manifestly rendered and made in the interests of Ontario and to the prejudice of Quebec, and that the said arbitrators being duly notified by the Quebec Government of the objections taken and held previous to their so acting without the arbitrator from Quebec, that their judgment or award is null and void and not recognised as valid by the Government of Quebec.

The Committee concur in the forgoing report, and submit the same for the Lieutenant-Governor's approval.

Certified, **FELIX FORTIER.**
Clerk, E.C.

GOVERNMENT HOUSE,
Quebec, 12th September, 1870.

SIR,

I have the honor to enclose, for the information of His Excellency the Governor-General, a copy of an order passed by the Honorable the Executive Council of the Province of Quebec, dated the 12th September instant, in relation to the pretended award rendered by the Hon. J. H. Gray and the Hon. D. L. Macpherson, two of the Arbitrators appointed for the division and adjustments of the debts, credits, liabilities and properties of Upper and Lower Canada.

I avail myself of this opportunity to inform His Excellency that I entirely concur in the views expressed by my Ministers, in the said order in Council, and that with them, I protest against an award which I hold to be unjust, illegal and inoperative.

I have the honor to be,

Sir,

Your obedient Servant,
N. F. BELLEAU,
Lieutenant-Governor,
of the Province of Quebec.

The Hon. JOSEPH HOWE,
Secretary of State for the Province, }
Ottawa.

SECRETARY'S OFFICE.
Quebec, 14th September, 1870.

SIR,

I have the honor to transmit you for the information of His Excellency the Lieutenant-Governor of Ontario, a copy of an order approved by His Excellency the Lieutenant-Governor of Quebec, in Council, on the twelfth of September instant, on the pretended judgment or award rendered and made by the Honorable J. H. Gray and the Honorable D. L. MacPherson, two of the arbitrators appointed to decide as to the division and adjustment of the debts, credits, and liabilities of Upper and Lower Canada.

I have the honor to be,

Sir,

Your most obedient Servant,
PH. J. JOLICŒUR,
Assistant-Secretary.

The Honorable M. C. CAMERON,)
Provincial Secretary, Toronto.)

SECRETARY'S OFFICE,
Quebec, 14th September, 1870.

SIR,

I have the honor to transmit you a copy of an Order approved by His Excellency the Lieutenant-Governor of Quebec, in Council, on the twelfth of September instant, on the pretended judgment and award rendered and made by you and the Honorable J. H. Gray, as Arbitrators appointed to decide as to the division and adjustment of the debts, credits, liabilities of Upper and Lower Canada.

I have the honor to be,
Sir,

Your most obedient Servant,

PH. J. JOLICŒUR,
Assistant-Secretary.

The Honorable D. L. MACPHERSON, }
Toronto. }

SECRETARY'S OFFICE,
Quebec, 14th September, 1870.

SIR,

I have the honor to transmit you a copy of an Order approved by His Excellency the Lieutenant-Governor of Quebec, in Council, on the twelfth of September instant, on the pretended judgment and award rendered and made by you and the Honorable D. L. MacPherson, as Arbitrators appointed to decide as to the division and adjustment of the debts, credits, liabilities of Upper and Lower Canada.

I have the honor to be,
Sir,

Your most obedient Servant,

PH. J. JOLICŒUR,
Assistant-Secretary.

The Honorable J. H. GRAY, }
Toronto. }

PROVINCIAL SECRETARY'S OFFICE,
Toronto, Sept. 17th, 1870.

SIR,

I have the honor to acknowledge the receipt of a letter from Mr. Asst.-Secy. Jolicœur, dated the 14th instant, and transmitting the copy of an Order in Council approved by His Excellency the Lieutenant-Governor of Quebec, on the 12th instant, and having reference to the award made by Colonel Gray and Senator MacPherson, under the 142nd Clause of the British North America Act, and to inform you that the subject will be submitted for the consideration of His Excellency the Lieutenant-Governor.

I have the honor to be,
Sir,

Your most obedient Servant,

THS. C. PATTERSON,
Assistant-Secretary.

The Honorable the Provincial Secretary, }
Quebec. }

OTTAWA, 21st September, 1870.

SIR,

I have the honor to acknowledge the receipt of your despatch dated 14th September instant, enclosing, for the information of His Excellency the Governor-General, a copy of an order passed by the Executive Council of the Province of Quebec, on the 12th September instant, in relation to an award rendered by the Honorable J. H. Gray and the Honorable D. L. MacPherson, two of the Arbitrators appointed for the division and adjustment of the debts, credits, &c., of Upper and Lower Canada.

I have the honor to be,
Sir,

Your most obedient servant,

JOSEPH HOWE,
Secretary of State
for the Provinces.

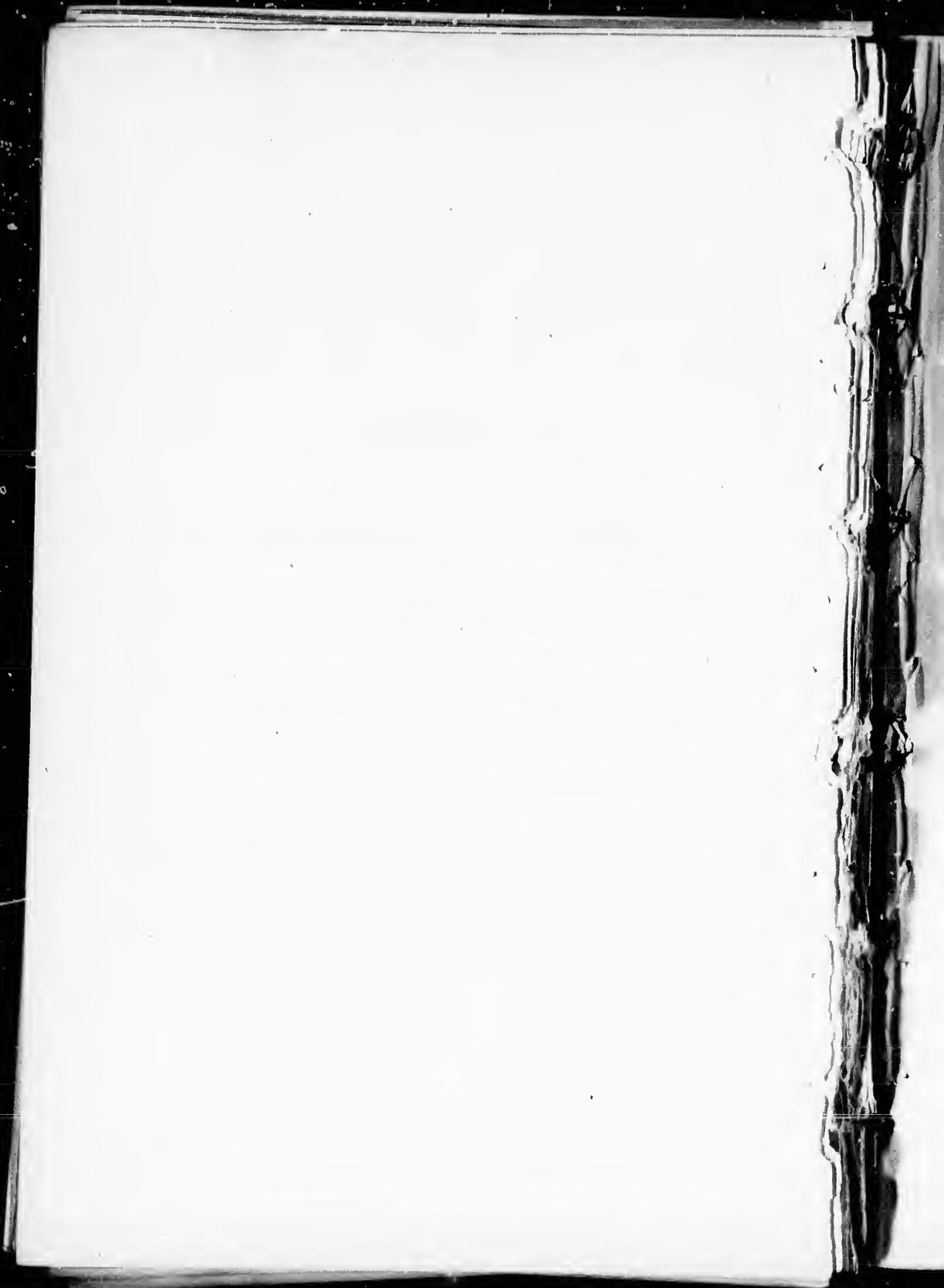
The Honorable
SIR NARCISSE F. BELLEAU,
Lieutenant-Governor, Quebec. }



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ARBITRATION
BETWEEN
ONTARIO AND QUEBEC.

MEMORANDUM SUBMITTED ON BEHALF OF THE PRO-
VINCE OF QUEBEC.

I.—FUNCTIONS OF THE ARBITRATORS—NATURE AND
EXTENT OF THEIR POWERS.

By the 142nd section of "The British North America Act, 1867," it is provided that "the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada." This brief enactment contains the only reference made in the Act to the arbitration between the Provinces of Quebec and Ontario, for the settlement of the important matters pending between them. It places in terms, within the jurisdiction of the Arbitrators the division and adjustment of the "debts, credits, liabilities, properties and assets" of Upper and Lower Canada, but the section is limited by others in the same Act. Section 107 provides that all "stocks, cash, bankers' balances and securities for money" belonging to each Province at the time of the Union, except as otherwise provided by the Act, shall be the property of Canada, and shall be taken in reduction of the amount of the respective debts of the Provinces at the Union. The public works and property of each Province, enumerated in the third schedule of the Act, are also declared, by section 108, to be the property of Canada. It is submitted for the decision of the Arbitrators whether they have jurisdiction over the assets enumerated in the fourth schedule of the Act. These assets are declared by the 113th section of the Act to have belonged at the Union to the "Province of Canada," and are not, it would seem, included in the assets, &c., of "Upper and Lower Canada," mentioned in the 142nd section. The assets, &c., referred to in the last mentioned section, were not, indeed, assets of the Province of Canada, but were, on the contrary, principally, if not wholly, liabilities of the late Province. The Act has assigned the assets enumerated in schedule 4 to Ontario and Quebec, and determined that they shall be theirs conjointly. The assets, &c., intended to be

arbitrated upon are those belonging to each section of the late Province of Canada, and which the Act has not specified nor specially assigned.

It is no doubt the interest of both Ontario and Quebec that all matters in issue between them under the Confederation Act should be brought to a speedy settlement. The question as to the jurisdiction of the Arbitrators over the assets set down in schedule 4, is not raised for the purpose of causing embarrassment but to draw attention to a point of great importance and to ensure the rendering of an award which shall be in all respects binding upon both Provinces.

From the year 1791 to the year 1841,—a period of 50 years,—the Provinces of Lower Canada and Upper Canada, which had prior to the first mentioned year formed one Province under the name of the "Province of Quebec," had a separate existence and distinct Governments. In the year 1840 the Imperial Act (3 & 4 Vict., c. 35,) intituled; "An Act to reunite the Provinces of *Upper and Lower Canada*, and for the Government of *Canada*," was passed and came into force, by Proclamation, on the 10th day of February, 1841, after which the two Provinces formed one Province of Canada. By the 50th Section of the Act a Consolidated Revenue Fund was formed, to be composed of the duties and revenue, over which the respective Legislatures of the two Provinces had, previous to the Union, the power of appropriation. The 56th section charges the Province of Canada with the respective debts of Upper and Lower Canada, the interest thereon being made, after provision for expenses of collection, &c., the first charge upon the Consolidated Revenue Fund.

The British North America Act, 1867, has dissolved the partnership which existed for upwards of twenty-six years between the late Provinces of Upper and Lower Canada. The surplus of their debt, and all the assets, credits, liabilities and properties of Upper and Lower Canada are now to be divided and adjusted under section 132 of the Act of 1867.

II.—DIVISION OF THE SURPLUS DEBT.

One of the most important tasks which the Arbitrators will have to perform is to divide the surplus debt of the late Province of Canada between Ontario and Quebec. The 112th section of the Confederation Act makes Ontario and Quebec conjointly liable to Canada for the amount by which the debt of the Province of Canada exceeds at the Union \$62,500,000; these Provinces being chargeable with interest at 5 per cent per annum upon such surplus debt.

This debt is to be apportioned by the Arbitrators between Ontario and Quebec.

It has been suggested that this division should be according to the population of each, as it stood either when the Confederation took place, or at the last census in 1861, or according to the origin of the debt.

1. To take the population, whether that of 1861 or that of 1867, as a guide, without taking into account the respective financial positions of the parties when first united in 1841, or enquiring in whose interest and in what proportion for each the subsequent indebtedness was incurred, would be most unjust. It might free from its just proportion of the debt the party which had profited the most by it, and charge it to the one which had the least interest in its being incurred, or which derived from it the smallest benefit. The injustice of this method will be made apparent by reference to a few facts and figures taken from the public returns.

The debt of Upper Canada on the 10th February, 1841, was	
1 ^o Debentures (as per Appendix No. 3 vol. 6, 1847, KKK.) cy.....	£1,398,855 9 10
Equivalent to.....	\$5,595,421 97
2 ^o Floating debt, being balance of <i>expenditure</i> over <i>receipts</i> from 1821 to 1841 (same appendix).....	330,357 57
Making together.....	\$5,925,779 54

Debt of Lower Canada, 10th February, 1841 :

1 ^o Debentures (same appendix)...	£96,718 ls. 7d.
Less—Montreal Harbour (the debt due by the same not being charged against Ontario and Quebec in the statement of affairs, on the ground that it is only a contingent liability and that the fund always paid its interest).....	£81,499 ls. 7d.
	£15,219 os. 0d.

Equal to.....	\$60,996 00
But Lower Canada had at its credit, (being excess of receipts over expenditures from 1791 to 1841.) (Appendix KKK, of 1847).....	\$250,362 41
From which deducting above debt.....	69,366 00

It is found that instead of having any debt, it had then at its command.....	\$189,306 41
Striking out this amount is equivalent to its addition to the debt of Upper Canada.....	189,306 41
Which would then stand at.....	\$6,115,085 95

Taking the population of each at that date, Upper Canada, (see census 1851, vol. 1, p. xvii) was 465,377, and Lower Canada (making it as near as anterior and subsequent census permit, to wit : census of 1831 and 1844, there being none for that province in 1841) was 663,258, it establishes that, to be on an equal footing according to population, Lower Canada should have entered the Union with a debt of..... \$8,715,630 60

Must not such disproportion be taken into account in the division of the debts, credits, properties and assets ; and the more so, since it existed at a time, when improvements of all kinds were so much needed, and money expended in roads and other public works, would, no doubt, have given to Lower as it did to Upper Canada, an impetus which would have given an immense augmentation of population, resources and wealth ?

II. The other mode suggested, if its adoption was possible, would be more consonant with the requirements of justice. But to be so, recourse must be had to the true and real origin of the debt, not to that which is the work of mere fancy. It would require to go back to the union of the two Canadas, take their respective debts and credits at that time, examine in detail all the expenses incurred since, note specially the province for which or in whose interest it was incurred, and determine thereby the share of each. Such a work would not only entail an amount of labor, and a consideration of circumstances which the arbitrators are not expected to undertake, but would also require a minute examination of all the administrative acts of the different governments since 1841, and an accurate appreciation of the same. In fact the adoption of this mode is impracticable.

To take the assets as a guide would be most fallacious, and the more so if only a part of them were taken into consideration. It has often occurred that very important and advantageous outlay for the part of the Province in which it was made, was the most unproductive to the treasury. For instance, the roads in Upper Canada, on which very large sums of money were expended, which tended as much if not more than any other expenditure to open up and colonize Ontario and thereby create its wealth ; government, nevertheless, felt it its interest to surrender for a nominal consideration to private companies or to the several municipalities within which they lie. The assets are silent on that head. Again the amount set down as the value of public works retained by the Dominion may be fairly contested as between Ontario and Quebec. To the Dominion they are worth their present value ; but in determining the origin of the debt, it is not their present value but their original cost which should be considered.

III. The plainest, easiest, and it may be said the only just and practicable way of settling the question, is to treat the case as one of ordinary partnership, and apply the rules which govern the partition of partnership

estates, rules which are the same in the old Roman, and in the modern English and French law.

Adopting this principle, the Arbitrators would treat the union of the two Canadas, from 1841 to 1867, as having been equally advantageous to both, or, in other words, as if each had derived the same benefit from it. Considering that Lower Canada, which came into the Union in 1841 with a large sum at its credit, and a population about one half larger than that of Upper Canada, left it in 1867 with comparatively limited resources, and that although Upper Canada entered it with an exhausted treasury and a small population, it left with a much larger number of inhabitants, an annual subsidy which exceeds by \$237,620, representing a capital of \$3,960,333.34, that of its sister Province, and great wealth, it will be admitted that this hypothesis is not partial to Quebec. It will however do away with what has been shown above to be impracticable, the minute inspection and appreciation of all the accounts of the Province of Canada during the twenty-six years of its existence, and will leave only the consideration of the financial position of Upper and Lower Canada, when they became united, and the debts, credits, properties or assets, the partition of which is rendered necessary by the dissolution of their partnership.

According to this method of division each Province ought first to assume from the excess of debt a sum equal to its own debt, when it entered the Union in 1841, and the balance ought to be equally divided.

Whatever may be urged against this mode, it is nevertheless the only just and reliable one. It has this advantage over all other modes, that being the rule which governs the relations of man with man in similar positions, it cannot give rise to grounds of complaint nor to suspicions of favor, unfairness or injustice.

Assuming it to be impossible, as above demonstrated, to ignore the relative financial positions of the two Provinces in 1841, even if population were taken as a basis for the division of the surplus debt, the following concise statements will prove that the adoption of this arbitrary rule, namely population, would free Quebec from a larger amount of the debt.

Debt of Upper Canada in 1841 (as above stated, p. 4) :

1. Debentures.....	\$5,595,421 97
2. Floating debt.....	330,357 57

\$5,925,779 54

Debt of Lower Canada in 1841 :

1. Credit.....	\$250,302 41
Less debentures.....	60,996 00

\$ 189,306 41

Striking it off makes, as already stated, debt of
Upper Canada, equivalent to..... \$6,115,085 95

Surplus debt payable by Ontario and Quebec on terms agreed upon at the Montreal Conference.....	\$10,424,853	87
Deduct for Upper Canada its debt in 1841.....	6,115,085	95
	<u>Balance.....</u>	<u>\$4,309,767</u>
		92

divided equally, it gives each Province..... \$2,154,883 96

According to population in	1861.	1867.
It gives Ontario...	\$2,399,382 48	\$2,512,650 89
Quebec...	1,910,385 44	1,797,117 03
	<u>\$4,309,767 92</u>	<u>\$4,309,767 92</u>

So that, by the mode suggested, Ontario would on the surplus of debt be charged with \$244,498 52, less than according to its population in 1861, and with \$357,766 93 less than its share by its population in 1867.

III.—ASSETS APPEARING IN STATEMENT OF LIABILITIES, &c.

The Statement of liabilities contains several items which must be specially considered. They are heads of indebtedness on the part of the Dominion, and are said in the statement of affairs to be either payable in cash or subject to be retained in the hands of the Dominion at interest. All those which are payable directly either to individuals or to corporations, whether public or private, need not be considered. The Federal Government will have to pay them to the creditors wherever they are and irrespective of their domicile or of the Province where they reside. They have a private and direct claim against the Dominion which could not free itself by handing over the amount to the Province to which such creditors are presumed to belong.

But others are due and payable by the Dominion to the Governments of Ontario and Quebec, to be made part of their own general funds and either employed as first contemplated or otherwise as their respective Legislatures shall think fit. They are balances of sources of public revenue, or the proceeds of public properties (which is the same thing) of the late Province of Canada, set apart for special services of a general nature and which would have been defrayed out of the common treasury, had not Government made, for purposes of its own, special provisions for them and affected for their requirements certain special heads of public revenue. So much so, that in some instances (and amongst others the common school fund), the sums required for this special service were, upon a vote of the Legislature, taken from the consolidated fund, whilst the special fund affected to the same service was allowed to accumulate. They are to be viewed in the same light as sums of money voted for a special service and which, not being required or employed, fall into the public common chest.

No individuals or corporations could legally receive them from the Government of the Dominion, which must pay them to the Government of either Province to be employed for general or special purposes as their Legislatures may decide. They are not mentioned in the British North America Act, 1867, except that they constitute the only *credits* which Upper or Lower Canada ever had or could have had since 1841, distinct from those of the Province of Canada. They therefore fall under section 142 of the Act, and are to be divided and adjusted as all other *credits, properties, assets, debts and liabilities*.

THE COMMON SCHOOL FUND :

It is admitted that this Fund has to be divided. It consists of :

1. Amount in liabilities..... \$1,733,224 47
2. Outstanding instalments on lands sold..... 1,704,738 00
3. 8,959 acres of land unsold.

(The two last items taken from Mr. Langton's Report, p. 8).

The other items are :

MUNICIPALITIES FUND UPPER CANADA :

This fund is the proceeds of the sale of clergy reserve lands. Consolidated Statutes of Canada, chapter 25.

When the clergy reserves were abolished, it was enacted that the proceeds of the lands which had been set apart for the maintenance of a protestant clergy, deducting the charge on the same, namely, the stipends and pensions, should be apportioned amongst the different municipalities, in proportion to the rate-payers, by the Government of the late Province of Canada, which, on the first of July, 1867, appears to have had the amount in its treasury. Their proceeds were therefore public property of the Province of Canada, and the balance now in the hands of the Dominion when divided and apportioned, will be part of the Consolidated Fund of the Province receiving it. But there is a special reason. The principal and interest of the Municipal Loan Fund are assets in schedule 4, which the act made the conjoint property of Ontario and Quebec, and by law the share of the Municipal Fund which might otherwise be payable to a municipality, in arrears to the Municipal Loan Fund, is to be an offset against said arrears, so long as the whole indebtedness of said municipality to the Municipal Loan Fund shall not have been paid. It would seem to have been treated so, and that part of the balance now due to the Municipalities Fund by the Dominion is composed of amounts retained for arrears ; and in it, therefore Quebec independently of any other reason has an interest.

U. C. IMPROVEMENT FUND :

By the school lands Act C. S. C., c. 26, s 7, the Governor in Council may reserve one-fourth of the proceeds of the school lands in any county, and one-fifth of unappropriated Crown lands in the same for public impro-

vements within the county. The funds so realized are to be expended under the direction of the Governor in Council, and an account of them laid before Parliament every year. This fund was therefore under the immediate control of the Executive and was to be appropriated by it for works which it approved. Its destination is a public one; no one can receive it but the Government of either Province, and it will then form part of its general or consolidated fund.

U. C. GRAMMAR SCHOOL FUND, and L. C. SUPERIOR EDUCATION FUND :

These funds are identical, and must both be treated as the other funds above enumerated.

U. C. GRAMMAR SCHOOL INCOME FUND :

This Income fund needs no special notice as it must be governed by the same rules as the fund which produced it.

U. C. BUILDING FUND. (Consolidated Statutes U. C., ch. 70) :

This is also an amount remaining beyond what was required for a special public service (section 3). The interest of which, when paid by the Dominion, will be employed in the manner directed by a vote of the Legislature of the Province receiving it. (Section 2).

It is clearly a credit for general purposes, the construction of public buildings, and necessarily falls under section 142 of B. N. A. Act, 1867.

BALANCES OF SPECIAL APPROPRIATIONS :

Ontario.....	\$218,473 37
Quebec.....	\$99,482 20
Less,—Services anterior to 30th June, 1867, paid by Quebec since.....	6,724 94
	\$92,757 26

Expenditures on appropriations for local purposes should, and must have been stopped after the 30th June, 1867. Their remaining unexpended, shows that they were not required for the special object for which they were voted. Far from there being any obligation on the part of the Government of either Ontario or Quebec to employ them for the special services for which they were originally intended, they could not do so without authority from their respective legislatures. The amount will, of necessity, fall into and form part of their respective consolidated funds. Having been included in the statement of debt, they become joint *credits* of Upper and Lower Canada, and must under section 142, B. N. A. Act, 1867, be divided and apportioned between them.

WIDOWS' PENSIONS, &c, U. C. :
Do do do L. C. :

These items are to be governed by identically the same rule as the

Municipalities Fund U. C. ; for the accumulated amount of the funds, after all charges payable by law out of them have fallen in, are to be paid to the Municipalities fund.

COURT HOUSES, L. C., and MONTREAL DISTRICT COUNCIL :

Must follow the rule adopted for the others whatever it is.

CROWN LANDS SUSPENSE ACCOUNT :

The amount of this account is stated in the statement of liabilities, at.....\$112,748 63

Money has been, from time to time, paid to the Crown Lands Department on account of sales which, for some reason, could not be carried out at the time. Such payments went to Suspense Account, and when after a while the difficulty was removed, or found unsurmountable, the payment went to the credit of the proper account, or the money was refunded. The Board of Audit reports that of the whole account there may perhaps be \$25,000 00 which are really in suspense; and that the residue represents nothing but bad book-keeping. It has been left out of the account in the statement of liabilities and is to be divided between the two Provinces.

CROWN LANDS DEPARTMENT :

The amount of this account is stated in the statement of liabilities, at.....\$253,089 76

The Board of Audit speaking of this item say: "it represents partly "doubtful book-keeping, though to a very much smaller extent than the "Crown Lands Suspense Account, partly valid assets, or money due by "solvent agents, unfortunately also to a small amount, and mainly balances "due by defaulting agents." This item is struck out of the statement and left to be divided between Ontario and Quebec.

TRUST ADVANCE ACCOUNT :

The amount of this account is stated in the statement of liabilities, at..... \$ 1,468 60

The Trust funds have been credited with the amount received by the agents previous to said agents accounting for the same. The above item appears to be balances due by agents and should, as stated by the Board of Audit, be treated as Crown Lands Department.

These three last amounts are to be divided according to the principle adopted for the division of the other assets.

" MONTREAL HARBOUR..... \$181,426 67."

This amount has been struck out of the statement of liabilities, because the Trust has always paid its interest. The contingency of the Dominion

ever being called upon to make any payment under the guarantee of the late Province must, however, be provided for by the Arbitrators.

The securities or investments on account of Trust funds, being part of the funds themselves, must be treated as the funds to which they belong.

There may be other assets than the above which will require to be dealt with. Should any others appear, the undersigned reserve the right to submit them to the consideration of the Arbitrators.

IV.—INDIAN ANNUITIES.

The British North America Act, 1867, reserves to the Parliament of Canada the exclusive legislative authority in matters relating to Indians and Indian lands; its Executive has the superintendence of all Indian affairs. This rendered necessary the charge 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, as just 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. The undersigned have been, as yet, unable to obtain a Statement of these unsold lands and arrears

By section 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 Government and the Indians ought to be governed by the same rules as similar contracts between individuals. The lands, being within the Province of Ontario, became, under said section 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 the lands and arrears representing the capital of these annuities.

V.—ASSETS IN SCHEDULE 4.

The 113th section of the "British North America Act, 1867," provides that "the assets enumerated in the fourth schedule to this Act, belonging, "at the Union, to the Province of *Canada*, shall be the property of *Ontario* "and *Quebec* conjointly." These assets are set down in the fourth schedule as follows:

Upper Canada Building Fund.	
Lunatic Asylums.	
Normal School.	
Court Houses in Aylmer,	} Lower Canada.
Montreal,	
Kamouraska.	
Law Society, Upper Canada.	
Montreal Turnpike Trust.	
University Permanent Fund.	
Royal Institution.	
Consolidated Municipal Loan Fund, Upper Canada.	
Consolidated Municipal Loan Fund, Lower Canada.	
Agricultural Society, Upper Canada.	
Lower Canada Legislative Grant.	
Quebec Fire Loan.	
Temiscouata Advance Account.	
Quebec Turnpike Trust.	
Education.—East.	
Building and Jury Fund, Lower Canada.	
Municipalities Fund.	
Lower Canada Superior Education Income Fund.	

The question of jurisdiction in reference to these assets has been already referred to. Until it is decided by the Arbitrators, the undersigned will abstain from any remark respecting these assets. They reserve the right, however, to submit a short memorandum respecting them, should it be determined that the award of the Arbitrators is to include the division and adjustment of the assets in the fourth schedule.

In conclusion, the undersigned desire to state that the foregoing is little more than a synopsis of the propositions of the Province of Quebec. They will be prepared to support the pretensions advanced in this memorandum by oral arguments upon the whole of the subjects involved in this arbitration, or upon such points as it shall please the Arbitrators to hear them.

N. CASAULT.
THS. W. RITCHIE.

QUEBEC, DECEMBER, 1869.



ARBITRATION
BETWEEN
ONTARIO AND QUEBEC.
—
ANSWER TO THE CASE OF ONTARIO.



ARBITRATION BETWEEN ONTARIO AND QUEBEC.

ANSWER TO THE CASE OF ONTARIO.

EXCESS OF DEBT.

The Province of Ontario, in the case submitted on its behalf, suggests three modes of dividing the excess of debt. 1. Proportion of local debts, 2. Population in 1861, 3. Proportion of capitalized assets.

1. PROPORTION OF LOCAL DEBTS.

To arrive at the amount of these local debts, Ontario finds it convenient to limit their enumeration to the assets in Schedule 4, taken at the face value put upon items similar in name in the Public Accounts, and to what it states as being the expenditure for the seigniorial legislation. This suggested investigation, by the origin of debt, is partial and incomplete, it wholly ignores the large expenditure made, during the Union, for the local advantage of the respective Provinces, and which have left no assets to represent such outlay.

It must have escaped the mind of the framer of the case for Ontario :

1. That the debt of Upper Canada, at the Union in 1841, was a local debt..... \$ 5,925,779 54
2. That the interest on the same was also a local debt.. 7,578,744 65
3. That the Upper Canada Improvement Fund, which had in fact no counterpart in Lower Canada, which was the proceeds of Public Lands, and produced during the six years of its existence..... 425,527 62
was also a local debt.
4. That the excess of the proceeds of the Municipalities Fund in Upper Canada over that in Lower Canada, which were both proceeds of Public Lands, should also have been noted as a local debt or expenditure.

It stands thus: U. C.....	\$3,493,514 88
do L. C.....	300,747 50
Difference	\$3,192,767 38
Making altogether.....	\$17,122,819 19

Amount which should have been added to what is stated in the case of Ontario as its local debt, and which would have raised it from \$9,833,733.33, amount therein stated, to \$26,956,552.52.

Assuming for a moment the figures of Ontario to be correct, its share and that of Quebec, in the excess of debt, would then be :

Ontario.....	\$8,150,591 34
Quebec.....	2,388,962 58

Many other similar cases of expenditure could be referred to, but it is not necessary to go into further details to demonstrate the unfairness of the first mode suggested by Ontario. If the origin of the debt is to be taken as a guide, "recourse must be had, as already stated for Quebec, to the true and real origin of the whole debt, not to that which is the work of mere fancy." This seems to be impracticable. If, however, this method of dividing the excess of debt is adopted, Quebec will be prepared to show that it will make its position still better than the adoption of that suggested in its case.

2. POPULATION.

It has already been shown, in the case for the Province of Quebec, that: "That to take the population as a guide, without taking into account the respective financial position of the parties when first united in 1841, or enquiring in whose interest and in what proportion for each the subsequent indebtedness was incurred, would be most unjust." That view was sustained by the statement of the disproportion of debt in 1841, which was there established to have been, against Lower Canada, \$8,715,630.60. It was felt that the consideration of expenses incurred during the Union, from 1841 to 1867, could only be partial, limited and incomplete, and on that ground Quebec, in its case, mentioned none, but as Ontario has referred to a few special debts created since, and offered them as the guide in the division of the excess of debt, a short reference to those incurred immediately after the Union, or incident thereto, will demonstrate that this disproportion was much larger, and will make still more manifest and apparent the injustice of the adoption of this second mode, suggested by Ontario for the division of the excess of debt.

Referring to the first session of the first Parliament of the United Canadas, which was held but five months after their Union, it will be found that the following appropriations were voted for each former Province.

	Upper Canada.	Lower Canada.
4 and 5 Vic., chap. 28 (a).....	Stg., £1,465,682 0 0	Stg., £153,400 0 0
	Cy., £1,628,535 11 1	£170,555 11 1
chap. 34.....	Cy., 500 0 0	
chap. 44.....	Cy., 447 4 2	
chap. 46.....	Cy., 6,801 14 1 $\frac{3}{4}$	
chap. 50 (b).....	Cy., 39,649 16 6	Cy., 8,436 13 4
	£1,676,034 5 10 $\frac{3}{4}$	£178,992 4 5

(a) £28,000 for works on the Ottawa, and £1,500 for a road from L'Orignal to the St. Lawrence have been omitted.

(b) £1,666 13s. 4d. for Geological Survey are omitted.

Making for Upper Canada.....	\$4,704,137 18
for Lower Canada.....	715,968 88

But as the population of Lower Canada was then one-half larger than that of Upper Canada, the share of appropriations of the former, if population had been taken as a guide, should have been.....

9,555,185 58	
Less—Appropriated as above.....	775,968 88

Difference.....	\$8,839,216 70
adding to this disproportion that of the debt as above.....	8,715,630 69
and the simple interest (though Quebec might charge compound interest, and reserves its right to do so, if the origin of the debt is gone into), from 10th February, 1841, to 30th June, 1867, on the debt which Upper Canada brought in...	7,578,744 65

The whole amounts to the large sum of..... \$25,133,591 95

Can this immense disproportion in the financial position of the two Canadas be ignored, in the consideration of this question, without glaring injustice? Yet if the second mode suggested by Ontario for the division of the excess of debt is adopted, this will be its result.

Common School Grants and Municipalities Fund for Upper Canada, the two examples quoted from the previous legislation, are not in point. The Municipalities Fund, Upper Canada, is not divided according to population, but, between the different municipalities, according to the number of rate-payers, whose names appear on the assessment roll; a very different thing. As to Common School Grants, they could only be made according to population; the educational wants of a country being, of necessity, governed by the number of its inhabitants.

3. PROPORTION OF CAPITALIZED ASSETS.

The Assets which are capitalized, being the same as those used by Ontario to arrive at what it calls the proportion of local debts, and thereby to the first mode of division it suggests, the same objections apply to both; but this third mode is less admissible still, and is based on data more erroneous if possible. It is altogether illusory and based upon no principle. The glaring disproportion in the value set down in Schedule D, under the plan, of the Consolidated Municipal Loan Funds of Upper and Lower Canada respectively, is a sufficient illustration of this.

It may be said that Ontario's case libels that rich Province; when, in the capitalization of Assets, it rates it as unable to pay more than \$1,920,505.38 out of \$7,083,220.14 it owed, on the first of July, 1867, to the Municipal Loan Fund; and that Quebec should almost feel obliged for the

good opinion therein expressed in its favor, when rated as able to pay \$1,410,926.38 out of the \$2,939,429.97 it owed that fund at the same date.

The Treasurer of Ontario is not so despondent. In his last Budget Speech, (pamphlet page 15), while bearing this arbitration in mind, he says, speaking of the Municipal Loan Fund of Upper Canada, "*this Fund is a permanent source of Revenue and might be brought to yield \$200,000 00 per annum,*" which at 6 per cent makes a capital of \$3,333,333.33.

Moreover, in this capitalization of Assets, the value of those which seem to have arisen in Lower Canada is set down, in the case submitted for Ontario, at one half of what is given by Mr. Langton as their face value; though, taking them to be what Mr. Langton states, one million of them are indebtedness of that part of the late Province and therefore *no real assets*; and others, such as the Quebec Fire Loan, are known to be for the most part worthless. On the other hand, those in Upper Canada, which, according to the same, are almost all valid Assets, are capitalized at less than one-third the same face value.

Nothing further need be said to show the unsoundness of this third mode of dealing with the debt.

THE SCHOOL LANDS.

Ontario claims as its own the unsold school lands and the balances due upon the lands sold. This claim cannot be allowed.

Reference to the law (Consolidated Statutes of Canada, ch. 26) cannot leave a doubt as to its creating a trust. 1,000,000 acres of land were, under the law, set apart and appropriated by the Governor in Council for Common Schools; they were to be sold by the Commissioner of Crown Lands, and the proceeds, *whether invested or not*, were to form the Common School Fund, which was to yield at six per centum \$400,000.00. The capital of the fund to yield that amount yearly would require to be \$6,666,666.66. It is also enacted that the Fund or Income thereof shall not be alienated for any purpose whatever, but shall remain a perpetual fund for the support of Common Schools and the establishment of township or parish libraries. Until the fund produced \$200,000.00, that amount was to be completed from the Consolidated Revenue Fund and divided (according to population by the anterior census,) between Upper and Lower Canada. It is evident that, until the amount above mentioned \$6,666,666.66 is created from the lands in question, the unsold lands and the arrears due on those sold are subject to a Trust under the terms of the Statute, in conformity with the 109th section of the British North America Act, 1867. Has not Lower Canada as direct an interest in both the lands and the amounts due by the purchasers of the same as Upper Canada? Such is, at all events, the opinion of the Treasurer of Ontario. In his Budget Speech, (pamphlet p. 16,) speaking of the Common School Lands, he says: "*Of the purchase money due for these lands, there remains uncollected, principal and interest, \$1,260,000.00. Of this amount, I assume that Ontario is entitled to five-ninths*" (about the proportion of its population in 1861 to that of Quebec). The Assembly of

Ontario may moreover be said to have assented to this statement by its silence : none of its members having expressed a contrary opinion.

CLAIMS ARISING OUT OF THE SEIGNIORIAL TENURE ARRANGEMENT.

Under this head, the Province of Ontario has assumed to go into an investigation of the origin of a part of the debt of the late Province of Canada, for the purpose of urging a large claim against Quebec, composed of the different items set down. If this is intended as a separate and distinct demand on the part of Ontario, the Arbitrators have no jurisdiction to deal with it, as it is not a "debt" nor an "asset" of Upper or Lower Canada, within the meaning of the 142nd section of the British North America Act, 1867. If intended to be used in the division of the excess of debt by its origin, this mode involves not only the consideration of these isolated items but a thorough investigation and analysis of the Public Accounts during the Union, and of the financial position of each Province when they joined.

Quebec might, with equal justice, allege that, supposing Lower Canada to have benefited by that Legislation to a larger amount than Upper Canada, it was but a small compensation for \$7,578,744 65 interest paid by United Canada on the debt of Upper Canada since 1841, for the \$3,192,767 38 excess received by Upper Canada from its Municipalities Fund, for the \$425,527 62 which Upper Canada drew, under the name of "Upper Canada Improvement Fund," from what should have been common. Those three sums amounting together to \$11,197,039 65 and for which, as well as for many similar ones, Lower Canada received no compensation whatever, can fairly be opposed to that claim.

It is moreover contended that, the Legislature of Canada having made what it then considered a fair compensation to Upper Canada for the burden which the abolition of this Tenure threw upon the Canadian Treasury (Consolidated Statutes Lower Canada, ch. 41, sec. 37 and 87,) and that part of the Province having, by its members in both Houses and in the Executive, agreed to and accepted the bargain, it cannot, under a new state of things, set out other claims for pretended inequality in the then Legislation which was final.

Quebec reserves to itself the right to enter into a special examination of the different items of this claim, if the origin of the debt is inquired into, but cannot dismiss its present consideration without noting.

1. The enormity of a pretension, which would give Upper Canada (or Ontario) over \$6,600,000 00 of indemnity for a legislation which appears, by the statement of liabilities, to have been altogether, including the indemnities to Upper Canada and the townships, a charge of little more than \$5,000,000 00 on the Consolidated Fund.

2. Upper Canada was credited for the full amount of its seigniorial indemnity, which, in schedule A and B in the case of Ontario, is not only credited to reduce its share of local debts, and thereby, by the mode it sug-

gests, its share of the excess of debt, but even apportioned on the capital and interest of the Municipal Loan Fund, contrary to what it has always been in the Public Accounts, and that to reduce the balance by \$264,923 75.

3. Items 2 and 5, Interest on Municipal Loan Fund Lower Canada \$782,742 83, and Part capital of seigniories of St. Sulpice \$196,719 66, form part of the items Municipalities Loan Fund, and Municipalities Fund in schedule C containing, as pretended by Ontario, an enumeration of the local debts of Lower Canada. After having used them in said schedule C to diminish its own share of the excess of debt, Ontario claims their full amount against Quebec, as a debt for which it received no compensation. And these two amounts, being in schedule 4 made, by the Act, the conjoint property of Ontario and Quebec, it will also have its share of them as such. These three operations would certainly be profitable.

4. The capital of Quint was not a debt due to nor paid by Government, but an amount deducted from the indemnity due the seigniors for the abolition of their rights.

5. The receipts from the Seignior of Lauzon, and from tavern and other licenses were, as by law directed, capitalized on their yearly average during the previous five years. To argue that, because the amount of the proceeds fell afterwards, a compensation should be given to Ontario, is maintaining that legislation founded on sound basis, should nevertheless be changed every year as these sources of revenue diminished or augmented. Would Ontario contend that Quebec, in the latter case, would have been entitled to a compensation?

The Arbitrators having no jurisdiction over the "Statement of debt of the Province of Canada," the undersigned think it useless to allude to that made out by Ontario in its case.

Until the Arbitrators have decided the question raised by Quebec, as to their jurisdiction over the assets in schedule 4 of the Act, its Counsel will refrain, as already mentioned in their case, from any remark respecting them, save that the mode, suggested by Ontario, of leaving each asset with the Province in which it arose, would be contrary to the intention of the legislator, and to the law. If such an apportionment had been contemplated, section 113, instead of making them the conjoint property of Ontario and Quebec, would have, as for the lands in section 109, made them the property of the Province in which they were situated or arose.

The Province of Quebec again claims the right to urge any further matter upon the consideration of the Arbitrators, either in answer to the case of Ontario or to any other claim which the latter may be allowed to advance hereafter, and also to submit on its own behalf any further demand which the circumstances of the case may suggest, and also to offer by its counsel any statements or arguments which may be necessary to elucidate the whole or any point of its claims or its answers.

N. CASALT,
THOS. W. RITCHIE, Q. C.
Counsel for Quebec

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ARBITRATION

BETWEEN

THE PROVINCES OF ONTARIO AND QUEBEC.

STATEMENT OF CASE OF THE PROVINCE OF ONTARIO.



ARBITRATION

BETWEEN

THE PROVINCES OF ONTARIO AND QUEBEC.

STATEMENT OF CASE OF THE PROVINCE OF ONTARIO.

The Province of Ontario submits the following Statement of case to the Board of Arbitrators in accordance with the resolution adopted at their last meeting.

The Province of Ontario has in preparation of the case, arranged the subjects for consideration under the following heads ;

1. The whole debt of Canada, at the time of the Confederation, and the excess of that debt, beyond the sum of \$62,500,000, allowed by the 112th section of the act of the Imperial Parliament 30 and 31 Vict., ch. 3, called the British North America Act, 1867.
2. The amount and specification of assets under Schedule 4 of the British North America Act, 1867.
3. The proportion of the whole debt of Canada created for the local purposes of the present Province of Ontario.
4. The proportion of the whole debt of Canada created for the local purposes of the present Province of Quebec.
5. The proportion of the assets belonging to the Provinces of Ontario and Quebec respectively.
6. The division of the excess of debt beyond \$62,500,000, between the Provinces of Ontario and Quebec.
7. The division of the assets between the Provinces of Ontario and Quebec.
8. The question of the School lands.
9. Claims arising out of the Seigniorial tenure arrangement.

No. 1.

The whole debt of Canada at the time of Confederation, and the excess beyond \$62,500,000.

Upon this head, Ontario contends that the whole debt of Canada at the time of the Confederation shall be taken at the sum of \$73,039,553.92, as shown by Schedule AA and the excess beyond \$62,500,000, at the sum of \$10,539,553.92 leaving this latter sum as the amount to be dealt with by the Arbitrators in the adjustment of the debt between the Provinces.

No. 2.

The amount and specification of assets under Schedule 4 of the British North America Act, 1867.

The amounts and specifications are shown on the Schedule hereto marked A.

Nos. 3 and 4.

The proportion of the whole debt of Canada, created for the local purposes of Ontario and Quebec respectively.

These several proportions are shown in the Schedules hereunto annexed, and marked for the Province of Ontario B, and for the Province of Quebec C.

No. 5

The proportion of the assets under Schedule 4, belonging to the Provinces of Ontario and Quebec, respectively.

These several proportions are shown in the schedules hereunto annexed, and marked D for the Province of Ontario, and E for the Province of Quebec.

No. 6.

The divisions of the excess of debt beyond the sum of \$62,500,000 between the Provinces of Ontario and Quebec.

The excess of debt beyond \$62,500,000 being assumed by Ontario at \$10,559,553.92 the Province of Ontario submits to the Arbitrators its view of the manner in which that excess should be apportioned. According to Schedules B and C, showing the debts created for local purposes in the Provinces of Ontario and Quebec, the amount of those debts is \$17,735,579.52 of which \$9,833,733.33 are of the Province of Ontario, and \$7,401,046.19

of the Province of Quebec, and the Province of Ontario is willing that the proportion, that it shall bear of the excess of debt above \$62,500,000 shall be determined by a charge against it in a ratio of either its debt created for local purposes, to the excess, or of the population of Ontario and Quebec respectively, according to the last census, or apportioned to the value of the assets of Quebec and Ontario, capitalized at six per cent on the average rate of interest they produced for the last four years and a half; but such interest not to be allowed beyond six per cent where the average has been more than six per cent. The result of each of these modes upon the basis offered by the Province of Ontario as follows:

No. 1.

PROPORTIONS OF LOCAL DEBTS.

Debts of Ontario and Quebec for local purposes.....	\$17,735,579 52
Local Debt of Ontario.....	9,833,733 33
Local Debt of Quebec.....	7,901,046 19
Excess of Debt of Canada.....	10,539,553 92

As the total local debt, \$17,735,579,52, is to the excess of the debt \$10,539,553,92, so is the local debt of Ontario, \$9,833,733,33, to the amount of debt of Canada to be hereafter borne by Ontario, and the same as to Quebec producing the following results:

Total local debt,	Excess of debt,
Ontario.....\$17,735,579 52	\$10,539,553 92
Local debt,	Result;
"\$ 9,833,733 33	\$ 5,845,416 01
Total local debt,	Excess of debt,
Quebec.....\$17,735,579 52	\$10,539,553 92
Local debt,	Result,
"\$ 7,901,046 19	\$ 4,694,137 91

and thus making the Province of Ontario liable for \$5,845,416,01, and the Province of Quebec liable for \$4,694,137,91.

No. 2.

The population of the Provinces of Ontario and Quebec, according to the last census in 1861, showed the following numbers: Ontario, 1,396,091; Quebec, 1,111,566, or a total population of 2,507,657. If this be taken as the basis the case will stand thus:

Total population.....	2,507,657
Population, Ontario.....	1,396,091
Population, Quebec.....	1,111,566
Excess of Debt.....	\$10,539,553,92

and this proportion will be as the total population to the excess of debt, so will the population of Ontario and Quebec respectively be to the excess of debt to be borne by them, producing the following results :

	Total Population.	Excess of Debt.
Ontario.....	2,507,657	\$10,539,553 92
"	Local Population.	Result,
"	1,396,091	\$ 5,867,738 43
	Total Population.	Excess of Debt.
Quebec.....	2,507,657	\$10,539,553 92
"	Local Population.	Result,
"	1,111,566	\$ 4,675,815 49

thus making the Province of Ontario liable for \$5,867,738.43, and the Province of Quebec liable for \$4,675,815.49.

No. 3.

PROPORTION OF CAPITALIZED ASSETS.

According to the schedule A hereto, the total assets of both Provinces amount to \$11,208,637.30, the proportion of Ontario being \$7,017,604.35, and of Quebec \$4,191,032.95, according to the schedules D and E hereto. These respective assets capitalized on their average rate of interest during the last four years and a half at six per cent. by the same schedules D and E, would produce for Ontario \$2,117,320.99, and for Quebec \$2,087,001.13, or a total of \$4,204,322.12. Taking this as a basis the case will stand :

Total Capitalized Assets.....	\$ 4,204,322 12
Capitalized Assets, Ontario.....	2,117,320 99
Capitalized Assets, Quebec	2,087,001 13
Excess of Debt.....	10,539,553 92

and the proportion will be as the total capitalized assets are to be capitalized assets of each Province, so is the excess of debt to the debt to be borne by each Province, as follows :

	Total Capitalized Assets.	Local Capitalized Assets.
Ontario.....	\$ 4,204,322 12	\$2,117,320 99
"	Excess of Debt,	Result,
"	\$10,539,553 92	\$5,304,184 41
	Total Capitalized Assets.	Local Capitalized Assets.
Quebec.....	\$ 4,204,322 12	\$2,087,001 13
"	Excess of Debt.	Result,
"	\$10,539,553 92	\$5,235,369 51

thus making the Province of Ontario liable for \$5,304,184.41, and the Province of Quebec liable for \$5,235,369.51.

The Province of Ontario is unable to suggest for the consideration of the Arbitrators any other basis upon which a division of the debt could justly be made, and the reasons for each mode of apportionment as follows:

No. 1.

It is clear that of the whole debt of the late Province of Canada, \$17,735,519.52 has been incurred for the local purposes of Ontario and Quebec. Of this sum, in the charge against the Dominion Government of \$62,500,000, \$7,196,025.60 has been absorbed, leaving only \$10,539,553.92 to be provided for, and it seems a fair distribution of this sum that it should be borne by the respective Provinces in the proportion in which they received the monies raised for local purposes, and of which it formed a part.

No. 2.

The Parliament of Canada itself adopted this apportionment according to population, when dealing with the Municipalities Fund for Upper Canada, and that fund is still so divided; also as to the Common School Grants. This basis of division would seem to carry out the principle of No. 1, and would have the concurrence of two things: the larger population, and the receipt of the greater amount of money for local purposes.

No. 3.

This basis of apportionment of the assets was suggested since the commencement of the Arbitration, and can only be used as by agreement,—but it was considered a just proposal, as these assets arose from and formed part of the debt of the Province of Canada, and were not for general but for local purposes, that their value should be ascertained through the annual average income for four years and a half prior to 30th June, 1867, derived from the institutions owing the several debts which formed the assets, and thus be made the basis for apportioning the debt itself.

No. 7.

The division of the assets between the Provinces of Ontario and Quebec.

By Schedules A, D, and E, the Province of Ontario has submitted to the Arbitrators statements of the assets to be divided, and the manner of division.

In proposing this division, the Province of Ontario has left each asset with the Province in which it arose and to which it seems naturally to belong, and it is believed that no more fair or just division can be arrived at. The actual value of the assets, if taken according to the proposal of capitalization on the average income of four years and a half, as shown by

Schedules D. and E., is equally favorable to the fairness of this division, as, although the nominal par value of the assets as stated in those Schedules, shows an excess for Ontario of \$2,826,571.40, the actual value, so capitalized, gives only \$30,312.86 more to Ontario than to Quebec.

No. 8.

THE SCHOOL LANDS.

These lands are derived altogether from the Province of Ontario, and that Province claims the whole balance, whether of lands or money, that remain at the time of the Confederation.

These lands were set apart for a capital for a Common School Fund by Statute of Canada, 12 Vict., ch. 200, sec. 1, and were to produce an income of \$400,000 per annum. By the second section of the same Act the capital of the fund was to be invested as therein mentioned to produce this annual income. The fund derived from these lands was never so invested by the Province of Canada, but was carried into the general account, and so has become a part of the debt of Canada, but the unexpended balance of the lands and funds, amounting to \$807,954.95 remains to be dealt with by the Arbitrators. Under Section 109 of the British North America Act, 1867, all lands, etc., and monies arising from lands, etc., belonging to the several Provinces, shall belong to the several Provinces in which the same are situate or arise, subject to any trust existing in respect thereof, and to any interest other than that of the Province in the same. The Province of Ontario submits that there is no trust existing in respect of these lands, nor any other interests in them, other than that of the Province of Ontario. While the Union of Canada existed the funds received from these lands were appropriated, and therefore no objection is made to the manner in which Canada dealt with these funds received before Confederation, which are allowed to form a part of the general debt; but the Province of Ontario contends that since Confederation the residue of the lands, and funds derived therefrom, belong wholly to her, and that the terms of the enactment appropriating the lands and providing for the apportionment of the funds, such as the apportionment of the grant in aid of the fund, and the grant from the Consolidated Revenue of Canada to make up the deficiency in any year, are inconsistent with any trust or interest, other than that of Ontario alone.

No. 9.

CLAIMS ARISING OUT OF THE SEIGNIORIAL TENURE
ARRANGEMENT.

Under this head, Ontario claims against Quebec the following sums:

1. Interest of the Municipal Loan Fund of Upper Canada, over paid by Indemnity account.....	852,089 04
2. Arrears of Debt of Lower Canada on the Municipal Loan Fund of Lower Canada.....	782,742 83

3. Jesuit Estate carried to credit of Superior Education in Lower Canada, with interest from 4th May, 1859, at 6 per cent.....	92,583 83
4. Quint and arrears of Quint with interest from 4th May 1859, at 6 per cent.....	103,544 00
5. Part of Capital of St. Sulpice, with interest as above...	196,719 66
6. Indemnity to the Eastern Townships, with interest as above.....	756,710 00
7. Income Fund, Superior Education, L. C.....	47,689 04
8. Difference between capitalization of estimated receipts from Seigniority of Lauzon and Tavern Licenses, and of actual receipts.....	73,258 90
9. Five-ninths of the actual capital from item 8, the revenues from Lauzon, and the Tavern Licenses remaining now with Lower Canada.....	\$423,880 80

The Province of Ontario contends that its claim to these several items is sustained on the following grounds :

As to item 1.

The Indemnity capital for Upper Canada for the Seigniorial Fund was.....	\$2,218,555 39
The interest thereon.....	1,350,617 91
	<hr/>
	\$3,569,173 30
The interest on the U. C. Municipal Loan Fund was.....	3,517,084 26
	<hr/>
Difference	\$ 52,089 04

For which Ontario has received no compensation.

On the item 2.

The arrears of interest on the Municipal Loan Fund of Upper Canada having been charged as against her, the arrears of Lower Canada on the similar account, amounting to \$782,742.83, should be charged against Lower Canada.

On the item 3.

The fund from the Jesuits Estates was carried to the credit of Superior Education in Lower Canada, to the amount of \$92,583.83, for which Upper Canada has had no equivalent,

As to Item 4.

The capital and arrears of Quint were included in the general capital of the Seigniorial arrangement, but were not ascertained, and the amount has now to be accounted for to Ontario to the extent of \$103,544.00.

As to Item 5.

Part of the capital of the Seigniories of St. Sulpice, \$196,719.66, was, by the Act of 1859, made a charge against the Lower Canada Municipalities

Fund, and not against the Consolidated Revenue Fund; but it was provided that until the Municipalities Fund was able to pay the interest thereon, it should be paid out of the Consolidated Revenue Fund, and as this Fund is not now, nor is ever likely to be able to pay it, Ontario is entitled to compensation for it.

As to Item 6.

Under the Seigniorial Act, there was set apart for the Eastern Townships of Lower Canada, as not being interested in the Seigniorial commutation, and as their equivalent therefor, the sum of \$754,710.00, but as these Townships are a part of Quebec, Ontario has had no equivalent for that sum, it now claims compensation for it.

As to Item 7.

This stands upon the same footing as Item 3, and Ontario claims compensation therefor.

As to Item 8.

The estimated annual receipts of Seigniority of Lauzon		
were.....	.....	\$12,951 65
" "	from Tavern Licenses...	37,115 01
	Total.....	\$50,066 66
The actual receipts were:		
Lauzon.....	\$11,897 47	
Licenses.....	33,773 66	
		\$45,671 13
The capital produced by the former is..... \$834,444 40		
" "	by the latter.....	761,185 50
	To be compensated to Ontario.....	\$73,258 90

As to Item 9.

The capital produced from the actual receipts from Lauzon and Tavern Licenses being \$761,185.50, and the whole of those receipts, which should have gone to the credit of Canada, being now in the possession of Quebec, Ontario is entitled to five-ninths of the capital, or \$422,880.80.

The Province of Ontario claims the right to urge any further matters upon the consideration of the Arbitrators, as it may be advised either on its claim now set forth, or in answer to any claim made by Quebec, and to make by its Counsel any statements or arguments that may be necessary further to elucidate the case hereby presented, or to answer the case of the Province of Quebec.

J. HILLYARD CAMERON, Q. C.

Counsel for Ontario.

A. A.

STATEMENT SHEWING THE DEBT OF THE LATE PROVINCE OF CANADA.

LIABILITIES.	\$	cts.	\$	cts.	\$	cts.
Direct debt assumed by Dominion, 30th June, 1867, Public Accounts 1867, page 1.....					62,734,797	63
Indirect debt assumed by Dominion as follows:			36,800	00		
Upper Canada Building Fund Debentures.....			95,500	00		
Montreal Court House do.....			16,000	00		
Law Society do.....			2,000	00		
Aylmer Court House do.....					150,400	00
SPECIAL FUNDS BEARING INTEREST.						
Indian Fund.....			1,810,110	61		
Common School Fund.....	1,733,224	47				
Less—One-fourth of Receipts for Common School Lands, sold during the existence of the Upper Canada Improvement Fund, from the day of the abolition of that fund to 1st July, 1867.....	124,685	18	1,608,539	29		
Less—Investments (Quebec Turnpike Trust).....	58,000	00				
Arrears of Interest.....	29,580	00	87,580	00	1,520,959	29
Upper Canada Grammar School Fund.....			362,769	04		
Less—Investments (City of Hamilton Debentures).....			50,000	00	312,769	04
Upper Canada Building Fund.....	1,578,898	96				
Less—Investments (City of Hamilton Debentures.).....	30,000	60				
Arrears of Interest.....	10,800	00				
Amount charged in Error to Consolidated Fund expended on Account of Lunatic Asylum Buildings, Toronto, in the year ended 30th June, 1866 and 1867.....	65,617	55	106,417	55	1,472,391	41
Lower Canada Superior Education Fund.....			377,251	53		
Less—Investments Huron and Bruce Debentures.).....	19,400	00				
Less—Investments (City of Hamilton do).....	10,000	00	29,400	00	347,851	53
Normal School Building Fund.....			61,761	84	61,462	72
Superannuated Teachers' Fund.....			2,700	88	3,113,100	02
Compensation to Seigniors, (Capital).....					756,710	00
Seigniorial Indemnity to the Townships, (Capital).....					\$9,398,354	62
Widows' Pensions and uncommuted Stipends, U. C. Do do Lower Canada.....					50,143	84
					4,126	31
					\$ 54,270	15
MISCELLANEOUS LIABILITIES, PAYABLE IN CASH.						
Court Houses, Lower Canada.....			4,061	20		
Montreal District Council.....			3,912	05		
Public Works (special).....			12,711	95		
Carried over.....					\$72,337,822	40

A. A.—Continued.

LIABILITIES.		\$	cts.	\$	cts.	\$	cts.
Brought forward.....						72,337,822	40
Municipalities Fund, Upper Canada.....				702,553	66		
Upper Canada Grammar School Income Fund.....		36,167	65				
Less—Arrears of Interest on Investments, (City of Hamilton Debentures).....		18,000	00				
Upper Canada Improvement Fund prior to abolition of Order in Council.....				18,167	65		
Less—Receipt in former years reversed.....		5,180	04				
Receipts of Common School Land sold during the existence of the Upper Canada Improvement Fund, from the day of the abolition of that Fund, to 1st July 1867.....		60	96			5,119	08
1-5th Receipts on Crown Lands so sold and money so received.....		124,685	18				
		101,771	68				
				226,456	86		
Compensation to Seigniors (arrears).....						231,575	94
Balance of special appropriations, Ontario.....						72	25
Do. do Quebec.....						218,473	37
Amount paid by Ontario for surveys ordered prior to 1st July, 1867.....						99,582	20
Amount paid by Quebec for Surveys ordered prior to 1st July, 1867.....						7,074	01
Ten per cent on purchase money (\$181,062 50) of the Canada Land and Emigration Company to be repaid to the company as per agreement for the construction of roads.....		18,106	25			7,651	55
Less—Paid thereon by the Province of Canada.....		5,177	88				
Seigniorial Indemnity to the Townships.....				12,928	37		
				130,317	39		
Banking Accounts, 30th June, 1867, assumed by Dominion.....						1,049,011	57
Public Works, special, debited to Public Works.....						3,096,415	22
Capitalization of Annuities.....						7,288	05
Discount at which £75,000 sterling, Debentures taken from the Bank of Montreal at par, per agreement, were placed in the Sinking Fund						999,835	55
Less—Premium at which £42,501 13s. 4d. due the Sinking Fund, 30th June, 1867, might have been invested.....				46,181	66		
				50,807	42		
						15,377	24
Expenditure on Account of the late Province of Canada, to the 30th June, 1868, Public Accounts, 1868.....						\$77,505,750	03
Less—Militia Clothing and Equipment, and improved Firearms.....				1,575,677	43		
Unexpended Warrant cancelled.....		278,651	03				
This sum twice included.....		64	05				
Gratuities to Officials and other Employees of the Senate charged in said expenditure.....		2,644	80				
		22,819	10				
				302,578	98		
						1,232,096	43
						\$78,737,846	43
Carried forward.....						\$78,737,846	43

A. A.—Continued.

		LIABILITIES.					
\$	cts.	\$	cts.	\$	cts.	\$	cts.
72,337,822	40					78,737,846	43
		Brought forward					
		DEDUCTIONS.					
		Consolidated Fund Investment Account, being ex-					
		cess at par value of Consolidated Canadian					
		Loan Debentures assumed from the Bank of					
		Upper Canada.....		5,353	33		
		Expenses of delegation to England.....		12,000	00		
		Receipts of the Dominion on account of the late					
		Province of Canada to 30th June, 1868, per					
		Public Accounts, 1868.....		491,743	01		
231,575	94						
72	25						
213,473	37			997,666	72		
99,582	20						
7,074	01						
		Consolidated Fund Investment.....					
		Competition Bank of Upper Canada Debt.....		500,000	00		
		Northern Railway Special Account.....		30,976	70		
		Cataract Property.....		6,584	54		
		Hydraulic and other Rents.....		101,784	44		
		Roads and Harbours.....		202,377	63		
		Sinking Fund of Imperia Guaranteed Loan.....		681,333	32		
		Do do Canadian Consolidated Loan.....		1,207,222	26		
049,011	57						
096,415	22						
7,288	05			1,461,250	61		
009,835	55					5,698,292	56
		Cash and Banking Accounts transferred to Domi-					
		nion				\$73,039,553	92
						62,500,000	00
		Allowed by B. N. A. Act.....					
		Excess over \$62,500,000.....				\$10,539,553	92
15,377	24						
03,750	03						
32,096	43						
37,846	43						
37,846	43						

A.
ASSETS,
Under Schedule 4, of British North America Act, 1867.

	\$	cts.	\$	cts.	\$	cts.
UPPER CANADA BUILDING FUND.						
Lunatic Asylum and Normal School Debentures.....						
COURT HOUSE.—LOWER CANADA.						
Debenture Account, Aylmer.....						
Account Current, do			2,000	00		
Debenture Account, Montreal.....			1,239	70		
Account Current do			95,000	00		
Account Current.....			18,966	21		
			201	91		
LAW SOCIETY.—UPPER CANADA.						
Debenture Account.....						
Book Account Current.....			16,000	00		
			140,015	61		
MUNICIPAL LOAN FUND.—UPPER CANADA.						
Capital Account.....						
Less—At Sinking Fund			7,300,000	90		
			429,548	62		
Less—Capital Indemnity Account.....			\$6,870,451	37		
			2,218,555	39		
			\$4,651,895	98		
Interest Account.....						
Short charged.....	3,517,018	32				
		65				
Less—Interest on Indemnity Account.....	\$3,517,084	26				
	1,350,617	91				
MUNICIPAL LOAN FUND.—LOWER CANADA.						
Capital Account.....						
Less—Sinking Fund.....			2,428,140	00		
			271,452	86		
Carried forward.....			\$2,156,687	14		
					\$10,098,645	73

A.—Continued.

ct, 1867.

cts.	\$	cts.
	36,80	00
00		
70		
00		
21		
91	118,03	82
0		
1	156,01	61
	618,38	23
	0,098,64	73

	\$	cts.	\$	cts.	\$	cts.
Brought forward.....					10,008,64	73
Interest Account.....			2,939,42	97		
AGRICULTURAL SOCIETY.—UPPER CANADA.						
Advance.....					4,000	00
LEGISLATIVE GRANT.—LOWER CANADA.						
Advance.....					28,404	73
QUEBEC FIRE LOAN.—LOWER CANADA.						
Advance.....					264,234	65
EDUCATION.—LOWER CANADA.						
Advance.....					290	10
BUILDING AND JURY FUND.—LOWER CANADA.						
Advance Account.....					116,475	31
MUNICIPALITIES FUND.—LOWER CANADA.						
Advance Account.....					484,244	38
SUPERIOR EDUCATION.—LOWER CANADA.						
Advance Account.....					234,281	46
REVENUE INSPECTOR'S ACCOUNTS.—UPPER CANADA.						
Amount of Account.....					2,426	41
REGISTRATION SERVICES.—LOWER CANADA.						
Amount Account.....					2,324	38
Territorial Advance Account.....					3,000	00
					\$11,208,627	30

B.

Debt of Canada created for Local purposes.

	\$	cts.	\$	cts.	\$	cts.
ONTARIO.						
UPPER CANADA BUILDING FUND.						
Debentures issued for Lunatic Asylum, Normal School					56,500	00
LAW SOCIETY.						
Debentures issued.....			16,800	00		
Book Account Advance.....			140,015	61		
					156,815	61
MUNICIPAL LOAN FUND.						
Capital Account.....			7,300,000	00		
Less—At Credit of Sinking Fund.....			429,548	63		
Less—Capital of Indemnity Account.....			\$8,870,451	37		
			2,218,555	39		
Interest Account.....	3,317,018	32	\$4,651,895	98		
Short charged.....		65	04			
Less—Interest on Indemnity Account.....	\$3,517,084	26				
	1,350,617	91				
			2,166,466	33		
					6,818,362	33
AGRICULTURAL SOCIETY.						
Amount Advanced					4,000	00
INDEMNITY ACCOUNT.						
Under Seigniorial Act, 1851.....			600,000	00		
Under Seigniorial Act, 1859.....			2,218,555	39		
In judg. O. Local debt	9,808,728	62			2,518,555	39
to Q.	8,778,792	55			2,832,733	33
	\$18,587,520	57			7,901,646	19
					\$17,794,779	52

C.
Debt of Canada created for Local purposes.

cts.	\$	cts.
	56,800	00
	136,015	61
	6,818,362	83
	4,000	00
2,518,555		59
2,533,733		32
7,001,645		19
17,734,779		52

	\$	cts.
Q U E B E C .		
COURT HOUSE.		
Amount Advanced.....	118,037	13
MUNICIPAL LOAN FUNDS.		
Amount Advanced.....	2,937,129	07
SEIGNIORIAL TENURES.		
Capital to Seigniors.....	3,713,338	26
MUNICIPALITIES FUND.		
Advance.....	481,244	92
SUPERIOR EDUCATION.		
Advance.....	334,281	46
QUEBEC FIRE LOAN.		
Advance.....	264,233	65
BUILDING AND JURY FUND.		
Advance.....	116,475	51
LEGISLATIVE GRANT.		
Advance.....	28,494	73
EDUCATION.		
Advance.....	290	10
	\$7,301,046	19

D.
ONTARIO

ASSETS.	Amount.		Average rate per cent for 4½ years.		Value capitalized at 6 per cent.	
	\$	cts.	\$	cts.	\$	cts.
U. C. Building Fund.....	\$	56,800 00		6 00	\$	30,800 00
Law Society, U. C.....		156,015 61		7 11		156,015 61
CONSOLIDATED MUNICIPAL LOAN FUND, U. C.						
Principal.....	\$	1,651,895 98				
Interest.....		2,166,466 35				
Agricultural Society, U. C. (this is put down as yielding) yet it is a good asset for the amount, the Society being able to pay.....		6,816,302 33		1 69		1,920,302 33
Revenue Inspectors, U. C.....		4,600 00				4,600 00
		2,423 41				
Assets of Quebec.....	\$	4,917,004 33			\$	2,117,320 99
		4,914,032 95				2,087,001 13
		811,208,637 50				81,201,322 12

E.
QUEBEC.

ASSETS.	Amount.		Average rate per cent for 4½ years.		Value capitalized at 6 per cent.	
	\$	cts.	\$	cts.	\$	cts.
Aylmer Court House Debenture Account 6 per cent.....	\$	2,000 00				
Aylmer Court House Account Current.....		1,239 70				
Debenture Account.....	\$	95,600 00				
Account Current.....		18,396 21				
Kamouraska Court House Account current \$201 91. There are 88,953,8 per cent debentures forming a first charge on the income. Ten per cent would pay interest on the Debentures, and leave ample to wipe out the Account current.....		\$201 91		17 42		114,396 21
		261 91				261 91
CONSOLIDATED MUNICIPAL LOAN FUND, L. C.						
Principal.....	\$	2,151,687 14				
Interest.....		787,412 83				
		2,939,100 00		2 88		1,416,067 38
SUPERIOR EDUCATION, L. C.						
Legislative grant.....		28,191 73				
Balance of deficit in Education Office.....		291 19				
Income Fund.....		234,281 46				
Quebec Fire Loan.....		262,000 29		17 30		460,000 29
Building and Jury Fund, L. C.....		264,254 05		1 98		87,901 05
Municipal Fund, L. C.....		116,175 51		11 38		156,475 51
Registration Services, L. C.....		48,214 53		1 11		92,000 42
Témiscouata advance account.....		2,521 38		3 10		7,21 38
		3,000 00				
Assets of Ontario.....	\$	4,191,032 95			\$	2,87,001 43
		7,017,504 35				2,117,320 99
		811,208,637 50				81,201,322 12

Value capitalized at 6 per cent.	
\$	cts.
36,800	00
156,015	61
1,920,390	38
4,000	00
\$2,117,320	99
2,987,001	13
\$1,204,322	12

Value capitalized at 6 per cent.	
\$	cts.
114,596	21
701	91
1,319,390	38

130,000	00
57,901	03
136,475	51
92,000	42
75,211	58
87,001	13
117,320	99
04,322	12

ANSWER
OF
PROVINCE OF ONTARIO
TO THE STATEMENT OF CASE OF
PROVINCE OF QUEBEC.



ANSWER
OF
PROVINCE OF ONTARIO

TO THE STATEMENT OF CASE OF

PROVINCE OF QUEBEC.

No. 2.

DIVISION OF THE SURPLUS DEBT.

The Province of Ontario objects to the statement made by the Province of Quebec under this head, on the ground that the Arbitrators have no jurisdiction nor authority to enquire into the state of the debts or credits of the Provinces of Upper and Lower Canada prior to the Union of 1841, nor to deal in any way with either the debt or credit with which either Province came into the Union at that time.

The Province of Ontario offers this objection, as preliminary to any consideration whatever, by the Arbitrators of this head of the case of the Province of Quebec; as, if it be possible that the Arbitrators can feel themselves justified in entering into the consideration of the matter objected to, the Province of Ontario will claim the right of going into that wider field which will be opened up by an examination into the origin of the debts, and the charges of each Province upon, and the contribution of each Province to, the general revenue of Canada, however tedious or impracticable such an examination may seem to the Province of Quebec.

The Province of Ontario will be prepared to argue fully this preliminary objection, and will ask for the decision of the Arbitrators upon it before entering upon any discussion of the general subjects of their case.

THE COMMON SCHOOL FUND.

The Province has put forward its views of this Fund in its own statement, and has made no admission that this Fund shall be divided.

MUNICIPALITIES FUND, U. C.

This Fund belongs to Ontario alone, and Quebec has no interest in it. It is derived from lands within Ontario, and is applicable to objects within Ontario solely.

All the Municipalities in arrears for interest to the Municipal Loan Fund, up to Confederation, have had such arrears charged against their proportion of the annual payments from this Fund, and Quebec has no claim upon any portion of it.

Upper Canada Improvement Fund,
 Upper Canada Grammar School Fund,
 Upper Canada Grammar School Income Fund,
 Upper Canada Building Fund.

In all these funds, Ontario has the sole interest.

BALANCE OF SPECIAL APPROPRIATIONS.

Ontario claims the balance of the special appropriations for Upper Canada.

WIDOWS' PENSION, U. C.

Are on the same footing as the Upper Canada Municipalities Fund.

Crown Lands Suspense Account,
 Crown Lands Department,
 Trust Advance Account.

Have all been struck out, and are, therefore, removed from the consideration of the Arbitrators by agreement.

INDIAN ANNUITIES.

The larger portion of these annuities, amounting to \$26,664, existed prior to 1841, and arose out of the surrender, from time to time, by the Indians of the greater part of the lands of Upper Canada, which were afterwards sold, and the moneys received from their sale went into the general revenue, in which Lower Canada participated after the Union, to an amount that would have created a capital fund that would have paid ten times the amount of these annuities, and in 1846 they were made by the Statute passed that year, a special charge in Schedule B, upon the Consolidated Revenue, and the lands released from them thereby. The remaining annuities for Upper Canada lands are \$4,400, chargeable under the treaty of surrender made by the Hon. W. B. Robinson, and for them an

equivalent was made to Lower Canada by the setting apart of upwards of 200,000 acres of the Crown lands there for the Indians, and by a charge annually upon the general revenue of \$4,400, or an amount similar to that appropriated for Upper Canada under Mr. Robinson's treaty. Under these circumstances, Ontario denies any separate liability for the principal of these annuities.

ASSETS IN SCHEDULE 4.

The Province of Ontario considers that these assets are clearly and distinctly within the power of the Arbitrators for division, and that the declaration that these are assets of the Provinces of Ontario and Quebec conjointly, does not mean that they belong to the Provinces of Ontario and Quebec in equal portions, but the Arbitrators must determine the principle of their division.

JOHN HILLYARD CAMERON, Q. C..

Counsel for Ontario.

