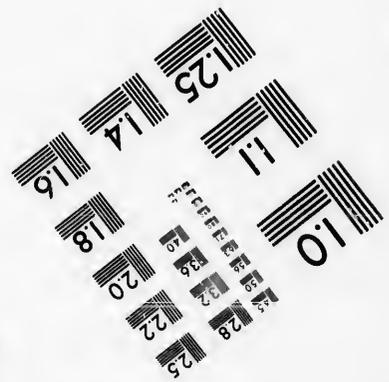
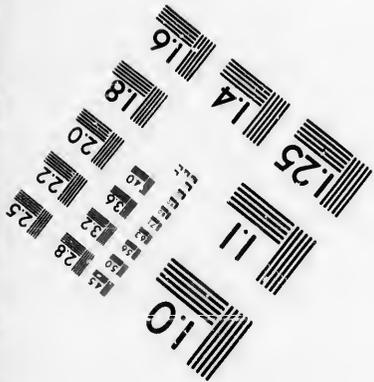
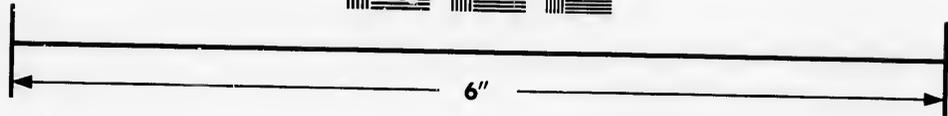
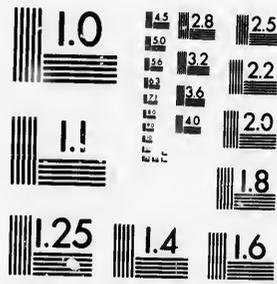


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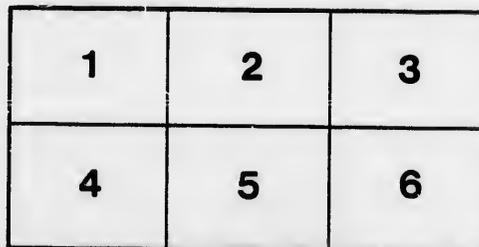
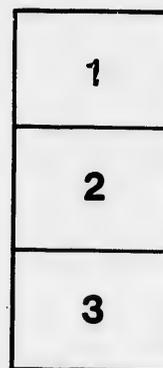
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Thomas Langton  
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1861

In the Privy Council.

IN THE MATTER OF ARBITRATION AND AWARD  
UNDER THE 142ND SECTION OF THE BRITISH  
NORTH AMERICA ACT, 1867.

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BETWEEN

THE PROVINCE OF ONTARIO, IN THE DOMINION OF  
CANADA,

AND

THE PROVINCE OF QUEBEC, IN THE DOMINION OF CANADA.

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## RECORD OF PROCEEDINGS.

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### FIRST MEETING OF ARBITRATORS.

The Arbitrators appointed under the provisions of the 142nd Section of RECORD.  
"The British North America Act, 1867," met pursuant to notice in the Com-  
mittee Room, No. 8, of the Parliament Buildings, House of Commons side,  
in the City of Ottawa, at noon on the 31st day of August, 1869. Present:  
The Honorable JOHN HAMILTON GRAY, the Arbitrator chosen by the Govern-  
ment of Canada; the Honorable DAVID LEWIS MACPHERSON, the Arbitrator  
chosen by the Government of Ontario; and the Honorable CHARLES DEWEY  
10 DAV, the Arbitrator chosen by the Government of Quebec.

The Honorable Edmund Burke Wood, the Treasurer of the Province of  
Ontario, appeared on behalf of the Province of Ontario, and the Honorable  
Christopher Dunkin, the Treasurer of the Province of Quebec, appeared on  
behalf of the Province of Quebec, along with Mr. Ritchie, of Montreal, and  
Mr. Casault, of Quebec, as his Counsel.

The Arbitrators ordered that the Commissions appointing the said Arbitrators  
should be produced and read, and entered on the minutes; and they were  
produced and read accordingly, and are in the words following:—

KF  
4481  
A3  
C26

RECORD.

(COMMISSIONS.)

SEAL MONCK.

CANADA.

Patent appointing the Hon. J. H. Gray, arbitrator, under 142 Sec., B.N.A. Act, 1867.

VICTORIA, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.  
To the Honorable John Hamilton Gray, of the City of St. John, in the Province of New Brunswick, in our Dominion of Canada, Esquire, and to all to whom these presents shall come, Greeting.

J. A. MACDONALD,  
Attorney-General, Canada.

Whereas in and by the one hundred and forty-second Section of "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 should 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 selection of the arbitrators should not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec had met; and that the arbitrator chosen by the Government of Canada should not be a resident either in Ontario or Quebec. And whereas the Parliament of Canada and the Legislatures of Ontario and Quebec have met.

And whereas one arbitrator (to wit: The Honorable David Lewis Macpherson) has been chosen by the Government of Ontario, and one arbitrator (to wit: The Honorable Charles Dewey Day) has been chosen by the Government of Quebec.

And whereas it is expedient that in pursuance of the said hereinbefore recited Act one arbitrator should be chosen by the Government of Canada, for the purposes in the hereinbefore recited section of the said Act mentioned, and we have thought fit to appoint you the said John Hamilton Gray, not being a resident either in Ontario or Quebec, to be such arbitrator.

Now know ye, that reposing especial trust in the loyalty, ability and integrity of you, the said John Hamilton Gray, We of our especial grace and our good will and pleasure, and by and with the advice of our Privy Council for Canada, do by these presents nominate, constitute and appoint you, the said John Hamilton Gray, to be the one Arbitrator chosen by the Government of Canada in pursuance of and under the authority of the said one hundred and forty-second Section of "The British North America Act, 1867," and for and on behalf of the Government of Canada, to arbitrate together with the Arbitrators chosen by the Governments of Ontario and Quebec respectively, in all and every the matters referred in and by "The British North America Act, 1867," to such arbitrators. And we hereby confer upon you full power and authority as such Arbitrator, as aforesaid, to act together with the other Arbitrators in the said recited section referred to, in and about the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada, and concerning every matter and thing relating

thereto ; and to award thereon by virtue of "The British North America Act, 1867," and according to the true intent and meaning thereof. RECORD. ---

To have and to hold the said office of Arbitrator during our pleasure. In Testimony whereof we have caused these our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. Witness our Right Trusty and well beloved Cousin the Right Honorable Charles Stanley, Viscount Monck, Baron Monck of Ballytrammon, in the County of Wexford, in the Peerage of Ireland, and Baron Monck of Ballytrammon, in the County of Wexford, in the Peerage of the United Kingdom of Great Britain and Ireland, Governor General of Canada, &c., &c., &c.

At the Government House in our City of Ottawa, this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-eight, and in the thirty-first year of our Reign.

By Command,

HECTOR L. LANGEVIN,  
*Secretary of State.*

CANADA.

N. F. BELLEAU.

PROVINCE OF QUEBEC.

VICTORIA, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c. To the Honorable Charles Dewey Day, of the City of Montreal, in our Province of Quebec, Greeting.

Patent ap-  
pointing the  
Hon. Chas.  
Dewey Day,  
Arbitrator  
for Quebec,  
under 142  
Sec. B. N.  
A. Act,  
1867.

Know you that reposing trust and confidence in your loyalty, integrity and ability, We of Our Especial Grace, certain knowledge, and mere motion have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint you, the said Charles Dewey Day, to be, under the provisions of an Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the thirtieth year of our reign, entitled "An Act for the Union of Canada, Nova Scotia and New Brunswick, and the Government thereof, and for purposes connected therewith," the Arbitrator chosen by the Government of Quebec, for the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada.

To have, hold, exercise and enjoy the said office of Arbitrator chosen by the Government of Quebec as aforesaid, unto you, the said Charles Dewey Day, with all and every the powers, authority, privileges, emoluments and advantages to the said office by law appertaining, during our royal pleasure. And we do hereby require that you, the said Charles Dewey Day, do report from time to time the result of your arbitrament, with all convenient speed, to the Lieutenant-Governor of the said Province of Quebec for the time being.

In Testimony whereof we have caused these our Letters to be made Patent, and the Great Seal of our said Province to be hereunto affixed.

GEDDEON OUMET,  
*Attorney-General.*

SEAL

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RECORD.

Witness our Trusty and well beloved the Honorable Sir Narcisse Fortunat Belleau, Knight, Lieutenant-Governor of our said Province of Quebec, at Quebec, this thirtieth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and in the thirty-first year of our Reign.

By Command,

P. J. O. CHAUVEAU,  
*Secretary.*

Recorded 4th February, 1868,  
In Liber A., folio 28.  
J. B. MELLEUR, *Deputy Registrar.*

10

PROVINCE OF ONTARIO.

SEAL H. W. STISTED.

Patent appointing the Honorable David Lewis Macpherson, arbitrator for Ontario, under 142, Sec. B. N. A. Act, 1867.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c.  
To the Honorable David Lewis Macpherson, of the City of Toronto, Esquire, and all to whom these presents shall come, Greeting.

J. S. MACDONALD,  
*Attorney-General.*

WHEREAS in and by the one hundred and forty-second Section of the British North America Act of 1867, it is enacted that the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada should 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 selection of the arbitrators should not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec had met; and that the arbitrator chosen by the Government of Canada should not be a resident either in Ontario or Quebec: AND WHEREAS the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and it is right and convenient that the said division and adjustment should be proceeded with: Now know ye that reposing especial trust and confidence in the loyalty, ability and integrity of you, the said David Lewis Macpherson, WE of our especial grace and of our will and pleasure do by these presents nominate, constitute and appoint you, the said David Lewis Macpherson, to be the Arbitrator for and on behalf of the Government of our Province of Ontario, touching the said matters under the said statute. And we do hereby confer upon you full power and authority as such Arbitrator as aforesaid, to act together with the other arbitrators in the said recited section referred to, in and about the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada, and concerning every matter and thing relating thereto, and to adjudicate and award thereon, by virtue of the said British North America Act of 1867, and according to the true intent and meaning thereof. To have and to hold the said office of Arbitrator as aforesaid during our pleasure.

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In Testimony whereof we have caused these our Letters to be made Patent, and the Great Seal of our said Province of Ontario to be hereto affixed, Witness, Henry William Stisted, Companion of the Most Honorable Order of the Bath, a Major-General in our Service, and Lieutenant-Governor of our Province of Ontario. At Toronto the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and in the thirty-first year of our Reign.

By Command,

M. C. CAMERON,  
*Secretary.*

RECORD.

The Honourable Sir John Rose, Minister of Finance of Canada, being present, produced and filed with the Arbitrators copies of certain Minutes of

\*See Schedule No. Council in reference to the public debt of the late Province of Canada.\* The Treasurers of Ontario and Quebec filed a Memorandum in relation to the same subject, which is as follows:—

“The Treasurers of Ontario and Quebec state that the above Orders in Council have not yet been formally acted upon by their respective Governments; but assent to the same 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.

“E. B. WOOD,

“CHRIST. DUNKIN.”

During the proceedings Mr. Langton, the Auditor-General of Canada was sent for, and questioned as to the matters under consideration.

After discussion the Arbitrators adjourned until Thursday, the second day of September, at 10 o'clock a.m.

## SECOND MEETING OF ARBITRATORS.

Thursday, the second day of September, 1869. The Arbitrators met pursuant to the adjournment. Present: The Honourable John Hamilton Gray, the Honourable David Lewis Macpherson, and the Honourable Charles Dewey Day, the Arbitrators; and the Honourable Mr. Wood on behalf of Ontario, and the Honourable Mr. Dunkin on behalf of Quebec.

After discussion the Arbitrators ordered that the following statements should be prepared by Mr. Langton, the Auditor-General of Canada, and to be by him submitted and sent as follows:—

The Arbitrators direct that the following Statements be prepared:—

“1. A statement in detail by the Auditor-General of the assets enumerated in the Fourth Schedule to the British North America Act, 1867, with such observations in explanation thereof as he may think necessary.

A \*

RECORD.

Order of Arbitrators as to statements to be prepared by Auditor General.

"2. That the 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.

"3. That a further statement be prepared by the Auditor-General of the sums which the Municipal Loan Fund of Upper Canada and of Lower Canada, respectively, and all other accounts in the statements to be prepared, have yielded yearly from the first day of January, 1863, up to the first day of July, 1867, respectively; and showing the annual per centage on the capital which has been paid on each; with any other statement of facts bearing on \*See Schedule No. "the value of the several items in the said statements which he may think necessary; and these be communicated to the

Treasurers of the two Provinces and to the Arbitrators as soon as possible."\*  
The Arbitrators then adjourned to Wednesday, the twenty-second day of September, 1869.

Afterwards, and before the twenty-second day of September, 1869, by mutual arrangement between the Arbitrators and all parties, the meeting for the twenty-second day of September, 1869, was postponed to the seventh day of October, 1869, and from the seventh day of October, 1869, to the twenty-third day of the same October.

#### THIRD MEETING OF ARBITRATORS.

All Arbitrators present.

The Arbitrators met at the City of Ottawa, at the place of their former meeting, on the twenty-third day of October, 1869, pursuant to arrangement between all parties. Present: The Honorable John Hamilton Gray, the Honorable David Lewis Macpherson, and the Honorable Charles Dewey Day, the Arbitrators. The Honorable Mr. Dunkin appeared on behalf of Quebec, and the Honorable Mr. Wood, with the Honorable John Hillyard Cameron as his Counsel, appeared on behalf of Ontario.

Arbitration proceeded with.

The Court of Arbitration proceeded with the reference, and after hearing arguments from Counsel in regard to the subject matter of the reference, and the discussions had in relation thereto, adjourned to Monday, the twenty-fifth day of October, 1869, at 11 o'clock a.m., at the same place.

#### FOURTH MEETING OF ARBITRATORS.

All Arbitrators present.

The Arbitrators met at the City of Ottawa, at the place of their former meetings, on the twenty-fifth day of October, 1869. Present: All the three Arbitrators. Messrs. Wood and Cameron appeared on behalf of Ontario, and Messrs. Dunkin and Ritchie on behalf of Quebec.

Arguments heard.

The Arbitrators after hearing discussions and arguments from Counsel on both sides, upon the subject matter of the reference, adjourned to Tuesday, the twenty-sixth day of October, to meet at the same place, at 10 o'clock a.m.

## FIFTH MEETING OF ARBITRATORS.

RECORD.

The Arbitrators met pursuant to adjournment, at the City of Ottawa, at the place of their former meetings, on the twenty-sixth day of October, 1869. Present: All the Arbitrators. Messrs. Wood and Cameron appeared for Ontario, and Messrs. Dunkin and Ritchie for Quebec. All the Arbitrators present.

The Arbitrators proceeded with the reference, and after hearing arguments and discussions of Counsel on both sides, adjourned to next day, to meet at the same place at 11 o'clock a.m. Arguments heard.

## SIXTH MEETING OF ARBITRATORS.

10 The Arbitrators on the twenty-seventh day of October, 1869, met at the place and time aforesaid. Present: All the Arbitrators, when the Honorable 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. Messrs. Casault with Mr. Ritchie appeared on behalf of Quebec, and Messrs. Wood and Cameron on behalf of Ontario. All the Arbitrators present.

Mr. Casault stated that the Honorable Mr. Irvine was to have been present, but that unforeseen circumstances had prevented his attending; however he was informed the Honorable Mr. Chauveau, the Premier of the Quebec Government, intended to be in Ottawa that day, and until receiving instructions from him, Mr. Ritchie and himself declined to assume any definite responsibility in the matter, in consequence of the change in Mr. Dunkin's position. Mr. Dunkin's resignation as Treasurer of Quebec.

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.

The Arbitrators thereupon adjourned until five o'clock p.m.

## SEVENTH MEETING OF ARBITRATORS.

At five o'clock on the same day and at the same place as last aforesaid, the three Arbitrators met. The Honorable Mr. Chauveau, the Premier of the Quebec Government, and with his Counsel, Messrs. Casault and Ritchie, appearing on behalf of Quebec, and Messrs. Wood and Cameron on behalf of Ontario, when after further hearing from both parties on the subject matter of the said reference, the Arbitrators made the following order:— All the Arbitrators present.

“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 Order.

RECORD. "with the Dominion Government in the matter of the amount of debt of the Province of Canada), on or before the fifteenth day of January next.

of the Arbitrators as to printing cases and exchange of same.

\*See Schedule No. 3, in Appendix. "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 to meet again on the day of the opening of the next Session of the Dominion Parliament (the fifteenth day of February, 1870), at noon.

#### EIGHTH MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met at the City of Ottawa, on the fifteenth day of February, 1870, pursuant to the adjournment. All the Arbitrators were present. Messrs. Chauveau, Casault, and Ritchie, and Mr. Drolet appeared on behalf of Quebec. Messrs. Wood and Cameron not appearing on behalf of Ontario, the Arbitrators adjourned until Thursday, the seventeenth day of February, 1870, at noon.

No progress made.

#### NINTH MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met on the seventeenth day of February, 1870, at the City of Ottawa, pursuant to adjournment, in the rooms of the Civil Service Board. All the three Arbitrators were present. Messrs. Chauveau, the Premier of Quebec, and Robinson, the Treasurer of Quebec, and Mr. Drolet, Accountant in the Treasury Department of Quebec, and with them their Counsel, Messrs. Casault and Ritchie, appeared on behalf of Quebec, and Messrs. Wood and Cameron on behalf of Ontario.

Cases interchanged.

It appeared 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 of October, 1869, 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.

Definite amount of debt not settled or agreed on.

Mr. Casault then addressed the Arbitrators as to the preliminary objection raised as to the jurisdiction of the Arbitrators over the debts and assets enumerated in the Fourth Schedule to the British North America Act, 1867. Mr. Cameron was heard in reply.

The Arbitrators heard arguments of Counsel.

The Arbitrators reserved judgment until the next day, to which they then adjourned, to meet in the same place, at 11 o'clock a.m.

#### TENTH MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met on the eighteenth day of February, at their last place of meeting, at 11 o'clock a.m., pursuant to adjournment. All the Arbitrators

were present. The same persons appeared for Ontario and Quebec respectively as were present at the last meeting ; when the Honorable Charles Dewey Day, the Arbitrator chosen by Quebec, delivered the opinion of the Court of Arbitrators on the point argued at the previous meeting, raised by the Counsel for Quebec, namely, "that the Court of Arbitration had no jurisdiction over the subject matter of the assets enumerated in the Fourth Schedule to the British North America Act, 1867," and the following judgment was unanimously pronounced by the Court of Arbitration :—

RECORD.

Question.

10 "The Arbitrators having heard Counsel upon the objection raised in behalf of the Government of Quebec, to their jurisdiction over the subject matter of the assets enumerated in Schedule Four of the British North America 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 Section 142 of the said Act ; and that they have by the said Act authority to divide and adjust the same."

Judgment of Arbitrators.

Mr. Cameron then on behalf of Ontario proposed to go into the argument upon the proposition as to the principle or mode of the apportionment of the excess of debt over and above \$62,500,000 of the late Province of Canada between Ontario and Quebec, and the division between them of the assets belonging to the late Province of Canada, under the British North America Act, 1867 ; to which Messrs. Casault and Ritchie objected, contending that such a course would be exceptional.

Proposition of Mr. Cameron—principle or mode of division.

After hearing Counsel on both sides as to whether the hearing of the argument on that point (the principle and mode of apportionment of the excess of debt and the division of the assets), and a decision thereon at that stage of the arbitration would or would not expedite the business, the Arbitrators reserved judgment until the next meeting.

Objected to by Messrs. Casault and Ritchie. Argument heard.

The Arbitrators then adjourned until Monday the twentieth day of February, 1870, at 11 o'clock a.m.

Adjournment.

ELEVENTH MEETING OF ARBITRATORS.

The Arbitrators met at the place last aforesaid, on the twentieth day of February, 1870, at 11 o'clock a.m., pursuant to adjournment. All the Arbitrators were present. The same persons were present for Ontario and Quebec respectively, as were present at the last meeting.

All the Arbitrators present.

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.

Decision of Arbitrators.

40 By agreement the Counsel proceeded to the argument on the claim of Quebec to charge against Ontario the capitalized portion of the "Indian Annuities."

Argument heard on Indian Annuities.

RECORD. Messrs. Casault and Ritchie were heard for Quebec, and Mr. Cameron  
 Arbitrators for Ontario. The Argument was closed, and the Arbitrators adjourned until  
 adjourned. next day, to meet at 11 o'clock a.m.

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TWELFTH MEETING OF ARBITRATORS.

All the Arbitrators present. The Arbitrators met at the place last aforesaid, on Tuesday, the twenty-first day of February, 1870, at 11 o'clock a.m. All the Arbitrators were present. The same persons appeared, and with them the Honorable Mr. Chauveau, the Premier of Quebec, and the Honorable Mr. Beaubien, the Commissioner of Crown Lands for Quebec, on behalf of Quebec. Mr. Wood and Mr. Cameron appeared on behalf of Ontario.

Argument heard on principle or mode of division. The Counsel selected and proceeded with the argument as to *the principle and mode of the apportionment of the excess of the debt of the late Province of Canada over and above \$62,500,000, and of the division of the assets belonging to the late Province of Canada, under the British North America Act, 1867.* 10

Mr. Cameron heard. Mr. Cameron opened the case, and closed his argument on behalf of Ontario, contending that the basis of population or the basis of the origin of local debts, was the correct and proper principle and mode on which such apportionment and division should take place.

Counsel for Quebec to be heard next day. Counsel for Quebec to be heard the next day.  
 Arbitrators adjourned. The Court of Arbitration adjourned, to meet at the same place next day, at 11 o'clock a.m. 20

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THIRTEENTH MEETING OF ARBITRATORS.

All the Arbitrators present. The Arbitrators met on Wednesday, the twenty-second day of February, 1870, at their last place of meeting, at 11 o'clock a.m., pursuant to adjournment. All the Arbitrators were present. The same persons who at the last preceding meeting appeared on behalf of Ontario and Quebec respectively were present.

Mr. Casault heard in answer to Mr. Cameron. Mr. Casault was heard in answer to Mr. Cameron on behalf of Quebec, on the principle and mode of the apportionment of the excess of debt and the division of assets. 30

Arbitrators adjourned. The Arbitrators then adjourned, to meet at the same place on Friday, the twenty-fifth day of February, 1870, at 11 o'clock a.m.

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FOURTEENTH MEETING OF ARBITRATORS.

The Arbitrators met on Friday, the twenty-fifth day of February, 1870, at their last place of meeting, at 11 o'clock a.m., pursuant to adjournment.

All the Arbitrators were present, and the same persons who at the last preceding meeting appeared on behalf of Ontario and Quebec respectively were present.

Mr. Ritchie was heard in support of Mr. Casault on behalf of Quebec.

Mr. Cameron and Mr. Wood were heard in reply on behalf of Ontario, and the argument was closed on both sides.

The Arbitrators adjourned, to meet next day, Saturday, the twenty-sixth day of February, 1870, at the same place, at noon.

RECORD.  
All the Arbitrators present.  
Mr. Ritchie heard in support of Mr. Casault, Messrs. Cameron and Wood in reply.  
Arbitrators adjourned.

FIFTEENTH MEETING OF ARBITRATORS.

10 The Arbitrators met on Saturday, the twenty-sixth day of February, 1870, at their last place of meeting, at noon, pursuant to adjournment. All the Arbitrators were present. Counsel and other officials interested appeared at the last preceding meeting.

All the Arbitrators present.

The Arbitrators, after some time spent in the consideration of the questions submitted, agreed that it was necessary to take time to look into the points raised, and the arguments offered for and against the same; and they intimated that they hoped they would be prepared to announce their decision thereon on the Monday then following, the twenty-eighth day of February, 1870.

Arbitrators consult and take time for deliberation.

20 The Arbitrators then adjourned, to meet at the same place on Monday, the twenty-eighth day of February, 1870, at 11 o'clock a.m.

Arbitrators adjourned.

SIXTEENTH MEETING OF ARBITRATORS.

The Arbitrators met on Monday, the twenty-eighth day of February, 1870, at their last place of meeting, at 11 o'clock a.m. All the Arbitrators were present. Counsel appeared on behalf of Ontario and Quebec respectively.

All the Arbitrators present.

The Arbitrators declared to the Counsel and Treasurers of the two Provinces that they were not prepared to give a decision on the points argued; and that they should adjourn, and would notify the Counsel at some future day when they would be prepared to meet again.

Arbitrators not prepared to give a decision, and adjourn to meet at some future day.

The Arbitrators adjourned accordingly.

SEVENTEENTH MEETING OF ARBITRATORS.

30 The Arbitrators met at the City of Montreal, on the twenty-sixth day of May, 1870, for consultation on the points and arguments submitted on the principle and mode of the apportionment of the excess of debt over and above

All the Arbitrators present.  
Meeting for consultation

RECORD. \$62,500,000, and the division of assets belonging to the late Province of Canada, pursuant to arrangement between the Arbitrators, all of whom were present.

Letter of Messrs. Casault and Ritchie as to two pamphlets.

A letter from Messrs. Casault and Ritchie, addressed to the Arbitrators, was received, enquiring whether 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 to:—

Minute of Arbitrators on the pamphlets.

"1. That the said pamphlets had been received, but had not been accepted 10  
"by the Arbitrators as part of the proceedings before them.

"2. 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.

Copy of Minute forwarded to Counsel for Ontario and Quebec. Discussion among the Arbitrators by themselves. Arbitrators adjourned.

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

The Arbitrators then proceeded to discuss among themselves the questions and arguments submitted on the said principle and mode of apportionment of debt and division of assets, and severally read and commented upon their various 20  
opinions which they had reduced to writing.

The Arbitrators adjourned at six o'clock p.m., to meet the next day.

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EIGHTEENTH MEETING OF ARBITRATORS.

The Arbitrators met on Friday, the twenty-seventh day of May, 1870, pursuant to adjournment, all being present; and continued their investigations and discussions, and adjourned at six o'clock p.m., to meet the next day.

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NINETEENTH MEETING OF ARBITRATORS.

Propositions of the Honourable Charles Dewey Day.

The Arbitrators met on Saturday, the twenty-eighth day of May, 1870, and continued their investigations and discussions.

The Honourable Charles Dewey Day submitted the following propositions:— 30

"1. It is proposed that the relation of Upper and Lower Canada, created by  
"the Union Act, of 1840, be regarded as an association in the nature of a universal  
"partnership; and that the division and adjustment of the debts and assets under  
"the British North America Act, 1867, be made according to the rules which  
"govern in such associations, in so far as they can be made to apply.

"2. It is proposed that the state of indebtedness of each of the Provinces of  
"Upper and Lower Canada at the time of the Union in 1841, be taken into consider-  
"tion by the Arbitrators, with a view to charge the Provinces of Ontario and Quebec

“respectively with the debt due by Upper Canada and Lower Canada respectively, at that time; and that the remainder of the surplus debt (excess of debt of the late Province of Canada over and above \$62,500,000) after such debts have been deducted from it (and charged to the respective Provinces), be equally divided between the said Provinces.”

“3. It is proposed that the assets specified in the Fourth Schedule to the British North America Act, 1867, and all other assets to be divided and adjudged under the authority of that Act, be divided equally, according to their value.”

10 Upon the question on the first proposition of the Honourable Charles Dewey Day being put, it was negatived as follows: For the proposition, the Honourable Charles Dewey Day; against it, the Honourable David Lewis Macpherson and the Honourable John Hamilton Gray. 1st proposition negatived.

Upon the question on the second proposition of the Honourable Charles Dewey Day being put, it was negatived as follows: For the second proposition, the Honourable Charles Dewey Day; against it, the Honourable David Lewis Macpherson and the Honourable John Hamilton Gray. 2nd proposition negatived.

Upon the question on the third proposition of the Honourable Charles Dewey Day being put, it was decided in the negative as follows: For the third proposition, the Honourable Charles Dewey Day; against it, the Honourable David Lewis Macpherson and the Honourable John Hamilton Gray. 3rd proposition negatived.

20 So the whole three propositions of the Honourable Charles Dewey Day were rejected. Whole three propositions negatived.

The Honourable David Lewis Macpherson then submitted the following grounds of dissent to the above propositions of the Honourable Charles Dewey Day, which were entered on the Minutes of the Proceedings of the Arbitrators, viz.: Grounds of dissent of David Lewis Macpherson to the propositions of the Honourable Charles Dewey Day.

“1. Because, in his opinion, the Union of 1841 between Upper Canada and Lower Canada was not analagous to an ordinary association or partnership between individuals, and that the rules of law applicable to the latter are not applicable to a political union, effected by the authority of a Parliamentary power, between two Provinces.”

“2. Because, in his opinion, the Arbitrators have no authority to inquire into or consider the financial condition of Upper Canada and Lower Canada respectively, anterior to or at the time of their union in 1841, with a view of rectifying, at the expense of Ontario, any supposed advantage alleged by the Counsel for Quebec—alleged unjustly, in his (Mr. Macpherson’s) opinion—to have accrued to Upper Canada under the Union Act of 1840.”

“3. Because, in his opinion, if the Arbitrators were to do so, they would transcend their power, and would inflict gross injustice on Ontario, by imposing upon that Province eleven-fourteenths of the whole surplus debt (that is, the excess of the debt of the late Province of Canada over and above \$62,500,000), or reducing it to figures, and assuming the excess of debt to be \$10,500,000, it would cast upon Ontario the sum of \$8,250,000, and upon Quebec \$2,250,000.”

“4. Because, in his opinion, while the propositions of the Honourable Charles Dewey Day profess to favour an equal division of the debts and assets,

RECORD. "the result of a division under them would be most unequal and unjust, inasmuch as Quebec would get one-half the value of the assets, while required to bear only three-fourteenths of the surplus debt."

The Honourable David Lewis Macpherson then submitted the following proposition, namely:—  
 "That the division and adjustment of the surplus debt, and of the assets owned conjointly by Ontario and Quebec, be upon the basis of the population of those Provinces as shown by the census of 1861."

Upon the question on this proposition being put, it was negatived on the following decision:—For the proposition, the Honourable David Lewis Macpherson; against it, the Honourable Charles Dewey Day and the Honourable John Hamilton Gray.

So the proposition of the Honourable David Lewis Macpherson was rejected. The Honourable John Hamilton Gray then expressed his reasons for dissenting from the propositions laid down by the Honourable Charles Dewey Day, which were entered on the Minutes of the Proceedings of the Arbitrators, as follows:—

"Because, for the reasons already assigned, he thinks the Union of Upper and Lower Canada by the Imperial Act of 1840 cannot be likened to a partnership or mercantile association of any character, and that the Arbitrators have no power and ought not to enter into the consideration of the political or financial state of Upper and Lower Canada previous to the Union, or the equivalents or inducements influencing the Imperial Government or the Provinces, which led to it. That the Union of 1841, in pursuance of that Act, concludes all enquiry into matters antecedent thereto, and that from that time, for all purposes now under their consideration, Upper and Lower Canada must be regarded as one, and the present division and adjustment be decided on grounds entirely irrespective of the position of either Upper or Lower Canada at the time of the Union."

He then submitted the following proposition:—  
 "That the division and adjustment of the surplus debt and assets, owned conjointly by Ontario and Quebec, and enumerated in Schedule Four of the British North America Act, 1867, be based upon the origin of the debts, and that the expenditure made in creating each of said assets be taken as the value thereof; the Arbitrators having no right to enquire into or adjudicate upon the policy or advantages of expenditures made by authority of Parliament."

Upon the question on this proposition being put, it was affirmed on the following division:—For the proposition, the Honourable John Hamilton Gray and the Honourable David Lewis Macpherson; against it, the Honourable Charles Dewey Day. So the proposition of the Honourable John Hamilton Gray passed in the affirmative.

The Honourable David Lewis Macpherson at the same time submitted the following Memorandum, to be entered on the Minutes of the Proceedings of the Arbitrators, which was accordingly done, viz:—

"That while adhering to his preference for population as the basis for division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada, he nevertheless assents to Colonel Gray's proposition, with a view of arriving at a basis, and believing that under it a just award may be made."

Proposition of the Honourable David Lewis Macpherson negatived.

Reasons of the Honourable John Hamilton Gray for dissenting from the propositions of the Honourable Charles Dewey Day.

Proposition submitted by the Honourable John Hamilton Gray.

Affirmed.

Memorandum of the Honourable David Lewis Macpherson.

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It was then ordered that the following Judgment be communicated to the RECORD.  
Counsel of both Provinces.

## JUDGMENT.

Judgment  
ordered to  
be commu-  
nicated.

The Arbitrators under the British North America Act, 1867, having carefully considered the statements made and the propositions submitted respectively by and on the 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, Judgment.  
10 “ 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  
“ enquiry into the relative state of the debts and credits of the Provinces 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  
“ B. N. A. Act, 1867, Ontario and Quebec are conjointly liable to Canada, shall  
“ be based upon the origin of the several items of the debts incurred by the  
“ creation of the assets mentioned in the Fourth Schedule to that Act, and shall  
20 “ be apportioned and borne separately by Ontario and Quebec as the same may  
“ be adjudged to have been 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 where the debt under consideration shall not come within the  
“ pervue of the Fourth 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 the last  
“ preceding section laid down.

“ 5th. That the assets enumerated in the Fourth Schedule to the B. N. A.  
30 “ Act, 1867, and declared by the 113th Section to be the property of Ontario  
“ and Quebec conjointly, shall be divided and adjusted, and appropriated 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 asset has 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  
40 “ their respective cases.

“ J. H. GRAY,  
“ D. L. MACPHERSON.”  
Judge Day *dissentient*.

“ Montreal, May 28, 1870.”

The Arbitrators then adjourned to meet at Montreal on some future day Arbitrators  
to be agreed on. adjourned.

RECORD.

—  
Dissent of  
the Hon.  
Chas. Dewey  
Day.

The Honourable Charles Dewey Day, subsequently to the adjournment, requested that the decision arrived at should not be communicated to counsel until he could be heard from in a few days.

Subsequently, the Honourable Charles Dewey Day sent to the other two Arbitrators, to be entered upon the Minutes of the Proceedings of the Arbitrators, his dissent from the foregoing judgment or decision, which is as follows:—

## DISSENT

of the Honourable Charles Dewey Day to the foregoing decision of the Arbitrators.

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

"1st. Because the said award and 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.

"2nd. 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.

"3rd. 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.

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

"5th. And therefore the undersigned presents an award and judgment based upon his foregoing propositions and upon the reasons assigned in his printed opinion (marked B.) in the terms following, which in his view of the case ought to be rendered, namely:—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 Canada and Lower Canada, under the authority of the 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 rules can be made to apply. And the Arbitrators having also  
 “heard Counsel for the Provinces of Ontario and Quebec respectively, upon the  
 “objection made in behalf of the former Province to the jurisdiction and author-  
 “ity 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  
 10 “the Provinces of Upper 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 Provinces.  
 “And thereupon it is ordered that the Counsel for the Provinces 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.

RECORD.

“C. D. DAY,  
 “Arbitrator.”

TWENTIETH MEETING OF ARBITRATORS.

The Arbitrators met at the City of Montreal, in the room of the Court of  
 20 Appeals, on the fifth day of July, 1870, pursuant to agreement and notice to all  
 parties. All the Arbitrators were present. There appeared on behalf of Quebec  
 the Honourable Mr. Robertson, Treasurer, the Honourable Mr. Chauveau, the  
 Premier, the Honourable Mr. Irvine, Solicitor-General, and Mr. Ritchie; and on  
 behalf of Ontario, the Honourable J. Sandfield Macdonald, Premier, the Honour-  
 able Mr. Wood, Treasurer, and the Honourable J. Hillyard Cameron.

All the  
 Arbitrators  
 present.

The Honourable John Hamilton Gray submitted a communication from the  
 Government of Quebec, that had been addressed to each of the Arbitrators  
 separately, which was read, and is as follows:

Hon. J. H.  
 Gray sub-  
 mitted a  
 communica-  
 tion from  
 the Govern-  
 ment of  
 Quebec.  
 Copy of  
 Report of a  
 Committee  
 of the  
 Executive  
 Council of  
 Quebec.

“Copy of a Report of a Committee of the Honourable the Executive Council,  
 30 “approved by His Excellency the Lieutenant-Governor in Council, on the 6th  
 “day of June, 1870.

“No. 131. “On the requirements of the British North America Act of  
 “1867, respecting the Judgment of the Arbitrators.

“The Honourable the Treasurer of the Province reports that it is the opinion  
 “of the law officers of the Crown that, whereas the 142nd section of the B. N. A.  
 “Act of 1867 enacts that the division and adjustment of the debts, credits, lia-  
 “bilities, properties and assets of Upper Canada and Lower Canada shall be  
 “referred to the arbitrament of three arbitrators, it is essential to the validity of  
 “any decision to be given by such arbitrators, that their judgment should be  
 40 “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 foregoing report, and submit the same for  
 “the Lieutenant-Governor’s approval.

“FELIX FORTIER.  
 “C. E. C.”

RECORD. [Copy.]

Letter from  
the Asst.  
Prov. Sec.  
Quebec to  
Hon. J. H.  
Gray.

"Province of Quebec,  
"Secretary's Office, Quebec, 6th June, 1870.

"SIR,—I have the honour to transmit for your information copy of an Order  
"in Council approved by His Excellency the Lieutenant-Governor of this Pro-  
"vince, and on which a despatch has been founded and transmitted to His  
"Excellency the Governor-General.

"I have the honour to be, Sir,

"Your most obedient servant,

"T. J. JOLICEUR,  
"Asst. Prov. Sec."

"To the Hon. J. H. Gray."

Discussion.

After the reading of the foregoing papers, an irregular discussion took place between Counsel on both sides, as to the order of proceedings, in which considerable time was spent without any definite conclusion having been arrived at.

Arbitrators  
adjourned.

The Arbitrators then adjourned, to meet again at the same place the next day at ten o'clock, a.m.

TWENTY-FIRST MEETING OF ARBITRATORS.

All the  
Arbitrators  
present.

The Arbitrators met at the place of their last preceding meeting on Wednesday, the 6th day of July, 1870, pursuant to adjournment. All the Arbitrators were present, as also all the parties for Ontario and Quebec respectively as were present on the last preceding meeting.

Arbitrators  
called upon  
to give  
decision.

The Honourable J. Hillyard Cameron called upon the Arbitrators to pronounce their decision upon the points argued before them in the month of February, 1870, and upon which it was understood a judgment would be delivered at the present meeting.

Demand  
that before  
decision,  
Counsel for  
Quebec  
should be  
heard on  
question of  
'unanimity.'

The Honourable Mr. Irvine demanded that before any decision on these points was delivered, Counsel on behalf of Quebec should be heard on the point of "unanimity" raised by the Government of Quebec. After hearing argument of Counsel on both sides on this point, the Arbitrators delivered their opinions *seriatim*.

Opinions of  
Arbitrators.

Honourable Charles Dewey Day was of opinion that Counsel should be heard on the question of unanimity before the formal announcement of the said decision.

The Honourable David Lewis Macpherson was of opinion that the decision should be announced at once.

The Honourable John Hamilton Gray concurred in the views of the Honourable Charles Dewey Day, that, before the decision was announced, the argument of Counsel should be heard on the question of unanimity.

Majority in  
favour of  
Quebec.  
Arguments  
heard.  
Arbitrators  
adjourned.

A majority deciding in favour of the proposition of Quebec, the argument was proceeded with.

Messrs. Ritchie and Irvine were heard on behalf of Quebec, and Messrs. Cameron and Wood on behalf of Ontario; and Mr. Irvine was heard in reply.

The Arbitrators then adjourned until the next day at ten o'clock a.m.

TWENTY-SECOND MEETING OF ARBITRATORS.

RECORD.

1870.  
 of an Order  
 of this Pro-  
 mitted to His

The Arbitrators met at the place of their last meeting on the seventh day of July, 1870. Present: All the Arbitrators and all the parties as at the last preceding meeting. All the Arbitrators present.

The Arbitrators stated that, in consequence of the Honourable Charles Dewey Day not feeling very well, they should adjourn until the next day at ten o'clock a.m. Arbitrators adjourned.

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 st. Prov. Sec." 10

TWENTY-THIRD MEETING OF ARBITRATORS.

ion took place  
 which consider-  
 arrived at.  
 place the next

The Arbitrators met at the place of their last meeting on the eighth day of July, 1870, at ten o'clock a.m., pursuant to adjournment. Present: All the Arbitrators and all parties as at the last preceding meeting, with the exception of Messrs. Robertson and Irvine. All the Arbitrators present.

ing on Wed-  
 the Arbitra-  
 respectively as

The Arbitrators announced that there was a difference of opinion between them respecting the delivery of any preliminary judgment; the Arbitrator for Ontario contending that the judgment should be delivered; the Arbitrator for Quebec, on the other hand, being of opinion that it should be reserved until the final hearing of all arguments on both sides, when it might be delivered or not, as rendered necessary or unnecessary by the points raised being otherwise disposed of, or remaining to be adjudicated upon. The Arbitrator appointed by the Dominion thereupon desired an adjournment until next day, at eleven o'clock, to determine as to the course to be pursued; and an adjournment took place accordingly. Difference of opinion as to delivery of judgment.  
Arbitrators adjourned.

to pronounce  
 of February,  
 ivered at the

TWENTY-FOURTH MEETING OF ARBITRATORS.

on on these  
 on the point  
 ng argument  
 their opinions 30

The Arbitrators met at the place of their last meeting on the ninth day of July, 1870, at eleven o'clock a.m., pursuant to adjournment. All the Arbitrators were present, and all parties as at the last preceding meeting. All the Arbitrators present.

uld be heard  
 aid decision.  
 the decision

The Honourable John Hamilton Gray, the Arbitrator appointed by the Dominion, then read the following opinion respecting the delivery of the judgment or decision of the Arbitrators on the points argued in the month of February last, as follows:—

of the Hon-  
 ed, the argu-

OPINION OF THE ARBITRATOR appointed by the Dominion Government.

ne argument 40  
 and Messrs.  
 d in reply.  
 k a.m.

"In deciding on the point of difference between my two colleagues, it is necessary briefly to recur to certain facts. In the arguments that took place at Ottawa, in February last, upon the different modes for the adjustment and division of the debts and assets referred to us under the 142nd Section of the Opinion of Hon. J. H. Gray.

RECORD. "B. N. A. Act, the Arbitrators were called upon by the Counsel for Ontario to  
 "dispose of, in the first instance, the important question of partnership raised  
 "by the Counsel for Quebec. This was objected to by the latter, and, after  
 "consideration, the Arbitrators on the following day sustained the objection.  
 "The arguments were then continued for several days by the Counsel on both  
 "sides, and the several modes of division suggested by Ontario and Quebec  
 "including the above question of partnership, were fully discussed, some of the  
 "members of the Government of each of those Provinces being present each  
 "day ; and the Arbitrators, at the close of the argument, were urgently pressed  
 "by the Counsel on both sides to determine and declare the mode under which 10  
 "the division and adjustment should proceed, as preliminary to any further 10  
 "action, notwithstanding that the Arbitrators had previously expressed their  
 "opinion that decisions on these preliminary points were not desirable, but that  
 "it would be better to go on, enter fully into the case on both sides, and decide  
 "upon the whole as ultimately might be deemed right.

"In accordance with the wishes expressed both by Ontario and Quebec,  
 "and solely in accordance with those wishes, the Arbitrators did proceed to  
 "consider the questions submitted and the arguments, and after a long and  
 "laborious consultation, extending over several days, held at Montreal in May  
 "last, came to a decision, but which decision was not unanimous. That decision 20  
 "was by the three Arbitrators ordered to be entered in the minute book, and 20  
 "to be communicated to the Counsel for the two Provinces respectively. At  
 "the subsequent request of the Arbitrator for Quebec, made to the other two  
 "Arbitrators separately after their adjournment on the 28th May last, that  
 "communication was delayed for a short time, and was, on further request  
 "still further delayed. The decision was entered as directed. About the  
 "16th June last, the Arbitrators severally received from the Government  
 "of Quebec a Minute of Council of that Government, expressing the opinion  
 "of the law officers of that Government, that it was essential to the validity  
 "of any decision by the Arbitrators that their judgment should be unanimously 30  
 "concurred in. 30

"The communication of the decision arrived at on the 28th May last, was  
 "therefore postponed until the action of the Arbitrators could be determined  
 "on this point at their meeting, which was to take place at Montreal, on the  
 "first Tuesday in July, though the Arbitrator for Ontario demanded that the  
 "Counsel of both Governments should have the decision communicated to them  
 "in obedience to the order made in that behalf, and unanimously concurred in  
 "by all the Arbitrators.

"On the first day of the meeting in July, at Montreal, the fact of the  
 "receipt of this communication from the Government of Quebec was announced. 40  
 "A demand was then made on behalf of the Government of Quebec, that 40  
 "Counsel should forthwith be heard on that point ; and after denial by the  
 "Counsel for Ontario of the right of the Government of Quebec to make any  
 "communication to the Arbitrators which was not at the same time made to the  
 "Counsel or Government of Ontario, and a demand made that a decision arrived  
 "at in May last should be first declared, the question was submitted, and the Arbi-  
 "trators decided by a majority that Quebec should be heard on the point of unanimity.

“ After full argument, the Arbitrators adjourned until the 7th, and then  
 “ further adjourned until the 8th. At the meeting on the 8th, the Arbitrator  
 “ appointed by the Dominion, announced that there was a difference of opinion  
 “ between his colleagues. That the Arbitrator for Quebec expressed his objec-  
 “ tion to the announcement of the decision arrived at on the 28th May last,  
 “ or of any other preliminary decision hereafter, and reiterated the views on the  
 “ impolicy of such a course, already stated by him, but which course at the  
 “ request of the Counsel on both sides had been departed from; further adding  
 “ his belief that such announcement would tend to prevent a harmonious con-  
 “ clusion. That the Arbitrator for Ontario, on the contrary, contended that, at  
 “ the request of both parties, they had come to a decision; that the decision  
 “ had already been communicated unofficially by both Arbitrators to their re-  
 “ spective Governments; that those Governments had a right to its announce-  
 “ ment, and that it was the duty of the Arbitrators to make the communication  
 “ previously ordered. That all efforts to produce an agreement between his  
 “ colleagues had failed, and that it was therefore necessary for him to take  
 “ twenty-four hours to consider the course he should pursue.

“ A discussion, as you are aware, arose on this statement, but resulted in  
 “ no amicable arrangement, and I have now to decide.

“ If this was a private matter there would be no difficulty about it. Parties  
 “ having agreed to a reference, and having requested a decision, whether inter-  
 “ locutory or final, must take it unless by consent it is abandoned.

“ The point now to be considered is, whether in an important public matter,  
 “ such as this arbitration between Ontario and Quebec, sufficient grounds exist  
 “ for a departure from the ordinary mode.

“ I have exhausted every effort to bring about an agreement on this point  
 “ between my two colleagues, and have delayed giving any opinion until com-  
 “ pelled by the necessity of the arbitration being either abandoned or proceeded  
 “ with. A week has elapsed in unavailing efforts to do so, and I am most re-  
 “ luctantly compelled to decide.

“ I have to observe that the decision of the 28th May last is not final. It  
 “ is not like an award of the Arbitrators on the division and adjustment. It is  
 “ only an opinion of the majority of them as to the best mode to proceed in the  
 “ division. If in working it out it is found to operate unfairly, it is open to be  
 “ reviewed and rescinded, and such other mode adopted as may be shown to  
 “ lead to a fairer result. It is admitted by the Arbitrator for Quebec that in  
 “ proceeding under this mode, the enquiry will necessarily expand itself into the  
 “ consideration of much that would be embraced under the view of partnership  
 “ advocated by himself; but it does not admit the existence of a partnership,  
 “ or limit the investigation to the rules which would govern a partnership.

“ No application has been made to have the matter re-heard or re-argued, or  
 “ any grounds taken or alleged to set aside the decision, or any reason assigned  
 “ why it should not be pronounced at this meeting, save that one party does  
 “ not wish it, and that its delivery may tend to prevent a harmonious conclu-  
 “ sion. If both parties would assent to this, there would be an end of the  
 “ matter, for clearly every effort should be made to attain that end.

“ The third Arbitrator undoubtedly has a discretion, but the exercise of  
 D

RECORD. "that discretion must be on reasonable grounds. It should not be the mere  
 "expression of an arbitrary will. One party demands the delivery of the  
 "decision at the meeting as part of the compact on which the arguments were  
 "heard and the discussion took place. The other admits the compact, but ob-  
 "jects to its being carried out.

Opinion—  
 Continued.

"The power to withhold judgments ready to be pronounced is frequently  
 "exercised by tribunals and judges, when it is manifest the interests of the  
 "parties concerned will be promoted; but it is generally by consent, and never  
 "against the will of one of the parties, without good cause shown.

"The decision in this case was communicated by both Arbitrators to their 10  
 "respective Governments unofficially, and I cannot see any objection to doing  
 "openly what each one has in that respect undertaken to do in his individual  
 "capacity.

"When the judgment is formally pronounced, it will then be optional with  
 "either Government to assign the grounds of objection, and move for a re-  
 "hearing or rescinding.

"No party will go on with a reference or argument if after both parties  
 "have agreed to the submission, and have been heard—one may render it nuga-  
 "tory, the moment he learns the result.

"I have been most desirous to concur with the views expressed by the 20  
 "Arbitrator for Quebec; but I have sought in vain for some rational ground  
 "on which, if compelled to decide, a refusal to announce the decision on the  
 "28th of May last could be based.

"I cannot find that the decision will inflict any wrong on the party object-  
 "ing. It is not conclusive. It is a mere mode of enquiry, and open to correc-  
 "tion. The decision made by us is no iron rule, but simply in the light of a  
 "guide to be construed liberally.

"It is now earnestly to be hoped that, in view of the great interests at  
 "stake, the parties will proceed without further delay, and that both will unite  
 "in endeavouring to effect a just distribution by the mode recommended, or 30  
 "failing that, by some other mode.

"I agree, therefore, with Mr. Macpherson, that the decision arrived at on  
 "the 28th of May last, should be formally announced to the Counsel and Pro-  
 "vincs concerned.

"J. H. GRAY."

Hon. C. D.  
 Day resigns.

After the foregoing expression of opinion, the Honourable Charles Dewey  
 Day stated that he could no longer act in the arbitration, as he could not agree  
 in the decision; and that he had, therefore, that morning placed his resignation  
 in the hands of the Government of Quebec. He thereupon handed to Messrs.  
 Macpherson and Gray a written notice to that effect, and withdrew. 40

His resigna-  
 tion received  
 by Quebec.  
 Decision of  
 28th May  
 read.  
 Dissent also  
 read.

Mr. Chauveau then stated that his Government had received the Honour-  
 able Charles Dewey Day's resignation.

On the motion of Mr. Cameron, the decision of the 28th May was formally  
 read and pronounced.

The Honourable Charles Dewey Day's dissent thereto was also read.

Mr. Ritchie then presented and requested the following memorandum to RECORD.  
be filed :—

"The undersigned, of Counsel for the Province of Quebec, heretofore respectfully represents that the Honourable John Hamilton Gray, the Arbitrator appointed by the Government of Canada, under the Provisions of the B. N. A. Act, 1867, has become and now is disqualified to act as Arbitrator, inasmuch as the said the Honourable John Hamilton Gray is now, and for a considerable time past has been, a resident of 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 Honourable John Hamilton Gray, so disqualified as aforesaid.

"Montreal, 9th July, 1870."

"T. W. RITCHIE,

"Of Counsel for Quebec."

Mr. Ritchie also presented the following memorandum, requesting it to be filed, it being as follows :—

"The Province of Quebec respectfully excepts to the decision now rendered by the Honourable John Hamilton Gray and David Lewis Macpherson, two of the Arbitrators, as not being a valid judgment—not being that of the Arbitrators.

"Montreal, July 9th, 1870."

"T. W. RITCHIE,

"Of Counsel for Quebec."

The Arbitrators then adjourned to meet again the same day at four o'clock p.m.

Arbitrators  
adjourned.

#### TWENTY-FIFTH MEETING OF ARBITRATORS.

The Arbitrators met on the same day as the last preceding meeting, at four o'clock p.m., pursuant to adjournment. Present: The Honourable David Lewis Macpherson and the Honourable John Hamilton Gray. Messrs. Wood and Cameron, and the Attorney-General for Ontario, were present on behalf of Ontario, and Mr. Ritchie appeared on behalf of Quebec.

The Attorney-General for Ontario proposed to proceed with the investigation. The Arbitrators declined to take further proceedings that day, and decided to adjourn, to meet again at Montreal, on some future day to be agreed upon and to be notified to all parties.

Present:  
Hon. J. H.  
Gray and  
Hon. D. L.  
Macpherson

Arbitrators  
declined to  
take further  
proceedings  
and  
adjourned.

#### TWENTY-SIXTH MEETING OF ARBITRATORS.

The Arbitrators met at the St. Lawrence Hall, in the city of Montreal, on the twenty-first day of July, 1870, at two o'clock p.m., pursuant to notice duly given to all parties. The Arbitrators present were the Honourable David Lewis Macpherson and the Honourable John Hamilton Gray. The Honourable John

Arbitrators  
present:  
Hon. D. L.  
Macpherson  
and Hon.  
J. H. Gray.

RECORD. Hillyard Cameron, the Honourable John Sandfield Macdonald and the Honourable E. B. Wood were present on behalf of Ontario, and the Honourable George Irvine, Solicitor-General, and T. W. Ritchie, Esq., appeared on behalf of Quebec.

The notice to the Honourable Charles Dewey Day of the meeting to be held that day was then produced and read; the same having been duly posted, and is as follows:—

Notice to attend meeting of Arbitrators given to Hon. C. D. Day.

“Toronto, July 12th, 1870.  
 “DEAR SIR,—We beg to notify you that we shall meet at the St. Lawrence Hall Hotel, in Montreal, on Thursday, the twenty-first instant, at two o’clock in the afternoon, to proceed with the arbitration between Ontario and Quebec, under the B. N. A. Act, 1867.

“We are, dear Sir,

“Yours very truly,

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

Notice to Que

A similar notice at the same time was sent to Mr. Ritchie, as Counsel for Quebec, which he admitted he had received.

Judgment on question of “unanimity” called for.

Mr. Cameron then called for the delivery of the judgment of the Arbitrators on the question of “unanimity,” which had been argued before them at a previous meeting in Montreal.

Communication informing Arbitrators that resignation of Hon. C. D. Day accepted by Quebec.

The Arbitrators then stated that they had severally received, from the Government of Quebec, a communication, which was read and is as follows:—

“Province of Quebec,

“Secretary’s Office, Quebec, 19th July, 1870.

“SIR,—I have the honour to inform you that His Excellency the Lieutenant-Governor has been pleased to accept the resignation of the Hon. Chas. Dewey Day as Arbitrator of the Province of Quebec, under the 142nd Section of the B. N. A. Act, 1867, and request that you will be pleased to stay further proceedings until such time as you receive notice as to their intentions from the Government of this Province.

“I have, &c.,

“P. J. O. CHAUVEAU.

Revocation of Hon. C. D. Day’s appointment as Arbitrator for Quebec.

“The Hon J. H. Gray, Ottawa.”  
 Mr. Ritchie thereupon handed in the revocation, by the Government of Quebec, of the Honourable Charles Dewey Day’s appointment, requesting the same to be filed. It is as follows:—

“Province of Quebec.

“N. F. BELLEAU.

“VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.

“To all to whom these presents shall come, or whom the same may concern, greeting.

“Whereas in and by our certain Letters Patent, bearing date, at our City of Quebec, the 30th day of January, in the 31st year of our reign, we did nominate, constitute and appoint the Honourable Charles Dewey Day, of the City of Montreal, in our Province of Quebec, to be, under the provisions of an Act

the Honourable George  
 of Quebec.  
 meeting to be  
 duly posted,  
 h, 1870.  
 St. Lawrence  
 t two o'clock  
 and Quebec, 10

Arbitrators.  
 Counsel for

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“of the Parliament of the United Kingdom of Great Britain and Ireland, RECORD.  
 “passed in the thirtieth year of our reign, entitled ‘An Act for the Union of  
 “‘Canada, Nova Scotia and New Brunswick, and the government thereof, for  
 “‘the purpose; connected therewith,’ the Arbitrator chosen for the Government  
 “of Quebec for the division and adjustment of the debts, credits, liabilities,  
 “properties and assets of Upper Canada and Lower Canada during our royal  
 “pleasure: And whereas the said Charles Dewey Day has tendered his resig-  
 “nation of the said office, which has been accepted by us, and for divers other  
 “good causes us thereunto moving, we have been pleased to determine our  
 10 “royal will and pleasure in relation to the said letters patent: Now know ye,  
 “that we do hereby cancel, revoke and make void the said letters patent, and  
 “do hereby discharge the said Charles Dewey Day from the office of Arbitra-  
 “tor of the Government of Quebec as aforesaid.

“In Testimony whereof we have caused these our Letters to be made  
 “Patent, and the Seal of our Province to be hereunto affixed.

“Witness, our Right Trusty and Well-Beloved the Honourable Sir Narcisse  
 “Fortunat Belleau, Knight, Lieutenant-Governor of our said Province of  
 “Quebec, at our Government House, in our city of Quebec, in our said  
 “Province, this twentieth day of July, one thousand eight hundred and  
 20 “seventy, and in the thirty-fourth year of our reign.

“By command,

“P. J. O. CHAUVEAU,  
 “Secretary.”

Thereupon Mr. Irvine rose and protested against further action being taken  
 by the Arbitrators, stating that he considered the Arbitration determined, and  
 that he and Mr. Ritchie would withdraw from all further proceedings.

The Attorney-General of Ontario and Mr. Cameron stated that they con-  
 sidered the Arbitration in full force, and in no way affected by the resignation  
 of the Honourable Charles Dewey Day, or the revocation of his authority, and  
 30 that they were ready, and demanded that the proceedings should go on.

The Arbitrator chosen by the Dominion thereupon read the judgment of  
 himself and Mr. Macpherson upon the question of the necessity of unanimity  
 raised and argued before them on the 6th day of July, 1870, and which is as  
 follows :—

#### JUDGMENT UPON THE QUESTION OF “UNANIMITY.”

“At our last meeting a question was raised by the Counsel for Quebec, under  
 “instructions from their Government (a copy of the Order in Council having been  
 “transmitted to each of the Arbitrators) which would then have been decided but  
 “for the abrupt withdrawal of Judge Day, and our subsequent immediate adjourn-  
 40 “ment, namely:—‘That it is essential to the validity of any decision to be given  
 “‘by the Arbitrators that their judgment should be unanimously concurred in.’ It  
 “remains for me now to express the decision of the Arbitrators on that question.

“It is to be regretted that a position of this important character should not  
 “have been taken before it was known that there was a division of opinion be-  
 “tween the Arbitrators; and it may well be assumed that it would hardly have  
 “escaped the attention of so accomplished a jurist as Judge Day, the Arbitrator

Revocation  
 —Continued

Protest by  
 Quebec  
 against fur-  
 ther action.  
 Demand by  
 Ontario that  
 proceedings  
 should go on.

Judgment  
 on the ques-  
 tion of  
 ‘unanimity.’

RECORD. " of Quebec, had he deemed it tenable, and in such case that he would, under the  
 Judgment " circumstances of that decision, undoubtedly have brought it to the notice of his  
 —Continued " co-Arbitrators. The learned Judge heard the argument, but left with us no  
 " expression of his opinion, save that the Arbitration was one of a public nature.  
 " The views, therefore, now delivered are those of the remaining two Arbitra-  
 " tors, and consequently of a majority.

" In matters of private reference the law is plain, that unless the terms of  
 " the submission provide that a majority may rule, all must agree in the award,  
 " or it would not be binding. The impracticability in private affairs of working  
 " out an arbitration, if unanimity was essential, led to the adoption, in almost 10  
 " all cases of submission, of the majority clause, or the alternative provision of  
 " an umpire. So essential to the successful conducting of an arbitration has  
 " this become, that in the ordinary forms of arbitration bonds, or of rules of  
 " reference, one of these clauses is almost always found inserted. Without such  
 " clause, in private arbitration, it is admitted unanimity is requisite. The point now  
 " is: Does the same rule apply to public references or arbitrations? to which class,  
 " it is conceded, the present enquiry belongs—the 142nd Section of the B. N. A.  
 " Act, 1867, under which the arbitration is held, containing no such clause.

" Mr. Irvine, the Solicitor-General for Quebec, has properly narrowed the  
 " question to this point.

" Mr. Ritchie, in his argument for Quebec, cited Caldwell on Arbitration, 20  
 " p. 202, to prove that undoubted position as to private arbitrations. In the note  
 " to that page by the able American editor, who republished the work in the  
 " United States, we find the following remark:—

" " There is a wide distinction to be observed between the case of a power  
 " conferred for a public purpose, and an authority of a private nature. In the  
 " latter case, if the authority is conferred on several persons, it must be jointly  
 " exercised, while in the former it may be exercised by a majority."

" Further on, at page 204, he says ' that referees appointed under a statute  
 " must all meet and hear the parties, but the decision of the majority will be 30  
 " binding.' The correctness of these views is sustained by the citation of many  
 " authorities.

" In the case of Green against Millar, Johnson's New York Rep., p. 38, as  
 " far back as 1810, it is clearly laid down:—

" " When an authority is confided to several persons for a private purpose,  
 " all must join in the act; *aliter* in matters of public concern.' Thompson J.—  
 " A controversy between these parties was submitted to five arbitrators. The  
 " submission did not provide that a less number than the whole might make an  
 " award. All the arbitrators met and heard the proofs and allegations of the  
 " parties, but four only agreed on the award made. And whether the award be 40  
 " binding is the question now before the court. No case has been cited by the  
 " counsel where this question has been directly decided. I am, however, satis-  
 " fied that as a submission to arbitrators is a deligation of power for a mere  
 " private purpose, it is necessary that all the arbitrators should concur in the  
 " award unless it is otherwise provided by the parties. In matters of public  
 " concern a different rule seems to prevail; there the voice of the majority shall  
 " govern.' In the case of Grindly vs. Barker, 1 Bos. and Pul. 236, Eyre C. J,

"says—'It is now pretty well established that when a number of persons are entrusted with power *not of mere private confidence*, but in some respects of a general nature, and all of them are regularly assembled, the majority will include the minority, and their act will be the act of the whole.' The same principle was recognized by the Court of K. B. in the case of King vs. Beaton, 3rd Term Rep. 592. See also Paley on Agency, 3rd Am. Ed., pages 177-8, Note G.; and Croker vs. Crane, 21 Wendell, 211-18. In *ex parte* Rogers, 7th Vol. Cowen U. S., Rep. 526, and Note A. pages 530 and 535, the whole position is ably and thoroughly reviewed; and in a long note citing the English authorities, as well as the American, bearing upon the same point, the distinction between public and private reference and the duties and powers resulting therefrom, are clearly shown, and the power of the majority to decide clearly established. The English cases upon the point are not so direct, but in the reasoning of those which have been cited, or can be found, the same principle clearly manifests itself. In the Courts of the United States, decisions are constantly found bearing upon circumstances similar to those in our own Dominion. The varied nature of the business of that country, the different aspects under which questions arise, from their position as a congregation of States, the daily development of new conflicts of rights arising from the expanding nature of their society, raise questions which do not come up in England, but the solution of which, after all, in the absence of any particular local statutory provisions, is governed by the law of England. Under these circumstances our courts are in the habit of taking those decisions as guides. These then determine that in matters of Public Arbitration and Reference, though provision to that effect be not specifically made, the decision of a majority shall be incident to the reference. The 142nd Sec. of the B. N. A. Act, 1867, must come within this rule. Were it not so intended, the section would be superfluous, because any one party in a great question of public importance could prevent a decision.

"To work out the reasoning of the Counsel of Quebec to its legitimate conclusion would place absolute power in the hands of the third or Dominion Arbitrator. I have supposed that, on points on which Ontario and Quebec were agreed, it was my duty at once to assent, and that under such circumstances, whether I differed or not, was of no consequence; but as the powers of all the Arbitrators must be co-equal, if unanimity is essential, I might, by simply disagreeing, prevent an award, even when both Ontario and Quebec, the parties interested, had agreed upon it. Such a position is untenable. Mr. Macpherson and myself are, therefore, of opinion that the decision of a majority must govern.

"J. H. GRAY.

40 "Montreal, July 21st, 1870."

The Arbitrators then adjourned until the next day at ten o'clock a.m.

Arbitrators  
adjourned.

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## TWENTY-SEVENTH MEETING OF ARBITRATORS.

The Arbitrators met on the twenty-second day of July, 1870, at ten o'clock

RECORD.  
Judgment  
—Continued

RECORD. a. m. Present: the Honourable John Hamilton Gray and the Honourable David Lewis Macpherson—the Honourable Charles Dewey Day not being present. The Attorney-General for Ontario, and Messrs. Cameron and Wood appeared on behalf of Ontario. No one appeared on behalf of Quebec.

Present  
Hon. J. H. Gray and  
Hon. D. L. Macpherson.

Discussion  
on the part  
of Ontario.

Arbitrators  
adjourned.

Mr. Cameron stated that he wished an adjournment until two o'clock p. m. The Arbitrators adjourned accordingly; and at two o'clock p.m. resumed their sitting, when Mr. Cameron proceeded on the part of Ontario, to submit to and discuss before the Arbitrators, the respective debts of Ontario and Quebec for local purposes, with the view of bringing the debts in both Provinces within the principle of their decision. After progress made, the Arbitrators adjourned until ten o'clock next day.

TWENTY-EIGHTH MEETING OF ARBITRATORS.

Present  
Hon. D. L. Macpherson  
and Hon. J. H. Gray.

Arbitrators  
announced  
service on  
them of  
Writ of Pro-  
hibition.

The Arbitrators met at the place of their former meeting on the twenty-third day of July, 1870, at ten o'clock a. m. pursuant to adjournment. Present: the Honourable David Lewis Macpherson and the Honourable John Hamilton Gray—the Honourable Charles Dewey Day not being present. Messrs. Cameron and Wood and the Attorney-General for Ontario, appeared on behalf of Ontario. No one appeared on behalf of Quebec.

The Arbitrators stated that, after the adjournment last evening, they were severally served with a Summons, or Writ in Prohibition, issued by order of Judge Beaudry out of the Superior Court of the Province of Quebec, which with the papers annexed thereto were read. The Writ appeared to be issued on affidavits severally made by the Honourable George Irvine, Solicitor-General for Quebec, and T. W. Ritchie, Esq., Counsel for Quebec; which affidavits and Writ severally bore date the twenty-second day of July, 1870. The affidavit, made by the said the Honourable George Irvine, is as follows:—

“ Canada. }  
“ Province of Quebec, }  
“ District of Montreal. }

“ IN THE SUPERIOR COURT.

Affidavit of  
Hon. Geo. Irvine.

“ The Honourable George Irvine, of the City of Quebec, Her Majesty's Solicitor-General for the Province of Quebec, being duly sworn, doth depose and say:—

“ That on the ninth day of July instant, at the City of Montreal, in the said Province, the Honourable Charles Dewey Day, the Honourable John Hamilton Gray and the Honourable David Lewis Macpherson, Arbitrators, under the provisions of the 142nd Section of the British North America Act, 1867, held a sitting, and that then and there the said the Honourable Charles Dewey Day, who was the Arbitrator chosen by the Province of Quebec, did, as this deponent is credibly informed and believes, notify the said other Arbitrators that he had resigned his office of Arbitrator, and should no longer act

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" upon the said Arbitration, and thereupon he withdrew from the said sitting RECORD.  
" of the said Arbitrators.

" That afterwards, upon the said day, the said the Honourable John Ham- Affidavit—  
" ilton Gray and the Honourable David Lewis Macpherson, as this deponent is Continued.  
" credibly informed, adjourned to a future day to be named, and thereafter  
" notified the Government of Quebec that they would meet and proceed with  
" the said Arbitration at the St. Lawrence Hall in Montreal aforesaid, on the  
" twenty-first day of July instant.

10 " That the resignation of the said the Honourable Charles Dewey Day was  
" duly accepted, and his commission and appointment as such Arbitrator was,  
" on the twentieth day of July instant, revoked and annulled by the Govern-  
" ment of Quebec.

" That on the said twenty-first day of July instant, the said the Honourable  
" John Hamilton Gray and the Honourable David Lewis Macpherson met at  
" Montreal aforesaid, and assumed to proceed with the said Arbitration, and  
" although they were then and there duly notified that the said the Honourable  
" Charles Dewey Day had resigned his office as Arbitrator, and that his resignation  
" had been accepted, and his commission and appointment as such Arbitrator had  
" been revoked and annulled by the said Government of Quebec, they the said  
20 " the Honourable John Hamilton Gray and the Honourable David Lewis Mac-  
" pherson did sit as Arbitrators upon the said Arbitration, and did proceed with  
" the same, and did then and there, notwithstanding the said Province of Quebec  
" protested against any further proceedings being had, render a certain judgment  
" or decision as Arbitrators, and did declare their intention to go on with the  
" said Arbitration, and did for that purpose adjourn and continue their said sitting  
" until the twenty-second day of July instant, at ten o'clock in the forenoon, at  
" Montreal aforesaid; and further deponent saith not, and hath signed.

" Sworn and acknowledged at Montreal, }  
" twenty-second day of July, before us, } " G. IRVINE."  
30 " L. J. A. PAPINEAU and J. S. HONEY, P. S. C." }

The affidavit made by T. W. Ritchie, Counsel for Quebec, was in substance Affidavit of  
the same as that of the Honourable George Irvine. Mr. Ritchie  
same as Mr.  
Irvine's.

Appended to the writ was the petition of the Honourable Gedeon Ouimet, Petition an-  
Attorney-General for Quebec, to the Chief Justice and Justices of the Superior nexed to  
Court, setting forth the facts stated in the foregoing affidavits, and praying for a Writ.  
Writ of Prohibition against the Honourable John Hamilton Gray and the Hon-  
ourable David Lewis Macpherson to restrain them from further proceeding upon  
the said Arbitration. The Writ of Prohibition commanded the said two Arbi-  
trators to refrain from further proceeding in the said Arbitration, and required  
40 them to show cause why they should not so refrain on Thursday, the first day  
of September then next.

The Arbitrators, after reading the foregoing papers, adjourned until Thurs- Arbitrators  
day, the fourth day of August then next, to meet at Osgoode Hall, in the City adjourned,  
of Toronto, at twelve o'clock noon, to proceed with the said Arbitration, and and directed  
they directed that due notice of the time and place of such meeting should be notice of  
given to the Honourable Charles Dewey Day, and to T. W. Ritchie, Esq., the next meet-  
Counsel for Quebec. ing to be  
given to  
Quebec.

RECORD.

TWENTY-NINTH MEETING OF ARBITRATORS.

Present :  
 Hon. J. H. Gray and  
 Hon. D. L. Macpherson.  
 Hon. C. D. Day being absent.  
 Notice to Arbitrator and Counsel for Quebec to meet in Toronto.

The Arbitrators met at Osgoode Hall, in the City of Toronto, on the fourth day of August, 1870, pursuant to notice. Present—The Arbitrators, the Honourable John Hamilton Gray and the Honourable David Lewis Macpherson; the Honourable Charles Dewey Day not being present. Messrs. Cameron and Wood appeared on behalf of Ontario; no one appearing on behalf of Quebec.

Mr. Cameron produced a notice which he stated he had personally posted to the Honourable Charles Dewey Day, to the Honourable George Irvine, Solicitor-General for Quebec, and to T. W. Ritchie, Esq., Counsel for Quebec, which notice is as follows :—

“ In the matter of the 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 Osgoode Hall, “ Toronto, at twelve o’clock noon, to proceed with the Arbitration.

“ Montreal, twenty-third day of July, 1870.

“ D. L. MACPHERSON,

“ J. H. GRAY.”

Endorsed on the back were these words, “ Mailed from Toronto on the twenty-eighth day of July, 1870. J. H. C.”

The Honourable John Hamilton Gray reported that after the adjournment at Montreal, on the twenty-third day of July last past, just before leaving Montreal by the evening train, he was served by a Bailiff or Sheriff’s Officer, with a Writ of *Quo-Warranto*, to show cause by what authority he exercised the office of an Arbitrator—he, having become a resident of Ontario.

Jurisdiction of Superior Courts, Quebec, over Arbitrators argued. Arbitrators adjourned.

The Arbitrators waited an hour, and, no one appearing on behalf of Quebec, expressed their desire to the Counsel for Ontario, to hear argument upon the subject of the jurisdiction of the Superior Courts of Quebec, by Writ of Prohibition, to restrain them from proceeding with the said Arbitration; whereupon Mr. Cameron proceeded to argue the question. After which the Arbitrators adjourned until next day at twelve o’clock noon, to meet at the same place.

THIRTIETH MEETING OF ARBITRATORS.

Present :  
 Hon. J. H. Gray and  
 Hon. D. L. Macpherson.  
 Hon. C. D. Day being absent.

The Arbitrators met on the fifth day of August, 1870. Present : The Honourable John Hamilton Gray and the Honourable David Lewis Macpherson—the Honourable Charles Dewey Day not being present. Messrs. Cameron and Wood appeared on behalf of Ontario; no one appearing on behalf of Quebec.

The Arbitrators stated that they were ready to deliver their opinion upon

the question of the authority and power of the Superior Courts of Quebec, to RECORD.  
restrain them by prohibition from proceeding in the said Arbitration argued the  
day before. —

OPINION OF THE HONOURABLE DAVID LEWIS MACPHERSON.

"The two Arbitrators now present meet under circumstances calling for  
"the most careful circumspection and thoughtfulness. Opinion of  
the Honour-  
able David  
Lewis Mac-  
pherson.

"The Province of Quebec is not represented before them.

"The Counsel for Ontario calls upon them to proceed with the evidence  
"and to make their award.

"The retirement of the Arbitrator for Quebec, sanctioned by the Govern-  
"ment of that Province, was formally communicated to the Arbitrators when  
"they met at Montreal, on the twenty-first July last, by an official letter from  
"the Premier and Secretary, the Honourable Mr. Chauveau, in which he fur-  
"ther preferred the extraordinary request that the remaining Arbitrators 'will  
"be pleased to stay further proceedings until such time as they receive notice  
"as to their intentions from the Government of this Province,'—the Province  
"of Quebec.

"A request to stay proceedings until the Government of Quebec should  
"determine whether they would appoint another Arbitrator, was shortly after-  
"wards made by the Counsel for that Province, and was, upon consideration,  
"refused by the Arbitrators; whereupon the Counsel for Quebec declared that  
"the Province would no longer be a party to the Arbitration, and withdrew.

"Further, each of the two Arbitrators now present was, since the retire-  
"ment of the Arbitrator for Quebec, served, while in the City of Montreal,  
"with a writ issued from the Superior Court of the Province of Quebec, the  
"purport of which is to prohibit them from the further exercise of their functions  
"until a new Arbitrator should be named for that Province, or to show cause  
"to the contrary on the first September next.

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

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

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

RECORD.

Opinion of  
Hon. D. L.  
Macpherson—*Continued.*

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

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

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

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

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

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

" They have been seriously and dispassionately considered, and not the less that their determination may involve personal responsibilities to an extent which could not be, and was not, anticipated when the Arbitrators accepted their appointment. I feel, however, that the first duty of the Arbitrators is to make a just award; that they are not responsible for the embarrassment which the present state of things has given rise to, and which adds greatly to their responsibility, while it increases, if possible, their anxiety to do right.

" By simply performing what they believe to be their duty, if they do anything (while impartially exercising their best judgment), that may be looked upon as prejudicial to the interests of Quebec in the voluntary absence of Counsel for that Province, the just responsibility cannot be charged upon them.

" If, in proceeding, they act illegally, their award will not be binding, and  
 " can do no injury. If it should be binding, the loss of the judgment and  
 " assistance of an Arbitrator for the Province of Quebec, however much the  
 " remaining Arbitrators may regret it, and especially that they are deprived of  
 " the valuable aid of the Arbitrator who has resigned, is not their fault. The  
 " withdrawal was his act, and it has been deliberately adopted by his Govern-  
 " ment, who have taken legal steps in one of their own Courts, by their Attorney-  
 " General, to stop further proceedings. They have thus placed the Arbitrators  
 " in the invidious position of either retracting their refusal to grant indefinite  
 " delay to the Province of Quebec, or of being placed in conflict with one of the  
 " highest tribunals of that Province.

" As a public functionary in the matter, as well as in my private capacity,  
 " I desire to evince in every proper way my profound respect for the Court  
 " whose process has been served on the Arbitrators. But it appears to me they  
 " cannot, without a virtual abdication of their functions as Arbitrators, accept  
 " as a justification for a departure from their previously declared opinion, the  
 " preliminary order of prohibition (which I venture to think will not be finally  
 " confirmed) of a tribunal of that Province whose Arbitrator's course has un-  
 " necessarily brought about this complication. I am of opinion that the Arbi-  
 " trators will best discharge the trust reposed in them by proceeding with the  
 " reference and making, without unnecessary delay, an award which shall divide  
 " and adjust the debts, credits, liabilities, assets and properties of Upper and  
 " Lower Canada.

" As already pointed out, if they have under the circumstances no power  
 " to make an award, the attempt to make one will create no prejudice to either  
 " party.

" If they have the power, the duty arising under the Statute from an ac-  
 " ceptance of their appointment imperatively requires them not by any act of  
 " theirs to suffer the time occupied and the cost occasioned by the proceedings  
 " so far taken to be utterly wasted, or to unnecessarily postpone the rendering  
 " of a final award.

" The Government of the Province of Quebec, and the Arbitrator ap-  
 " pointed by them have had due notice that the present meeting would be  
 " held for the purpose of proceeding with business, and that it would be  
 " competent for the Arbitrators, therefore, to proceed, in accordance with well  
 " established rules.

" In order, however, to remove any possibility of misapprehension or doubt,  
 " I think it better, under the peculiar circumstances, that notice should now be  
 " given to the Province of Quebec and to the Honourable Charles Dewey Day,  
 " of the intention of the Arbitrators to proceed in accordance with the opinions  
 " just expressed, and that the Arbitrators should adjourn until Wednesday, the  
 " 17th instant, giving notice to all parties to the reference, that on that day they  
 " will proceed, should the Government of Quebec not think proper to be repre-  
 " sented or to assign any new or sufficient reason for their absence.

" D. L. MACPHERSON,

" Arbitrator.

" Toronto, August 5, 1870."

RECORD.

Opinion of  
Hon. D. L.  
Macpherson  
—Continued

RECORD.

## OPINION OF THE HONOURABLE JOHN HAMILTON GRAY.

Opinion of  
the Honour-  
able John  
Hamilton  
Gray.

“My colleague, the Arbitrator for Ontario, having expressed a desire to  
 “adjourn for a week or ten days, in order to afford time for a notification to the  
 “Government of Quebec that the Arbitrators would certainly proceed in the  
 “absence of Arbitrator or Counsel on their part, unless at the next meeting  
 “they are represented—I shall most certainly concur. I think we should  
 “exhaust every reasonable effort to induce co-operation in this matter: but in  
 “order to prevent the delay, which is now granted, being in any way attributed  
 “to a doubt as to the power or intention of the Arbitrators to proceed, it is as  
 “well to explain with distinctness the views of the Arbitrators on the authority  
 “or the power of the Courts of any of the Provinces to prohibit or restrain their  
 “proceedings. With the highest respect for the Courts of Quebec, on any  
 “matter coming within their jurisdiction, it is plain this Arbitration does not.  
 “It derives its authority from an Imperial Act. The Government and Province  
 “of Quebec, of which those Courts form a constituent part, is simply a party to  
 “the Arbitration; another Province, whose Courts and Government are entirely  
 “independent of and beyond the jurisdiction of the Courts of Quebec, is the  
 “other party; while the Dominion Government simply appoints the third  
 “Arbitrator by the authority of the Imperial Act. These constitute the tri-  
 “bunal. How is it possible that a subordinate part of one of the two Provinces  
 “—because the Courts are only parts of the whole machine of Government—  
 “can control the action of another Province and Government, and of the  
 “Arbitrator appointed by a third Government, in a matter of submission, to  
 “which the Province (whose Courts assume the authority) only appoints one out  
 “of three co-equal Arbitrators? How can the Courts of Quebec restrain the  
 “Province of Ontario, or the Arbitrator appointed by the Government of that  
 “Province, or the Arbitrator appointed by the Dominion Government, in a  
 “matter in which the whole proceedings may be carried on outside of the Pro-  
 “vince or the territorial jurisdiction to which their process can possibly run?  
 “If so, the Courts of the other Provinces must have equal jurisdiction; and how  
 “absurd would it then be for the Courts of Ontario to come forward and punish  
 “the Arbitrators for not proceeding—for not discharging the duties they had  
 “undertaken!—punished by Quebec for going on!—punished by Ontario for not  
 “going on! Can any construction of the language of the Imperial Statute  
 “sanction such a conflict of jurisdiction? But even if the proceedings were  
 “held within the limits of the territorial jurisdiction of the Courts of one of the  
 “Provinces, the subject matter itself, and the parties proceeding therein, may  
 “be and are, as regards the subject matter, entirely exempt from that jurisdic-  
 “tion. Apart from the common-sense view of such a question, which must  
 “strike every man, the Courts of law in England have left no doubt upon the  
 “point. The highest authorities, both in Chancery and Common Law, have  
 “decided that even where proceedings in arbitration were carried on within the  
 “locality over which the Courts had jurisdiction, and in which their process had  
 “full force, yet the Courts would exercise no jurisdiction to restrain an Arbitra-  
 “tor from making his award, unless there was something in the conduct of  
 “*the parties to the reference* which rendered such interference necessary. The

"principle being as laid down by Kerr on Injunctions, page 142, that 'there is  
 "no original jurisdiction of the Court in the nature of a writ of prohibition  
 "to restrain an Arbitrator from proceeding to make an award.' Mr. Cameron  
 "cited a great many cases in which this position is illustrated and sustained;  
 "among others the King *v.* Bardell and others, 5 A. & E., page 619; Harcourt  
 "*v.* Ramsbottom, 1 Jacobs & Walker, Chy. Rep. 504; Pope *v.* Lord Duncannon;  
 "9 Simons Rep. 177; the Newry & Enniskillen Ry. Co. *v.* the Ulster Ry. Co., 8  
 "De Gex, McN. & G. 486. In Pope *v.* Lord Duncannon, where the plaintiffs had  
 "revoked the authority of their Arbitrator and notified the defendant, and their  
 10 "Arbitrator had refused to act, but the other Arbitrators had notwithstanding  
 "proceeded and made their award, the Court refused to restrain the defendant  
 "from acting upon the award—the Vice-Chancellor saying: 'As in this case  
 "there is nothing whatever to show that the power which the plaintiffs had  
 "given to the Arbitrator was revoked upon any just or reasonable grounds, I  
 "am bound to conclude the revocation was a wanton and capricious exercise  
 "of authority upon their parts, and consequently the motion must be refused.'  
 "The resignation of the Honourable Charles Dewey Day and the revocation of  
 "his authority by the Quebec Government was no act of Ontario or of the Arbi-  
 "trator appointed by the Dominion, and it is therefore difficult to see why the  
 20 "Province of Ontario should be prejudiced by that act, or why the Arbitrator  
 "appointed by the Government of Ontario or the Arbitrator appointed by the  
 "Dominion Government should not proceed to discharge their duty. In the case  
 "of the King *v.* Bardell (5 Adolphus & Ellis, 619), during the argument, Judge  
 "Patteson says: 'Is there any instance in which the Court has interfered to pre-  
 "vent an Arbitrator making an award after revocation? The award may be a  
 "nullity when made, but that is a different point.' Platt replies, 'Search has  
 "been made for precedents, but none have been found.' Blackstone's Com-  
 "mentaries, vol. 3, edition of 1862, page 117, says: 'A prohibition is a writ  
 30 "issuing properly only out of the Court of Queen's Bench, being a prerogative  
 "one; but for the furtherance of justice it may also now be had in some cases  
 "out of the Court of Chancery, Common Pleas, or Exchequer, directed to the  
 "judge and parties of a suit in any inferior court, commanding them to cease  
 "from the prosecution thereof, upon a suggestion that either the cause origi-  
 "nally or some collateral matter arising therein, does not belong to that juris-  
 "diction, but to the cognizance of some other court.' If old Blackstone is  
 "still law,—and the Imperial Act, British North America Act, 1867, is still in  
 "force—no other Court but the Arbitrators' Court can have cognizance of the  
 "Arbitration. But apart from these authorities, on broad constitutional grounds,  
 "the right of the Courts of Quebec to interfere with the proceedings of a tri-  
 40 "bunal created under authority of an Imperial Statute, acting on a subject  
 "matter exclusively within its own jurisdiction and for which it was created, is  
 "denied. It is greatly to be regretted that there was no counsel—as in the  
 "case of the unanimity question—to argue the other side; but as has been  
 "remarked by my colleague, that is not our fault. If these legal questions are  
 "to be raised on every occasion, it was manifestly of the highest importance  
 "that the Honourable Charles Dewey Day should have remained at his post.  
 "He did not resign—so far as we know—because he differed with his colleagues

RECORD.

Opinion of  
Hon. J. H.  
Gray—Con-  
tinued.

RECORD. "in concluding that the decisions of the Arbitrators need not be unanimous.  
 Opinion of "He assigned no such reason for his resignation, and on that question gave no  
 Hon. J. H. "decision, and, so far as his colleagues know, expressed no opinion; although  
 Gray— "he was present at the argument, and subsequently looked into the authorities  
 Continued. "with his colleagues. His resignation, as stated at the time, was on other  
 "grounds; but whether they have his able assistance or not, the remaining  
 "Arbitrators must proceed with the work, and decide on all questions as they  
 "arise according to the best of their judgment.

"Toronto, August 5th, 1870."

"J. H. GRAY,

10

Order of "The following Order was then made: "That the Arbitrators do adjourn  
 Arbitrators. "until the 17th instant, then to meet at Osgoode Hall, at two p.m., and proceed  
 "peremptorily with the Arbitration; and that notice thereof be served on the  
 Adjourn- "Government and Counsel of Quebec, and on the Honourable Charles Dewey  
 ment. "Day."

### THIRTY-FIRST MEETING OF ARBITRATORS.

Present : The Arbitrators met on the seventeenth day of August, 1870, at Osgoode  
 Hon. J. H. Hall, in the city of Toronto, at two o'clock, p.m., pursuant to adjournment.  
 Gray and Present: The Honourable John Hamilton Gray and the Honourable David  
 Hon. D. L. Lewis Macpherson,—The Honourable Charles Dewey Day not being present. 20  
 Macpher- Messrs. Cameron and Wood appeared on behalf of Ontario; no one appearing  
 son. on behalf of Quebec.  
 Hon. C. D. Mr. Cameron produced a notice duly endorsed by himself as having posted  
 Day being copies thereof to the Honourable Charles Dewey Day, the Honourable Mr.  
 absent. Chauveau, Provincial Secretary for Quebec, and T. W. Richie, Esq., Counsel for  
 Notice of Quebec, and stated that no answer had been received by him from any of the  
 meeting of Arbitrators parties to whom he had so sent copies; said notice being in the words and  
 to Hon. C. figures following.  
 D. Day and Governments of  
 Ontario "In the matter of Arbitration  
 served. "Between the Provinces of Ontario and Quebec. 30  
 "The undersigned Arbitrators have adjourned the proceedings of the Arbi-  
 "tration to Wednesday, the seventeenth day of August instant, at two o'clock  
 "p.m., at Osgoode Hall, Toronto; and the Governments of the Provinces of Que-  
 "bec and Ontario are notified that notwithstanding the Writ of Prohibition  
 "served upon the Arbitrators, the undersigned will proceed with the consider-  
 "ation of the matter of the Arbitration on the day and at the place above named,  
 "peremptorily.

"D. L. MACPHERSON,

"J. H. GRAY,

"Arbitrators.

40

"Toronto, 5th August, 1870."

Arbitrators "After discussion and progress made, the Arbitrators adjourned until next 40  
 adjourned. day at twelve o'clock noon, to meet at the same place.

THIRTY-SECOND MEETING OF ARBITRATORS.

RECORD.

The Arbitrators met on the eighteenth day of August. Present: The same Arbitrators and parties as at the last preceding meeting.

The Arbitrators stated that they had that morning received a communication from the Under Secretary of State at Ottawa, enclosing a copy of a despatch from the Lieutenant-Governor of Quebec to the Governor-General on the subject of the proceedings of the Arbitrators, which documents were ordered to be read and entered upon the Minutes of the Proceedings, and are as follows:—

Present: Hon J. H. Gray and Hon. D. L. Macpherson. Hon. C. D. Day being absent  
Statement of Arbitrators.

Letter from the Under Secretary of State for the Dominion to Hon. J. H. Gray.

“Department of the Secretary of State of Canada.

“Ottawa, 16th August, 1870.

10 “SIR,—I have the honour by command of the Governor-General to transmit to you herewith copy of a protest received by His Excellency from the Lieutenant-Governor of the Province of Quebec against the course which you and the Honourable David Lewis Macpherson have notified the Governor of that Province that you proposed taking in the matter of the Arbitration between the Provinces of Ontario and Quebec.

“I have the honour to be Sir,

“Your most obedient servant,

“E. PARENT,

“Under Secretary.

20 “The Honourable J. H. Gray.”

A similar letter *mutatis mutandis* was addressed to and received by the Honourable David Lewis Macpherson.

Similar letter to Hon. D. L. Macpherson.

The protest by the Lieutenant-Governor referred to is as follows :

(Translation.)

“Government House,

“Quebec, 8th August, 1870.

30 “SIR,—I have the honour to transmit, for the information of His Excellency the Governor-General, copy of a document signed by the Honourable Messrs. Gray and Macpherson, which has been received by the Secretary of this Province.

Protest by the Lieutenant-Governor of Quebec.

“I deem it my duty at the same time to call the attention of His Excellency the Governor General and of the Federal Government to the unjust and illegal course jointly adopted by the Arbitrator appointed by the Federal Government and the Arbitrator for the Province of Ontario, and respectfully to request, on behalf of the Government of this Province, the intervention of the Federal Government.

“I have the honour to be,

Your most obedient servant,

“N. F. BELLEAU,

“Lieutenant-Governor of the Province of Quebec.”

40 “To the Honorable The Secretary of State  
“for the Provinces, O tawa.”

## RECORD.

Notice referred to same as at 31st meeting of Arbitrators. Subject of Arbitration discussed. Arbitrators adjourned.

The document referred to in the foregoing despatch, is the notice of the Arbitrators set out *verbatim* in the proceedings of the meeting of the seventeenth day of August, 1870.

The Counsel for Ontario then proceeded to discuss the various items forming the subject of reference to the Arbitrators.

The Arbitrators adjourned to Tuesday, the twenty-third day of August, at noon, to meet at the same place.

## THIRTY-THIRD MEETING OF ARBITRATORS.

Present : Hon. J. H. Gray and Hon. D. L. Macpherson. Hon. C. D. Day being absent. The Auditor General subpoenaed. Arbitrators adjourned.

The Arbitrators met at the place of their last preceding meeting, on the twenty-third day of August, 1870, at twelve o'clock noon, pursuant to adjournment. Present : The Honourable John Hamilton Gray and the Honourable David Lewis Macpherson—the Honourable Charles Dewey Day not being present. Messrs. Cameron and Wood appeared for Ontario. No one appeared on the behalf of Quebec.

The Arbitrators stated that they had subpoenaed Mr. Langton, the Auditor-General for the Dominion of Canada, to appear before them and give evidence, and that they were informed he would be in attendance the next day, and that therefore they should adjourn to meet at the same place, on the next day at two o'clock.

## THIRTY-FOURTH MEETING OF ARBITRATORS.

Present : Hon. J. H. Gray and Hon. D. L. Macpherson. Hon. C. D. Day being absent. Arbitrators adjourned.

The Arbitrators met at the place of their meeting, on the twenty-fourth day of August, 1870, at two o'clock, p. m., pursuant to adjournment. Present : The Honourable John Hamilton Gray and the Honourable David Lewis Macpherson—the Honourable Charles Dewey Day not being present. Messrs. Cameron and Wood appeared on behalf of Ontario. No one appearing on behalf of Quebec.

The Auditor-General not having arrived, the Arbitrators adjourned until the next day, the twenty-fifth day of August, to meet at the same place, at two o'clock, p. m.

## THIRTY-FIFTH MEETING OF ARBITRATORS.

Present : Same as at last meeting

The Arbitrators met at the time and place last aforesaid, on the twenty-fifth day of August, 1870. Present : The same as at last preceding meeting.

Mr. Langton, the Auditor-General having arrived, and being present, Mr. Wood, on behalf of Ontario, proceeded with his case and argument.

The Arbitrators adjourned to meet the next day at the same place, at twelve o'clock, noon.

Auditor-General present. Arbitrators adjourned.

THIRTY-SIXTH MEETING OF ARBITRATORS.

The Arbitrators met at the time and place aforesaid, on the twenty-sixth day of August, 1870. Present: The same as at the last preceding meeting.

Mr. Wood resumed his argument, and continued until six o'clock p.m., when the Arbitrators adjourned to meet the next day at half-past one p.m.

Present: Same as at last meeting. Argument resumed. Arbitrators adjourned.

THIRTY-SEVENTH MEETING OF ARBITRATORS.

The Arbitrators met on the twenty-seventh day of August, 1870. Present: Mr. Langton.

Mr. Wood resumed his argument and closed it.

Present: Same as at last meeting. Argument closed.

THIRTY-EIGHTH MEETING OF ARBITRATORS.

Monday, 29th August, 1870. Arbitrators met for consultation. Adjourned to (next day) to-morrow.

Tuesday, 30th August, 1870. Arbitrators met for consultation. Adjourned until (next day) to-morrow.

Present: The same Arbitrators; Hon. C. D. Day being absent.

Thursday, 1st September, 1870. Arbitrators met for consultation. Agreed upon the substance of the Award, and initiated the draft of the terms thereof. Adjourned until (next day) to-morrow.

Friday, September 2nd, 1870. Arbitrators met. Discussed the form of Award. Adjourned until (next day) to-morrow.

Saturday, September 3rd, 1870. Arbitrators met. Re-examined the award, and finally completed and executed the same, in the presence of Christopher Robinson, Esq., of Toronto, Barrister-at-Law, and Mr. Frederick Finch, of the same place, Law Stationer. The same having been executed by a majority only, viz.: by the Honourable J. H. Gray, and the Honourable D. L. Macpherson;—the Honourable Charles Dewey Day not being present, or having attended the meetings of the Arbitrators since his withdrawal in July last (1870), which Award is as follows:—

Award made.

Award.

“ To all to whom these Presents shall come—

“ The Honourable John Hamilton Gray, of the City of St. John, in the  
“ Province of New Brunswick, and the Honourable 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 arbitrament of  
“ three Arbitrators, one chosen by the Government of 10  
“ Ontario, and 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 Gov-  
“ ernment of Canada the said David Lewis Macpherson by the Government of  
“ Ontario, and the Honourable 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  
“ burden of the said Arbitration, the said John Hamilton Gray and David Lewis  
“ Macpherson being a majority of the said Arbitrators do award, order and ad- 20  
“ judge of and upon the premises as follows, that is to say :—

“ I. That the amount, by which the debt of the late Province of Canada  
“ exceeded, on the thirtieth 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 30  
“ 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 mil-  
“ lions seven hundred and seventy-eight thousand seven hundred and ninety-two  
“ dollars and fifty-five cents bears to the sum of eighteen millions five hundred  
“ and eighty-seven thousand five hundred and twenty dollars and fifty-seven cents.

“ II. That the assets hereinafter in this cause enumerated shall be, and the  
“ same are hereby declared to be the property of and belonging to the Province  
“ of Ontario, namely :

“ 1. Debt from the Upper Canada Building Fund to the late “ Province of Canada, (enumerated in the Fourth Sche- “ dule to the said British North America Act, 1867, as “ Upper Canada Building Fund, Lunatic Asylums, “ ‘ Normal Schools’),—Lunatic Asylums \$30,800, Nor- “ mal Schools \$6,000.....	\$35,800 00
“ 2. Debt from the Law Society, Upper Canada, to the late “ Province of Canada .....	156,015 61

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<p>" 3. Debts to the late Province of Canada under the Consolidated Municipal Loan Fund of Upper Canada.....</p> <p>" 4. Debt from the Agricultural Society, Upper Canada, to the late Province of Canada .....</p> <p>" 5. Debt from the University Permanent Fund to the late Province of Canada.....</p>	<p>6,792,136 39</p> <p>4,000 00</p> <p>1,220 63</p>	<p>RECORD.</p> <hr/> <p>Award—</p> <p>Continued.</p>
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" III. That the assets hereinafter in this clause enumerated shall be, and the same are hereby declared to be the property of, and to belong to the Province of Quebec, namely :

<p>10 " 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. \$2,000 00</p> <p>" And for certain charges paid by the said late Province of Canada in respect of the said Court House..... 1,239 70</p>	<p>3,239 70</p>
<p>20 " 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 Court House and assumed by the Dominion of Canada, and charged in the debt of the late Province of Canada... 95,600 00</p> <p>" For advances made to the said Court House by the said late Province of Canada..... 18,996 21</p>	<p>114,596 21</p>
<p>30 " 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 Province of Canada..... 201 27</p> <p>" 4. Debt from the Royal Institution, otherwise the 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</p>	<p>2,939,429 97</p>
<p>40 " 5. Debt under the Consolidated Municipal Loan Fund of Lower Canada to the late Province of Canada..... 2,939,429 97</p> <p>" 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</p> <p>" 7. Debt to the late Province of Canada under the Quebec Fire Loan..... 264,254 65</p> <p>" 8. Debt to the late Province of Canada for advances made to or on account of certain municipalities in the county</p>	<p>264,254 65</p>

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156,015 61

## RECORD.

Award—  
Continued.

	“ of Temiscouata, (described in the said fourth schedule “ as ‘ Temiscouata 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 Schedule 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 10
“ 11.	Debt from the Municipalities Fund of Lower Canada to “ the late Province of Canada, for advances made to or “ on the credit of that fund (described in the said fourth “ schedule as ‘ Municipalities Fund.’).....	484,224 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

“ IV. 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 guar-  
“ anteed 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 Domin-  
“ ion 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 ; Know there-  
“ fore, the said Arbitrators having assigned the said Trust as an asset of 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 Do-  
“ minion 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 way of the said Trust.

“ V. 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 to belong to the Province of Ontario, for the purposes for which they were  
“ established, namely :—

- “ 1. Upper Canada Grammar School Fund.
- “ 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.

3,000 00

" 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.

290 10

" VI. 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 to belong to the Province of Quebec for the purposes for which they  
" were established, namely:—

116,475 51 10

" 1. Lower Canada Superior Education Fund.

" 2. Lower Canada Superannuated Teacher's Fund.

" 3. Lower Canada Normal School Building Fund.

" 4. Widows' pensions and uncommuted stipends, Lower Canada, subject  
" to all legal charges thereon.

484,224 33

" 5. Balance of special appropriations in Lower Canada.

" 6. Surveys ordered in Lower Canada before 30th June, 1867.

234,281 46

188,000 00

" VII. That from the Common School Fund, as held on the thirtieth day of

Arbitrators

20 " June, one thousand eight hundred and sixty-seven, by the Dominion of Canada,

" amounting to one million seven hundred and thirty-three thousand two hun-

" dred 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 fourth Schedule to 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

30 " 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 hun-

" dred 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.

" VIII. That the residue of the said Common School Fund, with the in-

" vestments belonging thereto, as aforesaid, shall continue to be held by the

" Dominion of Canada, and the income realized therefrom, from the thirtieth

" day of June, one thousand eight hundred and sixty-seven, and which shall be

40 " hereafter realized therefrom, shall be apportioned between and paid over to

" the respective Provinces of Ontario and Quebec as directed by the fifth sec-

" tion chapter-twenty-six of the Consolidated Statutes of Canada, with regard

" to the sum of two hundred thousand dollars in the said section mentioned.

" IX. 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

Canada, subject

RECORD. " Province of Canada shall be paid to the Dominion of Canada to be invested  
 Award— " as provided by section three of said chapter twenty-six of the Consolidated  
 Continued. " Statutes of Canada, and the income derived therefrom shall be divided, appor-  
 " tioned, and paid between and to the said Provinces of Ontario and Quebec  
 " respectively as provided in the said fifth section, chapter twenty-six, of the  
 " Consolidated Statutes of Canada with regard to the sum of two hundred  
 " thousand dollars in the said section mentioned.

" X. 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 10  
 " 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.

" XI. The " Crown Lands Suspense Account," amounting to one hundred  
 " and twelve thousand seven hundred and forty-eight dollars and sixty-three  
 " cents, and the Crown Lands Department, amounting to two hundred and fifty-  
 " three thousand and eighty-nine dollars and seventy-six cents, being the items 20  
 " 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 re-  
 " spect 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 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 30  
 " in the said Province of Quebec.

" XII. 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, direct, and ad-  
 " judge 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 sum so paid in the  
 " same proportions respectively, as the said Provinces are hereinbefore directed 40  
 " to bear and pay the excess on the thirtieth day of June, one thousand eight  
 " hundred and sixty-seven, above sixty-two millions five hundred thousand dol-  
 " lars of the debt of the late Province of Canada.

" XIII. 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 respectively situate, free from any further claim upon, or charge to the said Province in which they are so situate, by the other of the said Provinces. RECORD.  
Award—  
Continued.

“XIV. 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, 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. 10  
“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 paragraph hereof in respect to 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 20  
“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 three 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 such properties. 30

“XV. That the said 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. 40

“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 the presence of :

“Christopher Robinson, of the City of Toronto, Barrister-at-Law ;

“Frederick Finch, of the City of Toronto, Law Stationer.”

## SCHEDULE No 1.

## A.

MEMORANDUM OF INFORMAL CONFERENCE held at Montreal the 24th July, 1869 (Saturday), on the subject of the Debt of the late Province of Canada.

Present : Sir George E. Cartier, Honourable Mr. Sandfield Macdonald, Honourable Mr. Chanveau, Honourable Mr. Dunkin, Treasurer of Quebec, Honourable Mr. Wood, Treasurer of Ontario, and Honourable Mr. Rose, Minister of Finance of Canada.

Mr. Rose called attention to the Statement of Account on pages 72 and 73 of part III of the Public Accounts of 1868, and thought the better way would be for the Treasurers of Ontario and Quebec, respectively, to indicate any objections they might have to any of the items composing the balance.

Some discussion then arose as to the following items on the Debit side of the Statement as shown at page 70, Mr. Dunkin claiming that they should stand as assets, and be submitted to the Arbitrators, and that the liabilities should be correspondingly increased, viz. :—

1st. Upper Canada Building Fund Debenture Account...	\$36,800 00	
2nd. Lower Canada Sup. Education Fund :—		
A. Income Fund.....	230,681 46	20
B. L. C. Legislative Grant.....	28,494 73	
C. Education East.....	290 10	

Mr. Rose and Sir George Cartier on the part of the Dominion, and Mr. Sandfield Macdonald and Mr. Wood on the part of Ontario, thought the mode proposed of stating the account reasonable, and it was agreed to accordingly.

A discussion then took place with reference to the items to be deducted from the debt, Mr. Dunkin and Mr. Wood claiming that the debt as shewn in the statement in question should be reduced by the total of the following items, on the ground that they are either Bank Balances, or securities for money :

1st. The Bank of U. C.....	\$1,150,000 01	30
2nd. City of Hamilton Coupons.....	22,240 89	
Quebec Turnpike Trust.....	20,000 00	
McGill College Mortgage.....	40,000 00	
Lord Selkirk and Boulton Mortgage.....	13,900 00	
Boulton do .....	9,828 00	
Markland do .....	5,882 00	
Bank of U. C. Stock.....	750 00	

3rd. They also claimed the following items as being securities for money ; viz :

A. Grand Trunk Bonds.....	\$243,406 00	40
B. Northern do .....	243,333 00	
C. do do .....	30,976 00	

(Appendix.)

(A.—Continued.)

RECORD.  
Schedule  
No. 1—Continued.

4th. Debt due by the Great Western Railway.  
5th. Also the Hydraulic Rents, and other items enumerated in the Return laid before Parliament during the last Session.

Mr. Rose and Sir George Cartier stated that they could not agree to the deductions claimed, and after a lengthy discussion the consideration of the best plan of adjusting these points of difference was deferred till Monday, the 26th.

The discussion then proceeded on the transactions entered into since June 30th, 1867, and charged against the Provinces.

10 1. Objection was taken by the Treasurers of Ontario and Quebec to the item charged for Military Stores.

It was claimed that payments made after June 30th for stores then actually on hand, or which had been ordered by the Province of Canada, but which were received by the Dominion afterwards, should not be charged against the Provinces, but be borne by the Dominion.

A final decision on this point by Sir George Cartier and Mr. Rose was deferred.

2nd. The Treasurers of Ontario and Quebec agreed in the same form as stated in the letter of the Minister of Finance to the Treasurer of Ontario of the 19th December, 1868, to the general fairness of the rule laid down in reference to transactions since 1st July, 1867.

3rd. The Treasurer of Quebec claimed the balance of the unpaid appropriation for Superior Education as stated under letter A. of his communication to the Minister of Finance of the 8th June, 1869.

This was objected to, and after some discussion he agreed that this item should stand over for his future consideration.

4th. Surveys East,—as stated under letter B. of the same communication.

It is understood that any items within the balance of appropriation which either Province may have paid since June 30th, 1867, in consequence of the previous orders of the Province of Canada, shall be paid by the Dominion, and charged to the Province as arrears on proper accounts being rendered.

5th. The item claimed in Mr. Dunkin's communication above referred to under letter C. for the Board of Agriculture and Board of Arts and Manufactures.

It is understood that if this sum is authorized by statute, or has been actually voted, it may be paid, but if not, that the claim is inadmissible.

6th. The Treasurers of Ontario and Quebec refused to recognize the gratuities paid under vote of the Senate.

40 The Conference then adjourned until Monday, the 26th.

Monday, 26th July.

Present : The same as on Saturday, with the addition of the Honourable Mr. Ouimet.

After much discussion on the different items which the Treasurers of Ontario and Quebec claimed to have deducted from the debt, the following pro-

24th July,  
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- RECORD. posal was submitted as a basis on which the whole of the items in dispute should be settled, viz. :—
- Schedule  
No. 1—*Con-  
tinued.*
1. That the Dominion will assume at their face value the items enumerated in the Minutes of Saturday, under No. 2.
  2. Also the Grand Trunk Bonds \$243,400.
  3. The Hydraulic Rents, and other sums due at such Balances as may be ascertained to have been due on the 1st July, 1867.
  4. That the Military stores shall be treated as proposed in the minute of Saturday.
  5. That as to the Northern debt, the question whether it shall be deducted or not, and at what amount, shall stand for future consideration.
  6. The securities held for the Sinking Fund to be taken at par.
  7. That as to the Bank of Upper Canada debt, the Finance Minister in conjunction with the Treasurers of Ontario and Quebec shall investigate, with the assistance of the Trustees, the value of the assets, and endeavour to come to a conclusion as to the real worth of the debt, and the figure at which it shall be allowed by the Dominion to the late Province of Canada.
- If they cannot agree, then that they shall, with the assent of their respective Governments, name some indifferent person of high standing as a Referee, in which case it shall be competent for the Provinces, not only to ask that the question of value shall be settled, but also to contend, as they have heretofore done, that the total sum is to be assumed and deducted by the Dominion as Bankers' Balance.
8. That the Great Western debt shall be retained as an absolute asset of the Dominion, and not be deducted from the Debt.
  9. That any securities connected with Roads and Harbours not of general, but of local interest such as embraced in the return laid before Parliament last Session, shall be valued either between the two Provinces and the Dominion, or by some person of high standing, as mentioned in Article 7, and be deducted at such valued sum.
- It was accordingly agreed that the gentlemen representing the several Governments would submit the foregoing proposal with the minutes of this Conference, for the approval and action of their respective Governments, and that, if approved of, a statement of debt framed in accordance therewith should be prepared for submission to and the early action of the Arbitrators.

Tuesday, 27th July, 1869.

Present : The same gentlemen as yesterday, and the Honourable Sir John A. Macdonald and the Honourable Mr. McDougall.

The question of the Bank of Upper Canada debt was again discussed, and it was arranged that, in lieu of the reference mentioned in the minutes of yesterday, the Dominion and the Provinces should now agree on a sum at which the former will assume that item, and after further discussions, it was understood that the sum of \$500,000 was a fair amount at which it should be taken, and that that sum should accordingly be deducted from the debt as a final settlement be-

(Appendix.)

A.—(Concluded.)

tween the Dominion and the Provinces of Ontario and Quebec, in respect of that account. Schedule  
No. 1.—*Continued.*

B.

"COPY OF A REPORT OF A COMMITTEE of the Honourable the Privy Council, on the 17th August, 1869. Minute of  
Privy Council  
on the debt of the  
late Province of  
Canada.

"The Committee have had before them a memorandum dated 4th August, 1869, from the Honourable the Minister of Finance, submitting for the consideration of Your Excellency in Council a statement of the debt of the late Province of Canada, to be submitted to the Arbitrators in accordance with the Order in Council of the 29th ultimo, approving of the minutes of the Conference held at Montreal on the 24th and subsequent days of July last.

"The Minister of Finance states that the points involving questions of principle, which were reserved for future consideration, were the securities of the Northern and Grand Trunk Railway Companies held by the Government. That with reference to the securities of the Northern Railway, amounting to the sum of \$243,333.00, he reports that it was received by the late Province of Canada, under the circumstances stated in the Act 23rd Vic., Chap. 105, and is there referred to as the bonds of £50,000 sterling, being 2nd Preference Bonds.

"That the original advance of £475,000 sterling, and the sum of £50,000 sterling, represented by the 3rd Preference Bonds, class B., to be issued under the 31st Vic., Chap. 86, are apart and distinct from the first mentioned second Preference Bonds of £50,000 sterling, held by the late Province of Canada.

"That with reference to the securities of the Grand Trunk Railway Company of Canada, amounting to the sum of \$243,406.00, the circumstances under which they came into the hands of the Government, he states, are detailed in the Report of the Auditor, and the Minute of the Executive Council of the late Province of Canada, dated the 18th October, 1866, a copy of which Report, and of the minute passed thereon, are submitted with his memorandum.

"The questions whether these several securities, or either of them, are to be treated as the absolute property of the Dominion, in terms of the 108 Section of the British North America Act of 1867, and as coming within the category of Public Works and property specified in the Schedule No. 3 of the said Act, or whether they are to be regarded as securities under the 107th Section of that Act, and to be taken in reduction of the debt of the Province at the Union, and, if so, at what amount, he submits for the consideration of Your Excellency in Council.

"The draft statement of debt submitted will, he states, be varied according to the decision at which Council may arrive.

"The Committee are of opinion that, under the circumstances in which the two items of \$243,333 and \$243,406, came into the hands of the late Province of Canada, they are to be regarded as securities for money under the 107th Section of the B. N. A. Act of 1867, and ought to be taken at their face in reduction of the debt of the Province of Canada, but that the other items belong absolutely to the Dominion.

"Certified,

"W. H. LEE, Clerk, P. C."

## ( Appendix. )

B.—(Concluded.)

## RECORD.

## STATEMENT OF DEBT OF LATE PROVINCE.

Schedule No. 1— <i>Con- tinued.</i>	Net debt, July 1st 1867, as per Statement III, 5 p. 71.....	\$72,061,721	20
	U. C. Building Fund Debentures.....	36,800	00
Statement of debt of late Pro- vince of Canada by Privy Council.	Sup. Ed. Income Fund, L. C.....	230,681	46
	Legislative Grant.....	28,494	73
	Education East.....	290	10
	Less Bank of U. C.....	\$500,000	00
	Consolidated Fund Securities.....	120,599	14
	G. T. R. and N. R. R.....	486,739	66
	Northern Special.....	30,976	70
	Cataraqui property.....	6,584	54*
	Hydraulic and other rents.....	104,784	44*
		\$1,246,684	48
		\$71,111,303	01
	Subsequent debits.....	\$2,876,131	84
	Less freight, page 37, P. A. 1868, p. III.....	\$3,943	17
	Clothing and Equipments, page 38, p. III.....	259,582	95
	Improved fire-arms, p. 40 p. III.....	19,068	08
		282,594	20*
		\$2,593,537	64
	Less subsequent credits.....	574,949	91
		\$2,018,587	73
		\$73,129,890	74
	Less.....	62,500,000	00
	Net debt to be divided.....	\$10,629,890	74

From which there will be deducted the value of the Road securities when ascertained.

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SCHEDULE NO. 2.

RECORD.  
Schedule  
No. 2.

STATEMENT OF THE ASSETS enumerated in the Fourth Schedule of the British North America Act as they stood June 30, 1867, with explanatory remarks.

72,061,721 20  
36,800 00  
230,681 46  
28,494 73  
290 10

72,357,978 49  
10

1,246,684 48

1,111,303 01  
20

The items marked thus are subject to verification.

2,018,587 73

3,129,890 74  
2,500,000 00

0,629,890 74

curities when

1.	Upper Canada Building Fund Debenture Account...	\$36,800 00
2.	Aylmer Court House Debenture Account, 6 per cent...	2,000 00
3.	Aylmer Court House Debenture Account, 8 per cent.....	\$19,674 97
	As the late Province is only liable for the amount which may be collected, and the collection of the income is in the hands of Quebec, it has been mutually agreed to strike the item out of the account, reserving a question for the Arbitrators, mentioned below.	
4.	Aylmer Court House Account, Current, 6 per cent.....	1,239 70
	This amount has arisen from the accumulation of interest on the \$2,000, 6 per cent. Debentures remaining unpaid, the 8 per cent. Debentures being the first charge upon the income.	
5.	Montreal Court House Debenture Account.....	95,600 00
6.	Montreal Court House Account Current.....	18,996 21
7.	Kamouraska Court House Debenture Account	\$8,955 00
	This is exactly in the same position as the Aylmer's 8 per cent. Debentures.	
8.	Kamouraska Court House Account Current.....	201 27
	Before the building and Jury Fund was established certain charges for maintenance of the Court House had to be paid by the Government out of this Fund, besides the amounts distributed in the 8 per cent. Debentures, this balance is a remnant of these charges.	
9.	Law Society U. C. Debenture Account.....	16,000 00
10.	Law Society Account Current. ....	140,015 61
	The cost of the Law Society's Buildings, &c., were origin-	

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No. 2—Con-  
tinued.

ally met by the issue of Debentures on the credit of the Law Fees, but in 1860 we redeemed as many of the Debentures as we could get, and charged them against the account current, and all subsequent advances for the Building, &c., have been charged against this account.

11. Montreal Turnpike Trust.....\$188,000 00

This sum represents the Debentures issued on the credit of the Trust, with the guarantee of the Province. As the Trust always pays its interest regularly, it has been mutually agreed to strike this item out, reserving a point for the Arbitrators, as above mentioned under the head of Aylmer Court House.

12. University Permanent Fund.....\$1220 63

This amount was charged against the University improperly, and the debt is repudiated by it. The item was written off to Consolidated Fund before Confederation, by order of the Minister of Finance. It is to be observed with regard to this item, and some others which do not appear in the statement of affairs of June 30, 1867, that the framers of the Act had only in their hands the Public Accounts of 1865, from which the Schedule was drawn, but in the meantime the items had been otherwise treated in our books.

13. Royal Institution.....\$7,790 00

Otherwise McGill College.—This was the first loan of \$8,000 to that institution, deducting \$10, which from time immemorial had stood at its credit in our books. It was transferred to Consolidated Fund Investment Account before Confederation, under the impression that it was covered by a mortgage given after the second loan was made, which forms part of that account.

14. Consolidated Municipal Loan Trust, U.C.

Capital Account.....\$7,300,000 00

Less at credit of Sinking Fund..... 429,548 63

6,870,451 37

Less Capital of Indemnity Account..... 2,218,555 39

4,651,895 98

15. Consolidated Municipal Loan Fund, U.

C. Interest Account.....\$3,517,018 32

Short charged, *vide* P. A. 1868, iii, p. 5.... 65 94

3,517,084 26

Less Interest Account Seigniorial Indem-

nity..... 1,350,617 91

2,166,466 35

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The deductions of the Sinking Fund and Seigniorial Indemnity which, in the statement of affairs, stand amongst liabilities, have been mutually assented to, but in one respect, I have made a difference in this statement from that previously published. I think the present statement to be the correct one, for the reasons stated in a report to the Minister of Finance, of which I add an extract:—"The Upper Canada Indemnity is by the Act to be paid annually to the credit of the Municipal Loan Fund. As it is not in any way to extinguish the debts of the individual Municipalities, the Municipal Loan Fund Account must be kept just as if this Indemnity did not exist; but it must be kept as a parallel account, and ought to be treated exactly in the same way as the account to which it is an offset. Now the Municipal Loan Fund is annually charged with five per cent. interest on the capital, being the amount which we have to pay on the Debentures issued. Before 1860, it was charged six per cent, but, as at that date we refused to pay more than five, we have only charged what we paid since that time. But under the general Act, we continue to charge six per cent. on all arrears. Now, of these two parallel accounts, the one increases by five per cent. and the other by six per cent. on the capital, a difference which I think right to maintain, because there is no connection between the reasons which regulate those amounts of interest, except that they are the amounts we actually pay. But in other respects these two accounts ought to be treated in exactly the same way. If the annual payment had been carried to the credit of the Municipal Loan Fund in liquidation of it, there would have been so much less interest chargeable on the arrears, and though it cannot be so treated as the individual Liabilities are to be retained, the result as far as the Fund as a whole is concerned, ought to be the same, so that if ever the liability on that account is cleared off, the annual payment should go as provided by the Act, to the Municipalities Fund. But no interest has ever been allowed to the Indemnity Account, which has only been credited with the equivalent to the annual payments to Seigneurs. I think that it ought to be allowed at the same rate as is charged to the parallel account, viz: six per cent. This would make a difference of \$264,923.75 in the nominal amount, but the difference which it would make in the settlement, generally depends upon the manner in which the account, whatever its amount may be, is treated."

The words of the Act are that "as soon as the Province ceases to be under advances to the said Loan Fund," the balance is to go to the Municipalities Fund. If it is held that this means advances for both capital and interest, and I think

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4,651,895 98

2,166,466 35

RECORD.  
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No. 2—Con-  
tinued.

it should be so held, because we have redeemed the original Debentures, and it does not seem to affect the question, how we raised the money to do so, then the additional interest which I propose above should be allowed, does not at all affect the settlement. As the indemnity is not included in the liabilities of the late Province, but made an offset from the assets, it does not enter into the question of the debt for which Ontario and Quebec are responsible. Neither does it affect the availability of the assets handed over to Ontario, for the liability of the individual Municipalities is not reduced by it. It is merely what it was always intended to be, a piece of book-keeping of no value except in the case of an almost impossible contingency. Whether the change would in any way affect the distribution of the debt between Ontario and Quebec, will depend upon the basis adopted by the Arbitrators, and I need not trouble you about that. For that reason, however, I think it proper to submit this statement to the Arbitrators.

16. Consolidated Municipal Loan Fund, L. C.

Capital account. . . . .	\$2,428,140 00	
Less—Sinking Fund . . . . .	\$271,339 33	
Short credited, <i>vide</i> P. A. 1858, iii p. 4. . . . .	113 53	
		271,452 86

\$2,156,687 14

Included in the above sum are two loans, Terrebonne, \$94,000, and Ottawa County, \$131,000 respectively, respecting which in 1861 an O. C. was passed releasing those Municipalities, but no Parliamentary Authority has ever been given for writing them off the books.

17. Consolidated Municipal Loan Fund, L.

C., Interest. . . . .	\$782,735 34	
Short charged, <i>vide</i> P. A., 1858, iii p. 5. . . . .	7 49	

782,742 83 30

In this sum is included the arrears of Terrebonne, \$86,394 89 and of Ottawa, \$120,993 98.

18. Agricultural Society, U. C. . . . .

4,000 00

An advance made in 1858.

19. Lower Canada Legislative Grant. . . . .

28,494 73

Upon an examination of the Education Accounts in 1856, it became apparent that the grants had been erroneously divided, and that Lower Canada had over expended this amount, but as under existing circumstances the annual expenditure could not be diminished, a separate account was opened for the over

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( Appendix. )

RECORD.  
Schedule  
No. 2—Con-  
tinued.

draft, for future settlement. In the statement formerly submitted by me, I treated this as a deduction from the Superior Education Fund, because by law, any unexpended balance of the Grant is carried to the credit of that Fund, and this amount might in any year have been deducted from such balances, or it might have been made a deduction from the balance of appropriation for schools, which is included in the debt of the late Province; but as the item was named in the Schedule, it was decided to submit it to the Arbitrators as an asset for them

10 to divide.

20. Quebec Fire Loan..... \$264,254 65

This is the amount which stands in our books, but in 1863 there was legislation upon the subject, making certain deductions from the original debt for prompt payment of part of the arrears. No statement has ever been sent me of the extent to which the Act was taken advantage of. The item will certainly have to be reduced, and the officer in charge of the account at Quebec should be called upon for a statement.

21. Temiscouata Advance Account.

20 This item stood in the Public Accounts of 1865 at \$3,000, being an advance to certain Municipalities in the County of Temiscouata, on account of the Seigniorial Indemnity coming to these townships. In 1867 it was transferred to the account of the Seigniorial Indemnity to townships, which was then regularly opened. We have never been able to get proper accounts from the persons to whom the money was entrusted, shewing which Municipalities benefited by the advance, and as some of it at least appears to have been distributed in the Seigniories which had no claim on the Fund, it would probably  
30 be better to restore it to the assets of the late Province to be dealt with by the Arbitrators.

56,687 14

22. Quebec Turnpike Trust..... 29,580 00

This by mutual consent was treated as a deduction from Sundry Trust Funds, being interested on their investments, which we had given them credit for, but never had collected.

82,742 83 30

23. Education East..... 290 10

A balance of defalcations in the Education Office. In previous statements I treated it as a deduction from Education, but it was restored to the assets for the reasons given under  
40 the head of L. C. Legislative Grant.

4,000 00

24. Building and Jury Fund L. C. .... 116,475 51

Advances made to the Fund on the credit of its income

28,494 73

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( Appendix. )

RECORD.

Schedule  
No. 2—*Continued.*

25. Municipalities Fund L. C.....	\$484,244 33
<p>A large portion of this arose from advances made to several Municipalities on the credit of the Fund, and about \$36,000 more has been guaranteed to others by legislation, but has not yet been paid. Moreover, by the Seigniorial Act, of the total capital of the Seigniories of St. Sulpice, only \$140,000 was to be charged on Consolidated Fund, and the balance \$196,419.66 was made a charge against this Fund, but until it was able to pay it, the amount was to be advanced from Consolidated Fund. This \$196,419.66 forms part of the capital of the Seigniorial Compensation, which forms part of the whole debt; but upon the ground that it was nominally a charge upon this local fund of Lower Canada, which has no means to meet it, neither Upper Canada nor the township got any indemnity for it.</p>	
26. Lower Canada Superior Education Income Fund.....	\$230,681 46
Add Interest on Investment.....	3,600 00
	234,281 46

This arose from annual over expenditure of the fund since 1855, and of late years a vote has always been taken in the Estimates authorizing the advance. In my former statement, therefore, I treated this as a deduction from the Capital of the Fund, but for the reasons assigned, under the head Legislative Grant, it has been restored to the assets.

\$11,200,685 60

This completes the assets included in the Schedule, but there are two other items, which are of the same character as the above, which should have been included in the Schedule.

City of Hamilton Interest Account, \$32,400 is the exact counterpart of the Quebec Turnpike Trust, being interest on investment of Trust Funds which had not been paid. It is proposed to treat it in the same way, making it a deduction from the funds. But as the Lower Canada Superior Education Income Fund has now been replaced in the assets, a slight revision of this arrangement will have to be made. The City of Hamilton Interest Account will disappear from the assets, but whereas \$18,000 and \$10,800 will be made deductions from the Upper Canada Grammar School Income Fund and the Upper Canada Building Fund respectively, the balance of \$3,600 must be added to the Lower Canada Superior Education Income Fund, making it \$234,281.46 as above given.

Registration Service, L. C., \$2,524.38.—This account was not in existence in 1865, from the statement of affairs of which year the Schedule was drawn out, but it is exactly analogous in its origin to the others, being advances made on the credit of a special fund. It is proposed that this be given up to Quebec, which has the administration of the fund, and that as an offset an old account called Indemnity to Revenue Inspectors U. C. \$2,426.41 be given up to Ontario.

\$484,244 33

In the foregoing remarks I have mentioned three of the assets enumerated, which, by mutual consent, have been struck out, together with their corresponding liabilities, reserving a point for the Arbitrators to settle, namely:—Aylmer Court House 8 per cent. Debenture Account, Kamouraska Court House, and Montreal Turnpike Trust. As to the two first, the Dominion cannot relieve itself of its responsibility to pay to the Debenture holders the proceeds of the Local Tax. Should Quebec, which has the collection of the tax, fail to do so, and recourse is had upon the Dominion, is the Dominion to have a claim upon Quebec alone, or upon Ontario and Quebec, and in what proportions? Similarly the Montreal Turnpike Trust always has paid its interest, and therefore, the asset and corresponding liability have been struck out. But if the Trust fails to pay, and recourse is had upon the Dominion, in what proportion is it to fall back upon Ontario and Quebec, which have been relieved from the amount in computing the debt?

RECORD.  
—  
Schedule  
No. 2—*Continued.*

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There are two other items which, as not forming part of the asset, do not strictly belong to the statement I am called upon to make, but which so closely resemble the preceding ones, that it may be as well to mention them here.

234,281 46

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The Montreal Harbour Commissioners borrowed \$481,426.27 with the Provincial guarantee, and as they have always paid their interest, the amount is not included in counting the debt; but if the Dominion is at any time called upon under its guarantee, in what proportion is it to fall back upon Ontario and Quebec? The other item is one which stands only in the liabilities, viz:—The Crown Lands Suspense Account, standing nominally at \$112,748.63, but really being a much less amount. This it has been agreed to leave out of the debt, upon the ground that the great bulk of it which will ever have to be paid will be paid in land, the property of Ontario and Quebec. It is understood that Ontario and Quebec each assume the responsibility of paying all just claims arising in their territory, either in land or money, but if they fail to do so, and recourse is had upon the Dominion, in what way is it to recover from Ontario and Quebec?

11,200,685 60

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Education In-  
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234,281.46 as

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There is still another item which, though not enumerated in the Act, is a joint asset of Ontario and Quebec. All the other Trust Funds which form a part of the liabilities of the late Province, belong either to Ontario or Quebec, or to individual bodies or institutions within them; but the Common School Fund is the joint property of the two. The Schedule in question only dealt with the assets of the Province which were to be abandoned to the two Sections of it; but this is a liability of the Province and now of the Dominion, which thus becomes a joint asset of those two Sections. If the Act creating the Common School Fund had been strictly acted upon, the Annual School Grants would have been charged against it as far as its income would have covered them; but they have always been charged against Consolidated Fund, and the Common School Fund has been allowed to accumulate at compound interest. As far, therefore, as that part of the Fund is concerned, more than half of the whole amount, it would appear that it should be divided as the Grants were divided which should have been charged against it, viz:—according to population. The present amount of the Fund, deducting the investments, is \$1,645,644.47, and the lands already sold, but not paid for, amount to as much or, perhaps, rather

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Schedule  
No. 2—*Con-  
tinued.*

more. This further difficulty, however, arises out of the division of this Fund, that the investments, Quebec Turnpike Trust Bonds, amounting to \$58,000 cannot well be divided, I believe, however, that they are worthless, or nearly so, and that, by the Legislation of the late Province.

JOHN LANGTON,  
*Auditor.*

STATEMENT showing the net annual receipts after deducting costs of collection of the several accounts undermentioned, from 1st January, 1863, to 30th June, 1867.

	1863.		1864. Half year.		1865.		1866.		1867.		Average rate per cent.
	\$	cts.	\$	cts.	\$	cts.	\$	cts.	\$	cts.	
U. C. Building Fund Debentures account.	4,128	00	1,596	00	3,192	00	2,208	00	2,352	00	6
Montreal Court House.	23,266	01	15,114	12	22,459	87	26,455	17	34,630	72	17.42
Aylmer do 6 per cent.											
Law Society, U. C.	13,998	11	8,453	99	18,577	41	15,059	21	13,090	09	7.14
Consolidated M. Loan Fund, U. C.	183,232	62	81,645	08	198,316	39	168,921	13	188,384	68	1.69
Do do L. C.	170,162	40	6,077	67	70,076	71	76,919	11	81,588	85	2.88
Agricultural Society, U. C.											
L. C. Legislative Grant.											
Quebec Fire Loan.	6,278	42	84,209	69	7,600	00	5,758	38	3,536	72	7.34 (1.98)
Education, East.											
Building and Jury Fund.	29,710	68	13,797	32	40,030	40	22,252	77	16,765	45	11.58 (32.38)
Municipalities Fund, L. C.	30,915	37	10,719	10	13,751	54	20,852	25	12,743	88	1.14 (3.62)
L. C. Superior Education Income Fund.	28,105	10	17,243	17	38,264	50	34,451	15	40,414	78	14.30
<i>* Items in the Schedule which have been struck out.</i>											
Aylmer Court House, 8 per cent.	1,295	32	949	08	1,579	90	1,750	90	1,283	21	7.75
Kamouraska do	831	48	692	65	1,015	63	756	20	729	99	10.00
Montreal Turnpike Trust, 6 per cent.	11,280	00	11,280	00	11,280	00	11,280	00	11,280	00	6
University Permanent Fund.											
Temiscouata Advance account											
Quebec Turnpike Trust.											
<i>Items of similar character not in Schedule.</i>											
City of Hamilton, Interest account											
Registration Service, L. C.											
Revenue Inspectors, U. C.											
					1	50			3,910	69	



RECORD.

Schedule  
No. 3.

## SCHEDULE No. 3.

## 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 the 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 Session of the Act of the Imperial Parliament, 30 and 31 Vic., ch. 3, called the British North America Act, 1867.
2. The amount and specification of assets under Schedule Four 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 four of the British North America Act, 1867.*

The amounts and specifications are shown in the Schedule hereto marked A

Nos. 3 and 4.—*The proportion of the whole debt of Canada, created for the local purposes of the Provinces of Ontario and Quebec respectively.*

RECORD.

Schedule No. 3—*Continued.*

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 Four, belonging to the Provinces of Ontario and Quebec respectively.*

These several proportions are shown in the Schedules hereto 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 the 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 \$7,901,046.19 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 would be 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 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.	Local Debt.	Result.
ONTARIO	\$17,735,579.52	: \$10,539,553.92	: \$9,833,733.33	: \$5,845,416.01
QUEBEC	17,735,579.52	: 10,539,553.92	: 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.

## (Appendix.)

## RECORD.

## No. 2.—PROPORTIONS OF POPULATION.

Schedule  
No. 3—Con-  
tinued.

The population of the Provinces of Ontario and Quebec, according to the last census of 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.	Local Population.	Result.
ONTARIO.....	2,507,657...	\$10,539,553.92 ...	1,396,091 ...	\$5,867,738.43
QUEBEC.....	2,507,657...	\$10,539,553.92 ...	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 the 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.	Excess of Debt.	Result.
ONTARIO	\$4,204,322.12 ..	\$2,117,320.99 ..	\$10,539,553.92 ...	\$5,304,184.41
QUEBEC.	\$4,204,322.12 ...	\$2,087,001.13 ...	\$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 debt could justly be made and the reasons of each mode of apportionment are 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 moneys 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 late Province of Canada, and were not for general but 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 favourable 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 \$30,319.86 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 remained at the time of Confederation.

These lands were set apart for a capital for a Common School Fund by Statute of Canada 12 Vic. 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 in-

RECORD.

Schedule  
No. 3.—  
Continued.

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RECORD.  
Schedule  
No. 3—*Con-  
tinued.*

come. The fund derived from these lauds 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 fund, 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, &c., and moneys arising from lands, &c., belonging to the several Provinces, shall belong to the several Provinces in which the same are situate or arise, subject to any trusts 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 interest in them, other than that of the Province of Ontario. While the Union of Canada existed, the fund received from these lands was appropriated, and therefore no objection is made to the manner in which Canada dealt with those funds received before Confederation, which were allowed to form part of the general debt, but the Province of Ontario contends that since Confederation the residue of the lands, and the funds derived therefrom belong wholly to her, and that the terms of the enactment appropriating the lands and providing for the apportionment of the fund, 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.....	\$52,089 04
2. Arrears of Debt of Lower Canada on the Municipal Loan Fund of Lower Canada.....	782,742 83
3. Jesuits Estates 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 30
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 <i>estimated</i> receipts from Seigniori of Lauzon and Tavern Licences and of actual receipts.....	73,258 90
9. Five-ninths of the actual capital from item 8, the revenues from Lauzon, and the Tavern Licences remaining now with Lower Canada.....	422,880 80 40
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



## ( Appendix. )

RECORD  
Schedule  
No. 3—con-  
tinued.

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 the Tavern Licenses being \$761,185.50, and the whole of those receipts which should have gone to 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 10 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.

## AA.

## STATEMENT SHOWING THE DEBT of the late Province of Canada.

## LIABILITIES.

Direct Debt assumed by Dominion 30th June, 1867, Public Accounts, 1867, page 1.....			
Indirect Debt assumed by Dominion 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 FUND BEARING INTEREST.

Indian Fund.....			
Common School Fund.....	\$1,733,224.47	1,810,110.61	30
Less one-fourth of Receipts for Common School Lands sold during the exist- ence of the Upper Canada Improve- ment Fund, from the day of the abolition of that Fund to 1st July, 1867.....	\$ 124,685.18		
Less investments, (Quebec Turnpike Trust)	58,000.00	1,608,539.29	
Arrears of Interest.....	29,580.00		
		87,580.00	40
		1,520,959.29	
Carried forward.....	\$ 3,331,069.90	\$ 62,835,197.63	

( Appendix. )

Brought forward.....		\$ 3,331,069.90	\$62,885,197.63	RECORD.
Upper Canada Grammar School Fund.....	362,769.04			Schedule No. 3—con- tinued.
Less Investments (City of Hamilton Debentures).....	50,000.00			
		312,769.04		
Upper Canada Building Fund.....	1,579,808.96			
Less Investments (City of Hamilton Debentures) .....	30,000.00			
Arrears of Interest.....	10,800.00			
Amount charged in error to				
10 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			
20 Less Investments (City of Hamilton Debentures) .....	10,000.00	29,400.00		
			347,851.53	
Normal School Building Fund.....		61,761.84		
Superannuated Teachers' Fund.....		2,700.88		
			64,462.72	
Compensation to Seigniors (capital).....			3,113,100.02	
Seigniorial Indemnity to the Townships (capital).....			756,710.00	
				9,398,354.62
30 Widows' Pensions and Uncommuted Stipends, Upper Canada.....			50,143.84	
Do do Lower Canada .....			4,126.31	
				54,270.15

MISCELLANEOUS LIABILITIES—PAYABLE IN CASH.

Court Houses, Lower Canada.....		4,061.20	
Montreal District Council.....		3,912.00	
Public Works (special).....		12,711.95	
Municipalities' Fund, Upper Canada .....		302,553.66	
Upper Canada Grammar School Income Fund .....	36,167.65		
40 Less arrears of Interest on Investments (City of Hamilton Debentures).....	18,000.00		
		18,167.65	
30 Upper Canada Improvement Fund (prior to abolition of Order in Council) ...	5,180.04		
Less Receipt in former years reversed...	60.96		
		5,119.08	
1-4 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 .....	124,685.18		
50 1-5 receipts on Crown Lands so sold and money so received.....	101,771.68		
		226,456.86	
			231,575.94
Carried forward.....		\$572,982.45	\$72,337,822.40

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Q. C.,  
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\$62,734,797.63 20

150,400.00

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\$2,885,197.63

RECORD.	Brought forward.....	\$572,982.45	\$72,337,822.40
Schedule No. 3—continued.	Compensation to Seigniors, arrears.....	72.25	
	Balance of special appropriations, (Ontario).....	218,473.37	
	Do do (Quebec).....	99,482.20	
	Amount paid by Ontario for Surveys ordered prior to 1st July, 1867.....	7,074.01	
	Amount paid by Quebec for Surveys ordered prior to 1st July, 1867.....	7,651.53	
	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	
	Less paid thereon by the Province of Canada.....	5,177.88	10
		<u>12,928.37</u>	
	Seigniorial Indemnity to the Townships.....	130,347.39	
			1,049,011.57
	Banking accounts, 30th June, 1867, assumed by Dominion.....		3,096,415.22
	Public Works, special, debited to Public Works.....		7,288.05
	Capitalization of Annuities.....		999,835.55
	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 £42,501 13.4 due to the Sinking Fund, 30th June, 1867, might have been invested.....	30,807.42	20
			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 fire arms.....	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	
		<u>303,578.98</u>	
			1,232,096.45 30
			<u>\$ 78,737,846.48</u>

## DEDUCTIONS.

Consolidated Fund Investment Account, being excess 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. Public Accounts, 1868.....	491,743.01	40	
Consolidated Fund Investments.....	997,666.72		
Composition Bank of Upper Canada Debt.....	500,000.00		
Northern Railway Special Account.....	30,976.70		
Catarqui Property.....	6,584.54		
Hydraulic and other Rents.....	101,784.44		
Roads and Harbours.....	202,377.63		
Sinking Fund of Imperial Guaranteed Loan.....	681,333.32		
do Canadian Consolidated Loan.....	1,267,222.26		
Cash and Banking Accounts transferred to Dominion...	1,461,250.61	50	
		<u>5,698,292.56</u>	
		73,039,553.92	
Allowed by British North America Act.....		62,500,000.00	
		<u>\$ 10,539,553.92</u>	
	Excess over \$62,500,000.00.....		\$ 10,539,553.92

( Appendix. )

RECORD.  
Schedule  
No. 3—con-  
tinued.

ASSETS under Schedule Four of British North America Act, 1867.

UPPER CANADA BUILDING FUND.

Lunatic Asylum and Normal School Debentures..... \$ 36,800.00

COURT HOUSES,

LOWER CANADA.

10	Debenture Account.....	} Aylmer.....	{ \$ 2,000.00	
	Account Current.....			
	Debenture Account.....	} Montreal .....	{ 95,600.00	
	Account Current.....			
	Account Current, Kamouraska.....		201.91	
				118,037.82

LAW SOCIETY.

UPPER CANADA.

20	Debenture Account .....	16,000.00	
	Book Account, current.....	140,015.61	
			156,015.61

MUNICIPAL LOAN FUND.

UPPER CANADA.

20	Capital Account.....	7,300,000.00	
	Less at Credit of Sinking Fund.....	429,548.63	
		6,870,451.37	
	Less Capital of Indemnity Account .....	2,218,555.39	
		4,651,895.98	
	Interest Account.....	\$3,517,018.32	
	Short charged.....	65.94	
		3,517,084.26	
30	Less Interest on Indemnity Account.....	1,350,617.91	
		2,166,466.35	
			6,818,362.33

MUNICIPAL LOAN FUND,

LOWER CANADA.

	Capital Account.....	2,428,140.00	
	Less Sinking Fund .....	271,452.86	
		2,156,687.14	
40	Interest Account.....	782,742.83	
			2,939,429.97

AGRICULTURAL SOCIETY.

UPPER CANADA.

	Advance.....	4,000.00	
	Carried forward.....		\$ 10,072,645.73

K

## ( Appendix. )

## RECORD.

Schedule  
No. 3—con-  
tinued.

	Brought forward.....	\$ 10,072,645.73
	LEGISLATIVE GRANT,	
	LOWER CANADA.	
Advance.....		28,494.73
	QUEBEC FIRE LOAN,	
	LOWER CANADA.	
Advance .....		264,254.65
	EDUCATION,	
	LOWER CANADA	
Advance....		290.10 10
	BUILDING AND JURY FUND,	
	LOWER CANADA.	
Advance Account .....		116,475.51
	MUNICIPALITIES FUND.	
	LOWER CANADA.	
Advance Account .....		484,244.33
	SUPERIOR EDUCATION.	
	LOWER CANADA.	
Advance Account.....		234,281.46
	REVENUE INSPECTORS' ACCOUNT,	
	UPPER CANADA.	
Amount of Account .....		2,426.41
	REGISTRATION SERVICES.	
	LOWER CANADA.	
Amount of Account.....		2,524.38
Temiscouata Advance Account .....		3,000.00
		<u>\$ 11,208,637.30</u>

DEBT OF CANADA created for Local Purposes.

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## B.

## ONTARIO.

	UPPER CANADA BUILDING FUND,	
Debentures issued for Lunatic Asylum and Normal School.....		\$36,800.00
Carried forward.....		<u>\$36,800.00</u>

40

( Appendix. )

Brought forward ..... \$36,800.00 RECORD.

LAW SOCIETY.

Schedule No. 3—continued.

Debentures issued..... \$ 16,000.00
Book Account advance..... 140,015.61

156,015.61

MUNICIPAL LOAN FUND.

Capital Account ..... 7,300,000.00
Less at Credit of Sinking Fund..... 429,548.63

10 Less Capital of Indemnity Account..... 6,870,451.37
2,218,555.39

Interest Account... \$ 3,517,018.32
Short charged..... 65.94

4,651,895.08

Less Interest on Indemnity Account..... 3,517,084.26
1,350,617.91

2,166,466.35

6,818,362.83

AGRICULTURAL SOCIETY.

Amount advanced..... 4,000.00

INDEMNITY ACCOUNT,

Under Seignioral Act, 1854..... 600,000.00
Under Seignioral Act, 1859..... 2,218,555.39

2,818,555.39

9,833,733.33

7,901,046.19

\$ 17,735,579.52

C.

QUEBEC.

COURT HOUSES.

Amount advanced ..... \$ 118,037.18

MUNICIPAL LOAN FUND.

Amount advanced..... 2,939,429.97

SEIGNIORAL TENURES.

40 Capital to Seigniors..... 3,715,538.26

Carried forward ..... \$6,773,005.41

## ( Appendix. )

RECORD.	Brought forward.....	\$5,773,005.41
Schedule	MUNICIPALITIES FUND.	
No. 3—con-	Advance.....	488,244.33
tinued.	SUPERIOR EDUCATION.	
	Advance .....	234,281.46
	QUEBEC FIRE LOAN.	
	Advance .....	264,254.65
	BUILDING AND JURY FUND.	
	Advance .....	116,475.51
	LEGISLATIVE GRANT.	
	Advance .....	28,494.73
	EDUCATION.	
	Advance .....	290.10
		\$ 7,901,046.19

## D.

## ONTARIO.

ASSETS.	Amount.		Average rate per cent. for 4½ years.	Value capitalized at 6 per cent.	
U. C. Building Fund.....	\$36,800	00	6	\$36,800	00
Law Society, U. C.....	156,015	61	\$7.14	156,015	61
Consolidated Municipal Loan Fund, U. C.....					
Principal.....	\$4,651,895.98				
Interest.....	2,166,466.35				
	6,818,362	33	1.69	1,920,505	38
Agricultural Society, U. C. (This is put down as yielding nothing, yet it is a good asset for the amount, the Society being able to pay)	4,000	00		4,000	00
Revenue Inspectors, U. C.....	2,426	41	0		
	7,017,604	35		2,117,320	99
Assets of Quebec.....	4,191,032	95		2,087,001	13
	\$ 11,208,637	30		\$ 4,204,322	12

## ( Appendix. )

73

## E.

## QUEBEC.

RECORD.

Schedule  
No. 3—con-  
tinued.

ASSETS.	Amount.		Average rate per cent. for 4½ years.	Value capitalized at 6 per cent.	
Aylmer Court House Debenture Account, 6 per cent.....	\$2 000	00			
Aylmer Court House Account Current.....	1,239	70			
Montreal Court House: Debenture Account.....	\$95,600.00				
Account Current .....	18,996.21				
	114,596	21	\$47.42	\$114,596	21
Kamouraska Court House Account Current \$201.91. There are \$8,955—8 per cent.; Debentures forming a first charge on the in- come. Ten per cent. would pay the interest on the Debentures, and leave ample to wipe out the Account Current.....	\$201.91			201	91
Consolidated Municipal Loan Fund, L. C.: Principal.....	\$ 2,156,687.14				
Interest .....	782,742.83				
	2,939,429	97	2.88	1,410,926	38
Superior Education, L. C.: Legislative Grant.....	\$ 28,494.73				
Balance of deficit in Edu- cation Office.....	290.10				
Income Fund .....	234,281.46				
	263,066	29	14.30	263,066	29
Quebec Fire Loan.....	264,254	65	1.98	87,204	03
Building and Jury Fund, L. C.....	116,475	51	11.58	116,475	51
Municipal Fund, L. C.....	484,244	33	1.14	92,006	42
Registration Services, L. C.....	2,524	38	3,910.60	2,524	38
Temiscouata Advance Account.....	3,000	00			
	4,191,032	95		2,087,001	13
Assets of Ontario .....	7,017,604	35		2,117,320	99
	\$ 11,208,637	30		\$ 4,204,322	12

RECORD.

Schedule  
No. 3.—  
Continued.

## 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 Four, 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 Seignioral 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 .....
2. That the interest on the same was also a local debt.....
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 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 30

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.

RECORD.  
Schedule  
No. 3—*Con-  
tinued.*

2. POPULATION.

10 It has already been shown, in the case for the Province of Quebec, 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 inquiring 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, 20 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.		
30	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 <sup>3</sup> / <sub>4</sub>			
	chap. 50 (b)....	Cy., 39,649	16 6	Cy., 8,436	13 4	
		£1,676,934	5 10 <sup>3</sup> / <sub>4</sub>	£178,992	4 5	

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

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

Making for Upper Canada.....	\$6,704,137	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

RECORD.	the former, if population had been taken as a guide, should have	
Schedule	been.....	\$9,555,185 58
No. 3—Con-	Less appropriated as above.....	715,968 88
tinued.		<hr/>
	Difference .....	\$8,839,216 70
	Adding to this disproportion that of the debt as above.....	8,715,630 60
	And the simple interest (though Quebec might charge com- pound 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.....	10 7,578,744 65
		<hr/>
	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 the 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 favour, 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 six 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 (parquet 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

RECORD. 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 a financial position of each Province when they joined.

Schedule  
No. 3—con-  
tinued.

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 \$425,527.62 which Upper Canada drew, under the name of "Upper Canada Improvement Fund," from what should have been common. These 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 pretention, 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 Schedules 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 suggests, 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 assets in Schedule Four 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.

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tinued.

5. The receipts from the Seigniori 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 Four 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 legislature, 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. CASALTY,

THOS. W. RITCHIE, Q.C.,

*Counsel for Quebec.*

RECORD. MEMORANDUM SUBMITTED ON BEHALF OF THE PROVINCE OF  
 QUEBEC.

Schedule  
 No. 3—con-  
 tinued.

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 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." 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 Canada 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 Four 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 Four, 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 Province

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 Vic., c. 35) intituled: "An Act to reunite the Province 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.

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No. 3—con-  
tinued.

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 142 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 of 1861, or according to the origin of the debt.

I. 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 profitted 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° Debentures (as per Appendix No. 3 vol. 5, 1847,	
KKK.) cy.....	£1,398,855 9 10
Equivalent to.....	\$5,595,421 97

RECORD. Schedule No. 3—con- tinued.	2° Floating debt, being balance of <i>expenditure</i> over re- <i>ceipts</i> from 1821 to 1841 (same appendix).....	330,357 57	
	Making together.....	\$5,925,779 54	
	Debt of Lower Canada, 10th February, 1841 :		
	1° Debentures (same appendix).....£96,748 4s. 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 4s. 7d.	10
		£15,249 0s. 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).....	\$250,302 41	
	From which deducting above debt.....	60,996 00	20
	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 Can- ada (making it as near as anterior and subsequent census per- mit, 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	30
	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 augmenta- tion 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 expen- ses 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		40

not only entail an amount of labour, 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.

RECORD.  
Schedule  
No. 3—con-  
tinued.

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

RECORD. give rise to grounds of complaint nor to suspicions of favour, unfairness or injustice.

Schedule  
No. 3—con-  
tinued.

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 10

\$5,925,779 54

Debt of Lower Canada in 1841 :

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

\$189,306 41 \$ 189,306 41

Striking it off makes, as already stated, debt of Upper Canada, equivalent to .....	\$6,115,085	95 20
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

Balance.....\$4,309,767 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

30

\$4,309,767 92 \$4,309,767 92

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 40 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 40 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 Legislature 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.*

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Schedule  
No. 3—con-  
tinued.

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 Four, which the Act made the conjoint property of Ontario and Que-

RECORD. bec, and by law the share of the Municipal Fund which might otherwise be  
Schedule payable to a Municipality, in arrears to the Municipal Loan Fund, is to be an  
No. 3—con- offset against said arrears, so long as the whole indebtedness of said Municipality  
tinued. 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, there-  
fore Quebec independently of any other reason has an interest.

#### U. C. IMPROVEMENT FUND :

By the School Lands Act U. 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 improvements 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. 20

#### 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. 30

#### 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
	<hr/> \$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.

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tinued.

10 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

20 CROWN LANDS DEPARTMENT :

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

TRUST ADVANCE ACCOUNT :

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

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

“ MONTREAL HARBOUR..... \$481,426 67 ”

30 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 ether 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.

## RECORD.

## IV.—INDIAN ANNUITIES.

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tinued.

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 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 land 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 20 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 on 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 30 these lands, which will be the effect of the capital being allowed to remain in the statement of liabilities, unless compensation is required from Ontario from the lands and arrears representing the capital of these annuities.

## V.—ASSETS IN SCHEDULE FOUR.

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.	} Lower Canada.
Lunatic Asylums.	
Normal Schools.	
Court Houses in Aylmer, Montreal, Kamouraska.	

( Appendix. )

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tinued.

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.  
10 Temisconata 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 20 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. CASALT,

THS. W. RITCHIE.

Quebec, December, 1869.

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RECORD. ANSWER OF PROVINCE OF ONTARIO TO THE STATEMENT  
 Schedule OF CASE OF PROVINCE OF QUEBEC.  
 No. 3—con-  
 tinued.

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 inquire 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 arrear for interest to the Municipal Loan Fund, up to Confederation, have had such arrear charged against their proportions of the annual payments from this Fund, and Quebec has no claim upon any portion of it.

U. C. IMPROVEMENT FUND.

U. C. GRAMMAR SCHOOL FUND.

U. C. GRAMMAR SCHOOL INCOME FUND.

U. C. BUILDING FUND.

In all these funds Ontario has the sole interest.

( Appendix. )

91

BALANCE OF SPECIAL APPROPRIATIONS.

RECORD.

Ontario claims the balance of the special appropriations for Upper  
Canada. Schedule  
No. 3—con-  
tinued.

WIDOWS' PENSIONS, U. C.

Amount on the same footing as Upper Canada Municipalities Fund.

CROWN LAND SUSPENSE ACCOUNT.

CROWN LANDS DEPARTMENT.

TRUST ADVANCE ACCOUNT,

Have all been struck out, and are, therefore, removed from the considera-  
tion 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 an-  
nuities, 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 Honorable W.  
B. Robinson, and for them an equivalent was made to Lower Canada by the  
setting apart upwards of 200,000 acres of the Crown Lands there for the In-  
dians, 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 FOUR.

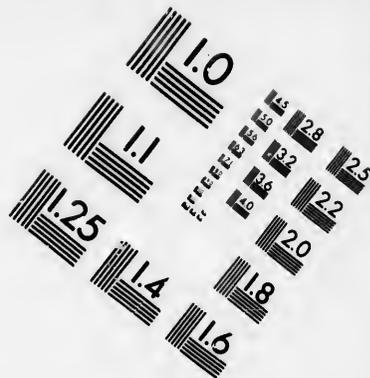
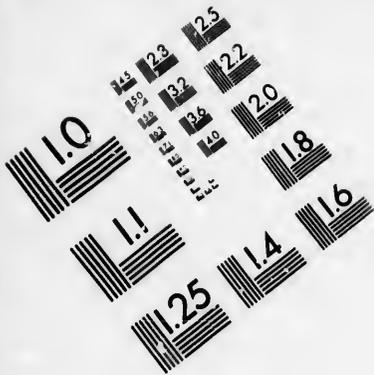
The Province of Ontario considers that these assets are clearly and distinctly  
within the power of the Arbitrators for division, and that the declaration that  
these are assets of the Provinces of Ontario and Quebec *conjointly*, does not  
mean that they belong to the Provinces of Ontario and Quebec in equal por-  
tions, but the Arbitrators must determine the principle of their division.

JOHN HILLYARD CAMERON, Q.C.,

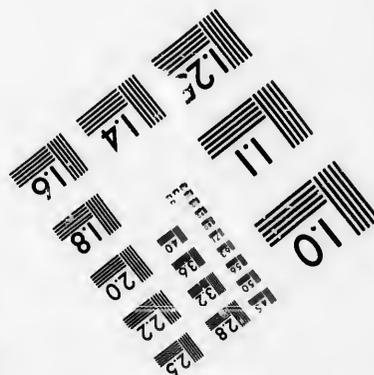
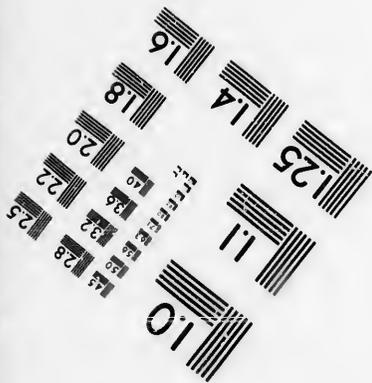
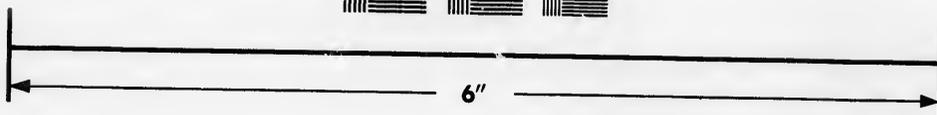
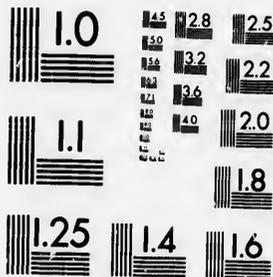
*Counsel for Ontario*

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**IMAGE EVALUATION  
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RECORD.

Schedule  
No. 4.

## SCHEDULE No. 4.

COPIES OF ALL CORRESPONDENCE between the Dominion Government and the Governments of Ontario and Quebec respecting the Arbitration and Award under the 142nd Section of the British North America Act, 1867, together with the REPORT OF THE MINISTER OF JUSTICE in respect of the same, and an ORDER OF THE PRIVY COUNCIL thereon.

*(Translation.)*

Government House,

Quebec, 11th July, 1870.

SIR,—For the information of His Excellency the Governor-General, I have the honour to inform you that the Honourable Charles D. Day has tendered his resignation as Arbitrator, appointed by the Government of the Province of Quebec, under Section 142 of the British North America Act, 1867, and to pray that His Excellency will direct the two other Arbitrators to suspend their labours until the Government of Quebec shall have come to a decision on this resignation, which is at present under its consideration.

I have the honour to be, Sir,

Your obedient servant,

N. F. BELLEAU.

Lieut.-Governor of the Province of Quebec 20

To the Honourable Joseph Howe,  
Secretary of State for the Provinces, Ottawa.

*(Copy.)*

Montreal, 9th July, 1870.

SIR,—I have the honour of transmitting herewith my resignation of the appointment of Arbitrator, under the 142nd Section of the British North America Act, 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 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 honour to be, Sir,

Your most obedient servant,

CHARLES D. DAY,

To the Honourable P. J. O. Chauveau,  
Provincial Secretary, &c., &c., &c.

(Copy.)

RECORD.

Montreal, 9th July, 1870.

SIR,—I have the honour to declare my resignation of the appointment of Arbitrator by the Government of Quebec, under the 142nd Section of the British North America Act, 1867, and respectfully to request that His Excellency the Lieutenant-Governor will be pleased to accept the same.

Schedule No. 4—continued.

I have, &c.,

CHARLES D. DAY.

To the Honourable P. J. O. Chanveau,  
10 Provincial Secretary, &c., &c., &c.

(Translation.)

(347.)

Department of the Secretary of State for the Provinces,

Ottawa, 13th July, 1870.

SIR,—I have the honour to acknowledge the receipt of your Despatch of the 11th July instant, stating, for the information of His Excellency the Governor-General, that the Honourable Charles D. Day has tendered his resignation of the office of Arbitrator, appointed by the Province of Quebec, under Section 142 of the British North America Act, 1867; and praying His Excellency to direct that the other Arbitrators should suspend their labours until the Government of Quebec shall have come to a decision on such resignation.

I have, &c.,

E. A. MEREDITH,

Under Secretary of State

The Honourable Sir N. F. Belleau,  
Lieutenant-Governor, Quebec.

(Translation.)

(49/70.)

Government House,

Quebec, 19th July, 1870.

30 SIR,—I have the honour to enclose for your information a copy of an order in Council accepting the resignation of the Honourable Charles D. Day as Arbitrator, appointed by the Province of Quebec, under Section 142 of the British North America Act.

I have, &c.,

N. F. BELLEAU,

Lieutenant-Governor of the Province of Quebec.

The Honourable  
The Secretary of State for the Provinces, Ottawa.

RECORD.

*(Translation.)*Schedule  
No. 4—con-  
tinued.

(No. 168.)

COPY OF THE REPORT OF A COMMITTEE of the Honourable the Executive Council, approved by the Lieutenant-Governor in Council, on the 19th July, 1870, On the resignation of the Honourable C. D. Day, Arbitrator, Quebec.

The Honourable the Secretary, in memorandum dated the 19th July, instant, 1870, recommends that the resignation offered by the Honourable Judge Charles Dewey Day, as Arbitrator, appointed by the Province of Quebec, under Section one hundred and forty-two of "The British North America Act, 1867," be accepted.

The Committee concur in the above recommendation of the Honourable the Secretary, and submit it for the approval of the Lieutenant-Governor.

Certified.

FELIX FORTIER,  
Clerk Executive Council.

The Honourable the Secretary of the Province,  
&c., &c., &c.

*(Translation.)*

(354.)

Department of the Secretary of State for the Provinces,

Ottawa, 21st July, 1870.

SIR,—I have the honour to acknowledge the receipt of your Despatch under date the 19th July, instant, transmitting, for the information of His Excellency the Governor-General, a copy of an order of your Executive Council, accepting the resignation of the Honourable Charles Dewey Day, as Arbitrator appointed by the Province of Quebec, under the one hundred and forty-second Section of the British North America Act.

I have, &amp;c.,

E. A. MEREDITH,

Under Secretary.

The Honourable Sir N. F. Belleau,  
Lieutenant-Governor, Quebec.

*(Translation.)*

Government House,

Quebec, 8th August, 1870.

SIR,—I have the honour to transmit, for the information of His Excellency the Governor-General, a copy of a document signed by the Hon. Messrs. Gray and Macpherson, which has been received by the Secretary of this Province. I deem it my duty at the same time to call the attention of His Excellency the Governor-General and of the Federal Government to the unjust and illegal course jointly adopted by the Arbitrator appointed by the Federal Government

and the Arbitrator for the Province of Ontario, and respectfully to request on behalf of the Government of this Province the intervention of the Federal Government.

RECORD.  
Schedule  
No. 4—con-  
tinued.

I have, &c.,

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

To the Honourable  
The Secretary of State for the Provinces, Ottawa.

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

10 The undersigned Arbitrators have had 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 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.

D. MACPIERSON,  
J. H. GRAY.

Toronto, 5th August, 1870.

(*Transation.*)

Government House,

Quebec, 11th July, 1870.

10 SIR,—For the information of His Excellency the Governor-General, I have the honour to enclose a copy of an Order passed by the Executive Council of the Province of Quebec, under date the 7th July instant, on the subject of the Arbitrators appointed for the division and adjustment of the debts, credits, liabilities, properties, and assets of Upper and Lower Canada, and to beg His Excellency to give his attention to the representations contained in the said Order.

I have &c.,

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

30 The Honourable Joseph Howe,  
Secretary of State for the Provinces, Ottawa.

(No. 157.)

COPY OF A REPORT OF A COMMITTEE of the Honourable the Executive Council, approved by His Excellency the Governor in Council on the 7th July, 1870, On the disqualification of the Hon. J. H. Gray to act as Arbitrator under the British North America Act of 1867.

The Honourable the Treasurer of the Province reports, that it is the opinion

RECORD.  
Schedule  
No. 4—con-  
tinued.

of Napoleon 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 Honourable 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 this Province to object to the said Honourable John Hamilton Gray acting as such Arbitrator.

The Honourable 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 Honourable John Hamilton Gray.

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

Certified.

FELIX FORTIER,

Clerk Executive Council.

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(986 on 2,144—32.)

Office of the Secretary of State of Canada,  
Ottawa, 20th July, 1870.

SIR,—I am directed to enclose Copy of an Order passed by the Executive Council of the Province of Quebec on your disqualification to act as Arbitrator under the British North America Act of 1867, transmitted to Government of the Dominion for its information and consideration by the Lieutenant-Governor of the said Province.

I am further to inform you that the Government of Quebec has accepted the resignation of the Honourable Charles D. Day as the Arbitrator appointed by the above Government.

I am, &c..

E. PARENT,

U. S. S.

The Honourable J. H. Gray,  
Arbitrator of the Dominion, Ottawa.

(Translation.)

Government House,  
Quebec, 14th September, 1870.

SIR,—For the information of His Excellency the Governor-General, to whom you are requested to communicate these presents, I have the honour to

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transmit herewith copy of an Order passed by the Honourable the Executive Council of the Province of Quebec, the 12th September instant, on the pretended award pronounced by the Honourable J. H. Gray and the Honourable D. L. Macpherson, two of the Arbitrators appointed for the division and adjustment of the debts, credits, liabilities, properties, and assets of Upper and Lower Canada.

RECORD.  
Schedule  
No. 4—continued.

I avail myself of the circumstance 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 consider unjust, illegal and vexatious.

I have, &c.,

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

The Honourable Joseph Howe,  
Secretary of State for the Provinces.

COPY OF A REPORT OF A COMMITTEE of the Honourable the Executive Council, approved by the Lieutenant-Governor in Council, on the 12th of September, 1870,

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

The Honourable 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 Honourable J. H. Gray and the Honourable D. L. Macpherson, two of the Arbitrators appointed to decide as to the division 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 Honourable 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 Honourable 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 Honourable 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.

RECORD.  
Schedule  
No. 4—*continued.*

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 Honourable 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 Honourable 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 of the British Crown to exercise when suffering under injustice or wrong from the hands of any.

The Honourable 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 been manifestly rendered and made in the interests of Ontario and 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 foregoing report and submit the same for the Lieutenant-Governor's approval.

Certified,

FELIX FORTIER,  
Clerk Executive Counsel. 30

(Translation.)

(No. 399.)

Department of the Secretary of State for the Provinces,  
Ottawa, 21st September, 1870.

SIR,—I have the honour to acknowledge the receipt of your despatch under date of the 14th 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, on the 12th September instant, on the award delivered by the Honourable J. H. Gray and the Honourable 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 honour to be, Sir,

JOSEPH HOWE, S. S. P.

The Honourable Sir N. F. Belleau,  
Lieutenant-Governor, Quebec.

( Appendix. )

99

( Translation. )

RECORD.

Government House,  
Quebec, 22nd December, 1870.

Schedule  
No. 4—con-  
tinued.

SIR,—I have the honour to state for the information of His Excellency the Governor-General, that there has been presented to me by the Legislative Council and Legislative Assembly of the Province of Quebec, an address praying me to transmit to His Excellency the Governor-General an address in relation to the Arbitration for the division and adjustment of the debts liabilities, credits, properties and assets of Upper and Lower Canada, under the provisions of Section 142 of the British North America Act, 1867.

I beg, therefore, to request that you will, with as little delay as possible, submit to His Excellency this address, which has been adopted jointly by the Legislative Council and the Legislative Assembly of this Province.

I have, &c.,

N. F. BELLEAU,  
Lieut.-Governor, Quebec.

The Honourable Joseph Howe,  
Secretary of State for the Provinces, Ottawa.

To His Excellency the Honourable Sir Narcisse Fortunat Belleau, Knight,  
Lieutenant-Governor of the Province of Quebec.

May it please Your Excellency,—

We, Her Majesty's true and loyal subjects, the Legislative Council and Legislative Assembly, pray that Your Excellency would be pleased to transmit to His Excellency the Governor-General, the Joint Address of the Legislative Council and Legislative Assembly, concerning the Arbitration.

C. B. DE BOUCHERVILLE,  
Speaker of the Legislative Council.  
J. G. BLANCHET,  
Speaker of the Legislative Assembly.

To His Excellency the Right Honourable John, Baron Lisgar of Lisgar and Bailieborough, in the County of Cavan, Ireland, in the Peerage of the United Kingdom of Great Britain and Ireland, one of Her Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Honourable Military Order of the Bath, Knight Grand Cross of the Most Distinguished Order of St. Michael and Saint George, Governor-General of Canada, and Governor and Commander-in-Chief of the Island of Prince Edward, &c., &c., &c.,

May it please Your Excellency :

We, Her Majesty's dutiful and loyal subjects, the Legislative Council and Legislative Assembly of the Province of Quebec, in Provincial Legislature as-

RECORD.  
Schedule  
No. 4—con-  
tinued.

sembled, humbly approach Your Excellency for the purpose of representing :—  
That, according to the provisions of the one hundred and forty-second Section of the British North America Act, 1867, the division and adjustment of the debts, credits, liabilities, properties, and assets of Upper and Lower Canada should have been referred to the arbitrament of three Arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and the third by the Government of Canada, the last mentioned not to be a resident, either in Ontario or in Quebec.

That the Honourable Charles Dewey Day having been appointed Arbitrator by the Province of Quebec, the Honourable David Lewis Macpherson by the Province of Ontario, and the Honourable John Hamilton Gray by the Government of Canada, and the last named Arbitrator having taken up his residence in Ottawa, the Government of the Province of Quebec have deemed it incumbent on them to protest against his continuing in office, and to express both to the Government of Canada and to the Arbitrators themselves, their firm conviction, that to carry out the true intent and meaning of the British North America Act, the decision of the Arbitrators should be unanimous.

That subsequently, on the ninth day of July last, the Honourable Charles Dewey Day, the Arbitrator appointed by the Province of Quebec, differing in opinion with the other Arbitrators respecting a preliminary judgment, which appeared to him based upon pretensions at once unfounded in fact and in law, and deeming that, by the rendering of that judgment, the examination of the question would be restricted by the inflexible rule of an erroneous judgment, and that it would be, therefore, impossible to arrive at an equitable and satisfactory conclusion, felt it to be his duty to resign his office.

That such resignation having been accepted by the Government of the Province of Quebec, notice thereof was immediately given, to wit, on the eleventh day of July last, to the Government of Canada, and to Messrs. Gray and Macpherson; the Government of the Province of Quebec, at the same time, protesting against any ulterior action on the part of the Arbitration Commission, which was thus rendered incomplete.

That, notwithstanding the representations so made to them, Messrs. Gray and Macpherson entered upon the examination of the questions submitted by the two Provinces, without the Province of Quebec being in any way represented, and on the third day of September last, rendered a pretended award, against which his Excellency the Lieutenant-Governor of the Province of Quebec, by despatch, dated the thirteenth day of September last, and addressed to His Excellency the Governor-General, protested as unjust and illegal.

That the injustice of the said pretended award is evident, from the same having been rendered wholly in the interest of the Province of Ontario, and from the fact that, while Messrs. Gray and Macpherson refused to take into consideration the relative financial positions of the two Provinces at the time of the Union, they have taken into consideration the object and nature of certain items of expenditure as having been incurred in one or the other section of the Province of Canada from the period of the Union to Confederation: that the said pretended award is further unjust, inasmuch as the division of the credits, properties, and assets of the late Province of Canada, does not even proceed upon

the same basis and principles as those which appear to have been adopted in relation to the division of the balance of the debt, and does not rest upon any principle whatsoever, but is purely arbitrary, and favours the Province of Ontario at the expense of the Province of Quebec; that, lastly, the provisions of the said pretended award fully justify the apprehensions of the distinguished lawyer selected by this Province as its Arbitrator, and the firm and independent line of conduct which he adopted in the interests of justice.

RECORD.  
Schedule  
No. 4—con-  
tinued.

That the said pretended award is absolutely illegal, null, and void, for the reasons hereinbefore set forth, and also as having been rendered by two Arbitrators, who, by the resignation of their colleague, remained without any power or jurisdiction, and that, therefore, the intentions of the British North America Act have not been carried out, and no valid title has been conferred upon either Province in relation to the credits, properties, and assets, which it was the duty of the said Arbitrators to apportion and divide between the two Provinces.

That the Province of Quebec can neither submit to its property being disposed of, or to any sum whatever being exacted from it, nor can it accept any property, credits, or assets in virtue of the said pretended award, and that it is bound to resist, and will resist by all means within its power, the execution of the said pretended award, claiming as it does that justice be done, and that its rights, as recognized by the British North America Act, be maintained.

Wherefore, we humble pray that Your Excellency will be pleased to adopt such measures as are best calculated to insure justice to this Province.

C. B. DE BOUCHERVILLE,  
Speaker of the Legislative Council.  
J. G. BLANCHET,  
Speaker of the Legislative Assembly.

(Translation.)

Department of the Secretary of State for the Provinces,  
Ottawa, 24th September, 1870.

SIR,—I have the honour to acknowledge receipt of your Despatch, 1,494, dated 22nd instant, transmitting an Address passed jointly by the Legislative Council and Legislative Assembly of the Province of Quebec, concerning the Arbitration for the division and adjustment of the debts, liabilities, properties, and assets of Upper and Lower Canada, under the provisions of Section 142 of the British North America Act, 1867.

I shall, without delay, submit the Address for the consideration of His Excellency the Governor-General.

I have, &c.,  
JOSEPH HOWE,  
Secretary of State for the Provinces.

The Honourable Sir N. F. Belleau,  
Lieutenant-Governor, Quebec.

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tinued.

Toronto, September 5th, 1870.

SIR,—As Arbitrators under the British North America Act, 1867, we have the honour herewith to enclose for the Government of the Dominion of Canada the award made by us.

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

We have the honour to remain, Sir,

Your obedient servants,

J. H. GRAY,

D. L. MACPHERSON.

10

To the Honourable

The Secretary of State for the Dominion of Canada.

(For Award see page 40.)

COPY OF A REPORT OF A COMMITTEE of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 27th February, 1871.

The Committee of Council have had under consideration the annexed Memorandum, dated 25th February, 1871, from the Honourable the Minister of Justice, to whom was referred the matter of the Arbitration under "The British North America Act, 1867," between the Provinces of Ontario and Quebec, and they respectfully report their concurrence in the opinion expressed in the said Memorandum, and advise that the same be adopted and communicated to the respective Provinces of Ontario and Quebec.

Certified.

W. H. LEE,

Clerk Privy Council.

To the Honourable

The Secretary of State for the Provinces.

In the matter of the Arbitration under "The British North America Act, 1867," between the Provinces of Ontario and Quebec, referred to the undersigned, he has the honour to report :—

That under the 142nd Section of the said Act, the following Arbitrators were appointed, viz. :—

The Hon. David Lewis Macpherson, by the Government of Ontario ;

The Hon. Charles Dewey Day, by the Government of Quebec ; and

The Hon. John Hamilton Gray, of St. John, New Brunswick, by the Government of Canada (his appointment dating from 21st March, 1868).

That by a Despatch from the Lieutenant-Governor of Quebec to the Secretary of State for the Provinces, bearing date the 11th July last, an Order of the Executive Council of that Province was transmitted for the consideration of His Excellency the Governor-General, which Order in Council sets forth, that "Whereas the Hon. 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 this Province to object to the said Hon. John Hamilton Gray acting as such Arbitrator."

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tinued.

That by a Despatch of the same date, the Lieutenant-Governor transmitted two letters, dated 9th July, from the Hon. Charles Dewey Day, addressed to the Provincial Secretary of Quebec, resigning his appointment as Arbitrator under the Section above cited.

That by a subsequent Despatch of the 19th July, the Lieutenant-Governor submitted a copy of an Order of his Council, accepting the resignation of Mr. Day, as the Arbitrator named for the Province of Quebec.

That by a letter, dated the 5th of September, Messrs. Gray and Macpherson, the other two Arbitrators transmitted a copy of the award made by them under the said Act, stated that such award had been made in triplicate and sent also to the Governments of Ontario and Quebec.

That the award is signed only by Messrs. Gray and Macpherson, and after reciting that the three Arbitrators were appointed by the several Governments as above mentioned, proceeds to state that "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, &c., &c., &c.

That by a Despatch from the Lieutenant-Governor of Quebec, dated the 14th September, a copy of an Order of the Executive Council of Quebec was transmitted, protesting, for the reasons therein given, against any force or validity being given to the pretended judgment or award of the said two Arbitrators by the Federal Authority, and advising of the intention of the 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."

That by a subsequent Despatch, dated 22nd December last, from the Lieutenant-Governor, he transmitted an Address from the Legislative Council and Legislative Assembly of the Province of Quebec to His Excellency the Governor-General, setting out—That the Hon. J. H. Gray having taken up his residence at Ottawa, the Government of Quebec having deemed it incumbent to protest against his continuing in office, and to express their conviction that the decision of the Arbitrators should be unanimous; that the Arbitrator appointed by the Province of Quebec resigned his office, that such resignation was accepted, and that the Government of Quebec at the same time protested against any ulterior action on the part of the Commission which was thus rendered incomplete. That Messrs. Gray and Macpherson, notwithstanding such representation, entered upon the examination of the questions submitted by the two Provinces, without the Province of Quebec being in any way represented, and

RECORD. made their award, against which the Lieutenant-Governor of Quebec protested as unjust and illegal. That the injustice of the pretended award is evident from the facts stated in the Address. That the pretended award is absolutely illegal, null and void, for the reasons therein set forth, and as having been rendered by two Arbitrators, who, by the resignation of their colleague, remained without power or jurisdiction. That, therefore, the intention of "The British North America Act" had not been carried out, and no title has been conferred upon either Province in relation to the credits, properties and assets, which it was the duty of the said Arbitrators to apportion and divide between the two Provinces. That the Province of Quebec can neither submit to its property being 10 disposed of, or to any sum whatever being exacted from, nor can it accept any property, credits or assets in virtue of the pretended award, and will resist by all the means within its power the execution of the said pretended award; claiming as it does, that justice be done, and that its rights as represented by the British North America Act be maintained. They, therefore, pray that His Excellency the Governor-General will be pleased to adopt such measures as are best calculated to ensure justice to that Province.

Schedule  
No. 4—con-  
tinued.

The case now stands thus :—

The Government of Ontario maintains the validity of the award—The Government of Quebec contends that it is altogether illegal and void, and declares 20 its intention of appealing for redress and justice in every constitutional mode, and the Legislature of Quebec, also protesting against its validity, asks the Governor-General to adopt measures to protect the rights of that Province.

Now the Government of Canada has no power or means of intervening between the parties, of enforcing the award as valid, on setting it aside as invalid, or of granting the redress, or the measure of protection sought for by the Legislature of Quebec. It is for the Government of Ontario, if it desires to enforce the award, to take such steps as it may be advised that the law allows for that purpose; and it is for the Province of Quebec to take the necessary legal steps to resist any action on the part of that of Ontario. 30

If the question of the validity of the award becomes a matter of litigation either Province will have the power of carrying it by appeal from the decision of any inferior tribunal to the Judicial Committee of the Privy Council as the Court of last resort.

If the Governments of the two Provinces were to agree on a statement or special case, with the view of submitting the question of the validity of the award to the Judicial Committee, it would be the duty of His Excellency the Governor-General, on being prayed so to do, to transmit such special case to the Secretary of State for the Colonies, with a request that it shall be submitted to such Judicial Committee for their opinion, under the 4th clause of the Imperial 40 Act, 3 and 4 William IV., chapter 41.

If the two Governments do not agree upon a joint submission of the case, it will be in the power of either Government to pray Her Majesty to refer the case, as stated by it, for the opinion of the Judicial Committee.

As it is obvious that if the Governor in Council were to assume to decide the questions in dispute, the Province against whom such decision would be

given would not accept or submit to it, and as such decision would have no legal force whatever, the undersigned recommends that no expression of opinion be given by His Excellency in Council, and for the same reasons the undersigned refrains from making any report on the legal questions.

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tinued.

Under present circumstances and until the questions raised respecting the award are settled by judicial decision, the undersigned is of opinion that no action with respect to it can properly be taken by the Governor in Council.

JOHN A. MACDONALD.

(Translation.)

10 118. Department of the Secretary of State for the Provinces,  
Ottawa, 28th February, 1871.

No. 624.

SIR,—I have the honour to transmit to you, herewith, for the information of your Government, a Copy of an Order of His Excellency the Governor-General in Council, together with a Copy of the Memorandum therein referred to, of the Minister of Justice on the subject of the Arbitration, under the British North America Act, 1867, between the Provinces of Ontario and Quebec.

I have, &c.,

JOSEPH HOWE,  
Secretary of State for the Provinces.

20 The Honourable Sir N. F. Belleau,  
Lieutenant-Governor, Quebec.

119. Office of the Secretary of State for the Provinces,  
Ottawa, 28th February, 1871.

No. 624.

SIR,—I have the honour to transmit to you, herewith, for the information of your Government, a Copy of an Order of His Excellency the Governor-General in Council, together with a Copy of the Memorandum therein referred to, on the subject of the Arbitration under the British North America Act, 1867, between the Provinces of Ontario and Quebec.

I have, &c.,

JOSEPH HOWE,  
Secretary of State for the Provinces.

30 The Honourable W. P. Howland, C.B.,  
Lieutenant-Governor, Toronto.

