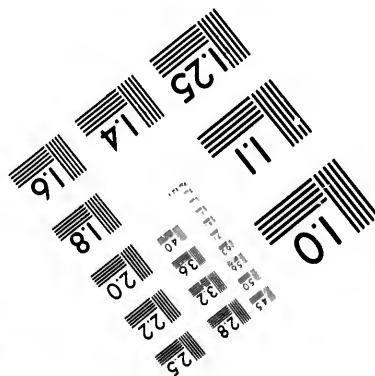
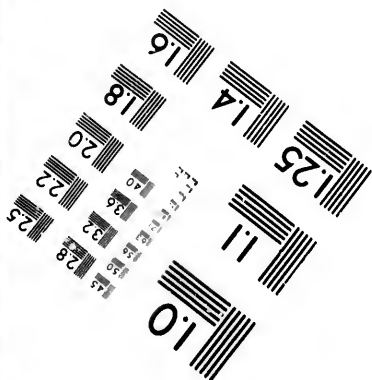
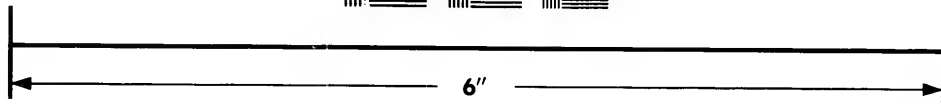
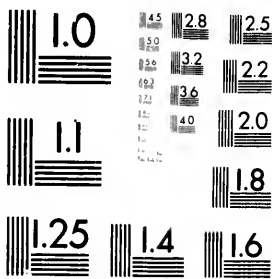


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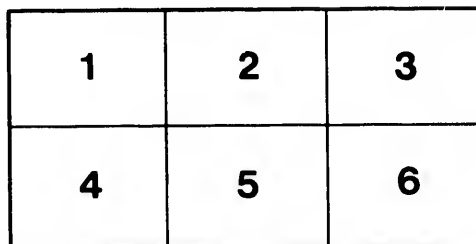
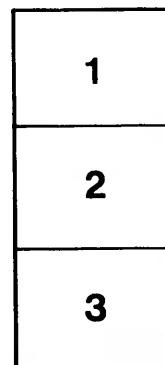
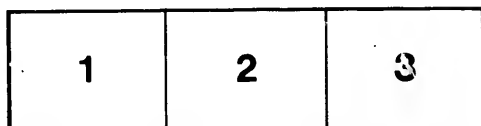
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The Honourable J. A. Chapleau P.C.  
Lieutenant Governor of Quebec  
with Compliments of  
H. T. Machin

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## MEMORANDUM

By the Assistant-Provincial Treasurer, Quebec, respecting the Arbitration for the settlement of accounts between the Dominion of Canada and the late Province of Canada, now represented by Ontario and Quebec, and between the said two Provinces, prepared at the request of the Honorable the Provincial Treasurer.

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[H. T. Machin]

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MEMORANDUM by the Assistant-Provincial Treasurer, Quebec, respecting the Arbitration for the settlement of accounts between the Dominion of Canada and the late Province of Canada, now represented by Ontario and Quebec, and between the said two Provinces.

At Confederation, under the provisions of the British North America Act, all stocks, cash, bankers' balances and securities belonging to each of the existing Provinces became the property of the Dominion of Canada, and the Dominion became liable for the debts and liabilities of each Province; but Ontario and Quebec conjointly were made liable to the Dominion for the amount by which the debt of the late Province of Canada exceeded at the Union, \$62,500,000.00, and were to be charged interest at the rate of five per cent thereon, which interest the Dominion was to deduct each six months from the subsidies payable to the Provinces under the Act.

Certain assets enumerated in the fourth schedule of the Act, were declared to be the property of Ontario and Quebec conjointly. The division of the debts, credits, liabilities, properties and assets of Upper and Lower Canada was to be referred to three Arbitrators, one chosen by Ontario, one by Quebec, and one by the Dominion, the last not to be a resident either in Ontario or Quebec.

Statements of the liabilities and assets of the late Province of Canada, as at that time ascertained, prepared in conformity with certain principles established and with the conclusions arrived at in a Conference of members of the three Governments, held at Montreal in July, 1869, and approved by an Order of the Privy Council of Canada of the 17th August, 1869, were submitted to the three Arbitrators appointed in accordance with the provisions of the said Act.

These Arbitrators met first in August, 1869, and after numerous sessions and hearings of Counsel, a judgment was rendered by the Arbitrators appointed by the Dominion and Ontario, on the 28th May, 1870, establishing the principles on which the surplus debt and the joint assets should be divided. The Arbitrator appointed by Quebec dissented from the judgment, and on the 9th July, 1870, withdrew from the Arbitration and resigned his position as Arbitrator, his reason being that he considered this judgment erroneous and unjust. The remaining two Arbitrators made their final award on the 3rd September, 1870, notwithstanding a protest against their proceeding by the Government of Quebec, and adjudged that of the excess of debt of the Province of Canada, over \$62,500,000.00, Ontario should assume and pay such a proportion as \$9,808,728.02 bears to \$18,587,520.57 and Quebec should assume and pay such a proportion as \$8,778,792.55

bears to \$18,587,520.57. This is approximately five-ninths for Ontario and four-ninths for Quebec. They also divided and apportioned the assets and special and trust funds which were the property of Ontario and Quebec conjointly. The Quebec Government protested against the award, and nothing was done respecting a settlement for some years. Later on correspondence was exchanged between the Governments of Ontario and Quebec, and a special case was prepared and submitted in 1878 to the Law Lords of the Privy Council in England, who decided that the Arbitrator appointed by Quebec had not the right to resign nor the Quebec Government the right to revoke his appointment, that the remaining two Arbitrators could legally proceed, hear the case and make a final award, and that the award of the 3rd September, 1870, is valid as regards any objection in the special case, save as affected by the Dominion Act therein setforth.

All the books and papers of the late Province of Canada remained in the possession of the Dominion Government, which, after Confederation, made payments and collected moneys in connection with the affairs of the late Province, and charged or credited these and other items to the account of the same, without the concurrence of the two Provinces to such charges or credits. Consequently, at the beginning of the year 1873, the excess of debt of the late Province of Canada, for which Ontario and Quebec were jointly liable, amounted, according to the account of the Dominion, to \$10,506,088.84.

In 1873 an Act was passed by the Dominion to readjust the amounts payable to and chargeable against the several Provinces of Canada by the Dominion Government so far as they depend upon the debt with which they respectively entered the Union.

By this Act, the \$62,500,000.00 of the debt of the late Province of Canada, which under the British North America Act was assumed by the Dominion at Confederation, was increased to \$73,006,088.84, and the amount of the debts of the other Provinces assumed by the Dominion were correspondingly increased.

Besides the account of the late Province of Canada, there were the individual accounts of each of the Provinces of Ontario and Quebec with the Dominion, comprising the subsidies payable half-yearly under the B. N. A. Act, the Trust and Special Funds and the interest thereon, also the payments by the Dominion on account of the same and the proportion of interest on the excess of debt chargeable to each Province. Moreover, as the Provinces had not at Confederation fully organized their Departments, the Dominion acted for them during the first year, making payments on account of the various services and collections on account of their revenues, and charging or crediting such payments and receipts.

The first statements of accounts were sent by the Dominion to the Provinces in September, 1877. These were incomplete. The Province of Quebec account shewed an apparent credit balance of \$1,347,915.00, but the account was misleading, as it did not include the interest on the excess of

debt. It was on account of this apparent balance that Quebec obtained payments of \$500,000.00 and \$125,000.00 in 1878 and 1879 respectively, although the Dominion called attention to the fact that the balance was subject to revision.

After the decision of the Privy Council, in 1878, respecting the award of 1870, correspondence was carried on from time to time with a view to getting a meeting for the adjustment of the accounts, but nothing was done until November 1882, when the Treasurers of Ontario and Quebec met at Ottawa, and submitted a Memorandum to the Minister of Finance, requesting that a statement of accounts between the Dominion and the Provinces should be prepared, and indicating the form in which they were of opinion that the accounts should be stated, with the balances struck yearly and interest allowed or charged half-yearly.

The Dominion Government in consequence had the accounts of the Dominion with the late Province of Canada, and with each of the Provinces to the 30th June, 1882, prepared, and they were submitted to Parliament at its next session. By these accounts, which were brought down to 1st July, 1882, the Province of Quebec appeared as owing an amount of \$889,551.21 after crediting the account with over \$600,000.00 of Funds held by the Dominion, which had not been included in the accounts of 1877.

The Provinces refused to accept these accounts as correct, and contended that proper effect had not been given to the operation of the Act of 1873, under which they claimed that the \$10,506,088.84 additional debt assumed by the Dominion should have been credited at Confederation instead of at the date of the Act of 1873, and that the amounts charged for interest on the excess of debt and retained from the subsidies between 1867 and 1873 should be reduced accordingly. They also objected to some important charges in the accounts, notably the arrears and capitalization of increased annuities to the Indians from whose tribes large territories had been obtained under treaties.

In April, 1884, an Act was passed by the Dominion to readjust the yearly subsidies allowed to the several Provinces of the Dominion.

By the terms of this Act, the total amount of the half-yearly payments which would have been made on account of the subsidies of Ontario and Quebec jointly, if the \$10,506,088.84 above mentioned had been assumed as at 1st July 1867, together with interest thereon, were capitalized at an amount of \$5,397,503.13, and the yearly subsidies of Ontario and Quebec jointly were increased by a sum equal to five per cent on such capitalized amount. The subsidies of all the other Provinces were increased in like proportion by this Act.

In October, 1884, meetings were held in Ottawa, at which the forms of the accounts, the question of interest on the excess of debt of the late Province of Canada, the claim against the Provinces for the increased

Indian annuities and various other items were discussed, and as a result a recast was made of the accounts, and delivered in January, 1886. In these accounts the principal of the Special and Trust Funds and the capital of the amount mentioned in the Act of 1884, on which the increased subsidy was based, were credited, and as Quebec's proportion of the latter was \$2,549,213.61, the credit balance in the Quebec account was \$1,861,594.44, but, as the Indian claims had been transferred to a Suspense account, Quebec stood debited in that account with \$409,091.12.

In June, 1888, in consequence of representations by the Treasurers, another recast of the accounts was made, in which the \$10,506,088.84, assumed by the Dominion in 1873, was credited as at the date of 1st July, 1867, thus doing away with any interest on the excess of debt, and also in effect annulling the provisions of the Act of 1884 as regarded the increase of the yearly subsidies. In this recast the Province of Quebec account showed a credit balance at June 30th, 1888, of \$1,074,400.35, which included the principal of all the Special and Trust Funds amounting to \$613,907.00.

In October, 1888, the representatives of the Dominion and the Provinces met at Ottawa, and agreed upon the principles on which the accounts were to be finally prepared, with the exception of the question of interest on the individual accounts of the Provinces, the latter claiming compound interest. A large number of the items of the accounts were gone over and admitted or reserved for proof, and it looked as if a settlement might be arrived at, but, on the third day, the Dominion Government refused to allow compound interest on the Province accounts, and the representatives of the Provinces decided to go no further in the settlement.

A lengthy correspondence resulted and, in December, 1889, the Provinces offered as a reasonable compromise, that instead of compound interest on the yearly debit and credit balances of the Province accounts, the half-yearly interest on the Trust Funds belonging to the Provinces, held by the Dominion, should be placed to the credit of the accounts at the end of each half-year, and simple interest at five per cent be then computed on all the items debit and credit, and that if the Dominion would not accept this proposal, that the question of interest on these accounts should be left to Arbitration.

In June, 1890, the Dominion Government refused to accept these proposals, and stated that it seemed preferable that the questions should be submitted to the adjudication of the ordinary tribunals.

It will be seen from the foregoing that these accounts had been stated in four different forms, based upon different applications of the three Acts, that items both credit and debit were not ranged under the same accounts or were excluded from one set of accounts and included in another set. In two of these interest was compounded, in one simple interest was calculated, and in one there were no interest computations. There were differences of

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opinion respecting the items making up the debt of the late Province of Canada as presented in the Dominion accounts, respecting the rate of interest and the method of computing it both on the accounts and the Special and Trust Funds held by the Dominion, and respecting the effect of the British North America Act and the Acts of 1873 and 1884. There were also serious differences of opinion respecting certain charges entered against the respective Provinces and also respecting the proportional obligations or rights of Ontario and Quebec in regard of claims against or properties belonging to the old Province.

In November, 1890, at a Conference of representatives of the Governments of the Dominion, of Ontario and of Quebec, held at Toronto, it was proposed that all questions arising out of, or incident to the accounts, should be referred to Arbitrators. A Memorandum was then prepared and signed, containing the terms and conditions of the proposed Arbitration, which was subsequently approved of by Orders in Council of each Government, and at the succeeding sessions of each of the three Legislatures, an Act, identical in terms, was passed, providing for the appointment of Arbitrators and the reference to them of such questions as the three Governments should mutually agree to submit; but from various causes the nominations were not finally confirmed until December, 1892. The Arbitrators appointed and who are now acting are, for the Dominion, the Honorable G. W. Barbidge, Judge of the Exchequer Court of the Dominion; for Ontario, the Honorable John A. Boyd, Chancellor of the Chancery Division of the High Court of Justice for Ontario, and for Quebec, the Honorable Sir Louis Napoléon Casault, Chief Justice of the Superior Court, Quebec.

The first meeting of the Arbitrators was held in Ottawa, on the 17th March, 1893, for organization and for determining the course of procedure to be adopted, Mr. D. Girouard, Q.C., and the Hon. J. S. Hall, Q.C., then Provincial Treasurer, appeared as Counsel for Quebec.

The first Agreement of Submission was made on the 10th April, 1893, recommended by Messrs. W. D. Hogg, Q.C., Counsel for the Dominion; Aemilius Irving, Q.C., Counsel for Ontario, and D. Girouard, Q. C., Counsel for Quebec, and was approved by Orders in Council of the three Governments. By it the following questions were referred to the Arbitrators for determination and award:

1. All questions relating to or incident to the accounts between the Dominion and the Provinces of Ontario and Quebec, and to accounts between the two Provinces of Ontario and Quebec.

2 The accounts are understood to include the following particulars:

(a) The accounts as rendered by the Dominion to the Provinces up to January, 1889;

(b) In the unsettled accounts between the Dominion and the two Provinces, the rate of interest and the mode of computation of interest to be determined;

(c) The accounts, as rendered by the Dominion to the two Provinces up to January, 1889, to be determined upon;

(d) The claims made by the Dominion Government on behalf of Indians, and payments made by that Government to Indians to form part of the reference;

(e) The Arbitrators to apportion the liability of Ontario and Quebec, as to any claim allowed the Dominion Government, and to apportion between Ontario and Quebec any amount found to be payable by the said Government;

(f) All other matters of account (1) between the Dominion and the two Provinces, (2) between the Dominion and either of the two Provinces and (3) between the two Provinces;

3. It is further agreed that the following matters shall be referred to the said Arbitrators for their determination and award, in accordance with the provisions of the said statutes, namely:

(g) The rate of interest, if any, to be allowed in the accounts between the two Provinces, and also whether such interest shall be compounded, and in what manner;

(h) The ascertainment and determination of the amount of the principal of the Common School Fund, the rate of interest which should be allowed on such Fund, and the method of computation of such interest;

(i) In the ascertainment of the amount of the principal of the said Common School Fund, the Arbitrators are to take into consideration, not only the sum now held by the Government of the Dominion of Canada, but also the amount for which Ontario is liable, and also the value of the school lands which have not yet been sold.

4. All the accounts referred to in this agreement shall be brought down and extended to the thirty-first day of December, eighteen hundred and ninety-two, inclusive;

5. It is further agreed by and between the parties hereto, that the questions respecting the Upper Canada Building Fund, and the Upper Canada Improvement Fund, are not at present to form any part of this reference but this agreement is subject to the reservation by Ontario of any of its right to maintain and recover its claims, if any, in respect of the said Funds, as may be advised;

6. It is further agreed between the parties hereto, that this agreement shall only have force and effect when and as soon as the same is adopted by Order in Council of the Dominion Government, and of the Governments of the respective Provinces;

7. It is further agreed that nothing herein contained is to limit or preclude the parties to this reference submitting such further and other questions or matters to the said Arbitrators as may be mutually agreed upon between the parties hereto.

## THE INTEREST QUESTION.

The first question that was brought before the Arbitrators in connection with the accounts was the Interest question. This involved the matters of the excess of debt and the interest thereon as affected by the British North America Act, and the Acts of 1873 and 1884, the rate of interest to be allowed on the unsettled accounts and the mode of computation, the treatment of the "trust" and "special" funds and the interest on them.

As the accounts of 1882, 1885 and 1888 were all made up with interest, either simple or compound, it was decided at the first meeting that the Dominion should recast the accounts without interest, that they should include the half-yearly subsidies and interest on the excess of debt, but should not include the principal of the "trust" funds. The Indian claims not to be included in the accounts.

Thus a fifth set of statements of accounts were made, and according to these the balance against the Province of Quebec, on the 1st January, 1893, was \$1,198,841.64, without interest.

The claims of the Provinces were that the accounts should be made up with half-yearly balances, the interest to be calculated half-yearly on the rests of the previous half-year; that the interest on the Trust Funds should be credited half-yearly in the accounts; that interest should be charged against the Dominion for any delay in paying the subsidies on the day when due; that interest should be credited to the Provinces on the deductions from their subsidies between 1867 and 1873, for the periods when the payments on account of subsidies were less than the amounts then due, which had not been allowed for in the Act of 1884; that when sums were paid the Provinces, the amount should be applied primarily in reduction of current interest, and Quebec claimed that no interest should be charged by the Dominion on the payments of \$500,000.00 and \$125,000.00 in 1878 and 1879, respectively.

It is not possible, in a reasonable space, to give any synopsis of the arguments. They and the evidence occupy more than one thousand pages of the record of proceedings.

The first award of the Arbitrators on this question was made on the 2nd November, 1893, and is as follows:

### AWARD.

1. That from the 1st of July, 1867, to the passing of the Act of the Parliament of Canada, 36 Victoria, chapter 30, the Provinces of Ontario and Quebec shall be credited with subsidy half-yearly in advance, deducting therefrom at the end of each half year their respective shares of interest, as determined by the award of September 3rd, 1870, at the rate of five per centum per annum, on the excess of debt of the Province of Canada, over

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\$62,500,000.00, as actually ascertained in amount at each period, the first of such deductions to be made on the first day of January, 1868, and the others on the first day of July and January thereafter, down to and including the first day of January, 1873

2. That in the Province of Canada account, there shall be credited on the 23rd day of May, 1873, the sum of \$10,506,088.84, remitted by the said Act, and thereafter the subsidy shall be credited in the separate accounts of Ontario and Quebec without any such deduction.

3. That on and from the 1st of July, 1884, the Provinces of Ontario and Quebec shall be credited with the additional subsidy granted by the Act 47 Victoria, chapter 4, in the proportion determined for the excess of debt by the award hereinbefore mentioned.

4. That each Province shall be credited as of the 1st of July, 1867, with its share of \$200,000.00 representing the purchase money of the library and other personal property mentioned in the fourteenth paragraph of the said award.

5. That the "trust funds" shall be treated as intact and unimpaired, and interest thereon at the rate of five per centum per annum, carried half-yearly into the separate accounts of Ontario and Quebec.

6. That the Province of Canada account shall be made up at simple interest at the rate of five per centum per annum, as has been agreed upon between the parties.

7. That in the separate accounts of Ontario and Quebec, the said Provinces shall respectively be allowed simple interest on any balance from time to time existing in their favor, at the rate of five per centum per annum, except where some other rate has been expressly agreed to.

8. That the question as to whether or not the Dominion shall be allowed simple interest at the rate of five per centum per annum on any balance that may from time to time be found to exist in its favor, in the separate accounts of Ontario and Quebec, be reserved for further argument.

In respect of the matters mentioned in paragraphs 1, 2 and 3, we have proceeded upon our view of a disputed question of law.

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It will be noticed that under this award the principal of the Trust Funds, amounting to \$412,314.25, exclusive of the Common School Fund, is not to be credited to the Province in the statement of the accounts; but this will not prevent the same being paid to the Province after these accounts are determined.



The question reserved in the foregoing award was argued before the Arbitrators at Ottawa on the 11th January, 1894, and their award was made on the 31st August, 1894, and is as follows :

#### AWARD.

1. That in respect of the separate accounts of both Provinces, the Dominion be allowed interest at five per centum per annum on all sums included in any balances in its favour that represent transfers from the Province of Canada account, or payments made by the Dominion under any liability of the Province of Canada to which it succeeded.

2. That in respect to the Quebec account, the Dominion be allowed interest at the rate of five per centum per annum on the two advances of \$500,000.00 and \$125,000.00, whenever it happens that there is a balance in favour of the Dominion of \$625,000.00 or more, and whenever such balance is less than \$625,000.00, then on such balance.

3. That in respect of the Ontario account, the Dominion be allowed interest at the rate of five per centum per annum on the \$936,729.33 transferred to the Common School Fund, and at the rate of four per centum on the \$500,000.00 advanced at four per cent, Dominion stock, whenever it happens that there is a balance in favour of the Dominion of \$1,436,729.33 or more, and whenever such balance is less than \$1,436,729.33, then interest shall be allowed to the Dominion at the rate of four per centum per annum on such balance to the amount of \$500,000.90, and at the rate of five per centum per annum on any sum in excess of the amount of \$500,000.00.

The Dominion appealed to the Supreme Court against the first award ; but, after hearing argument on both sides, the matter was taken under advisement, and subsequently judgment was rendered confirming the award, one of the judges dissenting.

The principles on which the accounts are to be stated having thus been determined, the Arbitrators, on the 20th May, 1895, appointed the Hon. Mr. Ross, formerly Treasurer of Ontario, Mr. Machin, Assistant-Treasurer of Quebec, and Mr. Dickieson, the Chief Accountant of the Dominion, to examine and investigate the *items* comprised in the accounts rendered by the Dominion, to refer through Counsel to them such as they could not agree upon, and to state the accounts in accordance with these principles.

Almost at the outset of the work, Mr. Dickieson, on behalf of the Dominion, having contended that by the Act of 1873, the Provinces were debarred from examining the items of the Province of Canada account prior to the 1st January, 1873, the matter was referred to the Arbitrators, and argued by the Counsel on the 5th September, 1895, and the Arbitrators at the same session made their award maintaining the contention of the representatives of the Provinces.

Owing to the pressure of work in the Finance Department, considerable delay has occurred in this examination ; but, at the last meeting, in the beginning of this month, which lasted a week, and was adjourned owing to the meeting of the Arbitration in Quebec on the 12th instant, considerable progress was made. This work will, however, take some time, as the intelligent examination of the accounts, vouchers, Orders in Council and records of entries, for so large a number of transactions, extending over a period of twenty-eight years, is necessarily a considerable labour, and these records being filed away in different Departments of the Dominion, renders the production of them in many cases a difficult matter. It has also to be taken into consideration that these representatives cannot neglect the official duties of their own Departments, which, owing to the existing session at Quebec, and the approaching sessions at Ottawa and Toronto, have demanded constant attention for the last two months. It is expected, however, that the work will be resumed shortly and pushed to a completion.

### THE MONTREAL TURNPIKE TRUST.

Included in the account of the Province of Quebec were certain charges for the principal of, and interest on debentures of the Montreal Turnpike Trust, issued under Ordinances and Statutes of 1839, 1840 and 1845, amounting in all to \$324,668 00, after deduction of amounts received by the Dominion from the Trust.

At Confederation it was taken for granted that these debentures were guaranteed by the late Province of Canada and the Arbitrators of 1870, on that ground, made Quebec liable, in case of default by the Trust, for any payment of principal or interest the Dominion might be called on to make by reason of the supposed guarantee.

\$67,200.00 of the debentures were held by the Dominion as an investment for the Indian Fund, and \$120,000.00 were held by the Quebec Savings Bank, afterwards the Union Bank.

The Trust had failed to pay its interest on the \$67,200.00, since 1872 and on the \$120,000.00 since 1882.

The Dominion paid the interest on the \$120,000.00 half-yearly, and in June, 1889, paid the Union Bank the \$120,000.00, charging the payments to Quebec at the dates they were made. In June, 1889, the Quebec account was charged with \$67,200.00, and interest from 1872.

Quebec claimed that there was no guarantee by the late Province of Canada, that the award of 1870, in respect of these debentures, was *ultra vires*, and that all the items should be eliminated from the account.

The case was argued on the 12th January, 1894, and on the 31st August, 1894, the award of the Arbitrators was :

"That all charges made in the accounts of the Dominion against the Province of Quebec, for principal or interest, on the Montreal Turnpike Trust Debentures, be eliminated from the same."

As in the final settlement of the account, these items would have borne five per cent. interest, the relief to the Province is equal to fully \$400,000.00.

#### THE INDIAN CLAIMS OF THE DOMINION AGAINST THE PROVINCES.

The most important of these claims is that on behalf of the Ojibeway Indians, who, in the year 1850, ceded very large territories on the Eastern and Northern shores of Lake Huron and on the Northern shore of Lake Superior, under what are known as the Robinson Treaties.

The cessions of territories were made in each case for a sum of money paid down, a fixed annuity to be paid in perpetuity, and a further condition that, "should the territory ceded at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time; provided that the amount paid to each individual shall not exceed the sum of one pound Provincial currency, or such further sum as Her Majesty may be graciously pleased to order." There is also a provision for reducing the annuities if the number of the Indians is diminished to less than two-thirds of their number at the time of the Treaties.

The claim of the Dominion is that the revenues obtained from the ceded territories, have entitled the tribes to the increased annuities since the date of the treaties;

That, up to Confederation, these tribes received \$1.60 per head yearly instead of the \$1.00 to which they were entitled, and that there is due by the late Province of Canada to these Indians the sum of \$325,000.00 for principal money and interest;

That, as these territories at Confederation passed into the hands of Ontario, subject to the trusts of the treaties and the interests of the Indians under section 109 of the British North America Act, and as the Dominion, administering under the said Act the Indian affairs, has paid between 1867 and 1875 \$1.60 per head yearly, and since 1875 the full sum of \$4.00 per head, there is due by the Province of Ontario \$95,200.00 to the Indians and \$389,106.00 to the Dominion at 31st December, 1892;

The Province of Quebec contended that the questions of fact respecting the amounts produced by the territories and the expenditures in respect of the same, the amount paid each year to each Indian, and the number of Indians each year entitled to the annuities, should be fully investigated before the Board could decide whether the increased annuities are war-

ranted, but urged that before adducing evidence certain questions of law should be determined. Among these questions are the following, viz. :

What is the definition of the word "Indian" within the meaning of these treaties, and what Indians are entitled to annuities and increase of annuities under these treaties ?

Whether all expenditures in connection with the territories (especially certain ones mentioned) can be charged against receipts.

Whether, as the administration of Indian affairs remained in the hands of the Imperial Government till 1860, the Province was bound to render account without demand ;

Whether interest could be charged on arrears of annuities so long as no demand or protest was made.

Whether the Dominion could increase the annuities without the consent of the Province or Provinces interested ;

Whether the capitalization of annuities at Confederation was not a finality as far as the Provinces were concerned.

Quebec also contended that in any case the increased annuities, if any should be allowed, are a trust on the lands, under the terms of section 109 of the B. N. A. Act, and that Ontario alone is responsible for them.

Ontario's contentions were similar to those of Quebec, except on the point of the increased annuities, if any, being a trust on the lands, and claimed (although the whole proceeds of sales and revenues of these territories since Confederation have gone into the hands of Ontario), that Quebec is liable for its share of any increased annuities, either before or subsequent to Confederation, which may be awarded to the Indians.

The award of the Arbitrators of the 13th February, 1895, is as follows :

#### AWARD.

In respect of the claim made by the Dominion of Canada against the Provinces of Ontario and Quebec in reference to the Indian claims arising under the Robinson Treaties :

1. That if in any year since the Treaties in question were entered into the territory thereby ceded produced an amount which would have enabled the Government, without incurring loss, to pay the increased annuities thereby secured to the Indian tribes mentioned therein, then such tribes were entitled to such increase not exceeding \$4 for each individual.

2. That the total amount of annuities to be paid under each Treaty is, in such case, to be ascertained by reference to the number of Indians from

time to time belonging to the tribes entitled to the benefit of the Treaties. That is, that in case of an increase in the number of Indians beyond the numbers named in such Treaties, the annuities, if the revenues derived from the ceded territory permitted, without incurring loss, were to be equal to a sum that would provide \$4 for each Indian of the tribes entitled.

3. That any excess of revenue in any given year may not be used to give the increased annuity in a former year in which an increased annuity could not have been paid without loss, but that any such excess or balance of revenue over expenditure in hand at the commencement of any given year should be carried forward into the account of that year.

4. That any liability to pay the increased annuity in any year before the Union was a debt or liability which devolved upon Canada under the 111th section of the British North America Act, 1867, and that this is one of the matters to be taken into account in ascertaining the excess of debt for which Ontario and Quebec are conjointly liable to Canada under the 112th section of the Act; and that Ontario and Quebec have not, in respect of any such liability, been discharged by reason of the capitalization of the fixed annuities, or because of anything in the Act of 1873, 36 Victoria, chapter 30.

5. That interest is not recoverable upon any arrears of such annuities.

6. That the ceded territory mentioned became the property of Ontario, under 109th section of the British North America Act, 1867, subject to a trust to pay the increased annuities on the happening, after the Union, of the event on which such payment depended, and to the interest of the Indians therein to be so paid. That the ultimate burden of making provision for the payment of the increased annuities in question in such an event falls upon the Province of Ontario; and that this burden has not been in any way affected or discharged.

7. That interest is not recoverable on the arrears of such annuities accruing after the union, and not paid by the Dominion to the tribes or Indians entitled.

8. That in respect to the matters hereinbefore dealt with the Arbitrators have proceeded upon their view of disputed questions of law.

9. That, as respects the increased annuities which have been paid by the Dominion to the Indians since the union, any payments properly made are to be charged against the Province of Ontario in the Province of Ontario account as of the date of payment by the Dominion to the Indians, and so fall within and be affected by our previous ruling as to interest on that account.

Against this award Ontario has appealed to the Supreme Court. The case was argued in the Supreme Court, on the 15th May, 1895, but judgment has not yet been rendered.

Should the award be confirmed, this Province, although not relieved from its share of any liability which may be proved to have existed before Confederation, will probably not have to meet a heavy claim, as the revenues from the territories were not large during that period.

#### THE CLAIM ON BEHALF OF THE MISSISSAGUA INDIANS OF PORT CREDIT AND THE CLAIM ON BEHALF OF THE DELAWARE INDIANS.

The first was a claim for the proceeds of lands which were sold on their account between the years 1828 and 1858 and interest, and amounted to about \$78,000.00.

The time and work entailed in the defence against this claim were very great. Sessional and other papers and books of account of sixty years back had to be examined, and reports of Commissioners of Indian Affairs carefully read. The result was that it was conclusively proved that the proceeds had been accounted for to the Indians.

The claim of the Delaware Indians was for the value of lands submerged in the construction of the Welland Canal in 1830, and amounted with interest to \$19,000.00.

This claim was disproved.

The award of the Arbitrators of the 13th November, 1895, relieved the Provinces from all liability in both cases.

#### UPPER CANADA MUNICIPALITIES FUND.

This was a claim of Ontario against the Dominion of Canada and the Province of Quebec for the recovery of a balance on the Upper Canada Municipalities Fund, amounting to \$21,488.74.

The case was argued and an award made in February, 1895, by which the Dominion was made liable for \$15,732.76, and the Province of Quebec was discharged in respect of the whole claim.

#### COMMON SCHOOL FUND.

The Act 12 Victoria, Chapter 200 (1849), provided that all moneys accruing from the sales of Public Lands should be set apart as a capital to form a Common School Fund to produce a yearly income of (£100,000) \$400,000.00, and also authorized the appropriation of 1,000,000 acres of lands, the proceeds of the sales of which were to go towards making the Fund,—the interest arising from the Fund to go towards the payment of the \$200,000.00 granted yearly for Common Schools, and apportioned according to population between Upper and Lower Canada. The 1,000,000 acres were appropriated from the lands in Upper Canada, in November, 1850.

Under authority of Act 16 Victoria, Chapter 159, an Order in Council was passed on the 7th December, 1855, reserving one-fourth of the proceeds of the sales of School Lands in any County for public improvements, and this one-fourth of the moneys received after the 7th December, 1855, was paid over to the Municipal Councils until the 6th March, 1861, when the Order in Council was rescinded.

Only the proceeds of the sales of the 1,000,000 acres were credited to the Fund, nothing from any other public lands. \$58,000.00 of the moneys were invested in Quebec Turnpike Trust Bonds; the balance of the collections remained in the hands of the Province, and amounted, with the interest allowed yearly, to \$1,645,644.47 at Confederation, at which time all the lands had been sold except 8,959 acres, and, according to a return of the Crown Lands Department, the outstanding instalments on lands sold amounted at the 30th June, 1867, to \$1,704,738.00.

In the award of 1870, the Arbitrators appointed under the British North America Act deducted from the Fund, as held on the 30th June, 1867, \$124,685.18, and transferred that amount to the Upper Canada Improvement Fund, being one-fourth part of moneys received between 6th March, 1861, and 1st July, 1867, on account of lands which had been sold between 14th June, 1853, and 6th March, 1861. They directed that the Dominion should continue to hold the Fund and pay the income to Ontario and Quebec respectively as is directed by the 5th Section of Chapter 26 of the Consolidated Statutes of Canada, and that Ontario should have the sale and management of the lands and be allowed six per cent on the collections for so doing. That from the collections on account of sales that were made between 14th June, 1853, and 6th March, 1861, one-fourth should be retained by Ontario for the Upper Canada Improvement Fund. The balance of the collections were to be paid over by Ontario to the Dominion, to be added to the Fund.

Instead of paying over the collections year by year, Ontario retained all the moneys received until January, 1889, when the sum of \$925,625.68 was paid to the Dominion, and a further sum of \$11,103.70 was paid in April, 1890.

Had the moneys collected been paid year by year, Quebec would have received its share of the interest on them half-yearly. And on the strong representations of the Treasurers of Quebec, Ontario has, at different times, paid to Quebec sums on account of Quebec's share of interest on the moneys retained, amounting in all to \$250,000.00; but this sum is far from what Quebec claims it is entitled to receive.

Quebec has claimed that the Order in Council of 6th December, 1861, put an end to the Upper Canada Improvement Fund, as regarded the one-fourth of proceeds of sales of these lands, and that the Arbitrators of 1870 exceeded their powers in deducting the \$124,685.18 and in authorizing the

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retention by Ontario of one-fourth of all proceeds received by it from sales made between 14th June, 1853, and 6th March, 1861.

There was correspondence from time to time between the Governments of Ontario and Quebec with regard to a settlement and final disposition of the Fund and the uncollected balances, but nothing was effected, as the views of the two Governments were so widely different.

As the ascertainment of the amount of the principal of the Common School Fund, the rate of interest to be allowed in the accounts between the Provinces, the amount for which Ontario is liable, and the value of the unsold lands, were matters to be determined by the recently appointed Arbitrators, the Treasurer of this Province asked, in March, 1893, for detailed and specific statements of amounts collected since 1867, of amounts outstanding on sales, and of the number and value of acres of land unsold.

The accounts not having been furnished in the form desired, and the estimate of the amount remaining outstanding and uncollected on lands sold being, in view of the statement of the Crown Lands Department made at Confederation, so different from what was expected, Mr. John Hyde, a chartered accountant, and Mr. Kemp, an official of the Crown Lands Department, Quebec, were, with the consent of the Government of Ontario, sent to Toronto, to make up complete and detailed accounts of all the lands, the sales, the interest accrued thereon, the collections on account of the same, and to establish the balances outstanding both at the date of Confederation and at the 31st December, 1892, that being the end of the last fiscal year of Ontario prior to the examination. This could only be done by full access being given to the books and records of the Crown Lands Department of Ontario, and it is gratifying to state that every facility in this respect was afforded by the Honorable Commissioner.

When it is considered that this work involved a complete audit of every account of the individual sales since 1850 of the 1,000,000 acres, most of which were in lots of 100 or 200 acres, with instalment payments on account of principal and interest, it will be realized how great was the amount of labor and time required, and as no individual sales ledger accounts had been kept, the accountants found it absolutely necessary to have a set of ledgers made and open an individual account for every sale, into which they posted every debit and credit entry both of principal and interest.

As it appeared that in settling with the purchasers of these lands, remissions had been made by Ontario, in a large number of cases, of part of the price or of the interest, and as Quebec questioned the right of Ontario to make these remissions, as far as Quebec's share was concerned, without having obtained its consent, a note had to be taken of every such remission and of the record in connection with the same. In view also of the claim of Ontario under the award to deduct one-fourth of the proceeds of lands



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sold between 14th June, 1853, and 16th March, 1861, the records of these sales and the collections on account of the same had to be distinguished from the sales made at other periods.

The result of this work showed that at 31st December, 1892, there was outstanding and uncollected on sales, including principal and interest, an amount of \$485,800.00, and that remissions and reductions had been made on amounts due in capital and interest to an amount approximating \$300,000.00, and that 3,383 acres remained unsold.

The Province of Quebec claims that these sums are to be taken into consideration in determining the amount of the principal of the Fund, though the amounts outstanding can only become available for income as they are collected.

The above amounts, as well as the amount in the hands of the Dominion belonging to Ontario and Quebec jointly, can only be divided by mutual agreement or by arbitration. And although the Lieutenant-Governor of this Province in Council is authorized by the Act 57 Victoria, chapter 3, (1894) to agree with the Government of Ontario upon an amount to be paid by Ontario for the unsold lands and uncollected balances, and also to agree with the Governments of the Dominion and of Ontario for the final payment to the Fund and for the division and distribution of the Fund to the Provinces, and failing to agree on such division and distribution, to refer the question to arbitration, no such agreement has yet been made; the questions submitted to the present Arbitrators being the ascertainment and determination of the amount of the capital of the Fund, the rate of interest on such Fund, and the rate of interest on the accounts between Ontario and Quebec.

The Dominion pays interest at the rate of five per cent per annum half-yearly on the amount of the Fund in its possession, which at the present time is \$2,457,688.62, Quebec having received as its share of such interest about \$30,000.00 a year for the years from 1867 to 1889, and about \$50,000.00 a year since 1889. Quebec has also received from Ontario \$250,000.00 on account of its share of interest, as before stated, on collections for the period that such collections were retained by Ontario.

From the foregoing it will be gathered that the principal grounds taken by Quebec are that the deductions from the collections for the Upper Canada Improvement Fund, though authorized by the Arbitration of 1870, are contrary to law, that Ontario is responsible for the remissions and deductions allowed the parties indebted to the Fund, and that Ontario is bound to place Quebec in the same position, as regards the interest on the collections retained, as it would have been if the same had been paid over to the Dominion from year to year.

The case was argued at Toronto in July last, but no award has yet been made.

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During the sessions of the Arbitration, claims have been argued and adjudicated upon in which Quebec had no interest, viz :

Claim of Dominion against Ontario in respect of the interest coupons on certain Bonds of the City of Hamilton amounting to \$16,781.85 and interest.

Claim of the Dominion against Ontario in respect of certain Immigration Expenditure amounting to \$20,000.00.

As regards the Robinson Treaties' Indian Case and the Common School Fund case, there will, after judgment has been given by the Supreme Court in the first, and an award by the Arbitrators been made in the second, if accepted as final, still be a considerable amount to be done to determine the facts and state the accounts in these particular matters.

But the hearing and adjudication of these cases, as well as of those claims which have not yet been brought before the Arbitrators, will not delay the final determination and settlement of those accounts of the Dominion with the late Province of Canada and with each of the Provinces, which have been for so many years the subject of contention and discussion. The uncertainty with reference to them, which has been a continual embarrassment in dealing with the financial position of this Province, will, it is hoped, be ended before the present fiscal year closes.

The claims in which Quebec is interested, which have not yet been argued, are as follows :

A claim of the Dominion in behalf of the Chippewas of the Thames and the Wyandotte Indians, for proceeds of their lands sold between the years 1845 and 1854, and received by Crown Lands Agents, but never accounted for, amounting to \$30,000.00 and interest to the present time.

A claim of the Dominion in behalf of the Mississaguas of Rice and Mud and Scugog Lakes against the late Province of Canada, for proceeds of their lands sold between 1844 and 1864, which, it is stated, went into the Consolidated Revenue Fund of the Province of Canada, instead of being accounted for to them. The amount is \$5,926.00 and interest.

A claim of the Chippewas of Lake Huron, and of the Mississaguas of Rice and Mud Lakes and Alnwick and Scugog, in respect of a territory of about 10,000 square miles, which, it is stated, was never surrendered by them, but that prior to Confederation, the lands were dealt with, and parts sold by the late Province of Canada, and that the territory has been occupied and enjoyed since Confederation by Ontario, portions having been sold from time to time by that Province. This claim is partly against the late Province of Canada and partly against Ontario.

There are other Indian claims in which Quebec is not interested.

It is to be remarked that, as far as this Province is concerned, the first intimation of the Robinson Treaties Indians' claims, and the claim of the Mississaguas of Port Credit, was received about the year 1880, and, as regards the other Indian claims, Quebec was only made aware of their existence after the commencement of this Arbitration.

A great source of difficulty and expense, with regard to obtaining information connected with all the matters and claims in dispute, has been that the books, documents, records and accounts relating to them are all either in Ottawa or Toronto, and the Counsel and others, acting for Quebec, have been obliged to make their researches and obtain their information in the Departments and offices in those places. In regard to the Interest question and the Indian claims, it has necessitated frequent Conferences of the Counsel of Ontario and Quebec, before preparing the arguments.

The difficulties arising from these conditions are more apparent when it is considered how many years these researches cover, in some cases going back sixty years, and in all of them as far back, at least, as Confederation, and there is no one living who, at that time, had anything to do with these matters and accounts, who can now give any assistance in the task of investigating the various transactions, which are difficult of explanation.

TREASURY DEPARTMENT,  
Quebec, 26th November, 1895.

H. T. MACHIN,  
Assistant Provincial Treasurer.

BELLEVILLE  
SARATOGA  
SARATOGA

