

ing, and differing so vitally with his colleagues, as to the justice of their decision that he deemed it his duty to resign. The Government of Quebec immediately accepted his resignation, and instructed their counsel, Mr. Ritchie, Q.C., to recuse the Hon. Mr. Gray, the Dominion arbitrator, on the ground that he resided in Ontario, against the terms of the statute in this case. This was done.

The interlocutory judgment was, in substance, (1) that the union act did not create in fact or in law any partnership between Upper and Lower Canada. (2) That the arbitrators have no power to enter into the debts or credits of the two Provinces at the time of their union in 1841. (3) That division and adjustment between Ontario and Quebec of the surplus debt beyond \$625,000, 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 4th Schedule to that Act, and shall be apportioned and borne separately by Ontario or Quebec, as the same may be adjudged to have originated for the local benefit of either; and where the debt has been incurred in the creation of an asset for the common benefit of both Provinces, and shall be so adjudged, such debt shall be divided and borne equally by both. (4) That in cases in which the debt shall not come within the parview of the 4th Schedule, reference shall be had as to its origin. (5) That the assets enumerated in the 4th Schedule to be the property of Ontario and Quebec conjointly, shall be divided or allowed on the same basis. (6) That the expenditure made in the creation 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 to enter upon the policy or advantages of expenditures or debts incurred.

Mr. Day submitted a written protest, and furnished a long written opinion in support of his views. His protest opposed a pointed negative to each allegation in the judgment of the majority, and he furnished at the same time a written judgment in the terms which he held it ought of right to be. We quote the following from this document: "The arbitrators * * * are of opinion that the propositions submitted in behalf of the Province of Ontario do not, nor does either of them, furnish any legal or sufficient rule or just basis for such division and adjustment; and they do award and adjudge that the said division and adjustment ought to be made according to the rules which govern the partition of the debts and property of associations known as Universal Partnerships, in so far as such rule can be made to apply:—and the arbitrators having also heard counsel for the Provinces of Ontario and Quebec respectively upon the objection made in behalf of the former Province to the 'jurisdiction and authority' of the arbitrators to inquire into the state of 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 debt or credit 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 they have authority, and are bound by the provisions of the said Act to inquire into the state of the debts and credits of the Provinces of Upper Canada and Lower Canada existing at the time of the union of 1841."

This judgment and protest were made at Montreal. After deliberation, the majority of the arbitrators, notwithstanding the resignation of Mr. Day, and the protest of the Province of Quebec, resolved that it was their duty to continue their proceedings. They accordingly adjourned their sittings to Toronto, and there continued their proceedings, notwithstanding the protest of Quebec.

At the beginning of September, they rendered an award, of which the following is the substance:—

This award divides the debts, credits, liabilities, property and assets of Upper and Lower Canada under the 142nd section of the B. N. A. Act of 1867.

It apportions to Quebec and Ontario the amount by which the debt of the late Province of Canada exceeds \$ 2,500,000, in the proportion of \$8,778,792.55 to Quebec, and \$9,808,728.02 to Ontario. In other words that Quebec is to bear 8-17ths, and Ontario 9-17ths of the excess.

The excess will be between \$9,700,000 and \$10,500,000, the exact sum depending upon the allowance or disallowance of certain deductions insisted on. The determination of the amount of debt was not referred to the arbitrators. If we assume the excess of debt to be divided is \$10,500,000, which it is likely to be, then according to the award of the majority of the arbitrators, Ontario would have to bear \$5,540,902, and Quebec \$4,959,097, as their portions respectively of such excess.

The principle on which this apportionment is made, is the origin of the debts for local purposes between 1841 and 1867, which so stated amount (as above) to \$8,778,792.55 in Quebec, and in Ontario to \$9,808,728.02, making together \$18,587,520.57, which is reduced by certain deductions under the 107th section of the Act aforesaid, remaining the property of the Dominion.

The award gives to Ontario, the following assets named in the 4th schedule of the Act:—

Debt from the Upper Canada Building Fund.....	\$ 36,807.00
Debt from the Law Society, Upper Canada.....	156,015.61
Do. from the Con. Mun. Loan, Upper Canada.....	6,792,136.39
Do. from the Agricultural Society, Upper Canada.....	4,000.00
Debt University Permanent Fund.....	1,220.63

\$6,990,172.63

The award gives to Quebec the following assets named in the 4th Schedule:—

Debt from Aylmer Court House.....	\$ 3,239.70
Do. from the Montreal Court House.....	114,596.21
Debt from the Kamouraska Court House.....	201.27
Do. from the Royal Institution (otherwise McGill College).....	7,620.00
Do. Municipal Loan Fund, L. C.....	2,939,429.97

Carried forward.....\$3,065,257.15