

the 7th and 9th paragraph of the award.

"The Province of Ontario is entitled to the costs of this appeal, to be paid by the Dominion."

The judgment of the Supreme Court supports the contention of the Attorney-General, Sir Oliver Mowat, as communicated to Mr. Blake, then Minister of Justice, in 1875, that the claim on the part of the Dominion, if any, is a liability of the late Province of Canada, and that Ontario alone is not to bear the ultimate burden of the increased annuities.

The Dominion has taken steps to apply during this month to her Majesty's Privy Council for leave to appeal against this judgment. The Province of Quebec is applying to be heard before the Privy Council as a party interested.

#### IMMIGRATION EXPENDITURES.

Three other matters, relatively speaking, of much less importance than the interest question or the question involved in the Huron and Superior treaties, were next taken up by the arbitrators.

The first of these concerned certain immigration expenditures. The Dominion claimed from Ontario a refund of \$68,635 under an agreement made in January, 1873, for the transport of immigrants from Quebec to points in Ontario during the years 1878-79 and 1880. This case was argued at Quebec on the 12th of February, 1895, and an award made on the day following disallowing \$55,549 of the claim. When the account is taken it is expected that it will be found that Ontario is entitled to recover a small balance.

The second was a claim preferred by Ontario against the Dominion for an unpaid balance of \$21,444 belonging to the Upper Canada municipalities fund, which in 1866-67 and 1868 had been misapplied. The award of February, 1895, on this head allows \$15,732 against the Dominion, and directs that amount to be credited to Ontario as of date, July 1, 1872.

The third of these minor claims was that made by the Dominion against Ontario to recover a balance on some interest coupons paid in London in 1861 by the late Province of Canada and assumed by the Dominion at Confederation. These coupons were collected by Ontario, but the proceeds were not paid over to the Dominion. The award as to this matter is against Ontario, and orders that the Dominion of Canada be credited with \$16,781 as of date, Dec. 31, 1892.

#### OTHER CLAIMS.

Two other claims of the Dominion against the late Province of Canada have been argued and decided. The one, a claim for \$21,083, was made on behalf of the Delaware Indians for lands drowned at Dunnville in 1829-33. This case was heard at Quebec last November. The arbitrators disallowed the claim in toto. The other was made on behalf of the Mississauga Indians of the River Credit for the value of Indian lands sold between 1826 and 1858, it being alleged that the Province of Canada received the proceeds, but did not pay them over to the Indian Department. The amount thus claimed was \$78,774. Ontario not only denied all liability, but also filed a counter-claim against the Dominion on the ground that the Dominion had improperly charged \$5,582 against the widows' pension fund and credited it to these Mississauga Indians. This case was argued last November in Quebec. The arbitrators dismissed the claim of the Dominion, and allowed in part the counter-claim of Ontario.

#### COMMON SCHOOL FUND.

The questions concerning the common school fund furnish the only other important matter which has been presented to the arbitrators up to the present time.

Shortly stated, the origin of the common school fund was that in 1841 an act was passed providing for the establishment of "a permanent fund to consist of such moneys as may accrue from the sale or lease of any lands which, by Legislature or any other competent authority, may hereafter be granted or set apart for the endowment, maintenance and support of common schools and of certain other moneys." The division of the fund between Upper and Lower Canada was to be made by the Superintendent of Education. This was amended in 1843 by 7 Vict., chap. 9, which provided that the income from the fund should be apportioned between Upper Canada and Lower Canada according to the census next before taken.

Then comes the act of 1849, which re-

cites that it is desirable that the annual sum of £100,000 should be raised from public lands of the Province of Canada for the maintenance and support of common schools therein, and "that so much of the first moneys to be raised by the sale of such lands as may be sufficient to create a capital which shall produce an annual sum of £100,000 should be set apart for such purpose." The act provides that all

moneys which shall arise from the sale of any public lands of the Province shall be set apart for the purpose of creating a capital sufficient to produce the said £100,000 per annum, and also provides for the investment of the money.

This act provides that 1,000,000 acres of public lands of Canada should be set apart for the purposes of the Common School fund. In pursuance of this act and by an order in Council dated the 5th of November, 1850, 1,000,000 acres of land in the Province of Upper Canada, now Ontario, was set apart to comply with this statute. At the time the Provinces were confederated by the British North America act of 1867 all lands within the confines of the old Province of Upper Canada, now Ontario, vested in the Province of Ontario. Sales were made, and at the time of Confederation nearly the whole of the million acres had been sold, but as to a large part the instalments of purchase money had not been paid and a portion of the lands remained unsold at Confederation.

After Confederation and owing to defaults by purchasers some of the sales previously made were cancelled and the lands resold, and a portion of the lands which at the time of Confederation were unsold were subsequently sold by the Province, and at the present time a few hundred acres remain unsold.

The Province of Ontario, according to the original award of 1870, has never received from the Dominion any of the moneys which came to the hands of the old Province of Canada as a result of sales of these lands prior to Confederation, but the Dominion has held this money as trustee for Ontario and Quebec under the award of 1870, and Ontario has received credit for certain amounts of interest thereon.

The amount required to produce \$400,000 per annum was \$6,666,666, and the total aggregate resulting or to result from the sale of the 1,000,000 acres would not produce this sum.

#### ANOTHER VICTORY.

Quebec has put forward a claim that the deficiency estimated to amount to \$1,451,741 should be made up.

The question of the liability of Ontario in respect to this claim of Quebec was argued before the arbitrators in July, 1895, and judgment rendered on the 6th of February, 1896, unanimously disallowing Quebec's claim.

Since Confederation Ontario has collected and paid over to the Dominion on account of sales of Common School lands sums aggregating \$936,728, and the arbitrators have found:—(1) That the sum held by the Government of the Dominion of Canada on the 10th of April, 1893, as part of the principal of Common School funds amounted to \$2,457,688, made up of \$1,520,959, that at Confederation came into the hands of the Government of Canada, and the sum of \$936,728 for which the Government of Ontario has accounted to the Government of the Dominion of Canada.

Quebec claimed that this should be increased by the sum of \$124,685 18. which had been deducted from the Common School fund and credited to the Upper Canada improvement fund, contending that the transfer of this sum to the Upper Canada improvement fund was contrary to law.

Ontario contended for the validity of the transfer which was expressly authorized by the award of 1870 made by the arbitrators appointed under section 142 of the British North America act, against which Quebec had unsuccessfully appealed to the Privy Council. The majority of the present arbitrators decided in favor of Ontario, but from this finding Chief Justice Sir L. N. Casault dissents, being of the opinion "that the sum so held by the Dominion Government as part of the principal of Common School fund was greater than has been stated by an amount of \$124,685, which sum in the said accounts had been deducted from the said fund and credited to Upper Canada improvement fund."

The award of 6th February, 1896, holds that subject to certain deductions Ontario is liable to the Common School fund for the amount received by her since Confederation or to be