make claims concerning trade and navigation, and there should be a unification of those laws without delay. Having obtained this expression of opinion on the subject from the Government, he had no doubt that the mover of the resolutions would withdraw them.

Mr. JONES (Halifax) said under the law of England, a ship was not attached for debt when the owner resided in the country. Supplies were supposed to be furnished vessels on the credit of the owner. The law, however, was different when the ship owner was a non-resident in the country.

Mr. STREET was glad that the matter had been so well received by the House. His object was to give security to merchants furnishing supplies to vessels. He proposed to do so through the county courts, but it was a matter of little importance to him how it was done so long as security was given. Having heard the announcement of the Government, he would ask leave to withdraw his motion.

Hon. Mr. McDOUGALL (Lanark North) thought the hon. member had proposed a very simple plan to give jurisdiction to ordinary courts in such cases. If the hon. gentleman was satisfied to wait for the slow action of the Imperial Government and the slow action of the Dominion Government afterwards, he would have to wait a long time. The constitution which we had and the power and authority given to us by that constitution, was quite large enough to enable us to deal with questions of this kind, and even larger, so far as we were concerned as a people. He admitted that we should follow in the trane of the Imperial Government in regard to sea-going vessels, but, with respect to internal navigation, it was a matter for discussion and legislation in this country alone. The hon. member for St. John (Hon. Mr. Gray) had proposed to establish a new court, with a new judge, and new machinery throughout. Now, he (Hon. Mr. McDougall) thought that the people of this country would feel satisfied that the courts at present in existence were sufficient to manage such matters.

Hon. Sir FRANCIS HINCKS thought the Government ought to be credited with being sincere in the matter. The Imperial Government had been engaged for some time in the consolidation of the laws respecting merchant shipping, which were exceedingly voluminous, and had expressly requested the Canadian Government to delay passing any measure on the subject pending the action in the Imperial Parliament, and for this reason, although the Minister of Marine had already prepared a Bill, the Government did not think it advisable to introduce it.

Hon. Mr. GRAY referred to the remarks of the member for Lanark, and said that the Imperial Act provided that one of the Judges of the existing Courts would be appointed, so that the necessary machinery was already in existence.

The motion was then withdrawn.

ARBITRATION

The adjourned debate on this matter was then taken up, the motions before the House being Hon. Mr. Dorion's motion with the amendment of Hon. Sir George-É. Cartier, and Hon. Mr. Holton.

Mr. BELLEROSE addressed the House in French. He thought that the action of the members for Hochelaga and Châteauguay was most injudicious, and was sorry that while they seemed to desire to stand first in advocating the interests of Quebec, they had represented her case so badly. Their motions could neither receive the support of the majority of the House or of the majority of the members for Quebec, which they must have well known. He then stated the reasons why those motions could not be entertained, maintaining that if they were carried, Quebec would be ten times worse off than at present. He did not fear any act of injustice to Quebec, as the question would be settled by a learned and liberal tribunal, the Privy Council, and further, Quebec could not possibly suffer any lasting injustice while she had sixty-five representatives firmly united in her interests, and indeed he was sure no Ministry could act unjustly in this matter and stand. The amendment of the hon. member for Châteauguay, though plain, and proposing something very simple, he was sorry to say was not proposed with the object of benefiting Quebec. He considered it rather designed to create political effect outside the House, and that it mingled good principles with doubtful modes of procedure, and while it pretended to be in the interest of Quebec, it might be productive of serious harm. He had intended to propose an amendment, but in the fact of one having been already moved out of order, and of the doubtful regularity of the others, he was not sure that he could do so with any good result.

The SPEAKER here asked permission to amend the Journals of the House, with respect to the reason of Hon. Mr. Chauveau's amendment in the previous part of the discussion having been ruled out of order. His reason for so ruling was, not that it involved an expenditure of money, and ought, therefore, to have originated in a message from His Excellency, as advanced by the member for Bothwell, but that it involved an increase of the public debt, and should therefore have originated in a Committee of the Whole.

Hon. Mr. ROSS (Champlain) condemned the award as unjust, and set forth his reasons for arriving at that conclusion. He thought the unfair character of the decision being acknowledged, there should be no difficulty in the Provincial Governments arriving at a basis of common action for an amicable and proper settlement of the difficulty. He condemned the motion of the member for Hochelaga, as calculated to do Quebec more harm than good. He was not prepared to vote for the motion of the member for Châteauguay, which amounted to one of want of confidence. The Government by not recognizing the award, had done all they could under the circumstances, to set it aside and bring the difficulty to a happy termination. He could not support the motion, but would vote for the amendment of the Minister of Militia.

Mr. HARRISON: I regret find that the discussion as to the Arbitration between Ontario and Quebec has been again and again, during this Session, forced on the attention of the House. I cannot help feeling that until the questions of law involved are determined by some competent tribunal the discussion is premature. Entertaining these views, I have hitherto refrained from taking part in the debate. But, sir, while I have done so, members representing constituencies in the Province of Quebec have persistently asserted not only the illegality of the award but its injustice, and have endeavoured to fortify their positions by all the arguments in their power. I now find that these arguments if longer left unanswered by members of Ontario, may damage the position of our Province in the eyes of our friends from the Maritime Provinces. We do not wish it to be understood that we assent to the proposition that the award is either illegal or unjust; we cannot do so, Sir; and in order that our reasons for not doing so may be placed before the House and the country, I shall claim the indulgence of the House for a short time. The views that I intend to express are my own views as a member from Ontario, but I believe I can say that they are shared by a great many members from that Province.

I admit that the award is signed by only two of the three Arbitrators appointed, that the award was made in the absence of Judge Day, and that it deals with assets mentioned in the fourth schedule of the Union Act. But I deny that for any of these reasons it is an invalid award. I also deny that Colonel Gray, when appointed, was a resident of Ontario, or is now a resident of Ontario within the meaning of the British North America Act. It is on these grounds that the award has been attacked by the gentlemen who have spoken against it. I admit that Upper Canada entered the Union with Lower Canada having a debt of about $5,000,000, and that in the allotment of assets the larger portion of apparent face value has been assigned to Ontario, but I deny that for either of these reasons the award is unjust. My denial, however, Sir, will amount to nothing unless I am prepared to advance arguments in support of my position. I have, I think, fairly stated the position of those who differ from me, and before proceeding to the argument of the questions involved shall briefly refer to some facts.

It is true that Upper Canada, in 1840, had a population of little more than 400,000, while Lower Canada had a population exceeding 600,000, and it is true that while having this small population Upper Canada had the large debt of $5,000,000 as against a small debt of Lower Canada or as against a claimed credit of $180,000 on the part of Lower Canada. But for what was our debt contracted? It was for the construction of the St. Lawrence Canals, the Welland Canal, the Kingston Penitentiary, for Light-houses and for other works which, at the time of the Union, were as much beneficial to Lower as to Upper Canada. It was not the case of a debt without an asset. (*Hear.*) But it was a debt represented by valuable assets, all of which were brought by us into the Union. (*Hear, hear.*) While Lower Canada brought into the Union public works valued at little more than $1,000,000, we brought in public works of the value of $4,000,000. (*Hear, hear.*) These assets by the Act of Union became the property of the Union. It never, at that time, entered into the contemplation of any one to take from Upper Canada its assets and without paying for its assets to charge it with the whole debt incurred in their creation.

On the contrary, I find these words in resolutions passed in 1839, by the Special Council of Lower Canada, ‘‘that regard being had to the nature of the public debt of Upper Canada, and the objects for which it was principally constructed by the improvement of internal communications alike useful and beneficial to both Provinces, it would be just and reasonable that such part of the said debt as had been constructed for this object should be chargeable on the revenue of both Provinces.’’ (*Hear, hear.*) Why, sir, if it were intended that Upper Canada should have been charged with this debt, surely some provision would have been made for the restoration of the assets. But what do we find? The Union Act (3 & 4 Vic.) created a consolidated fund, charged it with the payment of the debt of the Provinces, made the public works of both Provinces the property of the Union, contained no provision for charging either Province with interest on its debt, contained no provision for the payment to either Province of interest for the use of its Public Works, contained no provisions whatever for keeping an account of the contributions of either Province to the Revenue, contained nothing whatever which points to a partnership of any kind. (*Hear, hear.*)

The chief source of revenue intended was the Customs duties. The lands of Upper Canada were much more likely to attract emigration than the lands of Lower Canada. The revenue to be derived from the sale of lands in Upper Canada was much more likely to exceed the corresponding revenue from Lower Canada. Man for man, the population of Upper Canada contributed more to the Customs Revenue than the population of Lower Canada. Upper Canada with an increasing population in a short time would contribute more to the revenue than Lower Canada. Looking to the future there was every reason to believe that while Upper Canada entered the Union with less population and more debt than Lower Canada, in the course of time the positions of the two Provinces would be so far reversed as to make a union on equal terms politically and financially desirable by the people of both Provinces. This, Sir, was the view at all events entertained by the Imperial Government, and this view has been fully sustained by our experience of that Union. Soon the population of Upper Canada became equal to that of Lower Canada; soon our contributions to the revenue equalled those of Lower Canada. By means of the new Public Works in respect of which our debt was incurred, our tax-paying ability was greatly increased, and the whole country shared largely in our prosperity. (*Cheers.*) I say this Sir in no boastful spirit; I mention it simply as a fact, and give it as a reason sustaining alike the Imperial policy and the position for which we now contend before this House.

In the course of time we obtained a large preponderance of wealth and population. In 1861 while the population of Lower Canada was 1,000,000, our population was 1,300,000. In my references to figures I intend to drop as much as possible decimals or fractions. It was not long till we discovered that we were in this way paying nearly 5-9ths of the revenue. In 1857, we believe,

including our sales from Crown Lands, that we were paying 2-3rds of the revenue. There can be no doubt that before Confederation, although we were not yearly drawing more than Lower Canada out of the Consolidated Revenue Fund, we were yearly putting much more into it. This was felt to be an injustice to Upper Canada, and the injustice was in a great measure admitted by Lower Canada. Representation by population was the remedy demanded by a large section of Western Canada. This was denied by a large section of Lower Canada. The result was threats of a dissolution of the Union and the impossibility of any Government holding power that would alike command the support of Upper and Lower Canada. It was felt that dissolution would be a retrograde movement, and in our extremity we seized the idea of Confederation, an idea which has been realized with most happy results. Well, sir, during the existence of the Union additional public works were constructed in both sections of the united Province. These public works were paid for out of the Consolidated Revenue Fund. When a grant was made for public works in one section of the Province a corresponding grant was made to the other section. By these means assets became legalised, and financial equality of expenditure was as nearly as possible preserved. There were those who maintained that while Upper Canada contributed the greater part of the public revenue she procured the lesser part for expenditure on public works. I shall not stop to enquire whether this assertion was well founded or not.

In this discussion we have nothing to do with extreme opinions in the past. I desire to deal with the present by the light of the past, and to take a retrospect only when really necessary, and in no greater extent than necessary, to understand the present. I wish to avoid giving offence. I disclaim all idea of desiring to wound the sensibilities of any section of the people that are now in this confederation, and least of all the sensibilities of our friends from Lower Canada, who in common with us made some local sacrifices in the hope, and I think I may say, the well founded hope that the general good will prevail, (*cheers*); instead sir, of madly dissolving our late political union, we have like men worthy of our destiny increased and I hope perpetuated the Union. (*Applause*.) Instead of moving backwards we are hopefully marching onward in the great path of progressive civilization. (*Cheers*.) But sir, we have had some difficulties to encounter. By the creation of our Union an adjustment of the debts and credits, properties and assets of the several Provinces which entered confederation, became a matter of prime necessity. This adjustment in the past had been a cause of much anxiety, and in the present is still a matter of difficulty—in fact the difficulty which now I am attempting to deal. It was necessary that the General Government should in the main assume the debt and with some local exceptions acquire the assets of the Provinces, and in order to meet the demands of the Public Creditor should have powers of taxation, powers to levy duties, and make imposts. But for the same reasons that Upper Canada had an excess of debt over Lower Canada by large expenditures on public works, it was found that United Canada had an excess of debt over the Maritime Provinces. Our debt was about $74,000,000, and of this the confederacy assumed only $62,500,000—leaving a surplus of $10,500,000 for adjustment between the old Provinces of Upper and Lower Canada.

I am sorry, sir, that the adjustment was not made by the B.N.A. Had it been, the difficulties now before us would not have presented themselves. It was by a section of that Act declared that the lands and mines in the several Provinces should be the property of the Provinces in which situated. This was a localization of certain assets but not of all assets of the general Provinces. So by Section 110 of the Act it is declared that all assets connected with such portions of the public debt of each Province as are assumed by that Province shall belong to the Province. And while all the assets mentioned in the third schedule of the Act are made the property of Canada, it is declared that the assets named in the fourth schedule shall be the property of Ontario and Quebec conjointly, and then we have in the 142nd section of the Act, the provision that the Division and adjustment of the debts, credits, liabilities, properties and assets of Upper 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. In this section which is very crude, there is no express provision for a decision by a majority of the three arbitrators, nor is there in it any provision for the revocation of an arbitrator's authority, or for the appointment of a new arbitrator in the event of an arbitrator appointed refusing or becoming incapable to act. But this is the whole provision for the settlement of the debt and assets.

Hon. Mr. Gray was appointed arbitrator for the Dominion in March 1868. There was not at that time any objection made to him as being a resident of Ontario. The arbitrators for the two provinces were appointed in, I think, January 1869. These arbitrators were judges; no rule was laid down for their guidance. But whatever they were to do, they were to do as judges acting upon legal considerations, and not on political considerations or considerations of State Policy. In this particular, I unhesitatingly endorse the language, the arbitrator appointed for Quebec who said ''their office is not representative or diplomatic. They are not delegates or commissioners to settle the question of division by negotiation and compromise each acting for his own Government, and bound to obtain all the advantages he can, but as arbitrators, their character and duties are judicial.''

The first question which presented itself for the consideration of the arbitrators was the question whether the assets mentioned in the fourth schedule of the Act were subject to their decision; in other words subject to the reference. This question was decided, I think, properly in the affirmative, and an order was made in these words: ''The Arbitrators having heard counsel upon the objection raised on behalf of the Government of Quebec, to their jurisdiction over the subject matter of the assets enumerated in schedule four of 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 virtue of the Act authority to divide and adjust the same.'' This a few days since was referred to by my hon. friend the member

for Peel. Upon that occasion it was maintained by the Premier of Quebec, who, I regret to say, owing to family affliction is not in his place, as I understood him, that it was not held by the Arbitrators that there was power to make any other than equal division; in other words, that the words conjointly as used in the 113 section of the Act meant co-equally. In that opinion, I understood the hon. member for Westmorland a few days since to express his concurrence. I am unable to concur in that opinion.

Looking at sections 113 and 142 of the Act, and reading them together, I cannot see that the word ''conjointly'' necessarily means co-equally. If co-equally, why the power to divide and adjust? A power to adjust alone would have been all that was required. Power to divide and adjust implies power to make such a division as may be just, whether equal or unequal. This is my view. And this, sir, was the unanimous view of the three Arbitrators. Surely members from Quebec will not in this point dispute the opinion of their own Arbitrator, Judge Day. Here are his words: "As to the word 'conjointly' and the formal expression shall be the property of Ontario and Quebec conjointly used in section 113, it does not seem to me in any degree to justify the conclusion that those assets were to be so held in perpetuity, or were to be excluded from the general expression used provided for by the Act. The use of this word 'conjointly' and the whole expression are merely the declaration of a fact, not the creation of new right, and it can scarcely be necessary to say that if the mere fact of the property being held conjointly excludes it from the general division, then it excludes all the other assets, for they are all held conjointly, which does not, however, necessarily imply equality of interest, and if not so held, there could of course be no occasion for division."

So far there was no difference of opinion among the arbitrators. But the next step was attended with greater difficulties. The question arose—by what rule shall this division and adjournment be made. The statute was silent as to a rule, but some principle of action, some rule for decision was evidently demanded. Ontario proposed any one of these rules—proportion of local debts and assets—population and capitalization of assets. Quebec would have none of these and set up a so called principle of partnership—a principle which the hon. member of Hochelaga rightly treats with contempt as applied to such an enquiry. Had the Arbitrators been able to agree on any one of these rules, I judge the Arbitrator for the Dominion from his language would not have dissented, and even if he had the decision of the remaining two according to the subsequent holding would have been binding. But failing an agreement between the arbitration for the Provinces, the arbitration for the Dominion adopted the principle, as it is called, of ''Origin of debts,'' and to this the Arbitrator for Ontario ultimately assented. And while Quebec refused the proposition of Ontario for proportion of local debts and assets, I find her counsel using the following language in answer to the case of Ontario: ''If the argue 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 unpracticable. If, however, this method of adopting 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'' viz., partnership.

The hon. member for Hochelga says population should have been the rule. But that was steadily and firmly opposed by Quebec. Strangely infatuated with the so called principle of partnership, Quebec refused that which it said would make its position better than partnership, and refused that which the proposer of this motion says should have been accepted, viz., population. And yet it is Quebec that is now complaining at the award, and as it were, seeking to set it aside on a ground which it refused when the opportunity was given her! Why, sir, if the principles of partnership were adopted in their integrity and cross accounts taken, Quebec would be, to use a common expression, nowhere. But although Quebec in words asked to have the principle of partnership applied, she only sought to charge Ontario with a debt of $5,000,000, in other words sought to burden Ontario with $8,250,000 of the surplus debt, leaving only $2,250,000 for her own share. If Ontario were charged in account with the debt she should be credited with the assets representing that debt, and should be credited with excess of revenue paid by her every year up to 1867. Had this been done, Sir, Quebec would have had greater cause of complaint than she now has. (*Hear, hear*.)

On 28th May, 1870, the principle of origin of local debts was adopted. Judge Day dissented. There was no objection up to the time alleged against Hon. Mr. Gray, and no contention that unanimity of decision was requisite. I am not prepared to condemn the principle of ''origin of local debts.'' I think there is much to be said in favour of it. When these debts were contracted for the benefit of either section of the Province of Canada, equivalents were given to the other, so that the debt represented the asset and the asset the debt. Looking at the history of financial appropriations for local works in the late Province of Canada, I must say the principle of local debts—that is—local assets to the Province in which situated and charging that Province with their cost—seems to me to have been a very natural mode of division and adjustment. When the decision was come to as to the rule of action, it was, though not made public, communicated by the Arbitrators of Quebec and Ontario to their respective Governments.

The next step was a telegraph dated 6th June, from Judge Day, requesting the postponement of the delivery of the decision. No particular reason was assigned for the request. But on that day I see by the correspondence that the Government of Quebec by minute in Council adopted the conclusion that it was essential to the validity of any decision to be given by the Arbitrators that their judgment should be unanimous. This minute in Council was communicated to the Arbitrators on 16th June. But at the meeting of the Arbitrators held in Montreal on 6th July following, Ontario

demanded the publication of the decision. This was resisted by Quebec on the ground that unanimity was necessary, and that at all events that question should be argued and determined before the decision was pronounced as to the rule of action. To this contention the Arbitrators submitted. An argument was had on the unanimity, and unanimity was held not to be necessary. Judge Day then voluntarily retired from the court and a protest was filed against Col. Gray's qualification.

On 9th July, Judge Day tendered his resignation to the Government of Quebec, which resignation was afterwards accepted, his authority as an Arbitrator attempted to be revoked and application made to the local courts for prohibition of this process to restrain the proceedings of the remaining Arbitrators. So annoyed were the Arbitrators at these extrajudicial and illegal proceedings, that they held the remaining meetings in Toronto, beyond the reach of the nugatary but annoying proceedings of the Quebec Court, of the Courts of Quebec to restrain the Arbitrators the Courts of Quebec would have power to command them to proceed. What would be the result? The Arbitrators could not remain in either Province. The very statement of the proposition shows the absurdity of such a usurpation of jurisdiction. On 4th August the two Arbitrators met in Toronto, decided to pay no submission to the proceedings of the Quebec Courts, and adjourned till 17th August so as to notify Judge Day to be present at their deliberations if he saw fit.

Judge Day attended no meetings in Toronto. An award was made giving about five-ninths of the assets at their full value to Ontario and four-ninths to Quebec. It also made provision for the payment of the surplus debt. This award so made is now attacked for illegality and injustice. It does not appear to me that any of the objections to the validity of the award are entitled to prevail. Take first the alleged disqualification of Col. Gray. I do not think there is anything in the objection, and if there were the objection has been waived. I admit that the British North America Act declares that the Arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or Quebec. Was Colonel Gray, when appointed in March 1868, a resident of Ontario? It is not pretended that he was, but it is said that by afterwards remaining here, he became a resident; subsequent residence does not forfeit the office. There was qualification at the time of the appointment. But supposing subsequent residence would forfeit the office, did Colonel Gray ever become a resident within the meaning of the enactment? Residence in the section means permanent residence—a person resident in one of the Provinces without an *animus revertendi* to his own Province. It is not pretended that Colonel Gray did at any time give up the intention of returning to New Brunswick, the Province from which he came. His residence here was temporary and only for the purpose of discharging his public duties at the seat of Government of the Dominion. But, sir, if there were anything in the objection, it should have been taken before July 1870. It was not taken in the order in Council of Quebec of 6th June 1870.

Mr. JOLY begged to be permitted to remark that the objection was taken by the order in Council of 6th June, before the retirement of Judge Day, and referred to the hon. member for Mégantic to support this statement.

Hon. Mr. IRVINE corroborated the statement.

Mr. HARRISON: I have in the book before me what purports to be a copy of that order in Council, and in it there is no reference to the residence of Colonel Gray.

Mr. JOLY said the copy was not correct. The only correct copy was the one in the blue book published at Quebec.

Mr. HARRISON: I have not seen the book to which the hon. gentleman refers. But assuming that the printed copy which I hold in my hands, is not correct in the particular mention, the position of Quebec is not at all improved. So long as there was a chance of Hon. Mr. Gray deciding favourably to Quebec, there was no objection to him. But when it was found by his decision of May, that he was likely to give an independent judgment, and that judgment adverse to the supposed interests of Quebec, objection was for the first time raised. Had he decided for Quebec I apprehend there would have been no objection on the part of Quebec.

Now, a party to litigation cannot take the chance without objection of a favorable decision from an arbitrator and afterwards repudiate his authority when the decision is found to be adverse. (*Hear, hear*.) This seems to me to have been the conduct of Quebec. And if so supposing the objection to be at all well taken, it was not taken in sufficient time to be now available, as if it were on an application to set aside the award. Nor do I think that the objection as to want of unanimity is well founded. It is true that the section of the British North America Act does not provide for a decision of the majority. And if this were the case of a private award, I should hold the objection a fatal one. But in the case of public awards the rule is different. In the case of a private award where a reference fails the parties are remitted to the ordinary Courts of the country, which have jurisdiction to settle their disputes, so that there can be no failure of justice. But in the case of a public award—and that this is a public award has never been denied—the ordinary Courts have no jurisdiction. The only Court having jurisdiction is the Court specially constituted for the settlement of the matters in dispute.

It was intended by the Act that there should be a decision. If so it was never intended that any one of the three Arbitrators by refusing to join in decision could prevent a decision. The question is one simply of intention. And in such a case in order to prevent any one Arbitrator holding the absolute power to prevent a decision, it has been again and again held that without express words of authority the majority may make an award. Books of practice are full of decisions on this ground. If I am right in this view, it disposes of the

next objection taken to the award, that is to say, that it was made in the absence of the Arbitrator of Quebec.

I admit that if any trick had been practiced upon him, that if no opportunity had been given him to be present at deliberations of the Arbitrators, that if no opportunity had been given him to concur in the decision which was pronounced, the objection would be a good one. But his absence was voluntary; he had every opportunity to be present at the deliberations of the Arbitrators and refused. His absence was not the fault of Ontario but of Quebec. He resigned because he could not agree with his co-judges on the questions submitted for decision. The law makes no provision for such a resignation or for the revocation of authority under such circumstances. And I never before heard of a Judge resigning his position on the bench because in a matter brought up for decision he was in the minority. His absence was therefore not only voluntary but wrongful and those who are responsible for the wrong are now seeking to get up their own wrong as ground for relief from the ground. Such a position is surely untenable, as well in morals as in law. (*Hear, hear*.)

Hon. Mr. DORION: Suppose Colonel Gray had also refused to act, could the Arbitrator for Ontario have given a decision?

Mr. HARRISON: No! Because then it would have been the decision of a minority. I do not argue for the validity of a minority but of a majority decision. This disposed of all the objections taken to the award, with the exception of one, and that is the division of the assets mentioned in the Fourth Schedule. I have already adverted to this point. I have shown that ‘‘conjointly’’ does not necessarily mean co-equally, and I have shown the authority of Judge Day himself in support of this argument. In what I have said about the Arbitrator for Quebec I mean no disrespect to that learned gentleman. On the contrary, I have the pleasure of his acquaintance and can sincerely join with those who deservedly hold his legal attainments in high respect; what he did, he did, I am sure, from proper motives, and as he thought for the best in the interest of his Province. I should be sorry to assail his motives or the motives of any of the gentlemen who acted as Arbitrators. But when he agrees with me on a point of law, when that was the only point on which the Arbitrators were unanimous, I have a right to assume against Quebec that the point was well decided. Well, so, assuming it, there is involved in the assumption the discretionary powers to make an unequal division—less to one, more to the other, as influenced by considerations of Justice.

This brings me to the remaining ground on which, apart from the validity of the award, its justice is attacked. I cannot help thinking that those who hold strong views against the validity of the award weaken their position by any general argument of its alleged injustice in a political point of view, or on mere political considerations. (*Hear, hear*.) But even here, Sir, we are prepared to join issue with those who attack the award.

It being 6 o’clock, the House arose.

AFTER RECESS

Mr. HARRISON resumed the debate: Before the adjournment Sir, I gave my reasons for not being able to agree to the proposition that the award is void for illegalities. Gentlemen from Quebec differ from me, but I have, I think, at all events shown to the House that the validity of the award is not so clearly to be decided against us as assumed by those gentlemen. Whether legal or not is a question of law. Who is to decide that question? Not the Government, for it is not a court of law; not this House for it is not a court of law. All that the House can say is that validity of the awards, considering the conflict of opinion among the legal gentlemen in the House and out of the House, is doubtful. But so long as it is doubtful I contend the House should not deal with it. Let the legal question be determined by a competent tribunal. Until the decision of some tribunal having authority to deal with such matters I contend we have nothing to do with it as just or unjust under political considerations. But while taking this position I am not to be understood as conceding that it is unjust. It is alleged that it is unjust because it concedes to Ontario five-ninths of the assets. But these assets are local assets. If it be true that Upper Canada contributed five-ninths of the revenue I apprehend her receiving five-ninths of the assets cannot be said to be unjust. Besides this has the merit of being as nearly as possible a decision according to population. And the fact that it is so, goes far to prove that the rule adopted by the Arbitrators is more than a mere arbitrary one, that it is a rule in its operation so just that the result is nearly the same as that of which Quebec is now so much in favour—I mean population.

It is alleged that some of the assets assigned to Lower Canada are worthless. That, I think, may be said of some of the assets assigned to Upper Canada. But if during the Union, money was squandered in one section of the Province more than in the other, that is of itself no reason for increasing the burdens on the section which spent its money judiciously and has the more valuable assets to show for the expenditure. The great outcry, however, against the award arises from the fact that the Arbitrators did not see their way to charge Upper Canada with the debt of $5,000,000.

I confess, to me, that while this is the point on which those who attack the award most dwell, it is the least defensible of all the points taken. The assets in respect of which that debt was mainly incurred are now the property of the Dominion, and Quebec and Ontario in their dealings with the remaining