



"It being understood that all the water-communications, and
"all the usual portages along the line from Lake Superior to the Lake
"of the Woods, and also Grand Portage from the shore of Lake
"Superior to the Pigeon River, as now actually used, shall be free
"and open to the use of the subjects and citizens of both countries."
And by Article VII. of the same Treaty it is further provided:—

"It is further agreed, that the channels in the River St.
"Lawrence on both sides of the Long Sault Islands and of Barnhart
"Island, the channels in the River Detroit, on both sides of the
"Island Bois Blanc, and between that island and both the Canadian
"and American shores, and all the several channels and passages
"between the various islands lying near the junction of the River
"St. Clair with the lake of that name shall be equally free and
"open to the ships, vessels, and boats of both parties."

From this Article it might be argued that the exclusive right of navigation of each country within its own territory was conceded equal, free and open right to navigation being granted as a privilege in certain channels only.

By Article XXVI. of the Treaty of 1871 it was provided:

"The navigation of the River St. Lawrence, ascending and
"descending from the 45th parallel of north latitude, where it
"ceases to form the boundary between the two countries, from,
"to and into the sea, shall forever remain free and open for the
"purposes of commerce to the citizens of the United States, subject
"to any laws and regulations of Great Britain or of the Dominion
"of Canada, not inconsistent with such privilege of free navigation.

"The navigation of the Rivers Yukon, Porcupine and Stikine,
"ascending and descending from, to and into the sea, shall forever
"remain free and open for the purposes of commerce to the subjects
"of Her Britannic Majesty and to the citizens of the United States,
"subject to any laws and regulations of either country within its
"own territory, not inconsistent with such privilege of free navigation."

As a matter of fact, prior to the year 1909 there had been no arrangement between the two countries whatever dealing with the use or diversion of boundary waters or streams crossing the boundary. The use of these waters for power purposes made more manifest the necessity for some agreement, and in the year 1902 an Act was passed by the United States Congress containing the following provision:—

"The President of the United States is hereby requested to
"invite the government of Great Britain to join in the formation
"of an international commission, to be composed of three members
"from the United States and three who shall represent the interests