

9 GEORGE V, A. 1919

- Mr. A. H. Perkins, division engineer of the Conservation Commission of the State of New York;
- Mr. Francis King, K.C., Kingston, Ont., representing the Dominion Marine Association;
- Mr. F. E. Meredith, K.C., Montreal, representing the Montreal Harbour Commissioners;
- Mr. John Baillie, Montreal, representing the Montreal Board of Trade.

STATEMENT IN RESPONSE TO THE APPLICATION.

Formal statements in response were filed by most of the governments (other than the United States government, on behalf of which Mr. Koonce asked that the application be granted) and interests represented.

The position taken by the Government of the Dominion of Canada, as well by its statement in response as by the argument of counsel on its behalf, may be briefly summarized by stating that it denied the jurisdiction of the Commission to grant the application, on the ground that the proposed submerged weir would entirely close to navigation the south channel of the St. Lawrence river at the Long Sault, and that by Article VII of the Webster-Ashburton Treaty of 1842, it was agreed that this channel "shall be equally free and open to the ships, vessels and boats of both parties," and also that by Article 1 of the Treaty of January 11, 1909 (hereafter called the Waterways Treaty) it was stipulated that "the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels and boats of both countries equally." It is proper to add that counsel for Canada stated that the government of that country was ready to take up with the government of the United States the question of increasing for war purposes the supply of aluminum.

A great number of questions were raised by the statements in response filed by other interests, the main points submitted, which were also emphasized by the representatives of Canada, being the necessity of preserving the navigation of the south channel and the inadvisability of allowing a private corporation to make therein a power development that might prove detrimental should a larger scheme of development be adopted by two countries. It should be added that the statement in response filed by the State of New York opposed the application on the ground that the construction of the submerged weir would be an invasion of the rights of the citizens of that State in and to the navigable waters of the St. Lawrence river, and that it would necessitate the taking of a portion of the bed of the river belonging to the State.

At the hearing, evidence was offered on behalf of the applicant company as to all the pertinent facts it had alleged. No testimony whatsoever was adduced by any of the governments or interests opposing the application, their counsel having merely cross-examined the applicant's witnesses. It may be that it was considered that no further testimony was required for their purposes, but the Commission cannot but feel that the course thus pursued by those opposing the application has not aided in the discharge of the important duty imposed on the Commission by the Treaty, in the very urgent and entirely exceptional emergency under which it was obliged to discharge this duty.

Before referring to the facts established at the hearing, it will be useful to briefly describe the locality where the weir is proposed to be constructed, and also to mention the different permits obtained by the applicant from the Secretary of War of the United States.

DESCRIPTION OF LOCALITY.

There are in the St. Lawrence river at this point, four islands, Croil island, Long Sault island, Barnhart island, and Sheek island. The first three were placed in the