

they did. The other day I was talking to a man about this treaty and I remarked, "I hope it does not pass." He said, "So do I." I asked him his reason, and he said: "I have just one reason. We never had a deal with the United States in which we did not get the short end of the stick." I repeat, honorable members, that again and again we hear complaints about how badly negotiations with foreign countries were managed by our predecessors, and we should be careful to give no cause to our descendants to find fault with what we do in this matter.

Article viii of the treaty provides:

The High Contracting Parties, recognizing their common interest in the preservation of the levels of the Great Lakes System, agree:

(a) 1. That the diversion of water from the Great Lakes System, through the Chicago Drainage Canal, shall be reduced by December 31, 1938, to the quantity permitted as of that date by the decree of the Supreme Court of the United States of April 21, 1930.

And here is the destroying clause, in my judgment:

2. In the event of the Government of the United States proposing, in order to meet an emergency, an increase in the permitted diversion of water and in the event that the Government of Canada takes exception to the proposed increase, the matter shall be submitted, for final decision, to an arbitral tribunal which shall be empowered to authorize, for such time and to such extent as is necessary to meet such emergency, an increase in the diversion of water beyond the limits set forth in the preceding sub-paragraph and to stipulate such compensatory provisions as it may deem just and equitable; the arbitral tribunal shall consist of three members, one to be appointed by each of the Governments, and the third, who will be the Chairman, to be selected by the Governments.

To use a common expression, I view that clause with alarm, and I will say why. In the opinion of very eminent lawyers in the United States, Congress has been passing legislation which overrides the provisions of the federal constitution, and States have been enacting laws that override their own State constitutions. The State of Minnesota admittedly has overridden its constitution. One person brought an action to test the constitutionality of a certain statute. The court admitted that it was unconstitutional according to the letter of the law, but said that constitutions, like all other laws, were ever speaking and must be adapted to existing conditions. An emergency had arisen in Minnesota. There was no proof of any, but the court said there was one, and therefore the law, which was at other times unconstitutional, must be considered to be constitutional in the emergency. What an emergency means, nobody has defined. This treaty has not.

The American Congress has given the President control over the lives, liberty and property of all the people in the republic, and it is said over there that when the question comes before the Supreme Court of the United States there will be an admission that the action of Congress is unconstitutional, but that nevertheless the constitution is "ever speaking," that an emergency has arisen, and people must be deprived of liberty in an emergency.

What emergency can be imagined that would justify a further depletion of the waters of the upper lakes? The Canadian and the American records run back for perhaps seventy years, and we know that at this moment the water in the St. Lawrence and the upper lakes is lower than it has ever been in that time. Is there an emergency now? Ought Chicago to be allowed to divert more water than it is diverting at present? It appears from the treaty that the time may reasonably be expected to come when Chicago will take more water and make the lakes shallower than they are to-day. So far as I can see, no emergency can be conceived of—and I challenge any person to suggest one—that would entitle the Americans to lower the water still further, but as surely as we are alive it will be done if this treaty is passed. The only emergency that can entitle them to further diversion is an emergency which affects Chicago.

Hon. Mr. TANNER: Is not Lake Michigan wholly in the United States?

Hon. Mr. LYNCH-STANTON: Not under this treaty.

Hon. Mr. TANNER: But geographically.

Hon. Mr. LYNCH-STANTON: Geographically, and so is half of other lakes, geographically.

Hon. Mr. TANNER: How can we prevent the Americans from taking water out of their own lake?

Hon. Mr. DANDURAND: It is fed by other lakes.

Hon. Mr. LYNCH-STANTON: We have always denied that it is an American lake; we have always said that it is an international lake—that it is only an arm of the system of lakes. According to international law one nation shall not take water away from an international stream if thereby the nation on the other side of the stream would be injuriously affected. Now, it would be a plain breach of that law for the Americans to take water out of Lake Michigan if that would injuriously affect us, even if the lake is entirely