

SESSIONAL PAPER No. 230

It is worthy of note that the Commission in issuing the order expressly declines to decide whether it actually has power to do so. In exercising authority it leaves for future determination the controlling question as to whether it possesses any such authority. However, it cannot be doubted that the issuance of the order is in itself an assumption of such authority.

Thus confronted with an assumption of power on the part of the International Joint Commission, which in the opinion of the law officers of the Crown was entirely unwarranted, it is necessary to determine at once the course of the government. A conclusion as to the course to be pursued under such conditions is not without difficulty. It is pertinent however, to recall that in a former case presenting a similar situation, the Government of the United States refused to recognize the jurisdiction of the International Joint Commission. In the matter of the division of the waters of the St. Mary and Milk rivers, then pending before the Commission, it appears from a despatch from His Majesty's Ambassador at Washington, dated November 13, 1917, that the United States Secretary of State, by letter dated November 8, 1917, informed the Ambassador that since the Commission had under consideration the question of its authority to interpret or construe Article VI of the Treaty of January 11, 1909, and since in the view of his Government the Commission had no such authority in the then state of the case, he had deemed it proper to inform the Commission that whatever conclusion was reached by the Commission could not be regarded as binding upon his government in so far as it undertook to construe the Article in question.

In view of the foregoing, the minister recommends that the Government of the United States be informed that this Government feels bound to repeat its view that, for the reasons already indicated, the International Joint Commission was without authority to approve the application of the St. Lawrence River Power Company, and that the order of the Commission assuming to grant such approval cannot be regarded by the Government of Canada as binding upon this Dominion.

The Government of the United States will readily understand that in taking this course the Canadian Government is actuated only by its concern for those treaties and conventions that have so happily promoted the friendly relations between the two countries, and by the belief that it is through a jealous regard for the integrity of such understandings that these fortunate relations may best be maintained.

It is with this purpose also that the Canadian Government deems it appropriate to refer here to the proposal made in the Order in Council of the 2nd September, 1918, that the two Governments should take immediate steps jointly to prepare and carry out a scheme looking to the most economical and comprehensive development of the waters of the St. Lawrence River in the interests of the people of both countries. Even though the utilization of only a portion of the whole capacity of the river can be immediately contemplated, yet the endeavour should be to design at the outset a complete scheme into which successive developments might be fitted from time to time as and when the occasion might demand. Without some such scheme there is always present the great danger that the ultimate possibilities of St. Lawrence navigation may be neglected or even irreparably injured; for it must be borne in mind, not only that navigation is the paramount national and international use of this great highway of commerce, but that the possibilities of the stream in this respect have been as yet by no means fully developed. On the other hand it is certain that the subordinate and incidental but important use of these international boundary waters for power purposes can never be rendered as efficient and productive through a policy of simply permitting a haphazard series of unrelated private enterprises as through a carefully considered and comprehensive scheme of development carried out under public auspices by the two countries; and obviously it is only by agreement and concerted action between the two countries that such a development can be undertaken.