

Lawrence on both sides of the Long Sault island and of Barnhart island . . . shall be equally free and open to the ships, vessels, and boats of both parties." From this it was urged that any interference with the free and open navigation of the south Sault channel is not within the jurisdiction of the International Joint Commission, but should be dealt with by direct negotiations between the High Contracting Parties.

Briefly stated this denial of jurisdiction contends that inasmuch as it was agreed that the South Sault channel should be equally free and open to the ships, vessels and boats of both parties, the Commission has no jurisdiction to grant the prayer of the applicant.

If this means that because of Article VII of the Webster-Ashburton Treaty, the Commission should not, as a matter of international right, grant the present application, the point is one that can be very properly urged before the Commission, but if the objection to the jurisdiction of the Commission to consider and pass upon the application and to grant the prayer of the same, if the applicant has justified the right thereto, the Commission is unable to agree with this contention.

It is obvious that the whole foundation of the jurisdiction of the Commission is to be found solely in the Waterways Treaty. A stipulation made in the Webster-Ashburton Treaty may be binding on the High Contracting Parties, and may be so considered by the Commission, but it is certainly without effect on the jurisdiction conferred on this Commission by the Waterways Treaty.

Looking therefore at the latter Treaty alone, Article VIII determines the jurisdiction of the Commission over all boundary waters, and gives it jurisdiction over and power to pass upon "all cases involving the use or obstruction or diversion of the waters with respect to which under Articles III and IV of this treaty the approval of this Commission is required."

Article III refers to boundary waters and to their use, obstruction and diversion, and before any new use, obstruction or diversion can be made, saving the case of a special agreement between the High Contracting Parties, the authority of the country in which the use, obstruction or diversion is made and the approval of the Commission are required. The South Sault channel is a boundary water within the definition of the Treaty, the Preliminary Article of which defines boundary waters.

"as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary."

Therefore the Commission has jurisdiction with regard to any obstruction intended to be placed in this channel, which is undoubtedly a boundary water, and the proposed weir is such an obstruction.

It is unnecessary to refer to Article IV (which applies to waters flowing from boundary waters and the waters at a lower level than the boundary, within which description the Long Sault channel does not come) further than to say that this Article emphasizes the wide jurisdiction which is conferred upon the Commission by the Treaty.

Even assuming that the Webster-Ashburton Treaty prevents the construction of the proposed weir, the prohibition of this Treaty can give rise to no objection to the jurisdiction of the Commission to hear the application, but may be merely urged as a reason why the application should be denied.

This sufficiently disposes of the objection that the Commission is without jurisdiction, which objection in the opinion of the Commission is groundless.