

vision giving each of the countries equal and similar rights in the use of the waters heretofore defined as boundary waters. In other words, all the waters that can be diverted from boundary streams (having regard to the prior rights of use for domestic and sanitary purposes and use for navigation) are to be equally divided between the two countries. This provision for equal division applies everywhere save at Niagara Falls, where exceptional conditions existed.

Article 5 provides as follows:—

"The High Contracting Parties agree that it is expedient to
 "limit the diversion of waters from the Niagara River so that the
 "level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish
 "this object with the least possible injury to investments which
 "have already been made in the construction of power plants on
 "the United States' side of the river under grants of authority
 "from the State of New York, and on the Canadian side of the
 "river under licenses authorized by the Dominion of Canada and
 "the Province of Ontario.

"So long as this Treaty shall remain in force no diversion of
 "the waters of the Niagara River above the Falls from the natural
 "course and stream thereof shall be permitted, except for the purposes and to the extent hereinafter provided.

"The United States may authorize and permit the diversion
 "within the State of New York of the waters of said river above the
 "Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of twenty thousand cubic feet
 "of water per second.

"The United Kingdom, by the Dominion of Canada, or the
 "Province of Ontario, may authorize and permit the diversion
 "within the Province of Ontario of the waters of said river above
 "the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand
 "cubic feet of water per second."

Before the adoption of this treaty there was no rule of International Law which called upon any nation to recognize riparian rights outside of its own territory. Every nation had a perfect right, as long as it did not interfere with public rights of navigation, to divert the waters of boundary streams without regard to the injury inflicted upon private interests beyond the boundary line.

In boundary waters where navigation was impracticable by reason of rapids the conditions always made the flow of water available for power purposes. In the rapids of the Rivers St. Mary, Niagara and St. Lawrence the power capable of development from this source is almost