

## SESSIONAL PAPER No. 230

counter statements. In support of his motion counsel represented on behalf of the United States that the St. Lawrence River Power Company was supplying the electrical power essential to its parent corporation, the Aluminum Company of America, one of the world's chief producers of aluminum; that the proposed works would result in an increased production of aluminum during the coming winter months estimated at six million pounds; and that this increased production was urgently necessary for the purposes of the Government of the United States and the Allies in the prosecution of the War. Counsel, therefore, urged that it should be made possible to hold an immediate hearing on the merits of the application.

Counsel for the Canadian Government, having had no opportunity to secure instructions, opposed the motion, declaring at the same time the readiness of his Government to co-operate in all necessary war measures and urging that the matter was more properly one for direct consultation between the Governments.

After consideration the International Joint Commission ordered the suspension of the rules and fixed the hearing of the application for August 29 at Montreal.

At the hearing at Montreal counsel for the United States for the first time, came forward with a definite request that the application should be granted forthwith as an urgent war measure, and presented in support thereof a letter from the Secretary of War of the United States. Counsel for Canada submitted, and argued in support of, a statement presented to the Commission, copy of which is attached hereto. It was contended that under existing treaties the Commission was without power to grant the approval sought; and the suggestion was repeated that in any case the proper and more expeditious procedure was that of direct negotiation between the two Governments, and the Government of Canada was prepared to enter upon such negotiation immediately.

The International Joint Commission has taken the application under advisement until September 12, when it is possible of course, not certain, that a decision may be announced. It was urged at the hearing that unless the proposed work was commenced before September 15, there would be a risk that it could not be finished before the winter.

Having regard both for the necessity of securing the most effective prosecution of the War and for the great desirability of a wise regulation of the boundary water system between Canada and the United States, it is believed that the procedure pursued in this matter is not calculated to result in a mutually satisfactory solution. The Government of Canada is strongly convinced that some other and more direct means of settlement should be sought and in this conviction it submits the following considerations and suggestions:

Article VII of the Webster-Ashburton Treaty of 1842 declares "that the channels of the River St. Lawrence on both sides of Long Sault Islands and of Barnhart Island . . . shall be equally free and open to the ships, vessels and boats of both parties". This declaration, relating as it does specifically to the South Sault Channel, clearly prohibits the construction of the proposed submerged weir, which admittedly would prevent all navigation through this Channel. So far as the Treaty of January 11, 1909 goes to the question, it is equally conclusive against the project. Article VIII lays down an order of precedence to be observed among the various uses for boundary waters enumerated therein, and declares that "no use shall be permitted which tends materially to conflict with or restrain any other use which is given in preference over it in this order of precedence." In the order of precedence that follows "uses for navigation," are given preference over "uses for power and for irrigation purposes." The construction of the proposed submerged weir is sought purely for power purposes, and as such it must be held to be prohibited by Article VIII, since it would not only "tend materially to conflict with or restrain" but it would wholly prevent, the use of this channel of the St. Lawrence River for navigation. Clearly, therefore, the Inter-