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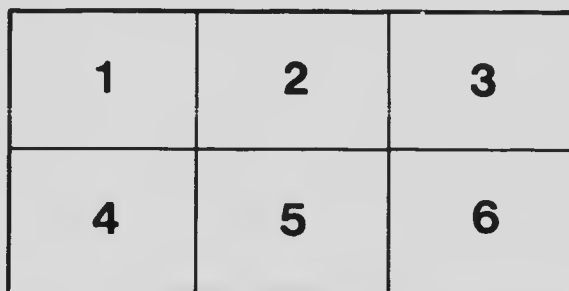
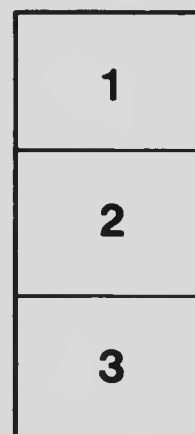
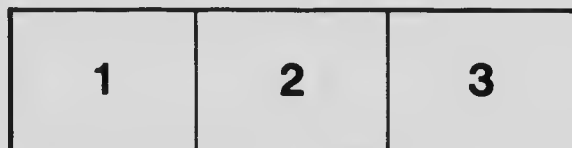
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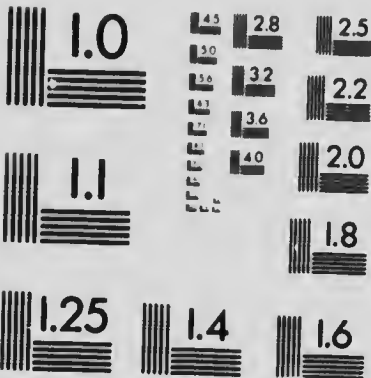
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THE INTERNATIONAL JOINT COMMISSION.

[Contributed by LAWRENCE J. BURPEE, ESQ., *Canadian Secretary of the International Joint Commission.*]

THE International Joint Commission exists by virtue of the Treaty between Great Britain and the United States, relating to Boundary Waters and questions arising along the boundary between Canada and the United States, signed at Washington, January 11, 1900.

The objects of the Treaty, as set forth in the preamble, are to prevent disputes regarding the use of boundary waters, and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise."

"Boundary waters" are defined in the Preliminary Article 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."

Art. 7 of the Treaty reads as follows :

The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six Commissioners, three on the part of the United States, appointed by the President thereof, and three on the part of the United Kingdom, appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

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Arts. 3 and 4 read as follows:

ARTICLE 3

It is agreed that in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a Joint Commission, to be known as the International Joint Commission.

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on the one side and the Government of the Dominion of Canada on the other, to undertake and carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbours, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

ARTICLE 4

The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any medial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

In determining such cases the Commission, under the terms of the Treaty, is governed by certain rules or principles adopted by the High Contracting Parties, who first agree that they "shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters."

Uses of Boundary Waters.—The following order of precedence is

Navigation

Irrigation

then laid down, to govern the uses of boundary waters " and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence :

" (1) uses for domestic and sanitary purposes ;

" (2) uses for navigation, including the service of canals for the purposes of navigation ;

" (3) uses for power and for irrigation purposes "

Uses of boundary waters existing at the date of the Treaty are not affected by the above provisions.

The Commission may suspend the principle of equal diversion in cases of temporary diversions, where local conditions justify such action, and may make its approval conditional upon the construction of remedial or protective works, and the protection and indemnity against injury of interests on either side of the boundary. Where the natural level of waters is raised on either side by the construction or maintenance of remedial or protective works, the Commission must provide for the protection and indemnity of interests injured thereby.

Other clauses of the Treaty provide for the machinery, procedure, legal powers, and decisions of the Commission.

International Arbitration.—Arts. 9 and 10 are peculiarly interesting, the former opening a broad field of usefulness to the Commission in the investigation of vexed questions along the common frontier ; and the latter practically constituting the Commission a miniature Hague Tribunal for the final settlement of any question of difference between Canada and the United States.

Art. 9 is as follows :

ARTICLE 9

The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

The International Joint Commission is authorised in each case so

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referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government.

Art. 10 is as follows:

ARTICLE 10

Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor-General in Council. In each case so referred, the said Commission is authorised to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth, and sixth paragraphs of Art. 45 of the Hague Convention for the pacific settlement of

international disputes, dated October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree.

At the organisation meeting of the Commission in Washington January 10, 1912 Mr. James A. Lawney, Chairman of the United States Section, said

The Treaty begins the twentieth century with a Commission to which may be referred for inquiry and adjudication all possible questions of disagreement between the Dominion of Canada and the United States, their Provinces, our States and their respective peoples. This is an effort to write into international law the sentiment of the peoples of two great countries.

The work of promoting closer and more direct relations between the two great peoples on this continent, who have the same language, come from the same race, have the same common fountain of law, the same traditions, and similar institutions of government as well as the same ambitions for the continued success of their respective governments, is in fact the work of blazing the trail for the judicial settlement of all disputes where they occur between any two great nations.

Despite a certain amount of uneasiness caused in Canada by the action of the United States Senate in adding to the Treaty after it had been signed by the respective plenipotentiaries a rider purporting to safeguard certain riparian rights at Sault Ste. Marie, but which was found not to affect the principle of the Treaty, there has been general satisfaction among public men on both sides of the international boundary with the terms of a convention which would have the effect of settling upon broad and equitable lines the many questions of difference which must arise between two countries having such an unusually long common frontier.

Work of the Commission.--Since its organisation the Commission has had before it a number of applications for the approval of works involving the diversion of boundary waters. Sometimes these applications have been made on behalf of United States interests; sometimes on behalf of Canadian companies. They have ranged geographically from the St. Croix River in the extreme east, dividing the Province of New Brunswick from the State of Maine, to the Lake of the Woods in the west. They have embraced such important works as a new water system for the city of Winnipeg, taking its supply from Shoal Lake, a tributary of the Lake of the

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Woods; large water power projects on both sides of the St. Mary River, between Lake Superior and Lake Huron; and various other similar undertakings.

In every case the decision is final under the terms of the Treaty; in every case up to the present time the Commissioners have been unanimous in their decisions; and in every case the settlement has given satisfaction to both Governments and to all the public and private interests concerned. Such a result is not only a tribute to the tact and common sense of the six men who represent the Governments of the United States and Canada on the Commission, but it is an even more striking tribute to the wisdom of those Governments in providing a simple and expeditious means for the settlement of all disputes between the two countries or their inhabitants along the common frontier.

Attention has already been drawn to the provisions of Arts. 9 and 10 of the Treaty. The Governments of Canada and the United States have not had occasion as yet to avail themselves of the latter Article, but in several important matters have taken advantage of Art. 9 to refer to the Commission for investigation and report questions or matters of difference arising along the frontier.

During the past two years the Commission has been engaged upon three important investigations, on behalf of the two Governments. It has sent in its final report on one, and has made very substantial progress with the other two. The Livingstone Channel question, finally reported upon in April 1913, related specifically to the construction of a dam or dyke in the Detroit River, for the protection of the enormous traffic up and down that international stream. Investigation, however, was instrumental in bringing to the front much larger questions, involving development and conservation of the entire system of boundary waters from the head of Lake Superior to the St. Lawrence; and since the Commission made its report, the Governments of both countries have had under consideration a policy for the systematic and harmonious improvement of navigation and other facilities throughout the Great Lakes and connecting waterways, for the mutual benefit of the people on both sides of the boundary.

The second question which the Commission has been investigating relates to the fixing of certain water-levels on the Lake of the Woods and tributary waters, which will best meet the varied and important

interests of navigation, agriculture, fishing, tourist traffic, and power development along these waters, involving communities as far apart as Duluth and Winnipeg, and a total investment of probably \$100,000,000. Thoroughly equipped parties of engineers were engaged throughout the seasons of 1913 and 1914 under the direction of the Commission's consulting engineers, Canadian and American, in gathering the data upon which the Commission will base its final report to the two Governments. The engineers have had to cover a great deal of new ground and secure reliable information on a variety of scientific questions, all of which will be brought together in their joint report to the Commission. While the investigation is not yet completed, the Commission has prepared a progress report, and submitted it to the two Governments.

The third investigation, and in many respects the most important that has yet been undertaken by the Commission, involves the question of the pollution of boundary waters between the United States and Canada. The Commission has been asked by the Governments of Canada and the United States to determine the sources and extent of pollution in these waters where it extends across the boundary, and to recommend suitable remedies.

Procedure of the Commission.—The technical side of the investigation has been entrusted to sanitary experts on both sides of the boundary, under whose direction parties were engaged throughout the summer of 1914 at various points from the St. John River in the east to the Lake of the Woods in the west, gathering material for bacteriological tests. The sanitary experts have in this way brought together a great mass of data, which they have put into the form of a joint report to the Commission. On this report the Commission based its own progress report to the two Governments as to the sources and extent of pollution of international waterways. This report has been submitted, and indicates very clearly the gravity of the situation on these international waters, pollution of which is a constant menace to the health of many millions of people on both sides of the boundary line.

The Commission is now taking up the second question, as to the remedies best adapted to each particular locality along the boundary. It will be seen that as the first question referred to the Commission was a chemical and bacteriological one, the solution of the second question rests rather with sanitary engineers.

Some months ago a conference was held in New York in which the Commission obtained the views of a group of sanitary engineers of international reputation as to the principles to be followed in taking up the second branch of the investigation. Since that time a corps of engineers has been put in the field, under the direction of a man of recognised ability and breadth of view. It was stated at that time that before the close of 1915 the Commission would be in a position to present to the Governments of Canada and the United States its final report on the whole matter. With that report before them, the two Governments will be in a position to settle intelligently and effectively the terms of the Treaty, and the waters herein defined as boundary waters and waters flowing adjacent to the boundary shall not be polluted on either side to the injury of the health or property on the other."

The Commission has recently held a hearing in St. Paul, Minnesota, in the matter of the measurement and apportionment of the waters of the St. Mary and Milk Rivers, two streams which cross the international boundary near the foothills of the Rocky Mountains. At this hearing a number of eminent engineers representing the Governments of the United States, Canada, of Montana, Alberta, and Saskatchewan, of the Great Northern Pacific Railway, the Great Northern Railway, and various other associations and other private interests, discussed the terms of the Treaty, and submitted a mass of engineering data and reports bearing upon the carrying out of the terms of that Article. After this has been digested the Commission will be in a position to carry out its duty under the Treaty in dividing the waters of the St. Mary and Milk rivers between the two countries upon an equitable and just basis.

It will be seen that the questions with which the International Joint Commission has had to deal are not only of the greatest and very great importance to the people on both sides of the international boundary line, but that they cover a field extending from the St. Lawrence in the east to the Rocky Mountains in the west.

MISSION.

New York, at which sanitary engineers were to be followed in opinion. Since then a report in the direction of a boundary. It was expected that the boundary would be in a line from the United States to the United States. With that report in position to carry out the Treaty, that "the waters flowing across the boundary to the injury of

in St. Paul, Minnesota, the apportionment of the waters which cross and flow in the hills of the Rocky Mountains. The government counsel and the United States and the Canadian government, of the Canadian government, of various irrigation projects. The terms of Art. 6 of the Treaty and other data are set forth in that Article. When in position to carry out the Treaty, the waters of the two rivers are to be made able and workable

the International boundary is very intricate and of a very complicated nature. The waters of the boundary between the United States and the St. John River

