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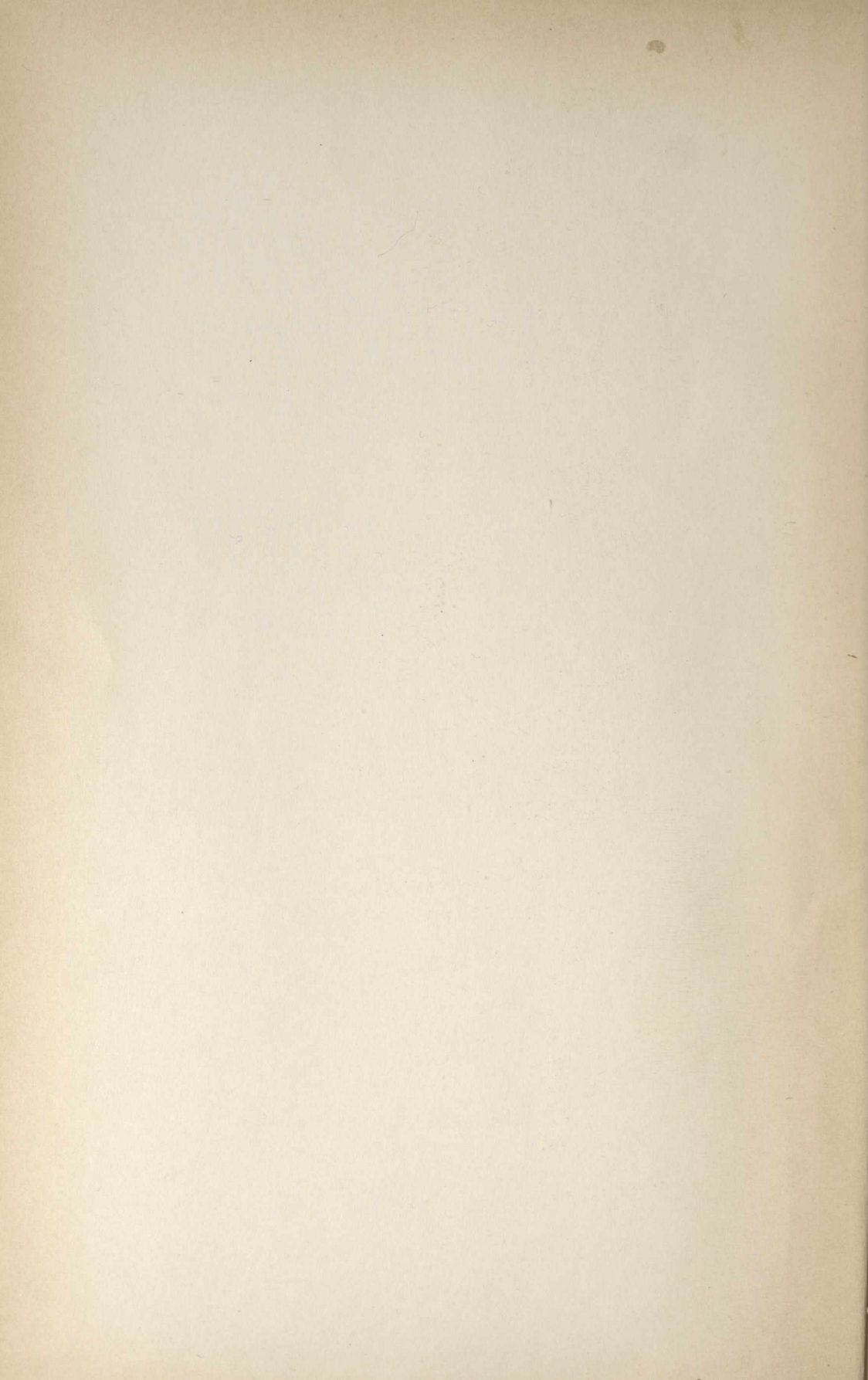
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Third Session—Twenty-fourth Parliament

1960

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON

EXTERNAL RELATIONS

on Bill S-35, intituled: "An Act respecting the International Boundary Commission"

THURSDAY, JUNE 23, 1960



The Honourable NORMAN P. LAMBERT, *Acting Chairman*

WITNESSES:

Mr. A. F. Lambert, Commissioner, International Boundary Division;
Mr. J. H. Cleveland, Director of the American Division, Department
of External Affairs; Mr. G. Douglas McIntyre, Solicitor, Customs and
Excise Division, Department of National Revenue.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

THE STANDING COMMITTEE ON
EXTERNAL RELATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators

*Aseltine	Haig	Monette
Beaubien	Hardy	Robertson
Boucher	Hayden	Savoie
Bradette	Horner	Taylor (<i>Norfolk</i>)
Bradley	Howard	Thorvaldson
Crerar	Hugessen	Turgeon
Croll	Jodoin	Vaillancourt
Farquhar	Lambert	Veniot
Farris	Lefrançois	Vien
Fergusson	MacDonald	Wall
Fournier	*Macdonald	White
Gouin	McLean	Wilson (34)

(Quorum 7)

35 members.

*Ex officio member

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate for Tuesday, June 21st, 1960.

“Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Blois, seconded by the Honourable Senator Choquette, for second reading of the Bill S-35, intituled: “An Act respecting the International Boundary Commission”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Blois moved, seconded by the Honourable Senator Buchanan, that the Bill be referred to the Standing Committee on External Relations.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNEIL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, June 23, 1960.

Pursuant to adjournment and notice the Standing Committee on External Relations met this day at 10.30 a.m.

Present: The Honourable Senators Aseltine, Beaubien, Crerar, Croll, Fergusson, Hugessen, Lambert, Macdonald, Taylor (*Norfolk*), Turgeon, Veniot and White—12.

In the absence of the Chairman and on Motion of the Honourable Senator Beaubien, seconded by the Honourable Senator Aseltine the Honourable Senator Lambert was elected acting chairman.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel. The Official Reporters of the Senate.

Bill S-35, An Act respecting the International Boundary Commission was read and considered clause by clause.

Heard in explanation of the Bill: Mr. A. F. Lambert, Commissioner, International Boundary Commission; Mr. J. H. Cleveland, Director of the American Division, Department of External Affairs; Mr. G. Douglas McIntyre, Solicitor, Customs and Excise Division, Department of National Revenue.

On Motion of the Honourable Senator Macdonald, seconded by the Honourable Senator Aseltine, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the proceedings on the said Bill.

It was resolved to report the said Bill without any amendment.

At 12.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON EXTERNAL RELATIONS
EVIDENCE

OTTAWA, Thursday, June 23, 1960.

The Standing Committee on External Relations to which was referred Bill S-35, respecting the International Boundary Commission, met this day at 10.30 a.m.

Senator Norman P. Lambert in the Chair.

(Coloured Slides were shown by Commissioner A. F. Lambert.)

The ACTING CHAIRMAN: Honourable senators, we will now proceed with the agenda. If it is agreeable to the committee, I would suggest that we hear from Mr. J. H. Cleveland, of the Department of External Affairs, who can throw a good deal of light on the treaties and agreements that have resulted in the boundaries being determined. Is it agreeable to hear Mr. Cleveland?

Senator REID: Perhaps Mr. Cleveland could tell us the reason for the bill now being brought forward after the commission has been in effect for many years? Why is the bill thought necessary.

Mr. J. H. CLEVELAND (*Head of American Division, Department of External Affairs*): Honourable senators, as a result of the treaties of 1908 and 1925 boundary commissioners were appointed, which of course is done under domestic law. The boundary commissioner is an official of the Department of Mines and Technical Surveys, and necessary funds are provided each year in the estimates. So, it was possible administratively to carry out the marking of the boundary and maintenance of it. However, in recent years the boundary commissioner has been troubled in his mind after having discussed the matter of the extent of his authority with the Department of Justice and the Department of External Affairs. When that was examined, it appeared that there was no clear statutory effect given to the treaties.

As you know, in the United States a treaty is submitted to the Senate of that country, and after receiving a two-thirds vote of the Senate it becomes the law of the land without any further legislative action. In Canada, of course, the treaty does not have a self-implementing effect.

As I said, certain aspects of the treaty may be implemented through administrative means, and through the authority which already exists in other legislation setting up Government departments. However, there were certain deficiencies in the statutory provisions which failed to give clear statutory effect to the existing practices.

As has been seen in the pictures which Commissioner Lambert has shown, the boundary has in fact been demarcated; the vista is there, and there are only a small number of major obstacles on the boundary at the present time. I believe there are about 50 structures of any size on the boundary at this time.

However, in order to avoid a situation in which the practice might be challenged of clearing the boundary vista and maintaining it and going on land in order to place reference points it was considered desirable to seek clear statutory authority to protect the existing practice and to ensure that in future there would not be any additional encroachments which would interfere with the maintenance of the vista.

Senator HUGESSEN: That raises the whole question of treaties and the executive power to make treaties and the power of Parliament either to implement them or not to implement them. I gather that under our political system our executive can make any treaty that it likes. It does not need to go to Parliament for power to make a treaty, but, once having made the treaty, that treaty is not in any way binding on any of the subject of Her Majesty unless and until and to the extent that it has been implemented by legislation. Is that right?

Mr. CLEVELAND: That is it.

Senator HUGESSEN: Here we have this treaty which Parliament has never had anything to do with up to now. You have gone ahead under the treaty, you have cleared a boundary line, you built monuments and have done various things to people's private property, and I believe it was the right of anybody in the last 50 years to dispute your right to do that and he would have won his case in court if he had decided to go there. Isn't that the case?

Mr. CLEVELAND: Senator Hugessen, I would like to give a legal opinion on the subject but certainly that is the concern which has occurred to the officials of the departments concerned in examining the matter in recent months, and for that reason it was desired to do two things, one to make sure that Canada was able to clearly implement its international treaty obligation.

Senator HUGESSEN: Of course the United States is able to do that in view of the American situation you referred to?

Mr. CLEVELAND: Yes, automatically. And secondly, to give adequate protection to the boundary commissioner who might otherwise find himself in a very embarrassing position.

Senator CROLL: It occurs to me while you are at it, in view of what you have said, the boundary commissioners over a period of years had done many things and did it all quite honestly and fairly in their own light. Is there any way that we cover by this bill the acts that have been already done so as to give them some authority and at least protect the officials?

Mr. CLEVELAND: No, Senator Croll, there is no retroactive provision. However, I think that is adequately covered by the fact that the commissioners have been gentlemen throughout and have always gone by permission, asking "May we come on the land today?" And Canadian citizens all across the boundary have co-operated fully and said, "Why, certainly, go down and carry out your duty under the treaty."

Senator REID: Suppose we take the case of a house that is built on land close to the border. Of course it has to be located in one of the provinces and the land on which that house is built is under the jurisdiction of the province. If a man has his house built partly on the 10-foot width of the boundary what rights have you to remove that? Have you had any power in the past to do it?

Mr. CLEVELAND: No.

Senator REID: I don't think you did.

Mr. CLEVELAND: Only in one instance and that is if an offence against the Customs Act is committed with respect to a structure on the boundary, in which case there are certain steps that can be taken.

Senator HUGESSEN: But that would come under other legislation.

Mr. CLEVELAND: Yes. That is the exception to the situation with respect to the removal of structures.

Senator REID: Is it proposed to clear that matter up by this bill?

Mr. CLEVELAND: In relation to proposed future structures this bill would cover it. But with respect to structures already existing they would remain unaffected.

Senator MACDONALD: Now I come to the question I was asking Mr. Lambert and that is with respect to certain billboards which are now on this 20-foot skyline vista. After this legislation is passed will the commission have authority to remove those billboards? They are structures which are on the area?

Mr. CLEVELAND: No, sir.

Senator CROLL: Under section 4?

Mr. CLEVELAND: Section 4 refers only to any work or any addition to a work that is, after the coming into force of this act constructed".

Senator HUGESSEN: So you can prevent billboards being erected in future but cannot interfere with ones there already.

Mr. CLEVELAND: That is right. The intention under this bill is not to interfere with the past in any respect. That would have to be done by persuasion or by deterioration due to time. As a matter of fact, over the past few years something like 25 permanent structures have been removed from the boundary either because their owners have torn them down, because it was a barn perhaps that had been there for a century, or because they had been acquired in some instances by the Department of National Revenue in order to make use of that area for customs purposes. In consequence, rather than get into a somewhat difficult situation with respect to the removal of of present structures, the feeling was that it would be possible to live with them and let them gradually disappear.

Senator REID: May I ask a question regarding the line in Section 3, on a subject which has interested me a great deal. You probably know that Canada lost half a mile of land from the boundary at Point Roberts while the Americans also made a mistake and were a mile in on Canadian territory in the east. That is the history of it. Might I ask if you are acquainted with it? My question is this: Has the American Government by order in Council or by legislation agreed to that mistake? Canada did it just by order in council and I always claimed that was not the proper way to do it, that it should have been done by way of an Act of Parliament. A half mile was involved and we should have been that half mile further south into Blaine County.

Mr. CLEVELAND: I am not familiar with the details of the actual marking. I know, as Commissioner Lambert was mentioning, with respect to some of the photographs he was showing, there had to be certain adjustments made in the marking of the boundary line at the western end.

Senator REID: It is not the actual marking I am interested in.

The ACTING CHAIRMAN: Senator Reid, I think Mr. Lambert might answer that question a little later as he knows the details of the markings.

Senator REID: I would like to have an answer before we are through.

Senator TURGEON: Mr. Cleveland, have there been any conversations lately so far as you know, between Canada and the United States with respect to Canada's access across the Alaska panhandle through corridors of free ports?

Mr. CLEVELAND: There have been no formal conversations. I hope you do not mind my saying that but there are a large number of matters which you might say are under review and discussed between officials of the two Governments, and this is one question which has a live file on it. The question comes up and is mentioned from time to time but there has not been anything in the nature of a formal discussion.

Senator TURGEON: But there have been informal talks about it?

Mr. CLEVELAND: Yes.

Senator REID: I would like to learn something about the Boundary Bay post. There is a great deal of criticism regarding that post. I wonder if you are acquainted with that eastern marker at Boundary Bay?

Mr. LAMBERT: Do you refer to Monument One?

Senator REID: I am referring to the marker on the land at Boundary Bay, at Point Roberts.

Mr. LAMBERT: Well, that marker was placed in 1859 or 1860. It was set by the British and United States commission at that time. The determination of the 49th parallel was made by instrument, by astronomic means, the only means available to them. Scientifically independent determinations made by both countries were calculated, and an agreement was made as a result of the observations. It was extremely close and as was the custom, if the determination of the spot on the 49th parallel by each commission would differ by 12 feet to 14 feet, which is an instrumental error, an observer's error, and considering the type of observation, they would split that difference and set their monument on the average.

Senator REID: That is not the question I asked you. I am asking about the Boundary Bay monument that is there now. I am telling you there have been complaints by residents there about the land being built up around it. I think you can hardly see the boundary markers.

Mr. LAMBERT: On the United States side I understand that there has been a reservation made for the park south of this monument. On the Canadian side there were certain people in British Columbia very interested in trying to protect that place and get a park established on this side. We were equally interested in the project. I believe they asked the National Parks Board to consider marking it an historic site and I believe they were informed at that time that they had an historic site in Blaine in the Peace Park and were therefore not willing to establish one on Point Roberts. Meantime they sought to interest other agencies to purchase the land on which they could maintain a park but they were unsuccessful, and I think they tried to interest the provincial Government but were equally unsuccessful there. We would have been very happy in the Commission if someone had taken over that area and made a park out of it, but I believe a man named Walter Jordan sold the property and it was developed as real estate.

I have seen the house that was built there as it is about ten feet north of the line. Our vista is clear but that is all, just clear.

Senator HIGGINS: Is there any case where the boundary line goes through a house?

Mr. LAMBERT: Yes, sir.

Senator HIGGINS: What do they do in a case where they have Canadian whisky on one side and American whisky on the other. I suppose on the Canadian side they are only allowed to use Canadian whisky.

Mr. LAMBERT: I imagine it is a precarious position. If your kitchen is in the United States you must use an American refrigerator, and if your living room is in Canada you have to use a Canadian television set. If you are caught with contraband the Customs can take down your house.

Mr. CLEVELAND: Mr. McIntyre of the Department of National Revenue is here. He could give the Customs answer to that question.

Senator HIGGINS: Supposing a man buys a Canadian TV set and puts it on the American side of the house. What happens?

Mr. MCINTYRE: That is the responsibility of the American Customs. If the man buys an American TV and moves it into the Canadian side of the house then our department is concerned about it. We would collect customs duties

and taxes on it. We have had quite a lot of trouble with respect to smuggling in these line houses and that is why our department is interested in this bill. There is a provision in the Customs Act, section 197, which reads:

"197. (1) If any imported goods seized in any building within one hundred yards from the frontier between Canada and any foreign country are forfeited according to law, such building shall also be seized and forfeited, and shall be forthwith taken down and removed."

We have had several buildings removed in that way. As a matter of fact, there was one building where we found evidence of smuggling and the man was convicted and the building was right on the line. The half of the building which was on the Canadian side was torn down, and the other half remains on the American side. Usually the whole building is taken down but there have been instances where just one-half is removed.

Senator REID: Have you the right to enter a house and investigate?

Mr. McINTYRE: Oh, yes. If any portion of it is on the Canadian side we certainly are very much concerned, for there have been a lot of people who have written to us from time to time wanting to put up all sorts of structures right on the border. There is one big company in British Columbia that wants to put a large building right astride the boundary. That would lead to great danger and risk of smuggling there. It would be very difficult for us to administer the Customs Act in that portion of the country if that building were to go up there.

Senator HUGESSEN: So you are very interested in getting this bill passed?

Mr. McINTYRE: Yes, sir. As a matter of fact, people have been putting a lot of pressure on us. We have received letters from lawyers who suspect strongly that we have no legal right to stop their clients. We have been holding them at arms length hoping that you gentlemen will put this bill through as soon as possible.

The ACTING CHAIRMAN: I was going to suggest that the information interpolated here has been very interesting but I think we should organize this discussion a little more systematically. I would suggest that we let Mr. Cleveland proceed with his description and discussion of the historical background and the special features of it relating to customs or the operation of the Commission in its work could be taken up later. If that is agreeable to the committee I would suggest we let Mr. Cleveland conclude what he has to say.

Hon. SENATORS: Agreed.

Mr. CLEVELAND: The question was raised earlier concerning the definition of the word "boundary," which is section 2(a) of the bill. The boundary is described as "the international boundary between Canada and the United States of America as determined and marked by the Commission". If the actual boundary were to be spelled out it would take many pages and it would have to be a repetition of the treaties of 1908 and 1925. The treaty of 1908 picked up a large number of treaties and agreements that had been made over the preceding several centuries and collected them in one place and described the boundary line by sections.

The first section is the boundary through Passamaquoddy Bay. The second one is from the mouth to the source of the St. Croix River. The third is from the St. Croix River to the St. Lawrence River. The fourth is from the St. Lawrence River to the mouth of the Pigeon River. The fifth is from the mouth of the Pigeon River to the northwesternmost point of the Lake of the Woods.

I might say this has provided an anomaly because there is a little piece of the United States away up in the middle of the Lake of the Woods as a result of something that happened many, many years ago.

The sixth is the boundary from the northwesternmost point of the Lake of the Woods to the summit of the Rocky Mountains.

The seventh is the boundary from the Forty-ninth Parallel to the Pacific Ocean, to which Senator Reid has referred. In addition, there are two further sections, the southeast Alaska boundary and the 141st meridian boundary.

The ACTING CHAIRMAN: May I ask you whether the line from the northwesternmost point of the Lake of the Woods to the summit of the Rocky Mountains would proceed along the Forty-ninth Parallel?

Mr. CLEVELAND: That would be right.

The ACTING CHAIRMAN: The Forty-ninth Parallel—

Mr. CLEVELAND: Is the boundary for the Prairie provinces. The boundary goes due south from the northwesternmost point of the Lake of the Woods until it meets the Forty-ninth Parallel and then it proceeds westerly along the parallel.

Senator MACDONALD: Does it go through the centre of Lake Erie?

Mr. CLEVELAND: It goes through the centre although, for practical purposes, subject to correction by Mr. Lambert, the boundary proceeds by a series of straight lines. As you can imagine, it is not possible to draw a single line showing the actual, continuous mid-point of a lake whose shores are not regular.

Senator MACDONALD: After it leaves Lake Erie it goes through the St. Mary River, I suppose? It would go up past Detroit into Lake Huron.

Mr. CLEVELAND: Through Lake St. Clair and the St. Clair River to Lake Huron.

Senator MACDONALD: Does it go through the centre of Lake Huron?

Mr. CLEVELAND: The mid-point.

Senator MACDONALD: And then Sault Ste. Marie?

Mr. CLEVELAND: Right.

Senator MACDONALD: And then from Sault Ste. Marie to Lake Superior. Does it go through the centre of Lake Superior?

Mr. CLEVELAND: To the Pigeon River.

Senator MACDONALD: Does it go through the centre of Lake Superior?

Mr. LAMBERT: The Pigeon River, of course, is a little around from the southwestern tip of Lake Superior.

Senator MACDONALD: Isn't the Pigeon River north, to some extent, of the centre line from Sault Ste. Marie through to Lake Superior?

Mr. LAMBERT: By treaty the Pigeon River was the target they were heading for. That seems to be the point.

Senator MACDONALD: The line appears to go through the centre of Lake Erie and the centre of Lake Huron and when you come to Lake Superior you divert off to the north, and it does not go through the centre of Lake Superior.

The ACTING CHAIRMAN: I think Senator Macdonald is pointing out that the line did not proceed through the centre of Lake Superior to Duluth and the Arrowhead but was diverted. That is part of the result of not knowing what lay there at the time, I think, and we were a simple, humble, inexpressive colony at that time and the details of that boundary line under the Webster-Ashburton Treaty was decided by the United States and Great Britain, and that was the reason why the line did not proceed to the Arrowhead and then west, which would have come out around Portland, Oregon, at the mouth of the Columbia River. So we can write all that off as part of history now, and I think the best thing we can do is to take the boundaries as they were set before we became a self-governing dominion.

Mr. CLEVELAND: In confirmation of that, Article IV of the 1908 treaty refers to the boundary line following the line described in the Treaty of Peace

of September 3, 1783, and a portion of such line in Article II of the treaty of August 9, 1842, the treaty to which you referred, and that takes you to the mouth of the Pigeon River.

Senator HIGGINS: Has the whole boundary line been settled now, sir?

Mr. CLEVELAND: The entire land boundary line has been demarcated. The entire boundary line has been agreed on but there is one section extending from the West Coast of British Columbia into the ocean which is a part of the Alaska boundary award, which has not been demarcated.

Senator HIGGINS: The bill describes the "boundary" as meaning the international boundary between Canada and the United States of America as determined and marked by the commission. Would it not be better to say "Marked in accordance with the treaties made between the two countries"?

Mr. CLEVELAND: I think, sir, the point is that in order to be able to have certainty it is desirable to refer to the actual marks on the ground, the boundary monuments, and so on. If there is to be any change made; for example, if Canada were to consider that the boundary line was not in the correct place, in the first instance, the boundary commissioners would be asked to look into it. If there were disagreement between them, then governments would have to take it up and agree by treaty just where that actual point was. Otherwise, as you said, if the boundary was the boundary as set out in the treaty, then each individual would have to find the boundary for himself. I think from the point of view of any question that might arise in a court of law there is a considerable advantage in being able to refer to the boundary as marked, rather than to the boundary as described in the treaty.

Senator HIGGINS: You mean marked by the commissioner in the past or in the future?

Mr. CLEVELAND: Well, as marked by the Commission at the pertinent time,—as from time to time it is marked by the Commission.

The ACTING CHAIRMAN: I suppose there is a definite engineering and scientific description of the boundary line in existence. That is what you are asking, Senator Higgins, is it not? There should be a definition somewhere in the records of engineering and scientific certainty that would describe the boundary line. Well, then it is the duty of this Boundary Commission to mark that scientific description.

Senator HIGGINS: I am only going by the words of the Commission. This description and interpretation is too narrow, is it not?

Mr. CLEVELAND: I think the advantage lies with certainty. because by following this definition any individual can ascertain precisely where the boundary is. For example, if a man were to build a house ten feet away from the boundary marker he would assume that he was in compliance with the law. If, however, by subsequent re-survey it was found that that boundary mark was one foot out, then if you said that the reference was to the treaty description he would have offended against the law, whereas if in good faith he keeps ten feet away from the boundary line, as marked under this bill he would be protected.

Senator REID: How do you describe a boundary line that is not the 49th parallel? I can understand how you can describe it by marks, a mark here and a mark there, but I am interested in how you would describe the one in British Columbia, where it is not the 49th parallel.

Mr. CLEVELAND: Well, I think that is the advantage of referring to the boundary as being the line that is marked. It saves a good deal of argument, and indeed it could cause considerable legal embarrassment if there were honest differences of opinion as to where the line should be. As I say, it might be only a matter of a foot, but it could make a major difference.

Senator REID: The word "boundary" is used, for instance, in constructing a work ten feet of the boundary.

Mr. CLEVELAND: The word "boundary", sir, is a word which is used in international law. Certainly the definition of it would be a line that has no width and therefore would not be a boundary monument, but would be the precise mark.

Senator REID: Then a person could construct ten feet from the boundary mark. It says in section 5 of the bill that no person shall "construct or place within ten feet of the boundary any work or any addition to a work,..." I am not a lawyer, but as a layman I think there should be a boundary mark there. A person could build within ten feet.

Mr. CLEVELAND: On each of these boundary markers there is a hairline point, isn't there, which indicates where the actual boundary is, because the boundary marker itself obviously has a measurable width, whereas there is what you might call a hairline point marking the actual boundary.

Senator REID: If I am looking at the boundary post I am not supposed to come closer than ten feet, but I cannot come within ten feet?

Mr. LAMBERT: I think that is correct, sir; that is the meaning.

Senator REID: That is the meaning?

Mr. LAMBERT: Yes.

The ACTING CHAIRMAN: About as vague as the Green Belt of Ottawa.

Senator MACDONALD: If there are no further specific questions, I was going to ask a general question of the witness with regard to treaties. I have been informed that there are a number of treaties apart from this treaty, which have not been implemented by legislation. For instance, there has been brought to my attention that the Treaty of Versailles was never implemented by legislation. Why, I do not know. If I remember correctly, it was not implemented in the States or elsewhere.

Mr. CLEVELAND: To answer the question on that particular point I can only give a quick opinion on it. I have not looked into it, obviously. But I would say that there was probably no need for legislation implementation of the treaty. If everything that had to be done under the Treaty of Versailles was in fact within the executive power of the Government, then there would be no need for implementing legislation, just as there is no need for legislation in order to appoint a boundary commissioner; a boundary commissioner is an official of the Government of Canada, and I suppose if any specific authority is needed it could be found in the acceptance of the estimates, which is sometimes taken in lieu of specific legislation. So that by administrative means many treaties could probably be implemented. For example, there are agreements which have a little less solemnity than treaties which are entered into frequently through the executive power of the Government, as you know; exchanges of notes take place on many, many matters which do not require any specific legislative implementation or the legislative implementation may take place in a statute which is passed for quite other purposes, but it may be consistent with the international agreement.

Senator MACDONALD: I can follow that, especially in connection with the Treaty of Versailles, but not so easily in connection with a treaty where a commissioner has been appointed, and a number of employees have been hired, and a number of other officers have been appointed and have been acting for the Government of Canada during all these years without the necessity of a bill having been passed empowering them to do so. Is this an unusual case, or do you know if there are many others? For instance, may I refer to the Telecommunications Agreement. Now, my information is that that treaty or agreement was never tabled in the house, although

I presume it would affect private individuals. Then there is the International Telecommunications Convention; this was not tabled in the house until 1955, and yet came into force in 1954. Then there was the 1937 Commonwealth Telecommunications Agreement, and I understand that it is very difficult even to get a copy of that agreement. As I say, these things have come to my attention. Members of the legal profession have stated that there are a number of agreements which have not been implemented and yet are in effect in Canada and which the profession have difficulty in getting copies of.

Mr. CLEVELAND: Well, senator, there are two points there, and I might refer to the last mentioned point first. In the Treaty Section of the Legal Division of the Department of External Affairs arrangements are made for the publication, as you know, of the treaty series. That has been going on for a few years now. I think you will find all of these documents are, or should have been, published in that series. If, however, through an oversight one is missed then sometimes it is picked up in a subsequent year, but that is the way in which they are made public. There is an actual physical publication of them.

Senator MACDONALD: The practice is that, but it may be that unintentionally some of them have not been made public.

Mr. CLEVELAND: That could be, sir, particularly, I think, if an agreement was negotiated largely by other departmental officers. Officers of the Department of External Affairs are very conscious of the need for the registering of their treaties with the legal division, and there should always be someone in the Department of External Affairs concerned with each of these, but at some stage it may be possible that someone through an oversight did not ask to have a particular agreement registered as a treaty and published in the treaty series.

Senator MACDONALD: Then, may I refer to my first question? Does the witness know of other treaties similar to the one which we are considering, under which the Government has retained officers similar to the Commissioner and which have not been implemented by legislation?

Mr. CLEVELAND: That would not come within my purview, senator, so I would say: "No", but that does not prove the negative.

The ACTING CHAIRMAN: I was going to suggest to Senator Macdonald that the point he is raising will be taken into consideration by the witness and communicated with his department so that the documents to which reference is made, and which undoubtedly are of increasing importance in the legal profession's mind, at any rate, in this country, might be organized in such a way that they be made available to the profession more systematically than at the present time. I think that point is the one that your letter suggests.

Senator REID: Does your Commission handle the line between the United States and Canada up north?

Mr. CLEVELAND: In Alaska? That part is covered by the International Boundary Commission.

The ACTING CHAIRMAN: At any rate, the point that has been made by Senator Macdonald is something which I think is a little outside of the compass of this bill, but we will put it in for added measure, anyway, and let Mr. Cleveland do his best to meet the suggestion which has been raised.

Senator MACDONALD: I appreciate the generosity of the chairman in allowing me to bring that matter forward.

Senator HUGESSEN: Could I raise one further point along the lines of Senator Macdonald's question? I wonder whether the witness can tell us whether there has been any recent change in departmental policy in regard to submitting treaties to Parliament. It seems to me that in the last few years

we have had a good many more treaties submitted, and had the Treaty of 1908 been submitted to the Parliament of that day this legislation might have been unnecessary.

Mr. CLEVELAND: Well, I shall have to leave the matter of policy to my minister.

Senator HUGESSEN: Well, I should have said "practice". What is the practice?

Mr. CLEVELAND: I think the answer is that in practice there are two things happening. One is that there are many more international agreements to which Canada is a party coming along, because, as you know, it is only within the last forty years that Canada had occasion to be an independent party to an agreement.

Senator HUGESSEN: There was the Halibut agreement?

Mr. CLEVELAND: Yes, a bilateral agreement, and then when we became a member of the International Labour Organization which was our first venture on our own. Accordingly, it has only really been in very recent years that there has been this multiplicity of agreements of many kinds, some of which are treaties, some of which are multilateral conventions, some under the United Nations and some not, and some of which are exchanges of notes and so forth. Accordingly, the number has increased very greatly.

I think another reason is that the Department of External Affairs was very tiny up until World War II, and it is since that time that, perhaps, Parkinson's law has come into effect, and there have been more agreements as a result.

Senator MACDONALD: But it has never been implemented by legislation.

Mr. CLEVELAND: Yes.

Senator ASELTINE: That is correct.

The ACTING CHAIRMAN: Senator Hugessen's question has been answered in the affirmative.

Mr. CLEVELAND: Yes, I believe there has been a considerable increase in volume. There are many, many agreements, and, as a matter of fact, one of the questions that always arises is this: Does this agreement require presentation to Parliament and, more than that, does it require implementing legislation, or is the present legislation adequate to cover the situation?

The ACTING CHAIRMAN: Are there any other questions on this point?

Senator BEAUBIEN: I think we had better go on with the bill.

The ACTING CHAIRMAN: Mr. Lambert might want to answer a few more questions in reference to his pictures. Perhaps, Mr. Cleveland, you would stand by and give us the advantage of your judgment on some of these other matters. Do you wish to add anything to what you have said? I think Mr. Lambert, the Commissioner, could give us a little enlightenment on the procedure of operation between the two branches of this commission. On each side there is a ten-foot strip of land, and collectively and co-operatively, I think I am right in assuming, they work together. In certain sections the American part of the Commission would keep certain vista lines clear on the whole twenty feet, and the Canadians would do likewise in other parts. I think that is important to emphasize the extent to which the two branches of this commission are co-operating.

Senator ASELTINE: They work together?

The ACTING CHAIRMAN: Yes.

Mr. LAMBERT: Just before beginning I might say that these photographs that you see at the end of the room have been put together to cover various aspects of our work, and to show you the problems that you have been hearing about and to show you some of the obstructions and some of the things we do.

Senator REID: You have no picture of the Peace Arch there.

Mr. LAMBERT: Yes, sir, it is over there as an example of a desirable boundary development. Next to it are some of the less desirable. It could not pass without being in this array of pictures.

As to the workings of the Commission I might just say that when we send out a party to cut the vista it obviously cuts on both sides of the line. Our party in British Columbia cuts a vista twenty feet wide. They have special letters from the Department of National Revenue which gives them permission to cross and re-cross the border without the necessity of reporting every crossing to Customs.

Senator MACDONALD: They do not pay duty on their axes?

Mr. LAMBERT: We were asked at one time to pay duty on cement, and we established the principle that if it is for international purposes it is possible to use it without being in that unhappy position. We cut both sides of the line when we are on the job, and the United States party cuts on both sides of the line when they are on the job. From year to year we plan our work ahead for this summer and the next summer, and decide which parties go where. We keep track of what is done, what should be done, with respect to opening vistas. The other part of the work is with regard to surveys when necessary. One very pleasant bit of work in the last two summers has been the re-establishment of monuments on the St. Lawrence River. In this case monument sites were destroyed by flooding, and had to be re-established by monuments of the same type.

Each summer the American Commissioner and I visit the field parties and inspect their work, and also visit any other point on the boundary which may be of interest because of specific changes which we may wish to examine.

I just heard yesterday that we may lose one range mark down at Campobello Island because a new bridge is going in there. We will most certainly be looking into this and see what is to be done about replacing it.

The ACTING CHAIRMAN: If it comes to a question of intervening in private property rights where there is an infringement on the strip, is there any understood procedure between your Canadian group and the American group as to dealing with a situation of that kind?

Mr. LAMBERT: I would say that whenever any request comes in to deal with the proposal to construct something near the boundary or upon the boundary, no matter from what direction, each Commissioner always brings it to the attention of the other Commissioner. If there is a request received in the United States from Montana to establish an air strip along the boundary, we get the correspondence, and the answer that goes out to them is that this also concerns Canada. The Commissioners will inform them as to what the decision is. In the past they have sent joint letters to various organizations who asked for special privileges, such as the privilege of establishing an air strip on the 49th parallel.

The ACTING CHAIRMAN: Those things are all covered by a joint presentation?

Mr. LAMBERT: Yes. We do not take individual or unilateral action in these matters; we keep in consultation, and I might say, we think alike.

The ACTING CHAIRMAN: Do you feel this legislation, in pin-pointing the powers that enable you to deal more effectively with this thing, will be a help from an administrative standpoint?

Mr. LAMBERT: Yes. We have been told that we do not have the power to prohibit anything. So, when a request comes in, we say that we regret that we are unable to permit it; but we could also say that we regret we are unable to prohibit it. We are in that unhappy position at the moment.

The ACTING CHAIRMAN: What about your opposite numbers in the United States in that regard? Mr. Cleveland has already shown the constitutional distinctions between the two. But would this legislation in any way emphasize any distinction between the Canadian group and the American group in dealing with this problem of the boundary? Would the Americans be inclined to get specific legislation too, to correspond with this proposed measure?

Mr. LAMBERT: Of course the treaty says that the American Commissioner is empowered to do certain things. Until this legislation goes through, it seems that the Canadian Commissioner does not have those powers that are specified in the treaty.

Senator MACDONALD: You have been at a disadvantage compared with the American Commissioner.

Mr. LAMBERT: The doubt existed in our mind, and we finally asked and were told that we did not have these powers.

Senator HUGESSEN: There is no question in your mind that the Commissioner on the American side has all these powers?

Mr. LAMBERT: He has all the powers under the treaty, and we agree on these instructions. At the time we requested information as to our specific powers, the United States Commissioner also wrote to his State Department asking as to his powers. While he has not obtained legislation such as this now proposed, there is that difference. I am sure he would indeed be interested in this legislation, because of the specific nature it takes.

Senator HUGESSEN: It would be interesting if he could get an opinion from his Department of State that he has the same powers that we propose to confer on you.

Mr. LAMBERT: Yes.

Senator REID: In your opinion is there any likelihood that the United States will pass similar legislation?

Senator HUGESSEN: It may not be a question of legislation, Senator Reid. It may be that the treaty is part of their law, and if the State Department says that under the treaty the American Commissioner has the same power as the Canadian Commissioner will have under this legislation, they do not need legislation.

The ACTING CHAIRMAN: It seems to boil down to this: our Canadian representatives on the Commission have not had the power that their opposite numbers in the United States have had. So, it is perhaps about time this legislation was put through.

Senator HIGGINS: Section 3 of the bill provides that for the purpose of maintaining an effective boundary the commission may:

- (a) enter upon and pass over the land of any person in order to gain access to the boundary or to survey the boundary;
- (b) erect and maintain boundary monuments upon the land of any person; and
- (c) clear from the land of any person such trees and underbrush as the Commission deems necessary to maintain a vista ten feet in width from the boundary.

Is authority given to you to settle the boundary line itself or should it be put in this bill?

Mr. LAMBERT: I don't think it is in the act, but it is in the treaty.

The LAW CLERK: It could not be done unilaterally.

Mr. CLEVELAND: No, it could not.

Senator REID: May I ask a question which applies to the part of the country from which I come, and this may be my best opportunity to do it?

I understand that first of all the United States have carried on by passing treaties that fit into the boundary position. I am wondering if they passed any law when we changed our position and called it the 49th parallel by Order in Council. Did they agree to it? It must be designated as the 49th parallel, but we by Order in Council say it is the 49th parallel when it in fact is not. Did the Americans agree to that? This seems to me a most interesting point.

Honourable senators may not see the significance of my question, but we have quite a few problems with the Americans in Boundary Bay. I have been doing my best to get them to release Boundary Bay, because it is part of Canada; Vancouver people have home sites there, and it is really a Canadian townsite. So, I would like to know if you have found out, since we have fixed the 49th parallel by Order in Council, how the Americans treat it.

Mr. CLEVELAND: Mr. Chairman, perhaps I might answer that as to the non-technical part of it. The boundary between the two countries is the actual staked-out boundary which the Commissioners have marked on the ground. By the treaty it is agreed that the Commission marks on the ground shall be the boundary.

The ACTING CHAIRMAN: Based on a survey, I suppose?

Mr. CLEVELAND: Based on a survey, and implementing the treaty. But once it is marked, it is the boundary until such time as it is challenged by one Government or the other. So, at the moment that would be the mark.

As to the action taken on the United States side at any time with respect to authorizing within their own country the demarcation of a particular line which might vary from the line which a surveyor might have run, I do not know what action has been taken. I doubt if they would have any need for specific action, because I think the treaty itself in the United States gives the administration all the power that is necessary to make such a decision, as an administrative decision.

Senator REID: My question is, there must have been some action taken, because we endeavoured to rectify the line by Order in Council.

The ACTING CHAIRMAN: On this point I wonder if Mr. Lambert knows of any experience since the commission came into existence where any problem has arisen over the location of the international boundary line, as to the marking of it?

Mr. LAMBERT: No, I do not think there have been any technical problems.

The ACTING CHAIRMAN: If there were then they would have to be referred to each government?

Mr. CLEVELAND: That is correct, Mr. Chairman.

The ACTING CHAIRMAN: After all there is not much difference between that problem and an ordinary line fence decision in most farming communities between here and Montreal. I have had some experience myself of that kind and there is no survey to decide it at all. These kind of problems descend from the seigniorial system.

Senator REID: Mr. Chairman, may we take the bill now clause by clause?

Senator FERGUSSON: I would like some information with respect to the boundary line across New Brunswick. Has the whole vista been marked all by way along in that province where it is not bounded by the St. Croix River? Is not the St. John River the boundary on one part.

Mr. CLEVELAND: Yes, it is for a few hundred yards.

Senator FERGUSSON: Just above Grand Falls?

Mr. CLEVELAND: Just above Grand Falls in the area that is slightly flooded.

Senator FERGUSON: I thought there were two miles of it along there.

Mr. LAMBERT: A good many more than that. The boundary goes from Grand Falls to Connors, on the St. John River, then up the St. Francis River. It also touches the southwest branch of the St. John River which is just east of the Quebec-Maine highlands boundary.

Senator FERGUSON: Is the boundary vista marked out along the rest of the boundary?

Mr. LAMBERT: One of our men re-opened one half of the length of this vista during three seasons in the mid 1950's and the United States re-opened their half at the same time.

There are 175 miles in the highlands.

Senator MACDONALD: Mr. Chairman, we have the customs officials here and I have a question I would like to ask.

The ACTING CHAIRMAN: I was going to suggest that possibly Mr. McIntyre of the Department of National Revenue might add something to what he has already said about these across the boundary incidents—how much traffic is permitted to go across there without being challenged at all.

Mr. MCINTYRE: In answer to Senator Macdonald, we have had a number of incidents with these boundary line buildings. We have certain provisions in the Customs Act that allow us to go in and if we suspect any smuggling of goods taking place in a line building we have the right to go before a Justice of the Peace and obtain a warrant to go in and search that building. If we find evidence that there is smuggling we have a right under the Customs Act to seize the goods and have them forfeited to the Crown and we also can take action under the Customs Act against the person suspected of smuggling the goods.

Senator MACDONALD: I think we are fairly familiar with the law, but have you had trouble in connection with people whose homes are right on the border-line?

Mr. MCINTYRE: Yes, we have.

Senator MACDONALD: Let me take a specific example: Supposing a home is on the border and the bedrooms are on the American side, the dining room on the Canadian side. Now, they want to buy a baby buggy and they buy the baby buggy on the American side. How do you follow them closely enough to charge duty on that baby buggy?

Mr. MCINTYRE: We are not too concerned about small matters like that, but if there is any evidence of suspected commercialization, then we become interested.

Senator MACDONALD: Let me take another case. Suppose that my home is on the border-line and I buy an automobile in the United States. Probably that is where my dining room is. My garage is on the Canadian side. Do I have to pay duty on that automobile, if I bought it in the United States and garage it in Canada?

Mr. MCINTYRE: If it was just garaged on the Canadian side we could not be concerned, but if there was any use made of it on the Canadian side we would want to collect the duty and tax.

Senator MACDONALD: Would I have to pay duty on that automobile if, let us say, one-quarter of my business was being done on the Canadian side and three-quarters of it in the United States?

Mr. MCINTYRE: Yes, we have had cases like that. We would collect duty and tax if the car is used to any extent for business purposes in Canada.

Senator REID: Would a man have to declare what his nationality is to avoid taxation?

Mr. McINTYRE: It is not a question of nationality, it is a question of, is that car being used for business purposes in Canada.

Senator MACDONALD: Even if three-quarters of his house is on the American side and one-quarter on the Canadian side, and three-quarters of his business is done in the town on the United States side of the border?

Mr. McINTYRE: Well, if the car is being used at all in Canada for commercial purposes we would require the duty to be paid.

Senator ASELTINE: On the full value?

Mr. McINTYRE: It would be on the duty paid value, that is the list price of the car. The duty is placed on that at 17.5 per cent and then 11 per cent sales tax. That would be added to the price of the car, plus the duty.

Senator REID: If he was not in business could he run the car in Canada without first having to pay duty? That is, if three-quarters of his home was in the United States and he bought the car there and left it in front of his house on the United States side, what law would you tax him under if he ran it in Canada? You could not take a sales tax from him?

Mr. McINTYRE: If he is not using the car for commercial purposes but just for his own personal purposes we could give him an E-50 permit, which would allow him to go to specific points, but he could not go around soliciting business for instance.

Senator REID: I didn't say anything about doing business. If he would just take trips in it, what law could you get him under for doing that?

Mr. McINTYRE: Just on a trip?

Senator REID: Yes. Could he come in as a visitor and go back and forth.

Mr. McINTYRE: He could have a visitor's permit. He would not be using the car for commercial purposes. That is the distinction I made.

Senator REID: But if a visitor's permit is issued to him it is good only for six months.

Mr. McINTYRE: Yes, but it can be renewed. We issue it anywhere for a month to six months and under unusual circumstances we would consider having it renewed.

Senator HUGESSEN: I suppose you do not worry about these people unless they are engaged in trade?

Mr. McINTYRE: That is right.

Senator MACDONALD: Do you require them to have a visitor's permit?

Mr. McINTYRE: Yes.

Senator MACDONALD: Even if not engaged in trade?

Mr. McINTYRE: Yes, we would issue a travelling vehicle permit. We want to have control over all these foreign automobiles coming into Canada; we want to know why they are in here and for what periods of time.

Senator MACDONALD: I do not suppose you would be prepared to give an opinion as to the nationality of a child if the home in which it is born is on the line, and three-quarters of it is in Canada, and the parents are Canadians, the bedroom being on the American side of the line.

Mr. McINTYRE: No, sir, I think I will leave that to Citizenship and Immigration.

The ACTING CHAIRMAN: May I ask the witness a question not based on these technical situations which my honourable friend has been raising? When I lived in western Canada one heard a good deal about cross-boundary traffic in relation to farmers in marketing their wheat. A Canadian farmer might have an elevator point more conveniently disposed to him across the border than he

has in his own country and would take his wheat across the line and market it there, and vice versa. Does that practice still maintain without any interference by the Customs Department?

Mr. McINTYRE: We have knowledge that that sort of thing is going on. They report to Customs when they go across the border.

The ACTING CHAIRMAN: They do not always report. I suppose there is a free trade area that you let go.

Mr. McINTYRE: We leave it a lot to the discretion and good sense of the local collectors. They know the men around there. Quite often the collector comes from that particular area in the first place, and he knows what is going on. As long as there is no evidence of smuggling on a commercial scale we are not too concerned. We know that all men have a little bit of a smuggler's nature and if they haven't their wives have. They bring the odd thing over but we are not too concerned.

The ACTING CHAIRMAN: You are wise.

Senator HIGGINS: The passage of this bill will not stop that sort of thing.

The ACTING CHAIRMAN: I understand that with respect to the instances which Senator Macdonlad has mentioned, there have been seventy-five cases where buildings straddled the line and created problems. But they have been reduced.

Senator REID: Can we proceed with the bill, now?

The ACTING CHAIRMAN: Does the committee agree with the title of the bill?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Shall we take the bill clause by clause?

Senator MACDONALD: I would move that the bill be reported.

Senator ASELTINE: Yes.

The ACTING CHAIRMAN: Is that unanimous?

Hon. SENATORS: Yes.

The ACTING CHAIRMAN: Then we will report the bill without amendment.

The committee thereupon adjourned.

REPORT OF COMMITTEE

THURSDAY, June 23rd, 1960.

The Standing Committee on External Relations to whom was referred the Bill (S-35), intituled: "An Act respecting the International Boundary Commission", have in obedience to the order of reference of June 21st, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

NORMAN P. LAMBERT,
Acting Chairman.

