CANADA

ESTABLISHMENT OF DIRECT DIPLOMATIC RELATIONS BETWEEN THE UNITED STATES AND CANADA AND OF AMERICAN DIPLOMATIC REPRESENTATION IN THE IRISH FREE STATE[1]

124.42/–: Telegram

The Secretary of State to the Ambassador in Great Britain (Houghton)

[Paraphrase]

WASHINGTON, *December 1, 1926—6 p. m.*

238. As the British Government has appointed a Minister for the Irish Free State and has expressed its intention of appointing a Minister for Canada, the Government of the United States desires to appoint a Minister to each of these countries. You are instructed to confer with Mr. Chamberlain and determine if such appointments would be acceptable to the British Government. Also endeavor to ascertain the desires of the British Government as to whom the Minister will be accredited and to whom his credentials should be presented. The following is for your information. The President has power to make the appointment without legislation but we must have an appropriation from Congress. Since this is the short session we desire to secure the appropriation as soon as possible.

KELLOGG

124.42/9

The Chargé in Great Britain (Sterling) to the Secretary of State

No. 1569 LONDON, *January 10, 1927.*

[Received January 22.]

SIR: Referring to the Embassy's telegram No. 6, dated January 7th, 11 a. m., 1927,[2] I have the honor to enclose herewith a copy, in triplicate, of the Note referred to therein from the Foreign Office, with regard to the appointments of Ministers from the United States to Canada and the Irish Free State.

I have [etc.] F. A. STERLING

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[1] For correspondence concerning British proposal for the appointment of a Canadian Minister at Washington, see *Foreign Relations*, 1926, vol. I, pp. 578 ff. For correspondence concerning decision to accredit a Minister to represent the interests of the Irish Free State, see *ibid.*, 1924, vol. I, pp. 246 ff.

[2] Not printed.

[Enclosure]

The British Secretary of State for Foreign Affairs (Chamberlain) to the American Chargé (Sterling)

No. T 152/92/373 LONDON, *6 January, 1927.*

SIR: Mr. Houghton[3] was good enough to inform Sir William Tyrrell[4] last month, on instructions from the United States Government, of the intention of the President of the United States of America to appoint United States Ministers at Ottawa and Dublin in view of the appointment of His Majesty's Ministers at Washington to represent the interests of Canada and the Irish Free State, and His Excellency enquired whether these appointments would be agreeable.

2. I now have the honour to state that His Majesty's Governments in Canada and the Irish Free State have learnt with much satisfaction of the intention of the President of the United States and that these appointments will be most agreeable.

3. In reply to Mr. Houghton's further enquiry in regard to the credentials of the Ministers whom the President proposes to appoint, the appropriate procedure would be that they should be addressed to His Majesty The King and presented to the Governor-General of Canada and of the Irish Free State respectively as His Majesty's Representative in each of those Dominions.[5]

I have [etc.]

(For the Secretary of State)
HUBERT MONTGOMERY

701.4211/58

The British Ambassador (Howard) to the Secretary of State

No. 49 WASHINGTON, *January 24, 1927.*

SIR: I have the honour to refer to your note of December 4th last,[6] notifying me that the appointment of the Honourable Vincent Massey as His Majesty's Envoy Extraordinary and Minister Plenipotentiary to represent the interests of the Dominion of Canada in the United States will be entirely agreeable to the United States Government.

In this connection, I have the honour to state that Mr. Massey has now advised me that he proposes to arrive at Washington at the end of the second week in February and is desirous of presenting his letters

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[3] Alanson B. Houghton, Ambassador in Great Britain.
[4] British Permanent Under Secretary of State for Foreign Affairs.
[5] Mr. William Phillips presented his credentials as American Minister in Canada on June 1, 1927, and Mr. Frederick A. Sterling presented his credentials as American Minister in the Irish Free State on July 27, 1927.
[6] *Foreign Relations*, 1926, vol. I, p. 580.

of credence on any day between the 15th and 19th of February. I should accordingly be most grateful if you would be so good as to notify me at your earliest convenience on what date it will be convenient for the President to receive Mr. Massey for the presentation of his credentials. At the same time, I have the honour to inform you that the Government of Canada are desirous that I should accompany Mr. Massey to the White House on this occasion.

I have [etc.] ESME HOWARD

701.4211/58

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, *January 29, 1927.*

EXCELLENCY: I have the honor to acknowledge the receipt on the 26th instant of Your Excellency's note No. 49 of January 24th, in which, referring to my note of December 4th last with reference to the appointment of the Honorable Vincent Massey as His Majesty's Envoy Extraordinary and Minister Plenipotentiary to represent the interests of the Dominion of Canada in the United States, you inform me that Mr. Massey proposes to arrive in Washington at the end of the second week of February, and is desirous of presenting his letters of credence to the President on any day between the fifteenth and the nineteenth of February. You also inform me that the Government of Canada is desirous that you should accompany Mr. Massey to the White House upon this occasion.

In reply I have the honor to inform you that the President will be glad to receive the appointed Minister of Canada, accompanied by Your Excellency, at three-thirty o'clock on the afternoon of Friday, February eighteenth, at the White House.[7]

I shall of course expect to have the pleasure of Your Excellency's presentation of Mr. Massey to me so soon as shall be mutually convenient after his arrival in Washington, and to receive from him at that time a copy of his letter of credence and a draft of the remarks which he purposes to make to the President—unless I shall have been sooner favored with the remarks through Your Excellency's courtesy.

Pursuant to the understanding reached between you and Mr. Wright, Assistant Secretary of State, in conversation on the twenty-fifth instant, Mr. Wright will call for Mr. Massey a few moments before the appointed time, for the purpose of escorting him to the White House, together with such members of his staff as he may desire to present. In further accord with that understanding, it is expected that Your Excellency will join the Minister and Mr. Wright at the White House;

[7] Mr. Massey presented his letter of credence on Feb. 18, 1927.

that the presentation to the President of the Minister, accompanied by Your Excellency, will be made by Mr. Wright, and that no member of Your Excellency's staff will be present.

In view of the fact that the procedure set forth differs from that followed in the presentation of the present Minister Plenipotentiary of the Irish Free State, in that Mr. Smiddy was not accompanied by Your Excellency, it is understood that neither Mr. Smiddy's case nor that of Mr. Massey shall be deemed to establish a precedent, but that the determination of whether or not the Ambassador shall accompany future Ministers of Dominions of the British Empire when presenting to the President letters of credence from His Britannic Majesty in a Plenipotentiary capacity shall be governed by the desire of the respective Dominion or its representative, which shall be communicated to the Department of State by the British Embassy.

Accept [etc.] FRANK B. KELLOGG

CONTINUED PROTESTS BY THE CANADIAN GOVERNMENT AGAINST INCREASED DIVERSION OF THE WATERS OF THE GREAT LAKES[8]

711.4216 M 58/128

The Canadian Chargé (Beaudry) to the Secretary of State

No. 230 WASHINGTON, *September 1, 1927.*

SIR: I have the honor to refer to the note which you addressed to Mr. Chilton on December 7th, 1926,[9] regarding the publication of certain correspondence relating to the diversion of water from Lake Michigan by the Sanitary District of Chicago.

His Majesty's Government in Canada has noted that the Government of the United States considers that the reference in the Report of the Joint Board of Engineers on the St. Lawrence Waterway Project[10] to the limited effect on lake levels of the diversion of water through the Chicago Sanitary Canal greatly alters the understanding of the situation, and that it might accordingly be considered undesirable to publish the correspondence in question.

I have been instructed to inform you that His Majesty's Government in Canada has not been under any misapprehension as to the extent to which the abstraction of water through the Chicago Sanitary Canal has lowered the levels of the Great Lakes and that it has been fully advised that this lowering has been in the neighbourhood of six inches. The papers which His Majesty's Government in

[8] Continued from *Foreign Relations*, 1926, vol. I, pp. 580–590.

[9] *Foreign Relations*, 1926, vol. I, p. 589.

[10] *Report of Joint Board of Engineers on St. Lawrence Waterway Project, Dated November 16, 1926* (Ottawa, F. A. Acland, 1927).

Canada desires to publish incorporate its viewpoint with respect to the general principle of abstracting water from the Great Lakes System and diverting it into another watershed, and include the protests of the Government of Canada against the abstraction, submitted on behalf of the people of Canada generally, as well as the protest of the Government of Ontario, submitted on behalf of the people of that Province. Any reference in the report of the Joint Board of Engineers as published, as to the actual effect of the withdrawal of water through the Sanitary Canal, does not in any degree whatsoever affect the viewpoint of His Majesty's Government in Canada as expressed in this correspondence.

His Majesty's Government in Canada desires to take this opportunity of pointing out that if any misapprehension exists in the United States or in Canada as to the degree of lowering occasioned by the Chicago abstraction, the publication of these papers will go a long way towards removing such misunderstanding.

With reference to the suggestion that His Majesty's Government in Canada enter upon a further discussion of the practical question of providing compensatory works as recommended by the Joint Board of Engineers, it may be pointed out that the installation of compensatory works for the restoration of lake levels will in no way recoup to the Great Lakes System the power which is lost to that system by the water abstracted therefrom through the Sanitary Canal. While recognizing the marked advantages which may be gained by the construction of suitable compensating works, His Majesty's Government in Canada would not be prepared to enter upon a discussion of any plans for the construction of such works, if this course involved an assumption that the present abstraction is to continue.

With reference, however, to the question immediately under consideration, His Majesty's Government in Canada observes nothing in the Report of the Joint Engineering Board, including Appendices, which would render inadvisable the publication of the papers in question. On the contrary it is considered that the release of these papers would have a marked effect in clarifying public opinion on the question in both countries.

I have the honour therefore to enquire whether the Government of the United States would not be prepared to publish the correspondence listed in Mr. Chilton's note of November 16th, 1926,[11] together with subsequent correspondence, at such early date as may be found convenient to both Governments.

I have [etc.] LAURENT BEAUDRY

[11] *Foreign Relations*, 1926, vol. I, p. 588.

711.4216 M 58/128

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *October 17, 1927.*

SIR: In further reply [12] to your Legation's note, No. 230, of September first, I have the honor to inform you that this Government raises no objection to the publication of the correspondence referred to therein, relating to the diversion of water from Lake Michigan at Chicago.[13]

This Government has not failed to recognize the importance of the contentions made by the Canadian Government relating to the abstraction of water from one watershed and the diversion of it into another. In my note of July 26, 1926, I informed the British Ambassador that this Government was not prepared to admit the conclusions of law stated in his notes of February 5, 1926, and May 1, 1926, on this question.[14] I did not think it was advisable to enter into a discussion of this legal question in view of the fact that the issues involved in certain cases which were then and are still pending in the Supreme Court of the United States are closely parallel to the questions presented in the Ambassador's notes. For this same reason I do not now desire to enter into a discussion of this question at the present moment.

This Government, however, has heretofore indicated that it is prepared to enter into discussions and negotiations with Canada covering the whole question of preservation of lake levels in the mutual interest of the two countries.

This Government is glad to note the agreement by the Government of Canada with the conclusions of the Joint Board of Engineers that the diversion at Chicago has affected lake levels less than six inches. It also notes the feeling on the part of the Canadian Government that lake levels could be dealt with, so far as navigation is concerned, by compensating works as recommended by the Joint Board of Engineers. It would appear in this connection that the question as to the practical results of diversion in its effect on navigation could be entirely remedied.

As to the observation by the Canadian Government that the installation of compensatory works to restore lake levels would not recoup to the Great Lakes System the power lost to the system by the diversion at Chicago, I would, without in any way admitting the principles of compensation, call attention to the fact that Canada

[12] Reply of Sept. 12, 1927, not printed.

[13] Printed in *Correspondence Relating to Diversion of the Waters of the Great Lakes by the Sanitary District of Chicago* (From March 27, 1912, to October 17, 1927) (Ottawa, F. A. Acland, 1928).

[14] Notes printed in *Foreign Relations*, 1926, vol. I, pp. 580, 584.

now receives 36,000 second feet at Niagara as against 20,000 cubic feet per second on the American side for power purposes. I would further observe that without development of the lower St. Lawrence this question does not arise in that connection.

I again wish to point out that all these problems appeal to the American Government as matters that may be settled by practical engineering measures which might be adopted pending further discussion of the principles involved.

Accept [etc.] FRANK B. KELLOGG

PROJECT FOR IMPROVEMENT OF THE ST. LAWRENCE WATERWAY BY JOINT ACTION OF THE UNITED STATES AND CANADA [15]

711.42157 Sa 29/302a

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *April 13, 1927.*

SIR: For more than one hundred years, the Great Lakes and the St. Lawrence River have furnished a common highway and transportation outlet for the population in the interior of the continent in both the United States and Canada. The waterway has been the subject of several treaties and conventions between the two countries. Its development has been a matter of continuous effort on the part of both countries.

Pursuant to reference made to the International Joint Commission by both governments under authority of the treaty of January 11, 1909,[16] that commission made investigation of the feasibility of improving navigational facilities of the St. Lawrence River between Montreal and Lake Ontario so as to transform that section into an ocean shipway. The Commission submitted its report, signed on December 19, 1921,[17] to your Government and to the Government of the United States after taking into consideration the existing characteristics of the waterway and its projected development, as well as the essential economic factors. It earnestly recommended to both governments the making of a treaty for a scheme of shipway improvement of the river between Montreal and Lake Ontario. It suggested, however, that before final decision be made, the engineering features should receive further consideration and study. Delays naturally ensued due to the problems of reconstruction resulting from the war.

On March 14, 1924, the President of the United States appointed the St. Lawrence River Commission [18] under the chairmanship of the

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[15] Continued from *Foreign Relations*, 1924, vol. I, pp. 342–349.

[16] *Foreign Relations*, 1910, p. 532.

[17] S. Doc. No. 114, 67th Cong., 2d sess.

[18] See note from the Secretary of State to the British Ambassador, Apr. 28, 1924, *Foreign Relations*, 1924, vol. I, p. 347.

Honorable Herbert Hoover, Secretary of Commerce, to consider the whole project in its economic and national aspects and to express an opinion as to whether the project should be undertaken and the Government of Canada on May 7, 1924, appointed a national advisory committee under the chairmanship of the Honorable George Perry Graham, Minister of Railways and Canals. Through the arrangements brought about by these committees the two governments by exchange of notes dated February 4 and March 17, 1925,[19] gave instructions to a Joint Board of Engineers designated by them to review and extend the engineering plans as recommended by the International Joint Commission in 1921.

This Joint Engineering Board made an elaborate resurvey of the lake and river systems both as to navigation and power, and filed with each government an exhaustive report upon all its engineering aspects. The representatives of the two countries differed as to a few details but from the report it clearly appears that the improvement of the waterway for navigation and power purposes is both feasible and advisable.

The St. Lawrence River Commission appointed by the President to advise this Government on the subject recently undertook an examination of all of the economic as well as engineering facts bearing upon the proposed development and has made a complete report covering all aspects. It concluded that the construction of the shipway at proper depths would relieve the interior of the continent, especially agriculture, from the economic handicaps of adverse transportation costs which now operate to the disadvantage of many states and a large part of Canada, would serve the industrial well being of both countries in the development of their power resources, and would tend largely to the increase of prosperity and the stimulation of industry. The Commission recommended that negotiations should be entered into with your Government in an endeavor to arrive at an agreement as to the speedy development of this waterway.

The Government of the United States adopts the recommendations of the St. Lawrence Commission. It appreciates the advantages which will accrue equally to both countries by the opening of the waterway to ocean shipping. It feels that the necessary increase in railway rates due to the war, and the modern practices respecting the generation and transmission of hydroelectric power have increased the importance and practicability of early development, and believes that the factors which influence its conclusions must have equal application to, and influence upon, the Dominion of Canada.

In view of the action already taken by both governments, it is apprehended that they are in accord on the principle that the project

[19] *Report of Joint Board of Engineers on St. Lawrence Waterway Project*, p. 4.

should be undertaken. If this Government's conclusion in this respect be correct, there only remains to be effected an understanding as to the methods and means for its earliest accomplishment. It seems highly appropriate that the development of the common highway for the benefit of both countries should be jointly undertaken.

This Government is prepared to enter into negotiations with a view to the formulation of a convention appropriate to this subject and should be grateful to be informed of the views entertained on this subject by your Government.

Accept [etc.] FRANK B. KELLOGG

711.42157 Sa 29/317

The Minister in Canada (Phillips) to the Secretary of State

No. 15 OTTAWA, *July 13, 1927.*

[Received July 19.]

SIR: Confirming my telegram No. 9, of July 12, 10 p. m.,[20] I have the honor to transmit herewith as a matter of record a copy of Mr. Mackenzie King's note on the St. Lawrence waterway, dated July 12, 1927, in reply to your note to the Canadian Minister at Washington of April 13, 1927. There is likewise enclosed a copy of a personal letter from Mr. Mackenzie King[20] on the subject of the publication of the two notes.

I have [etc.] WILLIAM PHILLIPS

[Enclosure]

The Prime Minister of Canada (Mackenzie King) to the American Minister (Phillips)

OTTAWA, *12 July, 1927.*

SIR: The Government of Canada has received and considered carefully the note of the Secretary of State of the United States to the Canadian Minister at Washington of April 13th, 1927, on the St. Lawrence Waterway.

It shares the appreciation felt by the Government of the United States of the importance of the problem of the development of the St. Lawrence and of the aid in the solution of the engineering aspects of this problem afforded by the reports of the International Joint Commission and of the Joint Board of Engineers appointed by the two Governments in 1925.

The report of the Joint Board of Engineers signed on November 16th, 1926, while unanimous in many respects, indicated differences

[20] Not printed.

of opinion on important phases of the development proposed. It is understood that in the appendices to the report, which are in preparation, certain further alternative schemes will be presented which will be of essential value in arriving at a conclusion.

The National Advisory Committee appointed by the Government of Canada to report on the economic and general aspects of the St. Lawrence Waterway question will not be in a position to make a final report until all the findings of the Joint Engineering Board, including the appendices, are available. Upon receipt of the report of the National Advisory Committee and upon consideration of the other factors involved, the Government of Canada will be able to determine its policy on the question, and will then have pleasure in discussing further with the Government of the United States at as early a date as possible the whole situation, including the proposals contained in the present note of the Secretary of State.

Accept [etc.] W. L. MACKENZIE KING

PROPOSAL THAT THE PROBLEM OF IMPROVING THE ROSEAU RIVER DRAINAGE SYSTEM BE REFERRED TO THE INTERNATIONAL JOINT COMMISSION

711.42157 R 72/9

The Acting Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *February 26, 1927.*

SIR: I have the honor to invite your attention to the conditions which cause the periodic overflow of the Roseau River in the State of Minnesota and the Province of Manitoba.

As you know, the Roseau River has tributaries in both the United States and Canada. The main stream, after flowing through the northwestern part of the State of Minnesota, passes into Manitoba and flows through the southern part of that province before emptying into the Red River. In the natural state of the stream the fall is slight and the channel is inadequate to carry the water originating above Roseau Lake. The construction of drainage ditches in Minnesota and Manitoba has increased the volume of water discharged into the main stream of the Roseau River and has subjected the riparian property to inundation at times of increased rainfall. I am informed that the State of Minnesota has deepened and improved the channel of the Roseau River at various times in the past twenty years and has thus increased the capacity of the channel to the maximum which can be reached until the fall in certain Canadian reaches of the river is increased. Even with the improvements that have been made, land in the United States for a considerable distance from the river is subject to periodic flooding by the waters of the Roseau River.

I understand that surveys are now being made in Manitoba with a view to the ditching of additional drainage into the Canadian tributaries of the Roseau. It is also my understanding that other surveys are being conducted in Canada with a view to the construction of dikes along the banks of the river. Both of these proposed improvements, if carried out, would further aggravate the situation as to flooding in the United States.

In the view of this Government the question of the improvement of the Roseau River in such a manner as to protect riparian owners is of sufficient importance to justify the United States and Canada in referring it to the International Joint Commission for investigation and report under the provisions of Article IX of the Boundary Waters Treaty of 1909.[21] I have the honor, therefore, to inquire whether the Canadian Government would be disposed to join this Government in referring the entire problem of improvement of the Roseau River drainage system in the interests alike of the people of Minnesota and Manitoba to the International Joint Commission with instructions to make an investigation and submit a report and recommendations to the Governments. This Government suggests that if the Canadian Government would be willing to join the United States in such a reference to the Commission, it might be desirable for the two Governments to designate engineers, one by each Government, to confer and submit a draft of the terms of reference.

Accept [etc.] JOSEPH C. GREW

711.42157 R 72/13

The Secretary of State to the Canadian Chargé (Beaudry)

WASHINGTON, *April 2, 1927.*

SIR: In further reference to the matter of the improvement of the drainage of the Roseau River valley, which was referred to in my note of February 26, last, and in the Minister's note of acknowledgment thereto of March 1,[22] I beg to inform you that reports have been brought to the attention of the Department that action is being taken in Canada to obtain appropriations for proceeding during the present season with works of drainage and diking along the Roseau River.

Residents of the part of the Roseau River valley which lies in the United States are very earnest in their desire that no works shall be undertaken in Canada which will aggravate the flood conditions

[21] *Foreign Relations*, 1910, p. 532.
[22] Not printed.

that hitherto have prevailed in the United States, and that, if possible, a system of drainage control shall be developed which will greatly reduce or remove these flood conditions.

In view of the above mentioned reports I desire to refer to the proposal made in my note of February 26, last, that the entire problem of the improvement of the Roseau River system be referred by the Governments of the United States and Canada to the International Joint Commission for investigation, report and recommendations, and that each Government designate an engineer to confer and submit a draft of the terms of reference. This Government would be grateful if the views of the Canadian Government in regard to these proposals were made known to it at an early date.

Accept [etc.]

For the Secretary of State:
JOSEPH C. GREW

711.42157 R 72/22

The Canadian Minister (Massey) to the Secretary of State

No. 269 WASHINGTON, *1 November, 1927.*

SIR: With reference to your note of April 2nd. 1927 and previous correspondence concerning the improvement of the drainage of the valley of the Roseau River, I have the honour to inform you that no decision has yet been arrived at by His Majesty's Government in Canada with regard to the proposed reference to the International Joint Commission of the entire problem of this improvement, inasmuch as the question is still under discussion with the authorities of the Province of Manitoba.

2. The operations for the improvement of the river, which are now being carried on in conjunction by the Federal and Provincial Governments, will not prejudice the aspect of the question in which the Government of the United States is mainly interested, and are not believed to be contrary to the spirit or provisions of the Boundary Waters Treaty of 1909, particularly to the provisions contained in Article 4 of that Treaty. The competent authorities of His Majesty's Government in Canada have had in mind in working out the present scheme of improvement that the excavated material should be so disposed in dikes on each side of the channel that the surface channel or flood way capacity of the river could be increased to receive the additional flood waters from Minnesota, if this action should prove to be necessary at a future date on a recommendation of the International Joint Commission accepted by the Governments of Canada and of the United States.

I have [etc.] VINCENT MASSEY

711.42157 R 72/22

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *December 12, 1927.*

SIR: I have the honor to refer to your note No. 269 of November 1, 1927, informing me that no decision has yet been reached by the Canadian Government with regard to this Government's proposal that the entire problem of the improvement of the drainage of the valley of the Roseau River be referred to the International Joint Commission for investigation, report and recommendations.

This Government has given careful consideration to the views expressed in your note. I have to inform you, however, that the information which has been furnished me from sources in the United States is that the execution of the present plans for the improvement of the Roseau River in Canada will have an effect contrary to that which the Canadian authorities have in mind. I am informed that the carrying out of these plans would result in extensive damage by flooding to some eighteen townships in Roseau County, and to a large area in Kittson County, Minnesota. In view of this information, it would seem, that contrary to the views expressed in your note, the construction of the works will prejudice the aspect of the question in which this Government is mainly interested, and that it will be contrary to the spirit and provisions of the Boundary Waters Treaty of 1909. If the information which has been furnished me is correct, it would seem desirable that the execution of the plans should be deferred until approval thereof has been obtained from the International Joint Commission under Article IV of the Treaty.

In view of this conflict of views as to the effect which the execution of the present plans will have, I am strongly of the opinion that the matter is also within the letter and the spirit of Article IX of the Boundary Waters Treaty and suitable for reference to the Commission under that Article by either or both Governments. I, therefore, have the honor to renew the proposal made in the Acting Secretary's note of February 26, 1927, and repeated in his note of April 2, 1927, that the entire problem of the improvement of the Roseau River system be referred by the Governments of the United States and Canada to the International Joint Commission for investigation, report and recommendations, and that each Government designate an engineer to confer and submit to them a draft of the terms of reference.

I further request that all action relative to the carrying out of the present plans for the improvement of the Roseau River be suspended until the International Joint Commission shall have made an investigation and report under such a reference.

This Government would be grateful if the views of the Canadian Government in regard to these proposals were made known to it at an early date.

Accept [etc.] FRANK B. KELLOGG

REPRESENTATIONS BY CANADA AGAINST CHANGES IN BORDER CROSSING PRIVILEGES BETWEEN CANADA AND THE UNITED STATES

150.01 Commuters/16

The Assistant Secretary of Labor (White) to the Assistant Secretary of State (Carr)

WASHINGTON, *April 22, 1927.*

MY DEAR MR. CARR: Enclosed find copy of General Order No. 86, outlining land border crossing procedure, which may be of interest to your Department, particularly, as it may greatly increase the applications for non-quota visas at some of your consulates. I am informed this phase of the question was discussed with you several weeks ago by Mr. Husband.[23]

Sincerely yours,

ROBE CARL WHITE

[Enclosure]

General Order No. 86 of the Department of Labor

WASHINGTON, *April 1, 1927.*

SUBJECT: Land border crossing procedure.

1. Hereafter aliens residing in foreign contiguous countries and entering the United States to engage in existing employment or to seek employment in this country will not be considered as visiting the United States temporarily as tourists, or temporarily for business or pleasure, under any provisions of the Immigration Law which exempt visitors from complying with certain requirements thereof; that is, they will be considered as aliens of the "immigrant" class.

2. However, the following aliens of the said "immigrant" class residing in foreign contiguous countries and who are now enjoying the border crossing privilege may continue so to enjoy it upon the payment of head tax, provided such head tax was assessible on aliens entering permanently at the time of original admission and, provided further, that they are not coming to seek employment.

A. Aliens whose original admission occurred prior to June 3, 1921.

B. Natives of nonquota countries whose original admission occurred prior to July 1, 1924.

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[23] Second Assistant Secretary of Labor.

C. Natives of quota countries whose original admission occurred subsequent to June 2, 1921, and prior to May 11, 1922, who at the time of such admission had resided in the Dominion of Canada, Newfoundland, the Republic of Cuba, the Republic of Mexico, or countries of Central or South America, or adjacent islands, for a period of one year.

D. Natives of quota countries whose original admission occurred subsequent to May 10, 1922, and prior to July 1, 1924, who at the time of such admission had resided in the Dominion of Canada, Newfoundland, the Republic of Cuba, the Republic of Mexico, or countries of Central or South America, or adjacent islands, for a period of five years.

3. Aliens of all nationalities of the "immigrant" class whose original admission occurred subsequent to June 30, 1924, will be required to meet all provisions of the Immigration Laws applying to aliens of the "immigrant" class. Aliens of this class already enjoying the border crossing privilege, however, will be granted a reasonable time, not to exceed six months from June 1, 1927, within which to obtain immigration visas and otherwise comply with the laws.

4. Aliens who have already complied with the requirements of the Immigration Laws and this General Order may be permitted to continue to enjoy the border crossing privilege.

5. Aliens who have complied with the requirements of this General Order governing permanent admission will be considered as having entered for permanent residence.

6. The use and issuance of identification cards to all classes of aliens entitled to same will continue as heretofore.

7. Identification cards held by or issued to aliens of the "immigrant" class shall be rubber-stamped as follows:

IMMIGRANT

Dated this . . . . . day of . . . . . ., 192 . .,
at . . . . . .
. . . . . .
Immigrant Inspector.

8. Identification cards held by or issued to aliens of the "nonimmigrant" class shall be rubber-stamped as follows:

NONIMMIGRANT

Dated this . . . . . day of . . . . . ., 192 . .,
at . . . . . .
. . . . . .
Immigrant Inspector.

9. To insure uniformity stamps furnished by the bureau, only, shall be used and blank spaces, including that for signature, shall be filled in by the use of indelible pencil.

10. All identification cards heretofore issued, held by aliens who can not, or do not, meet the requirements of law, regulations and this order, will be taken up and canceled upon an incoming trip of the holder and appropriate action taken.

11. The work of validating outstanding cards should proceed slowly, systematically, steadily and persistently, and in such a manner as to avoid confusion, congestion, interference with proper routine administration and the giving of just grounds for complaint upon the part of the traveling public.

12. The status of holders of identification cards shall be inquired into periodically, preferably every six months from date stamped, where practicable, but in any event not less frequently than once a year. When inquiry has been so made, it will be evidenced by a notation to show date of such inquiry and initials of the officer upon the reverse of the card. When the holder of a "nonimmigrant" identification card qualifies as an "immigrant," a new identification card shall be issued, stamped to show the correct status.

GEORGE J. HARRIS
Acting Commissioner General

APPROVED:
ROBE CARL WHITE
Assistant Secretary

150.01 Commuters/17

The Canadian Minister (Massey) to the Secretary of State

No. 100 WASHINGTON, *23 April, 1927.*

SIR: I have the honour to draw your attention to reports which have recently been circulating in the Press to the effect that the Government of the United States intends to make drastic changes in the regulations now applicable to persons living in Canada, and crossing daily to the United States to work, especially in the area of Detroit.

In view of the long period during which the present practice has been followed, of the reciprocal character of the existing arrangements and of the serious dislocation which would result from any important alteration, I am instructed to request that, before any decision on this matter is taken or announced, an opportunity should be given for a conference to be held as soon as possible, between representatives of the Governments of the United States and of Canada. I am instructed to inform you that representatives of the competent authorities of the Canadian Government are prepared to come to Washington for such a conference at the earliest convenient date.

I have [etc.] VINCENT MASSEY

150.01 Commuters/21

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *May 10, 1927.*

SIR: I have the honor to refer to your notes dated April 23 and April 27, 1927,[24] in which you suggest a conference for the purpose of discussing the effects of a recent General Order of the Department of Labor pertaining to border-crossing privileges between Canada and the United States.

I am very glad to inform you that a conference will be held in the diplomatic room of the Department, Thursday, May 12, at 10:30 a. m. Officials of the Department of Labor will be present and I shall be very glad if you can attend and bring with you anyone whom you may desire to have present.

Accept [etc.]

For the Secretary of State:
WILBUR J. CARR

150.01 Commuters/56

Memorandum by the Chief of the Visa Office (Du Bois) of a Conference Held May 12, 1927, Regarding Canadian Border Travel Difficulties

At 10:30 a. m., by invitation of the Secretary, the following officials met in the Diplomatic Room of the Department:

The Secretary
The Minister of Canada
Assistant Secretary Wilbur J. Carr (State)
Assistant Secretary Robe Carl White (Labor)
Mr. Wrong, Secretary, Canadian Legation
Mr. Jolliffe, Commissioner of Immigration of Canada
Mr. Flournoy, Assistant to the Solicitor
Mr. du Bois, Chief of the Visa Office.

The Secretary made an introductory statement to the Conference in which he pointed out the importance of maintaining the traditional friendly relations which had always existed with Canada. He hoped the conferees would discuss any and all questions arising from travel difficulties on the Canadian border in the friendliest spirit and he wanted the Conference to be sufficiently broad in scope to cover any question on which difficulties might arise with a view to their solution in a way that would maintain our friendly relations with Canada.

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[24] Note of April 27 not printed; it stated that the early part of the following week would be a suitable time for holding the conference.

The Secretary stated further that he hoped the work of the Conference would iron out all difficulties; that he would personally discuss its results with the Secretary of Labor at which discussion he invited the Minister of Canada to be present.

Since it was Diplomatic Day, the Secretary then excused himself and the Conference proceeded informally, presided over by Assistant Secretary Carr.

The Canadian Minister read a prepared statement outlining the widespread adverse effect Labor's General Order No. 86 has had on the sentiment and economic structure in Canada. He said it is being taken up editorially and by the man on the street in cities far removed from the border and has become, in fact, an acute international issue. He exhibited a copy of the *Border Cities Star* which bore a full front page editorial under one-inch headlines, "An Unfriendly Act of a Friendly Nation" and presented other clippings similar in tone from Quebec and other interior cities.

Mr. Wrong went further into details and suggested that under Labor's own definition—"an alien who, having a fixed domicile in some other country which he has no intention to abandon, comes to the United States for a temporary period only"—the border-crossers were in the category of non-immigrants.

Mr. White outlined the position of the Department of Labor at some length. He said that ever since July 1, 1924, Labor had been seeking a means to curtail the border-crossing privileges and was now driven by pressure from organized labor to a definite announcement of its program of control of border crossing by workers. He said these people who entered the United States solely for purposes of work and took the places of American workers were not contemplated by Congress as coming within the non-immigrant class.

The discussion then became general and centered around the number of persons who, under Labor's Order, would be required to present quota immigration visas. It was submitted by the representatives of Canada that these persons caused them the greatest concern since they were over 90% British-born and as much the responsibility of the Canadian Government as native-born Canadians. Each group had certain statistics which seemed to indicate that between 4000 and 6000 such persons were involved. It was pointed out that while this number was but a drop in the bucket as far as the American labor market was concerned, each individual, when thrown out of employment and forced to stay in Canada would become the nucleus of unfriendly feeling against the United States.

The time within which these people might hope to receive visas under their respective quotas was discussed. Our system of allotment proportional to demand was explained and also the fact that

obligations had been created in very large numbers both in England and in Canada by registrations on the part of prospective quota immigrants who had not hitherto enjoyed any border crossing privileges and who could not be set aside in favor of those who had. Statistics were adduced to show that a six-months period for the production of quota visas could not be considered as meeting the situation in the slightest degree.

Mr. White pointed out that the six-months period was not expected by Labor officials to be an adequate period, but rather to be a period in which the situation would clarify itself; the definition of a period (any period) after which quota visas must be produced being the only actual curtailment in the number of foreign workers enjoying employment in the United States, and, consequently, the only actual benefit accorded to the A. F. of L. He stated that it was also conceived as a period of readjustment—a period during which due notice having been served, non-Canadian border crossing workers would secure employment on the Canadian side of the border.

The Conference adjourned at 12:50 p. m. after agreeing that notices to the press should be limited to the statement that this was a preliminary session only and no announcement of its results could be made.

Tentatively, with the understanding that Mr. White would discuss them with the Secretary of Labor, the following three points were agreed upon as being the lines along which a solution might be reached:

1. Cease, as from the date of General Order No. 86, from the creation of further border-crossing privileges.
2. Continue in effect the privileges hitherto granted until the individuals in each class involved may either bring themselves within the Act of 1924 [25] or otherwise adjust their situations.
3. The Departments concerned will report the situation to Congress when it convenes with a view to ascertaining whether it is disposed to grant any further measure of freedom in travel across our land borders than is permitted by the present law.

C. DU B[OIS]

150.01 Commuters/21

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *May 28, 1927.*

SIR: I have the honor to refer to your notes dated April 23 and April 27, 1927,[26] and to a conference at the Department on May 12, in which you so ably presented the difficulties in which certain citizens

[25] 43 Stat. 153.
[26] Note of April 27 not printed.

of Canada will find themselves as a result of General Order Number 86 of the Department of Labor which relates to the daily crossing of the Canadian boundary to employment in the United States. I wish to assure you at the outset of the sincere desire on the part of this Government to continue the traditional freedom of mutual travel between Canada and the United States just as fully and completely as the provisions of the laws of this country relating to immigration will permit.

While it is realized that the law upon which General Order Number 86 is based, mandatorily modifies a long established practice, I should appreciate it if you would note that every effort was made in drafting that order to afford the most generous treatment possible under the law to all persons who acquired border crossing privileges before the effective date of the present Immigration Act of 1924. Further, every possible opportunity will be given to native-born Canadians to acquire legal status in the United States by the presentation of a non-quota visa and the single payment of the head tax in accordance with provisions of our immigration laws which are mandatory. The border-crossing privileges hitherto accorded such persons will be continued during such period as is necessary for them to obtain non-quota visas.

We are agreed, I think, that the main difficulty lies with the Canadian residents who are not native-born Canadians and who have acquired border-crossing privileges since the quota system became effective. It is appreciated that such persons are none the less the responsibility of your Government even though our immigration law, which, unlike Orders in Council, may not be modified except by act of the Congress, gives them a less favorable status than persons born in Canada. You will doubtless recall that the Immigration Act of 1921 [27] placed foreign born persons who had resided in Canada one year upon an equality with natives of Canada with respect to entry into the United States; the same Act as extended and modified by the Act of 1922 [28] increased the necessary period of residence to five years; while the Immigration Act of 1924 denied the non-quota privileges to Canadian residents born outside of Canada and made them chargeable to the quotas of the countries in which they were born. It is among the non-Canadian born who are quota aliens that the Order will cause some hardship. The number involved is not yet accurately known and the competent authorities express the belief that it will be found to be comparatively small. It is recognized nevertheless, that many persons within this class, through their inability to obtain quota visas within the prescribed period, will, under the terms of the Order, be

[27] 42 Stat. 5.
[28] 42 Stat. 540.

forced to relinquish employment in the United States which in certain cases they have enjoyed for a number of years. This would, I admit, constitute a hardship which I sincerely regret. I am sure you will appreciate that the large number of prior applicants whose desire to emigrate to the United States has been on record for some time at the Consulates in Europe and elsewhere and who must receive visas within the limited national quotas can not be deprived of the priority rights gained by such registration in favor of a particular group in any border city. Apart from the consideration that the law does not permit the creation of preferential classes in the discretion of the executive, fair dealing dictates that the obligations created by prior applications be scrupulously met.

In order to make sure that no unnecessary hardship shall be imposed upon persons in this category, consuls in the border cities have been directed to assist them in every possible way to obtain immigration visas under the provisions of the immigration law. The consuls will at once undertake the classification and listing of such persons in the course of which, if it appears that any individual is inadmissible to the United States or is chargeable to a quota against which the prior recorded demand is exceedingly heavy, he will be informed of his situation in order that he may make his plans accordingly. Those who obviously can not hope to receive immigration visas for some time to come because they are chargeable to small European quotas against which large demands now exist will be clearly informed of their status. In other words, a sincere endeavor will be made to reduce the uncertainties of the situation to the minimum.

The issue of quota visas will begin immediately after July 1 against allotments of quota numbers from the appropriate quotas which will be as large as prior applications against the quotas will permit and will proceed at the maximum rate allowed by the law. Before the expiration of the time limit specified in Order Number 86, within which aliens of this class must present quota visas, it will probably be found that all who have hitherto held border-crossing permits issued to them by the Department of Labor since the quota system became effective, will not, by reason of the numerical restrictions of the quota law, be able to receive immigration visas. Should this prove to be the case, I shall be glad at once to request the Secretary of Labor to allow further time in which these people may gain a status in conformity with the law and the Secretary has already assured me that any such request will receive the most sympathetic consideration possible.

Meanwhile, I shall be glad to confer with you whenever you desire it, and I am directing the officers of this Department to keep in touch with your Legation and to continue their studies of the sub-

ject with a view to clearing away, so far as can be done under existing law, all difficulties and dissatisfaction in regard to border crossing. Should these studies indicate that there are difficulties inherent in the law which tend to affect adversely the traditional friendly relations between Canada and this country, I shall make it a point to have the matter brought to the attention of the Congress when it convenes, and the Secretary of Labor assures me that he will cooperate to this end.

Accept [etc.] FRANK B. KELLOGG

150.01 Commuters/90

The Canadian Minister (Massey) to the Secretary of State

No. 149 WASHINGTON, *8 June, 1927.*

SIR: I have the honour to acknowledge the receipt of your Note dated May 28th. 1927, regarding the operation of General Order Number 86 of the Department of Labor of the United States. In so doing I desire to thank you for the careful and courteous consideration given by you and your officials to this subject at the conference held at the Department of State on May 12th. and on subsequent occasions.

I am instructed to inform you that His Majesty's Canadian Government is pleased to note that the Government of the United States desires to continue the traditional freedom of mutual travel between Canada and the United States. His Majesty's Canadian Government is gratified by your assurance that in the administration of this Order steps will be taken to avoid inflicting hardship on individuals so far as may be possible, and more particularly by your undertaking to ask the Secretary of Labor to extend the time set in the Order during which those who have to secure quota visas must comply with its terms, if it should become evident that these persons will be unable to secure quota visas by December 1st. 1927. The assurance of the Secretary of Labor that he will give to such a request the most sympathetic consideration possible is also noted with gratification. His Majesty's Canadian Government is pleased to learn that you and the Secretary of Labor are prepared to co-operate in bringing to the attention of the Congress any difficulties inherent in the law which may be indicated by a further investigation of this subject.

His Majesty's Canadian Government, however, regrets that the Government of the United States has not considered it possible to modify in any respect the terms of the Order at the present time, and that, in consequence, a long-standing and reciprocal arrangement between the two countries has been suddenly terminated. I have the honour to

lay before you, for the purpose of record, the views of His Majesty's Canadian Government on the issues involved.

For many years there has been reciprocal free movement over the border between the United States and Canada, a movement freer and involving a larger number of people than that between any other two countries in the world. This freedom of movement has been an outstanding demonstration of the close connection and friendship existing between the people of the two countries. The boundary is of such a character that the communities situated close to it on both sides must have many common interests. In some of these border communities the relationship has been so intimate that residents on one side of the frontier have been in the habit of crossing daily to the other side to engage in employment. This practice, as you are aware, is of many years standing. The Convention known as Jay's Treaty, concluded in 1794,[29] provided in Article 3:—

"It is agreed that it shall at all times be free to His Majesty's subjects and to the citizens of the United States and also to the Indians dwelling on either side of the boundary line freely to pass and repass by land or inland navigation into the respective territories and countries of the two parties on the Continent of America."

The broad principle which underlay this provision is clearly indicated in the statement contained in the concluding paragraph of the same Article:—

"This Article is intended to render in a great degree the local advantages of each party common to both and thereby to promote a disposition favourable to friendship and good neighbourhood."

The practice rooted in this understanding and in the unique conditions of border intercourse on this Continent has continued to this day. It has been most marked in the area adjacent to Windsor and Detroit and in the Niagara region. Though a large majority of the individuals who so cross the border daily are Canadians entering the United States, the practice is reciprocal, and a considerable number of citizens of the United States come to Canada each working day.

The Canadian authorities have always treated, and continue to treat, citizens of the United States entering Canada in this way as non-immigrants domiciled in the United States. The Government of the United States has until lately similarly regarded Canadians crossing daily to the United States, and has made regulations to facilitate their crossing the boundary by the issue of identification cards to these persons, whom they describe as "aliens who habitually cross and recross the boundary upon legitimate pursuits."

In the Windsor area, however, particularly during the last few months, the status of Canadians so situated has become increasingly

[29] Miller, *Treaties*, vol. 2, p. 245.

uncertain, especially the status of those who are not of Canadian birth. Many either have been definitely turned back at the border, or have been required to pay head tax and to secure immigration visas. The publication of General Order Number 86 has suddenly ended this growing uncertainty by providing that hereafter all who are employed in the United States while living in Canada are to be considered as immigrants to the United States.

His Majesty's Canadian Government does not question, of course, the right of the Government of the United States to determine what persons may be admitted to the United States. They wish, however, to express their view that the ending, without notice or negotiation, of this long-standing arrangement, under which economic interests have developed and communities have grown up in Canada dependent in part on employment in the United States, is a legitimate ground for concern. Ten years have elapsed since the passage by the Congress of the United States of the Immigration Act of 1917, and three years since the passage of the supplementary Act of 1924; no new legislation has been enacted since 1924 which affects the status of those who cross the border in this way, and the practice has been permitted to continue until the present time. The Order now applies for the first time to those who cross the border daily the provisions of the Act of 1924, three years after its passage.

As regards the general principle of the Order, the definition as an "immigrant" of one who is permanently domiciled in Canada and who enters the United States for a period of only eight or ten hours each working day, appears to be a departure from the ordinary meaning of the term, and seems to give to it a special sense in contradiction to customary usage. Immigration is generally considered to involve a change of domicile, and no other instance is known in which persons who retain in full their legal domicile and citizenship in one country are, at the same time, treated as immigrants to another country. In the view of His Majesty's Canadian Government, the interpretation of the term "immigrant" carried out in the practice which has been in force between Canada and the United States for many years is eminently fair and reasonable.

Certain exceptions to the operation of General Order Number 86 are made in Section 2 of the Order, by which the individuals who come within four specified classes are to continue to be admitted upon payment of head tax only. I understand that these exceptions are made to mitigate the hardship caused to individuals who began crossing the border before the passage of the Immigration Act of 1924. In Section 3 of the Order, all who have begun to cross the border since June 30, 1924, are given "a reasonable time, not to exceed six

months from June 1, 1927, within which to obtain immigration visas and otherwise comply with the laws". I am instructed to represent that for those who have to secure quota immigration visas the period of six months can hardly be regarded as "a reasonable time", except perhaps in a small number of cases in which the persons' names have for some time been on the waiting list for quota visas. As you already are aware, it is for those citizens of Canada who have to secure quota visas, numbering probably between four and six thousand, that His Majesty's Canadian Government feels an especial concern.

The laws of Canada make no distinction between citizens of Canadian birth and those of British or foreign birth who have acquired citizenship by domicile or naturalization, just as the laws of the United States make no distinction between native born and naturalized citizens. Unless some modification is made now or later, the effect of this Order will undoubtedly be to exclude from the United States the very large majority of these four to six thousand Canadian citizens who will be unable to secure quota visas before December 1, 1927. The number of persons seriously affected is a very small proportion of the population either of Canada or of the United States, but in the Windsor area it represents a very substantial percentage of the population of all ages, probably about fifteen per cent. In this area particularly the sudden dislocation of long established relations could hardly fail to have grave results.

The view of His Majesty's Canadian Government on the general principle of the Order has already been stated. With regard to its particular provisions, it is felt that in equity ample protection should be given to all who have been in the habit of crossing the border to work, irrespective of the date at which they began the practice, either by the extension of the exempted classes in Section 2, or by the elimination of the six months' time limit in Section 3, or by some other means. The interpretation given to the Immigration Act of 1924 up to the present time has encouraged the belief that the daily crossing of the border to employment in the United States was not affected by this Act. The retroactive aspect of the Order in excluding individuals who have been previously permitted by the Immigration authorities to enter the United States cannot, therefore, fail to cause ill-feeling and to work great hardship.

I shall be glad to accept the invitation which you cordially extend in the last paragraph of your Note to co-operate with your Department in studying these and other border-crossing difficulties; and I trust that in consequence a mutually satisfactory arrangement may be arrived at before long. In conclusion I take pleasure in assuring you that His Majesty's Canadian Government fully appreciates your

earnest desire, so clearly manifested in the discussions which have taken place on this subject, to preserve by practical means the traditional friendly relations between the United States and Canada.

I have [etc.] VINCENT MASSEY

150.01 Commuters/98

The Canadian Minister (Massey) to the Secretary of State

No. 159 WASHINGTON, *13 June, 1927.*

SIR: I have the honour to refer to your note of May 28th. 1927, and to my reply thereto, Number 149 of June 8th. 1927, regarding the operation of General Order Number 86 of the Department of Labor of the United States.

In the view of the competent authorities of His Majesty's Canadian Government, certain doubts may arise as to the interpretation to be given to some of the clauses of this Order. In order, therefore, to prevent, so far as may be possible, uncertainty as to their status among those affected by this Order, I have the honour to submit below a list of questions concerning its interpretation. I shall be glad if you will be so good as to transmit these questions to the proper authorities of the Government of the United States, and in due course to furnish me with the information requested:—

1. What is the status under the Order of Canadians born in countries to which the quota applies who began to cross the border between June 3rd. 1921, and June 30th. 1924, and who did not have the requisite residence qualifications at the time of their first admission to qualify under the provisions of Section 2 C and D. of the Order?

2. Will persons who fulfil the provisions of this Order, by the payment of head tax and by the presentation of visas when necessary, be able to continue to cross the border indefinitely without being required to pay head tax and to secure visas a second time?

3. Will persons who comply with the provisions of this Order at some future date be able to live in Canada and cross the border daily to work?

4. Will a person who is permitted under this Order to cross the border daily, and who at some future date changes his employment in the United States from one employer to another, be permitted to continue to cross the border?

5. What will be the status under the Immigration Laws of the United States of persons permitted to cross the border under Section 2 of the Order? Will they be considered to have been admitted as immigrants to the United States?

6. What is the meaning of the phrase at the end of the first paragraph of Section 2 "provided that they are not coming to seek employment"?

7. If a person permitted to cross the border under Section 2 of the Order ceases in the future to cross the border, will he be permitted to resume the practice at a later date?

For greater certainty regarding the exact meaning of the various classes of persons enumerated in Sections 2 and 3 of the Order, I submit in addition the following general enquiry:

Will the following classes of persons be able to continue to cross the border on compliance with the conditions set out after each class?

(*a*) Canadians, irrespective of national origin, who began to cross the border before May 1st. 1917, without payment of head tax or presentation of visas;

(*b*) Canadians, irrespective of national origin, who began to cross the border between May 1st. 1917, and June 3rd. 1921, upon payment of head tax;

(*c*) Native born Canadians who began to cross the border between June 3rd. 1921 and June 30th. 1924, upon payment of head tax.

(*d*) Native born Canadians who began to cross the border since June 30th. 1924, upon payment of head tax and presentation of a non-quota visa;

(*e*) Canadians born in countries to which the quota applies, who began to cross the border between June 3rd. 1921, and May 10th. 1922, and who had lived in Canada for one year before their first admission to the United States, upon payment of head tax;

(*f*) Canadians born in countries to which the quota applies, who began to cross the border between May 11th. 1922, and June 30th. 1924, and who had lived in Canada for five years before their first admission to the United States, upon payment of head tax;

(*g*) Canadians born in countries to which the quota applies, who began to cross the border after June 30th. 1924, upon payment of head tax and the presentation of a quota visa from the allotment of the country of their birth.

I have [etc.] VINCENT MASSEY

150.01 Commuters/116

The Secretary of State to the Canadian Chargé (Wrong)

WASHINGTON, *June 30, 1927.*

SIR: I have the honor to refer to the Minister's note No. 159 of June 13, 1927, requesting certain information regarding the operation of the Department of Labor's General Order No. 86 and to advise you that the following replies have been made by the appropriate branch of the Government to the questions propounded by you.

The questions are taken up in the order in which they appear in the Legation's note, with the answers appended thereto.

"1. What is the status under the Order of Canadians born in countries to which the quota applies who began to cross the border between June 3rd, 1921, and June 30, 1924, and who did not have the requisite residence qualifications at the time of their first admission to qualify under the provisions of Section 2 C and D of the Order?

"A. The Order contemplates that where residence is a requisite, such residence must have obtained at the time of original admission.

"2. Will persons who fulfil the provisions of this Order, by the payment of head tax and by the presentation of visas when necessary, be able to continue to cross the border indefinitely without being required to pay head tax and to secure visas a second time?

"A. Persons who comply with the provisions of the Order are admitted as immigrants, and the immigration rules and regulations governing what constitutes abandonment of status, exemption from repayment of head tax, etc., for aliens so admitted are applicable.

"3. Will persons who comply with the provisions of this Order at some future date be able to live in Canada and cross the border daily to work?

"A. The answer to the preceding question would seem to answer this query.

"4. Will a person who is permitted under this Order to cross the border daily, and who at some future date changes his employment in the United States from one employer to another, be permitted to continue to cross the border?

"A. This question would also appear to be answered by the foregoing, the nature and place of employment being a matter of no particular concern.

"5. What will be the status under the Immigration Laws of the United States of persons permitted to cross the border under Section 2 of the Order? Will they be considered to have been admitted as immigrants to the United States?

"A. This question is answered in the affirmative. In fact, the whole tenor of the Order deals with such persons as immigrants and not as visitors.

"6. What is the meaning of the phrase at the end of the first paragraph of Section 2 'provided that they are not coming to seek employment'?

"A. The exemptions in the Order apply only to aliens entering in pursuance of existing employment, and not to persons seeking employment.

"7. If a person permitted to cross the border under Section 2 of the Order ceases in the future to cross the border, will he be permitted to resume the practice at a later date?

"A. This question is answered under query No. 2.

"All the questions under the captions (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) are answered in the affirmative, with the restrictions already referred to."

Accept [etc.]

For the Secretary of State:
WILBUR J. CARR

150.01 Commuters/198

The Canadian Minister (Massey) to the Secretary of State

No. 281 WASHINGTON, *26 November, 1927.*

SIR: I have the honour to refer to your note of May 28th. 1927 and to my reply thereto of June 8th, regarding the operation of General

Order Number 86 of the Department of Labor of the United States, and also to the numerous conversations which have taken place between members of your Department and this Legation on this subject. In the course of your note you were kind enough to employ the following language:

"Before the expiration of the time limit specified in Order Number 86, within which aliens of this class must present quota visas, it will probably be found that all who have hitherto held border-crossing permits issued to them by the Department of Labor since the quota system became effective, will not, by reason of the numerical restrictions of the quota law, be able to receive immigration visas. Should this prove to be the case, I shall be glad at once to request the Secretary of Labor to allow further time in which these people may gain a status in conformity with the law and the Secretary has already assured me that any such request will receive the most sympathetic consideration possible."

The time limit of December 1st. which was set in this Order is now only a few days away. It has become apparent that a considerable number of Canadian citizens, who have been freely permitted to cross the border daily to employment under permits issued to them by the Department of Labor, are unable to comply with the terms of the Order because they were born abroad, and cannot secure immigration visas chargeable to the quotas of their countries of birth by December 1st. I understand that there are registered at the various United States Consulates at border points, the names of some three thousand individuals who have been in the habit of crossing the border to employment, and who have applied without success for the issue of quota immigration visas. These three thousand individuals are therefore in the most imminent danger of being deprived of their means of livelihood.

I therefore venture to suggest that the time has come when the assurances made in the second of the sentences which are quoted above from your note, should be put into effect. I need not emphasize the desirability of reaching a rapid decision, nor the difficulties which will be incurred at the points principally affected, if no relief is afforded before December 1st. The view of His Majesty's Government in Canada, as expressed to you in my note of June 8th, remains unchanged. It sincerely hopes that you may find it possible to inform me immediately that the effects of the Order have been so modified as to permit at least those who have applied for immigration visas without being able to secure them, to continue to cross the border without difficulty.

You will doubtless note that I am now only requesting relief for those who have taken all steps in their power to comply with the terms of the Order. In your note of May 28th. you stated that the compul-

sory relinquishment by such persons of their employment in the United States, which they may have enjoyed for a number of years, would constitute a hardship which you sincerely regretted. I have every confidence that you will take all steps to avoid the infliction of this hardship, and to arrive at an equitable solution of this problem.

I have [etc.] VINCENT MASSEY

150.01 Commuters/198

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *December 9, 1927.*

SIR: I have the honor to refer to your note No. 281 of November 26, 1927, and to recent conferences held with you at the Department upon the subject of relief for those residents of Canada crossing the border daily for employment in the United States who have applied for quota immigration visas but who have been unable to obtain them prior to December 1, 1927, the time limit specified in General Order No. 86 of the Department of Labor within which they were to present such visas.

As you have already been informed, it has been found possible to grant a substantial measure of relief to the aliens in question by arranging that those who have gone as far as they could in order to comply with the terms of General Order No. 86, by registering as applicants for visas at the American Consulates on the border prior to December 1, 1927, shall have priority status as of the date when they were accorded the border-crossing privilege. It is believed that they will thus be able to obtain their visas and to satisfy the requirements of the American immigration laws as fast as their examination can take place by the immigration authorities on the American side of the border, they continuing meanwhile to enjoy their border-crossing privileges. This relief is afforded in an effort to remedy any injustice that may have been suffered by this class of quota aliens due to the probability that they understood prior to the promulgation of General Order No. 86, that they had complied with American law when they had applied for and obtained border-crossing permits and that it was not necessary for them to apply also for immigration visas.

The Departments of State and Labor believe that the situation which was created by General Order No. 86 has, as a whole, largely disappeared, so many adjustments in individual cases having been made under the terms of the Order during the six months' period afforded for that purpose which ended November 30, 1927. The change made in the priority status of quota commuters who have been unable to obtain visas, although having registered as visa appli-

cants prior to December 1, 1927, will, it is believed, afford all needed relief in those cases. Commuters born in Canada, on the other hand, may obtain non-quota visas upon application at a consulate and satisfying the consul as to their birth in Canada and their admissibility to this country under its immigration laws.

Accept [etc.]

For the Secretary of State:
WILBUR J. CARR

DISINCLINATION OF THE CANADIAN GOVERNMENT TO AUTHORIZE THE DISCONTINUANCE OF SEINE FISHING IN MISSISQUOI BAY

711.428/1020

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, *April 13, 1926.*

EXCELLENCY: I have the honor to invite your attention to the fact that pike-perch in Lake Champlain, which annually migrate to the Canadian waters of Missisquoi Bay at the northern end of the Lake for the purpose of spawning, are being taken with seines under licenses issued by the Canadian authorities. The spawning season usually lasts from about March first to April fifteenth and it is understood that the licenses are issued for this period, although it has been reported that individuals continue illegally to fish with seines until well along into the month of May. During this time when the fish are passing into the Canadian waters they are taken in very large quantities without having had an opportunity to spawn, thus serving to destroy in large measure the future supply of this valuable food fish.

The question of conserving the pike-perch fisheries in Lake Champlain was discussed by the American-Canadian Fisheries Conference held in 1918.[30] The report of this Conference, signed by the Commissioners for the United States and the Commissioners for the Dominion of Canada at Lake Champlain, New York, September 6, 1918,[31] contained the following statement with reference to the protection of the fisheries of Lake Champlain:

"At the Boston hearings representatives from the States of New York and Vermont appeared to urge better protection of the fisheries in Missisquoi Bay, the Canadian portion of Lake Champlain. This matter had received preliminary consideration by the conference during its sittings in Washington, D. C.

[30] See American-Canadian Fisheries Conference, *Hearings at Washington, D. C., January 21–25; Boston, Mass., January 31, February 1; Gloucester, Mass., February 2; St. John, N. B., February 5–6, 1918* (Washington, Government Printing Office, 1918).

[31] *Foreign Relations*, 1918, p. 439.

"It was explained that for some years past these two States, with the cooperation and assistance of the Federal Government, were endeavoring to make Lake Champlain a favorite tourist resort, as, owing to its character, it could not support any extensive commercial fishing. To this end both States were prohibiting all net fishing, but the most important spawning grounds for pike-perch, the most valuable fish in the lake, are in the portion thereof that is in Canadian territory, and there each spring, when the fish crowd into these waters to spawn, they are caught with seines. Thus the good effects of the work of the two States were being largely nullified.

"It was also explained that the United States Bureau of Fisheries operates a pike-perch hatchery on the lake and that it was prepared to enlarge the hatchery and increase its work if the net fishing were stopped.

"While this matter was not explicitly referred to the conference for consideration, it was one of which it could take cognizance. It was, therefore, left with the Canadian delegation for such action as they felt justified in taking.

"Following the return of the Canadian section to Ottawa, after hearings at St. John, it laid the facts before the Canadian Government, and recommended that all net fishing in Missisquoi Bay should be stopped. This recommendation was approved, and the fishery regulations for the Province of Quebec were amended accordingly by Order in Council of February 18, 1918." (Page 37)

The amendment, prohibiting net fishing in Missisquoi Bay and in the Canadian waters of Lake Champlain, was later incorporated in an Order in Council of October 22, 1921, which in turn was rescinded by a subsequent Order in Council, dated March 1, 1922.

Since the promulgation of the Order in Council of March 1, 1922, it appears that net fishing has been authorized in Missisquoi Bay under licenses issued by Canadian authorities, and that at the present time fish are being gathered in by seines night and day.

The harmful effect which this seining is having upon the Lake Champlain Fishery is apparent.

I have the honor, therefore, to express the hope that you will present the matter to the Government of Canada and ascertain whether that Government would be willing to cooperate with this Government in conserving this fishery by prohibiting net fishing in the Canadian waters during the spawning season. If the prohibition inaugurated by the Order in Council of February 18, 1918, were reestablished by the Canadian authorities, it would be a source of gratitude to the United States and particularly to the people living in the vicinity of Lake Champlain, who feel greatly aggrieved at the existing practice. It is suggested that the furtherance of good will which discontinuance of the seining would occasion would no doubt outweigh the economic loss to individuals who have profited from the seining operations. Since this Government understands

that the operations complained of are now being vigorously prosecuted, it is hopeful that the Canadian authorities may see their way clear to take immediate action in the premises. I shall appreciate it if you will inform me as soon as feasible as to the disposition of the Canadian Government in this matter.

Accept [etc.] FRANK B. KELLOGG

711.428/1038

The British Ambassador (Howard) to the Secretary of State

No. 393 WASHINGTON, *June 7, 1926.*

SIR: With reference to your note No. 711.428/1020 of April 13th last regarding the pike-perch fisheries in Lake Champlain, I have the honour to inform you at the request of the Government of Canada, that enquiries made through the Department of the Province of Quebec which administers fisheries in that area, indicate that while some illegal fishing was attempted in April, the seines and other apparatus were immediately seized and an official of the Department, who has since made a thorough investigation, has reported that conditions are now entirely satisfactory.

As set forth in your note under reference, the question of prohibiting seining in the Missisquoi Bay was considered by the Canadian-American Fisheries Conference of 1918, and in anticipation of the different questions that had been referred by the two Governments to the Conference being settled by the acceptance of its report by both Governments, a regulation was adopted by Order in Council of February 18th, 1918, prohibiting fishing by means of nets of any kind in Missisquoi Bay. This regulation was maintained in the face of growing objection to it until March 1st, 1922, up to which time the recommendations of the Conference, though they had been approved by the Canadian Government, had not been approved by that of the United States and there was no immediate indication that they would be.

Missisquoi Bay is in the Province of Quebec, where the fisheries are being administered by the Provincial authorities, which consequently issue any licenses which authorize fishing there. The statement in your note abovementioned that it has been reported that individuals continue to fish in the Bay during the close season is being communicated to the Provincial authorities for proper attention.

It will be recalled that the Treaty of 1908 for the regulation of the fisheries in boundary waters [32] covered not only Missisquoi Bay, but other waters as well. The regulations adopted by the Commission

[32] *Foreign Relations*, 1908, p. 379.

appointed under that Treaty failed to receive the approval of the United States Senate and so did not become effective.

In the light of the above, the Dominion Government are of the opinion that the situation should be dealt with as a whole rather than that Missisquoi Bay should be considered by itself.

I have [etc.] ESME HOWARD

711.428/1072

The Acting Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *March 1, 1927.*

SIR: I have the honor to invite your attention to the situation regarding pike perch fisheries in Lake Champlain which in former years has been a subject of correspondence between the Department and the British Embassy. In note No. 393 of June 7, 1926, the Ambassador stated that it was the Canadian Government's view that fishing in boundary waters should be considered as a whole rather than that the fishing in Missisquoi Bay should be considered separately.

While this Government appreciates the Dominion Government's position as set out in the Ambassador's note, it believes that the interests of the people on both sides of the international boundary require the discontinuance of seine fishing in Missisquoi Bay, independent of the solution of questions relating to fisheries in other boundary waters. This Government understands that in the Lake Champlain region the interests of the summer angler are of greater financial importance to the resident people than market fisheries could be. You will recall that the American-Canadian Fisheries Conference of 1918 found that the work of the States of New York and Vermont directed toward the building up of the Lake Champlain region as a summer resort was being "largely nullified" by seine fishing in the Canadian part of Missisquoi Bay. The benefits of the fish hatcheries in the American section of the Lake are likewise impaired by the seine fishing.

This Government appreciates the importance of adequately protecting and regulating fishing in all the boundary waters through the cooperation of the governments of the United States and Canada. It is a matter of regret to it that questions of a local nature have delayed it in undertaking negotiations in regard to the fisheries in certain waters. However, this Government is hopeful that in respect of the fisheries in every part of the boundary waters in relation to which no serious questions have arisen the Dominion Government will find it possible to cooperate in the preservation of the permanent interests of the people immediately concerned.

In view of the opening of the season in which seine fishing in Lake Champlain has been permitted, which is now approaching, I have the honor to request that you bring the views of this Government to the attention of the Government of Canada with the suggestion that, if the Dominion Government finds it practicable to prohibit the use of seines in Missisquoi Bay, this Government will appreciate such action being taken.

Accept [etc.] JOSEPH C. GREW

711.428/1089

The Canadian Minister (Massey) to the Secretary of State

No. 53 WASHINGTON, *22 March, 1927.*

SIR: With reference to your note No. 711.428/1072 of March 1st. on the subject of the pike perch fisheries in Lake Champlain, I have the honour to state that the competent Department of the Dominion Government which has had the matter under consideration, represents that the conditions affecting the situation in Lake Champlain remain unchanged, such conditions being briefly outlined in the following manner.

It is explained that the fisheries of Missisquoi Bay are the property of the province of Quebec and are being administered by the Provincial authorities, who are opposed to the prohibition of a reasonable amount of seine fishing in the Bay, though while pike perch or pickerel resort to the Bay for spawning purposes fishing for them is prohibited during the spawning season. While the exclusive power to make regulations in all parts of Canada rests with the Federal Government, in an area where the fisheries are owned and are being administered by the Provincial authorities, the Federal Government hesitates to impose regulations that are not desired by the Provincial authorities unless the conditions are extraordinary in their character.

Although the question of fishery regulations in Lake Champlain was not referred to the Canadian American Fisheries Conference in 1918, it was brought to the attention of the Conference by delegations representing the States of New York and Vermont, and indeed the question was raised by the American members of the Conference at its preliminary sittings. It was at the time anticipated that the recommendations of the Conference would be approved by both countries, and accordingly as the fishing season was then approaching, on the recommendation of the Canadian members of the Conference to their Government, a regulation was adopted in February 1918, prohibiting all net fishing in Missisquoi Bay. The Conference completed its work and submitted its report in September 1918, and its recommendations were subsequently approved by the Canadian

Government, though such approval was not given by the United States Government. The regulation was, however, maintained in the face of continuously growing opposition until March 1922, when it was annulled as there was no indication at that time that the recommendations of the Conference would be approved.

Attention is further called by the Department to the fact that the Missisquoi Bay situation was covered by the Treaty of 1908 for the regulation of the fisheries in boundary waters, but that the regulations drawn up by the Commission appointed under that Treaty failed to receive the approval of the United States Senate.

After consideration of all circumstances, the Canadian Government is still of opinion that the Missisquoi Bay situation should be dealt with in connection with other outstanding matters and not by itself and I am accordingly requested in bringing their views to the notice of the United States Government, to take advantage of the opportunity to dwell upon the importance of early attention being given to the settlement of the outstanding fishery questions between the two countries.

I have [etc.] VINCENT MASSEY

711.428/1089

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *March 30, 1927.*

SIR: I have the honor to acknowledge the receipt of your note No. 53 of March 22, 1927, relating to seine fishing in the Missisquoi Bay section of Lake Champlain.

I note with regret that the Canadian Government does not deem it advisable to discontinue the issuance of licenses for such seine fishing at this time.

Accept [etc.] FRANK B. KELLOGG