

*Transport and Communications*

before it in December 1967, reconvene the hearing to consider whether in the exercise of its general powers under the Railway Act, it should impose further conditions to be met prior to the discontinuance of the passenger train service or direct the adoption of such measures as may be necessary to ensure the adequacy of the bus service.

The intent and the effect of that part of the order was to keep the matter before the commission. I take this to be acknowledged by the hon. member for Winnipeg North Centre in his argument. Therefore, the commission had not completed its adjudication. In effect, the order is analogous—referring to another legal proceeding—to an order nisi. Moreover, I understand that the standing committee was given evidence showing that the commission is still active in deciding what order it should make.

Perhaps it will be contended that the Canadian Transport Commission is not a body to which the sub judice doctrine is relevant. I should like to refer, as Your Honour did, to citation 152 (2) of Beauchesne and the fact that the status of the Board of Railway Commissioners has been carried on by the Canadian Transport Commission. Citation 152 (3) of Beauchesne has been referred to because reference is made there to matters before the railway commissioners. It was for this reason that I referred last Tuesday to section 53 (1) of the Railway Act, which provides:

The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made inter pares or otherwise, and whether such regulation is general or limited in its scope and application; and any order that the Governor in Council may make with respect thereto is binding upon the Board and upon all parties.

From a reading of citation 152 (3) and section 53 (1) of the Railway Act, it appears that matters still under adjudication by the Canadian Transport Commission are in fact sub judice; but once an appeal on a matter has been taken to the Governor in Council, as provided for, the matter is no longer *sub judice*. In this instance although those opposed to the interim order of July 13, 1968 could have done so, nobody made an appeal to the Governor in Council. Therefore, the 1923—I think it was—precedent referred to in that case does not apply in this particular instance. Since the matter has not been determined finally by the Canadian Transport Commission and since it has not been removed from the Commission by way of an

[Mr. Macdonald (Rosedale).]

appeal, I submit that the matter is still sub judice and as such should not be discussed in this house or in the committee.

Secondly, an inquiry has been made as to the form of the recommendation in the report. I am referring to the recommendation with regard to the Newfoundland railway. To whom is the recommendation addressed? The hon. member for Peace River referred at length to other precedents in which the recommendations were addressed to the government; but in this case—

Mr. Baldwin: No, I did not.

Mr. Macdonald (Rosedale): Well, the nature of those particular recommendations is a matter of opinion. But it is perfectly clear in this case that that is not to whom this recommendation is addressed. The house itself could not leave the order of the commission in abeyance. No attempt has been made to use the procedure of appeal to the Governor in Council as I have already indicated.

Therefore, the conclusion must be that this recommendation is in truth an attempt by the committee either to give a direction to the Canadian Transport Commission or to the Canadian National Railways, two bodies which have been given specific responsibilities by a statute made by Parliament. It is my submission that it is no more appropriate for the committee to give a recommendation to either of those two bodies than it is for the committee to give a recommendation to the Supreme Court of Canada or any other court in respect to a matter that is before it.

● (4:00 p.m.)

If the house generally decides it wants to make a change in the law with regard to a particular matter, then the course of action is quite clear. It can proceed by passing a bill. My submission is that the House of Commons ought not to be asked either to concur or refuse to concur in a directive that in any case should not issue.

As to whether the committee's report is within the terms of reference, I indicated I have no objection to the report in that regard and therefore make no further comment on this point. Some mention has been made, Mr. Speaker, about the new committee procedure. In the order made by the house to establish the new committees, it was assumed that the reports made by the committees would comply with the general rules of order.

I want to say in conclusion, Mr. Speaker, that I appreciate the careful attention you