

House of Commons Debates

THIRD SESSION—ELEVENTH PARLIAMENT.

HOUSE OF COMMONS.

TUESDAY, February 21, 1911.

The SPEAKER took the Chair at Three o'clock.

THE NATIONAL TRANSCONTINENTAL RAILWAY—LAND DAMAGES.

Mr. BORDEN (Halifax). Before the orders of the day are called, I would like to ask the government what is the reason for the delay in granting fiats to a number of petitions of right, I believe over thirty in all, which were asked for in the month of September and October, 1907, in regard to claims for compensation for lands taken by the commissioners for the Transcontinental railway in the county of Madawaska in the province of New Brunswick. It would appear that although these petitions of right were filed, and fiats were asked for more than three years ago, no fiat has been granted up to the present time. The right of expropriation involves a certain sacrifice of private interest for the public good. When it is exercised, it seems to me that the subject, whether his claim be against a corporation or against the Crown, ought to have the right to make that claim good in the courts. These claims have been standing for three years, and I would like an explanation as to the cause of the delay in issuing fiats.

Sir ALLEN AYLESWORTH. The cases of lands taken in the county of Madawaska along the line of the Transcontinental railway have been a matter of consideration, and of discussion with the hon. gentleman who represents that county in this House by the Department of Justice for a good many months, and there has been considerable difficulty and delay in regard to them caused by the view which has been taken of the applicability of the provisions of the Expropriation Act to lands taken for the line of the Transcontinental railway. I gave to the question the best consideration that I was able, upon the language of the Transcontinental Railway Act, and the provisions enacted by this parliament with reference to the manner in which the construction of that line was to be carried out, and I was of opinion, from such examina-

tion of its provisions, that notwithstanding the constitution of the Board of Transcontinental Railway Commissioners, land taken for the construction of the line was land expropriated by the Crown, and therefore that the provisions of the Expropriation Act would have application, and that an information filed in the name of the Attorney General for the condemnation of any land which was requisite for that purpose would properly bring the question for consideration before the Exchequer Court. Such proceedings were taken, not with reference to lands in Madawaska, although I think that in some instances of lands taken in that section of the province of New Brunswick, fiats were given or expropriation proceedings initiated upon information. Some cases, however, from other parts of the province of New Brunswick came not long ago before the learned judge in the Exchequer Court for disposition, and he reached the conclusion after consideration that the lands so taken could not be considered as expropriated by the Crown, but that they were taken by the Board of Transcontinental Railway Commissioners for the purposes of their work, and, in that view, that the method of proceeding under the Expropriation Act would not have application. Not considering that that disposition of the matter was a satisfactory one, instructions were given to appeal from that decision to the Supreme Court of Canada. Such an appeal has been taken, but has not been heard by the Supreme Court. It will be heard, I have no doubt, at the sittings which begin to-day, and as soon as we have had an authoritative pronouncement on the subject from the Supreme Court, it will be either unnecessary to make any amendment of our present expropriation statute or it will be a matter for consideration whether that course should be taken. With regard to the granting of a petition of right in such circumstances to the land owner, let me say just one word. I have had no reason to change my view that it is more in the interest of the land owner himself that the proceedings for ascertaining the amount of compensation should be initiated by the government upon information of the Attorney General than upon a petition of right. There is perhaps no great practical difference, but there