

*Railway Act*

apply because in effect there is not a railway in existence. Therefore the underlying real estate, which is all you have left in the circumstances, must be regarded in the light of the provision that it is a work declared by the parliament of Canada to be for the general advantage of Canada. A declaration may be made expressly or implicitly in legislation, and I would suggest that generally speaking with regard to railway companies it is made by the Railway Act and the relevant incorporation acts of the companies in question.

It is also clear that the parliament of Canada may by subsequent action, express or implied, withdraw such declaration and thereby return the lands to provincial jurisdiction. I would refer you, Mr. Speaker, to the case before the judicial committee of the privy council which may be found in the Law Reports, 1916, Appeal Cases, Volume II, at page 583. This is the case of Hamilton, Grimsby, and Beamsville Railway Company v. Attorney General for Ontario and others. Lord Buckmaster, who was then Lord Chancellor, speaking on behalf of the committee observed as follows at page 587:

Their lordships are clearly of opinion that section 92, subsection 10, never intended that a declaration once made by the parliament of Canada—

That is, a declaration for the general advantage of Canada;

—should be incapable of modification or repeal. To come to such a conclusion would result in the impossibility of the dominion ever being able to repair the oversights by which, even with the greatest care, mistakes frequently creep into the clauses of acts of parliament. The declaration under section 92, subsection 10 (c), is a declaration which can be varied by the same authority as that by which it was made.

My submission is that the parliament of Canada has by the Railway Act conferred authority on the board of transport commissioners to decree from time to time what works and property have ceased to be governed by the declaration for the general advantage of Canada. My submission, in particular, is that once approval has been given by the board to a railway line being abandoned as part of a railway, and once that has been acted on by the company, the jurisdiction of the parliament of Canada ceases. Under those circumstances the land, while remaining properly the property of the railway company, becomes subject to the laws of the particular province concerned with regard to questions which affect that property, such as fencing, weed control and such matters. In such circumstances, Mr. Speaker, I submit that the jurisdiction of the parliament of Canada has ceased. Therefore the proposed legislation of the hon. member would essentially attempt to confer upon the board a

[Mr. Macdonald.]

power *ex post facto* to act with regard to land that formerly formed part of a railway and which, by the board's own decision, has ceased to be part of the railway undertaking. That land, by an extension of the same reasoning, has therefore ceased to be under the jurisdiction of the parliament of Canada.

For those reasons, Mr. Speaker, I would submit that, notwithstanding the merits of this legislation, it is not appropriate for parliament at this time to discuss this particular measure; that remedial measures with regard to fencing and the other matters referred to in subclause (2) of the proposed amendment are properly under the jurisdiction of the provincial governments and that application should be made in the provincial legislatures for remedial legislation.

Mr. Thomas: Mr. Speaker—

Mr. Deputy Speaker: Order.

Mr. Thomas: On the point of order, Mr. Speaker—

Mr. Deputy Speaker: With deference to the hon. gentleman, I am prepared to make a ruling now on the point of order which has been raised by the hon. member for Rosedale (Mr. Macdonald). I might say at once that I do not agree with the hon. member and I really do not think it is necessary to continue the discussion on the point of order. I do not wish to interrupt the hon. member for Middlesex West or deprive him of the opportunity of presenting his views on this point of order raised by the hon. member for Rosedale. If he wants to submit an argument on the point of order I will give him an opportunity to do so, although I really do not think it necessary that he do so.

Mr. Thomas: I think the point has been covered in discussing the bill.

Mr. Deputy Speaker: I have listened with much interest to the argument made by the honourable and learned member for Rosedale (Mr. Macdonald). I gather the essence of the argument he submits now is that the bill should not be considered, that it is out of order because it is ultra vires the parliament of Canada. My submission at this time is that it should not be the responsibility of the Chair to the rule whether a particular bill or particular piece of legislation submitted to parliament is or is not within the competence of this house. First, I should like to refer hon. members to standing order 12, which limits and defines the duties and responsibilities of the Speaker.

Mr. Speaker shall preserve order and decorum, and shall decide questions of order, subject to an appeal to the house without debate.