

7 GEORGE V, A. 1917

Mr. SINCLAIR: Are there any spurs that are used by private parties exclusively?

Hon. Mr. COCHRANE: Lots of them, they pay a certain amount of rental by the year.

Mr. MACDONELL: You would not, Mr. Minister, object to the extension?

Hon. Mr. COCHRANE: Not a bit.

Mr. MACDONELL: I ask if these words "and to have such spur or branch line extended" be inserted after the word "thereof" in the 44th line.

Mr. SCOTT, K.C.: I am not familiar with the particular cases to which Mr. Macdonell has referred, but I am familiar with two cases which came up in the Supreme Court, *Blackwood's v. C.N.R.*, 44, S.C.R., 92; and *Cloverbar Coal Co. v. Humberstone*, 45, S.C.R., 346, and I want to point out to the Committee just what the effect of this would be. There are two methods by which a spur running into an industry may be provided, one is to invoke the Railway Act, which can be done either by the owner of the industry, or by the railway company, and the other is by means of a private agreement between the railway company and the individual. If the railway company and the owner of the industry are satisfied to make a private agreement, why should they be obliged or forced afterwards to come under the jurisdiction of the Board? If an extension of the spur is required it can be obtained in this way that the rights of the owners of the industry can be expropriated, and that is the fair way, I submit, to do it. It has happened in one of the cases to which I have made reference that a man constructed a branch line on his own land, as he had a right to do, and he laid it out in such a way that it suited his industry. In the case of *Blackwood v. C.N.R.* at Winnipeg there was a siding that was always covered by cars and it was desired to extend that spur without remuneration for the benefit of others. The contention in that case was that if the extension were desirable the railway company should expropriate, and then the original owner would get compensation for what he was giving up, and that because by a private agreement they had allowed the railway company to construct a branch up to that particular industry, they should not be asked to suffer the inconvenience and disarrangement of their business which would result from the extension without compensation. The other case of the *Cloverbar Coal Co. v. Humberstone*, was very similar. That was a case of two coal mines and the one company said: "We constructed this branch line in such a way that it would carry our traffic, but if it is extended to the Humberstone mine, one mine will fall in", and that is actually what happened, because between the time that the Board gave the order, and the Supreme Court gave a decision, the mine actually fell in and was spoiled, but there was no compensation. It seems to me unfair to force the party who has built a siding for his own private purpose, just because he is connected with the railway company, in any case, to provide that spur for the use of owners further on.

Mr. MACDONELL: That is in the Act already. Section 187 only applies to spurs constructed under 186.

Mr. SCOTT, K.C.: Section 187 applies to a case where there is an agreement, or where a person has invoked the Railway Act, but when another party does that why should the man who constructed the spur for his own use be subject to force in the interests of another party.

Mr. MACDONELL: I am asking that they be allowed to extend the spur.

Mr. SCOTT, K.C.: The section is all right as it is, but it is a question whether you can, where a private party has built a spur upon his own land, as he had a right to do, and has not invoked the provisions of the Railway Act, compel that private party by force to come within the jurisdiction of the Board.

Mr. MACDONELL: You cannot do that.