

Transport and Communications

that it is not in order for a standing committee to try by resolution to repeal a decision of parliament taken by bill.

The second base for my point of order is that I submit that the matter in question in the report is already under judicial consideration, that it is in fact sub judice, and as such the well established principles both in this house and at Westminster are operative here. I refer to the fact that section 9(2) of the Railway Act in effect constitutes the Canadian Transport Commission as a court of record.

I should like to refer Your Honour to page 127 of Beauchesne where the following is said:

—it has been sanctioned by usage both in England and in Canada, that a member, while speaking must not...refer to any matter on which a judicial decision is pending.

I should like to refer Your Honour to page 454 of May's seventeenth edition where the same principle is outlined, and also to page 396 where the following statement is made:

A matter, awaiting or under adjudication by a court of law, should not be brought before the House by a motion or otherwise.

When we examine the order relating to rail passenger service in Newfoundland we see it was made on July 3, 1968, by the commission and that in fact the commission had not yet made its final determination on this question, —in other words that the matter is still before the commission. The interim order made on July 3, 1968, says:

If, prior to April 15, 1969, Canadian National Railways fails or is unable to perform any of the conditions enumerated above, or if at any time before that date the Committee (i.e. the committee of the commission) is not satisfied that the bus service is at least as good as the present passenger train service, it may, upon notice to Canadian National and to all parties who appeared before it in December, 1967, reconvene the hearing—

In other words, it is perfectly clear that no final order has been made in this matter and that it is still before the Canadian Transport Commission. That commission is a court of record and therefore the long and well established practice of the house that such matters, being sub judice, are not to be dealt with on motions of the house, applies in this case, and I suggest that a motion for concurrence in this report should not be received at this time.

Some hon. Members: Hear, hear.

Mr. G. W. Baldwin (Peace River): It may well be, Mr. Speaker, that everything the

President of the Privy Council says is correct. It may well be there are defects in this report. But with all due respect, it seems to me the minister should not be able to introduce at this time statements with regard to proceedings before the Canadian Transport Commission, and that such statements ought not to be taken into consideration here.

I suggest with deference, Mr. Speaker, that what the minister could well do is this: Once the matter has come before the house on the substantive motion of the hon. member, he can introduce a subsequent motion to amend it or to send it back to the committee. The way in which the minister is attempting to deal with it now is, in my submission, not the proper way. Of course, once the motion has been put and the debate commenced it will be open to the minister or to anyone else to move an amendment or raise a point of order. The motion cannot be disposed of now by the action of the minister in drawing attention to certain proceedings, not yet completed, which are before the Canadian Transport Commission, and of which this house has not been apprised. Those proceedings were certainly not part of the work of the committee.

If, in the course of the debate, after an appropriate motion to amend put forward by the minister, Your Honour were to reach the conclusion that there were difficulties in connection with the wording of this motion, then Your Honour would have the right to rule accordingly. But in my view the matter should be allowed to proceed. It would then be incumbent upon the minister or upon any other hon. member to make a motion at the time we are debating the substance of the issue.

Mr. Knowles (Winnipeg North Centre): I wish to make it clear, Mr. Speaker, that I have no desire to prevent the President of the Privy Council from speaking on this matter, but I do feel very strongly that he should speak at the proper time.

Your Honour had called on the hon. member for LaSalle to proceed with his motion which reads:

That the fifth report of the Standing Committee on Transport and Communications, presented to the house on Wednesday, March 19, 1969, be concurred in.

Before the hon. member for LaSalle was able to get to his feet, the President of the Privy Council raised a point of order. I submit that it is a spurious point of order and