

Railway Act

a similar nature and is quite identical in wording. Would Your Honour give a decision, because we are doubling these bills?

Mr. Deputy Speaker: I am sure the hon. member would agree this should be done when the bill is before the house. It is not before the house, and therefore this is not an occasion for the Chair to point to any irregularity that is attached to the bill.

Order stands.

RAILWAY ACTAMENDMENT RESPECTING ABANDONMENT OF
BRANCH LINES

Mr. W. H. A. Thomas (Middlesex West) moved the second reading of Bill No. C-27, to amend the Railway Act (Abandonment).

Mr. Macdonald: Mr. Speaker, if I might be allowed to do so I should like to raise a point of order in connection with this particular matter. The point of order, in brief, is that the subject matter of this bill falls, not within the jurisdiction of this parliament but within the jurisdiction of the particular provinces in which the land may be situate, and for that reason it is not competent for this parliament to debate the matter at this time.

I may say, Mr. Speaker, I have the greatest respect for the hon. member for Middlesex West (Mr. Thomas) and out of respect for him I would like to give in a little more detail the reasons for arriving at that conclusion, and I should like to make reference to the appropriate legal authorities that relate to this question.

If I could summarize briefly, Mr. Speaker, the purpose of the bill—and I hope the hon. member will correct me if I am mistaken in this—is to confer upon the board of transport commissioners the power, after it has approved the abandonment of a railway line under substantially the terms that now may be found in section 168 of the Railway Act, to impose subsequent conditions upon a railway company as indicated in the second part of the proposed subsection, which reads as follows:

—the board shall order the company to carry out such remedial measures in the way of fencing, gates, cattle-guards, weed control, drainage works, demolition, restoration or any other remedy as the board deems necessary.

My submission is that once the board of transport commissioners has made its order decreeing that the railway line is to be abandoned, the board has lost jurisdiction and this parliament has lost jurisdiction over that particular piece of land. The hon. member has made reference to a decision of the board of transport commissioners, which may be found in volume 46 of Canadian Railway

Cases. This is the decision in Cairns Brothers v. Canadian National Railways. It is a decision of the chief commissioner of the board at that time, the late Hon. Hugh Guthrie, who was at one time house leader for the party of hon. members opposite. I would refer in particular to some remarks of the chief commissioner which are to be found at page 54 of the report. It was an application for substantially the same kind of relief which the hon. member is seeking in his bill. The chief commissioner observed:

It is to be noted that the requirement for fencing is that the company shall erect and maintain fences upon the railway. Where abandonment of operation has been authorized and has taken place, the right of way through which the railway is operated ceases to be used for railway purposes and is held by the company, not as part of its railway qua railway company, but in the same way as land is held by private individuals, subject to any provincial or municipal laws in respect of fencing which may be in force in the particular district.

It is to be further noted that the principal, if not the sole, reason for the fencing requirement in the Railway Act is to prevent cattle from getting upon railway lands and being killed or injured by railway operation. Where complete abandonment of a line of railway takes place, the necessity for fencing the line largely disappears, and the section does not apply. For these reasons the board, in my opinion, has no authority under the terms of the Railway Act to order the railway company to maintain fences upon the sides of its right of way under the circumstances which pertain in the present application.

At the root of the chief commissioner's observations at that time was the principle that there is inherently a conflict between the jurisdiction of the parliament of Canada and the various legislatures in so far as lands which may or may not be used for railway purposes are concerned. As hon. members know, the subject matter of property and civil rights in a general sense has been conferred by section 92 of the British North America Act upon the provincial legislatures, but by reason of the exceptions in section 92 (10) (a) and (c), it has been stipulated that railway lines can in certain circumstances be under the jurisdiction of the parliament of Canada and, more particularly, railways lines connecting one province with any other province. Section 92 (10) (a) or under section 92:

Such works as, although wholly situate within the province, are before or after their execution declared by the parliament of Canada to be for the general advantage of Canada—

The jurisdiction of the parliament of Canada, therefore, in the case of railways must rest upon those exceptions enumerated in section 92 (10) (a) or (c). I would submit, first, that if a railway line has been abandoned, it has ceased to exist as a railway and the provisions of section 92 (10) (a) cannot