

Railway Act

if I could just refer to a few remarks made by the hon. member for Parry Sound-Muskoka (Mr. Aiken) I would like to make it clear to the house that the remarks I made at the start of this hour were remarks made by me in my personal capacity as a member of the bar, and with doubts as to the constitutional validity of consideration of this question by parliament. They did not represent the policy of the government.

I would say that while I at that time raised some question as to the constitutional validity, I would like, if I might, just to refer to some of the merits underlying the question of constitutional validity, and to refer to the merits which presumably motivated the drafters of our constitution to consider this question and deal with it in this way. It was the intention of the drafters of the British North America Act to place matters of purely local and private nature within the jurisdiction of the provincial governments.

I do not disagree at all with the concern expressed by the hon. member for Middlesex West (Mr. Thomas) with regard to the fact that a piece of industrial wasteland may have been created, nor do I disagree with the remarks made by the hon. member for Renfrew South (Mr. Greene) that the particular railway should not be able, without any financial cost, merely to abandon the line and let it lie. But the point I was making is that this should be governed by the local planning authority. The jurisdiction over this should be exercised by local people who make plans for the use of real property within a particular community. What I am saying in connection with land which is purely the land of a particular locality, is that the locality should decide. The people should not have to come to Ottawa. They should not be forced to the expense of coming to the board of transport commissioners to say how the land is going to be used.

From a legal standpoint this question is amply clear for the reasons I have cited. We have already got pronouncements of the judicial committee of the privy council with respect to jurisdiction over land declared to be for the general advantage of Canada. We have the clear statement of the board of transport commissioners, a statement of law on which appeal was available, but upon which no appeal has been taken, that in fact the land has ceased to be part of the railway operation.

With regard to the maxim, once a highway always a highway, applying here, as argued by the hon. member for Parry Sound-Muskoka, I would point out that the chief purpose of that particular maxim is to assert the fact that it does remain in the public domain. There is no question here as to the

ultimate ownership of the land. It remains clearly the property in fee simple of the company, but the real question here is the manner in which it is being used.

The parliament of Canada, under the Railway Act, has conferred on the board of transport commissioners the power to decree the manner in which land shall be used when devoted for the purposes of a railway. When land has been abandoned with the consent of the board of transport commissioners and in accordance with due process of law, then that land has ceased to be within the jurisdiction of the parliament of Canada; and that proposition, as I pointed out to Your Honour at the beginning of this hour, has been amply confirmed by the judicial committee of the privy council, and has been amply confirmed by the body which, under the law of Canada, has chief jurisdiction over questions of law arising in connection with railway matters.

It is not so much a question of whether something should be done about this problem created for a community, when industrial wasteland exists after railroad tracks are torn up. I agree it is not that question, but the question is by whom should it be done? I would submit to the house that this question has already been decided fully by the British North America Act, and interpreted as such by the appropriate courts of the land—that the jurisdiction in this respect where land has been abandoned by approval of the board of transport commissioners, rests entirely with the provincial governments, and through the provincial governments in their creations, the local planning authorities, or in the appropriate case in the provincial departments of municipal affairs.

For that reason I do not feel it would be useful putting the crown to the expense of getting an opinion from the Supreme Court of Canada on a question which is eminently clear. What I do suggest is that the very commendable efforts of my hon. friends from Middlesex West and Renfrew South should be directed to the provincial authorities, and it is for them to take action to impose upon the local planning authority the jurisdiction and power to make orders for railway companies with regard to the proper, convenient and socially acceptable use for lands formerly devoted to railway purposes. Mr. Speaker, may I call it six o'clock?

The Acting Speaker (Mr. Batten): Order. I must advise the house the time for the consideration of private members' business has now expired. Before calling it six o'clock maybe the house would agree to go into committee of supply in preparation for the business that is for consideration at seven o'clock.