

Railway Act

Kaslo and Lardeau. Without the barges, there would have been no connected and continuous railway system to serve these areas. They were operated, as mentioned above, in place of a railway line along the shore because it was considered to be a more efficient method of transporting rail traffic from one town on the lake to another town on the lake.

Mr. Justice Le Dain made reference to CP's emphasis on the distinction between rail and water transport, as reflected in certain provisions of the Railway Act and the Transport Act. However, the issue which still remains is the operation of the rail barge service and, although it involves a form of water transport, the operation of a line of railway. Mr. Justice Le Dain came down with a decision which indicated that the Railway Transport Committee was without jurisdiction to take the action it did. Therefore it is quite proper for the House of Commons to clarify the legislative anomaly which caused the court to come to this conclusion, and prevent an obvious contradiction if an integrated transportation system were allowed to find a loophole to discontinue a link in the transportation service to a region, thus preventing the railway from doing what it could not do under the clear intent of the Railway Act.

● (1732)

I commend the Attorney General of Canada for this action. Since the government has seen fit, on November 18 of last year, to intervene and to seek leave to appeal the Federal Court decision to the Supreme Court—which leave was granted—I fail to see why, even though the Supreme Court is going to rule on this matter, the House of Commons would not be within its right to move forward and assist the court in changing the definition of "railroad". After all, we are the highest court in the land.

I commend the definition contained in this bill to the House of Commons because it seems to be most straightforward with no semantics and thus an acceptable definition as opposed to the one that exists now. It would not be construed by the Supreme Court of Canada, or anyone else I am sure, as interference or, indeed, as counter productive to what the court is about to do. It would give the court in some respects some assistance. More important than that, it would allow the House of Commons to improve a definition which, by its nature, is one of the most important and critical definitions in any statute, that being just what does constitute the proper definition of a railway.

I would like to congratulate the hon. member for presenting this bill and I commend it to the favourable attention of this House.

Mr. Les Benjamin (Regina-Lake Centre): On behalf of my party, Mr. Speaker, I would like to indicate that we support the bill proposed by the hon. member for Kootenay West (Mr. Brisco). In a few moments I would like to attempt to persuade our colleagues on the government side to allow this bill to pass second reading and at least go to committee. I may not get further than that, but if it got through committee and came back here for third reading, then if the government or government members feel that they do not want it to pass, they can

[Mr. MacKay.]

always put up three speakers at 20 minutes per speaker once every four years and the bill will never pass.

The issue of these rail and passenger ferries as between the continental mainland and appendages to Canada which happen to be islands is not new. Since the 1880's Canadian Pacific, the Grand Trunk in the early 1900's, and the Grand Trunk Pacific have made great arguments on how these were essential links in their rail systems. The CPR said decades ago that connecting the mainland to Vancouver Island was an essential part of their rail transportation system. In fact, it was part of their terms of reference, and the reason for their existence was to hook up Canada from coast to coast.

Suddenly, a rail ferry system that connects two parts of their rail lines on the ground across a piece of water is no longer relevant. I am no lawyer, Mr. Speaker, and I get a little tired of all the legal nitpicking that goes on, but if it was an essential part of a rail transportation system in the 1880's, 1910's or 1920's, I do not know how it is less essential now. The rail ferries across the Kootenay Lakes is a small part of the whole problem.

I hope my colleague from Kootenay West and his friends can persuade the Conservative government of British Columbia and the Liberal government of Canada that the British Columbia coastal ferries are an essential part of the trans-Canada highway. There should be no argument about that, but the B.C. government and the Minister of Transport (Mr. Lang) have opted for a user-pay principle on an essential part of the trans-Canada highway system. How they reconcile that I will never know. I hope the hon. member for Kootenay West can persuade people in Victoria and Ottawa on that matter.

Those passenger and rail ferries are an essential part of our road or rail system, since there are, in fact, large bodies of water inland and islands off our coasts on three sides that require water connections to whatever ground connections there are close by. We are attempting here to make some new law, or at least clarify old law or entrench in old law what has been an obvious fact and practice since the 1880's.

On top of that, the Canadian Transport Commission, which I would hardly call a great friend of the Canadian transport user—it has always been a great friend of the transport companies—ruled in favour of the transportation users. The communities and citizens around the Kootenay Lakes, the present member of parliament for Kootenay West, his predecessor, a provincial member of the legislature and the Railway Transport Committee of the Canadian Transport Commission all agree that the demand and need has been very well expressed.

A lower court, after some legal nitpicking on behalf of some CPR counsel, overruled the Canadian Transport Commission, and now the matter is before the Supreme Court because the Department of Justice is appealing it. The Government of Canada is adding its weight to the representations made by the hon. member for Kootenay West, by other people and communities regarding a decision made by the Railway Transport Committee of the Canadian Transport Commission.