

Transportation

people of Canada and has milked it for all it was worth when the cream was good has no right to abandon a line to the detriment of the people in the locality, without making very adequate compensation to the people there for the abandonment of the line.

The hon. member who proposed the bill has taken a step in this direction and, as I said earlier, I think he is to be complimented and highly commended for this step.

Again very kind words.

I wonder whether he has gone far enough. In hearing his well presented and documented speech—

Again very complimentary.

—I wondered whether it would not be advantageous to the people in these areas and more proper, in view of the fact that the railways have used these lines which were very largely granted from the public domain, if the railway when it wished to abandon a line would have to return the right of way to the public domain. I wonder how many applications for railway line abandonment we would have if the railways were told: "That is fine; you can abandon the line if it is in the public interest of the locality, but if you do so any land—"

The hon. member for Rosedale (Mr. Macdonald) also took part in that debate in 1963. He raised an objection to the bill under discussion at that time on the grounds that it was ultra vires the parliament of Canada, that property rights properly come under the jurisdiction of the provinces, and if the parliament of Canada undertook to dispose or direct the disposal of property owned by a corporation such as a railway company, after the line was torn up and the service discontinued, this would be wrong because the property reverts to the original owner and is held as any ordinary property is held. In other words, for the federal government to direct the disposition of such land would be beyond its powers.

This matter was not decided at that time. The point of law still remains unsettled. Arguments were presented in favour of and in opposition to it, but I would like to put on the record again some of the comments of the hon. member for Rosedale, as recorded at page 4042 of *Hansard* for October 25, 1963. Aside from the position of the federal government in the matter he said:

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.

That fits in with the suggestion I have made that for each abandoned line there should be an abandonment planning committee established to plan for the conditions under which abandonment might take place.

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.

● (4:40 p.m.)

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.

He goes on later to say on the same page:

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?

Now that we are considering amendments to the Railway Act in general, I submit that this is a good time to make provisions in the legislation to take care of these abandoned rights of way and those other things which have to be taken into account when a branch line is abandoned.

We have acclaimed the Agricultural Rehabilitation and Development Act which aims at the creation of economic farm units as a good conservation plan. We should apply some of these principles of conservation planning to the rehabilitation of farm lands which are affected by abandoned railway lines. Provision should be made through the Board of Transport Commissioners for suitable disposition of abandoned railway property to prevent its becoming a nuisance, a source of damage or a menace in the communities where abandonment takes place.

Mr. Justice Rand, at page 290 of the reports of the Supreme Court of Canada for 1958, in discussing property rights under the Railway Act describes section 198 of this act as:

An extraordinary power created by parliament which, being its creator, could modify it to whatever extent or in whatever manner may be considered advisable.