

Transport and Communications

Mr. Baldwin: It is in issue. I think probably this is a good time to touch upon it for enlightenment in respect of the future. The other argument made by the President of the Privy Council was that the matter referred to in the second part of the recommendations is sub judice, on the basis that the Canadian Transport Commission has considered the question of railway service in Newfoundland and has made a report which has been filed and which probably is in process of being acted upon. The President of the Privy Council pointed out that this report was an interim report.

This matter was also touched upon by Your Honour. With the greatest respect I say it is the most transparent argument. We have had a lot of transparent arguments made by the hon. gentleman and his colleagues opposite during the course of this session.

I should like to refer to Beauchesne's fourth edition, citation 152, paragraphs (1) and (2). Paragraph (2) reads as follows:

The Board of Railway Commissioners is a court of record and therefore may not be attacked except by way of impeachment.

Now I should like to read paragraph (3) of citation 152 because I think this is germane.

Matters which have been adjudicated upon by the Railway Commissioners—

We may substitute the Canadian Transport Commission.

—and taken in appeal to the Governor-in-Council cannot be considered sub-judice while the appeal is pending, because the Governor-in-Council then acts in an administrative and not a judicial capacity.

The President of the Privy Council last week in making his argument said that this parliament had in past years, and quite truthfully so, set out an appeal procedure for matters dealt with by the Board of Transport Commissioners which now we call the Canadian Transport Commission. But there are two aspects of this appeal procedure. There is appeal to the Supreme Court of Canada in respect of certain aspects and there is an appeal to the Governor in Council.

● (3:20 p.m.)

Surely, neither a committee of this house nor the house itself can be disqualified from dealing with an order made by the Canadian Transport Commission which to our knowledge has not been appealed to the Governor in Council or the Supreme Court of Canada, although this is a possibility which can be held out.

[Mr. Macdonald (Rosedale).]

I ask Your Honour to take judicial notice of the procedure set out. The Governor in Council may at any time at his discretion upon the petition of any person, party or company interested, or on his own motion without any petition or application being made, vary or rescind any order, decision or regulation of the commission. In other words, any order made by the commission is always subject to review by the Governor in Council in an administrative capacity. In an attempt to persuade the Governor in Council, any person, any party or any company may petition the Governor in Council and ask him to vary or rescind an order. Surely the government is not suggesting that a committee of this house is prohibited in any way from doing what other people can do? Yet this is the essence of the argument made by the President of the Privy Council.

I suggest that a careful reading of this appeal clause will show beyond any shadow of doubt that any person, company or party may at any time go to the Governor in Council, despite the form in which an order is made or despite the stage to which it may have progressed. There is no evidence before the committee or before this house that the question is before the Supreme Court of Canada and I am convinced the hon. gentleman would assure me if I were to ask him that the Supreme Court of Canada is not seized with jurisdiction at this time. In these circumstances I strongly submit it is unthinkable that a member or Committee of this house should be deprived of a privilege or right to make recommendations and suggestions to the Governor in Council, which is open to him as an individual or to it, particularly when this house saw fit to instruct the committee by its terms of reference to examine this issue and bring in recommendations. On this ground alone I suggest the argument used by the President of the Privy Council must fail.

We come now to one point on which a question might be raised. Reading what Your Honour had to say on March 27, I noticed that you, too, had it in mind, and I will admit that at first it caused me some concern. It was the suggestion that the wording of the committee report, by the use of the word "recommends" constituted in effect a direction to the government to do a certain thing, in other words to appeal, amend or vary an act of parliament. This was never the intention. I am making my argument reasonably expansive here, Mr. Speaker, because I think this