

*Newfoundland*

alcoholic beverages that the dominion government felt it was entitled to place certain restrictions on their movement between provinces where the provinces had themselves prohibited the use of alcoholic beverages in their own areas. Because the penalties imposed were something in the nature of penal provisions, they came under the broad reference in the British North America Act to peace, order and good government and have been sustained by the privy council on that basis.

I shall not labour the point beyond suggesting again to the Prime Minister that these restrictions dealing with a commodity such as margarine do not bear any direct relationship to the subject of the judgment to which I have referred, and to the material considered in that judgment, and that it is not competent for the dominion government to place such a restriction upon the use of margarine under the broad provisions of peace, order, and good government. If that is so, then such a provision would contravene section 121 of the British North America Act, and difficulties might arise in connection with this provision. It might be suggested that in subsection 2 of section 46 of the agreement there is a loophole which might make this restriction unimportant in any event, but I should like to point out to the Prime Minister that the situation in which we now find ourselves is that this restriction has become effective. Section 46, subsection 2, of the agreement reads:

Unless the parliament of Canada otherwise provides or unless the sale and manufacture in, and the interprovincial movement between, all provinces of Canada other than Newfoundland, of oleomargarine and margarine, is lawful under the laws of Canada, oleomargarine or margarine shall not be sent, shipped, brought, or carried from the province of Newfoundland into any other province of Canada.

Unless the Prime Minister contends that this restraint can be put in legislative form under the broad provision of peace, order and good government, then I would submit that the parliament of Canada cannot otherwise provide in view of the recent judgment of the Supreme Court of Canada in the stated case which was placed before them.

As to the second provision, that the restraint would operate unless "the sale and manufacture in, and the interprovincial movement between all provinces of Canada other than Newfoundland, of oleomargarine" is permitted, that alternative has already been swept aside by virtue of the fact that one province has already taken steps to prevent the use of margarine therein. I refer to the province of Prince Edward Island. Consequently, as to this reference to all provinces, that loophole is not open, and we come back to the point that this restriction is effective.

[Mr. Drew.]

If the dominion government have the right to permit the manufacture of oleomargarine, they also have the right to deny the manufacture of it. That seems an obvious proposition. If they have the right either to permit or to deny the manufacture, and also the right to place a prohibition upon the movement of the product, out of a province, then they must be asserting a right on some other ground than that which was put before the Supreme Court of Canada at the time this argument was being heard. The Supreme Court of Canada has found in its judgment on the stated case that it is not competent for the parliament of Canada to place a restriction on the manufacture and sale of margarine. If that is so, then I do not know how the dominion government is exercising that authority now, by agreement or otherwise, because the agreement becomes part of an act of this legislative body, and ultimately, if approved, of the parliament of Canada. It seems to me that in this matter the government is on the horns of a dilemma. If they are going to assert the right to permit the manufacture and restrain the movement, then they are asserting a right to deal with this subject. If they have the right to deal with this subject, then it is no use saying to the provinces that they no longer have the right to deal with it. They should exercise that right if in fact they feel that the law which was in force should have been continued in force. If they now assert that they have the right to deal with this under the provision of peace, order and good government, then that right should have been asserted at the time this argument was being dealt with by the Supreme Court of Canada.

I repeat that the question under consideration is not the desirability or otherwise of permitting the manufacture and sale of oleomargarine. It is a question of whether or not any step is to be taken which challenges the provision, in section 121 of our constitution, that all articles of the growth, produce, or manufacture of any one of the provinces shall, from and after the union, be admitted free into each of the other provinces. In a particular case some variation or evasion of the constitution may seem desirable; but where any attempt is made to disregard the provisions of the constitution, then I think we should remember that, no matter how desirable it may seem to the government in a particular case, they are establishing a precedent for similar action in regard to any other commodity or product at some other time.

As I said in my earlier remarks, this is not a case where we can move to delete a passage; it is not a case where we can move to amend. It is an agreement which we must