

Newfoundland

are built in St. John's, just as it is the duty of the corporation to see that houses are built in other parts of Canada. What arrangements will be made I cannot say, but I feel sure that some plan will be worked out so that houses can be built in Newfoundland as they are in other parts of Canada.

Mr. Nicholson: Can the minister indicate what share of the \$20 million which he mentioned this afternoon will be allocated to this item?

Mr. Abbott: The operations of Central Mortgage and Housing Corporation, so far as the construction of housing is concerned, are made possible by loans made to the corporation. I cannot say at the moment whether any amount has been specially earmarked for Newfoundland in their requests this year which are now under consideration.

Section agreed to.

Sections 41 to 45 inclusive agreed to.

On section 46—*Oleomargarine*.

Mr. Drew: Mr. Chairman, when we were discussing the motion I suggested to the Prime Minister that consideration should be given to the possible effect of the provisions of section 46. In his reply the Prime Minister stated that the difficulty I suggested in regard to this clause was perhaps not quite consistent with the situation and gave, as evidence of the fact that there could be barriers against interprovincial trade, the restrictions that are placed upon the movement between provinces of liquor under certain conditions.

I repeat my suggestion in regard to this section in the very real belief that there is inherent in this section a dangerous constitutional difficulty. What I have to say has nothing whatever to do with the desirability or otherwise of permitting the manufacture and sale of margarine; it has to do with the constitutional question as to whether or not it is competent under the British North America Act for the dominion government to impose any restriction, by agreement or otherwise, on international trade. My reference to that difficulty relates to section 121 of the British North America Act which reads:

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.

That provision in the British North America Act was regarded as one of the important provisions which would bring to an end any restraint upon the movement between prov-

inces of the ordinary products or goods which were traded in in different parts of the country.

The Prime Minister in referring to the restriction upon the movement of liquor is referring to the provision in the Canada Temperance Act, but I would point out that there is a very definite distinction between restraint on the movement of liquor between provinces and on the movement of ordinary commodities and products. That distinction was clearly drawn in a case having to do with the Natural Products Marketing Act of 1934 and the amending act of 1935. At page 420 of the Supreme Court Reports, 1936, in the judgment of the then Chief Justice of Canada a clear distinction is drawn between the restraint placed upon the movement of liquor between provinces and of other, ordinary, articles of trade.

The chief justice pointed out that the Canada Temperance Act imposed those restrictions in order that assistance might be given to the penal provisions of the provinces which had placed some prohibition on the use of alcoholic beverages within their own areas. The basis of that restraint is not the basis which could be used for the purpose of passing legislation to restrain other kinds of trade. I think the words of the judgment clearly indicate the difference and show that the suggestion put forward by the minister is not a correct parallel. I quote from the judgment at page 420 as follows:

The application of the principle implicit in this passage must always be a delicate and difficult task. That is shown by reference to the history of the Canada Temperance Act. The prohibitory clauses of the legislation undoubtedly do affect civil rights directly but, in *Russell v. The Queen* (1), the board took the view that the real subject matter of the legislation was not property and civil rights, but matter connected with public order and having a close relation to the criminal law. It was likened to "laws which place restrictions on the sale or custody of poisonous drugs, or of dangerously explosive substances . . . on the ground that the free sale or use of them is dangerous to public safety, and making it a criminal offence . . . to violate these restrictions . . ." It was described as "legislation . . . relating to public order and safety," and belonging to the class of "Laws . . . for the promotion of public order, safety, or morals, and which subject those who contravene them to criminal procedure and punishment . . ."

In the words of the judgment in that case, a distinction is drawn between the subject matter of the restrictive provisions in the Canada Temperance Act and such a substance as margarine. While many people object most strongly to the manufacture and sale of margarine, I do not think anyone will suggest that it comes within such a definition as that put forward by the chief justice as being an explosive or dangerous article. It was because of those inherent qualities in