

we have had an opportunity to go into this Bill and discuss it and judge it as we ought to judge such an important measure.

The honourable member from Pictou (Hon. Mr. Tanner), ever since he came into this House, seems to have been haunted with the fear that some day he might give an independent judgment on something and forthwith be abolished. If this House is to degenerate into a rubber stamp, for fear of being abolished, the sooner it is wiped off the face of God's earth, as being of less use than any dunghill, the better it will be for the country. I have functions to discharge here, and I am going to discharge them, despite any threats from outside this House, no matter from what source they come. It is perfectly useless to tell me that this House will be abolished if this Bill is postponed until next session.

The honourable gentleman from Alma (Hon. Mr. Foster) observed that the whole temperance sentiment of this country was behind the Bill, as if that settled the question. Even if that is so, there are other people in the country, and they have a right to be heard. In Ontario, although prohibition carried, there was a very heavy vote against it. As a matter of fact, the opinions of the temperance people themselves are not unanimous in regard to this Bill.

I have documentary evidence of that lack of unanimity, and it is for the purpose of reading that evidence more than for anything else that I have risen. This letter, which is from the Rev. Benjamin Spence, also throws light upon Bill 27, which is coming up. After I read it, I think that honourable gentlemen who have spoken against the postponement of the Bill will have very good grounds for changing their minds and agreeing that it should stand until next session. Mr. Spence's letter is written to Mr. Porter, a member of the House of Commons, and says:

Toronto, November 8, 1919.

E. G. Porter, M.P.,
Parliament Buildings,
Ottawa, Ont.

Dear Sir:

Permit me to respectfully call your attention to some features of the proposed temperance legislation as embodied in Bill 26 now before Parliament, which are of very grave importance to us in the province of Ontario and indeed, in every province where a provincial prohibitory law is in operation, also to the tremendous importance and significance of the present Dominion situation.

Were a license condition existent in the provinces and were the last part of the second paragraph of subsection 4 of section 154 elimin-

Hon. Mr. ROSS.

ated, then the Bill would be commendable as substituting a form of prohibition for license. We face the fact however that in eight of the nine provinces of Canada laws are now in force prohibiting the liquor traffic practically to the full extent of provincial power. Any Dominion legislation therefore, must be considered in the light of these provincial laws and with a clear understanding of the exact effect of such legislation upon these laws and their administration.

It is generally accepted that, where there is concurrent jurisdiction of the Dominion and province and over-lapping legislation, as in regard to the prohibition of the sale of liquor, Dominion legislation takes precedence and supersedes the provincial law. A case in point is the present Canada Temperance Act. Where that Act is now in force in Ontario, the Ontario Temperance Act is not operative.

The Dominion Parliament has exclusive jurisdiction regarding the manufacture, importation and inter-Provincial shipment of liquor. So far, therefore, as Dominion legislation deals wholly with manufacture and importation it does not infringe upon Provincial law. Regarding the sale of liquor there is admittedly concurrent jurisdiction of the Dominion and province. The moment, however, that the Dominion deals with the sale of liquor there is conflict.

Paragraph (b) of sub-section 2 of section 154 of Bill 26 does deal with the sale of liquor. The constitutional question is at once raised as to how this overlaps and therefore supersedes the Ontario Temperance Act. A comparison of this section with section 40 of the Ontario Temperance Act shows a marked similarity in purport and its enactment would at once open the way to serious complications, inasmuch as there does not seem to be any other or further safeguarding clause in this Bill.

With Bill 26 in force, could a person be prosecuted under the Ontario Temperance Act for the illicit sale of liquor? It would appear not. And if this section of the Ontario Temperance Act is superseded or set aside, what about other sections of the Ontario Temperance Act that are closely related to section 40? Many sections that now are important and helpful because they are complementary to section 40 would become nugatory.

Then other questions arise in connection with the exemptions provided for by sub-section 4 of section 154. This subsection distinctly allows the importation, manufacture, sending, taking, delivering, carriage, transportation, sale or agreeing to sell liquor for sacramental, medicinal, manufacturing or commercial purposes. Compare this with subsection 3 of section 41 of the Ontario Temperance Act. They cover the same ground.

The Ontario Temperance Act further contains exceedingly stringent and complete provisions by which liquor may be obtained for the purposes provided in sub-section 3 of section 41. If the main section is set aside, are not the subsidiary sections also practically nullified? If so, where are we at in regard to the sale of liquor for permitted purposes as provided for under the Ontario Temperance Act, for Bill 26 does not in any detail make provisions as to quantity, persons, places, etc.?

Does this conflict of jurisdiction extend further and include section 155, which makes the provisions, of part II of the Canada Temperance Act regarding offences and prosecutions applicable to proceedings under part III?