

ships point out in their recent judgment,<sup>1</sup> "at liberty to exercise its legislative authority, although in so doing it should interfere with the jurisdiction of the provinces," for the enumerated classes of subjects assigned to the Dominion Parliament by section 91 are expressly so assigned, "notwithstanding anything in this Act"; and, moreover, the effect of the concluding clause in that section is, their lordships hold, to derogate from the legislative authority given to the provincial legislatures, "to the extent of enabling the Parliament of Canada to deal with matters local or private, in those cases where such legislation is necessarily incidental to the exercise of the powers conferred upon it by the enumerative heads of clause 91."

It would, however, seem impossible to doubt that, apart from No. 2 of section 91, the Dominion Parliament could regulate the liquor traffic under its general residuary powers, for the peace, order and good government of Canada, but its jurisdiction here would be restricted by inability to encroach upon the provincial powers of regulation above referred to, for by the express opening words of section 91, the general legislative power of Parliament only extends to matters "not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces." And notwithstanding some dicta to the contrary,<sup>2</sup> it seems equally clear that the Dominion Parliament in regulating the trade so far as its powers extend, might do so by means of licenses. Indeed, as Hagarty, C.J.O., observes in *In re Local Option Act*,<sup>3</sup> The Canada Temperance Act, 1878, which was held *intra vires* in *Russell v. The Queen*, itself contemplated the issuing of licenses to brewers and distillers and manufacturers of native wines. The fact of an Act imposing the necessity of taking out a license before dealing with intoxicating liquors, is not the crucial point to be considered in determining whether such Act is or is

<sup>1</sup> 11 T.L.R. at p. 391.

<sup>2</sup> Per Fournier, J. in *Molson v. Lambe*, 15 S.C.R. at p. 265, 4 Cart. at p. 343. See also per Ritchie, C.J., S.C., 15 S.C.R., at p. 259, 4 Cart. at p. 339.

<sup>3</sup> 18 A.R., at p. 580, (1891).