

CORRESPONDENCE.

again, would it be *bona fide* within the powers given to the Legislatures to place the license fees so high as to be practically prohibitory, for that again would be for quite a different object than the raising of a revenue. It would seem thus far to be the prerogative of Parliament alone to pass all laws intended to prohibit wholly or in part the trade in intoxicating liquors, or to discourage it, or to diminish the evils arising from it.

Some writers in the press, since the decision in the McCarthy Act case has been cabled from England, have hastily rushed to the conclusion that if the McCarthy Act is *ultra vires* so must the Canada Temperance Act, and they quote the argument of Chief Justice Ritchie that the power to prohibit must of necessity go hand-in-hand with the power to permit. One writer asks: "Of what use is the privilege of issuing licenses for the purpose of raising a revenue to the Provinces while the Dominion Parliament has the power to say that only so many licenses, or even none whatever, shall be issued?" But I see no difficulty. It is not exact language to say that the Provinces have the power to permit the liquor traffic; they really only have the power to impose a tax on every person who carries on that traffic, and reading the two provisions together they amount to no more than this: Wherever the Dominion Parliament allows the trade in intoxicating liquors to be carried on, then the Legislatures may compel every person carrying on such traffic to pay a tax for local revenue purposes.

Carrying out the same reasoning it would seem that all provisions regulating the hours of business, the closing on Sunday, and every particular intended to instigate or prevent the evils arising from the traffic, should be within the jurisdiction of the Dominion only. I am aware that the Privy Council has decided otherwise in the Hodge case on the ground that such regulations come fairly within the subject of municipal institution, and matters of a merely local or private nature in the Province; but it may be permitted to me, following the example of the great judge at Calgary who has criticized so fully the very highest courts, to give reasons for thinking that the Privy Council did not correctly decide the Hodge case in that aspect of it.

For if the regulations in question, considering their object and purpose, come fairly within the regulation of trade, and not expressly within any subject assigned exclusively to the Legislatures of the Provinces, then they can only be validly passed, or authorized by Parliament. Do they, of necessity, come within the subject of "municipal institutions in the Province?" I think not. There

might be no municipal institutions in the Province at all. These institutions are organized to assume and exercise a portion of the functions of government in the particular localities, and a municipal corporation or government cannot be authorized to do what the legislative body creating it could not do itself.

Then do the regulations there in question come within the "matters of a merely local or private nature in the Province," referred to in sub-section 16? Still less, in my opinion, considering always the object and purpose in view, and especially considering the final part of section 91, which provides that "any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration in the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." If, then, the regulations in question come fairly within the subject of the regulation of trade, or are laws for the peace, order and good government of Canada in relation to matters not (expressly) assigned exclusively to the Legislatures, they do not come within sub-section 16. I have, I think, given good reasons for thinking they do not necessarily come within sub-section 8—"municipal institutions"—and, if not, they are not within the authority of the Legislatures at all.

It is to be regretted that the Judicial Committee of the Privy Council so early laid down for itself the rule that it would not go beyond the particular facts in each case coming before it, but would confine its decisions to the particular points arising in each case. On this account several cases have been finally decided without taking a comprehensive view of, and carefully examining the scope of the whole Act. Consequently there have been apparently conflicting decisions upon it, and we are still left in great uncertainty as to the proper limits of Federal and Provincial jurisdictions as to many subjects, and especially as regards the subject of this letter.

Winnipeg.

GEORGE PATTERSON.

THE BAR DINNER.

To the Editor of the LAW JOURNAL:

SIR,—I disclaim at the outset an intention to comment on your notes on the dinner given under the auspices of the County of York Bar Association and the Osgoode Legal and Literary Society. I simply enter a protest against the action taken in this matter by the Osgoode Legal and Literary Society at its meeting on the 20th inst.