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CORRESPONDENCE.

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ULTRA VIRES.—III.

LICENSES AND PROHIBITION.

To the Editor of the LAW JOURNAL:

Having now obtained the latest decision of the Privy Council that the McCarthy Act, as it has been called, is unconstitutional, it may be useful to discuss briefly the net result of the various decisions of the Court of last resort on questions arising out of the provisions of the B. N. A. Act respecting the Liquor Traffic and Licenses. I will first set out the wording of the B. N. A. Act on these points respectively:—

"Sec. 91: Parliament may make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to

"2. The regulation of trade and commerce.

"3. The raising of money by any mode or system of taxation."

Then in each Province, by sec. 92:

"The Legislature may exclusively make laws in relation to

"2. Direct taxation within the Province, in order to the raising of a revenue for Provincial purposes.

"8. Municipal institutions in the Province.

"9. Shop, saloon, tavern, auctioneer and other licenses, in order to the raising of a revenue for Provincial, local or municipal purposes.

"13. Property and civil rights in the Province.

"15. The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

"16. Generally all matters of a merely local or private nature in the Province."

I.—THE CANADA TEMPERANCE ACT OF 1878.

The object of this Act being evidently to diminish the evils caused by intoxicating drinks, it is clearly a law for the peace, order and good government of Canada, in relation to a matter not assigned exclu-

sively to the Local Legislatures. It is also an Act which affects the trade in intoxicating liquors wherever enforced, and so comes within the subject "regulation of trade." It is difficult, therefore, to understand how it could have been gravely contended that the Act was unconstitutional.

II.—THE PROVINCIAL LICENSE ACT.

When the Imperial Parliament assigned "licenses in order to the raising of a revenue" to the Local Legislatures, they created a sub-class out of the more general subject of "the regulation of trade" or "the raising of money by any mode or system of taxation," which were given to Parliament; therefore, according to the canons laid down in the first letter of this series, Parliament cannot in any manner legislate on this subject.

There are several objects which a license law may be supposed to have in view, as (a) in order to the raising of a revenue for Provincial, local or municipal purposes; (b) by limiting the number allowed, to diminish the amount of drinking, and so to lessen the evils arising from the excessive use of intoxicating liquors; (c) by making regulations to be observed by the license holders to secure, as far as possible, orderly behaviour in taverns and saloons, for the furtherance of peace, order and good government.

Apart from decided cases one would suppose that the Local Legislatures could only legislate upon licenses to raise revenue (a); the objects, (b) and (c) appearing plainly to come within the duties and powers of the Federal Parliament. If this be so, then the Legislatures are really confined to the taxation of all persons engaged in any of the businesses referred to, and such taxation must be *bona fide* for revenue merely, and must not be imposed with a view of prohibiting or diminishing the volume of the liquor traffic. Nor can it be coupled with any measure to regulate the traffic, or to provide for peace, order and good government. Any measure to secure these objects ought to come from Parliament.

The power to impose a tax of this kind may carry with it the power to punish any person who attempts to carry on any of these callings without paying the tax required (ss. 15 of s. 92). But it does not necessarily carry with it the power to limit the number of licenses to be issued in any place. That seems to me to be a restriction of trade not *bona fide* required "in order to the raising of a revenue." So that (apart from judicial decisions) it appears to me that the Local Legislatures have no right to limit the number of licenses; and that they must allow all who pay the tax demanded to exercise the calling. Nor,