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### THE LICENSE QUESTION—THE TEST CASE.

Written constitutions would be very admirable things if they rendered it impossible for anybody to infringe the rights they ostensibly guarantee. Unfortunately, experience teaches us that they are as subject to violation as unwritten constitutions, and the very attempt to commit constitutional rules to writing, from abstract considerations of what it is desirable to establish, gives rise for the most part to a new peril. The chief dangers to which all constitutions are exposed, however, arise from the calculated attacks of one or other power in the state with a view to undermine all other powers, and of this we have numerous examples, both on the part of the Dominion and of the local governments. On the one hand we have the local authority claiming equality with that of the Dominion, and denying its supremacy, and one local official has even had the hardihood loudly to proclaim the proposition that all powers not specially conferred on the Dominion by the B. N. A. Act belong to the Provinces. On the other hand the Dominion Parliament hardly hesitates to legislate on any subject, and by enlarging the application of laws has, not altogether unsuccessfully, robbed the local legislatures of powers evidently intended to be conferred on them.

We are not disposed to whine over these contests, which seem to be the accompaniment of every institution no matter how dexterously framed, but the license question is now being put into a shape which presents a new and very formidable menace to provincial powers. We learn from a special to the *Montreal Gazette*, dated Ottawa, 15th June, that "The reference to the Supreme Court of the Dominion Liquor License Act is made under authority of the 26th section of 47 Vict., chap. 32, passed last session, which provides that, whereas doubts have been raised as to the constitutionality of the

the license act, it may be referred to the Supreme Court, before which the provinces may be represented by counsel, the decision of the Supreme Court to be final, unless leave be granted to appeal to the Privy Council." The finality thus to be established is intended to decide the following important questions, which, we learn from the same authority, form part of the case:

"1. Question—Are the following Acts in whole or in part within the legislative authority of the Parliament of Canada, namely: 1. The Liquor License Act, 1883; 2. An Act to amend the Liquor License Act, 1883?"

"2. Question—If the court is of opinion that a part or parts only of the said Acts, are within the legislative authority of the parliament of Canada, what part or parts of said Acts are so within such legislative authority?"

One can scarcely help asking by what authority the Dominion Parliament passed such an Act? A very able supporter of the government, who does not generally speak at random, addressing his constituents, recently, put forward what, we may presume, is the best justification of the Act. He said: "This, therefore, is not an attack on the rights of anybody—it is simply an attempt to procure a complete legal decision from the highest courts, of the powers of the Dominion and provincial authorities on a subject upon which grave doubts existed, and relative to which it was most important to have these doubts set at rest."

It is always important to set doubts at rest; but, however desirable this may be, the object will scarcely be attained by appealing to an imaginary authority. It is nothing to say that "the provincial authorities have concurred." Their concurrence or disapprobation can neither add to nor diminish the powers of parliament. It is a considerable tax on credulity to require us to believe that this is a *bona fide* attempt to have a complete decision of a vexed question. The wicked promptings of the mind lead one rather to suppose that it is an attempt to snatch an advantage. Else, why should the suit not have been allowed to run a regular course? The decisions of higher courts are only better than those of inferior courts in