cluded in the Excise duties." (Wharton Law. Lex. V. Excise.) M'Culloch's Dict. of Commerce, V. Excise, gives its definition in very much the same terms—"As a part of excise, the rates of duties on licenses are included as upon auctioneers, brewers, &c., &c." (M'Culloch on the Principles and Practical Influence of Taxation and the Funding System, p. 242.) And at p. 321, "The licensing of lotteries is also a mode of raising a revenue by indirect taxation." In fact, all authors agree in placing excise duties in the category of indirect taxes.

Another author, in the United States, says: "Taxes are usually divided into direct and indirect. The former includes assessments made upon the real and personal estate of the tax-payer, upon his income, or upon his head, the latter comprises duties upon imports and exports, excises, licenses, stamp duties, and the like." (Ripley's Amer. Cyclopedia, V. Taxes.) It would seem that even in the British North America Act, the legislator did not consider that licenses were a direct tax. Had it been the intention to consider licenses as a direct tax, it would not have been necessary, after having given to the Local Legislature, by sub-sec. 2, the power to impose direct taxes, repeated in the 9th sub-sec. that the right to impose licenses on certain subjects was also within the legislative authority of the Provincial Legislatures. Does not the Act in so many words declare that the Local Legislature will have power to impose direct taxation, but as to indirect taxation, it is limited to imposing "shops, saloons, tavern, auctioneer, and other licenses."

I may add that in the case of *Regina* v. *Taylor*, 36 U. C. Q. B. 217, all the Judges composing the Court of Queen's Bench, as well as those of the Court of Error and Appeal, to wit: C. J. Draper and Richards, and Justices Morrison and Wilson, Strong, Burton, and Patterson, were of opinion that a license to be paid for by a brewer, or by a person to sell by wholesale, was an indirect tax. In the present case the character of the tax seems to me still more clearly established to be an indirect tax. For all these reasons, I am of opinion that the tax imposed on the Insurance Companies is not a direct tax, and, therefore, that under subsection 2 of the 92nd section of the British North America Act the Local Legislature had no power to impose it. On this point there is no difference of opinion amongst us.

Moreover, I do not think I am mistaken if I state that it was not on the 2nd sub-section that the Legislature relied in order to pass this Statute in reference to Insurance Companies, or that they supposed that by this Act they were for the first time imposing a direct tax in the Province of Quebec. The 9th paragraph of the 92nd section is alone relied on, I think, as giving the Legislature authority to pass this Statute. This is the sub-section which gives to the Local Legislatures control over "shop, saloon, tavern, auctioneer, and other licenses, in order to the raising of a revenue for provincial, local, or municipal purposes." And it is principally in the words "and other licenses" that the power to impose this tax on Insurance Companies is said to exist.

Let us see if by the words "and other licenses" the legislative provincial authority is thereby so very much enlarged.

It is clear on the simple reading of the Quebec Act, that the formality of taking out the license was thought of in order that the intended legislation would come within the authority of this 9th paragraph of the 92nd section of the Imperial statute. Nevertheless it is a "stamp duty" that has, in reality, been created. For, although there is a penalty of $50 imposed in case of policies, or renewal receipts, issued without the required stamps affixed, yet we do not find any penalty imposed if an Insurance Company does not take out the license.

If the defendant Company in the case, The Queen's Insurance Co., had affixed stamps on its insurance policies, it would not have been subjected by the statute to any penalty for having refused or neglected to take out a license from the revenue officer.

The Act, it is true, enacts that each company shall take out a license, but this license is not for the purpose of the raising of a revenue for provincial, local, or municipal purposes." The dollar which is charged, or the cost of, or price of the license, is a fee which is paid personally to the revenue officer. Now, by the express terms of the Imperial Statute, it can only be for the raising of a revenue, for provincial, local, or municipal purposes, that a license may be imposed.

If, as in the present case, the license does not raise any money for any of these purposes, the Legislature of the Province has no power to impose it, and the statute imposing it must be declared *ultra vires*.

An Insurance Company need not take out any license, and thereby will not be subject to any penalty under this Statute, provided the policies and renewal receipts have stamps affixed—the object of the legislation has been attained. How can it be said that in such a case the license has produced a revenue when it is not even in existence?

I say, therefore, that by the express terms of the Imperial statute a license can be imposed only in order to raise a revenue. Here, on the face of the statute under consideration, the license which the companies are to take out cannot and could not pro-