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Current Topics.

Constitutional Perplexities.

It is casting no reflection upon the judges of the Supreme Court to say that their decision in the appeal case touching the power of the Provinces to prohibit the retail sale of liquors cannot settle the question. It is not the fault of the gentlemen composing the court that their decision was affirmed by a majority of one, or that it was deprived of whatever weight might have attached to it by the fact that the opposite conclusion had been reached by the same court a few hours before. This latter surprising occurrence is readily explained by the accident that in the meantime one of the distinguished jurists composing the court had found it necessary to retire, and that another, who had been absent when the decision was pronounced in the first case, had taken his place. Every judge, no doubt, did his duty by giving his honest opinion on the questions submitted. One does, indeed, wonder a little at the remark of Judge Sedgwick, in announcing the decision in the second case, assuming that he is correctly reported, to the effect that had he known in time the answering of the court in the case of Huson *vs.* Norwich, he might, out of respect for the opinion of the court, have come to a different conclusion in the other. It would, perhaps, be rather a nice question whether he would have been justifiable, or have done his duty, had he set aside his own opinion, conscientiously reached, in order to fall in with that of his brethren, or to save the consistency of the court. And yet this is but what the ordinary juryman probably does under compulsion, in hundreds of cases every year. The solemn oath which the court compells him to take surely means that he is to be guided in his conclusions simply and solely by the evidence, as it appeals to his own judgment, while he and all his fellow-jurors are punished by being locked for the night if they do not so modify or set aside their individual judgments as to give a unanimous verdict.

Some Questions Suggested.

Where, then, is the fault? Is it in the imperfect wording of the B. N. A. Act? Or is it in that frailty of the human intellect which renders it quite unable so to frame any law or constitution that it shall be free from ambiguities? Or is the defect in the language, which is the imperfect material in which the law, however clear in the minds of its framers, has to be embodied, in order to its transmission to others? Or is it in that other weakness of the moral faculties rather than of the intellect, which makes it impossible for the most clear-sighted and conscientious jurist to approach such a question with a mind perfectly free from predilections of one kind or another, unconsciously beclouding the intellect or biasing the judgment? A much more practical question is, what is to be done? The ready reply, under existing circumstances, is, of course, that the question must be sent on to the Judicial Committee of the Imperial Privy Council, the highest court in the British Empire, and perhaps the most impartial tribunal in existence. Here, again, troublesome questions crowd upon the mind. Suppose that the members of this court should pronounce a judgment directly contradicting some previous judgment. Or, which is, perhaps, more to the point, suppose that we had—as many good Canadians think ought to be the case for the sake of our own dignity as a self-governing people, who delight to call our federation of Provinces a "nation," and to talk of our "nationality," —no such right of appeal to an Imperial Court, what could we do in such a case?

A Referendum.

Do these difficulties point to the desirability of having some great council of the people to whom such questions—and they are sure to arise from time to time under any constitution —might be referred for authoritative rather than legal decision? Even in that case—admitting that the people and they alone have the right, in the last resort, to say, not what the framers of the Constitution meant, but what the Canadians of to-day desire—it is quite possible that the answer in a given case might still be given by a bare majority. But we might, of sheer necessity, resolve to submit to majority rule as determined by the whole people, though unwilling to submit to the bare majority of a Canadian or British Court. Yet it is evident that the question in this case, as in many others, involves the danger of blocking the whole machinery of government, throwing everything into confusion, and, perhaps, precipitating civil war or the upbreak of Confederation, by obscuring the necessary line of demarcation between Federal and Provincial jurisdiction: for the people as a whole could not be expected to see to what difficulties a certain decision might lead.

The Licensing Power.

Still other curious and perplexing questions suggest themselves as we proceed. According to the latest decision it follows, as we understand the matter, that while it is the prerogative of the Provincial authorities to grant licenses for the retail sale of liquors, they cannot prohibit that sale; in other words, they cannot continue, as they have hitherto been doing in some localities, to refuse to grant licenses and still punish for selling without license. Are they, then, compelled to grant licenses, or face the alternative, that their neglect or refusal to do so will leave them powerless to prevent the free sale of intoxicants? If, in order to retain their control of the traffic, they must not withhold all licenses, how many must they grant in a given locality in order to