Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of Townsend v. *Cox; and of Townsend* v. *Cox, from the Supreme Court of Nova Scotia; delivered the* 31*st July* 1907.

Present at the Hearing:

LORD ROBERTSON.
LORD COLLINS.
SIR ARTHUR WILSON.
SIR HENRI ELZÉAR TASCHEREAU.
SIR ALFRED WILLS.

[*Delivered by Lord Collins.*]

These cases come before this Board under the following circumstances:—

The Appellant is an hotel-keeper at Kentville, Nova Scotia, where the Canada Temperance Act, 1888, 51 Vict., cap. 34, was at all material times in force.

On the 23rd September 1905, in consequence of an information laid before two Justices by the Respondent under that Act, a search warrant was issued to search the said hotel and premises for intoxicating liquor suspected to be kept for sale thereon. On the 25th September the search warrant was duly executed and large quantities of intoxicating liquor were found thereon, and brought before the Justices to be dealt with according to law. On the same day the Respondent laid an information before two Justices, charging the Appellant with unlawfully keeping for sale on the 25th September, at Kentville aforesaid, intoxicating liquor contrary to the provisions of the Canada Temperance Act, and issued a

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summons, calling on the Appellant to appear on the 26th September to answer such last-mentioned information. On the 26th September the Appellant was tried, and convicted of having unlawfully kept for sale intoxicating liquor on the 25th September in his said hotel and premises, and was fined accordingly, and on the same day the said two Justices, having duly convicted the Appellant as aforesaid, declared the said liquor and the vessels in which the same was kept to be forfeited to His Majesty, and ordered the destruction thereof. The Appellant applied to the Supreme Court of Nova Scotia for a writ of certiorari to remove into the said Court the record of search warrant of the 23rd September, and also for a like writ to remove into the same Court the record of order for destruction of liquor of the 26th September aforesaid. The Supreme Court dismissed each application, Weatherbe C.J. dissenting. Subsequently leave was obtained from the Supreme Court to appeal to His Majesty in Council against each of the said orders. The Respondent thereupon petitioned His Majesty in Council that the orders admitting the Appeals might be set aside. On the hearing of these petitions their Lordships directed them to stand over till the hearing of the Appeals, with an intimation that, if at the hearing there should appear to be substantial doubt as to whether the Appeals were or were not properly brought without special leave, and if their Lordships should then be of opinion that it was a case for granting special leave, they would be prepared to order accordingly.

On the 10th of July the Appeals came on before their Lordships, who decided to hear the cases on the footing that the Appellant had lodged petitions for special leave to appeal. Accordingly the facts and arguments were fully discussed before their Lordships. In the judgment of this Board

delivered by Lord Watson in *La Cité de Montréal* v. *Les Ecclésiastiques du Séminaire de St. Sulpice de Montréal* (14 App. Cas. 660, at p. 662), there is the following passage :—

> " A case may be of a substantial character, may involve matter of great public interest, and may raise an important question of law, and yet the judgment from which leave to appeal is sought may appear to be plainly right, or at least to be unattended with sufficient doubt to justify their Lordships in advising Her Majesty to grant leave to appeal."

Without venturing to predicate of these Appeals any of the propositions in the earlier part of the sentence, their Lordships are clearly of opinion that the last part of the sentence is directly applicable to them. The chief ground of appeal to the Supreme Court was that with respect to the search warrant certain cases had decided that such a warrant could only issue as ancillary to a prosecution already commenced. It was undoubtedly true that certain cases had so decided, but in the following year the Legislature intervened and amended the Act under which the search warrants in those cases had been issued by striking out the words on which the courts had founded their opinion that the commencement of a prosecution was a condition precedent to the issue of a search warrant, and it is under the amended Act that the proceedings now in question took place. Their Lordships cannot doubt that the Legislature by this simple and artistic amendment intended to make it impossible to ground a similar contention on the amended sections. Without, therefore, inquiring further into the reasons which have been urged against the granting of special leave in these cases, their Lordships are content to rest their decision upon the authority above cited.

Their Lordships are therefore of opinion that these are not cases in which they would have

been disposed to advise His Majesty to grant special leave to appeal, and they will accordingly humbly advise His Majesty to dismiss the Appeals. The Appellant will pay the costs of the Appeals, including the costs of the Respondent's above-mentioned interlocutory Petitions.