The defence therefore fails except as to the minor and comparatively immaterial point mentioned above. No doubt, if defendant had confined his claim to that one matter, plaintiffs would not have taken the trouble to contest it. Therefore there should be no allowance made therefor in considering the question of costs.

Plaintiffs will have judgment as indicated above, with $25 damages and an injunction and full costs.

MACLAREN, J.A. AUGUST 27TH, 1906.

C.A.—CHAMBERS.

RE SINCLAIR AND TOWN OF OWEN SOUND.

Appeal to Court of Appeal—Leave to Appeal per Saltum—Order Quashing Municipal By-law—Judicature Act, sec. 76a—Grounds for Granting Leave.

Motion by the corporation of the town of Owen Sound for leave to appeal per saltum to the Court of Appeal under sec. 76a of the Judicature Act from the order of MABEE, J., ante 239, quashing a local option by-law of that town.

D. C. Ross, for the corporation.

J. Haverson, K.C., for Sinclair.

MACLAREN, J.A.:—An appeal lies to the Supreme Court in such a case from a judgment of this Court under sec. 24 of the Supreme Court Act. Mr. Haverson argues that sec. 76a of the Judicature Act applies only to actions, and not to judgments in proceedings like this, which are not begun by writ. I can see no ground for so restricting the section, which in terms applies to any judgment, order, or decision of a Judge in Court, at the trial or otherwise, from which an appeal lies from this Court to the Supreme Court.

The only question remaining is whether this is a proper case to grant such leave. There are several important debatable questions of law involved, and I am of opinion that this case fairly comes within the principles laid down in Canada Carriage Co. v. Lea, 5 O. W. R. 86, and Playfair v. Turner, 7 O. W. R. 744. The motion is accordingly granted.