

As we pointed out in the recent case of *Rex v. Drummond*, 10 O. L. R. 546, 6 O. W. R. 211, this clause confers upon the Court more extensive powers than those conferred by the New South Wales Act which was considered by the Judicial Committee in *Makin v. Attorney-General*, [1894] A. C. 57. See also *Regina v. Woods*, 5 B. C. R. 585, and *Manley v. Polache*, 11 R. 566 (P. C.)

Though these powers should be very cautiously exercised, and only in cases where it is plain, almost to a demonstration, that no substantial wrong or miscarriage has been caused by the error complained of—and I say this because the Court in applying the cause is, to some extent, assuming the functions of the jury—yet the present case seems to be one in which the Court may properly act upon it and uphold the conviction. The prisoner had what Strong, J., in *Regina v. Laliberté*, *supra*, calls the obvious practical advantage which resulted from the refusal of the prosecutrix and Brennan to answer the question, the irresistible inference, in the circumstances, being that connection had taken place between them. If the latter had denied it, it does not appear that there was any evidence available for the purpose of contradicting him other than that of Roy, the hotel clerk, which was given, and from which the inference I have spoken of might have been drawn, while the other facts implicating the prisoner to which Brennan testified were corroborated by independent testimony.

I am therefore of opinion that we should hold that no substantial wrong or miscarriage was occasioned by permitting Brennan to refuse to answer the question, and that the conviction should be affirmed.

The question reserved should be answered by saying that the ruling of the trial Judge in regard to the question put to the prosecutrix was right; that in regard to the question put to the witness Brennan the ruling of the Judge was wrong. But the Court, being of opinion that no substantial wrong or miscarriage had been occasioned by such last mentioned ruling, doth not think fit to reverse the conviction of the prisoner or to grant a new trial.