

Province of Nova Scotia.

SUPREME COURT.

Full Court.] THE KING v. TOWNSEND. [Dec. 14, 1907.

Canada Temperance Act—Certiorari to remove search warrant—Attachment for costs—Code ss. 1096, 1126—Crown Rules (N.S.) 28, 32, Imp. Act 5 Geo. II. c. 19.

Motion under section 1096 of the Criminal Code for leave to issue attachment against the defendant and his sureties on the recognizance filed preliminary to applying for a writ of certiorari to remove a search warrant under the Canada Temperance Act. (See 39 N.S.R. 189.)

The defendant with Sawyer and Smith entered into a recognizance as required by the Nova Scotia Crown Rule 28, to remove a search warrant made by two justices of the peace for the County of Kings. The application was refused by the Court in banco and after taxation of costs a demand was made upon the defendant and his sureties pursuant to 5 Geo. II. c. 19, and payment of costs not being made the Court was moved for an attachment.

Held, that the Nova Scotia Crown Rule 28 under which the recognizance in this case was taken was authorized by section 1126 of the Code, and as this recognizance was not estreatable nor collectible under the Code and the Crown Rules taken together, resort was properly had to the provisions of the Imperial Statute, 5 Geo. II. ch. 19, in attaching for the costs.

Per RUSSELL, J., dissenting, that Crown Rules 28 and 32 under which the recognizance in this case was taken were not authorized by section 1126 of the Code and the application should, therefore, be refused.

Roscoe, K.C., in support of motion. *Power*, K.C., contra.

Full Court.] McDougall v. Ainslie Mining Co. [Dec. 14, 1907.

Lord Campbell's Act—Claim of damages under—Finding of jury set aside—New trial—Verdict, effect of.

Plaintiff claimed damages under Lord Campbell's Act for the loss of his son who was killed by a fall of stone in defen-