the conviction. This was strictly true if the evidence must be confined to the charge laid in the information, because it did not disclose that the defendant unlawfully had liquor in the alleged unauthorised place, 17 Scarfe avenue.

It was contended by the Crown that, as the record disclosed evidence of a breach of the Act on the part of the accused in having or drinking liquor in an unlawful place, viz., in a certain street described in the evidence, the conviction was sustainable upon amendment of the information under sec. 78 of the Act of 1916. The proceedings, however, did not shew that the magistrate either made or even suggested such an amendment, nor that the defendant was given an opportunity to consider whether he would be misled thereby and whether an adjournment was necessary. The magistrate certified that the defendant admitted that the street described was in the city of Brantford.

There was evidence that the defendant drank whisky in the street; and, under secs. 85 and 88 of the Act of 1916, the onus was upon the defendant.

A prima facie case of a violation of the Act was made out; but, the amendment not having been made under sec. 178, and the procedure indicated in that section not having been followed, the learned Judge, with some hesitation, concluded that the conviction must be quashed, but without costs.

BROWN v. DENNON—LENNOX, J.—APRIL 19.

Contract—Rental of Dredging Plant—Claim for Balance—Overpayment—Counterclaim—Set-off—Costs.]—The plaintiffs sued to recover $1,212.21, the balance of the rental of a dredging plant for 313 days at $18 a day, and damages at the rate of $18 a day for 147 days, $2,446: total, $3,658.21. The plaintiffs, at the opening of the trial, asked for leave to add a claim for loss of profits. The defendants counterclaimed to recover for overpayments, $774; loss of the use of scow No. 1, $380; and money expended on repairs, $764.33: total, $1,918.33. The defendants also claimed a right to set off a claim for rent of a scow when one furnished by the plaintiffs became useless. The action and counterclaim were tried without a jury at Peterborough. LENNOX, J., in a written judgment, after discussing the evidence, said that the plaintiffs had been paid more than they were justly entitled to, but the defendants definitely took their position, and from that position they should not be allowed to recede merely because the plaintiffs subsequently made an unfounded and unsuccessful claim. The costs of the trial were not increased by the counterclaim. The action should be dismissed with costs, including the fees of all