

All that this requires is, that, during the transit, the vessel or package containing the liquor shall not be opened or broken and that the liquor shall not be drunk or used. It is not required that the packages shall be sealed nor that they shall be the original and unopened bottles. In this case, there was no evidence whatever suggesting that the defendant's story should not be credited in its entirety. The magistrate in fact stated this, for the conviction was for having the liquor "not sealed."

The conviction, for these reasons, should be quashed. There should be no costs, and the usual order for protection should be made.

MIDDLETON, J., IN CHAMBERS.

DECEMBER 24TH, 1920.

NORTHERN TIMBER CO. v. BUCCIARELLI.

*Pleading — Counterclaim — Parties — Amendment — Crown
Timber License—Attorney-General.*

Appeal by the plaintiffs from an order of the Master in Chambers allowing the defendant to amend by pleading a counterclaim against the plaintiff and the Attorney-General attacking the license issued to the plaintiffs.

A. J. Thomson, for the plaintiffs.

H. J. Scott, K.C., for the defendant.

MIDDLETON, J., in a written judgment, said that he agreed with the proposition that a defendant cannot set up a counterclaim against the plaintiff unless he, the defendant, could alone maintain an action in respect of the same cause. If the cause of action is vested in the defendant and another, the defendant cannot counterclaim in respect of it. But here the defendant could sue in his own name in respect of the cause of action set up, and so he can counterclaim; and the Attorney-General, who would rightly be a defendant in any action, is rightly a defendant to the counterclaim. All the cases are collected in *Farah v. Glen Lake Mining Co.* (1908), 17 O.L.R. 1.

The appeal should be dismissed, with costs to the defendant in the cause.