

counterclaim for the damages he sustained owing to the breach of the warranty.

It was contended by counsel for the appellant that the respondent had not counterclaimed, but had limited his case to a defence on the ground of failure of consideration for the note.

Although the dispute-note was not in form a counterclaim, the case was fully tried out, and what the jury in effect did was to award to the respondent, as damages for the breach of warranty, the difference between the amount of the note, \$142.19, and \$110.

In view of this, the Court ought not to set aside the verdict or judgment, although in form the appellant should have had judgment for the amount due on the note, and the respondent judgment for the damages awarded to him for the breach of the warranty.

The appeal should be dismissed; but, in view of the informal character of the dispute-note, and its insufficiency as a counterclaim, the dismissal should be without costs.

*Appeal dismissed without costs.*

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SECOND DIVISIONAL COURT.

DECEMBER 21ST, 1918.

\*REX v. McCRANOR.

*Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 40—Selling Intoxicating Liquor in Hotel—Evidence of Detectives or Spies—Corroboration Unnecessary—Application of Rule as to Accomplices—Sufficiency of Evidence to Warrant Conviction—Appeal to District Court Judge—No New Evidence Taken—Magistrate's Conviction Quashed—Opinion of Judge as to Credibility of Detectives Formed in a Previous Case—Further Appeal to Appellate Division—Conviction Restored—Evidence of Prior Conviction—Questions Put to Accused on Cross-examination—Canada Evidence Act, sec. 12—Ontario Evidence Act, sec. 19 (1).*

James McCranor, who kept an hotel in the city of Fort William, appeared before the Police Magistrate for that city, on the 26th October, 1917, on a charge of having sold intoxicating liquor on the 27th September, 1917, at his hotel, contrary to the provisions of the Ontario Temperance Act, 6 Geo. V. ch. 50, sec. 40. He pleaded "not guilty," but was convicted by the magistrate. As it was a second offence, he was sentenced to 6 months' imprisonment. He appealed to the District Court Judge, who allowed the