

not intend to prosecute for the theft of the specific sums charged in the information, as, although the accused had received those sums, it would be impossible to prove that he had not deposited them to the credit of the municipality in the bank where its account was kept. Counsel for the Crown in support of the motion relied on the fact that a considerable part of the evidence appearing in the deposition related to the general shortage in the accounts of the accused.

Held, that, as a person who has once elected to take a speedy trial before a judge without a jury cannot afterwards withdraw that election, a judge should not, against the will of the accused, give his consent to any charge being preferred against him other than the one set forth in the information unless it is clear that, while it may be more formally or differently expressed, it is substantially for the same offence as the one on which he was committed for trial and for which he has consented to be tried without a jury, and that the application should be refused. Order for discharge of accused.

Patterson, for the Crown. *Bonnar and Affleck*, for accused.

Province of British Columbia.

SUPREME COURT.

Full Court.]

[Jan. 10.

MCKAY v. VICTORIA YUKON TRADING CO.

Trial by judge without a jury—Findings of fact—Commission—Evidence—Reversal by appellate court.

In an action in the Yukon for damages for breach of contract tried before CRAIG, J., without a jury, the evidence for the defence being evidence taken on commission, the Judge held that the contract sued on was made with defendant company and not with one Munn as alleged by the defence, and gave judgment for plaintiffs.

On appeal to the full court of the Supreme Court of British Columbia it was held, reversing the finding and allowing the appeal, that the judge had failed to appreciate the commission evidence. Different rules govern an appellate court when considering the soundness of findings based on evidence taken on commission as distinguished from that given by witnesses present in court.

Duff, K.C., for appeal. *Peters*, K.C., and *Griffin*, for respondents.

Irving, J.]

REX v. JORDAN.

[Feb. 15.

Summary conviction—Appeal—Notice of—Parties to be served—R.S.B.C. 1897, c. 176, s. 7.

This was a summons by prosecutors that HENDERSON, Co. J., be prohibited from proceeding in an appeal from a summary conviction by a