

fore, that the conviction of the accused on this count should be set aside." *Patterson and Bonnar*, for the Crown. *Howell*, K.C., and *E. L. Howell*, for accused.

**Province of British Columbia.**

SUPREME COURT.

Full Court.] *KCKINNON v. PABST BREWING CO.* [July 8, 1901.  
*Contract—Action for extras—Authority of agent—Setting aside findings of jury.*

M. contracted to build a building in Vancouver for defendants, a Milwaukee company, the contract providing that no extras would be allowed unless their value was agreed upon and indorsed on the contract. S., who intended to occupy the building for the purposes of a bottling company, of which he was a member, ordered extras, but no indorsement thereof was made on the contract. In an action for the price of the extras the jury found "that S., as authorized agent for the company, ordered the extras for it, and that it did either hold out or permit S. to hold himself out as its agent for the purpose of ordering extras."

*Held*, by IRVING, J., dismissing plaintiff's action, and affirmed by full Court, that such indorsement on the contract was a condition precedent to plaintiff's right to recover.

*Macdonell*, for plaintiff. *Wilson*, K.C., and *Bond*, for defendant.

Drake, J.] *REX v. NICHOL.* [Nov. 27, 1901.  
*Costs—Criminal libel—Depositions not used at trial—Abortive trial—Crim. Code, ss. 833, 835.*

Motion by defendant for an order that the costs reserved to be dealt with by the trial Judge by the order of McColl, J. (now C.J.), dated 31st August, 1898, be taxed and paid to defendant.

This was a criminal libel action, and the defendant in support of his plea of justification, obtained a commission, and had the evidence of certain witnesses out of the jurisdiction taken, for use at the trial. The order granting the commission provided that the costs of the commission be reserved to be dealt with by the trial Judge. The evidence was used at the first trial and the jury disagreed. At the second trial the jury again disagreed. At the third trial defendant was acquitted, but the evidence was not used owing to the private prosecutors giving evidence