

*Held*, that it was the property on the north-west corner that the parties had in contemplation, and that C. filled in the wrong description either by mistake or fraud, and that the plaintiff was entitled to specific performance of the true agreement.

For perjury alleged to have been committed at the trial by the defendant he was tried and acquitted before the hearing of the appeal, and, on the appeal, his counsel moved the Full Court be allowed to read the verdict of the jury in the criminal trial. The Court dismissed the motion IRVING, J., dissenting.

*Martin*, K. C., for appellant. *Davis*, K. C., and *Bowser*, K. C., for respondent.

Court of Criminal Appeal.]

[June 21.]

REX v. WONG ON AND WONG GOW.

*Criminal law—Judge's charge to the jury—Murder—Manslaughter Definitions—Failure to instruct jury as to—Failure to object to charge—New trial.*

Crown case reserved.

*Held*: 1. It is the duty of the judge in a criminal trial with a jury to define to the jury the crime charged and to explain the difference between it and its cognate offences, if any. Failure to so instruct the jury is good cause for granting a new trial, and the fact that counsel for the accused took no exception to the judge's charge is immaterial.

2. After the case for the Crown and defence was closed, the Crown called a witness in rebuttal whose evidence changed by a few minutes the exact time of the crime as stated by the Crown's previous witnesses, and which tended to weaken the alibi set up by the accused.

3. To allow the evidence was entirely in the discretion of the judge and there was no legal prejudice to the accused as he was allowed an opportunity to cross-examine and meet the evidence.

Conviction of murder set aside and new trial ordered.

*Taylor*, K. C., for the prisoners. *Belyea*, K. C., for the Crown.

Duff, J.] MUIRHEAD v. SPRUCE CREEK MINING CO. [Sept. 20.]

*County Court—Stay of proceedings under s. 34—Whether applicable to proceedings under mining jurisdiction—Prohibition.*

On an application for prohibition.

*Held*, allowing the application, that s. 34 of the County Court Act, which provides inter alia that if in any action of tort the plaintiff shall claim over \$250.00, and the defendant objects to the action being tried in County Court and gives certain security, the proceedings in the County