

Dubuc, C.J.] CUMMING v. CUMMING. [Oct. 24, 1904.
*Dominion Lands Act—Agreement to assign interest in homestead
 made before issue of patent.*

Under s. 42 of the Dominion Lands Act, R.S.C., c. 54, as re-enacted by s. 5 of 60 & 61 Vict. (D.), c. 29, an agreement made by a homesteader, before issue of the patent and before procuring a certificate of recommendation for patent from the local agent, to assign and transfer an interest in the homesteaded land to another person, though made in good faith and for an adequate consideration, is absolutely null and void and cannot be enforced at the suit of such other person.

Since the decision of *Aubert v. Maze*, 2 B. & P. 321, there has been no distinction between *malum prohibitum* and *malum in se* as to anything forbidden by statute. *Cannon v. Bryce*, 3 B. & Ald. 179, and *Wetherell v. Jones*, 3 B. & Ad. 221, followed. *Abell v. McLaren*, 13 M.R. 463, not followed on this point.

Wilson and Machray, for plaintiff. *Daly, K.C.*, and *Crichton*, for defendant.

• Province of British Columbia.

SUPREME COURT.

Court of Criminal Appeal.] [June 21.
 REX v. WONG ON.

*Criminal law—Judge's charge to jury—Murder—Manslaughter
 Definitions of—Failure to instruct jury as to—Failure to ob-
 ject to charge—New trial—Rebuttal evidence in discretion of
 Judge.*

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 any other offence of which it is open to the jury to convict the accused.

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.

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:—

Held, that to allow the evidence was entirely in the discretion of the Judge and there was no legal prejudice to the accused