

2. The plaintiff, by completing the agreement, waived his right to call in the full balance of the purchase price, because at that date the agreement was, so far as the past due payments were concerned, impossible of performance.

3. For that reason, and also because the plaintiff had made default in carrying out a term of the agreement by which he was to place a mortgage of \$10,000 on the property for a five year term, the defendant was entitled to the relief prayed for.

Robson, for plaintiff. *A. J. Andrews*, for defendant.

Howell, C.J.A.]

REX v. THOMPSON.

[March 24.

Criminal Code ss. 825, 828—Speedy trial—Right to elect for after true bill found by grand jury.

The accused had been bound over to take their trial at this assizes on the charge of theft, and allowed to remain at liberty by the magistrate. At the next assizes indictments were preferred by the Crown for offences set forth in the dispositions sent in by the magistrate and the grand jury found true bills. The accused then delivered themselves into the custody of the sheriff under sub-s. 4 of s. 825 of the Criminal Code, and the sheriff, under s. 826, took them before a County Court judge when they elected to take a speedy trial for which a term was fixed. Upon being arraigned for trial at the assizes, the accused objected to plead to the indictments under the circumstances.

It was argued on behalf of the Crown that, as the prisoners had not previously elected to take a jury trial, s. 828 could not apply, and that sub-s. 3 of s. 825 did not give the right of election after true bills found.

Held, that the accused had a right to elect as they had done even after true bills found, and that such right was conferred under s. 825 of the Code, although the case was not within s. 828.

King v. Kominsky, 6 C.C.C. 524, distinguished.

Arraignment postponed until the next sittings of the court, when the Crown can have a stay of proceedings entered if the cases shall have been disposed of in the meantime by the County Court judge.

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