

part, or stated by counsel at the trial is a matter in the discretion of the trial judge.

*Cassidy*, K.C., for plaintiff, appellant. *S. S. Taylor*, K.C., for respondent. *Lindley Crease*, for trustees.

Full Court.]      STEPHENSON *v.* STEPHENSON.      [July 18.

*Mining law—Hydraulic lease—Dispute note—Special defence—Free miner's certificate—Recorded interest—New defence on appeal.*

A defence setting up failure to comply with the provisions of the Placer Mining Act must be specifically pleaded, *e.g.*, lack of a free miner's certificate and failure to record interest.

Unless exception be taken at the trial to the jurisdiction of the County Court, it will not be entertained on appeal.

*Gelinas v. Clark* (1901), 8 B.C. 42, 1 M.M.C. 428, followed.

*Wilson*, K.C. and *Bloomfield*, for defendants, appellants. *Martin*, K.C., for respondent.

Irving, J.]      \*      [July 19.

DUDGEON *v.* DUDGEON & PARSONS.

*Husband and wife—Property purchased by wife with husband's money—Resulting trust—Sale by wife—Notice to purchaser.*

A husband from time to time gave his wife money to pay for certain property which constituted their home. While they were living apart through a disagreement, the wife entered into negotiations with defendant Parsons for the sale of the property and received a payment on account of the purchase price. Plaintiff thereupon notified the purchaser of his claim, but the purchaser anticipated the due date of final payment and completed the purchase.

*Held*, that there was a resulting trust in favour of the husband, and that he was entitled to recover from the purchaser, but that as there was a dispute between the husband and wife as to a proportion of the money being her own when the property was purchased by them, the amount recovered from defendant Parsons be paid into Court pending a reference.