

tion and manner of the said workings; and that the said McGillivray report the result of such inspection to the court, or a judge, on or before the 1st day of July, 1900, or such further time as the court or a judge may appoint, with power to the said McGillivray to take evidence as to the matters hereby referred to him for inspection, and apply to the court or a judge at any time for directions as to such inspection.

In his report he answered the questions as follows: (1) That the defendants had encroached on the mining claim of the plaintiffs, the Baker Fraction, to the extent of forty-four yards of bed-rock; (2) That pay-gravel had been taken from said claim by defendants to the amount of \$7,700.00, a portion of which has been rocked out in the mine and a portion put in the dump; (3) he estimated there were about 2,463 yards, and value at \$83,279.00; (4) that the drifts and tunnels are not made in a miner-like manner, in order to be maintained for permanent use. They should not have been made wider than five feet and should have been made straight on the sides, arched at the top, whereas these drifts and tunnels in instances had been made as much as twelve feet in width, flat, and gouged in underneath.

On this report plaintiffs moved for judgment, and CRAIG, J., after examining McGillivray as to how he arrived at his conclusions, approved and confirmed the report and entered judgment in pursuance thereof. Defendants on the appeal tendered evidence to shew that McGillivray refused to hear witnesses tendered by them, and also refused to allow counsel to appear before him, saying that he would not be bothered with them.

By s. 3 of the Judicature Ord. the jurisdiction of the Supreme Court of the N.W. Territories shall be exercised so far as regards procedure and practice in the manner provided by this ordinance and the rules of court, and where no special provision is contained in this ordinance or the said rules it shall be exercised as nearly as may be as in the Supreme Court of Judicature in England as it existed Jan. 1, 1898.

Held, by the full court, that the power to make an order of reference in an action is a matter of jurisdiction, and not merely a question of "procedure and practice," within the meaning of s. 3 of the Judicature Ordinance, and therefore the Yukon court had no power under this section to make an order of reference. Appeal allowed with costs and new trial ordered in both cases.

Hunter, K.C., and *Duff*, K.C., for appellants. *Davis*, K.C., and *Cassidy*, K.C., for respondents.

Martin, J] RICHARDS v. BANK OF B.N.A. [July 31, 1901.

Banker's lien—Overdrawn accounts—Partner's separate account.

In July, 1900, the plaintiff was a member of the firm of Richards & Riley who had a firm account in the Bank of B.N.A., and on 21st July