

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Yukon.] KIRKPATRICK v. McNAMEE. [May 2.

New trial—Contradictory evidence—Wilful trespass—Damages—Adding party—Reversal on appeal.

In an action for damages for entry upon a placer mining claim and removing valuable gold bearing gravel and dirt the trial judge found the defendants guilty of gross carelessness in their work, held that they should be accounted wilful trespassers, and referred the cause to the clerk of the Court to assess the damages. The referee adopted the severer rule applicable in cases of fraud in assessing the damages. The Territorial Court en banc reversed the trial judge in his findings of fact upon the evidence.

Held, reversing the judgment appealed from, that the trial judge's findings should be sustained with a slight variation, but that the referee had erred in adopting the severer rule against the defendants in assessing the damages and that his report should be amended in view of such error.

Semble, that the record and pleadings should be amended by adding the plaintiff's partner as co-plaintiff.

Held, per Taschereau, J., dissenting, that although not convinced that there was error in the judgment of the trial judge which the Court en banc reversed while at the same time it did not appear that there was error in the judgment en banc, yet the latter judgment should stand as the Court en banc should not be reversed unless the Supreme Court, on the appeal, be clearly satisfied that it was wrong. Appeal allowed with costs.

Aylesworth, K.C., and Walsh, K.C., for appellants. Noel, for respondent.

Yukon.] LE SYNDICAT LYONNAIS v. BARRETT. [May 2.

Mines—Vendor and purchaser—Consideration—Lump sum—Separate valuation—Misrepresentation—Fraud—Damages.

Upon representations made by the vendor the plaintiffs purchased several mining locations the consideration therefor being