

Province of British Columbia.

SUPREME COURT.

Drake, J.]

MACHIN v. PIERCY.

[March.

Partition—Dower.

A judgment of partition of certain farming lands forming part of an intestate's estate having been made, a question arose upon settling the minutes as to whether the widow was entitled to dower in the coal supposed to lie under the partitioned lands.

On the authority of *Stoughton v. Leigh*, 11 Rev. R. 817, in which it was decided that though a widow is dowable of mines opened during her husband's lifetime, and in which he had an estate of inheritance during coverture, she is not dowable of unopened mines.

Held, that the widow had no right to dower in any unopened deposits of coal which might lie under the partitioned lands.

Drake and Irving, JJ.] PARKS v. PITTENDRIGH.

Mandamus—Small Debts Court—Interpretation of statute.

Appeal from the decision of MCCOLL, J., refusing an application for mandamus to defendant to issue execution upon a judgment which was rendered by a judge of the Supreme Court on an appeal from the Small Debts Court over which defendant Pittendrigh presided. The grounds for the application were that inasmuch as the Small Debts Act did not provide any practice for such a case, but did provide that "when anything necessary for carrying out the scope or any provision of this Act is omitted herein, the remedies, practice and procedure of the 'County Court's Act' and rules may be applied," and the rules under that Act, provided that in cases of appeal from the County Court, the judgment of the Supreme Court could be filed in the County Court and thereupon should be enforced in that court, the same procedure should be applicable for the Small Debts Court. The appeal by the provisions of the Small Debts Act lay to "a judge of the Supreme Court or to the nearest County Court," and the succeeding section provided that "on every such appeal the court to which the same is taken shall try and determine the question in dispute." The judgment was entitled "In the Supreme Court of British Columbia."

Held, that the appeal from the Small Debts Court was to the Supreme Court of British Columbia, and the judgment being in that court could be enforced according to the rules thereof, and therefore a mandamus would not lie to the stipendiary magistrate to proceed in the Small Debts Court.

Brydone-Jack, for the appellant.

Walkem, Drake, Irving, JJ.]

CANADIAN PACIFIC RAILWAY v. MCBRYAN.

Natural user of water—Overflow—Damage.

In this case the defendant relied upon his right to use his land in the natural course of user, unless in so doing he interfered with some right