

usual term of one year from the death of the testatrix. Not later than one year after her death it is their duty to set aside and invest the sum of \$5,000 to provide for the legacy to John Clooney Flanagan. They may pay the income, or any part of it, for his benefit until he attains twenty-one and to him from that time until he attains the age of twenty-three, when he will be entitled to the \$5,000, and any part of the income not expended as directed. Payment of the principal even should not be made to him when he attains twenty-one. His interest in all but the income becomes divested if he should die without leaving issue before he is twenty-three, and passes to others by express terms in the will.

There will be judgment accordingly. In matters so plain as this, the advice of the Court should not in my opinion be sought. I cannot, however, say that the application is improperly made. But the costs should not come out of the legacy to John Clooney Flanagan; they should be paid out of the general estate of the testatrix.

HON. SIR G. FALCONBRIDGE, C.J.K.B.

DEC. 13TH, 1913.

HUDSON v. NAPANEE RIVER IMPROVEMENT CO.

5 O. W. N. 467.

Negligence—Death by Drowning—Breaking of Dam—Action against River Company—Findings of Jury—Negligence—Evidence—Contributory Negligence—Voluntary Assumption of Risk—Dismissal of Action.

FALCONBRIDGE, C.J.K.B., dismissed an action brought against a river company for their alleged negligence causing the death of one George Hudson by drowning in a flood of water caused by the breaking of one of defendant's dams, holding that no negligence on the part of defendants had been established, and that in any case the primary cause of the accident was the contributory negligence of deceased in persisting after warning in endeavoring to cross the swollen stream.

Action by the mother and administratrix of the estate of George Hudson, deceased, to recover damages for his death said to have been caused by the negligence of defendants, tried at Napanee.

E. G. Porter, K.C., for the plaintiff.

W. S. Herrington, K.C., for defendants.