

creditors a quantity of butter, which was sold, realizing \$1,800, and the proceeds distributed amongst such creditors in proportion to their claims, whereby they acquired a preference, the Division Court has jurisdiction to entertain an action brought therein by the assignee for the benefit of creditors, to recover the amount received by one of such creditors, being his share of such proceeds, and which was in itself of an amount within the competence of such court.

Aylesworth, Q.C., for plaintiff. *D. L. McCarthy* for defendant.

Armour, C.J., Falconbridge, J., Street, J.]

[Feb. 10.

FARQUHARSON v. IMPERIAL OIL CO.

Riparian owners—Soil of stream—Dams—R.S.O. 1887, c. 120, s. 1—“Other obstruction.”

The owner of the soil on both sides of a running stream, whether navigable or not, is prima facie the owner of the soil which forms the bed of the stream; and the owner of the soil on each side is in the same manner owner of the soil of the bed up to the centre of the stream, and dams constructed by such owners or with their consent over their parts of the stream are not wrongfully erected.

The words “any other obstruction” above stated do not comprehend the erection of dams, but only other obstructions of a like kind with felling trees. *Aylesworth*, Q.C., and *A. E. Shaunessey* for appeal. *Osler*, Q.C., contra.

Meredith, C.J., Rose, J., MacMahon, J.]

[Feb. 14.

SMITH v. HAVES.

Machinery—Injury by, of child—Allurement to child—Knowledge of defendant—Trespass—Evidence.

Plaintiff, a child of five years of age, was injured by a horse-power used by defendant to hoist grain into his warehouse. The machine was on a lot unfenced on one side, leased by him, adjoining his warehouse, about thirty feet from the highway.

Held, that as the evidence did not show that the machine was being worked in such proximity to the highway as to endanger the safety of persons using the highway, or that it was so situated as to attract or allure children, or any knowledge in the defendant that children were in the habit of frequenting the place, or any intention on his part to injure; and as the plaintiff had no right to be where he received the injury, he could not recover. *Finlay v. McCampbell* (1890), 20 O.R. 29, followed, and judgment of Meredith, J., sustained.

Aylesworth, Q.C., for motion. *J. B. Jackson*, contra.

Divisional Court.]

REGINA v. FITZGERALD.

[Feb. 14.

Conviction—Order nisi to quash—Death of prosecutor after—Effect of.

Where, after an order nisi had been obtained to quash a conviction, but before service thereof, the prosecutor died, but service had been effected on the magistrates, the court held that, notwithstanding such death, they might deal with the matter, and they made the order absolute, quashing the conviction.

Douglas Armour for applicant. *No one* contra.