

Supreme Court of Canada.

Cause—WILLIAM H. CREIGHTON, Assignee of LEWIS P. FAIRBANKS (intervening after the insolvency of said LEWIS P. FAIRBANKS,) *Plaintiff*.

vs.

PETER J. KUHN, *Defendant*.

APPELLANT'S FACTUM.

This was an action of trespass q. c. f. to land and land covered with water being the bed, banks and waters of the stream running from the First Dartmouth Lake to Halifax Harbor. The pleas are 1st. Denial of the trespasses. 2nd. That the land was not the plaintiff's. 3rd. That the land was in possession of defendant, and plaintiff wrongfully erected posts, &c., the removal of which are the alleged trespasses. 10

On 4th of April, 1791, James Creighton conveyed to Lawrence Hartshorne and Jonathan Tremaine the right to enter, &c, on his lands contiguous, through and upon which this brook ran, from the source to Richard Woodin's land, so as to lower the bank at its place of discharge and to clear out the bed and erect dams, flood-gates, &c., and to overflow the lands of said Creighton for the purposes of their mill.

On 5th April, 1791, Richard Woodin conveyed to the same parties by metes and bounds a tract which comprised the bed, banks and margin of the stream below the boundaries of the last mentioned conveyance and extending to the harbor. 20

On 6th April, 1791, said Richard Woodin entered into Articles of Agreement with said Lawrence Hartshorne and Jonathan Tremaine which, after reciting the last conveyance, gave them the right to enter on his lands contiguous to the stream to clean out the bed of the brook, and to build dams and flood-gates, and also the right to overflow for mill purposes. The lands affected by the easement, were the bed banks and margin of the stream between the lands comprised within Creighton's conveyance, and the lands included in the last conveyance. In May 1806, Richard Woodin conveyed these lands absolutely to Hartshorne and Tremaine.