

cause of the fall not being known, is in itself sufficient evidence of negligence to justify the case being submitted to a jury.

Judgment of the Queen's Bench Division, 25 O.R. 78, affirmed.

*Shepley*, Q.C., for the appellants.

*John McGregor* for the respondents.

From C.P. Div.]

O'CONNOR v. HAMILTON BRIDGE CO.

[Nov. 11.]

*Negligence—Dangerous machinery—Absence of guard—"Moving machinery"—"Defect in machinery"—Factories' Act—R.S.O., c. 208, s. 15—Workmen's Compensation for Injuries Act—R.S.O., c. 141, s. 3—52 Vict., c. 23, s. 3 (O.).*

The absence of a guard to a projecting screw in a revolving spindle is a violation of the provisions of the Factories' Act, R.S.O., c. 208, s. 15, the spindle being a moving part of the machinery within the meaning of that Act, and it is also a "defect in the condition of the machinery" within the meaning of the Workmen's Compensation for Injuries Act, R.S.O., c. 141, s. 3, as amended by 52 Vict., c. 23, s. 3 (O.), and in either view damages may be recovered for an accident caused by its absence.

Judgment of the Common Pleas Division, 25 O.R. 12, affirmed.

BURTON, J.A., dissenting.

*Bruce*, Q.C., and *Walker*, Q.C., for the appellants.

*G. Lynch-Staunton* for the respondent.

From Q.B. Div.]

BALL v. TENNANT.

[Nov. 11.]

*Assignments and preferences—Covenant of indemnity—R.S.O., c. 124.*

The benefit of a covenant to indemnify the assignor against a mortgage does not pass to his assignee under an assignment for the general benefit of creditors.

Judgment of the Queen's Bench Division, 25 O.R. 50, reversed.

*N. F. Davidson* for the appellants.

*R. U. McPherson* for the respondent.

From Q.B. Div.]

IN RE HANNA v. COULSON.

[Nov. 13.]

*Prohibition—Division Court—Garnishee—Defendant—After judgment summons—R.S.O., c. 51, s. 235.*

This was an appeal by the primary creditors from the judgment of the Queen's Bench Division, reported 23 O.R. 493, and was argued before HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A., on the 17th of September, 1894.

*Aylesworth*, Q.C., for the appellants.

*J. B. Clarke*, Q.C., and *C. Swabey* for the respondent.

November 13th, 1894. The court dismissed the appeal with costs, agreeing with the views stated in the judgment below, and not giving any opinion as to the effect of the amendment made by 57 Vict., c. 23, s. 18 (O.).