

SMITH V. MILLER.

[5 Mason, 191.]¹

Circuit Court, D. Rhode Island.

Nov., 1828.

REAL PROPERTY—WATER ON LAND—FISH—LEASE.

A lease for 500 years of certain land covered with a pond of water conveys, as incident, the water and the fish therein.

[Cited in *Turner v. Hebron*, 61 Conn. 187, 22 Atl. 952; *Sterling v. Jackson*, 69 Mich. 534, 37 N. W. 868.]

Trespass [by Stephen H. Smith against William Miller] for entering the plaintiff's close, partly covered with water, and taking fish from his pond. Plea, the general issue. At the trial, the principal question was, whether the plaintiff had any property in the fish. The title of the plaintiff was under a lease for 500 years of a certain factory lot, and dam lot, in &c., "together with all the land which may be flowed by raising said dam seven feet high from the bed or bottom of the river."

Mr. Searle, for plaintiff.

Mr. Bridgham, for defendant.

THE COURT said: The lease having conveyed all the land under the pond, it passed the pond of water and the fish therein to the plaintiff, as incidents to the principal grant.

¹ [Reported by William P. Mason, Esq.]