

lakes," but I cannot see that this advances the case at all in favour of the plaintiffs. The most particular evidence as to the nature of the water which the culvert carries is that given by Herbert J. Bowman, C.E., who visited the place on the Thursday before the trial. There were then about three inches of water, about two feet wide, running through. He says he followed up the ditch, and it is an artificial channel through a swamp. Some of the water came from a spring through a ditch to the swamp, and he says it is continued as a ditch in the county of Wellington. The spring water had not then all gone through, and he would not be surprised if it would be dry in July and August.

It is unnecessary, in view of my opinion upon this part of the case, to consider whether the plaintiffs' remedy, if any, ought not to have been by arbitration. There was a very small amount involved in this case (\$47.50), but the plaintiffs' reason for bringing the action in the High Court was, as stated before, to try and get the affirmation of some principle that would govern in like cases.

The action will be dismissed with costs.

JUNE 21ST, 1907.

DIVISIONAL COURT.

OSTERHOUT v. FOX.

Costs—Scale of—Amount Recovered—Ascertainment—Covenant—Amount Due under—Annuity—Deduction—Payment or Set-off—Division Court Jurisdiction.

Appeal by plaintiff from order of TEETZEL, J., ante 157, allowing an appeal by defendants from a ruling of a local taxing officer, and directing that plaintiff's costs of the action should be taxed on the Division Court scale.

The appeal was heard by FALCONBRIDGE, C.J., BRITTON, J., RIDDELL, J.

J. H. Spence, for plaintiff.

T. L. Monahan, for defendants.