

Falconbridge, C.J.K.B., Britton, J., Riddell, J.]

[June 21.]

OSTERHOUT v. FOX.

Costs—Scale of—Covenant—Amount due under—Deduction by way of payment or set off—Jurisdiction.

In an action on a covenant in a deed to pay the plaintiff a specified yearly sum, the amount found to be due the plaintiff was the sum of \$262.50 from which the trial judge deducted \$69.00 which the defendant, at the plaintiff's request, had paid to a creditor of the plaintiff, but which was in no way connected with the covenant, this reducing the amount to \$193.50, for which judgment was entered.

Held, that the plaintiff was entitled to costs on the High Court scale, the claim being within the jurisdiction of the High Court, for that the \$69 was allowed to the defendant, not by way of payment under the covenant, but as a set off. Order of TEETZEL, J., recovered.

J. H. Spence, for appellant. Monahan, for respondent.

Riddell, J.]

RE ASHMAN.

[June 24.]

Distribution of estates—Absentee next of kin—Advertisement for creditors and others—Publication in newspaper—Failure of absentee to make claim—Bar to future claim.

The administrators of the estate of an intestate, who died in 1906, inserted three times in a newspaper published at the place in Ontario where the intestate had resided, an advertisement headed "Notice to Creditors" given pursuant to R.S.O. 1897, c. 129, calling upon "all creditors and others having claims against the estate" of the deceased to send them in to the solicitor for the administrators by a named date, and stating that after such date they would not be liable to any person of whose claim notice should not have been received. One of the next of kin, who would, if alive, have been entitled to a distributive share of the estate, had left Canada, in 1876, and no communication had since been received from him or information about him, except that soon after his departure a sister of his heard that he was in Oregon, and in 1895 an aunt heard that he was dead. Diligent inquiry was made for him in 1882,