

I do not see that there is any real contradiction by the witnesses for the defence—and I would allow the appeal with costs here and below.

It is not easy to estimate the damages on the evidence before us; and it may be that the parties will desire to have the damages assessed by the County Court Judge. If, however, the plaintiff will be content with damages assessed at \$200 with costs on the County Court scale here and below, I think he should have judgment accordingly. If not, the defendants will be allowed to have the damages assessed by the County Court Judge, and costs of the action, appeal, and reference will be disposed of by one of us on application after the report of the County Court Judge.

HON. MR. JUSTICE KELLY:—On the evidence submitted to us I am unable to see how defendants can escape liability. The cause of the trouble of which plaintiff complains is found in the manner in which defendants constructed the ditch, or drain, and allowed its contents at times to overflow onto plaintiff's lands when they should have kept the ditch cleaned out. This is clearly shewn by the evidence of the witnesses called for the plaintiff, and their evidence is not contradicted to the extent necessary to remove the burden of liability from the defendants. In fact it is not difficult to find in the statements of defendants' witnesses corroboration of plaintiff's contention in material particulars.

As to the damages to which plaintiff is entitled, while I have some doubt, on the evidence, what these should be assessed at, I am inclined to the belief that the \$200 suggested by my brother Riddell would fairly compensate the plaintiff. I, therefore, agree with his conclusion as to the manner of disposing of the appeal.

HON. MR. JUSTICE LENNOX:—I think the appeal is well founded. The plaintiff is entitled to relief, and, if there is not a new trial, he should be allowed a substantial sum for damages, with costs.

I have had the advantage of reading the judgment of my brother Riddell, and I agree with him as to the way in which the appeal should be disposed of.

The trial occupied two days. The learned Judge of the County Court makes no findings and gives no reasons for his judgment. Brevity is rare, and is usually commended as a distinguished virtue, but, if I may say so without offence,