

whole quantity provided for by the contract. Judgment reduced to \$410.60. No costs of appeal.

BRITTON, J., gave reasons in writing for the same conclusion.

JULY 8TH, 1903.

DIVISIONAL COURT.

SISTY v. LARKIN.

Water and Watercourses—Government Ditch—Government Contractors—Damming back Water on Plaintiff's Land—Justification—Orders of Government—Negligent Execution of.

Appeal by defendants from judgment in favour of plaintiff for \$75, pronounced by the Judge of the County Court of Stormont, Dundas, and Glengarry, upon the answers of the jury, in an action to recover damages for injury done to vegetables growing in plaintiff's garden by water dammed back by defendants.

J. Leitch, K.C., for defendants.

D. B. MacLennan, K.C., for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.), was delivered by

STREET, J.—The ditch in which the drain was placed was a Government ditch, extending for a considerable distance above plaintiff's land. The persons whose lands lay along the ditch had for 30 years been in the habit of draining the surface water from their lands into it. The ditch collected the drainage from the upper lands and brought it past the land occupied by plaintiff. Defendants have built a drain across it below plaintiff's land. The jury found that the result of the dam was to flood and damage plaintiff's land. These facts make a prima facie case for plaintiff. Defendants answered that what they did was upon Government land. The reply to that is, that they had no right to go upon Government land and wrongfully block up a ditch to the damage of plaintiff. Defendants next say that what they did was done for and under the direct order of the Government, and that the Government alone was liable. . . . All that was shewn was that defendants undertook to do certain work for the Government which involved the building of a flume to carry off the water usually flowing along the drain; that this flume was not built of sufficient size to carry off the water; and that the result was the damage to plaintiff. The work which defendants were doing for the Government was, therefore,