

raised by the defendants was decided adversely to them, I am of opinion, and so order, that neither party should get, as against the other, any costs of the motion before the Chief Justice, or of the appeal to the Divisional Court, or any costs at the trial of attempting to uphold or to resist the settlement. The defendants are entitled to the general costs of defence in the action, as already ordered, but, if the parties do not agree, it will be for the taxing officer not to allow to either plaintiffs or defendants any costs, so far as they can be ascertained, pertaining solely to the alleged settlement, as above stated.

The costs of this motion to be costs in the cause.

Formal judgment to be amended accordingly.

RIDDELL, J.

OCTOBER 24TH, 1907.

TRIAL.

BECK v. CANADIAN PACIFIC R. W. CO.

*Railway—Animals Killed on Track—Negligence—Duty to Fence—Lease by Railway Company of Land Adjoining Railway—Escape of Horses therefrom—Covenant of Lessee to Erect and Maintain Fences—Owner of Animals Using Lands under License from Assignee of Lessee—Escape of Animals Due to Negligence of Owner—Railway Act, 1903, secs. 199, 237.*

Action to recover the value of some horses killed upon defendants' railway.

A. B. Morine, for plaintiffs.

W. R. White, K.C., and W. H. Williams, Pembroke, for defendants.

RIDDELL, J.;—At Wahnapiatae, in the district of Nipissing, defendants, being the owners of a parcel of land adjoining the line of their railway, leased it on 31st July, 1902, for 5 years, to one Picard. In the lease there is a covenant as follows: "And the lessee, for himself, his heirs, executors, administrators, and assigns, covenants, promises, and agrees to and with the company, its successors and assigns, that the