

but, making every fair allowance, an average of 130 lbs. per head would seem to be fair and reasonable. Upon the footing thus indicated, the sum of \$8,875 for shortage in weight and allowances for other outlays for fodder appears to be a fair sum by way of compensation.

Against this sum, however, is to be set the difference between what was due in respect of payments up to the 15th May in respect of rental under the agreements, and the amounts actually paid.

After making all proper deductions and allowances this difference comes to \$1,612.14, and adding thereto the sum of \$1,613.55 the total is \$3,225.69.

The result then is as follows:

Damages found against the defendants.....	\$8,875.00
Amount payable to defendants on the accounts..	3,225.69
Balance in plaintiff's favour.....	\$5,649.31

And for this sum judgment should be entered for the plaintiff with costs of the action. There should be no costs of the counterclaim. As to the costs of the appeal, while the defendants have obtained a reduction of the total amount which the Chancellor indicated would be his finding in the event of a reference not being taken by either party, they have not succeeded in reducing the quantum of damages actually found. The result now arrived at is upon the whole matter, as upon a reference, both as to accounts and as to damages. Upon this success is divided. There will be no costs of the appeal to either party.

The other members of the Court reached the same conclusion; MEREDITH, J.A., giving reasons in writing.

NOVEMBER 20TH, 1911.

EWING v. TORONTO R.W. CO.

Street Railways—Injury to Child on Track—Negligence—Evidence—Judge's Charge—Findings of Jury—New Trial.

Appeal by the defendants from the judgment at the trial, before MULLOCK, C.J.Ex.D., and a jury, in favour of the plaintiffs.