

the full amount, and defendants pleaded that their liability under the contract was limited to \$100. It was held that the defendants were liable for more than \$100, but under the Carrier's Act for not more than \$500.

*Held*, on appeal, that the contention that defendants were not liable for certain articles, not the wearing apparel of the plaintiff himself, was not open to defendants as that point was not raised in the pleadings or taken at the trial.

Remarks of DRAKE and MARTIN, JJ., as to what is included in the term "wearing apparel" which must differ according to different circumstances and climates. Appeal dismissed.

*Duff*, K.C., and *J. H. Lawson, Jr.*, for appellants. *Davis*, K.C., for respondent.

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Full Court.] CLEARY v. BOSCOWITZ. [Nov. 13, 1901.

*Mining law—Certificate of work—Impeachment of—Evidence—Mineral Act, s. 28, and Amendment Act of 1898, s. 11.*

Appeal from judgment of McCOLL, C.J., who dismissed plaintiffs' adverse action. Defendant relied on certificates of work obtained by him in respect of the mineral claims covering the ground in dispute, and plaintiffs sought to shew that the full amount of work required by the statute as a pre-requisite to such certificates of work being issued had not been performed. The Chief Justice refused to admit the evidence, holding that evidence impeaching a certificate of work could not be received in any proceeding to which the Attorney-General was not a party. The Full Court affirmed the decision, holding that if a certificate of work is to be set aside the Attorney-General must be a party, and until set aside, all things are presumed in favour of its holder.

The plaintiffs, in making their case, admitted that defendant had obtained certificates of work.

*Held*, that this in itself was affirmative evidence of defendant's title within the meaning of s. 11 of the Mineral Act Amendment Act of 1898.

*S. S. Taylor*, K.C., for appellants. *Davis*, K.C., for respondent.

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Full Court.] McKELVEY v. LE ROI MINING Co. [Nov. 14, 1901.

*Full Court—Reference of motion for judgment to trial judge—Jurisdiction.*

At the conclusion of the trial of an action for damages for personal injuries, the trial Judge (McCOLL, C.J.), did not see fit to enter any judgment on the findings of the jury, but left the parties to move the Full Court as they might be advised. Both parties accordingly moved the Full Court for judgment, the arguments being confined to the question of the liability of the defendant company.