

tacking such rights should be defended by and at the expense of the Crown. On action taken by plaintiff company to test the statute, judgment was given in favour of defendant. The company appealed, and the appeal was dismissed.

Held, as to costs, that defendant was not in a position to claim any costs against the plaintiffs as his rights were being asserted by and defended at the expense of the Crown.

Luxton, K.C., for plaintiffs, appellants. *A. E. McPhillips*, K.C., for defendant, respondent.

Clement, J.] *RAYLANCE v. CANADIAN PACIFIC RY. CO.* [Nov. 2.
Workmen's Compensation Act, 1902—Master and servant—
Injury affecting claimant's earning power—Measure of
damages.

In estimating compensation under the Workmen's Compensation Act for the loss of a thumb, consideration must be given to the fact that while the claimant is not thereby entirely prevented from carrying on his occupation, his chances of employment in competition with others are lessened and his earning powers consequently reduced.

S. S. Taylor, K.C., for plaintiff. *Macdonald*, K.C., for defendant company.

Full Court.] *EMBREE v. MCKEE.* [Nov. 11.
Contract—Construction of—Surrounding circumstances—Ex-
trinsic evidence.

Plaintiff agreed to sell to defendant, who agreed to purchase, 75 tons of hay, more or less. The hay in question was to be the hay in a certain barn, less some 30 tons which had already been sold. To bind the bargain plaintiff gave a receipt in the form "Received from D. A. McKee \$10 on account of 75 tons of hay, more or less, at \$17.50 per ton delivered on cars." There were some 122 tons in the barn, and evidence was given that the parties negotiated as to "all the hay in Brown's barn," except 30 tons sold.

Held, on appeal, affirming the judgment of Howay, Co.J., that parol evidence could be given to shew what particular hay the parties were dealing for.

Sir C. H. Tupper, K.C., for plaintiff, appellant. *Reid*, K.C., contra.