on the farm. Upon an arbitration to ascertain the compensation to be paid for the land taken and the damages sustained by reason of the exercise of the railway company's powers of appropriation, the owner of the farm claimed damages *inter alia* for the loss or serious impairment of the convenient use for the purpose of the farm of the springs in the field mentioned. The company contended that the loss would be minimized by the construction of a farm crossing across the railway, and offered to appear before the Board of Railway Commissioners and consent to an order directing that such a crossing be constructed and maintained by them:—

Held, applying *Vézina* v. *The Queen* (1889) 17 S.C.R. 1, that the owner of the farm had no statutory right under sec. 198 of the Railway Act, 1903, to a farm crossing sufficient to provide a satisfactory means of access for his cattle to and from the springs, and was entitled to damages in respect of this claim.

Construction of subs-ss. 1 and 2 of that section of the Railway Act.

Held, upon the evidence, that the sum of $1,170, awarded by the majority of the arbitrators, was not adequate compensation for the land taken and the injury done, and the amount was increased upon appeal to $2,250.

Remarks upon the large costs and expenses incurred in arbitrations under the Railway Act and the harshness of the rule which throws them upon the land owner if the amount awarded is less than that offered by the company.

DuVernet and *Kyles,* for land owner. *R. B. Henderson,* for company.

Anglin, J.] LUDLOW *v.* IRWIN. [May 3.

Costs—Taxation—Witness fees—Briefing evidence—Witnesses not called—Con. Rule 1176.

In an action for libel the plaintiff, not having pleaded justification, before the trial gave a notice, under Rule 488, of his intention to adduce, in mitigation of damages, evidence of the circumstances under which the libel was published. To meet such evidence the plaintiff had brought a number of witnesses to the trial, but the evidence was not admitted, and the witnesses were not called in reply.

Held, that by implication from Con. Rule 1176, or by analogy to the practice therein prescribed, the cost of procuring