257, gives the rule as to the respect to be paid to the finding of a trial Judge on questions of fact, and extends that rule to awards in arbitrations under the Railway Act. The rule is equally applicable to the present award.

The award should be upheld and the appeal dismissed; but the order dismissing the appeal should contain a provision, in accordance with a consent given by counsel for the respondents upon the argument of the appeal, that they will at their expense erect and maintain a satisfactory fence between the lands taken from and the lands retained by the appellants.

MULOCK, C.J.Ex., agreed with KELLY, J.

RIDDELL and SUTHERLAND, JJ., agreed that the appeal should be dismissed, for reasons stated by each of them in writing.

CLUTE, J., read a dissenting judgment, in which he examined the evidence with great care, cited many authorities, and stated his conclusion that the appeal should be allowed and the amount of the award increased to $6,750.

Appeal dismissed; CLUTE, J., *dissenting.*

HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B. SEPTEMBER 7th, 1918.

DANFORTH GLEBE ESTATES LIMITED v. HARRIS & CO.

Nuisance—Offensive Odours—Evidence—Positive and Negative Testimony—Acquiescence—Easement—Declaration— Injunction—Damages—Special Damage—Nominal Damages—Costs.

Action for a declaration, injunction, and damages, in respect of an alleged nuisance.

See Danforth Glebe Estate Limited v. Harris & Co. (1917), 39 O.L.R. 553.

The action was tried without a jury at a Toronto sittings.

W. E. Raney, K.C., for the plaintiffs.

W. N. Tilley, K.C., and A. C. Heighington, for the defendants.