even should the Judge, sitting in appeal, and viewing the case as an arbitrator, be of opinion that a smaller sum would be sufficient for compensation and damages: Toronto Suburban R.W. Co. v. Everson (1917), 54 Can. S.C.R. 395, 415.

That case might also be referred to on the question of allowance for benefit, by reason of the railway, to the land not taken.

Appeal dismissed with costs.

SUTHERLAND, J. JULY 11TH, 1919.

UNDERHILL COAL CO. v. GRAND TRUNK R.W. CO AND PUDDY BROTHERS LIMITED.

Railway—Carriage of Goods—Cars Containing Goods Placed on Private Siding of Consignee—Rules of Railway Company—Finding that Delivery Made—Action by Vendor against Railway Company and Consignee for Price of Goods—Denial of Consignee that Goods Received—Finding of Receipt and Acceptance—Statute of Frauds—Costs.

Action to recover from the defendants, or one of them, $901.49 and interest for two car-loads of coal sold by the plaintiffs to the defendants Puddy Brothers Limited.

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

John Jennings, for the plaintiffs.

D. L. McCarthy, K.C., for the defendant railway company.

A. G. Slaght, for the other defendant.

SUTHERLAND, J., in a written judgment, said that on the 3rd March, 1917, the plaintiffs sold to the defendant Puddy Brothers Limited one car-load of coal, shipped in the railway company's car P.R.R. 407064, and on the 8th March another car-load, shipped in car P.R.R. 413399.

The railway company's answer to the action was that it had placed the two cars on the private siding of the other defendant, and that the cars while on the siding were emptied and then removed.

The defendant Puddy Brothers Limited said that it had never received the coal.

The learned Judge said that, while the officers of the Puddy company seemed to be honest in their belief that they had never received the coal, they must have been mistaken. His finding was that they did receive the coal.