It was not disputed that the claimant was entitled to compensation, although none of her lands were taken.

The Railway Act, R.S.C. 1906 ch. 37, does not limit the compensation to lands injuriously affected. The right to compensation is declared by sec. 155, which is different in its meaning and intendment from the sections of the Imperial Acts under which it has been decided that damage to be recoverable must result from an act made lawful by the statutory powers or be such as would have been recoverable in an action but for the statutory powers.

After an examination of the authorities, the learned Judge stated his opinion that the claimant was entitled to damages under sec. 155; that the evidence shewed that the damage by loss of trade arose directly from the execution of the works, and was in addition to the amount allowed as represented by the value of the property as it existed before and after the building of the subway. It was not argued that the amount allowed, if the claimant was entitled to any sum for loss of business, was too large.

In Re Hannah and Campbellford Lake Ontario and Western R.W.Co. (1915), 34 O.L.R. 615, it was held that the proper method is to ascertain the value of the whole parcel of which part has been taken and the value of the remaining portion after the taking and deduct the one from the other; the difference is the compensation to be allowed.

There is no case shewing the method to be adopted in such a case as the present. The rule laid down in the case just cited is not applicable. If that rule were strictly applied, it would exclude the loss which might and which in this case largely did occur during the progress of the work.

Proceedings were taken with a view to commencing the work on the subway as early as 1913, and the work actually began in May, 1914. The evidence shewed that the claimant's business was increasing until the work was begun in 1914, and then it began to go back. She continued the business up to 1918, when she sold the premises.

The evidence of the loss of business, upon the facts in this case, was properly admissible and very important as evidence upon which to base the claimant's loss.

The learned Judge said that he could find no authority except Re Meyer and City of Toronto (1914), 30 O.L.R. 426, which would justify the arbitrator in accepting the 3 years' loss of business as the measure of loss which should be added to the depreciation of the property.

The case should go back to the arbitrator with a direction to him to ascertain the entire compensation to which the claimant