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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JANUARY 9TH, 1919.

*RE ALBIN AND CANADIAN PACIFIC R. W. Co.

Railway—Injury to Land (no Part of which is Taken) by Construction of Subway—Compensation—Allowance for Loss of Business—Railway Act, R.S.C. 1906 ch. 37, sec. 155—Allowance not Confined to Three Years' Loss.

Appeal by the railway company, contestants, from an award of an arbitrator determining the compensation to be paid to the claimant, Alberta Albin, for injury sustained by the construction by the contestants of a subway in Yonge street, in the City of Toronto.

The claimant's premises, in which she carried on the business of a confectioner, were situated on the west side of Yonge street, a short distance north of the railway tracks.

The arbitrator allowed \$10,866, of which \$4,500 was for loss of business. The balance represented the depreciation in the value of the property.

The railway company contended that the claimant should be allowed nothing for her loss of trade.

The appeal was heard by MULOCK, C.J. Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

C. M. Colquhoun, for the appellants.

W. Laidlaw, K.C., for the claimant, respondent.

CLUTE, J., in a written judgment, said that, although no land of the claimant was taken, she was entitled to damages by reason of the railway company having cut away the street in front of her premises to the depth of more than 5 feet, thus destroying her approach to Yonge street.

* This case and all others so marked to be reported in the Ontario Law Reports.