

ROSE, J.

AUGUST 23RD, 1898.

WEEKLY COURT.

RE MACDONALD AND TORONTO, HAMILTON AND
BUFFALO R. W. CO.

Railway—Lands Injuriouslly Affected—Right to Compensation—Operation of Railway—Alterations in Street—Interference with Access—Injury from “Smoke, Noise, Vibration, and Bustle.”

An appeal by the company, under the Railway Act of Canada, from an award of compensation for lands injuriously affected by the railway.

D'Arcy Tate, Hamilton, for the appellants.

C. Robinson, Q.C., and James Chisholm, Hamilton, for the land owners.

ROSE, J.—I have already expressed an opinion as to the effect of the decision in the cases of Powell and Birely against this company in the judgment I have delivered in *Re McQuesten* and this same company (*supra*). Referring to the opinion I have there expressed, and the grounds for such opinion, I do not see how I can interfere with the finding of the arbitrators on the facts which awarded \$500 for damage which the lands were found to have suffered “from alterations and changes made by the said company in and along and adjoining Hunter street,” and it is quite possible upon the evidence that this finding is based upon injury to the land from interference with the way of access, and so is supported by the authorities.

The next finding, however, I think may not be sustained in its present form. It is as follows: “And we, the said Colin G. Snider and the said William Bell, do hereby further order, award, and adjudge that the said lands have suffered and may suffer from the said operation of the railway from smoke, noise, vibration, and bustle to the extent of \$4,500, which amount we award and adjudge in respect of the matter hereinbefore last mentioned.”

As the decision in the Birely case is not interfered with by the decision in the Powell case, for the reasons which I have already pointed out, I think that a finding in the terms of the award for damage from vibration I could not interfere with; but I do not see how an award for damage arising from “smoke,” “noise,” and “bustle” can be supported.