were wrong in putting the cost of the property arbitrarily at $30,000; they should have put it at $32,125, made up of $25,000 and $7,125 for four years and nine months' interest; but that in other respects their estimate was properly made; and, making allowances for their mistakes, the award should be increased to $3,681.

Held, that it can make no difference as to the principle upon which compensation is to be awarded for lands injuriously affected, that such lands have or have not been laid out in building lots; the fact that a survey has been made dividing the land into building lots cannot enhance the value of the property, if there is no demand for the lots; nor can the value of the land be diminished by reason of its not having been subdivided into lots, if there is a demand for such lots; and therefore in this case evidence of the condition of the real estate market in this locality was of the utmost importance upon the question of damages.

G. F. Henderson, for Brennan. *Wyld*, for railway company.

Meredith, J.] [March 5.

ONTARIO LANDS AND OIL CO. *v.* CANADA SOUTHERN R.W. CO.

Railways—Farm crossings—Duty to provide—51 Vict., c. 29, s. 191 (D.)—Retroactivity.

Before the Dominion Railway Act of 1888, there was no statutable obligation upon a railway company to provide and maintain a farm crossing where the railway severed a farm, and s. 191 of that Act, providing that every company shall make crossings for persons across whose lands the railway is carried, is not retrospective.

Vezina v. *The Queen*, 17 S.C.R. 1, and *Quay* v. *The Queen*, ib. 30, in effect overrule *Canada Southern R. W. Co.* v. *Clouse*, 13 S.C.R. 139, and approve *Brown* v. *Toronto and Nipissing R. W. Co.*, 26 C.P. 206.

Shepley, K.C., and *J. Cowan*, for plaintiffs. *Hellmuth*, and *W. P. Torrance*, for defendants.

Falconbridge, C.J., Street, J.] IN RE NICHOL. [March 6.

Surrogate Court appeal—Security—Affidavit—R.S.O. c. 59, s. 36—Surrogate Rule 57—Con. Rule 825.

An appeal to a Divisional Court from an order of a Surrogate Court is not duly lodged, and will be quashed, if security has not been given, and an affidavit of the value of the property affected filed, as required by Rule 57 of the Surrogate Court Rules of 1892, which are made applicable by s. 36 of the Surrogate Courts Act, R.S.O. c. 59, notwithstanding the provision of Con. Rule 825, that no security for costs shall be required on a motion or appeal to a Divisional Court: *In re Wilson, Trusts Corporation of Ontario* v. *Irvine*, 17 P.R. 407, applied and followed.

Skeans, for appellants. *J. H. Moss*, for executors.