

highway at the crossing, as well as submitting to such terms and conditions as may be imposed by the Railway Committee. I am unable to find in the Railway Act, or in any other enactment, any warrant for this claim. . . . The municipality may in some cases secure terms from the Railway Committee, but no provision is made for ordering monetary compensation for the user of the highway involved in crossing it at rail level. This privilege of crossing does not appear to fall within any of the classes of interests for which compensation is provided under secs. 132 to 172. In no case that I am aware of has a claim for compensation to a municipality for the user of a highway by a railway, arising from the mere crossing in the line of railway, been presented or countenanced. *Sydney v. Young*, [1898] A. C. 457, *Donnaher v. State of Mississippi*, 8 Sm. & M. 649, and *Dillon on Municipal Corporations*, 4th ed., p. 834 *n.*, referred to.

Scott, Scott, & Curle, Ottawa, solicitors for plaintiffs.

Taylor McVeity, Ottawa, solicitor for defendants.

MAY 9TH, 1902.

DIVISIONAL COURT.

CANADIAN BANK OF COMMERCE v. ROLSTON.

Execution—Equity of Redemption—Dower—Election—Right to Estate in Land—Assign—Tenant in Common—Practice—R. S. O. ch. 77—Rules 1016, 1017, 1018.

Appeal by plaintiffs from judgment of LOUNT, J., dismissing action for the aid of the Court as to certain executions issued by plaintiffs against defendant out of a Division Court, wherein plaintiffs had recovered judgment for \$162.65 and \$40.20 respectively against defendant, who is a widow, and is entitled to dower in certain land of her late husband, or to an undivided one-third share or interest therein, subject to a mortgage made by him for \$175. The defendant on her examination for discovery declined to say whether she would elect to take dower in or one-third absolutely of her husband's estate. The trial Judge held that defendant had an interest in land saleable under secs. 29, 30, and 31 of the Execution Act, R. S. O. ch. 77.

H. J. Scott, K.C., for appellants.

M. H. Ludwig, for defendant.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J.) was delivered by

STREET, J.—In whichever way the widow elects, her interest is not saleable by the sheriff under a *fi. fa.* If she,