

In the circumstances, the case should be remitted to the Surrogate Court for trial, so that the plaintiff might have an opportunity of offering additional evidence as to the execution of the will. If found to be duly executed, it should be open to the Judge of that Court to consider to whom he will grant administration.

Objection was taken, under sec. 34 of the Surrogate Courts Act to the appeal, on the ground that the value of the property to be affected by the judgment did not exceed \$200, inasmuch as the only bequests possibly subsisting under the will at the testator's death amounted only to \$65—the devise of realty to his wife having lapsed, as he had survived her, the will having made no disposition of residue, and no executor having been named. But the estate was shewn to be over \$2,000; and, as the judgment and appeal concerned the person to whom administration of it was to be consigned, it must be taken to affect more than \$200.

Costs of the appeal and of the former trial to be paid out of the estate.

FIRST DIVISIONAL COURT.

DECEMBER 9TH, 1915.

***RE TORONTO AND YORK RADIAL R.W. CO. AND
CITY OF TORONTO.**

*Street Railway—Agreements with Municipal Corporations—
Right of Deviation and Extension of Lines—Approval of
Plans—Order of Ontario Railway and Municipal Board—
Jurisdiction—Franchise—Submission of Plans to Municipal
Officials—Necessity for.*

Appeal by the Corporation of the City of Toronto from an order of the Ontario Railway and Municipal Board allowing an application made by the railway company for the approval of certain plans of tracks by way of a deviation from its existing line along Yonge street in the city of Toronto, to a proposed station on land adjoining that street.

The application made to the Board was opposed by the city corporation on two grounds: (1) that the railway company had no franchise in respect of the street and adjoining land proposed to be used; (2) that, in any event, the consent of the city council was necessary.