I think in the present case this will may be construed to prevent an intestacy as to the lapsed devise, and that the lands given to the deceased sister pass to Andrew.

The cases upon this question are numerous, and among others cited upon the argument were the following, some of them bearing also upon the use of the word "estate" and the words "give and bequeath" instead of the word "devise:" Crombie v. Cooper, 22 Gr. 267, 24 Gr. 470; McCabe v. McCabe, 22 U. C. R. 378; Stein v. Ruthdon, 37 L. J. Ch. 369; Patterson v. Hoddert, 17 Beav. 210; Hamilton v. Hodson, 6 Moo. P. C. 76; Re Kendall, 14 Beav. 608.

The costs of all parties should be paid out of the estate; those of the executors will be solicitor and client costs.

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TEETZEL, J. OCTOBER 22ND, 1906.

WEEKLY COURT.

DAVIES v. SOVEREIGN BANK AND CITY OF TORONTO.

Discovery — Examination of Officer of Defendant Municipal Corporation — Alderman of City—Rule 439 (a) 1 — Construction of—"Officer or Servant"—Legislative Functions.

Motion by plaintiff to commit John Noble, an alderman of the city of Toronto, who refused to be sworn on an appointment taken out by plaintiff for his examination for discovery as an officer or servant of the corporation, under Rule 439a (1).

F. Arnoldi, K.C., for plaintiff.

F. R. Mackelcan, for defendants the city corporation and for John Noble.

TEETZEL, J.:—The motion involves the question whether a member of the municipal council other than the mayor or other head of the corporation is examinable under this Rule, which reads: "439a (1). In the case of a corporation any officer or servant of such corporation may, without order, be orally examined before the trial touching the matters in