

Ferguson, J.]

[June 29.

WRIGHT v. COLLINS *et al.**Will — Construction — Wrong Description — Falsa Demonstratio.*

Where a testatrix by her will devised as follows: "I give, devise and bequeath to my husband all my real estate, composed of the north-west quarter of lot number ten in the sixth concession of the township of Mersea;" and it appeared that she had never owned the said lands, but had owned and lived upon the north-west quarter of lot ten in the fifth concession of the township of Mersea.

Held, that by virtue of the fact that the will, taken apart from the erroneous description, contained a gift or devise of all the real estate of the testatrix which would, taken alone, be a sufficient description for the purpose of passing the lands really owned by the testatrix to the plaintiff, the part of the description referring to lot ten in concession six might be rejected as *falsa demonstratio*, and the lands really owned by the testatrix held to have passed to the devisee.

Hickey v. Stober, 11 O. R. 106; *Re Shover*, 6 O. R. 312; *Summers v. Summers*, 5 O. R. 110, distinguished.

Clark, for the plaintiff.

Blake, Q.C., for the infant defendants.

Full Court.]

[June 30.

QUEEN v. WEBSTER.

Municipal corporations — By-law — Favouritism — Delegation of functions — R. S. O. 1887, c. 184, s. 496, ss. 14.

On January 7th, 1880, the Council of the town of Parkdale passed a by-law, entitled "A By-Law to Regulate or Prevent the Carrying on of Manufactures or Trades Dangerous in Causing or Promoting Fire," whereby it was provided that no such manufacture or trade should be allowed to be carried on within 300 feet of any other building, and a fine of from \$5 to \$20 imposed for each day that a violation of the by-law continued, with distress on default of payment, and imprisonment in default of sufficient distress.

Afterwards they passed another amending by-law, providing that the restriction should not exist if the owners of such buildings within 300 feet consented in writing, the said consent, however, to be submitted for approval by the Chairman of the Board of Works.

Held, that the by-law as amended was invalid within the principles laid down in *re Kiely*, 13 O. R., at p. 457, and in *re Nash and McCracken*, 33 U. C. R. 181, viz., because by requiring the consent of the owner of the adjoining buildings to be obtained it constituted three persons the judges of the right asked for, and divested the council of the power they should personally exercise, and by requiring the approval of the Chairman of the Board of Works it permitted favouritism, and all persons who desired to follow the same trade were not placed or might not be placed on the same footing. It was also bad because it delegated in part the exercise of the judgment and discretion that should be exercised by the enacting body alone under R. S. O. 1887, c. 184, s. 496, ss. 14.

Shepley, for the prosecutor and the magistrate.

G. W. Holmes, for the defendant.

Robertson, J.]

[July 6.

*Re INGERSOLL, GRAY v. INGERSOLL.**Registrar — Fees — Salary — Apportionment — R. S. O. (1877), c. 111, ss. 98-104.*

Appeal from the report of the Master at Woodstock, made in reference to the claim of the county of Oxford against the estate of James Ingersoll, in respect to the proportion of the fees received by the said James Ingersoll, during the year 1886, in his capacity as Registrar of Deeds.

The said James Ingersoll died on August 9th, 1886, having received up to that date \$4,042.75. His deputy filled the vacant position from August 9th, 1886, to August 25th, 1886, receiving \$272.65 in fees, and the present Registrar was then appointed, and received during the balance of the year \$2,444.85, making a total received of \$6,760.25.

The county made their claim under R. S. O. 1877, c. 111, ss. 98 to 104, and it was contended