

crossing across the railway from one part to another of his land. Action dismissed without costs and without prejudice to any question affecting a claim to a way of necessity.

APRIL 9TH, 1903.

DIVISIONAL COURT.

NORTHMORE v. ABBOTT.

*Will—Action to Set Aside—Burden of Proof—Want of Testamentary Capacity.*

Appeal by defendant from judgment of FALCONBRIDGE, C.J., 1 O. W. R. 231, in favour of plaintiff in an action to set aside, for undue influence and want of testamentary capacity, the will of Hannah E. Fenwick, deceased.

T. D. Delamere, K.C., for defendant.

A. B. Cunningham, Kingston, for plaintiff.

THE COURT (BOYD, C., FERGUSON, J., MACLAREN, J.A.) dismissed the appeal with costs.

WINCHESTER, MASTER.

APRIL 11TH, 1903.

CHAMBERS.

KINGSTON v. SALVATION ARMY.

*Parties—Unincorporated Voluntary Association—Service of Process on—Religious Body Holding Property in Ontario.*

Motion by defendants "The Salvation Army" to strike out their name as defendants, on the grounds that they are not an incorporated body or a partnership; that they are under the sole control of William Booth, in whom (or in trustees for whom) all their property is vested; and that D. F. McAmmond is not a proper person to be served on their behalf, and William Booth has no agent in Canada upon whom process can be served. The action was brought to recover damages for injuries sustained by reason of a runaway horse frightened by the noise made by defendants McQuarrie and Austin while conducting religious services as members of the Salvation Army in the streets of the city of Hamilton. The noise was made by the beating of a drum. It appeared that D. F. McAmmond was a staff-captain having charge of the Army's work in Hamilton.

A. E. Hoskin, for applicants.

D. L. McCarthy, for plaintiff.

THE MASTER.—The Salvation Army is a religious body, acknowledged to be so by R.S.O. ch. 162, sec. 2 (3), provid-