

RECENT ONTARIO DECISIONS.

Important Judgments in the Superior Courts.

Court of Appeal.

DOYLE v. NAGLE.

[BURTON, OSLER AND MACLENNAN, J.J.A.,
[3RD MARCH, 1897.]

Will — Devise of property not owned by testator by mistake — Intention — Mistake — Devise of property owned by testator upheld — Hickey v. Hickey, 20 Ont. R. 371, followed.

Judgment on appeal by plaintiff from judgment of Falconbridge, J., in favour of defendant Jas. McGovern, in action for construction of will of Owen McGovern, heard upon motion for judgment on the pleadings. The testator died in 1894. The will was made in 1891, and after directing that his debts, etc., should be paid, devised the "residue" of his estate as follows:—"I give to my son James, his heirs and assigns, the south-westerly quarter of lot 11, concession 4, in the township of Ad-jala. I give to my said son James, his heirs and assigns, my farm, consisting of part of the west half of lot No. 12, in the 5th concession of the said township, on condition that he shall pay debts and legacies." The testator had no interest in the south-west quarter of lot 11 in the 4th, but was seised in fee of the south-west quarter of lot 12 in the 4th, at the time of making the will, and at the time of his decease. The Court below held (distinguishing *Hickey v. Stober*, 11 O. R. 106, and following *Hickey v. Hickey*, 20 O. R. 371) that by the will the testator devised the land he did own to the defendant James McGovern, his son. The

appellant contended that the testator died intestate, as to the south-west quarter of lot 12 in the 4th. The Court agreed with the Court below in upholding the devise, and dismissed the appeal with costs. M. Scanlon, for appellant. J. Hood (Barrie), for defendant, James McGovern. D. Ross (Barrie), for other defendants.

* * *

NOVERRE v. CITY OF TORONTO.

Damages for injuries by falling — Snow and ice — Plaintiff using street or way not opened for public travel — Defendant corporation not liable.

Judgment on appeal by plaintiff from judgment of Ferguson, J. (27 O. R. 651), dismissing the action, which was brought to recover damages for injuries sustained by plaintiff by falling in Lake Street, Toronto, and injuring his thigh bone, the plaintiff alleging negligence and breach of covenant contained in his lease from defendants to keep in repair the approaches to his premises fronting on the bay, where he carries on the business of a boat-builder. The accident to the plaintiff happened on the night of the 25th January, 1895, when there were snow and ice upon the ground. At this time work was being done by the defendants upon Lake Street. Instead of taking the planked way provided for access to and from his premises, the plaintiff left it and proceeded from his premises upon a diagonal track along and across Lake Street, which, to his knowledge, was not a street or way completed, for use or opened