

equal parts." The widow died on the 21st January, 1899. The testator had five children, all of whom but Annie Webster, were living.

D'Arcy Tate, Hamilton, for executor and children of testator.

T. Hobson, Hamilton, for adult grandchildren of testator.

F. W. Harcourt, for infant grandchild.

MEREDITH, J., held that, the testator's words being plain, there being no ambiguity, patent or latent (*Higgins v. Dawson*, [1902] A. C. 1), the grandchildren cannot take directly. Nor can they take under sec. 36 of the Wills Act of Ontario: see *In re Harvey*, *Harvey v. Gillow*, [1893] 1 Ch. 567, and *In re Coleman and Jarrom*, 4 Ch. D. 165. *In re Smith's Trusts*, 5 Ch. D. 497 n., distinguished, and doubted in view of *In re Musther*, *Groves v. Musther*, 43 Ch. D. 569. The gift (as a question of interpretation of the will) must be held to be to persons capable, or at least supposed to be capable, of taking. No one, with or without a knowledge of the Act and of such cases as *Mower v. Orr*, 7 Hare 483, would make a gift to a dead person in order that his child or children might take; the gift would be to the child or children, or child or children, if any; and the word "all" has no contrary signification. *Christopherson v. Naylor*, 1 Mer. 320, referred to. The dead child is not included in the words "all my children," and so her children take nothing under the will. Order accordingly; costs out of the estate as usual.

JANUARY 23RD, 1903.

DIVISIONAL COURT.

COBBAN MFG. CO. v. LAKE SIMCOE HOTEL CO.

Mechanics' Liens—Judgment for Defendant in Action to Enforce—Costs—Percentage of Sum Claimed.

Appeal by plaintiff from judgment of the Judge of the County Court of Simcoe in an action to enforce a mechanics' lien for work done and materials supplied in repairs and improvements to a hotel in the town of Barrie. The plaintiffs claimed \$277.85, \$57.85 being for extras outside the contract. The Judge disallowed the extras and deducted a sum for incomplete work, and therefore found that there was nothing due to plaintiffs, and gave judgment for defendants with costs. The plaintiffs appealed as to the extras and the deductions, and also contended that the defendants' allowance for costs should be based upon the amount