

legacies provided for under the will. If defendant's position is right, plaintiff may have to abate a portion of his legacy.

The appeal must be dismissed, with costs in cause to defendant.

---

ANGLIN, J.

MAY 9TH, 1906.

TRIAL.

STODDART v. ALLAN.

*Executors and Administrators—Action for Board of and Services to Testator—Evidence—Costs.*

Action against the executor of the will of William Allan, deceased, to recover an amount alleged to be due for boarding and attending upon the deceased.

W. H. Wright, Owen Sound, and G. M. Vance, Shelburne, for plaintiff.

S. H. Bradford and J. Bradford, Sturgeon Falls, for defendant.

ANGLIN, J.:—After carefully considering the evidence I have reached the conclusion that the plaintiff is entitled to succeed for a portion of his claim in this action.

Until 2nd December, 1902, his deceased father-in-law was an ordinary boarder with him, and I cannot find that he has not been paid all that he bargained for to that date. Down to that time plaintiff kept no account against the deceased, and his evidence rather indicates that he intended to make no claim for board beyond the small sum which her father paid from time to time to plaintiff's wife.

But from the beginning of December, 1902, the intention to charge for board and services to the deceased seem tolerably clear, and there is sufficient evidence, in my opinion, to warrant a finding that the deceased . . . knew of this, and more than once intimated his recognition of a claim by plaintiff upon himself or his estate. The small irregular payments made from time to time by the deceased to his daughter . . . subsequent to December, 1902, were, in