

no difficulty could have arisen. Neither would any have arisen if the proviso had proceeded without the words above set forth. Eliminating them, the remaining words provided clearly and appropriately for the possible case of a lapse by reason of the death of Janet Gibson in the lifetime of the testatrix, and carried the benefit of the devise to children, if any should be left and should survive to fulfil the conditions set forth. This was of course a very proper provision to make. Without it there would have been an intestacy in the event of Janet Gibson's death before the testatrix, even though there were children surviving her. Section 36 of the Wills Act, R. S. O. ch. 128, would not apply, Janet Gibson not being a child or issue of the testatrix. See also *Hargraft v. Keegan*, 10 O. R. 272. The insertion in the proviso of the words above adverted to does not in any wise depreciate its effect in the event of death before the testatrix, but their presence seems to suggest the presence in the testatrix's mind of some further idea imperfectly conceived or at all events imperfectly expressed. Death without children after the death of the testatrix but before death of her husband would, in itself, work no lapse of the devise. The words were probably used with some other intent, but of themselves they failed to express it, and there was nothing in the other words of the will from which it might be gathered. There was nothing to control the clear effect of the earlier provision by which the estate in remainder was vested in Janet Gibson upon her attaining the age of 21 years. The result is that in the events which happened the earlier provision was left to its operation and the plaintiffs have therefore no estate or property in the lands in question. As to the alleged appointment in favour of the plaintiff James Robertson Gibson, it was virtually conceded that, there was not a valid execution of the power, and that appears to be the correct view, even if it be assumed that it was ever delivered so as to become operative as an executed instrument..

The appeal should be dismissed.

The other members of the Court agreed; OSLER and MEREDITH, J.J.A., giving reasons in writing.