

The fact of James dying without children would not prevent the children of George taking the whole. In other words, there would be no lapse or intestacy by reason of only one of the sons leaving children. The testator makes no provision for any such contingency; but I think the second sentence evidences his intention that both should die without children as a condition of the gift ever taking effect, and thus supports the view that the testator's intention was that if only one son had children they should take the whole estate.

The subject of construction of gifts to a class is fully discussed in *Kingsbury v. Walter*, [1901] A. C. 187.

The declaration will therefore be that the children of George are entitled to the property in question in fee simple as tenants in common. Costs of all parties out of the estate.

MEREDITH, C.J.

MAY 16TH, 1906.

TRIAL.

McKENZIE v. GRAND TRUNK R. W. CO.

*Railway—Farm Crossing—Overhead Bridge and Under-pass
—Depriving Owner of—Damages—Measure of—Reference.*

Action for damages for injury to plaintiff's land by substituting for the farm crossing to which he was entitled upon the severance of his farm by defendants' railway, a different means of crossing.

T. G. Meredith, K.C., and A. E. Taylor, London, for plaintiff.

W. R. Riddell, K.C., for defendants.

MEREDITH, C.J.:—Since the trial a similar action, *Dickie v. Grand Trunk R. W. Co.*, has been disposed of by the Chancellor, and I have had an opportunity of reading the reasons for his judgment in favour of the plaintiff which were given by that learned Judge.