

these estates, it would not do so even in a deed and in a court of law ; but, unquestionably, in a court of equity, and acting upon a will, it cannot have that effect. 4 *Kent*, 361.

The words of the devise are, "to be divided equally, share and share alike," which words, even in a deed, have been construed to create a tenancy in common. 1 *Thos. Coke*, 773, note 42. And the cases referred to in the same note show, that the words, "share and share alike," or "between," or any other words indicating an intention, that the devisees shall take several and distinct shares, will make them tenants in common.

The children, therefore, of the testator, take as tenants in common, after the determination of the life estate of the widow ; and, as I think, they take this estate for life only—the will being prior to the act of 1825, chap. 119, and, there being no words of inheritance or perpetuity, or any other language from which the intention of the testator to pass a fee, can be clearly ascertained, which, according to the authorities, is indispensable, even in the case of a will, where a much more liberal construction is allowed than in a deed or grant.

As, therefore, these parties took as tenants in common in remainder for life only, it follows that the fee was undisposed of by the will, and, consequently, upon the termination of the various estates for life, the heirs of the testator would be entitled to the possession and enjoyment of the inheritance.

The true construction of this clause of the will in my opinion, is this. The widow took an estate for life—for a period thereof, to be held by her, for the benefit of herself and her children, that is, during their minority. Upon the children attaining their full age, the widow still living, her estate would continue until her death, disencumbered of any charge on account of the children ; and upon her demise the limitation over for life to the children would take effect, and upon their death's the inheritance would pass to the heirs at law of the testator, as property undisposed of by his will.

The Auditor by his report of the 7th of July last, gives to the children of the two sons of the testator, who died leaving