

tion which he may have been allowed by the Orphans Court for discharging the duties of executor, should have no more influence upon his commission as trustee under this will, than if the two offices were filled by different persons.

I am of opinion, therefore, that this trustee is entitled in the settlement of his accounts as trustee, to an allowance of ten per centum upon the property which may have come into his hands as such. He is not, however, to be allowed ten per cent. or any thing at all, upon his disbursements; the commission fixed by the testator, being the equivalent for his services in the administration of the trust, which includes of course the proper application and disbursement of the income of the trust estate. An order will, therefore, be passed referring the case to the Auditor, to take the proper accounts, and making provision for the taking of such evidence as the case may require.

[No appeal was taken from this order.]

MARY MOODY ET AL.

vs.

EMILY ELLIOTT ET AL.

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SEPTEMBER TERM, 1848.

[CONSTRUCTION OF WILL.]

A TESTATOR devised certain real and personal property to his wife, "to her use, for the benefit of her and her children under age, and after they all come of age," to his wife during her natural life, and "*no longer*;" and after her death, the whole "to be divided equally, share and share alike," between the testator's seven children, (naming them,) or equally between such as shall then be living. It was HELD—

That, though this will was executed prior to the act of 1822, ch. 162, which abolishes thereafter estates in joint-tenancy, unless the devise expressly declares, that the property shall be so held, this devise does not create an estate in joint-tenancy.

The words, "to be equally divided, share and share alike," even in a deed, would create a tenancy in common.

The will being prior to the act of 1825, ch. 119, and there being no words of inheritance or perpetuity, or any other language used, from which the intention of the testator to pass a fee could be clearly ascertained, it was held, that the children took estates for life only.