bill was filed by the widow, who married a second time, (and whose second husband has also died,) and several of the children of the testator, against other of his children, for the sale of this property; upon the allegation, that it was not susceptible of partition, and, that it would be advantageous to all parties concerned that it should be sold, and the proceeds divided among them according to their several and respective rights.

In the account of the Auditor reported on the 7th of July last, the net proceeds of the sale, after assigning to the widow a portion thereof, as an equivalent for her life estate, are distributed among the surviving children, and the grandchildren of the testator, giving to the grandchildren the portions of their respective parents; and the point to be decided is, whether this distribution is the proper one.

The bill proceeded upon the hypothesis, that the whole estate was disposed of by the will, and must be understood as conceding, that the grandchildren had succeeded to the rights of their parents, as otherwise there could have been no motive for making them parties. It was, however, subsequently supposed that these grandchildren of the testator, were not entitled to any portion of this money, upon the ground that the limitation over, after the termination of the life estate of the widow, was restricted to the children who may be living when that event shall occur. And in opposition to the right of the grandchildren, it was also insisted in the argument, that the children of the testator, whether the benefit of the devise, was to be confined to the survivors of the widow or not, took as joint tenants, and that consequently, the children of the deceased brothers must be excluded, upon the doctrine of survivorship —the will having been executed prior to the act of 1822, ch. 162, which abolishes thereafter, estates in joint-tenancy, except where the deed, devise, or instrument of writing, expressly declares, that the property shall be so held.

It appears to me, however, to be very clear upon authority, that this devise does not create an estate in joint-tenancy. Perhaps, in the present disposition of the courts in regard to