the fee. Such a construction the Court should not readily adopt. By the construction contended for by the plaintiff the whole estate is disposed of, and that is to be preferred where the will is doubtful. *Curia advisari vult.*

27th January.

BOYD, C.,—I have difficulty in defining precisely the manner of the testamentary devolution of the estate in question in this case, because the construction of the will was not argued with reference to that specifically; but, upon the general question presented on the pleadings, I have come to the conclusion that the plaintiff cannot, by his own conveyance, confer an indefeasible estate upon the intending purchaser. The will was made in 1866, at which time the testator's son had several children, who are yet alive. Some have been born subsequently to the will, but as a class they were then existing. The only clause relating to the land in question reads as follows, (the learned Chancellor read the clause above set out). The internal evidence supplied by this language, indicates that the will was the production of a draftsman learned in the law. The limitation of the land is to "John Dickson, to his heirs and executors." The inartistic expedient of prohibiting mortgaging or selling, is employed with a view to keep the farm for the use of his children after his death. The clear intention of the testator is, while giving the farm to his son, to provide "that it shall be to his (the son's) children after his decease." The first words give unquestionably an estate in fee simple absolute to the plaintiff. The last words as plainly declare, without resorting to technical language, that the son's children are to have the place after their father dies. The whole of the clause is to be read together, and if possible, effect is to be given to every part of it. If there is to be any preference in regard to conflicting limitations, the leaning of the Court should be in favour of that which is last.

Of possible constructions, the following have the most to commend them and, while it is not needful for me to decide on any one in particular, they all agree in manifesting an interest in the children of the plaintiff, which is the point I now decide as being sufficient for the disposal of of the matter in controversy.

(1.) Full effect can be given to all the words by holding that there is an estate in fee vested in the plaintiff, but subject to be defeated by executory limitation to his children after his decease, if any survive him. This would enable the plaintiff to convey in fee simply, but subject to defeasance if he predeceased his children. *Barker* v. *Barker*, 2 Sim. 249; *Spence* v. *Handford*, 4 Jur. N.S., 987.

(2.) The earlier technical words "to his heirs," may be rejected as being used ignorantly, or in misapprehension of their effect. This would cut down the first devise to one of a life estate only, and would vest the remainder in fee in the children, as tenants in common, *Sherratt* v. *Beatty*, 2 My. & K. 149. Such was the conclusion arrived at in a very tenaciously argued case, which came twice before the Supreme Court of Pennsylvania, *Wert* v. *Merkel*, 81 Penn. 332, in 1876, and *Ulrich's* appeal, 86 Penn. 386, in 1878, in which the provisions were almost identical with those in the case now in hand.

Or (3.) It may be held that the effect of the later words is to intercalate a life estate of the children between an estate for life in the plaintiff and the ultimate remainder in fee, vested in him by the first words of the clause. Such appears to have been the decision in *Chyck's* case, as reported in 3 Dyer 357*a*. This devise of the "fee simple of my estate to B. and after his decease to her son C." It was held that B. had an estate for life, remainder to her son C. for life, and the fee simple thereof to B. In the note it is said that Bendloe and Anderson both report this case as adjudged that C., the son, shall have the fee after the life estate of the mother determined. See also *Doe d. Herbert* v. *Thomas*, 3 A. E. 128, where *Chyck's* case is referred to with apparent approval by Littledale, J.; and *Doe d. Arnold* v. *Davies*, 4 M. W. 599; and *Gravener* v. *Watkins*, L. R. 6 C. P. 505.

At present I am inclined to regard the last as the preferable construction.

The plaintiff should pay the infants' costs.