pate with him at all, or only to such extent as he may think fit to allow. . . . The question then is, whether, in the absence of any direction as to the mode of participation, the participation is not to be in equal shares and proportions. I am of opinion that it is.''

Anything which in the slightest degree indicates an intention to divide the property must be held to abrogate the idea of a joint-tenancy, and to create a tenancy in common: Jarman on Wills, 6th ed., p. 1791; Robertson v. Fraser (1871), L.R. 6 Ch. 696. A different intention does not follow from the use of the additional words ''according to his best judgment.''

So strongly is the word ''divided'' when used in this connection held to mean equally, that where a direction was to pay, assign, and divide a sum to certain legatees as joint tenants, a tenancy in common was held to be created: Booth v. Allington (1857), 27 L.J. Ch. 117.

And so in earlier cases, a devise to A. and B. between them (Lashbrook v. Cock (1816), 2 Mer. 70), and a bequest unto and among certain persons (Richardson v. Richardson (1845), 14 Sim. 526), were each held to create a tenancy in common.

There is good ground for holding that the division contemplated by the testator was to be based on an equality, and that a tenancy in common was created. That being so, the answers given by the judgment appealed from to the other questions submitted must be held to be correct.

The appeal should, therefore, be dismissed with costs.

FALCONBRIDGE, C.J.K.B., and RIDDELL, J., concurred.

LATCHFORD, J.:—John Hislop, his brother David, his sister Margaret, and the personal representatives of his deceased sister Euphemia, are under the decision appealed from entitled respectively to an equal one-fourth share in the estate of the testator.

By appealing John Hislop obviously manifests an intention of not dividing the estate in equal shares.

Upon the argument his counsel admitted that the words of the devise imported that he would be obliged to give some part of the estate to each of the brothers and sisters who survived the testator, but contended that, while such part should not be illusory (how little would be illusory he declined to say), the amount of it was in the discretion of the executor—who, being one of those entitled, might apportion to himself more than he