

LOUNT, J.—“A will should be construed by reading it in the ordinary and grammatical sense of the words, unless some obvious absurdity or some repugnance or inconsistency with the declared intentions of the writer to be extracted from the whole instrument should follow from so reading it:” per Lord Wensleydale in *Abbott v. Mitchell*, 7 H. L. Cas. 877. “It is not the duty of a court of justice to search for a testator’s meaning otherwise than by fairly interpreting the words he has used:” per Lord Cranworth in the same case. See also *Crawford v. Broddy*, 26 S. C. R. at p. 353. Adopting this rule of construction, and reading the will in the ordinary and grammatical sense, it appears to me that Elizabeth Fitzsimmons, the widow of the testator, took an estate for life, subject to being cut down to an estate terminable on her marrying again, and subject to the express conditions of the payment of his debts, and to the support of his child Mary Ann, and as long as she remained his widow, but if she married again, her estate would absolutely cease; otherwise an estate for life, if she remained unmarried. His child Mary Ann, by the words “I give and bequeath my real estate to the sole and proper use of my child Mary Ann,” took an estate in fee simple, subject to an executory devise over in the event of her dying without issue, by the words, “in the event of my child dying without issue it is my will that my real estate should be sold and the proceeds equally divided between the children of my brother and sister.” I think these words import a failure of issue restricted to the time of the death of the first devisee: *Exp. p. Davis*, 2 Sim. N. S. 114; *Coltsman v. Coltsman*, L. R. 3 H. L. 121; *Gray v. Rochford*, 2 S. C. R. 431; *Jarman on Wills*, 5th ed., 1332. The rule is well established of restrictive construction for cases in which the devise is to A. in fee, and if he dies without issue, then at his death, over. . . . I think, also, it must be held that the intention of the testator was that, whether the estate reached Mary Ann through one channel or the other, he intended and willed that if she died without issue, then there should be the executory gift over, the lands should be sold and the proceeds go to the children of his brother and sister as mentioned in the will. By giving to the will this construction full meaning is attached to all of it, with the result that the manifest intention of the testator is effectuated without repugnance or inconsistency. This being so, the executors of the deceased surviving executor of this testator have power to sell and distribute the proceeds among the children of his brother and sister. The will does not clothe the executors directly with authority to sell, but directs a sale, and his executors are “to be his sole executors to carry the