

The will was made on the 23rd March, 1910, and the testator died on the 30th June, 1913. Euphemia Moody died intestate in November, 1912, and Janet Glover died on the 22nd January, 1914, leaving a will.

Mr. Justice Middleton states the first of these questions thus: "Has John Hislop an absolute and uncontrollable discretion which enables him to divide the testator's property among those entitled, in such shares and proportions as he may see fit, or is the testator's intention that the property shall be divided equally, and is John Hislop's function limited to apportioning so as to bring about that which, in his judgment, would constitute equality?" The appellant's contention is, that the testator's direction that the division be "according to his (the executor's) best judgment" confers upon him power to make the division amongst the five named persons in such proportions as to him seem best. I can find no such meaning in that language, particularly when read in connection with the other words used by the testator in making the devise. That to which his best judgment was to be applied was not the proportion in which the named persons should take, but the mode of making the division, as, for instance, what assets should each get as his or her share of an equal division. Had the testator said in express language that the executor should make the division in such proportions as in his best judgment he thought proper, or words to that effect, the result might have been otherwise.

Authority is not wanting that the language employed imports an equal division. A testamentary gift "to be divided" between two or more, means an equal division and creates a tenancy in common: Stroud's Judicial Dictionary, p. 559, citing *Peat v. Chapman* (1750), 1 Ves. Sr. 542, referred to in the judgment appealed from.

In *Liddard v. Liddard* (1860), 28 Beav. 266, where leaseholds were conveyed to trustees, and it was declared that when the settlor's eldest son attained 21 years, they should be in trust for him, and that they should be assigned accordingly, but so that the settlor's wish that his other children "might be allowed by the eldest son to participate with him in the same," should be observed by him, it was held that the younger children were entitled to equal shares with the eldest, as tenants in common. The Master of the Rolls (Sir John Romilly) said (p. 271): "It is true the settlement says that the children are to be *allowed* by their brother to participate with him, but that does not invest him with the right of determining whether they shall partici-