

WILL AND TESTAMENT—*Continued.*

- prove such intention, there is no valid objection to such evidence to show the state and circumstances of the property. *Ib.*
4. A party cannot take a benefit under a will, and at the same time defeat its provisions. *Ib.*
 5. A testator, after disposing of certain portions of his estate, devised all the residue of his property to the complainant, in trust, to hold the income, rents and profits, of one-third part of said residue for the use of his grandson, the defendant, during his life, such income, &c. to be paid to him from time to time, as they might accrue, and after his death, to his children in fee, and failing children, to the other grand children, to whom the remaining two-thirds were in like manner devised. At the time of the testator's death, the grandson was indebted to him in a large sum of money, but it appearing that the testator did not mean to regard him as his debtor in respect thereof, it was HELD—
That to enforce the payment of this debt out of the defendant's share of this income and profits, would defeat the clear intention of the testator to provide his grandson a competent support.
Waters vs. Waters, 196.
 6. That it was the duty of the complainant, the trustee, to retain the amount of a loss, occasioned by the failure of the defendant to comply with the terms upon which he purchased a part of the trust estate out of the income of said trust estate payable to the defendant. *Ib.*
 7. Upon a devise of real and personal property to a trustee, in trust, to apply the income arising therefrom for the mutual benefit of the uncle and aunt of the testator for life, and after the death of the uncle to the mutual benefit of the aunt and her children. It was HELD—
That during the life of the uncle and aunt the income of the trust estate should be equally divided between them, and that the title of the children of the aunt to participate in the income is to be postponed until after the death of the uncle. *Mitchell vs. Holmes, 287.*
 8. A testator devised certain real and personal property to his wife "to her use for the benefit of her and her children under age," and after they all come of age, "to his wife during her natural life and no longer," and after her death, the whole "to be divided equally, share and share alike," between the testator's seven children, (naming them,) or equally between such as shall then be living. It was HELD—
 1. That though this will was executed prior to the act of 1822, ch. 162, which abolishes thereafter estates in joint-tenancy, unless the devise expressly declares that the property shall be so held, this devise does not create an estate in joint-tenancy.
 2. The words, to be equally divided, share and share alike, even in a deed, would create a tenancy in common.
 3. This will being prior to the act of 1825, ch. 119, and there being no words of inheritance or perpetuity from which the intention of the testator to pass a fee, could be clearly ascertained, it was held that the children took estates for life only.
 4. The true construction of the whole clause, is, that the widow