the shares of the deceased devisees went to the survivors, and that each of those who outlived the widow of the testator was entitled to an equal proportion—that is, one-fifth of the whole estate.

Mowat, for the plaintiff, submitted the matter to the consideration of the court; the whole question being whether the survivorship referred to the death of the testator or that of the tenant for life.

Strong for the defendants.

Buckle v. *Fawcett* (4 Hare 536;) *Cripps* v. *Wolcott* (4 Madd. 11;) were referred to.

The judgment of the court was now delivered by

The CHANCELLOR: The only question argued before us in this case arises upon the will of *Allan Patterson*. After devising the premises in question to the testator's wife for life, the will proceeds in these words: "And from and after the determination of the said term, I give and bequeath the aforesaid real estate and lands, or the remainder or remainders thereof, to the children of my brother *Robert Patterson*; *Elizabeth*, the daughter of *Jane Corbet*, widow, now residing in Scotland, and the children of my deceased sister *Elizabeth Woodrow, or the survivor or survivors of all of them, their heirs and assigns, for ever, in fee simple, to be equally divided among them.*" And the question is as to the construction of this clause of survivorship,—does it mean the survivors at the death of the testator, or the survivors at the period of distribution?

The cases upon this subject have varied so much from time to time, that it would be impossible to adopt any construction which would not be inconsistent with some of them. In this state of the authorities, it is necessary to look to the reason of the thing rather than to the rules which have been from time to time propounded; and, viewed in that light, I concur in the construction placed upon this will by the learned counsel on both sides. I agree in the observation Vice-Chancellor *Wigram* in *Buckle* v. *Fawcett* (4 Hare 512,) "that the grounds upon which it was holden, as a rule of construction that indefinite words of survivorship should be referred to the death of the testator, are not conclusive." (*Doe d. Vere* v. *Hill*, 3 Burr. 1882; *Doe d. Dorwell* v. *Abey*, 1 M. & S. 428.) I am of opinion that the clause of survivorship in this will, placing upon the language of the testator its natural construction, refers to the period of distribution, and not of the death of the testator; and that construction appears to me to be sanctioned by the current of modern authority. It must be admitted that the Vice-Chancellor appears to have proceeded upon a very imperfect, if not an erroneous view of previous decisions in determining *Cripps* v. *Wolcott* (4 Madd. 11,) the first case in which the old rule was expressly disavowed; and in *Doe Long* v. *Prigg* (8 B. & C. 231,) a case subsequently decided, and as it would seem carefully considered, the doctrine of the older cases was adhered to; but the rule laid down by Sir *John Leach* appears to me to be so much more accordant with reason, and has been so often recognized by subsequent judges (*Gibbs* v. *Tait*, 8 Sim. 132; *Blewitt* v. *Stauffers*, 9 Law Jour. ch. 209; *Spurrel* v. *Spurrell*, 17 Jur. 755; and see *Pope* v. *Whitcombe*, 3 Russ. 124,) that I have no hesitation in following it in the present case.

U. C. COUNTY COURTS.

(County of Frontenac—Kenneth Mackenzie, Judge.)

REG. EX REL. RANTON v. COUNTER, MAYOR OF KINGSTON.

(*Reported by W. Geo. Draper, Esq., Barrister-at-Law.*)

Quo Warranto—Contractor with Corporation.—16 Vic. ch. 181.

A stockholder in a Gas Company having a contract with a Municipal Corporation is disqualified from being a member of such Municipal Corporation.

This was a summons in the nature of a quo warranto, issued against John Counter, Mayor of the City of Kingston, calling on him to shew why he usurped the office of Alderman of Victoria Ward in said Mayor of the City of Kingston. The objection to the defendant's election was that he was a Contractor under 16 Vic. ch. 181, sec. 24; in this that he was a stockholder in the City of Kingston Gas Light Company at the time of his election, which Company then had and still have a contract with the Corporation of Kingston to supply the said city with gas at a certain rate to be paid therefor to the said Company.

Cooper and *Draper* for relator.

Forsyth for defendant.

The defendant was elected to the office of alderman for Victoria Ward in the City of Kingston, on the 2nd Jan. last, and to the office of Mayor on Monday the 15th day of the same month. The fiat was signed and the summons issued on the 13th February, but the copy was not served until the 15th. The defendant was at the time of the election a stockholder to the amount of £140 12s. 6d. in the City of Kingston Gas Light Company, which Company on the 12th day of September, 1851, had entered into a contract with the Mayor, Aldermen and Commonalty, of the City of Kingston, to supply fifty lamps with gas for £300 a-year, to be paid by the said Mayor, Aldermen and Commonalty. The contract to continue in force until 1st Sept., 1855.

It was objected that the writ should have been served within the six weeks under 16 Vic. ch. 181, s. 27.

It was proved that defendant was, before the election and at the present time, indebted to the Company in a large amount, and it was urged that under 16 Vic. ch. 193, the defendant, in consequence of his indebtedness to the Company, had not such an interest in the stock as would make him a contractor within the meaning of the statute.

MACKENZIE, Judge: The fiat was signed and the writ issued within the statutory six weeks. It is not necessary that the service should be within the six weeks. The 16 Vic. ch. 181, s. 27, merely enacts, "*That the original writ of summons shall be applied for within six weeks.*" The service may be made after the six weeks. There is no notice or protest necessary under the statutes regulating our municipal elections. A protest made or a notice given at the commencement of an election might have a bearing upon the decision, if an opposite candidate claiming the seat was the relator, as it is generally held that when voters give their votes to a disqualified candidate, with knowledge of the disqualification, such votes are considered thrown away. But in the present instance the relator is merely a municipal voter, having an interest as such in the election in question, consequently a protest or notice could make no difference, as the relator cannot ask for the seat of the defendant. I think the stat. 16 Vic. ch. 173 refers only to joint-stock companies to be formed after the passing of that Act, and not to companies like the Kingston Gas Light Company, formed before it; but if it could be construed as applying to the City of Kingston Gas Light Company, it could not affect the decision of the present case. It is true that the defendant was, before and at the time of the election, indebted to the Company in a considerable sum for gas and otherwise, but the 23rd section of 16 Vic. ch. 173, merely enacts, "That it shall not be lawful for any shareholder who is or shall become indebted to the Company for Gas, Water, rent, fixtures or otherwise, to transfer any shares of stock held by him until payment be made to the Company of all sums due by the stockholder." This enactment creates merely a charge upon the stock in the event of the stockholder becoming indebted to the Company to the extent of the stock, but does not thereby divest the stockholder of his interest therein. The defendant could only be divested of his interest in the stock by sale, transfer or forfeiture. The seizure by the Sheriff of the stock in question, took place after the election for Victoria Ward; but even if a seizure had been made before the election and no sale followed, it would make no difference, for the effect of a seizure would be to bind and hold the stock, but the property would not be altered until final execution and sale by the Sheriff. (*Sewell*