

or might not be applicable to questions arising here." Per Kekewich, J., in *Re DeNicols* (1898) 67 L. J. Ch., p. 277.

"American decisions which, like the Apocrypha, though not to be applied to establish any doctrine, as Vice-Chancellor Bacon once observed, may be read for edification only." *London Financial Assn. v. Kelke*, The Times, Feb. 7, 1884.

LEX.

### SURVIVORSHIP.

Owing to the number of frightful disasters during the last few months, involving, in some instances, several members of the same family, the law governing survivorship in a common disaster has in many cases become a question of interest in determining the right of property. For instance, should a testator and a beneficiary under his will, both perish in the same disaster it becomes of the first importance to ascertain whether the will becomes operative or not.

The laws of most countries differ to some extent in this respect. According to Roman Law the presumption of survivorship obtained. For instance if father and son were in a common disaster and the son was above the age of puberty the presumption was that the son was the stronger and had survived the father. The Code Napoleon set down precise rules to govern in each case, and this code with modifications has been adopted by several countries including several of the individual states of the United States of America. In England and in Canada the common law is still in force. Each case is determined as it arises upon its own particular set of circumstances and there is no presumption either of survivorship or otherwise. The onus being upon the person claiming the benefit of survivorship. At one time it appears to have been presumed, in the absence of proof, that those involved died at the same moment but this presumption could be displaced, however, and sometimes upon very slight evidence as appears by the old English case of *Broughton v. Randall*, in which father and son, joint tenants, were hanged from the same cart, at the same time, the son was held to have survived as appeared from some signs, viz., "his shaking his legs," and his wife who claimed dower was held entitled to succeed.

In the leading case *Underwood v. Wing*, 4 De G. M. & W. the husband and wife were swept off the deck of a vessel by the same