WILL—LEGATEE—DISAPPEARANCE OF LEGATEE IN LIFETIME OF TESTATOR—EVIDENCE—DEATH—PRESUMPTION OF DEATH.

In re Benjamin, Neville v. *Benjamin* (1902) 1 Ch. 723. In this matter a legatee named in the will of a testator who died in 1893, the will being dated in 1891, disappeared under a cloud in September, 1892, and his whereabouts were unknown and he had never since been heard of, although searching inquiries had been made and advertisements published in all the English colonies, and other parts of the world. The share this legatee would have been entitled to, had he survived the testator, was £30,000. Letters of administration had been granted to his estate, leave having been obtained from the Probate Division to swear his death on or since 1 September, 1892. The trustees of the will having applied for directions as to the manner in which the £30,000 was to be dealt with, further inquiries by the Master were ordered who certified he was unable to state whether the absent legatee was living or dead, or if dead, when he died. He certified that he was not married when he disappeared, and no one claiming to be his wife or child had come in in answer to the advertisements which had been issued; and the trustees now applied for authority to distribute the £30,000 as if the legatee had predeceased the testator. Joyce, J., without making any declaration that the legatee was dead, or to be presumed to be dead, made an order authorizing a distribution of the fund as if he had predeceased the testator; the order stating on its face that it was made in the absence of any evidence shewing that he had survived the testator—he holding that the onus was on those claiming under the legatee to prove that he had survived the testator.

LEASE—COVENANT NOT TO ASSIGN—ASSIGNMENT OF PART.

Grove v. *Portal* (1902) 1 K.B. 727, is one of those cases which lawyers may point to as shewing the necessity of the circumlocution in legal documents which is so often the food for ridicule by the unlearned in the law. In the present case a lease of an exclusive right of fishing contained a covenant by the lessee not to assign "the said premises," the covenant did not contain the words "or any part thereof." The lessee granted a licence to another person to fish in part of the river in question limited to two rods for the residue of the term: and it was held by Joyce, J., that this partial assignment was no breach of the covenant, following a dictum of Lord Eldon in *Church* v. *Brown*, 15 Ves. 258, 265.