The order may declare that, by reason of the provisions of clause 14, the applicant is not now entitled to receive any portion of the corpus of the estate unless the executors, by virtue of the power vested in them by clause 13, see fit to make an advancement.

Costs out of the corpus.

MIDDLETON, J. SEPTEMBER 29TH, 1910.

RE GIGNAC AND DENIS.

Will—Construction—Devise to Two—Joint Estate for Life—Survivorship—Remainder—R. S. O. 1897 ch. 119, sec. 11—Title—Vendor and Purchaser.

Motion by the vendor, under the Vendors and Purchasers Act, for an order declaring that the vendor can make a good title and convey in fee.

F. E. Hodgins, K.C., for the vendor.

MIDDLETON, J.:—Jacques Gignac by his will dated the 20th January, 1886, devised the lands in question to his daughters Febronie and Delima "and to the survivor of them, her heirs and assigns forever."

The testator died on the 14th December, 1887, and his daughter Febronie died on the 1st October, 1895. Delima has now agreed to sell the land, and objection is taken to her title.

Unless R. S. O. 1897 ch. 119, sec. 11, makes a difference between our law and that of England, the effect of this devise is to give to the daughters a joint estate during the life of both, and to the survivor a separate estate in remainder after the termination of this joint life estate. The words "and to the survivor, her heirs and assigns," are not merely descriptive of the benefit of survivorship incident to a joint tenancy, but confer a separate estate in remainder upon the survivor.

Vick v. Edwards, 3 P. Wms. 371, 3 Brown Parl. Cas. 104, though subjected to criticism by Fearne (F. Con. Rem. 357), does not seem ever to have been doubted, and is accepted without question in Quarm v. Quarm, [1892] 1 Q. B. 184.

Our statute only operates upon an estate which but for its provisions would be a joint tenancy, and converts it into a tenancy in common. The daughters would, therefore, have under the devise a tenancy in common so long as they both lived, but upon the death of one the estate in remainder in the survivor became effective. In whom that estate was in the meantime vested seems to have puzzled conveyancers. In Ex p. Harrison, 3 Anstr. 836,