1801 for three lives and twenty-one years, two of the *cetteux que vie* had died before 1828. No witness was called who had ever known the third, and except the mention of him in the lease, which described him as ten years old, there was no proof that he had ever existed, nor was there proof of any search for him. And it was held, that to raise the presumption of his death, there should have been evidence that he had not been heard of by those who would naturally have heard of him had he been alive, or that search had been ineffectually made to find such a person, Doe v. Andrews, 15 Q. B. 756.[2] So in an action on a testamentary bond, in the name of the State but for the use of certain persons, the inference of the law is that the *cetteux que use* are alive at the time of trial unless proof of the contrary is produced, Maddox v. the State, 4 H. & J. 539, and see Nesbit v. Manro, 11 G. & J. 261.

Burden of proving death while presumption of life continues.—While this presumption of the existence of life continues, the onus of proving the death of the person is thrown upon the party asserting it, Thomas v. Visitors, &c. *supra*. The case commonly referred to on this point is Wilson v. Hodges, 2 East, 312, debt on a recognizance of bail, and plea of the death of the principal before the return of a *ca. sa.*, &c. The question there was, whether the issue lay on the defendants to prove the death of A., the principal, or on the plaintiff to prove that he was alive. The judge who tried the cause thought it lay on the defendants who had averred the death, and of that opinion was the Court, but a new trial was granted on the defendants swearing that they had been misled by an opinion which had been taken, and which had stated the issue to be on the other side, and circumstances being stated which went to prove the death of the party. And see Thomas v. Thomas, 2 Dr. & S. 298. Where, however, this presumption is overthrown by circumstances and the contrary presumption is induced, the burden of proving the life rests on the party who asserts it. In Rowe v. Hasland, 1 W. Black. 405, Lord Mansfield said that, in cases of pedigree, it is sufficient to show that a person has not been heard of for many years to put the opposite party on proof that he still exists. What is done on such a trial is no injury to the man or his issue, if he should afterwards appear and claim the estate.[3]

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[2] Mere lapse of time is insufficient. There must be proof that the person has never communicated with or been heard of by any member of his family. Shriver v. State, 65 Md. 278; Schaub v. Griffin, 84 Md. 563. As to what is sufficient evidence upon which to found a presumption of death, see Prudential Co. v. Edmonds, 2 App. Cas. 487.

[3] Hence a purchaser will not be required to accept a title the validity of which depends on such a presumption. Chew v. Tome, 93 Md. 251.

The Act of 1896, ch. 246, authorizing the Orphans Courts to grant letters upon estates of persons who by their absence unheard of for above seven years are supposed to be dead, was held unconstitutional in Savings Bank v. Weeks, 103 Md. 601. Cf. Lee v. Allen, 100 Md. 7. The subsequent Act of 1908, ch. 125, (Code 1911, Art. 93, sec. 235), dealing with the same subject was upheld in Savings Bank v. Weeks, 110 Md. 78. See also Cunnius v. Reading Dist., 198 U. S. 458; Scott v. McNeal, 154 U. S. 34; Carr v. Brown, 38 L. R. A. 294; Bolton v. Schriever, 18 L. R. A. 242.