

**Presumption of death.**—In *Thomas v. Visitors, &c. supra*, it was urged in argument, that the Statute and the rule that has prevailed in analogy to it applied only to absence of a party from his own country, and could not apply to his non-appearance for the same period in a foreign country; and as the relations of the intestate there were foreigners, there could be no presumption of their death. Two of the judges dissented from the opinion of the majority. However this may be, the presumption of the continuance of life, it is now held with respect to persons *having gone abroad, or absent from their usual places of residence, and of whom no account can be given*, ceases, in general, for all legal and equitable purposes (*Tilly v. Tilly*, 2 Bl. 436), at the expiration of seven years from the time they were last known to be living, *Doe v. Jesson*, 6 East, 80; *Hopewell v. DePinna*, 2 Camp. 113, on a plea of *coverture*; *Doe v. Deakins*, 4 B. & A. 433. In the latter case it was held, that the fact of a tenant for life not having been seen or heard of for fourteen years by a person residing near the estate, although not one of the family, was *prima facie* evidence of his death. The probability, said the Court, is that as he was entitled to the property he would come into the neighborhood to claim it; any of the family may \*be called to rebut the presumption, and if he be 503 still alive he may recover possession from the lessors of the plaintiff.

**Grounds and extent of presumption of death.**—The grounds as well as the extent of this presumption are very clearly laid down in *Nepean v. Doe*, 2 M. & W. 910, (see *Doe v. Nepean*, 5 B. & Ad. 86). There the lessor of the plaintiff claimed as grantee in reversion of certain copyholds on the death of one Mat. Knight, who went to America in Dec. 1806 or early in 1807, and the last heard of him was by a letter written by him and received in England in May 1807. The declaration in ejectment was served on the 18th Jan. 1834. Lord Denman said, “where a person goes abroad and is not heard of for seven years, the law presumes the fact that such person is dead, but not that he died at the beginning or end of any particular period during those seven years, and if it be important to any one to establish the precise time of such person’s death, he must do so by evidence of some sort, to be laid before the jury for that purpose, beyond the mere lapse of seven years since that person was last heard of. The law presumes that a person shown to be alive at a given time remains alive until the contrary is shown, for which reason the *onus* of showing the death of Mat. Knight lay in this case on the lessor of the plaintiff. He has shown the death by proving the absence of Mat. Knight, and his not having been heard of for seven years, whence arises at the end of those seven years another presumption of law, viz: that he was not then alive. But the *onus* is also cast on the plaintiff of showing that he has commenced his action within twenty years after his right of action accrued, *i. e.* after the actual death of Mat. Knight. Now when nothing is heard of a person for seven years, it is obviously a matter of complete uncertainty at what point of time in those seven years he died. Of all points of time the last day is the most improbable and most inconsistent with the ground of presuming the fact of death. That presumption arises from the great lapse of time since the party has been heard of, because it is considered extraordinary that, if he was alive, he should not be heard of. In other words, it is presumed that his not being heard of has been oc-