

casioned by his death, which presumption arises from the considerable time which has elapsed. If you assume that he was alive on the last day but one of the seven years, then there is nothing extraordinary in his not having been heard of on the last day, and the previous extraordinary lapse of time, during which he was not heard of, has become immaterial by reason of the assumption that he was living so lately. The presumption of the fact of death seems, therefore, to lead to the conclusion that the death took place some considerable time before the expiration of the seven years." And after alluding to difficulties that had been put, as a lease for seven years commencing from the death of A., and the like, Lord Denman went on to say, "inconveniences may no doubt arise, but they do not warrant us in laying down the rule that the party shall be presumed to have died on the last day of the seven years, which would be manifestly contrary to the fact in almost all instances. No such rule is enacted by the Statute, nor is any one authority adduced, in which any such rule has been laid down. It is not necessary to make any election between the beginning of the seven years and the end of them and the period to which the death should be referred, as seems at one time to have been assumed. The presumption of law relates only to the fact of death and, the time of death, whenever it is material, must be a subject of distinct proof."⁴

Cases where no presumption of death.—But the presumption of death after seven years' absence does not arise where the probability of intelligence is rebutted by circumstances. In *Bowden v. Henderson*, 2 Sm. & G. 360, a young lady had left her family and gone to France, where she had been employed as governess, and inquiries and advertisements for her **504** had been made *in vain. But the Vice-Chancellor said that the principle, on which the Court presumes the death of a party of whom no tidings are heard, is, that if he were living he would probably have communicated with some of his friends and relatives. It is a conclusion from the probabilities of the case; where no such probability exists, no such presumption can arise. Here it was improbable that her relatives should hear from the young lady after what had taken place. She had abandoned her religion, and her friends wrote her a letter of remonstrance and reproach for so doing. These reproaches were not calculated to encourage further communications. This circumstance, taken in connection with the rather eccentric course of life, which it appears from her letters that she pursued, render it improbable that she would have communicated with her friends. It follows that the presumption of death does not arise from the absence of information or of communication, when that absence is natural, if she were still alive, and there must be further inquiry. So in *Re Creed*, 1 Drew. 235, A. left England 9th Nov. 1829. On the 16th

⁴ The presumption of life continues until the end of seven years from the time the person is last heard of and ceases at that time. There is no presumption as to the time of death, which, if necessary to be established, must be done by evidence, the burden always resting on him who asserts it. *Schaub v. Griffin*, 84 Md. 564. Cf. *In re Aldersey*, (1905) 2 Ch. 181. See also notes 5 and 7 *infra*.