the course in England seems to have grown up for the Court to make the Master draw the conclusion as to the fact of death, though the Lord Chancellor in Lee v. Wilcock, 6 Ves. Jun. 605, observed that it was singular that the Court should send such a question to the Master. In Cuthbert v. Purrier, 2 Phill. 199, a testator died in 1809. In 1817 a sum of money was set apart to answer an annuity under the will to a woman then supposed to be resident in India. The annuity had been paid to her until 1815, since which time she had never been heard of. In 1837, the Master certified on presumption that she was dead, but did not find when she died, and the Court ordered payment of the principal money to the party entitled, subject to the annuity. In 1842 the Master again certified on presumption that she died in 1822, and that no personal representative had been heard of, and the Court then ordered the immediate payment to the same party of the accumulations since that time, and in 1847 ordered payment of the rest of the fund to the same party, though residing abroad, on his giving his personal security, which it seems was all he could give, to refund in case the annuitant or her personal representative should ever establish a claim.

Lapsing of legacies.—In England, the cases have very generally arisen on the question of the survivorship of legatees. In Dunn v. Snowden, 2 Dr. & S. 201, the legatee had not been heard of by his family or friends since 1st Jan. 1848, though they had endeavoured to do so by proper means, but there being no evidence to fix his death at any particular period, it was held that he died subsequently to the death of the testator in 1851, and his representatives were entitled to the legacy. In *Re* Tindall's trust, 30 Beav. 151, a young sailor was last seen in the summer of 1840 going to Portsmouth to embark; his grandmother died in March 1841, and it was presumed that he survived. In *Re* Benham, 4 L. R. Eq. 416, where a legacy was left to a man who was in the habit of leaving his wife and absenting himself for periods of some duration, and frequent inquiries were made by her, but he was last heard of in 1854, and the testator died in 1860, it was held not to have lapsed, but to be payable to his personal representatives. But this decision was reversed on appeal, S. C. 37 L. J. Chan. 265, Rolt L. J. observing that the case was one for proof not for presumption. His death might be presumed at the end of seven years, but the question when he died during the seven years was one of fact. The Court in order to come to a decision on that point must have evidence as to his age and the character of the inquiries made after him. Till then the case was not ripe for decision; and as before observed, the case was overruled in *Re* Phene's trusts, *supra*, and see Lambe v. Orton, 29 L. J. Chan. 286.[7] In Dowley v. Winfield, 14 Sim. 277, however, A., when

[7] When a legatee has not been heard of for over seven years his death is presumed and the burden of proving that he survived the testator lies on those who claim under him. In the absence of such proof the legacy lapses. *In re* Lewes' Trusts, L. R. 6 Ch. 356; 11 Eq. 236; *In re* Walker, L. R. 7 Ch. 120; *In re* Benjamin, (1902) 1 Ch. 723. Cf. *In re* Aldersey, (1905) 2 Ch. 181. See note 8 *infra*.