about fifteen years old, went abroad in Sept. 1830 as one of the crew of a South Sea whaler. He ran away at the Sandwich Islands before the ship's return, and the Captain had heard nothing of him afterwards. A.'s father died in Sept. 1833, and about 20 months before that A. had been heard of for the last time. The Court ordered a share of the father's residue, bequeathed to A., to be transferred to his brother as sole next of kin of the father living at the father's death, on the brother's giving security to refund in case A. should be living or should have died after his father. But see *in Re* Allin, 17 L. T. N. S. 60, where inquiry without advertisement was considered insufficient in a somewhat similar case, where an absence of fifteen years had occurred. In Tilly v. Tilly *supra*, Chancellor Bland indeed observed, though the question there did not arise, that the death of a party might be presumed to have happened just seven years after the time, at which it is shown by proof that he was last heard of, but this is clearly inaccurate. Under the Acts of 1810, ch. 34, sec. 4, and 1832, ch. 295, Code, Art. 93, sec. 304,[8] devises and legacies do not lapse by the death of the *legatee or devisee in the testator's life-time, as to which see Glenn **506** v. Belt, 7 G. & J. 362; Helms v. Franciscus, 2 Bl. 544; Young v. Robinson, 11 G. & J. 328.[9] But void devises, as where the devisee was dead when the will was made, are not included under the Act of 1810, Billingsley, v. Tongue, 9 Md. 575.[10]

No presumption as to death without issue.—But while such is the presumption as to the fact of death, there is no such presumption of death without issue.[11] Where a party is shown to have married, and his wife was living at the time of the last intelligence from her, the law makes no presumption against issue, and the plaintiff must show, either that the party had no issue or that such issue is extinct; he must remove any possibility of title in another before he can recover, no presumption being to be admitted against the person in possession, Sprigg v. Moale *supra*, referring to Richards v. Richards, 15 East, 293 *n.* and Hammond's lessee v. Inloes, 4 Md. 138. The question has repeatedly arisen here in reference to escheat-patents. In the earliest case, Hutchin's lessee v. Erickson, 1 H. & McH. 339, it was held, that to support an escheat grant it could not be presumed from the absence of the party beyond seas for more than seven years when the patent issued, that he died without heirs. In Peterkin's

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[8] Repealed and re-enacted by the Act of 1910, ch. 37, which excepts from the operation of the act the will of any person dying after its passage, when the maker becomes insane after the execution of the will and before the death of the devisee or legatee. Code 1911, Art. 93, sec. 326.

[9] Also Hays v. Wright, 43 Md. 122; Wallace v. Du Bois, 65 Md. 153; Pennington v. Pennington, 70 Md. 435; Halsey v. Convention, 75 Md. 275; Gambell v. Trippe, 75 Md. 252; Garrison v. Hill, 81 Md. 206; Lowndes v. Cooch, 87 Md. 485; Mercer v. Hopkins, 88 Md. 314; Lindsay v. Wilson, 103 Md. 275; Vogel v. Turnt, 110 Md. 192.

[10] Vogel v. Turnt, 110 Md. 198.

[11] Chew v. Tome, 93 Md. 252; Shriver v. State, 65 Md. 287; *In re* Jackson, (1907) 2 Ch. 354; Greaves v. Greenwood, 2 Ex. D. 289.