

probability of his sending intelligence of himself is not rebutted by anything in the evidence so as to prevent the presumption of his death arising. . . .

Although one may have many doubts as to his death, and may recall instances (such as *McArthur v. Egleson*, 43 U. C. R. 405) of people turning up after long absence, and may recognise how unsatisfactory it is to an insurance company to have to pay merely on evidence of disappearance, yet, on the other hand, considering the bona fides of the insurance and the absence of any reason for suggesting an intentional fraud upon the company, I do not know of any principle in any of the authorities on which I can refuse to give effect to the fact that he has not been and cannot be traced and to declare that the presumption of his death should take effect. . . .

There are, no doubt, cases where the fact of not being heard from for even longer than seven years has not been considered sufficient. . . .

[Reference to *Watson v. England*, 14 Sim. 27; *Bowden v. Henderson*, 2 Sm. & Giff. 360; *Hitz v. Ahlzen*, 170 Ill. 60; *Dun v. Travis*, 56 N. Y. App. Div. 317; *In re Ubrich*, 14 Phila. 243; *In re Hoppensack and New York Board of Education*, 173 N. Y. 321; *Prudential Assurance Co. v. Edmonds*, 2 App. Cas. 487.]

But in the present case the wide advertising and inquiries by the defendants have, I think, cured any absence thereof by the plaintiff, and the weakness, if not absence, of any probability that the insured would cease to communicate with his family, differentiates this case from those in which the presumption was held not to arise.

Upon the other branch of the case, the sufficiency of the proof tendered to the company before action, my finding must be against the plaintiff. . . . I do not consider that it was proof as required by the policy, or reasonably sufficient proof as required by the statute. It would have been consistent with it that the plaintiff or her family might have heard in various satisfactory ways of the insured's existence without direct intimation from himself. See *Doyle v. City of Glasgow*, 53 L. J. N. S. 527.

As to the claim for return of the premiums, that would involve fixing the time of the death. No presumption arises as to that. It is a question of fact to be established by evidence or inference from evidence. Whether the death is to be supposed to occur at or near the beginning or the end of the period of silence must in each case depend on the circumstances. As was said in *In re Phines Trusts*, L. R. 5 Ch. 139, the last day is the most probable. If the proof of death depended solely on failure to com-