at least until such a period as may be looked upon as a superior limit of the duration of human life; and the second, extended apparently by analogy from the Bigamy Act, 1 Jac. 1, c. 11, and the 19 Car. 2, c. 6, enabling reversioners or lessors to re-enter without proof of the death of the *cestuis que vient* on the lands held by tenants for lives—that after an absence of seven years without communication through any likely sources, the absentee will be presumed to be dead, so as to justify distribution of property in which he is interested on that assumption.

The question in *Re Benham's Trusts* was as to the practical result of these two rules. A great number of cases having established the principle that this presumption of death at the end of seven years is totally irrespective of the *date* of death, and that the *onus* of proving death at any particular date lies on those who allege it; the Vice-Chancellor stretched this a little further, and on the failure of this proof dealt with the fund on the opposite hypothesis. It does not, however, follow in these cases that because the *onus* of proof is on one claimant the Court will, on his failing to adduce proof, award the fund to the other.

A more correct view is to regard the Court as requiring a particular claimant to adduce a certain proof before it will act in his favour, but not necessarily, in default, acting for the oppposing claimant.

In *Re Benham*, a legatee under the will of a testator who died in 1860, had disappeared in 1854, and his representatives were held entitled as against those of the testator.

Such a decision is evidently inconsistent with the rule laid down by the Court of Exchequer Chamber after an elaborate discussion in *Nepean* v. *Doe*, 2 M. & W. 913, that "presumption relates only to the fact of death, and the time, whenever material, must be a subject of distinct proof." The action in that case was in ejectment, and the cause of action arose on the death of a person who had disappeared twenty-five years before action brought, so that it was material with reference to the Statute of Limitations whether the death could be presumed to have occurred at the end of the seven years.

Judgment was given for the defendant on the ground that proof of death within twenty years had not been shown.

Assuming the authority of this case, it would be necessary to hold that under circumstances like those in *Re Benham* no claim could be made through the missing legatee. But then the question arises how could the next of kin claim on the hypothesis of a lapse, as for that purpose they must prove that the legatee predeceased the testator, and there seems to be no escape from the conclusion that the fund must remain *in medio*. This the Courts have been reluctant to decide, as the following cases show.

Dowley v. *Wingfield*, 14 Sim. 277. A. disappears (we use the words in the sense of being last heard of) twenty months before his father's death intestate. His only brother was treated as sole next of kin on his giving security to refund. *Ex parte Creed*, 1 Dr. 235. A legacy is bequeathed to A. by a testator who died less than seven years after A.'s disappearance, on condition of A.'s surviving a person who predeceased the testator by a few weeks, and in default to A.'s issue. The latter were not allowed to receive the legacy. *Lambe* v. *Orton*, 8 W. R. 111. A., who disappeared four years before the death of an intestate, held to have survived him, and that the *onus* was on persons disputing the claim of A.'s representatives of showing that A. was not one of the next of kin. *Dunn* v. *Snowden*, 11 W. R. 160. Property was distributed on the supposition that a legatee who had disappeared three year's before the testator's death survived him and died afterwards. The same was done in *Thomas* v. *Thomas*, ibid. 298, the Vice-Chancellor objecting to the form in which the rule was expressed in the marginal note to the former case, namely, that a person not heard of for seven years must be taken to have lived to the end of the seven years, but substantially re-asserting it in the form that a person must be taken to have lived until the lapse of a reasonable time from his disappearance.

It must be admitted that we have here, if not a strong concurrence of authority, a series of decisions by an able judge, establishing a rule practically equivalent to that asserted by Vice-Chancellor Malins, for we do not see how they can be otherwise explained, but we cannot discover a sufficient foundation for such a rule, and we have good authority for saying that a person claiming under a will or intestacy must prove his title. Accordingly, in *Re Benham's Trusts*, Lord Justice Rolt discharged the Vice-Chancellor's order, observing that the case was one, not of presumption, but of proof, and as there was not proof for the Court to act upon, further inquiries must therefore be made. No doubt, in a case where a person has disappeared *more* than seven years before the death of the testator or intestate, the claimant may rely upon the presumption of such person's death at that date, but he will not be allowed to establish his title by insisting (as was in effect done in *Dunn* v. *Snowden*) on a presumption of life for three years and death in the remaining four. Even in the former case we think the time on which the presumption arises too small, at least, in the case of personal estate, which, if delivered to the wrong person, may be irrecoverably lost, and we should prefer a rule that the property claimed should be secured in court and the income only, until further years had elapsed, dealt with. On the other hand it is desirable that some provision should be made towards quieting the possession of those who are allowed to receive the property, and we believe that ours is the only one of the European States in which, in the event of the return of the absentee, after an interval however long, the posses-