

the next fortnight he was an out-patient. The apprentice claimed wages during his absence, and the master refused, whereupon the application was made to justices under 38 & 39 Vict., ch. 90, for an order on the master to pay these. The magistrate refused, and held that the master was not liable. The court however held that the magistrate was wrong, and that the series of cases which had established the right of the servant had been overlooked. Such a point can scarcely indeed be argued when the authorities are properly understood and applied.—*Justice of the Peace.*

PRESUMPTIONS AND THE DATE OF DEATH.

The case of *Rhodes v. Rhodes*, 56 Law J. Rep. Chanc. 825, reported in the October number of the Law Journal Reports, deals with a very interesting question of domestic law. In the year 1850 Alfred Rhodes emigrated to South Australia, and was last heard of in 1873. Administration to his personal estate was taken out some time after 1880, and it appeared that the persons who would be his next-of-kin if he died in 1873 were altogether a different set of persons from his next-of-kin if he died in 1880—that is to say, no one person filled the character of one of the next-of-kin at both dates. Again, the persons who filled the character of next-of-kin in 1880 would not have filled that character in, say, 1875, or if they filled it they would have taken a different proportion of his personalty at that date. The case, which arose before Mr. Justice North under an originating summons, consisted of claims by the next-of-kin in 1873 and claims by the next-of-kin in 1880, and he decided that he could give the property to no one of those persons, because it was impossible to say that the presumption of law was in favor of the deceased having died immediately after his being last heard of, and equally impossible that it should exclude all persons who were next-of-kin at dates between the termini at any one of which the deceased might have died. The facts were perhaps rather exceptional, but they suggest some

interesting questions in regard to this branch of the law of presumptions.

In the first place it may be as well to get rid at once of the idea that the law presumes the death to have taken place at the *terminus a quo*. The suggestion has really only been thrown out as a *reductio ad absurdum* of the notion that there is a presumption in favor of the death at the *terminus ad quem*. Lord Justice James is, we believe, responsible for the suggestion when he said, in the case of *In re Leves' Trusts*, 40 Law J. Rep. Chanc. 602, that "if anything is to be presumed it would be that the death took place on the first day of the seven years," as to which Mr. Justice North says truly, "I do not think that was the opinion of the Lord Justice." It is impossible to say that the law presumes that because a man has been unheard of for seven years he died at the very moment when he was last heard of. The other view, which was actually taken by Vice-Chancellor Malins in the unreported case of *Re Westbrook's Trusts*, that the date is at the end of the seven years, is more plausible. The argument is that, as the law does not presume him dead till seven years are passed, he must be taken to have died at the end of the seven years. This, however, is a confusion of one date with another. It is not correct to say, as is sometimes said, that the law does not presume that he died at any particular date. It presumes that he died at a date represented by, say, 1877-1883, which is as much a date as November 1. It is not so detailed a date, but the same difficulty might arise in regard to the hour of a man's death. Suppose, for instance, a man is missed on a Wednesday, and is found dead early on Thursday morning, and it is material whether he died on the one day or the other, the law has no presumption on the subject; and if a succession to property depended on the fact, and there was no reasonable evidence one way or the other, the law falls back on its ultimate resource *ei incumbit probatio qui dicit*, and the party who has to prove the fact fails. Similarly in regard to two persons being drowned in the same shipwreck, although other systems of law have artificial distinctions in regard to age and sex, the English law has