afterwards distinctly heard of. After the lapse of seven years and upwards, a petition was presented, and the present Lord Chancellor, then Vice-Chancellor, delivered the following judgment:—"I think that the rule which the Court should follow in this case is analogous to that laid down in *Underwood* v. *Wing*. The whole question is, on whom is the *onus* of the proof thrown. The lady on the devolution of whose estate the question arises is shown to have died on the 16th of November; her husband is shown to have died before her. A number of persons claim as her relations, and prove their kindred within a certain degree, and, so far as now appears, there is no one nearer in kindred. On the other hand, the representative of another person claims the property also, and shows that the person through whom he claims was nearer of kin than the petitioners, and would have been entitled if he survived his mother; but a person claiming under such a title must go further, and must show not only that the person through whom he claims would have been entitled if he survived, but that he acually was entitled, or, in other words, that he did survive. I am of opinion also that in this case there was some evidence to go to a jury that the child died in the mother's lifetime; the letter of Mrs. Green shows that at the time it was written the child, an infant in arms, was separated from its father and mother, and was in the hands of a native female nurse, in a time and place where it was almost improbable that it should escape destruction. But I do not rest my decision on this evidence, I prefer to rely on the grounds which I have before stated." There are three other cases in equity—viz., *Lakin* v. *Lakin*, *Re Beasney's Trusts*, and *Re Henderson*, referred to in that case. In all of these the period of the death was inferred as a matter of fact from the circumstances proved; not in any sense presumed.

This appears to be the state of the authorities in the equity courts. The leading case, however, is one at law—viz., *Doe* v. *Nepean*, which is reported before the King's Bench, 5 B. & Ad. 86, and before the Exchequer Chamber, 2 M. & W. 894. In that case the lessor of the plaintiff claimed as grantee in reversion of a copyhold estate on the death of Matthew Knight. Knight went to America. The last account that was heard of him was by a letter written by him from Charleston, and received in England in May, 1807. Ejectment was brought within twenty-five years from the date he was last heard of, and within twenty from the date of the right accruing, if he was taken to have died at the end of the seven years from 1807. The Court of King's Bench was of opinion that the lessor of the plaintiff, who gave no other evidence of Knight's death than his absence, failed in establishing that his death took place within twenty years before the ejectment brought. With reference to the argument of inconvenience, Lord Denman said:—"If, for the sake of preventing inconvenience, we were arbitrarily to lay down a rule that seven years absence abroad (the party not having been heard of) was *prima facie* evidence of his death *at the end* of the seven years, such a rule would, in the very great majority of cases, nay, in almost every case, cause the fact to be found against the truth; and, as the rule would be applicable to all cases in which the time of death became material, it would in many be productive of much inconvenience and injustice." The Exchequer Chamber adopted the doctrine of the of the Court of King's Bench in these terms—viz., "We adopt the doctrine of the Court of King's Bench, that the presumption of law relates only to the fact of death, and that the time of death. whenever it is material, must be a subject of distinct proof." It is obvious from these passages that there is an inconsistency between that which the Courts of King's Bench and Exchequer Chamber laid down, and what I have quoted from the judgment of the Vice-Chancellor Malins, as going beyond what was laid down by the Vice-Chancellor Kindersley. The Vice-Chancellor Kindersley, however, seems to have grounded his opinion on certain portions of these two judgments. There are, therefore, other parts of them which it will be desirable to quote and examine. Thus, in the Court of King's Bench it is stated, "There is no doubt that the lessor of the plaintiff must recover by the strength of his own title, and, in order to do so, must prove that he had a right to enter on the lands sought to be recovered within twenty years from the ejectment brought; and consequently, as the presumption is that a person once alive continues so until the contrary is shown, the lessor of the plaintiff is bound to prove, first, the death of Matthew Knight; and secondly, that it took place within twenty years before the ejectment brought." And in the judgment of the Exchequer Chamber the following are the material passages bearing on this part of the subject:—"The Court is called on to review the decision of the Court of King's Bench in *Doe* v. *Nepean*. The doctrine there laid down is, that where a person goes abroad and is not heard of for seven years, the law presumes the fact that such person is dead, but not that he died at the beginning or at the end of any particular period during those seven years; that if it be important to any one to establish the precise time of such person's death, he must do so by evidence of some sort to be laid before the jury for that purpose, beyond the mere lapse of seven years since such person was last heard of. After fully considering the arguments at the bar, we are all of opinion that the doctrine so laid down is correct. It is conformable to the provisions of the statute of James I., relating to bigamy; more particularly to the statute 19 Car. 2, c. 6, relating to this very matter, the words of which distinctly point at the presumption of the *fact* of death, not of the *time*; it is conformable also to decisions on questions of bigamy and on policies of insurance, and it is supported and confirmed by the case of *Rex.* v. *Inhabitants of Harborne*. It is true the law presumes that a person shown to be alive at ag[illegible]m remains alive until the contrary be shown, for which reason the *onus* of shewing the death of Matthew Knight lay in this case on the lessor of the plaintiff. He has shown the death, by proving the absence, of Matthew Knight, and his not having been heard of for seven years; whence arises, at the end of those seven years, another presumption of law, namely, that he is not then alive; but the *onus* is also cast on the lessor of the plaintiff of showing that he has commenced his action within twenty years after his right of entry accrued, that is, after the actual death of