living. Therefore, in the absence of all other evidence to show that he was living at a later period, there was fair ground for the jury to presume that he was dead at the end of seven years from the time when he went to sea on his second voyage, which seems to be the last account of him." This was supporting what the jury had done. All that this case lays down is that the jury were justified, on the analogy of the two statutes, in finding death by the end of the seven years; and, moreover, looking at Mr. Justice Rooke's ruling, which was not questioned upon this point, that they would not be justified in finding it earlier. It was not laid down that they ought to find death at the end of seven years, or that they must; nor was any rule of presumption put forward; nor, as I say, was this the point on which the ruling below was questioned in the full bench. In 1809, at *nisi prius*,* in an action against a woman on a promissory note, she pleaded coverture, and proved her marriage; but the husband had gone to Jamaica twelve years ago, and the question was as to the way of proving that he was now living. The defendant insisted that he must be presumed to be alive; but Lord Ellenborough ruled that "evidence" must be given of his being alive within seven years. This was given, and the defendant had a verdict. In the other case the aim was to prove death; here, life; and here the ruling was that a court cannot assume life now, when all that it knows is that the party had been absent and unheard from for more than seven years. Upon the basis of these cases, there soon appeared in the text-books on evidence, for the first time, in 1815, a general proposition that "where the issue is upon the life or death . . where no account can be given of the person, this presumption (viz., that a living person 'continues alive until the contrary be proved') ceases at the end of seven years from the time when he was last known to be living—a period which has been fixed from analogy to the statute of bigamy and the statute concerning leases determinable upon lives."† In this form the matter was again put by Starkie, ten years later, in the first edition of his book; and by Greenleaf, and so by Taylor. But the judges as well as text-writers got to expressing what had been put as a cessation of a presumption of life in the form of an affirmative presumption of death; and this was put as a rule of general application wherever life and death were in question. And so Stephen puts it:‡ "A person shown not to have been heard of for seven years by those (if any) who if he had been alive would naturally have heard of him, is presumed to be dead, unless the circumstances of the case are such as to account for his not being heard of without assuming his death." This rule is set down by Stephen among the few presumptions which he thinks should find a place in the law of evidence; his definition of the term "presumption" being, as it will be remembered,‖ "a rule of law that courts and judges shall draw a particular inference from a particular fact or from particular evidence unless and until the truth of such inference is disproved." Stephen published his Digest in 1876. Here then, in seventy years, we find the rule about a seven years' absence (1) coming into existence in the form of a judicial declaration about what may or may not fairly be inferred by a jury in

* *Hopewell* v. *De*., Pinna 2, Camp. 113.
† Phil. Ev. i., 152 (2nd ed.)
‡ Dig. Ev. art. 99.
§ Dig. Ev. art. 1.