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DEATH AS A JURISDICTIONAL FACT BEFORE THE REGISTER OF WILLS AND THE ORPHANS' COURT IN PENNSYLVANIA

by

A. J. White Hutton

The primary point of contact in the administration of the estates of the dead in Pennsylvania is with the office of the Register of Wills. This ancient office has jurisdiction (a) in the probate of wills; (b) in the issuance of letters testamentary and of administration; (c) in the receipt and advertising of accounts of fiduciaries; and (d) in the collection of death transfer taxes.

On the other hand the Orphans' Court is the immediate court of appeal from the decrees and orders of the Register of Wills and is also the court having jurisdiction of the estates of the dead.

The jurisdiction of the Register of Wills and of the Orphans' Court is based fundamentally upon two hypotheses, (1) the death of an individual, and (2) property of which such individual was the owner.

In the present outline the learning relative to the first hypothesis will be discussed. This essential was emphasized as early as 1824 by Duncan, J. in McPherson v. Cunliff, wherein he declared:

"The matter which gives the Orphans' Court jurisdiction, is the death of the owner, intestate, for if administration were taken out on the effects of a living man, or one who died testate, the administration itself would be void, and there could be no administrator to act, no party before the court, consequently, all the proceedings would be null."

Devlin v. Commonwealth

Over a half century passed after the utterance of Duncan, J. in McPherson v. Cunliff, supra, before the attention of the profession to the significance of death as a jurisdictional fact on which to found any action by the register's office and the orphans' court was given emphasis in the case designated in this topic. The action was debt upon a case stated, agreed upon by the parties and submitted to the court, setting forth the following facts:

*A.B., Gettysburg College, 1897; A.M., Gettysburg College, 1899; LL.B., Harvard University, 1902; Professor of Law, Dickinson School of Law, 1902 — Member of Pennsylvania House of Representatives, 1931-1935; Member of the Pennsylvania and Franklin County Bar Associations; Member of the Committee on Decedents Estates and Trusts, Joint State Government Commission of the Pennsylvania Legislature; Author of HUTTON ON WILLS IN PENNSYLVANIA.

Peter D. Devlin died intestate, in 1866, seized of certain real estate which was partitioned at No. 3, September Term, 1867, John F. Devlin, the eldest son of the decedent, taking the said real estate at the appraisement, and entering into recognizance for payment of the distributive shares. After settlement of the debts, the balance of the fund arising from the realty was distributed under the intestate law of Pennsylvania, amongst the several heirs at law of Peter D. Devlin. On said distribution, James Devlin, one of the sons of the said decedent, being dead, his share was allotted to his three children: James P., Martha and Mary B. Devlin. Their respective portions of said shares were paid to James and Martha, and said Mary having been absent and unheard-from for more than seven years, upon the presumption of her death, letters of administration on her estate were granted to her brother, James P. Devlin, and payment of her portion of said share made to him, as such administrator.

This action is brought by Mary B. Devlin, who was erroneously supposed to be dead, against John F. Devlin the cognizor, and Joseph F. Devlin, his surety, to recover her portion of said distributive share, which, with the interest accrued thereon, now amounts to the sum of $880.39, and the defendants set up payments to said administrator in bar of the action.

If, on the above facts, the court should be of opinion that the defendants are liable, they will enter judgment for the plaintiff in the sum of $880.39, with interest thereon, from February 8th, 1882, and if the court should be of opinion that the defendants are not liable they shall enter judgment in favor of the defendants, with cost of suit. Both parties, plaintiff and defendants, expressly reserve their right to a writ of error.

The court, in an opinion filed by Ewing, P.J., entered judgment for the plaintiff on the case stated, whereupon the defendant took this writ of error, assigning for error the said judgment.

In affirming the judgment of the court below Gordon, J., observed:

"Notwithstanding the long absence of Mary B. Devlin, the plaintiff below, from the state of Pennsylvania, and although it may be, as alleged in the statement of the plaintiffs in error, that she had been unheard-of for a period of fifteen years prior to the date of the issuing of letters of administration on her estate, yet the fact turns out to be that at that time she was alive. It follows, that those who undertook to act upon the presumption of her death must bear the consequences of the failure of the presumption.

"We cannot, therefore, but approve of what was so well said by the learned judge of the court below, i.e., that the presumption interposed by the defendants to defeat the plaintiff’s recovery was not even an important element in the case; it was but evidence from which the register might assume the death of Mary B. Devlin, but it was no more conclusive than would have been the testimony of false witnesses to prove the same thing."
"That this granting of letters upon the estate of a living person, though supposed to be dead, is not a voidable but a void act, is a legal conclusion supported by abundant authority." 6

**Scott v. McNeal**

This was an action of ejectment brought January 14, 1892, in the Superior Court of Thurston County, State of Washington, by Moses H. Scott against John McNeal and Augustine McNeal to recover possession of a tract of land in that county. It was conceded that title to the land was in the plaintiff until 1888. Defendants however denied plaintiff’s title and claimed title in themselves under a deed from an administrator of the plaintiff’s estate, and in their answer alleged that in March, 1881, plaintiff mysteriously disappeared from his place of abode and without the knowledge of those with whom he had been accustomed to associate and remained continuously away until July, 1891, and was generally believed by his former associates to be dead, and at the trial the following facts, inter alia, were proved: that on April 2, 1888, a petition was presented to the probate court of Thurston County, in the Territory of Washington, praying for the appointment of an administrator on the estate of Moses H. Scott who had disappeared in the month of March, 1881. In accordance with the law the petition was posted in three public places signed by the probate judge with notice that a hearing and consideration of said petition had been fixed for Friday, April 20, 1888, at 10 o’clock A. M., at the office of the probate judge. Later this hearing was held and an administrator was appointed together with a guardian ad litem for certain minor children, and on July 16, 1888, the probate court, on the petition of the administrator and after the usual notice and with the consent of the guardian ad litem, made an order authorizing the administrator to sell all of the decedent’s real estate. The same was duly sold at public auction and the probate court confirmed the sale, and the land was conveyed to one Ward and the purchase money paid to the administrator, who applied the same to the payment of a debt to Scott which was secured by mortgage on the land. On November 26, 1889, Ward conveyed by warranty deed to the defendants who forthwith entered into possession and made valuable improvements thereon. Later the plaintiff returned and instituted this ejectment. The judgment of the Superior Court was entered for the defendants and this judgment on appeal to the Supreme Court of the State was affirmed. The present writ of error was sued out by the plaintiff based on his contention that said judgment deprived him of his property without due process of law and was contrary to the 14th Amendment of the Constitution of the United States.

Mr. Justice Gray delivered the opinion of the Court reversing the judgment of the state court and remanding the case for further proceedings not inconsistent with the opinion as filed.

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The opening paragraphs of the opinion are as follows:

"The plaintiff formerly owned the land in question, and still owns it, unless he has been deprived of it by a sale and conveyance, under order of the probate court of the county of Thurston and territory of Washington, by an administrator of his estate, appointed by the court on April 20, upon a petition filed April 2, 1888.

"The form of the order appointing the administrator is peculiar. By that order, after reciting that the plaintiff disappeared more than seven years before, and had not since been seen or heard of by his relatives and acquaintances, and that the circumstances at and immediately after the time when he was last seen, about eight years ago, were such as to give them the belief that he was murdered about that time, the probate court finds that he 'is dead to all legal intents and purposes, having died on or about March 25, 1888;' that is to say, not at the time of his supposed murder, seven or eight years before, but within a month before the filing of the petition for administration. The order also, after directing that Milroy be appointed administrator, purports to direct that 'letters of guardianship issue to him upon his giving bond; but this was evidently a clerical error in the order or in the record, for it appears that he received letters of administration and qualified under them."

"The fundamental question in the case is whether letters of administration upon the estate of a person who is in fact alive have any validity or effect as against him.

"By the law of England and America, before the Declaration of Independence, and for almost a century afterwards, the absolute nullity of such letters was treated as beyond dispute."

After referring to certain cases discussed in McPherson v. Cunliff, supra, the learned justice observed:

"The same doctrine has been affirmed by the supreme court of Pennsylvania in a series of cases beginning 70 years ago. McPherson v. Cunliff (1824) 11 Serg. & R. 422, 430; Peebles' Appeal (1826) 15 Serg. & R. 39, 42; Devlin v. Com. (1882) 101 Pa. St. 273. In the last of those cases, it was held that a grant of letters of administration upon the estate of a person who, having been absent and unheard from for 15 years, was presumed to be dead, but who, as it afterwards appeared, was in fact alive, was absolutely void, and might be impeached collaterally."

Referring to the 14th Amendment and due process of law and cases thereunder, it was further observed:

"No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party."

Discussing particularly the Washington probate statute which was in the general form of probate law applying to deceased persons, it was stated:

"Under such a statute, according to the overwhelming weight of authority, as shown by the cases cited in the earlier part of this opinion, the

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7 See note 3.
jurisdiction of the court to which is committed the control and management of the estates of deceased persons, by whatever name it is called,—ecclesiastical court, probate court, orphans' court or court of the ordinary or the surrogate,—does not exist or take effect before death. All proceedings of such courts in the probate of wills and the granting of administrations depend upon the fact that a person is dead, and are null and void if he is alive. Their jurisdiction in this respect being limited to the estates of deceased persons, they have no jurisdiction whatever to administer and dispose of the estates of living persons of full age and sound mind, or to determine that a living man is dead, and thereupon undertake to dispose of his estate."

"A court of probate must, indeed, inquire into and be satisfied of the fact of the death of the person whose will is sought to be proved or whose estate is sought to be administered, because, without that fact, the court has no jurisdiction over his estate; and not because its decision upon the question, whether he is living or dead, can in any wise bind or estop him, or deprive him, while alive, of the title or control of his property."

"As the jurisdiction to issue letters of administration upon his estate rests upon the fact of his death, so the notice given before issuing such letters assumes that fact, and is addressed, not to him, but to those who after his death may be interested in his estate, as next of kin, legatees, creditors, or otherwise. Notice to them cannot be notice to him, because all their interests are adverse to his. The whole thing, so far as he is concerned, is res inter alios acta."

The final statement in the opinion concludes as follows:

"The defendants did not rely upon any statute of limitations, nor upon any statute allowing them for improvements made in good faith; but their sole reliance was upon a deed from an administrator, acting under the orders of a court which had no jurisdiction to appoint him or to confer any authority upon him, as against the plaintiff."

**Act of June 24, 1885**

*Devlin v. The Commonwealth*, *supra,* was the incentive to the passage of the Act of 1885. The *Devlin* case held that where letters of administration were issued by the Register of Wills the fact of death being based upon the presumption after seven years unexplained absence, and the presumption was later rebutted by the return of the presumed decedent, all proceedings based upon the letters as issued were null and void. The rationale was that the register's office and the orphans' court were established by statutes which in turn were based upon the actuality of death of the owner of the property which was to be administered. Hence, if this fundamental fact was not actually present, the register and the orphans' court were lacking in jurisdiction. This deduction was quite plain for in Pennsylvania the register of wills and the orphans' court are statutory creations and have no common

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9 See note 4.
law jurisdiction. The Act of 1885 was therefore passed to specifically confer upon the orphans' court the required jurisdiction in cases where the fact of death was based upon the presumption of death and also to confer upon the register of wills the specific authority to grant letters where the orphans' court so found the fact of death. A reading of the statutes already cited makes this matter quite plain.

Scott v. McNeal, supra, was decided May 14, 1894 by the Supreme Court of the United States on a writ of error to the Supreme Court of the State of Washington and subsequent to our enabling act of 1885.

However, the facts were somewhat similar to those of the Devlin case and the reasoning of the court was the same. In the Devlin case the sum of money involved was paid voluntarily by the principal on the partition bond. If he had compelled payment by requiring legal action on the bond he would have been protected as will be pointed out later in this discussion. In Scott v. McNeal the defendants were the successors in title from the purchaser who derived his title from the administrator of the presumed decedent. If in this case the title had rested upon proceedings on the mortgage, which was a lien upon the real estate apparently created by the presumed decedent himself, the result again would have been different. In other words in both of these latter suppositions the respective courts would obviously have had jurisdiction whether the owner of the res was living or dead.

However, as it happened in both cases, the probate action was based upon statutes which in turn were based upon the actuality of death of the owner of the property to be administered. Therefore, in both sets of facts the respective courts were confronted with the question whether per se probate courts were vested with jurisdiction to administer upon the estates of persons who were not actually dead, and both courts answered in the negative.

Cannius v. Reading School District

Fourteen years, almost to the day, elapsed from the passage of the Act of 1885 until its constitutionality came into question. In the case now under consideration the facts as presented to the Court of Common Pleas of Berks County and recited by W. D. Porter, J., in the opinion of the Superior Court were as follows:

"The defendant was the owner of certain land which was subject to a right of dower of the plaintiff, the value of which dower right had been ascertained and the amount of the annual installments to be paid duly fixed. The installments had been paid down to and including that for the year 1888, to which time the domicile of the plaintiff had been in the city of Reading, in the state of Pennsylvania. The plaintiff, in the year 1888, left the state of Pennsylvania and nothing was seen or heard of her until the bringing of this action, in 1899. The only son of the plaintiff continued to reside at Reading and, on May 17, 1897, presented his petition to the register of wills, praying that letters of administration upon the estate of his mother, the plaintiff, be issued to him. The ground upon

10 See note 6.
which the petition for administration was founded being the presumption of the death of the plaintiff, on account of her absence for more than seven years from the place of her last domicile in this commonwealth, the application was by the register certified to the orphans' court of the county, and the subsequent proceedings were conducted in accordance with the provisions of the Act of June 24, 1885, P.L. 155, entitled, 'An act relating to the granting of letters of administration upon the estates of persons presumed to be dead by reason of long absence from their former domicile.' The court after a hearing decreed that the legal presumption of death was established by the evidence. After notice by publication, in accordance with the requirements of the statute, letters of administration upon the estate of Margaret Cunnius were, on January 29, 1898, granted to John S. Gallagher. The defendant paid to this administrator all the installments upon the dower charge, and received from him an absolute release of the dower right. The plaintiff, on June 30, 1899, brought the action to recover the annual installments accruing from her statutory right of dower after the last payment to her, in 1888. The defendant relied upon the provisions of the act of June 24, 1885, the decree of the orphans' court made under the jurisdiction supposed to be conferred by the act, and the payment to the administrator made in accordance with the statutory provisions. The plaintiff, under the objection of the defendant that the decree of the orphans' court could not be attacked collaterally, proved that she was still living, that in the year 1888 she had acquired a domicile in the city of Sacramento, in the state of California, and had there resided ever since that time."

The trial court entered judgment for the plaintiff which was affirmed by the Superior Court. Whereupon the Supreme Court allowed an appeal reversing the Superior Court and ordering the record remitted to the Court of Common Pleas with directions to enter judgment for the defendant n.o.v., Mitchell, J., inter alia, explaining:

"The Superior Court held the act unconstitutional as depriving the plaintiff of her property without due process of law, under the fourteenth amendment of the constitution of the United States. In so holding the court felt itself bound by the decision of the Supreme Court of the United States in Scott v. McNeal, 154 U. S. 34. If that case really governs the present we must, of course, render willing obedience to its supreme authority. But we do not so regard it. The exact point there decided was that a sale by an administrator appointed under a state law for a person who had been absent, unheard of, for seven years, but who was in fact alive, passed no title even to an innocent purchaser. The ground of the decision was that the probate court had no jurisdiction to appoint an administrator for a person who was alive, and there being no jurisdiction over the subject-matter; the appointment of an administrator and all the acts done under such appointment were void. This is in entire accord with our own decision in Devlin v. Commonwealth, 101 Pa. 273, which is cited approvingly by Mr. Justice Gray in his opinion. . . .

"But our act of 1885 is wholly different in intent and effect. It was passed less than three years after the decision in Devlin v. Commonwealth

and is an effort to supply the remedy that such a state of facts as the present requires. Its primary purpose as appears from the preceding summary of its provisions, is not distribution, but conservation of the estate, through the medium of an officer clothed with authority to protect and enforce the rights of the unknown owner, the absentee if alive, his legal successors if he be dead. The statute did not create the presumption of death, that we inherited with our common law. The probate court in Pennsylvania, in the sense in which it is understood in the cases previously referred to, is, for ordinary cases, the register of wills whose jurisdiction as held in Devlin v. Commonwealth depends on the fact of death. But when a case arises of presumption of death from absence, a question of fact is presented, which is essential to the determination of the rights in property whose owner is thus shown to be doubtful. Express jurisdiction is given by the act of 1885 to the Orphans' Court to inquire into and determine judicially that fact. This provision at once takes the case out of the ruling in Scott v. McNeal, and the line of authorities on the same principle, and puts it in the class of Allen v. Dundas, 3 T. R. 125, where payment to the executor was a judicial act by a competent tribunal within its jurisdiction and though incorrect in fact, as subsequently shown, it was valid until regularly rescinded or reversed, and could not be attacked collaterally. The objection therefore that the court in the present case was without jurisdiction over the subject cannot be sustained."

In short our Supreme Court held that the Act of 1885 was constitutional, that under its terms the orphans' court had jurisdiction of the subject-matter, and lastly that the procedure satisfied the requirement of due process under the fourteenth Amendment.

The following quotation from the opinion of Mitchell, J., is interesting as reflecting the view of the writer generally as to the power of the Commonwealth in such type of cases:

"One other consideration is applicable to the present case. The plaintiff was a citizen and resident of this state. She chose to disappear, leaving no trace for eleven years. She was bound to know the law. The state has power to make rules of property, and all owners are bound to conform and abide by them. It might treat absence for seven years as ipso facto an abandonment, and deal with it accordingly. The plaintiff legally knew that if she stayed away twenty-one years the statute of limitations would bar her claim against the defendant, and the reasons for her absence whatever they were would not stop that result; the act of 1885 was in force when she went away and she was equally bound to know that under its provisions the presumption of death might be established and acted upon. By staying away she should be held to have accepted the provisions of the act as a sufficient protection to her rights."

In the conservation of property the case is an example of the valid exercise of the police power.18

The judgment of our Supreme Court was later affirmed by the Supreme Court of the United States, Mr. Justice White delivering the opinion in which after reviewing the facts and differentiating the same from that of Scott v. McNeal, supra, referring to the points pressed on behalf of the plaintiff in error, he said:

"We shall consider these objections separately:

1st. Was the state statute providing for the administration of the property of an absentee under the circumstances contemplated by the statute so beyond the scope of the state's authority as to constitute a want of due process of law within the intendment of the 14th Amendment? That the amendment does not deprive the states of their police power over subjects within their jurisdiction is elementary. The question, then, is not the wisdom of the statute, but whether it was so beyond the scope of municipal government as to amount to a want of due process of law. The solution of this inquiry leads us, therefore, to consider the general power of government to provide for the administration of the estates of absentees under the conditions enumerated in the Pennsylvania law."

The answer to this proposition as made by the learned justice was in the negative by tracing the general trend of law in this country, after which he concluded as follows:

"As the preceding statement shows that the right to regulate the estate of absentees, both in the common and civil law, has ever been recognized as being within the scope of governmental authority, it must follow that the proposition that the state of Pennsylvania was wholly without power to legislate concerning the property of an absentee is without merit, unless it be that the authority of a state over the subject is restrained by some constitutional limitation. That the Constitution of Pennsylvania does not put such a restriction is foreclosed by the decision of the supreme court of Pennsylvania in this case. But it is insisted, conceding that the state of Pennsylvania has power to provide for the administration of the property of an absentee, yet that authority could not be exerted without violating the due process clause of the 14th Amendment if the administrative proceeding, brought into play under the exercise of the authority, is made binding upon the absentee if it should subsequently develop that he was alive when the administration was initiated. To sustain this proposition numerous decisions of state courts of last resort are relied upon, which are enumerated in the margin, and special reliance is placed upon the decision of this court in Scott v. McNeal, 154 U. S. 34, 41, 38 L. ed. 896, 900, 14 Sup. Ct. Rep. 1108. We are of opinion, however, that the cases relied upon, with one or two exceptions, hereafter to be noticed, are inapposite to this case. The leading cases were reviewed in Scott v. McNeal, and their inapplicability to the present case will therefore be demonstrated by a brief consideration of Scott v. McNeal."

After distinguishing Scott v. McNeal from the present case the opinion continues:

"As it cannot be denied that, in substance, the Pennsylvania statute is a special proceeding for the administration of the estates of absentees, dis-

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14 See notes 6 and 10.
tinct from the general law of that state providing for the settlement of the
estates of deceased persons, and as, by the express terms of the statute,
jurisdiction was conferred upon the proper court to grant the administra-
tion, it follows that the supreme court of Pennsylvania did not deprive the
plaintiff in error of due process of law within the intendment of the 14th
Amendment.

"2nd. It remains only to consider the contention that even although
there was power to enact the statute, it is nevertheless repugnant to the
14th Amendment, because it fails to provide notice as a prerequisite to the
administration which the statute authorizes, and because of the absence
from the statute of essential safeguards for the protection of the property
of the absentee which is to be administered. Let it be conceded, as we think
it must be, that the creation by a state law of an arbitrary and unreasonable
presumption of death resulting from absence for a brief period, would be
a want of due process of law, and therefore repugnant to the 14th Amend-
ment. Let it be further conceded, as we also think is essential, that a state
law which did not provide adequate notice as prerequisite to the proceed-
ings for the administration of the estate of an absentee would also be re-
pugnant to the 14th Amendment. Again, let it be conceded that if a state
law, in providing for the administration of the estate of an absentee, con-
tained no adequate safeguards concerning property, and amounted, there-
fore, simply to authorizing the transfer of the property of the absentee to
others that such a law would be repugnant to the 14th Amendment. We
think none of these concessions are controlling in this case. So far as the
period of absence provided by the statute in question, it certainly cannot
be said to be unreasonable. So far as the notices which it directs to be is-
 sued, we think they were reasonable. As concerns the safeguards which
the statute creates for the protection of the interest of the absentee in
case he should return, we content ourselves with saying that we think, as
construed by the Supreme Court of Pennsylvania, the provisions of the
statute do not conflict with the 14th Amendment."

Common Law Presumption of Death.

In Miller v. Beates, there was an amicable action to recover certain legacies
by the plaintiffs under the will of George Schlosser, deceased, and in order to sus-
tain their claim it was necessary to prove that John G. Schlosser was dead without
issue. It was proved on the part of the plaintiffs that John Schlosser went beyond
the sea, unmarried, many years before and the last that was heard of him was by
letter from himself to his father dated in France, November 24, 1802, in which he
mentioned that he should endeavor to get a passage to the United States and hoped
to be in Philadelphia the next summer. Efforts had been taken to ascertain whether
he had died in France but no evidence of his death could be obtained. The jury
by consent of the parties found for the plaintiff and it was agreed that there should
be a new trial unless the court should be of opinion that the evidence afforded
ground for a legal presumption of the death of John G. Schlosser. Tilghman, C.J.
explained:

"The common law has fixed no period, after the expiration of which death should be presumed. But there are two statutes in England, creating a presumption in certain cases. By the statute punishing bigamy as a felony, which does not extend to Pennsylvania, because it was made in the first year of James I (before the grant to William Penn,) there is an exception in favour of persons, whose husbands, or wives, have been continually remaining in parts beyond sea, for seven years before the second marriage, or who have been absent within the king's dominions for seven years, without being known to be living within that time. And by the statute of 19 Car. 2, c. 6, (which extends to Pennsylvania,) it is enacted, that if any person or persons, for whose lives, estates are granted, absent themselves for seven years together, and no evident proof be made of their being living, in any action commenced by the lessors or reversioners, for recovery of the premises, they shall be counted as dead. The Courts in England have adopted and extended the principle of these statutes to cases not comprehended in them; to the case, for instance, of a person seised of lands in fee simple, who has been absent beyond sea, without being heard of, for seven years."

"I am not for fixing, at present, any precise period, after which a presumption of death arises. But I think myself safe in saying, that in the present instance, considering, that fourteen years and nine months had elapsed, between John G. Schlosser's being last heard of, and the commencement of this action; that when last heard of, he was at a place between which and the city of Philadelphia there was a free communication, and it was then his intent to return soon to Philadelphia; his being now in life, would be contrary to the usual course of things; that the jury might, and ought to presume his death, and if the case were to come to another trial, the court would so direct them. As to the injury which might arise to John G. Schlosser, by this presumption, in case he should be alive, I think it ought not to be regarded. He would have his action against those to whom the money will be paid; and although he might lose by their insolvency, yet that would not be a greater evil than would arise from the establishment of a principle, that the life of a man ought to be presumed, under circumstances which usually attend death, merely because positive proof of death could not be obtained. I am bound to mention, in justice to the defendants, in this cause, that they have no wish to reap any benefit from the detention of the money in question. Their object is safety; they are willing to pay to the persons who are authorized by law to receive; and, considering the circumstances of the case, I think they were prudent in withholding the money, till the plaintiffs established their right by legal adjudication."

Twenty-one years after Miller v. Beates, supra, the case of Burr v. Sim came before the court and it was held per Gibson, C. J., that the English rule of the presumption of the continuance of life ceased at the end of seven years. Said the Chief Justice:

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16 See note 15.
17 4 Wharton 150 (Pa. 1838).
"It certainly has not been expressly decided that the person must be taken to have lived throughout the period; but that conclusion inevitably follows from the legal presumption of life, which though prospectively rebutted at a particular period, is sufficient to sustain an allegation of existence during the time it lasted. . . . . In the case at bar, therefore, we must say that it was an error in leaving the jury to presume the death to have been at an intermediate period, unless we discover in the case at least a spark of evidence that the individual was, at some particular date, in contact with a specific peril as a circumstance to quicken the operation of time. The circumstance relied upon is the departure of the individual by sea; but the perils of the sea are general, not specific; and they are not present but contingent. They are such as may or may not occur; but to accelerate the presumption from time, or more properly to turn it from an artificial into a natural one, it is necessary to bring the presumption within the range of a particular and an immediate danger—not such as is contingently incident, in some degree, to every mode of conveyance. A natural presumption arises only from a violent probability, because it is a conclusion drawn by experience from the usual current of things; but no violent probability of death arises from a peril, which, though possible, is remote."

Thus the judges finally evolved the law in the matter of the presumption of death as follows:

(1) According to the common law of Pennsylvania a person whose disappearance is unexplained by any surrounding circumstances at the time of the disappearance is presumed to continue in life for seven years after the date of the disappearance.

(2) At the expiration of the seven-year period of unexplained absence the presumption of life ceases and is supplanted by the presumption of death.

(3) Any circumstances of facts surrounding the disappearance which tend to establish a reason why the person should absent himself will preclude the running of the seven-year period.

The late Professor James Bradley Thayer has ably presented the relation of these presumptions and the law of evidence and in his discussion relative to this evolution in Pennsylvania it is stated:

"In Pennsylvania it is possible to put the finger on the very case that accomplished this legislative stroke: the case of *Burr v. Sim*, 4 Whart. 140 (1839). In 1817 (citing *Miller v. Beates*, 3 S. & R. 490), the court laid down the duty of a jury to presume death, without any positive proof of it, when an unexplained absence for many years is shown; but they refused to adopt a seven years' rule. 'I am not', said Tilghman, C.J., 'for fixing any precise period after which a presumption of death arises. But here fourteen years and nine months,' etc. In *Burr v. Sim*, however, the court (Gibson, C.J.) adopted the English rule, although in Pennsylvania there were no statutes like those in England; and they said: 'If there is no direct
decision, as there is in some of our States, it is because there has been no case requiring it. There is such a case now, and the principle is to be considered as definitely settled. In some states this rule, or the like, has been fixed by statutes; but it is no less well established in others where it rests not upon a statute, but a judicial determination."

The cases of Devlin v. The Commonwealth, supra,20 and Scott v. McNeal, supra,21 are illustrations of the ineffectiveness of the presumption as applied to the estate of a presumed decedent where such presumption is rebutted by the fact that the person presumed to be dead is actually alive and where the questions involved concern the distribution of the presumed decedents' estate.

To avoid this legal embarrassment the procedure under section 6 of the Fiduciaries Act22 should be followed, for as already pointed out the Cunnius case establishes constitutionally the specific jurisdiction of the orphans' court and the register of wills in such cases.

However, the common law presumption is still applied where the facts do not fall under Section 6 and these cases concern either the distribution of the estates of actual decreedents and where the orphans' court has jurisdiction under general orphans' court law and also a class of cases involving life insurance problems particularly where beneficiaries under life policies are endeavoring to recover. These latter cases are usually if not exclusively in the common pleas. Then there is another type of case where the common law presumption of death is not applicable but on the contrary the fact of death is established by circumstantial evidence. A short review of these different types is interesting.

Distribution of Estates

Singularly enough the first case in our annals where the matter of a presumption of death arose was Miller v. Beater23 and the estate to be distributed was that of an actual decedent and the plaintiffs were claiming certain legacies under the will of this decedent, and the question to be determined was the death of a son of the decedent who had disappeared fourteen years and nine months before. The action was a common law one of which the court had undoubted jurisdiction. The death was established through lapse of time and Tilghman, C.J. considered this finding as final in the matter of the distribution of the estate of the father.

Likewise in Devlin v. The Commonwealth24 the position of the respective parties was substantially the same, but the son James Devlin, one of the distributees, being actually dead, his share was allotted to his three children, one of whom, Mary, was absent and unheard from for more than seven years. However, in this case

20 See note 4.
21 See note 6.
22 See note 8.
the estate of Mary was the subject of administration, the letters as granted being based upon the presumption of her death and the money which was due her from the estate of the ancestor was voluntarily paid by her uncle, the cognizor, as due on the recognizance bond given in the partition proceedings. If John F. Devlin, the cognizor, had refused to pay and an action instituted on the bond, the common law court having clear jurisdiction of the action, the defendant would have been protected in the event of the death of Mary being established by the presumption.

In Whiteside's Appeal testator bequeathed five hundred dollars to his son without interest until he called for the money and if he never called it was to be paid to certain others after the death of the son. The son was heard from by letter in 1837 but not afterwards. The will was made in 1840 and in the same year the testator died. The son was presumed to be dead after seven years, that is in 1844, and such presumption was not repelled by the idea that the testator by referring to him in his will in 1840 may have supposed him to be alive at the time of making of the will. It will be noted in this case the testator was actually dead, consequently the orphans' court had undoubted jurisdiction and the money was eventually distributed as a part of this decedent's estate to the persons who would take in case the son was dead. Therefore, his death having been established by the presumption as occurring in 1844, the auditor properly distributed the money on a finding that he was dead.

In Appeal of Esterly A was last heard of in May, 1870, at which time he disappeared from home, leaving his wife and four children. His father died intestate in March of 1879. The disappearance of A for seven years unexplained raised a presumption of his death, and this presumption was as effective as direct proof of the fact.

Consequently, as A was presumed to be dead at the time of his father's death, his share of his father's estate went directly to his father's children as heirs, and the creditors of A could not therefore participate in the distribution of this share. Said Clark, J.:

"If it now appeared, by positive and direct proof, that Joseph H. Gery had, in fact, died on the day he disappeared, it certainly cannot be doubted that we would distribute this fund, so held in trust and awaiting adjudication, to those upon whom the estate devolved; and as the presumption of death after the lapse of seven years is as effective as direct proof of the fact, we cannot see how any doubt can exist as to the parties entitled here. "It follows from what has been said that the appellants are entitled as heirs of their grandfather, and not as the heirs of their father, and that R. B. Longaker & Son, as creditors of the father, cannot therefore participate in the fund."
In Freeman's Estate a son of decedent had been absent and unheard of for more than seven years after his father's death, but there was evidence that he had been heard of within three or four years prior to his father's death. Held, that a finding of the orphans' court that the son survived the father will not be reversed. In such a case the son's share of the personal estate of the father may be distributed directly to the personal representative of his mother, the orphans' court of Philadelphia County stating:

"Ordinarily the share of Darwin Freeman would be paid to an administrator of his estate. Under existing circumstances it will be distributed directly to those entitled as by way of intestacy. The distribution directed by the auditing judge is to this extent modified, and the share of Darwin awarded to the estate of his mother, the widow of the testator, security being first required to protect the possible interest of the missing son or his legal representatives."  

In Woodside's Estate it was held proper in making distribution of the estate of the decedent, there having been found as a fact the death of certain heirs by applying the presumption where they had been unheard from for periods of twenty-nine and eighteen years respectively, to award the fund to the remaining heirs upon their giving bond for the repayment of the shares of the presumed decedents if it should be subsequently ascertained that they were alive at the time of decedent's death, and holding it unnecessary to resort to the method provided by Section 6 of the Fiduciaries Act to establish the presumption of death of such absentees. The court stipulated as follows:

"The fund in his case will be distributed among the eleven cousins named in the audit statement, subject to assignments and attachments; but each distributee shall file his own bond without sureties in double the amount of the portion of the presumed decedents' shares which each one receives, conditioned that if either or both of said presumed decedents were alive on Aug. 27, 1928, such amounts received will, on demand, be refunded to said presumed decedents or their legal representatives."

In Maley v. Pa. R. R. Co. the entire subject under discussion was reviewed by Frazer, J. in affirming the judgments of the court below in an action of assumpsit for funds deposited with the defendant by plaintiff's decedent, and the facts and conclusions were summarized as follows:

"Martin Maley died in 1913, leaving a will in which, after giving certain specific legacies, he left his residuary estate to his wife, plaintiff in this proceeding, and appointed her executrix. Deceased had been an employee of the Pennsylvania Railroad Company, the defendant, and had, since

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30 See Baker v. Fidelity Title and Trust Co., 55 Pa. Super. 15 (1913), awarding in partition proceedings the interest on a portion of the fund for life to the widow of the presumed decedent. Nothing is said but security was probably required.
82 258 Pa. 73, 101 A. 911 (1917).
1893, made deposits in the employees' saving fund of the company, and, at the time of his death, there was standing to his credit in that fund the sum of $1,774.25, the subject-matter of this litigation. In his application for membership deceased provided that, in event of his death, the amount due him should be paid to his three children, Jerry, Daniel and Mary, or, in case they were not living, to his legal representatives. The regulations governing payment of the saving fund provided that 'Upon the presentation to the superintendent of the fund of satisfactory proof of the death of a depositor, the money belonging to him shall be paid only to the beneficiary designated, in accordance with these regulations, to receive the same; or, if the beneficiary so designated shall not be then living, said fund shall be paid either to the heirs or legal representatives of the deceased depositor, as the board, or superintendent, may determine.' Daniel and Jerry Maley left home shortly after the father became a depositor to this fund and have not since been heard from. After the death of Martin Maley, Mary assigned her interest in the fund to her mother, the executrix, who then brought this action to recover the entire fund as the personal representative of decedent, basing her claim to the shares of Jerry and Daniel on the presumption of their death, arising from absence unheard of for a period of twenty-one and eighteen years respectively at the time of bringing this action. The court below left to the jury the question whether the absent sons were dead, and a verdict for plaintiff was rendered on which the court, after discharging rules for a new trial and judgment non obstante veredicto, entered judgment, and defendant appealed."

"We find nothing in the act, however, indicating an intention on the part of the legislature to confer upon the orphans' court exclusive jurisdiction of the determination of the fact of death by reason of absence.... Defendant cannot be injured by a judgment in favor of the plaintiff for the amount in its hands. It admits the amount is due and merely desires to be protected in making payment to the proper person. This protection is fully given by the judgment of the court in the present proceeding."

Insurance Cases

The insurance cases likewise afford some interesting applications of the presumption of death doctrine. A typical and well-considered one is Groner v. Knights of Maccabees wherein, in an action in the common pleas by a wife to recover insurance on the life of her husband whose death was alleged, it was held that the rule that in case of an absent person of whom no tidings had been received, the presumption of the continuance of life ceased at the end of seven years and a judgment on a verdict for the plaintiff will be sustained where the evidence showed

88 265 Pa. 129, 108 A. 437 (1919). Accord, Roblin v. Knights of Maccabees, 269 Pa. 139, 112 A. 70 (1920). As the presumption of death cannot be established until the end of the 7-year period, assessments of premiums due upon beneficial certificates or policies must be paid until the end of the period, otherwise the insurance may lapse. Schoneman's Appeal. 174 Pa. 1, 34 A. 283; on this latter point also see the Roblin case, supra.
that the insured had lived for twelve years with his wife in a "pleasant" home which he had built; that he had two children; that his parents who were advanced in years, and many friends, lived in the same town; that in November, 1907, when his health was poor, he left home, with the intention of going to Oklahoma to work at his trade; that his wife accompanied him part of the way; that after she left him he mailed letters to her all along his route, and some from Oklahoma; that running out of funds he wrote to his wife and she sent him money; that he subsequently sent a check to his daughter from California; that in 1909 he wrote from a town in California that he was getting his teeth fixed; that thereafter no communication was received from him; that the wife made numerous inquiries for him, writing to machine shops, to public officers of towns where such shops existed, and to people, who she thought might know of his whereabouts; that her brother-in-law went on a trip to find him; that she advertised in a trade journal, offering a reward for information about his whereabouts, and that all her efforts to locate him had failed; and more than seven years after last hearing from him suit was brought.

The opinion by Moschzisker, J., reviews the entire line of cases establishing and applying the presumption of death rule.

In Sheak v. New York Life Ins. Co., an action on a life policy, evidence that insured left home to obtain work and was unheard of for seven years, notwithstanding inquiries by his mother and wife, the latter after five years obtaining a divorce on the ground of desertion, warranted the jury in presuming death and hence the wife could recover on the policy. Further it was declared that testimony by the insurance company that within seven years a man giving insured's name attempted to make a long distance telephone call to his mother had little if any probative value, and in any event insurer could not complain where such testimony, brought out by it, was admitted and jury was instructed that if call came from insured within seven years the plaintiff could not recover. In re-affirming the general rule, Baldridge, P.J., said:

"Recently, in McNulty v. General American Life Ins. Co., 153 Pa. Super. 288, 291, 292, 33 A. 2d. 796, 798, we reiterated the general rule that when one's absence is unexplained and he is unheard of for seven years, there arises a presumption of death, and unless overcome the amount due under a life insurance policy is due and payable. Any fact which fairly and reasonably tends to rebut the presumption is admissible. The presumption of death naturally depends upon the circumstances in each case. The sufficiency of the evidence to rebut the presumption once it is shown to exist, is a question of law. Wigmore, Evidence, Third Edition, Vol. IX, section 2531b, p. 473. The truth, however, of plaintiff's evidence, upon which the presumption of death is predicated, and every inference fairly deductible therefrom must be assumed by the court in

determining that question. *Gurnacki v. Polish Roman Catholic Union,* 113 Pa. Super. 189, 192, 193, 172 A. 480.86

**Direct Proof of Death**

The common and usual way of proving the death of a deceased owner of property is by the testimony of those who saw him die and can testify directly to that fact. Such evidence may be furnished by physicians in attendance or friends and relatives acquainted with the facts. In given cases the testimony of the undertaker or of those who attended the funeral and were acquainted with the decedent in his lifetime may be taken as sufficient.

In other words, in instances where death is a notorious fact any persons familiar with that fact may testify before the register of wills if such persons are otherwise competent witnesses.

**Circumstantial Evidence of Death**

In contrast with the usual situation as outlined in the previous paragraph, the fact of death may not be the subject of direct proof, as for example where one was last seen in a burning building or on a sinking vessel or in some other situation of great peril and following these events the individual in question has disappeared and his whereabouts are unknown.

Some years ago a prominent citizen of Pennsylvania suffering from a severe nervous breakdown was last seen on the extreme end of a pier at Atlantic City. Later his hat, overcoat and cane were found near the place of his last appearance. He was never afterwards heard from or his whereabouts accounted for.

In such instances there is an absence of the finding of a body which might be the subject of identification. Yet in these respective cases and on the evidence as submitted, any reasonable time after the disappearance the register of wills would be justified in finding the fact of death and granting letters upon the estate of the given person.

In short, any circumstances submitted as evidence from which the register of wills might reasonably draw the inference of death would be sufficient proof to authorize the issuance of letters of administration or to probate a will in case of testacy. Of course, the finding of fact by the register of wills under such circumstances would be the subject of appeal to the orphans' court and might result in the framing of an issue and the determination of the fact by a jury trial.

Curiously enough this very question of proving death by circumstantial evidence rather than awaiting the 7-year period until proving the same by application of the presumption of death arose in *Burr v. Sim*88 wherein the presumption of

88 4 Wharton 150 (Pa. 1838).
death on the expiration of the 7-year period was adopted by our court. Said Gibson, C.J.:

"In the case at bar, therefore, we must say there was an error in leaving the jury to presume the death to have been at an intermediate period, unless we discover in the case at least a spark of evidence that the individual was, at some particular date, in contact with a specific peril as a circumstance to quicken the operation of time. The circumstance relied on, is the departure of the individual by sea; but the perils of the sea are general, not specific; and they are not present but contingent. They are such as may or may not occur; but to accelerate the presumption from time, or more properly to turn it from an artificial into a natural one, it is necessary to bring the person within the range of a particular and an immediate danger—not such as is contingently incident, in some degree, to every mode of conveyance. A natural presumption arises only from a violent probability, because it is a conclusion drawn by experience from the usual current of things; but no violent probability of death arises from a peril, which, though possible, is remote."\(^7\)

Several of our cases illustrate the application of the specific peril doctrine and as to the nature and the amount of evidence to justify the finding of death by the trier of the fact. In *Fanning v. Equitable Life Assurance Society*,\(^8\) there was an unexplained absence of more than seven years which the insurance company, defendant, admitted, but contended that under the facts the presumption of death did not arise until the expiration of the seven years from time of disappearance, but it was held that although the time of the death of the person who cannot be found is presumed to be seven years from the date on which he was last heard from, the presumption of life in the interim may be overcome by facts and circumstances tending to show that his death probably happened sooner, as that he encountered a special peril which might reasonably be expected to destroy life. It was held accordingly that the evidence was sufficient to sustain a finding that the insured died in a forest fire where it appeared that up until that time he wrote frequently to his mother, sending her money, that he earned good wages and was without financial difficulties and had a happy cheerful disposition, and that when last seen and heard of he said that he was going to fight the forest fire, in which many persons lost their lives, some being burned beyond recognition.

In *Herold v. Washington Natl. Ins. Co.*\(^9\) there was a suit to recover on an accident policy for the death of her husband by Laura H. Herold. Verdict for plaintiff and from the judgment entered defendant appealed.

About 4:30 P.M. on July 7, 1935, insured was last seen swimming in the ocean in front of the President Hotel, Atlantic City, where two lifeguards were on duty. The testimony showed that insured was never seen to come ashore nor seen elsewhere thereafter.

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\(^7\) Emphasis supplied by the present writer.

\(^8\) 264 Pa. 333, 107 A. 715 (1919).

In affirming the judgment the Superior Court, per curiam, explained, inter alia:

"Circumstances, tending to show that the insured was subjected to specific peril or serious danger on the day he was last seen or heard of; were given in evidence which, if believed by the jury, were sufficient, in our opinion, to support a finding that he was accidentally drowned on July 7, 1935, although his body was not recovered. In that event, it was not necessary to wait seven years before bringing suit, and the case was one of fact for the jury. The decisions of our Supreme Court and of this court, relied on by appellant, are easily distinguishable. They relate to cases where satisfactory and sufficient evidence that the insured had been subjected to serious peril of a nature that might prevent the recovery of the body was lacking, or the beneficiary elected to rely on the presumption of death arising seven years after the unexplained disappearance of the insured rather than attempt to prove that the latter died on a certain date within the seven years."

Resume

This review of the leading cases on the present topic presents five classes: (1) where as in Devlin v. Commonwealth, supra, the estate of a decedent is administered, the fact of death being based on the presumption; (2) where as in Freeman's Estate, supra, and others, the estate of a decedent is being distributed and the fact of the death of a proposed distributee is based upon presumption; (3) where the estate of one is being administered, the fact of his death being based upon circumstantial evidence; (4) the insurance cases where there is a suit brought to recover on a policy of the insured whose death is proved by circumstantial evidence; and (5) where in the insurance cases as outlined in (4) the fact of death of the insured is based upon the presumption.

Finality of Decree of Judgment.

The legal vice of Devlin v. Commonwealth and Scott v. McNeal was that, according to the ruling on the facts as they eventually turned out, the respective courts were without jurisdiction in the premises. According to the theory they essayed to administer the estates of persons who were not dead and thus transcended their jurisdictional powers. However, this conclusion although supported by authority is sound legal reasoning or otherwise depending upon the acceptance of the major premise in the syllogism of logic. It might have been urged that each court had jurisdiction from the finding of the fact of death and that this jurisdiction could not be destroyed by later fortuitous circumstances. In other words, once the jurisdiction was established by the finding of the court, that was conclusive.

However, the Act of 1885 and its successor, Section 6 of the Fiduciaries Act, were enacted to cure this matter and to specifically confer jurisdiction upon the
orphans' courts and registers of wills in the presumed decedent cases. This has been accomplished.

Nevertheless, where any court has jurisdiction of the subject matter and uses in the finding of some fact the presumption of death, a decree or judgment entered by such court upon the controversy involved is considered final, even though later the presumption may be found incorrect. Furthermore, in the Maley Case, Franzer, J. pointed out the protective feature of the judgment, observing:

"Defendant cannot be injured by a judgment in favor of the plaintiff for the amount in its hands. It admits the amount is due and merely desires to be protected in making payment to the proper person. This protection is fully given by the judgment of the court in the present proceeding. In Devlin v. Commonwealth to use, 101 Pa. 273, this court held a voluntary payment to the administrator, appointed on the estate of a person on the strength of the presumption of death before the Act of 1886, was not a defense to a subsequent action by the supposed decedent, but said (Page 278): 'Had John F. Devlin been compelled, by a court of competent jurisdiction, to have paid to the administrator the money in controversy, his case would have been very different.' In Miller et al vs. Beates, et al., 3 S. & R. 490, it was said in answer to a similar contention (page 494): 'As to the injury which might arise to John G. Schlosser, by this presumption, in case he should be alive, I think it ought not be regarded. He would have his action against those to whom the money will be paid; and although he might lose by their insolvency, yet that would not be a greater evil than would arise from the establishment of a principle that the life of a man ought to be presumed, under circumstances which usually attend death, merely because positive proof of death could not be obtained. I am bound to mention, in justice to the defendants, in this case, that they have no wish to reap any benefit from the detention of the money in question. Their object is safety; they are willing to pay to the persons who are authorized by law to receive; and, considering the circumstances of the case, I think they were prudent in withholding the money, till the plaintiff established their right by legal adjudication.'

Duty to Refund

Applying the principle of Devlin v. The Commonwealth, supra, and Scott v. McNeal, supra, as the proceedings of administration of the estate of the presumed decedent are null and void, no one is protected in dealing with the personal representative or the orphans' court, hence there is no legal protection to personal representative, creditor, purchaser or distributee when the presumed decedent returns and hence he is entitled to the restoration of his property despite the passage of time.

This impossible situation was remedied in large part by the Act of 1885 and now by Section 6 of the Fiduciaries Act. However, despite the theory that the ad-

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administration proceedings are in rem, Section 6 preserves a right in personam against the innocent distributee and in most instances protects this right of recovery by a bond, sometimes with approved sureties and at others without, depending upon the view the orphans' court takes on the lapse of time.

On the other hand in the type of cases illustrated by Freeman's Estate, supra, and others where the estate of an actual decedent is being distributed and the fact of the death of a proposed distributee is based upon the presumption, the early decisions awarded the fund to other parties based upon the presumption of death and no bond was required, but the inference was that if the presumed decedent returned he had a right of recovery against the distributee despite the solemn adjudication of the court in the matter of the distribution. The cases on this branch of our subject arising after the Act of 1885 apparently suggested to the orphans' courts the expediency of requiring a bond of the distributee either with or without sureties. On what actual statutory basis such an order is supported is not quite clear, except by way of analogy to proceedings under the Act of 1885 or the present Section 6. No cases have been encountered where actual restitution occurred.

In the present state of the law the cases where the fact of death is based upon circumstantial evidence are embraced under the general principle of the Devlin case, however unhappy the result proves to be.

In contrast with the foregoing conclusions, the insurance cases, either where the suit brought to recover on a policy of the insured whose death is proved by circumstantial evidence or by the finding of the fact of death of the insured as based upon the presumption, hold that the decree or judgment of the court is final. Query, has the insured or the insurance company, in case of the return of the presumed insured decedent, a right to recover the proceeds of the policy from the beneficiary or distributees? No cases have been encountered in this study furnishing an adequate or satisfying answer, although it is perfectly clear from the decisions that the insurance company is fully protected in paying out in accordance with the decree or judgment as rendered.

Conclusion

The foregoing review indicates that the particular law as it pertains to the orphans' court is unsatisfactory and as compared with the results in the common pleas on the same topic is inconsistent notably in the matter of the duty to refund. The case for a presumed decedent returning and demanding his property is not an impressive one under the usual circumstances. In fact the case is usually much stronger for an innocent heir or distributee who is compelled by law to refund possibly after the passage of many years when the economic conditions generally and applying to the individual particularly might render such action extremely harsh. In the instance of real estate, the principle of refunding involves the impracticability of holding the same indefinitely and with no incentive to improve.
or the risk of selling and giving a bond for the purchase money with the risk of the bond eventually becoming due and payable by the return of the presumed decedent. In either aspect the results are socially undesirable and the law should be changed, making the final action of the orphans' court in the matter of distribution or the vesting of estate conclusive, possibly refraining from this final step until every reasonable effort has been exhausted to ascertain the whereabouts of the absentee, thus assuring every compliance with the requirement of due process of law under the constitutional limitations.