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## Insurance—Disappearance of Insured—Presumption as to Time of Death

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475, footnote 15, to the effect that in Michigan the rule is well established that only under certain circumstances will a conditional vendor be entitled to superiority. For instance, one requirement is that the chattel must be removable without injury to the realty. It might be pointed out that the Michigan view is expressive of but one line of cases on a disputed matter. Other jurisdictions hold that the conditional vendor's right is inferior to that of the mortgagee on the ground that a mortgagor of real estate cannot affect the rights of the mortgagee by agreements with third persons for the annexation of chattels to the realty; in other words, by agreements to which he is not a party and has not consented. See 13 ST. LOUIS L. REV. 255; 37 L. R. A. (N. S.) 126. D. A. M., '29.

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**INSURANCE—DISAPPEARANCE OF INSURED—PRESUMPTION AS TO TIME OF DEATH.**—Five years after the disappearance of one Marshall his policy of life insurance expired. More than seven years after said disappearance, Marshall's widow sued upon the policy, offering evidence to support an inference of death within five years after the disappearance of her husband, and so before the lapse of said policy. *Held*, the jury correctly found for the plaintiff. *Kansas City Life Insurance Co. v. Marshall* (Colo., 1928), 268 P. 529.

The general rule is that a presumption of death arises from the continued and unexplained absence of a person from his home or place of residence without any intelligence concerning him for a period of seven years. See 8 R. C. L. 708 and cases there cited.

The question arises, however, as to whether the time of death must be presumed to have been only at the end of the seven years, or whether it may be found to have been at an earlier time. On this proposition there is a conflict of authority. The prevailing view seems to be that after seven years of unexplained absence the law presumptively establishes not only the fact of death, but also the time of death, the latter being regarded as occurring on the last day of the seven year period if there is nothing pointing directly to the contrary. *Meyer v. Madreperla* (1902), 68 N. J. L. 258, 53 A. 477, 96 Am. St. Rep. 536. Also see note, 91 Am. Dec. 526.

The English rule and that followed by a number of courts in this country is that there is no presumption established as to the time of death. The presumption is only that the person is dead at the end of seven years, but the question of the particular time of death is left open to be judged by the facts and circumstances of the case under consideration. This rule was applied in the principal case. See 8 R. C. L. 711; note, 34 A. L. R. 1389; *Davie v. Briggs* (1878), 97 U. S. 628.

To determine whether death occurred at some particular time before the expiration of the seven-year period the courts following the latter view refer the question to the jury. Consideration is given to such facts as the following: the habits, attachments, domestic and financial circumstances of the absentee; any circumstances indicating accident or exposure to specific peril; evidence of sickness; indications pointing to suicide; evidence of a

prospective journey and the dangers incident thereto; in short, anything tending to furnish a basis for inferring a death before the seven-year period established by law. A full discussion of these matters can be found in an annotation to *Goodier v. Mutual Life Insurance Co.* (1924), 158 Minn. 1, 196 N. W. 662, 34 A. L. R. 1383. Also see 8 R. C. L. 711 *et seq.*

The circumstances in *Kansas City Life Insurance Co. v. Marshall* justifying the jury in finding that the deceased died before the expiration of his policy, five years after his disappearance, were that the habits, character, domestic relations, etc., of the deceased were such as to make the abandonment of his home and family improbable. The evidence showed that although he was financially involved, the extent was inconsiderable; that he was a happy man, loving his family, and taking an interest in the future. Just previous to his disappearance, he had phoned his sister's residence stating he was coming over, but was never heard from again. Any motive for disappearing was altogether lacking. It is submitted that the case is correctly decided, not only on the particular facts, but also in adopting the English rule. For a very similar case, see *Springmeyer v. Sovereign Camp, W. W.* (1912), 163 Mo. A. 338, 143 S. W. 872, treated briefly in 34 A. L. R. 1389, 1394. D. A. M., '29.

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**MASTER AND SERVANT—MISSOURI WORKMEN'S COMPENSATION LAW—CLAIM FOR INJURIES RECEIVED OUTSIDE OF STATE.**—In contract of employment entered into in Missouri contemplating travel in other states, both employer and employee accepted the provisions of the Missouri Workmen's Compensation Act which by Section 12 (Laws 1927, p. 498) extends to injuries received outside of Missouri. The employee was injured in Oklahoma and brought an action to recover the stipulated compensation. The employer contended that Section 12 was void in that it purported to create an extraterritorial cause of action, and hence that the Missouri Workmen's Compensation Commission had no jurisdiction of the cause. *Held*, that Section 12 is valid, that the Missouri act governs the case, and that the commission has jurisdiction. *State v. Missouri Workmen's Compensation Commission* (Mo. A. 1928), 8 S. W. (2d) 897.

The cause of action in this case, the court points out, accrued not from the commission of a tort in Oklahoma, but through the breach of a contractual obligation which was entered into in Missouri and which was to be performed in Missouri. The breach consisted of relator's refusal to pay the stipulated compensation. The court cites *Crane v. Leonard et al.* (1921), 214 Mich. 218, 183 N. W. 204, 18 A. L. R. 285. The decision of this case and the annotation in 18 A. L. R. review many authorities, the essential points developed being as follows: Workmen's compensation acts are in general of two types: (1) compulsory, imposing on the employer a statutory liability; (2) optional, imposing liability under the act only where both the employer and employee expressly or impliedly agree to be bound by its terms. This distinction is of cardinal importance, particularly as affecting their "extraterritorial operation."

Under the compulsory type of statute, the rule is that there is no con-