primâ facie evidence of the payment of all the rent previously accrued.[1] But the mere delivery of money by one to another, or of a bank check, or the transfer of stock, unexplained, is presumptive evidence of the payment of an antecedent debt, and not of a loan.[2] The same presumption arises upon the payment of an order or draft for money, namely, that it was drawn upon funds of the drawer, in the hands of the drawee. But in the case of an order for the delivery of goods it is otherwise, they being presumed to have been sold by the drawee to the drawer.[3] Thus also, where the proprietors of adjoining parcels of land agree upon a line of division, it is presumed to be a recognition of the true original line between their lots.[4]

§ 38 *a*. Of a similar character is the presumption in favor of the due execution of deeds and wills. Thus, if the subscribing witnesses to a will are dead, or if, being present, they are forgetful of all the facts, or of any fact material to its due execution, the law will in such cases supply the defect of proof, by presuming that the requisites of the statute were duly observed.[5] The same principle, in effect, seems to have been applied in the case of deeds.[6]

§ 39. On the same general principle, where a debt due by *specialty* has been unclaimed, and without recognition, for *twenty years*, in the absence of any explanatory evidence, it is presumed to have been paid. The *Jury* may infer the fact

1 1 Gilb. Evid. (by Lofft,) 309; Brewer *v.* Knapp, 1 Pick. 337.

2 Welch *v.* Seaborn, 1 Stark. R. 474; Patton *v.* Ash, 7 Serg. & R. 116, 125; Breton *v.* Cope, Peake's Cas. 30; Lloyd *v.* Sandiland, Gow, R. 13, 16; Cary *v.* Gerrish, 4 Esp. 9; Aubert *v.* Walsh, 4 Taunt. 293; Boswell *v.* Smith, 6 C. & P. 60.

3 Alvord *v.* Baker, 9 Wend. 323, 324.

4 Sparhawk *v.* Bullard, 1 Metc. 95.

5 Burgoyne *v.* Showler, 1 Roberts, Eccl. R 10; In re Leach, 12 Jur. 381.

6 Burling *v.* Paterson, 9 C. & P. 570; Dewey *v.* Dewey, 1 Met. 349; Quimby *v.* Buzzell, 4 Shepl. 470; New Haven Co. Bank *v.* Mitchell, 15 Conn. 206; Post, § 372, n.

of payment, from the circumstances of the case, within that period; but the presumption of *law* does not attach, till the twenty years are expired.[1] This rule, with its limitation of twenty years, was first introduced into the Courts of Law by Sir Matthew Hale, and has since been generally recognised, both in the Courts of Law, and of Equity.[2] It is applied not only to bonds for the payment of money, but to mortgages, judgments, warrants to confess judgment, decrees, statutes, recognisances, and other matters of record, when not affected by statutes; but with respect to all other claims not under seal nor of record, and not otherwise limited, whether for the payment of money, or the performance of specific duties, the general analogies are followed, as to the application of the lapse of time, which prevail on kindred subjects.[3] But in all these cases, the presumption of payment may be repelled by any evidence of the situation of the parties, or other circumstance tending to satisfy the Jury, that the debt is still due.[4]

1 Oswald *v.* Leigh, 1 T. R. 270; Hillary *v.* Waller, 12 Ves. 264; Colsell *v.* Budd, 1 Campb. 27; Boltz *v.* Ballman, 1 Yeates, 584; Cottle *v.* Payne, 3 Day, 289. In some cases, the presumption of payment has been made by the Court, after eighteen years; Rex *v.* Stephens, 1 Burr. 434; Clark *v.* Hopkins, 7 Johns. 556; but these seem to be exceptions to the general rule.

2 Mathews on Presumpt. Evid. 379; Haworth *v.* Bostock, 4 Y. & C. 1; Grenfell *v.* Girdlestone, 2 Y. & C. 662.

3 This presumption of the Common Law is now made absolute in the case of debts due by specialty, by Stat. 3 & 4 W. 4, c. 42, § 3. See also Stat. 3 & 4 W. 4, c. 27, and 7 W. 4 & 1 V. c. 28. It is also adopted in New York, by Rev. Stat. Part 3, ch. 4, tit. 2, art. 5, and is repellable only by written acknowledgment, made within twenty years, or proof of part payment within that period. In Maryland, the lapse of twelve years is made a conclusive presumption of payment, in all cases of bonds, judgments, recognisances, and other specialties, by Stat. 1715, ch. 23, § 6; 1 Dorsey's Laws of Maryl. p. 11; Carroll *v.* Waring, 3 Gill & Johns. 491. A like provision exists in Massachusetts, as to judgments and decrees, after the lapse of twenty years. Rev. Stat. ch. 120, § 24.

4 A more extended consideration of this subject being foreign from the plan of this work, the reader is referred to the treatise of Mr. Mathews on Presumptive Evidence, ch. 19, 20; Best on Presumptions, Part I. ch. ii, iii; and to Cowen & Hill's elaborate note to 1 Phil. on Evid. p. 160, note 307, where the American authorities are collected.

§ 40. Under this head of presumptions from the course of trade, may be ranked the presumptions frequently made from the regular course of business in a *public office*. Thus post-marks on letters are *primâ facie* evidence, that the letters were in the post office at the time and place therein specified.[1] If a letter is sent by the post, it is presumed, from the known course in that department of the public service, that it reached its destination at the regular time, and was received by the person, to whom it was addressed, if living place at the and usually receiving letters there.[2] So, where a letter was put into a box in an attorney's office, and the course of business was, that a bell-man of the post-office invariably called to take the letters from the box; this was held sufficient to presume that it reached its destination.[3] So, the time of clearance of a vessel, sailing under a license, was presumed to have been indorsed upon the license, which was lost, upon its being shown, that without such indorsement, the custom-house would not have permitted the goods to be entered.[4] So, on proof that goods, which cannot be exported without license, were entered, at the custom-house, for exportation, it will be presumed, that there was a license to export them.[5] The return of a sheriff, also, which is conclusively presumed to be true, between third persons, is taken *primâ facie* as true, even in his own favor; and the burden of proving it false, in an action against him for a false return, is devolved on the plaintiff, notwithstanding it is a negative allegation.[6] In fine, it is presumed, until the contrary is proved, that every man obeys the mandates of the law, and performs all his official and

[1] Fletcher *v.* Braddyl, 3 Stark. R. 64; Rex *v.* Johnson, 7 East, 65; Rex *v.* Watson, 1 Campb. 215; Rex *v.* Plumer, Rus. & Ry. 264.

[2] Saunderson *v.* Judge, 2 H. Bl. 509; Bussard *v.* Levering, 6 Wheat. 102; Lindenberger *v.* Beal, ib. 104; Bayley on Bills, (by Phillips & Sewall,) 275, 276, 277; Walter *v.* Haynes, Ry. & M. 149; Warren *v.* Warren, 1 Cr. M. & R. 250.

[3] Skilbeck *v.* Garbett, 9 Jur. 339; 7 Ad. & El. N. S. 846, S. C.

[4] Butler *v.* Allnutt, 1 Stark. R. 222.

[5] Van Omeron *v.* Dowick, 2 Campb. 44.

[6] Clark *v.* Lyman, 10 Pick. 47; Boynton *v.* Willard, ib. 169.

social duties.[1] The like presumption is also drawn from the usual course of men's private offices and business, where the primary evidence of the fact is wanting.[2]

§ 41. Other presumptions are founded on the experienced *continuance* or permanency, of longer or shorter duration, in human affairs. When, therefore, the existence of a person, a personal relation, or a state of things, is once established by proof, the law presumes that the person, relation, or state of things continues to exist as before, until the contrary is shown, or until a different presumption is raised, from the nature of the subject in question. Thus, where the issue is upon the *life* or death of a person, once shown to have been living, the burden of proof lies upon the party, who asserts the death.[3] But after the lapse of seven years, without intelligence concerning the person, the presumption of life ceases, and the burden of proof is devolved on the other party.[4] This

[1] Ld. Halifax's case, Bull. N. P. [298]; Bank U. States *v.* Dandridge, 12 Wheat. 69, 70; Williams *v.* E. Ind. Co. 3 East, 192; Hartwell *v.* Root, 19 Johns. 345; The Mary Stewart, 2 W. Rob. Adm. R. 244. Hence, children born during the separation of husband and wife, by a decree of divorce *a mensa et thoro*, are, *primâ facie*, illegitimate. St George *v.* St. Margaret, 1 Salk. 123.

[2] Doe *v.* Turford, 3 B. & Ad. 890, 895; Champneys *v.* Peck, 1 Stark. R. 404; Pritt *v.* Fairclough, 3 Campb. 305.

[3] Throgmorton *v.* Walton, 2 Roll. R. 461; Wilson *v.* Hodges, 2 East, 313; Battin *v.* Bigelow, 1 Pet. C. C. R. 452. Vivere etiam usque ad centum annos quilibet præsumitur, nisi probetur mortuus. Corpus Juris Glossatum, tom. 2, p. 718, note (q) Mascard. De Prob. Vol. 1, Concl. 103, n. 5.

[4] Hopewell *v.* De Pinna, 2 Campb. 113; Loring *v.* Steineman, 1 Metc. 204. This presumption of death, from seven years' absence, was questioned by the Vice-Chancellor of England, who said it was "daily becoming more and more untenable;" in Watson *v.* England, 14 Sim. 28; and again in Dowley *v.* Winfield, ib. 277. But the correctness of his remark is doubted in 5 Law Mag. N. S. 338, 339; and the rule was subsequently adhered to by the Lord Chancellor in Cuthbert *v.* Purrier, 2 Phill. 199, in regard to the capital of a fund, the income of which was bequeathed to an absent legatee; though he seems to have somewhat relaxed the rule in regard to the accumulated dividends. See 7 Law Rev. 201. The presumption in such cases is, that the person is dead; but not that he died at the end of the seven years, nor at

period was inserted, upon great deliberation, in the statute of bigamy,[1] and the statute concerning leases for lives,[2] and has since been adopted, from analogy, in other cases.[3] But where the presumption of life conflicts with that of innocence, the latter is generally allowed to prevail.[4] Upon an issue of the life or death of a party, as we have seen in the like case of the presumed payment of a debt, the Jury may find the fact of death from the lapse of a shorter period than seven years, if other circumstances concur; as, if the party sailed on a voyage, which should long since have been accomplished, and the vessel has not been heard from.[5] But the presumption of the Common Law, independent of the finding of the Jury, does not attach to the mere lapse of time, short of seven years,[6] unless letters of administration have been granted on his estate within that period, which, in such case, are conclusive proof of his death.[7]

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any other particular time. Doe *v.* Nepean, 5 B. & Ad. 86. The time of the death is to be inferred from the circumstances. Rust *v.* Baker, 8 Sim. 443; Smith *v.* Knowlton, 11 N. Hamp. 191; Doe *v.* Flanagan, 1 Kelly, R. 543.

1 1 Jac. 1, c. 11.

2 19 Car. 2, c. 6.

3 Doe *v.* Jesson, 6 East, 85; Doe *v.* Deakin, 4 B. & Ald. 433; King *v.* Paddock, 18 Johns. 141. It is not necessary that the party be proved to be absent from the United States; it is sufficient, if it appears that he has been absent, for seven years, from the particular State of his residence, without having been heard from. Newman *v.* Jenkins, 10 Pick. 515; Innis *v.* Campbell, 1 Rawle, 373; Spurr *v.* Trimble, 1 A. K. Marsh. 278; Wambough *v.* Shenk, 1 Penningt. 167; Woods *v.* Woods, 2 Bay, 476; 1 N. York Rev. Stat. 749, § 6.

4 Rex *v.* Twyning, 2 B. & Ald. 385; Ante, § 35.

5 In the case of a missing ship, bound from Manilla to London, on which the underwriters had voluntarily paid the amount insured, the death of those on board was presumed by the Prerogative Court, after an absence of only two years, and administration was granted accordingly. In re Hutton, 1 Curt. 595. See also Sillick *v.* Booth, 1 Y. & Col. N. C. 117.

6 Watson *v.* King, 1 Stark. R. 121; Green *v.* Brown, 2 Stra. 1199; Park on Ins. 433.

7 Newman *v.* Jenkins, 10 Pick. 515. The production of a will, with proof of payment of a legacy under it, and of an entry in the register of burials, were held sufficient evidence of the party's death. Doe *v.* Penfold, 8 C. & P. 536.

§ 42. On the same ground, a *partnership*, or other similar *relation*, once shown to exist, is presumed to continue, until it is presumed to have been dissolved.[1] And a *seisin*, once proved or admitted, is presumed to continue, until a disseisin is proved.[2] The *opinions*, also, of individuals, once entertained and expressed, and the *state of mind*, once proved to exist, are presumed to remain unchanged, until the contrary appears. Thus, all the members of a Christian community being presumed to entertain the common faith, no man is supposed to disbelieve the existence and moral government of God, until it is shown from his own declarations. In like manner, every man is presumed to be of sane mind, until the contrary is shown; but if derangement or imbecility be proved or admitted at any particular period, it is presumed to continue, until disproved, unless the derangement was accidental, being caused by the violence of a disease.[3]

§ 43. A spirit of *comity*, and a disposition to friendly intercourse, are also presumed to exist among nations, as well as among individuals. And in the absence of any positive rule, affirming, or denying, or restraining the operation of foreign laws, Courts of Justice presume the adoption of them by their own government, unless they are repugnant to its policy, or prejudicial to its interest.[4] The instances, here given, it is believed, will sufficiently illustrate this head of presumptive evidence. Numerous other examples and cases may be found in the treatises already cited, to which the reader is referred.[5]

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1 Alderson *v.* Clay, 1 Stark. R. 405; 2 Stark. Evid. 590, 688.

2 Brown *v.* King, 5 Metc. 173.

3 Attorney Gen. *v.* Parnther, 3 Bro. Ch. Ca. 443; Peaslee *v.* Robbins, 3 Metcalf's R. 164; Hix *v.* Whittemore, 4 Metc. 545; 1 Collinson on Lunacy, 55; Shelford on Lunatics, 275; 1 Hal. P. C. 30; Swinb. on Wills, Part II. § iii. 6, 7.

4 Bank of Augusta *v.* Earle, 13 Peters, 519; Story on Confl. of Laws, § 36, 37.

5 See Cowen & Hill's note, 298, to 1 Phil. on Evid. 156; Mathews on Presumptive Evid. ch. 11 to ch. 22; Best on Presumptions, *passim*.

§ 44. Presumptions of fact, usually treated as composing the *second general head* of presumptive evidence, can hardly be said, with propriety, to belong to this branch of the law. They are in truth but mere arguments, of which the major premise is not a rule of law; they belong equally to any and every subject-matter; and are to be judged by the common and received tests of the truth of propositions, and the validity of arguments. They depend upon their own natural force and efficacy in generating belief or conviction in the mind, as derived from those connexions, which are shown by experience, irrespective of any legal relations. They differ from presumptions of law in this essential respect, that while those are reduced to fixed rules, and constitute a branch of the particular system of jurisprudence to which they belong, these merely natural presumptions are derived wholly and directly from the circumstances of the particular case, by means of the common experience of mankind, without the aid or control of any rules of law whatever. Such, for example, is the inference of guilt, drawn from the discovery of a broken knife in the pocket of the prisoner, the other part of the blade being found sticking in the window of a house, which, by means of such an instrument, had been burglariously entered. These presumptions remain the same in their nature and operation, under whatever code the legal effect or quality of the facts, when found, is to be decided.[1]

§ 45. There are, however, some few general propositions in regard to matters of fact, and the weight of testimony by the Jury, which are universally taken for granted in the administration of justice, and sanctioned by the usage of the bench, and which, therefore, may with propriety be mentioned under this head. Such, for instance, is the caution, generally given to Juries, to place little reliance on the testimony of an accomplice, unless it is confirmed, in some material point, by other

[1] See 2 Stark. Evid. 684; 6 Law Mag. 370. This subject has been very successfully illustrated by Mr. Wills, in his Essay on the Rationale of Circumstantial Evidence, *passim*.

evidence. There is no presumption of the Common Law against the testimony of an *accomplice;* yet experience has shown, that persons capable of being accomplices in crime, are but little worthy of credit; and on this experience the usage is founded.[1] A similar caution is to be used in regard to mere *verbal admissions* of a party, this kind of evidence being subject to much imperfection and mistake.[2] Thus, also, though lapse of time does not, of itself, furnish a conclusive legal bar to the title of the sovereign, agreeably to the maxim, *Nullum tempus occurrit regi;* yet, if the adverse claim could have had a legal commencement, Juries are instructed or advised to presume such commencement, after many years of uninterrupted adverse possession or enjoyment. Accordingly, royal grants have been thus found by the Jury, after an indefinitely long continued peaceable enjoyment, accompanied by the usual acts of ownership.[3] So, after less than forty years' possession of a tract of land, and proof of a prior order of council for the survey of the lot, and of an actual survey thereof accordingly, it was held, that the Jury were properly instructed to presume that a patent had been duly issued.[4] In regard, however, to crown or public grants, a longer lapse of time has generally been deemed necessary, in order to justify this presumption, than is considered sufficient to authorize the like presumption in the case of grants from private persons.

[1] See *post*, § 380, 381.

[2] Earle *v.* Picken, 5 C. & P. 542, note; Rex *v.* Simons, 6 C. & P. 540; Williams *v.* Williams, 1 Hagg. Consist. R. 304. See *post*, under the head of *Admissions*, § 200.

[3] Rex *v.* Brown, cited Cowp. 110; Mayor of Kingston *v.* Horner, Cowp. 102; Eldridge *v.* Knott, Cowp. 215; Mather *v.* Trinity Church, 3 S. & R. 509; Roe *v.* Ireland, 11 East, 280; Read *v.* Brookman, 3 T. R. 159; Goodtitle *v.* Baldwin, 11 East, 488; 2 Stark. Evid. 672.

[4] Jackson *v.* McCall, 10 Johns. 377.—"Si probet possessionem excedentem memoriam hominum, habet vim tituli et privilegii, etiam à Principe. Et hæc est differentia inter possessionem xxx. vel xl. annorum, et non memorabilis temporis; quia per illam acquiritur non directum, sed utile dominium; per istam autem directum." Mascard. De Probat. Vol. 1, p. 239, Concl. 199, n. 11, 12.

§ 46. Juries are also often instructed or advised, in more or less forcible terms, to presume *conveyances between private individuals*, in favor of the party, who has proved a right to the beneficial enjoyment of the property, and whose possession is consistent with the existence of such conveyance as is to be presumed; especially if the possession, without such conveyance, would have been unlawful, or cannot be satisfactorily explained.[1] This is done in order to prevent an apparently just title from being defeated by matter of mere form. Thus, Lord Mansfield declared, that he and some of the other Judges had resolved never to suffer a plaintiff in ejectment to be nonsuited by a term, outstanding in his own trustees, nor a satisfied term to be set up by a mortgagor against a mortgagee; but that they would direct the Jury to presume it surrendered.[2] Lord Kenyon also said, that in all cases where trustees ought to convey to the beneficial owner, he would leave it to the Jury to presume, where such presumption could reasonably be made, that they had conveyed accordingly.[3] After the lapse of seventy years, the Jury have been instructed to presume a grant of a share in a proprietary of lands, from acts done by the supposed grantee, in that capacity, as one of the proprietors.[4] The same presumption has been advised in regard to the reconveyance of mortgages, conveyances from old to new trustees, mesne assignments of leases; and any other species of documentary evidence, and act *in pais*, which is necessary for the support of a title in all other respects evidently just.[5]

[1] Phil. & Am. on Evid. 475, 477; 1 Phil. Evid. 455, 457.

[2] Lade *v.* Holford, Bull. N. P. 110.

[3] Doe *v.* Sybourn, 7 T. R. 2; Doe *v.* Staples, 2 T. R 696. The subject of the presumed surrender of terms is treated at large in Mathews on Presumpt. Evid ch. 13, p. 226–259, and is ably expounded by Sir Edw. Sugden, in his Treatise on Vendors & Purchasers, ch. xv. sec. 3, vol. 3, p. 24–67, 10th ed.

[4] Farrar *v.* Merrill, 1 Greenl. 17. A by-law may, in like manner, be presumed. Bull. N. P. 211. The case of Corporations, 4 Co. 78; Cowp. 110.

[5] Emery *v.* Grocock, 6 Madd. 54; Cooke *v.* Soltan, 2 Sim. & Stu. 154; Wilson *v.* Allen, 1 Jac. & W. 611, 620; Roe *v.* Reade, 8 T. R. 118, 122; White *v.* Foljambe, 11 Ves. 350; Keene *v.* Deardon, 8 East, 248, 266;

It is sufficient, that the party, who asks for the aid of this presumption, has proved a title to the beneficial ownership, and a long possession, not inconsistent therewith; and has made it not unreasonable to believe that the deed of conveyance, or other act essential to the title, was duly executed. Where these merits are wanting, the Jury are not advised to make the presumption.[1]

§ 47. The same principle is applied to matters belonging to the *personalty*. Thus, where one town, after being set off from another, had continued for fifty years to contribute annually to the expense of maintaining a bridge in the parent town, this was held sufficient to justify the presumption of an agreement to that effect.[2] And, in general, it may be said, that long acquiescence in any adverse claim of right is good ground, on which a Jury may presume that the claim had a legal commencement; since it is contrary to general experience for one man long to continue to pay money to another, or to perform any onerous duty, or to submit to any incon-

Tenny *v.* Jones, 3 M. & Scott, 472; Roe *v.* Lowe, 1 H. Bl. 446, 459; Van Dyck *v.* Van Buren, 1 Caines, 84; Jackson *v.* Murray, 7 Johns. 5; 4 Kent, Comm. 90, 91; Gray *v.* Gardiner, 3 Mass. 399; Knox *v.* Jenks, 7 Mass. 488; Society, &c. *v.* Young, 2 N. Hamp. R. 310; Colman *v.* Anderson, 10 Mass. 105; Pejepscot Proprietors *v.* Ransom, 14 Mass. 145; Bergen *v.* Bennet, 1 Caines, 1; Blossom *v.* Cannon, 14 Mass. 177. See cases cited in Cowen & Hill's notes to 1 Phil. on Evid. p. 162, note 311. Battles *v.* Holley, 6 Greenl. 145; Lady Dartmouth *v.* Roberts, 16 East, 334, 339; Livingston *v.* Livingston, 4 Johns. Ch. 287. Whether deeds of conveyance can be presumed, in cases where the law has made provision for their registration, has been doubted. The point was argued, but not decided, in Doe *v.* Hirst, 11 Price, 475. The better opinion seems to be, that though the Court will not, in such case, presume the existence of a deed, as a mere inference of law, yet the fact is open for the Jury to find, as in other cases. See Rex *v.* Long Buckby, 7 East, 45; Trials per Pais, 237; Finch, 400.

[1] Doe *v.* Cooke, 6 Bing. 173, per Tindal, C. J.; Doe *v.* Reed, 5 B. & A. 232; Livett *v.* Wilson, 3 Bing. 115; Schauber *v.* Jackson, 2 Wend. 14, 37; Hepburn *v.* Auld, 5 Cranch, 262.

[2] Cambridge *v.* Lexington, 17 Pick. 222. See also Grote *v.* Grote, 10 Johns. 402; Schauber *v.* Jackson, 2 Wend. 36, 37.

venient claim, unless in pursuance of some contract, or other legal obligation.

§ 48. In fine, this class of presumptions embraces all the connexions and relations between the facts proved, and the hypothesis stated and defended, whether they are mechanical and physical, or of a purely moral nature. It is that which prevails in the ordinary affairs of life, namely, the process of ascertaining one fact, from the existence of another, without the aid of any rule of law; and therefore it falls within the exclusive province of the Jury, who are bound to find according to the truth, even in cases where the parties and the Court would be precluded by an estoppel, if the matter were so pleaded. They are usually aided in their labors by the advice and instructions of the Judge, more or less strongly urged, at his discretion; but the whole matter is free before them, unembarrassed by any considerations of policy or convenience, and unlimited by any boundaries but those of truth; to be decided by themselves, according to the convictions of their own understanding.

PART II.

OF THE

RULES WHICH GOVERN

THE

PRODUCTION OF TESTIMONY.