

MAINE STATE LEGISLATURE

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December 1, 1943

To General George M. Carter, Adjutant General

From Frank I. Cowan, Attorney General.

I have your memo of November 27th in regard to persons reported missing in action and especially in regard to one Guy E. Torrey, Jr., concerning whom Mr. Serenus B. Rodick has communicated with you.

Mr. Rodick has quoted the statute in regard to missing persons. This is a general law covering cases where a man has gone away and no one has heard from him for a seven-year period. The presumption is that he would have communicated with some friend or relative or would have otherwise been heard from if he were alive, and the statute permits administration on his estate, when the facts are put before the probate court.

However, that is not the only way of proving that a man is dead. If I were on a ship many miles from the nearest land and the ship were sunk and it were known that no boats or rafts had put off from the ship and there was no other means of escape from the ship, the evidence would be sufficient to raise a presumption of death, because the experience of mankind has yet to disclose any person who can swim several hundred miles. I believe that in the case Mr. Rodick has cited affidavits can be obtained from persons who were either on the same ship with Mr. Torrey or on other ships in that vicinity, which would establish death conclusively.

The fact that it is difficult to obtain the evidence does not mean that the evidence would not be accepted by the courts, when received.

No set rules can be made except by legislative action; but you can easily see that there are cases where a man could be proved dead, even though no one saw the body. If a plane went down in flames from a height of some thousands of feet and no one was seen to bail out with a properly working parachute and no word was heard from the occupants of the plane for a reasonable length of time, there could be no question, it seems to me, but what evidence as above would be accepted as proof of death. If a man fell a distance of many hundred feet without a parachute, the same result must necessarily follow. Each case, however, would stand upon its own basis, in the absence of statute.

Frank I. Cowan
Attorney General

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