RECENT CASES.

BANKRUPTCY—EQUITABLE DEBTS—WIFE'S CLAIM FOR MONEY LOANED—IN RE TALBOT, 7 Am. B. R. 29 (Mass.).—A wife's claim for money advanced to her husband from her separate estate as a loan, cannot be enforced in Massachusetts by either legal or equitable proceedings and so cannot be proved against the husband's estate in bankruptcy.

The rule in most of the United States and in England is that a wife may become a creditor of her husband and enforce the contract in equity. *Story, Eq. Jur., sec.* 1373; *Lehr v. Beaver,* 8 W. & S. 102. In Massachusetts, however, the court holds that, since the contract of husband and wife is void at law, it would be contrary to the public policy of the commonwealth to enforce the liability in equity. *Foote v. Torrey,* 135 Mass. 87; *Woodward v. Spurr,* 141 Mass. 283; 6 N. E. 251; *Bank v. Tyndale,* 176 Mass. 547; 57 N. E. 622, 51 L. R. A. 447. And since the provability of a claim depends upon its validity in the State where it arises, *Fleitas v. Richardson,* 147 U. S. 550, the court refused to uphold the claim. This decision directly overrules the former decision of the same court in *Re Blandin,* 1 Low. 544, which involved the same point, and held that a loan made by a wife to her husband was enforceable by equitable proceedings and provable against the estate in bankruptcy. All the cases involving similar claims have held, in accordance with the laws of the States, that such a liability as this is enforceable in bankruptcy proceedings. *Sigsby v. Willis,* 3 Ben. 371; *In re Bigelow,* 2 N. B. R. 170; *In re Novak,* 101 Fed. 800; *Blumberg v. Bryan,* 107 Fed. 673 (C. C. A.); *In re Abraham,* 35 C. C. A. 592; *In re Neiman,* 6 Am. B. R. 329.

BANKRUPTCY—PROPERTY SEIZED UNDER WARRANT—THIRD PERSON'S CLAIM OF TITLE—PROCEDURE—IN RE YOUNG, 7 Am. B. R. 14 (C. C. A.).—A bankrupt had mortgaged his property some time prior to his involuntary petition in bankruptcy, at a time when his creditors claimed he was insolvent, and that the mortgage operated as a preference. The bankrupt remained in the possession of the property, and under a warrant the marshal took possession of such property. Subsequently the petitioner appeared and moved that the property be surrendered to him by the marshal, under claim of mortgage title. The motion was resisted by the bankrupt's creditors, and the District Court overruled the motion, without prejudice to the petitioner's right to bring an action for the recovery of the property in any court of competent jurisdiction. The Circuit Court of Appeals affirmed the decision.

Prior to the decision in *Bryan v. Bernheimer,* 181 U. S. 188, there had been some dispute as to the right of marshals to seize property of the bankrupt in the hands of third persons when absolutely necessary. *In re Ward,* 104 Fed. 985, *held* that a court of bankruptcy could not take property alleged to belong to a bankrupt, out of the hands of third persons. But *Bryan v. Bernheimer,* construing the same point, authoritatively *held* that the marshal could take possession of the property of a bankrupt in the hands of third

persons who claimed title thereto, the Supreme Court expressly stating that the contrary view in *Bardes v. Bank*, 178 U. S. 524, was an inadvertence and purely obiter. Upon *Bryan v. Bernheimer* this case is based. Ordinarily a court must act expeditiously when it is claimed that rights of third parties are invaded under color of process, *Gumbel v. Pitkin*, 124 U. S. 131; but where the claimant's right depends upon a decision of contested issues of fact or questions of law it will be found most expedient to require the controversy to be determined by a plenary action in the court of bankruptcy or some other court rather than on a mere motion.

COMMON CARRIERS—CONNECTING CARRIER'S LIABILITY—GOODS AWAITING CONVEYANCE—BILLS OF LADING—TEXAS AND PACIFIC R. R. v. REISS ET AL., 22 Sup. Ct. 253.—Goods, ready to be transferred between connecting carriers, were destroyed. The bill of lading provided that "the common carrier should be liable as warehouseman while the goods awaited further conveyance." *Held*, that, in the absence of notice to the succeeding carrier, the goods were not awaiting further conveyance, and the first carrier was liable as such.

Goods are not awaiting delivery, before notice to the connecting carrier. *McKinney v. Jewett*, 90 N. Y. 267. The court, in this case, holds that an analogy exists between goods awaiting further conveyance by a succeeding carrier and goods awaiting delivery, at the end of their route, so far as the requisite of notice is concerned. But a distinction would seem to have been made between these classes of cases in *R. R. v. Mfg. Co.*, 16 Wall. 318.

COMMON CARRIERS—STEAMSHIP TICKET—STIPULATIONS AGAINST PUBLIC POLICY—CONFLICT OF LAWS—THE KENSINGTON, 22 Sup. Ct. 102.—Stipulations printed on ticket and valid in country where issued, avoiding carrier's liability for negligence, requiring the settlement of all questions thereunder according to the Belgian law, and limiting responsibility for baggage to 250 francs unless excess is shipped and paid for as cargo under Sect. 3, Harter Act: *held* void as against public policy.

In *The New England*, 110 Fed. 415, *Yale L. J.*, xi, 118, it was *held* that stipulations, against liability for negligence, requiring the application of English law, and limiting responsibility for baggage to fifty dollars are invalid. The Supreme Court does not here pass on the reasonableness of the limitation of 250 francs, holding the stipulation to be void on the ground that baggage shipped as cargo under Sect. 3, Harter Act, is exempt from carrier's responsibility for negligence.

COMMON CARRIERS—WRONGFUL EJECTION—DAMAGES—MALICE — KIBLER V. SOUTHERN RY., 40 S. E. 556 (S. Car.).—In an action for wrongfully ejecting a passenger for non-payment of fare, *held*, that it was error to charge the jury that "the intentional doing of any unlawful act would be construed malicious" and ground for exemplary damages.

Such an act would not justify punitive damages where the actor had a reasonable belief in his right to do the act. 12 Am. & Eng. Enc. Law (2d ed.), 24, 25. Not even the fact that defendant "had good reason to believe the acts were wrongful" would show malice so as to warrant punitive damages. *Inman v. Ball*, 65 Iowa 543. But there must be a reasonable belief in the

right to do the act. *Singer Mfg. Co. v. Holdfodt,* 86 Ill, 455. And even such a reasonable belief, based on advice of counsel, will be no shield against punitive damages if the act is in fact unlawful and is committed in a wanton and outrageous manner. *Jasper v. Purnell,* 67 Ill. 358.

CONSTITUTIONAL LAW—EIGHT HOUR WORKING DAY—STATE V. ATKIN, 67 Pac. Rep. 519 (Kan. 1.).—Defendant was convicted of having violated a statute making it a misdemeanor for any contractor engaged on work for a municipal corporation to allow his employees to work more than eight hours per day. *Held,* that the statute is constitutional.

This is contrary to the decisions in other States on similar statutes. A law in New York compelling contractors working for municipal corporations to pay the prevailing rate of wages was held unconstitutional. *State ex rel. Rogers v. Coler,* 166 N. Y. 1. Laws almost identical with the one under discussion were held unconstitutional as follows: *In re Kubach,* 85 Cal. 274; *Low v. Rees Printing Co.,* 41 Neb. 127; *State ex rel. Bramley v. Norton,* 5 Ohio N. P. R. 183; *Seattle v. Sidney Smyth,* 22 Wash. 327. Kansas seems to be the only State which has so far declared such a statute constitutional. The matter has never been decided by the United States Supreme Court.

CONSTITUTIONAL LAW—INCRIMINATING QUESTIONS—MATTER OF EMIL HEUSCHEL, 7 Am. B. R. 207 (N. Y.).—A statute providing that no testimony offered by the bankrupt shall be used against him in any criminal proceeding, does not give him his constitutional right of immunity against prosecution, and he cannot be compelled under it to give any testimony which might incriminate himself.

In this opinion the referee followed a decision of the U. S. Supreme Court in *Councilman v. Hitchcock,* 142 U. S. 547, which declared that any such statute which did not afford complete immunity against criminal prosecution was unconstitutional.

CONSTITUTIONAL LAW—TRANSFER TAX LAWS—ORR ET AL. V. GILMAN, 22 Sup. Ct. 213.—Comptroller of New York, under a state transfer tax law, imposed a tax on the exercise of a power of appointment, derived from a disposition of property made prior to the act's passage. *Held,* that such an act was constitutional.

Justice Shiras' opinion holds that the right of taking property by devise is a privilege accorded by the State, for which it may charge as it sees fit. Consequently, a transfer tax law is not ex post facto, as understood by the U. S. Constitution. *Carpenter* v. *Pennsylvania,* 17 How. 456. Being imposed on all persons in a like situation, it is an equal tax, within the meaning of the Fourteenth Amendment. *Magoun v. Bank,* 170 U. S. 283.

CONTRACTS—CONSIDERATION — VALIDITY — DURESS — DOMENICO ET AL. V. ALASKA PACKERS' ASS'N, 112 Fed. Rep. 554.—Plaintiffs contracted with defendants to work on fishing grounds in Alaska. On arrival they refused to render services agreed unless paid a greater compensation. Defendant, fearing great pecuniary loss, acceded to the demand and entered into new contract, but subsequently refused to abide by it. *Held,* that defendant is bound by the new contract, and that the conditions under which it was made did not constitute duress.

No existing contract which unexpected events had rendered of no service could stand in the way of a new arrangement and constitute a bar to any new contract which should provide for a price that would enable both parties to protect their interests. *Goebel v. Linn,* 47 Mich. 489; 11 N. W. 484. *Hackley v. Headley,* 45 Mich. 569; 8 N. W. 511. The subsequent performance of the contract by the promisee is a sufficient consideration for the new agreement. *Monroe v. Perkins,* 9 Pick. 298; 20 Am. Dec. 475; *Rollins v. Marsh,* 128 Mass. 116.

CONTRACTS—OPTION TO RETURN STOCK—EXPIRATION—HOLIDAYS—PAGE V. SHAINWALD, 62 N. E. 356 (N. Y. App.).—*Held,* where a person, whose option to return stock falls due on a legal holiday (the next day being Sunday), does not return the stock until the next succeeding business day, the option has expired.

That a contract may expire on a legal holiday has not yet been decided; though this is the logical inference from the decisions on the subject. An insurance premium then due should be paid, *National Mut. Ben. Ass'n v. Miller,* 85 Ky. 88, and business may be transacted, *Richardson v. Goddard* 64 U. S. 23.

CORPORATIONS—CONSPIRACY—BUSINESS COMPETITION—W. VA. TRANSPORTATION CO. V. STANDARD OIL CO. ET AL., 43 S. E. 591 (W. Va.).—In an action for conspiracy, *held,* that defendants could, without liability, combine to ruin—and actually ruin—plaintiff's business by competition, withdrawing plaintiff's customers to themselves by refusal to deal with any who dealt with plaintiff, in the absence of contracts between plaintiff and his customers, and a malicious motive is immaterial; but if such withdrawal of customers was not in furtherance of defendants' own interests by competition, but merely to injure plaintiff, defendant was liable.

That what one may lawfully do, several may combine to do, is well settled. *Huttley v. Simmons,* [1898] 1 Q. B. D. 181. Where the act done is itself lawful and is in furtherance of one's own business interests and in competition, a malicious intent to injure others is immaterial. *Mogul Steamship Co. v. McGregor,* 1892, A. C. 25. Where, unlike the case reported above, breach of contract results from the act, an action will lie. *Chipley v. Atkinson,* 23 Fla. 206. But in England this is confined to contracts for service. *Bohen v. Hall,* 6 Q. B. D. 346. For mere malicious interference, in absence of competition, courts in U. S. tend to give a remedy, even in absence of contracts. *Walker v. Cronin,* 107 Mass. 555; *Rice v. Manley,* 66 N. Y. 82. But English courts deny a remedy in absence of contract. *Allyn v. Flood,* 1892 A. C. 1.

CORPORATIONS—LIEN OF BONDHOLDER ON SECURITIES—EQUITIES OF OTHER BONDHOLDERS—CAMBELL V. ANTHONY ET AL. 112 Fed. 213 (Kan.).—Corporation issued 100 bonds on securities deposited with trustee; then formed a new corporation and proposed to exchange for the old, its new debentures on the same and other securities. Plaintiff, holding four bonds, refused but the rest accepted. Through collusive sale by trustee the company obtained and deposited the securities. *Held,* plaintiff was entitled to only one-twenty-

fifth of the proceeds of the securities in hands of receiver, Sanborn, J., dissenting.

The exact state of facts seems to be without precedent on which to base decision. The two judges argue that holders of new bonds not being parties to fraudulent transfer of securities retain as good a claim on same as plaintiff. The dissenting judge contends that surrender of the old for new bonds operated as a payment and extinguished all lien on securities except as to the four bonds; that as the company could not legally obtain the securities without his consent, plaintiff's entire claim should be paid first.

ELECTIONS—TOWN MEETINGS—MODERATORS—WHEELER V. CARTER, 62 N. E. 471 (Mass.).—Statute provides that no person who is a candidate at a town election, shall act as an election officer at such election. *Held,* that term "election officer" does not apply to moderators.

The point involved has not been before decided. Section 1 of above statutes declare that the term "election officer" shall apply to moderators when taking part in the conduct of elections. The decision is based upon the ground that a moderator is primarily a presiding officer and his duties as election officer are simply incidental; and that section above quoted applies only to "voting precincts" and to "persons appointed election officers," not to moderators elected by the people. The justness of the decision is apparent.

GARNISHMENT—BANKRUPTCY OF PRINCIPAL DEBTOR—MARX ET AL. V. HART, 66 S. W. 260 (Mo.).—A judgment was rendered against a garnishee, the principal debtor being subsequently discharged in bankruptcy. *Held,* that a garnishee is not a co-debtor, guarantor, or in any manner a surety, so as to come under section 16 of the United States bankruptcy law of 1898, which provides that the liability of such persons shall not be altered on account of principal's discharge in bankruptcy.

This is the first decision on this point under the new law. But under a similar provision in the bankruptcy act of 1867, sec. 33 (Rev. St. U. S. sec. 5118), the court in *Hill v. Harding,* 130 U. S. 699, held that in general an obligor is not released by the bankruptcy of the principal debtor.

INSURANCE—WAIVER OF CONDITION—AUTHORITY OF AGENT—NORTHERN ASSURANCE COMPANY OF LONDON V. GRAND VIEW BUILDING ASSOCIATION, 22 Sup. Ct. 133.—*Held,* that insurance companies are not bound by the waiver of a condition in policies made, by agent, in manner different from that required in policy. Harlan C. J. and Peckham J. dissenting.

This decision is opposed to the tendency of several recent cases, as in *McCabe v. Aetna Ins. Co.,* 81 N. W. 426; *Palatine Ins. Co. v. McElroy,* 100 Fed. 391; *Germania Ins. Co. v. Wingfield,* 57 S. W. 456; Hackett v. Philadelphia *Underwriters,* 79 Mo. App. 16; *Rickey v. German Guarantee Town Mut. Fire Ins. Co.,* 79 Mo. App. 485. This case, however, seems to be the sounder law, following the rule laid down in England.

JUDGMENTS—RAILROAD COMMISSION—APPEAL RAILROAD COMMISSION OF TEXAS V. WELD, 66 S. W. 122 (Tex.).—A judgment obtained under the Texas statute by a person dissatisfied with the decision of the R. R. Commissioners

as to any rate or regulation, which only finds that such rate or regulation is unjust, but does not accord any relief to the plaintiff; *held,* not a final judgment from which an appeal may be taken.

No sentence of law is provided in such a judgment; the subject matter of the case is not disposed of, and no final determination of the rights of the parties resulted from such a ruling. A final judgment from which an appeal may be taken is one that determines the subject matter of the controversy between the parties. *West v. Bagby,* 62 Am. Decisions, 512; *Tweedy v. Nichols,* 27 Conn. 517.

LEASE—SUBLETTING—PRESBY V. BENJAMIN, 62 N. E. 430 (N. Y.).—A covenant, in the lease of an apartment, providing that the lessee shall not sublet the apartment without the consent of the landlord, is not violated if the lessee places servants in charge as caretakers during his absence.

Covenants in leases restraining the lessee from subletting or assigning are construed with the utmost jealousy, and very easy modes have been countenanced for defeating them. *Riggs v. Pursell,* 66 N. Y. 193.

MASTER AND SERVANT—NEGLIGENCE—SCOPE OF EMPLOYMENT—ALSEVER V. MINN. AND ST. L. R. Co., 88 N. W. 841 (Ia.).—When railroad engineer blows off steam to frighten child who falls and breaks a leg, *held,* the company is liable.

The conflict of decisions shows this point to be much mooted. This case well illustrates the distinction between departure from employment of master and departure from duty connected therewith. *R. Co. v. Shields,* 24 N. E. 658; *Andrews v. R. Co.,* 77 Ia. 669. The fact that a servant does an act with a private purpose does not free master from liability. *R. Co. v. Harmon,* 47 Ill. 299; *contra, Stephenson v. S. P. Co.,* 29 Pac. 234; *Mott v. Ice Co.,* 73 N. Y. 543. The limits of scope of employment are well defined in *Cobb v. R. Co.,* 15 S. E. 878.

MASTER AND SERVANT—PERSONAL INJURIES—CONTRIBUTORY NEGLIGENCE —GALVESTON H. & S. A. RY. CO. V. SANCHEZ, 65 S. W. 893 (Texas).—Plaintiff, who was ordered to jump from a moving flat car, waited to see fellow servants do so, then followed, thereby receiving injury. *Held,* not to constitute contributory negligence.

This is apparently contrary to the general rule of law which regards as an assumed risk the act of a servant done in pursuance of a command, when he might plainly foresee the danger to life or limb. *Jones v. Railway Co.,* 31 S. W. 706 (Texas); *Stephens v. Railroad Co.,* 86 Mo. 221. But it would seem under circumstances almost similar to the above that the danger might be a question of a fact as to whether a reasonable person might have foreseen it. *Railway Co. v. Egeland,* 163 U. S. 93.

MUNICIPAL CORPORATIONS—NEGLIGENCE OF OFFICERS—LIABILITY—NICHOLSON V. DETROIT, 88 N. W. 695 (Mich.).—State statute and city charter impose on Detroit the duty of providing a hospital for smallpox. Plaintiff's intestate was engaged by the city officers to tear down a building infected with smallpox. They did not warn him of the danger and he died of the disease. *Held,* city not liable for the officer's negligence.

This decision is based on the principle that local health officers acting under State statute do not perform corporate functions but are State agents.

Ogg v. Lansing, 35 Ia. 495; *Murtaugh v. St. Louis*, 44 Mo. 479. The distinction between governmental and ministerial duties is well brought out in *Judd v. Hartford*, 72 Conn. 350, opinion by Baldwin, J.

PATENTS—INFRINGEMENT—CHINNOCK V. PATERSON, P. & S. TEB. CO., 112 Fed. 531 (N. Y.).—This bill charged the defendant with infringement of letters patent of the United States. The defendant demurred upon the ground that the alleged invention was not patentable, was without novelty and disclosed no invention. Demurrer sustained. *Held*, the question of patentabilty here should be determined upon proofs.

A patent carries with it a presumption of novelty, and in this case the trained experts of the patent office had decided that what was done by the patentee arose to the dignity of an invention. The question whether or not a given improvement involves invention is one upon which judicial minds divide in very simple cases. *Beer v. Walbridge*, 100 Fed. 465.

PROPERTY RIGHTS—CONFISCATION—PERSONAL INJURIES—BALTIMORE AND OHIO S. W. RY. CO. V. READ, 62 N. E. 488 (Ind.).—A statute of Indiana provides "that no corporation shall plead or prove statutes of State wherein injury occurred," relieving such corporation from liability for negligence of servant to servant, as a defense to an action brought in Indiana. *Held*, that such statute is unconstitutional.

The decision is based upon the ground that it is an unconstitutional infringement of property rights for a legislature to bar a defense valid where injury occurred. Authorities are united that such a defense is a "vested right." *Cooley on Torts*, 552; *Bill of Rights*, Section 21; *Pritchard v. Norton*, 106 U. S. 124. However it is not quite clear how such a right can properly be called a "property" right, unless perhaps inferentially. See also *6 Am. & Eng. Encycl.*, 947. In its application the decision is a just one.

RIPARIAN RIGHTS—DIVERSION OF WATERS UNDER EMINENT DOMAIN—INJURY TO RIPARIAN OWNERS IN ANOTHER STATE—INJUNCTION—PINE ET AL. V. MAYOR, ETC., OF CITY OF NEW YORK, 112 Fed. 98.—The sources of a non-navigable interstate stream are in New York. The State, by the exercise of eminent domain, authorized the City of New York, for municipal purposes, to divert waters of such stream to the injury of riparian owners in Connecticut. *Held*, this amounted to taking property outside of New York jurisdiction, since the riparian right is not an easement but an inseparable incident, and that the remedy for such injury may be injunction. Wheeler, Dist. J., dissenting.

This case is novel and is decided according to the common law prevailing in the States concerned. A distinction is here taken between an easement which is an artificial creation and a right by nature. *3 Kent Comm.*, pp. 439, 442; *2 Wash. R. P.*, pp. 315, 366. The latter exists *ex jure naturae, Dickinson v. Grand Junct. Canal Co.*, 7 Ex. 282; and belongs to the riparian owner as a "natural incident to the right to the soil itself." *Chasemore v. Richards*, 7 H. L. 347; nor is the flaw subject to diminution or alteration. *Embry v. Owen*, 6 Ex. 353. The rule adopted follows the English cases and rejects the rule adopted in *Bricket v. Aqueduct Co.*, 142 Mass. 394, that the right is an easement and the remedy compensation.

SAVINGS BANK—JOINT DEPOSIT—GIFT INTER VIVOS—DUNN v. HOUGHTON ET AL., 51 Atl. 71 (N. J.).—Testatrix five years before her death took her niece, the complainant, to a savings bank and caused an account then standing in her (the testatrix's) name to be transferred so as to be payable either to her or her niece. Both signed deposit book. The testatrix retained possession of the book. Intention of the testatrix was clearly proven to have been that the complainant should have what was left of the account at her death. Action by complainant against executors to recover the account. *Held,* the right was vested with a distinct donative purpose, and was a complete gift inter vivos.

The courts are in open conflict upon the question whether or not delivery is essential to create a valid gift inter vivos in the savings bank book cases. In this case the court proceeds upon the theory that the law of delivery is in a large degree inapplicable, and that it is amply sufficient to sustain the gift if a clear donative intention can be proven. A similar doctrine is applied in *Mack v. Mechanics' and Farmers' Savings Bank,* 50 Hunt. 447; and *Whithead v. Smith,* 19 R. I. 135. The opposing view rests upon the theory that by retention of the evidence of the gift, the depositor does not part with his dominion over it. *Woonsocket Savings Institution v. Heffernan,* 38 Atl. Rep. 949; *Taylor v. Henry,* 48 Md. 550.

The court supports the doctrine of *Bank v. Schwoon,* 50 Alt. 490, a very recent case in which it is *held* that where there is a joint estate in a contract with right of survivorship, the survivor takes by virtue of the legal title vested in him, and not by a testamentary declaration. This decision is in direct opposition to the earlier authorities. The opposing view is well stated in *Towle v. Wood,* 60 N. H. 434.

TRADE NAME—RIGHT TO EXCLUSIVE USE—INTERNATIONAL COMMITTEE YOUNG WOMEN'S CHRISTIAN ASS'NS v. YOUNG WOMEN'S CHRISTIAN ASS'N OF CHICAGO, 62 N. E. Rep. 531 (Ill.).—*Held,* that the name of the appellant, being so similar to that of the appellee as to deceive and mislead the public, a perpetual injunction be granted restraining appellant from use of such name. Wilkins, C. J., and Carter, J., dissenting.

Inasmuch as this decision directly departs from the rule that in the absence of fraud, etc., there can be no exclusive appropriation of generic or descriptive words, it is to be questioned. In this case no charge was made or proof presented of fraud or misconduct. The very cases cited in the majority opinion have as their vital point the presence of fraud. *Croft v. Day,* 7 Brew. 84; *McLean v. Fleming,* 96 U. S. 245. "Mere similarity in the absence of any intent, act, or artifice to mislead" is no ground for interference. *Elgin Butter Co. v. Elgin Creamery Co.,* 155 Ill. 127. See also *Goodyear's India Rubber Glove Mfg. Co. v. Goodyear Rubber Co.,* 128 U. S. 598.

TRANSFER TAX—TRANSFER IN CONTEMPLATION OF DEATH—IN RE MAHLSTEDT'S ESTATE, 73 N. Y. Supp. 818.—Property transferred absolutely by the husband to his wife during his last illness, but several weeks before his death, was appraised as subject to the law requiring a tax on property transferred in contemplation of death. *Held,* that the transfer was not made in contemplation of death. Jenks, J., dissenting.

Under a taxable transfer law, if the transfer is regular and absolute, the law will infer that the transfer is untaxable, unless it can be shown that it was made in the belief that he was about to die.