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CASE NOTES

BANKRUPTCY - PREFERENCE - BURDEN OF PROOF IN RECOVERING TRANSFERS. - In an action by a trustee to defeat a transfer created by a mortgage the facts showed that Burgess, the bankrupt, being heavily indebted to the Southern Supply Company, executed to them on July 17, 1924, a mortgage on real estate as security. A petition of involuntary bankruptcy was filed against the bankrupt on November 17, 1924, and a final adjudication took place on January 19, 1925. The trustee attacked this mortgage on the ground that it was an unlawful and voidable preference as against the bankrupt's creditors. *Held,* the trustee failing to show that the bankrupt was insolvent and that the mortgagee had reasonable cause to believe that a preference would be effected the mortgage was not voidable as a preference. *Manly v. Southern Supply Company, In Re Burgess,* (Md.) 14 F. (2d) 273 (1926).

Before the amendment of June, 1910 to the Bankruptcy Act of 1898, it was necessary in setting aside a transfer as a preference for the trustee to show that the transferee had reasonable cause to believe that a preference was *intended.* See *Hume v. Brown,* 33 Okla. 634, 126 Pac. 823. At the present time, however, in a suit by a trustee to have the transaction set aside under section 60b of the Bankruptcy Act the trustee must show that the bankrupt was insolvent when it was made and that it was made within four months of the act of bankruptcy, that the mortgage operated as a preference and that the mortgagee had reasonable cause to believe that a preference would be *effected* at the time of making the transaction. *Ogden v. Reddish,* (Ky.) 200 Fed. 977 (1923); although in an action by the trustee to set aside a bankrupt's conveyance to his wife made to defraud creditors the husband and wife must bear the burden of showing the integrity of the transaction. *Harris v. Treadway,* (Mass.) 2 F. (2d) 557 (1924). To constitute reasonable cause to believe that a transaction would operate as a preference the test is whether, on the information, a reasonably prudent person would have thought it would effect a preference. *McGee v. Brennan & Carson Company,* (Ga.) 2 F. (2d) 758 (1924). *Lowell v. Chiasson,* (Mass.) 300 Fed. 219 (1923). Mere ground for suspicion is not sufficient. *Soper v. International Harvester Company of America,* 194 La. 868, 190 N. W. 386. *Talty v. Rosenthal,* (Mass.) 14 F. (2d) 630 (1926). In case of mortgages and other instruments required to be recorded the four month period allowed in the Bankruptcy Act does not begin to run until the instrument is recorded, in which case, to create a preference the mortgagee must have had reasonable cause to believe that a preference would be effected when he had the mortgage recorded. *Bridgeman v. Covington,* (N. C.) 219 Fed. 500 (1925). The test of insolvency under section 1 (15) of the Bankruptcy Act is whether on the date of the transfer the bankrupt's property was sufficient to pay his debts. *Hewitt v. Boston Straw Board Company,* 44 Mass. 260, 101 N. E. 424. But in case of a partnership it must be shown not only that the partnership is insolvent at the time the transaction took place but also that its members were insolvent. *Tumlin v. Bryan,* (Ga.) 165 Fed. 166 (1913). In the instant case the trustee failed to bear the burden of proof in that he did not show that the bankrupt was insolvent at the time the transaction was made or that the

transferee had reasonable cause to believe that a preference would be effected and the result is that the transaction is valid, establishing a good title in the mortgagee. FLOYD B. SPERRY.

CORPORATIONS - DIVERSION OF FUNDS - RECOVERY FOR CREDITORS. - The president of a corporation, composed of the president himself and the president's family, paid his personal debts with checks drawn upon the corporation funds. Among the debts so paid were the premiums on an insurance policy covering his own life for the benefit of his wife, also a stockholder of the corporation. The corporation now in the hands of a receiver for the benefit of creditors, the receiver brings an action against the insurance company for the recovery of the premiums so paid, or the cash surrender value of the policy thereof. The payments were charged against the account of the president on the books of the corporation and the payments ratified by the stockholders. *Held,* a receiver of a corporation cannot recover from insurance company premium on life policy of a stockholder paid with corporate funds while corporation was solvent, nor cash surrender value thereof, where corporation ratified payment. *Sweet v. Northwestern Mutual Life Insurance Co. et al,* (Minn. 1926) 14 F. (2d) 763.

A right of action in favor of a corporation in behalf of its receiver can exist only where the corporation has a right of action independent of the receivership. *Metropolitan Coach Co. v. Freund,* 42 App. D. C. 283. Receiver has only the rights that the corporation itself had except in cases where the act has been *ultra vires. Burch v. West,* 33 Ill., App. 359. Especially is this true in a case where the stockholders are principally from one household and it is considered by the courts as a family corporation, the custom being to pay the family bills with checks drawn on the corporate funds and charged to the account of the stockholder or employee, whose personal debts are so paid. *Little v. Garrabrant,* (N. Y. 1895) 35 N. Y. S. 689. The corporation, and therefore the receiver of an insolvent corporation standing in the shoes of the corporation, could recover the overdraft from the overdrawn employee of stockholder, but not from the personal creditor of the stockholder or employee, as the creditor took the corporate checks in good faith. *Skinner v. Smith,* (N. Y. 1892) 31 N. E. 911. HERBER L. EDWARDS.

FRAUD - SCIENTER - RECKLESS STATEMENTS. - In an action for deceit to recover back the amount paid for the purchase of a gas plant and other sums which had been lost in a fruitless attempt to realize profit upon the manufacture of the same, the plaintiff alleges that the defendant represented to him that a single complete plant could be manufactured at a cost not exceeding $250.00, and that the complete outfit could be manufactured at any tin shop. Relying upon these statements, the plaintiff bought the gas plant together with the right to manufacture the same for the market. The plaintiff proved that the cost of manufacturing the plant would be $700.00 instead of $250.00 and further that it could not be manufactured at any tin shop, but would have to be made at certain manufacturing centers where there was suitable machinery for that purpose. One of the defenses set up was that the defendant did not know that it was misrepresenting as to the cost of manufacture, but was merely making statements of opinion. *Held,* one stating as true material

facts susceptible of knowledge is liable for fraud though he did not know that the representations were false at the time made. *Jaquot v. Farmers' Straw Gas Producer Co. et al* (Wash.) 249 Pac. 984 (1926).

Originally, in actions on the case recovery was allowed by showing a breach of warranty. *Williamson v. Allison,* 2 East 446. This was distinctly a contract liability although the action was brought for deceit. All that was necessary to be shown for recovery was that there was a warranty and a breach thereof. Now, however, the majority rule is that in order to recover in an action for deceit it is necessary to allege and prove scienter on the part of the defendant. *Slater Trust Co. v. Gardner,* 183 Fed. 268. The case of *Ross v. Mather,* 51 N. Y. 108, points out the distinction between the older cases and the cases which hold to the majority rule today. In this case it was shown by the declaration that fraud was the basis of the complaint and the plaintiff tried to recover for a breach of warranty. The court held that the plaintiff could not recover for deceit because he did not prove scienter, although he alleged it in his declaration. Neither could the plaintiff recover on the contract without bringing a new action. The decision states that if the representation relied upon constitutes a warranty and if the property warranted does not answer the description there can be a recovery upon the breach of warranty irrespective of the question of scienter. If what is relied upon is a false statement not amounting to a warranty, then averment and proof of the knowledge of its falsity by the party making it are necessary. This is the law in North Dakota. *Snee v. Schwartz,* 25 N. D. 287, 141 N. W. 348. The courts make little distinction between cases of misrepresentation of facts actually known to be false and cases involving assertions without any precise knowledge as to whether the facts are true or false. Making statements which one does not know to be true is considered just as unjustifiable as making statements which one knows to be false. *Bullitt v. Farrar,* 42 Minn. 8, 43 N. W. 566; *Chatham Furnace Co. v. Moffatt,* 147 Mass. 403, 18 N. E. 168; *Wakeman v. Dalley,* 51 N. Y. 27, 10 Am. Rep. 551; 12 Eng. Ruling Case Law 296. Usually in these cases it is said that the defendant is estopped from denying knowledge that the statements made were false because it is his duty to find out whether they are true or not before asserting them as facts. Fraud alone, without scienter, is always sufficient grounds for the rescision of a contract. In an action to rescind a contract upon the grounds of fraud it is not necessary to allege and prove scienter, because this is a distinct action from that of deceit. Here the courts hold that although the statements made were made innocently and were later discovered to be false that the plaintiff can recover his property back or his money as the case may be and thus rescind the sale. *Mooney v. Davis,* 75 Mich. 188, 42 N. W. 802; *Alvarez v. Brannan,* 7 Cal. 503, 68 Am. Dec. 274. LYNN J. GEMMILL.

INJUNCTION - JURISDICTION OF EQUITY TO ENJOIN CRIMINAL PROCEEDINGS. - Upon application by the plaintiff to the District Court of the Fifth Judicial District, on the grounds that a new trial had been improperly denied, an injunction was granted restraining the enforcement of final judgment imposed by the District Court of the First Judicial District for a violation of the state banking laws in the acceptance of deposits by the plaintiff's insolvent bank. *Held,*

the action of the District Court and judge thereof was in excess of jurisdiction; hence, could not be sustained. *State ex rel Shafer v. Lowe,* (N. D.) 210 N. W. 501 (1926).

The court bases its decision upon the fact that only such actions as the Legislative Assembly directs can be brought against the state, NORTH DAKOTA CONSTITUTION, Sec. 22; and only actions respecting title to property or arising upon contract are brought within the provisions. REVISED CODE, 1913, Sec. 8175. This decision is correct in that the violation of the statute providing that an insolvent bank must not accept deposits is made a felony punishable by fine or imprisonment, REVISED CODE, 1913, Sec. 5175. The fact of the action being brought against the officers of the state is equivalent to the bringing of the action against the state itself, the state being the real party in interest. 25 *R. C. L.* 413; *Mullen v. Dwight,* 42 S. D. 171, 173 N. W. 645; *Longstreet v. Mecosta County,* 228 Mich. 542, 200 N. W. 248. The decision may also be sustained upon the grounds that a court of equity has no jurisdiction or power to enjoin criminal proceeding, 14 *R. C. L.* 26; 32 *C. J.* 279; *Story Eq. Jur.* (14th ed.) Sec. 1217; *City of Bessemer v. Bessemer Waterworks,* 152 Ala. 391, 44 So. 663. Authorities show that this rule rests in part upon the basis of the decision of the instant case, that in criminal actions the state is the plaintiff and cannot be sued. 2 BISHOP CRIM. PROC. Sec. 1414; *Kelly v. Conner,* 122 Tenn. 339, 123 S. W. 622; *Littleton v. Burgess,* 14 Wyo. 173, 82 Pac. 864. The assertion of innocence could not hinder the application of the rule. *Colby v. Binham,* 116 N. Y. S. 705, 62 Misc. 396. Nor would the mere fact of the statute being void allow equity to interfere with criminal proceedings relative to its violation. *Christian Moerlien Brewing Co. v. Hill,* (Ga.) 166 Fed. 140. *Evansville Brewing Assn. v. Excise Commission of Jefferson County, Ala.* (Ala.) 225 Fed. 204. But where property would be placed in jeopardy or taken without due process of law, an exception can be made. *Snouffer and Ford v. City of Tipton,* 161 Iowa 223, 142 N. W. 97. Such exception seems to be purely discretionary with the court. *Cobb v. French,* 111 Minn. 429, 127 N. W. 415. If in addition to an injury to property rights, there will also be multiplicity of suits and irreparable injury, the prosecution will be enjoined. *Zweigart v. Chesapeake and Ohio Ry.,* 161 Ky. 463, 170 S. W. 1194. In all cases, however, there must be an actual trespass to property rights, and not merely consequential and incidental injury. *Milton Dairy Co. v. Great Northern Ry. Co.,* 124 Minn. 239, 144 N. W. 764. (Action to enjoin carriers from complying with a Minnesota statute regulating shipments of cream on the railways of the state on the ground of the unconstitutionality of the act and that compliance would cause loss to shippers, was not allowed). Fines and costs which may result from the prosecution are not, therefore, such injuries to property as to allow restraining. *Board of Supervisors of Claiborne County v. Owen,* 100 Miss. 462, 56 So. 525. Without injury to property rights, the prosecutions for the violation of city ordinances could be no more enjoined than could the violation of state statutes. *Staines v. City of Atlanta,* 139 Ga. 531, 77 S. E. 381; *City of Chicago v. Chicago City Ry. Co.,* 22 Ill., 560, 78 N. E. 890. The court, having full exercise of jurisdiction over the criminal case which was properly subject to its cognizance, its action was not subject to review by a writ of habeas corpus.

State v. Overby, (N. D.) 209 N. W. 552; *Frank v. Mangum,* 237 U. S. 309. Chief Justice Marshall applied this rule in *Ex Parte Watkins,* 3 Pet. 193, 7 L. Ed. 650. Later cases have consistently followed the same rule. *Toy Toy v. Hopkins,* 212 U. S. 542, 29 Sup. Ct. 416; *Harlan v. McGourin,* 218 U. S. 442, 31 Sup. Ct. 44. Thus when the plaintiff in the instant case later brought an action to secure a review of the criminal proceedings against him by a writ of habeas corpus, such writ was properly denied. *State ex rel. Hagen v. Overby, Sheriff, et al,* (N. D.) 210 N. W. 652.

JALMER O. MUUS.

NEGLIGENCE - PROXIMATE CAUSE. - The plaintiff, an employee of defendant railway company, was injured while standing on the sill steps of cars of defendant's train when automobile collided with the train. Plaintiff claims that due to the failure of defendant to comply with the Safety Appliance Act defendant is liable for damages. Here the employee in order to recover under the Act, must allege and prove duty, failure to discharge duty, and injury proximately resulting from such failure. *Held,* that the negligence of the defendant was not the proximate cause of plaintiff's injury. *Johnson v. Ry. Co.,* (N. D.) 209 N. W. 786 (1926).

Failure to comply with the Act is negligence per se. *La Point v. Hodgins Transfer Co.,* 48 N. D. 1032, 188 N. W. 166. Therefore the sole question here is one of proximate cause. Forseeability is sometimes a test of negligence. *Blyth v. Birmingham Waterworks Co.,* 11 Exch. 781; *Hammack v. White,* 11 C. B. (N. S.) 588. Forseeability has been used for determining proximate cause. *Arkansas Valley Trust Co. v. McIlroy,* (Ark.) 133 S. W. 816. The "but for" rule has also, in some jurisdictions, been used to determine proximate cause, i. e., defendant is liable if the accident would not have happened "but for" the negligence. It has been denied, however, in others. *Gilman v. Noyes,* 57 N. H. 627. Both have been rejected by other courts and "natural consequence" rule employed. *Joslin v. Linder,* (S. D.) 128 N. W. 500. Although forseeability is sometimes used to determine negligence it is rejected in North Dakota as a sole test for proximate cause and defendant has been held liable even though the particular results of negligence were not anticipated. *Wilson v. Northern Pacific Ry. Co.,* 30 N. D. 456, 153 N. W. 429. The "natural consequence" rule is adopted in this state. *Garraghty v. Hartstein,* 26 N. D. 148, 143 N. W. 390. The "but for" rule seems to be employed in the principal case, as an aid in determining the importance of the intervening agency and whether or not it was a "controlling" agency. However negligent the defendant may have been in failing to comply with the Safety Appliance Act, yet intervening between that negligence and the accident and injury was a responsible human agency, a controlling intervening cause for which the defendant was in no wise responsible, *and without which the accident would not have happened.* To determine natural consequences the presence of an "intervening agency" is important. The "but for" rule seems to be employed to determine whether or not the "intervening agency" is the proximate cause. See *Orton v. Penn R. R. Co.,* (C. C. A.) 6 Cir., 7 F. (2d) 36 (1925); see also Norris J. Burke, *Rules of Legal Cause in Negligence Cases,* 15 CAL. L. REV. 1 (1926).

IRVING KOTHS.

TORT - DEGREE OF CARE REQUIRED OF GUEST IN AUTOMOBILE. Plaintiff was riding in defendant's automobile as guest. Defendant drove car at high rate of speed for a distance of one-fourth of mile, car overturned and plaintiff was injured. Question: Is plaintiff guilty of contributory negligence? *Held,* No. Plaintiff can recover. *Bryden v. Priem,* (Wis.) 209 N. W. 703 (1926).

The problem which presents itself is, how far or to what extent can a guest acquiesce in careless, reckless or negligent driving or violation of the law and still not be held guilty of contributory negligence in an action against the host. If a guest urges the chauffeur to go at a high rate of speed or acquiesces in such demands on the part of his comrades, and if the driver is thereby induced to go at an unsafe rate of speed, and an accident occurs by reason thereof, the guest's negligence will be held to have contributed to the result and he cannot recover for injuries so received. *Routledge v. Rambler Auto Co.,* (Texas) 95 S. W. 749 (1906). On the same theory an intoxicated guest riding with an intoxicated driver, at a negligent rate of speed was held to be negligent precluding recovery for his death in an action against the driver. *Schwartz v. Johnson,* (Tenn.) 280 S. W. 32 (1926). Even a sober invitee who rode without objection with an intoxicated driver, at 40 miles per hour, on a public street, when the machine was overloaded, was held to be negligent. *McGeever v. O'Bryne,* 203 Ala. 266, 80 So. 508 (1919). Where plaintiff, as defendant's guest, was riding in rear seat of car, which defendant operated negligently at the rate of 50 miles per hour, the plaintiff, unaccustomed to cars, became frightened but making no protest, was held not guilty of contributory negligence. *Jones v. Schreiber,* (Minn.) 207 N. W. 322 (1926). However a guest who failed to remonstrate with the driver when he knew that they were approaching a railroad crossing at excessive speed was held to be barred by his contributory negligence from recovery from the driver. *Howe v. Corey,* 172 Wis. 537, 179 N. W. 791 (1920). Similarly where the plaintiff was guest of defendant, who was the owner of a new car which he negligently drove at an excessive speed, whereby plaintiff sustained injuries as result of accident, it was held that a gratuitous guest in an automobile cannot sit idly by, observe clear violations of speed laws, acquiesce in them, and then hold driver liable for damages from collision. *Harding v. Jesse,* (Wis.) 207 N. W. 706 (1926). On the other hand where plaintiff was invited by defendant to ride, and defendant entered a race with another car which attempted to pass them, with the result that their machine collided with a pile of brick and sand and plaintiff was injured, and it was found that the guest had begged to be permitted to get out of the machine, there was no contributory negligence on guest's part and he could recover damages from his host. *Beard v. Klusmier,* 158 Ky. 153, 164 S. W. 319 (1919). In an action by a gratuitous guest against the negligent driver of an automobile for injuries sustained in collision with a load of wood, it was held that the plaintiff could not recover on account of his own negligence, when that negligence consisted of a failure to maintain a reasonable lookout, although he had protested at the excessive rate of speed. *Glick v.Baer,* (Wis.) 201 N. W. 752 (1925). It was held that a guest riding in a rear seat at the time of the accident which caused his death, was presumed to have been free from contributory negligence. *Day v. Isaacson,* 124 Me. 407, 130 Atl.

212 (1925). Also where the guest fell asleep and the driver also fell asleep, the guest was not guilty of contributory negligence. *Bushnell v. Bushnell,* (Conn.) 131 Atl. 432 (1925). Where one was permitted to ride on a truck for his accomodation, he was found to be negligent in standing with his arm over the driver's cab, when he was thrown out by a jolt of the truck, his position being one of unnecessary danger. *Crider v. Yolander Coal Co.,* 206 Ala. 71, 89 So. 205 (1921). Where it was found that a guest acquiesced in the driver's overloading of a seven passenger car until it carried twelve passengers, so that it overturned and injured the guest, he was precluded from recovery, by his own negligence. *Webber v. Billings,* 184 Mich. 119, 150 N. W. 332 (1915). Two recent North Dakota cases dealing with the question of whether the negligence of the driver is imputed to the guest, so as to bar the guest's recovery in an action for damages against third parties, are found in *Chambers v. Minneapolis, St. Paul & Sault Ste. Marie Railroad Co.,* 37 N. D. 377, 163 N. W. 824 (1917), and *Amenia & Sharon Land Co. v. Minneapolis, St. Paul & Sault Ste Marie Railroad Co.,* 48 N. D. 1306, 189 N. W. 343 (1922).

CARL O. LINDQUIST.

TRUSTS - RESULTING TRUSTS - LACHES. - (District of Columbia) James Haliday, a widower, being 67 years of age and wishing to provide for his old age and his children after his decease, bought of Graham, a real estate broker in Washington, D. C., two lots for $5500, assuming the whole purchase price, part being paid at the time and the rest to be paid in installments. This property was taken in the name of his eight children; but he reserved in his deed the right to the rents during his lifetime. Certain of the children now claim both the legal and equitable title and are about to sell one of the lots. *Held,* there is a resulting trust in favor of the father. *Haliday v. Haliday,* 11 Fed. 565 (1925).

Where one person pays purchase money for property and conveyance of legal title is made to another, a resulting trust arises in favor of the person furnishing purchase money: *Niland et al v. Kennedy,* 316 Ill., 253, 147 N. E. 117 (1925); and a resulting trust may be shown by parole evidence as it does not come within the statute of frauds: *McKinley County Abstract & Investment Co. v. Shaw,* 30 N. M. 517, 239 Pac. 865 (1925); and though a resulting trust must arise at the time of the transfer and cannot be created by subsequently assuming the obligation to pay the purchase price, the trust will result where obligation to pay is assumed at the time of the transfer and payments are made after the transfer: *Kauffman v. Kauffman et al,* 266 Pa. 270, 120 Atl. 640 (1920). Acts of the parties after the transfer cannot create a resulting trust; but evidence of acts and conversations of parties after creating alleged resulting trust in realty are admissible as evidence of intent of the purchaser at time of making the purchase and transfer: *Boston & N. St. Ry. Co. v. Goodell et al,* 233 Mass. 428, 124 N. E. 260 (1919). However, where the transfer of the legal title is made to one who is the natural object of his bounty, a presumption arises that it was intended as an advancement, although this presumption may be rebutted by parole: *McCafferty v. Flinn,* (Del.) 125 Atl. 675 (1924). However, in North Dakota where the statutes are declaratory of the rule of equity with respect to resulting trusts there are no exceptions made in favor of advancements and gifts: C. L. N. D. (1913) sec.

5365. Thus where a husband bought and paid for certain property and had the title taken in the name of his wife, a presumption arose that there was a resulting trust: *Roberge v. Roberge,* 46 N. D. 402, 180 N. W. 15 (1920); see BOGERT ON TRUSTS, p. 111. Time, lapse of which constitutes laches barring establishment of a resulting trust, begins to run when cestui learns of the trustee's disavowal: *Vigne v. Vigne,* (N. J.) 130 Atl. 816 (1925). Thus in *Haliday v. Haliday* the disavowal of trust several years before this action was brought did not start the statute of limitations running till it came to the knowledge of the cestui que trust. T. F. MURTHA, JR.

TRUSTS - RESULTING TRUSTS - LAND PURCHASED BY HUSBAND IN NAME OF WIFE. - A husband, after the death of his wife, sues to establish in his favor a resulting trust in land that he had purchased, taking title in the name of his wife. The evidence showed beyond a reasonable doubt that the husband did not intend a gift or advancement to the wife, but that it should be his property. *Held,* A resulting trust is created in favor of the husband, and the busband was not guilty of laches in failing to bring suit before the death of the wife to establish the trust. *John v. John,* (Ill.) 153 N. E. 363 (1926).

The rule is well settled that where the purchase price of real property is paid by one person, and the title thereto is taken in the name of another, that a resulting trust arises at once in favor of the person paying the purchase money, and the holder of the legal title becomes a trustee for him. *Doll v. Doll,* 96 Neb. 185, 147 N. W. 471. The resulting trust arises in such case regardless of any contract or agreement between the parties. *Metropolitan Trust & Savings Bank v. Perry,* 225 Ill. 183, 102 N. E. 218. Since the resulting trust does not depend on any contract or agreement between the parties, it naturally follows that it is immaterial who made that contract. In other words, it is immaterial whether the purchase was made and the money paid by the trustee or the cestui que trust. The important consideration to be borne in mind is who paid the consideration, and what was his intention. *Cunningham v. Cunningham,* 125 Iowa 681, 101 N. W. 470. Generally, as above stated, where the purchase money of land is paid by one person, and the title is taken in the name of another, the party taking the title is presumed to hold it in trust for him who pays the purchase price. The reason given for this rule is that the party who pays the money is presumed to intend to become the owner of the property, and the beneficial title follows such intention. *Bailey v. Dobbins,* 67 Neb. 548, 93 N. W. 687. However, where a person making a purchase of land in the name of another, and paying the purchase price himself is under a natural or moral obligation to provide for the person in whose name the conveyance is taken, such as in the case of parent and child, or husband and wife, no presumption of a resulting trust will arise, but it will be presumed as a gift or advancement for the benefit of the nominal purchaser. *Spradling v. Spradling,* 101 Ark. 451, 142 S.W. 848. Such a presumption can be rebutted by showing a contrary intention on the part of the person who paid the consideration, and that he in fact intended to be the owner of the property so purchased, and that the property was not to be held by the dependent person as a gift or advancement. *Roberge v. Roberge,* 46 N. D. 402, 180 N. W. 15. Since the Statute of Frauds does not apply in the case of resulting trusts, because it is a trust raised by implication of law, *Havner Land*

Co. v. MacGregor, 169 Iowa 5, 149 N. W. 617, it is clear that the parole agreement of the parties can be shown, as in the principal case, to prove the necessary intent to rebut the presumption of a gift, advancement, or settlement which is raised by law. *Appeal of Wilson,* 84 Conn. 560, 80 Atl. 718. The parol agreement, however, which is thus shown and relied upon to rebut the presumption of law, must not raise a trust which in character is different from that which the law implies from the facts of the case. *Brettenbucher v. Oppenheim,* 160 Cal. 98, 116 Pac. 55. A beneficiary of a resulting trust may be barred from enforcing his claim by laches. *Moore v. Taylor,* 251 Ill. 468, 96 N. E. 229. The defense of laches is independent of the statute of limitations, but yet it has been held that if the statutory period has expired, there is a strong presumption of laches. *Taylor v. Coggins,* 244 Pa. 228, 90 Atl. 633. The term "laches," in the broad legal sense, as interpreted by courts of equity, signifies such unreasonable delay in the assertion of and attempted securing of equitable rights as should constitute in equity and good conscience a bar to recovery. *Gaff v. Portland Town & Mineral Co.,* 12 Colo. App. 106, 54 Pac. 854. Since the courts are reluctant to apply the doctrine of laches to the rights of a cestui que trust, *Jenkins v. Hammerschlag,* 38 App. Div. 209, 56 N. Y. Supp. 534, no doubt the courts will require strong evidence of the operation of an inequity by enforcing the resulting trust before the doctrine will be held to bar the claim of the cestui. Since the facts of each particular case must necessarily govern the application of the doctrine, then if the relationship of husband and wife exists between the parties, the intimate relations between the husband and wife, and the reasons for the trust must be considered in determining the defense of laches to an action to establish a resulting trust to property taken in the name of one spouse, when the other pays the consideration. *Wright v. Wright,* 242 Ill. 71, 89 NE. 789, Hence, as in the principal case, the husband purchasing in the name of the wife, in whom he placed utmost confidence, and who expressed the intention of turning over the title to the husband, is not required to institute suit to protect his interest in the property during the wife's lifetime in order to prevent himself from being guilty of laches. *Wright v. Wright,* supra; *Davis v. Downer,* 210 Mass. 573, 97 NE. 90

ROY K. REDETZKE.

THE CONSTITUTION AND I.

During recent years there has been considerable effort put forth to limit the power of our courts to declare laws unconstitutional, one of the proposals being to give Congress the power to make effective any law that had been declared unconstitutional by mere re-passage after such a decision.

It should be recalled that, in order to obtain approval of the document by a sufficient number of states, certain additions were agreed to in the original draft.

The purpose of these additions, or amendments, was to prevent the possible loss of some of the "blessings of liberty" gained through the sacrifices of war.

And so Congress was denied the right to pass a law: 1. Restricting the exercise of religious preferences; 2. Abridging the freedom of speech or assembly; 3. Quartering soldiers in time of peace without consent; 4. Allowing search or seizure of persons, houses, papers or