existence of the power to punish for contempt but rather its proper application in this case, *Kilbourn v. Thompson* (1880), 103 U. S. 168, 26 L. Ed. 377. Next in order was the famous Chapman case, where the court denied a petition for a writ of habeas corpus to relieve the petitioner from restraint under a judgment convicting him under a statute for refusal to answer, saying that the Senate did have power to punish for contempt a recusant witness and that inquiry into the Senate's motives in making the investigation, whether for future legislative action or what, was neither necessary nor proper. *Re Chapman,* (1897) 166 U. S. 661, 41 L. Ed. 1154. The latest case prior to the instant one was decided in 1917 and was an appeal from a decision of a district court to review an order refusing relief by habeas corpus to the appellant who had been taken in custody; the court held that the action of a person in sending an irritating letter to the chairman of one of the committees of the House respecting its action and purposes was not such an act of contempt as to be punishable; again, this is no denial of the power but rather a decision as to its improper application to the circumstances in hand, *Marshall v. Gordon,* 243 U. S. 521, 61 L. Ed. 881. Thus, it can be seen that never has the power been denied but the courts have at very infrequent times seen fit to deny it proper application mainly because of the peculiar facts and situations arising in those particular cases. Judging by the foregoing, one is practically forced to the conclusion, both because of logic and precedent, that legislative bodies should be and are invested with the power to punish contumacious witnesses for contempt and the enforcement of such a power bids fair to raise the now extremely low number of men who have ever been convicted of this misconduct. E. L. W. '28.

COURTS—CONTRACT RIGHTS ACQUIRED UNDER EXISTING STATE OF LAW NOT DISTURBED BY CHANGE OF CONSTRUCTION IN SUBSEQUENT DECISION.—Where land was conveyed by deed which was recorded, but the name of one of the grantors was not properly indexed by the recorder as required by statute, such conveyance was valid, a court decision at the time declaring that under existing law improper indexing did not impair the efficacy of a deed, although this decision was overruled before the action in the present case, by the court holding that indexing was a necessary part of registration. *Wilkinson et al. v. Wallace,* 134 SE. 401.

This case involves one of the points that arose in the much criticised case of *Gelpcke v. Dubuque,* 1 Wall. 175. In that case a city issued some bonds in aid of a railroad, which bonds had been held valid by decisions of the state court at the time the plaintiff acquired his rights. A later decision overruling the prior decisions was held not to invalidate the bonds of the plaintiff in the *Gelpcke* case. The criticism that has been levelled at the doctrine of such cases is that a contract is created by the court decision, from which position the court could never withdraw without violating contract rights. The weight of authority, however, and the sounder rule seems to be that, " . . . if the contract when made was valid by the laws of the state as then expounded by all departments of the government, and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent action of legislation or decision of its courts altering the construction of the law." *Ohio Life & Trust Co. v. Debolt,* 16 Howard 432.

The defendant in the instant case, contends that the transaction here, occurred prior to the first case, *Davis v. Whitaker,* 114 N. C. 279, construing the statute under which the deed was made, not to mean that improper indexing would invalidate the deed; and having occurred prior, in point of time to *Davis v. Whitaker,* that case would not govern the transaction, but that the latest interpretation of the statute should affect the holding in his case. The latest interpretation of the statute was that improper indexing invalidated the deed.

The court holds that it would be immaterial whether the transaction giving rise to the present case occurred before or after the *Davis* case which was later overruled. The *Davis* case, says the court, was the judicial interpretation of the purpose, the scope, and the effect of the statute concerning indexing at the time it was passed and hence embraces the period during which the facts of this case arose.

As for the criticism that the statute means two different things at different times and a deed made at one period would be valid, while if made at a later time under the same statute, would be invalid, the court's statement in that case would seem to apply here also. Although uniformity is to be desired, nevertheless " . . . there have been heretofore, . . . as doubtless there will be hereafter, many exceptional cases," and the court will not "immolate truth, justice, and the law . . . "

Thus it seems that this case goes further than the doctrine announced in the *Gelpcke* case, which is the weight of authority, in holding that the deed would be governed by a case decided later in time, the first one however construing the statute under which the deed was made and recorded. M. E. B. '27.

CRIMINAL LAW—ERROR—BURDEN OF SHOWING PREJUDICE.—In appeal from conviction of cheating, errors complained of were exclusion of defendant's testimony of his intent, exclusion of other evidence, and erroneous instructions. Prosecution claimed errors were not prejudicial. *Held,* burden is on prosecution to show errors not prejudicial. *People v. Pierce,* 218 N. Y. S. 249 (1926).

This is in accord with other New York decisions, *People v. Smith,* 172 N. Y. 210, 64 N. E. 814 (1902) (cited), and with the weight of authority in other jurisdictions. *Crawford v. United States,* 212 U. S. 183, 29 S. Ct. 260, 53 L. Ed. 465, 15 Ann. Cas. 392 (1909). This rule is adopted in the Missouri case of *State v. Tracy,* 294 Mo. 372, 243 S. W. 173 (1922), and by *dicta* in other Missouri cases. But it has been criticised recently on the ground that it is more favorable to the accused than modern experience in administering criminal law warrants, *Lawrence v. State* (Ariz. 1925), 240 P. 863, and there are a number of states which follow a contrary rule, holding that errors are not presumed prejudicial, but the excepting defendant must show that he was harmed. *Collingswood v. State,* 13 Okl. Cr. 443, 164 P. 1154 (1917) (exclusion of evidence); *Kennedy v. State,* 119 Ark. 611, 178 S. W. 920 (1915) (separation of jury). These decisions, however, are subject to the exception that prejudice will be presumed if the trial has been unfair to such an extent that it can hardly be said the errors were made in good faith, *Dupree v. State,* 10 Okl. Cr. 65, 134 P. 86, and should not be understood as altering the rule that, where the question of prejudice depends upon the effect of the evidence on the jury's mind, and the evidence is conflicting, the view most favorable to the accused will be taken in determining whether he has been harmed. *Crosby v. State,* 154 Ark. 20, 241 S. W. 380 (1922). Courts which ordinarily do not recognize the rule that the burden of showing prejudice is on the appellant in criminal cases, sometimes follow it when the error is a minor, technical one, *Loman v. State,* 19 Ala. Ap. 611, 99 So. 769 (1924), or where the matter complained of is in the discretion of the trial court. *Cox v. State,* 138 Miss. 370, 103 So. 129 (1925) (granting continuance). The modern tendency is to restrict, rather than to enlarge, the presumption of prejudice, unless the error is material. *State v. Bosch,* 172, Iowa 88, 153 N. W. 73 (1915). Often this is accomplished by the aid of statutes or constitutional provisions, which are not necessarily incapable of being interpreted otherwise than as throwing the burden of proving prejudice on the appellant. *State v. Seyboldt,* (Utah 1925) 236 P. 225 (statute); *Lawrence v. State, supra* (constitutional provision).