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).

Perhaps the two lines of decision can be reconciled to a large extent by making the burden of proving prejudice or absence of prejudice depend upon the specific nature of the error complained of, and the facts of the case as a whole, as they appear on the record. Attempts have been made to state a more exact rule which will throw the burden on one party or the other according to the nature of the error and other circumstances. Some of these statements are in substance as follows: depriving the defendant of a substantial right raises a presumption of prejudice, *Territory v. Prather,* 18 N. M. 19, 145 P. 1086 (1915); if the record as a whole shows a *material* error, prejudice will be presumed, unless it appears from the record that the error was harmless, *Miller v. State,* 174 Ind. 255, 91 N. E. 930 (1910); *probable* prejudice must be shown by appellant before a conviction will be reversed, *State v. Driscoll,* 106 Ohio St. 33, 138 N. E. 376 (1922). Contrast with this last rule that stated in *State v. Sage* (N. J. 1923) 122 A. 827, that the record must show that error was, or *might* have been prejudicial. F. W. F. '27.

CRIMINAL LAW—DOUBLE JEOPARDY—IDENTITY OF OFFENSES.—Defendant, driving an automobile, hit two girls simultaneously, killing one and injuring the other. He was acquitted of manslaughter for the death of one, and later tried for atrocious assault on the other. *Held,* plea of *autrefois acquit* was good under the circumstances; where several persons are injured by the same act, only one, if any, crime is committed. *State v. Cosgrove,* (N. J. 1927) 135 A. 871.

The nicety of the distinction between cases where injuries to more than one person result from what is in law a single crime, and those where substantially the same act constitutes several crimes against different persons, has led to some conflict of authority. Where several persons are killed or injured in the same affray, but by separate shots or blows, the authorities agree that more than one crime has been committed, and an acquittal or conviction of one homicide or assault does not bar a subsequent prosecution for another. *Augustine v. State,* 41 Tex. Cr. R. 59, 52 S. W. 77, 96 A. S. R. 765 (1899) (acquittal); *State v. Temple,* 194 Mo. 228, 92 S. W. 494 (1906) (conviction). A few cases hold that, even where the identical shot or blow injures several persons, there may be a prosecution for a separate crime for each person injured. *Vaughan v. Commonwealth,* 2 Va. Cas. 273 (1821); *Commonwealth v. Browning,* 146 Ky. 770, 143 S. W. 407 (1912). But by a slightly larger number of cases the contrary conclusion is reached, at least where the first prosecution results in a conviction. *State v. Damon,* 2 Tyler (Vt.) 387 (1803); *Clem v. State,* 42 Ind. 420, 13 Am. Rep. 369 (1873); *Sadberry v. State,* 39 Tex. Cr. R. 466, 46 S. W. 639 (1898). On the other hand, there are cases which go so far as to hold that, even though several persons are killed or wounded by distinct shots, only one crime has been committed, if the shots are fired in such rapid succession as to be practically continuous, and there is no intention to commit distinct acts of violence. *Moss v. State,* 16 Ala. App. 34, 75 So. 179 (1917) (acquittal on first trial); *Fews v. State,* 1 Ga. App. 122, 58 S. E. 64 (1907) (conviction on first trial). This seems to be the case especially where the shots are fired in self-defense and both of them hit persons other than those for whom they were intended. *State v. Houchins* (W. Va. 1926) 134 S. E. 740 (acquittal). But *State v. Corbett,* 117 S. C. 356, 109 S. E. 133, 20 A. L. R. 328 (1921) is *contra,* though the shots were alleged to have been fired in self-defense. (See also note, 20 A. L. R. 341, and cases cited.) The rule for determining when the defense of double jeopardy may be pleaded is usually stated to be, whether the proof of facts alleged in the one indictment would sustain a conviction on the other indictment. *Commonwealth v. Browning, supra.* But such cases as *Moss v. State, supra,* apply the test of whether there was an intention to in-