general law in which the Federal courts may use their own independent judgment. This distinction between statutory and general common law has been made consistently in a long line of decisions. *B. & O. R. R. Co. v. Baugh* (1893), 149 U. S. 368. In *Mobile Shipbuilding Co. v. Fderal Bridge Co.* (1922), 280 F. 292, it was held that the Federal court in an action brought therein is not bound, in determining the rights of the parties, by the interpretation placed upon the common law by the courts of the state where a contract was made, but will determine the common law independently of the state. However, in a question of general law, if possible, the Federal courts will decide in harmony with state decisions. *Sturtevant Co. v. Fidelity Company of Maryland* (1922), 285 F. 367.

A definitely recognized exception to the rule of independence of the Federal courts in matters of general law exists in cases whre state rules of property are involved. *Jackson v. Chew* (1827), 12 Wheat. 153; *Swift v. Tyson, supra.* Thus in *Keene Five Cent Sav. Bank v. Reed* (1903), 123 F. 221, it was held that the proper interpretation of a private contract presents a question of general law, concerning which the Federal courts are entitled to express an independent judgment, unless the contract is one relating to the sale or conveyance of real or personal property and contains words and phrases which, in virtue of local decisions, have acquired a definite meaning and have thus become rules of property as distinguished from rules of construction within the state.

The rule of the principal case, although never departed from, has been vigorously criticized, both by dissenting opinions in many of the decisions and by writers. See dissenting opinion in *B. & O. R. R. Co. v. Baugh, supra; Kuhn v. Fairmount Coal Co.* (1910), 215 U. S. 349, and note on principal case, 37 YALE L. J. 88.

In the dissenting opinion in the principal case Mr. Justice Holmes holds that the doctrine is based on the fallacious and unwarranted distinction between the statutory and common law rules of states made in *Swift v. Tyson, supra.* He further states: "The common law so far as it is enforced in a state, whether called common law or not, is not the common law generally but the law of that state existing by the authority of that state without regard to what it may have been in England or elsewhere." Certainly, if a state would declare one of the disputed rules of general law by statute the Federal court in the state would have to follow it. The view of the dissenting opinion appears to be the more realistic one and to be based upon sounder legal theory. Certainly in matters of local policy, such as that involved in the principal case, there is nothing to be gained from having the Supreme Court override the judgments of the state courts and, as in the principal case, foist a monopoly upon an unwilling community.

S. E., '30.

FIXTURES—MORTGAGES—CONDITIONAL SELLER'S RIGHTS AGAINST THOSE OF PRIOR MORTGAGEE OF REALTY.—One Pointer and wife mortgaged their real estate and dwelling house to plaintiff. Later, they purchased on conditional sale a heating plant from defendant, but the contract was signed

by Pointer alone and not by his wife. Plaintiff began foreclosure of the mortgage, claiming (1) that the heating plant became part of the realty and as such became subject to the mortgage, and (2) that as the contract of purchase had been signed by the husband alone, a mechanic's lien in favor of the conditional vendor would not attach to the real estate. *Held*, that the conditional vendor's title is superior to that of the mortgagee. *Title & Bond Guaranty Co. v. Pointer* (1928), 243 Mich. 415, 220 N. W. 786.

The brief opinion in the case asserts two propositions which will be considered *seriatim*. The first, which upholds the plaintiff's second contention, declares that a mechanic's lien will not attach to real estate owned by the husband and wife as tenants by the entirety, where a contract is signed by one spouse alone. This is the rule in the majority of jurisdictions. *F. M. Sibley Lumber Co. v. Letterman* (1926), 234 Mich. 32, 207 N. W. 869; *Kohring v. Bowman* (Ind. A., 1923), 137 N. E. 767; *Finch v. Cecil* (1915), 170 N. C. 72, 86 S. E. 992; 40 C. J. 98. But there are exceptions to the general rule, and the lien will be good if the other spouse has authorized or ratified the contract, *Phelan v. Cheyenne Brick Co.* (1920), 26 Wyo. 493, 188 P. 354, 189 P. 1103; or has had knowledge of the contract and the improvement and stood by without objection. *Kohring v. Bowman, supra.* In a few jurisdictions the rule obtains that the husband may by his contract subject his interest to a mechanic's lien. *Brockett Cement Co. v. Logan* (1915), 187 Mo. A. 322, 173 S. W. 727; *Heacock v. Loder* (1923), 106 Ore. 323, 211 P. 950. In Missouri each spouse is held to be an owner within the meaning of the mechanic's lien statutes and may contract to subject his or her estate to liens for improvements made on the land. *Independence Sash Co. v. Bradfield* (1911), 150 Mo. A. 527, 134 S. W. 118.

The second proposition offered in the decision was decisive of the conditional vendor's superior claim. It is the simple assertion that under the circumstances of the particular case, the stove company's title is superior to that of the mortgagee. Three Michigan cases are cited as authority: *Warner Elevation Manufacturing Co. v. Capitol, etc. Assn.* (1901), 127 Mich. 323, 86 N. W. 828, 89 Am. St. Rep. 473; *Perkins v. The Golden Girl* (1915), 185 Mich. 200, 151 N. W. 660; *Phillips-Michigan Co. v. Field Body Corporation* (1922), 221 Mich. 17, 190 N. W. 682. An examination of these cases will reveal that they are not in point. They merely support the rule that the retention of title until payment of the purchase price is not inconsistent with the right to a mechanic's lien against the property; and that an unsuccessful attempt to enforce a mechanic's lien does not waive the right to claim title under the reservation. There is nothing in these cases respecting the conflicting rights between conditional vendors retaining title to chattels affixed to realty and mortgagees of this realty. Hence, it appears that a very important link is missing and the opinion is to be criticized. It assumes that the conditional vendor's rights should be superior under the facts of the case, which it is submitted, is the correct result, but cases are cited in support thereof which establish an altogether different rule. The rule which should have been applied, it is submitted, is that established by numerous Michigan cases, and found in 24 R. C. L.

475, footnote 15, to the effect that in Michigan the rule is well established that only under certain circumstances will a conditional vendor be entitled to superiority. For instance, one requirement is that the chattel must be removable without injury to the realty. It might be pointed out that the Michigan view is expressive of but one line of cases on a disputed matter. Other jurisdictions hold that the conditional vendor's right is inferior to that of the mortgagee on the ground that a mortgagor of real estate cannot affect the rights of the mortgagee by agreements with third persons for the annexation of chattels to the realty; in other words, by agreements to which he is not a party and has not consented. See 13 ST. LOUIS L. REV. 255; 37 L. R. A. (N. S.) 126. D. A. M., '29.

INSURANCE—DISAPPEARANCE OF INSURED—PRESUMPTION AS TO TIME OF DEATH.—Five years after the disappearance of one Marshall his policy of life insurance expired. More than seven years after said disappearance, Marshall's widow sued upon the policy, offering evidence to support an inference of death within five years after the disappearance of her husband, and so before the lapse of said policy. *Held*, the jury correctly found for the plaintiff. *Kansas City Life Insurance Co. v. Marshall* (Colo., 1928), 268 P. 529.

The general rule is that a presumption of death arises from the continued and unexplained absence of a person from his home or place of residence without any intelligence concerning him for a period of seven years. See 8 R. C. L. 708 and cases there cited.

The question arises, however, as to whether the time of death must be presumed to have been only at the end of the seven years, or whether it may be found to have been at an earlier time. On this proposition there is a conflict of authority. The prevailing view seems to be that after seven years of unexplained absence the law presumptively establishes not only the fact of death, but also the time of death, the latter being regarded as occurring on the last day of the seven year period if there is nothing pointing directly to the contrary. *Meyer v. Madreperla* (1902), 68 N. J. L. 258, 53 A. 477, 96 Am. St. Rep. 536. Also see note, 91 Am. Dec. 526.

The English rule and that followed by a number of courts in this country is that there is no presumption established as to the time of death. The presumption is only that the person is dead at the end of seven years, but the question of the particular time of death is left open to be judged by the facts and circumstances of the case under consideration. This rule was applied in the principal case. See 8 R. C. L. 711; note, 34 A. L. R. 1389; *Davie v. Briggs* (1878), 97 U. S. 628.

To determine whether death occurred at some particular time before the expiration of the seven-year period the courts following the latter view refer the question to the jury. Consideration is given to such facts as the following: the habits, attachments, domestic and financial circumstances of the absentee; any circumstances indicating accident or exposure to specific peril; evidence of sickness; indications pointing to suicide; evidence of a