directed verdict; but if contrary evidence is produced, the case should be for the jury, with the normal burden of proving both value and lack of notice on the subsequent purchaser.

In the normal situation this burden of persuasion never shifts. 5 Wigmore, Evidence § 2489 (2d ed. 1923); *McAdams v. Bailey*, 169 Ind. 518, 82 N.E. 1057 (1907); *Lebens v. Wolf*, 138 Minn. 435, 165 N.W. 276 (1917). However, even the burden of persuasion, on a particular issue, has been said to be shifted if the party having the burden produces evidence raising a strong policy presumption, *e.g.* the presumption of legitimacy arising on proof that the mother was married at the time of birth. See Morgan, Some Observations Concerning Presumptions, 44 Harv. L. Rev. 906, 921 (1931). Perhaps therefore, in some states where proof of recording does raise a strong presumption that the legal title is with the recorded deed, a result contrary to the principal case might well be reached. See *Hoyt v. Jones*, 31 Wis. 389 (1872); *Lampe v. Kennedy*, 56 Wis. 249, 14 N.W. 43 (1882) (holding the burden of proving both notice and lack of consideration on the prior grantee).

Insurance—Interpretation of Risk Exclusion Clause in Automobile Owner's Liability Policy—[New York].—The plaintiff brought suit on a liability insurance policy for injuries caused to him by the insured's automobile. At the time of the accident the defendant's seventeen year old son, who had a junior operator's license, was driving the car on his return from a social visit. The defendant insurance company pleaded the clause in the policy providing that the policy "shall exclude any obligation of the company . . . . while any described automobile is being driven . . . . by any person *under the age fixed by law*. . . . ." (Italics added.) The New York statute stipulated that "No license . . . . shall be issued to any person under eighteen years of age, except that junior operators' licenses may be issued to minors who have arrived at the age of sixteen years, but who have not reached eighteen years of age . . . . provided, however, that such license shall entitle a licensee to operate a motor vehicle . . . . only in traveling to and from school, and in the usual and ordinary pursuit of the business of the parent or guardian of the licensee." N.Y. Cons. Laws 1935, c. 64-a, § 20. *Held*, (three judges dissenting), for the plaintiff. The driver was not a person under the age fixed by law, and the exclusion clause in the policy did not excuse the insurance company from liability merely because the terms of the license had been violated. *Taylor v. U.S. Casualty Co.*, 269 N.Y. 360, 199 N.E. 620 (1936).

The exclusion clause in this policy can be literally interpreted in two ways: (1) the driver was to observe the restrictions of his license and would be "under the age fixed by law" in driving for purposes which a junior operator's license did not sanction, (2) he was only to be of age to receive any license and his violation of its restrictions would not make him "under the age fixed by law." By accepting the latter interpretation and imposing liability, the court in the principal case recognized the policy of construing ambiguous terms of insurance contracts in favor of the insured. Vance, Insurance § 179 (2d ed. 1930).

In applying this policy the courts have uniformly accorded no effect to general "catch all" exclusion clauses. 29 Col. L. Rev. 1023 (1929). They have allowed recovery despite the usual clause that the insurer is liable only for injuries resulting from negligent operation of a motor vehicle by one *legally* using or operating the same,

though the driver violated statutory restrictions concerning speed, license, or age of the driver. *McMahon v. Pearlman*, 242 Mass. 367, 136 N.E. 154 (1922); *Fireman's Fund Ins. Co. v. Haley*, 129 Miss. 525, 92 So. 635 (1922); *Messersmith v. Amer. Fidelity Co.*, 232 N.Y. 161, 133 N.E. 432 (1921). Also under a statute permitting no license to one under eighteen years of age but permitting a person sixteen years old to drive if accompanied by a licensed driver and a clause in the policy excluding liability of the company for injuries caused by a driver "under the age limit fixed by law," recovery has been allowed even though the driver was seventeen years old and unaccompanied. *Brock v. Travelers' Ins. Co.*, 88 Conn. 308, 91 Atl. 279 (1914); *Yorke v. Continental Casualty Co.*, 64 Ont. 109 (1929). The United States Supreme Court went further in allowing recovery by holding that the clause "under the age limit fixed by *law*" was ambiguous, permitting the construction that it did not include a municipal ordinance. *U.S. Fidelity and Guaranty Co. v. Guenther*, 281 U.S. 34 (1930). *Contra, Zolla v. Employers Liability Assurance Corp.*, 251 Ill. App. 197 (1929).

Other courts in construing clauses similar to that in the principal case have seized upon almost imperceptible variations in grammar as bases for conflicting results: Where the clause refused protection to one driving "in violation of law as to age," a driver who violated a restrictive license like the one in the principal case has been denied recovery. *Hudak v. Union Indemnity Co.*, 108 Conn. 598, 143 Atl. 885 (1928). Despite the obvious similarity of the two clauses, the words "in violation of law as to age" were considered as referring to any infringement of the driving age regulations, and thus as not synonymous with the "under the age fixed by law" clause in the principal case. *Cf. Morrison v. Royal Indemnity Co.*, 180 App. Div. 709, 167 N.Y.S. 732 (1917); *S. & E. Motor Hire Corp. v. N.Y. Indemnity Co.*, 255 N.Y. 69, 174 N.E. 65 (1930); but see *Bitzer v. So. Surety Co.*, 245 Ill. App. 295 (1924). The dissent in the principal case was based on the clause in the statute, "No person shall operate . . . . a motor vehicle . . . . unless he is duly licensed." Cahills Cons. L. N.Y. 1930, c. 64-a, § 20. Although this clause adds nothing, as it would clearly be implied in any license statute, its omission in a statute amending and repealing one which contained such a clause has also been made the basis of a decision allowing recovery against an insurance company. *Mannheimer Bros. v. Kansas Casualty Co.*, 147 Minn. 350, 180 N.W. 229 (1920); *cf. Maryland Casualty Co. v. Friedman*, 45 F. (2d) 369 (C.C.A. 8th 1930); see also *Wagoner v. Fidelity and C. Co.*, 215 App. Div. 170, 213 N.Y.S. 188 (1926). It seems questionable whether the inclusion of such a provision is of itself a sufficient foundation on which to rest a contrary decision. The decision of the principal case seems more desirable in that it gives effect to the general policy of requiring insurance companies to make very clear any risk which they seek to exclude.

Insurance—Mutual Companies—Effect of Retroactive By-law under Reserved Power—[New Jersey].—The insured's life insurance certificate expressly reserved the right to bind members by subsequently enacted by-laws. After the insured had disappeared, the defendant society enacted a by-law to the effect that absence for seven years without communication would not entitle any beneficiary to recover until the full term of the member's life expectancy had expired, provided that up to such expiration premiums had been duly paid. The plaintiff, as beneficiary, after presenting proof to the society of the insured's unexplained absence for seven years, brought this action