Volume 57
Issue 3 *Dickinson Law Review - Volume 57, 1952-1953*

3-1-1953

The Effect of Rebuttable Presumptions in Pennsylvania

Jack H. Barton

THE EFFECT OF REBUTTABLE PRESUMPTIONS IN PENNSYLVANIA

"It was long thought that in Pennsylvania the establishment of the basic fact of a presumption fixed upon the opponent not only the risk of non-production of evidence sufficient to justify a finding of the non-existence of the presumed fact but also the burden of persuasion. To what extent this view still prevails in Pennsylvania is doubtful."[1a]

The nature and effect of presumptions is a matter of vigorous controversy in the law. The courts and writers do not agree as to the precise meaning to be attached to the term, or the procedural effect which must follow when a presumption is present.[1] In addition much uncertainty regarding presumptions has been created by the loose and often interchangeable use of such terms as: presumptions of fact, presumptions of law, mixed presumptions, inferences, rebuttable and irrebuttable presumptions, permissible inferences, conclusive and disputable presumptions, natural presumptions, burden of proof, etc.

In *Watkins* v. *Prudential Insurance Company,*[1b] Mr. Justice Maxey, in an effort to clarify the law in Pennsylvania, emphasized that:

> "Considerable confusion appears in judicial opinions as to the nature of presumptions and their function in the administration of justice. They are not evidence and should not be substituted for evidence. Presumptions are generally grouped into two major classes: (1) of law; and (2) of fact. The former usually has the force of legal maxims and becomes rules of law, with definite precedural consequences. As Mr. Justice Agnew said in *Tanner* v. *Hughes and Kineaid,* 53 Pa. 289, 'A legal presumption is the conclusion of the law itself to the existence of one fact from others in proof and is binding on the jury, *prima facie* till disproved, or conclusively, just as the law adopts one or the other as the effect of proof.' Justice Agnew also refers to the other kind of presumption as merely a 'natural probability,' i.e., 'an inference of fact of the probability.' "

Justice Maxey also quotes *Wigmore on Evidence,* 2nd Edition, Vol. 5, Section 2491:

> " 'A presumption is in its characteristic feature a rule of law laid down by the judge and attaching to one evidentiary fact certain procedural consequences as to the duty of production of evidence by the opponent. . . . There is in truth but one kind of presumption; and the term 'presumption of fact' should be discarded as useless and confusing. Nevertheless, it should be kept in mind that the peculiar effect of a 'presumption

---

1a Morgan and Maguire, Cases and Materials on Evidence, 3rd. Ed. (1951).
1b 315 Pa. 497 (1934).
1 See Thayer, Preliminary Treatise on Evidence, 315-352 (1898); Wigmore, Evidence, 2nd Ed., § 2409 (1923); Morgan, Some Observations Concerning Presumptions, 44 Harv. L. Rev. 906; Bohlen, The Effect of Rebuttable Presumptions of Law Upon the Burden of Proof, 68 U. Pa. L. Rev. 307; Morgan, Instructing the Jury upon Presumptions and Burden of Proof, 47 Harv. L. Rev. 59.

of law' (that is the real presumption) is merely to invoke a rule of law compelling the jury to reach the conclusion *in the absence of evidence to the contrary*[2] from the opponent.' "

We note, therefore, that the Pennsylvania Supreme Court, in 1934, had adopted the generally accepted distinction between presumptions of law or rebuttable presumptions and the so-called presumptions of fact. The effect of the former is to require the trier-of-fact to find the presumed fact upon the establishment of the basic fact in the absence of evidence to the contrary. The effect of the latter is merely to permit the trier-of-fact to find, in its discretion, that the presumed fact does or does not exist. The latter is commonly called an inference or permissible inference because the trier-of-fact is "permitted" to infer the ultimate fact. It does not give rise to any procedural or evidential consequences as does the true presumption. This article deals with the rebuttable presumption or presumption of law, and in most instances, it will be referred to merely as a presumption.

* * * * * *

What effect does the presumption have? What procedural or evidential consequences flow from the establishment of the basic facts which give rise to a presumption? Does the presumption shift any burden upon the party against whom it operates and, if so, what is the nature of that burden, and, perhaps most important, what is the measure of the burden so shifted? The American Law Institute, *Model Code of Evidence* expresses the widely accepted view. Rule 704(1) of the model code states:

> "When the basic fact of a presumption has been established in an action, the existence of the presumed fact must be assumed unless and until evidence has been introduced which would support a finding of its non-existence or the basic fact of an inconsistent presumption has been established."

In its comment on the above rule the American Law Institute points out:

> "This states the view of practically all text writers, and is universally applied by the courts when they are using the word presumption carefully and not as a mere synonym of 'inference.' "

It should be noted that the effect of this rule is to shift the burden of coming forward with sufficient evidence to "support a finding" of the non-existence of the presumed fact to the party against whom it operates. It will also be noted that the effect of the generally accepted rule is not to shift the burden of persuasion, that is, the burden of persuading the trier-of-fact by a preponderance of the evidence of the non-existence of the presumed fact. Apparently, a rebutting scintilla is not enough; manifestly, a rebutting preponderance is not required. The question is raised whether the quality of rebutting evidence required by the model code, that is, evidence sufficient to "support a finding," is the same as the quality of evidence sufficient to avoid a directed verdict.

---

[2] Italics in the original report.

It is the opinion of the writer that the quality or measure of the rebutting evidence to meet both tests is the same because any distinction that might be drawn, even theoretically, would necessarily be so fine as to result in mental gymnastics. Whether rebutting evidence is sufficient, (1) to support a finding, or (2) to avoid a directed verdict, is a question of law universally conceded, and it would be highly conjectural to say that one could be present without the other. The comments to, and cases decided under, the model code do not answer this question. In discussing the burden that is shifted by a presumption, Professor Morgan, in his article entitled *"Some Observations Concerning Presumptions"*[2a] observes:

> "The phrase, burden of producing evidence, is usually employed as if it carried its own explanation. Actually it is but a fragment and is unintelligible unless completed. Producing evidence for what purpose? To avoid a directed verdict, or to gain a directed verdict? It is frequently said that this burden lies upon the party who would lose if no other evidence were introduced. If this is to be taken generally, it must include a defeat at the hands of the jury, for at many, if not at most, stages of the ordinary trial, after evidence is opened upon an issue its determination is for the jury. In many instances the context makes it clear that the burden is to be met to avoid a directed verdict."

What is the result when rebutting evidence "sufficient to support a finding" of the non-existence of the presumed fact is submitted? Section 704 (2) again expresses the widely accepted view on this point. It states:

> "When the basic fact of a presumption has been established in an action and evidence has been introduced which would support a finding of the non-existence of the presumed fact or the basic fact of an inconsistent presumption has been established, *the existence or non-existence of the presumed fact is to be determined as if no presumtion had been applicable in the action."*

Comment on this rule points out that the rule is in accord with the United States Supreme Court and of the courts of last resort in a number of states. It is supported by countless *dicta* and has the approval of distinguished commentators. It is not subject to attack for unconstitutionality under *Western and Atlantic Railroad* v. *Henderson*[2b] or kindred decisions.

Under this rule, the introduction of evidence sufficient to support a finding that the presumed fact does not exist, effectively rebuts the presumption and the presumption, as such, vanishes from the case. However, it must be noted that the basic facts giving rise to the presumption remain and the trier-of-fact may consider these facts and all proper inferences deduced therefrom. In *O'dea* v. *Amodea*,[2c] the court describes this effect as follows:

> "Although the presumption as such disappears from the case when substantial countervailing evidence is produced, the facts and circum-

---

2a 44 Harv. L. Rev. 906, 910 (1931).
2b 279 U.S. 639, 49 S. Ct. 445, 73 L.Ed. 884.
2c 118 Conn. 58, 170 A. 486.

stances which give rise to the presumption remain and afford a basis for a like inference by the trier, whether court or jury."

This effect has been described in another case as follows:

"The facts which furnish the foundation of the presumption in question are entitled to count as evidence, and all fair inferences therefrom may be drawn, but the rule of law which gives to them an additional artificial effect may not be regarded as either contributing evidence or possessing probative quality."[3]

As noted in the model code and under the authorities set forth above, we have the general proposition that when evidence sufficient to support a finding of the non-existence of the presumed fact is established, the presumption as such disappears from the case.

Can this effect be reconciled with the fundamental concept in the common law that the credibility of witnesses is a matter for the consideration of the trier-of-fact? In other words, the rebutting evidence, although sufficient to support a finding as a matter of law, may not be believed by the trier-of-fact. Can a presumption be destroyed by evidence which the jury disbelieves? By the same token, can a presumption be created by evidence which the jury disbelieves?

The question of credibility, as applied to the creation of presumption depends upon the type of presumption involved. There are presumptions the factual basis of which lie in judicial knowledge, such as those of sanity and innocence. When pertinent, they become operative at the commencement of the proceeding or later, as the occasion demands, without proof. However, there are other types of presumptions which arise only from a factual foundation based on the evidence. The presumption of death arising from an unexplained absence for seven years is an illustration of the latter type. Obviously, the facts of absence and lack of explanation cannot be judicially noticed. A number of cases have held that a presumption arises when the party claiming its benefit "introduces evidence" tending to establish the basic facts.[4] On the other hand, the Connecticut Supreme Court in *Schiesel* v. *Poli Realty Co.*,[4a] indicated that in some instances, at least, the jury must first "find the basic facts and then, in addition, draw the inferences as a matter of logic" before the presumption can come into being. These two cases represent the extremes. The cases are legion which require that the jury must find the basic facts, and that is all that is required as a condition precedent to the creation of the presumption. This means that the jury must pass upon the credibility of the testimony probative of the basic fact before this type of presumption can arise.[5]

Of course, the basic facts which may give rise to a presumption may be supplied in a case other than by testimony of witnesses. The basic facts may be estab-

[3] Vincent v. Mutual Reserve Fund Life Ass'n., 77 Conn. 290, 58 A. 963. Accord, State v. Linhoff, 121 Iowa 632, 97 N.W. 77; Duggan v. Bay States St. Ry. Co., 230 Mass. 370, 119 N.E. 787; 4 Wigmore, Evidence, §§ 2490, 2491, 2511.

[4] Downs v. Horton, 287 Mo. 414, 230 S.W. 103 (1920); State v. Arnold, 30 S.W.2d 1015 (Mo., 1930).

[4a] 108 Conn. 115, 120, 140 A. 812, 813, 814 (1928).

[5] 95 A.L.R. 892; 121 A.L.R. 1078; 31 C.J.S., Evidence 119.

lished in an action by, (a) the process of judicial notice, (b) by the pleadings, (c) by stipulation, (d) by evidence which would compel a finding of the basic fact, or (e) by the finding of the jury.[5a]

Likewise, the general proposition that the trier-of-fact must credit the rebutting testimony before a presumption can be effectively overcome, is well settled.[6]

The Pennsylvania Supreme Court has adhered to this doctrine in a long line of cases. In *Zenner* v. *Goetz,*[6a] the court applies the rule and reviews the authorities in the following language:

> "It is true that, in the case at bar, the garnishee (appellant-defendant) supported its defense by competent oral evidence, as the garnishee failed to do in *Shaffer* v. *Hebenstreit, supra.* Plaintiff, moreover, made no effort to rebut this defense. Nevertheless, the case could not, for this reason, be withdrawn from the jury and a judgment entered for the garnishee, since oral testimony alone supported the defense and the credibility of the witness had to be determined by the jury. This long established principle has been restated by this court in *Nanty-Glo Borough* v. *American Surety Co.*, 309 Pa. 236, 163 A. 523. Only in exceptional circumstances is a defendant's opposing proof so conclusive and indisputable in character, in sustaining a defense, as to carry the case back into that state of the evidence where binding instructions must be given in his favor and plaintiff can be deprived of the opportunity, which he at first was entitled to demand, of having his case submitted to the jury. Wigmore (Evidence, Volume 5, page 446, Section 2487) speaks of such instances as 'possible in principle . . . though rare.' Where a presumption in favor of a plaintiff must be overcome by a defendant, if the issue is not to go against the latter, the rule has been established that the jury must determine the issues of fact if the defense is based on oral testimony. In *Hartig* v. *American Ice Co.,* 209 Pa. 21, 33, 137 A. 867, we said: '. . . in all our recent cases, we have consistently held that oral evidence relied on to overcome presumptions sufficent to take plaintiff's case to the jury, must be submitted to that body to determine as to the credibility of the witness, the inference to be drawn from this testimony, and the fact to be found therefrom, unless the testimony in question, being clear, positive, credible, uncontradicted and *indisputable,* shows physical facts, or forms the basis for mathetmatical tests which demonstratively govern the case in defendant's favor.' "[7]

It follows, therefore, that only in an extraordinary case can a presumption be created or rebutted before the case goes to the jury; and, that any charge to the jury regarding the effect thereof must be conditional. For example, if a party relies on the presumption of death arising from seven years unexplained absence, the jury must be charged (if there is no evidence to the contrary) that if they find that X was absent for seven years and that such absence was not explained, X must be presumed to be dead. The presumption of death cannot arise until the

---

5a Morgan, Instructing the Jury upon Presumptions and Burden of Proof, 40 Harv. L. Rev. 392.
6 31 C.J.S. 119; 68 U. of Pa. L. Rev. 307, 315.
6a 68 U. of Pa. L. Rev. 307 (1920).
7 Accord; MacDonald v. Pennsylvania Railroad Co., 348 Pa. 558, 36 A.2d. 492.

basic facts of seven years unexplained absence are found to exist by the trier-of-fact. If this is so, how can any mere evidence of the basic facts at trial "create" a presumption of death so as to shift a burden onto the opponent during the course of the trial? The answer seems to lie in the fact that the presumption of death does not arise at trial. That which arises from the basic facts at trial is what Thayer calls, "the risk of non-production of the (rebutting) evidence."[8] The opponent assumes the risk, by not producing rebutting evidence, of having the jury find the proponent's basic facts, namely, seven years unexplained absence of X, and is put on notice that if they find these facts, the presumed fact of the death of X will be found as a matter of course.

By the same token, if the opponent submits competent rebutting evidence sufficient to support a finding that X is alive, and the jury believes such evidence, the case is considered without the aid of any presumption on proponent's part because the presumption of death, as such, has been rebutted. The jury is entitled to "infer" death from seven years unexplained absence but they cannot "presume" death in the sense that they *must* find it if they find the basic facts. It is submitted that it would be less confusing and perhaps more accurate to say that the proper type of rebutting evidence transforms a presumption into an inference, rather than to say, as do most writers,[9] that the presumption disappears, and then adding, that the basic facts remain and all reasonable inferences may be drawn therefrom. Actually what is meant by the latter phraseology is that the legal consequences imputed to a presumption disappear and those imputed to an inference arise; the facts remain the same.

* * * * * *

It has previously been noted that most authorities agree that the effect of a rebuttable presumption, to summarize it generally, is to place upon the party against whom it operates the burden of going forward with competent evidence sufficient to support a finding of the non-existence of the presumed fact, or, as Thayer states it; "the risk of non-production of evidence." It does not shift the burden of proof, or, more accurately, the burden of persuading the trier-of-fact by a preponderance of the evidence that the presumed fact does not exist.

In his article entitled, *"The Effect of Rebuttable Presumptions of Law Upon the Burden of Proof,"* Professor Francis Bohlen makes the following observation:

> "The term presumption is used on a variety of senses, but only one form of presumption, the 'rebuttable presumption of law' is a true rule of evidence and its only effect is to shift the burden of producing evidence. Nothing could be simpler, more easily administered, more effective to prevent confusion and conflict. Yet there is no class of case more confused or confusing, more difficult to analyze or rationalize, than those which deal with the effect of presumptions on the burden of proof. The settled practice in at least one important jurisdiction (Pennsylvania, where sub-

8 See Thayer, Preliminary Treatise on Evidence, p. 351.
9 See n. 8, supra.

stantially every presumption recognized by the courts shifts the 'risk of persuasion')[10] denies the theory *in toto.*"

It will be noted that Professor Bohlen's article was written in 1920. (In *"Cases and Material on Evidence,"*[10a] Morgan and Maguire point out that it was long thought that in Pennsylvania a rebuttable presumption shifted the burden of persuasion. "To what extent the view still prevails is doubtful.")

A review of the Pennsylvania cases on this question requires an endorsement of Professor Bohlen's obsevation above: the cases are "confused and confusing" and "difficult to analyze or rationalize."[10b] The earlier Pennsylvania cases did not devote much attention to the effect of a presumption. In the case of *Mansel* v. *Nicely,*[10c] the court held that the burden shifted by the presumption was that of coming forward with "positive evidence to the contrary." In *Neubert* v. *Armstrong Water Co.,*[10d] the language used was "evidence to the contrary." These cases do not hold expressly or impliedly that the presumption shifts the burden of persuasion.

The next important case was *Doud* v. *Hines.*[10e] In this case the plaintiff was a passenger on defendant's train. The plaintiff put in evidence that he was injured on defendant's train when the train left the track. The appellate court (in applying what is now considered to be Pennsylvania's doctrine of *res ipsa loquitur*) sustained the charge to the jury that "the burden was on the defendant to overcome the presumption of negligence, arising from the accident, by a 'preponderance of the evidence.' " In this writer's opinion, the case is clear authority for the proposition that the Pennsylvania doctrine of *res ipsa loquitur,* when applicable, shifts the burden of persuasion as well as the burden of coming forward with the evidence.[11]

The *Watkins* case,[12] decided in 1934, has assumed great importance in the law of Pennsylvania and it is cited for innumerable propositions regarding the nature and effect of presumptions. Although the actual holding in the case is quite narrow, as we shall see, the fifteen-page opinion represents an unusual effort by the court to set forth a clarification of the law in Pennsylvania regarding presumptions. The court states the issue as "(W)hether or not in an action on an insurance policy, the so-called 'presumption against suicide' can take the place of evidence of accidental death in sustaining an averment of death 'effected solely through external, violent and accidental[13] means.' " In holding on the question the court said that "(t)o charge the jury that after the plaintiff proved the in-

---

10 Parenthetical language appears as a footnote in the original article.
10a N. 1a.
10b N. 1a.
10c 175 Pa. 367, 34 A. 793.
10d 211 Pa. 582, 61 A. 123.
10e 269 Pa. 182 (1921).
11 See also, 51 Dick. L. Rev. 129, 131; 349 Pa. 574; 334 Pa. 161.
12 Watkins v. Prudential Insurance Co., 315 Pa. 497 (1934).
13 Note that an affirmative part of plaintiff's case was to prove "accident"; not to prove that death was not a suicide.

sured's death through external and violent means, the balance of the proof required to maintain the cause of action, that is, 'the necessary element of accidental death is, *prima facie*, supplied by the presumption against suicide,' as erroneous." Therefore, the holding, in its very essence, was that a presumption cannot take the place of evidence (that the death was accidental). This holding is quite in accord with the best authority, including Wigmore, Thayer, Bohlen, Morgan and Maguire.[14]

As pointed out above, the holding in the *Watkins* case did not include a ruling on the effect of a presumption because the presumption against suicide was not applicable. It merely decided that presumption cannot take the place of evidence; that it is not evidence, but rather the legal consequences of evidence. However, the importance of this case lies in the fact that, after recognizing that "Considerable confusion appears in judicial opinions as to the nature of presumptions and their functions in the administration of justice," the court went to great lengths to clarify the law. In doing so the court quoted Wigmore as to the nature and effect of presumptions. So far as this writer has been able to discover, this was the first case in which the Pennsylvania Supreme Court cited this section of Wigmore.[15] Those portions of the quotations that are pertinent to this discussion are as follows:

> " 'A presumption is in its characteristic feature a rule of law laid down by the judges, and attaching to one evidentiary fact certain procedural consequences *as to the duty of production of other evidence*[16] by the opponent. . . It must be kept in mind that the peculiar effect of a presumption 'of law' (that is the real presumption) is merely to invoke a rule of law compelling the jury to reach the conclusion *in the absence of evidence to the contrary*[17] from the opponent.' "

This case, therefore, supplies us with strong Pennsylvania *dicta* that the effect of a presumption is merely to shift the burden of going forward with the evidence.

The *dicta* in the *Watkins* case was strengthened in a number of succeeding cases. In *Henes* v. *McGovern*,[17a] the court said that the "burden of proof" remains with the plaintiff, while the "weight of evidence" shifts from side to side in the progress of the trial according to strength of proof offered.[18] In *Wright* v. *Straessley*,[18a] the court reiterated that, although under certain circumstances the "burden of coming forward with evidence" may shift to a defendant in personal injury

---

14 See Wigmore on Evidence, 2nd Ed. vol. 5, § 2491; Thayer, Storrs Lectures; Bohlen, Effect of Rebuttable Presumptions on Burden of Proof, 68 U. of Pa. L. Rev. 307.
15 Wigmore on Evidence, 2nd Ed., vol. 5, § 2491.
16 Emphasis not in original report.
17 Emphasis not in original report.
17a 317 Pa. 302, 176 A. 503 (1935).
18 In the opinion of the author, these expressions are also all by way of dicta. Furthermore, the term "burden of proof" is apparently used in the sense of burden of persuading the trier of fact by a preponderance of the evidence.
18a 321 Pa. 1, 182 A. 682 (1936).

cases, the "burden of proof" is never on the defendant in such cases.[19] In *Zenner* v. *Goetz*,[19a] the court again asserted, "A defendant's duty of coming forward with evidence at certain stages of a trial is sometimes loosely referred to as 'burden of proof.' The 'burden of proof' rests throughout the trial on the party affirming facts in support of his case against a defendant, while 'the burden of coming forward with the evidence' may shift from side to side during the progress of a trial."[20] The court then cited *Henes* v. *McGovern*, supra.

In the face of consistent dicta in the long line of cases herein reviewed, (not involving the doctrine of *res ipsa loquitur*) that a presumption does not shift the burden of persuasion, the Pennsylvania Supreme Court appears to make an about face in *Grenet's Estate*.[21]

In this case, a creditor recovered on a judgment note under seal payable one day after date. Note was dated Sept. 20, 1911. There was a lapse of twenty-six years between the time when the note was payable and when it was presented for payment. The court, in discussing the defendant's reliance on the presumption of payment arising from a lapse of time said:

> "It is a presumption merely of fact and amounts to nothing more than a rule of evidence *which reverses the ordinary burden of proof and makes it incumbent upon the creditor to prove, by preponderance of the evidence, that the debt was not actually paid.*"

After reviewing the evidence, the court concluded that "(t)his evidence was legally sufficient upon which to base a finding that the note had not been paid." So we see that, in 1938, the Pennsylvania Supreme Court stated (and apparently held) that the presumption of payment arising from lapse of time not only shifts the burden onto the creditor of coming forward with evidence of non-payment, but also, shifts the burden of persuasion; that is, "to prove, BY A PREPONDERANCE OF THE EVIDENCE, *that the debt was not actually paid.*"[22] Apparently this presumption shifted the burden of persuasion.

To add to the confusion, the court in *McDonald* v. *Pennsylvania Railroad Co.*,[22a] in applying the doctrine of *res ipsa loquitur*, cited *Doud* v. *Hines, supra*[23] and then continued:

> "In the instant case, the burden of proof was on the plaintiff. When plaintiff proved that her son while a passenger on defendant's train was

---

19 See n. 18, supra.
19a 324 Pa. 432, 188 A. 124 (1936).
20 Accord, Pfordt v. Educator's Beneficial Ass'n., 140 Pa. Super. 170, 14 A.2d 170; Guise v. N.Y. Life Ins. Co., 127 Pa. Super. 127. See n. 18, supra.
21 332 Pa. 111 (1938).
22 In absence of a presumption, the debtor, as a matter of affirmative defense, would have the burden of proving payment by a preponderance of the evidence. See 5 Wigmore, Evidence, 2nd Ed., §§ 2486, 2489; 348 Pa. 558.
22a 348 Pa. 558, 36 A.2d 492.
23 Also a res ipsa loquitur case; but which held that the presumption of negligence shifted the burden of persuasion onto the railroad.

killed by the derailment of that train she met the burden of proof initially resting upon her and if no further evidence had been offered by either side, the jury should have returned a verdict for the plaintiffs, because upon proof of the facts just stated a 'presumption' arose that the child's death resulted from the defendant's negligence. This presumption was 'a conclusion based upon the generally known results of wide human experience' (quoting the language of the *Watkins* case). This persumption cast upon the defendant, if it wished to forestall a verdict in plaintiff's favor, the burden of producing evidence to neutralize the inference which the jury in the absence of countervailing evidence would draw legimately from the evidence produced by the plaintiff. As Thayer says in his *Preliminary Treatise on Evidence at the Common Law* (page 339): 'The essential character and operations of presumptions so far as the law of evidence is concerned, *is in all cases the same*. . . They throw upon the party against whom they work the duty of going forward with the evidence, *and this operation is all their effect*, regarded merely in their character as presumptions.' "

This case certainly raises a doubt as to the effect of the presumption of negligence in Pennsylvania *res ipsa loquitur* cases.

Jack H. Barton
Member of the Senior Class