and labor was far more expensive, than contemplated in the specifications. You have heard the statements and explanations of the plaintiff. Several intelligent and experienced builders and artisans have, in their testimony, explained the terms of art used in the plans and specifications, and, after a careful examination of the work, they have given you their opinion upon the matters in controversy. Although tnere is some conflict in the testimony, I hope you may be able to understand the subject, and correctly decide the questions of fact involved. If you find that the plaintiff departed from the plans and specifications without the consent or approval of the defendants, and such departure rendered the foundation walls insecure, and caused greater expense in the work than was contemplated by the architect, then the defendants are entitled to such damages as the evidence shows that they sustained by reason of defective work and increased expenditures.

The pleadings and trial in this case have been conducted in accordance with the mode of procedure provided in the Code system of this state, and there are substantially cross-actions between the parties. If you find that one party alone is entitled to recover, you will so render your verdict; but if you should think that the plaintiff has sustained the allegations of his complaint, and the defendants have proved their counter-claim, then you will assess the amount to which each party may be entitled, and deduct the less sum from the greater, and render your verdict for the party in whose favor the balance may appear.

Missouri River, F. S. & G. R. Co. *v.* United States.

(*Circuit Court, W. D. Missouri, W. D.* January, 1884.)

1. Income Tax—Corporations—Period from August 1, 1870, to January 1, 1871.

   The case of *Blake* v. *Nat. Bank*, 23 Wall. 307, 320, followed, which held that corporations were not exonerated from the payment of income tax during the last five months of the year 1870.

2. Action to Recover Taxes—Deduction of Overpaid Amounts.

   In a suit by the United States for the recovery of taxes, the defendant is entitled to a deduction of any amount admitted by the plaintiff to have been previously overpaid, even though there is no plea of offset

Error to the District Court.

The United States brought suit in the court below to recover of the Missouri River, Fort Scott & Gulf Railroad Company the sum of $19,474.93, claimed as due for taxes, under the revenue laws, as income tax upon the earnings of said company for the year 1870. The case was heard by the court without a jury, upon an agreed

statement of facts, from which it appears that the gross receipts of said company for the 12 months ending December 31, 1870, were—

	$1,199,220 58
That the expenses for the same period were -	707,222 18
Leaving net earnings, - - -	$491,998 40

It also appeared that said company had overpaid the taxes due on gross receipts for that year the sum of $209.50, but that it had paid no tax for that year upon the undivided net earnings during said year. The court found for the plaintiff for the whole amount claimed, and rendered judgment accordingly. The said railroad company, defendant below, brings the case here and assigns errors, as stated in the opinion.

Wallace Pratt, for plaintiff in error.

Wm. Warner, U. S. Atty., for defendant in error.

McCrary, J. The errors assigned are (1) that the district court erred in finding the sum of $5,124.98 due from the railroad company to the United States for taxes on net earnings from August 1 to December 31, 1870; (2) that the district court erred in not deducting from the amount it found due the sum of $209.50, overpayment by the railroad company upon the taxes upon its gross receipts for the year 1870.

As to the first assignment, it presents a question which was settled by the supreme court in *Blake* v. *Nat. Banks*, 23 Wall. 307, 320. In that case, as here, it was insisted that, by oversight or otherwise, congress omitted to impose an income tax upon corporations from August 1, 1870, till January 1, 1871; that there was a hiatus of five months, so far as corporations were concerned, while as to individuals the tax was imposed for the entire year. This contention is expressly overruled by the case cited, and requires no discussion here.

As to the second error assigned, I think it ought to be sustained. The government agreed upon a statement of facts which became the only evidence in the case. That statement shows upon its face an overpayment to the government by the company upon one item of $209.50. True, the government does not expressly agree to credit this sum upon the remaining claim against the company, but it does, in effect, agree that the court shall determine from the facts stated what sum, if any, is due. It is not a question as to the force and effect of a certified statement of account under the act of congress on the subject. The question is, what judgment is the United States entitled to upon the facts admitted? And the answer must be that the United States is entitled to the amount of tax due, less whatever sum has been paid. Nor is it necessary that the company should plead an offset. The government is bound to prove the amount due, and if in making proof it shows affirmatively that it has received into its treasury a partial payment, the court will take that fact into account.

The judgment is reversed, and remanded to the district court with direction to render judgment for the United States for the sum heretofore found due, less the sum of $209.50 overpaid, as above stated, and interest thereon.

SENSENDERFER *v.* PACIFIC MUT. LIFE INS. CO.

(*Circuit Court, W. D. Missouri, E. D.* November Term, 1882.)

LIFE INSURANCE—POLICY TAKEN OUT FOR THE BENEFIT OF A CREDITOR—PROOF OF DEATH—NATURE OF EVIDENCE.

Absence of a person alone does not raise a presumption of his death; but such absence, in connection with surrounding circumstances, such as the failure by his family and friends to learn of his whereabouts, his character, and business relations, together with the fact that he was last known to be seen near the place where a murder is supposed to have been committed, and the reputation in his family and with his friends that he is dead, creates a very strong presumption of death, the law being satisfied with less than certainty, yet requiring a preponderance of proof. On the other hand, evidence to overcome the presumption of death, that the party supposed to be dead was in a financial condition which might have induced him to abscond, or that he was a speculator, or visionary, in his business or trades, is all proper evidence to be considered by the jury in establishing the fact.

At Law.

S. P. Sparks and *L. C. Krauthoff*, for plaintiff.

William McNeall Clough, for defendant.

KREKEL, J., (*charging jury.*) The plaintiff, William Sensenderfer, sues the Pacific Mutual Insurance Company on a policy of insurance issued by the Alliance Mutual Life Insurance Society to said Sensenderfer on the life of John La Force. It is claimed by plaintiff, Sensenderfer, that the Pacific Mutual Life Insurance Company is liable to him, because it has assumed to become responsible for the company which issued the policy, under a contract between the Alliance Mutual and the Pacific Mutual, read in evidence, and you are instructed that if the policy issued by the Alliance Mutual, and the contract between it and the Pacific Mutual, are found to be true and genuine, the Pacific Mutual is liable for the policies of the Alliance Mutual under the conditions and limitations hereinafter stated. La Force had a right to insure his life for the benefit of a creditor; and if you are satisfied from the testimony that La Force was indebted to the plaintiff, Sensenderfer, at the time the policy was issued, Sensenderfer has a right to recover thereon under the conditions hereinafter stated. The plaintiff, Sensenderfer, under the provisions of the policy, was bound to make satisfactory proof of the death of La Force, the insured, and it is this which constitutes the real issue in the case, the defendant company claiming that the proof of death is not satisfactory. This proof—the proof of the death of La Force—the plaintiff,