Yale Law Journal

Volume 13
Issue 5 *Yale Law Journal*

Article 5

1904

RECENT CASES

RECENT CASES.

BANKRUPTCY—AMENDATORY ACT OF 1903—PROVISION AGAINST RETROACTION—JURISDICTION FOR RECOVERY OF PROPERTY.—IN RE HARTMAN, 10 AM. B. R. 387 (D. C.).—Sec. 19 of the Amendatory Act provides that its own provisions shall not apply to cases pending when it takes effect. *Held*, that the amendment enlarging the jurisdiction of bankruptcy courts to include suits for the recovery of property, is confined to cases in which the original petition was filed after the amendment took effect, and Sec. 19 applies to all matters connected with a petition in bankruptcy as well as to the petition itself and the adjudication.

Contra: The provision against retroaction applies only to bankruptcy cases proper, and not to a suit brought by a trustee. *Pond v. N. Y. Exchange Bank*, 124 Fed. 992, 10 Am. B. R. 343. But *Re Hartman* seems to carry out the intention of the law more nearly, and agrees with the construction other courts are giving it. Thus, a proceeding under Sec. 57g to expunge a claim because of unsurrendered preference, in a case brought before the Amendatory Act took effect, must be governed by the original Act of 1898. *In re Docker-Foster Co.*, 10 Am. B. R. 584. The rule that the repeal of a statute prescribing a penalty or forfeiture recoverable in a civil action takes away the right of recovery (*Bay City Ry. Co. v. Austin*, 21 Mich. 390), is negatived by Sec. 19. So an unconditional transfer of real estate by a bankrupt for inadequate consideration is no concealment of property in cases begun prior to the amendments. *In re Dauchy*, 10 Am. B. R. 527.

BANKRUPTCY—DEPOSIT IN BANK—SET-OFF.—NATIONAL BANK V. MASSEY, 11 AM. B. R. 42 (SUP. CT.).—Money was deposited with a bank upon an open account subject to check, within four months prior to adjudication. *Held*, that such a deposit did not constitute a preference which must be surrendered before the claim of the bank against the bankrupt's estate should be allowed.

This case seems to be the first on this point under the Act of 1898. The decisions under the Act of 1867 permitted banks to set off their debts. *In re Petrie*, Fed. Cas. 11,040; *Scammon v. Kimball*, 92 U. S. 362. But it was urged that section 60 of the present act had changed the law. A payment of money being a transfer of property falls within the provisions of Sec. 60 of the Bankruptcy Act and constitutes a preference which must be surrendered before claim will be allowed. *Pirie v. Trust Co.*, 182 U. S. 438. But a deposit in a bank is a mere loan creating an obligation to repay upon demand. *Davis v. Bank*, 161 U. S. 288. The principal case holds that it is not a transfer of property. And therefore Sec. 68 applies, which provides that in all cases of mutual debts, one debt may be set off against the other.

BANKRUPTCY—INVOLUNTARY PROCEEDINGS—RECEIVER'S COMPENSATION—AGAINST WHOM TAXABLE.—MATTER OF SEARS, HUMBERT & CO., 10 AM. B. R. 389 (D. C.).—*Held*, that when a petition in bankruptcy has been dismissed, a

receiver previously appointed to seize and hold the property of an alleged bankrupt pending adjudication must restore such property to the person or corporation from whom it was taken, intact, and without any deductions for his services or disbursements. In voluntarily serving before the adjudication in bankruptcy, a receiver accepts this risk of loss if the proceedings be dismissed.

In this case the petitioners for a receiver were merely creditors, seeking security in property to which they had no other claim. True, when no question is made as to the legality and propriety of an appointment of a receiver, and he has closed up the business in pursuance of his appointment, his compensation should be paid from the funds in his hands. *Radford v. Folsom,* 55 Iowa 276. And when it becomes the duty of a court to take property under its charge, the property becomes chargeable with the necessary expense incurred in taking care of and saving it, including the allowance to the receiver for his services. *Ferguson v. Dent,* 46 Fed. 88. But a receiver irregularly and erroneously appointed cannot look for compensation to the funds placed in his hands, *French v. Gifford,* 31 Iowa 428, as that would be a taking of property without due process of law. So in the present case Referee Hotchkiss holds that to charge the alleged bankrupts with the expenses of seizing and administering their solvent estate against their will would be a greater injustice than to deprive the receiver of his return for voluntary services, though rendered in good faith.

BANKRUPTCY—PREFERENCES.—MCKENNY V. CHENEY, 11 AM. B. R. 54.—*Held,* Section 67f of the Bankruptcy Act of 1898, providing "that all levies, judgments, attachments or other liens, obtained against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed void in case he is adjudged a bankrupt," is applicable to cases both of voluntary and involuntary bankruptcy.

The decisions upon this question are very fully catalogued in this case. Some courts are of the opinion that to construe section 67f as applying to cases of voluntary bankruptcy would be to eliminate from the statute subsection c, which in terms apply to voluntary bankrupts. *In re O'Connor,* 95 Fed. 943. But by the slight weight of authority, the words "at any time within four months prior to the filing of a petition in bankruptcy against him" are to be construed as applying to voluntary as well as involuntary cases, in as much as section 1a, cl. 1, declares that "'a person against whom a petition has been filed' shall include a person filing a voluntary petition." *In re Dobson,* 98 Fed. 86; *In re Benedict,* 75 N. Y. Supp. 165.

BILLS AND NOTES—BONA FIDE HOLDER.—MECHANICS' BANK V. CHARDAVOYNE, 55 ATL. 1080 (N. J.).—*Held,* that a party who receives a negotiable note in payment of a pre-existing debt is a bona fide holder for value. Dixon, Garrison, Fort and Green, J. J., *dissenting.*

A purchaser of fraudulently obtained goods in settlement of a pre-existing debt is not a bona fide purchaser for value. *Sleeper v. Davis,* 64 N. H. 59. And in some States this has been held to be so in the case of negotiable instruments. *Button v. Rathbone,* 118 N. Y. 666. *Roxborough v. Messick,* 6 Ohio St. 448. It is sufficient for his protection, however, if the purchaser

parts with anything of value, such as evidence of the debt. *Moyer v. Heidelbach,* 123 N. Y. 332. And the generally accepted rule is that the purchaser holds the note free from equities, although he gives up nothing for it. *American File Co. v. Garrett,* 110 U. S. 288; *Bridgeport City Bank v. Welch,* 29 Conn. 475. In the present case the note was delivered in New York and hence governed by the law of that State. The majority of the court seemed to mistake the fact that, on this point, the New York law is contrary to the general rule.

BILLS AND NOTES—FOREIGN JUDGMENTS—CONCLUSIVENESS—LIMITATIONS. —BRAND V. BRAND, 76 S. W. 868 (KY.).—In an action on a note in New York judgment was given for the defendant on the grounds that suit was barred by the statute of limitations. *Held,* that such a judgment affects only the remedy to be had in that State, and the plea of the New York judgment is not good in an action brought in another State, where a different statute of limitations prevails.

It is well established that where an injured party has a right to either of two remedies, the one he chooses is not barred because the other, if he had brought it, might have been. *Lamb v. Clark,* 5 Pick. 193; *Missouri Sav. Bank Co. v. Rice,* 84 Fed. 131. This is strong evidence that, in absence of stipulations to the contrary, statutes of limitations relate to the remedy only, and not to the cause of action. And it is very generally held that such statutes are a part of the *lex fori. Bauerman v. Blunt,* 147 U. S. 647; *M'Elmoyle v. Cohen,* 13 Pet. 312; *Story, Conflict of Laws* (8th ed.), sec. 576. Hence a judgment based upon such a statute is not conclusive in other jurisdictions. This rule is applicable to the statutes of foreign countries, as well as to those of the several States. *Bulger v. Roche,* 11 Pick. 36. The same doctrine is well established in England. *Dicey, Conflict of Laws, 422. Harris v. Quine,* (1869), L. R. 4 Q. B. 653, is on all fours with the decision under discussion.

CITIES—STREET SPRINKLING—PUBLIC PURPOSE—TAXATION.—MAYDWELL V. CITY OF LOUISVILLE, 76 S. W. 1091 (KY.).—*Held,* that the sprinkling of city streets is such a public purpose that an ordinance, levying a tax for the expense involved, is constitutional.

The statutes on street sprinkling, that have come before the courts, have been those providing for assessments on abutting property as for local improvements. These have been held to be constitutional on the ground that "the sprinkling, besides being of general public good, was of special private benefit." *Sears v. Boston,* 173 Mass. 71; *State v. Reis,* 38 Minn. 371; *Reinkin v. Furhring,* 130 Ind. 382. City ordinances, requiring trolley companies to sprinkle the roadbed between their tracks, have been declared constitutional, as providing for the public health. *State v. R. R. Co.,* 50 La. Ann. 1189; *Chester v. Traction Co.,* 5 Pa. Dist. 609. Several of the cases contain *dicta* on the point of principal case, for example,—"that street sprinkling is a public purpose is unquestioned." *State v. Reis, supra.* It would therefore seem that the ruling of this case is sound.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—RECEIPTS AS CONCLUSIVE EVIDENCE.—HARRIS V. STEARNS, 97 N. W. 361 (S. D.).—*Held,* that a legislative enactment providing that a tax receipt shall be conclusive evidence that

all prior taxes on property have been paid, is in conflict with a constitutional provision against deprivation of property without due process of law. Hanley, P. J., *dissenting.*

That a legislature is competent to declare certain documents presumptive or prima facie evidence is everywhere admitted. *Pillow v. Roberts,* 13 How. 472; *Allen v. Armstrong,* 16 Iowa 508, but the opposite is universally held in regard to the power of a legislature to make such documents conclusive evidence of their own contents. *Cooley on Taxation,* 298; *Abbott v. Lindenbower,* 42 Mo. 162; *Kelley v. Herrall,* 10 Saw. 169; *McCready v. Sexton,* 29 Iowa 356. On the other hand, the universal doctrine that a statute will not be declared unconstitutional, except where the conflict between its provisions and the organic law is so palpable as to leave no doubt of its validity, and the fact that there is a substantial distinction between a tax deed being conclusive evidence of its own recitals, and a law making it conclusive evidence that an officer has done his duty, leads several of the States to hold that under these circumstances the legislature can make a tax deed conclusive evidence that all prior taxes have been paid. *Rollins v. Wright,* 93 Cal. 397; *Phelps v. Meade,* 41 Iowa 470.

CONSTITUTIONAL LAW—EVIDENCE—SELF-INCRIMINATING TESTIMONY.—PEOPLE V. ADAMS, 68 N. E. 636 (N. Y.).—Officers, under a search warrant, seized policy sheets and private papers which were used to prove the handwriting of the defendant and that the offices were occupied by him. *Held,* that this was not in violation of the constitution, as compelling the accused to tesify against himself.

This is in harmony with the great weight of authority that private property, though illegally procured, is admissible in evidence in a criminal action. *Siebert v. Illinois,* 143 Ill. 571; *State v. Griswold,* 67 Conn. 290; *Commonwealth v. Welsh,* 110 Mass. 359, and the remedy for such unlawful taking is an independent suit. *Commonwealth v. Tibbits,* 157 Mass. 519. *Contra, Boyd v. United States,* 110 U. S. 616, which distinguishes between the compulsory production of private property, such as seizure of smuggled goods, or private papers, as circumstantial evidence of the existence of such matters, and the compulsory production of private papers as evidence of the truth of their contents, holding that in the former case there is no self-incriminating evidence, as the things are merely evidence as such; while in the latter case, it is equivalent to making the accused testify against himslf, and is therefore unconstitutional. In point with the main case is *State v. Hial Mathers,* 64 Vt. 101, where an incriminating letter, illegally obtained, was admitted in evidence in a criminal action.

CONSTITUTIONAL LAW—INFANTS—FAILURE TO FURNISH MEDICAL ATTENDANCE.—PEOPLE V. PIERSON, 68 N. E. 243 (N. Y.).—Defendant did not call in a licensed physician to attend the dangerous illness of an adopted daughter, but depended upon faith to cure her. *Held,* the provisions of the Penal Code, making it a misdemeanor to omit to furnish medical attendance to a minor does not violate the constitutional provision guaranteeing freedom of worship.

A defense of religious belief cannot be set up to a violation of a law of public health: *Reg. v. Downes,* 13 Cox C. C. 111; nor of public policy; *State*

v. White, 64 N. H. 48. Nor do these rules violate the constitutional provision guaranteeing liberty in religious profession and worship. *Reynolds v. U. S.,* 98 U. S. 145. The furnishing of medical aid by a parent to his minor child is required by the common law. *Reg. v. Wagstaffe,* 10 Cox C. C. 530, and by statute both in England, 31 and 32 Vict., c. 122, sec. 37, and in most of the states. So that there is a strict analogy between this case and *Reynolds v. U. S., supra.* where the provision in the constitution for liberty of religious profession was held not to shield the crime of bigamy. See also XIII *Yale Law Journal,* 42.

CRIMINAL LAW—EVIDENCE—FACTS RELEVANT—CONDUCT OF BLOODHOUNDS.—BROTT V. STATE, 97 N. W. 293 (NEB.).—*Held,* that the mere trailing of bloodhounds from the place where a crime is committed to the house of the accused is not proof sufficient to infer the commission of the crime therefrom.

Courts have taken notice of the power of bloodhounds to follow a man's trail, and evidence of their conduct is usually admitted as establishing the man's identity. *Hodge v. State,* 98 Ala. 10. In *Simpson v. State,* 111 Ala. 6, similar evidence was admitted without question, and the court went so far as to exclude evidence proving the unreliability of other dogs of the same breed and trained by the same man. But evidence of bloodhounds' trailing should be admitted only where circumstances were most favorable to enable them to track, and then only as a circumstance tending to connect the accused with the crime. *Pedigo v. Commonwealth,* 44 S. W. 143.

EMPLOYER AND EMPLOYES—RIGHT TO EMPLOY—INJUNCTION.—ATKINS V. FLETCHER CO., 55 ATL. 1074 (N. J.).—Complainants, being members of a machinists' association on strike, sought to restrain the defendants from interfering with their pickets. *Held,* the right of a voluntary association engaged in supporting a strike, to freedom in the labor market so that the association can readily employ pickets, is not a proper subject of protection by injunction.

In all cases heretofore the question of interference has been raised by the employers. And the law is well settled that where the defendants induced the plaintiff's employes to leave his service by using force, threats or intimidation, the act constituted an injury to property which a court of equity has jurisdiction to restrain by injunction. *Davis v. Zimmerman,* 91 Hun. 489; *Frank v. Herold,* 63 N. J. Eq. 443. In the principal case, it is the union which seeks the freedom of the labor market and, in view of the statement by the learned judge that "the complainants are before the court as employers," the decision seems to be in conflict with settled principles.

EVIDENCE—JOURNALS OF LEGISLATURE—COMPETENCY—ALTERATION BY PAROL.—TOWN OF WILSON V. MARKLEY, 45 S. E. 1023 (N. C.).—Where the question is whether a bill is passed in accordance with constitutional provisions requiring it to be read three times, *held,* that the journal imports absolute verity and cannot be altered or explained by parol.

Bank v. Commissioners, 119 N. C. 214, the case most nearly in point, supports the decision, holding the journal conclusive evidence as to whether the roll was called in accordance with constitutional provisions. In harmony with the main decision are also *McCulloch v. State,* 11 Ind. 424; *Burr & Co.*

v. Ross and Leitch, 19 Ark. 250; *Spangler v. Jacoby,* 14 Ill. 297, and *Division of Howard County,* 15 Kan. 194, holding such records as conclusive evidence, and that courts will take judicial notice of them. The reasoning seems to be that since the journal is under the immediate control of the assembly, and the members have utmost freedom of access, and it is a public record, that such evidence is primary, and the best obtainable. *Contra, Miles v. Stevens,* 3 Pa. St. 21, and *Green v. Weller,* 32 Miss. 650, supporting the proposition that journals are merely prima facie evidence, on the ground that they are carelessly recorded, are not required to be sworn to, and therefore no guarantee of accuracy exists.

FORECLOSURE SUIT — VENUE—CONSTITUTION—STATUTES.—SHERMAN V. DROUBAY ET AL., 74 PAC. 348 (UTAH).—Where mortgage notes were payable in one county and the property was in another, *held,* that an action of foreclosure was properly brought in the county where the land was situated.

This is in harmony with *Fields v. Daisy Gold Mining Co.,* 73 Pac. 521, the only other case in point decided by this court, on the ground that the mortgage as security for the debt is the main thing. The great weight of authority supports this view. *Rogers v. Cady,* 104 Cal. 288; *Fraley v. March,* 68 N. C. 160; *Orcut v. Hanson,* 71 Ia. 514; *Hackenhull v. Westbrook,* 53 Ga. 285. Of the cases *contra, Cavanaugh v. Peterson,* 47 Tex. 197, rests solely on the ground that the District Court has general jurisdiction of the debt and the mortgage; and *Trust Co. v. Day,* 63 Ia. 459, on the ground that the indebtedness is considered the main thing, and if the action is brought where the note is payable, and personal judgment rendered, foreclosure may then be had there, although the land lies elsewhere, a conclusion not possible under the statute applicable to the main case.

INTERSTATE COMMERCE—ELEVATOR WAREHOUSE.—PEOPLE EX REL CONNECTING TERMINAL R. CO. V. MILLER, 82 N. Y. SUPP. 582.—*Held,* that a domestic railroad and elevator warehouse engaged exclusively in handling and storing grain and other freight in the process of transportation between States is not engaged in interstate commerce. Smith and Chase, J.J., *dissenting.*

Opinion seems to be unsettled as to whether such elevators are directly or indirectly engaged in interstate commerce. If only indirectly engaged in interstate commerce the State may control. *Wabosheta Ry. Co. v. Ill.,* 118 U. S. 557. In *State Freight Tax Case,* 15 Wall 232, it was held that the mere transportation of freight into and out of a State is interstate commerce. A railroad entirely within a State used as a connecting link of interstate roads is engaged in interstate commerce. *Norfolk, etc., R. Co. v. Penn.,* 136 U. S. 114; *Nav. Co. v. Ins. Co.,* 89 Tex. 1. The present case cites as an authority *Budd v. N. Y.,* 143 U. S. 517, and *Munn v. Ill.,* 94 U. S. 113. In each of these, however, the point was a minor one and thus did not receive the full consideration of the court. They have been much criticised in respect to this point and in the present case the judge, while feeling bound to follow the decisions of the Supreme Court, intimates grave doubts as to the correctness of this conclusion.

JUDGMENT—FRAUDULENT JOINDER OF PARTIES—EQUITY JURISDICTION.—DE GARCIA V. SAN ANTONIO & A. P. RY. CO., 77 S. W. 275 (TEX.).—*Held*, that where the plaintiff, in collusion with the defendant, joined another as co-plaintiff to cut off his rights, the judgment may be set aside in a court of equity.

Formerly courts of law would not review a cause for fraud and equity had entire jurisdiction. *Bateman v. Willor*, 1 Sch. & Lef. 201. But now, in some States, relief may be had in law in many cases of fraud and mistake. *Borland v. Thornton*, 12 Cal. 440; especially if the fraud was extrinsic and not concerned in the issue in the former suit. *U. S. v. Throckmorton*, 98 U. S. 61. There seems to be no general rule, however, as to what will vitiate a judgment in law. And the uncertainty as to when equity will act is increased by the fact that it sometimes continues to assert its jurisdiction even after relief might be had at law. *Pearce v. Olney*, 20 Conn. 545. *McMurray v. McMurray*, 67 Tex. 665, while in other States it refuses to interfere in such cases. *Floyd v. Jayne*, 6 Johns. Ch. 479.

MANDAMUS—RIGHT TO MONEY DEPOSITED IN LIEU OF BAIL—SUPPLEMENTARY PROCEEDINGS—DISCONTINUANCE.—IN RE ROTHSCHILD, 82 N. Y. SUPP. 558.—Relator deposited money in lieu of bail to secure the appearance of S. proceedings against whom were "adjourned to a time to be hereafter fixed." Before the case was dismissed, the chamberlain was enjoined by judgment creditors from disposing of S's property. *Held*, that mandamus will not lie requiring the chamberlain to pay the money deposited to relator, because proceedings were not dismissed by a judge's order. McLaughlin and Ingraham, J. J., *dissenting*.

The code of civil procedure of New York requires a judge's order for a discontinuance of supplementary proceedings. Adhering strictly to this provision the case of *Meyer v. Gould*, 75 App. Div. 524, is not in point. In that case it was held that a party who deposited bail for another as in this case could recover it. *Contra*: The injunction is part of proceedings which have lapsed by adjournment *sine die*. Saying that there is no discontinuance after proceedings have really been abandoned because of the requirement of a judge's order is giving the code a character never intended. *Squire v. Young*, 1 Bosw. 690. No express order is needed to discontinue proceedings which have been abandoned by failure to get a regular adjournment. *Thomas v. Kercher*, 15 Abb. Prac. 342; *Wright v. Nostrand*, 47 N. Y. Sup. Ct. 441. An adjournment to a day not certain is *sine die*. 1 *Enc. Pl. & Pr.* 243. Authority on this point does not seem to support the principal case.

MUNICIPAL CORPORATIONS—IMPROVEMENTS—COMPETITIVE BIDDING.—FINERAN V. CENTRAL BITULITHIC PAV. CO., 76 S. W. 415 (KY.).—An ordinance provided that contracts for street paving should be awarded to the lowest bidder. *Held*, that, as there could be no competition, a contract with a corporation having the exclusive control of a patented composition was void. Paynter, J., *dissenting*.

There is an irreconcilable conflict of opinion upon this subject. In some states the courts reason that such ordinances should not be strictly enforced, as the municipality would be precluded from availing itself of patented articles,

however advantageous and valuable they might be. *In re Dugro,* 50 N. Y. 513; *Hobart v. Detroit,* 17 Mich. 246; *Verdin v. St. Louis,* 27 S. W. 447 (Mo.); *Yarnold v. Lawrence,* 15 Kan. 126. In support of the decision in the main case, it is argued that such awards would be disastrous to the public, presenting large inducements to monopolies and affording opportunities for corruption. *Dean v. Charlton,* 23 Wis. 590; *New Jersey v. Elizabeth,* 35 N. J. L. 351; *Nicolson Pav. Co. v. Painter,* 35 Cal. 699; *Fishburn v. Chicago,* 171 Ill. 338; *Burgess v. Jefferson,* 21 La. 143. Evils arising from monopolistic control may be mitigated, if not entirely eliminated, by reserving in the law making body the power to reject any and all bids. A deprivation of the right to use that which is best adapted for the purpose is positively disadvantageous and against public policy. It would seem that the more acceptable construction is that which grants to the public the benefits flowing from discoveries and scientific progress.

MUNICIPAL CORPORATIONS—TAX ON MERCHANTS—LIABILITY OF MERCHANTS' AGENT.—CITY OF TROY V. HARRIS, 76 S. W. 662 (Mo.).—*Held,* that one acting as agent for a foreign firm or corporation is not liable to prosecution under a city ordinance providing that all "merchants and grocers" should pay an *ad valorem* tax on merchandise held at a certain time, and procure a license in order to lawfully carry on business.

The court decided that the agent of a merchant corporation was not a merchant, within a reasonable meaning of the above ordinance. In this case there must have been an unlicensed dealing in the capacity of "merchant" to make it punishable. *State v. Martin,* 5 Mo. 361; *State v. Cox,* 32 Mo. 566. Because no clause in the ordinance provided for punishment of an agent conducting business without a license. Although without doubt a municipal corporation has the right to tax agents of foreign corporations exercising a trade or calling within its borders. *Bates v. Mobile,* 46 Ala. 158; *Walker v. Springfield,* 94 Ill. 364. In order to subject agents to its tax, an ordinance must so provide. *Farmington v. Rutherford,* 94 Mo. App. 328.

PLEADING AND PRACTICE—SCIRE FACIAS—SERVICE OF PROCESS.—KIRK V. UNITED STATES, 124 FED. 324.—Plaintiff was surety on a recognizance to appear and answer to an indictment in the courts of a foreign jurisdiction. Upon non-appearance of the principal, *scire facias* was issued on the bail bond. Process was never personally served on the complainant, and after two returns of *nihil,* bail was forfeited and execution levied on complainant's property. *Held,* that, as *scire facias* on a forfeited recognizance is equivalent to original process, the conditions warranted the issuance of an injunction *pendente lite* restraining the enforcement of the execution.

It is a well established proposition that in actions *in personam* the service must be personal. *Pennoyer v. Neff,* 95 U. S. 714; *Needham v. Thayer,* 147 Mass. 536. By statute, final process in favor of the United States may be served in any State in the Union, but this has not been extended to original or other process. *Toland v. Sprague,* 12 Pet. 300. When the condition of bail is broken, the penalty immediately accrues, *U. S. v. McGlashen,* 66 Fed. 537; but a *scire facias* proceeding is a suit to enforce the penalty of the recognizance. *Hunt v. U. S.,* 166 U. S. 424. Two returns *nihil* on successive writs

of *scire facias* are equivalent to service when the party resides or is found within the court's jurisdiction, *Brown v. Wygant*, 163 U. S. 618; but not when he is a non-resident. *Owens v. Henry*, 161 U. S. 642. It would appear that the exigencies of the occasion justified the injunction.

PUBLIC SCHOOLS—CONDITIONS OF ATTENDANCE—VACCINATION ACTS—CONSTITUTIONALITY.—VIEMEISTER V. WHITE, 84 N. Y. SUPP. 712.—*Held*, that a statute requiring vaccination of children as a condition of their attendance on public schools is constitutional, as being a valid exercise of the police power of the State.

Vaccination as a condition precedent to a pupil's admission to public schools has given rise to conflicting decisions in the courts. There are but two cases directly in point. *Abeel v. Clark*, 84 Cal. 226; *Bissell v. Davison*, 65 Conn. 183. The conflict of decisions is found in suits brought because of vaccination regulations promulgated at the discretion of local boards of education. Some of these decisions hold that it is unconstitutional for such boards so to limit the privilege of public education, except when an epidemic of smallpox actually threatens. *Blue v. Beach*, 155 Ind. 121; *Mathews v. Board of Education*, 127 Mich. 530. In this last case it is admitted that a statute requiring vaccination at all times would be constitutional. The weight of authority, however, holds that boards have the power to require it under all circumstances. *Duffield v. School Dist.*, 162 Pa. St. 476; *In re Rebenack*, 62 Mo. App. 8. A perusal of these cases makes it evident that such statutes will be liable to modification, as public opinion on the subject changes.

STATUTES—CONSTRUCTION—LEGISLATIVE INTENT.—SCOUTEN V. CITY OF WHATCOM, 74 PAC. 389 (WASH.).—*Held*, that resort may be had to the legislative history of a statute for the purpose of determining legislative intent where a word was omitted through the error of the clerk of enrollment, making the bill ambiguous.

Where a doubt exists as to the legislative intent reference may be had to the history of the bill as it was before the legislature. *Howlett v. Cheetham*, 17 Wash. 626; *Fosdick v. The Mayor*, 14 Ohio 481; *Spangler v. Jacoby*, 14 Ill. 297. Clerical errors will not be allowed to stand in the way of the legislative intent. *Ex parte Hedley*, 31 Cal. 109; *Sutherland, Stat. Const.*, sec. 300. This decision is in accordance with the weight of authority, but there is much conflict upon the question. That the enrolled act is conclusive evidence and the journals and history of the bill cannot be introduced to controvert it, see *Pangborn v. Young*, 32 N. J. L. 29; *Weeks v. Smith*, 81 Me. 538; *Sherman v. Story*, 30 Cal. 253.

TAXATION—PRIVILEGE TAX—INDIRECT COLLECTION—CONSTITUTIONALITY.—KNOXVILLE TRACTION COMPANY V. MCMILLAN, 77 S. W. 665 (TENN.).—*Held*, that an act passed imposing a privilege tax on the business of advertising in public conveyances, with a proviso that "the street car company or railroad company who leases or sells such advertising privileges shall be liable for payment of the above privileges," is a deprivation of property "without due process of law," in contravention of the 14th amendment of the Constitution.

The property of one citizen owing no duty or obligation to another can

not be taken to pay a tax due from such other person. *Gray v. Logan County,* 7 Okl. 321; *Stapylton v. Thaggard,* 91 Fed. 93. In some cases, however, corporations holding property of other persons may be compelled to pay taxes levied on such persons. *Whitney Nat. Bank v. Parker,* 41 Fed. 402; *Nat. Bank v. Commonwealth,* 9 Wall. 353; *Cooley on Taxation,* p. 716. But not unless the corporation could reimburse itself, as it could not in the present case, from the property of the parties taxed. *St. John's Nat. Bank v. Bingham T'p.,* 113 Mich. 203; *Nat. Bank v. Hoffman,* 93 Ia. 119.