

or other instrument may be applied to improper purposes and used for the promotion of vexatious litigation. 2 Story Eq. Jur., ss. 700, 700 a.; Snell's Principles of Equity 498, 502.

A party who holds a tax certificate to land, and resists an application to have it cancelled, as a cloud upon the rightful title, cannot well say that he does not set up a claim under it. *Dean v. Madison*, 9 Wis. 402.

Courts of equity will not restrain the collection of a tax illegally assessed, in a case where the party has a plain and adequate remedy at law. *Brown v. Concord*, 56 N. H. 375. And where the tax is assessed as a personal charge, or against personal property, the remedy at law is presumably adequate. If the tax is illegal, and the party makes payment, he is entitled to recover back the amount (*Cooley on Taxation*, s. 538; *Savings Bank v. Portsmouth*, 52 N. H. 17; *Brewer v. Springfield*, 97 Mass. 152); but where the effect of the sale of realty is to cast a cloud upon the title, equity will interfere to prevent it. *Dillon Mun. Corp.*, ss. 737, 738; *Cooley on Taxation*, s. 536; *Brown v. Concord*, 56 N. H. 375, 384; *Hannewinkle v. Georgetown*, 15 Wall. 547; *High on Inj.*, ss. 269, 272, 367, 368; *Key v. Munsell*, 19 Iowa 305. The case of *Norton v. City of Boston*, 119 Mass. 194, cited by the defendants, seems to have been controlled by considerations of the limited jurisdiction of equity in such matters, as declared by the court in *Loud v. Charlestown*, 99 Mass. 208, referring to Mass. Gen. St., c. 12, s. 42, with the additional remark,—“If the legislature had intended to give parties further remedies in equity in respect to taxation, they would have been likely to make express provisions on the subject, with proper limitations.”

*Demurrer overruled.*

SAWYER and BINGHAM, JJ., did not sit.

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FREETO v. HOUGHTON.

The running of the limitation of the time allowed for securing a mechanics' lien by attachment, under Gen. St., c. 125, s. 12, is not suspended by the lienee's breach of contract causing the lienor to abandon his work and never resume it.

ASSUMPSIT, to secure a lien. Facts found by the court, who reserved the question, whether, under Gen. St., c. 125, ss. 11 and 12, and Laws of 1868, c. 1, s. 38, the plaintiff's sixty days lien, for labor performed and materials furnished for erecting the defendant's building, had expired. The last labor was performed and the last materials were furnished more than sixty days before the attachment. The plaintiff

left his job unfinished, and has not resumed it, because the defendant did not pay him according to the contract.

*Shirley and Spring*, for the plaintiff.

*Barnard*, for the defendant.

FOSTER, J. The plaintiff's lien continued sixty days "after such labor performed or materials furnished." Whether it would have continued during a temporary suspension of the work if the job had been completed or resumed under the original or any other contract, we need not inquire. The contract was broken, by the defendant wrongfully, by the plaintiff rightfully. This suit is brought, not upon the contract, but a rescission of it. More than sixty days before the attachment the contract had ceased to be in force, or to be executed by either party. During that period nothing was done or furnished by the plaintiff under the original, or any other, agreement. He has not resumed the job, nor has either party done anything that can, actually or constructively, bring any part of it within sixty days of the attachment. If the true construction of the statute is, that the lien lasts sixty days after the termination of a continuous employment, there is, in this case, no element of continuity that can bridge over any part of the sixty days. The defendant's breach of the contract caused it to be left unexecuted by the plaintiff, but did not alter the fact that the attachment was not made within sixty days "after such labor performed or materials furnished," nor stay the running of the statutory limitation. The lien had expired.

*Case discharged.*

STANLEY, J., did not sit.

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WEEKS v. THE MASCOMA RAKE CO.

A mortgage, under seal, executed by one partner, does not bind the firm, but the partner executing it binds himself.

ASSUMPSIT, on a note made sixteen years before suit, and signed "Mascoma Rake Co., by D. Currier, Agt." Plea, the general issue, with a brief statement of the statute of limitations. Facts found by a referee. The plaintiff introduced a personal mortgage, under seal from the defendants, signed in the same manner as the note, and given to secure it. At the date of the note and mortgage the defendants were co-partners, under the name and style of The Mascoma