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171 N. Y. 538. For a discussion of that case, see 15 HARV. L. REV. 227; 16 HARV. L. REV. 72. For a discussion of the general principles of the right of privacy, see 4 HARV. L. REV. 193-220 18 HARV. L. REV. 625; 21 HARV. L. REV. 63.

SALES — BILL OF LADING — LIABILITY OF ASSIGNEE FOR VENDOR'S BREACH OF CONTRACT. — A vendor shipped cotton under a contract warranting its quality. He took an order bill of lading, attached to it a draft on the vendee, and sold the draft to the A bank. The vendee paid the draft and obtained the bill of lading. Later he sued the bank for a breach of the warranty of quality. *Held*, that he cannot recover. *Mason v. Nelson*, 62 S. E. 625 (N. C.).

This case overrules a previous decision in the same jurisdiction which was criticized in 14 HARV. L. REV. 159. For a discussion of similar cases, see 16 HARV. L. REV. 292.

STATUTE OF FRAUDS — SALES OF GOODS, WARES, AND MERCHANDISE — GOODS ALREADY IN POSSESSION OF VENDEE. — The defendant, having in his possession certain mill culls belonging to the plaintiff, made an oral contract to buy them. The defendant kept silence for five days and then repudiated the contract. *Held*, that the plaintiff cannot recover on the contract. *Godkin v. Weber*, 117 N. W. 628 (Mich.).

The mere fact that the vendee is already in possession of goods does not constitute an acceptance and receipt which will take a contract of sale out of the seventeenth section of the Statute of Frauds. *Silkman Lumber Co. v. Hunholz*, 132 Wis. 610. There must be in addition some conduct making the buyer's possession inconsistent with anything but ownership. *Matter of Hoover*, 33 Hun (N. Y.) 553. Whether such conduct is shown is a question of fact for the jury. *Dorrey v. Pike*, 50 Hun (N. Y.) 534. But the evidence must be clear and unequivocal. *Lillywhite v. Devereux*, 15 M. & W. 285. The courts have gone far in holding that there is no evidence. See *Matter of Hoover, supra*. In the present case retention of the goods for five days before repudiation of the contract is held to be no evidence. Where the vendor has delivered possession to the vendee after the contract, retention is evidence of acceptance, for the vendee has no right to retain unless in pursuance of the agreement. *Gilliat v. Roberts*, 19 L. J. Ex. 410. But where the vendee had possession before the contract, his possession afterwards is not inconsistent with the former relation of the parties.

TAXATION — PROPERTY SUBJECT TO TAXATION — WATER POWER. — A owned land in Massachusetts on which water power was generated and controlled to work his mill in Rhode Island. The water power was assessed for taxation in Massachusetts, and A petitioned to abate this tax on the ground that the water power was not taxable in Massachusetts. *Held*, that he is not entitled to any abatement. *Blackstone Mfg. Co. v. Town of Blackstone*, 85 N. E. 880 (Mass.).

As a general rule realty is taxed where it is situated. See *Potter v. Orange*, 62 N. J. L. 192. An apparent though not a real exception exists in the taxation of water power. Thus, an owner of land may be taxed on his use of water power which is generated on other land without the taxing jurisdiction. *Matter of Hall*, 116 N. Y. App. Div. 729. And the same water power is also taxed where generated although applied elsewhere. *Winnipiseogee, etc., Mfg. Co. v. Gilford*, 64 N. H. 337. In the first case the use of the water power is an element of value in the assessment of the property taxed, as in any other easement. In the second case the capacity of the land to render other land more valuable by providing water power is obviously to be considered in its taxation. See *Quinebaug Reservoir Co. v. Union*, 73 Conn. 294. In each case the value of the realty is enhanced by connection with the water power, and the realty is therefore taxed at a higher rate. See *Amoskeag Mfg. Co. v. Concord*, 66 N. H. 562. Thus, although the water power is a distinct element in assessment for taxation it is not a distinct subject of taxation. Decisions opposed to the main case have overlooked this distinction. *Union Water Power Co. v. City of Auburn*, 90 Me. 60.