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1839 (Laws 1839, c. 145), made a condition of the right thereby granted to condemn land for, and operate, a canal, while constituting an affirmative easement, the franchise constituting the servient estate, continues only so long as the condition remains imposed on the franchise; and there being no grant to nor contract with such abutting owners, the canal company may, with consent of the commonwealth, abandon exercise of the franchise in part, and grant a railroad right to construct a bridge across the canal, making navigation at the point impossible; and this though prior to construction of such canal, such lands had access to deep-water navigation, which was cut off by the canal, and though the contemplated future status of continued free use may have affected the quantum of damages in condemnation for the land for the canal.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 666.]

Appeal from Circuit Court, Norfolk County.

Suit by W. S. Johnson and others against the Lake Drummond Canal & Water Company and others. Bill dismissed, and complainants appeal. Affirmed.

*N. T. Green*, of Norfolk, and *R. H. Bagby*, of Portsmouth, for appellants.

*Hughes, Little & Seawell* and *Hugh C. Davis*, all of Norfolk, and *Theo. W. Reath*, of Philadelphia, Pa., for appellees.

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AMERICAN TOBACCO CO. *v.* CITY OF RICHMOND.  
SAME *v.* CITY OF DANVILLE.

June 12, 1919.

[99 S. E. 777.]

1. **Municipal Corporations (§ 966 (3)\*)—Taxes—Intangible Property—Foreign Corporation.**—Tobacco, bought for purposes of manufacture, and held in Virginia by a foreign corporation having its chief office and business domicile in the city of Richmond, where it conducted its business of manufacturing tobacco in Virginia, was taxable, prior to Acts 1918, c. 101, as intangible property, in Richmond as its situs for taxation.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 232.]

2. **Municipal Corporations (§ 971 (3)\*)—Property Not Concealed or "Omitted"—Reassessment after Two Years—Statute.**—Tobacco of a foreign corporation, not actually concealed or omitted from taxation, but erroneously assessed and the taxes thereon collected by a city on the theory that it was tangible and not intangible property, was not property "omitted" from taxation to entitle the city, in 1917,

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

when the corporation was barred by the lapse of two years, under Code 1904, § 571, from correcting the erroneous assessment, to re-assess the tobacco on the correct theory that it was intangible property.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Omit.]

Error to Hustings Court of Richmond.

Error to Corporation Court of Danville.

Applications by the American Tobacco Company for relief from local taxes against the City of Richmond and the City of Danville. To review orders for the Cities, the Company brings error. Order as to City of Richmond amended and affirmed; order as to City of Danville reversed.

*L. L. Lewis* and *Jas. E. Cannon*, both of Richmond, for appellant.

*H. R. Pollard*, of Richmond, for appellee City of Richmond.

*E. Walton Brown*, of Danville, for appellee City of Danville.

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JOHNSON et al. v. MERRITT et al.

June 12, 1919.

[99 S. E. 785.]

**1. Judicial Sales (§ 48\*)—Sale to Trustee.**—In suits to subject land to judgment liens, where a trustee for a wife offered to purchase land of the husband, defendant, at \$4 an acre, and his offer was accepted by a decree stating that it made the sale absolute and binding, there was a judicial sale, and on entry of the decree the trustee became the equitable owner of the land and trustee of the purchase money for the husband's heirs, and the husband became equitable owner of the money and the trustee of the legal title to the land for the purchaser, and specific performance could have been enforced by either against the other.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 751.]

**2. Judicial Sales (§ 50 (1)\*)—Deed of Commissioner—Estates Conveyed.**—In suits to subject the land to payment of judgment liens, if a trustee for a wife had complied with the terms of a decree accepting his offer to buy land of the husband, defendant, and the court commissioner, pursuant thereto, had conveyed to him, the deed from the commissioner would have conveyed to the trustee all the estate, legal and equitable, of all the parties to the suits in which the decree was entered.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 807.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.