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Contracts

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tion in a party primary if he voted as a member of a different party at a primary election within the next four years preceding.[21] The former provision prohibited such candidacy only if the person had so voted at the next preceding primary.

The perennial problem of a valid classification under the equal protection clause was presented twice last year by city ordinances. One barred from the streets through traffic vehicles having a gross weight over 20,000 pounds. The failure of the ordinance to impose a similar prohibition on other than through traffic on the city streets made this enactment an arbitary classification and void.[22] The other imposed an earned income tax of one per cent of employees' compensation and net business profits from April to October. The tax on net profits was based on seven-twelfths of the year's total; the tax on wages was based on wages earned from April to October. Such classification of assessment was reasonable and constitutional[23] in a decision affirmed by the Supreme Court.[24]

OLIVER SCHROEDER, JR.

CONTRACTS

Promise to Pay "When Funds Available" — Conditional

That a promise to pay "if and when funds are available," is conditional and not absolute, and that the promisee, therefore, is not entitled to recover on such promise unless the promisor is able to pay the debt, was decided in *North Market Ass'n v. Case.*[1] While this would seem to be the "common sense" construction, nevertheless, in some jurisdictions it has been held that a promise to pay when the promisor "is able," or a term of like purport, is an absolute promise to pay within a reasonable time.

Contract for Sale of Land and Construction of House — Construction Contract Not "Merged" in Deed

In various situations when, pursuant to a contract for the sale of land, a deed is delivered and accepted by the buyer, it is held that the rights and obligations under the contract are "merged" in the deed and discharged. While the boundaries of this doctrine are somewhat uncertain, it is generally agreed that collateral undertakings not inconsistent with the

[21] State *ex rel.* Bouse v. Cickelli, 165 Ohio St. 191, 134 N.E.2d 834 (1956).
[22] Richter Concrete Corp. v. City of Reading, 136 N.E.2d 422 (Ohio App. 1956).
[23] Clark v. Cincinnati, 99 Ohio App. 152, 131 N.E.2d 599 (1954).
[24] Clark v. Cincinnati, 163 Ohio St. 532, 127 N.E.2d 363 (1955).