

The highway was legally laid out, and opened to public travel, and included in one of the highway districts of the city. It was built by one Mitchell, under a contract made in behalf of the city by the highway committee of the board of mayor and aldermen. Mitchell's bill for building it was approved by the mayor and the committee on accounts, and paid by the city treasurer. The highway committee were not specifically authorized to make the contract by any vote of the city government, but acted under general powers supposed to be conferred by the rules of the board.

Bailey, for the plaintiff.

Stevens and *G. Y. Sawyer*, for the defendants.

STANLEY, J. The only question raised is, whether the road was constructed by the defendants. They claim that they are not liable for damage done the plaintiff by an improper construction of the road, because Mitchell's contract for building it was not authorized by the city councils, but only by a committee of the board of mayor and aldermen, who had no power to make such a contract. The road was legally laid out; it was built; the city paid for building it; they included it in one of the highway districts of the city; they allow it to be open for public travel, and to be used as a highway;—this is an acceptance of the work, a ratification of the construction and of the contract therefor. By such a ratification the contract was adopted as the contract of the city, and the work of the builder became their work, as if it had been duly authorized before it was done; and they are not relieved, by an original want of authority or formality in the contract, from liability for damage done a land-owner by its improper construction. If the plaintiff had been injured in her person by the defective construction of the road while travelling upon it, the defence here set up would be no answer to her claim. The defendants' ratification of its construction must be equally effective, whether it be her person or her property that is injured by the defect in its construction. There must be

Judgment on the report for the plaintiff.

SAWYER, J., did not sit.

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MANCHESTER MILLS v. MANCHESTER.

On a petition for an abatement of a real estate tax, the appraisal complained of may be compared with the appraisal of other real estate in the same town, for the purpose of ascertaining whether the assessment was proportional, and whether justice requires an abatement.

PETITION, for an abatement of a tax. The court appointed a committee to find and report,—1. The true value of the plaintiffs' estate described in the petition, in April, 1875. 2. The true value of real estate in Manchester other than the plaintiffs', as near as they could estimate it, compared with its assessed value in April, 1875. 3. The rate per cent. of taxation in Manchester for the same year. The question, whether the second point was a proper subject of inquiry, was transferred, on exceptions, from the circuit court.

C. R. Morrison and Briggs & Huse, for the defendants.

Cross & Burnham, for the plaintiffs.

SAWYER, J. Such order is to be made in this case as justice requires—Gen. St., c. 53, s. 11; and justice requires an equal rate of taxation, a proportional assessment, an assessment that will not impose upon the plaintiffs a real estate rate higher than the average rate to which the other owners of real estate in Manchester are subject.

This construction of the statute was approved and acted upon in *Cocheco M. Co. v. Strafford*, 51 N. H. 455, 482, and in subsequent cases; and, so far as it lays down a general rule, subject to such exceptions as justice may possibly require in extraordinary cases, it must be considered settled. The statute makes the proceeding for the abatement of a tax a summary one, free from technical and formal obstructions. The question is, Does justice require an abatement? It is a broad and comprehensive inquiry, not to be restricted by artificial, arbitrary, immutable rules, inconsistent with the substantial justice which the statute was designed to secure. The investigation must have reasonable limits. Unlimited, in point of time and subject-matter, it might produce the injustice of litigation unreasonably protracted. The maxim, *de minimis non curat lex*, may properly be applied in this class of cases. The justice to be administered is to be sufficiently exact for the practical purpose of the legislature, who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles. The points to be considered are such as the nature of each particular case presents. They cannot be fixed by an invariable rule. The form of the inquiries to be made by the court, or submitted to some other tribunal (whether like the form used in this case, or more general, or more special), rests in the discretion of the court at the trial term, and is not open to exception.

Exceptions overruled.

FOSTER, J., did not sit.