

with which the plaintiffs have any personal concern, and with reference to which, upon their objection, the jury are to pass.

The only question in this case is, whether s. 4, c. 70, G. L., prohibiting the appropriation of land for a highway until the damages assessed are paid or tendered, forbids also the acceptance of the report of the commissioners laying out the highway before the jury assess the damages of the plaintiffs.

The establishment of the highway by the acceptance of the report and judgment thereon is a matter of public concern; that of the land-owner's damages a matter of private concern, which cannot be allowed to defeat or obstruct the public necessity or convenience. The case does not raise the question whether the plaintiffs' property can be "appropriated or used" before the damages now or finally assessed are paid or tendered. G. L., c. 70, s. 4.

There is an obvious distinction between the settlement or adjudication of land damages, and the judgment of a court establishing a highway. If it appear by the report of the commissioners that all the land-owners have been legally notified, and their damages assessed, the court may accept the report, and the highway thereby becomes established, even without a formal rendition or record of judgment on the report. *State v. Dover*, 10 N. H. 394, 396.

*Exceptions overruled.*

SMITH, J., did not sit: the others concurred.

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WHEELER v. WHITNEY.

In trespass for an assault, a justification of the assault in self-defence is not available under the general issue.

TRESPASS, for an assault and battery. Plea, the general issue. The court gave the jury certain instructions on the subject of self-defence, to which the defendant excepted.

*Blair & Burleigh* and *Pike & Blodgett*, for the defendant.

*Carpenter* and *Fling*, for the plaintiff.

FOSTER, J. Under the pleadings in this case, the exception to the instructions of the court cannot be sustained. The justification of self-defence was not available. *Jewett v. Goodall*, 19 N. H. 562.

*Exception overruled.*

ALLEN, J., did not sit: the others concurred.