

*Thomas v. Dike*, 11 Vt. 273 ; *Ray v. Haines*, 52 Ill. 485 ; *Baylis v. Dineley*, 3 M. & S. 477 ; *Fisher v. Mowbray*, 8 East 330.

The plaintiff is therefore entitled to so much compensation as, under all the circumstances, she reasonably ought to have, without any deduction of damages for the breach of the contract on her part ; in other words, her claim is to be heard and determined as if no such contract had been made.

*Exceptions sustained.*

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

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KITTREDGE v. GIFFORD & a. and Trustee.

The rights of attaching creditors, who, as against their common debtor, have equal claims to the satisfaction of their respective debts, depend on strict law ; and if one of them, through want of regularity in his proceedings, loses a priority once acquired, it will not be restored by amendment.

FOREIGN ATTACHMENT. The opinion states the case.

*G. B. French*, for the plaintiff.

*C. W. Hoitt*, for the subsequent attaching creditors.

BLODGETT, J. The gist of this case is, that the plaintiff brought a suit against the principal defendants, and summoned as trustee the Pilgrim church, which is the church organization connected with the Second Orthodox Congregational Society in Nashua. The plaintiff intended to summon the society, and supposed the name used by him was the correct one. Service was made upon the trustee by leaving a copy of the writ with one Shattuck, who happened to be an officer in both corporations. Shortly afterwards, other creditors of the defendants brought suits against them, and trusted the society by making service upon Shattuck as an officer thereof. Subsequently the plaintiff learned of his mistake, and thereupon inserted the correct name of the trustee in his writ, and caused an additional service thereof to be made upon Shattuck. All the writs were returnable at the same term of court, and all were duly entered. The plaintiff moved therein to amend his writ by inserting the correct name of the society as trustee, and that the officer have leave to amend his return of the first service accordingly, which was granted, but reserving the rights of the other creditors. The trustee having made disclosure, the plain-

tiff claimed the first right to the funds disclosed; but the presiding justice ruled that his right was subject to the rights of the other attaching creditors, and the plaintiff excepted.

The only question is, Was the ruling correct? To state the question is to answer it affirmatively.

*Exception overruled.*

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

SAWYER & a. v. MANCHESTER & KEENE RAILROAD & Tr.

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The record is the only competent evidence of a vote passed by a town, and is conclusive. It cannot be amended to the injury of one who, relying upon it in good faith, without notice of error, has acquired rights under it. Under an article in the warrant for a town-meeting "to see what sum the town will vote to raise and appropriate as a gratuity to" a railroad, "said road to be completed on or before" a day named, the town may lawfully vote a gratuity upon condition that the road be completed in a reasonable time.

FOREIGN ATTACHMENT. The trustee is the town of Hancock. The plaintiffs claim to charge the trustee for the amount of five per cent. on the appraised valuation of the town for the year 1874. The warrant for a special meeting of the town, held January 25, 1875, contained the following article:

"Second. To see what per cent. of its last valuation, or what sum of money, the town will vote to raise and appropriate as a gratuity to the Manchester & Keene Railroad Company, if it will build a railroad with suitable depots at the village, or within one half mile of the town hall in said town, said road to be completed on or before the first day of January, 1878."

The vote of the town under this article was recorded by the town-clerk as follows:

"Voted on the second article of the warrant to raise five per cent. of the present valuation of said town of Hancock as a gratuity to the Manchester & Keene Railroad, if the company will build and complete a railroad into the village, or within one half mile of the town hall in said Hancock, with suitable depots for the convenience of its inhabitants and the public."

The directors of the railroad having received information of the vote as recorded, at a meeting holden December 14, 1875, "Voted to accept and approve the action of the treasurer of this company accepting the gratuity voted by the citizens of the town of Han-