

majority against the plaintiffs on all motions, elections, and other matters at the meeting. This being so, the election will not be set aside. It is superfluous to cite authorities to such a proposition, but see 1 Cook Stock & Stockh., s. 620, and 1 Mor. Corp., s. 485.

Decree for the plaintiffs in the first case.

Information dismissed in the second case.

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

Hillsborough, }
Dec., 1898. }

COSSAR v. TRUESDALE, *Ex'r, Ap't.*

WHEELER v. SAME.

SAWTELLE v. SAME.

In an appeal from an allowance by the commissioner of an insolvent estate, ignorance of the law furnishes ground for granting a creditor leave to file a declaration, under P. S., c. 193, s. 7.

PROBATE APPEALS from the decision of the commissioner allowing the claims of the plaintiffs against the estate of the testatrix, Martha J. Emery. The executor duly notified the plaintiffs of his appeals, and they were entered in good faith at the trial term. Counsel for the plaintiffs were ignorant of the provision that the creditor should file his declaration, and for this reason failed to do so within thirty days after notice of the appeals. They then petitioned for leave to file declarations on the ground of accident and mistake. Leave was granted, and the executor excepted.

James F. Briggs and Taggart & Bingham, for the plaintiffs.

George W. Prescott and Henry B. Atherton, for the defendant.

BLODGETT, C. J. There was no legal error in permitting the appellees to file their declarations under the statute relating to appeals from commissioners (P. S., c. 193, s. 7), which authorizes the court, "in cases of accident or mistake," to "allow the creditor to file his declaration or to amend it as in other civil actions."

Parker's Appeal, 15 N. H. 24, 26; *Tilton v. Tilton*, 35 N. H. 430, 433; *Holt v. Smart*, 46 N. H. 1; *Hilton v. Olcott*, 58 N. H. 598, 599; *Cutts v. Cutts*, 58 N. H. 602, 603; *Bolles v. Dalton*, 59 N. H. 479, 480; *Kelsea v. Manchester*, 64 N. H. 570.

Exception overruled.

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

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WILLARD v. SULLIVAN.

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The extent to which a cross-examination upon collateral issues shall be permitted for the purpose of testing the memory of a witness is a question of fact for the trial term.

Testimony educed upon a cross-examination as to immaterial issues is not open to contradiction.

ASSUMPSIT, to recover upon a special promise by the owner to pay the past and future bills of a sub-contractor. Facts found by the court.

One Beaudry, the principal contractor, was asked what the final result of his contract with the owner was,— whether the house cost more or less than the contract price. The plaintiff objected on the ground that it was immaterial. The defendant's counsel asked the privilege of inquiring along that line for the purpose of testing the memory of the witness, and was permitted to do so to a considerable extent. The court then ruled that he had inquired sufficiently for this purpose, and the defendant excepted.

The defendant offered to show that he had paid Beaudry in full. The court ruled that the evidence was immaterial. The defendant then offered the evidence to contradict Beaudry's statements which had been received in evidence for the purpose of testing his credibility, as above stated. The evidence was excluded, and the defendant excepted.

Wason & Jackson, for the plaintiff.

Bertis A. Pease and Henry B. Atherton, for the defendant.

BLODGETT, C. J. How far justice required the inquiries to Beaudry, upon the immaterial point whether the house cost more