

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.

Hillsborough, }
Dec., 1898. }

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

or less than the contract price; should be allowed to go for the purpose of testing his memory, was a question of fact to be determined at the trial (*Spalding v. Merrimack*, 67 N. H. 382, 383; *Baldwin v. Wentworth*, 67 N. H. 408, 409); and his statements so made were not open to contradiction upon the other immaterial point as to whether he had been fully paid by the defendant for building the house. *Sumner v. Crawford*, 45 N. H. 416, 418; *Dewey v. Williams*, 43 N. H. 384, 386; *Hersom v. Henderson*, 23 N. H. 498, 506, 507.

Exceptions overruled.

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

Hillsborough, }
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SAUNDERS v. NASHUA.

Where a resolution respecting the duties and compensation of a municipal officer is ambiguous, the contemporaneous construction placed upon it by the parties is competent evidence of the intention of the city councils by which it was adopted.

ASSUMPSIT, for services. Facts found by the court. The plaintiff was the city engineer of Nashua for the years 1893, 1894, and 1895. The duties of the office, as defined by the city ordinance, were, in part, to "make all such surveys, estimates, measurements, and levels, and perform such other duties as may be required of him by the mayor, board of aldermen, or any committee of the city councils or either board thereof"; to collect and file in his office, under the direction of the city councils, "accurate plans of all public grounds, commons, streets, sewers, and main drains, showing all entrances thereto and all estates abutting thereon, with their frontage and owners' names"; to "make or cause to be made complete and accurate plans of public grounds at present existing or that may be hereafter laid out"; and to "make or cause to be made a complete and accurate profile of all public streets at present existing or that may hereafter be laid out," with lines showing the grade of sidewalks. The ordinance provides that the engineer "shall receive twelve hundred dollars per annum for his services as such."

March 10, 1891, the city councils resolved "that a system of maps for the use of the assessors and the engineering department be adopted, and that a committee of five be appointed to