

[REDACTED]

and "whether or not a new domicile has been acquired is primarily a question of fact under all the circumstances of the particular case" (*Bailey v. Bailey, ante*, 259, 261).

The Presiding Justice was not obliged to believe the libelant's assertion that he regarded Manchester as his home, and the dismissal of the libel, after the Court had taken the libelant's testimony under advisement, included a finding that the plaintiff had not sustained his burden of proof. *Kidd v. Trust Co.*, 75 N. H. 154, 155, and cases cited.

Exception overruled.

MARBLE, C. J., was absent.

[REDACTED]

Strafford, }
Oct. 2, 1945. } No. 3550.

ASHTON ROLLINS *v.* CITY OF DOVER.

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origin and obligation, no part of the share of one can be constitutionally exacted of another. And as any one's payment of less than his share leaves more than their shares to be paid by his neighbors, his non-payment of his full share is a violation of their constitutional right.

"Such non-payment is, in effect, a compulsory payment of money, by those who bear their shares of the common burden, to the privileged person who does not bear his share. . . .

"The relief to which the plaintiff is entitled is a release from so much of the tax assessed to him as is in excess of his share. Such order is to be made as justice requires." *Morrison v. Manchester*, 58 N. H. 538, 549, 550.

"A disproportional, unequal assessment, so far as it is disproportional and unequal, is an act, not of taxation, but of confiscation, destitute of that element of equal rights which, under our constitution, is an essential part of the definition of law." *Boston & C. Railroad v. State*, 60 N. H. 87, 94.

Consequently, in petitions for abatement, justice requires, upon equitable principles, such an order that the plaintiff shall pay, as nearly as may be, precisely his share of the tax burden. *Edes v. Boardman*, 58 N. H. 580, 586; *Manchester Mills v. Manchester*, 58 N. H. 38; *Perley v. Dolloff*, 60 N. H. 504; *Fowler v. Springfield*, 64 N. H. 108; *Amoskeag & C. Company v. Manchester*, 70 N. H. 336, 344; *Connecticut & C. Company v. Monroe*, 71 N. H. 473, 479; *Winnipisaukee & C. Company v. Laconia*, 73 N. H. 337; *Granite & C. Company v. Hampton*, 76 N. H. 1, 7. The issue is plainly "whether the petitioner's tax is greater than it should be" with respect to the taxes of other property owners in the taxing district. *Page v. Portsmouth*, 76 N. H. 372.

When the plaintiff shows that his property has been assessed at more than its fair market value, there is no opening for a presumption that other property in the taxing district was assessed at full market value as directed by statute. He must go on and show that his valuation is disproportionate to that of other property in general. *Clark v. Middleton*, 74 N. H. 188. This burden, as already pointed out, the plaintiff herein successfully assumed. His right is to have his property assessed upon the same standard of values as that applied in the taxation of other property in the city. *Boston & Maine Railroad v. State*, 75 N. H. 513, 517. He is not disabled, because his assessed valuation is in excess of true valuation, to show that other property, on the average, is assessed at less than true

value, for the issue of equality is resolved by comparing his assessed valuation, not with the true value, but with the ratio of other property. *Manchester Mills v. Manchester*, 57 N. H. 309, 311, 312, 313; *Amoskeag &c. Company v. Manchester*, 70 N. H. 200, 206. The Superior Court correctly measured the abatement by comparing the ratio between the plaintiff's true and assessed valuation with the ratio between the true and assessed value of all other property in the taxing district. *Winnipiseogee &c. Company v. Laconia*, 74 N. H. 82, 84.

Exceptions overruled.

All concurred.

Cheshire, }
Nov. 6, 1945. } No. 3544.

RICHARD M. FAULKNER & a., *Ap'ts*

v.

WINTHROP FAULKNER, *Trustee, & a.*

ELLEN FAULKNER & a., *Ap'ts v. SAME.*

JOHN C. FAULKNER & a., *Ap'ts v. SAME.*

WILLIAM E. FAULKNER & a., *Ap'ts v. SAME.*