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The State v. Bailey.

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dates and amounts of the notes are given, so that the sum due on them could be ascertained. If the account be erroneous, it contains, in itself, enough to show in what particulars errors have been committed. If the interest is not correctly cast; if the charges for the mortgage and for recording, and the sum of \$500, stated as before advanced, are not due upon the mortgage, the enumeration of them does not mislead any one. It was not the intention of the statute, that such an account should be *omni exceptione major*, but only that a reasonable degree of accuracy should be required; and such, in our opinion, has been attained in this case.

*Judgment on the verdict.*

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THE STATE v. BAILEY & a.

The selectmen of a town are not liable to be indicted for neglecting, on petition, to remove a school-house to a new site, designated, according to the statute, by report of a committee, unless the district, by purchase or otherwise, had obtained the right to place the school-house on the new site.

INDICTMENT, against the selectmen of the town of Salem.

The indictment alleged that, on the 15th day of May, 1847, there was a school-district numbered seven in Salem, with a school-house established therein by the district; and on that day, sundry legal voters in the district petitioned the selectmen for the time being, stating that they were aggrieved by the location; and praying the selectmen to appoint a committee to examine, &c.; that, on the 23d day of November, 1847, the selectmen appointed a committee to examine and report on the location, and the committee, on the 6th of December, reported in writing, that the location ought to be changed; that in their report they selected a location, and described the spot as the property of William Thom; that the district neglected and

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refused to remove the school-house to the above location ; and on the 19th day of March, 1849, sundry legal voters in the district petitioned the defendants, setting forth the above proceedings, and praying the defendants to cause the school-house to be removed and placed on the location recommended by the committee, and to exercise the powers conferred on them in such cases ; yet the defendants have never removed the school-house, but have neglected and refused so to do.

The defendants moved to quash the indictment.

1. Because it appears, that the land alleged to have been designated by said committee for a school-house lot, was not the property of said school-district, but was the property of one William Thom.

2. Because it does not appear that the owner of said lot had refused to sell the same at a reasonable price, or that any petition had been made to the selectmen to lay out the same as a school lot.

3. Because it does not appear that the selectmen had authority to remove the school-house, and place it on said lot.

*Hatch*, County Solicitor, for the State.

*French*, for the defendants.

PERLEY, J. The complaint made in this indictment against the defendants is, that, being selectmen of Salem, they did not remove the school-house in district number seven, in that town, to the spot designated by the committee in their report of December 6, 1847.

That report shows, that the land fixed upon by the committee for the new site of the school-house then belonged to William Thom ; and there are no allegations in the indictment, which show that the district, by purchase, by appraisement under the statute, or in any other way, had acquired the right to place the school-house on that spot. Nor does the indictment show that it was through the neglect or default of the defendants, that the district had failed to obtain that right. There is no allegation

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of any petition to the defendants, requesting them to lay out the lot and appraise the damages; and without such petition they had no authority under statute to lay out and appraise. Rev. Stat. ch. 71, § 7.

The defendants could not place the school-house upon the land of William Thom, without committing a trespass on him. The indictment does not show them to have been guilty of any neglect of their official duty, and must be quashed.