

May 1. Laws 1878, c. 69, s. 7. The construction of c. 55 as thus amended is, that if the blank inventory required by it to be filled out and returned to the selectmen or assessors on or before April 15 is not delivered to any person or corporation on or before that day, or if any person or corporation is prevented by accident, mistake, or misfortune from making and returning such inventory, it shall be done before May 1; and for wilful neglect to do so the penalty of doamage attaches. The wilful omission of the plaintiff to make and return the inventory required of her consequently constituted a proper case for doamage; and the defendants could not do otherwise than impose it, without the violation of their official duty. "If any person . . . shall wilfully omit to make, deliver, and return such inventory . . . as by said chapter fifty-five required, . . . the selectmen or assessors shall ascertain as nearly as may be, and in such manner as they may be able, the amount and value of the property and estate for which, in their opinion, he is liable to be taxed, and shall then set down to such person . . . four times as much as such estate and property, if so inventoried and returned, would be legally taxable." Laws 1879, c. 46, s. 2.

But if the defendants acted erroneously and unlawfully in imposing the doamage, this action could not be maintained. They were acting in a judicial capacity, and presumably in good faith, and therefore are not liable for errors of judgment, unintentional mistakes, irregularities, or illegalities in the assessment. *Edes v. Boardman*, 58 N. H. 580; *Odiorne v. Rand*, 59 N. H. 504, 506; *McDaniel v. Tebbetts*, 60 N. H. 497.

*Exception overruled.*

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

AYERS & a. v. SCHOOL DISTRICT OF CORNISH & a.

The power of a committee, appointed under Gen. Laws, c. 88, s. 2, for the location of a school-house, is not affected by a petition for the calling of a meeting to reconsider the vote appointing them, or by the calling of such a meeting, and a location made by them before the meeting is held is not invalidated by the district's vote to reconsider, or by its vote for a different location.

PETITION, filed October 20, 1891, for an injunction against building a school-house in Cornish school-district on the location fixed by the school board as a district committee, and, on appeal, by the county commissioners.

By vote of the district, March 10, 1891, the school board were empowered to locate and build the school-house. The school board, acting as a committee under the vote of the district, after hearing the parties interested, agreed upon a location May 23, 1891, laid it out by metes and bounds, made return of their doings in writing June 15, 1891, and filed the same with the clerk of the district July 3, 1891, before the district meeting held on that day was opened.

June 6, 1891, seventeen legal voters of the district petitioned the school board to call a school-meeting to see (1) if the school-district would reconsider the vote passed at the last meeting, that the school board be empowered to locate a school-house in division 10, and (2) if the district would by its vote fix upon a site and locate thereon a school-house for division 10. The meeting was called and held July 3, 1891, and the district voted (1) that the vote that the school board be empowered to locate a school-house in division 10 be reconsidered, and (2) that the school-house to be built in division 10 be located on the place of the old one.

June 19, 1891, fifteen legal voters of the district presented to the county commissioners their petition, setting forth that they were aggrieved by the location made by the school board, and praying them to determine the location. The commissioners gave due notice, heard the parties, and found that the petitioners were not aggrieved by the location made by the school board, and that the location should not be changed.

*Albert S. Wait and Edward D. Baker*, for the plaintiffs.

*Ira Colby and Hosea W. Parker*, for the defendants.

CARPENTER, J. The location by the school board acting as a committee chosen by the district was legally made and completed when their report was filed with the clerk. Gen. Laws, c. 88, s. 2. *Hardy v. Houston*, 2 N. H. 309; *Converse v. Porter*, 45 N. H. 385, 397, 399. The power of the committee to act was not affected by the petition for and the calling of the meeting of July 3. The location was established before the opening of the meeting, and was not invalidated by the subsequent vote of the district. In the absence of appeal, the location was binding on the district for the term of five years. Gen. Laws, c. 43, s. 6; *Blake v. Orford*, 64 N. H. 299, 301, 302.

The act of 1885 (Laws 1885, c. 43) contains no provision for locating school-houses. The authority conferred on the school board by section 6, to "provide schools . . . at such places and times as in their judgment shall best subserve the interests of education, and as shall give all the scholars of the town as nearly equal advantages as may be practicable," is not an authority to determine where the school-houses of the district shall be located.

The provisions of the General Laws (*c.* 88, ss. 2, 4, 5, and 6) relating to the location of school-houses are not inconsistent with and are not repealed by the act of 1885. *Adams v. Slate*, 65 N. H. 188.

The plaintiffs have no equitable ground of complaint. The county commissioners are the appellate tribunal provided by law to establish the location of school-houses. From their judgment there is no appeal. The plaintiffs had the opportunity to appear and presumably did appear before them and present fully the merits of the location they desired. They have had or might have had as full and fair a hearing as they could have had on an appeal to the commissioners from the district's vote of July 3, had that been the first action taken on the subject, and with the same result. It must be presumed that the commissioners gave due consideration to the location pointed out by the vote.

*Petition dismissed.*

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

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PIKE v. HOOD & a.

A deed bounding land by the bank or the thread of a brook which has two channels refers to the main channel, in the absence of evidence showing a different intention.

COVENANT, for breach of warranty of land conveyed by the defendants to the plaintiff. The defendants filed a bill in equity for a reformation of the deed. Facts found by the court.

The boundary is described in part as running on Millen's land "to a maple tree marked at the west bank of Long Pond brook so called, thence on the west bank of Long Pond brook so called (southerly) to a stump marked below the mill." The brook flows in a southerly direction, and in its natural state, within the limits referred to, had a channel through which all the water flowed in dry times, and another channel (which left it on the westerly side just below the maple tree and united with it twenty or thirty rods northerly of the stump) through which water flowed at higher stages. The island between the two channels contains four or five acres. Before the date of the deed dams had been erected across both channels a short distance above their junction. No water flowed over the westerly dam except during freshets. The defendants never owned the island, and did not intend to convey it. The plaintiff claimed that the boundary is the west bank of the westerly channel, while the defendants claimed that it is the west bank of the easterly channel. Judgment was ordered for