

The theories of the law governing liquidation, which are advanced in support of the present motion, are not in harmony with the trend of the authorities. The broad proposition, that in the event of the dissolution either of a partnership or a corporation a dissatisfied minority can take from the majority the power to dispose of the assets in any reasonable way, cannot be sustained. Before the control of liquidation is taken from the majority, it must be shown that they have violated their trust; and before a sale negotiated by them can be interfered with, it must appear that it was not a fair sale.

*Rehearing denied.*

All concurred.

Cheshire, }  
March 5, 1912. }

SULLIVAN COUNTY RAILROAD v. KEEFE & a.

Where the description of land taken for a railroad right of way, as contained in the original location, is too indefinite to be the foundation of condemnation proceedings, the validity of the lay-out is to be determined by the conduct of the several landowners in accepting the damages awarded them.

BILL IN EQUITY, to delimit a portion of the plaintiffs' right of way. The plaintiffs contend that some of the defendants are occupying and that others claim the right to occupy parts of their right of way which they acquired by the exercise of eminent domain. The plaintiffs' original location was similar to that of the Concord & Claremont Railroad, which is set forth in *Northern R.R. v. Railroad*, 27 N. H. 183. The questions of law arising upon the defendants' demurrers were transferred without ruling from the April term, 1911, of the superior court by *Pike, J.*

*John E. Allen, Albin & Sawyer, and Edgar W. Smith, for the plaintiffs.*

*Davis & Davis and Thomas E. O'Brien (both of Vermont), and Joseph Madden, Remick & Hollis, and Taggart, Tuttle, Burroughs & Wyman, for the defendants.*

YOUNG, J. The plaintiffs say they should be permitted to maintain this proceeding because locating the line described in the com-

missioners' report will be determinative of the rights of all the parties in respect of the land in dispute. An examination of the bill shows that the description of the land to be taken, as contained in the original location, was too indefinite to be the foundation of condemnation proceedings (*Dolbeer v. Company*, 72 N. H. 562; *Littleton v. Company*, 73 N. H. 11), and that the attempted lay-out was defective. *Northern R.R. v. Railroad*, 27 N. H. 183. Although the lay-out was defective, no one of the defendants except the town of Walpole is in a position to deny that the plaintiffs have a valid location, for their several grantors (the then owners of the land) accepted the damages the commissioners awarded. But as the location depends for its validity on the conduct of the defendants' several grantors, and not on the report of the commissioners, the test to determine whether any one of the different tracts of land in dispute is within the plaintiff's location is to inquire what the one from whom they attempted to take it understood in respect to the matter, and not what the commissioners' report shows. In short, notwithstanding the line described in the report is relevant to the rights of the parties in respect to any of the different tracts, it is not determinative of them. That issue as to each of the different tracts must be determined on its own facts.

*Case discharged.*

All concurred.

Grafton, }  
March, 5 1912. }

PUSHEE v. LYME SCHOOL DISTRICT.

The action of a school board in paying the tuition of a pupil who has attended an academy located out of the state is evidence that such institution was approved by them, as required by chapter 100, Laws 1909.

The school board of a town bordering on the state line, in which no high school is maintained, may in their discretion approve an academy located in another state, on the ground of accessibility, although similar schools in this state are geographically nearer the pupil's residence.

In the exercise of a reasonable discretion, the school board of a town may revoke an approval of an academy located in another state before the completion of the full course of study prescribed therein.

ASSUMPSIT, for tuition paid to St. Johnsbury Academy by the plaintiff for the attendance of his daughter after January 23, 1911.