

STATE v. VALE MILLS.

Admissibility of ancient records, and of reputation as to location of boundary affirmed.

A declaration in a petition for a highway, signed by the defendant's grantor, as to the location of a disputed boundary of another highway, is admissible on the trial of an indictment for obstructing the last mentioned highway.

INDICTMENT for obstructing Main street, in Nashua, by erecting a porch and fences and setting trees in front of the Vale Mills. The defendants claimed that the alleged obstructions were upon their own land, and not within the limits of the highway. The place of the alleged obstructions is on the westerly side of the street, between Salmon brook and the Nashua river, within the limits of the old town of Dunstable. To show the location and boundaries of the highway, the state, subject to exception, introduced from the records and files of the town of Dunstable, preserved in the office of the city clerk of Nashua, a record of the original laying out of the highway by the selectmen of Dunstable, and a vote of the town that the laying out be accepted and recorded. The objection was, that it did not appear that there was any petition or other application to the selectmen for the laying out of the highway. Subject to exception, the state introduced from the files of the town of Dunstable, labelled "Sundry papers from 1801 to 1806," what purported to be an original paper containing the laying out of a road from Salmon brook to the road that leads to Merrimack, &c. The objection was, that it did not appear that the paper was recorded, and that the original paper was not competent.

Several other exceptions taken by the defendants to the admission of extracts from the records of Dunstable, which stand on substantially the same ground as those above, are omitted.

Subject to exception, old men, who lived in the vicinity of the highway fifty years ago and upwards, were allowed to state where the west line of the road in dispute was reputed to be when they were young men.

Against the defendants' objection, the state was allowed to read from the record of the laying out of Salmon street in Nashua, in 1854, on the petition of Thomas W. Gillis and others, in which the highway petitioned for is described as beginning at a point on the east side of Main street, near the north end of the bridge across Salmon brook. Thomas W. Gillis was at the time the owner and occupant of the Vale Mills property, now occupied by the defendants. The jury returned a verdict of guilty, which the defendants move to set aside for the above reasons.

Wallace, Barnes, and Foster, for the state.

French, Stevens, and Burns, for the defendants.

STANLEY, J. The first three exceptions stand on the same ground. The evidence objected to was taken from ancient records, and was competent to be considered by the jury on the question of the laying out of Main street. *Prichard v. Atkinson*, 3 N. H. 335, 338; *State v. Alstead*, 18 N. H. 59; *Willey v. Portsmouth*, 35 N. H. 303, 309, 310; *Hayward v. Bath*, 38 N. H. 179, 187; *Thompson v. Major*, 58 N. H. 242, 244; *Plummer v. Ossipee*, 59 N. H. 56; 1 Greenl. Evid., ss. 139, 483, 493, 496, 497, 501.

The location of the west line of the street, in dispute, was a matter of public and general interest, and the evidence of reputation, to which objection was made, was competent. 1 Greenl. Evid., ss. 128-131.

The portion of the record of the laying out of Salmon street read was competent, as a declaration of a former owner on the question of boundary. The petition described the point of beginning of Salmon street. It was signed by Gillis, under whom the defendants claim, and was in legal effect his declaration as to the location of the east side of the street in dispute. *Smith v. Powers*, 15 N. H. 546; *Smith v. Knight*, 20 N. H. 9; *Hurlburt v. Wheeler*, 40 N. H. 73; *Prescott v. Hayes*, 43 N. H. 596.

The defendants make no argument and cite no authority in support of their exceptions.

Judgment on the verdict.

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

JAQUITH v. SCOTT.

Under Gen. Laws, c. 224, s. 2, a horse is exempt from attachment when reasonably required for actual use, either at the time of the attachment or within a reasonable time thereafter.

Upon the question whether it is so required, evidence of the debtor's intention is competent.

REPLEVIN for a horse. Plea, the general issue, and a brief statement that the horse was attached as the property of the plaintiff.

The plaintiff claimed that the horse was exempt from attachment, under Gen. Laws, c. 224, s. 2, and this was the only question in dispute. Facts found by the court.

The horse was attached November 28, 1882. Previous to the attachment the plaintiff owned a grocery store, and used the horse