

or that of another, the mischiefs which the statute aims to prevent are accomplished; even if the liquor were stolen, the illegal character of the sale or keeping for sale would not be thereby affected.

As there was competent evidence of the defendant's guilt, the entry must be

Exceptions overruled.

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

WINNIPISEOGEE PAPER CO. & a. v. MARSH, *Ex'v.*

A grantee of land cannot recover against a former grantor with full covenants of warranty, expenses which he has incurred in a proceeding to set aside a collector's deed of the premises, made upon a sale for a tax assessed to the grantor before the execution of his deed of warranty, when it appears that the grantor had no notice of the proceeding, and the validity of the tax sale was not established.

APPEALS from the disallowance of claims against the estate of Sylvester Marsh, deceased, by the commissioner of insolvency.

Daniel Barnard, for the plaintiffs.

Bingham & Mitchell, for the defendant.

CLARK, J. The plaintiffs, who are the owners of a tract of land in Crawford's Purchase, claim to recover of the estate of Sylvester Marsh, a former owner, and the grantor with covenants of warranty of the plaintiffs' grantor, expenses incurred in a proceeding instituted by them to annul a tax deed of Crawford's Purchase and Chandler's Purchase, given upon a sale for taxes assessed against Marsh previous to the conveyance by him to the grantor of the plaintiffs. It appears that the suit to set aside the tax deed was instituted without notice to Marsh, and that neither he in his lifetime, nor his representative since his decease, was a party or was notified to become a party to it, and that the suit was settled by agreement of the parties by a decree that the tax deed be annulled and cancelled, and that no costs should be allowed to either party. Upon these facts the plaintiffs' claim cannot be sustained. It does not appear that there was any incumbrance upon the land when the action was commenced. The validity of the adverse tax title has never been established in any way, and Marsh's estate cannot be charged with the costs and expenses of a suit commenced, prosecuted, and settled without direction or

authority from him. Under these circumstances it is unnecessary to consider whether under any circumstances the plaintiffs could have maintained an action upon the covenants contained in Marsh's deed to their grantor.

Judgment for the defendant.

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

LAWRENCE v. TENNANT & a.

Where a document was offered in evidence purporting to be an ancient plot of a town, and an inspection of it, taken in connection with other evidence, established that it was what it purported to be—*Held*, that it was properly admitted.

Declarations of deceased persons as to the boundaries of their land, though not made upon the land, are admissible on an issue between parties not privy in estate to them, if the declarants had means of knowledge as to such boundaries and no apparent interest to misrepresent.

The former existence of a monument at a certain point, and the fact that the corner of a wall was placed by A at the same point, being relevant to the issue, the report of a referee is not set aside because A and B, whose adjoining lands were bounded by the monument, were permitted to testify to a conversation between themselves, at the time the wall was being built, which tended to show that both then understood that the corner of the wall was located at the place of the former monument.

Declarations of deceased persons are admissible to prove the original location of a highway.

TRESPASS, *qu. cl.*, for cutting down and carrying away trees growing on the plaintiff's land in Epsom. Facts found by a referee. The defendants justified under one Steele, who was the owner of two "Home" lots lying adjacent to the plaintiff's land in the "Gore," so-called. The question was as to the true location of the line between the Home lots and the Gore, that being the line between the plaintiff's land and that of Steele.

The plaintiff was shown a plan which was marked "Plot of the town of Epsom, taken on a scale of 100 rods to an inch, July 2, 1800, D. L. Morril," and testified,—“That plan was given to my father by Dr. Sam. Morril, brother of Gov. Morril, who made it. We gave it to Nathan Griffin.” Upon cross-examination he testified,—“Father told me Dr. Morril gave it to him. I saw this

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66	358
64	532
67	186
68	281