

SMITH, J. The declaration of Emery as to the location of his southerly line was not rendered inadmissible by the fact that it was a statement such as his interest might induce him to make. The reasons for a contrary holding (*Shepherd v. Thompson*, 4 N. H. 213, *Smith v. Powers*, 15 N. H. 546, 563, *Morrill v. Foster*, 33 N. H. 379, 386) have been removed by the statutory changes in the law of evidence, by which parties and persons interested are no longer excluded as witnesses. The objection of interest is held to go to the weight of the evidence merely, and not to its competency. *Lawrence v. Tennant*, 64 N. H. 532, 541. Nor does the fact that the predecessors in title of both parties occupied the disputed tract prior to March, 1871, render the evidence inadmissible. The declarations of a former deceased owner of land, made while in possession, are competent upon the question of its boundaries in favor of as well as against one claiming under him. *South Hampton v. Fowler*, 54 N. H. 197, 200; *Wood v. Fiske*, 62 N. H. 173. Either party may put in the declarations of a deceased former owner on the question of boundaries, but on the question of the weight of the evidence it is much stronger for the party who puts them in when they are against the interest of the person who made them. "The true rule admits this traditionary evidence, not as a mere disclaimer or disparagement of title, but on the broader ground of the nature and necessity of a class of cases in which great difficulty in proving original landmarks is likely to arise from lapse of time." *Lawrence v. Tennant*, *ubi supra* 541.

*Exception overruled.*

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

#### DOUCET v. RICHARDSON.

A sale of chattels is invalid as to creditors of the vendor when the property is allowed to remain in his use and possession.

REPLEVIN of a horse. Facts found by the court. July 13, 1889, Onesime Hamel sold the horse in suit to William Doucet (the plaintiff's father) for the price of \$145, to be paid in one year with interest. Doucet resided in Newmarket and carried on the business of a baker, using the horse in his business. During the year ending in July, 1890, William Doucet paid Hamel \$47.90 of the price of the horse. At the end of the year he was unable to pay the balance. August 2, 1890, Hamel, then residing in Plais-tow, went to Newmarket to collect the balance due him. On his way to Doucet's house he saw the plaintiff, who promised to meet him shortly at his father's house. Hamel went to Doucet's

house. Doucet told him he could not pay the balance due for the horse, and must sell him to get the money to pay up. Hamel replied that he need not do that, for he would take him back. Doucet agreed to this. At this point, and before anything further was done, the plaintiff arrived at his father's house, and proposed to buy the horse. Hamel thereupon sold him to the plaintiff. It was agreed between Hamel, William Doucet, and the plaintiff that Hamel should keep the sum of \$47.90, previously paid by William Doucet, in part payment of the price and for interest on the unpaid balance to that date, and that the plaintiff should pay Hamel \$103 in monthly instalments of \$25. Hamel did not take possession of the horse, nor did he undertake to deliver possession of him to the plaintiff, nor did the plaintiff receive possession of him from William Doucet. It was understood between the plaintiff and his father that the latter should use the horse for his keeping as long as the plaintiff should board with his father. The horse remained in William Doucet's stable where he had been previously kept, was cared for and kept by William Doucet, and was used by him in his business as before, until, in July, 1891, he was attached as the property of Doucet & LeClere by the defendant as deputy sheriff on a writ against them. The plaintiff paid for the horse in monthly instalments, varying from \$5 to \$15. The last payment was made June 15, 1891, when Hamel gave the plaintiff a bill of sale of him. The payments were made through his father. Both parties claim judgment. If the plaintiff is entitled to recover, his damages are assessed at one dollar. If the defendant is entitled to judgment, his damages are assessed at \$145.

*William H. Paine*, for the plaintiff.

*Charles H. Knight*, for the defendant.

CLARK, J. William Doucet bought the horse of Hamel and became its owner in July, 1889, and from that time until the attachment by the defendant in July, 1891, the horse was not out of his possession. The contract between William Doucet, Hamel, and the plaintiff vested the title to the horse in the plaintiff, as between those parties; but there being no change of possession, the horse remaining in the custody and use of William Doucet was liable to attachment by his creditors. It is unnecessary to cite authorities to the point that a sale of chattels is invalid as to creditors of the vendor when the property is allowed to remain in his use and possession.

*Judgment for the defendant.*

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