

his secular calling, to the disturbance of others, works of necessity and mercy excepted, on the first day of the week, commonly called the Lord's day." The note was in effect a mere contract, lawfully made, for the payment of a sum of money, with interest to be reckoned as commencing to run on a certain Sunday, and the statute no more prohibits contracts by which interest commences to run on Sunday than it does contracts by which interest runs on Sundays.

The other objection is not that the declaration alleges the note to have been made on Sunday, and if it were, perhaps an amendment, if necessary, might be made after verdict; see *Whittier v. Varney*, 10 N. H. 304; *Marshall v. Riggs*, 2 Strange 1162; *Wilder v. Handy*, 2 Strange 1151; but that the note varies from the declaration. The declaration is not before us, and it does not appear, nor is it suggested, that the date of the note is not correctly stated in the declaration; and if its date is correctly stated, there is no variance in this respect, even if the note appeared to have been in fact made upon a day different from that alleged. 1 Chit. Pl. 257, 258; 2 Greenl. Ev., sec. 160; 1 Saund. Pl. & Ev. 260. There must be

Judgment on the verdict.

CARR v. GRIFFIN.

Where the plaintiff proved the signature of the defendant to a deposition taken upon insufficient notice, and it did not appear that the defendant testified under any compulsion, or that his answers were made under duress or obtained by fraud;—*Held*, that the deposition was properly received to show any admissions of the defendant contained in it.

THE plaintiff, John S. Carr, offered the deposition of the defendant, George Griffin. The defendant objected to its admission on the ground that the notice was not served three days before the caption; and on this ground the deposition was excluded. The plaintiff then offered to prove the defendant's signature to the deposition, and to read the deposition as an admission of the defendant. To this the defendant objected, on the ground that being summoned before a magistrate and compelled to give his deposition, the admissions therein contained were obtained by coercion and duress, and were, therefore, not admissible in evidence. The court ruled that if the defendant's signature were proved, the deposition might be used as an admission, and the defendant excepted. The defendant was a resident of Manchester, and the deposition was taken December 15, 1862, to be used at the January term, 1863, at Manchester. The deposition was referred to in argument. A verdict was taken for the plaintiff, by consent, subject to the defendant's exception, and the questions of law arising in the case were reserved.

S. N. Bell, for the defendant.

L. B. Clough, for the plaintiff.

BARTLETT, J. Whether, under the circumstances stated, the magistrate could properly have compelled the defendant to give his deposition (see *Gilman's case*, 8 Chand. Law Rep. 169; *Burnham v. Stevens*, 33 N. H. 258; *Cilley v. Page*, Rockingham, June T. 1862), is a question not arising here, for it does not appear that the defendant testified under any compulsion, or that his answers were made under duress or obtained by fraud; and although the caption might have been irregular, or even unjustifiable, the admissions of the defendant contained in the deposition were by law competent evidence against him. 1 Greenl. Ev., sec. 193; 2 Stark. Ev. 28; 1 C. & H. Phil. Ev. 357; *Collett v. Keith*, 4 Esp. 212; *Stockfleth v. DeTaslet*, 4 Camp. 10; *Smith v. Beadnell*, 1 Camp. 30; *State v. Flynn*, 36 N. H. 70; *Carter v. Beals*, 44 N. H. 408; *Lawrence v. Heath*, Merrimack county, June term, 1860. There must be

Judgment on the verdict.

WALKER v. PRESCOTT.

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Ale is not spirituous liquor within the meaning of chapter 846 of the laws of this State. A liquor sold as ale may be so mixed with spirituous liquor as to fall within the prohibition of that statute, forbidding the sale of "any wine or spirituous liquor, mixed or unmixed," &c.

ASSUMPSIT, to recover the sum of \$44.50, being a balance due from the defendant, Josiah D. Prescott, for ale sold by the plaintiff, Arthur L. Walker, to him. It appeared that it was sold at various times between January 1, 1853, and November 22, 1854, and that the plaintiff had no license. Upon this evidence the court ruled that the presumption was that ale was not "spirituous liquor" within the meaning of the act in force at the time the sales were made; that the defendant might rebut this presumption by evidence, and that the term "spirituous," as used in the act, meant distilled liquor in contradistinction from fermented liquor; to which ruling the defendant excepted.

The questions arising upon the foregoing case were reserved for the determination of the whole court.

Morrison, Stanley & Clark, and *S. K. Mason*, for the defendant.

Cross & Topliff, for the plaintiff.

BARTLETT, J. Ale, being produced by fermentation and not by distillation, is not "spirituous liquor" within the meaning of