

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

chapter 846 of the Pamphlet Laws of this State. *People v. Crilley*, 20 Barb. 248; *State v. Moore*, 5 Blackf. 118; *Nevin v. Ladue*, 3 Denio 437; *Commonwealth v. Markoe*, 17 Pick. 465; *Commonwealth v. Jordan*, 18 Pick. 228; *Commonwealth v. Thayer*, 5 Met. 246. But what is sold as ale may be so mixed with spirituous liquor as to fall within the meaning of that statute which prohibited the sale of "any wine or spirituous liquor, mixed or unmixed," &c.; and where that is the fact it may be shown by evidence. *Commonwealth v. Bathnick*, 6 Cush. 247; *Commonwealth v. White*, 10 Met. 14; *State v. Wall*, 34 Me. 165.

The case is to be discharged.

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RANLET v. COOK.

Where there are different owners of rights in the same water-power or privilege, and the existence of the right of each has been established at law, or is admitted, but the owners disagree as to the extent of the several rights in the common property, a court of equity will interfere to regulate the use, and to define and limit the respective rights of the several owners.

A provision in a lease of a water-power or privilege for ten years, that the lease shall on certain terms be renewed for an additional term of ten years, is equivalent to a provision that the lease shall be extended for the additional term upon the same conditions.

Such a lease for ten years, containing a provision that on certain conditions it shall be renewed for a further term of ten years, is a good lease for twenty years, if the tenant complies with the conditions specified.

IN EQUITY. The bill alleges that the plaintiff was, and for a long time had been, possessed of a certain mill-privilege on Perley canal (so called), in Laconia, on the Winnipiseogee river; that he holds said privilege by virtue of a certain indenture, dated September 5, 1848, made between the Winnipiseogee Lake Cotton and Woolen Manufacturing Company and the plaintiff, wherein said company demised and leased unto the plaintiff the right to draw water from the lower end of said canal, for the use of two wheels of the kind invented by Alvah Tucker, and of four feet diameter, to have and to hold, &c., for the term of ten years, at a yearly rent of one hundred dollars, payable, &c.; that in said indenture said company covenanted with the plaintiff that they would, at the end of said ten years, renew the said lease for a further term of ten years, the rent for said last ten years to be one hundred and twenty-five dollars annually, and that the said indenture has been renewed accordingly;

That the plaintiff, in the years 1848 and 1849, erected, at the lower end of said canal, a large car manufactory, consisting of three large buildings, flumes, gates, wheels and other works, fitted and designed to operate in the same, and containing a large quantity of valuable machinery, which is operated mainly by two wheels of the kind and dimensions stated in the indenture, which are carried by water from said canal.