

identified." We are of the opinion that the law does not require so particular a description as to enable the officer to identify the liquors wherever they may be. If it did, it is plain that the object of the law would be defeated, as such a description could rarely be given. A general description is sufficient. It is not practicable to give any other. If the liquors seized were not kept for sale and concealed in Doonan's house at the time the warrant was issued, the claimant has not proceeded in the right way to avail himself of that objection.

Demurrer overruled.

PLUMMER v. MESERVE.

Upon an auditor's report being filed, a party waives his right to a trial by jury, if he submits the questions raised by the report to the court for decision, without reserving the right to such a trial.

This case, *assumpsit* by Anson Plummer against David Meserve, had been to an auditor, who reported a balance of accounts in favor of the plaintiff, subject to the opinion of the court upon a special finding of facts with respect to some items. At this term the report was submitted to the court by the parties, and upon the special findings of the auditor the court ordered judgment for the defendant. The plaintiff thereupon signified his election to have a trial of the cause by jury. The court *pro forma* granted the plaintiff's motion for a trial by jury, and ordered the cause continued for that purpose; and the defendant excepted.

Case reserved.

Hastings and Twitchell, for the plaintiff.

G. A. Bingham, for the defendant.

ISAAC W. SMITH, J. Ordinarily it will be regarded as a judicious exercise of the discretion of the judge *à nisi prius* "to decline to examine or to decide any questions of law raised by the report of an auditor, unless the parties distinctly waive the right of a trial by the jury, and of a transfer to the superior court." *King v. Hutchins*, 26 N. H. 139. Each party has his election, upon the coming in of the report, either to submit it to the court for decision, or to go to the jury. If he elects the former course, he is regarded as waiving the latter. Having his choice of two tribunals, he is not permitted to take his chances with one, and, if the result is not satisfactory, resort to the other. When, therefore, an auditor's report is submitted to the court without reserving the right to go to the jury, the report is treated as a case agreed,

and a trial by jury as waived. *Hoyt v. French*, 24 N. H. 198; *Beebe v. Dudley*, 30 N. H. 34; *Goodrich v. Railroad*, 38 N. H. 390.

If we construe this case as reserving the question whether in the exercise of the sound discretion of the court the plaintiff's motion to go to the jury should have been granted, we are constrained to say that we see nothing in the circumstances of the case to take it out of the ordinary operation of the rule. No right of trial by jury was reserved, and no request to transfer questions of law arising upon the auditor's report was made. There seems to be nothing in the circumstances of this case different from those of any other case founded upon the report of an auditor.

No questions of law being reserved, there must be

Judgment for the defendant at the trial term upon the report.

ROCKPORT v. WALDEN, EX'R.

54	167
68	503
54	167
70	24

When a right of defence under the statute of limitations has become vested and perfect, any law which afterwards annuls or takes it away is retrospective and unconstitutional.

So much of chapter 7 of the laws of 1872, as attempts to make the provisions of that statute apply to cases where the time for prosecuting claims had expired at the time of the passage of said act, is unconstitutional and void.

BILL IN EQUITY by the town of Rockport against Richard Walden, executor of William B. Russell.

The bill alleges that in the court of common pleas for this county, February term, 1849, the plaintiffs recovered judgment against the testator for \$35.50 damages, and \$4.95 costs of suit, which judgment remains unsatisfied; that an execution founded upon this judgment was issued March 20, 1849, but the testator so concealed his property that no levy of the execution could be made; that the testator died about the first of January, 1868, and the defendant is his executor; that the plaintiffs presented the execution to the defendant and demanded payment thereof, March 17, 1868, but the defendant, further concealing the property and effects of the testator, replied that he had nothing wherewith to satisfy the judgment. The bill alleges that the plaintiffs, being unable to discover any assets of the testator, delayed the prosecution of their claim "for the said Walden, executor, to return an inventory of the estate of said Russell, or for him to settle his accounts of administering said estate," and afterwards, in the summer of 1872 (the defendant not having returned an inventory nor settled his accounts), the plaintiffs discovered that the said Russell in fact left assets more than enough to satisfy the plaintiffs' claim, and they there-