
 BELKNAP.

 FRENCH v. SMITH.
 58a 323;
68 412

When there is no estoppel, the question whether a transfer of goods is a sale or a gift, is a question of the understanding of the parties.

ASSUMPSIT, on a note given for the price of goods sold by the plaintiff to the defendant. The goods were the stock and fixtures of a restaurant. The plaintiff had, in the restaurant, intoxicating liquors, which he either sold or gave to the defendant at the time of the sale of the other goods. The defendant excepted to the refusal of the court to charge, that, if the parties understood the defendant was to have the liquors, the plaintiff cannot recover, although he may have stated to the defendant that the liquors should not be included in the sale. Verdict for the plaintiff: motion of the defendant for a new trial.

Key and Hibbard, for the defendant.

Jewell and Whipple, for the plaintiff.

DOE, C. J. There being no estoppel, the liquors were sold, if the understanding of the parties (proved by competent evidence) was that they were included in the sale: they were a gift, if the parties understood they were a gift. A transaction, intended and understood to be a sale, would be a sale, whatever pretence of a donation might be made. The instruction requested was properly refused, because the parties understood that the defendant was to have the liquors, whether they were sold or whether they were given to him.

Judgment on the verdict.

SMITH, J., did not sit.

 CARROLL.

HALE v. BROWN & a.

An attachment, made more than four months before the commencement of bankruptcy proceedings, but expressly limited to securing a workman's lien, is not a foundation for a judgment *in rem* for a debt which is not a lien.

The finding of a referee, appointed in a suit at law, by the court, with the consent of parties, under the act of 1876, that a certain judgment should