

that they should be instructed that the unsworn statement was not evidence, and could have no weight in favor of the party improperly making it. The other party does his duty when he objects to the wrong inflicted upon him, and does not allow it to be understood that he waives his objection. *Bullard v. Boston & Maine Railroad*, 64 N. H. 27, 32. But counsel did nothing to rectify his wrong. He neither retracted his statement nor requested the court to instruct the jury to disregard it, and, so far as appears, they were not so instructed. The first exception is therefore sustained. See, generally, *Hilliard v. Beattie*, 59 N. H. 462; *Cross v. Grant*, 62 N. H. ; *Martin v. State*, 63 Miss. 505—S. C., 56 Am. Rep. 812, and note. The remaining exception need not be considered.

Verdict set aside.

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

STATE v. WELCH.

64	525
71	437
64	525
72	397

On the trial of an indictment for the illegal sale of liquor to A, evidence of sales to B and C within a year before the first day of the term at which the indictment was found is admissible, as tending to show that the defendant was engaged in the business of selling liquor.

Evidence that D was found intoxicated on the defendant's premises within the same period is admissible for the same purpose.

INDICTMENT, for the illegal sale of cider to one Hannah J. Nason, November 20, 1887. Against the defendant's objection, the state was permitted to prove sales to one James Cole, in December, 1887, and to show by one Joseph Cole, that in June, 1887, he drank fermented cider at the defendant's premises, bought there by other persons in less quantities than ten gallons at a time; also, that on one occasion within a year before the first day of the term at which the indictment was found, a witness bought fermented cider of the defendant in less quantity than ten gallons, and within the same period had found her brother there intoxicated by cider. The jury were instructed that the evidence excepted to was competent only so far as it tended to show that the defendant was guilty of the sale to Mrs. Nason in the fall of 1887.

F. B. Osgood, solicitor, for the state.

John B. Nash, for the defendant.

BINGHAM, J. The indictment charged an illegal sale of cider to Hannah J. Nason. The state was permitted to prove sales to other parties in the year next preceding the first day of the term when the indictment was found. It was competent to prove that the respondent kept cider for sale; that he was in the business. *State v. Shaw*, 58 N. H. 72; *State v. Havey*, 58 N. H. 377, 378, 379. The evidence tended to show it.

Exception overruled.

LANGMAID, *Ex'r*, *v.* HURD & *a.*

D by will gave to "H and family, jointly" one thousand dollars. *Held*, that the legacy should be divided in equal shares between H, his wife, and daughter, who constituted the family at the death of the testator, and that a child born afterwards took nothing.

BILL IN EQUITY, by the executor of Charles C. Drake, asking direction from the court as to his duty under the following clause in the will: "I give and bequeath unto Frank Hurd and family, jointly, the sum of one thousand dollars." At the time of Drake's death the family of Frank Hurd, besides himself, consisted of his wife and one daughter, now about six years old. Since then another daughter has been born, who is now about three months old.

H. G. Sargent, for the plaintiff.

E. H. Woodman, for the defendants.

DOE, C. J. The bequest "unto Frank Hurd and family, jointly," is not a clear expression of an intention to create a joint tenancy. The testator seems to use the word "jointly" in its ordinary sense, to signify such a collective body as "joint heirs," who are "deemed tenants in common." G. L., c. 135, ss. 14, 15. A gift to Frank and his family of a carriage "for family use," or of a house "for a family home," might keep the property undivided during Frank's life, or so long as the donees desired to hold it in common. Here is a gift of money with no expressed purpose, and no evidence sufficient for the inference of a purpose, that the fund shall be or may be unequally divided or unequally enjoyed, or shall be held in trust, or that the ascertainment of the number and identity of the legatees and the amount of Frank's share shall be postponed until Frank's death. The will does not expressly fix the time when a person must be a member of Frank's family in order to receive a share of the one thousand dollars. If the testator