

and used by the defendants, and the others, not conforming to the order in dimensions, quality, quantity, and price, were rejected, and piled in their yard, where they remained subject to the plaintiffs' order. The defendants seasonably informed the plaintiffs of their action, and tendered the price of the accepted lots.

*C. W. Hoitt and Salloway & Topliff*, for the plaintiffs.

*G. B. French*, for the defendants, cited *Young & Conant Mfg. Co. v. Wakefield*, 121 Mass. 91; *Miner v. Bradley*, 22 Pick. 457; *Johnson v. Johnson*, 3 B. & P. 162; *Manning v. Humphreys*, 3 E. D. Smith 218; *Cohen v. Pemberton*, 53 Conn. 221; *Lampson v. Cummings*, 52 Mich. 491.

DOE, C. J. The defendants rightfully inspected and measured the lumber before determining to accept or reject it. Benj. Sales, ss. 918, 1042, 1049-1051, 1342, 1343, 1348-1350. Without an express stipulation that the contract was or was not entire, the parties might have understood that it was severable in such a sense that the defendants could accept the lots that conformed to the contract, and reject the rest. In the general finding for the defendants there is no error of law.

*Judgment for the defendants.*

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

[Grafton, December, 1889.]

STATE (*ex rel. Blanpied & a.*) v. CURRIER.

PETITION, of twenty legal voters for the abatement of a liquor nuisance. The defendant demanded, and it was held, that he might have a trial by jury upon the question whether he used the building described in the petition for the purposes alleged. *State v. Saunders*, 66 N. H. 39, 89, 90.

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

*W. H. Cotton*, for the plaintiff.

*Bingham, Mitchell & Batchellor*, for the defendant.

66	622
70	282
66	622
72	186