

PIKE, J. The measure of damages for the breach of the contract was the difference between the agreed price and the value at the time the contract was broken. *Gordon v. Norris*, 49 N. H. 376, 386; *Hurd v. Dunsmore*, 63 N. H. 171, 173; *Hutt v. Hickey*, 67 N. H. 411, 417. The finding of the referee that the defendants did not decline to fill the order until December 8, and that until that time the plaintiff relied upon having the order filled, implies a finding that the original time of delivery was, by the agreement of the parties, indefinitely extended. By reason of such extension the contract was not broken until the defendants refused to fill the order, and testimony as to the value of news board at this time was competent upon the question of damages.

Evidence that the weight of a ton of news board, "count 53, caliper  $\frac{45}{1000}$ ," was more than an ordinary ton was properly received. 1 Gr. Ev., s. 280. Technical words must be construed according to their appropriate meaning. P. S., c. 2, s. 2. The objection of the defendants that because of the expression in their acceptance,— "same as last boards shipped you by us,"— the plaintiff was limited to showing how many pounds per ton he received under the prior shipment, cannot be sustained. In the absence of evidence to the contrary, it must be taken for granted that the technical words in each contract were used with the same meaning, and that the plaintiff received the same number of pounds for a ton under the former shipment that it is found he should have received under the present contract. It was open to the defendants to show that such was not the fact.

*Exceptions overruled.*

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

Carroll, }  
Dec., 1900. }

STATE v. LAGER BEER *¶ a.*

Whiskey kept for sale in violation of law is not subject to seizure upon a complaint charging the unlawful keeping for sale of lager beer and other malt, spirituous liquor.

LABEL, for forfeiture of liquor kept for sale in violation of law and seized upon a warrant issued upon a complaint, the material part of which is as follows: "Hayes L. Whiting . . . did unlawfully keep for sale a large quantity of lager beer and other malt,

spirituous liquor, to wit, one hundred gallons of lager beer and other malt, spirituous liquor." Upon this complaint a warrant was issued, both lager beer and whiskey were seized, and the libel was subsequently filed.

*Josiah H. Hobbs*, solicitor, for the state.

*Arthur L. Foote*, for the claimant.

BLODGETT, C. J. So far as appears, the libel may be maintained against the lager beer. The complaint upon which it was seized sets forth with sufficient legal certainty the kind and quantity of the liquor (*State v. Jenkins*, 64 N. H. 375), alleges that it was unlawfully kept for sale, and charges that it was spirituous. By statute, "any spirituous liquor kept for sale in violation of law . . . may be seized," etc. (P. S., c. 112, s. 30), and "by the words . . . 'spirituous liquor' . . . shall be intended all spirituous or intoxicating liquor, . . . unless otherwise expressly declared." *Ib.*, c. 2, s. 33. There being no such declaration as to fermented intoxicating liquor, lager beer, if intoxicating, is consequently subject to seizure and forfeiture (*State v. Lager Beer*, 68 N. H. 377); and whether it is intoxicating may be shown by evidence. *Walker v. Prescott*, 44 N. H. 511, 512.

As to the whiskey a different case is presented, and the libel cannot be maintained. Being produced by distillation and not by fermentation, the whiskey was not subject to lawful seizure upon the complaint, which, it must be borne in mind, was for unlawfully keeping for sale "lager beer and other malt, spirituous liquor" only.

*Case discharged.*

All concurred.