

sumptions might operate harshly, the admitted facts amply demonstrate that this case is not such an one.

Exceptions overruled.

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

Strafford, }
Dec., 1897. }

STATE v. JACQUES.

One who keeps a restaurant open on the Lord's day for the sale of food, to be eaten on the premises, may be convicted of keeping a shop open on Sunday for the reception of company.

COMPLAINT, for keeping a shop open on Sunday for the reception of company. The defendant testified that he kept his place open on Sunday afternoon, and a few people were in there; that he sold sandwiches, pies, ice cream, and frankforts, which were eaten in the shop. There were probably a hundred people in the shop that day.

The defendant requested the court to charge the jury that all his sales were of the necessaries of life. The court declined to give the instructions, and, subject to exception, charged the jury that the buying the food and eating it on the premises was a violation of the law and would authorize the jury to find a verdict against the defendant. The jury returned a verdict of guilty.

William F. Nason, solicitor, for the state.

William S. Pierce, for the defendant.

WALLACE, J. "No person shall keep his shop, warehouse, cellar, restaurant, or workshop open for the reception of company, or shall sell or expose for sale any merchandise whatsoever on the Lord's day; but this section shall not be construed to prevent the entertainment of boarders, nor the sale of milk, bread, and other necessaries of life, nor drugs and medicines." P. S., c. 271, s. 5. One of the offences created by this statute is the keeping open a shop, restaurant, or other similar place for the reception of company on Sunday. When the defendant kept open his shop on Sunday for the reception of the people who came there, and entertained them with food and ice cream which he sold them to be eaten on the premises, he committed the offence

charged, unless what he did came within the exception in the statute allowing the sale of the necessaries of life. One effect of the exception is to restrict the statute so that it will not apply to "the sale of milk, bread, and other necessaries of life." It does not, however, permit the keeping open on Sunday of shops, restaurants, and other places named, for the reception of company. The opening of a shop on Sunday, and the sale of food and ice cream to be eaten upon the premises, or furnishing similar entertainment, is a keeping open of the place for the reception of company within the meaning of the statute, to which the excepting clause does not apply. To give the exception any greater effect would be to emasculate the statute and prevent it from accomplishing the object intended, which is to prevent shops, restaurants, and other similar places from being open for the reception of company and the transaction of their regular business on Sunday. There was no error in refusing to charge the jury as requested, or in the instructions given, which, construed in view of the facts, were in effect that the selling of food to be eaten on the premises was a violation of law.

Exceptions overruled.

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

Belknap, }
Dec., 1897. }

SANBORN v. LADD.

A note payable on demand, a mortgage securing the payment of the note, and a contemporaneous written agreement providing that if the mortgagor shall, during his life, pay the mortgagee or her legal representative five dollars a month and keep the buildings on the mortgaged premises reasonably insured for her benefit, the mortgage shall not be foreclosed, but if he shall die or make default in these matters. "the payment of the note or foreclosure would be demanded," are construed as one contract; and the employment of three papers, instead of two, to express it does not impair its validity or change its effect.

A default by the mortgagor in the making of the monthly payments causes the principal of the note to become due, and renders the right to foreclose the mortgage complete.

WRIT OF ENTRY, to foreclose a mortgage. BILL IN EQUITY, by the defendant, praying for an injunction to restrain the plaintiff from prosecuting the action. Facts found by the court.