

Hillsborough, }
 Dec., 1899. }

STATE v. RYAN.

It is no defence to an indictment charging a hotel-keeper with furnishing oleomargarine to a guest without first notifying him that the substance is not butter, that the respondent acted without unlawful intent and under a mistake of fact.

INDICTMENT, for furnishing oleomargarine in the place of butter to a guest of the defendant's hotel, in violation of section 3, chapter 115, Laws 1895, enacting that it shall be unlawful for any person to furnish or cause to be furnished, in any hotel, etc., to any guest or patron, oleomargarine, butterine, or any similar substance, without first notifying such guest or patron that the substance so furnished is not butter. Trial by jury, and verdict for the state.

The defendant excepted to the refusal of the court to instruct the jury that the state must prove that he knowingly and intentionally furnished oleomargarine instead of butter, and also to the denial of his request for an instruction that, in order to warrant his conviction, the jury "must find that the defendant knew, or had reason to know by the exercise of due diligence, that the substance so furnished on his hotel table was not butter."

James P. Tuttle, solicitor, for the state.

Doyle & Lucier and *Wason & Jackson*, for the defendant.

BLODGETT, C. J. The instructions requested by the defendant were properly denied.

It is true that "in the earlier history of the common law only such acts were deemed criminal as had in them the vicious element of an unlawful intent, indicating a deviation from moral rectitude; but this quality has ceased to be essential, and now acts unobjectionable in a moral view, except so far as being prohibited by law makes them so, constitute a considerable portion of the criminal code. In such statutes the act is expressly prohibited, without reference to the intent or purpose of the party committing it, and is usually of the class in which the person committing it is under no obligation to act unless he knows he can do so lawfully. Under these statutes it is not a defence that the person acted honestly and in good faith, under a mistake of fact. He is bound to know the fact as well as the law, and he acts at his peril. These statutes do not make a guilty knowledge one of the ingredients of the offence." *State v. Cornish*, 66 N. H. 329, 330, and numerous

authorities there cited; *State v. Campbell*, 64 N. H. 402-405; *Commonwealth v. Uhrig*, 138 Mass. 492; *Commonwealth v. Savery*, 145 Mass. 212; *State v. Smith*, 10 R. I. 258; *State v. Hughes*, 16 R. I. 403.

The statute in question clearly comes within this class, and having been enacted nearly five years subsequent to the decision in *State v. Cornish*, of which the legislature must be deemed to have had knowledge, no room for reasonable doubt remains that the legislative intent was that the statute should be construed in accordance with its language and agreeably to the construction obtaining not only in *State v. Cornish*, but in preceding cases.

Exceptions overruled.

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

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BEARD v. HENNIKER AND HILLSBOROUGH.

Where a highway has been discontinued prior to the rendition of final judgment in an action for the assessment of land damages, a landowner can recover only for damages actually sustained.

APPEAL from the assessment of damages for land taken for a highway. December 31, 1896, the joint boards of selectmen of the defendant towns laid a highway across the petitioner's land and assessed her damages. She took an appeal, both from the laying out and from the assessment of damages. At the September term, 1897, she amended by striking out the appeal from the laying out. Subsequently the towns voted to discontinue the highway and filed a petition to procure the assent of the court thereto. That petition and the one in this case were referred to the commissioners for the counties of Merrimack and Hillsborough. They reported that the highway ought to be discontinued; that the plaintiff's damages, (1) assuming that the highway was to be built, were \$275; (2) assuming that it was to be discontinued, were \$90; and (3) that the plaintiff suffered no special damage, by reason of the discontinuance of the highway, not suffered by the general public. The highway was not built. As laid out, it followed a private way. Prior to the laying out, the travel over this route was permissive; since then there has been no change either in the kind or amount of travel, except that it has not been permissive.