

The Queen Vs. Peterson

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All316

Judge : Pearson, J.

Appellant : The Queen

Respondent : Peterson

Judgement :

Pearson, J.

1. I proceed to consider whether the prisoner has been rightly convicted of an attempt to commit the offence defined in Section 494, Indian Penal Code. He was charged with and has been found guilty of 'attempting to marry E.A. Guise by causing' the publication of the banns of marriage between them when he, being a Christian, had a wife alive.' The question shortly is whether the publication of the banns of marriage is an attempt to marry. An attempt to commit a crime is to be distinguished from an intention to commit it and from preparation made for its commission. 'Preparation consists in devising or arranging the means or measures necessary for the commission of the offence; the attempt is the direct movement towards the commission after the preparations have been made'--Mayne's Commentaries on Section 511, Indian Penal Code. In one of the cases cited by Mr. Mayne in his Commentaries on the Indian Penal Code in illustration of the

above doctrine, it was ruled that there could be no attempt to contract a marriage until the parties stood before the Magistrate about to begin the ceremony. It would follow in the present case that the publication of the banns was not an attempt on the prisoner's part to marry Miss Guise, but only a preparation for such an attempt. The publication of banns may or may not be, in cases in which a special license is not obtained, a condition essential to the validity of a marriage, but common sense forbids us to regard either the publication of the banns or the procuring of the license as a part of the marriage ceremony. If the rule laid down in America, that an attempt can only be manifested by acts which would end in the consummation of the offence, but for the intervention of circumstances independent of the will of the party, be accepted, it is clear that the Prisoners' Act, in causing the banns of marriage between himself and Miss Guise to be published was not, in the eye of the law, an attempt to marry her, inasmuch as he might, before any ceremony or marriage was commenced, have willed not to carry out his criminal intention of marrying her. For the reasons above stated the verdict of the jury by which the prisoner is convicted of an offence punishable under Sections 511, 494, Indian Penal Code, and the sentence passed on him under those sections by the Sessions Court, must be and hereby are annulled.