

Queen-empress Vs. Fischer

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Court : Chennai

Decided On : Mar-03-1891

Reported in : (1891)ILR14Mad342

Judge : Arthur J.H. Collins, Kt., C.J., ;Muttusami Ayyar and ;Shephard, JJ.

Appellant : Queen-empress

Respondent : Fischer

Judgement :

Arthur J.H. Collins, Kt., C.J.

1. This is an appeal by Mr. Robert Fischer, a Barrister-at-Law, who has been convicted under Section 68 of the Indian Christian Marriage Act of 1872.

2. The facts of the case appear to be as follows: Mr. Robert Fischer is a Lay Trustee of St. George's Church, Madura, and in April and May last the Native' Pastor of that Church published the banns of marriage between Samuel Louis Ormsby and Miss Bibiana Elizabeth O'Connor, both of whom profess the Christian religion. A day was appointed for the marriage ceremony to take place; but the incumbent of the Church was away on duty at Kodaikanal and the Native Pastor left Madura apparently on some private business three days before the marriage was to take place in spite of urgent requests that he would stay and perform, the ceremony. Mr. Fischer was then asked to perform the ceremony, as he was a Lay Trustee of the Church. Mr. Fischer sent a letter to Mr. Wansbrough, the

Incumbent, informing that gentleman that he intended to perform the marriage ceremony and gave as a reason that Mr. Johnson, the Marriage Registrar, had told him that there were precedents for such a course, and further, that the mother of the bride had gone to considerable expense in making preparations, and great inconvenience would ensue if the service did not take place on the day appointed. Mr. Johnson, the Marriage Registrar, in his evidence says, that Mr. Fischer asked him on 5th May 1890 whether laymen could marry people, and that he replied he thought they could, and gave as an instance the marriage of his grandmother. On the 7th May 1890, Mr. Fischer solemnised a marriage between Mr. Ormsby and Miss O'Connor according to the rites of the Church of England, and the question to be decided is, has Mr. Fischer committed an offence against the provisions of Act XV of 1872, Section 68. The section is as follows:-' Whoever, not being authorised under this Act to solemnise a marriage in the absence of a Marriage Registrar of the district in which such marriage is solemnised, knowingly solemnises a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years and not exceeding ten years, or, if the offender be an European or American, with penal servitude according to the provisions of Act No. XXIV of 1855 (to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts), and shall also be liable to fine.'

3. It was contended on behalf of the appellant that no offence has been committed

(1) because Section 68 can only refer to marriages that were intended to be solemnised by or in the presence of a Marriage Registrar--Sub-Section 4 of Section 5;

(2) because the Registrar was, in fact, present when the ceremony was performed;

(3) because there was no proof that the accused knowingly committed a wrongful act and the section requires such proof.

4. Act V of 1852 refers solely to civil marriages and contains sections similar to those found in the Act of William IV., which first allowed a marriage before a registrar and made it an offence to solemnise a marriage under the Act without the presence of a Marriage Registrar.

5. The next Act of importance (Act XXV of 1864 was repealed by Act V of 1865) was Act V of 1865: the preamble of that Act states that it is expedient to provide further for the solemnisation of marriages in India of persons professing the Christian religion and applies to all marriages of Christians whether solemnised by a minister of religion or a Marriage Registrar. The sixth section of the Act enacts who are authorized to solemnise a marriage and Section 56 provides a penalty against unauthorised persons performing such ceremony in these words:

Whoever, not being authorised under the sixth section to solemnise a marriage shall, from and after the commencement of this Act, in the absence of a Marriage Registrar of the district in which such marriage is solemnised, knowingly and wilfully solemnise a marriage between persons, one or both of whom shall profess the Christian religion, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, which may extend to ten years, and shall also be liable to fine; or in lieu of a sentence of imprisonment for seven years or upwards, to transportation for a term of not less than seven years and not exceeding ten years; or if the offender be an European or American, to penal servitude according to the provisions of Act XXIV of 1855 (to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts).

6. In 1872 Act XV was passed to consolidate and amend the law relating to the solemnisation in India of the marriages of the persons professing the Christian religion. It repeals so much of the Act of 1852 as had not already been repealed and with an unimportant exception, the Act V of 1865, and Section 5 of the Act of 1872 provides who may solemnise marriages in India between Christians, and Sections 66 to 76 enact penalties against those persons who commit any offence against the provision of the Act.

7. It appears to me therefore that these sections apply to all persons, who are not authorized to do so, solemnising a marriage between Christians and do not apply simply to marriages that are to take place before a Marriage Registrar.

8. With regard to the contention that no offence has been committed, because a Marriage Registrar was, in fact, present, it is clear that the Act means that the Registrar must be present qua Registrar and Sections 38 to 59 provide that certain notices, publication of notices and other formalities shall take place before a marriage can be solemnised either by or in the presence of a Marriage Registrar. It is not pretended that any of these provisions were complied with. Mr. Johnson did not attend as Registrar, but was in attendance merely as a relation of the bride for the purpose of giving her away; it is impossible to believe that under these circumstances the marriage has taken place in accordance with sub- Section 4, Section 5 of this Act.

9. The third objection was the one most strenuously urged by the learned Counsel. He contended that there was an entire absence of proof that Mr. Fischer had any guilty intention or knowledge that he was doing wrong when he solemnised this marriage; that he thought he was authorised to perform a marriage under the circumstances being a Lay Trustee of the Church; that he was utterly unaware of the provision of Act XV of 1872 and it is necessary for the prosecution to prove that he knew he was not authorised to perform a marriage, and that his statement made before the Committing Magistrate is true, wherein he says he believed he was authorised by law to perform the marriage, and that, as Lay Trustee, acting for Mr. Wansbrough, it was his duty to do so. I regret to say that I cannot accept this statement--it is impossible for me to believe that a Barrister of many years standing thought that it was his duty to solemnise a marriage in a Church according to the rights of the Church of England, because he happened to be a Lay Trustee of that Church and the incumbent happened to be away. In his letter, dated 11th July 1890, to the Registrar of the Diocese (Exhibit C), he says he told the mother of the bride, that he thought he had no power to marry, but that the Registrar had said he had known of instances where Lay Trustees had performed the ceremony; that he advised the bride and bridegroom to go through the ceremony again when the incumbent returned or to get married before the

Registrar, and that it was the urgency of the case and the earnest entreaty of Mr. Johnson and Mrs. O'Connor that induced him to preform the ceremony, though unwillingly. I am of opinion, therefore, that Mr. Fischer did not believe he was only performing a duty or that he was authorised by law to celebrate such a marriage. I believe he acted with great recklessness, and, as stated by the Sessions Judge, with a culpable want of care and caution in performing this marriage not knowing that he was authorised to do so. The appellant, if he had looked at Act XV of 1872, Section 5, would have seen at once that he was not one of the persons authorised to perform a marriage ceremony; and Mr. Fischer's assumed or real ignorance of the law cannot avail him and I must hold Mr. Fischer liable for his act. It may well be that he was not aware he was committing so grave an offence carrying with it such a severe penalty as is provided in Section 68. In some exceptional cases ignorance of the law may be pleaded as in the cases of *Ellis v. Kelly* 30 L.J.M.C. 35 and *Taylor v. Newman* 32 L.J.M.C. 186, cited by Mr. Wedderburn; but those cases were decided upon the words of particular statutes and do not apply to this case. In *Beg. v. Prince* L.R. 2. C.C.R. 154, the law as to guilty knowledge is very fully discussed and supports the view I take. In the case of *Beg. v. Bishop* L.R. 5 Q.B.D. 259, the defendant was tried before Mr. Justice Stephen for receiving more than two lunatics into a house not duly licensed, upon an indictment, on 8 and 9 Vic, cap. 100, Section 44. It was proved that the defendant did receive more than two persons whom the Jury found to be lunatics into his house believing honestly and on reasonable grounds that they were not lunatics. The Judge held that this was immaterial having regard to the scope of the Act and the object for which it was apparently passed, and the Court upheld that ruling. I am further of opinion that the only facts necessary to support a conviction under Section 68 are these-- first, it must be proved that the accused was not authorised under the Act to solemnise a marriage in the absence of a Marriage Registrar, and secondly, that he knowingly solemnised a marriage in the absence of such Registrar between persons one or both of whom was a Christian or Christians. Both these points have been proved by the prosecution in this case.

10. The Act XV of 1872 is, as stated by both the learned Counsel who appeared in the case and that statement is acquiesced in by the Judges, very badly and clumsily drawn; but I am of opinion that the word 'knowingly' only applies to the

fact that the person so solemnising a marriage is aware that he is solemnising a marriage and that the person or persons he is professing to marry is or are a Christian or Christians.

11. I am of opinion, therefore, that the conviction of the appellant was right, and I would dismiss this appeal.

Muttusami Ayyar, J.

12. The appellant, Mr. Robert Fischer, has been convicted under Section 68 of Act XV of 1872. As to the facts of the case, there is no dispute. On the 5th May 1890, Mr. Fischer solemnised a marriage between two Christians in St. George's Church at Madura according to the rites of the Church of England. At that time Mr. Fischer was a Lay Trustee of the Church, and Mr. Johnson, a Marriage Registrar of the district, was present on the occasion, not in his official capacity as Marriage Registrar but as a relative of the bride. It is clear that Mr. Fischer is not one of the four classes of persons mentioned in Clauses 1, 2, 3 and 5 of Section 5 of the Act. Nor was the marriage a civil marriage solemnised in the presence of the Marriage Registrar within the meaning of the Act. According to Section 4, a marriage between persons one or both of whom is or are a Christian or Christians is void if it is not solemnised in accordance with the provisions of Section 5. It is provided by Section 68 that ' whoever, not being authorised under this Act to solemnise a marriage in the absence of a Marriage Registrar of the district in which such marriage is solemnised, knowingly solemnises a marriage between persons one or both of whom is or are a Christian or Christians shall be punished with imprisonment which may extend to ten years or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years and not exceeding ten years.' The question for decision is whether Mr. Fischer has been properly convicted under Section 68. It is first urged that Section 68 applies only to marriages performed by the Marriage Registrar, but this contention appears to me to be obviously untenable. Section 68 ought to be read together with Sections 4 and 5, and when it is so read, there appears no reason for limiting the scope of Section 68 to civil marriages. The words 'in the absence of a Marriage Registrar' have to be read together with clause 4, Section

5, and far from being words of limitation, they appear to me to be intended to include unauthorized civil marriages. The history of previous legislation which is set out by Mr. Justice shephard in his judgment, the nature of the Act of 1872 as a consolidating Act, and the intention suggested by Section 4, Section 5 and Section 68 when they are read together, lead me to the conclusion that Section 68 is of general application.

13. Another contention is that the presence of Mr. Johnson at the marriage takes this case out of Section 68. The proper construction of the words, 'in the absence of the Marriage Registrar' is that in order that there may be a valid defence, he should be present in the exercise of his statutory authority as Marriage Registrar, and that they do not include a case in which he is present as a mere spectator or as a relative of the bride. It is clear in the case before us that the marriage solemnised was not intended to be solemnised as a civil marriage; nor was the procedure prescribed by the Act in connection with such marriage either followed or intended to be followed. Those words ought to be construed as well in the light thrown upon them by Part V as by Section 5.

14. The substantial question for decision is what effect is to be given to the word 'knowingly' used in Section 68 and how far it is necessary to prove in order to support a conviction under this section that the offender knew in fact that he was doing an unauthorised act. The Judge finds, upon the evidence, that Mr. Fischer had not guilty knowledge, but that the absence of such knowledge was due to gross negligence or carelessness on his part. The absence of such knowledge is due in the case before us to his omission to refer to the Act of the Legislature of which Section 4 and Section 5 are as plain as any provision of law can be, as to a marriage being void if solemnised otherwise than by persons enumerated in Section 5, or by or in the presence in his official capacity of a Marriage Registrar. It is true that there must be 'a mind at fault before there can be a crime.' But in applying this principle, it must be remembered that every man is presumed to be cognizant of the statute law of the country and construe it aright; that if any individual should infringe it through ignorance or carelessness, he must abide by the consequence of his error; that it is not competent to him to aver in a Court of Justice that he was ignorant of the Criminal Law of the land, and that no Court of

Justice is at liberty to receive such a plea. There may be some important ingredient of a particular offence independently of the mere ignorance of law, such as dishonest intention in the case of theft, which may be shown not to exist owing to an error in applying the law to the facts of a particular case. But in the case before us, we are asked to presume that the very knowledge of the existence of the statute law must be proved as a matter of fact and to assume that the Legislature framed Section 68 on that view. I do not think that I can accede to such a suggestion. Starting then with the presumption that Mr. Fischer must be presumed to have been aware of the law, I am unable to refer the word ' knowingly ' to a knowledge of the existence of the law. I can only refer it to the other fact mentioned in Section 68 as constituting the offence, viz., the status of the parties or one of them being a Christian or Christians. Neither the Post Office case, *Meirelles v. Banning* 2 B. & A. 909 nor *Ellis v. Kelly* 30 L.J.M.C 35 nor the Pigeon Shooting case, *Taylor v. Newman* 32 L.J.M.C. 186 goes further than to show that a person may be mistaken as to the application of a known rule of law to certain special circumstances and as to the manner in which such erroneous application affected him in the particular case. They do not warrant the contention that ignorance of the existence of a penal provision of law is pleadable as a good defence.

15. I agree with the learned Chief Justice in holding that it is sufficient to support the conviction under Section 68 to show that Mr. Fischer was not authorised by the Act to solemnise the marriage, and that he solemnised the marriage in the absence of the Marriage Registrar in his official capacity, knowing that the parties between whom he solemnised the marriage were Christians. I am also of opinion that the conviction must be upheld and the appeal dismissed.

Shephard, J.

16. The appellant has been found guilty of doing an act which renders him liable to punishment under Section 68 of the Indian Christian Marriage Act. It is proved, and not denied by him, that he, not being a member of the classes of persons authorised to solemnise marriages under Section 5, Clauses (1), (2), (3) and (5) of the same Act, did solemnise a marriage between two Christians in an English

Church and according to the rites of the Church of England. At the marriage, Mr. Johnson, an uncle of the bride, who happens to be Marriage Registrar, appointed under the Act, was present, and he attested the marriage register. It is clear that he did not attend the marriage in any official capacity.

17. It was contended on behalf of the appellant that the act done by him did not amount to an offence within the meaning of the section:

(1) because the section was only intended to apply to marriages performed by the registrar;

(2) because the section requires proof of knowledge on the part of the accused that he was committing an unauthorized and wrongful act, and that such proof was wanting, and

(3) because the absence of the registrar is an element of the offence, and, in point of fact, the registrar was present.

18. This last point may shortly be disposed of by the remark that the presence of the registrar can only be material when he appears in his official capacity and that it cannot be intended that his mere physical, and perhaps accidental, presence in the Church can save from penal consequences the act of one who is otherwise guilty of an offence under the section.

19. The argument on the first point was based on the history of the Act of 1872. Previously to 1852 there was no statute law relating to Christian marriages in this country. In that year was passed on the authority of the Statute 14 & 15 Vic, c. 10, the Act V of 1852. This Act refers solely to civil marriages and does not touch marriages solemnised in English Churches or by ministers of religion. It contains a section similar to that found in the Statute of William IV., which introduced the registrar's marriage, making it penal for any person knowingly and wilfully to solemnise a marriage under the provisions of the Act of Parliament in the absence of a registrar of the district. In 1862 a Bill was introduced with the object of making further provision for the solemnisation of marriages between Christians. This bill became law under the title of Act XXV of 1864 for which in the next year was

substituted Act V of 1865. This Act was intended to cover the whole field, not already covered by the Act of 1852. It provided for licenses to solemnise marriages being granted to ministers of religion, not being persons episcopally ordained or Clergymen of the Church of Scotland, and for the granting of licenses to grant certificates in the case of Native Christians. It prescribed rules for the solemnisation, of marriages by ministers of religion and rules as to the time when such marriage or marriages performed by ordained Clergymen or Clergymen of the Church of Scotland might be solemnised, and it also prescribed rules as to the registration of all marriages except those solemnised under the statute and the Act of 1852.

20. In the chapter relating to penalties was a section (the 56th), running as follows:

Whoever, not being authorized under Section 6 to solemnise a marriage shall, from and after the commencement of this Act, in the absence of a Marriage Registrar of the district, in which such marriage is solemnised, knowingly and wilfully solemnise a marriage between persons, one or both of whom shall profess the Christian religion, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, which may extend to ten years, and shall also be liable to fine; or in lieu of a sentence of imprisonment for seven years or upwards, to transportation for a term of not less than seven years and not exceeding ten years; or, if the offender be an European or American, to penal servitude according to the provisions of Act XXIV of 1855.

21. Looking to the scope of this Act and to the fact that concurrently with this section there was in force the above mentioned section of the unrepealed Act of 1852 making it penal for any person knowingly and wilfully to solemnise a marriage under the provisions of the Act of Parliament in the absence of the registrar of the district, I think there can be no doubt that the 56th section of the Act of 1865 was not intended to refer exclusively to marriages which might be solemnised by or in the presence of a Marriage Registrar. The object of the section clearly was to make the solemnisation of a marriage by an unauthorised person a punishable offence, and, at the same time, to except from its operation the case of marriages solemnised in the presence of a registrar; that this was the

view with which the section was framed is confirmed by the statement of objects and reasons to which Mr. Wedderburn called our attention. In 1872 the Act now in force was passed; it is a consolidating Act--it repeals the statute 14 & 15 Vic, c. 10, and the Acts V of 1852 and V of 1865, which, up to that time, had been concurrently in force. In this Act, in the chapter relating to penalties, the 68th section takes the place occupied by the 56th section in the Act of 1865; and, as the latter section must be construed as applicable to marriages other than those which might have been solemnised under the statute, so the section now in force must have a similar construction put upon it. Its operation cannot be restricted to the case of civil marriages.

22. Assuming then that Section 68 is aimed at the case of a person who, like the appellant, not being authorized to solemnise a marriage does solemnise a marriage in a Christian Church and according to the rites of the Church of England, it has to be seen whether in other respects the facts necessary to constitute an offence under the section have been proved. There was a great deal of discussion as to the construction of the section. It was said that as the section is punctuated, it would notwithstanding the presence of the registrar, render punishable any person who, not belonging to any of the four classes denoted by the first, second, third, or fifth clauses of Section 5 solemnised a marriage of the kind described in Part V of the Act. Obviously this cannot have been intended, for an ordinary layman is under the provisions of Part V at liberty to solemnise a marriage in the presence of the registrar. In order, therefore, to make the section applicable to the case of a marriage of that class, it must be supposed that the absence of the registrar was intended to be an ingredient of the offence. In other words the section must be read, as if there were a comma in the first line after 'marriage.' It was thus that the punctuation stood in the section of the Act of 1865 of which the present section is a reproduction. In the present case it is not necessary to pursue this discussion, because, on the literal reading of the section, the appellant is clearly a person not authorised under the Act to solemnise a marriage in the absence of the registrar, and, on the other hand, if by an altered punctuation the absence of the registrar is made an ingredient of the offence, the registrar in his official capacity was absent.

23. The more important and difficult question remains to be considered, viz., what is the effect to be given to the word 'knowingly.' It was contended on behalf of the appellant that in construing the section, regard should be had to the fact that in the original section, as framed in the Act of 1852, the act for which punishment was prescribed was stigmatised as a felony, and that, in the present section, the punishment is extremely severe. It was said that it could not have been intended to make an act a felony or prescribe imprisonment for ten years unless it were shown that the offender had acted with a consciousness of doing wrong. Reference was made to the objects and reasons published on the introduction of the Bill of 1861 as showing that it was cases of false pretence which it was sought to render punishable by legislation. With regard to the grammatical construction of the section, it was insisted that the word 'knowingly' should be read as relating to the antecedent words, and that, in order to constitute an offence, there should be on the offender's part knowledge as well of the absence of authority as of the fact that the parties are Christians. If this construction were adopted and the finding of the Sessions Judge that Mr. Fischer did not know that he was not authorised or that he was doing wrong is accepted as correct, Mr. Fischer would be entitled to an acquittal.

24. To ascertain what effect must be given to the word 'knowingly' we must examine first the language of the section itself, and regard must also be had to the use of the word in other sections of the same Act or of other penal enactments. There can be little doubt that if the word had been omitted in the section under discussion, the inference would have been that it was intended to make the mere act of solemnisation penal independently of proof that the offender did not know that he was not authorised or that the parties were Christians. It may be that an honest belief on the offender's part that he was, as a matter of fact, authorised, or that the parties were not Christians would have afforded him a good defence; but it is at least clear that the burden of proving this defence would have been on the accused person. The effect of the introduction of the word 'knowingly' would then be to throw the burden of proof, so far as relates to the matter referred to by that adverb, on the prosecution [see observations of Brett, J., in *Beg. v. Prince* L.R. 2 C.C.R. 154]. Is it then correct to say that the word relates back to the antecedent sentence? Reading the section by itself I should say that that was not the

meaning. The section makes it an offence for a person, not belonging to certain classes, knowingly to do a certain act. Surely it is in respect of the doing of the act that knowledge is required. To do the act in ignorance of its nature or in ignorance of the religion of the parties would be no offence. This construction gives full effect to the word, and is, in my opinion, consistent with the manner in which the word is used in other sections. The expression 'knowingly' in conjunction with 'wilfully' is used in several other sections of Part VII of the Act. In Section 71 (1) it is made an offence knowingly and wilfully to issue any certificate for marriage or solemnise a marriage without publishing the notice required by the Act. In Section 72 it is made an offence for a registrar knowingly and wilfully to issue a certificate for marriage after the expiration of three months after the notice has been entered by him as required by the Act. In these instances it is tolerably clear that the knowledge intended is nothing more than consciousness of the character of the act done in the one case without the publication of a notice, in the other after the expiration of a certain time. In the clauses of Section 71 other than the first, the words 'knowingly and wilfully' do not appear, though in the corresponding section of the Act of 1865 the words govern the whole section, and there is no apparent reason why any distinction should be made between the cases provided for by the various clauses. In the original section of the Act of 1852 in which the first traces of the present Section 68 may be found, punishment is prescribed for any person who knowingly and wilfully solemnises a marriage under the Act of Parliament in the absence of a registrar. Here again it is only with reference to the character of the act done that the phrase can have been used. The language of Section 56, the corresponding section of the Act of 1865, certainly does not favour the contention that, in order to prove an offence under it, knowledge of want of authority was required to be proved positively. Whatever was the intention expressed in the objects and reasons framed in 1861. I think the Legislature has not used the language they might have been expected to use, had their intention been to limit the operation of the section to cases of false representation. And it is the less likely that the Legislature did entertain this intention because ordinarily there could be no doubt as to the absence of authority to solemnise a marriage and any mistake in the matter could only be due to a misapprehension of the law. It is not necessary to say what would be the effect of a mistake in fact on the part of a person charged

under the section. It may be that in such a case it would be held as it was in the Post Office case, *Meirelles v. Banning* 2 B. & A. 909, that no offence had been committed; but in the present case the mistake, if any, was a mistake of law (ignorance of the provisions of a statute) and the appellant's case requires that the Legislature should have been supposed to intend to exempt from the penal consequences of the section, those of whom it could be proved that they were ignorant of the law or rather those of whom the prosecution failed to prove that they knew the law. There are doubtless cases in which ignorance of law may be a material ingredient in the defence to a criminal charge and the cases cited are illustrations of this. In the Post Office case the defendant had delivered letters to the wrong person, but he had done so, bona fide, and in conformity with a long established practice.

25. In *Ellis v. Kell* 30 L.J.M.C. 35, the defendant had, before the passing of the Act, assumed the title of doctor and practised medicine and was possessed of a diploma from a German University. It was held that there was no reasonable evidence that he had wilfully and falsely called himself or pretended to be what he was not. In the Pigeon Shooting case it was held that the statute was not intended to apply to a case where the pigeons were shot by a man in the course of protecting his corn from the injury done by the pigeons--*Taylor v. Newman* 32 L.J.M.C. 187.

26. These cases were decided with reference to the particular state of things with which the statute had to deal and with reference to the language of the statute. They may be authority for showing that under certain circumstances a man may defend himself by showing that he was mistaken as to the manner in which he was effected by a given statute; but they do not justify the proposition that entire ignorance of the existence of the law making the act criminal may be pleaded.

27. In the present case the Act declares that any marriage not solemnised in accordance with the provisions of the 6th section shall be void. The marriage solemnised by Mr. Fischer not being solemnised under the provisions of Part V of the Act and not being solemnised by an ordained Minister or by a Clergyman of the Church of Scotland or by a person licensed under the Act, was clearly void. In

order to prevent marriages being solemnised otherwise than in accordance with Section 6, Section 68 was enacted, having, as it appears to me for its object, to make the act of solemnising a marriage in defiance of the enacted law an offence. This object would be defeated if it were held that the section applied only to persons who had read the Act or had otherwise become aware of its provisions, and I do not think the language is such as to justify our placing such a construction upon the section.

28. In my opinion the Judge, on the facts found by him, rightly convicted the appellant, and I would dismiss the appeal.

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