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*In re*  
WARREN,  
*Ex parte*  
GORDON.

proving for the debt, and this appeal will therefore be allowed with costs. The order rejecting the proof will be set aside, and costs, if any have been paid under the order, will be returned.

Solicitors for the appellants: *Pavey, Wilson & Cohen.*

Solicitor for the respondent: *Lewis.*

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August 5.

REG. v. ADAMS.

*Criminal law—Bigamy—Evidence—Forged consent to marriage of minor—Marriage Act 1890 (No. 1166)—Bonâ fide belief that forged consent to a first marriage rendered it invalid.*

On a trial for bigamy prisoner's counsel proposed to adduce evidence to show that prisoner *bonâ fide* believed that her first marriage (she then being a minor) was invalid, on the ground that the consent to her first marriage required by sec. 14 of the *Marriage Act 1890* was a forgery.

*Held*, upon case stated, that the evidence was inadmissible, because, even if the prisoner *bonâ fide* believed that the consent was a forgery, the first marriage would not be invalid.

APPLICATION under sec. 485 of the *Crimes Act 1890* for an order *nisi* calling upon Higinbotham, C.J., and the Attorney-General to show cause why a question of law which arose at the trial of the prisoner should not be reserved for the opinion of the Full Court. The prisoner Adams was placed on her trial for bigamy, she having married one O'Donnell while her first husband Adams was still living. At the time prisoner married Adams she was a minor. At the trial her counsel proposed to adduce evidence that the consent produced at the time of her first marriage (as required by sec. 14 of the *Marriage Act 1890*) was a forgery, and that the prisoner believed at the time that she entered into her second marriage that this forged consent rendered her first marriage invalid, and that she had reasonable grounds for thus believing, inasmuch as her husband had told her after the marriage that the marriage was invalid. Higinbotham, C.J., who presided at the trial, refused to admit the evidence on the ground that, even if true, it would not exonerate the prisoner. The presiding judge was requested by prisoner's counsel to state a case on the point for the opinion of the Full Court, but refused to do so, and the present order *nisi* was then applied for.

*J. T. T. Smith* in support of the application—The first marriage was invalid, because a forged consent is no consent. Sec. 14 of the *Marriage Act* 1890 provides that in the case of a minor “such marriage shall not take place unless and until there be produced to the person about to celebrate the same the written consent” of the father or guardian. The words “unless and until” are very strong, and make the marriage null and void without the consent. The word “unless” is absolutely prohibitive. Evidence that the prisoner had reasonable grounds for her belief that the first marriage was invalid should have been allowed to go to the jury.

He cited *R. v. Griffin* (a); *Gullifer v. Gullifer and Foley* (b); *R. v. McMahon* (c); *R. v. Tolson* (d).

A'BECKETT, J., delivered the judgment of the Court [A'BECKETT, HODGES and HOOD, JJ.]. This is an application for an order *nisi* calling upon the learned Chief Justice to state a case in reference to his refusal to allow certain evidence to be given upon a trial for bigamy. The evidence, as to which argument has been addressed to us, was evidence as to the forgery of the consent given to the marriage of the accused person, who was at the time of the marriage a minor, and it was proposed to show that that consent was a forgery in the first place, and that the accused person, believing that that consent was a forgery, believed at the time of the second marriage that her first marriage was invalid, and therefore that she committed no offence in entering into the second marriage. Counsel proposed, as is shown by the affidavit, to adduce evidence that the prisoner had been told by George Adams (the first husband) that the first marriage was illegal, and that she *bonâ fide* believed that it was void because of the alleged forgery and by reason of the statement of the said George Adams; and counsel also proposed to contend that the marriage of a minor without and against such consent was invalid; and that in any event the fact of the prisoner having such belief, and the reasonableness of the grounds for having such belief, were questions for the jury. The learned Chief Justice in charging the jury said: “The objection taken to the validity of the first marriage was

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(a) 3 V.L.R. (L.) 278.

(c) 17 V.L.R. 335.

(b) 6 V.L.R. (I. P. &amp; M.) 109.

(d) 16 Cox. 629; 23 Q.B.D. 168.

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not a valid objection. If the consent were a forgery, it did not affect the validity of the first marriage." The first branch of the argument addressed to us was based on the assumption that the forgery, and consequent absence of proper consent, did not affect the validity of the marriage, and it was contended that evidence proposed to be adduced should have been received on the authority of cases in English and Victorian courts, in which it was laid down that if a prisoner have a *bonâ fide* belief, upon reasonable grounds, of a fact which would have rendered her first marriage invalid, that was a permissible subject for the consideration of a jury, and was evidence proper to be submitted to a jury, upon which, if the jury believed in the prisoner's *bonâ fide* belief in the existence of the fact, they would be justified in finding the prisoner not guilty, as there was no *mens rea* in the prisoner. In those cases the fact upon which the belief of the accused rested, and as to which evidence was allowed to be given, was one which would have rendered the first marriage invalid. The difference between those cases and the present case is that the existence of the fact alleged to have been believed—namely, the forgery of the consent,—would not have rendered the first marriage invalid, as it was belief of an irrelevant fact. A person will not be permitted to say that he or she does not know the law—that is not a matter proper to be submitted to the jury; and the cases referred to by counsel are not authorities to justify the admission of evidence of a fact which is irrelevant.

The second branch of the argument was that the forgery of this consent rendered the marriage invalid. If we agreed with that contention, we should think that evidence as to the prisoner's belief would have been improperly excluded, but on considering the provisions of the *Marriage Act* as to consent, and comparing them with other sections in the Act, we have no doubt that the first marriage was valid, even though the consent was forged. We therefore refuse this application.

Solicitors for prisoner : *Gaunson & Wallace.*

A. F. M.