

without due publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same (r) : or if any person falsely pretending to be in holy orders, shall solemnize matrimony according to the rites of the Church of England, every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony, and shall be *transported* for the space of fourteen (s) years, according to the laws in force for transportation of felons, provided that all prosecutions for such felony shall be commenced within the space of three years after the offence committed' (t).

The mere fact of institution to a living is no evidence that the person instituted is in orders, nor does it put him in the position of a person who has received holy orders, nor make him compellable to celebrate marriages. The question for the jury is, first, whether the prisoner has ever acquired the position and status which made him an ordained minister (u), and if not, whether he knew at the time he performed the ceremony that he had never been ordained (v).

The Marriage Act, 1836 (6 & 7 Will. IV. c. 85), provides for civil marriages, at the office of a registrar of marriages, and for marriages in his presence at a registered place of worship not belonging to the Church of England, or by the rules of the Church of England on a certificate from the registrar. By sect. 39, 'Every person who after the said first day of March [1837], shall knowingly and wilfully solemnize any marriage in England, except by special licence, in any other place than a church or chapel in which marriages may be solemnized according to the rites of the Church of England, or than the registered building or office specified in the notice and certificate as aforesaid, shall be guilty of felony (except in the case of a marriage between two of the Society of Friends, commonly called Quakers, according to the usages of the said society, or between two persons professing the Jewish religion, according to the usage of the Jews), and every person who in any such registered building or office shall knowingly and wilfully solemnize any marriage in the absence of a registrar (w) of the district in which such registered building or office is situated, shall be guilty of felony (x) : and every person who shall knowingly and wilfully solemnize any marriage in England after the said first day of March (except by licence) within twenty-one days after the entry of the notice to the superintendent registrar as aforesaid . . . (y) shall be guilty of felony' (z).

(r) As to marriages out of church see 6 & 7 Will. IV. c. 85, s. 39, *infra*.

(s) Now penal servitude from three to fourteen years or imprisonment with or without hard labour for not over two years (20 & 21 Vict. c. 3, s. 2; 54 & 55 Vict. c. 69, s. 1; *ante*, pp. 211, 212).

(t) See Lonsd. Cr. L. 140. The Act of 1823 contains no provisions for the punishment of principals in the second degree and accessories. But the principals in the second degree are punishable like the principals in the first degree. The Act does not extend to the marriages of any of the Royal family (s. 30), nor to any marriages amongst Quakers or Jews, where both the parties to any such marriage shall

be Quakers or Jews (s. 32). C. S. G.

(u) The proper mode of proving this is by production of his letters of ordination. Forgery thereof is a misdemeanor at common law. R. v. Etheridge, 19 Cox, 676.

(v) R. v. Ellis, 16 Cox, 469, Pollock, B.

(w) Repealed by 61 & 62 Vict. c. 58, s. 15 (*ante*, p. 1015), as to marriages authorised by and solemnized in accordance with that Act.

(x) See 19 & 20 Vict. c. 119, s. 9, &c.

(y) The words here omitted were repealed in 1874 (37 & 38 Vict. c. 35). See 7 Will. IV. and 1 Vict. c. 22, s. 3, *post*, p. 1018.

(z) This being a felony for which no punishment is provided, is punishable under 7 & 8 Geo. IV. c. 28, s. 8, as amended by 54 & 55 Vict. c. 69, s. 1, *ante*, p. 246.