



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 40
Issue 2 *Dickinson Law Review - Volume 40,*
1935-1936

1-1-1936

Ignorance or Mistake of Law as a Defense in Criminal Cases

Richard E. Kohler

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Richard E. Kohler, *Ignorance or Mistake of Law as a Defense in Criminal Cases*, 40 DICK. L. REV. 113 (1936).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol40/iss2/7>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

IGNORANCE OR MISTAKE OF LAW AS A DEFENSE IN CRIMINAL CASES

"Everyone is presumed to know the law" is a maxim that has become familiar to all jurists and to many laymen.¹ As has been the case with many other legal maxims, it has been criticized by bench and bar.² Even though the maxim is condemned as a rule of law, or as a poorly expressed rule of law, the fact remains that it must have had an authoritative foundation. It is the purpose of this note to examine the size and strength of this foundation.

The legal scholar is also familiar with a Latin maxim which is frequently quoted as expressive of the same rule of law—"Ignorantia juris non excusat, ignorantia facti excusat."³ "Ignorantia" has been translated both as ignorance and as mistake, the two terms being used interchangeably.⁴

In order to apply the doctrine correctly it is necessary to distinguish clearly a mistake of law from one of fact. Ignorance or mistake of *law* occurs when one has full knowledge of *facts* but is either ignorant of the legal effect of those facts or retains an erroneous belief as to their legal effect. In the Roman law the following case was used to illustrate the distinction: If an heir is ignorant of the death of his ancestor he is ignorant of the fact; but, if being aware of the death and his own relationship, he is ignorant that certain rights have thereby become vested in himself, he is ignorant of the law.⁵

Blackstone tells us that the doctrine is of Roman origin, and later writers quite universally confirm this view.⁶ Most of the authorities, however, express considerable doubt as to its applicability to criminal cases, declaring that it applied to civil cases only.⁷ Whether such be the case or not, we do know that certain classes were exempted from the rule because it was considered that people of inferior legal intelligence would not have knowledge of the law. This group consisted of persons under twenty-five years of age, women, soldiers, peasants, and other persons of a limited knowledge.⁸

¹The presumption is conclusive, *Com. v. Jellico Coal Co.*, 96 Ky. 373, 29 S. W. 26 (1895).

²"There is no presumption in this country that every person knows the law. It would be contrary to common sense and reason if it were so." Maule, J., in *Martindale v. Faulkner*, 2 C. B. 706 (1846). "That the axiom contains an untruth is conceded. No man, in any community, knows the law either intensively or extensively. . . . To predicate that of the ignorant which cannot be predicated of the learned is absurd." Wharton, *Criminal Evidence*, Section 723.

³There are different wordings, "Ignorantia eorum, quae quis scire tenetur, non excusat," 1 Hale P. C. 42. "Ignorantia excusatur, non juris sed facti," 2 Bouvier Law Dict. 355. "Ignorantia juris, quod quisque tenetur scire, neminem excusat," 4 Bl. Comm. 27.

⁴4 Bl. Comm. 27.

⁵Digest 22, 6. 1. See 1 Spence, Eq. Jur. 632.

⁶"Ignorantia juris, quod quisque tenetur scire, neminem excusat is as much the maxim of our own law as it was of the Roman." 4 Bl. Comm. 27.

⁷Hunter, *Roman Law*, 3d., 660; Domat, *Civil Law*, Sections 1224-1240.

⁸Digest, Book XXII.

The doctrine became firmly established in the common law early in the 13th century.⁹ The general rule has come to include not only common law offenses but also statutory crimes, felonies and misdemeanors, and crimes *mala prohibita* as well as *mala in se*.¹⁰ The English common law exempted no particular class of persons as did the Roman law. The Doctor and Student specifically includes infants, knights, and noblemen who "are bound most properly to set their study to acts of chivalry for the defense of the realm," and husbandmen "that may not by reason of their labor put themselves to know law." Even one who could not possibly have learned of a law, having been at sea when the statute was enacted and violated, was held accountable.¹¹ Similarly, a foreigner ignorantly violating a law is liable for punishment even though it would not have been an offense in his native land.¹²

Since the defendants in some cases had no opportunity to ascertain the law it seems that negligence is not the underlying theory upon which the criminal liability is justified. A California court states: "The rule rests on public necessity If a person accused of a crime could shield himself behind the defense that he was ignorant of the law which he violated, immunity from punishment would in most cases result."¹³ Somewhat similar reasoning was used by a court in North Carolina when it stated: "Courts are compelled to act upon this rule as well in criminal as civil matters. It lies at the foundation of the administration of justice. And there is no telling to what extent, if admissible, the plea of ignorance would be carried, or the degree of embarrassment that would be introduced at every trial To allow ignorance as an excuse would be to offer a reward to the ignorant."¹⁴ There have been other justifications given depending, to some degree, upon the character of the accused. For example, a public officer who ignorantly violates a statute which he should have understood in order to fulfill correctly the duties of his office, is not excused because he has been culpably negligent. In Pennsylvania, our own Chief Justice Gibson has expressed the rule as follows: "Ignorance of the law will not excuse in any case; and this principle is applicable, and with irresistible force, to the case of an officer selected for his capacity, and in whom ignorance is unpardonable. The very acceptance of the office carries with it an assertion of a sufficient share of intelligence to enable the party to follow a guide provided for him, with an unusual attention to clearness

⁹The earliest case occurred in 1231 and is reported in Bracton's Note Book, Maitland's Ed. pl. 496. One Waggehastr, was summoned to answer for the breach of a fine committed by entering upon the land in question. He pleaded that he believed the estate was his own, a belief founded upon the advice of counsel. This was held to be no defense.

¹⁰*Com. v. Raymond*, 97 Mass. 567 (1867).

¹¹*Rex. v. Bailey*, R. & R. 1 (1800).

¹²*Participants in a duel, Barronet's Case*, 1 El. & Bl. 1 (1852); *Rex v. Esop*, 7 Car. & P. 456 (1836).

¹³*People v. O'Brien*, 31 Pac. 45 (1892).

¹⁴*State v. Boyett*, 32 N. C. 336 (1849).

and precision. On any other principle a conviction would seldom take place, even in cases of the most flagrant abuse; for pretexts would never be wanting."¹⁶ Finally the policy of the doctrine seems to be excellently expressed in the following statement, "If ignorance of a law were a defense to a prosecution for breaking such law, there is no law of which a villian would not be scrupulously ignorant."¹⁶

In at least two cases where the plea of ignorance of the law was denied as a defense, it was also held that such ignorance may be taken into consideration in mitigation of punishment.¹⁷ Such a ruling tends to relieve the situation where a strict application of the doctrine creates an injustice, especially where there are extenuating circumstances.

Somewhat analogous to the cases of foreigners punished for ignorant violations of laws which were not offenses in their native lands, are the cases of violations by those obeying the customs of their own particular sect or group, which are in conflict with the law of the commonwealth. Thus a Mormon who marries more than one woman cannot escape liability for bigamy,¹⁸ a Jew cannot escape responsibility for working on Sunday,¹⁹ and a negro indicted for keeping goods found cannot introduce evidence of a general belief among his people that goods thus found without earmark became the property of the finder.²⁰

The Latin term "ignorantia" has been used both as meaning ignorance and mistake but there is no question that the two terms represent two distinct ideas. Mistake presumes some consideration of the legal effect of facts and the reaching of an erroneous conclusion, while ignorance implies total absence of thought or consideration. It is for this reason that some writers insist that a distinction should be made so that a mistake of law would be a valid defense in certain cases.²¹ Some courts also have made this distinction. In *Lawrence v. Beaubien*²² it was said, "The former (ignorance) is passive, and does not presume to reason, and, unless we are permitted to dive into the secret recesses of the heart, its presence is incapable of proof; but the latter (mistake) presumes to know, when it does not, and supplies palpable evidence of its existence." Another court distinguishes the two saying,

¹⁶*Coates v. Wallace*, 17 S. & R. 75 (1827), a justice of the peace receiving illegal fees. See also *State v. McLean*, 121 N. C. 589, 28 S. E. 140 (1897).

¹⁶Wharton, *Criminal Law*, Section 102.

¹⁷*Rex v. Esop*, 7 C. & P. 456 (1836), a native of Bagdad committing an unnatural crime in British jurisdiction which was no offense in his native land; *Fraser v. State*, 112 Ga. 13, 37 S. E. 114 (1900).

¹⁸*Reynolds v. U. S.*, 98 U. S. 45 (1878).

¹⁹*Com. v. Has*, 122 Mass. 40 (1877). Same as to a Seventh Day Baptist, *Specht v. Com.*, 8 Pa. 312 (1848).

²⁰*State v. Welch*, 73 Mo. 284, 39 Am. Rep. 515 (1880).

²¹See Keedy, *Ignorance and Mistake in the Criminal Law*, 22 *Harvard Law Review* 75, "Where the defendant errs in applying law to the facts, thus reaching an incorrect conclusion, and then does an act which would not have been criminal if the conclusion were correct, he should not be convicted because he does not have the guilty mind." See also 23 Am. Dec. 164.

²²2 Bailey 622, (S. C. 1831). Also *Hall v. Reed*, 2 Barb. Ch. (N. Y.) 500 (1847).

"Ignorance does not pretend to knowledge, but mistake assumes to know. Ignorance may be the result of laches, which is criminal; but mistake argues diligence, which is commendable."²³ On the other hand, some courts say the distinction is merely a quibble, and declare it is not of such a character as may be used as a test by the courts.²⁴ The distinction is somewhat academic because when the defense of mistake of law is allowed it is usually upon some other ground and rarely because of its distinction from ignorance.

One of the most frequent situations where mistake is relied upon as a defense arises from a faulty interpretation of the law by another. This has occurred mainly in three classes of cases: where the defendant has relied upon the advice of counsel, upon a decision of a court subsequently reversed, or upon the ruling of an administrative officer or agency.

The courts have been unanimous in rejecting mistake of law based upon advice of counsel as a defense.²⁵ The reason usually given is that any other view would make the "opinion of counsel paramount to law." One of the most famous of these cases is popularly called *Miss Anthony's Case*.²⁶ The defendant, Susan B. Anthony, was indicted for voting illegally. She defended by declaring that her counsel advised her that she had a legal right to vote. Judge Hunt overruled the defense and stated to the jury, "The precise question has been several times decided, viz., that one illegally voting is bound to know the law."

A decision of a court, when relied upon, has been recognized as a valid defense to a prosecution brought after the decision was reversed for an act done before the reversal.²⁷ If the decision was one of an *inferior* tribunal it is no defense.²⁸ In *State v. O'Neil*²⁹ a criminal statute had been declared unconstitutional, the offense was committed, and later the statute was declared valid. It was held that a prosecution could not be maintained. Justice McClain stated in his opinion, "An exception to the rule that everyone is required to know the law is justified, we believe, when, as to the validity of a statute on constitutional grounds, a person has relied upon the expressed decision of the highest court in the state." The court experienced considerable difficulty in reversing the conviction because the statute was deemed to be constitutional from the beginning. The six judges disagreed as to the basis of the decision. Chief Justice Deemer was of the opinion that the

²³Culbraith v. Culbraith, 7 Ga. 64 (1849).

²⁴Champlin v. Laytin, 18 Wend. 407 (1837); Schlesinger v. U. S., 1 Ct. of Cl. 16 (1863); Jacobs v. Morange, 47 N. Y. 57 (1871).

²⁵People v. McCalla, 220 Pac. 436 (Cal. 1923); State v. Hunt, 25 R. I. 75, 54 Atl. 937 (1903); Weston v. Com., 111 Pa. 251 (1885); Miller v. U. S., 277 Fed. 721 (1921); State v. Marsh, 36 N. H. 196 (1858).

²⁶U. S. v. Anthony, 24 Fed. Cases No. 14459 (1873).

²⁷State v. O'Neil, 147 Iowa 513, 126 N. W. 454, 33 L. R. A. 788 (1910); State v. Longino, 109 Miss. 125, 67 So. 902 (1915); State v. Bell, 136 N. C. 674, 49 S. E. 163 (1904).

²⁸State v. Striggles, 202 Iowa 1318, 210 N. W. 137 (1926). See also note in 49 A. L. R. 1273.

²⁹147 Iowa 513, 126 N. W. 454, 32 L. R. A. 788 (1910).

principle reached by the majority was unsound. He concurred in the result, but reached it by holding that a change of decisions involving constitutionality of a statute should be prospective in operation and not retroactive, and that to punish the defendant would violate the constitutional protection against cruel and unusual punishment. Justice Weaver based his decision upon the theory that there is an implied term in every statute that it is not to be enforced against one after an authoritative judicial decision declaring the statute unconstitutional.

In *State v. Strigles*³⁰ it was held that a decision of a municipal court could not be relied upon as a defense to a crime. The defendant had been advised by the county attorney and the mayor that he was doing a legal act. This advice, by way of letter, along with a certified copy of the decree of the municipal court was offered in evidence. Objection to them was sustained. In its opinion the court states: "We are disposed to hold with the O'Neil case that, when the highest court of a jurisdiction passes on any given proposition, all citizens are entitled to rely upon such decision; but we refuse to hold that any decisions of any court below, inferior to the supreme court, are available as a defense under similar circumstances."

In a quite recent case of analogous nature,³¹ the Supreme Court of Florida has ruled that where one relies upon a decision of a *circuit* court, holding that a statute that governs his conduct is unconstitutional, no liability in the form of a penalty for violating the alleged unconstitutional statute is incurred when the act would be simply *malum prohibitum* if the statute later should be declared constitutional. This court would seem to follow the view taken by Bishop that when an act is merely *malum prohibitum* it would be gross injustice to punish a man for an act pronounced lawful by the tribunals. He would call it "ex post facto judicial legislation."³²

The majority of the cases hold that it is no defense that the advice of an administrative officer or agency was relied upon.³³ The defense was recognized however, in a recent California case.³⁴ The defendant had been advised by deputy corporation commissioners and by the assistant commissioner that he needed no license to sell certain securities. In a prosecution for so doing, objection to this evidence was sustained, but the Supreme Court held it was error. Again the court points out that it was an act *malum prohibitum* and says, "we cannot believe the law so inexorable as to require the brand of felon upon him for following advice so obtained." The conclusion reached in this case is commendable, especially since the defendant was forced to act without a license or refrain from selling his securi-

³⁰202 Iowa 1318, 210 N. W. 137 (1926).

³¹State ex. rel. Williams v. Whitman, 156 So. 705 (Fla. 1934).

³²Bishop, Criminal Law, vol. 1, Section 96.

³³State v. Foster, 22 R. I. 153, 46 Atl. 833 (1900), advice of the state treasurer; Hoover v. State, 59 Ala. 57 (1877), advice from a probate judge; Hamilton v. People, 57 Barb. (N. Y.) 625 (1870). See note in 61 A. L. R. 1153.

³⁴People v. Ferguson, 54 Cal. App. 615, 24 P. (2d.) 965 (1933).

ties because the whole matter of licenses was in the hands of the corporation commissioners.

Generally, misapprehension or misinterpretation of a statute by the defendant himself is not a defense.³⁵ There are cases which make an exception to this rule where the law is not settled or is obscure.³⁶ A Georgia case³⁷ denies this exception and declares, "the rule is applicable even where the criminality is not so obvious because of the fact that the law bearing upon the subject is involved in more or less confusion, and therefore less capable of being easily and readily understood." This statement is merely dictum and a recent Texas case³⁸ is authority for the proposition that the modern tendency is to allow the exception. Article 40 of the Penal Code (1925) of that state provides that "No mistake of law excuses one committing an offense." The defendant, a sheriff, was indicted and convicted of extortion. He had collected five dollars from the state for traveling expenses in serving a subpoena. The appellate court found that the statute fixing the fee in question was obscure and confusing, subject to more than one reasonable interpretation. It held that if the defendant reasonably believed that he was entitled to the fee he demanded he was not guilty of extortion and a new trial was granted because the trial court refused to admit such an affirmative defense into the charge. The court also affirmed a prior case³⁹ holding that when the statute is clear the rule that mistake of law is no defense would be applied in all its rigor.

Generally, the doctrine that a statute may be abrogated by nonuser does not prevail in this country, so that one may not defend his violation of a statute by declaring that he was lulled into a belief that the law was abrogated by previous failure to prosecute its violation. In *Everhart v. People*⁴⁰ the court states, "It is a matter of common knowledge that many laws are enacted which lie dormant, in whole or in part, for years. We know of no court, however, that has held that things clearly within the letter and spirit of an act are excluded from the operation thereof because of such desuetude." That others have violated a law without being arrested and leading the defendant to believe that the act is legal is, of course, no defense.⁴¹

Mistake of law as a defense has been submitted quite frequently in prosecutions for adultery and bigamy. Marital status is usually a question of law. Thus one who marries a second time under a mistaken belief that his first marriage is

³⁵*Fraser v. State*, 112 Ga. 113, 37 S. E. 114 (1900). A physician who issues prescriptions for narcotics in violation of the Harrison Act must stand convicted even though the leading physicians of the community believed the method lawful. *Mitchell v. U. S.*, 3 Fed. (2d.) 514 (1925).

³⁶*Cutler v. State*, 36 N. J. L. 125 (1873).

³⁷*Levar v. State*, 103 Ga. 42, 29 S. E. 467 (1897).

³⁸*Burns v. State*, 61 S. W. (2d.) 512 (1933).

³⁹*Lewis v. State*, Texas Cr. App., Opinion No. 15269.

⁴⁰130 Pac. 1076 (Col. 1913).

⁴¹*State v. Sugarman*, 148 N. W. 466 (1914).

void is guilty of bigamy, providing the statute does not require a criminal intent.⁴² Good faith of the defendant in believing that a divorce was valid and dissolved the former marriage, or that a separation had the effect of a divorce is no defense.⁴³ The arguments for this American view seem to be that where the legislature has not made intent an element of the crime the courts have no right to do so and that public policy forbids the protection of two separate marriages by the same person.⁴⁴

When the mistake of the defendant arose from an erroneous belief that his or her previous spouse had secured a divorce some courts allow such mistake as a defense.⁴⁵ The cases which adopt this view usually place the burden of proof upon the defendant to show his honest belief or such care and inquiry as to justify such a belief. On the other hand, some jurisdictions hold that mistake as to whether a divorce was granted is no defense, reaching the same result as in cases of mistake of law.⁴⁶

There is a class of cases in which one who acted under a bona fide mistake of law may use such mistake as a defense. Crimes which have a particular form of mens rea as a necessary element are not committed when one, even though he commits the physical element of the crime, does not have the specific intent because he acted under a mistake of law. The mistake is said to negative the intent. An excellent example of this situation is expressed by Coleridge J.,⁴⁷ "Ignorance of the law cannot excuse any person, but, at the same time, when the question is with what intent a person takes, we cannot help looking into his state of mind as if a person takes what he believes to be his own, it is impossible to say he is guilty of felony." In larceny cases it may be admitted in proof that the defendant took the property under a claim of right, even though erroneous, and thus acting under a mistake of law.⁴⁸ The doctrine is applicable only when the defendant acted under a bona fide claim of right, and only when the mistake acts to negative some specific criminal intent that has been made an element of the crime. Mere custom to take another's property and a belief that it is harmless would not be a defense.⁴⁹ The doctrine is likewise applicable to robbery.⁵⁰ In malicious mischief

⁴²Staley v. State, 131 N. W. 1028, 34 L. R. A. 613 (Neb. 1911); Medrano v. State, 22 S. W. 684 (Texas 1893); Com. v. Hayden, 163 Mass 453 (1895).

⁴³State v. Hughes, 58 Iowa 165, 11 N. W. 706 (1882); State v. Sherwood, 68 Vt. 414, 35 Atl. 352 (1896).

⁴⁴See annotation in 57 A. L. R. 792.

⁴⁵Squire v. State, 46 Ind. 459 (1874); Leseur v. State, 176 Ind. 448, 95 N. E. 239 (1911); Robinson v. State, 6 Ga. App. 696 (1909).

⁴⁶Eldridge v. State, 126 Ala. 63, 28 So. 580 (1900); People v. Spoor, 235 Ill. 230, 85 N. E. 207 (1908); Rex. v. Wheat, 2 K. B. 119 (1921).

⁴⁷In Reg. v. Reed, Car. & M. 308 (1841).

⁴⁸People v. Husband, 36 Mich. 306 (1887); Com. v. Stebbins, 8 Gray (Mass.) 492 (1857); State v. Diehl, 64 N. C. 270 (1870); People v. Devine, 95 Cal. 227, 30 Pac. 378 (1892).

⁴⁹Com. v. Doane, 1 Cush. (Mass.) 5 (1848).

⁵⁰Rex v. Hall, 3 Car. & P. 409 (1828).

it is a defense that the act is committed in a mistaken belief as to a legal right,⁵¹ and the same applies to a charge of assault.⁵² One may defend an alleged perjury by showing that he was acting under bona fide advice of counsel.⁵³ In cases of criminal conspiracy, where the question is one of intent, advice from counsel or other good faith of the defendant may be considered by the jury.⁵⁴ On the other hand, it should be noted that the ignorance or mistake may be the result of gross negligence for which the defendant may be held accountable.

The rule that ignorance or mistake of law is no defense has been invoked quite frequently in the Pennsylvania courts. In the early case of *Coates v. Wallace*⁵⁵ a justice of the peace was held accountable for demanding and receiving illegal fees, though it be done in mistake or ignorance and without any corrupt intent. This doctrine has been reiterated many times in civil actions for penalties.⁵⁶

In *Weston v. Com.*⁵⁷ the defendant had committed murder in a dispute over land. He attempted to introduce evidence to the effect that he had been advised by counsel that he had a legal right to maintain possession of the land. Such testimony was held inadmissible.

There are a few Pennsylvania cases which recognize the defense of mistake in cases of malicious mischief because it negatives the specific intent.⁵⁸ As was said in *Com. v. Shaffer*,⁵⁹ "Where the injurious act is done or committed in the exercise or enforcement of what the defendant honestly believes to be his legal right, even though such belief be mistaken, there can be no conviction." A lower court case⁶⁰ clearly illustrates the application of this doctrine. A Federal prohibition officer had been advised by a United States attorney that he might lawfully destroy the property which a search warrant authorized him to seize. He destroyed cereal beverage which contained less than one half of one per cent alcohol in the mistaken belief that it contained more than this legal limit. It was held he was not guilty of larceny or malicious mischief because he had no intention of depriving the owner of his property or injuring it.

In *Com. v. Weiserth*⁶¹ an inspector of elections was convicted of having knowingly rejected the vote of a qualified voter when an imposter had previously voted

⁵¹*Sattler v. People*, 59 Ill. 68 (1871); *Palmer v. State*, 45 Ind. 388 (1873).

⁵²Wharton, Criminal Law, Section 104.

⁵³*State v. McKinney*, 42 Iowa 205 (1876); *U. S. v. Stanley*, Fed. Case No. 16,376 (1853).

⁵⁴*Miller v. U. S.*, 277 Fed. 721 (1921).

⁵⁵17 S. & R. 75 (1827).

⁵⁶*Aechternacht v. Watmough*, 8 W. & S. 162 (1844); *Gault v. Dunbar*, 1 Phila. 26 (1850); *Wilson v. Barrett*, 24 Pa. Super. 68 (1903); *Whitmore v. Craig*, 32 Pa. Super. 292 (1907).

⁵⁷111 Pa. 251 (1885).

⁵⁸*Com. v. Shaffer*, 32 Pa. Super. 375 (1907); *Com. v. Drass*, 146 Pa. 55 (1892).

⁵⁹*Supra*, n. 58.

⁶⁰*Com. ex. rel. Smith v. Sheriff of Phila. Co.*, 7 D. & C. 240 (1926).

⁶¹47 Pa. Super. 592 (1911).

under the citizen's name and the inspector acted in good faith after deliberation and consultation with others.

When one commits an act which is not the essential element of a certain crime he is not guilty of the crime even though, through ignorance or mistake of law, he thought he was committing the crime. Thus in *Wallis v. Mease*⁶² the court states, "If a felony was not committed in the act, the intention, however it may be in a moral point of view, will not in law make it felony." In recognizing the futility of mistake as defense the court further states, "But if the taking of the honey was actually a felony, the thinking it otherwise could not reduce it from a felony and make it only a trespass. For even the understanding of a whole people contrary to the law, would not make it cease to be a crime."

One case in Pennsylvania recognizes the defense of mistake in an accusation of perjury.⁶³ If one is advised by counsel that certain land is unimproved and he swears that it is so in an affidavit he cannot then be convicted of knowingly swearing a false affidavit if the land is improved as a matter of law.

There has been no case in Pennsylvania where the refusal to allow mistake as a defense has worked a great hardship, and thus Pennsylvania has had no chance to apply the more liberal and modern views of the doctrine. It seems likely that should cases arise similar to those in the more liberal jurisdictions Pennsylvania will fall into line with the exceptions which have been made in other states.

There has been some criticism of the mistake rule. The criticism has arisen mainly in regard to cases in which the defendant has done an act which is criminal, because of his misconception of a pre-existing status or condition arising from the improper application of law to the facts. It is earnestly contended that to deny the defense in such cases works an injustice.⁶⁴ It is extremely difficult to distinguish such cases from mistakes of fact. The following has been submitted as an example: A statute makes a trespass on land criminal. A and B own adjoining estates and through each a private road leads to the highway. A, while driving along the highway, determines to turn into his own lane but turns into B's by mistake. A would be excused because he acted under a mistake of fact. Now let us suppose A goes into a field, which under the deed belongs to B, believing it belongs to him. Does it seem fair to convict him for this and acquit him in the first situation? It would seem to be a better rule to apply the mistake of fact doctrine to the latter situation.

⁶²3 Binn. 546 (1811).

⁶³*Com. v. Clark*, 157 Pa. 257 (1893).

⁶⁴Keedy, *Ignorance and Mistake in the Criminal Law*, 22 *Harvard Law Review* 75.

In conclusion the following generalizations may be made:

- I. Ignorance of the common law or a statute is never a defense.
- II. A mistake of law is not a defense, except:
 - A. When the mistake was due to a reliance on a decision of the highest court in the state.
 - B. When the law upon the subject is confusing or obscure, and capable of more than one reasonable interpretation.
 - C. When the mistake negatives the specific intent which is an essential element of the crime.

Richard E. Kohler

THE FARMER AND THE BANKRUPTCY LAWS

In amending the statutory definition of a farmer under the Bankruptcy Act, the 74th Congress progressed with one foot and regressed with the other. It incidentally raked anew the coals of an old controversy centering around the question, Who is a farmer?

Our present Bankruptcy Act,¹ basically created in 1898 and frequently amended since then,² exempts farmers from involuntary bankruptcy.³ It is not the writer's purpose to question the wisdom of extending to the farmer the benefits of voluntary bankruptcy, while withholding from his creditors the complementary assistance of involuntary proceedings.⁴ The humanitarian aspects of our

¹Act of July 1, 1898, 30 Stat. 544, 11 U. S. C. A. 1-303.

²Acts of Feb. 15, 1903; June 15, 1906; June 25, 1910; Mar. 2, 1917; Jan. 7, 1922; May 27, 1926; Feb. 11, 1932; Mar. 3, 1935; May 24, 1934; June 7, 1934; June 18, 1934; June 28, 1934; May 15, 1935; Aug. 28, 1935.

³Bankruptcy Act, section 4b, as amended May 15, 1935, c. 114, sec. 1, 49 Stat. 246; 11 U. S. C. A. 22b. Wage-earners (individuals who work for wages, salary, or hire, at a rate of compensation not exceeding \$1500 per year) and the following corporations are also immune from involuntary bankruptcy: municipalities, railroads, insurance companies, banks, and building and loan associations.

⁴That the courts are not in agreement as to the reason for the exception is indicated by the two following quotations—the one arbitrarily certain, the other hesitatingly general:

"The intent of Congress to protect men in agriculture, who might fall behind from the failure of crops for one or two seasons, has always been recognized as the basis for this provision in the statute." In re Doroski (D. C.), 271 Fed. 8, at p. 9 (1921).

"It may be safely assumed that Congress had no wish to facilitate preferences among a farmer's banking or mercantile creditors. There were in its judgment, however, reasons which in the overwhelming majority of cases made it inexpedient that farmers be subject to the possibility of involuntary bankruptcy, although, of course, there would be instances in which the denial to creditors of the right to institute bankruptcy proceedings against a farmer would work grave injustice to them and be of no benefit to him." In re Disney (D. C.), 219 Fed. 294, at 297 (1915).