IN THE SUPREME COURT OF BELIZE, A.D. 2020
CRIMINAL JURISDICTION

SOUTHERN DISTRICT – STANN CREEK

Indictment No. S22 of 2014

THE QUEEN

V

PAUL MARK

BEFORE: Honourable Justice Mr. Francis M. Cumberbatch

APPEARANCES: Mrs. Audrey Matura – Sr. Crown Counsel for the Crown
Mr. Oscar Selgado – Counsel for the Accused

TRIAL DATES: 3rd, 9th, and 10th of April, 2020.

RULING ON SUBMISSIONS

[1] The Accused was indicted by the Director of Public Prosecutions for the offence of bigamy contrary to ***Section 321 of the Criminal Code.***

[2] The trust of the Crown's case is that on the 3rd day of February, 2006, the Beatrice Garbutt Mark was lawfully married to the Accused in California, USA. In March 2010, after returning from a trip to the USA, the Accused informed Beatrice Garbutt Mark that they were divorced and presented her with documents amongst which was a judgment for dissolution of marriage issued by a Court in Cook County, Illinois, USA. This document was tendered into evidence by the Crown. The witness went on to state that she decided to challenge the divorce and served a letter to the Accused

indicating her intention so to do. This document was also tendered by the Crown into evidence.

[3] ***Section 321(1)*** provides thus:

> ***"A person commits bigamy who knowing that a marriage subsists between and any person gives through the ceremony of marriage with another person. Provided that a person accused of bigamy shall be acquitted if at the time of the subsequent marriage his former husband or wife has been continually absent from him for seven years, and has not been heard of by him as being alive within that time, and if before the subsequent marriage he informs the other party thereto of the facts of the case so far as they are known to him."***

It is therefore incumbent on the Crown to prove that the Accused went through a form of marriage knowing that his previous marriage to Beatrice Garbutt Mark still subsists.

[4] During her address to the jury, Counsel representing the Crown submitted that the letter of March 30th puts the Accused on notice that his divorce would be challenged and as such they can infer from that that he knew his divorce would be vacated and/or set aside.

[5] The Court brought to the attention of Counsel the following:

- Nothing in the notice prohibits the Accused from remarrying;
- There is no evidence that he was told by the process server that he is restrained from remarrying until the challenge is heard;
- That the last paragraph of that letter states "whatever decision the above Courts make in this matter, I will serve you with a copy of the order for your perusal";
- That the author of the letter was by its contents aforesaid uncertain of the outcome and promised to serve the Accused with a copy thereof when that order is made.

[6] It is common ground that the Court in Chicago made an order on the 28th day of April, 2010, in favour of Beatrice Garbutt Mark on her motion to vacate the judgment for dissolution of marriage. On the 10th day of May, 2010, a copy of that order was served on the Accused.

[7] The Court at this stage drew to the attention of Counsel on both sides the provisions of Section 322(2) of the Criminal Code which provides thus:

> ***"In like manner, where a person accused of bigamy defends himself on the ground of a divorce from a former husband or wife, any such divorce (and no other) shall be deemed sufficient as would be admitted by the Supreme Court of Belize as a valid divorce from the bond of marriage."***

The Court invited further submissions from Counsel as to whether this matter should be withdrawn from the jury in light of the foregoing.

[8] Mr. Selgado for the Accused submitted that the chronology of events disclose that the Accused at the time of his second marriage could not have known that his divorce decree had been vacated. He also relied on the provisions of section 322(2) of the Code aforesaid. He also relied on the second limb of Galbraith in support of his submission that the case should be withdrawn from the jury. Ms. Matura for the Crown relied on ***2(b) of Galbraith*** and contends that it is a matter for the jury to determine whether the Accused knew that his first marriage still subsisted when he went through a form of marriage on the 17th day of April, 2010.

[9] I find as follows:

- That the Accused marriage to Beatrice Garbutt Mark was dissolved in 2009, by the Circuit Court of Cook County, Illinois, a Court of competent jurisdiction;
- That the notice served on the Accused on the 30th day of March, 2010, cannot be interpreted as a notice that the divorce decree would be vacated, indeed Beatrice Garbutt Mark stated therein that whatever the outcome of her challenge may be she would serve a copy of that decision on the Accused;

- It is common ground that the divorce was not vacated until May 2010, and the final order was not made until June 2010, which was subsequent to the marriage of April 17th, 2010;
- That at the time when the Accused got married in April 2010, his judgment for dissolution of marriage was still subsisting; and hence, the provisions of Section 322(2) of the Code provides a complete defense to this charge.

[10] I find that in the circumstances, the Court should not risk to liberty of the subject by placing this matter for the jury's determination as there may be the likelihood of them returning a verdict adverse to the Accused which cannot be supported by the law and evidence before them.

[11] Accordingly, I will direct the jury to return a formal verdict of not guilty to the sole count on the Indictment.

Dated this **10th day of April, 2019**.

Honourable Justice Mr. Francis M. Cumberbatch
Justice of the Supreme Court