IN THE MATTER OF E——

In EXCLUSION Proceedings

5923798 (56107/653)

Decided by Board June 29, 1945

Opinion by Attorney General July 11, 1945

Reconsidered by Board September 21, 1945

Crime Involving Moral Turpitude—Bigamy—Section 10138 Nevada Compiled Laws.

The crime of bigamy is an offense which involves moral turpitude within the meaning of the immigration laws.

EXCLUDED BY BOARD OF SPECIAL INQUIRY:

Act of 1924—No immigration visa.
Act of 1916—Admits commission of crime: to wit, Bigamy in Nevada.

BEFORE THE BOARD

(June 29, 1945)

Discussion: The appellant, a 31-year-old native and citizen of Canada, was accorded a hearing before a board of special inquiry at Victoria, B. C., Canada, on April 17, 1944, relative to his admissibility to the United States. The board of special inquiry excluded him on the grounds above stated and his appeal is now before use for consideration.

The appellant, according to his testimony, seeks admission to the United States to make his permanent home here. His status is accordingly that of an immigrant and to satisfy the requirements of the Immigration Act of 1924, he must present an immigration visa to gain admission. He does not have such a document and he is therefore inadmissible under section 13 (a) of the act.

In addition to the documentary ground of exclusion, the board of special inquiry found the appellant inadmissible as one admitting the commission of a crime involving moral turpitude, to wit: bigamy in Nevada. A similar finding was made by a board of special inquiry at Victoria, B. C., Canada, on the occasion of this same alien's application for admission in the summer of 1942. That finding was affirmed by this Board on February 25, 1943. The basis for our decision at that time was the fact that good faith as to the death of the first spouse was thought to be a defense to a bigamy prosecution and the further fact that the Attorney General of the State of Nevada had advised

the immigration authorities that a criminal intent was an essential element of the crime of bigamy in that jurisdiction.

Thereafter, on November 12, 1943, we had occasion to again consider whether the crime of bigamy in Nevada involved moral turpitude. We then answered the question in the negative (*Matter of D—— R——*, 56156/310 (now A-2077593)). That decision was based on the theory that a criminal intent was not an ingredient of the offense and that a good faith belief in the termination of a prior marriage was not a defense to a bigamy prosecution. Our holding in the *D—— R——* case, arrived at subsequent to our first consideration of the same issue in this alien's case, constituted at the minimum an implied overruling of our prior decision.

Since, however, Mr. E—— has again applied for admission, and since the conclusion reached by us at the time of his application in 1942 was not expressly overruled in the *D—— R——* case, we shall give further consideration to the problem presented. In the event our prior decision in this alien's case is reaffirmed, he will be mandatorily inadmissible to this country and will never under existing law be able to establish a home here.

The record facts indicate that the alien was first married in 1933. While living in Canada he discovered his wife's infidelity and made two unsuccessful attempts to obtain a divorce in Toronto. Sometime thereafter he became intimate with another woman and in July 1941, after making an illegal entry, established a home in the United States. In December of that year a son was born to them in Los Angeles. Desiring to adjust his marital status, the alien again instituted divorce proceedings against his first wife, this time in California, and on July 1, 1942, he was granted an interlocutory decree of divorce by the Superior Court of Los Angeles County. This decree specifically provided that a final judgment terminating the marriage could be entered only after the expiration of 1 year. Notwithstanding that fact, the following day, July 2, 1942, the alien went to Nevada with his paramour and went through a marriage ceremony with her. He apparently thought that he could safely remarry in Nevada before the 1 year period had expired and had no intention of committing bigamy at the time. His only desire was to get married, give his son a name and then return to Canada and obtain the necessary documents to clarify his and his second wife's immigration statuses. Prosecution proceedings have never been instituted against him because of his second marriage.

When we consider the alien's appeal from the decision of the board of special inquiry excluding him in 1942, we found that he had committed the crime of bigamy in Nevada and that he had made a valid admission of its commission. We need not reexamine the

validity of these conclusions since, in our judgment and as will be shown below, the offense of bigamy as defined by Nevada law does not inherently or in its essence involve moral turpitude. We believe that our decision in the *D—— R——* case was sound and that our previous holding in the instant case on February 25, 1943, was erroneous.

Bigamy at common law was not punishable by the ordinary common-law tribunals. This condition existed because the ecclesiastical courts were deemed to be the most appropriate forums for the trial of offenses against the rights of marriage. These courts were therefore vested with exclusive jurisdiction to try bigamy cases. It was not until the reign of James I that bigamy was made *by statute* a felony punishable in the civil courts. This early statute, as thereafter modified and amended, was reenacted in all the American colonies and served as the basis for the bigamy statutes that were subsequently passed by the legislatures of all the States and Territories of the Union.[1]

Bigamy being a statutory offense, the determination of whether moral turpitude is involved therein must be made from an examination of the statutory definition plus the record of conviction, if any. Since no conviction was had in the instant case, only the offense as defined by Nevada law may properly be employed in answering the question in issue. And this is so regardless of how heinous or immoral the alien's acts in attempting to contract a second marriage might have been (*U. S. ex rel, Mylius* v. *Uhl*, 203 Fed. 162 (S. D. N. Y., 1913), affd. 210 Fed. 860 (C. C. A. 2nd, 1914); *U. S. ex rel, Meyer* v. *Day*, 54 F. (2d) 336 (C. C. A. 2, 1931); *U. S. ex rel, Zaffarano* v. *Corsi*, 63 F. (2d) 757 (C. C. A. 2, 1933); 39 Op. Atty. Gen. 215, 220 (1938); 37 Op. Atty. Gen. 293 (1933)).

Bigamy at the time of its commission by the appellant was, and is now, defined in section 10138, Nevada Compiled Laws (1929), which reads in its pertinent portion:

> Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this state being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars and be imprisoned in the state prison not less than one year nor more than five years. * * * Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is or shall be, at the time of such second marriage, divorced by lawful authority from the bonds of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

[1] See 7 C. J. 1158 as authority for this paragraph.

At common law, *mens rea,* or a *guilty mind*, is essential to the commission of any crime. Such an intent, however, is not always a necessary element with respect to statutory offenses. Its presence in any statute always depends upon the legislative intent and design. Thus, in some statutory crimes the mere doing of the prescribed act is punished and the presence or the absence of a guilty mind is immaterial.

So far as bigamy in Nevada is concerned, the Attorney General of that State in a communication dated September 2, 1942, apparently indicated, and we so assumed in our previous consideration of this case in 1942, that *mens rea* was an ingredient of that offense, for he said, "* * * criminal intent * * * is an essential element in any crime." While ordinarily, in the absence of definitive judicial decisions, we would be disposed to accept this statement by the Attorney General, the most authoritative legal officer in the executive department of the State of Nevada, as indicative of the law of that State with regard to the elements of bigamy, the highest court in Nevada has already passed upon this precise question. In *State* v. *Zichfield*, 23 Nev. 304 (1896), the court expressly held, apparently notwithstanding the use of the word "knowing" in the first sentence of the definition, that *mens rea* was not necessary to establish a violation of the Nevada bigamy statute.[2] In that case the defendant entered into a valid common-law marriage in 1893. Thereafter, in 1895, the parties mutually agreed, by virtue of a written instrument, to separate. In this written agreement they attempted to declare their marriage terminated. Three weeks later the defendant, believing in good faith that his first marriage had been validly terminated and knowing that his first wife was living, went through a formal marriage ceremony with another woman. During his trial on a bigamy charge, he attempted to introduce into evidence the agreement entered into with his first wife in order to show that he was acting in good faith and had no criminal intent in going through the second marriage ceremony. The trial court rejected this evidence and he was convicted. The Supreme Court in affirming the conviction held that the lower court had not erred in excluding the agreement and that the mere doing of the act prescribed by the statute constituted a violation thereof. (See also *State* v. *Pansey*, 128 F. (2d) 464 (Nev. 1942.) In view of this holding by the supreme judicial authority in Nevada, we must and do conclude that a person committing bigamy in Nevada need not have a guilty mind. Such is the great weight of

[2] In construing a similarly worded Utah bigamy statute, the highest court in that jurisdiction in *State* v. *Hendrickson*, 245 P. 375 (1926) cited the *Zichfield* case as authority for the holding that *mens rea* is not an element in the offense of bigamy. See also 27 L. R. A. (N. S.) 1097 (1910).

authority in the United States,[3] and such also apparently represents the English view.[4]

The Nevada statute provides for only three defenses to a bigamy prosecution: (1) A continuous absence of 5 years prior to the second marriage, the absent spouse not being known to be alive during that period; (2) a lawful divorce; and (3) a valid annulment. Consistent with the absence of *mens rea*, a previous common-law marriage had been terminated by mutual agreement was expressly held in the *Zichfield* case not to be a defense to a charge of bigamy. Similarly, though there is apparently no reported Nevada case on this point, a remarriage *within* the 5-year period in a mistaken good faith belief that the first spouse had died does not constitute a defense. This is apparently so in spite of the fact that the first sentence of the statute provides that "bigamy consists in the having of two wives or two husbands at one and the same time, *knowing* that the former husband or wife is still alive." For the effect of the last italicized word is seemingly nullified

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[3] See *Effect of Mistakes as to Termination of Former Marriage in Bigamy Prosecutions*, 34 Law Notes 124 (1930); *Bigamy: Good Faith Belief in Dissolution of a Former Marriage*, 27 Cal. L. R. 746 (1939); 15 Minn. L. R. 470 (1930).

The minority view that *mens rea* is an essential ingredient of bigamy apparently obtains in the States of Georgia (*Robinson* v. *State*, 6 Ga. App. 696 (1909)), Indiana (*Squire* v. *State*, 46 Ind. 459 (1874)), Louisiana (*State* v. *Cain*, 106 La. 708 (1902)), Nebraska (*Baker* v. *State*, 87 Neb. 775 (1910)), Ohio (*State* v. *Stark*, 9 Ohio Dec. 8 (1883)), and Texas (*Adams* v. *State*, 7 S. W. (2d) 528 (1929)). In these jurisdictions, because of the requirement that *mens rea* be present, a good faith belief in the termination of a prior marriage is apparently a valid defense to a bigamy prosecution. Under the bigamy statutes of these States, the offense probably involves moral turpitude. We have so held with respect to Texas in *Matter of S——*, 55923/195 (Jan. 1, 1944). Australia apparently also follows the minority view with respect to *mens rea*. See *Thomas* v. *The King* (1938), Argus Law Reports 37, where the court refused to follow the English cases of *Rex* v. *Wheat & Stocks*, (1921), 2 K. B. 119. See also *Bigamy and Mens Rea*, 17 Can. B. R. 94 (1939). New Zealand has also taken a similar position. *Rex* v. *Carswell* (1926), N. E. L. R. 321.

[4] *Evidence in Bigamy Cases*, 107 Just. P. 603 (1943); *Rex* v. *Wheat & Stocks*, *supra*; cf. *Bigamy and Mens Rea*, op. cit.; where the author apparently has some doubt as to what the English law is in view of the fact that a good faith belief in the death of a prior spouse constitutes a valid defense to a bigamy prosecution in England (*Reg.* v. *Tolson*, (1889), 23 Q. B. D. 168), whereas a good faith belief as to termination of a prior marriage by divorce is not. *Rex* v. *Wheat & Stocks*, *supra*. The Canadian law is apparently in accord with the English rule. The distinction drawn in the English cases has been said to be based on the fact that a mistaken belief as to the death of a prior spouse is a mistake of fact, whereas a similar belief as to divorce is a mistake of law which is inexcusable. This distinction has been vigorously criticized by English authorities. It has been said, "However true this may be as a matter of logic, *there is no difference in the moral innocence between the two cases*, and it is certainly unfortunate that in these circumstances a completely innocent man should be convicted of felony, however nominal the punishment may be." *Evidence in Bigamy Cases*, op. cit.

by the first sentence of the excepting provision which sets forth in substance that a continuous absence of 5 years, where the absent spouse is not known to be alive, shall constitute a defense. In addition, the Nevada court, in arriving at its conclusion as to the absence of *mens rea* in the *Zichfield* case, relied to a considerable extent, if not wholly, upon a Massachusetts case (*Comm.* v. *Mash* (48 Mass. Reports), 7 Met. 472 (1844)), and an Alabama case (*Jones* v. *State*, 67 Ala. 84 (1880)), wherein it was held that a remarriage within the prescribed period in a good faith belief that the first spouse was dead does not establish a defense.[5] Likewise, a bona fide belief that the first marriage has been adjudged a nullity or has been legally terminated by divorce does not constitute a defense.[6]

Thus it is clear that under the Nevada statute a person may be convicted of bigamy even though he may *honestly*, *sincerely*, and *reasonably* believe that his first wife died within the 5-year-period and he remarries within that period. Moreover, a remarriage in Nevada *innocently* entered into upon the erroneous advice of an attorney that a prior marriage had been legally dissolved by a divorce or adjudged a nullity nevertheless constitutes bigamy. The state of mind of the person violating the Nevada bigamy statute is of no moment. A person remarrying in that jurisdiction does so at his peril and no matter how well founded and reasonable his belief in the termination of his prior marriage may have been, he may nevertheless subject himself to a bigamy prosecution if the facts or the law turn out other than as he had thought. The Nevada statute draws no distinction between innocent wrongdoers and persons motivated by those base desires which call for condemnation by all mankind. It punishes the guileless, the naive, and the undesigning as well as the scheming, the deceitful, and the cunning.[7]

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[5] In *Parrnell* v. *State*, 126 Ga. 103 (1906), the Georgia court arrived at a similar conclusion under a statute worded substantially the same as the one before us. See also (1910) 27 L. R. A. (N. S.) 109, where the *Zichfield* case is cited as authority for this proposition. This construction of the Nevada statute is in accord with the great weight of American authority. See *Effect of Mistake as to Termination of Former Marriage*, op. cit.; *Bigamy: Good Faith Belief in Dissolution of a Former Marriage*, op. cit.; *Bigamy: Mistake of Fact as to Divorce and Death of First Wife*, 5 Wisc. L. R. 100 (1929). The contrary position, as indicated above, has been taken in England (*Reg.* v. *Tolson*, *supra*), and Canada (*Reg.* v. *Smith*, 14 U. C. Q. D. 565).

[6] Likewise, in this situation, there appears to be no reported Nevada case. In *State* v. *Hendrickson*, *supra*, which involved a person convicted of bigamy in Utah, even though he believed in good faith that he had been validly divorced, the Utah court cited the *Zichfield* case as authority for its holding. Such, also, represents the majority view in the United States. See footnote 5 for authorities.

[7] A second marriage invalid because of the existence of a prior marriage always causes serious social maladjustments, especially if there are children as issue

In view of this construction of the Nevada statute, we cannot conclude that a violator thereof is necessarily always guilty of base, vile, or depraved conduct.[8] For, it must be remembered that "it is in the intent that moral turpitude inheres" (*U. S. ex rel. Meyer* v. *Day*, 54 F. (2d) 336, 337, (C. C. A. 2nd, 1931); see also *U. S. ex rel. Shladzien* v. *Warden*, 45 F. (2d) 204 (E. D. Pa., 1930); Op. Sol. Labor, Dec. 5, 1922, and Mar. 1, 1923).

Since, as we have stated above, we are precluded from examining the actual conduct of the alien at the time of the commission of the crime, it must follow that the offense of bigamy, as defined by Nevada law, does not inherently or in essence involve moral turpitude. And parenthetically we wish to stress, as we have implied above, that even if we were permitted to examine the alien's conduct in this case, it is clear from the record that his motivations in entering into the premature second marriage were free from any evil intent. He apparently thought that he could legally remarry in Nevada notwithstanding the terms of the California interlocutory decree and was extremely anxious to get married for the second time as soon as possible in order to give his son a name. Further, the absence of any criminal intent is seen from the fact that he had already obtained an

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of both marriages. Yet, in jurisdictions where *mens rea* is a requirement, only the guilty minded person is punished, whereas where no *mens rea* is required the innocent as well as the criminally minded wrongdoer must suffer equally under the stigma of being called and punished as a bigamist. The suggestion has been made that in the light of changing sentiment and modern conditions, the whole question of intent in bigamy needs careful legislative reexamination with a view towards punishing only the guilty minded bigamist. See *Good Faith Belief in Dissolution of Former Marriage*, op. cit.; *Bigamy: Mistake of Fact as to Divorce and Death of First Wife*, op. cit.; *Bigamy and Mens Rea*, op. cit.

[8] Cf. *Petition of Schlau*, 141 F. Supp. 161 (S. D. N. Y., 1941), reversed on other grounds, 136 F.(d) 480 (C. C. A. 2nd, 1943). In that case a petitioner for naturalization had obtained a rabbinical divorce which had no civil effect in New York, and had remarried a year later in a good faith belief that he had been legally divorced. The district court, notwithstanding that the alien was apparently living in an adulterous relationship and had seemingly committed the crime of bigamy in violation of sections 340 and 341 of the New York Penal Law, found that he was a person of good moral character for purposes of naturalization. And parenthetically it is noted that the moral character expected of a petitioner for naturalization is obviously higher than that expected of an alien seeking to maintain his residence in the United States. The Court said (p. 163):

"* * * I find no compulsion in the law which constrains me to find the petitioner immoral simply because his conduct is unlawful.

"The distinction between offenses which involve moral turpitude and those which are free of that taint is well recognized at law. *That indicates that depravity of character and violation of law are not necessarily wedded together.* The ancient differentiation between *malum prohibitum* and *malum in se*, is a manifestation of the same common-sense separation between offenses which spring from wickedness of character and those which do not." [Italics supplied.]

interlocutory divorce decree; if he had had a criminal intent he would surely not have troubled to institute divorce proceedings against his first wife.

In arriving at this conclusion, the Board is fully cognizant of the fact that the Ninth Circuit Court of Appeals in *Whitty* v. *Weedin*, 68 F. (2d) 127 (1933), held that bigamy in Canada involved moral turpitude.[9] The language of this holding was broad and sweeping in character, and were it the sole expression of judicial opinion with respect to the manner of determining the presence or absence of moral turpitude in a particular crime, as an administrative agency we would feel compelled to follow it here. But, as we have seen, it is well settled by countless judicial decisions beginning with *U. S. ex rel. Mylius* v. *Uhl*, *supra*, some of which decisions we have cited above, that the presence or absence of moral turpitude in any crime is to be judged solely from the definition of the offense (statutory or common law, as the case may be) plus, if necessary, the record of conviction. The particular conduct of the alien, no matter how base or depraved it might have been, is immaterial and irrelevant and under no circumstances, at least in domestic crimes, can it be considered in making a determination. It was this approach that we followed in the instant case in ariving at our final judgment that no moral turpitude was involved in the crime of bigamy under Nevada law.

An examination of the decision in the *Whitty* case indicates, however, that the court there did not analyze the Canadian bigamy statute (sec. 308 of the Canadian Criminal Code) to ascertain therefrom the elements of the offense. Further, the opinion does not show that the record of the alien's conviction in Canada was before the court.[10] No account was apparently taken of the fact that, as in Nevada, a *bona fide* belief as to the termination of a prior marriage by way of divorce was not a defense to a bigamy prosecutor (*R.* v. *Wheat & Stocks*, *supra*); nor of the fact that where a foreign divorce had been granted which was invalid under Canadian law, the accused's good faith belief in its validity would not constitute a defense (*R.* v. *Brinkley* (1907), 14 O. L. R. 434, 12 C. C. C. 454; *Earl Russell's Case*, (1901) C. C. 446, 70 L. J. K. B. 998, 20 Cox C. C. 51). Apparently the court was only concerned by the facts, obtained outside the record of conviction, that the alien had married for a second time not in good faith and when he well knew that his first wife was still living and that his first marriage had not been validly terminated.

While perhaps a desirable result was reached in the *Whitty* case in view of the base nature of that alien's conduct, for us to accept the broad implication of that court's ruling as controlling here would

[9] See also *United States* v. *Brooks*, 284 Fed. 908 (D. Mich.) 1922.

[10] This is confirmed from our examination of the deportation file (55794/75).

mean that the crime of bigamy in *every* jurisdiction, no matter what the elements of the offense in the particular jurisdiction may be, must be held to involve moral turpitude. The tenuouness of such a holding can best be illustrated by the recent Supreme Court decision in *Williams* v. *North Carolina*, (325 U. S. 226), 89 Law. ed. Advance Opinions, 1123 (May 21, 1945). There the petitioners, residents of North Carolina, went to Nevada, obtained divorces from their respective spouses, and were married to each other in that jurisdiction. They then returned to North Carolina and lived together as man and wife, knowing that their former spouses were still living but believing that they had been validly divorced. Notwithstanding these facts, they were convicted in North Carolina of bigamous cohabitation, the jury finding that they had never been domiciled in Nevada from which finding it followed that Nevada had no jurisdiction to grant them divorces and there was no obligation upon the North Carolina courts to give the Nevada decrees full faith and credit. The Supreme Court upheld their convictions. Of particular interest, so far as the issue before us is concerned, is the following statement from the concurring opinion of Mr. Justice Murphy (p. 1133):

> It is unfortunate that the petitioners must be imprisoned for acts which they probably committed in reliance upon advice of counsel and without intent to violate the North Carolina statute. But there are many instances of punishment for acts whose criminality was unsuspected at the time of their occurrence. *Indeed, for nearly three-quarters of a century or more individuals have been punished under bigamy statutes for doing exactly what petitioners have done* (cases cited).

To say that the parties in the *Williams* case had committed a base, vile, and depraved crime would, of course, be absurd; yet, the application of the broad principles of the *Whitty* case and the rejection of those established judicial rules, set forth above, as to the manner of determining the presence of moral turpitude, would lead to that result. It is because of those rules that we have concluded that in considering whether the crime of bigamy, in whatever jurisdiction it is committed, involves moral obloquy, the *Whitty* case need not be deemed controlling.[11]

Findings of Fact: Upon the basis of all the evidence presented, it is found:

(1) That the appellant is an alien, a native and citizen of Canada;

(2) That the appellant seeks admission for permanent residence;

(3) That the appellant is not in possession of an immigration visa;

[11] On the facts, of course, the *Whitty* case may be distinguished from the one before us. There, the alien was convicted and was lacking in good faith. Here there has not been a conviction and the alien had no criminal intent in entering into the second marriage.

(4) That the appellant admits the commission of the crime of bigamy in Nevada.

Conclusions of Law: Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under section 13 (a) of the Immigration Act of 1924, the appellant is inadmissible as an immigrant not in possession of an immigration visa;

(2) That the crime of bigamy as defined in section 10138, Nevada Compiled Laws (1929), does not involve moral turpitude;

(3) That under section 3 of the act of February 5, 1917, the appellant is not inadmissible as admitting the commission of a crime involving moral turpitude, to wit: Bigamy in Nevada.

Other Factors: The alien lived illegally in the United States from July 7, 1941, until July 1942. He was permitted to depart voluntarily from this country on July 21, 1942. Though his divorce from his first wife has become absolute, he has apparently not yet remarried the woman with whom he went through a marriage ceremony in Nevada. At the time of the hearing, he apparently believed that he had to enter the United States to have his invalid second marriage annulled before he could be remarried. After the hearing, the alien's attorney wrote advising that the alien could legally remarry in Canada in view of the fact that his divorce in California had become absolute, thus indicating that the required marriage ceremony would be performed.

The appellant has never been in trouble with the police authorities and apparently has always supported the woman with whom he contracted a marriage in Nevada and their child. It seems that at the time of the hearing he was a member of the Canadian Navy. The excluding decision will be affirmed on the documentary ground without prejudice to a reapplication for admission.

Order: It is ordered that the excluding decision be affirmed solely on the documentary ground stated by the Board of Special Inquiry and without prejudice to a reapplication for admission within 1 year.

As a question of difficulty is involved, pursuant to the provisions of section 90.12, title 8, Code of Federal Regulations, the Board refers its decision to the Attorney General for review.

BEFORE THE ATTORNEY GENERAL

(Judy 11, 1945)

F—— J—— E—— attempted to enter the United States from Canada, but was excluded by the Board of Special Inquiry on the ground that he admitted the commission of a crime involving moral turpitude. The crime committed by him was bigamy. The bigamous marriage took place in Nevada. The Board of Immigration Appeals held that

under the Nevada statute relating to bigamy, the crime does not involve moral turpitude and, therefore, is not a ground for exclusion. The basis of this conclusion is that the definition of bigamy in the Nevada statute is sufficiently broad to include cases of marriages contracted in the honest belief that a prior marriage has been legally terminated, and that hence bigamy does not necessarily imply a felonious intent. The Board has certified its decision to me for review under the applicable rules on the ground that the issue involved is one of difficulty.

The Circuit Court of Appeals for the Ninth Circuit in *Whitty* v. *Weedin*, 68 F. (2d) 127, held that bigamy is a crime involving moral turpitude within the meaning of the immigration laws. The decision of the Board of Immigration Appeals refers to this case, but declines to follow it. I feel, however, that this department in making administrative decisions on questions of law should be guided by the decisions of the appellate courts on any point that has been judicially determined. No cogent reason appears discernible why the ruling of the Circuit Court of Appeals for the Ninth Circuit should not be adopted by this department in this matter.

To hold that bigamy is not a crime involving moral turpitude is contrary to the accepted standards of morals. As was stated by Mr. Justice Field in *Davis* v. *Beason*, 133 U. S. 333, 341, bigamy tends "to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman and to debase man. Few crimes are more pernicious to the best interests of society and receive more general or more deserved punishment."

The decision of the Board of Immigration Appeals insofar as it holds that bigamy is not a crime involving moral turpitude within the meaning of the immigration laws is reversed and the case is remanded to the Board for further proceedings not inconsistent with this opinion.

BEFORE THE BOARD

(September 21, 1945)

Discussion: This record relates to a 31-year-old native and citizen of Canada who was excluded by a board of special inquiry at Victoria, B. C., Canada, on April 17, 1944, on the grounds above stated. We considered this case on June 29, 1945, and at that time affirmed the excluding decision solely on the documentary ground and without prejudice to a reapplication for admission within 1 year. In our decision we held that the crime of bigamy as defined by section 19138, Nevada Compiled Laws (1929) did not inherently or in its essence involve moral turpitude. Because our conclusion in this respect involved a question of difficulty, the case was certified to the Attorney

General for review. On July 11, 1945, the Attorney General reversed the Board's decision so far as it held that bigamy was not a crime involving moral turpitude and remanded the case to us for further proceedings not inconsistent with his opinion.

The issue now before us is whether the appellant has made a valid admission of the commission of the crime of bigamy as defined by Nevada law. The record indicates that the definition of this crime was given to the alien and that he admitted, in his testimony, all the elements that went to make up the offense, namely, the fact that he went through a second marriage ceremony with another woman at a time when he knew that his first wife was alive. Since *mens rea* was not an element of the crime of bigamy as defined by the Nevada law, and since his good faith belief in the fact that he had been validly divorced from his first wife was not a defense, the evidence that was adduced on these issues has no effect on the question of whether the alien admitted the essential elements of the crime of bigamy. Finally, the record shows that the alien voluntarily and explicitly admitted that he did commit bigamy in Nevada. That being so, the appellant's inadmissibility on the criminal ground of exclusion must be sustained.

Order: It is directed that Conclusions of Law (2) and (3) in our decision of June 29, 1945, be amended to read as follows:

(2) That the crime of bigamy as defined in section 19138, Nevada Compiled Laws (1929), involves moral turpitude:

(3) That under section 3 of the Act of February 5, 1917, the appellant is inadmissible as admitting the commission of a crime involving moral turpitude, to wit: Bigamy in Nevada.

It is further directed that the order of June 29, 1945, be amended to read as follows:

The excluding decision of the board of special inquiry is affirmed.

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