

【法學英文】：模擬測驗練習第七回

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文章閱讀：本期「論重婚之法律上效果」

【原文裁判書摘要】

Supreme Court of North Carolina
State v. Joseph Landrum Vandiver, Jr.
265 N.C. 325 (N.C. 1965)

SUPREME COURT OF NORTH CAROLINA

FILED 22 SEPTEMBER, 1965

1. Criminal Law 78; Bigamy 2 — In a prosecution for criminal cohabitation in violation of G.S. 14-183, the legal wife of defendant is a competent witness to prove a valid, subsisting marriage at the time defendant contracted the second marriage. G.S. 8-57.
2. Indictment and Warrant 4 — Where some of the evidence before the grand jury is competent and some incompetent, a motion to quash the indictment for the admission of incompetent evidence will not be allowed, since the courts will not inquire as to how far the incompetent testimony contributed to the finding of a true bill.
3. Indictment and Warrant 13 — A motion for a bill of particulars is addressed to the discretion of the trial court and the denial of such motion will not be disturbed in the absence of a showing of abuse of discretion. G.S. 15-143.
4. Criminal Law 87 — The trial court has discretionary authority to consolidate indictments against the male and female partners for bigamous cohabitation. G.S. 14-183.
5. Bigamy 2 — Evidence of guilt of bigamous cohabitation held sufficient to be submitted to jury. The State's evidence tending to show that the male defendant had a lawful and subsisting marriage at the time he contracted a second marriage in another state, that the partners to the second marriage returned to this State where the female continued to live in her apartment, and that the male defendant went to her apartment practically every evening and that his automobile was parked there all night, is held sufficient to be submitted to the jury on the question of defendants' guilt of cohabitation in this State following a bigamous marriage outside the State, which marriage would be punishable as bigamous if contracted within the State. G.S. 14-183.

APPEAL BY DEFENDANT FROM CAMPBELL, J., APRIL 1965 CRIMINAL
SESSION OF BUNCOMBE.

Criminal prosecution on an indictment charging that defendant, late of Buncombe County, being a married man, on 14 September 1964 did feloniously contract a bigamous marriage with Frances Hall Young in Greenville, South Carolina, and that the said defendant did feloniously thereafter cohabit with the said Frances Hall Young in Buncombe County, North Carolina, a violation of G.S. 14-183. Plea: Not guilty. Verdict: Guilty.

From a judgment of imprisonment with a recommendation that he be placed on work release (G.S. 148-33.1 (a)), defendant appeals.

PARKER, J.

Before pleading to the indictment, defendant moved to quash the indictment on the ground that his legal wife testified before the grand jury that found the indictment here a true bill. Defendant's daughter also testified before the grand jury. The court denied his motion, and he assigns this as error. This assignment of error is overruled.

By virtue of the express provisions of G.S. 8-57, defendant's legal wife was a competent witness before the grand jury, which was considering an indictment against him charging him with a violation of the provisions of G.S. 14-183, "to prove the fact of marriage and facts tending to show the absence of divorce or annulment proceedings wherein the husband and wife were parties, in cases of bigamy, or in cases of criminal cohabitation in violation of the provisions of G.S. 14-183." In *S. v. Goldberg*, 261 N.C. 181, 134 S.E.2d 334, the Court said:

"It is a well-settled principle of law in this State that an indictment will not be quashed, on a motion made in apt time, when some of the testimony before the grand jury given by a witness who is not disqualified is competent and some incompetent, because a court will not go into the barren inquiry of how far testimony which was incompetent contributed to the finding of an indictment as a true bill."

Defendant assigns as error the denial of his motion, made before pleading to the indictment, for a bill of particulars. The granting or denial of defendant's motion was within the discretion of the court and is not subject to review, except for palpable and gross abuse thereof. *G.S. 15-143*; *S. v. Lippard*, 223 N.C. 167, 25 S.E.2d 594; *S. v. Scales*, 242 N.C. 400, 87 S.E.2d 916. We have examined the record as it relates to the court's denial of his motion for a bill of particulars, and no abuse of judicial discretion appears. This assignment of error is overruled.

There was an indictment against Frances Hall Young charging bigamous cohabitation by her with defendant, in violation of G.S. 14-183. Defendant assigns as error the order of the court, on motion