

OPINION  
OF THE  
ATTORNEY - GENERAL

IN  
REPLY TO A RESOLUTION OF THE HOUSE OF ASSEMBLY ASK-  
ING WHAT CRIMES DEPRIVE A PERSON OF HIS  
RIGHT OF CITIZENSHIP.



CAMDEN, N. J.  
THE COURIER PUBLISHING ASSOCIATION.  
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OFFICE OF ATTORNEY-GENERAL, }  
TRENTON, February 9, 1885. }

HON. EDWARD A. ARMSTRONG,

*Speaker of the House.*

MR. SPEAKER :—In reply to the resolution of the House of Assembly asking me to advise that honorable body, whether a person convicted of the crime of larceny of the sum of twenty-five dollars is thereby deprived of his right of citizenship and also generally what crimes deprive the persons convicted thereof of their right of citizenship, etc., I would observe that the constitution of this state provides that “no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector.”

The statute disqualifying witnesses in force at the time of the adoption of the constitution provided “that no person who shall be convicted of blasphemy, treason, murder, piracy, rape, arson, sodomy or the infamous crime against nature, etc., polygamy, robbery, conspiracy, forgery, or larceny of above the value of six dollars, shall in any case be admitted as a witness, unless he or she be first pardoned; and no person who shall be convicted of perjury, or subornation of perjury, although pardoned for the same, shall be admitted as a witness in any case.”

The crime of larceny of above the value of six dollars being one of the crimes specified in the statute I can see no reason why the crime of larceny of the sum of twenty-five dollars is not such a crime as deprives a man of his citizenship.

I am also asked "generally what crimes deprive the person convicted thereof of his citizenship and especially whether the crime of conspiracy as now defined by statute and by the decisions of the courts, is one of the crimes which deprive a man of his citizenship." The only answer that I can give generally is that the crimes are those specified in the statute.

In regard to the question to which my attention is especially called I reply that the 5th section of "An act supplementary to an act entitled 'An act for the punishment of crimes' passed the seventeenth day of February, one thousand eight hundred and twenty-nine," provided "that if two or more persons shall combine, unite, confederate, conspire, or bind themselves, by oath, covenant, agreement, or other alliance, to commit any offence, or falsely and maliciously to indict another for any offence, or to procure another to be charged or arrested for any such offence; or to falsely move or maintain any suit; or to cheat and defraud any person of any property by any means which are in themselves criminal; or to cheat and defraud any person of any property by any means which, if executed, would amount to a cheat; or to obtaining money by false pretences; or to commit any act injurious to the public health, to public morals, or to trade or commerce; or for the perversion or obstruction of justice or the due administration of the laws, they shall, on conviction, be deemed guilty of a conspiracy, and shall be punished by imprisonment, not exceeding two years, or by a fine, not exceeding five hundred dollars, or both; but no agreement to commit any offence, other than murder, manslaughter, sodomy, rape, arson, burglary, or robbery, shall be deemed a conspiracy, unless some act, in execution of such agreement, be done to effect the object thereof, by one or more of the parties to such agreement." (P. L. 1839, p. 148.) This act was in force at the time of the adoption of the constitution, but was not in force at the time of the passage of the act disqualifying witnesses.

The act of March 18, 1796, concerning crimes, confined the definition of the crime of conspiracy to combinations, falsely and maliciously to indict, or cause or procure to be indicted.

This act was in force at the time of the passage of the act disqualifying witnesses.

The act disqualifying witnesses passed June 7, 1799, must therefore have used the word "conspiracy," either to define the offence as it was known at common law or by the statute existing at the time of its passage, or both: And on the solution of this problem depends the constitutional question under the suffrage clause.

I am not aware that this question has ever been determined in this state. It has however been much discussed at the bar; and one judge eminent as a criminal lawyer has expressed the opinion that the disqualification only applied to "conspiracy" as defined by the act of March 18, 1796.

As the constitutional clause described as a class those persons convicted of crimes which excluded them from being witnesses at the time of the adoption of the constitution it cannot be said to be settled in this state whether that class embraces all convictions for "conspiracy" or only such as are defined by the act of March 18, 1796, until the matter is judicially ascertained.

I am further asked "whether the Court of Pardons is competent to grant a pardon after the person convicted of crime has served out the term of his imprisonment or has paid the fine adjudged or has in any way fulfilled the whole sentence of the court so that nothing remains but the disability?"

I have no doubt of the power of the Court of Pardons to grant a pardon under such circumstances, and the practice of the court confirms this opinion.

The statute which was in force at the time of the adoption of the constitution provided, "That no person who shall be convicted of perjury or subornation of perjury, although pardoned for the same, shall be a witness in any case."

This probably led to the peculiar phraseology of that portion of the exception in the suffrage clause "unless pardoned or restored by law to the right of suffrage."

It might have been considered doubtful whether the effect of the pardon was to restore the right of suffrage as it could not restore competency as a witness, but I have no doubt the practice of the court has established a construction of the constitution which gives the pardon the effect of restoring the right of

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suffrage as completely as though it was restored by an act of the legislature. <sup>per</sup>

I have the honor to remain your obedient servant,

JOHN P. STOCKTON,  
Attorney-General.