

Opinion No. 12-936

August 17, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. K. K. Scott, Roswell, N. M.

BIGAMY AND POLYGAMY.

Conviction for can be properly had under Section 1266, C. L. 1897.

OPINION

{*88} Your letter of the 14th instant was received yesterday in which you discuss the question as to whether bigamy and polygamy are offences under under the existing laws of New Mexico. As to the case of which you speak in which the offence, if any, was committed while we were a territory, there can be no doubt that it was correct to turn that over to the United States authorities in view of the provisions in Section 15 of the Enabling Act.

The doubt which you express as to whether an indictment under Section 1266 of the Compiled Laws would be good, is one which would naturally arise in the mind of any careful lawyer. I have heretofore had my attention called to this section of the statutes, but while we were a territory it did not appear to be a matter of practical importance as the legislation of congress on the same subject would suspend the operation of any territorial law. I believe there was a bill prepared and probably introduced in the last legislature on this subject for the purpose of defining bigamy and polygamy, but if so it failed of passage.

Upon the receipt of your letter I began to consider the subject with some care and it took this shape in my mind, that where a legislature denounces a punishment for any act it thereby declares that act to be a crime, and the grade of the crime as to being a misdemeanor or a felony would be measurable by the punishment, as is distinctly provided in Section 1043 of the Compiled Laws. If we should not take this view then we absolutely nullify Section 1266 and impute folly to the legislature, which must never be done if there is any possible way to avoid it. While this seemed reasonable I could not feel contented to rest my opinion upon my own reasoning if any authority should be found on the subject and I have today made a little investigation which leads me to believe that there are very few authorities applicable to such a question, but the few to be found support my conclusion.

In North Carolina it appears that Sub-section 2 of Section 985 of the code provided merely, inter alia, that every person convicted of the wilful burning of a gin house should be imprisoned for not less than five years nor more than ten years, and it was urged that this did not create any offence as the statute was limited merely to the denouncement of

a punishment. The supreme court of the state held that it did create an offence and declares that "the doctrine is well settled that where the statute either makes an act unlawful or imposes a punishment for its commission, such act becomes a crime, without any express declaration that it shall be a crime or of its grade." (State v. Pierce, 31 S. E. 847.) I take it, however, that the court means this doctrine is well settled in North Carolina {*89} as it refers to some earlier cases which I have not had the time to examine.

This case is closely applicable to our statute which merely provides that "Every person who shall be convicted of bigamy or polygamy shall be imprisoned not more than seven years nor less than two years."

Still more closely applicable, however, is a Louisiana case where an appellant sought to have a verdict and sentence reversed because the information described no offence and that the statute was void because in denouncing bigamy no attempt was made to define that offence. It appears that the statute there was "any person who shall be convicted of the crime of bigamy in this state shall be imprisoned at hard labor in the state penitentiary for a period of not more than five years nor less than one year." The court said in substance that while it was true that the crime of bigamy was not particularly defined by the statute yet it was the fact "that the word has a meaning not to be misunderstood wherever the English language is spoken," that it requires no definition and in itself denounces an offence, and the conviction was sustained. (State v. Hayes, 29 So. 937.)

These authorities are such as to commend themselves to our approval and I believe even in the present condition of our statutory law a conviction can properly be had under Section 1266.