

UNITED STATES v. BROCKIUS.

[3 Wash C. C. 99.]¹

Circuit Court, D. Pennsylvania. Oct. Term, 1811.

WITNESS—COMPETENCY—CONVICTION—INFAMOUS
OFFENCE.

1. A person who had been convicted in a court of this state, of an assault and battery with intent to murder, and sentenced to fine and imprisonment, is a competent witness.

[Cited in *Boyd v. State* (Tenn.) 29 S. W. 901; *Com. v. Dame*, 8 Cush. 385.]

2. If incompetency, produced by the conviction of a witness, depends on the punishment, and not the nature of the offence, yet where an infamous punishment, in the discretion of the court, is not added, there is, no disqualification, because it might have been inflicted. Fine and imprisonment is not an infamous punishment.

[Cited in *U. S. v. Block*, Case No. 14,009.]

[Cited in *State v. Nolan* (R. I.) 10 Atl. 482.]

Indictment for smuggling. One of the witnesses, in favour of the prosecution, was objected to, on the ground, that he had been convicted of an assault and battery with intent to murder, and had been sentenced to pay a fine, and to six months imprisonment, as appeared by the record produced in evidence.

Mr. Levy, for defendant, read the following cases: Co. Litt. 6, 13; Kel. 37, 38; 2 Wils. 18; 2 Bac. Abr. 583; 4 Bl. Comm. 217; 1 East, P. C. 407.

Mr. Dallas read McNal. Ev. 206 et seq.

BY THE COURT: The punishment of this offence at common law, is fine and imprisonment, and frequently the pillory is added; but it seems to be in the discretion of the court. In lieu of the common law punishment of branding, whipping, and pillory, the Penal Code of this state, has substituted confinement and hard labour. Now, even if the incompetency produced by conviction, depended on the punishment,

instead of the nature of the offence; where the infamous punishment forms no part of the sentence, there would be no disqualification, because it might have been inflicted. In this case, the punishment by fine and imprisonment, is not to be considered as an infamous punishment, so as to render the witness incompetent.

The case was left to the jury, on the evidence, who found the defendant not guilty.

Quere per WASHINGTON, whether, in any case, the statutory punishment, by confinement to hard labour, will destroy the competency of the witness, unless the crime is infamous?

¹ [Originally published from the MSS. of Hon. Bushbord Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters. Jr., Esq.]

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