

New Jersey Court of Errors and Appeals.

NEW JERSEY SUPREME COURT,
June Term, 1865.

THE STATE

vs.

TRASK, *et al.*

} *On state of the case.*

~~~~~

The statute, *Nix. Dig.* 815, section 7, providing that the keeper of the State Prison may contract for the labor of the prisoners, was intended to give him power to contract for the term of his official existence, and a contract to last for a longer term is not binding, either on his successors or the State.

### Opinion of Judge Vredenburgh.

VREDENBURGH, J.—It appears, by the case submitted, that on the 25th November, 1861, Mr. Stoll, the then keeper of the state prison, by agreement farmed out to the defendants 10 the labor of 250 prisoners, for four years from the 1st December, 1861, at prices therein specified. Stoll went out of office in the spring of 1862, and was then succeeded by Mr. Hoagland, who in turn was succeeded by J. B. Walker, the present incumbent, in the spring of 1863.

The different keepers and the defendants went under the contract until the 5th of October, 1863, when it was claimed, on behalf of the State, that the said agreement was not then binding on the State, and an agreement was then entered into between Walker and the defendants that the rate of 20 wages should be increased, if it should be judicially determined that said agreement was not then valid.

The validity of the contract on the 5th of October, 1863,

is claimed by the defendants under the statute, *Nix. Dig.* 815, section 7. This provides, among other things, that the keeper may, with the consent of the acting inspectors, contract with any persons for the labor of the prisoners. The difficulty is as to the construction of this clause. The State insists that it was intended to give the keeper power to contract only for the term of his official existence. The defendants insist that it gave to him authority to contract not only during his own, but also during the official life of his successors indefinitely.

10 I do not see how there can be the slightest doubt as to the intent of the act. The act gives power to every keeper to contract—whoever is keeper for the time being may contract. Mr. Walker was keeper on the 5th of October, 1863, and he had then power, by the very terms of the statute, to contract, and did make a new contract then. This power in the existing keeper is entirely inconsistent with the binding influence of a contract made by a former keeper. The power of the two cannot co-exist together. Either the keeper for  
20 the time being cannot contract when the statute says he may, or the former keeper cannot make his contract binding on his successors. In order to hold the contract binding on his successors, we must repeal the very clause under which the power of a former keeper is claimed.

That the legislature never intended by the clause in question to give any keeper power to bind his successors by any such contract, is also apparent from the whole scope and object of the said seventh section, as well as from all legislation upon the subject of the state prison.

30 Thus the keeper is a constitutional officer, who holds under a term of only one year. He cannot exercise the powers or duties of a successor without exercising them unconstitutionally. One of the principal duties of a keeper is to oversee and regulate the labor of the prisoners. A predecessor cannot intrude himself into the prison, and say that prisoners shall labor as I prescribe.

And yet it is contended here, that although a former keeper has no business in the state prison unless he is duly sent there by the Oyer, yet he can in substance regulate all  
40 the labor of the prisoners for all future time by his agents,

the contractors. A law which would force the keeper for the time being to submit and regulate himself by the mode of regulating the labor of a prior keeper would be a clear infringement of the constitution, by changing the office from a yearly to a perpetual one.

But the scope of the whole law in relation to the state prison plainly indicates that the legislature could have had no such intent. It speaks and provides only for the duties of existing keepers. Thus section seven, *Nix. Dig.* 813, is entitled "of the principal keeper and his duties," and then goes on defining them. Among others, it provides that he shall provide stock for the prisoners to work upon, and to make contracts for clothing and provisions. Was it ever supposed that one keeper could in these matters bind his successors indefinitely? So again it provides that the keeper for the time being may contract for the sale of all articles manufactured by the prisoners. 10

Was it ever supposed that any keeper for the time being could under this clause contract for the sale of all articles manufactured by the prisoners not only during his own official life, but also for all time indefinitely? If we should so construe it, the office of keeper would lose all the characteristics of an annual officer under the control of the legislature. A new keeper would be one in name only, with no duties, powers, or discretion. So throughout the whole of this long section it speaks only of the duties of the keeper during his official life. 20

But again, one of the chief duties of the keeper is to keep the prisoners in solitary confinement at hard labor, and provide the necessary means and materials for them to labor on and with. This is made *imperative* by the statute, and can necessarily only be done by the keeper during his term of office. When a new keeper is inducted, the old one necessarily ceases to have any control over the labor of the prisoners. The statute allows the keeper for the time being to contract for the labor of the prisoners. But this was only allowed in place of his own personal employment of them, and was intended to last no longer than his own personal employment of them. It merely covers in the place of his own personal employment of them. 30 40

So again this 7th section provides that the keeper may appoint agents for the sale of articles manufactured. It does not say how long the appointment is to last. Suppose he should appoint them for four years, would it bind his successor? and yet why not, if this one does? In fine, if the doctrine the defendants contend for be true, the person appointed this year by the legislature will indeed be the nominal keeper, but the real one will be some one who was appointed perhaps a dozen years back.

- 10 In this whole section there is no duty prescribed which does not contemplate its being done by the keeper for the time being. So when it prescribes that the keeper shall receive and keep the prisoner, does it mean that the prisoner is to be kept by the same keeper who received him, or by each keeper, as he succeeds to the office? So when it prescribes that the keeper shall visit the cells twice a week, or keep a journal, or not absent himself from the prison, or furnish the prisoners with books, or receive money for articles sold, or sell articles manufactured, or, as is the case be-
- 20 fore us, contract for the labor of the prisoners, it always and only contemplates acts done by the keeper for the time being; and the simple fact that this section gives these powers and duties, and vests this discretion in each keeper or any keeper, and attaches them to the office, necessarily, as we have before remarked, limits the power of each one to his own official existence.

- I am of opinion that the only object of this clause was, instead of insisting that the keeper should himself procure the material to be manufactured, and attend to the labor of
- 30 the prisoners personally, to give him the privilege of putting the labor of the prisoners out by contract, and that the one mode of managing such labor of the keeper was to endure no longer than the other.