

New-Jersey Supreme Court : Middlesex.

SILAS COOK,

vs.

THE BOARD OF CHOSEN FREEHOLDERS OF THE } In Debt.
COUNTY OF MIDDLESEX.

STATE OF THE CASE.

At the May Term of the Court of Oyer and Terminer of the County of Middlesex, in the year 1853, Silas Cook, the above named plaintiff, was convicted of the crime of Rape, and sentenced to pay a fine of one thousand dollars, and the costs of suit, and to stand committed until the fine and costs were paid. This judgment was affirmed on Writ of Error in the Court of Errors and Appeals in the Term of March, in the year 1855. On the 25th of June, in the year last aforesaid, at a Court of Pardons held at Trenton, the said plaintiff was in due form of law pardoned for the said crime, and the said fine was remitted at the same time; a certificate of which said pardon and remission of the said fine, furnished the said plaintiff, under the seal of the State of New Jersey, is in the words following, to wit : 10

State of New Jersey :



I, THOMAS S. ALLISON, Secretary of State of the State of New Jersey, and, *ex officio*, Clerk of the " Court of Pardons," do hereby certify, that on the twenty-fifth day of June, A. D., one thousand eight hundred and fifty-five, at a meeting of the said Court of Pardons, Silas Cook, convicted of

the crime of Rape at the Middlesex County Court, of the term of May Term, 1853, received a full and free pardon for the crime of which he was convicted; also that the fine of one thousand dollars imposed upon the said Silas Cook, by the said Court, for the offence aforesaid, be remitted, in both which acts, the pardon, as well as the remission of the fine, the Governor, and a legal number of the members of said Court of Pardons, concurred.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at Trenton, this twenty-sixth day of June, 10 eighteen hundred and fifty-five.

THOS. S. ALLISON,
Clerk of the Court of Pardons.

That at the time of the conviction aforesaid of the said plaintiff, to wit, in the month of May, in the year 1853, the said plaintiff paid to the Sheriff of the County of Middlesex, the said fine of one thousand dollars, besides the costs, and that the same was immediately paid over by him to the County Collector of the said County of Middlesex, and was then carried to the credit of the said County.

That the said plaintiff, after his pardon, and the remission of the fine in manner aforesaid, and before instituting this suit, de-
20 manded payment of the said one thousand dollars, with interest, from the Director of the Board of Chosen Freeholders of the said County of Middlesex, and of the Collector of the County, and on the 6th of October last, at a meeting of the said Board, made a formal demand of the same of the Board, which were refused by the said Board.

Upon this state of the case, the question is submitted whether the plaintiff is entitled to recovery, and if so, with or without interest, and, if with interest, from what time, and as the decision of the Court shall be, it is agreed judgment shall be entered with
30 costs to the successful party. And it is further agreed that either party shall be at liberty to turn this state of the case into a special verdict, and have the opinion of the Supreme Court reviewed in the Court of Errors.

January 15th, 1856.

WM. PENNINGTON, *Att'y of Plaintiff.*

GEORGE A. VROOM, *Att'y of Def't's.*

REASONS IN ERROR.

1. Because the Supreme Court decided that the power conferred by the Constitution of this State in the Court of Pardons, to remit fines, only extended to cases where the fine had not been paid, and that no restitution could be made after the same had been paid by the defendant.

2. Because the Supreme Court decided that the fine of the plaintiff in this action having been paid to the Sheriff of the County of Middlesex, and he having paid it over according to law to the Collector of the County, the plaintiff could not, notwithstanding the remission of the fine by the Court of Pardons, recover 10 back the money.

3. Because the Supreme Court decided that no recovery could be had in the present action, but resort must be had to the Legislature for that purpose, or in some other form of action or procedure.

4. Because the Supreme Court ordered judgment for the defendants below, when they should have ordered judgment for the plaintiff below.

5. Because the judgment below is in other respects erroneous.

WM. PENNINGTON, *Plaintiff's Attorney.*

