

New Jersey Court of Errors and Appeals.

ALANSON TRASK, CHARLES D. BIGELOW, and WALTER B. BIGELOW, vs. THE STATE OF NEW JERSEY.	}	In error to the Sup. Ct., &c.
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State of the Case.

[Filed July 7, 1864.]

This was an action of *assumpsit*, brought by the State of New Jersey (defendant in error) against Alanson Trask, Charles D. Bigelow, and Walter B. Bigelow (the plaintiffs in error), by a writ of summons, issued out of the Supreme Court, tested March 17th, 1864, and returnable April 4th, 1864.

The declaration contains the common count for goods sold and delivered; work and labor done and performed; money lent and advanced, &c. The plea *non-assumpsit*.

Afterwards, on the 24th June, 1864, the parties agreed upon the following state of the case; *viz*:

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SUPREME COURT OF NEW JERSEY.

The State of New Jersey, vs. Alanson Trask and others.	}	In case, &c.
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It is agreed between the parties in this action that it shall be deemed and considered that the issue joined between the parties came regularly on to be tried before the Circuit Court in and for the county of Mercer, at the April term thereof, in the year of our Lord one thousand eight hundred and sixty-four, (*pro ut* the pleadings).

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That at said trial it was fully proved, on the part of the plaintiff, that the said plaintiff, at the instance and request of the defendants, had furnished them with the labor of two hundred and fifty prisoners and upwards at the State Prison

of New Jersey, from the first day of December, 1861, up to the day of the commencement of this suit, *viz.* on the 17th day of March, 1864, which at the rate of thirty-one cents a day for each prisoner whose labor was thus furnished, after having worked for six months for said defendants, and at the rate of twenty cents per day before so working for six months, amounted to the sum of

that by increasing the rate of the wages of said labor, from the fifth day of October, 1863, up to the said day of the
 10 commencement of this suit, to thirty-five cents instead of thirty-one cents a day for each prisoner whose labor was thus furnished, after having worked for six months as aforesaid, and to thirty-one cents, instead of twenty cents a day, before so working for six months, the aggregate of said wages would amount to the sum of

and that the first above specified rates, in the absence of any agreement, were a reasonable and fair compensation for the labor aforesaid from the first day of December, 1861, to the fifth day of October, 1863; and that
 20 the last above specified rates were a reasonable and fair compensation for the labor aforesaid between the said fifth day of October, 1863, and the day of the commencement of this suit. And it was admitted by said plaintiff that said defendants had paid for said wages furnished as aforesaid the said sum of but no more; and said plaintiff claimed the difference between that sum and the said sum of to wit, the sum of four thousand nine hundred and seventeen dollars and ninety-eight cents.

30 The plaintiffs having rested, the defendants, on their part, duly proved, and offered and read in evidence, an article of agreement made and entered into between them and Robert P. Stoll, a former keeper of said State Prison, with the consent of the inspectors, of which the annexed is a copy, and then proved that the said labor was furnished to them under that agreement, from the aforesaid first day of December, 1861, to the aforesaid fifth day of October, 1863, on or about which day it was claimed in behalf of the state that said agreement was not then a valid and binding agreement on
 40 the plaintiff; and that, in consequence of such claim on the

part of the state, an agreement was entered into to the effect that subsequent to that day, and up to the day of the commencement of this suit, the rate of wages should be increased as above stated, if it should be judicially determined that said agreement was not then valid; but if it should be so determined that said agreement was then valid, there should be no increase in the rate of said wages first above mentioned.

It was also proved and admitted by the parties, that Robert P. Stoll, the keeper of said State Prison mentioned in said 10 article of agreement, went out of office in the spring of 1862, and that his successor, Tunis V. D. Hogeland, was keeper but one year, and went out of office in the spring of 1863; that his successor, Joseph B. Walker, after having served his first term, was afterwards duly appointed for a second year, and is now the keeper of said State Prison.

It was also proved and admitted by the said parties, that the furnishing of said labor as aforesaid, under said agreement, in no wise interfered with the discipline and regulations of said prison.

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It is further agreed between the parties that the above statement shall be deemed and considered as a special verdict, with power in the court to make all legal presumptions therefrom; provided that, if the court shall be of opinion that the aforesaid article of agreement was not binding on the plaintiff for the four years mentioned therein, then no presumption of its confirmation or adoption thereof shall be made for its continuance beyond the aforesaid fifth day of October, eighteen hundred and sixty-three; and if the court shall be of opinion that said agreement was and continued 30 binding on the parties to the day of commencing this suit, they shall give judgment final thereon for the said defendants; but that if the court shall, on the contrary, be of opinion that said agreement did not so continue binding, then they shall give judgment for the plaintiff for the said sum of four thousand nine hundred and seventeen dollars and ninety-eight cents, with costs.

E. W. SCUDDER,
Attorney of plaintiff.

A. BROWNING, 40
Attorney of defendants.

The argument, having been fully noticed, came regularly on to be heard before the Supreme Court, at the February term thereof, 1865, and was argued before said court by the counsel of the parties, respectively, at the term; and that court, having considered the same, and being of opinion that upon the said case agreed upon by said parties as a special verdict, the judgment should be for the plaintiff below, did thereupon, at the same term of the said Supreme Court, in pursuance of said agreement, give judgment for said
 10 plaintiff below for the sum of four thousand nine hundred and seventeen dollars and ninety-eight cents, besides costs, (*pro ut* the record).

The said defendants below at once brought a writ of error removing said judgment into this court, and have assigned for error as follows, *viz*:

ASSIGNMENT OF ERROR.

That the said article of agreement, made and entered into between them, the said Alanson Trask, Charles D. Bigelow, and Walter B. Bigelow, plaintiffs, with said Robert P. Stoll,
 20 a former keeper of the State Prison of New Jersey, was, at the time of the making thereof, a valid and binding agreement between the parties, and so continued up to the day of the commencement of said action; and that therefore judgment should have been given for said plaintiffs, instead of for said defendant.

And also there is error in this, that the judgment aforesaid, by the record aforesaid, appears to have been given for the said defendant against the said plaintiffs; whereas, by the law of the land, the said judgment ought to have been
 30 given for the said plaintiffs against the said defendant.

The defendant in error filed the common joinder in error.

COPY OF AGREEMENT MENTIONED IN SAID STATE OF THE CASE.

Articles of agreement made and concluded on this 25th day of November, 1861, by and between Robert P. Stoll, keeper of the New Jersey State Prison at Trenton, party of

the first part, and Alanson Trask, Charles D. Bigelow, and Walter B. Bigelow, party of the second part, witnesseth, that the party of the first part do let and farm out, and by these presents have let and farmed out to the party of the second part, the labor and services of two hundred and fifty male prisoners, provided there are as many available convicts in the prison who shall have at least one year to serve, and who shall be mentally and physically capable of doing the labor for and during the whole time each day which the prisoners are required to labor, to begin on the first day of 10 December, 1861, and to continue for four years, at the price of thirty-one cents (31) per day, each prisoner, after he has worked six months on this contract, and twenty cents (20) per day, for each prisoner, until he shall have worked on this contract six months; payments to be made quarter yearly, *viz.* January, April, July, and October. The said convicts to work at making boots and shoes, or other articles of merchandise connected with their business. The time of labor to average ten hours per day, from the first day of March to the first day of November each year, and as many 20 hours as they can by daylight see to labor during the months of November, December, January, and February, of each year, excepting in case tasks are given to the prisoners, in which case the task shall complete the day's work. And the party of the first part covenant and agree to furnish, free of charge, suitable and convenient shop-room in which to conduct their said business, and heat the same when necessary; to furnish gratis one prisoner for each fifty men as shop waiter, and furnish gratis a disciplinarian for each shop floor or room, whose duty it shall be to preserve order and enforce 30 discipline, see that the convicts do a fair and reasonable day's work, enforce the rules and regulations of the prison, and keep the time-book; no charge to be made for time lost by reason of sickness, punishment, or by any other reason not to the fault of the party of the second part; also, no charge to be made for any prisoner who shall be pardoned out, or for other cause shall discontinue work before he shall have worded sixty days under this contract.

And the party of the first part further covenant and agree not to take any prisoner from the work of the party of the 40

second part who has been once placed upon it and instructed, except with their consent, unless pardoned or sentence expires; and that they will not let prisoners for the boot and shoe business to any other party or parties, so long as the said party of the second part continue this contract; also agree to make good any damage done to any goods or stock by rebellion of prisoners or by their wilful or malicious acts.

It is further understood and agreed, by and between the parties hereto, that the said party of the second part shall be
 10 privileged to have, at their own charge and expense, a suitable number of men in the shops to oversee the work and instruct the prisoners, and shall have free access to and from the shops for themselves and their goods during business hours; and also that the party of the second part shall be privileged to discontinue their contract after December 1st, 1862, by giving in writing, at any time, three months' previous notice.

And in consideration of the expense of establishing the said business, should the party of the second part, at the ex-
 20 piration of this contract, desire to renew the same, they shall have the preference over any other party or parties, upon offering the same or as favorable terms.

It is hereby further understood and agreed that each disciplinarian shall keep a time-book, containing the name of each prisoner under his charge, in which he shall make daily entries, showing the number of days and parts of days each prisoner shall have worked, which book shall be subject to inspection and correction by the parties hereto.

The party of the second part hereby covenant and agree,
 30 to and with the party of the first part, to hire, and by these presents doth hire, the labor and service of two hundred and fifty male prisoners, in accordance with the stipulations and conditions herein before mentioned.

And the party of the second part further agree that the said party of the first part shall have a lien upon all goods, stock, tools, and machinery of the said party of the second part, which may be in his possession as keeper within said prison, for the security of payment of all sums or debts that may be due or become due said party of the first part by
 40 virtue of this contract; and in case the said party of the

second part shall neglect or refuse said payments as they shall become due, said party of the first part shall, after reasonable notice to said defaulting party, have full power to sell such portion of said property in his possession as may be necessary, at public auction, on giving the usual notice required by law for a sale under a chattel mortgage, for payment of said labor and services, the overplus, if any arising from such sale, to be returned to the party of the second part.

It is agreed that nothing herein contained shall be construed to abridge the right of the keeper to carry out the 10 rules of discipline, and enforce the regulations and laws of the prison.

An alteration was made in the fifteenth line from the top of the page, striking out the word September, and writing over it the word December, before signing these articles.

In witness whereof, the parties to this agreement have hereunto affixed their hands and seals, in presence of Josiah P. Marquand, to the signatures of Robert P. Stoll, Alanson Trask, and Charles D. Bigelow.

ROBERT P. STOLL, *Keeper*, [L. s.] 20

ALANSON TRASK, [L. s.]

CHAS. D. BIGELOW, [L. s.]

John W. Murphy, to the signature of W. B. Bigelow.

W. B. BIGELOW, [L. s.]

A true copy.

We, the undersigned, acting inspectors of the New Jersey State Prison, approve and consent to the foregoing agreement.

JONATHAN PICKEL,
SILAS H. KITCHELL.

NEW-JERSEY

COURT OF ERRORS AND APPEALS