

1860

Phillips & Boswell, printers, Trenton.

New Jersey Court of Errors and Appeals.

Between

SIDNEY M. LAYTON,

vs.

THE STATE OF NEW JERSEY, on the relation of the Board of Chosen Freeholders of the county of Hudson.

Writ of error to Sup. Court.

Reple March T., 1860.

The State of New Jersey to the Justices of our Supreme Court *greeting* : Whereas we are given to understand and be informed that, in a certain case of *mandamus* before you in our said court, at our suit on the relation of the board of chosen freeholders of the county of Hudson, against one Sidney E. Layton, judgment hath been given against the said Sidney, that a *mandamus* should be issued against him, as by the record and proceedings in that behalf may appear ; and because in the said record and proceedings, and in the giving of judgment in the said case, manifest error hath intervened to the 10 great damage of the said Sidney, as by his complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then the record and proceedings aforesaid, as fully as the same are before you, with all things touching the same, you do certify and send, with this writ, to our Court of Errors and Appeals, to be holden at Trenton on the fourth Tuesday in March, instant, that our said court, having duly inspected the said record and proceed- 20 ings, may cause to be done thereupon, for correcting that error, what of right and according to the laws and constitution of this state ought to be done.—Witness Henry W. Green, es-

quire, Chancellor, at Trenton, the twenty-third day of March, in the year one thousand eight hundred and sixty.

JOSEPH P. BRADLEY, *Att'y.*

THOS. S. ALLISON,
Secretary of State.

The answer of the Justices of the Supreme Court to the within writ.

The records and proceedings within mentioned, as fully as the same remain before us, we certify and send to the Court of 10 Errors and Appeals in a schedule to this writ annexed.

Dated March 24th, 1860

E. B. D. OGDEN, [L. s.]
Associate Justice Sup. Court.

NEW JERSEY SUPREME COURT, November term, 1859.

The State, on the relation of the
Board of Chosen Freeholders of
the county of Hudson,

vs.

Sidney M. Layton,

*On motion to show
cause why a man-
damus should not
issue.*

- 20 It having been represented to the court that Sidney M. Layton was appointed keeper of the jail of the county of Hudson under the act entitled, "An act to transfer the charge and keeping of the jail and custody of the prisoners in the counties of Essex and Hudson from the sheriff to the board of chosen freeholders, and for the employment of the prisoners, and to regulate the term of service therein."—And it further appearing by the said act, that the said jailor may at any time be removed from office by a vote of two-thirds of all the chosen freeholders of said county for the time being; and it

being represented to the said court, that at a meeting of the said board of chosen freeholders of the county of Hudson, held on the twelfth day of October, eighteen hundred and fifty-nine, a resolution was passed that the said Sidney M. Layton be removed from the office of keeper of the jail and master of the work house, and that the committee on the jail and work house be authorized to employ a temporary keeper until the next meeting of the board; which resolution was passed by a vote of two-thirds of all the chosen freeholders of the said county of Hudson for the time being. And it being 10 further represented to the said court that, on the 19th of October, 1859, the said board did resolve, by a vote of two-thirds of all the chosen freeholders of the said county for the time being, that the committee on the jail and work house be directed to remove Mr. Layton from the possession of the jail, work house, and dwelling house, and to appoint a temporary jailor subject to the approval of this board. And it being further represented to the court, that the said Sidney M. Layton, although duly notified to surrender to the board of chosen freeholders of the county of Hudson the possession of the jail, 20 work house, and dwelling house, has refused so to do; and although duly notified of his removal from the office of jailor, as aforesaid, has refused to vacate said office—

It is thereupon ordered, that a rule to show cause be granted, and that Sidney M. Layton show cause before this court, on the third Tuesday of November, 1859, at three o'clock in the afternoon of that day, at the state house at the city of Trenton, why a *mandamus* should not issue commanding the said Sidney M. Layton to vacate and surrender the office of jailor of the county jail of the said county of Hudson, and surren- 30 der to the board of chosen freeholders, or to such jailor as they have appointed, or may see proper to appoint, the possession of the jail, work house, and dwelling house in the said county of Hudson, and that either party have liberty to take affidavits under this rule.

On motion of

I. W. SCUDDER,
Att'y for relators.

NEW JERSEY SUPREME COURT, February term, 1860.

The rule heretofore granted by this court, at the term of November, A. D. 1859, why a *mandamus* should not issue, as in said bill stated, having been brought on to be heard, and the depositions and exhibits, taken under said rule, having been laid before the court, and the matters therein contained having been debated by counsel, the court do order, that the rule aforesaid be made absolute, and that an alternative *mandamus* be issued.

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On motion of

I. W. SCUDDER,
Att'y for relators.

NEW JERSEY SUPREME COURT.

New Jersey, *ss.*—The State of New Jersey to Sidney M. Layton.—Whereas we have been given to understand, in our Supreme Court before us, that you hold the possession of the jail, work house, and dwelling house of the jailor in the county of Hudson, notwithstanding the board of chosen freeholders of said county have, by resolution passed by a vote of two-thirds of all the members of the said board of chosen freeholders, ordered that you, the said Sidney M. Layton, be removed therefrom. And whereas we have been further given to understand that you, the said Sidney M. Layton, although duly notified to surrender to the board of chosen freeholders of the county of Hudson the possession of the said jail, work house, and dwelling house, have refused so to do, and that you, the said Sidney M. Layton, well knowing the premises, and not regarding your duty in this behalf, still do absolutely neglect and refuse to deliver to the board of chosen freehold-
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ers of the county of Hudson the said jail, work house, and dwelling house in the said county of Hudson, and on the contrary thereof unjustly detain the same in your custody or power in contempt of us, and to the great hinderance of the administration of justice within the said county of Hudson, as

we have been informed from the complaint of the said the board of chosen freeholders of the county of Hudson, made to us in that behalf.

We, therefore, being willing that due and speedy justice should be done in this behalf, as it is reasonable, do command you, firmly enjoining you, that immediately after the receipt of this our writ, you do without delay deliver, or cause to be delivered, to the said the board of chosen freeholders of the county of Hudson, the possession of the jail, work house, and dwelling house in the county of Hudson in your possession, in order that the same may be placed in the custody, rule, keeping, and charge of the said the board of chosen freeholders of the county of Hudson, and in such jailor as they have appointed, or shall hereafter appoint— 10

Or that you show us cause to the contrary thereof, lest, by your default, the same complaint should be repeated to us, and how you shall have executed this our writ make known to us at the state house, at the city of Trenton, on the thirteenth day of March, eighteen hundred and sixty.

Witness Henry W. Green, esquire, Chief Justice of our said 20
Supreme Court, at Trenton, this sixth day of March, in the year of our Lord one thousand eight hundred and sixty.

CHAS. P. SMITH, *Clerk.*

I. W. SCUDDER, *Att'y.*

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NEW JERSEY SUPREME COURT, February term, 1860.

It is ordered, that the defendant have until Friday next, the 16th instant, to make his return to the *mandamus* issued in the above cause.

On motion of

J. P. BRADLEY, *Att'y.* 30

March 10th, 1860.

*The answer of Sidney M. Layton to the writ, whereof a copy is hereunto annexed.*

I, Sidney M. Layton, to whom said writ is directed, do hereby respectfully and humbly certify and return to the State of New Jersey, at the time and place in said writ specified, that true it is that I hold possession of the jail, work house, and dwelling house attached to the jail of the county of Hudson, as in the said writ is surmised, and that the board of chosen freeholders of said county have, by resolution passed  
 10 by a vote of two-thirds of all the members of the said board, ordered that I be removed therefrom, and that I have refused so to do, except as herein after mentioned, and still refuse to deliver to the said board the said work house and dwelling house, as in the said writ is also surmised, but I have not refused to deliver to said board or to such jailor, as they should or might appoint, the possession of the jail itself, as distinguished from said dwelling house and work house; but, on the contrary thereof, I have offered, if the said board would  
 20 appoint a jailor to take charge of said jail without claiming or taking possession of said dwelling house and work house, I would pay him a salary of five hundred dollars out of my own pocket; and I do further certify and return, that I was never, to my knowledge, appointed, and never claimed to be appointed, by the said board of chosen freeholders of the county of Hudson, or any other officer in person jailor of the said county; but that, on or about the thirty-first day of October, in the year of our Lord one thousand eight hundred and fifty-six, in anticipation and contemplation of the passage of the act entitled "An act to transfer the charge and keeping of the jails  
 30 and custody of the prisoners in the counties of Essex and Hudson from the sheriffs to the boards of chosen freeholders, and for the employment of the prisoners, and to regulate their term of service therein," approved the twenty-seventh day of February, in the year one thousand eight hundred and fifty-seven, or of some similar act of like object and effect, for which the said board of chosen freeholders were to apply to the legislature, and agreed with me so to do, an agreement was made and entered into by and between myself, then residing and en-

gaged in business at Waterbury, in the state of Connecticut, and the said board of chosen freeholders of the county of Hudson, which agreement was reduced to writing, and duly executed by me, under my hand and seal, and by the said board of chosen freeholders of the county of Hudson, by and through a special committee, including the "director" of said board, appointed for that purpose; and being so reduced to writing, and mutually executed, was afterwards ratified and confirmed by the said board by resolution to that effect, and was mutually delivered by and to the parties thereto respectively. One 10  
copy thereof was delivered to me, and a counterpart to the said board, and which agreement bears date the said thirty-first day of October, A. D. eighteen hundred and fifty-six, and is in the words following, that is to say:—

This agreement, made this thirty-first day of October, A. D. eighteen hundred and fifty-six, by and between Sidney M. Layton, of Waterbury, New Haven county, and state of Connecticut, of the first part, and the board of chosen freeholders of the county of Hudson, in the state of New Jersey, of the second part—Witnesseth, that the said party of the first part, 20  
in consideration of the promises and agreements herein after set forth, to be kept and performed by the parties of the second part, doth promise and agree, to and with the said parties of the second part, that he will, on or before the first day of May, A. D. eighteen hundred and fifty-seven, and upon the compliance with the covenants, promises, and agreements herein after specified to be performed by said parties of the second part, take the entire charge and management of the county jail and work house for the county of Hudson, and by and with the consent and co-operation of the sheriff of said county, 30  
will receive all persons that may be committed to said county jail and work house from time to time, and board the same at his own expense, the provisions and rations to be the same, both in quality and quantity, as those specified in the rules and regulations for the New Haven county prison, in the state of Connecticut. But it is mutually understood that this agreement to board applies only to such persons as may be sentenced to labor, and for all such as are or may be committed as witnesses, or are awaiting trial, or are unable to work or refuse to work, the said party of the first part is to receive 40

from said county of Hudson the sum of one dollar per week for the board of each one of such prisoners while such prisoner shall remain.

And the said parties of the second part, in consideration of the premises, do promise and agree, to and with the said party of the first part, to allow and give him the free and entire use of the dwelling house attached to the said county jail during the continuance of this contract, by and with the consent of the sheriff, and of all such furniture and fixtures as are now in  
 10 and about the said premises belonging to said county, the same to be left by the said party of the first part in the same like good condition as they now are, ordinary wear and tear and loss by casualty excepted.

And the said parties of the second part further agree, that the said party of the first part, his heirs, executors, administrators, and assigns, shall be allowed to work and employ all persons that may be committed to said county work house and jail for labor ten hours a day, each and every day (Sundays  
 20 excepted) during the continuance of this agreement, in such labor as to him or them may seem meet—such labor to be considered as full payment by the said county for the board of the prisoners so laboring.

The said party of the first part also agrees to allow the sum of two dollars per week for each person whose term of sentence shall have expired, to be appropriated for the payment of fines or cost of court and such other expenses as may occur, for the nonpayment of which such persons may be detained.

And the said parties of the second part further agree with the said party of the first part, his heirs, executors, administra-  
 30 tors, and assigns, that they will erect, or cause to be erected, on or before the first day of May, A. D. eighteen hundred and fifty-seven, a good and suitable work house, as an addition to the present jail, the said addition to be at least sixty feet in length, and twenty-five feet wide, and to cost not exceeding fifteen hundred dollars; said work house to be erected in conformity with the plans and specifications hereto annexed. And the said parties of the second part shall put into the said work house, when completed, for the use of the said party of the first part, the following machinery, to wit—a steam engine, of  
 40 not less than twelve horse power, the cost whereof shall not

exceed fifteen hundred dollars, all the necessary shafting, one lathe, one upright drill, two buckle machines, two powr presses, six drops, one japaning oven, one tinning furnace, one silvering apparatus, all necessary pulleys and belting, four foot presses, and ten small foot presses, the total outlay not to exceed five thousand dollars, exclusive of the expense of procuring water, which said parties of the second part are to furnish.

The said buildings and machinery are to be put up, and in good working order, on or before the first day of May, A. D. 10 eighteen hundred and fifty-seven; and the machinery is to be kept in the same general good order by the said party of the first part as that in which it is furnished by the said parties of the second part, ordinary wear and tear excepted.

The said party of the first part is to keep the said building and machinery insured, to the amount of the original cost of the same, for and in the name of the board of chosen freeholders of the county of Hudson.

The party of the first part is to have the right of employing, from time to time, such a number of workmen as he may find 20 necessary for the successful prosecution of his business in said work house.

This contract to be and remain in force for the period of five years from the first day of May, A. D. eighteen hundred and fifty-seven.

And it is mutually stipulated that all the rights conferred by this agreement upon said parties hereto, and the obligations assumed herein by said parties, shall enure to the benefit of and be binding upon the legal representatives and assigns of said several parties, as by the said agreement, ready to be 30 produced in court, may appear.

And I do further certify and return, that immediately after the execution and delivery of the said agreement, I gave bond with good and sufficient sureties to the said board of chosen freeholders of the county of Hudson in the penal sum of ten thousand dollars, conditioned for the full and faithful performance of the said agreement on my part, which bond I delivered to the committee of said board having charge of said contract, and which the said board yet have and hold. And I do further certify and return, that after the execution and delivery 40

of the said agreement as aforesaid, and of the said bond, as before mentioned, the said board of chosen freeholders of the county of Hudson, in pursuance of the aforesaid agreement and understanding with me in that behalf, in conjunction with the board of chosen freeholders of the county of Essex, did apply to the legislature of this state for, and did obtain the passage of the act above recited, which is therein declared to be a public act, and as such is hereby referred to by me, as by the said act may more fully appear. And I do further certify  
 10 and return, that pending the application for said act, and in anticipation of the passage thereof, and for the purpose of facilitating and carrying out the said agreement, on or about the twentieth day of January, in the year one thousand eight hundred and fifty-seven, Henry B. Beaty, then sheriff of the county of Hudson, did make an agreement with me in writing, in the words following, to wit :—

“Hudson county, Jan’y 20th, 1857. I do agree to appoint Mr. S. M. Layton my deputy on the first day of February, 1857, and, as such, he shall be allowed to take possession of  
 20 the jail buildings at that time. And S. M. Layton agrees to give Mr. Beaty a bond, in the sum of five thousand dollars, for the safe keeping of the prisoners that may be confined in said jail, subject to all the rules and regulations that may be applicable to the same, and that I shall also pay to the said H. B. Beaty the sum of fifteen dollars per week during the term of his office, to wit, from February 1st to November 1st, 1857, payable monthly, the turnkey fees to be equally divided. (Signed) H. B. Beaty, (signed) S. M. Layton, (and signed as witnesses) B. B. Brown, John H. Platt.” Which agreement  
 30 was made and executed in presence of the said board of chosen freeholders of the county of Hudson, at a meeting of said board in the court house of said county, on the day of the date thereof, and was examined and approved by the said board, as by said agreement, ready to be produced in court, may appear. And I do further certify and return, that immediately after the making of the last mentioned agreement as aforesaid, and in pursuance thereof, I entered into bond to the said sheriff, with good and sufficient surety, in the penal sum of five thousand dollars, conditioned for the safe keeping of the prisoners that  
 40 might be confined in said jail, and in other respects as required

by the said last mentioned agreement, and delivered the said bond to the said sheriff. And on or about the sixth day of February, in the year eighteen hundred and fifty-seven, reposing full reliance upon the said respective agreements, and in order to be fully prepared for executing the same, and carrying them into operation and effect, I removed my family from Waterbury, in Connecticut, before mentioned, to the city of Hudson, and into the dwelling house attached to said jail as aforesaid, and the said sheriff did appoint me his deputy, as mentioned in our said last mentioned agreement, and did deliver to me possession of the jail buildings at that time, and I did take and receive possession thereof. And I do further certify and return, that after the passage of the said act of the legislature above recited, the said board of chosen freeholders of the county of Hudson, in pursuance of the said agreement with me, did construct and build a work house attached to said jail, with the dimensions of twenty-five feet by one hundred feet on the ground, and one story high; and afterwards, on or about the first day of May, I did enter upon the fulfilment of the said first mentioned agreement between me and said board, and have ever since fully and fairly fulfilled and performed the same on my part, and am still in the fulfilment and performance thereof, and have made many and great sacrifices in order faithfully to perform and fulfil the same: and the said board of chosen freeholders of the county of Hudson, during all the period of time which has elapsed since the passage of the said act above recited, and since I so entered upon the performance of the duties and obligations of the said agreement, until recently and within a short space of time last past, have repeatedly and in various ways recognised and acted upon the said agreement, and, by their acts and conduct, have induced me to go on under the same, and to perform the duties and obligations imposed upon me thereby. Wherefore, and for the reasons and facts stated in this my return, and the matters contained in said act, I submit that I am entitled to continue in the performance and fulfilment of the said contract and agreement, and in the perception and enjoyment of the profits and emoluments thereof, and cannot lawfully be deprived of the same by the said board of chosen freeholders of the county of Hudson, nor removed from the said dwelling 40

house and work house without my will and consent; and therefore I have refused to and cannot give up possession of the said jail and work house and dwelling house, as is before expressed; at the same time, however, I hereby tender myself ready and willing to give up to said board, or to any jailor lawfully appointed by them, possession of the said jail alone, as distinguished from the said dwelling house and work house being kept safe, secure, and undisturbed in the possession and enjoyment of the labor of the prisoners in said jail and other emoluments secured to me in and by the said agreement herein  
10 before first above mentioned and set forth.

S. M. LAYTON.

J. P. BRADLEY, *Att'y.*

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NEW JERSEY SUPREME COURT, February term, 1860.

It appearing to this court that an alternative writ of *mandamus* was issued in the above cause, and that the same was tested on the sixth day of March, eighteen hundred and sixty, and was made returnable on the thirteenth day of March, in the year last aforesaid; and it further appearing that the said
20 Sidney M. Layton has made return to the said alternative *mandamus*; and it also appearing that the said relators gave notice of motion to said Layton for a peremptory *mandamus* for the insufficiency of said return; and it also appearing that the attorney for said Layton required that the said relators should plead or demur to said return, and the court, having inspected the said return, do order and adjudge that the said return to the said alternative *mandamus* is insufficient, and for reason of the insufficiency of said return, do order that a peremptory *mandamus* be awarded against the said Sidney M. Layton, commanding him to deliver, or
30 cause to be delivered, to the board of chosen freeholders of the county of Hudson the possession of the jail, work house, and dwelling house in the county of Hudson in his possession, in order that the same may be placed in the custody, rule,

keeping, and charge of the said the board of chosen freeholders of the county of Hudson.

On motion of

I. W. SCUDDER,
Att'y for relators.

Entered March 23d, 1860.

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NEW JERSEY SUPREME COURT, February term, 1860.

A writ of error having been presented in this case, issued out of the Court of Errors and Appeals, it is ordered that the clerk make return thereto.

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On motion of

JOSEPH P. BRADLEY,  
*Att'y of defendants.*

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I, Charles P. Smith, clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true transcript of the rules and proceedings in the above stated cause, as the same remain of record and on file in my office.

In testimony whereof, I have hereby set my hand and affixed the seal of said court, at Trenton, 20 this 24th day of March, A. D. 1860.

CHAS. P. SMITH, *Clk.*

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