

## EDWARDS vs. THE STATE.

A general pardon, by the Governor, of a person convicted of a crime, does not discharge him from the costs of prosecution.

*Appeal from the Poinsett Circuit Court.*

John R. Edwards was convicted of manslaughter, in the Poinsett Circuit Court, at the April term, 1850, and sentenced to imprisonment in the Penitentiary, and to pay the costs of the prosecution, which were taxed at \$305.32½.

Afterwards, the following pardon was granted to him by the Governor:

*The State of Arkansas—To all to whom these presents shall come*

—GREETING:

*Whereas, At the late term of the Circuit Court for the county of Poinsett, John R. Edwards was convicted, and sentenced to the Penitentiary for the term of two years, for the felonious killing of Parker Furnish; and whereas, it appears from the certifi-*

cate of the jurors who set upon the trial of said case, that their verdict of guilty was rendered under a misconception of the law, otherwise they would have returned a verdict of not guilty, or inflicted a slight punishment :

NOW, THEREFORE, I, JOHN SELDEN ROANE, Governor of the State of Arkansas, in consideration of the premises, and being petitioned thereto by many of the good citizens of said county, and by virtue of the authority in me vested by the constitution of said State, do hereby pardon the said Edwards, and fully acquit and release him from all the pains and penalties of said conviction. The Sheriff of Poinsett county, or whosoever may have the custody of the said Edwards, is hereby commanded, without excuse or delay, forthwith to discharge him from all further confinement.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and caused the seal of said State to be affixed at Little Rock, [L. S.] on the 13th day of May, A. D. 1850.

JOHN SELDON ROANE.

By the Governor :

D. B. GREER, *Secretary of State.*"

Afterwards, on the 2d September, 1850, an execution was issued to the sheriff of Poinsett, against Edwards, for the costs of the prosecution aforesaid. He applied to the Circuit Court to quash the execution, exhibiting his pardon, and claiming that it released him from the costs, the court overruled the motion to quash, and he appealed.

ENGLISH, for the appellant, contended that the pardon released the appellant from the judgment for costs as well as imprisonment, and restored him to the same state as before conviction; and cited the case of *Amour Hunt*, 5 *Eng. Rep.*

CLENDENIN, Att. Gen'l, contra. The costs are neither a part of the pains and penalties of a conviction; nor a fine or forfeiture, but belong to private individuals and cannot be remitted by the executive.

Mr. Justice SCOTT delivered the opinion of the Court.

The only question presented is whether or not the legal effect of the pardon was to discharge the judgment for costs.

The case of *Amour Hunt, Ex Parte*, (5 Eng. 284,) cited by the appellant's counsel does not sustain the position contended for by him. That was a case where a pardon was construed; but this is as to the legal effect of a pardon in general terms involving no question of construction.

All that is said of the legal effect of a pardon in the case cited is that "Its legal effect is to restore the convict at once to the rights of liberty and citizenship," and *Lilly's Abr.* 270, is there cited to show that its effects are not only to discharge the punishment, but also to wipe out the guilt of the offense. To use the language of that author, "It pardons culpor so clearly that, in the eye of the law, the offender is as innocent as if he never had committed the offence." Not that its effect relates back to a moment anterior to the conviction and removes every thing that would be inconsistent with its ever having existed—as to annul the second marriage of the convict's wife, or the sale of his property made by persons appointed to administer his estate, or to divest the title of his heirs of the interest acquired in his estate in consequence of his civil death. (*Malter of Deming*, 10 John. 232. S. C. *Ib.* 483)—but that it creates new legal capacities for him and removes the stain of guilt, as completely as if he had never committed the offence. And by parity of reason it cannot release him from like intervening obligations. In a word, it does not continue him in a state of innocence for all purposes, but restores him to that state from the date of the delivery of his pardon.

Nor did the King's pardon in England remove every effect of a conviction. On the contrary, in every case where the disability was a part of the judgment itself, nothing short of a general pardon by act of Parliament would remove it, although it was otherwise when the disability was only consequential. (*Rex. v. Weeden, et al.*: 3 Salk. 264.)

Costs are neither "fines" nor "forfeitures," nor are they imposed by way of punishment, or as amercement at common law, but by way of sequence to every judgment whether in a civil or criminal case, as a matter of common justice to the party complainant, witnesses and officers of court, although the judgment is in favor of the complainant alone. Costs then partaking, in no respect, of the nature, either of punishment or of guilt, are without the sphere of the legitimate legal operation of a pardon, however general in its terms. And this view is sustained in principle by a much stronger case reported in 2 Bay. R. 565, (*Rowe v. State*,) where it was held that a pardon from the Government did not discharge the moiety of a fine which goes to the informer.

There is no error in the record. Let the judgment of the court below be affirmed.

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