

Hauenstein v. Lynham.

under the provisions of the constitution, for the section is brought into the revision, not as a new enactment, but as an existing law. Rev. Stat. Missouri, § 6026.

The verdict is sufficiently certain to authorize the judgment. It is for the full amount of the policy, with six per cent interest, and ten per cent damages for vexatious delay. The amount of the policy and the date from which interest is to be calculated is stated in the petition and admitted in the answer. The amount of the judgment to be entered on the verdict can, therefore, be ascertained by simple arithmetical calculation, which may as well be done by the court as the jury. Every material fact at issue was found by the jury, and all the elements of the calculation to be made were indicated with sufficient certainty.

Judgment affirmed.

Mr. James Carr, Mr. George D. Reynolds, and Mr. John R. Shepley for plaintiff in error. *Mr. E. T. Farish* for defendant in error.

HAUENSTEIN *v.* LYNHAM.

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

No. 133 of October Term, 1879. — Motion made in the case at October Term, 1880. —
Decided November 22, 1880.

An officer of a State, sued in his official capacity, and charged with no official delinquency, is not liable for costs.

THIS was a motion to correct the judgment in *Hauenstein v. Lynham*, 100 U. S. 483. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This motion is denied. The defendant in error was sued in his official character, as escheator for the Commonwealth of Virginia. He was a public officer of the state, and he held the funds sued for in that capacity. He was charged with no official delinquency. Under such circumstances he cannot be made liable personally for the costs of the plaintiffs. The court below was right, therefore, in confining the judgment for costs to the funds in his hands as escheator.

Denied.

Mr. W. L. Royall for the motion.