Ex parte Dubuque and Pacific Railroad.

When this court, under the 24th section of the Judiciary Act, reverses a judgment on a case stated and brought here on error, remanding the case, with a mandate to the court below to enter judgment for the defendant, the court below has no authority but to execute the mandate, and it is final in that court. Hence such court cannot, after entering the judgment, hear affidavits or testimony and grant a rule for a new trial; and if it does grant such rule, a mandamus will issue from this court ordering it to vacate the rule.

Litchfield sued the Dubuque and Pacific Railroad Company, in the District Court of the United States for the District of Iowa, for a tract of land in that district. The cause of action was set forth by petition, according to the mode of proceedings prescribed by the code of Iowa. It alleged that the plaintiff had a title in fee, and the right of possession; which land was withheld from him by the defendant, who was in possession. The answer of the defendant denied that the plaintiff had any title to the premises sued for. On this issue the parties went to trial before the District Court, at October Term, 1859. The court found, and entered judgment, that the *plaintiff* had right to the land claimed, and the right of possession thereof. *The facts had been agreed on* in writing, and filed on stipulation, in the District Court, *on which agreed statement the finding and judgment proceeded.* On the facts thus presented to the court below, the cause was brought to this court by writ of error, *was re-examined*, and after an elaborate opinion, reported among the decisions of December Term, 1859, the judgment below was *reversed;* and *it was ordered that the District Court enter judgment for the defendant below.**

A mandate went down, and was entered of record, and the District Court entered judgment that the plaintiff Litchfield had no title, and that he pay costs. This was done at October Term, 1861, and *immediately thereafter* (affidavits of ability to show new facts having been filed) *a new trial was moved for on behalf of Litchfield, and granted by the court.* To

* See Dubuque and Pacific Railroad *v.* Litchfield, 23 Howard, 66.

this step the railroad company excepted, and it now moved for a writ of mandamus commanding the court below to vacate the order granting the new trial.*

Mr. Mason against the motion: The judgment having been entered in the court below, became *its* judgment, possessing the same qualities as if it had been originally entered there. One of these qualities or incidents was, that it was liable to be vacated, and a new trial granted, in a proper case, in the discretion of the court below; a discretion with which this court will not interfere, as it has declared in many cases, and notably in *Eberly* v. *Moore*.†

1. This power and duty exists under the Judiciary Act of 1789. The court in the case just cited says: "The jurisdiction has been conferred by *acts of Congress* upon the courts of the United States, so to supervise the various steps in a cause as to prevent hardship and injustice, and that the merits of a cause may be fairly tried. It has been uniformly held in this court that a Circuit Court could not be controlled in the exercise of the discretion thus conceded to it."

2. It exists, also, under the statute of Iowa; which by the Judiciary Act of 1789‡ is the "rule of decisions in trials at common law." Courts in Iowa are *compelled* to grant new trials, on cause shown, on the application of a party, for any "cause affecting materially the substantial rights of such party," specified in the law; in which case, the "former report, verdict, or decision, *shall be vacated, and a new trial granted.*"§ It is to be presumed that the court had grounds which justified it in granting as it did the new trial under the above provisions.

In actions for the recovery of real property in Iowa, under its code a new trial may be granted, *without any cause* being shown, in the discretion of the court, on application within

* The parties had stipulated that no rule should be required on the Circuit Court where the cause now was by transfer, to show cause why a peremptory mandamus should not issue as prayed for in the petition, if this court could rightfully order the writ.

† 24 Howard, 147. ‡ § 34. § Code, Revision of 1860, § 3, 112.

two years after the determination of the former trial.* And this may be after the first judgment has been executed; for the code authorizes a writ of restitution to restore the possession of the property to the party who shall succeed on the new trial.†

Of course the court below cannot, directly or indirectly, question, or attempt to overthrow *the law* as settled by the judgment of this court. But the plaintiff submits that this court will not interfere with the allowance of a new trial, where he can prove *facts* upon which his rights depend, and where the affidavits show that, without fault on his part, *the merits of the cause have not been fairly tried;* which showing he assumes is proved, or must, from the fact of a new trial having been allowed, be here presumed.

Mr. Platt Smith contra: There are no new facts. Admitting that the plaintiff can prove all his affidavits, we assert that he does but make out the old case stated; and on which this court, after patient hearing, has ordered a judgment to be entered below.

When the case was brought by appeal to this court, the whole case was removed from the court below. When it was remanded, the court below could only take jurisdiction for the specific purpose of executing the judgment of this court, in accordance with the mandate and opinion. The 24th section of the Judiciary Act of 1789 enacts, that on reversals in this court, the court "shall proceed to render such judgment or pass such decree as the District Court *should have passed*, except where the reversal is in favor of the plaintiff, or petitioner; and the damages to be assessed or matter to be decreed are uncertain; in which case they shall remand the cause for final decision." The statute of Iowa, authorizing new trials, does not apply to cases that have been removed to this court by writ of error or appeal, and remanded to the court below for the mere purpose of execution. In *Ex parte Sibbald*‡ this court says: "When the Supreme Court have executed their power in a cause before

* Id. § 3, 584. † Id. § 3, 588. ‡ 12 Peters, 492.

them, and their final decree or judgment requires some further act to be done, it cannot issue an execution, but shall send a special mandate to the court below to award it. Whatever was before the court, and is disposed of, is considered as finally settled. The inferior court is bound by the decree as the law of the case; and must carry it into execution, according to the mandate. They cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it upon any matter decided on appeal for error apparent; or intermeddle with it, further than to settle so much as has been remanded. After a mandate, no rehearing will be granted. It is never done in the House of Lords; and on a subsequent appeal, nothing is brought up but the proceeding subsequent to the mandate. If the special mandate directed by the 24th section is not obeyed or executed, then the general power given to 'all the courts of the United States to issue any writs which are necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law,' by the 14th section of the Judiciary Act, fairly arises, and a mandamus or other appropriate writ will go."

The court below treats the case as though it had never been removed. But the judgment of that court is reversed and held for nought. The District Court does not pretend to overturn its own original judgment; *that* was, in the opinion of that court, all right,—it was in favor of the plaintiff. This court overturned that judgment, and ordered the District Court to enter judgment for the defendant. The District Court reversed and set aside the judgment of this court, and seeks to re-establish its original judgment. If the facts of the case required another trial, this court would have issued an order for a trial *de novo* in the court below; a peremptory mandate to enter judgment for the defendant is quite another thing.

Mr. Justice CATRON, after stating the case, delivered the opinion of the court; Mr. Justice MILLER, who had been of counsel in the case, not sitting in it here.

Opinion of the court.

In granting the new trial the District Court seems to have been governed by two reasons: *First*, because the statutes of Iowa prescribed that a second trial may be had of course in actions brought for the recovery of real estate; and *Secondly*, because the court below had the power, after the cause was presented there by a mandate from this court and the judgment of reversal entered, to hold that the cause stood on the same footing that it would have done, had the District Court entered the judgment for the defendant before the cause was brought up to this court. And in that case it is true the District Court could have granted a new trial at its discretion.

The 24th section of the Judiciary Act of 1789 governs the practice in cases brought up and reviewed in this court. It is bound to give such judgment as the court below ought to have given, and the law directs that a mandate shall be sent down to have the judgment entered as final in the lower courts, when it is for the defendant below, as here. The District Court had no power to set aside the judgment of the Supreme Court, its authority extending only to executing the mandate.*

We order that a writ of mandamus do issue to the Circuit Court of the District of Iowa, commanding it to vacate and erase the order granting a new trial in the aforesaid cause; and that a judgment be entered in conformity to the mandate of this court.

ORDER ACCORDINGLY.

ORCHARD *v.* HUGHES.
Id. *v.* Id.

1. It is no defence to a suit for debt that the debt arose from the receipt of the bills of a bank that was chartered illegally and for fraudulent purposes, and that the bills were void in law, and finally proved worthless in fact; the bills themselves having been actually current at the time the defendant received them, and they not having proved worthless in *his* hands, nor he being bound to take them back from persons to whom he had paid them away.

* Ex parte Sibbald, 12 Peters, 492.