tion, and refused to take jurisdiction of the case. The matter is too plain for argument.

MOTION GRANTED.

SUPERVISORS *v.* UNITED STATES, EX RELATIONE

1. On application by a creditor for *mandamus* against county officers to levy a tax to pay a judgment, the defendant cannot impeach the judgment by setting up that interest was improperly given in it. This would be to impeach it collaterally.
2. The statute of Illinois, which enacts that when a judgment is given against a county, the county commissioner shall draw a warrant upon the treasurer for the amount, "which shall be paid as other county debts," cannot be taken advantage of on error, in case of an application for a *mandamus* to levy a tax to pay a judgment, where such a warrant was applied for and refused, and where there are no funds in the county treasury with which to pay the judgment.
3. Where power is given by statute to public officers, in permissive language —as that they "*may*, if deemed advisable," do a certain thing—the language used will be regarded as peremptory where the public interest or individual rights require that it should be.

ERROR to the Circuit Court of the United States for the Northern District of Illinois, the case being thus:

A statute of Illinois, of February 16th, 1863, enacts as follows:

"The board of supervisors under township organization, in such counties as may be owing debts which their current revenue, under existing laws, is not sufficient to pay, *may, if deemed advisable*, levy a special tax, not to exceed in any one year one per cent. upon the taxable property of any such county, to be assessed and collected in the same manner and at the same time and rate of compensation as other county taxes, and when collected to be kept as a separate fund, in the county treasury, and to be expended under the direction of the said county court or board of supervisors, as the case may be, in liquidation of such indebtedness."

With this statute in force, the State Bank, relator in the

case, was the holder of certain coupon bonds of the County of Rock Island, originally issued and negotiated in payment of stock of the Warsaw and Rockford Railroad Company, for which the county had subscribed. They were issued pursuant to law.

The coupons representing the interest for one year were paid by the county; the necessary tax having been levied and collected for that purpose. Subsequent payments, however, were not made, and at the March Term, 1863, the relator recovered a judgment in the court below, upon coupons overdue and unpaid, for $2554, and costs. Nothing was paid upon it, and there was no money in the county treasury which could be so applied.

The relator subsequently requested the supervisors to collect the requisite amount by taxation, and to give him an order on the county treasury for payment. They declined to do either.

He then applied to the court below for a *mandamus*, compelling the supervisors, at their next regular meeting, to levy a tax of sufficient amount to be applied to pay the judgment, interest, and costs, and when collected to apply it accordingly. An alternative writ was issued.

The supervisors made a return, wherein numerous objections were taken to the issuing of a mandatory writ. Among them were:

1. That the court below, in rendering judgment, had allowed *interest* on the coupons, from the day they became due.

2. That the respondent had no power to pay the judgment except by issuing an order on the treasurer of Rock Island County; the ground of this objection being a statute of Illinois, which enacts, that when a judgment is rendered against a county, no execution shall issue, but that the county commissioners' court shall draw a warrant upon the treasurer for the amount, "which shall be paid as other county debts."

3. In substance, that the respondent had levied and collected the regular county taxes, and that the same had all been needed and used for the ordinary current expenses of the county.

The court below disallowed the return, and ordered that a peremptory writ should issue, commanding the respondents, at their next meeting for levying taxes, to levy a tax of not more than one hundred cents on each one hundred dollars' worth of taxable property in the county, but of sufficient amount fully to pay the judgment, interest, and costs; and that they set the same apart as a special fund for that purpose; and that they pay it over without unnecessary delay to the relator.

The main question here in the case was whether, under the act of February 16th, 1863, the respondents were compellable to levy and collect, by taxation, the amount specified in the order of the court below; that is to say, in other words, whether that expression of the statute, "*may, if deemed advisable*," was permissive merely, or, under the circumstances of this case, obligatory.

The case was submitted on briefs.

Mr. Cook, for the Supervisors, plaintiffs in error:

I. Under the law, as settled in Illinois, counties cannot be required to pay interest in any case, unless they specially contracted to pay it.*

II. Under the statutes of Illinois, there is but one mode in which payment of a judgment against a county can be coerced, and that is by obtaining a county order from the county authorities upon the county treasurer. A statute provides this way, and provides none other. Necessarily, therefore, it is the only mode in which a judgment can be proceeded in.

III. The statute of February 16th, 1863, says the board of supervisors "may, if deemed advisable, levy a special tax."

If not deemed advisable, the tax is not to be levied, because these words cannot be rejected, and while they remain there is no room for construction.

* Madison County *v.* Bartlett, 1 Scammon, 71; Pike County *v.* Hosford, 11 Illinois, 175; City of Pekin *v.* Reynolds, 31 Id. 529.

If the statute had simply said, "*may levy a tax*," it might then well be argued, that in cases where the interests of a third party were concerned the court would construe may to mean *shall*, and would enforce the levy. But it is not so here. They *may*, upon a condition, and that condition is, that the board and none other shall deem it advisable. This statute does not repeal any other, but is in addition—it is cumulative.

Suppose the statute had read, "*shall*, if deemed advisable,"—certainly its effect would not be in the least changed; because it would still be necessary that the plaintiff deem it *advisable* before it should levy.

If the words "*may*, if deemed advisable," vest discretion in the plaintiff, then it cannot be controlled by the court. If they vest the discretion in the court to determine when it is advisable to levy a tax, then the board of supervisors could not, in any case, levy a tax under that statute, unless the court had first found it advisable and issued its mandate to that effect directing it to be done.

A statute ought to be so construed that no clause, sentence, or word shall be superfluous, void, or insignificant.*

In *The King* v. *The Mayor*,† Holroyd, J., observes: "By the charter, the mayor and aldermen are to elect such and so many free burgesses *as they shall think fit*. It is not competent, therefore, to the court to grant a mandamus directing them to elect any."

In *The Commonwealth* v. *The County Commissioners*,‡ the first section of an act made it the duty of the assessors to receive from parents the names of children residing in their townships, and whose parents were unable to pay for their schooling, &c. The second section directed the assessor to send the list to the teachers of schools within his township, &c., "whose *duty* it shall be to teach *all* such children as may come to their schools, in the same manner as other children

* James *v.* Dubois, 1 Harrington, 285; Hutchen *v.* Niblo, 4 Blackford, 148; Opinion of the Justices, 22 Pickering, 571; McCay *v.* Detroit and Erie Plank Road Co., 2 Michigan, 138; Pearce *v.* Atwood, 13 Massachusetts, 336.

† 2 Barnwall and Cresswell, 584.

‡ 5 Binney, 536.

shall be taught. It required the teachers to keep a day-book and to enter in it the number of days each child should be taught, and the amount of stationery furnished for the use of the child, "from which book he shall make out his account against the county on oath or affirmation, agreeably to the usual rates of charging for tuition in such schools; which account, after being so examined or revised, he shall present to the county commissioners, who, *if they approve thereof*, shall draw their order on the county treasurer for the amount, which he is hereby directed to pay out of any moneys in the treasury."

Upon a motion for *mandamus* against the commissioners, the court says:

"The law has vested the commissioners with the power of approving or disapproving of the account, and we cannot take it away from them."

The *mandamus* was refused.

In *The People* v. *Supervisors of Albany*,* a leading case, a statute directed supervisors to allow a constable for certain services "so much money as the *supervisors shall judge he reasonably deserves to have.*"

On motion for *mandamus*, to allow a certain sum claimed, the court says:

"In the present case, whatever may be thought of the reasonableness of the allowance of the supervisors to the applicant, he has no legal right to any particular sum. He has no right to any money for the services performed but such as the supervisors shall in their discretion judge him entitled to. Should we grant a peremptory *mandamus* what would be its command? Certainly not to allow any specific sum. That would be taking upon ourselves a discretion which the legislature have vested in the supervisors; we could only command them to examine the applicant's account, and, in the words of the statute, allow him for his services *such sum as they shall judge he reasonably deserves to have;* and this has been already done. Where a discretionary

* 12 Johnson, 416.

power is vested in officers, and they have exercised that discretion, this court ought not to interfere, because they cannot control, and ought not to coerce that discretion. This may be a hard case, and the party may be remediless; but that consideration cannot induce us to grant an unfit, and, as I believe, a nugatory remedy."

In a note to Johnson's Cases,* the subject is very fully treated, and the authorities cited. It is said:

"The writ of *mandamus* will not lie to control the discretion of an inferior officer, for otherwise superior tribunals would draw to themselves all matters of judgment, and officers would in reality have none at all.

"Whenever a discretionary power is vested in officers, and that discretion has been exercised, the court ought not to interfere, because they cannot control and ought not to coerce that discretion.

"The writ of *mandamus* will lie to corporations, as to inferior tribunals and officers, to compel them to exercise their discretion, though not to direct the manner of its exercise."

In *United States* v. *Seaman*, in this court,† Taney, C. J., giving the opinion of the court, says:

"The rule to be gathered from all these cases is too well settled to need further discussion. The *mandamus* cannot issue in a case where discretion and judgment are to be exercised by the officer."

Similar principles were declared in *United States* v. *Guthrie*.‡

In the case at bar it will be observed that the relator demanded the levy of the tax, and that the board of supervisors, plaintiffs in error, refused to make it.

It thus appears that the board has exercised the discretion

* Vol. 2, pp. 217–232.

† 17 Howard, 230.

‡ Ib. 304; and see Towle *v.* The State, 3 Florida, 202; Chase *v.* Blackstone Canal Co., 10 Pickering, 246; Ex parte Black, 1 Ohio State, 30; McDougal *v.* Bell, 4 California, 178; McGee *v.* Board of Supervisors, 10 Id 376; The City *v.* McKean, 18 B. Monroe, 17.

vested in it by the law of February 16th, 1863, and deemed it unadvisable to levy the tax to pay the defendant's debt.

Mr. James Grant, contra:

I. This being a *mandamus* to collect a judgment, any error in the judgment to collect which it is brought, only comes collaterally in question, and therefore the question is not before this court.

II. As to the second point, we answer that the county treasurer has no funds; and that this *mandamus* was brought to compel the board of supervisors to levy a tax, to provide them. The argument, as to the *method of paying debts* when the money is at hand to do it with, has nothing to do with the question of raising the money to pay them with, when no money can otherwise be had.

III. Passing to the important question in the case, we insist that the words "if deemed advisable" have the same legal signification as the word "may" alone, or "shall have power," and no other.

In *Mason* v. *Fearson*,* in this court, the words "it shall be lawful," are construed as mandatory. In laying down the rule for the construction of words of permission, the court says: "Whenever it is provided that a corporation or officer 'may' act in a certain way, or that it 'shall be lawful' for them to act in a certain way, it may be insisted on as a duty for them to act so, if the matter, as here, is devolved on a public officer, and relates to the public or third persons."†

And, again:

"Without going into more details, these cases fully sustain the doctrine, that what a public corporation or officer is em-

* 9 Howard, 237.

† Citing Rex & Regina *v.* Barlow, 2 Salkeld, 609; The King *v.* The Inhabitants of Derby, Skinner, 370; Blackwell's Case, 1 Vernon, 152–154; Newburg Turnpike Co. *v.* Miller, 5 Johnson's Chancery, 113; City of New York *v.* Furze, 3 Hill, 612–614; Minor et al. *v.* The Mechanics' Bank, 1 Peters, 64.

powered to do for others, and it is beneficial to them to have done, the law holds he ought to do."

In *The Commonwealth* v. *The City of Pittsburg*,* Grier, J., on the circuit, says:

"It is absurd to argue that conferring such a power (taxation to pay bonds) is imposing no duty. The select and common council are public agents, created to perform a public trust. One of the purposes of their creation is, that they may provide for the payment of the debts of the city. It is true that the act of February 7th, 1863, only declares that the city *shall have power* to make provision for the payment of the principal and interest of the money borrowed, by the assessment and collection of a tax, but in the statute the word 'may' means 'must' or 'shall' in cases where the public interest and right are concerned, and where the public or third parties have a claim *de jure*, that the power should be exercised."

The argument for the plaintiff in this case is based on a mistaken idea of what discretion is. An examination of authorities will show that disputed facts are necessary to found a "discretion," or a "deliberative judgment," (in the sense used in the authorities) upon. In the case of *The People* v. *Supreme Court of New York*,† the nature of a "discretion" that cannot be controlled by the courts is discussed. The court says:

"It is that discretion which is not and cannot be governed by any fixed rules. We will not act upon our judgment in opposition to the judgment of a board of supervisors as to what is a reasonable compensation for services performed by a constable. . . . . It is to their judgment and discretion and not to ours, which the legislature has left that matter."

They add, that had the board of supervisors refused to grant anything on the ground that they had no discretion, or that the officer had no right to any compensation, they

* American Law Register, vol. 3, 292. † 5 Wendell, 125.

would have interfered to "set them in motion and determine the law, for they are legal duties and legal rights if they exist at all."

It appears from authorities* that if the facts are not disputed, there is no "discretion" to exercise, and in this case the facts are admitted. If it is contended that the supervisors are to render a deliberative judgment on the law, we answer, that by the constitution of Illinois,† they can have no judicial powers, and if they could have such power, it can be controlled by the court.‡

We think that an examination of the authorities cited by the plaintiff in error, will show that in every case cited, the respondents were to judge of facts more or less uncertain, or otherwise were invested with judicial powers.

In *The Commonwealth* v. *The County Commissioners*, cited on the other side, the court say:

"The law has vested the commissioners with the power of approving or disapproving of the account, and we cannot take it away from them."

The law provided that the commissioners should draw an order *if they approved of the bill.*

In *The People* v. *Supervisors of Albany*, the applicant by law was to have such sum as they (the supervisors) shall judge he reasonably deserves to have. The supervisors had passed the claim, and the court says, this was a discretion left to the supervisors, which we cannot control, that the relator was not entitled to any particular sum, and that the amount to which he was entitled was by the very contract to be determined by the supervisors.

The case of *United States* v. *Seaman*, is decided on the ground, that the superintendent of printing was obliged "to

* The People *v.* The Supreme Court, 10 Wendell, 275–290; Anon., 2 Halst. 160; Rex *v.* Justices of Worcestershire, 1 Chitty, 649; Rex *v.* Justices of Carnarvon, 4 Barnwall & Alderson, 86; Rex *v.* Justices of Monmouthshire, 4 Barnwall & Creswell, 844.

† Article ii, Sections 1 and 2, and Article v, Section 1.

‡ 5 Ohio State, 538; State of Ohio, Ex. rel., &c., *v.* Chase.

examine evidence, and form his judgment before he acted; and whenever that is to be done, it is not a case for a mandamus."

In the case of *United States* v. *Guthrie*, the court says:

"The only legitimate inquiry for our determination upon the case before us is this: Whether under the organization of the Federal government, or by any known principle of law, there can be asserted a power in the Circuit Court of the United States for the District of Columbia, or in this court, to command the withdrawal of a sum or sums of money from the Treasury of the United States, to be applied in satisfaction of *disputed* or *controverted claims* against the United States."

The decision of the Circuit Court, overruling the application, was approved.

After examining a great number of cases (though not perhaps all the authorities quoted by plaintiff in error), we find none in conflict with the position assumed in this argument.

Mr. Justice SWAYNE delivered the opinion of the court, having first stated the case.

We have not had the benefit of an oral argument upon either side. The case was submitted upon printed briefs. We shall confine our examination to the points thus brought to our attention.

In the return of the respondents to the alternative writ numerous objections were taken in regard to which their brief is silent. We take it for granted they have been abandoned, and shall not consider them.

I. It is said the court below, in rendering the judgment, allowed interest upon the coupons from the time they became due.

The judgment cannot be thus collaterally questioned. It can be impeached only in a proceeding had directly for that purpose.*

* Bank of Wooster *v.* Stevens, 1 Ohio State, 233.

II. A statute of Illinois provides that when a judgment is rendered against a county no execution shall issue, but that the county commissioners' court shall draw a warrant upon the treasurer for the amount, "which shall be paid as other county debts."

Such a warrant was applied for and refused, after the rendition of the judgment. If the judgment of the court below is sustained, a warrant can yet be issued when the fund to pay the judgment is provided, if a warrant be necessary to complete the obedience of the respondents in paying over the money according to the command of the writ. There is nothing in the objection as a matter of error.

III. The important question in the case is whether the respondents are compellable to levy and collect, by taxation, the amount specified in the order of the court below.

The writ, if issued, must conform to the order.

The court below proceeded upon the act of February 16th, 1863. We have not found it necessary to consider any of the other acts referred to in the briefs.

That act declares that "the board of supervisors under township organization, in such counties as may be owing debts which their current revenue, under existing laws, is not sufficient to pay, *may*, *if deemed advisable*, levy a special tax, not to exceed in any one year one per cent. upon the taxable property of any such county, to be assessed and collected in the same manner and at the same time and rate of compensation as other county taxes, and when collected to be kept as a separate fund, in the county treasury, and to be expended under the direction of the said county court or board of supervisors, as the case may be, in liquidation of such indebtedness."

The counsel for the respondent insists, with zeal and ability, that the authority thus given involves no duty; that it depends for its exercise wholly upon the judgment of the supervisors, and that judicial action cannot control the discretion with which the statute has clothed them. We cannot concur in this view of the subject. Great stress is laid by the learned counsel upon the language, "*may*, *if deemed ad-*

visable," which accompanies the grant of power, and, as he contends, qualifies it to the extent assumed in his argument.

In *The King* v. *The Inhabitants of Derby*,* there was an indictment against "diverse inhabitants" for refusing to meet and make a rate to pay "the constables' tax." The defendants moved to quash the indictment, "because they are not compellable, but the statute only says that *they may*, so that they have their election, and no coercion shall be." The court held that "*may*, in the case of a public officer, is tantamount to *shall*, and if he does not do it, he shall be punished upon an information, and though he may be commanded by a writ, this is but an aggravation of his contempt."

In *The King and Queen* v. *Barlow*,† there was an indictment upon the same statute, and the same objection was taken. The court said: "When a statute directs the doing of a thing for the sake of justice or the public good, the word *may* is the same as the word *shall:* thus, 23 Hen. VI, says the sheriff *may* take bail. This is construed he *shall*, for he is compellable to do so."

These are the earliest and the leading cases upon the subject. They have been followed in numerous English and American adjudications. The rule they lay down is the settled law of both countries.

In *The Mayor of the City of New York*‡ and in *Mason* v. *Fearson*,§ the words "it shall be lawful" were held also to be mandatory.‖

The conclusion to be deduced from the authorities is, that where power is given to public officers, in the language of the act before us, or in equivalent language—whenever the public interest or individual rights call for its exercise—the

* Skinner, 370.

† 2 Salkeld, 609.

‡ 3 Hill, 614.

§ 9 Howard, 248.

‖ See The Attorney-General *v.* Locke, 3 Atkyns, 164; Blackwell's case, 1 Vernon, 152; Dwarris on Stat. 712; Malcom *v.* Rogers, 5 Cowen, 188; Newburg Turnpike Co. *v.* Miller, 5 Johnson's Chancery, 113; Justices of Clark County Court *v.* The P. & W. & K. R. T. Co., 11 B. Monroe, 143; Minner et al. *v.* The Merchants' Bank, 1 Peters, 64; Com *v.* Johnson, 2 Binney, 275; Virginia *v.* The Justices, 2 Virginia Cases, 9; Ohio ex rel. *v.* The Governor 5 Ohio State, 53; Coy *v.* The City Council of Lyons, 17 Iowa, 1.

language used, though permissive in form, is in fact peremptory. What they are empowered to do for a third person the law requires shall be done. The power is given, not for their benefit, but for his. It is placed with the depositary to meet the demands of right, and to prevent a failure of justice. It is given as a remedy to those entitled to invoke its aid, and who would otherwise be remediless.

In all such cases it is held that the intent of the legislature, which is the test, was not to devolve a mere discretion, but to impose "a positive and absolute duty."

The line which separates this class of cases from those which involve the exercise of a discretion, judicial in its nature, which courts cannot control, is too obvious to require remark. This case clearly does not fall within the latter category.*

The Circuit Court properly awarded a peremptory writ of mandamus. We find no error in the record. The judgment below is

AFFIRMED.

DAVIDSON v. LANIER.

1. It is not required that a writ of error be allowed by a judge. It is enough that it is issued and served by copy lodged with the clerk of the court to which it is directed.
2. A mistake in the date of the writ of error is not important, when it is clear that such mistake is a clerical one merely, and when, from the judgment described and the number given to it, the party cannot be misled.
3. A statute declared by its title to be "an act to suppress private banking," and making it penal to "erect, establish, institute, or put in operation, or to issue any bills or notes for the purpose of erecting, establishing, or putting in operation any banking institution, association, or concern," covers with its prohibition not only the primary steps in establishing and putting into operation the bank, but also the whole range of its transactions, by which illegitimate currency is imposed on a commu-

* The People v. Sup. Court, 5 Wendell, 125; The People v. Sup. Court, 10 Wendell, 289; The People v. Vermilyea, 7 Cowen, 393; Hull v. Supervisors, 19 John, 260.