

Statement of the case.

SUPERVISORS *v.* DURANT.

An amendment by allowing, *nunc pro tunc*, an entry, omitted at the proper time by inadvertence, in the journal record of the clerk, of the issue of a writ of peremptory mandamus; and an amendment by the marshal to his return, so as to show that he had exhibited the original writ to the party served, allowed as matters of common practice.

ERROR to the Circuit Court for the District of Iowa.

The writ of error in this case, which was a proceeding of the United States *ex relatione* Durant against the Board of Supervisors of Poweshiek County, Iowa, brought up a petition, on the part of the relator, for an alternative writ of mandamus to the supervisors of the county just named, commanding them to levy a tax sufficient to pay a certain judgment which he held against the county, or show cause for not so doing; the order for an alternative mandamus, and the issuing of the same; a return demurrer to the return, and an order for peremptory mandamus; application for attachment against the supervisors for not obeying the peremptory writ, and an order for attachment.

Several objections were taken to the proceedings on the part of the supervisors, but no brief was filed in the case in support of them, nor was there an appearance of counsel.

One of the objections was, that the writ of peremptory mandamus was issued without any order of the court having been entered upon the journal record of the clerk. The order was made by the court, and a note of it had been entered upon the clerk's docket, and also upon the judge's. The court, on motion, allowed the entry to be made in the journal *nunc pro tunc*.

Objection was also taken to the return of the marshal, that it did not appear that the original writ of the peremptory mandamus was exhibited at the time of the service of same upon the supervisors. The court allowed the return of the marshal to be amended by adding the words: "I also exhibited the original writ to each of the foregoing

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named persons so served, and I finally left it with said Snow," who was chairman of the board.

Mr. Grant, for the relator, having submitted the case with a few remarks—

Mr. Justice NELSON subsequently delivered the opinion of the court, to the effect, that as to the entry which the court on motion allowed to be made in the journal *nunc pro tunc*, as the matter was one which arose from the inadvertence of the clerk, the entry was but common practice and matter of course, and that the amendment to the marshal's return was of daily practice also.

The judgment for the writ of attachment was accordingly

AFFIRMED.

WISE *v.* ALLIS.

1. In giving notice, under the 15th section of the Patent Act of July 4th, 1836, of the names and places of residence of those by whom he intends to prove a previous use or knowledge of the thing, and where the same had been used, the party giving notice is not bound to be so specific as to relieve the other from all inquiry or effort to investigate the facts. If he fairly puts his adversary in the way that he may ascertain all that is necessary to his defence or answer, it is all that can be required, and he is not bound by his notice to impose an unnecessary and embarrassing restriction on his own right of producing proof of what he asserts.
2. *Held*, therefore, in a suit for infringing a patent for balancing millstones, that when, in addition to the particular town or city in which such large objects as millstones are used, the name and residence of the witness by whom that use was to be proved was also given, there was sufficient precision and certainty in the notice.

On certificate of division of opinion between the judges of the Circuit Court for the District of Wisconsin.

The Patent Act of July 4th, 1836, referring to suits for the infringement of patents, enacts by its 15th section that "whenever the defendant relies in his defence on the fact of a previous invention, knowledge, or use of the thing patented, he shall state in his notice of special matter the