AMY v. THE SUPERVISORS.

1. The State and National courts being independent of each other, neither can impede or arrest any action the other may take, within the limits of its jurisdiction, for the satisfaction of its judgments and decrees. *Riggs* v. *Johnson County* (6 Wallace, 265), affirmed.
2. Where the law requires absolutely a ministerial act to be done by a public officer, and he neglects or refuses to do such act, he may be compelled to respond in damages to the extent of the injury arising from such nonfeasance or malfeasance. A mistake as to what his duty is and honest intentions will not excuse him.

AMY having obtained a judgment for money against Desmoines County, Iowa, in the Circuit Court for the District of Iowa, and not being paid, procured from the same court a mandamus against Burkholder, and several others, the supervisors of the county, to compel the levy of a tax. The mandamus not being obeyed, he sued them personally. They set up certain defences, to which he demurred. The court overruled the demurrer, and he brought the case here.

Mr. J. Grant, for the plaintiff in error, submitted a brief.

No opposing counsel.

Mr. Justice SWAYNE stated the case particularly, and delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the District of Iowa.

The plaintiff in error was the plaintiff in the court below. The declaration contains two counts. The first count alleges substantially that the plaintiff recovered a judgment against the county of Desmoines in the said Circuit Court; that afterwards such proceedings were had that a peremptory writ of mandamus was issued from that court and duly served upon the defendants as supervisors of said county, whereby they were commanded to levy a tax sufficient to pay the judgment and costs; that in September, 1868, it was their duty to levy such a tax, and that they neglected to do

so, whereby the plaintiff sustained damage to the amount of $12,108\frac{3}{100}$.

The second count sets forth substantially the same facts; and, further, the provisions of the code of Iowa prescribing the duty of the defendants, as supervisors, under such circumstances, and declaring that a failure on their part to perform the duty enjoined, should render them personally responsible for the debt. It is further averred in this count that the judgment is in full force and unsatisfied, and that the defendants have levied no tax and made no provision for its payment, and that the plaintiff is thereby damaged in the sum stated in the first count.

The defendants, by their answer, set up three defences:

(1.) Nil debet.

(2.) That the District Court of Desmoines County had enjoined them from levying a tax to pay the judgment; that they were nevertheless proceeding to levy such tax when they were attached by order of that court for contempt of its process, and compelled to give bonds to answer said charge of contempt and to obey the injunction, and that those bonds were still in force and obligatory upon them.

(3.) That before the peremptory writ of mandamus was issued the legislature of Iowa repealed the statutory provision, whereby they were made individually liable for the delinquency charged against them, and that, by reason of such repeal, they are not so liable.

The plaintiff demurred to the answer. The court overruled the demurrer and gave judgment for the defendants.

The counsel for the plaintiff in error has filed an able and elaborate brief. None has been submitted in behalf of the defendants. A few remarks will be sufficient to dispose of the case.

The Circuit Court had authority to issue the writ of mandamus. It was the process resorted to by the plaintiff to procure satisfaction of his judgment. The State court was powerless to prevent its execution. In so far as concerned the process in question the injunction was a nullity. In such

cases the two sets of tribunals—State and National—are as independent as they are separate. Neither can impede or arrest any action the other may take, within the limits of its jurisdiction, for the satisfaction of its judgments and decrees. Where either is in possession of the *res* sought to be reached, the process of the other must pause until that possession has terminated. But this rule has no application in the case before us. These principles are a part of the checks and balances of our dual and combined polity, and are indispensable to the harmonious and beneficial working of the system. If the ground assumed by the State court in this case can be maintained, the Constitution of the United States, and the laws made in pursuance thereof, as regards their judicial administration, instead of being the supreme law of the land, would be subordinated to the authority of the courts of every State in the Union. If this writ may be paralyzed by the injunction relied upon, a writ of *fieri facias* and a writ of *levari facias* may be defeated in the same way. In point of principle there is no distinction between them. Every judgment of a court of the United States may thus be rendered fruitless of any beneficial result. These views are conclusively maintained by *Riggs* v. *Johnson*,* and the principle involved has since been reaffirmed in the cases which followed, and were controlled by that judgment.

It is not necessary to consider the effect of the repeal of the provision of the code which enacted that the delinquent parties shall be personally liable. There is a common law liability which was not affected by the repeal. The statute was only cumulative on the subject.

The rule is well settled, that where the law requires absolutely a ministerial act to be done by a public officer, and he neglects or refuses to do such act, he may be compelled to respond in damages to the extent of the injury arising from his conduct. There is an unbroken current of authorities to this effect. A mistake as to his duty and honest intentions will not excuse the offender. The question of the rule

* 6 Wallace, 166.

by which the measure of damages is to be ascertained is not before us, and we do not feel called upon to express any opinion upon the subject.

The defences set up in the answer of the defendants are clearly bad. The demurrer should have been sustained.

The judgment of the Circuit Court is REVERSED, and the cause will be remanded with instructions to that court to proceed

IN CONFORMITY TO THIS OPINION.

NOTE.

AT the same time with the preceding case was decided another case, which came here on certificate of division between the judges of the Circuit Court for Wisconsin. The case, namely, of

FARR *v.* THOMSON ET AL.

In which the preceding case was affirmed.

The declaration in this case presented, in all substantial respects, the same state of facts as the declaration in the case just decided. After argument by *Mr. M. H. Carpenter, for the plaintiff, no one appearing contra*, Mr. Justice SWAYNE announced the judgment of the court to the effect that the former case decided this. The question certified to the court—which was whether the declaration showed a sufficient cause of action—was accordingly answered by it

IN THE AFFIRMATIVE.

SMITH *v.* SAC COUNTY.

1 In a suit on a negotiable security when the defendant has shown strong circumstances of fraud in the origin of the instrument, this casts upon the holder the necessity of showing that he gave value for it before maturity.