

Of course, the question as to *res judicata*, which is presented in another count, is not affected by this decision.

The demurrer will be sustained, and leave given to file an amendment to answer within 60 days.

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UNITED STATES *ex rel.* FIELD v. TOWNSHIP OF OSWEGO, LABETTE Co.

(Circuit Court, D. Kansas. June 10, 1886.)

1. MUNICIPAL CORPORATIONS—BONDS—MANDAMUS—JUDGMENT—SATISFACTION.

A writ of *mandamus* to enforce collection of judgment against a municipality on its bonds is in the nature of, and is legally equivalent to, the statutory writ of execution.

2. SAME—STATUTE OF LIMITATIONS.

The right to prosecute the writ for such a purpose is limited to the same period of time within which execution may be sued out on a judgment against individuals.<sup>1</sup>

Motion to Quash Writ of *Mandamus*.

*S. E. Brown*, for plaintiff.

*Perkins & Morrison*, for defendant.

BREWER, J. These are judgments rendered on township bonds 10 years ago. The last proceedings upon these judgments were in 1878, and they were *mandamus* proceedings against the township officers. Thereafter, from 1878 until 1885, more than six years, the plaintiffs and relators took no action thereon. Last fall an alternative writ was sued out against the county commissioners of the county of Labette. The question is whether those judgments were alive, so that any proceeding could be had to enforce them. It is settled in this state, both by statute and decisions, that a judgment becomes dormant in five years, and that an execution issued thereafter is absolutely void. It is true that the statute provides that no execution shall issue against a county, but the proceeding by *mandamus* is one in the nature of an execution for enforcing the collection of judgments against a municipality. I think, by all fair analogies, the same rule applies; and if a party holding a judgment against a municipality permits it to stand, without any effort to collect it by *mandamus* proceedings, for five years, the judgment becomes dormant, and there must be a revivor, which can only be had within a year, before any process can be obtained on that judgment. I cannot think it possible that the legislature, by taking away the right to issue execution against the county, meant that a judgment against a county should remain in

<sup>1</sup> For a full discussion of the question of the statute of limitations, when it begins to run, etc., see *King Iron Bridge & Manuf'g Co. v. County of Otoe*, 27 Fed. Rep. 800, and note, 801-807; and *Barden v. City of Duluth*, *ante*, 14.

force indefinitely. It has provided that the judgment should be paid by taxes, and the taxes enforced by *mandamus*. The *mandamus* is the equivalent of an execution, and the same rule must obtain as to all judgments which are permitted to stand for five years without process. They become dormant.

The motion to quash will be sustained, and counsel can note an exception to the order.

### UNITED STATES v. THURBER and others.

(District Court, S. D. New York. June, 1886.)

1. CUSTOMS DUTIES—NECESSARY COVERINGS—BOXES—ACT OF MARCH 3, 1883, § 7—TRANSPORTATION TO THE UNITED STATES—APPRAISEMENT OF VALUE—EXCESS OF POWER—DEFENSES AVAILABLE.

Under section 7 of the act of March 3, 1883, (22 St. at Large, 523,) the appraiser is forbidden to add the value of the usual or necessary boxes or coverings, in fixing the market value of the goods, provided such boxes or coverings are only designed for use in the transportation of the goods to the United States. If the value of the boxes be added without finding such other design, his appraisement, and the liquidation based upon it, will be void; and that defense will be available to the importer when sued for the duties as thus liquidated. "Use in transportation to the United States" includes transportation to the consumer, so long as the boxes are not broken. But the appraiser is authorized to inquire into the design of the boxes or coverings, and if he finds them designed for other than transportation uses, his finding, and the liquidation based upon it, cannot be reviewed in a suit to enforce payment of the duties; but only in a suit by the importer against the collector to recover back after payment. In no case is the value of the coverings to be added to that of the goods. If dutiable at all, they are dutiable at the rate of 100 per cent. *ad valorem*, without regard to the rate on the goods.

2. SAME—SAFETY MATCH BOXES—REV. ST. § 2931.

Safety matches were imported put up in small boxes, each having a prepared surface convenient for lighting the matches as used. The appraiser raised the invoice value of the goods by the precise amount of the invoice value of the small boxes, "to make market value in marketable condition," and duties on the whole were liquidated at the rate of 35 per cent., the rate imposed by law on matches. The importer on entry had paid the correct amount of duty upon the matches alone as invoiced. This suit was brought for the duty upon the added value. The government contended that the liquidation was "final and conclusive," and could not be questioned in this action. *Held*, that if the appraiser added the cost of the boxes to make the market value of the matches and boxes together, without any inquiry or finding whether the boxes were for any other use than transportation to the United States, his act was contrary to the statute, and in excess of power, and that the appraisement and liquidation were void. Under such instructions, the jury found a verdict for the defendant.

Action to Recover Duties.

Mr. Rose, Asst. U. S. Atty., for plaintiff.

Edwin More and Nelson Smith, for defendants.

The charge of the court to the jury was substantially as follows:

BROWN, J. This action is brought to recover a balance of \$273 alleged to be due to the United States for duties upon an importation