

COLT, J. I am satisfied that the motion to quash must prevail, upon the grounds—*First*, of want of notice on the part of the defendants; and, *second*, because the writ is irregular in form, it being a compound writ of *mandamus* and *certiorari*. These two objections are so clear on reason and authority that it is unnecessary to enlarge upon them.

The rule is well established in this country that no peremptory *mandamus* shall issue without notice in some form to the defendant, or a waiver of notice by an appearance. The wisdom of this rule is well illustrated in this case; for surely this court ought not to command a judge of the district court (assuming it has the power in such a case) to do that which he says would be false, without notice to him, and opportunity to be fully heard.

As to the second ground, there seems to be no precedent for combining writs of *certiorari* and *mandamus*. Each being distinct, and having its prescribed functions, it would be irregular to join both in one writ. Such a course may lead to much confusion, for rules which apply to one writ may not apply to the other; whereas, if each is kept distinct, we can deal with it according to the rules of procedure which are applicable to it.

Motion to quash sustained.

SHELLEY v. ST. CHARLES Co.

(Circuit Court, E. D. Missouri, E. D. April 20, 1887.)

1. COUNTIES—BONDS—MANDAMUS TO LEVY TAX.

Where a county court refuses to levy a tax required by law to be levied for the payment of county bonds, a *mandamus* will go to compel such levy.

2. SAME—ADJUSTMENT OF EQUITIES.

Where bonds, maturing in different years, were issued for the improvement of certain lands upon which they were made a lien until paid, and the law required the county court to levy enough taxes upon such lands each year to pay the annual interest on such bonds, and all bonds maturing the following year, allowing at least 25 per cent. for delinquent taxes, and the county court only levied enough, if all collected, to pay the interest and bonds, and allowed nothing for delinquencies, and delinquent suits were instituted, and certain tracts sold under judgments recovered, and some of the purchasers were *bona fide*, held, that this court cannot attempt, in *mandamus* proceedings, to apportion or determine the equities which exist, and will not issue a *mandamus* to compel a second levy upon lands sold, for the payment of bonds due before such sales were made.

This is a proceeding by *mandamus* against the judges of the county court of St. Charles county to enforce the satisfaction of a judgment recovered in this court upon certain bonds and coupons issued by St. Charles county, under certain acts of 1869 and 1870, for the improvement by drainage of certain lands lying in said county, known as the "Marias Temps Clair District," and to that end compel the levy of a sufficient tax to pay said judgment, less the amount already paid thereon. For other material facts, see 28 Fed. Rep. 875.

E. B. Sherzer, for relator.

Dyer, Lee & Ellis and Castleman, Hough & Denison, for respondent.

BREWER, J., (*orally*.) In the case of Shelley, relator, against St. Charles county, the relator is entitled to a *mandamus*, so far as respects ponds for which no levy has been made. Provision to that effect is in the order which is herewith approved. So far as the balance of the judgment is concerned, the plaintiff is not entitled to *mandamus*. There were judicial sales made under proceedings in the courts, after the failure of the ordinary tax levies, and there were on those judicial sales some *bona fide* purchasers. As we intimated in the course of one of the arguments in the case, we think the parties who bought under these judicial sales are entitled to protection, and that the relator's remedy (if he have any) for the balance of the judgment must be in some other proceeding.

We cannot in *mandamus* attempt to apportion or determine the equities which exist, so that, as to the balance of the judgment, the application for *mandamus* will be refused.

UNITED STATES, by DOWELL, Prosecutor, *v.* GRISWOLD.

(*District Court, D. Oregon. May 3, 1887.*)

1. JUDGMENTS—SATISFACTION—CROSS-JUDGMENTS—SET-OFF.

By the practice at common law, a court might set off cross-judgments in the same or different actions, in the same or different courts, between substantially the same parties, on the application of either to enter satisfaction in both actions for the amount of the smaller debt.

2. CLAIMS AGAINST UNITED STATES—SET-OFF—JUDGMENT.

The authority to settle claims due to and from the United States by setting one off against the other, as provided in the act of March 3, 1875, (18 St. 481,) is thereby conferred exclusively on the secretary of the treasury; and this court is not authorized to set off a claim allowed in the treasury department to the defendant in this action against the judgment therein.

(*Syllabus by the Court.*)

Action to Recover Damages and Penalties.

James K. Kelly, for the motion.

M. C. George, *contra*.

DEADY, J. On July 30, 1879, a judgment was given in this court in the *qui tam* action of the United States, by B. F. Dowell, prosecutor, against William C. Griswold, for \$35,228, with costs and disbursements, amounting to \$2,875.60, on account of certain forfeitures and damages incurred by him in knowingly making, presenting, and obtaining payment from the treasury of the United States, in January, 1874, of certain false and forged claims, contrary to section 5438 of the Revised Statutes. Afterwards divers sums were collected and credited on the