

Case No. 7,261. JENKINS v. BOARD OF SUP'RS OF CULPEPER COUNTY.
[1 Hughes, 568.]¹

Circuit Court, E. D. Virginia.

April, 1876.

SPECIAL TAX—FAILURE TO LEVY—MANDAMUS.

Where the board of supervisors of a county charged by law with the duty of levying a special tax for the payment of the bonds and interest coupons issued for the erection of county buildings, had been negligent and inefficient in discharging their duty, a United States court will issue the writ of mandamus in favor of nonresident holders of overdue coupons, in favor of whom judgment had been recovered in the United States court, to compel the efficient performance of their duty.

Mr. John Howard moved the court for an absolute mandamus in the case of Thomas E. Jenkins, of Baltimore against the Board of Supervisors of the County of Culpeper. He read the petition of Mr. Jenkins filed on the 12th of October, 1875, setting forth that under an act of the general assembly of December, 1870, the county of Culpeper had issued bonds to the amount of fifteen thousand dollars, with interest coupons thereto attached, payable semi-annually, for the purpose of erecting a court-house and other public buildings in the county; that the bonds had been accordingly issued, and that several instalments of coupons, of which Mr. Jenkins was the holder, had fallen due and had been dishonored; that by the said act of assembly the board of supervisors were authorized to levy a special tax for the payment of the bonds and interest-coupons, and that the faith of the county was pledged to the payment thereof; that the board failed to perform their duty under the law; that Jenkins had accordingly brought suit in the United States circuit court upon the overdue coupons, and had obtained judgment thereon, upon which execution had been issued, and returned "No effects," and praying the court for a rule or mandamus nisi against the board of supervisors, requiring them to show cause why an absolute mandamus should not issue, commanding them to pay the judgment and execution immediately, or in default thereof to levy a special tax, under the direction and supervision of the court, for that purpose. And it was shown that the rule had been accordingly issued and had been duly served upon the board.

Mr. C. U. Williams appeared for the county of Culpeper, and filed the answer of the board of supervisors. The answer stated that the board had in December, 1874, passed an order levying a special tax for the purpose of paying the interest-coupons and of creating a sinking fund for the payment of the bonds themselves when they should become due; that the board had also passed orders directing the treasurer of the county to pay the coupons which had fallen due, and that no interest should be allowed on the coupons after their maturity. The board of supervisors thus claimed that they had done their whole duty in the matter, and their counsel contended that nothing further could be required of them.

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Mr. Howard read the statutes, showing the jurisdiction of the board of supervisors under the law, and held that under all the circumstances of the case the board had been negligent of their duty, and had not properly exercised the powers with which they were clothed for a timely and effectual levy of taxes for the payment of the debt; that four semi-annual instalments of coupons had fallen due and not a dollar had been paid, and that it was the legal duty and business of the board of supervisors not merely to have levied a special tax, but to have levied it in time to meet the coupons, and to have seen that the special provision made for the payment of the coupons was fully carried out, and if necessary to levy other taxes for the purpose, and that it did not appear they had done so, and that upon the whole there had been a failure of duty on the part of the board and of the county, and that the court ought to issue an absolute mandamus commanding the board of supervisors to pay, or cause to be paid, the judgment and execution which had been recovered and issued against the county, principal, interest, and costs, and also the costs of the proceedings for mandamus.

THE COURT (BOND, Circuit Judge) entered an order awarding an imperative mandamus against the board of supervisors, commanding them, on or before the 1st day of February next, to pay, or cause to be paid, to Mr. Jenkins the amount of his judgment and execution, and costs, and the costs of the mandamus proceedings.

¹ [Reported by Hon. Robert W. Hughes, District Judge, and here reprinted by permission.]