No. 13427

Supreme Court of Illinois

Mills, Executor

VS.

Thornton

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SUPREME COURT,
Third Grand Division.

No. 34.

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SUPREME COURT OF ILLINOIS.

APRIL TERM, A. D. 1860, AT OTTAWA.

JOSHUA L. MILLS, Executor of the last Will and Testament of Eli R. Mills, deceased, plaintiff in error,

vs.

ARNOLD THORNTON, Collector of the town of Magnolia, and "The School Directors of District 3, Township 31 North, Range 1 West, in Putnam County. ERROR TO PUTNAM.

POINTS AND AUTHORITIES FOR PLAINTIFF IN ERROR.

The Complainant filed his bill and got out an injunction, to prevent the collection of School Taxes to the amount of \$119 23, assessed on the personal property of his estate for the benefit and in behalf of said District 3, while plaintiff was a resident and tax-payer of District 8, and therein alone, as he alleges, liable to be charged with School Taxes. The errors complained of are the dissolution of the injunction and the dismissal of the bill.

T.

This case is in principle, identical with *The Town of Ottawa*, and al. v. Geo. E. Walker, et. al., 21, Illinois 605. Here, as there, officers not authorized by law levied the taxes complained of, and a Court of Equity has the same jurisdiction here as there, to restrain the collection of those taxes.

The complainant being a resident tax payer of School District 3, was liable to be charged with School Taxes there alone, and when the attempt was made to charge him with School Taxes in and for District 8, it was unauthorized. Here is not a mere irregularity in the assessment, as in *The Chicago*, *Burlington & Quincy R. R. Co.*, vs. Frary, et. al., 22 Ill, 34; but under that case, (p. 37 ibid.), the tax complained of being upon property not subject to the tax, a Court of Equity should interfere to prevent its collection.

Beverly v. Sabin, 20 Ill. 357, is likewise an authority for the plaintiff in error. In fact, no case like this can be found, when the jurisdiction of a Court of Equity to prevent the collection of a tax levied by persons or authorities, without jurisdiction or authority to make the levy, has been denied.

II.

The personal estate of Eli R. Mills, the testator, became vested in his executor.

(1 Williams on Executors, 546.)

And said Executor, being a resident tax payer of School District 8, it was there alone that School Taxes could be charged on said personal estate, the legal ownership of personal property carrying with it the possession, or presumptive possession, of the property, and only the residence of the tax payer being regarded, or entitled to be regarded, in assessing School Taxes upon personal property.

(School Law of 1857, § 4, p. 445, Cook's Statutes.)

T. M. SHAW and Attorneys for Plaintiff in error.

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Mills Ext. De Thouton dass. Poffs. breif

Filo elley 1. 1860 Collections

An the Supreme Court of Allinois,

THIRD GRAND DIVISION ... APRIL TERM, A. D. 1860.

JOSHUA L. MILLS, Executor of the last will and testament of

ELI R. MILLS, deceased, Plaintiff in Error,

ARNOLD THORNTON, (Collector of the town of Magnolia,) and

of Magnolia,) and
THE SCHOOL DIRECTORS OF DISTRICT

Lage of Record.

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3, Township 31 North, Range 1 West, in Putnam County, Defendants in Error.

ERROR TO PUTNAM CIRCUIT COURT.

ABSTRACT OF RECORD.

The plaintiff in error filed his Bill in Chancery showing that he is Executor as above; that he is a resident tax payer of School District 8, Township 31 North, Range 1 West of the third Principal Meridian, and was such resident tax payer of said District before and at the time of taxes becoming chargeable for the year 1859, and as such resident tax payer of said District, listed for taxation for said year the personal property of said testator; that though plaintiff is not and was not a resident of School District 3, in said Township and Range, nor liable to be charged with School taxes therein, there was wrongfully charged on said personal property School taxes for the year 1859 in favor of said School District 3, to the amount of \$119 23; that plaintiff was not informed of the return of said property for assessment of said School taxes in said District 3, until long after the meeting of the Assessor with the Supervisor and Town Clerk for the correction of the Assessor's list; that defendant Thornton, Collector as aforesaid, was seeking to coerce payment of said School taxes upon said personal property for said District 3, and had seized upon personal property belonging to said estate and in the hands of plaintiff, and advertised the same for sale, to make the amount of said taxes, and that the other defendants (the School Directors) had combined with said Collector to collect said taxes for the benefit of said District.

The Bill prayed an Injunction against defendant Thornton to prevent the collection of said School taxes, and that on the final hearing the same should be made perpetual and extended to said School Directors. Copy of Letters Testamentary issued to said plaintiff in error, September 3, 1855, by order of the County Court of said county, was annexed to said Bill.

Hon. Mark Bangs, Judge of the 23d Judicial District, allowed the Injunction in vacation, as prayed for.

The defendants were regularly brought into Court by service of summons.

The Circuit Court, (at the March Term thereof, 1860,) Hon. M. Bangs, presiding, dissolved the Injunction, on motion of the defendants, and dismissed the Bill on like motion, as for want of equity therein.

Plaintiff assigns for error the dissolution of the Injunction-

The dismissal of the Bill, &c.

Mills vs Thornton

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This case is in principle, identical with *The Town of Ottawa*, and al. v. Geo. E. Walker, et. al., 21, Illinois 605. Here, as there, officers not authorized by law levied the taxes complained of, and a Court of Equity has the same jurisdiction here as there, to restrain the collection of those taxes.

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(1 Williams on Executors, 546.)

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(School Law of 1857, § 4, p. 445, Cook's Statutes.)

T. M. SHAW and Attorneys for Plaintiff in error.

T. DENT,

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T'iled May 1, 1868 Skeland Class

STATE OF ILLINOIS, ss. The People of the State of Illinois, To the Sheriff of the County of Putture Greeting: Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the bicuit -Court of Putuam Country, before the Judge thereof, between Joshua L. Mills Executor of the last will land testament of Eli R. Miles deceved plaintiff, and Arnold Thouston and Homas Herman Price, George Griffills and Joseph Howard this three last named defendant tring School Directors of Districts 3 Township 31 North Name of west. defendants., it is said that manifest error hath intervened, to the injury of the said Joshua L. Mills Executor as a foresaid as we are informed by his complaint the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command Mou, That by good and fawful men of your County, you give notice to the said Arnold Thouton, Herman Price, george griffithe and Joseph that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at OHawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if They shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then theze the names of those by whom you shall give the said Arnold Thornton, Herman Price, george Griffith and Joseph Howard notice, tegether with this writ. Witness, The Han. John D. Raton, Chief Justice of our said Court, and the Jeal thereof, at Ottawa, this 19 day of March in the Mear of Our Loted One Thousund & aht Hundsed and Fixty. Le Leland

Glerk of the Supreme Court. Ly J. B. Piece Deputy

Joshua L. Mills Arnold Thouston SCIRE FACIAS. L. Leland Sheriff fees-\$4.65-Thomas Dent Plant Afs atty

An the Supreme Court of Allinois,

THIRD GRAND DIVISION ... APRIL TERM, A. D. 1860.

JOSHUA L. MILLS, Executor of the last will and testament of

ELI R. MILLS, deceased, Plaintiff in Error,

ARNOLD THORNTON, (Collector of the town of Magnolia,) and THE SCHOOL DIRECTORS OF DISTRICT

E SCHOOL DIRECTORS OF DISTRICT 3, TOWNSHIP 31 NORTH, RANGE 1 WEST, in Putnam County, Defendants in Error.

ERROR TO PUTNAM CIRCUIT COURT.

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The Bill prayed an Injunction against defendant Thornton to prevent the collection of said School taxes, and that on the final hearing the same should be made perpetual and extended to said School Directors. Copy of Letters Testamentary issued to said plaintiff in error, September 3, 1855, by order of the County Court of said county, was annexed to said Bill.

Hon. Mark Bangs, Judge of the 23d Judicial District, allowed the Injunction in vacation, as prayed for.

The defendants were regularly brought into Court by service of summons.

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STATE OF ILLINOIS, ss. The People of the State of Illinois,
To the Clerk of the Court for the Country of Perfecting: Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the bicit Court of Putram Country, before the Judge thereof, between Joshua L. Mills Executor of the Cast will and testament of Eli R. Miles decensed plaintiff, and Arnold Thousand and Herman Price George Griffith and George Howard the Cust there named de few auts being School Directors of District 3 township 31 North Range 1 west defendants, it is said manifest error hath intervened, to the injury of the aforesaid for home I miles Executor as aforesaid; that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaints aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Otlawa, in the County of La Salle, on the first Tuesday after the third Monday

in April next, that the record and proceedings, being inspected, we may

cause to be done therein, to correct the error, what of right ought to be done

according to law.

fustice of our said Court, and the Seal thereof, at Ollawa, this 12 day of Mexcle in the Year of Our Lord One Thousand Eight Hundred and Sixty

Leland Blerk of the Supreme Bourt. If Be Pine Deful

State of Ellinois, Putnoem County.) Is. Pleas before the Honorsh Mark Bungs, birant Judge in and for the 23 quedicial Dis trict, at a derm of the bircuit Court in and for said Country of between begun and held nepin on the factor mohle (12th day) of March AD! 1860, and of the independence of the United States the 84 th year, Present, Now. Mark Bangs, Judge, Henry Miller, States atty John P. Gerberch, Sheriff, George Dent, Werk.

Be it remembered that heretofore, to with: son the 16th. day of Tubrisery A.D. 1860, bother L. Molies, by J. Mo. Thaw, his tobis itor, came into the office of the blerks of said court and field his Bill in Chancery, which is as pollows:

State of Ellinois, (Putnam Country.) SS. In the Circuit Court of Said county, March Jerm A.D. 1860, In Chancery. do the Hon Mark Bangs, Judge of said court, in chancery sitting: Your orator Joshua mills, Executor of the last will and tes-tament of Eli Q. Mills, dec'd. would respectfully represent and show unto your honor, that he is Executor of the last will and testownent of Eli R. Soills, dec'd, and as such Executor has the possession and control of all the personal hop erty belonging to said Mills at the time of his decease; all of which will more fullyappear from the letters testamentary here to attached market Exhibit A' your orator would further show that he is a resident and top payer in School District num. ber eight, in Jourship thirty three North, R. one West of the third

(3)

Principal Meridian said sound ship 31 being in the town of Mag. wha, in the said County of hitrag and your orator was such resident tax payer of said District & & not of District 3 hereinafter named, and also was such Executor, at the time of the isting of the property assessed and taxed as hereinafty stated, Fever since hath been a resident of said District 8. your orator would further show that Amold distrition is down bollector of the said cours of Magnotis in said county, and as such Collector has the collection of all The tayes in said town for the yar A.D. 1859; that there is starged on the sand Collector's book in the personal projecty list the sem of one hundred and wineteen and 23/100 Dollars, as school tay in favor of the District Nº 3 in Soundhip Nothing one North, Range I West of the 3 1: In in said Putram Country and against the estate of olife

(4) Mills; which tay is as sharen on tagainst the personal prop. erty of said testator, and that with Collector is seeking to coerce gay. ment of the said taxes out of the proper home to state in the hands of your nator, and has the same advertised for saly and threatens and intende to sell the same for the parament of the said taxes charged against the said estate and in favor of said Thool District unless your on. tor with many said tay. your orator would further show that he is not now, nor was he at the time the apreparent was made for said year 1859 a resident of said Tchool District member three, but on the contra. ry was a resident and tac payer in District number sight in said town, and gove in and listed all the personal property belonging tosaid estate (the same being listed as old M. Mills's Estate , in said District maniscr exect in which your orafor it resident. I And your orator

was not informed that said property was returned by the assessor of said town of Magnolia as liable for taxes in said District number three as your orator is now informed was done by said Assesor, until long after the meeting of the assessor with the Supervisor and town clirk for the correction of said assessor's list.

And your orester would further show that Herman Price, George Griffith and Joseph Howard are School Directors in said District number three, and as such School Directors combined together and procured said afsepment of said personal property belonging to serial estate tobe returned by the aprefact of said town as taxable in soul District and are ariding and abetting the said chornton in the collection of said tors. your crater therefore charges that said tax of one hundred and ninetien & foo Dollars is wholly unjust and illegal, and that your

orator should not be compelled a pay the same either ofth of his our or the fertienal afsets of said state of Eli R. Mills, dec :; that said Thornton and the said Thout Directors have conspired together against your orator to compethin to pay the same afther out of his own or the appets of said estate. And your orator there. fore prays that the said Arnold Inoriton, the said School Directors Herman Price, George Frigfith and Joseph Howard may be made defendants inthis Bill, and that they be required at a time to be fixed by the court to answer all and singular the allegations and charges in this bill, but not on out, that being waived, and that Chancery Immont ipice against them returnable to said term of this court, and also that thepeople's writ of Injunction spece to the said Thom tin and successors in office com. manding them to abstain and desist from the collection of the said Thool tax of one hundred

(7) and nineteen and Too Dollars charged on his book in paror of said District number three and against Eli R. Mills' Estate", until the further order of this court, and that on the final hearing of this Bill the said hyunction maybe made perpetual and extended to said Directors; and for such other and further relief as may be just and equitable, And as in duty bound your orector will ever pray, Jc. oshua Mills, P. J. M. Sheer, Ttate of Ellinois, & Putram County . Joshua mills the plaintiff in the above suit, being duly sworn on his vath says that he had read the foregoing Bill, and that the matters and things therein set forth are true except those charged on information and thou he believes to be true. oshua L. Mills. Tubscribed and affirmed to this 16 th day of abruary AD. 1860.

Exhibit A. State of Illinois, Cutuam County,) S. The People of the State of Elinois, to all to whom these presents shall come, greeting: Know ye, that whereas Eli N. Mills, late of the Country of Petrous and State of Ellinois, died on or about the eighteenth day of August AD 1855, as it is said, after having duly made and published his last will and testament, a sopy whereof is hereunto annexed leaving at the time of his death property in this State which may be lost, distroyed or diminished in value of speedy care be nottaking the same; and indesunch as it appears that Joshua L. Mills has been appointed Executor on and by the said lastwill and testament to execute the same; and to the end that said property may be preserved for those who shall appear to have a light right or interest therein, and that the said will many be youted

according to the request of the said testator: We do hereby an. thoriza him the said Joshua L. Mills as such Executor to collect and secure all and singular the goods and chattels, rights and credits, which were of the said Eli A Mills at the time of his decease, in who seever hands or possession the same may be found in this State, and well and truly toperformand fulfill all such duties as may be enjoined upon him by the said will, so far as there shall be property, and the law charge him; and in general to do and perform all otheracts which now are or hereaftermen be agained of him bylass. In Withen Whereof, Shave hereisto set very beend and affixed the seal of the saed County Court, at my office in Herrefren, this third day of September A.D. 1865. Milliers Eddy, My 6. Eddy, Deputy Click A mu

Which said hymnelin But was indorses Introuse County . J.S. The blick of the bircuit bourt of said butware limity will office Expendion on the above cause according to the prayer of said Bell ripor complainant intering into Board of \$300. with Arios Wilson as secrety unditioned according to law. Mark Bangs, fuder 23 prelicial Civil Ellianis. on the 16th day of helman TD. 1860, Jumment was ifered in sould cause as follows: Turmens State of Allinois, Putuan County S SS. The Profile of the State of Ellinois to the Sheriff of said fourty, Greeting: We command you that you summent trovaled Thorston, Herman Price, George Griffith and Joseph Howard, if they shall be found in your county,

(11) personally to be and appear h. for the Circuit Court of Said county, on the first day of the next tem thereof, to be holden at the Court House in Heunepin, in Soud Portuge County, on the 2. monday of barch next, to gensives not Joshua L. Mills in his certain Bill of Complaint filed in said went on the chance side thereof, and have you then and there this with, with as endorsement thereon in what may nestyon shall have executed the sam. Witness george Det blech (II) seal thereof, at the supin, this Milay of Milmay A.D. 1860. Gev. Dert. flerk; Which said with was after. wards was afterwards to with. seles in the 32th day of March Th. 1860, returned and sted as follows: State of Elicion, Interese County Jos. There duly served this unit by reading the same of

the within seasoned dependents Amold Showsten, Herman Price and George Griffith, and by delivery a true copy of the seeme to each off the above neural dependents, and ly having a true copy of this wif at the residence of the within around Joseph Howard with Mer Joseph Howard, she bring a white there over the age of ten years and explained when the contents of the some. hemany 17 th.D. 1860. John Pyerbereck, Therff And in the 16 clay of Memory A.D. 1860 the following princtien Bond was feled in said case, to ent: State of Ellinois, & Intram County. St. Quoes all men by these Presents, that we Joshua Mills adprincipal and Found Wilson as security are held and fromly bound and to horder thouseon, Bernan Price, George Griffith and Joseph Bourased in the Junal

(13) Sun of the hundred dollars, for thefrayment of which we bind ocestilves, and heirs, executors and administrator, jourty, severally and fiverely by these presents. Witrop and heads and seals this 15 th day of Memany AD. 1860. The undition of the stove obligation is such that whereas the above bounder poster Wills had prayed for and obtaine a word of Infinction from the Judge of the 23. Judicial Circuit injuriously and commanding the said Amold Thomas, Herman Price, George Inffith and Joseph Howard to desist from collecting \$119. Too School tay charged on the Collector's Books of the low of Magnolia in the County of Intraces against the estate of the A mills, and in favor of sand Tchool Distri No 3 J 31 Mgth of the 3. Principal Maridian until the must shall make ather order to the instrange New of the seed Joshus him and Nows Walson shall pay o were

to be paid to the said Amold Thomating Herend Price, George Inffilt and Joseph Howardy such damages as they may of said Injunction, and also all such evits and damages as me be awarded against the sail complained by send court in case the Saed Injunction hereen granted shall be dipolved, then the above obligation is to be suite and roid, otherwise to remain in pull force and effect. Joshua L. Mills and Seal And on the 16th day of Mely any A.D. 1860 an hymnoline en issued in said cause as follows: State of Ellinois, Putnam County US. The Robb of the State of Missois, Greeting, to Amold things his Consellors, altoneys, Tolicitors and agents and succepose in office: Whereas Joshua L. Mills

has lately if hebited his Bill of Complaint to the Judge of the birchit bout and for the County and State aforesaid, on the chancery side thereof, against you the said Amola Thomaton and succepsors in office, defendants, wherein among other things it is alleged that you are about golbeling a school tax of - \$119 700 Charged on your bollector's Brok of the town af Bagnolia in favor of Televol Dis. trick N. 3 in Jourship No 31 North, oflange I West, a prefeed on the hersonal property of the estate of the N. North: Wa therefore on cousing nation of the premises do streets enjoin and command you the said Arnold Thorston and all and every of theper son above mentiones that you and each of you, aloah solutely and entirely desist from all further proceedings at low from sollecting said tax and against the Said complainant toncering any of the matter en the said will complained of will you and rach of you shall appear

(16) and fully answer the complain. ants Bill, and the said court make other order to the southerny. Herry fail not under the prenatty of what thelaw directo. Witup ger Deut bleck of said court and the Tel seal thereof at Heunopen, this 16th day of Johnson, 1860 Go Dent, Clerk Unwhich said with, which was returned on the 12 th day of hung A.D. 1860, was indo sed the following return, to not! "There duly served the with withy reading the some to the within named Anold Monton, and he delevering to him a true copy of the Janu this 17th day of pulmany 1.D. 1860. John Byerberick, Thenfy. the 13 th day of March A. 1860, the following procudings were had in said court in said cause, is wit: Joshua L. Mills, Executor of the last

(77) eill and testument of Eli R. Mills, deceased In Chanung Amold Thornton, or mill for hymelin. Herman Price, George Griffith & Joseph Howard (the Three East named defindents being the Toleral Directors Postrict 3, Jourship 31 North, Range Will March 13. 1860, - The defendants come by f. O. Glover, Cry, their Solicitor, and more the court de depolve the Enjandlin ipued herein, and said motion have now been argued by events, The court latter the same under advisionent. And afterwards, to evit : on the 14 th day of March J.D. 1800, the following other pro. cieclings were had in buil court in vacili cause, to pirt: Thund. Mills, Executor of the last well & lesternent

(8) ofthe A. Mills, deceased, In Chancery Amold Thomaton, & mill fes Herman Price, George Greffith & Joseph Howard (the Suprestin three last named defendants Vieney Mutcherol Directors of District No 3, Tourship 3/4 North, hangs I Walt. March 14. 1860. Now come again the parties by their respective Solutors, and the court being now advised in the premises it of opinion that the Bill of Conplaint herein does not make mich a case asenthe the said complainants to an hysimation: Therefore it is ordered that the said Inquinction be and he ourse is depolved. And thereufen freid defendants more the could de suip the Bill. the 15th day of March S.D. 1860, The vollouring other proceedings were had in said court in soud cause,

to wit:

(Tite of course as last above)

March 15 th D. 18 bo.

It is in considerate,

ordered herein in the survivalent,

aforesaid that the Bill in this

case be dissiped. Therefore

it is considered that said

defendants recover of said

everylainant their costoherein

expended, the tapea, and have

execution therefor.

State of Plines, South, South Speak of the bereich lout in and for daid county, do herely cerlify, that the foregoing's a fill and complete transfit full papers perords and in fill papers in the above and in this cause.

(20) and the seal of sould court, string office on Phenoping this of the day of March AD. 1860. Songe Dent-And the said Joshuade Mills, Executor of the last millans testerment of Eli R. Abills, deceand Rays that in the record and provendmed aforeien there is many estrotor on this among the thing; to with? That suid west world in depoline The Injunction. That said emberred in dromping That said unterfed ownendering judgment for the de udants.

1211 That by the of the land the judgment onight to have been for this plaintiff whereas the Jame has brend rendered against him. Wherefore, and brearing other cross, the Dard Mills, Exercis br., hours that alatin and office dedear may fine, that the decore ex judgment of para livert lout be revised and that he he restored to all things which he has lost by reason thereof. J. M. There V thronas Dink, allomens for said m

Joshua Le Mills
Extrese 34.22
Amold Thornton
Holles.

Record reesigh,
of inorse

File March 12.1860 L. Leland Clark

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