town council; and, as they represent the corporation, the mandamus would be properly directed as prayed; *Rex* v. *The Mayor and Burgesses of the City of Gloucester* (*b*)[1].

Williams J.(*c*). It is not necessary to enter into the question whether, under sect. 28, the party is entitled to hold the office; for the assumption necessarily made in support of the rule is that he actually is in the office now, having never been displaced; and, on that ground, no mandamus can be necessary to restore him.

[353] Coleridge J. I am of the same opinion. Looking at the facts agreed on by both parties, this rule appears to me either in part or wholly misconceived. Supposing all that has been done by the mayor and corporation, in regard to the election of Dry, to be merely colourable and void, and there to be no more than an exclusion de facto of Towle from the exercise of his office, a mandamus might go, without infringing upon the rule laid down in *Rex* v. *The Mayor of Colchester* (2 T. R. 259); for then there would be a wrongful exclusion de facto of the one, and yet the office not filled by the other (*b*)[2]. But, as this is a case in which Towle has once been in full possession, and asserts that the office is still full of him de jure, the mandamus only ought to be to command the restoration of him to that of which he has been deprived, his seat and voice in the council. I am not, however, prepared to say that what has been done is merely colourable and void. No want of good faith is imputed. The election of Dry, if wrongful, has proceeded upon an erroneous yet honest misconstruction of the statute; and, under the same impression, Towle has been supposed to have ceased to be a councillor. If so, I cannot pronounce at once that Dry is not actually in the office; and, if he be, it is clear that no mandamus will lie, and that the proper remedy for Towle, in the first instance, is by quo warranto to oust Dry. In *Rex* v. *The Mayor of York* (4 T. R. 699), two persons claimed to have been legally elected as recorder: the corporation had certified the election of one to the Secretary of State **[354]** for the approbation of the Crown; and this Court thought that a proper case for a mandamus to the corporation to put the corporate seal to the election of the other, in order that the title of the contending parties might be tried on the return. But there the office was not de facto full of either party: the certificate was only a step towards the completion of the title; and the Crown had not signified its approbation.

Rule discharged.

[355] THE KING *against* THE COMPANY OF PROPRIETORS OF THE NOTTINGHAM OLD WATER WORKS. Saturday, January 28th, 1837. By an Act, incorporating a company for supplying the town of N. with water, the company were empowered to continue, make, &c., water-works, weirs, and other like works in the parish of L., subject to the restriction after contained, and to enter upon all rivers, lands, &c., specified in the plans and books after mentioned, and to do all other things necessary for making, completing, &c., the water-works. A plan, describing the line of intended works, and the lands through which they were to be carried, and books specifying the owners of the lands, were to remain with the clerk of the peace; and the company were not to deviate from the line described. They were empowered to agree for the purchase of lands, &c.; and tenants for life, &c., and owners and occupiers of lands through which the works were to pass, were to receive satisfaction for the value of the lands and the damages sustained in making the works; the amount to be settled, if necessary, by a compensation jury at Quarter Sessions, to be summoned by the company's warrant to the sheriff on certain notice to the company, and not without; and the jury were to assess purchase-money or compensation, and to settle what share should be allowed to any tenant or person having a particular interest. The sessions were to give judgment for the sum awarded; and the verdict and judgment were to be registered among the records of the Quarter Sessions, and to be deemed records to all intents and purposes. If the verdict should exceed the amount

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(*b*)[1] 3 Bulst. 190. S. C. 1 Rol. R. 409. See *Rex* v. *The Mayor, &c. of Abingdon*, 2 Salk. 699.

(*c*) Lord Denman C.J. and Littledale J. were absent.

(*b*)[2] See the observations of Lord Mansfield, in *Rex* v. *Bankes*, 3 Bur. 1454: also *Rex* v. *The Mayor, Bailiffs, and Burgesses of Cambridge*, 4 Bur. 2008.

of the company's offer, they were to pay costs, which, if not paid, might be levied on their goods under a justice's warrant; the amount to be ascertained by a justice. A subsequent section directed the assessment of compensation for any damages not before provided for, accruing by reason of the execution of any of the powers in the Act; the sums assessed to be levied as directed with respect to damages before provided for. The company, on payment, tender, &c., of the sums agreed upon or assessed, might enter on the lands, &c., but not before. Certain restrictions were provided, in the case of actions brought for any thing done in pursuance of the statute. The company, by alterations in a weir in L., across a river, raised the water so as to damage a mill in L., of which T. was tenant for life: neither the mill, nor the weir or its site, nor T.'s name, was specified in the books or plan, nor was the weir in the line of works there described; but that part of the river in which the mill and weir respectively lay was in the plan. 1. Held that a mandamus lay to the company, commanding them to issue their warrant for a jury to assess the damages sustained by T. 2. The jury, summoned in obedience to the mandamus, having assessed a compensation, and the company refusing to pay the same, or the costs, Held, that a mandamus lay to enforce payment of the compensation, though the statute made the verdict and judgment records of the Quarter Sessions. 3. Held, also, that the company, in shewing cause against the rule for a second mandamus, were precluded from contending that the injury sustained by T. was not within the Act, or that all preliminaries necessary to support the first mandamus were not fulfilled. 4. That all formal preliminaries, essential to the verdict, must be presumed to have been fulfilled, in default of affidavit to the contrary. 5. That the jury, having assessed a compensation to T. without noticing the interest of any other person, it was not to be presumed, in the absence of any affidavit, that they had given such compensation for a larger interest than T. really had, or had overlooked any other person's interest. 6. That, if costs were recoverable at all, for the inquisition, &c., they must be levied as prescribed by the Act; and that no mandamus would lie for the payment, though application had been made to a justice for a distress warrant, which he had refused. 7. That a mandamus would not lie for the costs of the former mandamus.

[S. C. 1 N. & P. 480; W. W. & D. 166; 6 L. J. K. B. 89.]

Sir W. W. Follett, in Easter term, 1835, obtained a rule nisi for a mandamus to the Company of Proprietors of the Nottingham Old Water Works to issue **[356]** a warrant under their common seal to the sheriff of the county of Nottingham, commanding him to summon and return a jury of twenty-four, &c., to appear before the justices of the peace at the next General Quarter Sessions for the said county, in order that a jury might be then and there empannelled, according to stat. 7 & 8 G. 4, c. lxxxii. (*a*), to assess the damages sustained by Sarah **[357]** Turner in her lands,

(*a*) Stat. 7 & 8 G. 4, c. lxxxii. (local and personal, public), entitled "An Act for More Effectually Supplying with Water the Inhabitants of the Town and County of the Town of Nottingham, and the Neighbourhood thereof."

Sect. 1 recites that the inhabitants of Nottingham, for many years have been supplied with water from the river Len, by means of works constructed at the expense of the proprietors of such works, on ground demised to them for a long term; and it incorporates the proprietors by the name of "The Company of Proprietors of the Nottingham Old Water Works."

Sect. 2 empowers the company "to continue, make, complete," &c., "water-works, houses," "reservoirs," "weirs," "pipes," &c., "in and near" "the several parishes or townships of Basford, Lenton," &c., "and from time to time to regulate, conduct, continue," &c., the same, and to discontinue the same, subject to the restriction after contained; and "to go enter and pass in, upon, over, under and through all or any of the rivers, brooks, streams, waters, highways," &c., "and all other lands and places of or belonging to any person or persons," &c., "mentioned and specified in the plans and books of reference hereinafter mentioned," (with exceptions not material here,) "and to set out and ascertain such part or parts thereof as they the said company shall think necessary and proper for continuing, making," &c. "the said water-works,"

tenements, hereditaments, and premises, by reason and in consequence of certain works done and erected by the said company, in the execution of certain of the powers of the said statute.

&c., "and all such other works" "as they shall think necessary for effecting the purposes aforesaid;" doing as little damage as may be, &c., "and making full satisfaction in manner hereinafter mentioned to the owners or proprietors of, and all persons interested in any lands tenements or other hereditaments which shall be taken, used," &c., "or injured, for all damages to be by them sustained in or by the execution of all or any of the powers hereby granted; and this Act shall be sufficient to indemnify the said company, and their deputies, servants," &c., "for what they or any of them shall do by virtue of the powers hereby granted, subject nevertheless to such provisoes and restrictions" as are after mentioned.

Sect. 3 recites that a map or plan, describing the intended reservoirs and line of pipes and other works, and the lands, &c. upon or through which they are made or intended to be carried, together with a book of reference containing a list of the owners thereof, have been deposited at the offices of the clerks of the peace in Nottingham and Nottinghamshire; and also another plan, describing a certain variation, &c.; and enacts that the maps or plans, and books shall remain in the custody of the clerks of the peace; "and the said company in making such reservoirs," &c., "and other works, and laying such pipes as aforesaid, shall not deviate from the line described in the said first mentioned maps or plans, save as the same is varied or altered by the said second mentioned plans; and that the said company in laying the said pipes through the parishes of Radford and Lenton, aforesaid, shall not deviate from the line described in the said second mentioned plans."

Sect. 8 gives powers for the purchase and sale of lands, &c.

Sect 11 enacts that the tenants for life or in tail, &c., owners, occupiers, &c., of any lands, tenements, or hereditaments through, in or upon, over or under which the works authorized by this Act are or are intended to be made, may accept and receive satisfaction for the value of such lands, &c., "and for the damages to be sustained in making and completing the said works, in such gross sums as shall be agreed upon" between them and the company of proprietors; and in case the company and the parties interested in such lands, &c. cannot or do not agree, the amount of such satisfaction or compensation shall be ascertained by the verdict of a jury, as after directed.

Sect. 12. "And for settling all differences which may arise between the said company of proprietors and the several owners of or persons interested in any lands," &c., which the company are by this Act enabled to take and make use of for the purposes thereof; be it further enacted, that if any "person or persons so interested, entitled or empowered or capacitated to sell as aforesaid, for and on behalf of himself," &c., "or of the person or persons entitled in remainder or reversion after them," &c., shall refuse to accept the "purchase-money recompence or other compensation" offered by the company, and give written notice thereof to the company within twenty-one days of the offer, with a request that the matter may be submitted to a jury, the company shall, and they are hereby empowered and required, from time to time, to issue a warrant under their common seal to the sheriff of the county, &c., commanding him, and the sheriff is authorized and required, to empannel a jury of twenty-four, who are required to appear at some Court of General or Quarter Sessions, or adjournment thereof, for the town or county of Nottingham; out of whom a jury of twelve shall be drawn, who shall "inquire of, assess and ascertain, and give a verdict for the sum or sums of money to be paid for the purchase of such lands," &c., tenements, or hereditaments, "and also the separate and distinct sum or sums of money to be paid by way of recompence or compensation either for the damages which shall or may before that time have been occasioned and sustained as aforesaid, or for the future temporary or perpetual continuance of any recurring damages," &c.; "and the said justices shall accordingly give judgment for such purchase-money, recompence or compensation as shall be assessed by such jury, which said verdict, and the judgment thereupon to be pronounced as aforesaid, shall be binding and conclusive to all intents and purposes, upon all bodies politic," &c., and all other persons whatsoever.

Sect. 14 empowers the said juries to "settle what shares and proportions of the purchase-money or compensation for damages," to be assessed, "shall be allowed to

[358] By the affidavits in support of the rule, it appeared that Sarah Turner was owner, as tenant for life, of a water-mill, in Lenton, in Nottinghamshire, on the river **[359]** Leen. In 1826 (after the commencement of her ownership) the company were in possession of works for raising water from the Leen. The local Act passed on 14th June 1827. About the end of 1830 the company removed a weir, which had been placed across the river, to a part of the river higher up, and at the same time heightened the weir; in consequence of which the working of the mill was obstructed, and the value of the property lessened. The company were applied to for **[360]** compensation, and, in November 1834, were formally required to issue a warrant to summon a jury for assessing the damage; but they did not grant either.

Affidavit was made in answer, to the effect that neither the new weir, nor the site thereof, was specified or referred to in the plans or books of reference mentioned in the Act (sect. 3); that none of the plans or books shewed that the company sought, by virtue of the Act, to obtain the power of changing the site of the weir, or raising it, or in any way altering the height of the water in the Leen, or diminishing the

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any tenant or other person or persons having a particular estate term or interest in the premises, for such his her or their interest or respective interests therein."

Sect. 15 enacts, "That all the said verdicts and judgments, being first signed by the clerk of the peace," shall by him be "registered among the records of the Quarter Sessions for such town or county, and shall be deemed records to all intents and purposes: and the same, or true copies thereof, shall be allowed to be good evidence in all Courts whatsoever."

Sect. 18 enacts, that where a verdict shall be given for more money than the company shall have offered as a recompence or satisfaction for any such lands, &c., or for any such estate, &c., "or for any damages that may have been sustained by any person or persons aforesaid," the costs of summoning, &c., the jury, taking the inquisition, witnesses, and recording the verdict or judgment, shall be borne by the company, and shall, in default of payment by them or their treasurers, be levied by distress and sale under the warrant of a justice of the town or county, which warrant the justice is authorized and required to issue; and where differences shall arise respecting the amount of the costs, the same shall be ascertained by a justice of, &c., who is authorized and required to do so.

Sect. 20 enacts, that if "any person or persons sustain any damage in his her or their lands, tenements, hereditaments or property, by reason of the execution of any of the powers given by this Act, and for which a compensation is not hereinbefore provided," such damages shall from time to time be assessed by a jury, "and the sum or sums of money to be paid for the same shall be recovered levied and applied" in the same manner as is directed with respect to such damages as are in the Act before provided for.

Sect. 21 enacts, that the company shall not be obliged, nor any jury under this Act be allowed to receive and take notice of any complaint of injury or damage sustained by virtue or in consequence of the execution of this Act, unless notice in writing, stating the particulars of such injury or damage, and the amount of compensation claimed, shall have been given to the company within three calendar months after the injury shall have been sustained, or the doing thereof shall have ceased.

Sect. 22 enacts, that on payment or tender of sums agreed upon, or assessed by a jury, within one calendar month after the same shall be agreed for or assessed, (with a provision in case the persons entitled cannot be found, &c.,) the company may enter into such lands, and the same shall vest in them; but before such payment, &c., the company shall not dig or cut into such lands, &c., without leave in writing.

Sect. 108 enacts that no plaintiff shall recover in any action for any thing done in pursuance of this Act, unless he shall have given twenty-eight days' notice of action, nor if sufficient amends be tendered, &c.

Sect. 109 enacts, "That no action suit or information shall be brought commenced or prosecuted against any person" for any thing done in pursuance of this Act, or in execution of the powers, &c., made given, &c. in by or under the same, unless certain notices be given, nor after certain times specified; and other enactments as to the proceedings, &c., in such actions, are added. In case of the plaintiff's not succeeding, the defendants to have double costs.

power or value of the mill; that the weir was not in the line of works marked on either of the maps or plans; and that no part of the estate through which that part of the river passed wherein the new weir stood, was specified or referred to in either of the books or plans. It was not, however, denied (and was assumed in argument) that the parts of the river Leen on which the mill and the new weir respectively stood were comprehended in the plans. It was also assumed that the new weir, as well as the mill, was in Lenton.

Hill and Humfrey shewed cause in Michaelmas term 1835 (November 7th), and contended that the remedy sought for was not the proper one, for that the injury complained of was not occasioned by any act done under the compulsory powers of the statute, and, that being so, the process given by the statute was not applicable; *Rex* v. *The Hungerford Market Company* (*Ex parte Yeates*) (1 A. & E. 668), *Rex* v. *The Hungerford Market Company* (*Ex parte Eyre*) (1 A. & E. 676); but the complainant ought to **[361]** proceed by action, as in the case of an ordinary wrong. And they endeavoured to shew that, the weir in question not being comprehended in the plans or books of reference mentioned in sect. 3, the work done upon it was not an execution of any power given by the Act. They urged that sect. 20 did not apply to any damages but such as arose from the execution of the powers given by the Act; and they cited *Scales* v. *Pickering* (4 Bing. 448), as shewing that such powers must be construed strictly. If this were a proper subject for compensation, the company would be entitled to retain the weir, and be liable to no further complaint for the consequences.

Sir W. W. Follett, contrà, referred to sects. 2, 11, and 20, and argued that the last applied to the damage here complained of, inasmuch as sect. 2 enabled the company to lay down weirs; and he observed that, although the weir was not in the plan, it was newly erected, under the powers of the Act, on a part of the river Leen which was in the plan; and that a particular specification of that or of the mill was not necessary for the purpose of enabling the company to erect works in that part of the river which was in the plan.

Lord Denman C.J. The erection of this weir seems directly within the powers given by the Act; and the Act might be pleaded by the company in justification. This appears to be the very case contemplated by sect. 20.

Patteson J. The second section gives the power expressly.

[362] Williams J. The only doubt I felt was whether the clause as to the plans and books restricted the company. But, as the part of the river in question is within the plan, I think it does not. It was not a matter of course, when the plans were made, that the weir should be erected.

Coleridge J. The argument as to the plans and names of the owners falls to the ground as soon as we refer to sect. 20. As to the future consequential damages we need not decide now.

Rule absolute.

A mandamus issued accordingly, tested 7th November 1835, in the terms of the rule. The jury were summoned; and, at the Nottinghamshire Quarter Sessions in April 1836 (the time having been enlarged by consent), assessed the damages of Sarah Turner at 500l. This sum, and the costs incurred in obtaining the mandamus and verdict, were demanded of the company, but not paid. Sarah Turner then applied for a warrant of distress at the June Quarter Sessions, 1836: the sessions adjourned the consideration till the October Sessions, and then refused the warrant. A similar application was afterwards made to a single magistrate of the county, who refused to issue the warrant. The costs previous to the inquiry were sworn by the attorney for Sarah Turner to be 167l. 13s. 11d.; and those incurred since, to be 73l. 13s. 4d. An offer was made on the part of Sarah Turner to refer the taxation to the clerk of the peace for Nottinghamshire, or the proper officer of this Court, or any indifferent professional man. The attorney also stated that the costs incurred since those already men-**[363]**-tioned would amount to a considerable sum. Upon affidavit of the above facts, Sir W. W. Follett obtained a rule in Michaelmas term, 1836, calling upon the company to shew cause why a mandamus should not issue, commanding them forthwith to pay Sarah Turner 500l., being the damages assessed by the jury; and also 241l. 7s. 3d., her costs of the inquiry.

Hill, N. R. Clarke, and Whitehurst now shewed cause. The money here has been awarded under sect. 20. If that stood alone, it would be nugatory; for no directions

are there given as to the method of summoning the jury, of holding the inquiry, or of recording or enforcing the verdict. But the claimant insists that this section is connected by reference with the preceding sections, and that therefore the remedy is on the same footing with those before provided. Now, assuming for the present that this view is correct, and that all the proceedings up to the time of making this last application have been regular, the remedy is misconceived. If the twentieth section is to be connected with the preceding, it must be so for all purposes; and then no remedy will be found but that which the Act, like other Acts of the same kind, gives, by restraining, in sect. 22, the company from using their statutory powers till the money is paid. But, further, supposing the intention of the Legislature to be that, after the verdict, the money must be paid at all events, then an action of debt lies. In 3 Blackstone's Commentaries, 159, 160, the author, describing the cases in which a right of action accrues on an implied contract, points out contracts implied by the fundamental constitution of government, and lays it down, "That every person is bound and hath virtually **[364]** agreed to pay such particular sums of money, as are charged on him by the sentence, or assessed by the interpretation, of the law;" and he adds, "Whatever, therefore, the laws order any one to pay, that becomes instantly a debt, which he hath before hand contracted to discharge. And this implied agreement it is, that gives the plaintiff a right to institute a second action, founded merely on the general contract, in order to recover such damages or sum of money, as are assessed by the jury and adjudged by the Court to be due from the defendant to the plaintiff in any former action." This is at least as strong a case as that of an amerciament by a court leet, or a penalty imposed by a statute prescribing no specific remedy (*a*). By stat. 29 Eliz. c. 4, s. 1, the sheriff is not to take more than the fees thereby appointed, which shall be lawful to be had, &c.: on this Act it has been held that debt lies by the sheriff for the amount allowed (*b*). In *Rex* v. *The Bank of England* (2 Doug. 524), this Court refused to grant a mandamus commanding the bank to permit the transfer of stock, partly on the ground that there was a sufficient remedy by action on the case, although that is not, strictly speaking, a direct remedy, as the action of debt here would be. And here the fifteenth section makes the verdict and judgment a record to all intents and purposes; so that the case falls within the common one of debt on a judgment of record. Debt lies also on a judgment of a Court by custom of London, and on a foreign judgment. Again, this is a mandamus to pay money, which the Court does not grant. It is true that, in *Rex* v. *The St. Katharine Dock* **[365]** *Company* (4 B. & Ad. 360), a mandamus went to enforce payment by the company of money which an arbitrator had awarded to be paid by its treasurer; but that was expressly on the ground that the action on the award could only be against the treasurer, and that his body and goods were exempted from execution by the statute incorporating the company. Again, if the act done be not a matter within the compulsory powers of the Act, the jurisdiction fails. [The Court here intimated that, after the previous argument and decision, it was too late to raise objections which impugned the propriety of originally issuing the mandamus.] On the argument of the return to the mandamus in *Rex* v. *The St. Katharine Dock Company* (4 B. & Ad. 363), Parke J. said, "The first question in this case is, whether a mandamus should issue. The objection, that it ought not to have issued at all, though it might more properly have been made at the time when cause was shewn against the rule for issuing it, may be made in this stage of the proceeding." At all events it ought to appear that every thing done since the granting of the rule is regular. Now the claimant has only a life estate; the jury ought therefore to have apportioned the compensation under sect. 14: but here it appears that the whole is given to the tenant for life; and the mandamus itself is erroneously drawn, for it is merely to assess the damages sustained by the applicant. It is contrary to both the spirit and letter of the Act, that there should be separate enquiries in the case of each party interested: the jury must therefore be understood to have assessed all the damage done by the Act complained of; but the present applicant can claim only a part, and it does not ap-**[366]**-pear how much. Further, it is not shewn that the claimant has entered up the verdict and judgment of record, as directed by sect. 15; or that notice was given

(*a*) See Com. Dig. Debt (A, 1), (A, 2), (A, 9). Holt C.J. in the *Anonymous case*, 6 Mod. 26.

(*b*) *Probey* v. *Mitchell*, Moore, 853.

to the company before summoning the jury, and within three months of the injury sustained, under sect. 21. The injury took place in 1830; and no application to the company was made till 1834. It will be said, that this was a continuing injury; but, if so, the complaint should have been made within three months of the act being done by which the injury is occasioned. [Per Curiam. That objection should have been urged against granting the first mandamus.] Admitting that this cannot be urged as an objection to the jurisdiction, still the jury, when assembled under the precept, could give no compensation for any injury of which there had not been proper notice; they were bound, under the mandamus, to enquire whether the preliminaries, which the Act makes essential to the assessment of damages for the particular injury proved, had been performed. Perhaps the fact of the notice ought to have been averred in the mandamus, to give the company an opportunity of traversing it. Then as to the costs. Sect 18 gives costs only where the proceeding is by "any person or persons aforesaid." The claimant is one of a new class of persons, who are the object of sect. 20. But, even admitting that the parties protected by sect. 20 are entitled to costs under sect. 18, there is a specific remedy provided in sect. 18 for the costs. As for the costs of the last mandamus, if they can be given at all, now that the rule has been made absolute without costs, the proper method is to apply for them under stat. 1 W. 4, c. 21, s. 6; and, if the Court order payment, such order may **[367]** be enforced by attachment. Besides, the amount of costs appears only by the affidavit of the claimant's solicitor: no particulars are given, and there has been no taxation. This Court will not issue a mandamus for the payment of a sum not ascertained.

Sir W. W. Follett and Bourne, contrà. On the former argument it was decided that this case fell within sect. 20; then, the damages having been assessed in pursuance of the mandamus, and the company refusing to pay, there must be some remedy. It is said that an action lies, because this is a judgment of the Court of Quarter Sessions: but that would support only an indictment, as in *Rex* v. *Kingston* (8 East, 41). There is no debt: the judgment is rather in the nature of a judgment for damages for an injury. *Rex* v. *The St. Katharine Dock Company* (4 B. & Ad. 360), was not so strong a case as this. That was the case of an action which was referred, and an award made. It is said that here debt lies, because the verdict and judgment are made records: but they are records only of the Court of Quarter Sessions, upon which no action lies. It is not probable that the Legislature intended to prescribe so circuitous a course as first to obtain a judgment of the Quarter Sessions, upon a verdict for damages, and then to bring an action on the judgment. But the remedy by indictment is not sufficient to prevent a mandamus from issuing; *Rex* v. *The Severn and Wye Railway Company* (2 B. & Ald. 646). An indictment would also have lain in *Rex* v. *The Commissioners of the Navigation of the Rivers Thames and Isis* (5 A. & E. 804); yet **[368]** the Court granted a mandamus to pay the money; which also is an answer to the argument that a mandamus is not to be granted to enforce payment of money. And, in that case, the Court would not allow the propriety of the remedy by mandamus to be questioned on the argument upon the return, that point having been decided on granting the rule for a mandamus. It is said that the jury ought to have apportioned the damages: but it does not appear that they gave more than the damages suffered by the particular party, nor would sect. 20 have warranted them in doing so; nor does the form of the mandamus require it. And, nothing to the contrary appearing, the Court will presume that the jury have done rightly. So, as to the absence of proof of three months' notice: it must be presumed, from the previous decision of this Court, that every thing necessary to justify the mandamus was done: and, as to any subsequent steps which may have been necessary to make the verdict regular, these too will be presumed, after the verdict, in default of affidavit to the contrary. As to the refusal of the magistrates to enforce payment of costs under sect. 18, no mode of taxing is provided: and the company do not deny the amount. It is clear that parties obtaining damages under sect. 20 are to be placed, in all respects, in the same situation as parties recovering damages or compensation under the previous clauses. It would be very hard if a party entitled to the remedy were required to pay the expense of obtaining it: the company are protected by double costs being given, in sect. 109, wherever a party fails in an action against them for any thing done in pursuance of the Act. If the remedy for costs, in every other shape, be doubtful, the Court will grant the mandamus.

[369] Patteson J.(*a*). This is an application to compel payment of 500l., compensation assessed by a jury, and of another sum for costs. It is clear that we are not bound to refuse the mandamus altogether, if we shall be of opinion that a part of the application may be granted. With respect to the costs, sect. 20 gives no directions, unless costs can be included under the words "sum or sums of money to be paid" for the damage done: such sums are to be levied in the same manner as is directed with respect to the damages before provided for; and in sect. 18 there is a course prescribed for recovering the costs, in the case of a verdict being given for a higher compensation than the company shall have offered. If, therefore, costs are here recoverable at all, they are recoverable by that method. There must, consequently, be no rule as to costs.

As to the 500l. I have some difficulty. If there be a specific remedy for this sum, we cannot grant the mandamus. Now, by sect. 12, the Court of Quarter Sessions is to give judgment for the sum assessed by the jury, which judgment is to be conclusive: and, by sect. 15, the clerk of the peace is to sign the verdicts and judgments, which are to be registered and to become records. It seemed to me at first that, if these were judgments of record, they might be enforced like judgments of other Courts, by the process of the Court itself, if it had any process proper for the purpose, and, if not, by action of debt. But, on looking to the Act, I doubt whether such a consequence can be admitted. These are not the ordinary records of the Quarter Sessions; and I never heard of an action on a record of this **[370]** sort. The Quarter Sessions are a Court for this particular purpose; no form of the record is prescribed, and I cannot tell what the form is to be. It is difficult to say in what form an action can be maintained upon it. Sections 12 and 15 contain no directions how the money is to be levied: only the 22d section enacts that the company, on payment as there prescribed, may take possession, and cannot act before. It seems that was thought sufficient security for the compensation and damages provided for by sect. 12. By sect. 20 damages, for which compensation is not provided in the preceding part of the Act, are to be assessed by a jury. Nothing is there said of making a demand, or of offer to pay the damages. And then it is said, that such damages are to be levied as is directed with respect to the damages before provided for. I suppose it was taken for granted that there had been some previous provision for levying the damages mentioned in the earlier part of the Act. But there are no means of levying them; there can be no fieri facias or levari facias; neither can we remove the record by certiorari and enforce the judgment here. But the main argument in opposition to the rule was, that an action of debt would lie. I am not prepared to say whether that be so or not. But, as it is not clear that such an action does lie, we are bound to grant a mandamus in the absence of any other clear remedy.

Objections have been made to the regularity of the proceedings. I do not understand that the affidavits shew irregularity, but only that there is no affidavit shewing the regularity. This, however, we are not bound to require. We shall presume omnia ritè acta, in pursuance of the mandamus which we granted.

[371] Then it is said, that the applicant is only a tenant for life, and that the jury ought to have assessed and apportioned the damages for all parties interested. However that may be in the case of the purchase of lands by the company, where all tenants having partial interests are entitled to compensation, it is not clear here that any one but the tenant for life had a right to complain: the injury might be merely temporary. Besides, the expression in sect. 20 is "any person or persons," not "all persons." Here the party has sustained a damage in respect of her land; and if, in fact, it were one in respect of which the jury ought to have limited her compensation, that should have been pointed out to them at the time of the inquiry: and no complaint is made of the chairman's summing up. Under all the circumstances, I think the rule must be made absolute so far as respects the 500l.

The costs of the other mandamus cannot be included in this rule; and there is a specific statutory provision respecting such costs.

Williams J. As to the costs, no precise or ascertained right can be shewn. With respect to the objection on the ground of irregularity, no doubt, we should presume that notice was proved at the time of the inquiry, unless the contrary be shewn. We must suppose that all has been rightly done: and, on the same ground, no objection

(*a*) Lord Denman C.J. was absent.

appears to the form in which the compensation is given. The principal question is, whether there be any remedy besides mandamus; and it is clear that, if there be, this rule cannot be made absolute. An order of sessions, awarding the payment of money, can be enforced only by the circuitous pro-**[372]**-cess of indictment. That gives no direct remedy. But the most important question is, whether, the fifteenth section enacting that the verdict and judgment "shall be deemed records to all intents and purposes," that operate as a legislative declaration that there is to be a remedy by action of debt upon the record. I am aware of no applicable instance. As, therefore, I doubt whether there be any other efficient remedy, I think the mandamus should go. I am also influenced by a doubt which I feel, whether the Legislature could have intended to put the party to so cumbrous a course as an action of debt on the record, to recover that for which they were professing to give a summary remedy.

Coleridge J. Two requisites must concur to authorise this application; a right, and an absence of any other remedy for enforcing it. Costs are asked for, both those of the previous mandamus, and those of the inquiry. Now, when costs of a rule are given, there is no remedy, except that arising upon the order of the Court. But here the costs asked for are claimed, not as matter of common law, but under specific statutory enactment. Then as to the 500*l.* damages. We must take it that the party has a specific right. Has she then a clear remedy? It is said, in opposition to the rule, that this is either a judgment like other judgments of the Court of Quarter Sessions, or in the nature of a judgment of a Superior Court, and thus to be enforced by action of debt on the record. Now the judgment of a Court of Quarter Sessions can be enforced only by indictment. That has been held not to be a beneficial remedy. All that could be obtained by it would be the fining or imprisonment of the party refus-**[373]**-ing, which clearly would give no beneficial remedy to the party aggrieved. Then, as to the remedy by action of debt, can any one say that it clearly exists? The authority of 3 Blackstone's Com. 159, 160, was cited, but no decision; and the doctrine would certainly be now much disputed. As to the regularity of the proceedings, where a mandamus has issued, and the party makes no return, but consents to obey, can he say, upon an application for another mandamus ancillary to the first, that the first was irregular? We must suppose that the sessions, in obedience to the mandamus, have done all that was necessary; and we cannot, therefore, intend that notice has not been duly given, or that the jury have gone beyond the proper limit in the compensation which they have awarded.

Rule absolute, as to the 500*l.*

[374] THE KING *against* SIR HUMPHREY PHINEAS DAVIE AND OTHERS, Three of the Twelve Governors of the Hereditaments and Goods of the Church of Crediton, on the Part of the Vill or Hamlet of Sandford. Monday, January 30th, 1837. By charter of Edw. 6, it was granted that the inhabitants of the vill of S., within the parish of C., should have a chapel for all the said inhabitants, with a chaplain, to be paid out of the profits of the vicarage of C., and that they should elect chapelwardens. And that certain governors, appointed for the said vill pursuant to that charter, "Unà cum assensu majoris partis inhabitantium ejusdem villatæ," should nominate and appoint the chaplain. The charter also provided that the "inhabitants of S. should not be charged towards the support of the church of C. otherwise than the other inhabitants of C. In 1836, the governors having, upon a vacancy, nominated a chaplain, gave notice to the inhabitants of S. that such nomination had been made, and required them to meet at a time and place named, for the purpose of assenting or dissenting. At such meeting, the resident payers of church and poor-rates, and no other persons, were admitted to vote. Some persons, not rated, tendered their votes. The majority of rate-payers assented to the nomination. On motion for a mandamus to the governors to elect a chaplain, on the ground that such election was void, it appeared that the two preceding nominations and elections, in 1814 and 1771, had been conducted in the same manner; aged persons deposed that they had always understood that to be the customary mode; and a decree of Lord Hardwicke, in a suit relative to the chaplaincy of S. in 1741, was proved, in which the same course was prescribed as the proper one, but it did not appear, with certainty, by the decree, that the decision on this point was a judgment on any question litigated in the suit.