In 1 Allen's Mass. Reports, 172, it was held that a city was not liable for an assault committed by its police officer, even though it was done in an attempt to enforce an ordinance: 15 U. S. Digest, 140. We are, therefore, satisfied from principle and authority, that a municipal corporation is not liable for the wrongful acts of its officers. If they violate the law, they are personally responsible.

The judgment of the Circuit Court is reversed.

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[214] A. E. Smith vs. Conrad Ishenhour.

1. CONSTITUTIONAL LAW. *All laws of the usurped State Government, void.* The 5th section of the Schedule to the amended Constitution, declares all laws, ordinances and resolutions, or acts done in pursuance thereof, under the usurped State Government, after the 6th of May, 1861, unconstitutional, null and void, from the beginning.
2. SAME. *Case in judgment.* The plaintiff in error was commissioned, under an Act of the 18th of November, 1861, by Governor Harris, to take from the citizens of the county, their guns. He, under this authority, seized the gun of defendant in error, and carried it off. Held, that the Act of the 18th of November, 1861, was no protection to the plaintiff in error; but in taking the gun, he committed a trespass for which he was personally liable, and that the Act violates the 26th section of the Bill of Rights, which allows "the free white citizens of this State have a right to keep and bear arms for the common defense."

[Cited in: 5 Cold., 182.]

FROM COCKE.

This case originated before a Justice of the Peace, and by appeal taken to the Circuit Court, at the August Term, 1866, the case was submitted upon an agreed state of facts. Judge JAS. P. SWAN, presiding, gave judgment for the plaintiff. Defendant appealed.

BAXTER & MCFARLIN, for Plaintiff in Error.

A. C. CAMP, for Defendant in Error.

BRACKELFORD, J., delivered the opinion of the Court.

This suit was commenced before a Justice of the Peace to recover a gun, and was taken by appeal to the Circuit Court of the County of Cocke.

[215] The case was submitted to the Circuit Judge upon an agreed state of facts. The plaintiff in error was appointed, in 1862, by Isham G. Harris, then acting Governor of the State of Tennessee, under an Act passed by the Legislature the 18th of November, 1861, and duly commissioned, under the provisions of that Act, to take from the citizens of the county, their guns. Under this authority he seized the gun of the defendant in error, and carried it off; the gun being valued at $25. His Honor was of opinion the law was in violation of the Constitution, the plaintiff in error a trespasser, and a judgment was rendered against him; from which there was an appeal to this Court.

The case presents, for our consideration, the validity of the Act passed by the Legislature of the State, after the attempt to throw off the allegiance of the citizens to the United States, on the 6th day of May, 1861, and the effect of the adoption of the Constitutional amendments and Schedule, on the 22d of February, 1865. It is insisted for the plaintiff in error, that if, by force or otherwise, the power of the Government of the United States to protect the citizens was withdrawn, the allegiance of the citizens was suspended, annulled, or in abeyance, and he was left to the absolute control and demand of the State; that the State, as a sovereign under the Constitution, has a right to take the property of a citizen, by and with the consent of his representatives, and having that consent, the Governor, as the executive, was bound to execute the law, and of right to issue the commission, and it is the act of the State for

which the [216] plaintiff in error is not individually liable. These question have been decided by tribunals from which there is no appeal.

The right of a State to withdraw from the Federal Union, and of her citizens to throw off their allegiance to the General Government, is a question unnecessary for us to discuss at length in the determination of the questions presented in this record.

The Constitution of the United States was adopted by the whole people; and upon its adoption became the paramount law. The framers of that instrument were the patriots and statesmen who lived under the old Confederation, saw the evils of that system of government, and in the formation of the Constitution, carefully endeavored to guard against them.

It was submitted to the whole people, and ratified by them, and no citizen can voluntarily throw off the allegiance cast upon him, while he remains within the States or Territories over which the Government has jurisdiction. Statesmen have differed, since the organization of the Government, on the rights of a State to withdraw from the Federal Union. The attempt to exercise it by part of the States, culminated in the late civil war; the authorities controlling the Federal Government triumphed, and the question is, we hope, finally and forever settled by that tribunal from which there is no appeal. Upon the attempt of this State to withdraw from the Union, the Legislature met and passed various Acts; among them an Act, entitled "an Act to establish an Ordnance Bureau, and for other purposes," passed on the 20th of November, [217] 1861. The 18th, 19th and 21st section of that Act authorized the Governor of the State to commission persons in each county to collect the arms of the citizens. Heavy penalties were imposed upon those who refused to yield them up. In the passage of this Act, the 26th section of the Bill of Rights, which provides, "that the free white men of this State

have a right to keep and bear arms for the common defense," was utterly disregarded. This is the first attempt, in the history of the Anglo-Saxon race, of which we are apprised, to disarm the people by legislation.

The motives which induced the passage of the Act, we will leave an enlightened public to decide, when passion has passed and reason resumed her control. How far the Acts of this Legislature, which assembled without the sanction of the oath prescribed in article 10th, sec. 2d, of the Constitution of the State, which requires each member of the Legislature, before he takes his seat, to take an oath to support the Constitution of the United States, etc., etc., are valid, it is unnecessary for us to decide, as it has been settled by the people, acting in their sovereign right.

The constitutional amendments became a part of the Constitution of the State, and the schedule thereto annexed for all the purposes sought by the ratification, became equally binding on the Courts, as to the purposes therein expressed. Section 5th of the Schedule, provides: "All laws, ordinances, and resolutions, as well as all acts done in pursuance thereof, under the authority of the usurped State Government, after the [218] declared independence of the State of Tennessee, on or after the 6th of May, 1861, were unconstitutional, null and void from the beginning." No one has ever doubted the right. According to the institutions of this country, the sovereignty of ever State resides in the people of the State, and they may alter or change their form of Government at their pleasure; but whether they have changed it or not, by abolishing the old government, and establishing a new one, is a question to be settled by the political power. The Courts are bound to take notice of its decisions, and follow it: 7 Howard's Reports, Luther vs. Berden, 1.

The people of the State having, in their sovereign character, declared the Acts of the Legislature, passed after the 6th of May, null and void from the beginning, it follows,

therefore, that the ratification of the Schedule by the people, on the 22d of February, 1865, (the Act under which the plaintiff justified his seizure of the gun of the defendant in error,) was null and void; and he can not defend himself by virtue of the commission under which he acted, nor shield himself from the responsibility, by the provisions of the Acts of the Legislature, passed after the 6th of May, 1861. It follows, the defendant was a trespasser, and is responsible for the property taken.

The judgment of the Court will be affirmed.

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[219] N. M. Crockett et al. vs. James Parkison, Chairman.

1. SUMMARY PROCEEDINGS. *Motion against Trustee.* In Summary proceedings, every thing necessary to sustain the jurisdiction of the Court, must clearly appear on the face of the judgment Therefore, a judgment on a motion against the former Trustee of McMinn County, that does not show the time for which the Trustee held his office, and for which he was liable to settle, or that his default was in refusing to settle, in going out of office, as required by law, or under any order of Court, requiring him to make settlement, is not a valid judgment.
2. SAME. *Trustee must refuse to settle or pay, according to law* The failure of a County Trustee to settle, does not, of itself subject him to the forfeiture imposed by Statute. He must refuse to pay or settle, according to law.

[Cited in: 1 Heis., 732.]

FROM M'MINN.

This was a motion against the plaintiff in error, as the former Trustee of McMinn County. There was a judgment against him and his sureties, at the December Term, 1865. Judge GEO. W. BRIDGES, presiding. The case is brought up by writ of error.

S. NIXON VAN DYKE, for Plaintiff in Error.

THOS. H. COLDWELL, Attorney General, for the State.

MILLIGAN, J., delivered the opinion of the Court.

This is a writ of error, prosecuted to reverse a judgment by motion, rendered in the Circuit Court [220] of McMinn County, against the plaintiff in error and his securities in his official bond. The motion is predicated on section 431, and sub-section 3 of the Code. The judgment is for the penalty declared by the Statute against County Trustees, who refuse to settle or pay over money in their hands, according to law.

By the Code, section 520, sub-section 6, it is provided, that: "The Judge or Chairman of the County Court, shall have power to call the Trustee to a settlement, when required by law, or by the Court. The Trustee is bound by law, (Code, section 427, sub-section 10,) on going out of office, to make settlement immediately, with the Revenue Commissioners, and pay over the balance of funds in his hands to his successor, taking duplicate receipts. This is an imperative obligation, fixed by law; but he may be required by the Court to make settlement at any other time."

The motion in this case, as it appears in the record, is, "for refusing to settle or pay, according to law." And the judgment recites, that: "It appearing to the Court, that N. M. Crocket, as Trustee of McMinn County, made and executed his bond with Thos. A. Cleage, Joseph McCully, and Samuel Firestone, as his securities, in the County Court of McMinn County, on the 7th day of April, 1862, which bond was approved in open Court; that the said N. M. Crockett, Trustee of McMinn County, as aforesaid, has failed or refused to make settlement, according [221] to law; it is, therefore, considered by the Court, that judgment," etc.

This is a summary proceeding, and highly penal in its