

exclusively to the use of the process of *distringas* or sequestration, as the only means of enforcing an answer, is most manifest. To prevent this injury in a case which occurred in England, in the year 1776, where the *warden* of a body politic refused to affix the corporate seal to its answer, the Court of Chancery, in mercy to the acquiescing parties, staid its process of contempt, by which the whole corporation at large would have been affected and punished, by a seizure of their property, until the acquiescing members of the body politic could obtain from the Court of King's Bench, a *mandamus* to compel the contumacious warden to affix the seal to its answer. (*j*)

It is one of the most valued principles of our government, and of the common law, that all men hold their situations, in this country, upon the terms of submitting to have their conduct examined and measured by that standard which the law has established; (*k*) and that all trustees or fiduciaries appointed for the public good, or who are entrusted with the management of the affairs of a body politic, should be within reach of the law; and in some form or other responsible, and made to perform their duty. Upon this ground, where the justices of an inferior court, or the officers of a corporation, fail to give judgment, or to discharge their duty, they may be compelled to do so by a *mandamus*. The superintending authority does not by its *mandamus* deprive them of any of their discretionary power, but merely commands them to execute their duty, to render judgment, or to make answer as they may think proper, to the end that the individual may have an appeal, or prosecute his suit to a final decision, or obtain the relief he seeks. (*l*) Why should not an immediate power, to this extent, in the shape of an attachment against the person, be vested in every court of justice, before which a public officer, or a body politic, may be called as a defendant? The important concerns of the public, or the rights of individuals, or of corporations, most certainly ought not to be suffered to be delayed, obstructed, or destroyed by the mere indolence, caprice, or perverseness of any one.

These difficulties and inconveniences are sufficient to shew, that a body politic ought not, in any case, to be made a defendant, unless it is indispensably necessary to do so. But there are instances, many of which have already occurred in this court, and of which this suit affords an example, where, as the law now stands,

(*j*) *Rex v. Windham*, Cowp. 377.—(*k*) *Sutton v. Johnstone*, 1 T. R. 504.—
 (*l*) *Bac. Abr. tit. Mandamus, D.*