→ 73/1

July 1848 #22
Houston McFarland et al
vs.
Platte County Court
Platte County

Commissioners of State Road
County claimed survey inaccurate

Roads
Atty -- Almond, WB
land
Survey

Survey map in
Oversize

Weston May 20th /43

Dear Sir

When Mr. Norton was at the Convention - Genl. Almond and myself sent by him for a Writ of Error, in the Case Huston McFarlin & others, road Commissioners vs Platte County Court — Mr. Norton informed me that he left the Memorandum upon your table, and that the writ would be here in a short time, but as yet it has not come. I presume owing to your indisposition, will you be pleased to send it ~~to me~~ on immediately and

Oblige your

Obedients

J R Hardin

W B Almond

HUSTON
MAY
21
MO.

10

PAID

Clerk Supreme Court
State of Missouri

Jefferson City

Huston McFarland
and others
vs Precipe
Platte County Court.

Filed May 27. 1848
H. L. Boon clk.

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Twelfth Judicial Circuit in said State, GREETING:

Whereas, In the record and proceedings in a certain cause lately pending in the Circuit Court of Platte County in the Judicial Circuit aforesaid wherein Huston McFarland & others are plaintiffs and Platte County Court defendants in an action on a State Road manifest error hath intervened, to the great damage of the said County Court as by complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the First Monday in July next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, HAMPTON L. BOON, Clerk of our said Supreme Court, at office, in the City of Jefferson, the 27th day of May, in the year of our Lord one thousand eight hundred and forty-eight.

SEAL OF THE SUPREME COURT OF MISSOURI.

H. L. Boon,

$1.50 due for this writ

State of Missouri }
County of Platte }

I Ira Norris Clerk of the Circuit Court within and for the County of Platte aforesaid do certify that I have executed the within writ by sending certified the Record and Proceedings of the within Plaint as fully and amply as the same remains of Record in my office to the Supreme Court of the State of Missouri. and that the Record in the said Cause has been fully and entirely transcribed by me and certified to said Supreme Court according to the Commands of the within writ.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Circuit Court at office in Platte City this 9th day of June A.D. 1848.

Ira Norris. Clerk

State of Missouri }
County of Platte } ss

Pleas at a Circuit Court for the County of Platte in the State of Missouri begun and held at the Court house in Platte City on Monday the sixth day of March in the year of our Lord eighteen hundred and forty eight before the Honorable Solomon L Leonard Judge of the Twelfth Judicial Circuit in said State and Ex officio Judge of the Platte Circuit Court

Be it remembered that heretofore to wit on the twenty first day of August eighteen hundred and forty seven there issued from the office of the Clerk of the Circuit Court within and for the County aforesaid a certain writ of Error directed to the Judges or Justices of the County Court of Platte County which said writ of Error is in the words and figures following to wit

Writ of Error } "The State of Missouri

To the Judges or Justices of the County Court of Platte County Greeting Whereas: It hath been suggested to us by Fuston McFarland, Caleb Bailey and Samuel D. Denill Commissioners of the State road from Weston to St Joseph by the way of Linnville. that in the Record and Proceedings, and also in the decision in a certain cause or matter relating to the

(2) Report of the said Commissioners lately pending before you. manifest error hath accrued, and we being willing that such Errors, if any there be, should be corrected do command you. that the Record and proceedings of the said Cause or matter you send certified as fully and amply as the Same now remains before you to our Circuit Court of said County. to be held at Platte city in the said County of Platte on Monday the 6th day of September 1847 so that the Judge of our said Circuit Court on inspecting the Same may proceed to do therein. that which to Law doth appertain, and to him seems meet and proper, And have you then there this writ

Witness Ira Norris Clerk of said Circuit Court with the Seal thereof affixed at office in Platte City this 21st day of August A D 1847

Ira Norris Clerk"

Which said writ was only returned with the following endorsement made thereon by the Clerk of the County Court to wit

Return of writ of Error } "In obedience to the command of the within writ I hereby return the same executed by making out and returning to the Clerk of the Circuit Court of Platte County a true and perfect ~~transcript~~ of the papers & proceedings had by the County Court of Platte in relation to the report of the Commissioners of the State road leading from Weston to St Joseph by way of Linville as appears of record & file in my office

(3)

In testimony whereof I hereunto subscribe my name and affix the seal of said Court at office in Platte City, Platte County Mo. on this 6th day of Sept 1847

Danl. P. Lewis Clerk
of said County Court"

And the transcript of the record and proceedings of the County Court of Platte County referred to ~~filed~~ ~~as~~ in the foregoing return ~~aforesaid~~ is in the words and figures following to wit.

Transcript from County Court } State of Missouri }
County of Platte } ss

Be it remembered that at a Term of the County Court for the County of Platte in the State of Missouri begun and held at the Court house in Platte City on Monday the 3rd day of May A D 1847 before the Honorable John Freeland presiding Justice of said Court and the Honorables H B Mayo and William B. Barnett Justices thereof when amongst other proceedings then and there had were the following to wit

May 7th 1847

Huston McFarland and others Commissioners of the State road leading from Weston to St Joseph by the way of Linville appears in open Court and presents their Report in relation to laying out and surveying the same &c &c. ~~and~~ also the plot of said road

And whereupon the heirs of James Childers deceased and Stephen Sparks & others appear

by their Attorney and file objections to the Court receiving & accepting said report of the Commissioners and a motion to reject the same for reasons hereinafter set forth, to which objections and motion the Commissioners objected but the Court upon hearing said motion sustained the same —

Huston McFarland and others Commissioners of the above named road appear and asks leave of the Court to withdraw their Report of said survey so as to amend said Report and plot and file the same on the 1st Monday in June next which privilege being granted by the Court

And now here comes the heirs of James Childers deceased. Sparks and others by their Attorney and files Bill of Exceptions to the Opinion of the Court which is signed filed and made a part of the Record in this cause"

The Bill of Exceptions filed as aforesaid is in the words and figures following to wit

"In the matter of the State road leading from Weston in Platte County Missouri to St. Joseph in Buchanan County Missouri.

Be it remembered that after the and return of the Commissioners and the Plat of survey of the Surveyor to locate view and mark out and survey said road on the 7th May A D 1847 in Open Court the objections to the same therein named filed in Court the following notice to wit

In the matter of ~~the~~ a State road from Weston in Platte County Missouri to St Joseph in Buchanan County Missouri —

And now at this day come Coleman Shaw. Henry A Overbeck. Stephen Sparks and John Pace and Bethel Wilson and Martha Ann Wilson formerly Martha Ann Childers in their individual capacity, and the said Martha Ann Wilson as guardian of Martha Ann Childers, Mary Edna Childers and Sarah Matilda Childers infant heirs of James Childers deceased, and moves the Court to reject the Report and proceedings of the Commissioners viewing and making out so much of said State Road as falls within the limits of Platte County, Missouri and the plat of survey thereof for reasons

1. That said Commissioners have not surveyed and marked out the route or road between the points named in the law creating them

2- They have not located said road on the most direct and practicable route between such points

3- They have not had due regard to the advantage to be derived by said road to the public and as little as may be to the detriment of individuals

4 ——

5 ——

6- The Commissioners, Surveyor and Chain carriers before entering upon the duties assigned them did not take the oath required by law

7- Said road runs over the lands of the infant heirs of James Childers decd

8- Said road runs over the land of Martha Ann Wilson — And neither of them has

given the right of way, nor have the Commissioners assessed the Damages of either

W. B. Almond
Attorney for Movers

Upon the hearing of which motion and upon the sustaining of which motion said Commissioners asked leave to withdraw their said Report and the said plat of survey from the files of the Court, which said leave the Court granted, And thereupon said Commissioners withdrew & took from the Court said Report & Plat, to which said opinions of the Court in granting said leave and in permitting said Report and plat of survey to be thus withdrawn, the said Objectors severally excepted and pray that this their Bill of Exceptions may be signed sealed & made a part of the Record which is done accordingly

John Freeland (Seal)
Wm B. Barnett (Seal) "

And afterwards to wit at an adjourned Term of the Court aforesaid begun and held as aforesaid on Monday the 7th day of June A D 1847 amongst other proceedings then and there had were the following proceedings to wit

"Tuesday June 8th A D 1847"

In the matter of the State road from Weston by way of Linville to St Joseph

And now here come Huston McFarland, Caleb Bailey and Samuel D Ferrice Commissioners appointed to locate a State road from Weston by way of Linville to St Joseph

and file their Report and a plat of the location of said road"

Which said Report filed as aforesaid is in the words and figures following to wit

"To the Honrable County Court of Platte County

The undersigned Commissioners appointed in part by the Legislature of the State of Missouri by act approved 25. Jany. 1847 for the purpose of locating a State road from Weston in Platte County by way of Linville to St Joseph in Buchanan County respectively ask leave to report the following as their proceedings under the said act On the first Monday in March 1847 the following Commissioners met in the Town of Weston, Platte County Mo. under the requisition of said act Viz: Caleb Bailey and Samuel Allen, who were sworn to perform the duties required of them

In consequence of the absence of Samuel D Ferrill another Commissioner named in said act. the said Caleb Bailey and Samuel Allen adjourned to meet again in the town of Weston Platte County Mo. on the 6th day March ensuing thereafter. On that day Messrs Bailey and Ferrill appeared. Samuel D Ferrill was duly sworn as Commissioner and Samuel Allen having resigned his seat as Commissioner Huston McDaland was appointed to fill said vacancy by said Bailey and Ferrill — He being present was duly sworn as Commissioner under said Act — The Board of Commissioners then proceed to elect a Chairman. Mr McDaland was appointed Chairman of the Board

Henry Tutt was appointed Surveyor Gideon L Brown. Henry Williams chain carrier

They were severally sworn to reform their respective duties. Since that time the Commissioners have viewed many routes and ways and have located the site for a State road required of them upon the following route: commencing at the town of Weston and running North along the first Section line in Township 53. Range 36. which line passes between the property of Benjamin Holladay and J F Warner. Messrs. Bull and Meeks. Moore and Pace and upon which line there is at present located a County road They followed this line 78 chains - thence North East through the lands of Messrs. Pace - Shaw in Township 53 Range 36 - Thence North East through the lands of Messrs. Overbeck. Hankins Small Perse and Wilson. in Township 54 Range 36 - thence between the lands of Messrs Noland and Hull. Harris and Burris. Mc Donald and Roberts. Steel Dougherty & Overly - thence between Messrs Layton and Moore to and by the way of Linville owned by said Moore - thence through the lands of R B. Wilson or the heirs of James Childers Decd in Township 54 Range 35 - thence North East through the lands of Messrs Baker Collier Sparks and Squires in Township 54 Range 35 to the Section line between Messrs Beauvell and Squires - thence with the same to the County line of Buchanan County at the junction of the Sparta and St Joseph road. which Section line divides the lands of Gideon L Brown and Moses Dooley

The Commissioners find the distance to the County line of Buchanan County to be 27 7.5 poles from Weston. They have selected the most practicable route to St Joseph and find that the ground over which the proposed road is located free from marshes and the streams but few— Only two bridges will be required and they will cost but little— In the County one can be erected by but little labor. The other across branch of Bee creek should either at present or some future time be bridged and will require more labor than any other. This branch is about fifteen or ~~twenty feet~~ wide, but the situation of the banks will require a bridge to be longer than that number of feet—

The right of way has been relinquished by a large portion of the land holders along the route— in the relinquishment they cheerfully gave sixty feet in width when exclusive owners— in relinquishing where the route passed on a line between different owners they relinquished thirty feet in width on each side— The Commissioners assessed the damages of sundry individuals for their damage for sixty feet of each of their land as follows to

Mess. H. A. Overbeck $25.00 — Running through his land North a quarter section

" Coleman Shaw $100.00 — runs through his qr. Sec. N.E.

" John Pace 15.00 — runs N.E. about 25 poles cutting off about an acre

" Stephen Starks 100.00 — runs through about 200 poles N.E. and North qr. Sec.

Mess. Overbecks land is in Township 54 Range 36

Mess Shaws & Paces land is in Township 53 Range 36

" Starks in Township 54 Range 35

These are the only owners of land along the whole route from Weston to St Joseph a distance of near 25 miles where damage have been claimed or set up - Messrs Hankins and Snell though unwilling to relinquish the right of way claim no damage - Wilson is a non resident of the County

Your Commissioners have no hesitation in asserting that the route selected by them is the best & most direct and practicable route between said points that could be got - is less prejudicial to private interest and greatly to the benefit of the public at large

The Commissioners have in their possession the bonds signed by the different owners of land relinquishing the right of way. They herewith return a plat of the survey upon said road together with the field notes thereof which is made part of this report -

They have thus located the said route between the said points Weston by way of Linville to St Joseph in Buchanan County upon the best most directly practicable route that could be selected

The affidavits of the Commissioners Surveyors and Chain carriers are hereby annexed

We took into consideration the damages of the land of A B. Wilson or the heirs of James Childers decd & find no damages - we have also a relinquishment from A B Wilson - May 1st 1847

Huston McFarlane
Caleb his + mark Bailey
Samuel D Jewell

111

State of Missouri }
County of Platte } ss

Be it Remembered that on the first day of March A D 1847 before the undersigned a justice of the peace within and for the County aforesaid personally appeared Caleb Bailey and Samuel Allen two of the Commissioners appointed by an act of the General assembly of the State of Missouri approved January 25th A D 1847 entitled "an act to locate a State road from Weston to St. Joseph by way of Linville" who were there by me sworn that they would faithfully and diligently perform without favor or partiality the duties prescribed in said act — Given and certified under my hand this 20th day of May A D 1847

Wm B. Barnett J. P.

State of Missouri }
County of Platte }

Be it remembered that on the 6th day of March A D 1847 before the undersigned a Justice of the peace within and for the County aforesaid personally appeared Samuel D Daniel one of the Commissioners appointed by an act of the General Assembly of the State of Missouri approved Jany. 25th 1847 entitled "an act to locate a State road from Weston to St Joseph by way of Linville" who was there by me sworn that he would faithfully and diligently perform without favor or partiality the duties prescribed in said act. Given and certified under my hand this 1st day of June 1847

H. Stinger J. P.

(12)

State of Missouri }
County of Platte }

Be it remembered that on the 6th day of March 1847 before the undersigned Justice of the peace within and for the County aforesaid personally appeared Huston McFarland appointed as Commissioner to supply the vacancy occasioned by the resignation of Samuel Allen one of the Commissioners appointed by an act of the Legislature of Missouri for the purpose of locating a State road from Weston by way of Liniville in Platte County Mo to St Joseph in Buchanan County Mo. which said act was approved 2nd day Jany 1847 entitled "An act to locate a State road from Weston to St Joseph by way of Liniville Said McFarland being appointed by Caleb Baily and Samuel D Ferrill two of the Commissioners named in said act: the said McFarland by me was sworn faithfully and diligently to perform without favor or partiality the duties prescribed in said act — Given and certified under my hand this 1st June 1847

H. Shugert J P.

State of Missouri }
County of Platte }

Personally came before me the undersigned a Justice of the peace within and for the County aforesaid Henry Shutt who was appointed by Caleb Bailey, Samuel D Ferrill and Huston McFarland Commissioners to locate a State road from Weston to St Joseph by way of Liniville to survey the said route from Weston to St Joseph as directed by said

Commissioners. The said Tutt was by me sworn faithfully and diligently to perform the duties required of him without favor or partiality to the best of his ability

Henry Tutt

Sworn and subscribed to before me this 6 day of March 1847

H. Shugert J.P.

State of Missouri }
County of Platte }

This day personally came before the undersigned a Justice of the Peace within and for the County aforesaid Gideon L Brown and Henry Williams who were appointed Chain carriers by Caleb Bailey Huston McFarland and Samuel D Ferrill Commissioners to locate a State road from Weston to St Joseph by way of Linville which said act was approved the 25th Jany. 1847 and is entitled "An act to locate a State road from Weston to St Joseph by way of Linville" and the said Brown and Williams were by me sworn faithfully and diligently to perform the duties assigned them without favor or partiality to the best of their abilities — Given and certified under my hand this 6th day of March 1847

H. Shugert J.P."

And the plat of the survey filed as aforesaid is in the words figures & lines as follows to wit

"I Henry Tutt of Platte County being appointed Surveyor to survey a route from Weston in Platte County by

way of Linville to St Joseph in Buchanan County which appointment was made by Caleb Bailey, Huston McFarland and Sam. D Ferrill Commissioners under the said act to locate the same after being duly sworn do hereby certify that I Surveyed the same, and that it was measured under my direction and that the annexed field notes and plat contain the courses and distances in the County of Platte to the County line of containing so much as shows connection with Buchanan Cty Mo. May 1st 1847

H. Tutt"

(17)

Thursday June 10th 1847

In matter of the Report of the Commissioners of State road from Weston to St Joseph

Now here comes Coleman Shaw by his Attorney and files his written objections to the reception of said Report and upon agreement of the parties interested it is ordered that the hearing of said objections be continued until the third day of the next July adjourned Term of this Court

The objections of said Shaw filed as aforesaid is in the words and figures following to wit

"In the matter of the State road from Weston in Platte County to St Joseph in Buchanan County by the way of Linville

Coleman Shaw appears in open Court and objects to the reception by the Court of the Report of the Commissioners, and the plat of survey of the Surveyor herein and moves the Court to reject the same for the following reasons

1. The Commissioners designated by the act establishing said State road did not act under and in conformity with the powers therein delegated

2. The persons making the Report as Commissioners are not the Commissioners appointed by the Legislature or authorized to act as such

3 The Commissioners before entering on their duties did not take the oath required by law

4. The Surveyor and Chain carriers did not take the oaths required by law

5. They have not located the road between the points named in the Law creating them

(78)

6. The road as reported is not located on the most direct and practicable route between such points having due regard to the ground over which the road shall pass to the advantage to be derived to the public and as little as may be to the detriment of individuals

7. The said Commissioners have already reported and the said Plat of survey been filed heretofore & the same rejected by the County Court

8. The Commissioners were actuated & governed by improper motives in locating said road

9. The plat of survey is not made out in conformity with the law

10 The Commissioners did not obtain a grant of the right of way as appears of record from the following persons to wit over whose lands the route of said road was located to wit: The heirs of Noah Wells decd Benjamin Holladay. J. J. Warner Brill & Meeks. Moore. Hawkins. Snell Persace Island Hall Harris. Burns McDonald & Roberts. Reed Dougherty Overley. Layton. Moore. The heirs of James Childers decd. Baker Collier. Sparks. Squires, Bidwell - nor did they legally assess the damages of the said several owners of said lands

11- The Chairman of the Commissioners was not appointed by the act of the Legislature: and was not and is not a Commissioner and authorized to act in the matter

12. They run through the lands of Stephen Sparks but failed to state that fact in their Report

13- Bailey and Allen. Commissioners met at the time and place designated in the act and took the oath - and they only met on that day

& at that place. And they therefore were the only Commissioners authorized to locate the Road

Almond. Attn. for Shaw"

And be it remembered that afterwards to wit at an adjourned Term of the County Court aforesaid begun and held as aforesaid before the Honorable Justices aforesaid on Monday the 5th day of July A D 1847 amongst other proceedings then and there had were the following to wit

"Wednesday Morning July 7th 1847

In the matter of the Report of the Commissioners of the State road from Weston to St Josekh by way of Linville

Now here comes the Commissioners of sd road and moves the Court to receive the Report of said Commissioners herein filed which motion is ordered on file by the Court

And thereupon Coleman Shaw and others appears in open Court and moves that said Report be rejected which motion is sustained by the Court and said report is hereby rejected

Whereupon the said Commissioners by their Attorneys appear and file their motion which is in the words following to wit "A motion is made on the part of the State and the people in favor of said road to the County Court now here to require said Commissioners to assess damages to the owners of the land through which said review runs who have not relinquished the right of way thereto" — Which motion is now

here overruled by the Court"

The motion of the Commissioners for the rectification of the Report of said Commissioners filed as aforesaid is in the words following to wit

"In the matter of the State road running from Weston to St Joseph

The Commissioners of said road by their Attorney moves the Court the Report of the Comrs herein filed be rec'd by the Court

Wilson & Rees
Attys for Comrs."

State of Missouri
County of Platte } ss

I Daniel D Lewis Clerk of the County Court within and for the County of Platte aforesaid certify that the foregoing contains a full true and complete transcript of the proceedings had in said Court in relation to the Report of the Commissioners of the State road leading from Weston in Platte County to St Joseph in Buchanan County by way of Linville

In testimony whereof I hereunto subscribe my name and affix the seal of said Court at office in Platte City this 6th day of September A D 1847

(L S)

Danl D. Lewis Clerk"

And be it remembered that afterwards to wit at a Term of the Circuit Court aforesaid begun and held at the Place and before the Judge aforesaid on Monday the

121 6th day of September 1847 amongst other proceedings then and there had were the following to wit

Record } Friday September 10th 1847
Huston McFarland et al
vs } Error to County Court
Platte County Court

Now here comes the Defendant by her Attorney and files her motion to dismiss the writ of Error herein

Record } Wednesday September 22nd 1847
Hugh McFarland & others
vs } Error to Platte County Court
Platte County Court

Now here come the parties by their attorneys and upon their agreement this cause is continued to the next Term of this Court"

And be it remembered that afterwards to wit at the Term of the Circuit Court first aforesaid begun and held at the time and place and before the Judge first aforesaid amongst other proceedings then and there had with the following to wit

Record } Tuesday March 14th 1848
Huston McFarland & others
vs } Error to County Court
Platte County Court

And now here come the

Plaintiffs in Error and file their Assign=ment of Errors"

Which said Assignment of Errors filed as aforesaid is in the words following to wit

Assignment of Errors

"Huston McFarland
vs
In Error
Platte County

The Plaintiff in Error comes and assigns and sets down for Error the following to wit.

That the County Court erred in refusing to receive and adopt the Report of the Commissioners and to appoint an overseer of said road and order the same to be opened and otherwise to proceed as the Statute in such case requires so as to fulfill all the requisitions of the Statute in establishing said road, paying said Commissioners for their services &c —

Wilson & Rees Attys for Plffs in Error"

Record

Saturday March 18th 1848

Huston McFarland & others
vs
Error to County Court
Platte County Court

And now here the motion of William B. Almond to dismiss the writ of Error in this cause is taken up and argued and the same is overruled by the Court and thereupon this cause coming on for trial and neither party requiring a Jury the trial

of the issue joined herein is submitted to the Court and the Court having fully inspected the record from the County Court and being fully advised in the premises is of opinion that there is mani=fest error therein wherefore it is considered that the Judgment of the County Court herein be reversed and held for nought

It is therefore considered that the said Plaintiffs recover their costs in this behalf expended in this Court as well as in the County Court, and that copies of all the records and proceedings in this cause be certified to the County Court. And now here comes William B. Almond and files his Bill of Exceptions in this cause.

Which said Bill of Exceptions is in the words and figures following to wit.

Bill of Exceptions

Huston McFarland & others
vs
Writ of Error to County Court
Platte County Court

Be it remembered that on the trial of this cause the following motion came on to be heard to wit

Motion to dismiss writ

Huston McFarland and others
vs
Writ of Error
Platte County Court

And the said Defendant by her Attorney moves the Court to dismiss the writ of Error - and this cause also for reasons

1- That it no where appears in the papers and proceedings had in the County Court that said Plaintiffs or either of them have any interest involved in, or private rights affected by said proceeding, or the road mentioned therein

2- There is no Bill of Exceptions in this cause

3- There are no exceptions saved or reserved upon the record of any kind

Almond Atty.
for the County

And the Court overruled the same- To which opinion of the Court in overruling said motion the Defendant excepted

And the Court made the following Judgment

Huston McFarland & others
vs Error to County Court
Platte County Court

And now here the motion of William B. Almond to dismiss the writ of Error in this cause is taken up and argued and the same is overruled by the Court. And thereupon this cause coming on for trial and neither party requiring a Jury the trial of the issue joined herein is submitted to the Court. And the Court having fully inspected the record from the County Court, and being fully advised in the premises is of opinion that there is manifest Error therein. Wherefore it is considered that the Judgment of the County Court herein be reversed and held

for nought. It is therefore considered that the said Plaintiffs recover their costs in this behalf expended in this Court as well as in the County Court, and that copies of all the records and proceedings in this cause be certified to the County Court — And now here comes William B. Almond and files his Bill of Exceptions in this cause"

To which opinion of the Court in rendering said Judgment W. B. Almond excepts and prays that this his Bill of Exceptions may be signed sealed and made a part of the record which is done accordingly

S. L Leonard
Judge

Certificate State of Missouri } ss
County of Platte }

I Ira Norris Clerk of the Circuit Court within and for the County of Platte aforesaid certify that the foregoing pages contain a full true and complete transcript of all the record and proceedings of said Court in the cause therein mentioned wherein Huston McFarland & others are Plaintiffs and the Platte County Court Defendants as the same remains of record and on file now in my office

In testimony whereof I hereunto subscribe my name and affix the seal of said Court at office in Platte city this 8th day of June 1848

Ira Norris Clerk
By A St C Denver D C

(261)

Bill of Costs

Ira Norris Clerks fees

For 4 appearances	40	
" filing 5 papers	25	
" motion to dismiss writ of error	25	
" order for continuance	25	
" 1 continuance	25	
" entering assignment of errors	25	
" issue on motion	25	
" judgment on issue	25	
" trial by the Court	50	
" submission	25	
" issue joined	25	
" judgment	25	
" order for transcript to County Court	25	
" transcript to County Court say 7500 words	750	
" certificate & seal to same	50	
" transcript to Supreme Court say 7500 words	750	
" certificate & seal to same	50	
" writing out Bill of Exceptions say 600 words	60	
" certificate & seal to same	50	
" " " " " writ of error	50	$21.25

M N Owen Sheriff fees

For calling action & names 2 terms	60	60

Daniel P Lewis Clerk County Court fees

For filing 15 papers	75	
" 2 continuances	20	
" copying Bill of exceptions on record	22	
" " motion on record	10	
" 5 orders	50	
" 2 judgments of the Court 25 each	50	
" transcript to Circuit Court say 4500 words	450	
" certificate & seal to same	50	

[27] " " " " " writ of error .50

" administering 12 oaths .60 8.37

Clerk of Platte for Jury fee 4.00

$34.22

State of Missouri }
County of Platte } Set

I hereby certify that the foregoing is a true statement of the costs accrued in the case of Huston McFarland & others v Platte County Court as taken from my fee Book

Test

Dra Norris Clerk
By A St C Denver DC

(28)

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I hereby accept notice of the writ of error hereto attached, and waive all other and further notice of the issuing and return of the same.

June 13th 1828—

Amos Rees atty for
E. H. Garland & others,

~~No.~~

(22.)

Huston Mc. Farland
and others -

vs.

Platte County Court

Filed June 19. 1848
H. L. Boon clk.

"Platte County Court" plff in Error
vs } On Error to Platte County
Huston McFarland & others defts in Error.

W. B. Almond attorney for plaintiff in Error contends that the Circuit Court of Platte County committed error herein, and relies on the following points and authorities to reverse the decision and judgment of said Court.

1. The decision of the Platte County Court in refusing to receive and rejecting the report of the Commissioners was not and is not such a decision as authorized the Circuit Court to review and revise it on writ of Error; and if the Commissioners have any remedy in such case, it is by Mandamus from the Circuit to the County Court. See Astor vs Chambers 1 M. R. p 135.

2. The Circuit Court erred in over ruling the motion of Platte County Court, to dismiss the writ of error and the cause for the reasons therein stated — See Davis vs Hays 1 M. R. 192 & Galloway vs Overbeck and Shaw 10 M. R. 364 —

3. The Circuit Court erred in making "Platte County Court," a party "defendant" to the proceeding, and in rendering judgment against said County Court —

4. The County Court under our Law has exclusive original jurisdiction over the subject of roads; and the action of said Court in establishing or refusing to establish a road, can not be reviewed on appeal or writ of error.

5. But the action of Platte County Court was correct, on said report — Ferrill

and McFarland, who acted as commissioners and signed the report as such, had no right under the law thus to act — See the act of the Legislature of Missouri, Revision acts 1826-7 — page 334 — particularly sections 2 and 7 — and Rev. Code p. 972 sec 3 — 6 — When Bailey and Allen met under the 2d section of said act of the Legislature & qualified, all the powers of the three commissioners concentrated in them; and Ferrill having failed to meet & qualify under the second section of said act, his office as commissioner ~~became~~ ceased —

7. And a majority of the commissioners having met and qualified under said 2d section, under the 7th section of said act, McFarland could not be elected under the provisions of the general law —

8. Said report is also deficient in this; that the pretended commissioners did not obtain relinquishments of the right of way from various persons therein named, nor did they legally assess the damages for those persons.

9. The proceedings under acts of the Legislature for establishing State Roads, are in their nature to some extent ex parte, and those who seek to enforce said acts ought to be held to a rigid compliance therewith.

60.

Platte Co. Court pl'ff in Error
vs ⅌ Error from Platte
H. McFarland et. al. dist'n Er.

Assignment of errors
by Platte County Court.

Filed July 3. 1848.
H. L. Boon, clk.

Houston McFarland & others
vs } On error to Platte County
Platte County Court

This case originated in the County Court of Platte County. On the 7th day of May A.D. 1847, Houston McFarland, Caleb Bailey and Samuel D. Ferrill professing to be commissioners duly authorized to survey and mark out a State Road from Weston in Platte County, to St. Joseph in Buchanan, came into the County Court of Platte County, & filed a report of their survey and marking out of said State Road within the limits of said County of Platte. And thereupon the Court refused to receive and rejected said report on account of its alleged illegality — The County Court however gave permission to said Commissioners to withdraw their said report, and report again on the 1st monday in June thereafter. On Tuesday the 8th June A.D. 1847, the same commissioners come into Court and file their report and a Plat of the survey of said Road; and certain objectors file objections to said report and a motion for its rejection. The County Court again refuse to receive the report, but reject it. And thus the case finally ended so far as action on it went in the County Court.

But the commissioners obtained their writ of error from the Clerk of the Circuit Court of Platte County, and in this way took the case to said Circuit Court. When it arrived in said Circuit Court it was docketed as a case or proceeding against "Platte County Court", that Court being considered a responsible defendant. The case in this fix was continued from the September Term of the Platte Circuit Court, after "defendant" had filed a motion to dismiss the writ of error and the cause for reasons therein filed, to the March Term A. D. 1848 of said Court. At the March Term 1848, the commissioners file an assignment of errors to the judg=ment of the County Court — And the whole case being submitted to the Court, the Court overruled the motion of "defendant" to dismiss the writ of error and the cause, and reversed the decision of the County Court, & rendered a judgment for costs against "the defendant" a County Court as I suppose — The "defendant" by attorney excepted to the opinion of the Court in overruling said motion; in reversing the decision of the County Court, & in rendering said judgment for costs. And this State of the Record may be clearly inferred and seen, although the Hon. Judge of the Circuit Court, before signing the bill of exceptions, has but informally

the name of the attorney of "defendant" where defendants name ought to be in one or two places — But this is cured by an old Law maxim — "Lex non de minimis curat." — The County Court of Platte, "defendant" in the Circuit Court; but plaintiff here, contends that the decision and judgment of the Circuit Court was & is wrong for the following reasons —

1. The decision of said County Court, was not and is not such a decision, as will legally entitle a writ of error to lie from the Circuit to the County Court thereon — it was not and is not a judgment at all & is no bar to the future presentation and reception of the same report by said County Court. see Aston vs Chambers 1 M. R. p 135

2. It was certainly cruel thus to create a case in the Circuit Court, against the "Platte County Court" and it was evidently wrong to render judgment against "defendant" for an error of judgment supposing one to have been committed.

3. There was no bill of exceptions filed in the County Court, before the case arrived in the Circuit Court, to show upon what evidence or grounds the report was rejected — ~~And~~ see Davis vs Hays 1. M. R. page 192 —

4. The assignment of errors by McFarland & others in the Circuit Court, and the action of that Court seem to imply, that the County Court, ex necessitate rei, ought to have received and acted upon the report.

5. The commissioners, acting in a public capacity, and for the public, had no private right or interest affected by the decision of the County Court, and had no right to their writ of error — and the question as to their pay was altogether a different question, from the reception of the report See Galloway vs Overbeck & Shaw 10 Mo R 364

6. The circuit Court had no right to revise the decision of the County Court in this case, and if the Circuit Court has any control over the County Court, in reference to this Road, it can only be exercised by writ of Mandamus — commanding the County Court to receive said report.

7. If the precedent is established of taxing the County Court with the costs in this case, for a wrong decision, supposing it to be wrong, it might be extended to the Circuit Courts, which would prove most disastrous.

8. But the County Court decided correctly

For 1. If the evidence before the County Court had been preserved, it would be seen that Shaw, the objector had private rights affected, and his objections were sustained by proof. and

2. The private act of the Legislature is no where preserved upon the record, establishing said State Road, but is found on Page 334 of "Laws of Missouri" of last Session of the Legislature — and from the report it will be seen that only Bailey and Allen met as required by the second Section of said act —

3. Bailey and Allen then having met at the time and place designated in the 2d section of said act, & complied with all its requirements, "constituted a quorum and were competent to perform the duties by said act assigned to the three Commissioners". And

4. Ferrill by failing to meet at the time and place evidently lost his capacity as Commissioner, it having centred in the other two who did then meet—

5. Allen does not join in the report— but Ferrill at a subsequent day comes up after he was functus officio, qualifies and aids in appointing McFarland—

6. Even supposing that Ferrill had a right to act as Commissioner after he thus qualified, clearly he and Bailey had no right to appoint McFarland— For

7. The Special act gave them no authority to make such an appointment And only upon failure of said Commissioners or a majority of them to meet as required by the second section of said act, were they authorized to act under the general law— See 7th and last section of said act.

8. McFarland and Ferrill then were not authorized to act as Commissioners—

9. Said report is deficient in this that the pretended Commissioners

did not obtain a relinquishment of the right of way from various persons nor did they legally assess the damages of those persons — And

10. As the County of Platte had and has to foot all the damages occasioned by the location of said road, the County Court did right in requiring the commissioners strictly to conform to the law — See Rev. Code p 972-973-974 Sections 3-13.16.

Almond
Attorney for Co. Court.

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Houston McFarland and others
vs
On Error
Platte County Court.

Brief for the Judges
By "Platte County Court"

Platte County Court

vs } On Writ of error to Platte Co.

Houston McFarland & others

Platte County Court insists, in reply to the allegation, that the points and exceptions in the bill of exceptions herein are not properly saved on the record, that enough is saved upon the record to reverse the decision and judgment of the Circuit Court. For the Bill of exceptions shows that after the case came into the Circuit Court, Platte County Court moved said Circuit Court to dismiss the writ of error, and the case for reasons assigned therein, and that said defendant excepted to the opinion of the court in over ruling said motion — And as that motion ought to have prevailed, that decision is sufficient to reverse the judgment of the Circuit Court. And as the Circuit Court thereby [illegible] and therein recognized [illegible] W.B. Almond as the attorney of Platte County Court, by the plainest intendment of Common Sense, and by the Circuit Court permitting the bill of exceptions to be filed in

the case, the action of said Almond herein is to be considered as the action of defendant —

Almond
Atto for Platte
Co. Court

Platte Co. Court
vs } Writ of
} error
Houston McFarland
and others

Additional
Brief —

Houston M. Garland & Others,
vs
Platte County Court.

Writ of Error to County Court, and also to Circuit Court,

The Legislature at it last Session passed an act establishing a State road from Weston to St. Joseph by way of Linville, and appointed Commissioners to establish said road and report, the plaintiffs are three Commissioners, with some changes strictly according to the provisions of the act, See that act,

the Commissioners act and report,

Thos Overbeck & others appear and resist the report of the Commissioners,

The County Court reject the report, the Circuit Court reverses the judgment of the County Court and affirms and recommits the report, & William B. Almond excepts to the opinion of the Circuit Court & brings the Cause here by writ of error,

Wilson & Rees, for defendants.

Our first point is, the Report is strictly Correct and Conforms to every requisition of the laws. See Revis' Statutes 500- Roads & Highways Article 2nd Sections, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, to 36, inclusive,

2. Point. The Commissioners had such an interest as authorized them to appeal and litigate the Case, The defendants had no such interest, See Galloway v Shroud Overbeck, 10 Mo R.

3. William B Almond had no such interest, not even the Colour or pretence of interest and consequently had no right to except to the opinion of the Court. Nor had he a right to bring the Case here by writ of error,

4th There is nothing in the motion, the overruling of which is Complained of, and made the ~~only~~ sole ground for exception, The Court did right to overrule that, Motion,

5. The proper parties are not made on the Record, Coleman Shaw is the only party - see the Record

Wilson & Rees attys for pltff,

H. McFarland &c.

2 Pltfs Brief -

3

Platte County Court

H. McFarland
~~Gallaway~~ &c
Atty &c

County Court of Platte

The said defendant moves the Court to dismiss the writ of Error in this case - 1. Because as appears from the record, it is entitled in the wrong Cause. The true parties being Overbeck & Co. vs. Gallaway.

J. Wilson Atty
for McFarland ~~Gallaway~~

County Court of
Platte County
[illegible] motion to dis-
-miss —
~~[illegible]~~
H. McFarland.

Filed July 12. 1848.
H. L. Boon, clk.

Platte County Court
vs.
H McFarland & al

§ Error to the Platte
§ Circuit Court

McFarland and others being Commissioners under an act of the last General Assembly to survey and mark out a State Road from Weston in Platte County to St. Joseph in Buchanan County made a report of their proceedings to the County Court of Platte County & filed a report of their survey of the said road. This report for its alleged irregularity was rejected by the Court, and further time was given to the Commissioners to make a report. On the coming on of this report certain objections insisted in, and the Court again refused to receive it: On this, the Commissioners sued out a writ of error from the Circuit to the County Court. The writ is directed to the Justices of Platte County Court: On the return of the writ, the cause is docketed as one against the County Court of Platte, and on the hearing of it, the judgment of the County Court ~~in~~ rejecting the report of the Commissioners is reversed & a judgment for costs is rendered: On this judgment a writ of error was sued out from this Court.

It is impossible to discover any principle on which the County Court of Platte could have been made a party to the writ of error: The judgment of the Circuit Court itself, shows the frivolousness of the proceeding by ~~the~~ writ of error, for after reversing the judgment of the County Court, the parties are kept just where they were before the writ was sued out, and the making of costs, is the only effect of ~~the proceeding~~ it. When such consequences result from a proce-

claim it is obvious that it must be irregular. The action of the county court could in no sense of the term be called a final judgment such as will sustain a writ of error. The defects in the report or proceedings of the commissioners might have been obviated: a Mandamus was obviously the proper proceeding to compel the County court to do its duty.

Then being an error in the rendition of the judgment of the Circuit Court, & it appearing upon the record, that it was unwarranted; by repeated decisions of this court, no motion was necessary, in order, to subject it to the revision of this court. The other Judges concurring the judgment will be reversed.

W. Scott

85.

The County Court
of Platte vs

McFarland & al

Opinion

Scott

Filed Dec 21. 1848.
H. L. Boon Clk

The State of Missouri, use of
Hinton Mc Garland ... } On the Supreme
vs } Court on appeal
Platte County Court ... } from Platte Cir. Court.

Fee bill of costs in the Supreme Court to be paid by the said Platte County Court.

Wm. E Dunscomb's costs as Clerk of said Sup. Court.

Filing transcript & docketing cause	.50
appearance .20 continuance & order .50	.70
appearance .10 dismissim .50 Trial & judgment 1.00	1.60
filing papers .10. certified judgment .75	.85
	3.65
R B Jackson Marshal, calling action & parties 2 Terms.	.60
Ira Morris Clerk. transcript	3.90
Total ...	$ 8.15

Attest
Wm E Dunscomb, Clerk
of Sup. Court of Mo.

To the
Sheriff of Platte County
Missouri

Comd to hand 25th Oct
1852, L. Shepard Sheff
By H. B. Herndon D.S.

State use of McFarland

vs Fee Bill

Platte County Court.

Costs

Wm E Dunscomb	3.65
R B Jackson	.60
Ira Norris	3.90
	$8.15
	1.14
	.18
	$9-33

To Platte County

Satisfied in full,
Nov 3d 1852,
L Shepard, Sheff
By H B Herndon D.S.

RG 600
Supreme Court of Missouri
Case Files

LARGE DOCUMENTS CAN BE FOUND IN OVERSIZED STORAGE

Location 16A/4/9

Box 2/folder 4

Folder 73/1

Number of Items 1