St. Francois County Court v. Peers, Katharine 1851 9th C. St. Francois 170/3

(20) Aff'd

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the 9th Judicial Circuit in said State, GREETING:

Whereas, In the record and proceedings in a certain cause lately pending in the Circuit Court of St Francois County State of Missouri wherein Catharine Pers is plaintiff and the County Court of St Francois County is defendant

in an action of Petition for Mandamus to said Court manifest error hath intervened, to the great damage of the said County of St Francois 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~~ St Louis, in the county of ~~Cole~~ St Louis, in said State, on the third Monday in October 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~~ William B. Stark, Clerk of our said Supreme Court, at office, in the City of ~~Jefferson~~ St Louis, the thirteenth day of March, in the year of our Lord one thousand eight hundred and ~~forty~~ fifty, with my private seal, there being no seal of Court yet provided

W. B. Stark, Clerk

Fee $1.50 paid by L. B. Beal
W. B. Stark.

[34]

State of Missouri } ss
County of St Francois

In pursuance to the within writ I herewith send you a certified transcript of the record and proceedings had in our said Circuit Court of St Francois County and State aforesaid before our Judge thereof in the cause wherein Catharine Pers is plaintiff and the County Court of St Francois County is defendant as fully as the same remains in my office.

In testimony whereof I John Cobb clerk of said Circuit Court hereunto subscribe my name and affix the seal of said court at office at Farmington this 25th day of September A D 1850

John Cobb clerk
By Martin V. Harris, D.C.

Katharine Peers
against
County Court of St Francois
County

In the Circuit Court
of St Francois County
an petition for
Mandamus

To Katharine Peers the plaintiff in the above cause
You are hereby notified that the above cause and all the
proceedings therein had have been certified by writ of error
to the Supreme Court of the State of Missouri at its next
term to be held on the third Monday in October next in the
city of St Louis in the County of St Louis and State of
Missouri

April 4th 1850

J. G. Beal
Attorney for defendant

Served this notice by delivering a Copy of the same to Valentine C Peers agent for the within named Katharine Peers on the 23d April 1850 in St Francois County.

Elisha Arnold Sheriff
St Francois County Mo.

Katharine Peers
vs
County Court of
St Fr. County.

Service 50¢

Filed May 20th 1850
John Bobbelleck
By Martin V Harris
Cl

Be it remembered that at a Circuit Court of St Francois County in the State of Missouri begun and held at the Court House in the Town of Farmington within and for the county and State aforesaid on Monday the 7th day of May A D 1849. among others of the pleas and proceedings had before said Court were the following. To wit

To the Hon John H. Stone Judge of the ninth Judicial circuit this petition of Katharine Peers Exx. and devisee under the will of John D. Peers would respectitely represent that at a Term of the County Court for St Francois County held in the Town of Farmington on the 18th of August 1847. a certain Isaac B. Perkins with others. presented a petition to said Court for the establishment of a County road, commencing at the court house in the Town of Farmington, and running to a point on the line dividing the Counties of St Genevieve and St Francois where the County road leading from the Town of St Genevieve by the way of the residence of Charles Burks comes to said County line the course from the beginning being a north East direction and thereupon such proceedings were had by said Court according to Law that Commissioners were appointed to view lay out and mark it and make report in reference to said proposed road, as required by law. and afterwards at the November Term. of said County Court said commissioners asked for further time to make their report in this behalf. and at the following February term of said County Court 1848. The said Commissioners reported in reference to said road and among other matters that it passed through the land of John D. Peers dec.d & that the consent of the representatives of said Peers to its passage

has not been obtained, at the may Term of said Court 1848. the report of Commissioners was amended by stating the refusal of Chapman to relinquish the right of way. and at the august Term 1848 upon motion of Charles Burks said Road was established as a County Road, and that the same be opened accordingly your petitioner shows to your Honor that this Order has been complied with long since. the road cut out and from thence. and now used by the public as a county road. and the property of your petitioner in virtue of the will of the said John D. Peers in and to said Land taken for the public use without any compensation whatsoever and against her express demonstrance.- your petitioner would further show unto your Honor. that at the August Term of said County Court she filed with said court her demonstrance to the opening and establishment of said proposed road and the court appointed commissioners to assess damages sustained by your petitioner in virtue of said road who reported Sixty Dollars in favor of your petitioner.
which report was upon motion rejected by said County Court although entirely just in itself and they refused to allow any compensation whatsoever to your petitioner for the wrong and injury inflicted upo her rights as sole devisee under the will aforesaid. and as trustee for her children and your petition herewith exhibits to your Honor a copy of the will of said John D. Peers. as also the record files and proceedings of the County Court in this behalf. and prays that the same may be held and taken as a part of this petition,
your petitioner further prays. that your Honor would direct a Mandamus Ni si commanding said

court to adjust and allow the sixty dollars assessed as damages to your petitioner against said County as aforesaid or that said Court show cause to the contrary upon the return of said writ. so that right and Justice may be done in the premises and as in duty bound your petitioner shall ever pray.

Katharine Peers
Exrx and Devisee by
P. Cole atty

State of Missouri } In the County Court said County
County of St Francois } was the following proceeding To wit
Wednesday August 18th 1847

Now at this day come into Court here Isaac B. Perkins and presents a petition signed by more than twelve householders of the Township of St Francois. by which they apply for a new County road to commence at the Court house in the Town of Farmington and run to a point on the line dividing the Counties of Ste Genevieve and St Francois where the County road leading from the Town of Ste Genevieve by the way of the residence of Charles Burks comes to said County line, the course from the begin=ning being a north East direction. And the said petition having been publicly read and proof addeced to the satisfaction of the Court that due notice had been given of the presentation thereof according to Law It is therefore ordered by the Court that James Cunningham Senr Lawson Alexander + Robert Cleaveland be and they are hereby appointed commissioners to view lay out and mark the route above designated for a public road, and report their proceedings as required by law

A true copy of the order of said Court
attest John Cobb. Clerk

dividing Ste Genevieve and St Francois Counties where the County road leading from the Town of Ste Genevieve by the way of the residence of Charles Burks, comes to said County line, the course from the beginning being a north East direction

your petitioners therefore pray that the Court will appoint Commissioners to view and mark out the route for said road as required by law, and your petitioners will ever pray

August 4th 1847

J. B. Perkins
James McDaniel
Joel Folman
H. W. Crow
N. L. Fleming
V. C. Peers
John H Starn
Robertson Shelton
John McHenry
J. M Douthit
John Hughes
Geo A Lett
J. E. Douthit
Levi Bep

Josiah Horn
Zebulon Murphy
David H Murphy
William D. Perkins
Joseph Perkins
Geo H Marks
Moses Cunningham
Joseph F Hurry
Isaac H. Perkins
G. W. Smith
Corbin Alexander

And afterwards to wit at the Nov. Term of said Court in the year aforesaid was the following proceeding to wit

Wednesday November 17th 1847

Now at this day come into Court here James Cunningham and Lawson Alexander two of the Commissioners appointed by the Court to view a route for a road leading from Farmington, to intersect the road leading from Charles Burks to Ste Genevieve at the line dividing the Counties of Ste Genevieve & St Francois, and upon their motion it is ordered that they have further time to make their report, and that they be authorized to employ a surveyor.

Wednesday Feb. 23rd 1848 was the following proceeding Burks Road

Now at this day come into Court here James Cunningham and Lawson Alexander a majority of the Commissioners appointed at the August term of this Court 1847, to view lay out and mark the route for a new County road, to commence at the Court house in Farmington, and run to a point on the line dividing the Counties of Ste Genevieve and St Francois where the County road leading from the Town of Ste Genevieve, by the way of the residence of Charles Burks, comes to said County line and said Comrs present to the court a Copy of their proceedings, and it ~~it~~ appearing therefrom that the Consent of the heirs of John D Peers, or their agent Valentine C. Peers, and the heirs of Davis F. Marks (Geo Marks agent) through whose land the said road passes, has not been obtained, It is therefore ordered by the Court that a summons issue to the said V. C. Peers and George Marks agents as aforesaid to show cause, at the next term of this Court why the said road should not be opened

Which report is in the words and figures following to wit

State of Missouri } In the County Court
County of St Francois } February Term 1848.

Whereas at the August term 1847. of the County Court of the above County, a petition was presented by Isaac Perkins, praying for a new County road to commence at the Court House in the Town of Farmington, and run to a point on the line dividing the Counties of St Francois and Ste Genevieve, where the County road leading from the Town of St Genevieve by the way of the residence of Charles Burks, comes to said County line; the course from the beginning being a North East direction: and whereas it was ordered by said Court that James Cunningham Senr Lawson Alexander and Robert Cleaveland be appointed Commissioners to view lay out and mark the route above designated for a public road and report their proceedings as required by law, and whereas at the November Term of said Court it was ordered that further time be given said Commissioners in which to make their report with a surveyed plat of said road, therefore, we a majority of said Commissioners, to wit James Cunningham Senr. and Lawson Alexander beg leave to present the accompanying surveyors plat and certificate, and report that they did view lay out and mark the said road as designated in said petition, and that said road will pass through lands owned by the following persons Commencing as described in said surveyors report said route runs first through lands belonging to Rachel Murphy, on the survey of the St Louis road, then through lands belonging to Richard Murphy, also on the survey of the St Louis Road thence through lands belonging to the Estate of John I Beers, against which U. C. Beers

as agent for said Estate makes objection thence through lands belonging to the Heirs of Davis F Marks deceased to which George Marks as agent for said heirs makes objection; thence through lands belonging to Richard Murphy who gives consent for said road to pass through his land; thence through lands belonging to Isaac B. Perkins, who also consents for the passage of said road; thence through lands of Joel Zolman, who also consents for the passage of said road; thence through lands belonging to the heirs of Davis Marks who by their agent George Marks consent for the passage of said road to the place of intersection of the said County line. and we further report that we believe the route of said road to be practicable, and that said road should be established as marked out by your said Commissioners. your commissioners therefore present their report, with the accompanying report of the County Surveyor and beg leave to be released from further duties &c

James his X mark Cunningham Senr

Lawson Alexander

At the May Term of said Court 1848. on the 15th day of said Month was the following proceeding

" Burks Road }

At this day upon satisfactory evidence the Court Orders James Cunningham and Lawson Alexander Comrs on said road, to perfect their report, filed herein, which is done by appending the following words, To wit

"We further report that Calvin Chapman one of the individuals whose land said road runs through, refuses to relinquish the right of way, May 16th 1848

James his X mark Cunningham

Lawson Alexander

Which said summons is as follows To Wit

State of Missouri } SS
County of St Francois

The State of Missouri To the Sheriff of said County Greeting

You are hereby commanded to summon Valentine C. Peers if he shall be found in your County to be and appear before the County Court of said County on the third day of the next term thereof to be begun and held at the Court house at the Town of Farmington within and for said County on the third Monday in the month of may inst, then and there, as agent of the heirs of John D. Peers dec.d to show cause why, a public road the route of which has been viewed through the Land of said heirs, and as herein after described, should not be opened." Commencing at the court house in the "Town of Farmington and running to a point on the line "dividing the Counties of Ste Genevieve and St Francois "where the County road leading from the Town of Ste "Genevieve, (by way of the residence of Charles Burks, comes "to said County line" and have you then and there this writ, and certify to our said Court how you execute the same

Witness John Cobb clerk of our said

L.S. County Court and seal of office at Farmington the 4th day of May AD 1848
John Cobb. Clerk

Upon which was the following acknowledgement of service.

I Valentine C. Peers agent for the heirs of John D Peers decd do hereby acknowledge service of the within summons
May 1848 Valentine C. Peers

At the august term of said Court 1848 was the following proceeding

Wednesday August 23rd 1848

Burks Road }

Now at this day come into Court here Charles Burks and upon his motion and proof to the satisfaction of the Court that all things touching said road had been complied with as required by law. It is therefore ordered by the Court that the same be, and it is hereby established as set out in the report of the Commissioners, and as marked by them, as a County road & it is ordered that the same be opened accordingly.

August 24th 1848. was the following proceeding To wit

Katharine Peers Executrix of John D. Peers deceased vs Saint Francois County } On remonstrance against Burks Road

Now at this day come the plaintiff aforesaid by her agent and presents a remonstrance

setting forth her Grievances sustained by the passage of said road through lands belonging to said Estate, and prays the Court to appoint Commissioners to assess the damages sustained, if any by the passage of said road through said lands. Whereupon it is ordered by the Court that Zeno Westover Elisha Matkin & Joseph Perkins be, and they are hereby appointed Commissioners as aforesaid, who are required to meet in the town of Farmington on the second Saturday in September next, to qualify as required by law, and it is further required of said Commissioners to make report of their proceedings at our next County Court,

A true Copy of the order of Court

In testimony whereof I. John Cobb clerk of the County Court in and for said County have hereto signed my name and affixed the seal of said Court at office this 29th day of august 1848, John Cobb. Clerk

(L.S.)

By Wm. R. Taylor. D.C.

Upon which was the following return To wit

Served the within by delivering a Copy to the Within Named Joseph Perkins in St Francois township in St Francois County on the 31st day of august 1848 and also by leaving a Copy at the residences of each of the within named Elisha Matkin and Zeno Westover in Pendleton township in St Francois the same day with a member of their white families over the age of fifteen years

J. S. Boyce
Sheriff

Which remonstrance is in the words and figures as follows To wit

To the Honorable the County Court of St Francois County

Your petitioner Katharine Peers, admx. of the Estate of John S. Peers dec'd would remonstrate with your honorable body against the passage of a certain road, commonly designated the "Burks road," through the lands belonging to said Estate, said road being described in its route, as beginning at the Court House in the Town of Farmington, and proceeding by the nearest and best route in the direction of the residence of Charles Burks, until it intersects the County line dividing St Francois and Ste Genevieve Counties, your petitioner would represent that the Grievances done to said Estate, by the passage of said road are great and excessing, cutting up said land into narrow strips, and that much of the timber on said lands will be destroyed by the opening of said road, Wherefore your petitioner would pray that the court would appoint three disinterested householders, and a day, and place for them to meet, to inquire into the amount of said damages, and assess the same; and your petitioner as in duty bound will ever pray

Katharine Peers
By V. C. Peers (her agent)

State of Missouri } ss
County of Saint Francois }

Joseph Perkins, Elisha Matkin, and Zeno Westover reviewers appointed by the County Court of said County, being duly sworn by me Clerk of said Court, each for himself, on his oath

says that he will faithfully and impartially discharge the duties assigned him in the within Order of Court

Given under my hand this 9th day of September AD 1848 John Coble, Clerk.

And afterwards at the November Term of said Court was the following proceeding to wit,

Thursday November 23rd 1848

Katharine Peers Exx. of John D Peers dec vs Saint Francois County } On remonstrance against Burks Road

Now at this day come into Court here Elisha Mathin and Geno Westover, two of the commissioners appointed by this court to assess Damages in the above Cause, and make report of their proceedings, which is filed, and the said plaintiff by her agent Charles Hart Esqr. appears, as well as the said defendant by her attorney Ignatius G. Beal Esqr. and the said defendant by her attorney files a motion to reject the report of said commissioners and to recind and set aside the order of this Court whereby they were appointed, to which motion is annexed the reasons therefor, which said motion the Court takes under advisement untill 9 o'clock tomorrow morning to which time this cause is Continued,

Which report of said Commissioners is in the words and figures as follows To wit

We the undersigned commissioners have examined the lands of the estate of John D. Peers deceased through which the within named road passes, and have assessed to Katharine Peers, Administratrix of the estate of said deceased the sum of Sixty Dollars

Damages: Given under our hands this 9th day of September 1848

Elisha Mathin
Zano Westover

Which said motion and reasons of said Defendant are in words and figures following to wit,

Catharine Peers } In County Court Nov Term 1848
vs } Burks Road
St Francois County

The defendant in the above cause by her attorney comes and moves the court to reject the statement made by Elisha Mathin and Zeno Westover in the above cause purporting to be their report of their proceedings in the said cause and to rescind and set aside the order of this court whereby they with one Joseph Perkins were appointed at the last August term of this court as commissioners to assess damages to said Catharine Peers sustained by the passage of said Road through her lands, for the following reasons to wit:

1 There is no law for the appointment of commissioners to assess damages to the owner of lands through which a county road may be layed and marked out,

2 The order of said court whereby said Elisha Mathin Zeno Westover and Joseph Perkins were appointed is without authority of law, and is therefore irregular & void and all proceedings under it are void.

3 The said Catharine Peers did not object at the term next after said road was layed and marked out as required by law. She should have remonstrated before

the august term AD 1848; her objection made then came too late

4 Three disinterested householders were not appointed according to law, to "view the proposed road" The said order appoints commissioners to apess damages,

5 Said persons appointed were not duly qualified according to law previous to their attempting to act.

6 Said pretended report is insufficient because it shows that said commissioners did not "review the proposed route" before they assessed damages, as required by law.

7 Said pretended report does not show over how much land said road passes and how much is taken thereby as it should do,

8 Said commissioners state in their pretended report that they "examined the land of said objector through which said road passes:" The law is that they shall "review the proposed route" it is therefore insufficient,

9 The said pretended report does not show the kind of grievous damages and injuries which the owner of the land sustains by the passage of the road through it,

10 The damge is excessive and greatly beyond what is actually sustained,

11 Said commissioners were not disinterested house-holders as required by law,

12 Said pretended report shows that only a bare majority "examined the land" and they then apessed damages The law requires all three to review the proposed

route" but a majority may apess damages & report,

13 The said Statement purporting to be a report is vague uncertain, informal, irregular insufficient and without law and therefore void

I. G. Beal
Atty for the County

Thursday Novr 23rd 1848

Katharine Peers Exx.
vs
Saint Francois County
} On remonstrance against Burks road

Now at this day the parties aforesaid appear by their respective attorneys, and the plaintiff files a motion by which she moves the Court to order a warrant to issue on the Treasurer in her favor, for the amount of damages assessed by said Commissioners, which motion the court orders to be Continued

Which motion is in the words and figures following
To wit

Katharine Peers, Administratrix of the estate of I. D. Peers Deceased now hereby moves the County Court of St Francois County to issue a certificate or draft on the Treasurer of said County for the sum of Sixty Dollars the amount of damages apeased to her by the commissioners appointed to assess Damages to her for the opening of a public Road through the lands of the estate of said Deceased from the Town of Farmington in St Francois County in the direction to St Genevieve by the way of the residence of Charles Burks

Novr 23rd 1848.

Katharine Peers
Administratrix

Friday Novr 24th 1848

Katharine Peers Extx. vs Saint Francois County } On remonstrance against Banks Road

Now at this day the parties aforesaid appear by their respective attorneys, and the motion of said defendant filed herein on yesterday come on to be heard, and the Court being now fully advised in relation to the matters and things contained in said motion It is considered by the Court here that the said motion of the said defendant be sustained, and it is ordered that the said report of the said Commissioners be rejected, and that the order of this Court whereby the said commissioners were appointed (made at the last august term of this Court) be, and the same is hereby rescinded and set aside, whereupon the said plaintiff files an affidavit and bond, & prays, an appeal to the Circuit Court of this County, which is granted her accordingly.

Wednesday may 9th 1849

The following order was made in relation to said petition. In the Circuit Court of said County To wit

Katharine Peers Admx. of the Estate of John D. Peers vs County Court of St Francois County } Petition for a Mandamus

Now at this day come the said Petitioner by her attorney & files her petition for a mandamus against the County Court of said County, It is therefore ordered by the Court that a mandamus be awarded accordingly & ordered that this cause be continued,

Which mandamus is in the words and figures following to wit

State of Missouri } Set
County of St Francois } The State of Missouri - to the County Court of St Francois County in said State Greeting: Whereas Catharine Peers Exx. and devisee under the will of John S. Peers, at the May Term of the Circuit Court for said County in the year 1849. presented her petition to the said Court whereby she complains, that heretofore to wit at a Term of the County Court for St Francois County held at the Town of Farmington on the 15th of August 1847, a certain Isaac B. Perkins with others presented a petition to said court for the establishment of a County road commencing at the Court House in the town of Farmington, and running to a point on the line dividing the Counties of Ste Genevieve and St Francois, where the County road leading from the Town of Ste Genevieve by the way of the residence of Charles Burks, comes to said County line, the course from the beginning being a north east direction, and thereupon such proceedings were had by said Court according to law that Commissioners were appointed to view lay out and mark &c and make report in reference to said proposed road as required by law, and afterwards at the November term of said County Court, said commissioners asked for further time to make their report in this behalf and at the following February Term of said County Court 1848, the said Commissioners reported in reference to said road, and among other matters that it passed through the land of John S Peers dec., & that the consent of the representatives of said Peers to its passage has not been obtained,

at the may Term of said Court 1848 the report of commissioners was amended, by stating the refusal of Chapman to relinquish the right of way, and at the august Term 1848 upon motion of Charles Burks, said Road was established as a County Road and that the same be opened accordingly; your petitioner shows to your Honor that this Order has been complied with long since, the road cut out and from thence are now used by the public as a county road and the property of your petitioner in virtue of the will of the said John D Peers in and to said land taken for the public use without any compensation whatsoever and against her express remonstrance, your petitioner would further show unto your Honor, that at the august Term of said County Court she filed with said Court her remonstrance to the opening and establishment of said proposed road and the Court appointed Commissioners, to assess damages sustained by your petitioner in virtue of said road who reported sixty Dollars in favor of your petitioner which report was upon motion rejected by said County Court although entirely just in itself & they refuse to allow any compensation whatsoever to your petitioner for the wrong and injury inflicted upon her rights as sole devisee under the will aforesaid, and as Trustee for her children and your petitioner herewith exhibits to your Honor a copy of the will of said John D. Peers, as also the record files and proceedings of the County court in this behalf, and prays that the same be held and taken as part of this petition

Therefore in consideration of the premises and and in as much as the said County Court of St Francois County refused to adjust and allow the sixty Dollars assessed as damages against the

said County of St Francois in favor of the said Catharine Peers, Exx. and devisee under the will of John D Peers, and that due and speedy Justice may be done to her the said Catharine Peers, as is reasonable, you the said County Court of St Francois County are hereby commanded immediately after the reception of this writ to allow the said demand of the said Catharine Peers, as by the commissioners aforesaid assessed and reported, or signify and make Known to the said Circuit Court cause to the Contrary thereof, lest complaint should again be made to the said court against you in this behalf. And how you shall execute this writ, certify and make Known to the said Circuit Court at the next Term thereof, to be begun and held at the Court house at the Town of Farmington in and for said County, on the first monday in the month of November next, and have then there this writ

(Ls) Witness John Cobb clerk of our said court and seal of office at Farmington this 19th day of May 1849

John Cobb, clerk.

To which writ the County Court made the following return <u>To wit</u>

Catharine Peers Admx of John D. Peers decd
vs
The County Court of St Francois County

In the Circuit Court
An Petition for
Mandamus

The answer of the County Court of St Francois County to the conditional mandamus issued from the Circuit Court of said County on the application of Catharine Peers most respectfully shows that, it is true as stated by the said Catharine Peers, in her compl=aint, that a petition was presented by a certain Isaac B. Perkins and others to the said Court at its August term thereof for the year 1847, whereby application was made for a new County road to commence at the Court house in the Town of Farmington, and to run to a point on the County line dividing the Counties of Ste Genevieve and St Francois by the way of the residence of Charles Burks. That commissioners were appointed, to view, lay out and mark the route designated in said petition

That said commissioners reported their proceedings to said Court at its February Term for the year 1848, and prayed to be dismissed. By which report it appeared that said road would run through lands belonging to the estate of John D Peers decd to which V. C. Peers as agent for said heirs objected That thereupon on the 1st day of May 1848 a summons issued from the Office of the Clerk of said Court directed to said V. C. Peers, agent as aforesaid to appear before the County Court of said County on the 3rd day of May term to be begun and held at the Court house in Farmington on the 3rd Monday in May, then, next 1848 then and there to show Cause why said road should not be opened, which said summons was returned executed, by the said V. C. Peers as agent for the heirs of said John D Peers decd endorsing thereon his acknowledgement of service of the same And on the day of the return of said summons, neither the said

W. C. Peers as agent as foresaid, nor said Catharine Peers appeared before the Court and presented a remonstrance setting forth the grievances of said Catharine Peers according to law. Nor was there time given by the Court for her so to do. That at the May Term of said Court 1848 James Cunningham and Lawson Alexander two of the persons who had acted as Commissioners to view and locate said road appeared in Court, and on their own Motion were permitted to affirm to their said report "We further report that Calvin Chapman one of the individuals whose land said road runs through, refuses to relinquish the right of way." That at the August Term said Court ordered said road to be opened. That on the next day after said road had been ordered to be opened, the said Catharine Peers by her agent presented her remonstrance setting forth her grievances by the passage of said road through the lands belonging to the estate of John D. Peers died to be a great and excessive cutting up of said lands into narrow strips, and that much of the timber on said lands will be destroyed by opening said road" That Zeno Westover, Elisha Matkin and Joseph Perkins were appointed as Comrs to said rout and assess the damages, if any, which the said Catharine Peers would sustain by reason of said road being opened and continued through said land, that Elisha Matkin and Zeno Westover two of the Comrs made a pretended report (endorsed upon the Copy of the order of the Court) to the County Court at its November Term for the year 1848, as follows "We the undersigned Commissioners have examined the lands of the estate of John D. Peers deceased through which the within named road passes, and have assessed to Catharine Peers, administratrix of said deceased, the sum of Sixty Dollars" which said pretended report was heard and considered, and by the Court rejected and the order whereby the said Commissioners were appointed was rescinded and set aside That during the time said pretended report was under the consideration of the Court, the said Catharine Peers did present her Motion by which she moved the

court to order a warrant to issue, in her behalf, on the treasurer of St Francois County for the damages assed by the Comrs and that there was no further action thereon than the dismissal of the said pretended report as aforesaid. The Court further answering states that the land in the remonstrance referred to, though not described is, "a tract of 660 50/100 acres confirmed to John Capehart and known by its number of survey as 2065, in Township 36. N. in Ranges 5 & 6." and that where said road passes there is no im=
=provement nor inclosure.

The Court further answering state and show for Cause why the said pretended report of the said Zeno Westover and the said Elisha Mathin should not be received by the Court, and the damages assessed unto the said Catharine Peers as aforesaid be adjusted and paid out of the County Treasury, because the said pretended report is vague, uncertain and insufficient, amounts to, and in fact, is no report at all, It appears by it that said Commissioners did not review the proposed road previous to assessing the damages, as they were required to do by the Order of the Court, and by the law under which they undertook to act nor does it appear by their said pretended report, that the damages they apessed were sustained by reason of said road being opened and continued through the said land. It does not show over what particular lands of the estate of said deceased nor over how much thereof said road runs. Commissioners state that they examined the lands of the estate of the said John C Peers and through which said road passes, and apessed the damage to sixty dollars, this your respondents believed to be insufficient, as it not only showed that they had failed to comply with the requisitions of the law and the order of the Court, but it showed to your respondent that said Comrs had mistaken their duties under the law and the Order of the Court, as also the nature of the Griev=
=ances specified ~~and~~ and presented by the said Catharine Peers

said Comrs had evidently not noticed nor regarded, this your respondent believed to be the case, as the damage assessed is excessive and greatly beyond that actually sustained. of this your respondent was fully convinced when the said pretended report was viewed and considered in connection with other facts before the Court, to which your respondent here beg leave to refer your honor, your respondent is advised and state the fact to be that said road runs nearly along the line dividing said tract of land from that of Richard Murphy, for part of the distance, thence passes across an unimproved and uninclosed corner of the tract of land of said Catharine Peers, the distance across being very short, and not interfering with any inclo= =sure or improvements and that said road will not take more than one acre and $\frac{50}{100}$ in its passage over said land. your respondent further show that said pretended report was made by a bare majority of the Comrs Zeno Westover and Elisha Mathin, that said Mathin was the assessor of St Francois County for the year 1847, and assessed the said tract of land together with other lands in the aggregate to the sum of $2.65 per acre for the year 1848, to the sum of $2.65 per acre, and for the year 1849, since the passage of said road, at $2.65 &c. all of which will fully appear by reference to the tax books for those years,

Your respondent further answer and show as additional cause, that at the August term of said Court for the year 1847 when commissioners were appointed to lay out and marke the proposed road, and make a report of their proceedings to the Court, the 13th section of the first article of said act concerning roads and highways, was repealed, see Session acts 1846 & 1847, p. 127, (though unknown to your respondent) that under the law as it then stood when the Comrs had viewed and marked out the projected rout, their duties were performed and their powers ceased, Consequently the report made by the commissioners appointed to view and locate

said road, and the statement appended thereto, that Leonard Hopman refused to relinquish the right of way, was without law, irregular and void for the law did not require them to report nor empower them to take a relinquishment of the right of way of the owners of the land over which said County road might run, and that the Order of the Court at the February term for the year 1848 under the same section authorizing a summons to issue to B. B. Peers as agent for the heirs of the estate of John D. Peers died was also void. Your respondent also insist that sections 16, 17, 18, 19, of the same article of said act, have their operation and force through and by the 13th section of the same article and were virtually repealed by the repeal of the latter; and that the appointment of the Commissioners under those sections at the August term of this Court for the year 1848 was void, and the action of such Comrs. was also void. Your respondents further show for Cause, that should not the 16, 17, 18, & 19 sections above mentioned and insisted to be repealed through and by repealing the 13th that then the sixteenth section requires the person seeking the remedy therein provided to appear, without summons and present to this Court a remonstrance setting forth his grievances within the time allowed for the return of a summons issued under the 13th. This your respondent insists and shows that said Catharine Peers neither by herself, nor by agent, did do, her appearance afterwards and the appointment of Comrs by the Court, under a mistaken view of the law, could not renew to her a right which the law by her own neglect had taken away, and the Court be compelled thereby to adopt the report.

For the foregoing reasons viewed in connexion with the nature of County roads your respondents believe it to be both unjust and illegal to receive the report and pay the damage assessed to the said Peers as aforesaid.

and having exercised their Judgment not to receive the report insist that it is final and Conclusive in the premises, and having answered all the matters and things by said writ required, you respondents must respectfully insist that this their answer may be taken and received as showing sufficient Cause for not receiving said report, and for still refusing to adjust and pay the damages aforesaid

Charles Myers
John Kennedy
Justices

And afterwards at the November Term of said Circuit Court was the following proceeding, to wit

Friday November 9th 1849.

Catharine Peers Admx of John D. Peers decd vs St Francois County Court } On Mandamus to St Francois County Court

The plaintiff by her attorney appears and files a Demurrer to the answer of the said County Court and also a replication

Which Demurrer is as follows To wit

Catharine Peers adv County of St Francois } Novr Term 1849

And the said Catharine, comes &c and says that the return of said County Court to the mandamus awarded and the record refered to in this Cause is insufficient in law to preclude the said Catharine from having her damages in this behalf

assessed by order of the County Court of St Francois County whereupon she prays Judgment and that a peremptory mandamus may be awarded to her in this behalf to the County Court aforesaid.

Johnson & P. Cole attys
for C. Peers

Saturday November 10th 1849.

Katharine Peers Admx of
John D. Peers deceased Petitioner } On Conditional mandamus
vs } On Demurrer
St Francois County Court

Now at this day the Petitioner aforesaid by her attorney appears and the answer of the said County Court, being filed and by the Court here examined It is considered by the Court here that the reasons matters and things stated in the said answer are not sufficient to preclude the said Katharine Peers from having her writ of Peremptory Mandamus against the said County Court It is therefore ordered by the Court here that a writ of Peremptory Mandamus be awarded against the said County Court commanding them to issue their warrant on the Treasurer of this County in favor of the said Katharine Peers for the amount of Damages assessed by the said Comrs

The following is a copy of the replication above mentioned filed with the Demurrer. To wit

Catharine Peers admx of
John D. Peers } Mandamus
vs
The St Francois County Court

and now at this day come the said Catharine Peers and for replication to the answer of Charles Myers & John Kennedy Justices. says that by the showing of the said Justices this replicant never was ordered to be summoned and therefore cannot be prejudiced for not appearing to a summons served on V. C Peers. This replicant in fact saith that at the time when the summons against Valentine C Peers was returnable to wit at the May Term 1848., the commissioners were permitted to amend their report and the court decided that the service on V. C. Peers was not legal and ordered summons to be issued to this replicant and refused to hear any objections to the opening of said road untill said summons was returned. The summons was issued by the clerk but never put in the Shffs hands. Nevertheless at the August Term this replicant did file her remonstrance and the court appointed commissioners who having been sworn according to law reported sixty dollars in favor of this replicant

As to the further cause shown by said justices that the damages are excessive this replicant saith that said damages are reasonable and she further saith that the assessment of the commissioners is final and conclusive from which no appeal lies. and creates a vested right in this replicant wherefore this replicant prays Judgment that a peremptory mandamus may issue to said County Court requiring them without delay to draw their warrant upon the County treasury in favor of this replicant for the damages assessed—

Catharine Peers adm^x
By Cole & Johnson attys

State of Missouri } ss
County of St Francois }

I John Cobb Clerk of the Circuit Court within and for the County and State aforesaid do hereby certify that the foregoing Twenty eight pages ~~contain~~ of writing contain a true and perfect transcript of the record and proceedings had in said Circuit Court in the cause wherein Catharine Fees is plaintiff and the County Court of St Francois County is defendant as fully as the same remains in my office

In testimony whereof I hereunto subscribe my name and affix the seal of said Court at office at Farmington this 25th day of September A D 1850

John Cobb Clerk
By Martin V. Harris
, D.C.

SEAL CIRCUIT COURT ST. FRANCOIS CO. MISSOURI

Index to Record & proceedings

	Page
" Petition for Mandamus Si Si	1
" Appointment of Com^rs to view a route for road	3
" Return of Sheriff on copy of order appointing Com^rs	4
" Oath of Commissioners	4
" Petition for new road	4
" Order granting Com^rs further time to report	6
" Order for a summons to issue to V. C. Pers agent	6
" Report of Commissioners	7
" Order to Com^rs to perfect their report	8
" Further report of Com^rs	9
" Summons for V. C. Pers.	9
" Acknowledgement of service	10
" Order for the Opening said Road	10
" Order appointing commissioners to assess damges	10
" Return of Sheriff on copy of said order	11
" Remonstrance to passage of Road	12
" Certificate of oath of appraisers	12
" Order continuing motion to reject report &c	13
" Report of Commissioners	13
" Motion and reasons to reject report of com^rs &c	14
" Order continuing motion to issue warrant	16
" Motion to issue warrant on Treasurer	16
" Order rejecting report of Com^rs setting aside order appointing	17
" Mandamus Si Si	18
" Answer of the County Court	21
" Filing Demurrer and replication	26
" Demurrer to answer of County Court	26
" Judgment on Demurrer	27
" Replication to answer of County Court	27
" Certificate of Record & proceedings	29

(20) Oct. T. 1850 92
St Francois County

vs

Catharine Peers

Error to St Francois

Filed 10th Octo. 1850
W. B. Starke Clk

St. Francois County
v. } Error to St. Francois Circuit Court.
Catharine Peers.

The facts in this case being substantially the same as in the case of the County v. Marks, (just decided) the judgment of the Circuit Court is, for the same reasons, affirmed.

James H. Birch.

Concurred in:

27

St Francois Co vs Peers

Opinion by
Judge Buck

Filed 29. March 1851
W. B. Starks clk

Katharine Peers pltff
vs
St Francois County Court

Petition for Mandamus
In Circuit Court of
St Francois County.

Statement of the Case

At the August term of the County Court of St Francois County, A.D. 1847, a certain Isaac B. Perkins and others presented a petition for a new County road, leading from Farmington in the same County, in the direction of Ste Genevieve. Commrs were appointed to locate the proposed road & make report according to law. The Commrs reported to the February Term of the County Court A.D. 1848. Showing that the route as located passed over "lands belonging to the estate of John D Peers" deceased and that B. C. Peers as agent for said estate made objection, whom the County Court ordered to be summoned to show cause at the ensuing (May) term, why the proposed route should not be opened. B. C. Peers acknowledged service of this summons. At the May term (1848) the Commrs who had reported to the previous term, came in court again, and obtained leave to amend their report by adding the name of another person over whose land the route passed. The road was ordered to be opened on the third day of the next term (August 1848) and on the day afterwards Katharine Peers the defendant in error, claiming under the Will of John D Peers dec^d presented her remonstrance against the road. Thereupon the Court appointed three Commrs to assess damages and make report. Two of these Commissioners reported to the November term of the County Court (1848) that they had "examined the lands" and assessed sixty dollars damages to the defendant in error. This report the County Court refused to receive.

The defendant in error then presented to the Circuit Court of St Francois County at its May term A.D. 1849. her petition for a Conditional Mandamus. A writ was awarded to which the County Court made return to the Nov. term of the Circuit Court 1849. The Causes shown in the answer were, in substance, that there was no law authorizing the assessment of damages to any one over whose land a County road may be located; or in case damages are allowed, the defendant in error

did not present her remonstrance in time; that the report of the Commissioners appointed to assess damages was insufficient because only two of the Comrs "examined the lands" instead of all three "reviewing the proposed route", as required by law; that the report does not show what kind of grievances were sustained, what particular land and how much thereof was taken by the route; that the damage is excessive; and the Comrs misconceived their duties

The defendant in error demurred and replied to the return at the same time. The Cause was heard on the demurrer which was sustained and a peremptory mandamus awarded. The County Court bring the Cause to the Supreme Court by writ of error.

J. G. Beal for plaintiff in error, insists.

The Circuit Court Committed error in sustaining the demurrer for the following reasons.

1st At the time the defendant presented her remonstrance there was no law giving to any one over whose land a County road may be located, damages for the passage of such road. The 13th Sec. of the first Article of the act Concerning "Roads and Highways" Statutes 1845, under which the most of the proceedings in this Cause were had, was repealed long before. See acts of 1846 & 7. p. 127. s. 1. And by implication the Secs. 16. 17. 18 & 19 of the first article of the act of 1845 were also repealed at the same time. There being no right of way taken; nor survey made; and the facility with which a County road may be changed or vacated, Clearly show that the Legislature designed to make the law for the establishing of County roads so as to suit the wants and necessities of every Community without subjecting the County to pay damages to all persons over whose lands a County road might pass. Statutes 1845. act Concerning roads & Highways, first article, This Construction being correct, the reports of both sets of Comrs and all the orders of the Court relative thereto are void

2nd But supposing the defendant in error to be entitled to have damages assessed for the passage of a County Road over her land, under Secs. 16.17.18.19 of the first article of the act above refered to, then it is contended that she did not present her remonstrance in the time required by Sec. 16. Under it she is required to present her remonstrance at the next term (which was May term) after it was ascertained that the Comrs had marked out the proposed road, that being the term to which a summons issued under the 13th would have been returnable. This she did not do by herself nor by her agent. ~~The damage must be assessed~~

3rd The County Court has the power to reject a report of Comrs appointed to assess damages on a County road whenever it shall be right and proper for the Court to do so. This is the tribunal to which report must be made, and if there is any thing wrong fraudulent, or improper, it is the duty of the Court to correct or reject it. The defent not being required to relinquish a right of way on the land, she can acquire no right to damages (unless given by law) until a proper report is made and received. The report of Comrs appointed to assess damages is not final and conclusive regardless of errors.

4 The report of the second set of Comrs was properly rejected for the following reasons.
1 The law requires all three Comrs to "review the the proposed route" before they assess damages. The report shows that only two of them "examined the lands of the estate of John & Peers" through which the road passed, and then they assess damages. It does not appear that they ever saw the proposed route. This was not in compliance of the law. Statutes 1845 Art. 1 Sec. 18.19. of the act before refered to. See record p. 13. for the report.
2 The report does not show what kind of grievances were sustained by the Aft, nor does it show as it should, that the objector sustained the damages by ~~Comrs considered what~~ reason of the road being opened & continued through her land.

were the ~~advantages to the land~~. See: 18. ib.
3 The report is too vague: It should have showed over what particular land the road passed, and how much was taken thereby.
4 The damages are excessive. It appears by the answer, admitted by the demurrer, that not more than one acre and an half, of uncultivated and uninclosed land, is taken by the passage of the road. One of the Comrs who makes report, acting as assessor of the County in the same year in which the damages are assessed, valued the same land at $2.65 per acre, and for the year following, for the same, acting under oath in every instance. The assessment under these Circumstances is excessive.
5 The Comrs misconceived their duties and their report was properly rejected. See record for the answer p.

J. H. Beal
Atty for plff in error

St Francois County
Court pltff in error
vs
Katherine Peers
Deft in error

Plaintiff's Brief

Katharine Peers
vs
St Francois County Court } Petition for Mandamus
In Circuit Court
St Francois County

Statement of the Case

At the August term of the County Court of St Francois County A.D. 1847. a certain Isaac B. Perkins and others presented a petition for a new County road leading from Farmington in the same County in the direction of St Genevieve. Comrs were appointed to locate the proposed road and make report according to law. They reported to the February term of the County Court 1848, showing that the route as located passed over "lands belonging to the estate of John D Peers" deceased and that T. C. Peers as agent for said estate made objection, whom the County Court ordered to be summoned to show cause at the ensuing (May) term why the proposed route should not be opened. T. C. Peers acknowledged service of this summons. At the May term the Comrs who had reported to the previous term, came in court again, asked and obtained leave to amend their report by adding the name of another person over whose land the route passed. The road was ordered to be opened on the third day of the next term (August 1848) and on the day afterwards Katharine Peers the defendant in error claiming under the will of John D Peers dec^d presented her remonstrance against the road. Thereupon the Court appointed three Comrs to assess damages and make report, two of whom reported to the Nov. term of the County Court (1848) that they had "examined the land" and assessed sixty dollars damages to the defendant in error. This report the County Court refused to receive

The defendant in error then presented to the Circuit Court of St Francois County at its May term AD. 1849. her petition for a Conditional mandamus. A writ was awarded to which the County Court made return to the Nov. term of the Circuit Court 1849. The causes shown in the answer for refusing to receive the report were, in substance, that there was no law authorizing the assessment of damages to any person over whose land

a County road may be located; or, in case damages are allowed, the defendant in error did not present her remonstrance in time; that the report of the Comrs appointed to appraise damages was insufficient, because only two of the Comrs "examined the lands" instead of all three "reviewing the proposed route" as required by law; that the report does not show what kind of grievances were sustained; what particular land and how much thereof was taken by the route; that the damage is excessive; and that the Commissioners misconceived their duties.

The defendant in error demurred and replied to the return at the same time. The cause was heard on the demurrer which was sustained and a peremptory mandamus awarded. The County Court bring the cause to the Supreme Court by writ of error.

S. G. Beal for plaintiff in error insists

The Circuit Court committed error in sustaining the demurrer for the following reasons

1st At the time the defendant presented her remonstrance there was no law giving to any one other whose land a County road may be located, damages for the passage of such road. The 13th section of the first article of the act concerning "Roads and Highways", Statutes 1845, under which the most of the proceedings in this cause were had, was repealed long before, See acts 1846-7 p. 124. Sec. 1. and by implication Secs 16, 17, 18, 19. of the first article of the same acts of 1845, were also repealed at the same time. There being no right of way taken, nor survey made; and the facility with which County roads may be changed or vacated, clearly show that the legislature designed to make the law for establishing County roads, so as to suit the wants and necessities of every community, without subjecting the County to pay damages to all persons over whose land a County road might pass. Statutes 1845. art. 1. Roads and Highways. This construction being correct the reports of both sets of Comrs and all orders of the

Court relative thereto, are void. The ~~[illegible]~~ doctrine that that Government has no right to take private property for public purposes, does not apply here.

2nd

But supposing the defendant in error to be entitled to damages for the passage of a County road over her land under Secs. 16. 17. 18, 19. of the first article of the act before referred to, then it is contended that She did not present her remonstrance in the time required by the 16th Section. Under it She is required to present her remonstrance at the next term (which was May term) after it was ascertained that the Commissioners had marked out the proposed road, that being the term to which a Summons issued under the 12th would have been returnable. This She did not do by herself, nor by her agent.

3rd

The County Court has the power to reject a report of Comrs to assess damages, whenever it shall appear right and proper to do so. This is the tribunal to which the report must be made, and if there is any thing wrong, fraudulent, or improper, it is the duty of the Court to correct or reject it. The defendant not being required to relinquish a right of way on the land, She can acquire no right to damages (unless given by law) until a proper report is made and received. The report of Commrs appointed to assess damages on County roads is not final and conclusive regardless of error

4th The report of the Second set of Comrs was properly rejected for the following reasons

1 The law requires all three Comrs to "review the proposed route" before they assess damages, the report shows that only two of them "examined the lands of the estate of John D Peers" through which the proposed road passed, and then they assess damages. It does not appear that they ever saw the proposed route.

This was not in Compliance with the law. Statutes 1845. Roads and Highways. a. 1. s. 18. 19.

2d The report does not show what kind of grievances were sustained by the defendant; nor does it show, as it should, that the objector sustained the damages by reason of the road being opened and continued through her land. ibd.

3 The report is too vague. It should show over what particular land the route passed and how much was taken thereby

4 The damages are excessive. It appears by the answer, admitted by the demurrer that not more than one acre and an half of uncultivated and unenclosed land is taken by the passage of the road. One of the Comrs who makes report, acting as assessor for the County in the same year in which the damages are assessed, valued the same land at $2.65 per acre. and for the year following for the same. acting under oath in every instance

5 The Comrs misconceived their duties and the report was properly rejected. See record for the answer.

J. G. Beal

atty for pltff in error

St Francois County
Court, plaintiff in Error

vs

Katharine Peers
Defendant in Error

Plaintiff's Brief

Katharine Peers
vs
St Francois County Court

Petition for Mandamus
In the Circuit Court of
St Francois County.

Statement of the Case

At the August term of the County Court of St Francois County A.D. 1847 a certain Isaac D Perkins and others presented a petition for a new County road, leading from Farmington in same County, in the direction of Ste Genevieve. Commrs were appointed to locate the proposed route and make report according to law. They reported to the February term of the County Court 1848, showing that the route as located passed over "lands belonging to the estate of John D Peers" decd and that A. C. Peers as agent for said estate made objection, whom the County Court ordered to be summoned to show cause at the ensuing (May) term why the proposed route should not be opened. A. C. Peers acknowledged service of this summons. At the May term (1848) the Commrs who had reported to the previous term came in Court again, asked and obtained leave to amend their report by adding the name of another person over whose land the route passed. The road was ordered to be opened on the third day of the next term (August 1848) and on the day afterwards Katharine Peers the defendant in error, claiming under the Will of John D Peers decd, presented her remonstrance against the road. Thereupon the Court appointed three Commrs to assess damages and make report, two of whom reported to the November term of the County Court (1848) that they had "examined the lands" and assessed Seaty dollars damages to the defendant in error. This report the County Court refused to receive.

The defendant in error then presented to the Circuit Court of St Francois County at its May term A.D. 1849, her petition for a conditional mandamus. A writ was awarded to which the County Court made return to the Nov. term of the Circuit Court 1849. The Causes shown in the answer were in substance, that, there was no law authorizing the assessment of damages to any one over whose land a county road may be located; or, in case damages are allowed, the defendant in error did not present

her remonstrance in time; that the report of the Comrs appointed to assess damages was insufficient, because only two of the Comrs "examined the lands", instead of all those "viewing the proposed route" as required by law; that the report does not show what kind of grievances were sustained; what particular land and how much thereof was taken by the route; that the damage is excessive and that the Commissioners misconceived their duties.

The defendant in error demurred and replied to the return at the same time. The cause was heard on the demurrer which was sustained and a peremptory Mandamus awarded. The County Court bring the cause to the Supreme Court by writ of error.

J. G. Beal for plaintiff in error insists)

The lower Court committed error in sustaining the demurrer for the following reasons

1st At the time the defendant presented her remonstrance, there was no law giving to any one over whose land a County Road may be located, damages for the passage of such road. The 13th Sec. of the first Article of the act concerning "Roads and Highways" Statutes 1845, under which the most of the proceedings in this cause were had, was repealed long before, see acts of 1846 & 7. p. 127. Sec 1. and by implication Secs. 16. 17. 18. & 19. of the first article of the same act of 1845 were also repealed at the same time. There being no right of way taken, nor survey made; and the facility with which a County road may be changed or vacated, clearly show that the Legislature designed to make the law, for establishing County roads, so as to suit the wants and necessities of every Community without subjecting the County to pay damages to all persons over whose lands a County road might pass. Statutes 1845. art. 1st of the act concerning "Roads & High ways". This Construction being correct, the reports of both sets of Comrs and all the orders of the Court relative thereto, are void.

2nd But supposing the Defendant in error to be entitled to damages for the passage of a County Road over her land under Secs. 16. 17. 18 & 19 of the first article of the act above referred to, then it is contended that she did not present her remonstrance in the time required by the 16th Section. Under it she is required to present her remonstrance at the next term (which was May term) after it was ascertained that the Comrs had marked out the proposed road, that being the time to which a Summons returnable issued under the 13th would have been returnable. This she did not do by herself nor by her agent.

3rd The County Court has the power to reject a report of Comrs appointed to assess damages on a County road whenever it shall be right and proper for the Court to do so. This is the tribunal to which report must be made and if there is any thing wrong, fraudulent, or improper, it is the duty of the Court to correct or reject it. The Defendant not being required to relinquish a right of way on the land, she can acquire no right to damages (unless given by law) until a proper report is made and received. The report of Comrs appointed to assess damages is not final and conclusive regardless of error.

4th The report of the second set of Comrs was properly rejected for the following reasons
1 The law requires all three Comrs to "review the proposed route" before they assess damages, - the report shows that only two of them "examined the lands of the estate of John D. Pers," through which the proposed road passed, and then they assess damage. It does not appear that they ever saw the proposed route. This was not in compliance with the law. Statutes 1845. Art. 1 Secs. 18. 19. of the act before referred to. See Record p. 13 for the report.
2 The report does not show what kind of grievances were sustained by the Deft. nor does it show,

as it should, that the objector sustained the damages by reason of the road being opened and continued through her land. See sec. 18. of same act.

3 The report is too vague. It should have shown over what particular land the road passed, and how much was taken thereby.

4 The damages are excessive. It appears by the answer, admitted by the demurrer, that not more than one acre and an half, of uncultivated and unenclosed land, is taken by the passage of the road, one of the Commissioners who makes report, acting as assessor of the County for the same year in which the damages are assessed, valued the same lands at $2.65 per acre, and for the year following for the same, acting under oath in every instance. The assessment under these circumstances is excessive.

5 The Comrs misconceived their duties and the report was properly rejected. See Record for the answer.

J W Beck
Atty for plff in Error

St Francois County
Court plaintiff in Error

vs

Nathaniel Peers
defendant in Error

Plaintiff's Brief

St Francis County Court } plaintiff in error defendant below
agt. } Mandamus
Catharine Peers. } defendant in error plaintiff below

Error to ~~Washington~~ St Francois Co.

Points & Authorities

1. The court did right in sustaining the demurrer to the answer of the county court. They showed no legal reason for not drawing their warrant on the county treasury for the sum assessed. The reviewers were sworn according to law, examined the lands thro' which the road ran and a majority reported $60.00 in favour of plaintiff. The law expressly permits a majority to assess the damages. Roads & Highways Art 1. Sec 18 & 19 p. 963. It was not necessary that the reviewers should show in their ~~report~~ all the reasons & considerations that operated on their minds in making up their opinion; they are simply required to ~~report~~ that they examined the land & how much they assess the plaintiff's damage Sec 19. The right of the remonstrant to adequate compensation became a vested right so soon as the road was established, & her right to a particular amount became complete so soon as the assessment was completed. Wilkerson v. Buchannan Co 12 Mo Rep 330 & the Authorities there cited. The assessment of the reviewers is conclusive both on the remonstrant & the county. There is no provision in the law which provides in the case of county roads, as in some special acts on roads, that the county court may set aside the assessment of the reviewers & appoint others in their stead. The right of the remonstrant being a vested right to a particular sum so soon as the assessment was completed, the county court couldn't destroy that right by refusing to receive the report. A breach of their duty couldn't destroy our rights.

2. It is true the legislature by act of Feby 1847 repealed the 13th Section of the 1st Art. on Roads & Highways Session Acts of '46-7 p. 127. It appears to have been unintentionally done. The member who

introduced the bill must have intended to repeal some other section & by mistake inserted the 13th. What object could the member have in view, by exonerating the commissioners appointed to lay out a road from reporting to the county court and the clerk from issuing summons to those who did not give their consent to the passage of the road through their land. This was every thing done by the repeal of the 13th section. At any rate the legislature restored & reenacted the 13th section by act approved 16th March 1849 Sessions acts p. 118. In construing this repealing act, it will be so interpreted as, if possible, not to affect common right. It is a fundamental provision of the constitution, that private property cannot be taken for public purposes without just compensation. Now the court will never presume that the legislature intended to violate the constitution. By extending the operation of the act repealing the 13th section to sections 16, 17, 18 19 as contended for by the county court, the court would, by implication, repeal the only law giving compensation to persons whose lands had been taken for public purposes; and thus nullify a plain provision of the constitution. The subsequent sections do not depend for their operation on the 13th, but may well stand by themselves. A court of justice will always restrict the operation of an unjust statute within as narrow bounds as possible. It was evidently unjust for the legislature to authorize the county court to lay out roads thro' the lands of their citizens & repeal the law which directed the clerk to give them notice of the fact to prevent them from showing on the one hand that the cutting out & keeping said road in repair would be an unreasonable burthen or on the other to come in & claim compensation. When he does get notice he can come in. He is not to be told, you are too late sir, when he was never notified. The county court say that we cannot claim compensation because the legislature have repealed the section directing the clerk to summon us to appear at the term after the commissioners report. The argument amounts to this; that because the law dont provide for notifying us to appear and shew cause, it takes away our rights. Are we to be turned away if hearing by chance how our

rights are affected, we voluntarily appear in the county court and ask for reviewers to assess our damages? But the county court say that if we are entitled to damages we did not appear at the term when the summons would have been returnable. They allege that the 13th section, which provides for the summons, is repealed & yet would bind us by one the provisions of the repealed section. This is blowing hot & cold out of the same mouth. They further say that the damages are excessive and in their brief refer to their answer for reasons & contend that our demurrer admits the truth of their answer. The demurrer admits all facts well pleaded & nothing more. It dont admit every irrelevant statement that a party may make. The question of damages was a matter for the reviewers alone & the county court are concluded by their assessment. The difference between us & the county court is this: the exhibits accompanying the petition shows that a road has been laid out, established, cut out & is now used through our land disinterested reviewers who were sworn to discharge their duty, examined the land thro which the road passed & said we were damaged $60,00, we claim this sum & the county court refuse to pay it. It is for this court to say whether private property can be taken for public purposes without compensation

Thos J. Johnson Atty for
Catherine Pegrs.

Appeal from St Francois Co.

St. Francois County Court
pltf in error

aft. } Mandamus

Catharine Peers.
dft. in error

Points & authorities by
Thos L Johnson Atty
for dft. in error.