

Jefferson County Circuit Court
Case Files - Civil

Box 21 Folder 42

May 1868

Vinyard, C.W.S.

vs.

Vinyard, Charles

Appeal

Defendant appealed from County Court
on opening of private road near town
of Victoria; bill of exceptions; appeal
to District Court

Mr Charles Wingard

Sir

I take notice that I shall

apply to the County Court on the 3^d Monday
in December next for Committal of
to lay out a private road, forming a lane
to the Victoria Road, which road runs
through a portion of your lands, where
there may attend if you think proper

Stephen Co
Nov 13 1864

C. H. S. Wingard

John Williams
Shriffu 50

Filed Feb 6th 1868,
E. D. Koney Cl,

cop

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of sented the within notice in Jefferson County Mo on the
23rd day of September 1867 by delivering to
Charles Kingman and true copy of this notice
John Williams Sheriff

000000

To the Honorable the County Court of Jefferson County Missouri;

The undersigned, Charles W. S. Vinyard, respectfully states that he is the owner of a Tract of Land, situate in Jefferson County Missouri, on the Joachim Creek in said County near Victoria, and described as United States Survey No. Eight hundred and ninety four, in ~~Township~~ Forty Range Four East, containing about one hundred and fifty six acres, and that no Public Road passes through said Land, - He therefore prays the Court to establish a Private ^{Road} extending from his Dwelling House on said Land, in a Western direction, along the Bluff, through a small Tract of Land belonging to Charles Vinyard, till it intersects with the Victoria and Hillsboro Road,

Charles Vinyard

The Commissioners to View, Measure ^{ordered} and Report ~~to~~ next Term —

Petition for road

cop

Filed Nov 18th 1867

V. H. McMullen & Co

Filed July 1868
E. H. Honey & Co,

State of Missouri
County of Jefferson

The following proceeding was had, to wit

The petition of C. W. S. Vinyard having been filed praying for a private road through land of Charles Vinyard and notice having been served on Charles Vinyard, the Court doth appoint William Shelton Richard Marsden and Finas Williams as commissioners to view the premises and mark out said road and assess the damages sustained by the owners of the land through which it will pass and order that they make report of their proceedings herein to this Court on the third Monday in January next.

A True Copy of the Order,

Witness my hand and the seal of said
Court here to affixed this 23rd day of Dec, 1864

Konnomulin 12

I received the within in Jefferson County Mo on
the 27th day of December 1867 by reading
the same to Wm Shelton the Sheriff Marsden
and by delivering to ~~the~~ James Williams
a true copy of this notice

John Williams Sheriff

Notice to
William Shelton
Richard Massden D
Ginas Williams

John Williams
Sheriff fee \$1.50

State of Missouri
County of Jefferson

William Shelton, Richard Marsden and Tinas Williams commissioners appointed to view a private road from C. W. Vinyard's house through land of Charles Vinyard, before entering on the discharge of their duties being by me duly sworn on their oath say that they will faithfully and impartially discharge the duties enjoined upon them by said appointment, according to law,

Sworn to and subscribed before me
this 28 day of Dec 1867

Wm. McMullin
J. H. H.

William Shelton

Tinas ^{his} Williams
mark

Richard Marsden

Oath of Commissioners

Filed Feb 6th 1868
E. H. Kiney Clk

Cop

Hillsboro Mo. Jan. 20th 1868,

To the Hon. County Court of Jefferson County Mo.

We, the undersigned Commissioners appointed by you to view and mark out a private road from the house of C. W. S. Vinyard in Central Township through the land of Charles Vinyard, respectfully report that after having been duly sworn as the law requires, we commenced the performance of our duties, by beginning about 150 yards ~~from~~ ^{westwardly} ~~eastwardly~~ from the house of ~~C. W. S.~~ ^{Charles S.} Vinyard and run in a North Easterly course up the hill by the old meeting house and along the hill side near a quarter of a mile and then down the hill to a stable belonging to C. W. S. Vinyard; we then viewed another road from C. W. S. Vinyard's house along the side of the hill and between the hill and the field of Charles Vinyard where an old road now runs to where it intersects the Hillsboro and Victoria road, at the new house of Charles Vinyard, this last route we consider the only practicable route for a road, and we assess the damages to the land of Charles Vinyard to the sum of nothing, we considered no damage done, all of which is respectfully submitted.

Wm. A. Mcmullen

William Shelton
Jmas ^{mark} Williams
Richard Marsden

Commissioners fees 2 days each @ 2,00

Report of Survey of
Private Road for C.W.
S. Vinyard

Approved and
The Road ordered
to be opened

Copies

Filed Jan. 20th 1868
Wm McMullen Clk

Filed Feb 6th 1868
E. H. Money Clk,

State of Missouri } In the County Court
County of Jefferson } January Term 1868

In matter of Petition of
Charles H. S. Vinyard for Private Road,

Charles Vinyard appears in open Court and enters his objections to establishing the Road of said Petitioner, according to the Report of William Shelton, Finas Williams, & Richard Menden, Commissioners, filed on this day, for the following reasons:

- 1- Said Report does not show said Commissioners made Affidavit as required by law, -
- 2- Nor that they marked out a Road twenty feet wide, so as to be convenient and do as little injury as practicable to other persons, -
- 3- Nor did said Viewers assess such damages, would accrue to said Charles Vinyard by the location of said Road, -
- 4- The Commissioners overlooked the fact that said Charles Vinyard has a field of about twenty six acres of ^{rich} bottom land, subject to overflow by the Cotton's Creek, & Joachims Creek, - and which field is now protected by a strong, substantial Stone fence on the South side of said field, - and that the opening & establishing of said Road would open a gap through said Stone fence, so that said Creek would run through and render said field of little or no value, -

5 - Said Commissioner, Report no damages would be done to ~~the~~ land of said Charles Vingard, whereas, in point of fact, the opening of said proposed Road, would cause immense damage to said bottom field, by leaving it in a condition to be overflowed whenever said Creek become high, - It would thus render said land nearly valueless - and would cause a damage of about five hundred dollars.

6 - The damage to ensue would therefore overbalance the utility of said Road, and therefore another location should be selected, ^{otherwise} he had

7 Because a good way might ^{otherwise} be had for the location of a private way from said C. W. S. Vingard's place to intersect the points mentioned in his petition without very little damage to said Charles Vingard.

Charles Vingard By
Green & Williams, Attys

C. W. S. Vinyard

Chas Vinyard

objections of Chas Vinyard
to report of Com^{rs}
establishing Private
Road.

Filed Dec 6th 1868
E. F. H. H. H. H. H.

Filed Jan, 20th 1868
~~Wm. M. M. M. M. M.~~

Green & Williams
for Chas Vinyard

In matter of a Petition of } Charles W. S. Vinyard, for a
Private Road, }
In the County }
County Court }
of Jefferson County }
January Term 1868 }

Now at this day Comes Charles Vinyard, and asks leave, before judgment is entered on the record, establishing the road asked for by said Charles W. S. Vinyard, to file amended objections thereto, - and presents the following objections as explanatory of his objections made, and on which evidence was heard:

1. That there is no necessity for the Road described in the Report of said Commissioners, - and that therefore the application of said Petitioner for said right of way, or Private road over the land of said Charles Vinyard, should be rejected.

} A. Green & J. J. Williams
Attorneys for Charles
Vinyard,

In County Court
of Jefferson County

C. M. S. Virginia

vs,

C. Virginia

objections
of sd C. Virginia

Filed July 6th 1868.

E. F. Hines Cl

Filed Jan 23rd 1868
R. M. Mullins

235

C. W. S. Vinyard } In the County
 } Court of Jefferson
Charles Vinyard } County Missouri
 Application for Private
Road -

This affiant on oath says
that the application of Charles
Vinyard for an appeal in the
above entitled Cause is not made
for vexation or delay but because
this affiant believes that said
Appellant is aggrieved by the
Judgment of the Court -

Sworn to and
Subscribed before
me this 23rd day
of January 1868
Wm. Mullin

Charles Vinyard

Henry Frederick Ahlvers, Esq
Notary Public of Jeff January A Boon
Boon Boon Boon Boon Boon Boon
333333333334454

James F. Whitehead. All
All All All

Al C'est ainsi Doctor Elder
Doctor Elders of Big River
Tennsipp. Common Law dic-
tionary in metaphors
Illegal transactions transactions

Copied

Filed Aug 6 1868
G. A. Spring

affidavit for appeal
to the court

co. ch

deceased. Clerk

deceased. Clerk

Charles M. S. Vinyard } In the County Court of
Charles ^{vs.} Vinyard } Jefferson County, - January
Term 1868.

Me, Charles Vinyard as Principal and
C. H. Bissett and

as securities acknowledge ourselves indebted
to Charles M. S. Vinyard in the sum of one
hundred dollars, to be void upon this con-
dition. Whereas, Charles Vinyard, has ap-
pealed from the judgment of the County
Court of Jefferson County, Missouri, in an action
wherein Charles M. S. Vinyard is plaintiff in
an application for a private road, and Charles
Vinyard (as objector) is Defendant, - Now, if
on such appeal, the judgment of the County
Court be affirmed, or if, on the trial given in
the appellate court, judgment be given against the
appellant, and he shall satisfy such judgment, or
if his appeal shall be dismissed, and he shall pay the
judgment of the County Court, together with the costs
of the appeal, this recognizance shall be void.

Charles Vinyard
C. H. Bissett.

Vinyard
vs
Vinyard
Bond for Appeal

Appured

un 11111

Atto Jan. 24th 1868

Wm. Menallin

State of Missouri In the County Court
County of Jefferson Dec. 16th 1867.

The following proceeding was had, To wit:

The petition of C. W. S. Vinyard, having been filed praying for a private road through land of Charles Vinyard, and notice having been served on Charles Vinyard, the Court doth appoint William Shelton, Richard Marsden and Finas Williams as commissioners to view the premises, and mark out said road, and assess the damages sustained by the owners of the land through which it will pass, and order that they make report of their proceedings herein to this Court on the third Monday in January next.

On January 20th 1868, the following, To wit:

Went at this day come William Shelton, Richard Marsden and Finas Williams Commissioners appointed to view and mark out a private road from C. W. S. Vinyard's house through land of Charles Vinyard, and report that they have surveyed and located a road from the house of C. W. S. Vinyard along the hill side, and between the hill & Charles Vinyard's field to intersect the Hillston and Victoria Road at the new house of Charles Vinyard, which report is approved and the Commissioners discharged, and the road ordered to be opened and established as a private road.

Again at this day comes Charles Vinyard and files objections to the report of the Commissioners of Survey of a private road through his land, whereupon the Court doth rescind the order approving of said report, and ordering said

road to be opened, and the matter is continued until to
morrow.

January 21st 1868,

Charles Vinyard } On Objections filed to location of private road,
C. M. S. Vinyard } Continued until tomorrow.

January 23rd 1868,

Charles Vinyard } On objections to location of private road,
C. M. S. Vinyard } Now at this day comes the parties herein and
after hearing all and singular the evidence of witnesses and
argument of counsel, the Court doth overrule the objections and
approve the report of the Commissioners appointed to view
and locate the road, and order that the road be established, and
the right of way given, as located by the Commissioners provided
C. M. S. Vinyard will build a dump on each side of the
Rock fence of Charles Vinyard, and erect a gate on the
fence, the road to be 20 feet wide, and the Court enter
judgment for all costs in this case prior to filing of objections
against C. M. S. Vinyard and all subsequent costs against
Charles Vinyard.

Charles Vinyard } On objections to location of private Road,
C. M. S. Vinyard } Again at this day comes the plaintiff
and files amended objections by leave of the Court whereupon
the defendant moves to strike out the amended objections which
motion is sustained by the Court,

January 25th 1868,

Charles Vinyard }
C. M. S. Vinyard } Now at this day comes said

plaintiff and files his affidavit and bond for an appeal
to the Circuit Court which bond is approved and the appeal
granted.

I, J. N. McMullin Clerk of the
County Court within and for the County of
Jefferson aforesaid, hereby certify that the above
and foregoing is a full, true and correct Transcript
of the proceedings had in the above entitled cause as
the same remains of Record in my office,

Witness my hand and the Seal of said
Court hereunto affixed, this fifth
day of February A.D., 1868,

J. N. McMullin Clerk

6/11

Manuscript

L. H. H. H. H.

to Mr. H. H. H.

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Dr. H. H. H.

& H. H. H.

COUNTY OF JEFFERSON.

The State of Missouri,

To

James H. Smith *vs* *John Smith*

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the *12th day of May 1868* at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

Wm. H. Vandenberg is

Plaintiff, and

Charles Vandenberg is

Defendant, on the part of

Defendant

and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereto affixed, at office, this *9th* day of *April*, A. D. 1868.

Elias F. Honey

Clerk.

Per Charles D. Smith

SUBPENA.

TO

Jefferson Circuit Court

May, TERM, 1867.

Wm. S. Vinyard

vs
Charles Vinyard

For Deft

C. H. Swett +

Sol. Progers +

Wm. Kendrickson

I served the within in Jefferson County the 23rd day of April 1868 on Charles H. Swett
Darius Swygien and Wm. Kendrickson
by leaving the same to each of them

Wm. McKinnis Clerk

COUNTY OF JEFFERSON.

The State of Missouri,

To William Shetter, Edmund Williams,
Richard Handlen

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the 1st day of May next at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

is
Plaintiff, and Charles Vengard is

Defendant, on the part of Plaintiff

and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereto affixed, at office, this 21st day of April A. D. 1868

Elias F. Honey
Clerk.

SUBPŒNA.

TO

Jefferson Circuit Court

May TERM, 1868

C. W. S. Vinyard
vs
Charles Vinyard

For. Ref.
William Shetton +
Phonias Williams +
Richard Marsden +
Sheriff fee \$1.50

I served this sub in Jefferson County Mo
on the 8th day of Sept 1868 on Wm Shetton
Phonias Williams and Richard Marsden
by reading the same to each of them
J. W. Williams Sheriff

COUNTY OF JEFFERSON.

The State of Missouri,

To George Warensick, Henry J. Bates

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the 1st Monday of May next at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

to
Plaintiff, and Charles Dingard

Defendant, on the part of Plaintiff and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereto affixed, at office, this 21st day of April, . . . A. D. 1868.

Elias F. Honey
Clerk.

SUBPŒNA.

TO

Jefferson Circuit Court

May . . . TERM, 1868

C. W. S. Vinyard

vs
Charles Vinyard

for. Peff

George Haverstick
Henry P. Bates X

Sheriff fee \$1.00

I herewith certify that the within is a copy of the original of the
on the 9th day of May 1868 by reading the
same to H. J. Bates and George Haverstick

John M. Thomas Sheriff

COUNTY OF JEFFERSON,

The State of Missouri,

To

Wesley Owen,

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the 12th day of May 1868. at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein to Wm Denny and id

Plaintiff, and

Charles Denny and Son,

Defendant, on the part of

Defendant.

and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereto affixed, at office, this 9th day of May... A. D. 186...

Elias F. Honey Clerk.

SUBPÆNA.

TO
Jefferson Circuit Court

May TERM, 1868.

W. S. Viny and
vs
Charles Viny and

For Defendants
O. Dover.

Served 13
Sherriffes 50

Given this in the Northern County, Mo on the 11
th day of May 1868 on Oscar Dutton by
bearing the same to him

John Williams
Sherriff

The State of Missouri,

18 Henry

YOU ARE HEREBY COMMANDED, That setting aside all manner of excuse and delay, you

appear before our Circuit Court for the County aforesaid, on the March 10th

, at Hillsboro, then and there to testify, and the truth to say in a certain

matter of controversy, now depending in our said Court, wherein

Plaintiff and

overly, now bending in our said knee, wherein
 has living and co

Defendant, on the part of

Dear Mr

and hereyn you are in no wise to fail,

WITNESS, ~~SAYED~~ WILLIAM, Clerk of our said Court,

with the Seal thereof hereto affixed, at office, this

day of Mrs

A. D. 1865

Wm. H. Carey
New York.

Benjamin D.

SUBPENA.

TO

Jefferson Circuit Court

May Term, 1867

Vinard

vs

Vinard

For Duff

W. H. Hiney

Sever 13

Sherriff fee 50

I Certify the within and the foregoing to be true
the same to him

John Williams
Sherriff

C. W. S. Vinyard

C. Vinyard

Plffs instructions

1. ^{the} If it ~~appears~~ ^{believe} to the jury, from the evidence that there is no public road opened and used as such and established by law, passing through or touching the land of the plaintiff, then the plaintiff is entitled to a private way through the land of the defendant and the jury will so find.

Before the jury can find for the defendant on the ground that plaintiff's land joins the streets of Victoria, they must believe from the evidence that said streets are open public ^{roads} ~~ways~~ established by law for the use of the public

Plp Inst,

Plaintiffs Ins
Given

Vinward
vs
Vinward

Exhibit 4th
Report

The Report of the Commissioners
Appointed by the County
Court to view and mark out
the Road in question not being
Legally sufficient to authorize
the Establishment of said Road
according to Law ~~the plan~~
the verdict of the Jury must
be for the Defendant Charles
Vinyard

Green

At the very first the cause for the Plaintiffs
they will also state in their verdict whether
any facts are necessary if so how many
both of kind.

Refused

Charles H. d. Virginia, Plaintiff
vs.
Charles Virginia, - Defendant
In the Circuit
Court Jefferson
County,

The Defendant asks the Court to give
the following instructions to the jury;

1 - Before the jury can find for the Plaintiff
they must believe from the evidence that
the Plaintiff cannot get from his own land
to a fence high way without going
through the land of Defendant,

Alfred
Smith

Refused

Smith
Smith

Refused
Refused
Refused

Refused—

6 The Court—instructs the Jury
that the Petition in this Cause
of Plaintiff for the Establish-
ment of the Road in question
is insufficient—in Law to
authorize the Establishment of
said Road and the
Verdict of the Jury must be
for the Defendant—Charles
Vineyard

8 - The Certified Plat of the Town of
Victoria, read in evidence showing
that ^{the} Streets and Alleys of said Town
have been dedicated to public use,
- and if the Jury believe from the
evidence that said Streets and alleys
have been used as public high-
ways, ever since the recording of
said Plat, then these circumstances
are presumptive evidence that said
^{& Alleys} Streets are public highways.

Neither refused or given because not-
offered till Mills Counsel closed
his argument - J. H. Vail

Dilled May 1878
E. J. Finney

7 # As the Plat of the Town of Victoria
has been read in evidence, showing that
the Streets and Alleys of said Town have
been opened and dedicated to public use
as public high ways, by Henry B. Bell,
who made a plat of said Town, ⁺ acknow=
ledged the same and had the same
recorded, - and if the Jury believe
from the evidence that said Streets
and alleys have been used by the
public as public highways, ever
since the recording of said Plat,
then for the purposes of the case,
the Jury may infer from these
facts, - in the absence of testimony
to the contrary, that said Bell
was the owner of said Town
Property.

Referred

Plaintiffs' Examinations

4 The Court inquired the jury that before they can find a verdict for the defendant on the ground that the land of S. H. S. is being wrongfully taken up and that parties claiming same have laid out and located the defendant must show that the land included in his claim belongs to H. B. Pitt at the time the same was located.

Given

3rd If the Jury find from the
evidence that the Land of
C. W. S. Vinyard adjoins the Town
of Victoria and that Public
Streets have been Laid out through
Said Town of Victoria and
dedicated to public use, and that
a portion of Said Streets adjoin
the Land of said C. W. S. Vinyard
mentioned in his Petition for
a Road through Land of Charles
Vinyard, then in that event Said
Charles W. S. Vinyard is not entitled
to have a private way established
through the Land of Charles Vinyard
and the Jury should find for
the Defendant Charles Vinyard

④ 344-5 Washington
GIVEN

Refused

2- The Plaintiff cannot have a right of way through the lands of Defendant as a mere matter of convenience, - it must be by a matter of necessity.

8- All the testimony introduced, tending to show that the road as marked out and reported by the Commissioners is, ^{plaintiff} the most practicable and convenient, to, but not absolutely necessary to enable Plaintiff to get from his own Land to some public highway, is excluded,

Living and W^o Living and

13th The Jury find for the Plaintiff, & W^o Living and
the right of way to the road so located by the Commissioners,
appointed by the County Court, & the said Plaintiff
to erect a substantial gate on the top of the back fence
of Defendant and build or make a fill the width of
road and as high as the fence at said gate
also a gate at the other fence of said Defendant
said gates to be where the road crosses the fences of
Defendant

Michael McNamee

foreman

Vingard
vs
Vingard
Verdict

Dated May 18 1868
O. F. Honey

C. W. S. Benjard — In the Jefferson
Charles Benjard — Circuit Court

Defendant moves the Court to
set the verdict aside and grant a new
Trial in this Cause for the following reasons
To-wit

1st Because the Court permitted the
plaintiff introduce in competent and
illegal Evidence against the objections of
Defendant-

2nd Because the Court Erred in permitting
plaintiff to make objections to the
Recorded plat of Victoria as evidence
after the same had been admitted by the
Court at the instance of Defendant before
Defendant closed his Testimony
Notwithstanding said Recorded Plat
was received in Evidence when offered by
Defendant without objections on the
part of plaintiff which objections the
Court permitted plaintiff to make after
Counsel for Defendant had commenced
their argument of the Cause to the Jury

3rd Because the Court Erred in ~~allowing~~
refusing to give instructions nos. 1. 2.

4. 6. 7 & 8 asked by Defendant—

4th Because the Court Erred in giving instruction no. 4 asked by Plaintiff against the objections of Defendant

Firstly; because said instruction is against the Law. Secondly; Because said instruction was improperly given against Defendant's objections, ~~after Defendant had had notice of the plat~~ of Victoria having been received in evidence without objections when offered by Defendant

5th Because the Court Erred in refusing to give or refuse instruction no. 8 prayed by Defendant on the ground that that it was not asked till after the commencement of argument of counsel to jury, when in fact the Court gave instruction no. 4 asked by Plaintiff after the argument of counsel had been commenced and against the objections of Defendant

Green & Wilkins
Attys. for Defendant

C. W. S. Binyard

Chas. Binyard

Motion new trial

Dated May 15-98
E. J. Honey

to W. Kingard } Do the Jefferson
Charles Kingard } Circuit Court

Defendant moves the Court to arrest
the Judgment in this cause and
to vacate the order establishing
the Road in question over Lands
of Defendant-

1st Because the Petition of Plaintiff
presented to the County Court of said
County of Jefferson for the establishing
of a private way as described
and prayed for in said Petition
and for the appointment of Commis-
sioners to view and mark out the
Road prayed for and upon
which said Court acted to appoint
said Commissioners and to establish
said private Road over Land
of Defendant, is wholly insufficient
in Law to authorize said County
Court to appoint ~~such~~ such Comm-
issioners or to make an order to
establish said Road and to order
the same to be opened and is not
sufficient to sustain & support the
Judgment and order of this Court to

Establish said Road or to affirm the judgment
of the said County Court—

2nd Because The Report of the
Commissioners appointed by
the County Court of said County of
Jefferson to view and mark out
a private way or Road over
Land of Defendant as described
or mentioned in said pretended
petition and pretended Report
and upon which said County Court
acted to Establish said private
Road ~~and upon which this Court~~
~~acts to~~ over Land of Defendant
is wholly insufficient in Land
to authorize this Court to Render
~~its~~ judgment to Establish to
Establish said private Road
or to support such judgment or
order Establishing a private
Road over Defendants Land or to
Support the judgment of this Court to affirm the judgment
or order of the said County Court

Green & Williams
Attys. for Defendants

C. W. S. King and
per
Chas. King and

Motion in arrest
of Judgment

Filed May 13th 1868
E. D. Honey A

~~Honors to Railroad~~

Vingano }
vs
Vingano, 1

Indgt for Deft.

appealed to Dist Ct.

May Term 1868.

Fee Bill,

RW McClure 5 orders, \$1.75 3 subs \$1.75 files 40^c Indgt 25^c Trans \$2.00 6.15

Honey Clerk 20 files - \$1.00 ~~1.00~~ appearing & entering & deliv. cop, 1⁰⁰ 2.00
ent verdict 35^c Indgt 50^c ords 20^c 2 motions @ 20^c - 40 2 rules 40 6.85
affs for appeal, 15^c dock 16^c Bonds 50 Bill & 35^c ent appeal 35 1.45
10 writs, 50^c 5 Shas. \$1.25 Indgt 20^c Indgt to Indgt 10^c 2.05
making cash, 50^c Fee Bill 485 \$1.50 cert to Plat, 50^c 2.50
making cap of plat, & of the Town of Victoria \$15.00 \$15.00
making Transcript, 9720 words & fig. @ 15^c per 100, \$14.08 14 08
Cert & Seal to Transcript 50 50
Postage, 30 30
39.73

John Williams Sheriff.

For Services in County Court, 5.20

" " " Dist. Court. Serv 10 Shas. 5.00

Summoning & Calling jury \$1. 12 call 60^c 1.60

11.80.

Due Oregon 4 days 16 miles \$5.28

Wendell 4 " 12 4.96

R. Myerson 4 " 16 5.28

James Williams 3 " 14 4.12

13 Mining 2 " 17 3.36

Wm. Kendrick 1 " 14 2.12

J. C. McKee 1 " 14 2.12

Wm. Bales 2 " 9 2.72

A. Stone 2 " 9 2.72

1.32 68

32.68
90.36

Charles W. S. Vingara, - Plaintiff } In the Circuit
 Against } Court of Jef=
 Charles Vingara, - Defendant } ferson County
 } Missouri, - May Term
 } 1868.

Be it remembered that on this 13th day of May 1868, the above entitled Cause coming on the petition of Plaintiff, and the objections thereto of Defendant as follows, (here copy same) on for trial, all and singular the matters at issue between the parties were submitted to a jury, and the Plaintiff to sustain the issues on his part, offered the following testimony, To wit, -

Finis Williams, - Who states, I was one of the Commissioners appointed to view the road in controversy. We examined the old road extending from Plaintiff's House along the bluff, about a quarter of a mile to where it intersects the Hillsboro and Victoria Road, this old road along the bluff is not a County road, we also examined a road on top of the bluff, but we Reported in favor of the Road running along ^{at} the foot of the bluff, - as we thought this the most practicable route, the road from Plaintiff's house up the Hill could be made at a good deal of expense,

There was a stone fence, extending from the point where the proposed New Road intersects the Hillsboro & Victoria ^{Road}, Eastward, to within a few yards of the Joachim creek. This fence was built

of very large stone, and looked as if it would resist the current of high waters, and tend to turn the current from the field into the Gracien Creek,

Mason, - States, I was one of the Commissioners appointed to view the Proposed Road, - We were only shown two routes, - one, up the hill from Plaintiff's House, and extending along about 60 yards above the bluff, in South Western direction to the Hillsboro & Victoria Road. This Road could not be made, except by considerable expense, - as the hill was very steep, - The other route, runs along ^{at} the foot of the bluff to the Hillsboro & Victoria Road. This road we considered ~~the~~ most practicable, and therefore Reported in favor of this route, (The Defendant objected to any testimony tending to show merely what was the most convenient and practicable route for a private road for Plaintiff, - on the ground that he could only have a private road as a matter of necessity, - not as a mere matter of convenience, - But, the Court overruled the objection, and ~~permitted~~ ^{admitted} the testimony, - and to which decision

the Defendant at the time accepted)

Charles W. S. Vinyard, - the Plaintiff, - States, that no public road passes through my land, but the Railroad, - That it is a quarter of a mile up the hill and along on top of the bluff to the Millsboro and Victoria road, - I could not make a road along this route, without a great deal of trouble & expense; as the hill from my house to ^{the} top of the bluff is very steep. I have driven an empty wagon up it several times. But in going over the hill I have to pass through Mr. Reed's land - that the wagon was nearly empty, - I can not get to the Millsboro road conveniently without going on the Defendant's land, - The new road would extend from my house along at the foot of the bluff to the Millsboro & Victoria Road, and over the land of Defendant. This route is the most convenient and practicable. But, I can get from my land at several places to Victoria, without going over any other

Yerson's land, - My land joins the Town of
Victoria on ~~the~~ ^{the West} side, - On the Plat of the Town
of Victoria, it appears that six or seven streets
across off join on my land. On the West
side of said Town, three streets ~~extend~~ up to
the Joachim Creek, and join my land, But
it is difficult to get to two of these streets, as
the bank of the creek is about eight feet
high, and would require a good deal of work
to grade it down, - and the ford is pretty
deep, though the creek ^{at} these ^{places} can be crossed
in an ordinary stage of water, - There is a
lane between my Land and Defendant's
Land, extending from the road passing my
House, to the Joachim Creek, & intersecting
a Street of Victoria, - but the ford of the Creek
is not very good, - though I frequently go
on horse or foot, ^{or by} ^{through} with a wagon.
This lane to Victoria, - In going to Victoria
this way, I do not go on any Yerson's land
but my own, - The Plat of the Town of Victoria
being shown the witness, he states, my Land
adjoins the Lots & Streets of that Town on
two sides, - the Western & Northern sides, - these
streets are not fenced up, but the most of
them are not traveled much, On a straight line
from my house to Victoria it is 250 yds. & around by the Thomas ^{road}, on the
N. of Victoria it is a mile or about a mile & from my house
to where the ~~off~~ road ^{applies} for, ^{intersects} the Hillbush road is 360 yds. but around
by the Thomas road through Victoria to the same ^{point} is one mile
& a half & I would to cross the creek twice,

The Defendant has a stone fence, extending from his New House, (within a few yards of the Cotter Creek, in an Eastern direction, to within about ten yards of the Joachim Creek, - Defendant had this fence nearly done when this Controversy commenced about the road, - but there was a gap down then, about 10 or 12 steps from his House, - This Defendant has built up since, & has also put his fence, that formerly ran along the foot of the bluff, on top of the bluff. -

William Shelton, - Who states, I was one of
the Commissioners to view the Road, - We
only looked at two routes, - one, from a point
about 200 yards from Plaintiff's House along
the foot of the bluff to the Willsboro &
Victoria Road, - and the other, up the Hill
from Plaintiff's House, & thence along on top
of the bluff, about 60 yards from it, to the
Willsboro & Victoria road. - The route below
the bluff, we considered the most convenient
& practicable and made our Report in favor
of this route, ^{which runs through Defendant's land the whole length} - I don't think a road along
this route takes any land of Defendant of
much value, - Perhaps, he could plant a few
more rows of Corn near the bluff, by taking
away his fence & working up to the bluff. - The
shelving rocks along the bluff would be ^{of} some
use to Defendant, by having no road there, as
a shelter for his stock. But, we did not think
Defendant is damaged any by the proposed new
road,

Barzile Viney - I live in Victoria - have often
seen the Joachim Creek overflow the bottom
field of Defendaut, - but dont think the stone
fence he has built would be much protec-
tion against high water - the gap left in the
fence, within about ten yards of Defendauts
new house, near the Cotter Creek, I dont
think would cause high water to run
into his bottom field, as the water I think
never gets high enough to run in at that
place, - and if aid, it would run over
the stone in other places near the Joachim
Creek, before it would run in at the gap, -
The trails leading to Vineyards land on the West are
rough, cut up by sand bars & steep bluffs some 8
feet high - these trails are not traveled except by an
occasional footman or horseman. The trails
leading to the land on the North can be traveled
~~at~~ and are traveled some. Vineyard would
have to go one mile in order to get to Victoria on
the N. side of ~~Victoria~~ Town, that is to the
Horton house

W. P. Dates, - States that the Plaintiff has two ways to get to Victoria, - one, by the New Road reported by the Commissioners, and one, by going North to the Thomas Road and ^{then} crossing and going up the Grachin Creek, - Don't know that this is a public road, - it has been kept open and travelled for several years, - (The Plat of Victoria being shown witness) he states, I am familiar with this Plat of the Town of Victoria, By this there are some six or seven streets of said Town that join the Lands of Plaintiff. These streets are all open, though some of them but little travelled, then stunts are rough & when they cross the creek the ford is deep & the banks steep

George Harverstick, - I know of no public road that passes through Plaintiff's Land, - I am well acquainted with the roads in that neighborhood. From Plaintiff's land across the creek to intersect a street of Victoria, is a bad way for a road, - The creek is rather deep, but can be forded, - but the bank on the East side is about eight feet high, - would require considerable work to make the creek passable this way (The last statement of witness objected to by Defendant, as being both irrelevant and incompetent, - objection overruled, and Defendant excepts) From Plaintiff's house ^{to Defendant's} by way of Victoria is about one & a half miles, - It is a bad way from Plaintiff's house over the hill & along on top of the bluff to Willboro road, - From the Plaintiff's house to the Thomas road, is about 300 yards, - & from there to Victoria is about a mile, - This Thomas road is a regular travelled road that has been open for several years, - it is a pretty good road,

Plaintiff then offered in evidence the Report of the ^{to view said Road} Commissioners, to which the Defendant at the time objected, for the following reasons, - 1, Because the report does not state the course said new road would run, - nor, 2 - the beginning of the same with certainty, - 3 - It does not state the distance, - nor that the Commissioners marked out the same 20 feet wide, - nor 4 - on whose land it is located, - nor does the re =

not conform to the petition, - and is in other respects too indefinite to authorize the County Court to establish said road. But, the Court overruled the objection, and permitted the Report of said Commissioners to be read in evidence, as follows, (here copy report) To which decision of the Court in admitting said evidence, the Defendant at the time objected and excepted,

The Plaintiff here closed his testimony. The Defendant in support of his defence, introduced the following testimony, to wit, Asaor Dover, - who states, I have lived at Detroit for several years, - I have often seen the Joachim Creek high enough to overflow its banks, and run over the bottom fields of Defendant. - If the gap in the stone fence, near the house of Defendant, was left open, the water would run through the gap (when the bottom overflows,) and would damage the fields worse than if the stone ^{fence} ~~was~~ not there, - The stone fence of the Defendant is made of very large stone, & in high water, would be of great service in turning the current into the proper channel, - The new road proposed, along the foot of the bluff is the most convenient to Plaintiff. But Plaintiff has

a lane between him and Defendant, leading to the Joachim Creek. This lane leads to a street in Victoria, Plaintiff often ^{horseback or foot} travels it, - The Crossing of the Creek right opposite the lane is not very good, - but, by going a few yards up, it is a pretty good ford.

Defendant then offers in evidence a Plat of the Town of Victoria, in Jefferson County Missouri, which is laid off, ^{in evidence} and reads, as follows, (The Clerk will see Copy the Plat of said Town)

Oscar Dover, further says, I am well acquainted with the plat of this Town, - Three of its streets on the western side, extend to the Joachim Creek and join on the land of Plaintiff. Plaintiff's land also joins on the North side of the Town of Victoria, - and joins on some four or five streets of said Town, These streets are all open - Don't think any of them on either side are fenced up, - The most of these streets on the Northern side are traveled and used as public roads. Plaintiff's lands on the Northern side of said Town, adjoin his lands on the Western side,

Sullivan Frazier - I think a road could be made up the hill from Plaintiff's house, & extended along on top the bluff, to intersect the Hillsboro road, - but it would require a good deal of work to make the hill passable, - I think Defendant's stone fence would be of service to turn the ~~current~~ when the creek is high, into the main channel, - If the gap in the stone fence, near Defendant's house were left open, the water would run through when the bottom is overflowed, and do Defendant field's field more damage than if there was no fence there, - I think the water would run in at the gap before it would run over the fence, -

Charles H. Bissett, - States, I live at Victoria,
- have often seen the Joachim Creek overflow
the bottom fields of Plaintiff and Defendant, I
think the Stone fence built by Defendant from
his New House on the Bank of the Cotten Creek,
to the Joachim Creek, would be of much ser-
vice to prevent the water from flowing into
Defendant's field, in time of high water, - But,
if the gap ^{in said fence} at Defendant's new House, where
the proposed road would pass through, be left
open, I think in time of high water, it would
cause considerable damage to Defendant's
field, - by the waters rushing through said
gap.

There are several Public Streets in the Town
of Victoria that go in on Plaintiff's land, - Three
on the western side of said Town, & five or six
on the Northern side, None of these streets are
fenced up, and they are all used as Public
roads, though some of them are not travelled
much, & there is no County or established road
leading from the terminus of the street ^{or roadway} away
from Victoria going northward, but
these streets running southward into the
central part of Victoria strike into the
Hillsboro and Victoria Public Road

Charles Vinyard, - the Defendant, - States, I built a Stone fence, from my New House to the Joachin Creek, to turn the water into the main Channel, when the bottom is overflowed, - If the gap in this fence, where the New proposed road, Comes through the fence, be left open, the water would run into my field and do me great damage. The New ^{proposed} road along the foot of the bluff, would do me considerable injury, as the shelving rocks on the bluff affords a good shelter for my stock, & I prefer to have my fence on top of the bluff. - The Plaintiff can go from his House into the Thomas road, and from that to Victoria, I don't know whether this is a County road, but it has been used as a public road for several years, it's a very good road. - The Plaintiff has a lane on his land between my bottom field and his, - which he often travels in going to Victoria, it strikes the Joachin Creek opposite a Street of Victoria, - & by going a little up the Creek the Crossing is pretty good, - There are three streets of Victoria on the West side that join Plaintiff's land, & five or six streets on the North side of that Town, that join his land. The Plat of said Town here in Court, shows how these streets run & join Plaintiff's land on two sides of the Town, - These streets are open and used as public highways.

The Defendant here closed his evidence in the case, - and the above and foregoing being all the evidence introduced by the Parties in said cause, the Plaintiff asked the following instructions, numbered one, two, and three, and which were given by the Court to the jury, and are as follows, (the Clerk will here copy same,) To the giving of said instructions the Defendant at the time objected and accepted. The Defendant then asked the Court to give to the Jury the following instructions, numbered, one, two, three, four, five, six, and seven, and which are as follows, to wit, (here copy the Defendants said instructions) But the Court gave only instructions, No. three, and five, - and refused to give instructions number one, two, four, six, and seven, - and to the decision of the Court in refusing said instructions, the Defendant there and there accepted.

At the close of the argument of one of the Counsel for Defendant, the Plaintiff asked and the Court gave to the Jury Plaintiff's instruction number four, - (here copy same No. 4) - to the giving of which instruction the Defendant at the time objected and accepted, - The Defendant afterwards ~~then~~ asked instruction number eight, - which is as follows, (here copy same) But the Court refused to pass upon this instruction, on the ground that the argument had closed, - to which decision of the Court, the Defendant at the time accepted,

After the ~~commencement~~^{of the trial} by Defendant's Counsel, the Plaintiff objected for the first time, objecting to the Plat of Bratton being used in evidence (although it had been used in evidence without objection - and Defendant's Counsel had expressly stated it would be considered in evidence, & Plaintiff made no objection, and the Court had decided that it be considered in evidence, But, the Court permitted Plaintiff to make his objection to said Plat,

And afterwards overruled the objection, and permitted said recorded Plat to be used in evidence,

The Jury returned into Court the following verdict, (here copy same)

The Court thereupon entered judgment for Plaintiff as follows, (here copy judgment,)

The Defendant then, on the 13th day of May 1868, filed his motion to set aside the verdict and grant a new trial for the reasons stated in said motion, and which is as follows (here copy said motion,) But the Court overruled Defendant's motion and refused to grant a new trial, - To which decision of the Court in refusing to grant a new trial & in overruling said motion, the Defendant then and there accepted,

The Defendant then on the 13th day of May 1868, filed his motion to arrest the judgment in said Cause, for the reasons stated in said motion, - and which motion is as follows, to wit (here copy motion in arrest)

But the Court refused to arrest the judgment and overruled said motion, and to which decision

of the Court in overruling said motion in arrest,
the Defendant at the time excepted. And the
Defendant now prays that this his Bill of Ex-
ceptions may be signed, signed, sealed, and made
a part of the record in said Cause, and which
is accordingly done.

J. W. Ad. Judge. Seal

In Circuit Court
Jefferson County

Chas. W. S. Vinyard

^{B.}
Charles Vinyard

Bill of
Exceptions

Filed June 3rd 1868

Elias & Honeywell

C. W. S. Vinyard } In the Circuit
vs } Court of
Charles Vinyard } Jefferson
County - Missouri

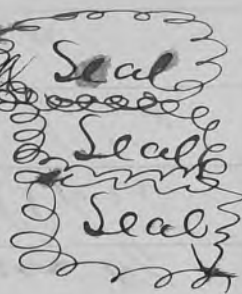
We Charles Vinyard as Principal
and ~~Three hundred Dollars~~ as
Security - acknowledge our selves to
owe and stand indebted unto
Charles W. S. Vinyard in the sum of
Three hundred Dollars
for the payment of which we bind
our selves our heirs Executors and
Administrators signed with our
names and sealed by us at Hillsboro
this 23rd day of May 1868.

The conditions of this Bond
are such that whereas Charles
Vinyard has appealed from the
Judgment of the Circuit Court
of Jefferson County Missouri in
a Case in which C. W. S. Vinyard
was Plaintiff and Charles Vinyard
was Defendant which was for the
purpose of establishing a Private
Road over Lands of said Charles
Vinyard Defendant now if said
Charles Vinyard Defendant shall
Prosecute his said Appeal with

Due Diligence to a decision in the
District Court for the second district
of Missouri and shall perform
such judgment as shall be given in
said District Court, or such
decision as the said District Court
may direct the Circuit Court to give
and if the judgment of the Circuit Court
or any part thereof be affirmed
and said Charles Quincy Defendant
shall comply with & perform the same
so far as it may be affirmed &
pay all damages and costs which
may be awarded in against the
appellant by the appellate court
then this Bond to be void otherwise
to remain in force

Charles Quincy

C. H. Binett



Vingard
vs
Vingard

Bond
for
Appeal
"

Filed and approved
by me in vacation
June 3rd 1868
E. A. Hiney Cl.
By D. D. Hiney Dep.

C. W. S. Vinyard } In the Circuit
us } Court of Jefferson
Charles Vinyard } County Missouri

This affiant Charles Vinyard on his oath says that this application for an appeal in the above entitled Cause on the part of Defendant is not made for vexation or delay but because this affiant believes that said Charles Vinyard the appellant is injured and aggrieved by the judgment of the Court

Charles Vinyard

Sworn to and
Subscribed before
me this 23rd day
of May 1868
Elias W. Honeycutt

Vinyard
^{vs}
Vinyard

affidavit for
appeal

Filed June 3rd 1868,
E. F. Honey, Clk,

C. W. A. Bryant } In the Circuit
vs } Court of
Charles Bryant } Jefferson County,
Missouri

Now at this day comes the
Defendant and moves
the Court to set aside and
vacate a judgment rendered
for costs against this
Defendant at the May Term
of this Court 1868 in the
above cause the same
being a case tried on
appeal from the County
Court of Jefferson County
for the establishment of
a private road for
the following reasons, viz,

1st Because said judgment is
erroneous upon its face
and void in that a judg-
ment for the costs of the
trial of the case was rendered
by the Court against Defendant
when no judgment was rendered
upon the merits of the cause.

Green & Williams
attys at law,

C. W. Benjamin
vs,
Chas. Benjamin

Motion

Filed May 21 1869
Elias H. Kory clk
By S. H. Ayers & Co

C. W. S. Vinyard Deft in error

Charles Vinyard Plff in error

This case was brought to this Court by writ of error.

It was a proceeding originally commenced in the Jefferson County Court, to establish a private road over the land of plff in error, of the deft in error C. W. S. Vinyard.

The County Court appointed Commissioners who made a report of their proceedings to the County Court, when objections were made to establishing the road by the plff in error, but the Court overruled the objections and made an order to establish the road. The defendant, the plff in error took an appeal to the Circuit Court of Jefferson County and the cause was tried de novo in the Circuit at the May term A D 1868.

It is scarcely necessary to say that the trial de novo was error in view of the decision of the Supreme Court in the case of Foster et al vs Dunklin, not yet reported and in the case of Bernard vs Ballaway County 28 Mo. 37. There the Court say that parties have their appeal to the Circuit Court and the Court must reverse or affirm on the record alone.

there being no provision for signing a bill of exceptions. It can make no difference in this case, it being a proceeding to establish a private road, the same principle will apply as well to public or private roads. The Court below then ought to have reviewed the matter before them alone upon the record of the County Court, and if that record had shown a compliance with the Statute, to affirm the same - if not in compliance therewith to have reversed the same and directed the County Court wherein to correct its errors as in the Case of Foster et al vs Dunklin, referred to. The Supreme Court notwithstanding the Court below went into a trial of the Cause de novo, after declaring the error of the Circuit Court in doing so, went into an inspection of the proceedings before the County Court to see if that record was sufficient for them to support the same and passed their opinion upon the record of the County Court by an affirmance of their ~~proceeding~~ judgment - - So this Court will proceed in the same manner to inspect the record of the County Court to determine if the record of the County Court can be affirmed in said Cause. The Commissioners who were designated by the County Court to view & mark

out a private road from the house of
C. W. S. Vinyard, the defendant in error
through Charles Vinyard's land, plaintiff
in error, report in reference to the road
laid out as follows, "We then viewed
another road from C. W. S. Vinyard's
house along the side of the hill be-
tween the hill and the field ~~and~~
Charles Vinyard where an old road
now runs to where it intersects the Hills-
boro & Victoria Road at the new house
of Charles Vinyard - This last route
we consider the only practicable route
for a road and we assess the damages
to the land of Charles Vinyard at the sum
of nothing - We consider no damage done"
Signed by the Commissioners - - - -

This report was acted upon by the County
Court and a private road granted to defend-
ant in error upon the condition that he should
build dunnep & gates in adopting this report
and making the order allowing the road
without any compensation for damages
expressed an appreciative sense by the County
Court of the constitutional right that no
private property ought to be taken or ap-
plied to public use without just compen-
sation. In the case of Drake & Ferriss
27 Mo. 373, the Court say whilst the provisions
recognized the right of eminent domain
for the public use, there is nothing
which sanctions the doctrine that the

property of individuals may be taken for private use with or without compensation — Such a right would be hostile to the existence of private property.

If one individual could be compelled by law to transfer his property to another against his will, a great stimulus to the acquisition of wealth, which contributes so much to the prosperity of the State would be taken away. Hence the commentators on our form of government, whilst they acknowledge the right of eminent domain in the State for public use in its broadest terms, are unanimous in the opinion that private property cannot be taken for private use a difference of sentiment may arise as to the application of this principle, but none deny its existence — We do not intend to intimate an opinion hostile to the constitutionality of Chapter 51 General Statutes entitled of Private Roads. This Statute contemplates nothing more than the exercise of a right which existed without any Statute — a right of way of necessity, which every man enjoyed who owned lands surrounded by the lands of another.

Yet when the exercise of that right

is sought it must be done in strict compliance with the provisions of the Statute and any departure therefrom will be null & void - Is this case in compliance with the Statute?

The Law says, Chapin 51 Genl Stat 1865 page 289 - Sec 2 - Such assessors shall be sworn and shall view the premises and shall cause a road twenty feet wide to be marked out, so as to be convenient and to do as little injury as practicable to other persons & shall make a report to the County Court at its next term stating the points of beginning and ending and courses & distances of such road and shall also make an assessment of the damages sustained by each person through whose real estate such road passes and the Law of 1868 does not change the manner of proceeding.

Saying nothing about the insufficiency of the report of the Commissioners in not complying with the General Law or the Law of 1868, we do not hold that it was necessary for them to take the County Surveyor along to give courses & distances, but it was necessary that this report should designate

the location of the road with sufficient certainty. See Wyatt vs Thomas 29th Vol 23 - The main principle in this case is, admitting that all things else in the report of the Commissioners had been complied with and the fact is true as they allege that they assess the plaintiffs in error "damages" as the sum of nothing" We hold that this is of itself sufficient to nullify the proceedings of the County Court.

The point raised by the defendant in error that in order to entitle the plaintiff in error to the benefit of objections to any proceeding in the Court below, it must appear by the record that the objections were taken in the Court below - This position with reference to the case at bar is not true. The Supreme Court has repeatedly held that they will judicially notice errors apparent on the face of the record - See Jones vs Fuller 38th Mo 363 -

For error apparent upon the face of the record, the judgment will be reversed 38th Mo 489 - The judgment of the Circuit and County Court is reversed and remanded to the County Court to proceed therein as the law directs -

J. E. Leonard Judge

Judges Carter, Vail & Hewkins concur
(concur) Given Feb 23, 1870
L. Sargent CLK

State of Missouri }
Second Judicial District }

I, the undersigned
Clerk of the District Court within & for
said District, certify the above &
freely to be a true & perfect copy
of the opinion of the Court in the
above entitled Cause as fully as
the same remains on file in my office.

In testimony whereof within
my hand & official seal this
26th day of March 1870
Leonard Sargeant Clerk

Chas Vinyard

Chas^{rs} Vinyard

apinion of.

Jest Court

Feb. 27 1810

E. F. Honeycutt



being as being
We the Jury find for the Plaintiff the right
of way ~~is~~ as located by the Commissioners, He to
have 2 gates