

June 1868

Foster, Emory S.

Buck, H. A.

Wetmore, George P.

Reed, Silas, et al

vs.

Dunklin, James L.

Appeal

Defendant appealed from County Court on
opening of county road from Fereely to Sulphur
Springs; Supreme Court; survey map

**ALL OVERSIZED
DOCUMENTS FOR THIS
CASE ARE LOCATED IN:**

Oversized Box: 1

Folder: 8

Number of Items: 1

Notice.

Is hereby given
that a County Road between Sulphur
Springs & Brady, running on or as near
the first fractional section line west
of the Mississippi river as practicable,
will be applied for at the next meeting
of the County Court to be held at
Willsboro Jefferson County Mo.
to be held on the third Monday of May 1868

Henry C. Tipton

Sulphur Springs April 28th 1868

To the Hon. the County Court of Jefferson County Mo. —

We the undersigned householders residing on the route, respectfully petition, that the Hon County Court of Jefferson County Mo, will establish a county road from Pevy to Sulphur Springs in said County, running in a north and south direction between the two places and through lands belonging to the following persons, viz
Nicks Bungep, John O'Hallen ^{Mr. Allen}, John Bungep,
Silas Reed, G. P. Wetmore, L. W. Gey
Chas Peabody, G. W. Varnum, & a
Duck, Chas S. Paulkin, Isidor Busch
E. S. Haster, Geo Peggam, or Geo Blank-
lin, and My Catherine West.

We will state that the above road is a public necessity and of public utility, making the distance between Pevy and Sulphur Springs at least one mile less, than by the state road and on as good, or better ground. We are willing to do nearly all the work on the road and will only

state further that we believe there will
be no damages to pay as it is desira-
ble that the road shall as near as
practicable follow the first fractional
section line west of the Mississippi
River, and your petitioners will
ever pray &c.

W A Bush
George P. Wetmore
Silas Reed
E R Stuart
Charles Peabody
J. W. Gray

Ernest S. Foster
Ludwig Taira
Gen. Nelson
A. L. Foster
Jos. McCoy
Sidney Bush
W B Rupard
Wm Sterrett
John Randall
Wm. T. T. T.
E. T. T.
Severin Ruf
John A. Kellner
John Koch

Petition for Road
from Sulphur Springs to
Levell

Wm May 28th 1868
Wm McMillan & Co

State of Missouri
County of Jefferson

In the County Court
May 18th 1868

The following proceeding was had, to wit,

On a petition of twenty or more citizens of Joachim and Little Rock Townships praying for a County Road from Pearch to Sulphur Springs (at the expense of the petitioners) and proof of notice of this presentment being made, to the Court, the Court doth order that Samuel Masden Road Commissioner of Jefferson County, proceed to Survey, mark out and locate said road as petitioned for, over the nearest and most practicable route that can be obtained not running through any persons enclosure without the consent of the owner, unless a good way can not otherwise be had, that he take the right of way, and in case the right of way can not be had, that he assess the damages to the land over which the right of way is refused and report his proceedings herein to this Court on the third Monday in June next & further order that he take with him the County Surveyor to Survey and make a plat of said road.

A True Copy of the Order
Witness my hand and the Seal of said Court
hereunto affixed this 21st day of May 1868
Wm. McMillin Clerk

Order to Survey Road
from Peenah to
Sulphur Springs

Copy for Commissioner

Filed June 22 1868,
E. D. Henney clerk

To the Honorable the County Court of Jefferson County Missouri,

The undersigned Road Commissioner for said County would respectfully set forth & Report, - That, in pursuance of an order of the County Court of said County, made at the May Term 1868 thereof, I proceeded to view & mark out, & survey a County Road leading from Sulphur Springs in said County to Pevely Springs, on the St. Louis & Iron Mountain Railroad, and did survey and mark out the same, to the width of Forty feet, between the points of beginning & ending as aforesaid, in pursuance of said order of Court, - locating the said Road on the most direct and suitable grounds, so as to do as little damage as practicable to the owners of lands, through which said road passes, - That said Road passes through several small strips of Land, near Sulphur Springs, in Section 32, in Township 42, of Range 6 East, owned respectively by John O'Fallon, the Estate of Gilbert Nettleton, William Bungeas, Mr. Allen, and Silas Reed, who refused to give the right of way, but I assessed the damages done to the lands of said persons, at nothing, believing the advantages of the Road more than equal the damages done to said lands, The road passes through lands owned by

the following persons, who relinquished the right of way through their lands respectively, to the extent of forty feet in width, and put their relinquishment in writing, which is herewith filed as part of this report, - To wit, W. A. Buck, G. W. Varnum, J. W. Gay & Isidor Bush, -

And the following persons owning lands through ^{which} said Road passes, To wit, James L. Dunklin, owning 40 acres in sec. 7, - Mr. Gilpin $56\frac{8}{100}$ acres in sec. 18, & Mrs. Catharine West $60\frac{44}{100}$ in the same section, who refuse to give the right of way for said Road through their lands respectively, and I as such Commissioners did therefore assess the damages done to said Lands by the location of said Road, & believing the advantages of the said Road more than equal the damages done to the lands of said James L. Dunklin, Mr. Gilpin & ~~Mrs. Catharine West~~, I assessed the dam-

& I assessed
in sur. 266, A

ages done to their ^{said} Lands respectively at \$15. dollars to Mrs. West, & \$15 to J. L. Dunklin for the part ^{of the} ~~nothing~~ - I caused said road to be

surveyed by Jerome B. Dover, who has made a profile & plat of the same, which is herewith filed marked exhibit A, and also the field notes thereto connected, as part of this Report,

All of which is respectfully submitted,

This June 13, 1868

J. H. Menden
Road Commr

Report of Survey of Road
from Leech to
Sulphur Springs

This report approved

Filed June 22nd 1868
E. P. Honey C,

Filed June 15th 1868
Wm. Mullin C

Know all men By these presents that I
~~G. M. Garrison~~ Do hereby Relinquish the Right
of way over or through my lands to Jefferson
County for the purpose of a Road or public high-
way 40 feet In width said lands Being a part of
the N.E. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ of Sec 6 T. 41. N of R
6 E. of 5th principal Meridian

Given under my hand and seal this 1st Day of
June AD 1868.

Attest ~~Maraden~~
Road Comr

~~G. M. Garrison~~ Seal

Know all men By these presents that I
J. W. Guy Do hereby Relinquish the Right
of way over or through my lands to Jefferson County
for the purpose of a Road or public highway 40
feet In width said land Being a part of the South
frac. $\frac{1}{2}$ of Sec 32. T. 42. N. range 6 E. of 5th P. M. also South $\frac{1}{2}$ of S.E.
frac $\frac{1}{4}$ Sec. 31 T. 42. Range 6. E. also part of N.W. frac. $\frac{1}{4}$ Sec 5. & T. 41 N. range 6. E.

Given under my hand and seal this 1st Day of
June AD 1868

Attest ~~Maraden~~
Road Comr

J. W. Guy Seal

Know all men By these presents that I
Do hereby Relinquish the
Right of way over or through my lands to
Jefferson County for the purpose of a Road
or public highway 40 feet in width Said lands
Being a part of

Given under my hand and seal this
June AD 1868
Attest

Day of



Know all men By these presents that I
Do hereby Relinquish the Right
of way over or through my lands to Jefferson
County for the purpose of a Road or public high-
way 40 feet in width Said lands Being a part of

Given under my hand and seal this
June AD 1868
Attest

Day of



Know all Men By these presents
that I Charles Peabody Do hereby Relinquish
the Right of way over or through my lands to
Jefferson County for the purpose of a Road or
public highway ^{forty feet in width} said lands Being a part of
N.W. frac. Quat Sec 5 Township 41 R 6 East

Given under my hand and seal this 1st Day
of June AD 1868
Attest ~~Mason~~ Charles Peabody (Seal)
Road Commr

Know all Men By these presents that
I George J. Wetmore Do hereby Relinquish the
Right of way over or through my lands to
Jefferson County for the purpose of a Road or
public highway 40 feet in width said lands
Being a part of Frac Sec 32 Township 42 Range
6 East

Given under my hand and seal this 1st Day
of June AD 1868
Attest ~~Mason~~ George J. Wetmore (Seal)
Road Commr

Know all men By these presents that
I Emory S. Foster Do hereby Relinquish the
Right of way over or through my lands to
Jefferson County for the purpose of a Road or
public highway 40 feet In width Said lands Being
a part of Section 8 Township 41, Range 6,

Given under my hand and Seal this 1 Day
of June AD 1868
Attest S. Mersden
Road Commissioner
Emory S. Foster Seal

Know all men By these presents that I
Emory S. Foster as trustee Do hereby Relinquish the
Right of way over or through ~~my~~ ^{the} lands ^{held by me as trustee for my} to Jefferson
County for the purpose of a Road or public high-
way 40 feet In width Said lands Being a part of
Section 8 Township 41 Range 6

Given under my hand and seal this 1 Day
of June AD 1868
Attest S. Mersden
Road Commissioner
Emory S. Foster Seal
and benefit of Issue & Heirs

Whereas all men by these presents that I

Do hereby Relinquish the Right of way

over or through my lands to Jefferson County

for the purpose of a Road or public highway 40 feet

in width said lands being a part of 1/4 section

of the S E quarter of Section 40 E in Township 41

Range 6 E, Also a part of 1/4 section 41 R. 6 E. S. 41

Given under my hand and seal this Day of

June 1st 1868

Attest My Hand and Seal
J. H. Smith
Local

E. S. Foster and others
Petitioners for a Road from
Penick to Sulphur Springs

James L. Dunklin et al.
parties through whose
Land said Road has been
located by the Court Commissioner

In the County Court
Jefferson County - Mo.
June 16th 1868

Now at this day comes James
L. Dunklin and moves the Court
to vacate and set aside the order
made on the 15th of June 1868

and approving the report of
the Commissioner and establishing
the Road ~~as~~ as a public Road
over Land of said Dunklin for
the following reasons, to wit:

1st Because said petition
does not show that it is signed
by twelve or more citizens of
the Township or Townships
through which the Road prayed
for would run,

2nd Because it does not appear from the Petition or Record of this Court that Three or more of the Petitioners for said Road live in the immediate neighborhood of said Road.

3rd Because said petition does not designate or name any two or more or less intermediate points on said proposed Road between the points designated for the beginning or ending of said Road.

4th Because no legal or sufficient notice has been given of the intention of ~~the~~ the Petitioners to apply for the establishment of said proposed Road.

5th Because said Commissioner has not taken the right of way of persons giving the same in the manner required by Law.

6th Because the said proposed Road being prayed for & attempted to be established at the Cost of the Petitioners this Court ~~can~~ improperly entered an order at this Adjourned Term of the Court establishing said Road & approving the Report of the Commissioner without first having determined according to Law the amount of Damage which ought to be assessed to said Dunklin.

7th Because this Court could not Legally establish said Road or approve said Report of the Commissioner at this Adjourned Term of this Court.

8th Because said proceedings are otherwise irregular & void because said Dunklin had no notice of the proceedings
J. J. Williams
Att. for Dunklin

Foster Et al

per
Dunklin Et al

Motion to vacate
order to establish
Road

This motion
overruled

Filed June 16th 1868

R. M. Mullins

To the Honorable The County
Court of Jefferson County
Missouri:

I now at this day
Come James L. Dunkle
and now here prays the
Court to be permitted by this
Court to file his objections in
this Court to the Establishment
of a Road over his Land
by this Court by virtue
of a Report filed by the
Road Commissioner
of Jefferson County Missouri
and approved by this
Court on the 15th day
of June 1868, and ~~also~~

~~and~~ First for the
Reason that he had no
notice of the fact that
the said petition would
be presented at that time or
at any other time or acted
on by this Court.

2nd for the reason that
said Road ought not to
be established at all,

3rd On account of the
Damage assessed by
the Commissioner being
insufficient

Jos. J. Williams
Att. for Dunklin

Foster St-al

no

Washington St-al

motion

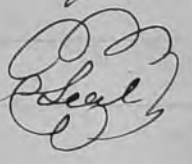
Since the ^{1st} of March
to be filed with
refused by the
Court

Know all men By these presents that I
Isidor Bush Do hereby relinquish the Right
of way over or through my lands to Jefferson
County for the purpose of a Road or public
highway 40 feet in width Said lands Being a
part of the North West Quarter Section (8) Eight and of the Northeast
Quarter Section Seven (7) in Township 41. Range II East.
Given under my hand and seal this Day of
June AD 1868

Attest W. B. Kelley

Isidor Bush 

Know all men By these presents that I
Do hereby Relinquish the Right of
way over or through my lands to Jefferson County
for the purpose of a Road or public highway 40 feet
in width Said lands Being a part of

Given under my hand and seal this Day of
June AD 1868
Attest 

Know all men By these presents that I
Do hereby Relinquish the Right of
way over or through my lands to Jefferson County
for the purpose of a Road or public highway
40 feet in width Said lands Being a part of

Given under my hand and seal this Day of
June AD 1868
Attest 

Jefferson County;

Emory S. Foster and others
petitioners for public Road

vs
James L. Dunklin

This affiant James
L. Dunklin a party through
whose Land the Road in
question has been laid out
on his oath says that this
application for an appeal
in the above entitled cause
from the judgment of the County
Court is not made for vexation
or delay but because this
affiant believes the appellant
is injured by the judgment of
the Court

Jos. L. Dunsdin

Sworn to and
Subscribed before this
19th June 1868
H. H. Mullen clerk

Jefferson County in the State of
Missouri on the petition of
E. S. Foster and others

James L. Dunklin
as principal and
as security acknowledge ourselves
indebted unto Jefferson County in the
~~the~~ State of Missouri in the
sum of Two Hundred Dollars
to be void upon the following
Conditions, viz, whereas James L.
Dunklin has appealed from the
Judgment of the County Court of
Jefferson County Missouri in an
action wherein Jefferson County upon
the petition of Emory S. Foster and
others for a Road from Powell
to Sulphur Springs in Jefferson
County Missouri was plaintiff
and James L. Dunklin and others
were Defendants now if on such
appeal the Judgment of the County
Court be affirmed or if on a Trial
come in the appellate Court Judgment
be given against the appellant and he
shall satisfy such Judgment.

so if his appeal shall be dismissed
 and he shall pay the judg-
 ment of the County Court
 together with the costs of the
 appeal then this Bond shall be
 void

Given under our hands and seals this 19th day of June 1868

J. L. Dunstun

Jas. C. Powers

Jos. J. Williams

Bond

Filed June 22nd 1868
 E. J. Harey Cl.

15 Cords to H. Harey
 6 South Cove
 1 Cords
 24 Cords

12
 6

Jefferson County on the petition of
Emory S. Foster and others
vs
James L. Dunklin.

Petition to Establish
County or public Road through Land
of James L. Dunklin and others;

To S. Marsden Road Commissioner
of Jefferson County Missouri
Take notice that I have
taken an Appeal from the
Judgment of the County Court establish-
ing a public Road over my
Land and Approving a report
made by you establishing such
Road and assessing my Damage
Caused by said Road at fifteen
Dollars which Report and its
Approval by said County Court and
order Establishing said Road by
said County Court were made on
the 15th day of June 1868

James L. Dunklin By
Jos. J. Williams, Atty.

I acknowledge notice of the written
notice and receive the necessity of
service of the same on me as
an officer

~~June~~ June 27th 1868

J. Menden

Post Office

Jefferson County
vs
James L. Dunklin

Notice of Appeal

Filed June 27th 1868
Wm McMullin

State of Missouri In the County Court of Jefferson
County of Jefferson Mo, the following proceedings
in reference to establishing a County Road from Sulphur Springs
to Peery were had, to wit,
(Petition)

Sulphur Springs April 28th 1868

To the Hon. the County Court of Jefferson County Mo.

We the undersigned householders residing on the route
respectfully petition that the Hon. County Court of Jefferson County
Mo. will establish a county road from Peery to Sulphur Springs
in said County running in a north and south direction between
the two places and through lands belonging to the following persons
viz, Messrs, Burgess, John Ballou, Mr. Allen, W. Burgess, Silas Reed,
G. P. Wetmore, S. W. Guy, Chas. Peabody, G. M. Varnum, H. A. Buck,
Chas. S. Rankin, Edwin Bush, E. S. Foster, Geo. Peagram, Jas. Oak-
lin and Mrs. Catharine West,

We will state that the above road, is a public necessity,
and of public utility, making the distance between Peery and
Sulphur Springs at least one mile less, than by the State Road
and on as good or better ground. We are willing to do nearly
all the work on the road and will only state further that
we believe there will be no damages to pay as it is desirable
that the road shall as near as practicable follow the first
fractional section line west of the Mississippi River, and your
petitioners will ever pray &c,

H. A. Buck,
George P. Wetmore
Silas Reed,
E. R. Stuart

Emory S. Foster
Ludwig Grider
Charles Peabody
S. W. Guy

George Nelson
Jas. McCoy
W. B. Rapard
John Randall
E. Ellis
John Miller

J. F. Foster,
Isador Bush
Wm. Stemitt.
Wm. Jeride
Severin Ruff
John Rich,

(Marked) Filed May 18th 1868

R. M. Mullin &

(Copy of Notice)
Notice

It hereby given that a County Road
between Sulphur Springs & Peerey running on or as near
the first fractional section line west of the Mississippi river
as practicable, will be applied for at the next meeting
of the County Court to be held at Hillston Jefferson
County Mo, on the third Monday of May 1868

(Signed)

Many Citizens

(Order of Court)

Monday May 26th In the County Court the following
was read and remains of Record to wit

On a petition of twenty or more citizens of Frachin
and Little Rock Townships praying for a County Road from Sulphur
Peerey to Sulphur Springs (at the expense of the petitioners) and proof
of value of the presentment being made to the Court, the Court doth order
that Samuel Masada, Road Commissioner of Jefferson County proceed
to survey, mark out and locate said road, as petitioned for over the
nearest and most practicable route that can be obtained, not running
through any persons enclosure without the consent of the owner unless a

good way can not otherwise be ~~had~~ had, that he take the right of way and in case the right of way can not be had, that he assess the damages to the land over which the right of way is refused and report his proceedings herein to this Court on the third Monday of June next. & further that he take with him the County Surveyor to survey and make a plat of said land,

Also Monday June 15th 1868 the following to wit,

Now at this day comes Samuel Masden Road Commissioner of Jefferson County Mo, and files his report of the survey of a county road from Sulphur Springs to Pierce as follows, running from Sulphur Springs through land of John O'Fallon & Est. Gilbert Keltleton, William Ringers Mr. Allen and Elias Red who refused to give the right of way but to whom no damages were assessed through land of H. A. Buck, W. Wamm, J. W. Gay, & Cadmus Bush who gave the right of way, through land of Mrs West and James S. Dunklin to whom he assessed the sum of fifteen dollars each as damages to their land and files a plat of said road and the relinquishment from parties giving the right of way which report is approved and the Court doth order that upon the petitioners paying into the County Treasury the amt. of damages assessed that said road be declared a county road and said petitioners here presenting a receipt from the Treasurer for the amount of damages assessed by the Commissioner, the Court doth order that the parties who refused the right of way be notified of the amount of damages assessed to their land,

Also Friday June 19th 1868, Invocation of Court the following entry was made by the Clerk to wit,

Now at this day comes James S. Dunklin and

file his affidavit and bond for an appeal from the decision
of the Court locating and establishing a County Road from Sulphur
Springs, to the Circuit Court of Jefferson County which
bond is approved and the appeal granted

R. McMullin clerk

State of Missouri
County of Jefferson I R. McMullin Clerk of the County Court
of Jefferson County Mo, hereby certify that the foregoing is a
correct & full copy of the petition and Notice for a Road from Sulphur
Springs to Peerey and all the proceedings of the Court relating
thereto,

Witness my hand and the seal of
Said Court hereunto affixed this 25th
day of June A.D. 1868

R. McMullin clerk

James L. Dunklin
vs
D. H. Carter et al

Transcript

R. McMullin clerk
3 orders 70 pgs. 400
2.50
3.60

Filed June 22nd 1868.

E. H. Honeycutt

Also Tuesday June 16th 1868

James D. Ouellet } On Motion to vacate order establishing Rice,
Esq. Deane et al. } And at this day comes the plaintiff and
files a motion to vacate and set aside the order of this Court
made on the 13th day of June 1868 affirming the report of
the Road Commissioner, and relating to a road from
Belpham Spring to Pond whereupon the Court after considering
said motion and hearing the argument of Ouellet and
Deane, do vacate said motion. Judge W. H. Morse dissenting
from the decision of the majority of the Court.

COUNTY OF JEFFERSON,

The State of Missouri,

To Samuel Menden & E. J. Proctor and
Jedediah Bush, et al, yeomen

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 17th day of November
A. D. 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,

Plaintiff, and *Samuel Menden* *Jedediah Bush*
E. J. Proctor

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 6th day of Nov A. D. 1868

Elias F. Honey
Clerk.

J. C. McNamee
Deputy

SUBPOENA.

To Jefferson Circuit Court.

Nov. Term, 1868

James L. Dunklin

vs.

E S Foster

or Deft.

Samuel Marsden

E S Foster, & Isidor Bush

Sheriff fee \$1.50

John Williams

I certify the within in & Belton County Mo on the
8th March 1868, ordered Henry et al to appear by attending
the same to each of them

John Williams
Sheriff by
Jacob Hager

COUNTY OF JEFFERSON.

The State of Missouri,

To *Unborn Meyer*.

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 *fourth* with

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

J. E. Marklin is
Plaintiff, and *E. S. Garton* et al. is

Defendant, on the part of *Steffens* 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 *19th* day of *Nov* A. D. 186*8*,

E. F. Honey
Clerk.

Per Chas. Haring Clerk

SUBPOENA.

To Jefferson Circuit Court.

Nov Term, 1868

J. L. Dunklin
vs

E. J. Foster

John W. Allen
Sheriff fee 50

Served the within in Jefferson County, Mo
on 28 August by executing the same
to him

John W. Allen
Sheriff

COUNTY OF JEFFERSON,

The State of Missouri,

To *Wm. L. Guy & Dr. Buck*

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 *17th* day of *November 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

Robertson vs. Drake
Plaintiff, and

vs.
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 *6th* day of *Nov.* A. D. 1868

Elias F. Honey
Clerk.

By John H. Jones

SUBPOENA.

To Jefferson Circuit Court.

Nov. Term, 1868

James L. Dunklin

vs
E. S. Foster

per Deft.

E. S. Foster + Dr Buck.

and G. P. Guy

John Williams

Sheriff fee \$1.00

Served the within in Jefferson County Mo on the
17th Day of September 1868 on G. P. Guy &
Dr Buck by executing the same to each of
them

John Williams
Sheriff

COUNTY OF JEFFERSON,

The State of Missouri,
To *Ben H. Johnson*

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 27th*

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

Plaintiff, and

Paul Dunklin vs
Edwin et al is

Defendant, on the part of

Edwin,

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 *18th* day of *Nov* A. D. 186*8*

Elias F. Honey Clerk.

By Chas. H. Honey

SUBPOENA.

To Jefferson Circuit Court.

November Term, 1868

James L. Dunklin
vs

E. S. Foster

for

Deft

G. J. Johnston

John Williams

Sheriff fee 50

I certify the within in Jefferson County Mo on
the 19th Day of November 1868 in G. J. Johnston
vs Meeting the same to him

John Williams

Sherriff

State of Missouri	} In the
Emory S. Foster	
Others Petitioners	
For Public Road	
vs	
James L. Dunklin	} Circuit
	} Court of
	} Jefferson
	} County
	} Missouri

Now at this day comes said James L. Dunklin and moves the Court to set aside the finding and judgment of the Court and Grant said Dunklin the Defendant a new Trial in the above cause for the following Reasons to wit,

1st Because the Court erred in not deciding the Cause for the said Defendant Dunklin and in rendering Judgment to Establish the Road as prayed for in the Petition of Petitioners

2nd Because the Judgment ought on the evidence to have been for said Dunklin that is to Reverse the order of the

County Court Establishing
the Road Prayed for & to
Dismiss the Case

3^d

Because the Court were in
refusing instructions asked
by said Dunklin the Defend-
ant

4th

Because the Court were in
permitting the petitioners to
introduce illegal Testimony
on the Trial of the Cause

Geo. J. Williams
Atty. for
James L. Dunklin

Yoster Med

in

Dunklin

motion for
new Med

Filed Nov 24 1868,
E A Honeyd

Emory S. Foster & Th. A. Buck & George P. Wetmore
& Silas Reed and others petitioners for a
public Road

vs
James L. Dunklin

In the Circuit Court of Jefferson
County Missouri

Be it remembered that at the November Term 1868
of the Circuit Court of the aforesaid County of
Jefferson the above entitled Cause being
docketed for trial in said Court upon the
Appeal of James L. Dunklin from the County
Court of said County said James L. Dunklin
filed ^{a motion} in said Court on the 17th day of November
1868 to reverse the order of the County Court
of said County establishing the Road prayed
for in the petition of petitioners over Lands
of said Dunklin as shown by the Report
of the Road Commissioner of said County filed
in said Cause & to dismiss the Cause which
motion is as follows To wit (Here copy said
motion filed Nov. 17th 1868) which motion
being submitted to the Court was by the Court over-
ruled to which action of the Court in overruling said
motion said Dunklin then & there accepted, —
and afterwards viz. on the 19th of November 1868
said Dunklin filed in said Court objections
to the Establishment of the Road prayed for in

the Petition of said Petitioners & described in the
Report of the Road Commissioner of said County
as filed in said Cause over his Land which
Said objections are as follows viz (Here copy
objections filed by Dunklin Nov. 19th 1868)
to the filing of these objections the Petitioners
at the time objected for the Reason that
they were not filed in the County Court &
that it was too late to file them in the Circuit
Court but the Court overruled the objection
& permitted Defendant to file said objections
to which the Petitioners at the time accepted,
whereupon neither party ^{both parties waiving their right to a jury} requiring a jury said Cause
was submitted to the Court for Trial, the Petitioners
then to maintain their right to the Establishment of the
Road prayed for in their Petition over Land of
Said Dunklin proved that Two notices were
put up in Joachim Township & Two in Little
Rock Township in said County of Jefferson ^{in which Townships said road is located},
20 days before the third Monday (the 26th day)
of May 1868 all of which said notices as
put up and proven being ^{each} as follows viz
(Here copy notice signed May Citizens
embraced in the Transcript of the
Clerk of the County Court filed in this Cause
in the office of the Clerk of the Circuit Court)
Said Petitioners here closed their Evidence
and Said James L. Dunklin to sustain his

introduced
 To the Establishment of said Road over his Land
 as witnesses John Inglebaen, Louis Yedie
 and James C. Power each of whom
 testified to the following facts, that from
 Pevly to Sulphur Springs is between four & five
 miles there is an old State Road running from
 Pevly to Sulphur Springs & on to St. Louis, it
 runs between Pevly & Sulphur Springs on
 an average from one and a half to two miles
 west of the Mississippi River, there are ten or
 twelve families known to witnesses living
 between Pevly & Sulphur Springs ~~East of the~~
 East of the old State Road and between
 it & the Mississippi to make a new Road
 from Pevly to Sulphur Springs commencing at
 Pevly & running East of the old State Road
 & between it & the Mississippi would accom-
 -odate the people living East of the old Road
 & between the two points, by it from Pevly
 to Sulphur Springs it would be three quarters
 or a mile nearer than by the old Road —
 The old State Road is a very good Road it &
 the new Road if Established would run on
 very much the same kind of ground,
 that such new Road is not necessary
 except for the people living East of it & between
 it & the Mississippi & between Pevly &
 Sulphur Springs — James C. Power

Stated further in his Evidence that he
Considered the old State Road a better
Road than could be conveniently made
East of it and between it & the Mississippi
that a new Road was not necessary from
Pruey to Sulphur Springs & except for people
living East of the old Road and that
most of them have private Roads leading
from their places out into the old State
Road but that he does not know whether
these private Roads are Established by
Law or not. Pruey is about one mile
West of the Mississippi River. Sulphur
Springs is on the Mississippi ^{that} the old
State Road from Pruey to Sulphur
Springs runs ~~runs~~ ^{from} a mile to a mile
and a half West of the Mississippi
that he has not been in the scope of
Country through ^{which} the new Road would
run for three or four years

James L. Dunklin sworn as a witness
for Defendant says he considered the old
Road a better Road than can be made
East of it between it and the Mississippi
that the old State Road Leading from
Peru to Sulphur Springs and on to St.
Louis is the oldest Established Public
Road in the Country, that for people
passing from Peru to Sulphur Springs
it is the best route that can be got that
his Land in Sec. 7 through which the
new Road would pass is worth
Eighty Dollars per acre, that his Land
in U. S. Survey No. 266 through which it
would pass is worth Two hundred and
fifty Dollars per acre, that in running
on his Land in Sec. 7 the new Road would
run down a branch which he desires to
fence in for stock water and deprive him
of the use of it, that he does not want
the Road on his Land that no notice
in writing was ever served on him by
any person that any application
would be made to any Court to condemn
his Land for the proposed new Road
or to appear & show Cause why such
if any he had why such Road
should not be located on his Land

~~James L. Dunklin the Defendant then read in evidence in the cause the petition for the establishment of the road over his land which petition is in words and figures as follows. To wit:~~

he said he could not get from his Land in Section Seven to the public highway without going over Land of some other person a short distance

James L. Dunklin the Defendant then read in evidence in the cause the petition for the establishment of the Road over his Land which petition is in words and figures as follows. To wit:
< Here copy the petition for the establishment of the Road signed by ~~E. S.~~ E. S. Foster and others > and also read in evidence the Report of S. Marsden Road Commissioner made out and filed by him in the County Court

in this Cause under an order of
Said Court which Report is
in words and figures as follows
To wit < Here copy the Report of the
Road Commissioner > and
also the order of the County Court
of Said County directing the
Road Commissioner to Survey
and mark out said new Road
which order is in words as follows
< Here copy said order, > also the
order of said County Court app-
roving the Report of the Road
Commissioner and ordering the
Road to be opened which order
is in words following, To wit,
< Here copy said order approving
Said Report &c. > and also a
paper purporting to be a plat of
a ~~Survey~~ Survey of such proposed
new Road filed in the Cause
marked Exhibit "A" which
plat is in words and figures as
follows To wit, < Here copy plat of
Survey > and here closed his evidence

The Petitioners then in Rebuttal,
Called E. S. Foster, J. W. Guy,

J. R. Guy in his evidence said the following named persons live between Pevely & Sulphur Springs, East of the old Road & between it & the Mississippi Mr. Allen - Dr. Silas Reed, & Mr. Wehmore - Mr. Stewart - Mr. Guy - Dr. Varnum - Mr. Peabody - Dr. Bucke - Mr. Smith - Mr. Herrick - Mr. Bush - Mr. Roupont - Mr. Foster - Mr. Pedgram - & Mr. Gilpin - of these the following live west of the new Road as land out and between it and the old State Road, viz, Dr. Varnum - Dr. Bucke - Mr. Herrick - & Mr. Roupont -

Isador Bush and A. Yerger as witnesses who testified in effect as follows (viz), that new Road would be from three miles to a mile nearer than the old Road, that a good deal of improvements are being made in that portion of Country laying East of the old State Road between Pevely & Sulphur Springs in the way of cultivating grapes & fruits, that the ~~Road~~ Establishment of the new Road is necessary for the convenience of those persons living between Pevely & Sulphur Springs and East of the old Road, to enable them to get out from their farms and to enable others to get to them, there are fifteen families living in the Country from Pevely to Sulphur Springs East of the old ~~stage~~ ~~Road~~ State Road, four of which live west of where the new Road would run and between it and the old State Road, but these four would use the new road, E. J. Foster stated also that the Road would not damage

They also stated that the people living in the lower
of Country through which the new
road would pass, are mostly fruit growers
& they have to buy all their meat, hay, corn
from those living beyond the State road
or else go to St Louis for those things.
& that the most of the roads which had
been used to come about in former years
to get out to the old State road had
been fenced up by the owner of the lands.
& they could not get to the old State road
without going over some one else's
land. They mostly now bought such
farm articles as they needed from
at St Louis, & got them by way of the River
or Rail Road. They could not get
these things from the surrounding
Country for the reason they had no
road to get out to the farmer.

E. S. Haster stated that Dunklin met the Road Commissioners at his north line in Section Seven when he was surveying the road and objected to locating the road on his land and in order to do him a little damage as possible they ran on the line until they reached the South East Corner of Dunklin's ^{land} when they ran diagonally across the the land & cut off about $\frac{1}{4}$ of an acre. This quarter of an acre was not fit for cultivation it being a bluff of rock.

E. S. Haster stated also that the road would not damage to Dunklin's land in Section 7 - thought it would not deprive him

of the branch for stock water - that the land was worth per acre in Section 7 about \$80. in U. S. No 266 about \$200 or \$250 per acre. That where the new road would run on Dunklin's land in Survey 266, it would be no benefit, but taking into consideration the advantages to the land in Section Seven as well as ~~the~~ ^{the dis} advantages to the land in Survey 266 the advantages of the new road to all his land were greater than the damage.

S. Morrison, Road Com. messenger for Jefferson Co. testified that the new road would be an advantage to Dunklin's in Sec. 7 as no public road touched it.

The witness being shown the plat of the Survey of the New Road marked Exhibit "A" said the red line running through the plat represents the new road and the dotted line represents the old State road. He said that Dunklin came to them when they were surveying the road through his land & told them that he objected to locating the road on his land - that this was all he said about the matter that he gave Dunklin no written notice that on application

would be made to the Court to condemn his land for the use of the Road. He saw the road on Dunklin's land line so as to do him as little damage as possible. He thought \$15, would cover all the damage done to Dunklin's land by the new road, taking into consideration the advantages as well as disadvantages of the road.

The Petitioners here closed their evidence in rebuttal and the foregoing was all the evidence in the case.

~~James~~ Said James L. Dunklin then asked the Court to declare the Law as follows (Here copy declarations of Law Nos. 1. 2. 3. & 4 asked by Dunklin) of which declarations of Law the Court gave numbers One. Two. & four but refused to give declaration of Law No. Three to which action of the Court in so refusing to give said declaration of Law No. Three said Dunklin at the time Excepted.

The court then rendered judgment affirming the judgment of the County Court, for the establishing the road prayed for by petitioners over Dunklin's land. Which said judgment was in words & figure as follows (here copy judgment) to the action of the Court in rendering such judgment said Dunklin then and there Excepted and afterwards in due time filed a motion

To set aside the finding and Judgment
of the Court and to grant him a new
trial which motion is in words and
figures as follows, To wit, (here copy
motion for a new trial)

~~which~~ which motion being
seen and understood by the Court
was by the Court overruled to which
action of the Court in overruling
said motion said Dunklin then
and there accepted, and here tenders
his Bill of exceptions which he prays
may be signed sealed and made
a part of the Record which is
accordingly done

James H. Tail. Judge



Emory J. Fowler
& others

vs
James S. Franklin

Bill of Exchange

E. A. Foster, Clerk,

vs
James D. Brunklin
Bill of Exceptions

Filed Dec 19th 1868,
E. J. Henry Cl.
By Geo. W. Harris & Co.

H. A. Buck & others Defendants in error } In the
J. L. Dimkle^{vs} Plff in error } 2nd District
Court of Missouri

Feb'y Term 1869

Error to the Jefferson County Circuit Court --

This suit was instituted in the County Court of Jefferson County by petition of citizens to open and locate a County road over the lands of Plff in error at the May Term of said County Court. On the 26th day of May 1868, the County Court ordered the Road Commissioner of said County to proceed to survey, mark out and locate a County road from Sulphur Springs to Pevely as petitioner for, which order of said County Court was executed by said Commissioner, who on June 15th 1868 files his report of how he executed the same. Afterwards on the 19th of June 1868, the Plff in error Dimkle files his affidavit and bond in vacation for an appeal from the decision of the Court, locating and establishing the said County road, to the Circuit Court of Jefferson County, which appeal is granted. At the November Term of the Circuit Court for Jefferson County, Plff in error moves the Court to reverse the order & judgment of the County Court, establishing a County road and to dismiss the case for reasons stated in said motion, which was overruled by the Court, to which ruling Plff in error excepted.

Again on the 19th day of November 1868 Plff
in error filed his objections to the establishing the
said road prayed for in the petition of said pe-
titioners and described in the report of the said
~~petitioner~~ Commissioner of said County as running
over his lands, to which objections of plff in error
Defendants in error moved the Court to strike out,
which motion of defendants in error the Court over-
ruled, to which ruling ~~defts~~ in error excepted,
whereupon neither party requiring a jury, the cause
was taken up for trial by the Court, and the
Court sitting as a jury, after hearing heard the
evidence & arguments of Counsel both paid
for the petitioners & rendered judgment affirm-
ing the order & decrees of the County Court in es-
tablishing & locating said County Road. To the
rendering of this judgment, Plff in error Drunklin
excepted & filed his motion to set aside the
judgment & grant a new trial, which motion
was also overruled & plff in error Drunklin ex-
cepted and the cause is brought to this Court
upon writ of error. The first question of any
importance that is present for the consideration
of this Court is, whether the Court below Com-
mitted error in refusing to reverse the proceed-
ings of the County Court in establishing this road
and in order to be fully advised upon this question,
I am compelled to examine the legality of the pro-
ceedings in the County Court as shown by the
record sent up - The record shows that a
petition was filed for the opening of this road

in May 1868 & that the Court, upon proof of a notice having been given, made the order for a survey & location of said road & afterwards approved said location of this road. Now the inquiry for the Court is. Had the law been complied with by the petitioners up to the time of the rendering of said judgment of location - It is a well settled principle that private property cannot be appropriated for the public use, except upon a public necessity & for the public good; and further that the same shall not be taken without just remuneration. I am unable to find anywhere in the pleadings any allegations or any proof on the part of the defendants in error & petitioners that the establishing of this road would be of public utility & demand for the public good - I am of the opinion that not only was it necessary that the petition should show this allegation, but that the same should have been proven to the entire satisfaction of the Court before they would have any authority to render a judgment in any manner interfering with vested rights of individuals. Again upon the further examination of this record, we find that this judgment of the County Court locating this road and the taking of the lands of plaintiff in error was rendered by said County Court without any legal notice having been given the said Drunklin to appear and defend his interests in this behalf & I am therefore of the opinion that the County Court perpetrate a grave and serious violation upon the great and vital principle of Law, that no man shall be deprived of his rights without an opportunity of making a defense - This doctrine is so old & so well settled that I only deem it necessary to refer to 26 Mo. City of Boonville vs. Amrod Pg 193 - There is but one other

H. A. Buckehead D.E.

vs

James L. Dinkelman D.E.

In the 2nd District Court

Opening of the Court

Received per mail &

Filed July 19th 1869

Chas. J. McCreary
Clerk

(Barnes)

Filed July 13, 1869
Leonard Sargeant
Clerk

question raised by the defendants in error & petitioners that I deem necessary to notice & that is the right of the parties interested to appeal from the decisions of the County Court in the matters of County Roads & I think this question is clearly settled by the Statute Page 550 Sec 2, "allowing appeals from all orders & judgments of the County Court, unless otherwise expressly prohibited." I am therefore of the opinion that the Circuit Court erred in affirming the judgments & orders of the County Court. - This cause will be reversed & dismissed
Judge Barth concurs.
Hawkins Judge

State of Missouri

Second Judicial District I, the undersigned, Clerk of the District Court within & for said District, hereby certify that the above & foregoing is a true & perfect copy of the opinion of the Court in the above entitled cause, as therein appears as fully as the same appears from the files of my office

In testimony whereof, witness my hand & the seal of said Court hereunto affixed at my office in the City of Cape Girardeau this 17th day of February A.D. 1869.
Leonard Sargeant Clerk

In the Supreme Court, held at St. Louis, of the State of Missouri,

March Term 1869

April 26 1869

Emory S. Foster, et al.

P.E.

Error to Second
District Court.

James L. Dunklin,

D.C.

Now again come the parties aforesaid by their respective attorneys; and the Court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said Second District Court be reversed, and the judgment of the Jefferson County Circuit Court herein be affirmed, except its judgment upon ~~for costs~~ ^{in the trial} of subpoenas and witnesses, and other proceedings upon the merits which is reversed. It is further ordered ~~and~~ that the said Plaintiffs in Error herein recover of the aforesaid Defendant in Error all other costs and charges herein expended and have execution therefor. - Opinion filed -

STATE OF MISSOURI, SS.

O. F. Fishback

I, ~~ANDREW W. MEAD~~, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office,

In Testimony Whereof, I have herunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this Eighth day of May, A. D. eighteen hundred and sixty nine.

O. F. Fishback Clerk.

James L. Dunklin
D.C.

2666

Supreme Court of Missouri.

Emory S. Fortin et al
P.E.

v.

James L. Dunklin
D.E.

MANDATE.

Judgment of Second District
Court Reversed.

Dinklin }
 no }
 Foster }

R. H. McMullin, County Clerk,

\$ 3.60

E. P. Money, 16 files, ⁸⁰ 2 motions, ⁴⁰ rules on same, ⁴⁰ \$1.60
 44 p^{as} ^{1.60} & sub ³⁵ Judgt, ⁵⁰ order, ²⁰ Ent appeal, ³⁵ 2.40
 Ent & file Bill E, ³⁵ order to make Transcript ³⁵ .70
 Ent & file objecting to Road ³⁵ Indexes, ²⁵ 60
 vaths ⁵⁰ making costs, ¹⁰ Rec Bill ¹⁰ 1.10
 making ~~Transcr~~ making plat of survey, ⁵⁰ 50
 Transcript 8000 words & fig @ 15 / per 100, 12.00
 Certificate & seal to same, 50
~~4 " " " to Bill of costs - 50~~
 Copy of Bill of costs C & S, = 1.35 \$ 20.60
 return on writ of error, 50

John Williams Shff, Serv 7 Spas. \$ 3.50

Calls,

50

\$ 4.00

E. S. Porter, 3-39 \$ 6.12

H. A. Buck, 1-26 3.08

A. Yenger, 1-28 2.46

T. W. Guy 3.40 6.20

Samuel Marsden 3.14 4.12

G. J. Johnston 2.12 2.96

\$ 24.94
 \$ 53.69

Drunklin vs E. S. Foster 608.611.653 657

Hwy

Molun 20. odr 15.

" 20.

order. 35-

order. 35-

Bis Ex 35.

Bml 50.

Offib 15.

Five Shas 1.25-

Docket 10.

Files 50

4.12
2.96

20.65-

11.54
612
308
620

26.94

1.00
4.12
2.96
2.46
10.54
1.00
11.54

20.65-

19.65-
4.00
23.65-
360
27.25- {Drunklin}
11.54 {Foster.}
48.79
6.12
3.08
620
64.19
700
57.19

1st

The Court declares the Law to be that-if the Establishment of the Road in question over the Lands of Dunklin is not a public necessity- then the same can not be Legally Established ~~if there is~~ and unless the Court find from the Evidence that such public necessity exists the Judgment of the Court should be that the ~~petition~~ order of the County Court Establishing said Road be Reversed and the Case dismissed

2nd

The Court further declares the Law to be that- if said Road if Established would be beneficial to a few persons only and not to the public in General then in that event- the same can not be Legally Established over Dunklin's Land and if the Court so find the Court should Reverse the order of the County Court Establishing said Road and dismiss the Case,

3rd

Refused

The Court further declares the Law to be that if the County Court made the order for the Establishment of the Road in question over Dunklin's Land without any notice in writing having been ~~served on him~~ previously served on him to appear and show Cause if any he had why said Road should not be established then said order is void and if the Court so find from the Evidence then the Court should reverse the ~~Judgment of the~~ order of the County Court and dismiss the Case.

4th

The Court further declares the Law to be that if the Report of the Road Commissioner read in Evidence does not state the Course of the Road or the distance between the place of beginning and ending of said Road that it is insufficient in Law to enable the Court to establish the

Road in question and if the Court
So find the Court should
Reverse the order of the County
Court establishing the Road
and dismiss the case,

Foster
Dunklin

1st

Proceedings Void
for want of notice

27th mo. 373

Property Can not be Condemned
for private use, nor for a
neighborhood Road for
the benefit of a few individ-
uals See 27th mo. 373

2nd

Private Property Can only be
taken for Public use, & then
only when it is actually necessary
for the good of the public in
General.

25th mo. 258

This want of Road if any is
to be supplied by private
way.

11th mo. 513

3rd

The objections are in time a
motion was made in Co. Ct. to
set this order aside & overruled,
besides written objection are
not necessary in Co. Ct. under the
Law. the question of necessity
is not necessary to be raised by
objection if it does not exist.
the R.R. can not be established whether
objections are made or not

See authorities above also see, 2nd
pass 15th Jan'y of 1868

Also when
there is no notice objections may
always be made,

4th The Report is not sufficient

See Secs. 849-9 Secs, 49 to 52
secs - 1868 page 157

Nothing for
Dunklin

Foster
Dunklin

Brief of
Dunklin

Dunklin's report.
Ed. Foster -
Allen
Hess
Hessmore