

Jefferson County Circuit Court
Case Files - Civil
September 1874

Box 33 Folder 29

Thomas, John L.
Donnell, Eliel F.
Pipkin, Philip
Rankin, Charles S., et al

vs.
Jefferson County Court
Morse, John H.

Injunction

Enjoin issuing warrants to pay for 2
roads under tax levy; bill of exceptions;
other plaintiffs William S. Boyce, William
S. Jewett, Thomas McMullin

John L. Hooover,
Philip Donnell,
Philip Piptin,
Charles S. Rankin

In the Jefferson
Circuit
Court.

William S. Bayce,
William S. Jewett
Thos H. McMullin and
other Tax Payers of
Jefferson Co. Plaintiffs

The County Court of
Jefferson County, Missouri
and John H. Morse
Depts

Plaintiffs state that they ~~are~~ ^{are} citizens
of Jefferson County in the State
of Missouri ~~and have been all~~
~~his life~~ and that they ~~are~~ ^{are} also tax-
payers of said County. and
~~are~~ interested in all money and
expenditure belonging to and
paid out by said County through
its officers for any purpose
whatever.

Plaintiffs further state that under
and by virtue of the authority conferred
by an act of the General Assembly
of the State of Missouri approved

186 entitled an Act
in reference to Public Roads, the
County Court of said County did
order an election in said County
to be held on the 5th day of February
1867 to take the sense of the qualified
voters of said County on the following
propositions. "Affirmative. For
the issue of bonds of the County with
coupons attached not to exceed one
hundred and fifty thousand dollars
and for the levy of an annual tax
for the purpose of paying the accum-
ing interest thereon and redeeming
said bonds not exceeding one percent
on the assessed value of the property
of the County for the purpose of con-
structing two gravel roads, one leading
from Lemay Ferry Bridge to Hillsboro
and the other leading from Fenton
by the way of Houser's Springs up
the valley of Big River or at the
discretion of the County for the
levy of said tax annually for the
construction of said roads without
issuing bonds." "Negative. Against
the issue of bonds or the levy of an
annual tax for the improvement

of ~~work~~ in the County; that at
said election a majority of the
voters of said County voted for
the affirmative proposition above
set out, which under the law
in force at the time authorized
the County Court of said County
to expend one hundred and fifty
thousand dollars, in construction
of the two works named in one of
two ways - 1st By issuing bonds to
that amount, or By levying an
annual tax until the aggregate sum
~~raised~~ should reach one hundred
and fifty thousand dollars, but
in neither event did the vote taken
authorize said Court to expend
in either way on said works a sum
exceeding one hundred and
fifty thousand dollars.

Plaintiff further states that said
Court, soon after said vote was taken,
commenced the construction of said
works and levied a tax for that
purpose and paid in the year 1867
to the contractors the sum of ~~one~~ ^{one hundred}
thousand four hundred ^{and}
dollars in cash but said Court then
could pay for said ^{work} County

and duly elected to construct said
quarl roads by issuing bonds for
that purpose but in a short
time the question arose as to whether
the bridges which necessarily had
to be built on said roads were to be
paid for out of the one hundred
and fifty thousand dollar voted
by the voters of the County of said
or whether the said Court might
not build said bridge and pay
for them under the general law
in reference to building bridges.
The said Court determined held
and decided that the said bridges
were not to be paid for out of
the said one hundred and fifty
thousand dollar but that the
whole of the one hundred and
fifty thousand dollar should
go exclusively to the construction
of said roads. And thereupon said
Court proceeded with said work until
January 21st 1873 when it issued
the cost of the one hundred and
fifty thousand dollar voted
by the people of said, but in
issuing said bonds said Court did
not take into consideration the

sum of \$498⁵⁹ which had
been ^{paid} cash or hereinafore
stated but bonds to the amount
of \$15000 were issued exclusive
of the cash paid. During the time
these roads were being constructed
said Court issued bonds to the
amount of \$35,610 to build
bridges on the lines of said roads.
Plaintiff further state that after
issuing all the bonds the Court
was authorized to issue by vir-
tue of the said vote, that on the
21st day of January 1873 the
said Court commenced to con-
struct gravel roads in said County
under and by virtue of the 7th
Section of the Road Law approved
March 18th 1872, which the Court
claimed authorized it to expend
ten thousand dollars annually
for that purpose without sub-
mitting the question of the
amount to be expended. Plaintiff
aver that John H. McDonough said
defendant was the principal
contractor to do all said work
and he continued to carry the

came on, after January 21 1873. that
on the day of April 1873 the
said Court paid said Horse the
sum of Five thousand dollars
for work done since January
21 1873, and on the day of
September 1873 the further sum
of \$3,810²⁹ and on the day
of February 1874 the further sum
of \$1000 and since then the said
Horse has done work to the amount
of \$5,445 which has not yet been
paid to him and the said Horse
is still continuing to work on the
grove woods. Plaintiff Note that
he is informed and believes and so
states the fact to be that said
Horse and the said Court
claim that said Horse has
a legal right to go on with said
work and to get pay therefor
out of the money in the Treasury
of said County or that may be
collected and placed there
in the future by virtue alone
of a pretended contract which
they own was made between
the County of pre said and said

Marce on the 21st day of October
1873 by which it was stipulated be-
tween them that said Marce
should construct Sections 11, 12, 13, 14
15, 16, 17, 18, 19, 20, 21 and 22 of the road leading
from Benton by the way of Hama
Springs of the Valley of Big River
and also construct a road
from Victoria to Deloto in
said County, at the sum of \$4900
per mile, by which contract
24 ten mile of road were to be
constructed by said Marce for
which he was to receive \$78400
to be paid in installment of
\$4000 annually: that the law
authorizing ten thousand dollars
a year without a vote of the
people was repealed on the 9th day
of March 1874 since which time
there has been no law in force
authorizing the expenditure of one
dollar to construct gravel roads
and dependants rely solely upon
said pretended contract for
the appropriation of the public mone-
y for that purpose.

Plaintiffs state that since January
21 1873 the said Court has expended

#18870⁹⁰ in Cork to build good roads
and now over the said Defendant
have the sum of \$5,145 for work
done and not paid for, making the
work done in one year and eight
months amount to \$73810⁹⁰ when
said Court was at no time authorized
to spend more than \$2000 in two
years. But notwithstanding the
repeal of the law authorizing the
building of said roads the said
Nasse claims the right to go on
with said work until he finishes
the work specified in his pretended
Contract of record and the said
Court is threatening to pay him
for the same at the rate of \$1000
annually and over that unless
if he enjoined it will proceed
to pay him, by which Plaintiff
over the said County will become
bankrupt and insolvent and
he and the other tax payers
of said County suffer irreparable
injury, detriment and damage
for he says if the Court should
issue to said Nasse either
bonds or warrants of the County
in payment for said work

and they should be negotiated to insure
cert bona fide purchasers, the
Plaintiffs and the other taxpayers
of said County would be reminded
to resist the payment of the same.
Plaintiffs state that hundreds
of taxpayers join them in this
application and petition but
they are too numerous to be conven-
ient to name them. Plaintiffs
state that said Court had no
right, power or authority to
confer with said House
or any one else to do work after
the repeal of the law and such
contract could not bind the
County after the law was upheld
and hence ^{since} the 9th day of March
1874 said pretended contract
~~is void~~ has been void and of no
effect.

Wherefore Plaintiff prays the
Court to grant them the writ
of Injunction restraining
and enjoining the County Court
of said County from issuing
to said House any warrant
or bond of the County or money
in payment of any work done

by him or said ground sold since
the 9th day of March 1874 or
for any ans he may do in
the future and grant them
such other relief as Plain-
tiff may be entitled to.

John L. Howard & Bro
Atty for Plaintiff.

John R. Lathrop^x
Attorney

The County Court
of Jefferson Co.
and John H. Morse

Petition for
Injunction

Filed Sept. 16th 1874
W. S. Boyce
Clerk

To John H. Morse, You will take
notice that I the undersigned a citizen
and Tax-payer of Jefferson County Missouri
together with one hundred and fifty others,
will apply to the Circuit Court of
Jefferson County Missouri at the
Court house in Hillsboro in said
County on Wednesday the 16th day
of September A.D. 1874, ~~or for any you may hereafter do~~ for an injunction
and Prohibition to restrain and
Prohibit the County Court of Jefferson
County Missouri from paying you for
any work done on the Gravel Roads
in said County since the 9th day of
March A.D. 1874, ~~or for any you may hereafter do~~ at which time and
place you can attend if you see proper
This 11th day of Sept. 1874

John L. Thomas

John L. Morris

as

Jefferson C. Et. al.

John V. Morse

Filed Sept. 16 1874
W. J. Boyce
CLK

To the County Court of Jefferson County
Missouri. You will take notice that I
the undersigned a citizen and Tax
payer of said County of Jefferson aforesaid
together with one hundred and fifty other
Citizens and tax payers of said County
will apply to The Circuit Court of Jefferson
County Missouri at the Court house in
Hillsboro in said County on Wednesday
the 16th day of September A.D. 1874, for
an Injunction and Prohibition to restrain
and prohibit you from paying for any
work done on the Gravel Roads in said
County since the 9th day of March A.D.
1874, at which time and place you
can attend if you see proper.

Sep'r 9th 1874

John L. Thomas

John L. Thomas
against
County Court

Notice for
Injunction

Filed Sept. 16th 1884
W. S. Boyce
Clerk

State of Missouri }
County of Jefferson }

John L. Moore
makes oath says that the petition
he and others filed in this Court
on the 16th day of September 1874
is John H. Moore and the
County Court of said County
and the facts as therein
stated he believes to be true and
swears to them from his own
knowledge he knows to be
true.

John L. Moore.
Sworn to and subscribed before
me Sept 21 1874.

W S Boyce Clerk
By Geo. H. Moore Sept.

Frank Mowbray
et al

vs

Jefferson Co. Court

D. H. Mowbray

Applicant

Filed Sept. 21 1874

M. S. Bryce

Clk

John L. Thomas,
Eliel H. Donnell,
Philip Piskin
& others

vs
The County Court of
Jefferson County
Missouri &
John H. Morse

In the Circuit
Court of
Jefferson
County
Missouri

Now at this day come
the Defendants and Demur to
the Petition filed herein by the
Plaintiffs ~~and ask the Court~~
~~to Dismiss the same for~~ ^{for} the Reasons
following, to wit,

1st Because the Plaintiffs have
no interest whatever as appears
from their Petition in the
matters in said Petition specified
and sought by them to be enjoined

2nd Because the allegations made
by the Plaintiffs in their said
Petition fail to show that the
Plaintiffs are entitled to the
Relief by them sought or that
the Defendants are doing or about

to do any act the The Commission
or Continuance of which during
any litigation such as contemplated
by the Statute of this State would
produce injury to the plaintiffs
and because the said petition
fails to show that Defendants or
either of them are either doing or
threatening to do or about to do any
act in relation to the plaintiffs rights
or tending to injure the plaintiffs
either in their persons or property,

3^d Because The petition of
plaintiffs shows affirmatively
that the plaintiffs have no such
right or interest in the subject
matter of the action or work
mentioned and described in
their petition as to entitle them
to sustain this proceeding or
any such interest therein as
to entitle them to an Injunction
as prayed by them or any
order whatever in the nature of
an Injunction

4th Because there is no Equity in the petition of said plaintiffs as the allegations are there in set forth,

5th Because the allegations in said petition contained do not show that- Defendants or either of them have done or that they are about to do any act in violation of Law in regard to the building or construction of the Roads in said petition mentioned or in issuing Bonds therefor or otherwise paying for the same,

6th ^{Because} It does not appear from the statements and allegations in said petition contained that the contract mentioned by plaintiffs in their petition is invalid or that the proceedings of the County Court with regard to the building or construction of the Gravel Roads in said petition mentioned or the paying for them is without the authority of Law,

- 7th Because said Petition is not verified by the plaintiffs as required by Law or verified sufficiently
- 8th Because the same has not been supported by any affidavits or evidence such as required by Law or any evidence whatever
- 9th Because said Petition is otherwise insufficient, and invalid, and if the same were true the allegations and facts as alleged therein are not sufficient to authorize this Court to grant any injunction or other relief to Plaintiffs either in the nature of a Temporary injunction or a final injunction,
- 10th Because said Petition not being in aid of any action ~~of~~ depending in this or other court is not such a proceeding as is allowed by the Statute in

Such cases made and
provided, and because
it is not prosecuted by any
person or persons ~~in~~
witted by Law to
prosecute the same

11th Because it does not appear
from said petition that
the defendants are insolvent
or that any irreparable damage
will result to plaintiffs if
their application for injunction
shall be refused.

~~Green, Bynum & Williams~~
~~Attorneys for~~
~~Defendants~~

12th Because there is a misjoinder
of parties Defendant in the
plaintiffs petition John H.
Morse not being properly
joined as a defendant with
the County of Jefferson

Green, Bynum
& Williams Attys.
for Defendants

John Thomas

vs
Et al,

Jefferson County
Et al

Demurrer

Filed Sept. 21 1874

W S Boyce

Clerk

John L. Thomas, Eliel F.
Donnell, Charles Rantier
William S. Boyce, William
S. Jewett, Thomas H. McMullan
^{Philip P. Klein}
and other Tax Payers of
the County of Jefferson
in the State of Missouri
Plaintiffs

vs
Anton Gerger, Wm F. Williams
and John C. Cape, Justices
of the County Court of Jefferson
~~County of Jefferson County~~
~~the County Court of Jefferson County~~
Missouri, and John
H. Morse, Defendant

In the Circuit Court of
Jefferson County Missouri,
Sept. Term 1874

Plaintiffs state that they are resi-
dents of Jefferson County Missouri
^{that they own large amounts of real and personal}
and ~~are property owners~~ and
^{property lying in said County}
are tax payers therein and they bring
this suit on their own behalf and
hundreds of other tax payers and
property owners residing in said
County who are so numerous
it is not convenient to name

them but who join in this action. The Plaintiffs state that they are interested in all money, belonging to said County or which may be collected from taxation in the future and in all expenditures made out of the public revenues of said County by the officers of said County for any any purpose whatever.

Plaintiffs state that under and by virtue of the authority conferred by an act of the General Assembly of the State of Missouri approved 1866, entitled an Act in reference to Public Roads the County Court of said County ordered an election to be held on the 5th day of February 1867 to take the sense of the qualified voters of said County on the following propositions. Affirmative. For the issue of bonds of the County with coupons attached not to exceed one hundred and fifty thousand dollars and for the levy of an annual tax for the purpose of paying the accruing interest thereon and redeeming

said bonds not exceeding one per cent
on the assessed value of the property
of said County for the purpose of
constructing two gravel roads, one
leading from Lemay Ferry Bridge
to Hillsboro and the other leading
from Fenton by the way of Keaukake
Springs up the Valley of Big River
or at the discretion of the County Court
for the levy of said tax annually for
the construction of said roads without
issuing bonds." "Negative. Against
the issue of bonds or the levy of ~~a tax~~
an annual tax for the improvement
of roads in the County": that at said
election a majority of the legal
voters of said County voted for the
affirmative proposition above named
which under the law in force at the
time authorized the County Court
of said County to spend one hundred
and fifty thousand dollars but no
more in the construction of the two
roads named and none other, in
one of two ways. 1st By issuing bonds
to that amount. or 2nd. By levying
an annual tax till that amount
should be expended

Plaintiffs state that said Court soon
after said vote was taken commenced
work on said road and levied a
tax for that purpose and collected
and paid for said work done
in the year 1867 the sum of \$10,493⁰⁰
in cash but said Court then ceased
paying cash for said work and
duly elected to raise funds to con-
struct said road by issuing the
bonds authorized by said vote
Plaintiffs state that said bonds could
not be sold in the market for par
and hence some plan had to be
devised by which the law could be eva-
ded, which prohibited the Court
from disposing of said bonds at
less than their face, whereupon
the said Court advertised to let
out the work on said road, the
contractors taking said bonds
at par in payment for the same,
by which those who got contracts
on said work got the same at
figures ranging from twenty to
thirty percent higher than the
same could have been done for
in cash and by which the tax payers

2

said County have had saddled
on them from \$30000 to \$40000 by
way of discounts on said bonds
which the law at the time prohibited.
Plaintiffs further state that in
the progress of said work the question
arose as to whether the bridges which
necessarily had be constructed
on the lines of said roads in order
to make them at all passable
should be paid for out of the hun-
dred and fifty thousand dollars
voted by the people as aforesaid or
whether the said Court might
not build said bridges and pay
for them under the General law
in reference to building bridges.
The said Court determined held
and decided that the said bridges
were not to be paid for out of the
hundred and fifty thousand
dollars but that the whole of the
said hundred and fifty thousand
dollars should go exclusively to the
construction of the said roads. And
thereupon said Court proceeded with
said work until January 21 1873.
when it issued the cost of the said hundred

and fifty thousand voted by the people of said but in issuing said bond said Court did not take into consideration the sum of \$10493⁵⁹ which had been paid in cash as hereinbefore stated but bonds to the amount of \$10000 were issued &clusive of the cash paid. During the time then work were being constructed said Court issued bonds to the amount of \$35610 to build bridges on the lines of said work.

Plaintiffs further state that after issuing all the bonds the said Court was authorized to issue under said vote, viz: on the 21st day of January 1873 the said Court commenced to construct gravel work in said County under and by virtue of the 7th section of the road law approved March 18th 1872 which the Court claimed authorized it to spend \$10000 annually for that purpose without submitting to the voters of said County the amount to be expended. Plaintiffs over that John H. Morse one of said Defendants was the principal contractor to do

all said work and he continued to
carry on the same after January 2/
1873: that on the day of April
1873 said Court paid said Horse
the sum of \$5000, on Sept 1873
the further sum of \$3810²⁹ and
on the day of February 1874
the further sum of \$10000 and
since then said Horse has done
work reported to said Court or finish
ed to the amount of \$5145 which
has not yet been paid to him
and the said Horse is still
continuing the work on said road.
Plaintiffs state that said Horse
claims to have a legal right to
go on with said work under and
by virtue of a contract which
he pretends he & said Court ^{have} en-
tered into on the 21st day of Oct-
ober 1873 by which it was stipu-
lated that said Horse should
construct ~~thirteen~~ miles of
road on the road leading up the
valley of Big River, three
miles on the road leading from
Desoto to Victoria and one mile
at Rock Ford Bridge all in

Contract
of 1873

said County making six miles of
road at \$4900 per mile making
an aggregate said horse is
to receive for all said work
amount to \$78400 to be paid
in annual installments of
\$10000 each, copy of which contract
is herewith filed and prayed the
latter as a part of this petition
the original not being in their pos-
session or under their control.
Plaintiffs state that the above
recited acts were repealed on
the 9th day of March 1874 by which
said Court was stripped of its au-
thority power and right to con-
struct gravel roads or appropri-
ate any money for that purpose
or even take a vote of the people
thereon, since which time there
has been no law authorizing said
Court to spend one dollar for
the construction of gravel roads
in said County and defendants
rely solely upon said contract
for the appropriation of the public
money for that purpose
Plaintiffs state that since Janu-

R. road
9th March 1874

any 1873 the said Court has expended
 \$8810⁹² in Cork to build gravel roads
 and now owes him the sum of \$5145
 for work done and not paid
 for making the work done in
 20 months amount to \$23810⁹²
 when said Court was not authorized
 at any time to expend more than
 \$2000 in twenty four months.

But notwithstanding the repeal
 of the law authorizing the building
 of said roads the said Morse claims
 the right to go on with said work until
 he finishes the same which will
 require him six years longer
 as he yet has twelve miles to con-
 struct under said Contract and
 the said Court is threatening to
 pay said Morse for the same
 as the work progresses not sending
 \$1000 annually and said Justices
 of the said Court are that they
 will issue the warrant of said
 County to said Morse in pay-
 ment of said work unless they
 shall be enjoined from so doing
 by which Plaintiffs own the said Court
 will expend \$6000 of the money collected

Three times
 to pay

aid of Plaintiffs, or to the collection of Plaintiffs and the other taxpayers of said County and the real and personal property of Plaintiffs will be burdened with an additional tax annually to an enormous amount and which additional tax will be levied along with other legal taxes so that it will be a difficult matter for Plaintiffs to be relieved from the same even if said warrants should still be returned by said House Plaintiffs. Note that said County is now in debt \$20,000 and the Defendants now propose and are proceeding constantly and have been since January 1873 to add to said debt the sum of \$78400 by which the taxes of Plaintiffs were greatly increased but said County will become insolvent and Plaintiffs would suffer irreparable injury and damage in increased taxes on their property and Plaintiffs would be compelled to bring a multiplicity of suits annually

to resist the Collection of the additional
Taxes thus caused and their remedy
could not be adequate in any event
and said House sells and disposes
and will sell and dispose of
said bonds ^{for money} as for or they are
issued to innocent and bona fide
purchasers in which case
~~they~~ the Plaintiffs would be wholly
remediless to resist the payment
of the same. Plaintiffs state that
Homer Green is the prosecuting
Attorney in and said County and
refuses and fails to institute
proceedings to injoin said Court
to annul said Contract and hence
Plaintiffs have no course
left but to commence proceed-
ings in their own name.

Plaintiffs state that since March
9th 1874 the said Court has had no
authority and has none now to
appropriate the public money of
said County to build said work
and since that time said pretended
Contract has had no validity
as the Plaintiffs own that said
Court had no right to Contract

Contract
void for

for the building of said road after
the repeal of the law authorizing
them, Mr. J. Williams & John B. Cooke are attorneys
here to do so. Plaintiffs state that the
justices of the said court of said County
wherefore plaintiffs pray the
Court to declare said pretended
contract null and void and
to grant them the precious writ
of Injunction enjoining and
restraining said Justices of
said Court ^{and said County} from issuing to
said House any warrants or
bonds of said County or money
in payment of any he has
done since March 9th 1874
or which he is doing or may
do in the future and to grant
them such ~~other~~ relief as they
may be entitled to.

John L. Thomas & Mrs.
With J. H. McNeill
Attys for Petitioners.

John L. Thomas makes oath
and says that the above petition
and the facts as therein stated
are true.

Subscribed before me John L. Thomas.
Sept. 22nd 1874 W. S. Boyce Clk Cir Ct.
(By Chas. H. H. H. H. H.)

John D. Thawmer
et al

vs

The Justices of
the County Court
of Jefferson Co
et al

Filed Sept 22 1874

W. L. Boyce
clerk

By Geo. H. Horne

deputy

John L. Thomas & al., Plaintiffs	} In the
against	
The County Court of	
Jefferson County Mo.	
& al., Defendants	
	Circuit
	Court of
	Jefferson
	County Mo.
	Sept. Term
	A.D. 1874

Now at this day comes the Plaintiffs and ask the Court to grant them a Temporary Injunction in the above case during the pendency of the suit for the following reasons to wit:

1st Because John H. Morse one of the defendants is proceeding with the work on the Gravel Roads under the contract set out in Plaintiffs petition and that the County Court of said County will pay said Morse for said work thereby placing the bonds of Jefferson County ⁱⁿ warrants of said County in the hands of Morse who ^{will} ~~might~~ transfer the same to innocent parties -

2^d Because said Morse has done a large lot of work on said Gravel Roads which has been received

John L. Thomas Esq. at.
Against
Jefferson County Esq.

• Notice for
Temporary
Injunction

Filed Sept. 23rd 1874
W. J. Boyce cc
clerk

John S. Thomas, E. F. Donnell
Charles S. Rautin, W^m S. Boyce
W^m S. Jewett, Thomas H. McMullin
Philip Piptin & others

against

Anton Yeager, John C. Cape
& W^m F. Williams Justices of
the County Court of
Jefferson County Missouri,
The County Court of said
County and
John H. Morse,

In the Circuit Court of
Jefferson County Missouri

Now at this day come the said Defen-
=ants and for answer to the petition of
the plaintiffs deny that the plaintiffs
bring this action in behalf of Hundreds
of property owners & Tax payers of
said County of Jefferson other
than themselves who are so
numerous as that it is inconvenient
to name them and deny that any
such hundreds join in this action
and defendants deny that these
plaintiffs named have any such
interest in the subject matter of the

action as to entitled them to institute, prosecute, or maintain this action, & Defendants deny that Plaintiffs are interested in all moneys belonging to said County or which may be collected from Taxation in the future or in all Expenditures made out of the public revenues of said County by the officers of said County and Defendants deny utterly that they are interested therein to such extent as to entitle them to bring and prosecute this action,

Defendants say they have no knowledge or information sufficient to form a belief as to whether or not the County Court of said Jefferson County soon after the vote taken upon the proposition to build and construct the Fenton & Big River valley & Hillsboro & Semay Ferry Grave Roads levied a tax for that purpose or ~~not~~ as to whether or not said Court collected and paid for said work done in the year 1867 the sum of \$10,493⁵⁹ in cash or any cash whatever or as to whether or not said Court then & thereafter elected to raise the necessary funds by issuing Bonds of said County

that some Bonds were issued for that purpose is not denied but that the County Court elected to issue them after raising by Taxation & Expending on said Roads \$10,493⁵⁹ is by defendants denied. Defendants deny the allegation that the Bonds of said Jefferson County referred to in plaintiffs petition issued for the construction of the gravel Roads therein specified and hereinabove referred to could not be sold in the market at par and deny that any plan had to be or was devised by which the Law prohibiting their sale for less than par could be evaded or that the Law in that regard was evaded by the County Court of said County.

Defendants deny that those Contractors who got contracts on said work got the same as figures ranging from ~~less~~ twenty to thirty percent or any percent higher than the same could have been done for cash and deny that the Tax payers of said County have been saddled with from \$30000 to \$45000 by way of discounts on said Bonds. deny that there was any discount suffered on said Bonds, and deny that

Any of the Citizens of said County were
Saddled either with discount on
Bonds of the County or otherwise, The
defendants have no knowledge or information
sufficient to form a belief as to whether or
not - during the progress of said work viz.
The Building of said Gravel Roads referred to
in the petition & heretofore named any
question was raised as to whether the
Bridges thereon were to be paid for out of
the \$150,000 voted by the people to build
said Roads neither have defendants any
knowledge or information sufficient to
form a belief as to whether or not the
County Court of said County held, determined
and decided that - said Bridges were not
to be paid for out of said \$150,000 but
that - the whole of that sum should go
Exclusively to the construction of said
Roads neither have defendants any
knowledge or information sufficient to
form a belief as to whether or not said
Court proceeded with said work until
January ^{21st} 1873 when it issued the Cash
of said \$150,000 voted by the people
neither have defendants any knowledge
or information sufficient to form a belief
as to whether or not said Court in
issuing said Bonds did not take

into consideration the sum of \$10,493⁵² (which plaintiffs charge to have been paid in cash but which payment defendants deny) ~~and~~ and defendants deny that Bonds to the amount of \$150,000 were issued Exclusive of cash paid during the time said Roads were being constructed, and deny that Bonds to the amount of \$35610 were issued to pay for building Bridges on the Lines of said Roads,

Defendants deny that after all the Bonds authorized had been issued by the County Court that said Court commenced on the 21st of January 1873 to construct Gravel Roads in said County under and by virtue of the 7th Section of the Road Law approved March 18th 1872 under a claim that it authorized the court to spend \$10,000 annually for that purpose without submitting to the voters of said County the amount to be expended, Defendants have no knowledge or information sufficient to form a belief as to whether or not the County Court paid John H. Morse for the Building of said Roads \$5000, on ~~Sept~~ April - 1873 or the further sum of \$3,810⁹⁹ on Sept 1873 or the further sum of \$10000 — Defendants admit that said Morse is still continuing the

work on said Roads and admit that he claims to have a legal right to go on with said work but denies that he claims to do ^{so} under or by virtue of any pretended contract - which he pretends he and said County Court entered into on the 21st day of October 1873 by which it was stipulated that said Morse should construct 12 miles of Road on the Road leading up the Valley of Big River, 3 miles on the Road leading from De Soto to Victoria and one mile at Rock Ford Bridge all in said County making 16 miles of Road at \$4900 per mile ~~making an aggregate~~ making an aggregate to be received by said Morse for said work of \$78400 to be paid in annual installments of \$10000 each but to the contrary thereof Defendants aver that said Morse is proceeding with said work under a good and valid contract made between him and said County Court on the 21st day of October 1873 that is to say the Defendants aver that the contract which Plaintiffs choose to term a pretended contract which he pretends he and said County Court

entered into ^{is} a good and valid Contract
 entered into between said Morse and
 the County Court of said County of Jefferson
 bearing date October 21st 1873 for the
 building & construction by said John H.
 Morse of 12 miles of Gravel Road
 as specified in said Contract - consisting
 of the gradation, masonry, McAdamizing
 & Graveling the same on the gravel
 Road leading from Genton by way of
 Houses Springs up the valley of Big River
 & three miles on the Route leading from
 Victoria to Sedoto & one mile at the
 Rock Ford Bridge for which said
 Morse is to receive such compensation
 as may be just to be determined by
 a competent Engineer not exceeding
 \$4,900 per mile but which may be
 less than that amount, and defendants
 aver that the building & construction
 of said Roads was at the time of
 making said Contract & still is
 so far as the same is unfinished a
 matter of great public necessity - and
 utility to the people of said County
 Especially do defendants aver that
~~it was~~ the business interest and
 convenience of the people of said

County required & still requires the building of said Road leading from Fenton up up the valley of Big River which had prior to October 1873 been commenced and proceeded with to such an extent as that a large sum of money which had theretofore been expended on it would have become a loss to the people of the County unless finished as contemplated by the County Court in the making of the contract - with Morse of October 21st 1873 and the orders of Court in connection therewith as the Road as it then stood would not have answered the demands and conveniences of the public who had borne up to that time & point the burdens of its construction nor would it have repaid the cost of its construction as it was at that time without further expenditures so as to finish the same as contemplated in said contract of October 21st 1873

in consequence of which state of facts regarding said Road from Fenton by way of Houses Spring Springs up the valley of Big River as in consequence of the urgent necessity which the people of said County were under for

the construction & completion not
 only of said last mentioned Road
 but also of that from Desoto to Victoria
 and that at Rock Ford Bridge as
 before stated and in pursuance of Law
 then in force a great many citizens
 of said County in the month of September
 1873 to wit four Hundred citizens
 petitioned the County Court of said
 Jefferson County to Cause the remain-
 der then unfinished of said Road
 leading from Henton by way of House
 Springs up the Valley of Big River
 that is to say about 12 miles thereof
 to be ^{also to cause the one mile at Rock Ford to be built} completed, and about Two
 Hundred & fifty citizens of said County
 also at the same time petitioned
 said Court to Cause the Road from
 Desoto to Victoria to be built and
 macadamized & Graveled whereupon
 thereafter and before and upon the 21st
 of October 1873 said County Court in
 pursuance of Law & the prayers of
 said petitions of citizens & acting in
 good faith & upon its judgment
 touching the best interests of said County
 & its citizens in the premises made the
 necessary orders for the letting out to
 contract of said work & the building &
 completion & payment therefor

And thereupon on the 21st October 1873
entered into the contract for the doing of
said work with said John H. Morse as
before set forth, which contract the
Defendants aver was reasonable
& just and binding in Law upon
all parties thereto,

Defendants deny that the act of the
Legislature of Missouri of March 9th 1874
which plaintiffs assert repeals the
act of March 18th 1872 has any effect
to strip the County Court of said Jefferson
County of its authority, power & right to
construct gravel roads or appropriate
any money for that purpose or to take
a vote of the people thereon and
deny that since the passage of
said act of March 9th 1874 there has
been no law authorizing said Court
to expend one dollar for the construction
of gravel roads in said County for
Defendants say that the contract of
October 21st 1873 above described
was made in pursuance of law
at the time it was executed that
said Morse had gone to work to
construct said roads under it
and had that the same had been
partly performed prior to the pass-
age of said act of March 9th 1874
and so Defendants say that the
passage of that act had so no such
effect either in law or fact as to
defeat said contract or divest the
parties thereto of the right & power to

carry the same out according to its
spirit & letter,

Defendants have no
deny that since January 1873 the
County Court has expended \$18810.⁰⁰
to build gravel Roads up to the time
when Plaintiffs filed their amended
petition in addition to the amount
then due Morse as charged in said
petition and although said Morse
may have done more than \$10,000
worth of work upon said Roads
under his contract in the year
preceeding the filing of said petition
Yet-it is not true that he has
at any time been paid more than
\$10,000 during any one year for
work done by him on the Roads
within such year on the contrary
by the terms of said contract he is
not to receive at any time for
said work any larger sum than
\$10,000 per year not notwithstanding
he may by the contract do the work
as soon as he ~~consent~~, chooses,
and defendants aver that said County
Court will not pay or attempt to
pay him any greater sum than
\$10,000 in any one year for said work
notwithstanding he should do work which

at the contract price within the year which might amount to more,

Defendants deny that by reason of the progress of said work the Real and personal property of Plaintiffs and other Tax payers of said county will be burdened with an additional Tax annually amounting to an enormous amount but to the contrary say that the Taxable wealth of the County & the importance & necessity of the work is such that it may be completed without creating more than a slight burden on the Taxable wealth of the County which slight burden will be amply compensated by the increased value of property in said County resulting from said improvements, Defendants deny that said Taxes for the building of said Roads will be levied along with other Taxes in such way as to make it a difficult matter for Plaintiffs to resist the payment of the same if they see cause to do so believing it to be illegal but on the contrary it will be and is extended on the Tax Books in a separate column so that Plaintiff may conveniently resort to their remedy at Law to Test the Legality of the Taxes if they doubt the Levy being

Authorized by Law, Defendants
deny that the County is \$200,000 in
debt and deny that if it were that
such fact would tend to invalidate
the contract aforesaid, deny that
Defendants are about to add to such
debt \$78,400 more, deny that the
Taxes of Plaintiffs have been greatly
increased by reason of the building
of said Roads, deny that there is
any danger of the County becoming
insolvent by the building of
the gravel Roads mentioned in
said Contract of October 21st 1873
a great portion of which is already
completed, deny that Plaintiffs
have any cause of alarm upon
that point, deny that Plaintiffs
would suffer increased irreparable
injury & damage in increased
Taxes on their property by reason
of the completion of said work or
that they would be compelled to
bring a multiplicity of suits annually
to resist the payment of the
Taxes for the building of said Roads
and deny that they have any right
in the premises to maintain any suit or
suits for that purpose,

Defendants deny the allegation that since
 the 9th of ~~January~~ March 1874 said
 County Court has had no authority & has
 none now to appropriate the public
 money of said County to build said
 Roads, ^{and deny the allegation} and deny that since that
 time said contract has been of no
 validity but aver that it is valid and
 binding, Defendants say that the
 Contract was not made after the
 Law authorizing it had been repealed
 but before, and Defendants deny
 that this Court can or ought to
 declare said contract null & void
 & deny that Plaintiffs are entitled to an
 Injunction to restrain or enjoin
 These Defendants, said Justices of
 said County Court, or said Court or
 said Morse from issuing to said
 Morse, warrants or Bonds of the
 County or money in payment of
 the work done or yet to be done under
 said Court Contract, deny that there
 is any Equity in Plaintiffs Bill & having
 answered Defendants pray judgment for their
 costs, ~~sum~~

Jos. Williams with
 Abner Green &
 Saml. Byrns Attorneys
 for the Defendants

John L. Thomas
exal

v

Jefferson County—
and John H. H. H.

Repts and

Filed Dec 11th 1874

W. H. Boyce Clerk
R. O. H. H. H.
H. H. H.

John L Thomas Et al
Against
Anton Meyer - Et al

In the circuit court of
Jefferson County Missouri
January Term 1875-

Now at this day comes said
Plaintiffs and replying to new matter
in ~~said~~ the answer of said defendants
say that it is not true as is avowed
by the defendants that defendant John
H. Morse is proceeding with the work
referred to in plaintiffs petition under a
good and valid contract made
between him and the other defendants
the county court of Jefferson County
Mo., on the 21st day of October 1873

and plaintiffs say that it is not
true as alleged by defendants that a
good and valid contract was entered into
between said Morse and the county court
of Jeff. Co. bearing date October 21st 1873 for
the building & construction by said John H.
Morse of 12 miles of Gravel Road as specified
in said contract, and as is specified in said
answer

The plaintiffs say that it is not true as alleged by defendants that the building & reconstruction of said roads was at the time of making said contract, and at the time of filing said answer by defendants, so far as the same is unfinished, a matter of great public necessity and utility to the people of said County. And that it is not true as avowed by defendants that the business interest and convenience of the people of said County required & still requires the building of said road leading from Denton up the valley of Big River - and deny that said road had prior to October 1873 been commenced and proceeded with to such an extent as that a large sum of money which had theretofore been expended on it would have become a loss to the people of said County unless finished as contemplated by the County Court in the making of the contract with mine of October 21st 1873.

And deny that the road as it then stood would not have answered the demands and conveniences of the public who had borne up to that time and point the burdens of its construction nor would it have repaid the cost of

its construction as it was at that time without further expenditures so as to finish the same as contemplated in said Contract of October 21st 1873

Plaintiffs deny that the contract of October 21st 1873, was made in pursuance of Law at the time it was executed

Plaintiffs deny that the taxable wealth of the county & the importance & necessity of the work is such that it may be completed without creating more than a slight burden on the taxable wealth of the county which slight burden will be amply ~~insured~~ compensated by the increased value of property in said county resulting from said improvements

Plaintiffs deny that the Taxes for the building of said roads will be and is extended on the tax books in a separate column ~~so that plaintiffs~~

Thomas & Bros
& J H McMullin
Attys for Plaintiffs

J L Thomas
et al

Jefferson Co Court
& James

Replication

Filed Jan'y 13th 1875
Wm. H. Herring Clerk

John T. Thomas, C. F. Donnell,
Charles S. Rankin, W^m S. Boyce,
W^m S. Jewett, Thomas M. Mullin }
Philip Pipkin, & others, — Plaintiffs

Against

Anton Gerger, John C. Cape
and W^m F. Williams, Justices of }
the County Court of Jefferson }
County Missouri, — the County }
Court of said County and John }
H. Morse, — Defendants

In the Circuit Court of
Jefferson County, Missouri
January Term 1875.

The Defendants by their Attorneys
move the Court to set aside the finding
and Judgment of the Court, and grant
a new trial for the following reasons;

- 1st Because the finding of the Court is
contrary to the evidence in said Cause,
- 2 - Because the finding and Judgment
of the Court is against the law of the
Case,
- 3 - Because the Court misconstrued the
law governing the Case,

4- Because the Court erred in setting aside the Contract made by the Defendants on the 21st day of ~~February~~^{October} 1873, and in granting an Injunction to restrain the said County Court from paying said John H. Morse, for work done in ful-
fil-
lance of said Contract,

5- Because the Court erred in granting a decree in favor of the Plaintiffs, and in ordering an injunction,

6- Because the Court erred in finding for the Plaintiffs, when the finding and Judgment should have been for the Defendants,

7- That the Court ^{erred} in the Judgment rendered, and in not dismissing the Plaintiffs bill,

8- That the Court erred in holding that the Plaintiffs had such interest in the subject matter of the suit as to entitle them to maintain the action

9- That the Court erred in granting the injunction restraining the County Court from paying said Morse, and carrying ^{out} said Contract according to its terms,

10- The Court erred in not dismissing the Petition of Plaintiffs,

11- Because the Court admitted illegal and improper testimony offered by the Plaintiffs,

12 Because the Court refused to admit proper and legal evidence offered by the Defendants,

13 Because the finding and judgment is for the Plaintiffs, when it should have been for the Defendants,

{ A. Green, J. J. Williams,
 & Saml. Byrnes,
 Attorneys for the Defendants

In the Circuit Court
Jefferson County

John L. Thomas
and others,

vs.
Anton Weger
and others,

Motion
for a New Trial

Filed July 22 1875
Thos. Horne
Clerk

John L. Thomas, E. F. Donnell,
Charles S. Rankin, W^m S. Boyce,
W^m S. Jewett, Thomas M^c Mullin,
Philip Pipkin, and Others, - Plaintiffs

Against

Anton Gerger, John C. Cape,
and W^m F. Williams, Justices of
the County Court of Jefferson
County, Missouri, - the County Court
of said County and John H. Morse, - Defendants,
In the Circuit Court of Jef-
ferson County Missouri, -
January Term 1875,

Be it remembered that on this 31st day
of January 1875, at the January Term 1875 of
the Circuit Court of Jefferson County, Missouri,
the above entitled Cause coming on for trial,
and neither party requiring a jury, all and sin-
gular the matters at issue between the parties
were submitted to the Court, - and the Plaintiffs
to sustain the issues on their part, offered in
evidence the following testimony;

1- The Defendants admit that by virtue of an
order of the County Court, an election was had
in 1867, by which the people of Jefferson County
voted in favor of said County Court expending
the sum of 150,000, dollars, for the purpose of con-

Constructing two gravel roads, in said County, one, from Lema Ferry Bridge to Hillsboro, and the other from Fenton by way of Houses Springs up the Valley of Big River.

The Defendants also admitted that Plaintiffs ^{property holders} were taxpayers of said Jefferson County.

The Plaintiffs then offered to prove by the testimony of W. R. Donnell, Clerk of the County Court of said County, the amount of money that had been expended in constructing said Gravel Roads, and how much John H. Morse had received for his work in constructing said Roads, - to which testimony, the Defendants objected on the ground that such testimony was irrelevant, illegal, and incompetent, - but the Court overruled the objection, and permitted the witness to testify, - to which ruling and decision of the Court the Defendants at the time objected and excepted, -

Said W. R. Donnell then stated, -
Up to Jan 21 1873 the County had issued bonds as follows viz:

For constructing the two gravel roads
named # 150,000.

~~For Bridges along the line of said~~
~~roads~~

~~For the Victoria road~~

~~For the De Soto road~~

~~For the De Soto Bridge~~

For

Since Jan 21/873 the Court paid Mr
Horse \$18,810, - \$10,000 of which was paid
in July 1874 on the Contract of Oct 21/
1873. For work done by him under said
contract for the year ~~previous~~, following
said Contract

The Plaintiffs have closed their
evidence

The Defendants then in support of the issues and defence on their part, introduced in evidence, ~~a~~ petition signed by four hundred tax payers of ~~the~~ Big River Township, ^{and other townships} in said Jefferson County, asking the County Court to appropriate and expend ten thousand dollars annually, for the purpose of completing the gravel Road from Ganton by way of Huser's Springs up the valley of Big River, as originally contracted to be built, and as such Court was authorized to do, under the Road Law of 1870, and which ~~the~~ ^{said} petition ~~was~~ ^{was} filed in the County Clerk's office September 23rd 1873, and ~~is~~ ^{is} as follows, To wit, (The Clerk will here ^{the heading of} copy ^{the heading of} said petition, ~~but~~ ^{but} the names of the signers ^{may be omitted} of each of the three petitions, but only the heading of one) - Which said Petition the Plaintiffs admit was signed by four hundred tax payers of said Jefferson County, - and was received in evidence, but the names to which are here in omitted by agreement of the Parties.

The Defendants also read in evidence a Petition signed by two hundred tax payers of Jefferson County, praying said County Court to construct a gravel road from De Soto to Victoria in said County, three sections in length, and to pay for same at the rate of ten thousand dollars only in any one year, (Which petition is as follows, (here copy same omitting the signers names,) The Plaintiffs ~~admit~~ ^{admit} ~~that the names may be omitted~~ ^{said petition was} signed by two hundred tax payers of said Jefferson County, whose names are therefore omitted, by agreement of the parties

The Defendants then read in evidence the contract, made by the County Court, with John H. Morse October the 31st 1873, for the construction of several sections of gravel Road, at the price of \$4,900 per section, and to be paid for ^{at the rate of} only \$10,000, in any one year, - and which contract is as follows, to wit,
(The clerk will here copy said contract)

The above and foregoing was all the evidence introduced by the parties in the Cause, And the Cause being submitted to the Court, upon the pleadings and evidence aforesaid, the Court after hearing of the argument of Counsel, found the issues for the Plaintiffs, - and thereupon ^{the Court} entered a decree enjoining and restraining the County Court of Jefferson County from paying the Defendant John H. Horse, ^{any money, warrants or bonds} for any work done in making ^{Roads} gravel in said County since March the 9th 1874, - and which decree is as follows;

(here copy same)

And to which finding and judgment of the ^{Court, - the} Defendants at the time objected and excepted.

The Defendants then on the 22nd day of January 1875, filed their motion to set aside the finding and judgment of the Court, and ^{to} grant a New trial for the reasons stated in said motion, and which motion is in words and figures as follows, to wit, (here copy motion for New trial)

But the Court overruled said motion, and refused to set aside said judgment, and grant a New trial, and to which decision of the Court in overruling said motion and refusing to grant a New trial, the Defendants then and there excepted. And on the 22nd day of January 1875, the Court ordered by entry of record, the Plaintiffs consenting thereto, that the Defendants have leave to prepare

their Bill of Exceptions in vacation, and to be signed by the Judge and filed in the clerk's office of said Court, within thirty days after the adjournment of Court, - and which entry of record is as follows, To wit, (here copy same)

And the Defendants now in pursuance of said order, on this 17th day of February 1875 presents to the Judge of said Court, this their Bill of Exceptions, and prays that the same may be signed by the Judge, and sealed, and made a part of the record in said Cause, and which is accordingly done, this 17th day of February 1875.

Louis F. Dunning *Great*
Judge 26th Judicial Circuit
Mo

In Circuit Court of
Jefferson County

John L. Thomas
and others

v.
Anton Gergert,
others.

Dill
of Exceptions

Check with please
file

Amis & Son

Filed July 18th 1876

E. H. Marine

Clk

correct

Thomas

A. Green

John L. Thomas, et al.,
vs
Monroe & County, et al.,

- See 42nd Mo. 171 - also
44th Mo. 197 -

Counties are quasi corporations
act in matters of Roads not as
agt. of Co. but act for the State

- 36th Mo. 555 -

See as to construing all the
acts together

St Louis vs Alexander 23rd Mo. 483
where the Legislature empowers
the Co. to do an act. The power
to perform it to be implied

- 36th Mo. 294 -

In managing school funds Co.
St. agent of State 49th 236 -

See as to the power to subscribe
10th Wall. 676 - 48th Mo. 390

If the Co. has recd. benefits
it is bound to pay &c &c

- 47th Mo. 349 -

Bacon's Abridgement, Statutes;
Vol. 7 p. 454

"If among diverse Statutes

relate to the same thing they ought
all to be taken ~~together~~ into
consideration in construing any
one of them"

ib

"If a thing contained in a subseq-
uent statute be within the reason
of a former statute it shall be
taken to be within the meaning
of that statute"

Bacon ab. title Vol. 7th vol

p 455

ib

"A statute made pro bono publico
shall be construed in such manner
as that it may as far as possible
attain the end proposed"

Bacon: Stat. vol. 7th p 461-

1st by these rules construe chapter
52 Genl. Stats. &

2nd act March 21st 1868 acts 1868 Page 42

3rd Secs. 1-7- & 16 act 1868 Page 150-

4th Secs. 2-7- & 15 acts 1872 Mag^{is} 1872

Page 1219 & fol.

56th mo. 126

54 " 76

Points of Thomas' Arguments
1st That Co, Courts are Courts of Limited
Jurisdiction

That law was in force in
1870

Thomas Deal
(ms)
County Deal

John F. Macauley

Morse et al

Now come the parties appeared
by their respective Attorneys and all and
singular the matters in controversy
having been submitted to the Court
and after hearing the evidence
~~both~~ the Court doth find the issues
for the Plaintiffs. Wherefore it is or-
dered, adjudged and decreed by the
Court that the County Court of Jefferson
County Missouri and Anton Gergen,
Wm F. Williams and John C. Leper
the Justices of said County Court
be and they are hereby forever restrained
and enjoined from issuing any warrants
or bonds of said County or any of the
public money of said County to or for
the use of John A. Morse in payment
of any work said Morse has done in
the W & A damming or grading of any
of the W & A of said County since Nov
9 1874 or for any ^{and} work on said work
he may do in the future under the
alleged contract mentioned in the petition
of Plaintiffs dated October 21 1873.
(Indg. for costs)

No. 3978

Circuit Court.

Term, 18

Jno L Thomas

et al

vs.

Jefferson Co W

County Court Justices & more

Judgment, - - \$

Date 18

Fee Book No. Page

Judg't Docket, Page

Plaintiff's Atty.

ATTORNEYS: Exercise care and return promptly.

C. F. Chamberlin & Co., Printers and Stationers, St. Louis.