

Jefferson County Circuit Court
Case File Civil

Box

14

Folder 30

June 1863, No. 18

Spalding, Vincent J.
B

Jefferson County
Huskey, John
Moss, Thomas
Brighton, Jackson
Hestington, Elias B.

Injunction

Restrain use of road built on plaintiff's
property; \$300 damages; survey map

Vincent J Spalding Plaintiff
against
Jefferson County
John Huskey
Thomas Moss
Jackson Boughton
Elias B Harrington Defendants

In the Circuit
Court of Jefferson
County Mo

The plaintiff states that on the 23^d day of September 1857. (it being Wednesday) sundry petitioners filed with the County Court of Jefferson County, Mo then in session, a petition for a new County road from Moses Mill on Big River by way of John Huskey's to John Campbell, thence to the intersection of the Lewis and Iron Mountain Rail Road at the nearest stopping point from the last designated point. That the County Court then without reading the petition in open court made an order on the 23^d of September ¹⁸⁵⁷ for John Huskey, Thomas Moss and Jackson Boughton their commissioners to view and lay out the new county road as prayed for by said petitioners and to report their proceedings to the next Term of said County Court, that said commissioners in pursuance of said order were sworn to faithfully discharge their duties as commissioners and did view out & lay off a new County Road on the proposed route, through the following lands of plaintiff in Joachim Township in said County viz through part of United States Survey Nos 4374, 1980 and part of Lot 3 and part of Lot 10 Section 16, all in Township 41 Range

free East. Said Road was laid out through a part of the unimproved land for about a half a mile in length and through a part of the enclosures ^{& improvements} of said premises for about ^{200 yards in length} one quarter of a mile.

Said Plaintiff further states that said Commissioners made a report of their proceedings and of the road as laid out to the December Term of said Court 1857, in which they report that ~~the road~~ passes through the land of plaintiff but do ~~not~~ not describe whether through the enclosures or in what way.

The said Commissioners did not discharge their duties by obtaining from plaintiff a written consent to locate the road over his land nor was any such ^{or verbal consent given} written consent filed or accompanying the report. They further failed to discharge the duties required of them by law in not assessing damages that resulted to plaintiff from the location of said road through his lands. That the plaintiff charges that he never gave his consent for the location of said road through his lands and that the County Court knew from the report when filed that the said Commissioners had not the written consent of plaintiff to locate said road over said lands yet said Court received and approved of said report on the 22^d of December 1857 and did not at any time order summons to be issued to plaintiff to show cause why such road should not be opened, but did then on the same day of approving of said report order that Elias B. Harrington, Samuel Horn

ington & John Husky to open said road
In pursuance of which, ^{order} notice issued
was served on said Elias B Harrington, Sam-
uel Harrington & John Husky & Elias B
Harrington did in the summer of 1858
cut and open said road thirty feet wide
through the wood land & improved fields of
plaintiff aforesaid for about three quarters of
a mile thereby destroying a large quantity of
timber and depriving plaintiff of the use and
cultivation of the improved land

Plaintiff states that by reason of said com-
missioners failing to discharge their duties &
failing to obtain the written consent of pl-
aintiff to locate said road through his said
land and by reason of said court - failing
to order summons to be issued to him to
show cause why such road ~~should~~ ^{should not} be opened
as required by law, plaintiff did not have
any damages assessed for the location
& opening of the road through said land
and was deprived of his right ^{and opportunity} to show the
damages he sustained in locating the said
road through his lands

Plaintiff states & charges that the loca-
tion & opening of said road has injured the
plaintiff three hundred dollars

Plaintiff further states that defendants
have taken possession of the land and
premises over his land said enclosures & used
the same for a road for about three quarters
of a mile in length & thirty feet in width
from the summer of 1858 to the present
time and have from time to time, used

the same for travel without the consent of
plaintiff and contrary to law thereby doing
damage to plaintiff and depriving him of the
sole use and occupation of the same

Plaintiff prays the court for an injunction
to restrain defendants from further use of
the road over his premises and for judg-
ment for recovery of the possession
of the premises and for judgment for three
hundred dollars his damages and for
all further orders and decrees as may be
proper & just under the circumstances

Vincent J Spalding by atty

Vincent J Spalding makes oath & says that the foregoing
petition & the matters therein stated he believes to be true
Subscribed & sworn to before
me this 8 day of April 1863 V. J. Spalding
Chas J. Hooney Clerk

Vincent J Spalding
vs
Jefferson County & others

Filed April 20 1863
Chas J. Hooney
Clerk

aff 10
16 apr 1863
1 14 apr
24 6 apr
20 oct

Vincent J. Spalding Plaintiff

against

Jefferson County

John Hensley

Thomas Melfs

Jackson Brighten

Elias B. Harrington Defendants.

In the Circuit Court of
Jefferson County Mo.

The Plaintiff states, that on the 23 day of September 1857. (it being Wednesday) Sundry petitioners filed with the County Court of Jefferson County Mo. their in Superior, a petition for a new County road from Morris Mill on Big River by way of John Hensley's to John R. Campbells, thence to the intersection of the St. Louis and Iron Mountain Railroad, at the nearest stopping point from the last designated point, that the County Court, then without reading the petition in open Court, made an order on the 23d of September 1857. for John Hensley, Thomas Melfs and Jackson Brighten, three commissioners, to view and lay out the new County road as prayed for by said petitioners and to report their proceedings to the next term of said County Court; that said commissioners in pursuance of said order were sworn to faithfully discharge their duties as commissioners and did view out & lay off a new County road on the proposed route through the following lands

of plaintiff in Jackson Township in said County. viz. Through part of United States Surveys Nos 437 & 1986, and part of Lot 3 and part of Lot 10. Section 16, all in Township 41. Range five East; said road was laid out through a part of the unimproved land for about a half a mile in length, and through a part of the enclosures & improvements of said premises for about one quarter of a mile.

Plaintiff further states that said Commissioners made a report of their proceedings and of the road as laid out, to the December Term of said Court 1857. in which they report that the road passes through the land of plaintiff, but do not describe whether through the enclosures or in what way. The said Commissioners did not discharge their duties by obtaining from plaintiff a written consent to locate the road over his land nor was any such written consent filed or accompanied the report, or verbal consent given. they further failed to discharge the duties required of them by law, in not ascertaining damages that resulted to plaintiff from the location of said road through his lands. The plaintiff Charges, that he never gave his consent for the location of said road through his lands, and that the County Court knew from the report when filed that the said Commissioners had not the written consent of plaintiff to locate said road over said lands. Yet said Court

received and approved of said report on the 22nd of December 1857 and did not at any time order Summons to be issued to plaintiff to show cause why such road should not be opened but did then on the same day of approving of said report, Order that Elias B. Herrington, Samuel Herrington & John Huskey to open said road. In pursuance of which order, notice issued & was served on said Elias B. Herrington, Samuel Herrington & John Huskey & Elias B. Herrington did in the summer of 1858, cut and open said road thirty feet wide through the woodland & improved fields of plaintiff aforesaid for about three quarters of a mile thereby destroying a large quantity of timber and depriving plaintiff of the use and cultivation of the improved land.

Plaintiff states that by reason of said commissioners failing to discharge their duties, & failing to obtain the written consent of plaintiff to locate said road through his said lands, and by reason of said Court, failing to order Summons to be issued to him to show cause why such road should not be opened as required by law, plaintiff did not have any damages assessed for the location & opening of the road through said land and was deprived of his right and opportunity to show, the damages he

Sustained in locating the said road through his lands. Plaintiff states & charges that the location & opening of said road has injured the plaintiff three hundred dollars.

Plaintiff further states that defendants have taken possession of the land and premises over his lands and enclosures & used the same for a road for about three quarters of a mile in length & thirty feet in width from the summer of 1858 to the present time and have from time to time used the same for travel without the consent of plaintiff and contrary to law, thereby doing damage to plaintiff and depriving him of the sole use and occupation of the same.

Plaintiff prays the court for an injunction to restrain defendants from further use of the road over his premises and for judgment for recovery of the possession of the premises and for judgment for three hundred dollars his damages and for all further orders and decrees as may be proper & just under the circumstances.

Vincent J. Spalding

Vincent J. Spalding makes oath & says that the foregoing petition & the matters therein stated he believes to be true.
Subscribed & sworn to before me this 8th day of April 1863
Elias McConney Clerk

By Atty

V. J. Spalding

A true copy of the original
petition and affidavit on file in my
office

For Testimony where of
I hereto set my hand
and affix the Seal of said
Court at office this 2nd
day of April A.D. 1863
Chas F Honey
Clerk Circuit Court

The State of Missouri, } ss.
COUNTY OF JEFFERSON.

To the Sheriff of the County of Jefferson---Greeting:

We command you, that you summon *Jefferson County*
John Hensley Thomas Meigs Jackson
Boughton and Elias B Herrington

if they be found in your County, that they
be and appear before the Hon. Judge of our Circuit Court, on the first day
of the next term thereof, to be begun and held at the town of Hillsboro, within
and for the County of Jefferson, on the second Monday after the fourth
Monday of *May* next, then and there to answer unto
Vincent J. Spalding

upon *his* original petition, a copy whereof is hereunto annexed and ac-
companies this writ, and have you then there this writ.

Witness, ELIAS F. HONEY, Clerk of our said Circuit
Court, with the seal thereof hereunto affixed, at office
in Hillsboro, this *Second*
day of *April* A. D. 18 *63*

Elias F. Honey
Clerk Circuit Court.

The State of Missouri, } ss.
COUNTY OF JEFFERSON.

To the Sheriff of the County of Jefferson---Greeting:

We command you, that you summon *Jefferson County*
John Huskey, Thomas Mops, Jackson
Boughton and Elias B. Herrington

if they be found in your County, that *they*
be and appear before the Hon. Judge of our Circuit Court, on the first day
of the next term thereof, to be begun and held at the town of Hillsboro, within
and for the County of Jefferson, on the second Monday after the fourth
Monday of *May* next, then and there to answer unto
Vincent J. Spalding

upon *his* original petition; a copy whereof is hereunto annexed and ac-
companies this writ, and have you then there this writ.



Witness, ELIAS F. HONEY, Clerk of our said Circuit
Court, with the seal thereof hereunto affixed, at office
in Hillsboro, this *Second*
day of *April* A. D. 18 *63*

Elias F. Honey
Clerk Circuit Court.

TO JEFFERSON CIRCUIT COURT

Sept, 186

Warrant of *Shalading*

Jefferson County
and others

Copy petition and
omit for defendant
will be sent

Wm. A. H. H. H. H.
Sept. 186
Sept. 186

Vincent J Spalding }
 vs }
 Jefferson County } In the County Court of Jeff
 erson County Mo

V J Spalding the appellant
 states on oath that the appeal in the above
 Cause, is not taken for the purpose of
 vexation or delay, but because the affiant
 believes that he is aggrieved by the decision
 of the Court

Subscribed & sworn to
 before me this 27th day
 of February 1864:

Saml. Keppel Clerk



V. J. Spalding

Know all men by these presents that I Vincent J
 Spalding as principal and James L. Power as security
 are indebted to Jefferson County in the sum of fifty dollars
 to be void upon these conditions: whereas Vincent J Spald
 ing has appealed from the decision of the County Court in
 the above entitled Cause, now if he will prosecute the
 appeal and pay all costs, debt and damages that may be
 adjudged against him, then this obligation to be void,
 otherwise to remain in full force, as witnesses
 our hands & seals this 27th day of February 1864

V. J. Spalding

James L. Power

Alfred Bond of
Vincent T. Spaulding

Wm. H. Bond of
Wm. H. Bond of
Wm. H. Bond of

State of Missouri } In the County Court
County of Jefferson } January Term 1864

To the Hon. County Court

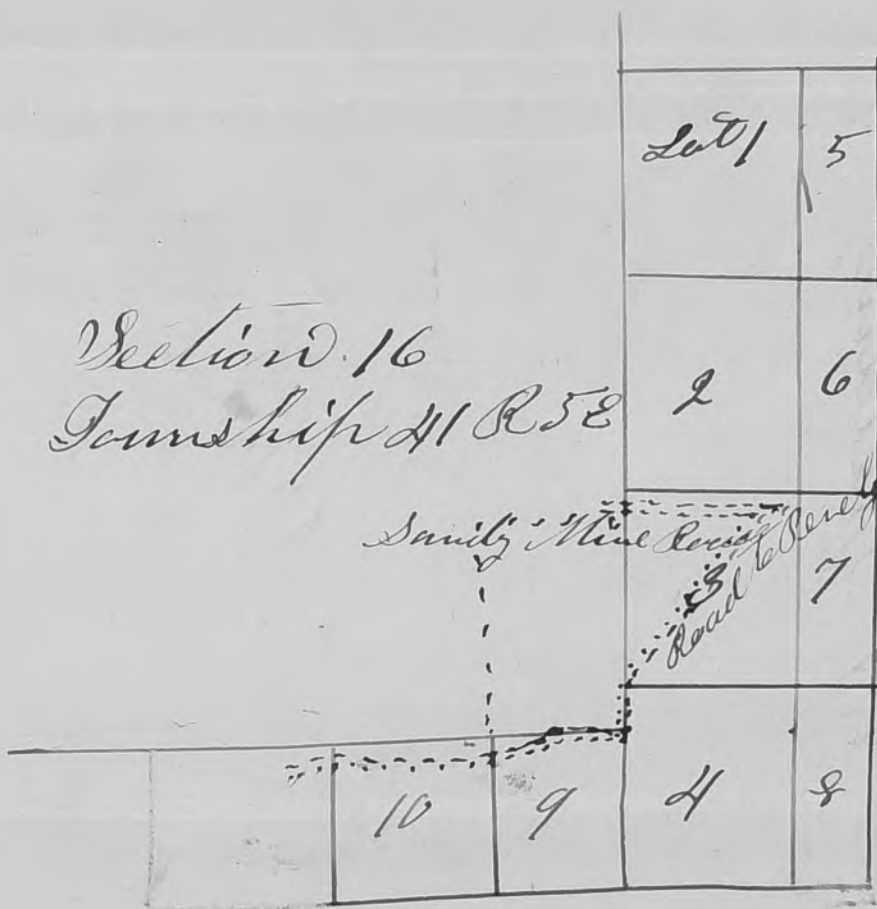
We the undersigned Commissioners
Appointed by your Hon. body, at the
October Term 1863, to view and Assess
The damages, of A certain Road, Leading
from Mauds Mill to Beverly Springs,
Through Lands belong to N. J. Spalding,
Do respectfully Report, That after having
first been duly Sworn did proceed
to view said Road, through said Lands,
And assessed the damages Through Lat
No. Three, at twenty five dollars, beginning
at the South West corner of said Lat No.
Three, Thence running S. N. East Course
Through said Lat Three, untill it
intersected the Old County Road, leading
from Sandy Mines to St Louis; We also
assessed the damages Through Lat No.
nine, at Twenty five Dollars if it belongs
To said Spalding, which is not claimed
by him in his Petition to the Circuit
Court, Lat Ten claimed by him in said
Petition does not belong to said Spalding;

This 14th day of November 1863,

P. S. We called to our assistance J. B. Dorer
Surveyor of said Road, to show us the
Lines of said Lands, And this Report is
Submitted,

William C. Coyle
William Shelton

Section 16
 Township 41 R 5 E



Fees		
William Shelton	} Commissioners	\$ 3.00
Wm Cook		3.00
W. P. Hamrick		1.50
J. B. Dover Surveyor & Plat		5.00
allow		\$12.50

Commissaries Report
of Damages on Board
Shanghai bound of
A. J. Spalding

A. J. Spalding

Filed Jan 30 - 1864
Attest J. H. Bell

To the County Court of Jefferson
County We the undersigned commissioners
appointed to view and examine a Road
leading from Peerey Station to J H Morse
Mill and running through V J Spaulding
Land have viewed the same and do not
consider as the Road now runs that
the Land of V J Spaulding is damaged
to the sum of One Hundred dollar
Given under our hands this 5 day of
October 1863

Charles A. Craft
Wm Mockbee
A B Hensley

Fees as Commissioners
C A Craft \$1 50
W Mockbee 1 50
A B Hensley 1 50

4 50

Commissioner
William. Proctor
Charles S. Craft
J. D. Hendley
Reproh

Filed Oct 5 1863
D. H. Coffey Clerk

State of Missouri } In the County Court.
County of Jefferson } Oct. 16th 1863.

The Court doth appoint Willis P. Hamrick, William Cook and William Shelton, Commissioners to view a Road leading from Mosser Mill to Pearly Springs, or that part of said Road, running through the lands of V. J. Spaulding, as surveyed by Jerome P. Dover, and that they take into consideration, the advantages, as well as the disadvantages of said Road, as surveyed by said Dover, through the said V. J. Spaulding's land, and that they assess the damages to the lands of the said V. J. Spaulding, (if any) as seems in their judgment, to be just and right, and that they report their proceedings herein to this Court, on the first day of the next term thereof, to be begun and held on the first Monday of January next.

Witness my hand and the seal of said Court, this 16th day of October, 1863.



J. A. Reppey Clerk.
per. R. M. Mullen Depty.

Notice to

Willis S. Hamrick,

William Cook &
William Shelton.

Debit \$1.50

Dec 3-1864

James M. Coffey

Chf

I executed this writ on Willis S. Hamrick
William Shelton & William Cook by
Reading the same in their presence and
leaving this 3rd day of November 1863
James B. Dancy Sheriff

State of Missouri } In the County Court
County of Jefferson } January Term AD 1864

Among other proceedings, the following were had, To Wit:
(January 15th AD 1864)

Now at this day comes William Cook, William Shelton, and Willis P. Kamerick, Commissioners heretofore appointed to view a road running through the lands of W. G. Spaulding, and assess the damages to said land on account of said road, and report that they have viewed said road, and assess the damages sustained by the said Spaulding, at the sum of Twenty Five dollars, which report is approved. Fee bill allowed, and Warrants ordered to Issue as follows, To W. G. Spaulding, for twenty five dollars, To Jerome B. Doser, five dollars, To William Cook and William Shelton, each, three dollars, and to Willis P. Kamerick one dollar, and fifty cents. Issued.

And whereas, afterwards, on the 9th day of January AD 1864, said County Court adjourned until Monday February 13th 1864, and whereas afterwards on the 27th day of February 1864, the following proceedings were had, To Wit:

Vincent J. Spaulding }
Jefferson County } Now at this day, (it being in vacation,
on the 27th day of February AD 1864, and on the 8th day after the
adjourned term held in said month) comes said plaintiff,
and files his affidavit, and bond for an appeal, from the report
of the road commissioners, appointed on the application of
said plaintiff, in the above entitled cause, Stating that
the appeal is not taken for the purpose of vexation or de-
lay, but because the affiant believes that he is aggrieved
by the decision of the court. It is therefore considered
that the appeal be granted, and a certified transcript of
the record, and proceedings relating thereto, together with

The original papers in the office of the clerk of this Court, be transmitted by the clerk of said Court to the clerk of the Circuit Court of said County, at least twenty days before the first-day of the next term thereof.

A true copy from the Record.

Witness my hand, and the Seal of
said County Court, at Office, this
9th day of May A.D. 1864



Saml. McPerry Clerk of

Fees due Saml. McPerry, Clerk County Court, in the above,
and foregoing case, For certifying up, this appeal,
taking bond of appellant. &c &c. One dollar, and Seventy
five Cents.



Vincent J. Spaulding
Atty.

Jefferson County
2411

Filed May 10th 1864
Elias J. Hooney
Clerk

Money Clerk aft. 10²

Money bet 100

Cent Head 50

Front 1/4 to cap 88° 186

Back 10 10

Seam 10° Cent 25 35

Feet 10

Blank

50

44
45

445

52

25

Stomach

9
45

50

9.95

52

W. J. Spaulding
as
Sergeant at Law

of the circuit Court
of Jefferson County
Missouri

The clerk of the circuit Court
of Jefferson County Missouri
the above suit at law

for Debt and
for W. J. Spaulding