

State of Tennessee

Be it remembered that here tofore, at a Circuit Court begun & held for the County of Montgomery at the Court House in the City of Clarksville a petition was filed in the words & figures following to wit

Petition

To the Honorable the judge of the Circuit Court presiding at Clarksville for the County of Montgomery. Your Petitioners Hugh Pundak Wm Dudley H Dudley Dock Smith Wm Dudley Anna Barnes by Jas F. Brown guardian E. H. Dean & S. Marr, J. M. A. L. Johnson & J. C. Henderson & others heirs of Jas Henderson shew to your Honor that they respectively are the owners of certain distinct tracts of lands situate in the County of Montgomery - that the President & directors of the Memphis Clarksville & Louisville Rail Road Company have located said road upon & through the several tracts of lands of your Petitioners greatly to their damage as the road is now being opened on said lands. They shew that no agreement has been entered into ascertaining and fixing the amount of damage with & between the Rail Road Company & your Petitioners, they therefore pray your Honor to appoint five commissioners of competency to value separately the damage such Petitioners will sustain by reason of the road so running to their lands & consequent loss thereof & report separately as the law directs to the next term of the Honourable Court

H. S. Kimble atty for Petitioners

And afterwards to wit, at the May term 1868 of said

Court, present & presiding the Hon. W L Davidson
judge presiding the following proceedings were had
to wit

Hugh Dunlap Jno A Smith Wm Dudley W M Dudley
E D Marx D L Henderson W Dudley A L Johnson
D Marx Anna Barnes by her guardian Jno H Moore & E H Deane

Petition

No. of
order of court

May 1858

The petition of the foregoing parties

having been read to the Honorable the Circuit
Court of Montgomery County & the matters therein
stated being considered of as well as its prayer
to have commissioners appointed to value the lands
of each of said petitioners that are taken & appropriated
by the Memphis Clarksville & Louisville Rail Road
Company in the location & construction of the Memphis
Clarksville & Louisville Rail Road. And it appearing
from this petition that said company had located
their said road upon & through the lands of the
petitioners situate in said County of Montgomery
And that no agreement has been entered into be-
tween petitioners & said Company for the value of
said lands, or with either for the value of his land
so appropriated by said company. It is ordered
& decreed by the Court that Robert Ferguson Jacob
Rudolph & A Whitfield Pleasant Bagwell & J B
Trigg be & they are hereby appointed commis-
sioners to value the lands of each petitioner separate
ly & separately report the value of the same to
the next term of this court under their hands &
seals, so taken & appropriated by said company
for this road, accompanying their report

with a full description of said land so taken together with the quantity

And afterwards to wit, on the 13th July 1858 the commissioners so appointed as aforesaid filed this report in pursuance to the order made but afterwards withdrew the same to make a subsequent report & have since returned it - to which report the defendants objected

No 2
Order of Court
Sept 1858

And at the September Term 1858 of said Court present & presiding the Honorable W. H. Coffey Judge &c the following proceedings were had to wit

E. S. Marr vs Memphis & Louisville R.R. Co.

Puncan Marr vs Same

J. C. Henderson & others vs Same

Wm Dudley vs Same

H. M. Dudley vs Same

Hugh Dunlop vs Same

A. L. Johnson vs Same

E. W. Dean vs Same

Geo. H. Smith vs Same

Anna Barnes by her

next friend J. H. House vs Same

In these cases
both the Plaintiff
& defendants appear
from the action of
the commissioners
to their report &
Pray this case
be submitted to a
jury of the country
& the same is granted

And at the January Term 1859 of said Court the Hon. W. H. Allen Judge presiding the following proceedings were had to wit,

No 3
Order of Court
Jan'y 1859

Hugh Dunlop E. S. Marr H. M. Dudley

D. Marr Anna Barnes by gen J. H. House

Wm Dudley & A. L. Johnson

vs

Memphis & Louisville R.R. Company

This case came
on to be heard before
the Hon. W. H. Allen
Judge presiding upon

4 the commission returned & filed July 1858. Accepted
to by the said Rail Road Company by their Counsel
& appealed from to this term of the Court, when on
motion of said company by their counsel to set
aside the report because no sufficient description
of the lands appropriated by said company was
given & the Court being of opinion that the commis-
sioners in their said report did not describe the lands
of the petitioners as appropriated by the company
doth order that the said report be set aside and
recommitted to Robt H Ferguson Thos S Trigg Jacob
Randolph Stephen Ligon & Pleasant Cagwell who
are hereby appointed commissioners to view & value
the lands of petitioners, separately report the same to the
next term of this Court with a full description of the
lands so valued with the quantity - ~~given~~ under their
hands & seals. The clerk of this Court will issue a copy
of this order commanding the Sheriff to summon
said commissioners to meet at some convenient place
organize & proceed to their work

Commissioners
report

And afterwards to wit, on the 19th
April 1859 a report was filed in said Cause in
the words & figures as follows, to wit:

The undersigned commissioners
appointed by the Circuit Court of Montgomery Co
Tenn having been duly qualified according to law
have reviewed the land appropriated by the M
& L R R Co belonging to Hugh Dunlap of this
county & State & submit the following report -

We find that the R R Co in
the case of this petitioner, Hugh Dunlap, have

5 appropriated $3\frac{1}{5}$ acres of sd Dunlap's lands omitted & bounded as follows: Beginning in Harry M Dudley's eastern boundary line, run thence to another tract of lands belonging to Dr Parnon. The ap of damages for the space occupied by the cut & embankments with ten feet added on each side of the roads. We decide that he should be paid by the RR Co for the above named quantity of lands at the rate of twenty five dollars (\$25.00) per acre

The road in its course through the lands of this petitioner cuts off about 40 acres from a large tract with a tobacco barn upon it thus separating from the body of the lands, leaving the cut off portion in an awkward & inconvenient shape and for these reasons we find the said Dunlap's damages in his property over & above the price for the lands actually taken Four hundred dollars

R H Ferguson Esq

J Bagwell Esq

J S Trigg Esq

Jacob Rutledge Esq

And afterwards to wit: at the May term 1859 of said Court Present the Hon W W Pepper Judge &c the following proceedings, among other things, were had to wit:

At 4
Order of Court
May 1859

Hugh Dunlap

vs

The Memphis Clarksville

& Louisville Rail Road Company

3 In this cause it is
ordered by the court
that the plaintiff give
a proceution bond at
this term of the Court
conditioned to pay all costs & damages that may be

indured against him in the hearing of this cause & thereupon plff gave bonds with H S Kimble as his security

Which said bonds is in the words & figures following to wit:

Prosecution bonds

We acknowledge ourselves bound & indebted to the Memphis Clarksville & Louisville Rail Roads Company in the sum of Two hundred & fifty dollars to be void on condition that Hugh Purlap prosecute his ^{petition} ~~suit~~ filed in this court & now pending in the Circuit Court of Montgomery County against said Memphis Clarksville & Louisville Rail Roads Company & do pay all cost & damages that may be awarded against him in the cause, otherwise to remain in full force & effect

H S Kimble *ESQ*

G A Henry *ESQ*

Appeal May 1859

And afterwards to wit; at the May term 1859 of said court, Present the Hon W W Pepper Judge &c the dfants appealed from the report of the said commissioners to a jury of the Country

Proceedings on Appeal Sept 1859

And afterwards to wit; at the Sept term 1859 of said court Present the Hon W W Pepper Judge &c the following proceedings were had to wit

Hugh Purlap	} Appeal	This day came the Parties by their attorneys & thereupon came a jury of good & lawful men to wit: W D Booth & M Robinson
M C & L Rail Road		

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A Eldridge A Merritt Alf Brown A L Smiths A Fletcher
 W Gorham A King M B Stone H W Smiths & A
 Stone who being duly elected tried & sworn well &
 truly to try the matters in controversy between
 the parties took their seats in the box. And the de-
 fendant by counsel excepted to the report of the
 of the commissioners & argument being had it is con-
 sidered by the court that the exceptions be sustain-
 ed, that the jury be discharged & that the report
 be recommitted to the said commissioners who
 shall report to the next term of this court & the plain-
 tiff filed his bill of exceptions to the opinion of the court
 which is in the words & figures following to wit:

Hughes Pencil

Exceptions
 Sept 1854

24 } This day this cause came on to be
 Mem Clarksville & tried, whereupon a jury was em-
 Louisville Rail } panelled to try the matters of
 Road Company } appeal by defendants and the
 defendants, after the jury was sworn
 excepted to the report of the commissioners filed in
 the cause on 19th April 1854, for that the com-
 missioners did not state the nature of the incidental
 damages outside the value of the lands actually
 appropriated by the roads, nor the nature or ex-
 tent of the damages accruing to the petitioners by
 reason of locating the roads upon his lands & set
 the one off against the other, and the court being
 of opinion that the exceptions ^{well} taken & that the
 report is deficient in this behalf doth order and
 decree that the jury be discharged from the fur-
 ther consideration of the case & that the report in

this behalf be recommended to the said commissioners to wit: Robert F. Ferguson P. Bagwell Thos S. Trigg & Jacob Rudolph to report to this court at its next term upon the matters herein directed to which opinion of the court the Petitioner by his counsel excepts & prays this his bill of exceptions to be signed sealed & made a part of the records in this cause which is done

W H Pepper Seal
Judge &c

Nov
Commissioners
report

And afterwards to wit on the 4th day of January 1860 a report was filed in said cause in the words & figures following to wit:

We the undersigned commissioners appointed by the Circuit Court of Montgomery Co Tenn. having been duly qualified according to law have viewed the lands appropriated by the M C & L R R Co belonging to Hugh Penlap of this County & submit here with our report

We find that the R R Co aforesaid have appropriated $3\frac{1}{5}$ acres of the lands belonging to this petitioner situated & bounded as follows

Beginning in Harry M Dudley's eastern boundary line where the R R as located intersects said line, running through said Penlap's lands to where said road as located intersects Dr Dawson's line including the space occupied by the cuts & embankments with ten feet added on each side of the road. We decide that said Penlap should be paid at the rate of twenty five dollars per

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new for the above named quantity of lands.

The road in its course through the lands of this Petitioner cuts off about 40 acres from a large tract of lands, leaving the cut off in an awkward shape, with a tobacco barn on it separated from the body of the lands, Said Dunlaps tract is a large one at no great distance from a ^{good} turnpike road which runs to a good navigable river. We do not see that this Petitioner is in the enjoyment of any advantage from this road, certainly of no more than those through whose lands it does not pass, & after weighing the incidental advantages of the road to him we cannot find that he is benefited, but ~~we~~ find that the Petitioner is damaged over & above any incidental and supposed advantage of the RR to him & over & above the price of the lands actually taken Four hundred dollars (\$400⁰⁰).

Jan'y 4th 1860

R. H. Ferguson Esq

Thos. S. Tully Esq

P. Bagwell Esq

Exceptions

To which report the Defendant excepts

- 1st. Because it is signed by only three commissioners
2. Because the commissioners did not go upon or view the lands nor did they make any survey of the land taken
3. Because the lands is not identified with sufficient certainty

Robert Bailey atty

And afterwards to wit, at the January term 1860 of said Court Present & presiding the Hon. St. W. Pepper Judge & the

following proceedings were had to wit.

Court Proceedings

Hugh Penlap

vs

M & L Railroad Co

Be it remembered that on this
10th day of January 1860 this

cause came on to be heard before the

Hon W W Pepper Judge presiding upon the report
of Robert F Ferguson Thomas Stagg & O Bagwell
three of the five commissioners appointed by the
court filed on the 4th of Jan'y 1860 & exceptions filed
by the defendants counsel to the same in number
three, & on argument had the court doth disallow
said exceptions as not being well taken & on motion
of petitioners counsel to have said report confirmed
it is ordered & decreed by the court that the same
be & is in all things confirmed & it appearing to
the court from said report the said commissioners
were duly sworn & proceeded on the 4th Jan'y 1860
that they reviewed the lands of petitioner Hugh
Penlap in Montgomery County & found that said
Memphis Clarksville & Louisville Rail Road Company
had appropriated of petitioners lands three & one
fifth acres in locating this road. Bounded as
follows, Beginning in Harry M Dudley's east
boundary line where the said Rail Road as located
intersects said line running through said Penlap's
lands to where said Road as located intersects Dr
Dawson's line including the space occupied by
the cuts & embankments with ten feet added on
each side of the road & it appearing to the court
from the report that said land is worth twenty
five dollars per acre, making the sum of Two

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hundred & forty dollars. And it also appearing to the court that said Hugh Penlap had been damaged by reason of the said rail roads having been located through & upon his lands the sum of four hundred dollars & that no incidental had accrued to said Penlap. It is therefore ordered adjudged & decreed that said Hugh Penlap do recover of the said Memphis Clarksville & Louisville Rail Road Company the said sum of two hundred & forty dollars & four hundred dollars in all six hundred & forty dollars & that he have execution therefor. It is further decreed that the title of said Hugh Penlap in & to said three & one fifth acres of lands so described as aforesaid be divested out of him & his heirs & assigns in said Rail Road company them & their successors in fee - and it is further decreed that the defendants the said Memphis Clarksville & Louisville Rail Road Company pay the costs of this cause & that the plaintiff have execution therefor as well as for his damages - and the defendants tendered this bill of exceptions to the opinion of the court which is signed & sealed by the court & ordered to be made a part of the record in this cause. And the defendants prayed an appeal to the next Supreme Court to be held at Nashville & having entered into bond & security agreeably to law the same is allowed.

And the defendants by attorney files this bill of exceptions in this cause which is the words & figures following, to wit:

Exception

Hugh Penlap 2

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M & L Road 3

As it remembered that the de-

defendant filed his exceptions to report of the commissioner
 & on the trial of the cause offered to prove that
 the commissioner who made the said report did
 not go out to the lands & see the same & make an
 inspection of the premises, the same alleged to
 be damaged by the defendant. the court was
 of opinion that the proof was not admissible
 & refused to allow the defendant to make it,
 to all of which the defendant excepted & pray
 that that this his bill of exceptions be signed &
 sealed & made a part of the records in the
 cause which is done.

Jan'y 9th 1860

W. H. Cupper Esq

Judge

And the defendant filed this appeal
 bond in said cause which is in the words &
 figures following to wit

Appeal bond

Hughes Purlap

04.

} M. C. & L. Rail Road Co. v. A. Robb

M. C. & L. Rail Road Co. acknowledge ourselves bound & in-
 debted to Hugh Purlap for the
 sum of Twelve hundred & eighty dollars.

The condition of the above obligation is such
 that whereas, the said Hugh Purlap has this
 day recovered a judgment in the Circuit Court
 of Montgomery County against the said M. C.
 & L. Rail Road Co. for \$640⁰⁰ from which said
 judgment the said M. C. & L. Rail Road have
 appealed to the next Supreme Court to be held at
 Nashville, Now in case the said M. C. & L. Rail Road shall

State of Tennessee }
 Montgomery County } I, Elias Bailey Clerk of the
 Circuit Court for the County
 aforesaid do certify that the foregoing is a true
 & perfect transcript of the Papers & Proceedings had in
 the case, Hugh Pumphrey vs Memphis Clarksville
 Louisville Rail Road Company as the same appears
 of record & Papers filed in my office

In witness whereof I have hereunto
 set my hand & affixed the seal of
 said Court at office in the City of
 Clarksville This 10th day of November 1860
 Elias Bailey

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By the Court.

The judgment must be affirmed. If it were true - as offered to be proved - that the Commissioners, in making their assessment of the damages, did not view the premises - this would have been proper ground of appeal; but no appeal was taken. Moreover, it is not denied that the facts, the premises, before making a former report, had gone upon the premises.

The other objections to the report are not tenable.

judgt affirmed

McKinney