

ALTERNATIVE WRIT OF MANDAMUS

W. A. WEEKLEY,	I	
PLAINTIFF,	I	IN THE CIRCUIT COURT OF
VS.	I	BALDWIN COUNTY, ALABAMA.
HONORABLE W. R. STUART, JUDGE	I	AT LAW
OF PROBATE COURT OF BALDWIN	I	CASE NO. <u>1764</u> .
COUNTY, ALABAMA.	I	
DEFENDANT.	I	

TO HONORABLE W. R. STUART, AS THE JUDGE OF THE PROBATE COURT, BALDWIN COUNTY, ALABAMA.

Whereas, on the 23<sup>rd</sup> day of February 1952 there was presented and filed with the undersigned, as clerk of the Circuit Court of Baldwin County, Alabama, a petition praying for an alternative writ of mandamus or rule nisi, which petition is in words and figures as follows:

PETITION FOR MANDAMUS

W. A. WEEKLEY,	I	
PLAINTIFF,	I	IN THE CIRCUIT COURT OF
VS.	I	BALDWIN COUNTY, ALABAMA.
HONORABLE W. R. STUART, JUDGE	I	AT LAW
OF PROBATE COURT OF BALDWIN	I	CASE NO. <u>1764</u> .
COUNTY, ALABAMA.	I	
DEFENDANT.	I	

TO THE HONORABLE TELFAIR J. MASBURN, JUDGE OF THE TWENTY-EIGHTH JUDICIAL CIRCUIT COURT.

COMES NOW YOUR PETITIONER AND SHOWS UNTO YOUR HONOR AS FOLLOWS

1. That W. A. Weekley is over twenty-one years of age and presently resides at Bay Minette, Alabama.
2. That the Defendant, Honorable W. R. Stuart, is the Probate Judge of Baldwin County, Alabama, and is over the age of twenty-one years, and presently resides in Bay Minette, Alabama.
3. That the County of Baldwin in the State of Alabama by R. J. Robertson, its agent, as chairman of the County Commissioners, filed a petition in the Probate Court of Baldwin County, Alabama, asking that certain lands in Baldwin County be condemned for public road purposes. Among the land sought to be condemned were parcel 5 described as follows:

Parcel 5: A strip of land as shown by the right-of-way map of Project No. F. G. 163 (3), as recorded in the office of the Judge of Probate of Baldwin County:

A strip of land 35 feet wide evenly off the South side of Lots 6, 7, and 8 of the R. E. Lee Sub-division, the map or plat of which is recorded in Map Book 1, page 107 in the office of the Judge of Probate of Baldwin County, making the right-of-way 57 feet wide on the North side of the center line of Project No. F. G. 163 (3) from Station 2567 + 51.9 to station 2568 + 88 and containing 0.12 acres, more or less.

4. That the Code of Alabama of 1940 (as amended) in title 19, Eminent Domain section 1 through 31, sets out the procedure that MUST be followed for "condemnation Of Lands For Public Uses." Your petitioner avers that this procedure has not been followed in that:

(A) Your Petitioner avers that Section 11 was violated for the commissioners appointed to appraise said land were not disinterested in the condemnation for its purpose was to provide for the widening of a public road in the City of Bay Minette. C. A. Thompson is a local land owner and a real estate dealer and as such had a vital interest in the widening of the said road. A. C. Mott was, at the time he was appointed, the Secretary of the Bay Minette Chamber of Commerce and as such could not have been disinterested in the condemnation for its purpose was to provide for the widening of the public road in the City of Bay Minette. A. C. Mott had a strong and direct interest in the improvement of the said city. George T. Byrne was not disinterested in this condemnation for he was the owner of valuable property abuttin on the road to be widened by this condemnation procedure, and this condemnation enhanced the value of his property greatly.

(B) Section 16 was violated, it provides the commissioners MUST, within twenty days from their appointment, make a report in writing to the Court, stating the amount of damages and compensation ascertained and assessed by them for the owners of each tract of land, or persons injured and other parties interested therein. The records of this said proceeding affirmatively shows that more than 20 days elapsed between the commissioners appointment and the day they made their report.

5. Your Petitioner avers that his rights guaranteed him under Article One, Paragraph 23 of the Constitution of 1910 of Alabama are being denied

him: Specifically: "but private property shall not be taken for, or applied to public use, unless just compensation be first made therefor." The compensation paid your petitioner for the land taken and heretofore described is in no wise adequate, fair nor commensurable to the damage done. The records of the lower court shows that your petitioner received only ONE HUNDRED (\$100.00) DOLLARS as damages to Parcel 5 whereas the owners of the adjoining lots, parcel 6 A, received ONE THOUSAND (\$1,000.00) DOLLARS as damages to their lots. Your Petitioner had more land taken from Parcel 5 under the said condemnation, to-wit: 0.12 acres, than was taken from Parcel 6 A, to-wit: 0.11 acres.

Your petitioner avers that his land was of equal value to that in parcel 6 A.

6. The Decree of the Probate Court, dated October 9, 1951, in part is as follows: "and the said right-of-way and easement and privileges so prayed for in said Petition, is hereby condemned to the Petitioner, and said County of Baldwin, State of Alabama, as aforesaid upon the payment of damages and compensation assessed by the commissioners heretofore named."

Your Petitioner avers that he was lead to believe, from the reading of this Decree, that the condemnation was not effective until payment and that at such time he "could do something about it", that is appeal. And that payment was made to-wit: January 15, 1952.

7. That in the face of the failure to follow the mandates of the Code of Alabama, 1940 (as amended) title 19: which set out the procedure that MUST be followed when land is condemned and the other error set out in this petition, W. R. Stuart entered a Decree dated October 9, 1951, condemning the aforesaid land to the use of Baldwin County, Alabama. In so doing the Honorable W. R. Stuart failed on his part to perform a ministerial duty imposed upon him as Probate Judge of Baldwin County, Alabama, by the Statutes of this State.

Wherefore, the Premises Considered, Petitioner respectfully prays that Your Honor will grant an alternative writ of mandamus or a rule nisi, directed to the said W. R. Stuart, as Judge of Probate of Baldwin County, Alabama, returnable to the Circuit Court of Baldwin County, Alabama, ordering and commanding W. R. Stuart as such Probate Judge, forthwith to vacate and annul his Order and Decree, dated October 9, 1951, condemning the above described land; limit-

ing the vacation and annulment however to that part of the Order and Decree which condemns Parcel 5; or to appear at a time to be designated by Your Honor and show cause why he should not do so; and Petitioner respectfully prays for any other and further relief; and for such other and further orders and judgments to which they may be entitled under the facts above alleged.

W. A. Weekley  
Petitioner

C. LeNoir Thompson  
Attorney for Petitioner

Tolbert M. Brantley  
Attorney for Petitioner

STATE OF ALABAMA

BALDWIN COUNTY

Before me, C. LeNoir Thompson, a Notary Public in and for said County and State, personally appeared W. A. Weekley, known to me, who being duly sworn, deposes and says that he is the Petitioner in the foregoing petition; that he has knowledge of the facts therein averred, and the facts therein averred are true and correct.

W. A. Weekley

Sworn to and subscribed before me this \_\_\_\_\_ day of February, 1952.

C. LeNoir Thompson  
Notary Public

And whereas in the opinion of the Honorable Telfair J. Mashburn, Judge of this Court, said petition states a proper and sufficient case for said writ of mandamus and has directed the clerk to issue the same; now, therefore, the said W. R. Stuart as the Probate Judge of Baldwin County, Alabama, is hereby commanded to appear before this Court on the 11<sup>th</sup> day of March, 1952, and show cause, if any he can, why a writ of mandamus should not be awarded to the said petitioner as prayed for in his petition as aforesaid.

(5)

WITNESSETH, the Honorable Telfair J. Mashburn, Judge of the Circuit  
Court of Baldwin County, Alabama, on this the 23<sup>rd</sup>-day of February,  
1952.

Alice L. Duck  
Clerk of the Circuit Court of Baldwin County, Alabama.

RECORDED

1764

Filed 2-23 1952

By W. R. Stuart  
Judge of Probate Court  
Baldwin Co.

By Joyla Walpin Sheriff  
W. F. Hall Deputy Sheriff

FILED  
FEB 23 1952  
ALICE L. DICK, Clerk

W. A. WEEKLEY,

PLAINTIFF,

VS

HONORABLE W. R. STUART, JUDGE  
OF PROBATE COURT OF BALDWIN  
COUNTY, ALABAMA.

DEFENDANT.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW

CASE NO. 1764.

This cause coming on to be heard upon the petition of Baldwin County, Alabama, to intervene as a party defendant in this proceeding, and it appearing that Baldwin County was the petitioner in the Probate Court of Baldwin County, Alabama, in that certain cause, the final decree in which is sought to be set aside in this proceeding, such county is a proper and necessary party in this proceeding;

Now therefore, it is ordered, adjudged and decreed that the petition of Baldwin County, Alabama, to intervene in this proceeding as a party defendant is hereby granted.

This the 1st day of April, 1952.

J. J. Madubury Jr.  
Judge





W. A. WEEKLEY,

PLAINTIFF,

VS

HONORABLE W. R. STUART, JUDGE  
OF PROBATE COURT OF BALDWIN  
COUNTY, ALABAMA.

DEFENDANT.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW

CASE NO. 1764.

This cause coming on to be heard upon the demurrers of W. R. Stuart, Judge of Probate, and of Baldwin County, Alabama, to petitioner's petition, the same is hereby ordered submitted on briefs.

The defendants, W. R. Stuart and Baldwin County, Alabama, are given ten days from this day in which to file briefs in this court, and petitioner is given ten days after the filing of defendant's brief in which to file brief.

This the 1st day of April, 1952.

John J. Mashburn, Jr.  
Judge

No. 1764

W. A. Weekley

Plaintiff

vs

Honorable W. R. Stuart,  
Judge of Probate Court of  
Baldwin County, Alabama  
and Baldwin County, Ala.

Defendants

Decree

FILED

MAY 23 1952

ALICE J. DUCK, Clerk

Filed 4-1-52  
Alice J. Wreck  
Clerk

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

AT LAM.

No. 1764.

No. 1764.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendants demurrers to the petition in the foregoing cause be and the same are hereby sustained.

Done this the 21st day of May, 1952.

Telfair J. Mashburn, Jr.  
Judge

ORDER GRANTING CONTINUANCE

W. A. WEEKLEY,

X

PLAINTIFF,

X

IN THE CIRCUIT COURT OF

VS.

X

BALDWIN COUNTY, ALABAMA.

HONORABLE W. R. STUART, JUDGE  
OF THE PROBATE COURT OF BALDWIN  
COUNTY, ALABAMA,

X

AT LAW

X

CASE NO. \_\_\_\_\_

DEFENDANT.

X

An alternative writ of mandamus was heretofore issued out  
of this court in this cause and made returnable on this date, to-wit:

March 11, 1952.

All parties to this suit, both petitioners and respondents,  
by their attorneys of record appeared and made a motion for a continuance  
of this cause.

It appearing to this court that good reason exists for the  
granting of a continuance IT IS THEREFORE ORDERED that this case be continued  
and reset for a hearing at 10:00 A. M. on Tuesday the 1st day of April, 1952.

Dated the 11 th day of March, 1952.

Julius J. Marshall  
JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA.

For the purpose of this investigation, the following information is being furnished:

1. The name of the person or persons who furnished the information.

2. The date of the information.

3. The name of the person or persons who received the information.

4. The name of the person or persons who furnished the information.

5. The name of the person or persons who received the information.

6. The name of the person or persons who furnished the information.

7. The name of the person or persons who received the information.

8. The name of the person or persons who furnished the information.

9. The name of the person or persons who received the information.

10. The name of the person or persons who furnished the information.

Adm. 3-11-54  
Miss J. J. J.  
J. J. J.

W. A. WEEKLEY,  
PLAINTIFF,

VS

HONORABLE W. R. STUART, JUDGE  
OF PROBATE COURT OF BALDWIN  
COUNTY, ALABAMA.

DEFENDANT.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW

CASE NO. 1764.

TO THE HONORABLE TELFAIR J. MASHBURN, JUDGE OF CIRCUIT COURT,  
BALDWIN COUNTY, ALABAMA:

Comes your Petitioner, Baldwin County, Alabama, and by leave of court files this his Petition to intervene in the foregoing cause and shows to this Honorable Court that it was the Petitioner in that certain suit in the Probate Court of Baldwin County, Alabama, for condemnation of lands for public road purposes owned by Petitioner in this proceeding; that the decree rendered by the Probate Court in the proceedings therein, and in this proceeding sought to be set aside, was in favor of Baldwin County and against the Petitioner in this cause; and that its rights under the decree of the Probate Court are involved in this proceeding and it is interested in the matters sought to be adjudicated, and that it is interested in and its property rights are involved in a successful defense of this proceeding; that its right and interest are not or may not be properly defended without its participation in the defense thereof and, hence, Baldwin County is a proper and necessary party defendant in this proceeding;

Wherefore, Petitioner prays that due and proper notice be given to the Petitioner in this proceeding and that upon hearing of this Petition, this Petitioner be permitted to intervene in this cause as party defendant for the purpose of defending its rights in this proceeding under the decree of the Probate Court here sought to be vacated; and Petitioner prays for all such other or different relief as it may be entitled to in the premises.



Solicitor for Baldwin County, Ala.

FILED  
MAR 28 1952  
ALICE J. DUCK, Clerk

RECORDED



PETITION FOR MANDAMUS

W. A. WEEKLEY,

PLAINTIFF,

VS.

HONORABLE W. R. STUART, JUDGE  
OF PROBATE COURT OF BALDWIN  
COUNTY, ALABAMA,  
DEFENDANT.

X

X

X

X

X

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW

CASE NO. \_\_\_\_\_.

TO THE HONORABLE TELFAIR J. MASHBURN, JUDGE OF THE TWENTY-EIGHTH JUDICIAL  
CIRCUIT COURT.

COME NOW YOUR PETITIONER AND SHOWS UNTO YOUR HONOR AS FOLLOWS:

1. That W. A. Weekley is over twenty-one years of age and presently  
resides in Bay Minette, Alabama.

2. That the Defendant, Honorable W. R. Stuart, is the Probate Judge of  
Baldwin County, Alabama, and is over the age of twenty-one years, and presently  
resides in Bay Minette, Alabama.

3. That the County of Baldwin in the State of Alabama by R. J. Robeertson,  
its agent, as chairman of the County Commissioners, filed a petition in the  
Probate Court of Baldwin County, Alabama, asking that certain lands in Baldwin  
County be condemned for public road purposes. Among the land sought to be  
condemned were parcel 5 described as follows:

Parcel 5: A strip of land as shown by the right-of-way map of  
Project No. F. G. 163 (3), as recorded in the office of the  
Judge of Probate of Baldwin County:

A strip of land 35 feet wide evenly off the South side of Lots  
6, 7 and 8 of the R. E. Lee Sub-division, the map or plat of  
which is recorded in Map Book 1, page 107 in the office of the  
Judge of Probate of Baldwin County, making the right-of-way 57  
feet wide on the North side of the center line of Project No.  
F. G. 163 (3) from Station 2567 + 51.9 to station 2568 + 88 and  
containing 0.12 acres, more or less.

4. That the Code of Alabama of 1940 (as amended) in title 19, Eminent  
Domain section 1 through 31, sets out the procedure that MUST be followed  
for "Condemnation Of Lands For Public Uses." Your petitioner avers that this  
procedure has not been followed in that:

(A) Your Petitioner avers that Section 11 was violated for the  
commissioners appointed to appraise said land were not disinterested in the

condemnation for its purpose was to provide for the widening of a public road in the City of Bay Minette. C. A. Thompson is a local land owner and a real estate dealer and as such had a vital interest in the widening of the said road. A. C. Mott was, at the time he was appointed, the Secretary of the Bay Minette Chamber of Commerce and as such could not have been disinterested in the condemnation for its purpose was to provide for the widening of the public road in the City of Bay Minette. A. C. Mott had a strong and direct interest in the improvement of the said city. George T. Byrne was not disinterested in this condemnation for he was the owner of valuable property abuttin on the road to be widened by this condemnation procedure, and this condemnation enhanced the value of his property greatly.

(B) Section 16 was violated, it provides the commissioners MUST, within twenty days from their appointment, make a report in writing to the Court, stating the amount of damages and compensation ascertained and assessed by them for the owners of each tract of land, or persons injured and other parties interested therein. The records of this said proceeding affirmatively shows that more than 20 days elapsed between the commissioners appointment and the day they made their report.

5. Your Petitioner avers that his rights guaranteed him under Article One, Paragraph 23 of the Constitution of 1910 of Alabama are being denied him: Specifically: "but private property shall not be taken for, or applied to public use, unless just compensation be first made therefor." The compensation paid your petitioner for the land taken and heretofore described is in no wise adequate, fair nor commensurable to the damage done. The records of the lower court shows that your petitioner received only ONE HUNDRED (\$100.00) DOLLARS as damages to Parcel 5 whereas the owners of the adjoining lots, parcel 6 A, received ONE THOUSAND (\$1,000.00) DOLLARS as damages to their lots. Your Petitioner had more land taken from Parcel 5 under the said condemnation, to-wit: 0.12 acres, than was taken from Parcel 6 A, to-wit: 0.11 acres.

Your Petitioner avers that his land was of equal value to that in parcel 6 A.

6. The Decree of the Probate Court, dated October 9, 1951, in part is as follows: "and the said right-of-way and easement and privileges so prayed for in said Petition, is hereby condemned to the Petitioner, the said County of Baldwin, State of Alabama, as aforesaid upon the payment of damages and compensation assessed by the commissioners heretofore named."

Your Petitioner avers that he was lead to believe, from the reading of this Decree, that the condemnation was not effective until payment and that at such time he "could do something about it", that is appeal. And that payment was made to-wit: January 15, 1952.

7. That in the face of the failure to follow the mandates of the Code of Alabama, 1940 (as amended) title 19: which set out the procedure that MUST be followed when land is condemned and the other error set out in this petition, W. R. Stuart entered a Decree dated October 9, 1951, condemning the aforesaid land to the use of Baldwin County, Alabama. In so doing the Honorable W. R. Stuart failed on his part to perform a ministerial duty imposed upon him as Probate Judge of Baldwin County, Alabama, by the Statutes of this State.

Wherefore, the Premises Considered, Petitioner respectfully prays that Your Honor will grant an alternative writ of mandamus or a rule nisi, directed to the said W. R. Stuart, as Judge of Probate of Baldwin County, Alabama, returnable to the Circuit Court of Baldwin County, Alabama, ordering and commanding W. R. Stuart as such Probate Judge, forthwith to vacate and annul his Order and Decree, dated October 9, 1951, condemning the above described land; limiting the vacation and annulment however to that part of the Order and Decree which condemns Parcel 5; or to appear at a time to be designated by Your Honor and show cause why he should not do so; and Petitioner respectfully prays for any other and further relief; and for such other and further orders and judgments to which they may be entitled under the facts above alleged.

W. A. Weekley  
Petitioner

Robert M. Brantley  
Attorney for Petitioner

C. L. Thompson  
Attorney for Petitioner

STATE OF ALABAMA

BALDWIN COUNTY

Before me, C. L. Thompson, A Notary Public in and for said County and State, personally appeared W. A. Weekley, known to me, who being duly sworn, deposes and says that he is the Petitioner in the foregoing petition; that he has knowledge of the facts therein averred, and the facts therein averred are true and correct.

W. A. Weekley  
Sworn to and subscribed before me this 23 day of February, 1952.

C. L. Thompson  
Notary Public

ORDER DIRECTING ISSUANCE OF WRIT

Upon reading and considering the verified foregoing petition or complaint, it is my opinion that the petitioner or plaintiff is entitled to the issuance of the alternative writ of mandamus as therein prayed. The clerk will, therefore, issue an alternative writ of mandamus as prayed for in said petition returnable to the Circuit Court of Baldwin County, Alabama, at 10:00 A.M. on the 11<sup>th</sup> day of March, 1952.

Jeffrey G. Mashburn, Jr.  
Circuit Judge

1764

ALV

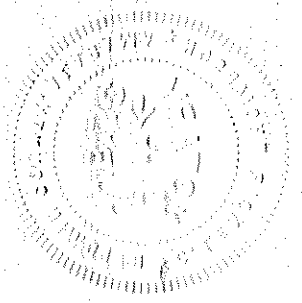
RECORDED

Executed 2 - 23 1952  
by leaving copy of within Petition for  
Moratorium on

Hon. W. R. Stuart  
Judge of Probate Court  
Baldwin Co.

Taylor Wilkins Sheriff  
By V. H. Hall Deputy Sheriff

FILED  
FEB 23 1952  
ALICE J. BROWN, Clerk



W. A WEEKLEY,

PLAINTIFF,

VS

HONORABLE W. R. STUART, JUDGE  
OF PROBATE COURT OF BALDWIN  
COUNTY, ALABAMA.

DEFENDANT.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW

CASE NO. 1764.

Comes Baldwin County, Alabama, and demurs to Plaintiff's petition and as ground demurrer says:

1. That there is no equity in the petition.
2. That the petition does not allege facts upon which this court could issue the order prayed for.
3. That the allegation in subdivision "A" of paragraph four does not show that the commissioners appointed by the court had any interest in the proceeding.
4. That the allegation that C. A. Thompson, commissioner appointed in the proceeding, is a local land owner and real estate dealer does not show that he had any interest in the proceeding.
5. That the allegation that A. C. Mott was Secretary of Chamber of Commerce does not show that the said A. C. Mott was interested in the proceeding.
6. That the allegation that George T. Byrne was the owner of property on the road to be widened does not show that the said George T. Byrne has any interest in the proceeding.
7. That there are no allegations of fact showing that the commissioners appointed in the proceeding, C. A. Thompson, A. C. Mott and George T. Byrne, had any interest in the said proceeding and were thereby disqualified as commissioners.
8. That the failure of the commissioners to make their report within twenty days after their appointment as alleged in subdivision "B" of paragraph four does not invalidate the decree rendered by the Probate Court.

9. That from aught that appears in the petition, the petitioner waived the failure of commissioners to report within 20 days after their appointment.

10. From aught that appears in the petition the failure of the commissioners to report within 20 days of their appointment was at the instance of petitioner.

11. This Court is not authorized under the law to issue a writ of mandamus to review the assessment of damages in the Probate Court in eminent domain proceedings.

12. That the remedy to the Plaintiff for an inadequate assessment of damages in the proceeding, if such award of damages was inadequate, should have been raised by appeal.

13. That the allegations of paragraph six that the petitioner misinterpreted the legal effect of the decree does not authorize this court to order the defendant to vacate the same.

14. That the Plaintiff had the right to appeal from the decree of the Probate Court and failed to do so within the time prescribed by law.

15. That the allegations of the petition show that the Plaintiff failed within the time allowed by law to appeal said cause.

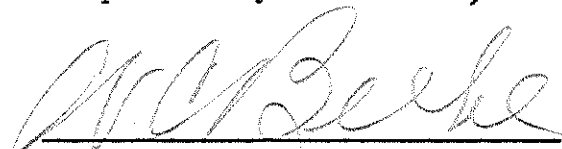
16. That the allegations of the petition show that the decree of the Probate Court is a valid decree and this court has no jurisdiction to order the same vacated.

17. That the petition fails to show that petitioner has timely application to the court wherein said decree was rendered for appeal or to set aside said decree, or that such court has denied such remedies or either of them.

18. That petitioner seeks by collateral attack to set aside a decree of the Probate Court.

19. That petition shows on its face that the matters complained of have been adjudicated by a court of competent jurisdiction.

Respectfully submitted,

  
Attorney for Baldwin County

RECORDED

Filed April 1, 1952  
Ricefman  
Clark



W. A. WEEKLEY,

PLAINTIFF,

VS

HONORABLE W. R. STUART, JUDGE  
OF PROBATE COURT OF BALDWIN  
COUNTY, ALABAMA.

DEFENDANT.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW

CASE NO. 1764.

Comes W. R. Stuart, Judge of Probate of Baldwin County, Alabama, and demurs to Plaintiff's petition and as ground demurrer says:

1. That there is no equity in the petition.
2. That the petition does not allege facts upon which this court could issue the order prayed for.
3. That the allegation in subdivision "A" of paragraph four does not show that the commissioners appointed by the court had any interest in the proceeding.
4. That the allegation that C. A. Thompson, commissioner appointed in the proceeding, is a local land owner and real estate dealer does not show that he had any interest in the proceeding.
5. That the allegation that A. C. Mott was Secretary of Chamber of Commerce does not show that the said A. C. Mott was interested in the proceeding.
6. That the allegation that George T. Byrne was the owner of property on the road to be widened does not show that the said George T. Byrne has any interest in the proceeding.
7. That there are no allegations of fact showing that the commissioners appointed in the proceeding, C. A. Thompson, A. C. Mott and George T. Byrne, had any interest in the said proceeding and were thereby disqualified as commissioners.
8. That the failure of the commissioners to make their report within twenty days after their appointment as alleged in subdivision "B" of paragraph four does not invalidate the decree rendered by the Probate Court.

9. That from aught that appears in the petition, the petitioner waived the failure of commissioners to report within 20 days after their appointment.

10. From aught that appears in the petition the failure of the commissioners to report within 20 days of their appointment was at the instance of petitioner.

11. This court is not authorized under the law to issue a writ of mandamus to review the assessment of damages in the Probate Court in eminent domain proceedings.

12. That the remedy to the Plaintiff for an inadequate assessment of damages in the proceeding, if such award of damages was inadequate, should have been raised by appeal.

13. That the allegations of paragraph six that the petitioner misinterpreted the legal effect of the decree does not authorize this court to order the defendant to vacate the same.

14. That the Plaintiff had the right to appeal from the decree of the Probate Court and failed to do so within the time prescribed by law.

15. That the allegations of the petition show that the Plaintiff failed within the time allowed by law to appeal said cause.

16. That the allegations of the petition show that the decree of the Probate Court is a valid decree and this court has no jurisdiction to order the same vacated.

17. That the petition fails to show that petitioner has timely application to the court wherein said decree was rendered for appeal or to set aside said decree, or that such court has denied such remedies or either of them.

18. That petitioner seeks by collateral attack to set aside a decree of the Probate Court.

19. That petition shows on its face that the matters complained of have been adjudicated by a court of competent jurisdiction.

Respectfully submitted,

  
Attorney for W. R. Stuart

RECORDED  
1764

Filed April 1, 1952  
Alice French  
Turk