

JULIAN SANFORD LITTLE, a minor,
suing by his next friend, AYRES
C. LITTLE, CLYDE NOLON LITTLE
and AYRES C. LITTLE, Individually,

PLAINTIFFS,

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. 1765.

Comes W. R. Stuart, Judge of Probate of Baldwin County,
Alabama, and demurs to Plaintiff's petition and as ground demur-
rer 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 es-
tate dealer does not show that he had any interest in the proceed-
ing.
5. That the allegation that A. C. Mott was Secretary of
Chamber of Commerce does not show that the said A. C. Mott was in-
terested 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 petitioners 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 petitioners.

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 Plaintiffs 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 petitioners misinterpreted the legal effect of the decree does not authorize this court to order the defendant to vacate the same.

14. That the Plaintiffs 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 Plaintiffs 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 petitioners have 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 petitioners seek 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.

20. That it does not appear from the petition that the petitioners, Clyde Nolen Little and Ayres C. Little, individually did not appear in said cause in the Probate Court.

21. That from aught that appears in said petition the petitioners Clyde Nolon Little and Ayres C. Little, individually, waived service in the Probate Court.

22. That the question of ownership of the property was adjudicated in the Probate Court.

23. That it does not appear from the petition that petitioners have made application to the Probate Court to amend the decree of October 9, 1951, by including petitioner, Julian Sanford Little as an owner of Parcel 6.

24. That from aught that appears in the petition the petitioners Julian Sanford Little was properly represented in the Probate Court proceedings.

25. That it appears from the face of the petition that Clyde Nolon Little and Ayres C. Little individually are not proper parties to this proceeding.

Respectfully submitted,


Attorney for W. R. Stuart

RECORDED

RECEIVED THE TOWER

RECEIVED THE TOWER

Filed April 1, 1912
Alice L. Hirsch
Berlin.

JULIAN SANFORD LITTLE, a minor,
suing by his next friend, AYRES
C. LITTLE, CLYDE NOLON LITTLE
and AYRES C. LITTLE, Individually,

PLAINTIFFS,

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. 1765.

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 petitioners 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 petitioners.

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 Plaintiffs 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 petitioners misinterpreted the legal effect of the decree does not authorize this court to order the defendant to vacate the same.

14. That the Plaintiffs 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 Plaintiffs 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 petitioners have 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 petitioners seek 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.

20. That it does not appear from the petition that the petitioners, Clyde Nolon Little and Ayres C. Little, individually did not appear in said cause in the Probate Court.

21. That from aught that appears in said petition the petitioners Clyde Nolon Little and Ayres C. Little, individually, waived service in the Probate Court.

22. That the question of ownership of the property was adjudicated in the Probate Court.

23. That it does not appear from the petition that petitioners have made application to the Probate Court to amend the decree of October 9, 1951, by including petitioner, Julian Sanford Little as an owner of Parcel 6.

24. That from aught that appears in the petition the petitioner Julian Sanford Little was properly represented in the Probate Court proceedings.

25. That it appears from the face of the petition that Clyde Nolon Little and Ayres C. Little individually are not proper parties to this proceeding.

Respectfully submitted,



Attorney for Baldwin County

RECORDED

Filed April 1, 1952
Aucifrenk
Clark

JULIAN SANFORD LITTLE, a minor,
suing by his next friend, AYRES
C. LITTLE, CLYDE NOLON LITTLE
and AYRES C. LITTLE, Individually,

PLAINTIFFS,

VS

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

DEFENDANT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

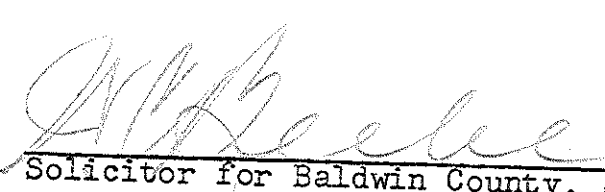
AT LAW

CASE NO. 1765.

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 Petitioners 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 Petitioners 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 Petitioners 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, Alabama.

RECORDED

FILED
MAR 28 1952
AUGUST 1, 1952, CHICAGO

ALTERNATIVE WRIT OF MANDAMUS

JULIAN SANFORD LITTLE, a minor,
suing by his next friend, AYRES
C. LITTLE, CLYDE NOLON LITTLE
and AYRES C. LITTLE, Individually, I

PLAINTIFFS, I

VS

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

DEFENDANT. I

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW

CASE NO. 1765.

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

Whereas, on the ____ 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

JULIAN SANFORD LITTLE, a minor,
suing by his next friend, AYRES
C. LITTLE, CLYDE NOLON LITTLE
and AYRES C. LITTLE, Individually, I

PLAINTIFFS, I

VS

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

DEFENDANT. I

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW

CASE NO. 1765.

TO THE HONORABLE TELFAIR J. MASHBURN, JUDGE OF THE 28TH JUDICIAL CIRCUIT
COURT.

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

1. That Julian Sanford Little suing by his next friend, Ayres C.
Little, is 16 years of age and presently resides with Ayres C. Little in Bay
Minette, Alabama. That Clyde Nolon Little and Ayres C. Little are each over
the age of 21 years, that both 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 21 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 lands sought to be condemned were Parcel 6 described as follows:

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

Beginning at Station 2567-51.9 where the center line of Project No. F. G. 163 (3) intersects the west right-of-way line of the Louisville and Nashville Railroad, which is the east property line; thence S $87^{\circ} 46'$ W a distance of 120.2 feet; thence westerly along a curve to the left (concave southerly), having a radius of 1432.69 feet, a distance of 200.9 feet to the point of ending at Station 2570 - 73 where the center line intersects the West line of the 2570 - 73 where the center line intersects the West line of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 10, T 2 S, R 3 E, which is the West property line.

Said strip of land being 63 feet wide on the South side of the center line of said project, being a part of Lots 1, 2, 2, 4, and 5 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, and containing 0.17 acres, more or less, in addition to the present right-of-way of U. S. Highway No. 31."

And Parcel 6 A. described as follows:

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

Beginning at Station 2569 - 35 of Project No. F. G. 163 (3) the east property line; thence westerly along a curve to the left (concave southerly), having a radius of 1432.69 feet, a distance of 138 feet to the point of ending at Station 2570 - 73 the west line of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 10, T 2 S, R 3 E, which is the west property line.

Said strip of land being 57 feet wide on the North side of the center line of said Project, being a part of Lots 9 and 10 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, and containing 0.11 acres, more or less, in addition to the right-of-way of U. S. Highway No. 31."

4. That R. J. Robertson averred in his petition that Clyde Nolon Little, Ayres C. Little, Burnie Eugene Little, Mary Virginia Little, Alice Mae Miller, Cornelia Little, Mildred Agnes Hall, William Robert Little, Betty Fay Little and Julian Sanford Little, were the owners and in possession and control of Parcel 6 A.

5. 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) Section 3 provides; "Where there are several tracts of land lying within one County of which portions are proposed to be taken, or in which an interest or easement is proposed to be acquired, the applicant may join them all in separate paragraphs in the same application, and must describe the several tracts and state the names and residences of the owners of each tract and any other parties claiming or holding any right, title, or interest therein, if known, or if unknown, must show that reasonable diligence has been used to ascertain the same."

Parcel 6 is comprised of five lots, 1, 2, 3, 4, and 5 of the R. E. Lee Subdivision; Ayres C. Little and Clyde Nolon Little are the owners of lot number 1; Clyde Nolon Little, Ayres C. Little, Burnie Eugene Little, Mary Virginia Little, Alice Mae Miller, Cornelia Little, Mildred Agnes Hall, William Robert Little, Betty Fay Little and Julian Sanford Little, are the joint owners of lots 2, 3, 4, and 5. In R. J. Robertson's petition as heretofore set out, Parcel 6, including all 5 lots, erroneously shows them to be the joint property of Clyde Nolon Little, Ayres C. Little, Burnie Eugene Little, Mary Virginia Little, Alice Mae Miller, Cornelia Little, Mildred Agnes Hall, William Robert Little, Betty Fay Little and Julian Sanford Little.

(B) Section 4 provides: "If any of the owners or other parties be infants or persons of unsound mind, and reside in this State notice must be served on them in the manner provided in this Code for service on infants and persons of unsound mind." Section 194 of Title 7 of the Code of Alabama of 1940,

sets out the method of serving an infant who is a defendant in a suit. The record of service affirmatively shows that this was not followed.

(C) Your Petitioners 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.

(D) 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.

6. Your Petitioners avers that their rights guaranteed them under Article One, Paragraph 23 of the Constitution of 1910 of Alabama are being denied them: 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 petitioners for the land taken and heretofore described is in no wise adequate, fair nor commensurable to the damage done.

7. 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 use 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 petitioners aver that they were lead to believe, from the reading of this Decree, that the condemnation was not effective until payment and that at such time they "could do something about it", that is appeal. And that payment was made to-wit: January 15, 1952.

8. Petitioners aver that R. J. Robertson in his petition for condemnation named Julian Sanford Little, who is 16 years of age, as one of the owners of Parcel 6, and that the Probate Judge in his Decree of condemnation failed to include the said Julian Sanford Little as one of the owners of Parcel 6 and failed to compensate him for damage done to his share of Parcel 6.

9. Your petitioners aver that Clyde Nolon Little and Ayres C. Little are the owners of lot number 1 of the R. E. Lee subdivision which is a part of parcel 6, and that they and others are the joint owners of lots 2, 3, 4, and 5 of the R. E. Little subdivision which is a part of Parcel 6.

That the commissioners failed to assess damages to lot number 1 separate from the other 4 lots and that payment for damages to all of Parcel 6 was lumped together. That Clyde Nolon Little and Ayres C. Little and the other owners of Parcel 6 are unable to ascertain what money was paid to Clyde Nolon and Ayres C. Little for damages done to lot number 1 and what money was paid to owners of lots 2, 3, 4, and 5 for damages done to them.

10. 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 errors 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, Petitioners respectfully pray 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

ing W. R. Stuart as such Probate Judge, forthwith to vacate and annul his Order and Decree which condemns parcel 6 and 6 A; 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.

Ayres C. Little
Petitioner

C. LeNoir Thompson
Attorney for Petitioners

Tolbert M. Brantley
Attorney for Petitioners

State of Alabama

Baldwin County

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

Ayres C. Little

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 11th day of March, 1952, and show cause, if any he can, why a writ of mandamus should not be awarded to the said petitioners as prayed for in their petition as aforesaid.

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

Bessie J. Smith
Clerk of the Circuit Court of Baldwin County, Alabama.

PETITION FOR ALIENATION

JULIAN SANFORD LITTLE, a minor,	{	IN CIRCUIT COURT OF
suing by his next friend, AYRES	{	BALDWIN COUNTY, ALABAMA
C. LITTLE: CLYDE NOLON LITTLE and	{	AT LAW
AYRES C. LITTLE, INDIVIDUALLY	{	CASE NO. _____
PLAINTIFFS	{	
VS	{	
HONORABLE W. R. STUART,	{	
JUDGE OF PROBATE COURT OF	{	
BALDWIN COUNTY, ALABAMA	{	
DEFENDANT	{	

TO THE HONORABLE TELFAIR J. MASHBURY, JUDGE OF THE 28TH JUDICIAL CIRCUIT COURT.

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

1. That Julian Sanford Little suing by his next friend, Ayres C. Little, is 16 years of age and presently resides with Ayres C. Little in Bay Minette, Alabama. That Clyde Nolon Little and Ayres C. Little are each over the age of 21 years, that bothe 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 21 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 roads purposes. Among the lands sought to be condemned were Parcel 6. described as follows:

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

Beginning at Station 2567+51.9 where the center line of Project No. F. G. 163 (3) intersects the west right-of-way line of the Louisville and Nashville Railroad, which is the east property line; thence S. 87° 46' W a distance of 121.2 feet; thence westerly along a curve to the left (concave southerly), having a radius of 1432.69 feet, a distance of 200.9 feet to the point of ending at Station 2570+473 where the center line intersects the West

line of the 2570 & 73 where the center line intersects the West line of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 10, T 2 S, R 3 E, which is the West property line.

- 4 Said strip of land being 63 feet wide on the South side of the center line of said project, being a part of Lots 1, 2, 3, 4, and 5 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, and containing 0.17 acres, more or less, in addition to the present right-of-way of U. S. Highway No. 31."

And Parcel 6 A. described as follows:

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

Beginning at Station 2569 + 35 of Project No. F. G. 163 (3) the east property line; thence westerly along a curve to the left (concave southerly), having a radius of 1432.69 feet, a distance of 138 feet to the point of ending at Station 2570 & 73 the west line of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 10, T 2 S, R 3 E, which is the west property line.

Said strip of land being 57 feet wide on the North side of the center line of said Project, being a part of Lots 9 and 10 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, and containing 0.11 acres, more or less, in addition to the right-of-way of U. S. Highway No. 31."

4. That R. J. Robertson averred in his petition that Clyde Nolon Little, Ayres C. Little, Burnie Eugene Little, Mary Virginia Little, Alice Mae Miller, Cornelia Little, Mildred Agnes Hall, William Robert Little, Betty Fay Little and Julian Sanford Little, were the owners and in possession and control of Parcel 6 A.

5. 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 petition avers that this procedure has not been followed in that:

(A) Section 3 provides; "Where there are several tracts of land lying within one County of which portions are proposed to be taken, or in which an interest or easement is proposed to be acquired, the applicant may join them all in separate paragraphs in the same application, and must describe the several tracts and state the names and residences of the owners of each tract and any other parties claiming or holding any right, title, or interest therein, if known, or if unknown, must show that reasonable diligence has been used to ascertain the same."

Parcel 6 is comprised of five lots, Lots 1, 2, 3, 4, and 5 of the R. E. Lee subdivision; Ayres C. Little and Clyde Nolon Little are the owners of lot number 1; Clyde Nolon Little, Ayres C. Little, Burnie Eugene Little, Mary Virginia Little, Alice Mae Miller, Cornelia Little, Mildred Agnes Hall, William Robert Little, Betty Fay Little and Julian Sanford Little, are the joint owners of lots 2, 3, 4, and 5. In R. J. Robertson's petition as heretofore set out, Parcel 6, including all 5 lots, erroneously shows them to be the joint property of Clyde Nolon Little, Ayres C. Little, Burnie Eugene Little, Mary Virginia Little, Alice Mae Miller, Cornelia Little, Mildred Agnes Hall,

William Robert Little, Betty Ray Little and Julian Sanford Little.

(B) Section 4 provides: "If any of the owners or other parties be infants or persons of unsound mind, and reside in this State notice must be served on them in the manner provided in this Code for service on infants and person of undound mind." Section 194 of Title 7 of the Code of Alabama of 1940,

sets out the method of serving an infant who is a defendant in a suit.

The record of service affirmatively shows that this was not followed.

(C) Your Petitioners 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 Ray 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. Hott was, at the time he was appointed, the Secretary of the Ray 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 Ray Minette. A. C. Hott had a strong and direct interest in the improvement of the said city. George T. Lyne was not disinterested in this condemnation for he was the owner of valuable property abutting on the road to be widened by this condemnation procedure, and this condemnation enhanced the value of his property greatly.

(D) 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.

6. Your Petitioners avers that their rights guaranteed them under Article One, Paragraph 23 of the Constitution of 1901 of Alabama are being denied them: 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 Petitioners for the land taken and heretofore described is in no wise adequate, fair nor commensurable to the damage done.

7. The Decree of the Probate Court, dated October 9, 1951 in part as follows: "and the said right-of-way and easement and privileges so prayed for in said Petition, is hereby condemned to the use 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 Petitioners aver that they were lead to believe, from the reading of this Decree, that the condemnation was not effective until payment and that at such time they "could do something about it", that is appeal. And that payment was made to-wit: January 15, 1952.

8. Petitioners aver that R. J. Robertson in his Petition for condemnation named Julian Sanford Little, who is 16 years of age, as one of the owners of Parcel 6, and that the Probate Judge in his Decree of condemnation failed to include the said Julian Sanford Little as one of the owners of Parcel 6 and failed to compensate him for damage done to his share of Parcel 6.

9. Your Petitioners aver that Clyde Nolon Little and Ayres C. Little are the owners of lot number 1 of the R. E. Lee subdivision which is a part of parcel 6, and that they and others are the joint owners of lots 2, 3, 4, and 5 of the R. E. Little subdivision which is a part of Parcel 6.

That the commissioners failed to assess damages to lot number 1 separate from the other 4 lots and that payment for damages to all of Parcel 6 was lumped together. That Clyde Nolon Little and Ayres C. Little and the other owners of Parcel 6 are unable to ascertain what money was paid to Clyde Nolon and Ayres C. Little for damages done to lot number 1 and what money was paid to owners of lots 2, 3, 4, and 5 for damages done to them.

10. 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, Petitioners respectfully pray 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 6 and 6 A; 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.

Agnes C. Little
Petitioner

Albert M Brantley
Attorney for Petitioners

C. L. Simpson
Attorney for Petitioners

STATE OF ALABAMA

BALDWIN COUNTY

Before me C. L. Simpson, Notary Public in and for said County and State, personally appeared Agnes C. Little, known to me, who being duly sworn, deposes and says that he is one of the Petitioners in the foregoing Petition; that he has knowledge of the facts therein averred, and the facts therein averred are true and correct.

Agnes C. Little

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

C. L. Simpson
Notary Public

ORDER DIRECTING ISSUANCE OF WRIT

Upon reading and considering the verified foregoing petition or complaint, it is my opinion that the petitioners or plaintiffs are 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 10:00AM on the 1st day of March, 1952.

Jeffrey G. Mablebury, Jr.
Circuit Judge

77 RECORDED

Executed 2-23 1952
by serving copy of within Petition for
Mordamus on
complaint on

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

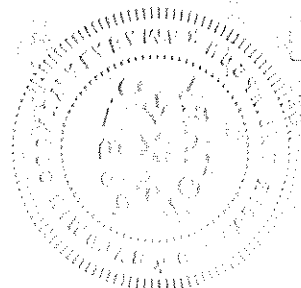
Taylor Wilkins Sheriff
by W. F. Hall Deputy Sheriff

FILED
FEB 23 1952
ALICE J. DUCK, Clerk

FILED

FEB 23 1952

ALICE J. DUCK, Clerk



JULIAN SANFORD LITTLE, a minor
suing by his next friend, AYRES
C. LITTLE, CLYDE NOLON LITTLE
and AYRES C. LITTLE, Individually,

PLAINTIFFS,

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. 1765.

This cause coming on to be heard upon the demurrers
of W. R. Stuart, Judge of Probate, and of Baldwin County, Ala-
bama, to petitioners' petition, the same is hereby ordered sub-
mitted on briefs.

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

This the 1st day of April, 1952.

Julian J. Maslbury, Jr.
Judge

7th 4-1-52
Aristarch
Clark

... of
... ..
... ..
... ..
... ..

... ..
... ..
... ..
... ..
... ..

... ..
... ..
... ..

ORDER GRANTING CONTINUANCE

JULIAN SANFORD LITTLE, a minor,
suing by his next friend, AYRES
C. LITTLE; CLYDE NOLON LITTLE and
AYRES C. LITTLE, Individually,

PLAINTIFFS,

VS.

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

DEFENDANT.

Y
Y
Y
Y
Y
Y
Y
Y
Y
Y
Y

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW

CASE NO. _____.

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 11th day of March, 1952.

Julian P. Mashebury Jr.
JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA.

Filed
3/1/57
Miss [unclear]
[unclear]

JULIAN SANFORD LITTLE, a minor,
suing by his next friend, AYRES
C. LITTLE, CLYDE NOLON LITTLE
and AYRES C. LITTLE, Individually,

PLAINTIFFS,

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. 1765.

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.

Jeffrey J. Marshall
Judge

1765'

File # 4-1-72

Reichmann
Guth

Gluck

JULIAN SANFORD LITTLE, a minor,
suing by his next friend, AYRES
C. LITTLE, CLYDE NOLON LITTLE
and AYRES C. LITTLE, Individually

Plaintiffs

vs

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

Defendants

IN THE CIRCUIT COURT

OF BALDWIN COUNTY, ALABAMA

AT LAW.

No. 1765

This cause coming on to be heard is submitted for
decree on the defendants demurrers to the plaintiffs
petition and the same being considered by the Court, the
Court is of the opinion that the demurrers are well taken
and should be sustained;

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.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
the petitioners have twenty days in which to amend the
petition, failing in which the said cause shall stand dis-
missed.

Done this the 21st day of May, 1952.

Walter J. Masliberger
Judge