

No 268

*Circuit*

Court

*George Wright and son*

Plaintiff,

vs

*W J Duncan*

Defendant

Action for *Money*

Docket *A* Page *446*

*O F Bell*

Attorney for Plaintiff

Attorney for Defendant

PLATE PRINTED BY THE UNIVERSITY OF CHICAGO PRESS

**Record of the Case**

1889  
 July 3 Pet Rec Viewers app'd  
 Jul 4 Jnl D p 579 page  
 Sep 4 Reports 1st reading, and  
 appraisers app'd Val D p 628  
 Sep 7 Ordered Bells Allowed  
 Jul D p 660  
 Nov 7/89 New Appraisers app'd  
 Jul D p 709  
 Jan 9/90 Viewers Report, 1st reading  
 Jul D p 741  
 Jan 10/90 Viewers Rept 2nd reading  
 and return of Appraisers Rep  
 Jul D p 763  
 Apr 6/90 Damages of Jul p 841  
 Apr 8/90 Ordered opened  
 Jul D p 843

326

Good  
 petitioned for by Wm Arley et al  
 Beginning at NE End of the Thos Keating  
 Lane to the Houghton Bridge  
 on Powder River

**WITNESSES**

DIRECTIONS—Place papers on TOP OF RUBBER  
 Fold ends first then sides Throw the rubber cords  
 over the ends and package is complete

326

PETITION FOR COUNTY ROAD.

To the Honorable County Court for Union County, Oregon:-

The undersigned, householders of Union County, Oregon, residing in the vicinity where the hereinafter described road is proposed to be, respectfully petition your honorable body to lay out alter and establish a county road within said county on the following line or route, to-wit:

Beginning on the county road as now traveled on lower Powder River, from Dean Bridge, on the north side of Powder River, to the Furman Bridge, at a point on said county road at the northeast end of the Thomas Keating Lane, on the northwest 1/4 of northeast 1/4 of Sec. 17, T. 8, S. R. 42, E. W. M. thence running S.W. on the grade as now traveled to the center of Powder River, terminating in the Houghton Bridge, on the N.E. 1/4 S.W. 1/4 of Sec. 17, T. 8, S. R. 42, E. W. M. all the above points and places being within Union County, State of Oregon, and in duty bound your petitioners will ever pray, etc.

Names.

Names.

- H. L. Anley,
- Thomas M. B. Perry,
- John A. Tucker,
- C. Vandevander,
- E. Vandevanter,
- Thomas Davis,
- E. P. Cranston,
- H. B. Cranston,
- Wm. H. Leasy,
- Joseph Graham,
- Wm. H. Wellington,
- John Erwin.

Endorsed:- Filed July 3rd, 1889.

A. T. Neill, clerk,  
By Turner Oliver, Deputy.

State of Oregon, )  
                  ( ss.  
County of Union, )

I, John Irwin, being first duly sworn, say that I posted three several notices, of which the notices hereto attached is a true and correct copy, in three public places, in said county in the vicinity of the proposed road therein described, to-wit: One on the Keating Post-office, one on the Houghton Bridge, and one in the Irwin lane, on the gate<sup>v</sup> affiants pasture, on the public road. Thirty days previous to the presentation of the road petition therein mentioned, to-wit: On the 29<sup>th</sup> day of May, 1889, and that said notices remained posted thirty days previous to the presentation of said petition, as I verily believe.

John Irwin,

Subscribed and sworn to before me, this 3rd day of July, 1889.

A. T. Neill, Clerk,

By O. F. Bell, deputy.

Endorsed:- Filed July 3rd, 1889.

A. T. Neill, Clerk,

By Turner Oliver, deputy

State of Oregon,)
( ss.
County of Union,)

I, Turner Oliver, being first duly sworn, say that I on the 3rd day of July, 1889, I posted a true and correct copy of said notice at the place of holding Court for Union County, Oregon, to-wit: On the front of the Court house door, in the town of Union, in said county and State, and that said notices remained posted thirty days previous to the presentation of said petition as I verily believe.

Turner Oliver,

Subscribed and sworn to before me this 3rd day of July, 1889.

A. T. Neill, Clerk,

By O. F. Bell, Deputy.

Endorsed:- Filed July 3rd, 1889.

A. T. Neill, Clerk,

By Turner Oliver, Deputy,

Notice of Road petition.

To all persons concerned:- You and each and all of you will take notice that the undersigned, householders for Union County, Oregon, residing in the vicinity where the hereinafter described road is proposed to be, will at the next session of the county Court for Union County, Oregon, to-wit: On Wednesday, the third day of July, A. D. 1889, respectfully present to said Court a petition praying said Court to lay out, alter and establish a County Road within said County on the following line or route, to-wit:

Beginning on the County Road as now traveled on Lower Powder River, from Dean Bridge, on the north side of Powder River, to the Furman Bridge at a point on said County Road, at the northeast end of the Thomas Keating Lane, on the northwest 1/4 of Northeast 1/4 of Sec. 17, T. 8, S. of R. 42, E. W. M. thence running S. W. on the grade as now traveled to the center of Powder River, terminating on the Houghton Bridge, in the N.E. 1/4 S.W. 1/4 of Sec. 17, T. 8, S. R. 42, E. W. M. all the above points and places being within Union County, State of Oregon.

Names.

H. L. Anley,  
Thomas M. B. Perry,  
John A. Tucker,  
C. Vandevater,  
E. Vandevanter,  
Thomas Davis,  
E. P. Cranston,  
H. B. Cranston,  
Wm. H. Leasy,  
Joseph Graham,  
Wm. H. Wellington,  
John Erwin.

Names.

Endorsed:- Filed July 3rd, 1889.

A. T. Neill, Clerk,

By Turner Oliver, Deputy.

Poste d June 3, 1889,

T. O.

Know all men by these presents;

That I, John Erwin, of the County of Union, and State of Oregon, <sup>was</sup> held and firmly bound unto the said County of Union in the sum of One Hundred Dollars, the payment of which, well and truly to be made, we bind ourselves, our heir, executors and administrators, firmly by these presents.

Signed this 3rd day of July, 1889.

Now, the condition of the above obligation is such, that whereas, if the county road petitioned for by H. L. Anley and others, and presented at the July Term, 1889, of the County Court of said Union County, Described in petition hereto attached be located and established, then this obligation to be void, otherwise to remain in full force and virtue in law.

William Proebstel,

John Erwin,

State of Oregon,) ( ss.  
County of Union,)

I, John Erwin, say that I am worth the sum of One hundred dollars over and above all debts and liabilities and property exempt from execution, and that I am a resident and householder in said county and state.

John Erwin.

William Proebstel,

Subscribed and sworn to before me this 3rd day of July, A.D.1889.

A. T. Neill, Clerk.

By Turner Oliver, Deputy.

Endorsed:-

Bond of Road Petitioners.

- - - - -

H. L. Anley, et al/ Petitioners,

- - - - -

Filed July 3rd, 1889.

A. T. Neill, Clerk,

By Turner Oliver, deputy.

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REPORT OF VIEWERS.

To the Honorable County Court for Union County, Oregon:-

The undersigned viewers heretofore on the 3rd day of July, 1889, appointed to view and lay out and alter the proposed county road of which the survey hereto attached is a true and correct description, as petitioned for by H. L. Anley, et al, beg leave to report that on the 25 day of July, 1889, in pursuance with said appointment and order, after being duly sworn to faithfully and impartially discharge the duties of said appointment, we proceeded to view out said proposed road for the whole distance thereof, and that in our opinion <sup>said</sup> proposed road should be laid out and established as a public highway of Union County, Oregon? That the same is practicable, and would add much to the convenience of the householders residing in the vicinity thereof, we therefore recommend that said proposed road be laid out and declared a public highway of said County.

A. T. Merwin,  
Wm. Constable,  
G. W. Hulick,

Endorsed:- Filed Aug. 27th, 1889,

A. T. Neill, Clerk,  
By Turner Oliver, deputy.

Field notes of the survey of the proposed county road of  
H. L. Anley and others.

I commenced by planting a post in mound of earth, with pits,  
& marked R. from which the N. W. Corner N.W.1/4 N.E.1/4 Sec. 17, in  
T. 8, S.R. 42, E. W. M. bears N.  $51-1/4^{\circ}$  W. 88 rods, and 15 lks.

Dist. thence S.  $37-1/2^{\circ}$  W. 60 rods A. 1,

" S.  $34^{\circ}$  W 120 " A Post in bridge,

marked R.T. from which the center Sec. 17, T. 8, S.R. 42, E. W.

M. Bears N.  $38^{\circ}$  E. 53 rods, and 16 lks. distant.

J. W. Kimbrell,

Co. Surveyor.

Endorsed:- Filed Aug. 27th, 1889,

A. T. Neill, Clerk,

By Turner Oliver, Deputy.

Proprietor J.C. East of H.L. Anley

17

J.S.R. 1/2 E. W. M.

Order of Survey  
of the  
of the  
of the

To the Honorable County Court of Union County, Oregon:-

As I have reason to believe there will be a petition or return of viewers at your next term for the purpose of locating a road through my place. Located in Union County, in Bed Rock Precinct, in the State of Oregon. And whereas, it will be a nuisance, and cause me damages in the sum of Three hundred dollars (\$300.00) I petition and pray that you take notice of my claim and grant the same before taking further actions or causing the road to be thrown open.

Mrs. E. A. Pierce,

Endorsed:- Filed Aug. 28th, 1889,

A. T. Neill, Clerk, by Turner Oliver,  
Deputy.

In the County Court of the State of Oregon,  
For Union County.

In the matter of the County Road )  
Petitioned for by H. L. Anley, et al. )  
----- )

Now at this time comes Thos. Keating, and shows to the Court that he is the owner of the N.2 of S.E.4 & S.E. 4 of N.W.4, and S.W.4, of N.E.4, of Sec. 17, Tp. 8, S.R. 40, E.W.M. in Union County, Oregon, across which the above entitled proposed road as petitioned for, viewed and surveyed extends. That said proposed road extends quartering through said lands and that said lands sought to be condemned thereby are first class agricultural lands and of great value to claimant. That said lands are enclosed and <sup>one</sup> used by the claimant for agricultural purposes.

That the opening of said proposed road leaves claimants land in a bad shape, will deprive him permanently of the use of a large portion thereof, necessitating the building and keeping in repair of a large amount of extra fencing and damage him in the sum of \$500.00

Wherefore claimant asks that viewers be appointed to assess said damages and that he be awarded and paid the sum of \$500.00 damages before said road is declared a public highway and ordered opened.

Thos. Keating,  
By T. H. Crawford, his attorney.

Endorsed:- County Court, Union County, State of Oregon.  
In the matter of the H. L. An ley Road.

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Claim of Thomas Keating for damages,  
Filed Sept. 3rd, 1889. A. T. Neill, Clerk,  
T. H. Crawford, attorney for, By Turner Oliver, Deputy.  
Claimant.

In the County Court of the State of Oregon,  
For Union County.

In the matter of the County Road, )  
petitioned for by H. L. Anley, et al. )  
----- )

Now at this time comes Mrs. E. A. Pierce, and shows to the Court that she is the owner of the N.E.4, of S.W.4, of Sec. 17, Tp. 8, S.R. 42, E.W.M. across which said proposed road as viewed, laid out and surveyed extends.

That said proposed road runs quartering across said lands, and the said lands sought to be condemned thereby are very valuable agricultural lands. That said proposed road will cut up and disfigure said lands and necessitate the building and maintaining of a large amount of additional fencing in order to enclose the same & will deprive claimant permanently of a large portion of said land to claimants damage, in the sum of \$500.00

Wherefore claimant prays that viewers <sup>now</sup> be appointed to assess said damages and that she be awarded and paid the sum of \$300.00 damages before said proposed road is declared a public highway and ordered opened.

Mrs. E. A. Pierce,

By T. H. Crawford, her attorney.

Endorsed:- County Court, Union County, State of Oregon.

In the matter of H. L. Anley Road.

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Claim of Mrs. E. A. Pierce for damages.

Filed Sept. 3rd, 1889,

A. T. Neill, Clerk, By Turner Oliver, Deputy.

T. H. Crawford, attorney for claimant.

REPORT OF VIEWERS.

To the Honorable County Court for Union County, Oregon:-

We the undersigned viewers heretofore on the 21st day of Sept. appointed to view out and assess the damages claimed by Thomas Keating in the matter of the proposed County Road petitioned for by H. L. Anley, et al. we beg leave to report that on the 21st day of Sept. 1889, we, after being duly sworn to discharge our duty faithfully and impartially, proceeded to view said proposed road the whole distance through the premises of Thomas Keating and Mrs. E. A. Pierce, complainants, and to assess and determine how much less valuable said premises of complainants would be rendered by the opening of said road, and we find that the premises of said complainants, Thomas Keating would be rendered no less valuable, and that the premises of complainant Mrs. E. A. Pierce would be rendered no less valuable, by the laying out and establishment of said proposed road as a public highway of said County, and recommend that \_\_\_\_\_ be paid to said complainants before laying out and establishing said road as a public highway.

P. H. Miles,

S. A. Spears,

Justus Wright.

Endorsed:- Filed Oct. 8, 1889.

A. T. Neill, Clerk,

By O. F. Bell, Deputy.

State of Oregon,) ss.  
County of Union,)

We, P. H. Miles, Justus Wright, and S. A. Spears, having been appointed by the County Court of Union County to appraise the damages that will accrue to Thomas Keating, and Mrs. E. A. Pierce by reason of the establishment of the proposed County Road, petitioned for by H. *H*. Anley and others, do solemnly swear that we will support the constitution of the United States and the constitution of the State of Oregon and the laws thereof; and will faithfully, honestly and impartially discharge the duties of said trust to the best of my ability and judgment so help me God.

Justus Wright,

P. H. Miles,

S. A. Spears, Appraisers.

Subscribed and sworn to before me <sup>thus</sup> 21st day of Sept. 1889.

C. R. Bowman,

Justice of the Peace.

Endorsed:- Filed Oct. 8, 1889,

A. T. Neill, Clerk,

By O. F. Bell, deputy.

*according*



In the County Court of the State of Oregon,  
For Union County.

In the matter of the Road )  
petitioned for by H. L. Anley, et al. )  
----- )

Now at this time come Thomas Keating and Mrs. E. A. Pierce remonstrators by their attorney, T. H. Crawford, and move the Court to set aside the report of P. H. Miles, S. A. Spears and Justus Wright, viewers, in claim for damages occasioned by the opening of said proposed road for the following reasons:-

- 1st:-- That one of the parties signing said report was never appointed a viewer therein, and had no authority to act as such viewer. Namely S. A. Spears.
- 2nd:-- That said report wholly ignore\* the rights of these claimants and appears to have been made under the influence of passion and prejudice.
- 3rd:-- That said report is illegal and void.

T. H. Crawford, attorney  
for Complainant.

Endorsed:- County Court, Union County.

In the matter of the County Road Petitioned for by  
H. L. Anley, et als.

Motion to set aside report of viewers.

The within motion allowed by County Court, November 6th, 1889, and the following persons appointed to appraise damages on the within named road, to-wit: Walter Love, A. J. Brown, and Samuel VanOrder, meet at Thomas Keatings on 16th of November, 1889, at 10 o'clock, A. M.

Filed Nov. 6th, 1889.

A. T. Neill, Clerk,  
By Turner Oliver, Deputy.

REPORT OF APPRAISERS.

To the Honorable County Court for Union County, Oregon,-

We, the undersigned viewers heretofore on the 7<sup>th</sup> day of Nov. appointed to view out and assess the damages claimed by Thomas Keating and Mrs. E. A. Pierce, in the matter of the proposed County Road petitioned for by H. L. Anley, et al, beg leave to report that on the 16th day of November, 1889, we after being duly sworn to discharge our duty faithfully and impartially proceeded to view said proposed road the whole distance through the premises of Thomas Keating and Mrs. E. A. Pierce, <sup>complainants,</sup> and to assess and determine how much less valuable said premises of said complainants would be rendered by the opening of said road, and we find that the premises of said Complainant Thomas Keating would be rendered \$166.00 less valuable, and that the premises of complainant Mrs. E. A. Pierce would be rendered \$90.00 less valuable, by the laying out, and establishment of said proposed road as a public highway of said County, and recommend that \$256.00 be paid to said complainants before laying out and establishing said road as a public highway.

W. S. Love,

Samuel Vanorder,

State of Oregon, )  
Union County. ) ss/

We, Walter Love, A. J. Brown, and Samuel Vanorder, having been appointed by the County Court of Union County to appraise the damages that would accrue to Thomas Keating and Mrs. E. A. Pierce on account of the construction of the proposed road petitioned for by H. L. Anley and others, being first duly sworn, each for himself say that I will support the constitution of the United States and ~~an~~the constitution of the State of Oregon, and will perform the duties of my said trust to the best of my ability and judgment so help me God.

W. S. Love,

Samuel Vanorder.

Subscribed and sworn to before me this \_\_\_\_ day of November, A.D. 1889.

John Erwin,

Justice of the Peace,

Bedrock precinct.

Endorsed:- Filed Nov. 20, 1889,

A. T. Neill, Clerk,

By Turner Oliver, Deputy.

Keating, Union County, Oregon,

April 7, 1890.

To the Honorable County Court, of Union Co. Oregon:-

We, the undersigned citizens, and householders living in the vicinity of the road proposed and petitioned for by H. L. Anley, and others do ask that the petitioners of said road be relieved from paying the sum of \$256.00 the amount allowed to Mrs. Pierce, and Mr. Keating, as damages for the right of way through their farm and that the County Court pay the above damage, and we will ever pray.

Names.

John Erwin,

J. E. Gilkison,

A. T. Merwin, *Wm. Constable*

~~H. L. Anley~~ *J. A. Tucker*

~~W. D. Emble~~ *C. Vandevanter*

~~A. J. Brown~~ *C. Vandevanter*

Names.

*A. J. Brown*  
Thomas M. B. Perry,

~~Wm. Constable~~, *A. T. Merwin*

~~J. A. Tucker~~, *H. L. Anley*

~~C. Van devanter~~, *W. D. Emble*

~~E. Vandevanter~~,

Endorsed:- The within petition granted in full, April 8, 1890.

Filed April 8th, 1890.

A. T. Neill, Clerk,

By Turner Oliver, deputy.

In the County Court of the State of Oregon  
for the County of Union.

X-----X  
: In the matter of the County :  
: Road petitioned for by :  
: H. L. Anley, et al. :  
X-----X

I, G. W. Benson, County Clerk of  
Union County, Oregon, do hereby certify that the foregoing  
are true and correct copies of the original papers in the  
above entitled matter and the whole thereof, same being  
transferred to Baker county, Oregon.

IN TESTIMONY WHEREOF, I, have hereunto set my hand and  
seal of the County Court, this 23<sup>rd</sup> day  
of June, A. D. , 1902.

*G. W. Benson*  
Clerk.  
BY *E. P. Schaw* Depy.  
5

Butte  
County Court  
Sumner County, Oregon

Butte master of  
the road between  
Horsley & H. Andley,  
et al,

Transcript of  
papers transferred  
to Baker County

Filed June 27, 1902  
J. M. Benson  
Clerk

First Judicial Day

Wednesday July 3<sup>rd</sup> 1889

said petition to this Court, notifying all persons concerned that application would be made to this Court at the present session of this Court: and that the notices so posted were in due form and duly signed by the petitioners, and that a bond for the cost of this proceeding has been duly given. It is therefore ordered that David Bug, Rudolph Bug and J. A. Marvon be appointed Viewers of said road, and that J. M. Kimbrell be appointed Surveyor of said road, and that they meet at the beginning of said proposed road on the 18<sup>th</sup> day of July 1889 at the hour of 10 o'clock A. M. and after qualifying to view, survey and lay out said road according to law.

In the Matter of the proposed }  
County Road petitioned for by }  
H. B. Anley and others } Comes now John Erwin, one of the petitioners  
for the above named proposed County road, and presents to the Court the petition of himself and others, praying for the location and establishment of a County road described as follows, to-wit: Beginning on the County Road as now traveled on Lower Powder river from Lean Bridge on the North side of Powder River to the Thurman Bridge at a point on said County road at the North East end of the Thomas Heating lane on the North West quarter of North East quarter of Section 17 T8 S R 42 E N. M. Thence running S. N. on the grade as now traveled to the center of Powder River, terminating on the Houghton Bridge in the North East quarter of South West quarter of Section 17 T8 S R 42 E N. M. And it appearing to the Court that said petition is signed by more than twelve householders of this County residing in the vicinity of said proposed road, and that said petition properly specifies the place of beginning, intermediate points and places of termination of said road, and it satisfactorily appearing to the Court that notice has been given by advertisement posted at the places of holding County Court, to-wit: at Union, County of Union State of Oregon, and, also in three public places in the vicinity of said proposed road, to-wit: One on the Heating Post Office, one on the Houghton bridge, and one in the Erwin Lane on the gate by the public road, for more than thirty days immediately prior to the presentation of said petition to this Court, notifying all persons concerned that application would be made to this Court at the present session of this Court; and that the notices so posted were in due form and duly signed by the petitioners, and that a bond for the cost of this proceeding has been duly given. It is therefore ordered that William Constable, George