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MANDAMUS—JUDICIAL OFFICERS—CONDEMNATION PROCEEDINGS.—
The State of Oklahoma ex rel. Attorney General filed a petition in a
district court praying for the appointment of commissioners to assess
the damages which might result to owners of certain realty desired
by the state highway commission for the construction of a county
road. The district court dismissed the petition and denied the right
of a state body to condemn lands for county highway purposes. An
action was then brought in the Supreme Court for a peremptory
writ of mandamus directing the district judge to reinstate the peti-
tion and to appoint commissioners. Held, that plaintiff was entitled
to the writ (two judges dissenting). State ex rel. Dabney, Atty. Gen.

Both opinions, prevailing and dissenting, quote excerpts from
the statutes providing for the classification of highways and the division
of regulatory powers between state and county highway commissions.
Assuming that all the pertinent sections have been presented, the lack
of authority in the state body to bring the proceeding is evident.

In issuing the writ, the majority of the court held that the act
of a district judge in filing a petition and appointing commissioners
was purely ministerial and the failure so to do would be a sufficient
ground for the extraordinary remedy by mandamus. Though the
statute, in terms, does not grant the district judge any discretionary
power in such matters, it is difficult to believe that he would
be bound to act where, apparently, conditions precedent to the acquiring
of jurisdiction had not been met. It is generally accepted that a
writ of mandamus will issue only when a clear legal right of the
applicant will suffer through the inadequacy of other available
remedies. The usual remedy for an erroneous decision is an appeal
to a higher tribunal. Here the plaintiff has failed to show either the
clear legal right or the inadequate remedy. Earlier Oklahoma deci-
sions express the general rule, Determan v. State, 89 Okla. 242, 215
Pac. 423, (1923); Champlin v. Carter, 78 Okla. 300, 190 Pac. 679,
(1920); Close Bros. v. Oklahoma City, 77 Okla. 104, 186 Pac. 931,
(1920). A Michigan decision decided under a substantially similar
form of procedure, and generally accepted as law, holds that man-
damus will not issue to compel the appointment of commissioners
where the petition does not disclose facts which will confer juris-
diction upon the court. Detroit, S. & D. Ry. Co. v. Gartner, Judge,
95 Mich. 318, 54 N. W. 946, (1893). Because of the apparent lack
of original jurisdiction, the available and usual remedy by appeal
and the general trend of authority to the contrary, the reasoning and
conclusions of the dissenting opinion seem more convincing.

DOMESTIC RELATIONS—ANNULMENT OF MARRIAGE—INSANITY—
WHO MAY AVOID—Plaintiff was married to Defendant in 1912. At
that time she was a lunatic and wholly unable to understand the
nature of the contract of marriage, he being ignorant of that fact.
He lived with her for 10 years and in meantime two children were
born of union. Defendant was adjudged a lunatic and is now and
has been for some years an inmate of an asylum. Plaintiff starts
suit demanding that nullity of marriage be judicially declared. From
a judgment in favor of Defendant, Plaintiff appeals. Held, a mar-
riage voidable for insanity may be annulled only by the lunatic and