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# Mandamus--Judicial Officers--Condemnation Proceedings (State ex rel. Dabney, Atty. Gen. v. Johnson, District Judge, 254 P. 61 (Okla. 1927))

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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 petition and to appoint commissioners. *Held,* that plaintiff was entitled to the writ (two judges dissenting). State ex rel. Dabney, Atty. Gen. *v.* Johnson, District Judge, 254 Pac. 61 (Sup. Ct. Okla., 1927).

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 decisions 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 mandamus will not issue to compel the appointment of commissioners where the petition does not disclose facts which will confer jurisdiction 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 marriage voidable for insanity may be annulled only by the lunatic and