

No. 3, May Term, 1886

View Vacate & Supply
Public Road

versus in

Decatur Twp.

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New York July 1870

No. 3 May Dec. 1886

John W. Sumner and
H. M. Corwin Esq. are
representing Deeds
Township of New York
at County in County
in their attorney's and
attorney's for said
County and can
can on the grounds of
the petition must
require the court to
grant the same.

In the matter of vacating
the City of New York
Public Road in
Deeds Township.

Attest to the above
confirmation of report
of viewers.

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confirmation of report
of viewers.

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In the Court of Quarter Sessions of Clearfield County Pa
No 3 May Sessions 1886.

In the matter of viewing vacating and supplying a
portion of a public road in Decatur township, Clearfield
County Pa. from a point on the Township Line ~~between~~
on the line of Woodward and Decatur Townships, through
the land of John H. Phillips and John A. Kephart to
a point at or near the land of John M. Chase in Decatur
township, and the Report of viewers thereon, confirmed
December 27th 1886.

The undersigned ~~inhabitants~~ of Decatur township
aforesaid respectfully represent:—

That, as they are informed, and believe, the Report
which was confirmed in this case ~~was improperly~~ on the
27th day of December A.D. 1886 was improperly
obtained regardless of the requirements of law, and that,
through mistakes of some kind the confirmation of
said Report was unlawfully & improvidently entered,
as will appear by records ~~in~~ the case. It appears,

1 That the ^{old} public road, by said said proceedings,
would be in part vacated and supplied, not for any
public benefit or purpose, but to subserve the private in-
terest of a few land holders including John H. Phillips,
John A. Kephart and William K. Turner, through or
near to whose land said road passes. — And that
this fact is apparent on the papers of record.

2. That the petition on which the view was obtained
purports to ~~be~~ be the petition of inhabitants of Decatur town-
ship, while in fact only about six of the 23 signers are
inhabitants of Decatur township, and ~~for~~ the six are in-
cluded the above named persons interested in said road.

3. The change reported by the viewers would be a public loss and disadvantage: - inasmuch as the old road vacated is shorter in distance, and easier in grade, and passes over as good ground for the purposes of a road if not better, than the new road reported to supply its place. - This distance would be about $\frac{1}{2}$ mile more or less, - and the township would be put to the extra expense of about two hundred dollars or possibly much more to put the new road in condition for travel and then would not have a better road than the old one now is. - Nobody would be benefitted unless it would be the persons reported to through or near whose land the road passes. - There is nothing in the Report to show that the portion of the old road reported to be vacated has become useless, burdensome or inconvenient. The Report says that by the opening of the new road the portion of the present road which they recommend to be vacated will become unnecessary and burdensome.

4. The Report also sets forth as a part of it that from said road (the new one reported by the viewers) if confirmed, John H. Philips and John A. Kinkaid agree to ~~cut and~~ remove all timber, brush & logs and make the same ready for grading. -

5. The proposed new road contains a great many stumps and would not be ready for grading till they are removed: - all of which would require much labor and expense. The road has never been opened. -

6. The Order to the viewers attached to their Report does not give the proper directions as to notice to the public of the time and place of the view, and in point of fact we believe that no such notice as the law requires was given, and that the public was substantially without

either notice or knowledge of the said proceedings.

The Report fails to state either the time or manner of notice.

7. That the Order to view issued to the viewers represents the Damage and injury by the old road to the land of John H. Phillips and A. Kephart and others as the matter complained of and to be remedied by making a road more advantageous to the petitioners; - all of which as a ground for vacating and supplying is insufficient and illegal. The said order does not designate the points for vacation ^{supply} & -

We therefore pray the Court to strike off the aforesaid Confirmation of Dec. 27th 1886 of the Report of the viewers, upon the ground that it was unlawfully and improvidently entered as appears from the papers and records in the case -

And so we pray: -

June AD 1890. -

Wm M. Lawrence	A. P. Dunbar
Jacob M. Lawrence	Joseph Dunbar
Jacob Banghman	Wm. Mathews Banghman
A. Evans	John W. Turner
Martin Fleck	E. J. Kephart
Jr. M. Lawrence	L. L. Linton
Galley Bupp	James Kephart
L. J. Fleck	John H. Kephart
D. W. Jones	R. L. Hughes
Henry Foster	
William A. Kelley	
A. B. Bathune	
R. K. Jones	
Elmer Jones	

Elmer E. Bower
Harrison Olinger
Wilson Kephart

William Ross

Joe A. Mills

Geo. W. Inmeal

Edwin E. Inmeal

P. E. Baughman

Austin Davis

J. C. Kephart

E. W. Kephart

W. A. Reams

S. S. Kephart

Geo. W. Mattem

Road case —
No. 3 May Sess; Term, 1886

~~The Commonwealth~~

VERSUS

Decatur Township et al
Plff in Rule to show cause
why Confirmation of Report in
regard to Road in this case should
not be stricken off. —

Constable's Return.

J. W. Turner
Constable 3 — services \$ 45
7 miles ^{circuit} ~~direct~~ 42
Total - - - - - \$.87

Clearfield County, ss:

Personally appeared before me the subscriber, who
being duly sworn, doth depose and say that he made the
number of services and traveled the number of miles
set out above in making service of this Subpoena.

John W. Turner

Sworn and subscribed before me this 8th
day of August A.D. 1890. —

J. M. Wilson
Clerk.

McDonally & McCurdy
attys. —

Clearfield County, ss:

The Commonwealth of Pennsylvania to

John W. Turner,

Esq. & Masters of the Court of Quarter Sessions, there to be hold for

We Command You, That, setting aside all manner of business and excuses whatsoever, you be and appear in your proper person before our Judges, at Clearfield, at ^{the office of William S. Gering, Esq. in the office of} ~~our County Court of Quarter Sessions, there to be hold for~~ Clearfield County, on the 8th day ~~Monday~~ of August 1890 — next, there to testify the truth according to your knowledge in a certain case now pending in our said Court, ~~and there and there to be tried, wherein the Commonwealth of Pennsylvania is Plaintiff and in a Rule to show cause why confirmation of the Report of a certain Road in Decatur Township should not be stricken off in case No 3 May Session 1890 Defendant~~, and that on the part of the said Township. And this you are not to omit under the penalty of five hundred pounds.

WITNESS, the Hon. DAVID L. KREBS, President of our said Court, at Clearfield, the 28th day of July — A. D., one thousand eight hundred and ~~eighty~~ ninety

Wm. Gering
Clerk.

Woodward
Township

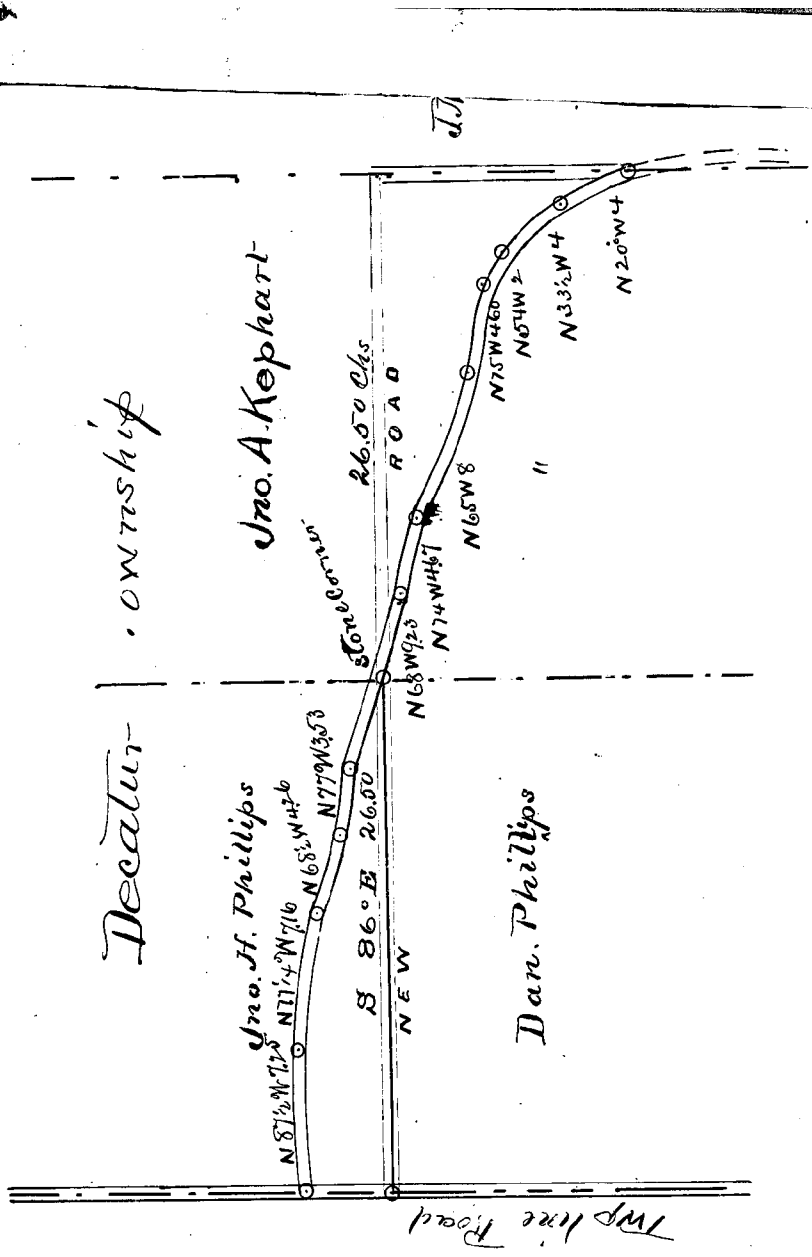
Decatur

Township

Jno. H. Phillips

Jno. A. Kephart

Dan. Phillips



Scale 100 chs. = 1 in

CLEARFIELD COUNTY, SS:3

At a Court of Quarter Sessions of the Peace of the county of Clearfield, held at Clearfield, in and for said county, on the 13th day of May, A. D. 1886, before Judges of said Court, upon a petition of sundry inhabitants of the township of Decatur, in

said county, setting forth that a Public Road hath been lately laid out by order of Court from a point or near John Lechase ~~farm~~ in Woodward Twp to a point in Decatur Twp at or near O'Keefe's Coal Bank that part of said Road is so located on the land of most Philips A. Keplest ~~and~~ others as to greatly damage and injure said lands that the said road can be so changed as to make it more advantageous to your petitioners and at the same time afford them a better road and with less injury to said lands

and therefore praying the Court to appoint proper persons to view and lay out the same according to law, and make Report to Court whereupon the Court, upon due consideration had of the premises, do order and appoint Chas Read Aaron S Shoff and Thos C Anderson who, after being respectively sworn or affirmed to perform the duties of their appointment with impartiality and fidelity, are to view the grounds proposed for said road, and if they view the same and any two of the actual viewers agree that there is occasion for such road, they shall proceed to lay out the same agreeable to the desire of the petitioners, as may be, having respect to the best ground for a road and the shortest distance, and in such manner as to do least injury to private property, and state particularly whether they judge the same necessary for a public or private road, together with a plot or draft of the same, with the courses and distances and reference to the improvements through which it passes, and shall also procure releases of damages from persons through whose lands said road may pass, or failing to procure such releases, shall assess the same, if any sustained, and shall make report thereof to the next Court of Quarter Sessions to be held for the said county, in which report they shall state that they have been sworn and affirmed according to law. Notice is directed to be given to the owners or occupants of seated lands through which the within road is intended to pass, of the time of the view, according to the 147th Rule of Court.

BY THE COURT.

James Kerr

CLERK.

RELEASE OF DAMAGES.

KNOW ALL MEN BY THESE PRESENTS : That we, the undersigned, owners of lands through which the road located by the viewers, under the annexed order, passes, for and in consideration of the sum of ONE DOLLAR to us respectively paid by the _____ at and before the ensealing and delivery hereof, have remised, released and forever quit-claimed and do hereby remise, lease and forever quit-claim to the said _____ all damages that may arise to us respectively by reason of the location and opening of the said road ; so that neither we, nor any of us, nor any person claiming under us, can or may hereafter ask, sue for, demand, have or receive any damages for injuries arising or growing out of the location and opening of the road aforesaid.

Witness our hands and seals this _____ day of _____
A. D. 188 .

+++++
[L. S.]
+++++

+++++
[L. S.]
+++++

+++++
[L. S.]
+++++

+++++
[L. S.]
+++++

ASSESSMENT OF DAMAGES.

The following persons, having refused to release the damages to which they respectively may be entitled by reason of the location and the opening of the said road in the annexed return described, we, the undersigned viewers, under oath in pursuance of our duty, under the Act of Assembly do assess their damages and make report thereof, as follows :

To _____ the sum of _____

To _____ the sum of _____

To _____ the sum of _____

Witness our hands this _____ day of _____ A. D. 188 .

To the Honorable the Judges of the Court of
Quarter Sessions of Clearfield County Pa

We the undersigned were appointed by your Honors
and named by the Amended Order of Court would
respectfully report that in pursuance of said
order and after giving good and sufficient
notice of the time & place of meeting, have met in
pursuance of said notice and all being present &
after all having been severally sworn or affirmed
according to law we have viewed the premises
within named and find that the road as now used
does cut the Lands of Jno^r Phillips & Jno^r F.
Kephart in very bad shape and also lays upon bad
ground in some places and ~~we have~~ we also find that
a public road between the points within named is
necessary and have thereon laid out & do now return to
for public use the following road to wit: Beginning
at the Corner of Jno^r F. Phillips & Dan Phillips on
Top Line Public Road between Woodward & Deauster tops
thence along the line between Jno^r & Dan Phillips S 86¹/₂ E
265⁰ Chains to Stone Cor of same on Jno^r F. Kephart
line thence continuing same course 26⁵⁰ Chains through
said Kephart land to line of Jno^r Chas. Lantz thence along same
line South 4⁹ W 13.40 Chs to Public Road ^{from} which said road
is confirmed Jno^r F. Phillips & Jno^r F. Kephart agree to
cut & remove all timber Brush & Logs and make the same ready
for grading. In our opinion no damage will be done
any one owning lands over which the above described is laid
by the opening of the above described Road a portion of the
present road now opened & used will become unnecessary
& Burdensome & we have therefore located said Road as
follows Beginning at point on Chas line above mentioned thence
along said Road, N 20⁰ W. 4 Chs. N 33¹/₂ W. 4 Chs. N 54⁰ W. 2 Chs
N 75⁰ W. 4.60 N 65⁰ W. 8 Chs. N 74⁰ W. 4.67 Chs. N 68⁰ W. 9.43 N 77⁰ W. 3.53
N 68¹/₂ W. 4.26. N 77¹/₄ W. 7.16 N 87¹/₂ W. 7.25 Chs to Top Line Road above
mentioned a plot or off of which is then to answer Curry & Reed
J. Leander ^{at M. Spitt}

NOTE.—In case of a Private Road, the release must be executed in favor of the petitioner for said road.
 Also.—Viewers will carefully note the number of days employed and set the amount out at the foot of their return.
 Reviewers cannot interfere with damages assessed by the original viewers, except so far as the location may be changed by the reviewers.
 N. B.—If the viewers believe the parties are not entitled to damages, taking into consideration the advantages as well as the disadvantages of the road, they will report to that effect.

W. B. A. M. { Days 1 *24* Amount *2.00*
 { Miles *5-17d* *50*

W. B. A. M. { Days 1 *#150*
 { Miles *2*

W. B. A. M. { Days *3* *#148*
 { Miles *26*

{ Days
 { Miles
 { Miles

See above
By the Court

No. 3 May Session, 1886

ORDER

To view and lay out a Road
Public
 For ~~the~~ use in the township
 of *Acacia* Clearfield county.

Left Jan 1886, Road was
 found to be sub's ordered
 that the road be laid out
 33 feet wide except where there
 is suitable cutting material
 must be buying, here to be
 36 1/2 feet wide
By the Court

Confirmed absolutely
 Dec 27 " 1886
By the Court

Filed *15 Dec*, 1886
 Fees \$1, paid by *W. B. A. M.*

W. B. A. M.

374 No 3 May 28 1886

In the Matter of Vacating
and supplying ~~the~~ part
of Public Road
in
Alcator Twp

Rule

21st July
Shff M Closter, \$1⁰⁰ XX

McMc

To the Hon. J. D. Ketch of the Court within name —
July 21. 1890 I received the within rule by a free and ^{giving} ~~deputized~~
copy personally to Oscar Mitchell. The ~~city~~ on
accord for the road. Said answer being ^{to}
made by direction of M. S. Smith, Jr. County
Atty for this Rule. — Said answer was
made on the 21st day of July 1890
do answer. Edgar J. McCloskey, Shff J.

In the matter of Vacating } In the Court of
the Suppleing part of a } Quarter Session
Ruler's Road } of Cleapsea Co &
in } the 3 May 1886
Declarin Township }

And now 7th July
1890 Rule granted to show Cause
why Confirmation Absolute should
not be decreed of Ret 1st argument over

By the Court
Certified from the record at
Cleapsea this 21st July 1890
Wm Deacon
Clerk of the Court

In the Quarter Session of Clear-
field County
Mo. 3 May Sess. 1886.

In the matter of the rule to show
cause why confirmation of road
in Decatur Township should not
be stricken off.

Now April 27, 1891 we Bur-
ton Winters and William Pritchard
the present supervisors of Decatur
Township heard Geo. Pa. here
by direct and authority Michael
by the County Esq. Atty for the
rule in the above stated case
to have said rule disconti-
nued and discharged and to
proceed no further in the mat-
ter.

Burton Winters
Wm Pritchard Jr
Supervisors of
Decatur Twp.

Apr 3. May Seco. 1886. -

In the matter of Rule
to show cause why the
confirimation of the
Report of the Secoary of the
Board in Decatur Co -
in this case should be
sustained &c. -

Now July 7th 1891
the proceedings upon
this case described
as far as respects the
Furnish of Decatur
for whom we have
been instructed them
act - in accordance
with the report -
will not prejudice the
rights of the other parties
to whom said confir-
mation of
the Secoary & the Secoary
of the Board
for Decatur
Co. -

Filed 7 July 1891
Wm. H. Secoary

We the undersigned citizens of Decatur Township
appointed to estimate the Advantages and costs to open the public
road lately laid out in Decatur Township from a point at John H. Phillips
corner on Woodward Township line to a point on the line of John W. Chases
land in Decatur Township at a point where said new road connects
with old road

The old road is more advantageous than the new road Old Road the Best
The grade of the Old road is better than the grade of the New road
It will cost \$1,579.00 Dollars to remove the stumps in the new road
it will cost \$396.00 Dollars ^{more to grade} to make the new road ~~as good~~
~~as condition as the old road is now.~~

it will cost only about \$50.00 Dollars to make the old road
in good condition for travel
said new road is not ^{not} used for public travel except where
it is crossed by the old road

6. 27. 1890

We the undersigned ^{citizens} of Decatur Township appointed to

Estimate the new Road, Believe the above statement to be
true and correct to the Best of our ability

E. L. Mattern
S. W. Jones

James Leffer D,
William H. Kephart
Wilson Kephart.

J. L. Baughman
J. A. Kephart
Jacob H. Garren.

John H. Kephart
J. B. McLaughlin
William G. Goss

Exhibit A.
W. M.
Aug. 8. 1890

In Court of Quarter Sessions
Cleaveland Co. Pa.
Road case. —
No 3 May SS. 1886.

Estimate of Cost of opening the
new road to supply part of the
old one. —

①

W. M. C.

No 3 May Seco. 1886

Road case.

In the Rule to show Cause why Compination of Road in Decatur Township should not be stricken off of No 3 May Seco. 1886.

Rule for Dep^y on part of Decatur & Petitioners for Rule to strike off.

W. McEnally on taking of dep^y — \$4.00
S. M. Jones wit 1 day mileage — 1.00
S. P. S. Mahtem 1 day mileage — 1.50
J. W. Turner on service of subpoena — .87

Apr. 1. 1892 Recd of A. M. Plowman 488 as the cost of Wm. McEnally above stated in the case of Wm. McEnally — \$8.37

Alfred Seco. 1881

Wm. McEnally

W. McEnally

Now 8th August 1890 it is agreed that the deposition made in the Rule taken down by Wm. McEnally — and to have the same given and effect as if regularly taken before a Justice of the Peace, — and the said Wm. McEnally to be in the same manner and to be entered as the same. — McEnally, Wm. Seco. 1881 against

RULE TO TAKE DEPOSITIONS.

CLEARFIELD COUNTY, SS:

In Re, Rule to show Cause
why Confirmation of Road
in Decatur Township should
not be stricken off - of No 3
May Session 1886. -

Quarter Session
In the Court of ~~Commons Pleas~~ of Clearfield
County, Pennsylvania.

Road case

No. 3 May Session Term, 1886

AND NOW, to wit, the 22nd day of July, in the year of our

Lord one thousand eight hundred and ~~eighty-ninety~~
~~Decatur Township and Petitioners for striking off~~
~~the Confirmation by M. McNally & Co.~~ enter a Rule to take the

Depositions of ancient, infirm and going witnesses, to
be read in evidence on the Argument of
this case. Ex parte Rule of Parties for Rule on
five days' notice.

J. M. McNally
Prothonotary.

To Oscar Mitchell, Esq.:

Atty of Record for the Road.

You will please take notice that, in pursuance of the foregoing rule, deposi-
tions will be taken before Daniel Connolly Esq., or some other
person authorized to administer an oath or affirmation in Pennsylvania, in
and for the county of Clearfield, at the office of McNally & McNally
in the Borough of Clearfield, in the county of Clearfield
and State of Pennsylvania, on the 8th day of August, A. D. 1890,
between the hours of 9 o'clock A. M., and 7 o'clock P. M.,
when and where you may attend and cross-examine.

McNally & McNally

Attys for the Rule

Clearfield, Pa., July 28th, 1890

Served this Rule July 28. 1890
personally by duplicate original copy of
same notice by copy given to Oscar
Mitchell atty for the Road & road

from recorded this 28th by
J. M. McNally
2 Aug 1890 before me
J. M. McNally C. K.

In the Court of Quarter Sessions of Clearfield County.

No. 3 May Session 1886

n the matter of vacating and supplying part of a public road in Decatur township. And Rule to show cause ~~why~~ absolute confirmation of road in Decatur township ~~should~~ not be stricken off.

Deposition of witnesses produced, sworn and examined before me, the Eighth day of August, A.D. 1890, at the office of McEnally & McCurdy, in the borough of Clearfield, in the County of Clearfield, and State of Pennsylvania, between the hours of Nine o'clock A.M. and Nine o'clock P.M. by virtue of the annexed Rule of Court of Quarter Sessions of Clearfield County, Pa., and notice attached together with the agreement of Counsel for the examination of witnesses in a certain cause depending ⁱⁿ said Court ^{wherein} Decatur township and others are parties Plaintiff for a Rule to strike off the confirmation of the road in Decatur township in No. 3, May Session, 1886, and Oscar Mitchell, Esq., is Attorney for those opposing the said Rule to strike off the said confirmation.

S.M. Jones, aged about 33 being duly sworn deposes and says; I am a citizen of Decatur township, and have been for Eight years. I have examined this road that was reported and confirmed in 1886. In the latter part of last month I was over this new road and the old one which it was intended to supply. Mr GPC Mattern & Wm H Kephart were along. Others were also along. We were there for the purpose of examining the two and estimating the cost of making the new road. The new road had not been opened nor used for traveling except where the old road crossed it. We estimated that it would cost \$555. to put the new road in a proper condition as called for by the opening order. ~~±~~ We estimated about \$159. for removing the stumps and about \$396. for grading and [↑]throwing up the ground about 16 1-2 feet wide according to the opening order. In some places it would require stone to be hauled; I would think a good many stone and at considerable expense. The place where stone would be required looked to me like a flat basin or swampy ground. Say about 20 rds. it might be more than that. I was over this ground in May 1889; it was covered with water and was soft; my horse sank in a great many places; I don't mean that the ground was all covered with water but that there was water standing at intervals. I think it would be absolutely necessary to pike or stone the road across this piece of ground to make it fit for traveling all seasons of the year. I think it would be necessary to build up the road on that ground so as to elevate ^{it} above the present surface; I regarded this as being

a very expensive part of the road. The old road crosses one portion of this flat; At a distance I would suppose nearly 15 rds. It looked to me as if it was not as wide where the old road crosses and the chance for draining appeared to be better at the old road; Stone had been used in making the old road across it. We estimated that it would cost \$50. to put the old road in a fair condition for traveling. This would not open it out the full width which the law requires; I do not think that \$300. would be sufficient to put the new road in as good a condition as the old road would be in after the expenditure of \$50. at least I would not like to undertake the contract; I hardly consider the new road as good in grade as the old one, especially where it connects with the road on the Woodward twp. line; I do not think the new road if made, would be as good as the old road for the accomodation of the public. My reason is that the old road is the shortest and when you reach the Woodward twp. road the travel nearly all goes to the right, that is to the north; and also that I think the grade is better on the old road. The following persons who appear to be signers to the original petition, were inhabitants of Decatur twp. in 1886 viz. Wm T Kephart, John H Philips; Wm K Turner, John A Kephart, John Kephart; J A Haines, appears as a name to the petition. There was a person by the name of Haines in the twp. at that time and he may be the man. The witness after looking at the original petition, says; I do not recognize any of the other names as being at that time citizens of Decatur twp. I know or believe that a majority of the names are of persons who at that time belonged to Woodward twp. and I think that most of them still belong to Woodward twp. I never heard of this new road till a year ago this last spring;

Cross-examined by Oscar Mitchell.

I reside from 2½ to 3 miles from this road at present. My present business is contracting and shipping fire clay; I farmed, mined coal &c. I never built any township road; I helped to build some but never contracted any; one piece of road I helped to build 7 miles; I worked probably 4 months; I worked by the day; was only a day man; dont know what the road cost; I consider that I have as good a knowledge as any run of laboring men about building roads, filling &c. I dont swear that I measured any of the road but that it seemed to me by walking to be about a mile long; I swear to no distance as to the road; there is some stumps taken out and the majority of the logs have been removed and the timber has been cut off; the road is not in a condition for driving if the fences were removed; we made the estimate 16½ ; when we went to make our estimate the order was produced and we saw that it required 16½ feet to be graded and required the road to be opened 33 feet; we made our estimate according to that order;

I dont remember what length we based it on; dont know whether roads in this township are usually opened as wide as the order calls for or not; I know they are not all; the old one is not opened that wide; I dont know whether there is stone within a quarter of a mile of this road; the stumps are not pulled out of the new road as wide as the old; there are some larger stumps pulled and blowed; the logs and brush not all off this road some on it; not many; I got through this new road just the same as if it had been brushed out through the woods; that is on horse back; Did you measure this swamp? I didnt measure any of it; I cant swear to the length of the wet place in this road; it might be 20 rods and might be more; I dont know that the supervisor worked on this road we made our estimate on the road as we found it that morning

I didnt count many stumps in the new road that would have to be taken out to make it as good as the old road; I didnt count the grubs in the new road that would have to be taken out; we first made an estimate of what expense it would take to have to read off the stumps and the grubs, a rod, that is, one ~~rod~~ with another, from one end of the road to the other; then we took an estimate of what it would take to have to grade that road one rod from one end to the other, that is, so much a rod, and averaged it up; it averaged the amount we have stated, \$159 stumping; \$359 for grading, and the stumps and the grubs were to be pulled for the width of 33 feet.

Were there any stumps in this swamp? There had been some stumps; I would not pull these stumps and grubs out through the wet place where I would have to fill unless they were too high; I dont know as I know of a road through the wooded district of our township that has the stumps and grubs pulled for the space of 33 ft. in width.

Dont you know that there is ^{not} a new road in your township opened up these last 8 years, that pulled the stumps and grubs for the width of 33 ft.? Dont know there was; when I was on the new road in May 89, it was a wet season,

Dont you know there is a very wet place on the old road? There has been one bad place on the old road and it is not good yet; that place is not a very long place that I noticed.

Was this road swampy the last time you were on it? It wasnt swampy, I saw no water; it was a very dry time; I dont know whether there was any notice up to view this road or not; I would consider the old road shorter than the new to go to Houtzdale; I suppose half the distance stoned on the new road was near as great in length as the distance stoned on the old road.

How long is the distance stoned on the new road? Dont know, didnt measure it

Now your estimate is based on the supposition as to the length and the number of the stumps and grubs? I counted no stumps, counted no grubs nor measured no length of stone, more than the eye, guided by my judgment; I think the road by Philips does not lay in the ravine where the water runs into the road my reason for thinking that, is, when I go below Philips towards Hendersons I go down hill into a basin and back up again..

[By Mr McEn.] I think there were 11 viewers viewing the road. the viewers all agreed as to the cost of the stumping grubbing & grading of the road; these viewers were: GPG Mattern Jas. Kephart, Wm Kephart, Wilson Kephart, JLEaughman, JAKephart Jacob McClarin, John Kephart, JRM~~McAren~~ Wm Goss SM Jones.

Oscar Mitchell, counsel for the parties in favor of the road objects to this testimony as being incompetent and irrelevant.

We had before us at the time of making these estimates the opening order checking the courses and distances of the road; we referred to it in ascertaining the distances of the road.

[By Oscar Mitchell.] The principal part of the 11 viewers were from the end of the twp. where the road is; the supervisor, John W Turner, called upon me to act as a viewer; I dont know as these viewers would have to come over this new twp. road to come to the place of meeting; Mr Kephart or Thom H Philips were not present at this view; ; I think that all these viewers with the exceptions of about 2 or 3 could reach that road within 3 miles or 3 $\frac{1}{2}$. I didnt know then, I dont know now, who were in favor of the road and who opposed to it. I dont know whether the supervisor who called me is in favor of the road or against it; I knew on that day that we met after we had disapproved the road that the supervisor was against it; I own no land in Decatur township.

G P G Mattern I have been a resident in Decatur for 30 years or more

Obj to as incompetent and irrelevant for the reason the only thing that can effect this case is whether or not a notice were posted as required by law and not whether or not Mr Mattern saw it or not said objection made by Oscar Mitchell attorney for the road;

I knew nothing of this new road until this spring. I was one of the men called upon by the supervisors in June of this year.

It is admitted that all irrelevant testimony may be taken advantage of before the court withany objection here; the grade in the new is not as good as that in the old; the new road is not as short as the old road; According to my judgement the new road if made would not accommodate the public as well as the old road; if there is a swamp where they say there is on the new road, then the new road would be much more expensive to keep in repair than the old one, because the road is longer and the swamp is longer on the new road than on the old one ; there was no swamp there when I was there in June, and also on yesterday; it was very dry time both times when I was there and the waters were very low; if the ground referred to and reported as swampy is in fact swampy, then the new road would pass perhaps twenty times as far over swampy ground as the old one- but as the ground was not swampy when I was there I do not undertake to testify as to the character of the ground in wet weather; On looking at the petition for this new road which is signed by 23 petitioners, I do not recognize any of them as inhabitants of Decatur twp. in 1886 outside of the six persons who have been ^{named} by Mr Jones in his testimony, and in regard to two of them viz. Mr J A Haines and Levi P Kephart, I am not

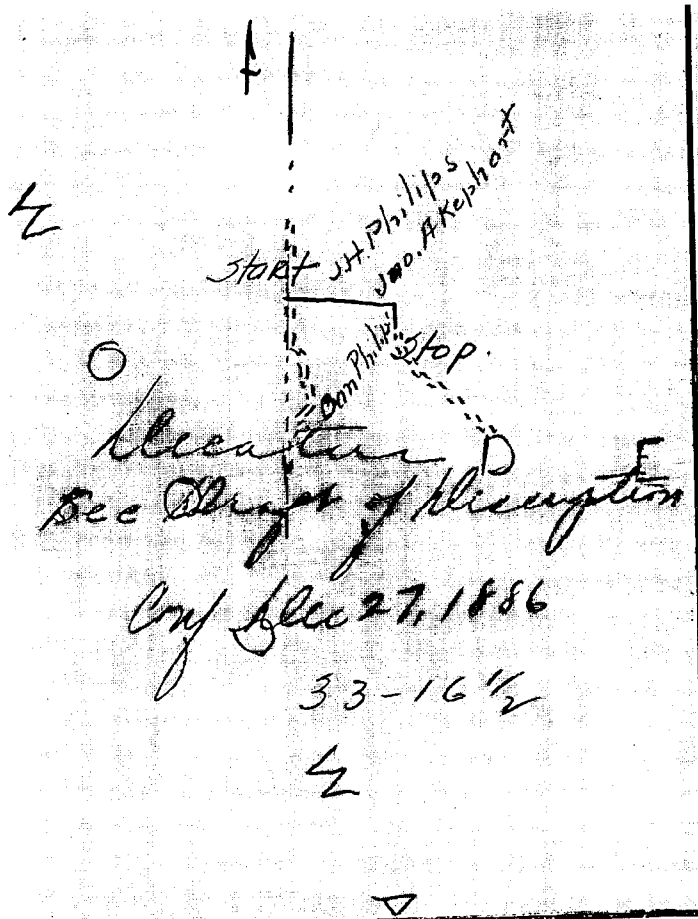
sure whether they were residents of the twp at that time or not; We estimated that it would cost \$50. to make the old road in a fair condition for travel between the points that would be supplied by the new road and that it would take a very much larger expenditure to put the new road in an equally good condition but I never made an estimate upon that question as to the new road; the estimate of the viewers was as shown in this paper which contemplated the making of the road as set out in the order. The finding of the viewers myself and the other viewers is contained in the paper hereto attached marked exhibit A.

CROSS EX.

I am well acquainted with this old road but not with the new.
I was one of these viewers; we made our estimation by going over the ground Did'nt count the stumps; I represented to Mr Wm H Kephart that the new road would cut off the school house lot from the twp. road; but that was not one of the objections on the day of the view to my knowledge.. *It was ascertained then.* —

G. O. E. Matter

I certify the foregoing to be the testimony of the witnesses
named as taken by me at the time and place mentioned
in the caption, under the rule attached and agreement
of attorneys undersigned.



TRACED BY

In the Court of Quarter Sessions of
Clearfield County.

To the Honorable the Judges of
the Court of Quarter Sessions of said
County.

The petition of the undersigned
residents of Decatur Township
in the said County respectfully sheweth
That a ^{Public} road hath been lately cut by
~~John H. Phillips~~ ^{in the farm in Woodward Township} from a point at or near
Dephant's coal bank that portion of
said road is so located upon the lands
of John H. Phillips, A. Dephant and others
as to greatly damage and injure said
lands, that the said road can be so
changed as to make it more advan-
tageous to your petitioners and at the
same time afford to them a better
road and with less injury to the
said lands.

Your petitioners therefore
pray your Honorable Court to appoint
proper persons to view, vacate and
supply that portion of said road
in the Township of Decatur, start-
ing at or near the Woodward Town-
ship line at Jeffries Postoffice
and ending at a point on the
said road at or near the farm of

John M. Blaser in Deatur Town-
Ship

and make report there on
according to law

and they will ever pray
Israel Cornelly

Wm Brady

Levi J. Kephart

E. C. Cross

Jos. H. Chase

John H. Phillips

J. L. Bailey

Frank Goff

Angelo Gaudio

Levi Haines

Daniel Kline

Oscar Kline

Wm H. Turner

J. A. Kephart

John Kephart

Edmund Roberts

J. A. Haines

John Ralston

W. C. Ralston

J. E. Ralston

T. H. House

David Batte

David H. Batte

In Re Rule to show
Cause why Confirmation of
road in Decatur Township
should not be stricken
off.

In the Court of Quar-
ter Sessions of
Cherokee County, Pa.
No 3 May Ad, 1886

Depositions of witnesses taken this
15th day of August A. D. 1886, at the Office of
Oscar Mitchell Esq., Cherokee, Pa., between
the hours of 9 o'clock A. M. and 9 o'clock
P. M., by virtue of the annexed Rule of
Court and notice thereon endorsed, for the
examination of parties in a certain case
then pending.

John A. Kephart, Affirmed, One party persons
in favor of road.

My age is about 44 yrs.
I was supervisor of Decatur township in
the years 1887 and 1888. I had an opening
order for this road in controversy in 1888.
In pursuance of this order I did have
seventy five and eighty dollars worth of work
on this road. While I worked on this
road under this opening order no person
ever objected to it. The road was brushed
out by myself and John H. Philips without
expense to the township. I claim this
road could be traveled except the fences.
It was put in this condition by the
work which I mentioned before, which

was done by me as supervisor and by myself and John H. Phillips as individuals. What I call stumps are all removed from the center of that road. The road is rid of stumps for about thirty feet wide except some few places.

There are sixteen or eighteen feet clear of stumps. This is the narrowest portion of the road. The other part of the road is over thirty feet clear of stumps. I, as supervisor, put stumps on this road.

The stumps we put on this road were broken for traveling except a few on one end. A part of this road I put in as fair traveling condition as new roads are usually put in. I claim I could put this road in good traveling condition for about seventy five dollars. If they would let this road out for bids, I would take the bid and put this road in as good traveling condition as new roads are usually put in for the sum of seventy five dollars. I should think the new road would be an improvement over the old road because I claim it is on better ground. I think the new road would be easier kept up by the township than the old road. I am well acquainted with the ground on both the old and the new road. I would claim that the wet part of the road is the longest on the old road. The new

road would be ~~easier~~ drained than the old. This old ^{road} through this swamp has been moved from place to place. I suppose this was done because it was so bad through the swamp. I have made over two miles of road in my time.

Cross Examined by Mr. McEally.

I was on part of the ground when the view was located. I was with the viewers. Mr. Philips was with me. I do not remember any others besides the viewers. They did not carry the chain through them. They ran it by sight. They had a chain along but did not use it. This was in the afternoon. I do not know what day it was. I lived & was on this ground at the time. The road went through some of my land. ~~The~~ land of myself and Mr. Philips joins. Mr. Philips and I were two of the petitioners. Mr. Philips and I did not agree with the viewers that we would stump the road. We agreed to brush the road. We agreed with the viewers to do this. But we did not agree to stump the road. There were very few trees of any size on the road. Mr. Philips and I did not cut down any of the trees on the road. What few there were, were left standing to be pulled down. Mr. Philips and I did not remove any stumps. When

I was supervisor & moved some stumps
I hauled some stone. We hauled them
in different places. There was a great
many places we did not put any stone.
We hauled stone on this part that was
all wet ground and on these places
where we blazed stumps out. This
new road was run between Turner and
me, then it ran through my land, then
on the line between Chase and me. This
fence I speak of ran across the new
road. It was a fence of Dan Philips.
There were two fences across the road. They
were both Dan Philips fences. They are
across the road yet. They were there also
when the road was laid out and have
been ever since. Inside of those fences
the land is cleared. There is buckwheat
in it today. It is about thirty rods
from our fence to another across this
buckwheat field. The old road goes
through my land. The old road runs
about through my land, in an angling
way Mr. Philips.

Re Direct:-

The buckwheat field is an old
field, and the ground is nice and dry
and is not stony. I put stone in
different parts of this road, because our
place was wet and in the other places
because we had blazed stumps out

and left holes which we wanted filled up. The reason the road was not chained was because the viewers could see through and Reed said it was not necessary and it was getting late. We were ^{not} hindered from going through on account of the ground being too wet. I am acquainted with A. P. Isenberg who signed the petition to strike off the confirmation of this road. Mr. Isenberg told me he never saw this road and did not know when it was, and that he signed the petition on the representation of Turner, the supervisor. There are men on this petition whose names I do not know and I was supervisor for two years.

John A. Fekhardt

John W. Knight, Affirmed.

My age is 42 yrs. I live in Decatur township; about one-half mile from Osceola. I own land in Decatur township. I was supervisor of Decatur township in the years 1887 and 1888. I built about 1 1/2 miles of new road. I have examined the new road in question. The stumps are all rid out, with the exception of a few little oak stumps in some places, that would not amount to anything, to make a good road about twenty feet. There are some

grubs them but I would not call them
stumps. They stoned the wet wet
portion of this road sufficient to make
a good wide wagon track. This was
done for eight rods. On each side
of this the ground is gravelly and
has no indication of being swampy
ground. As near as I can tell the
road was cut out the full width of
two rods. But the little brush has grown
up. There is a part of the road where the
brush is probably about three feet high.
There is a part where the brush was grubbed
there is no brush ^{there}. There is a part along
Mr. Kephart where the fire from Mr.
Kephart's clearing about a couple of years
ago burnt over the road and burned it off
clean. This brush I speak of is just
sprouts growing up from roots since
the road was brushed out. I saw
wagon tracks on this new road which
indicated that it had been traveled on.
I never heard any complaint by
the tax payers of the Township about this
road in controversy. This new road
is on higher and better ground and
better drainage than the old one.
This new road will be a better road
for the traveling public than the old
one. When this new road passes
over the wet place it is about eight
rods long which has been stoned. When
the old road passes over the wet place it

is about twenty four rods from where the corduroyed at our end to where it is corduroy-
ed at the other. Between these points there
are parts not corduroyed just as low as
the part that is corduroyed, but it is dry
and dusty now. Between this Cordu-
roy nothing seems to have been done
to the road, but the road branches off to
both sides. This is done I suppose to
avoid driving over the wet place in the
main road. It is cheaper to make a
road around than to fix the one in the
middle. In my opinion I would
just as soon take the new road and
make a good road out of it as the old road.
I examined the ^{old} road and the new road and
know the condition both are in. I do
not know of a road in the township that
are thirty three feet wide clear of stumps
and brush. In wooded districts they
nearly open a good wagon track and
leave the rest as is.

Cross Examination.

I, as supervisor, did
not do any work on the road in contro-
versy. That part of the township was
left to Mr. Kephart when I was super-
visor. I was not personally on this
road when I was supervisor. It was
in Mr. Kephart's end of the township.
I was up in the fall of 1887 to look
at the road. It was partly brushed then.

He did not have all the stumps blazed out. Since I think of it, it was in 1888 that I went up to look at the road and not in 1887. This was at the request of Mr. Kephart, the other supervisor. I went over the whole length of the road at this time. The brush had been cut and was lying along in the road. The stumps had not been taken off. The logs had been cut off and rolled off to the side. The only other time I was on the road was yesterday, when I went up again at the request of J. A. Kephart, the former supervisor. I went over the whole of the new road yesterday. I went over the old road also. I was in company of Mr. Philips and Mr. Kephart and Mr. Henry. Both roads were dry then. There were no wet places in either of them. The way I could tell the wet places was by the corduroy in the old road and the stumps in the new road, which I supposed run to cover the wet places. Between the old road and the new road there is a pond of water in a wet time. There is swamp grass there now but no water. From this pond I think the water would naturally run towards the old road. The new road lies on higher ground than the old one and I think the water would run toward the old road. This pond is twice as far from the new road as it is from the old road. It is eight rods from the new road

to the center of the pond and only four from
the old road to the center of the pond. The
pond looks to be three or four rods across. In
a real wet time it might spread a good
deal farther. The center of the pond I think
is below the new road and a little lower than
the old road, and when fuel of water naturally
lays against the old road.

J W Wright

David Marshall McHenry, Sworn:

Living in Woodward
Township and my age is 36 yrs. I am ac-
quainted with the location of the old road
and new road in outworn. I have
made 224 rods of township road in my
time. I have measured the old road in
outworn town. There are 240 rods in it.
I have measured the new road. There are
269 rods in the new road. This new
road would be nearer for two-thirds of the
travel, I think, than the old one in going
to Houtydale, Glen Hope, and that
country. I think the new road is on
better ground all the way through, on
better grade, better drain and makes
much swamp. I am acquainted
with the location of both of these roads
and have seen them in wet
weather. The new road would be

easier kept up. The old road is in a kind of a gully and is hard to keep in shape. That portion of the old road that goes through the swamp is difficult to drain as there is no outlet for the water. The new road when it passes over the swamp is higher than the old road and is easier drained. On last Thursday I examined both roads Duran yesterday. I do not think there would be much difference in the expense of putting these roads in the same traveling condition. In my judgment it would cost just about as much to put our road in traveling condition as the other. The stumps have been removed from the new road for a width of about thirty feet except in a couple of places. These places which I have excepted are clump stumps for a width of about sixteen or eighteen feet. There have been stumps hauled on the new road for twelve rods. The new road would not drift as much as the old road because the new one is now in the woods. The old one drifts pretty badly and they have to cut roads around in the winter. I saw that there had been wagons on the new road. Through the wooded districts in my township it is not customary to stump the roads thirty feet wide. I think it would take more to make the old road in a good condition when it comes out

the Houghdale road at the Woodward Twp. line than it would to make the new one in a good condition. When the old road connects with the Houghdale road there is a very bad turn, and with a long cuppled wagon, with hay, or anything, a man cannot make the turn unless he backs around. At this point in the old road it would cost more to put it into condition so as to turn onto the Houghdale road than it would to put the new one into condition to turn onto the Houghdale road. The new road at this point would not be as hard to keep in condition as the old one. This new road would make a better road for the traveling public than the old one, because it is on a better location. It would take less expense to keep up the new one than the old road.

Core Gammond:-

I think each road strikes the Woodward Township road about at right angles. When you strike the Houghdale road on the Woodward Twp. line, if you turn to the right it will take you to the Jeffries Post Office, I think, in about fifty or sixty rods. At Jeffries Post Office there are two roads. One going across the creek leading to Curwensville, and the other leading to Charfield. On turning to the left when you reach the Woodward Twp. road, the first place of any importance that would be

reached would be Hordydale at a distance of about six miles. I live in Woodward Township. I have lived there about five months. Before this I lived in Boggs Township. I lived in Boggs Township about eight years. I have been a citizen of Woodward and Boggs townships for about sixteen years. I labor by the day generally. When I lived in Boggs Township I lived within two miles of this road. Messrs. Kephart, Philips and Wright were with me yesterday when I was over this road. I went at the request of Mr. Philips. I was never over the new road before since it was a road but I have been over the ground. Where the new road connects with the Woodward Twp. road is a bank. The connection is on top of the bank. In going from the Woodward Twp. road onto the new road there is a little of an upward grade, but not very much. This upward grade extends about fifteen rods part way through the field. One of the fences of Daniel Philips which encloses one of his fields is right along the Woodward Twp. road. If this new road continued on across the Woodward Township road it would still be a light down grade. The Woodward Twp. road at the point where this new road intersects it has a light descending grade towards the right which is towards Jeffries Postoffice. In going towards Hordydale, that is in turning to the

left, the Woodward Twp. road is slightly ascending. To the right of the Woodward Twp. road the grade is a little steeper. When the old road strikes the Woodward Twp. road is a little descending. I think about the same grade as the new one when it intersects. The ascending grade in the old road continues I think for about thirty five rods from the Woodward Twp. road. The Woodward Twp. road from the intersection of the old road has an up grade towards Jeffers Post Office and a down grade toward Houtydale. This down grade is a pretty good grade. There is a hollow, or lowest place, in the Woodward Twp. road between the intersections of the new and old road. I can't say whether this lowest point is nearest to the new or the old road. I don't think there is much difference. This low place is at a ravine in which ^{there is} water in very wet times. This ravine is not so very narrow. There is no road open through the field now. The field is in buckwheat. There is nothing visible on the ground then to show where the new road is at the place where the new road would strike the Woodward Twp. road in coming through the field. I know where the new road is located. I only know from what Mr. Kephart and Mr. Phillips ^{told me} as to where the road is through the field and where it strikes the Woodward Twp. road. They told me when they saw it out. The old road has been traveled during the sixteen years that I have been in that

neighborhood. They traveled it when Grist
Came to that country.

L. M. McHenry

W. Kephart, Recalled:-

If I had a chance to
later a contract to put this new road in a
fair condition for travel I would give
a bond to the supervisors to put it into fair
condition for the sum of seventy five
dollars. In order to get off of the old road
onto the Houtdale road with a long coupled
^{with a load on it} wagon, we have to back the wagon to make
the turn. To make a proper turn from the
old road onto the Houtdale road, we would
have to put in a stone culvert which
would not have to be done with the new
one. The old road would cost the most
to make a proper turn. The old vacated
road for about twenty five rods, I would call
a canal, and the water runs in it, and
it runs into the Woodward Top road and
cuts this ditch out so that we can't
make the turn to Houtdale. Part of this
vacated road is in the natural course
of the water and it seems that the
water cannot be kept out. This water
that runs in the old road makes it
bad in the spring.

John A. Kephart

State of Pennsylvania } 88:
County of Charfield }

I do hereby certify, That
the above witnesses were duly qualified and
examined at the time and place stated
in the above caption; that the same was
reduced to writing by me, in the presence
of said witnesses and having been first
read over to them, they subscribed their names
thereto in my presence.

Witness my hand and official seal.

W. C. Miller,
Notary Public.

Bill of Costs

Notary Public.

W. C. Miller, taking testimony \$4.00

Witnesses,

John A. Kephart, 1 day \$1.00
13 miles .78

\$1.78

John W. Wright 1 day, \$1.00
22 miles 1.32

\$2.32

David M. McHenry, 1 day \$1.00
13 miles .78

\$1.78

John Philips

To serving subpoenas

To miles

W. C. Miller
Notary Public

RULE TO TAKE DEPOSITIONS.

CLEARFIELD COUNTY, SS:

In Rule to show
cause why confirmation
of said Rule should not
be granted. As
w. 2 May Sess. 1886

In the Court of ~~Common Pleas~~ ^{Quarter Term's} of Clearfield
County, Pennsylvania.

No. 3 May Sess Term, 1886

AND NOW, to wit, the 9th day of Aug, in the year of our
Lord one thousand eight hundred and eighty ~~ninety~~
the ~~Partes for~~ ^{Partes for} ~~and~~ enter a Rule to take the
Depositions of ancient, infirm and going witnesses, to
be read in evidence on the ~~argument~~ ^{argument} of
this case. Ex parte Rule of ~~Partes for~~ ^{Partes for} ~~and~~ on
5th days' notice.

J. M. Dorman
Clerk

To Mr. Enally Munday, Esq.,
Atty for Petitioner

You will please take notice that, in pursuance of the foregoing rule, deposi-
tions will be taken before ~~H. B. Miller~~ ^{H. B. Miller} ~~Esq.~~ ^{Esq.}, or some other
person authorized to administer an oath or affirmation in Pennsylvania, in
and for the county of ~~Clearfield~~ ^{Clearfield}, at the office of ~~Oscar Mitchell~~
in the borough of ~~Clearfield~~ ^{Clearfield} in the county of ~~Clearfield~~ ^{Clearfield}
and State of Pennsylvania, on the 15th day of Aug, A., D. 1890,
between the hours of 9 o'clock A. M., and 9 o'clock P. M.,
when and where you may attend and cross-examine.

Oscar Mitchell
Clearfield, Pa., Aug. 9, 1890 Atty for Respondent.

This Rule was duly served
on us Aug. 9th 1890 & same
accepted. — M. Enally & M. Munday
Atty for Rule to
strike off Confirmation.