

No. 13, May Term, 1888

Vacate public

road

versus

Knox Township.

Contents:

Review of N^o 4 Sept. 1887.

In Re Report on In the Quarter Sessions of Clarendon
Vacation of road in County Pal
Knox Twp

N^o 13 May Sep 1888. Review

N^o 4 Sept Sep 1874 Original

Upon examination of the Report of viewers filed in N^o 4 Sept Sep 1874 and the proceedings filed in N^o 13 May Sep 1888. I find that the view was made by S. F. Milforkey, R. Calverell and Jno. Mays, when the order to view was directed to John L. Cuttle, R. Calverell and Jno. Mays. - It is true there is a writing on the back of the order which would seem to indicate that someone intended to change the names of the viewers, but the entire proceeding is so irregular that of the attention of the President Judge of the Court as then constituted had ever been called thereto the entire proceeding would have been set aside. In truth no road was ever laid out and returned as required by law in N^o 4 Sept Sep 1874, and the orders therein are simply nullities and must be set aside. This makes unnecessary to consider the Exceptions to N^o 13 May Sep 1888.

And now May Sep 1889 The order confirming report of viewers in N^o 4 Sept Sep 1874 is hereby set aside & decree vacated.

By the Court

D. L. K.

In the Court of Quarter
Sessions.
May Session 1888
No. 43 Man B. 1888

The petition of the Citizens
of this Township for
appointment of assessors
to assess Township Road
which has been laid
out from Milport to
Big Clearville Creek and
the Public Road of Smith's
Rice Land, both of which
lands are in this Township
and for the whole length
being within said this
Township.

And now May 8-1888
J. O. Stangle, J. M. Moore,
and James McCreary
~~and James McCreary~~
~~James McCreary~~
~~and James McCreary~~
are appointed assessors
to view said road and
make their report to the
next Session of the Court

By the Court

A. C. Krebs

By

Petition for the Vacating of
Township Road. -

To the Honorable W. L. Webb Judge
of the Court of Quarter Sessions in
and for the County of Clearfield.

The petition of the undersigned
inhabitants of the Township of
Knock, said County respectfully
sheweth;

That a road has long since been
laid out from the village of
New Millport in said Township
to Big Clearfield Creek and the
Public road at Saml. Rea's land - which
road your petitioners describe as
follows beginning at the Public Road
about 40 perches North west of Alexander Blume
line thence through land of E. A. Davis North
 72° East 90 perches. Thence through Flynn
land 20° West 56 perches North $17\frac{1}{2}^{\circ}$ East 51
perches to line of Flynn's and then thence on
their line 370 West 48 perches thence through land
of Truman Root North 53° East 15 perches North 370
West 31 perches to line of Root & John ~~Henryman~~
thence on the line between them North 54° East
 $82\frac{5}{10}^{\circ}$ through Henryman land North 480 West 28
per. Thence North $21\frac{1}{2}$ degrees East $25\frac{6}{10}$ perches to line of
Samuel Ray thence between him & John Henryman North 370

most open to the Public Road at Saml. Rees' land
 which road your petitioners con-
 sider is useless, & burdensome to
 the inhabitants of said township
 and that there is no necessity for
 such a road. Your petitioners
 therefore pray the Court that the
 said road may be vacated,
 agreeably to the Act of Assembly
 in such case made & provided.
 And they will ever pray -

1 Joseph Witherow
 2 John E. Witherow
 3 J. B. Luntow
 4 S. S. Bloom
 5 Ellen Root
 6 Saml Reap
 7 Barney Thurn
 8 J. H. Farran
 9 James Rea
 10 J. M. Rea
 11 Isaac Rea
 12 Daniel Bloom
 13 Martin H. Bloom
 14 M. J. Templeton
 15 M. A. Caldwell
 16 Reuben Caldwell
 17 Isaac Mayz
 18 Edward Wise
 19 H. B. Shugart
 20 W. L. Wise
 21 Wm. Bloom

21 B. F. Robbins
 22 David Snyder
 23 Abram. Walker
 24 George B. Cathart
 25 William B. Arnold
 26 W. C. Var
 27 Clark Holton
 28 Peter Erhard
 29 Lewis Erhard
 30 Enoch Erhard
 31 David Erhard
 32 W. M. Witherow
 33 Thomas Witherow
 34 Joseph Patterson
 35 David Patterson
 36 Samuel Witherow
 37 Margar Witherow
 38 James Jonson
 39
 40
 41

In re: View^{and} } In the Court of
Vacating of Public } Common Pleas of
Road in Knox Twp. } Clearfield County

No. 13 May Term 1888

Argument of Aluzo B. Macdonald Atty. for
Petitioners to vacate road.

The fourth section of the General Road Law
of 13 June 1836 provides If the court shall
approve of the report of the viewers, allowing
a road, they shall direct of what breadth
the road so approved shall be opened
and at the next Court thereafter, such road
shall be taken, deemed ^{and} allowed to be
a lawful public highway;

The report of the viewers in this case was
filed at January Session 1875^{and} read;
on March 19-1875- the Court approved
of ^{and} confirmed the said road & directed
that it be entered of record, ~~the~~ breadth
thereof to be 33 ft.

The order of Court therefore of March 19-1875-
fixing the "breadth" of road at 33 ft,
was erroneous, unless the order of Court
confirming the report of viewers, nisi, at
January Session 1875-, set out ^{and} deter-
mined the width of the road: 112 Pa. St. 212
Road in Silver Lake 3 N. & S. 45-59

By the 18th, 19th, 20th & 21st sections of the Act of 13 June 1836 authority was given to Courts of Quarter Sessions of the Commonwealth within their respective counties, "to change or vacate the whole or any part of any private or public road laid out by authority of law", "to vacate roads laid out & confirmed", but not opened &c. &c.

By the act of May 3^d 1855 supplementing to the general road law, Courts of Quarter Sessions are authorized to inquire of and to change or vacate the whole or any part of any public or private road which may have been laid out by authority of law & opened in part.

The petition to vacate this road was presented on the day of May 1888 and J. M. Herodby, J. D. Spangle & J. M. Beers were appointed to view the said road. The report of viewers was to the effect that the road was useless & would be an unnecessary burden to the tax payers of the Township. The facts are that this road was laid out in 1874; and since that time has remained unopened; this in itself would

indicate that the road is not a necessity. From the testimony of petitioners witnesses it is shown that Mr. Saml. C. Snyder is the only one in the Township who is desirous of having this road opened. The expense in opening the road would be heavy & burdensome to the tax payers. Daniel Blum puts the cost at \$400. to \$500.-; Isaac Ray estimates cost at \$600.-; Snyder Blum estimates cost at \$600.-; M. H. Blum estimates cost at \$1000.-; J. M. Heversly one of the viewers at \$1000.-; J. M. Beers one of the viewers at \$800.- to \$1000.-; J. D. Spangle at \$1000.-; J. W. Johnson says it would cost \$2.50th per rod; John Reas estimates cost at \$600.-; Mr Reuben Caldwell testifies that the road is not a necessity except it might be to Mr. Snyder ^{and} that there are many Twp. roads in that vicinity; that the majority of the people in the Twp. are opposed to the opening of the road. So also Mr. Isaac Rea, John Rea, Ellen Root, &c &c. The only object of the road seems to be a way into the School House, which everyone swears, who is subpoenaed, would be more conveniently located at a point

called Barney Pheasant since comes
at this place Mr. John E. Witherow has
testified he offered the ground for the
School House. The weight of the testimo-
ny is against the opening of this road,
And that it would be useless if opened
& burdensome to the taxpayers.

No. 13 May 7/88.

In re. Vacante
Road in Thux
township.

Argument

Exceptions to review of road in Knox Twp

Report of viewers does not show they gave any notice of time of meeting to view said road

No notices were posted up along route of said road giving notice of time of meeting as required by law

Viewers met and reviewed said road within four days of taking out of order when law requires five days notice to be given

Vacating of said road closes up all means of getting to School house situated along proposed route of said road

Petition for review is not signed by a majority of signers of original petition

Signers to original petition

Samuel Rankins Isaac Rankins John Mays John M Rea Jams
Rea Samuel Rea Jr Edward D Wise Jos McNeel Smith M McNeel
David T Mays Isaac Rea THO Templeton J G Templeton
Conrad Baker Alex Bloom Enoch Erhard Jos Patterson Forest
Bloom Samuel Rea James A Mays George B Mays

No of signers to original petition 21

Names of oold petitioners signing petition for review

Johm M Rea James Rea Edward D Wise Jos Patterson Saml
Rea Enoch Erhard and Isaac Rea Total 7

Act of 13 June 1836 P L 558 Purdons Digest Page 1276

Roads laid out and confirmed as aforesaid but not opened
may be vacated and annulled upon the petition of a majority
of the original petitioners for the said road resident within
the respective County in the same manner as other roads may
be vacated

As to notice

Act of Feby 25 1845 Purdons Digest Page 1290 sec 137

In cases of the appointment of viewers in said County
to view and locate a public or private road or to review a
public road the said viewers or any of them shall before pro
ceeding to make their view or review give public notice by
at least three advertisements put up in the vicinity of the
contemplated route of makingxxxsuch road of the time and
place where the said viewers will meet for the puopose of
making such view or review at least five days before such m
meeting

In the Court of Quarter Sessions
of Clearfield County

To the Honorable the judge of
said Court

We the undersigned, persons appointed by the within order of Court, to view the road therein mentioned, respectfully report; That having been present, together at the view of the said road, and having all been first severally sworn or affirmed, in pursuance of the said order, we have viewed the said road and that we are of opinion that the same has become useless, inconvenient & further some and ought there for to be vacated.
Witness our hands this 19th day of
May A. D. 1888

J. D. Spangels
J. H. Beers
J. M. Newberry

County of Clearfield }
State of Pennsylvania } S. S.

Personally appeared before me a Notary
Public in & for said County John, M. Beers,
Jacob D. Spangle, and James M. Heersly,
who upon being duly sworn according
to law depose & say, that they will per-
form the duties of their office or appoint-
ment with impartiality & fidelity - and
will view the road in the said peti-
tion prayed to be vacated & will con-
sider & judge whether it is become use-
less, inconvenient and burdensome.
And will so report:-

Sworn Subscribed
before me the 18th day
of May 1888. -
of Alfred M. Adams

J. D. Spangle
J. M. Beers
J. M. Heersly

63
63
83

Clearfield County, ss:

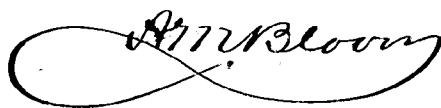
At a Court of Quarter Sessions of the Peace of the county of Clearfield, Pennsylvania, held at Clearfield, in and for said county, on the 8th day of May ———, A. D. 1888, before Judges of said Court, upon a petition of sundry inhabitants of the township of Knox, in

said county, setting forth that a road has long since been laid out from the village of New-
Millport in said township to Big Clearfield Creek and the public road at Samuel Rea's land - described as follows: - Beginning at the public road about 40 paces north west of Alexander Bloom's line, thence through land of Geo. Davis north 7 1/2° east 90 paces, thence through Slegun's land, - 20° west 50 paces, - north 7 1/2° east 57 paces, thence through land of others, - thence on their line - 37° west 45 paces, thence through land of Herman Root north 53° east 15 paces, - north 37° west 31 paces to line of Root and John Mergman, - thence on their line between them north 54° east 82 5/10 through Mergman's land north 48° west 28 paces, thence north 2 1/2 degrees east 25 6/10 paces to line of Samuel Rea thence between him and John Mergman north 37° west to the public road at Samuel Rea's land, which road your petitioners enclose is under and burdened on the inhabitants of said township -

and therefore praying the Court to appoint proper persons to view and ^{vacate} ~~lay out~~ the same according to law,

whereupon the Court, upon due consideration had of the premises, do order and appoint J. D. Sprague, J. M. Beers and James Stevely ——— who, after being respectively sworn or affirmed to perform the duties of their appointment with impartiality and fidelity, are to view the grounds ~~proposed~~ ^{proposed} for said road, and if they view the same and any two of the actual viewers agree that there is ^{no} occasion for such road, they shall proceed to ^{vacate} ~~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 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.



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 ensembling and delivery hereof, have remised, released and forever quit-claimed, and do hereby remise, release 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 .



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 .

Note.—In case of a private road, the release must be executed in favor of the possessor for said road.
Also—Viewers will carefully note the number of days employed and set the amount for 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.

<i>Geo. M. Berra</i>	{ Days 1	Amount.
	{ Miles 32	
<i>J. N. Stangle</i>	{ Days 1	
	{ Miles 32	
<i>Geo. M. Hervey</i>	{ Days 1	
	{ Miles 32	

{ Days
{ Miles
{ Days
{ Miles

No. 13 May Sessions, 1888

ORDER

Wacore

To view and lay out a Road
For use in the township
of Snow Clearfield Co.

Sept 16 to 1888 Read
Confirmed No. 12
By M. S. Town

Filed _____, 188

Fees \$1, paid by *W. M. MacLeod*

MacLeod