

No. 13, May Term, 1888

Vacate public  
road

versus

I<sup>n</sup>nox Township

**Contents:**

Review of No 4 Sept 1884.

In Re Report on In the Quarter Sections of Cleared  
Vacation of road in County Pa  
Knox Twp

No 13 May Sep 1888. Review

No 4 Sept 1874 Original

Upon examination of the Report of receivers filed  
in No 4 Sept Sep 1874 and the proceeding filed in  
No 13 May Sep 1888. I find that the view was made  
by S. F. McMurtry, R. Calornell and Mrs Mays, when the  
order to view was directed to John L. Cutts. R. Calornell  
and Mrs 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 receivers, but the  
entire proceeding is so irregular that the attention  
of the President Judge of the Court as then constituted  
had never called their attention to the entire proceeding  
which had been set aside. In truth no road was  
ever laid out and returned as required by law  
in No 4 Sept Sep 1874, and the orders therein are  
simply nullities and must be set aside. This makes  
it unnecessary to consider the exceptions to No 13  
May Sep 1888.

And now May 29 1889 The order confirming  
report of viewers in No 4 Sept 1874 is hereby set  
aside & decree vacated. By the Court  
R. K.

By the Council

D.E.K

g

In the Court of Quarter  
Session.

May Session 1888  
No. 43 March 28, 1888

The petition of the citizens  
of New Haven for  
affirmance of order  
to vacate New Haven Road  
which has been laid  
out from Newport to  
Big Blaspheme Brook, and  
the public land at Sandy  
Run, land, some of which  
private are in the town boundary  
and for the whole length  
being within said town  
respectfully.

Resolved, and ordered, &c., 1888  
G. O. Stangler, J. M. Dyer,  
and James Deering, Jr.  
and James May,  
particulars of names  
and ~~and~~ Blaspheme  
Road and Blaspheme  
are affirmed and  
to view said road and  
make their report to the  
next Session of the Court.

By the Court  
S. C. Webb  
J.

Petition for the Vacating of  
Township Road. -

To the Honorable D. L. Trebil, Judge  
of the Court of Quarter Sessions in  
and for the County of Clearfield.

The petition of the undersigned  
inhabitants of the Township of  
Knox, 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 Sunil, Reasland - which  
road your petitioners describe as  
follows beginning at the public road  
about 40 perches North west of Alexander Blome  
line thence through land of C. A. Drue with  
 $72^{\circ}$  East 90 perches. Thence through Flynn  
land  $20^{\circ}$  West 56 perches with  $17\frac{1}{2}^{\circ}$  East 51  
perches to line of Flynn and others thence on  
their line 370 West 48 perches thence through land  
of Truman Root with 530 East 15 perches North 370  
West 31 perches to line of Root & John ~~McGinnis~~  
thence on the line between them with  $54^{\circ}$  East  
 $82\frac{5}{10}^{\circ}$  through Merriman lands with 480 West 28  
per. thence with  $21\frac{1}{2}$  degrees East 25 $\frac{1}{10}$  perches to line of  
Samuel Ray thence between him & John Merriman with 370

met to open to the Publick Road at Sam'l Rea's land  
which road your petitioners con-  
ceive is useless, & burdensome to  
the inhabitants of said town  
and that there is no necessity of  
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  | 21. B. F. Robbins      |
| 2. John E. Witherow | 22. David Snyder       |
| 3. B. L. Linton     | 23. Abram Walker       |
| 4. S. S. Bloom      | 24. George B. Cathcart |
| 5. Ellen Root       | 25. William B. Arnold  |
| 6. Samuel Rea       | 26. H. G. Farb         |
| 7. Barney Burn      | 27. Clark Holton       |
| 8. J. H. Farran     | 28. Peter Erhard       |
| 9. James Rea        | 29. Lewis Erhard       |
| 10. Jno Rea         | 30. Enoch Erhard       |
| 11. Isaac Bear      | 31. David Erhard       |
| 12. Daniel Witherow | 32. W. M. Patterson    |
| 13. Martin H. Bloom | 33. Thomas Witherow    |
| 14. H. J. Templeton | 34. Joseph Patterson   |
| 15. M. A. Caldwell  | 35. David Patterson    |
| 16. Reuben Caldwell | 36. Samuel Witherow    |
| 17. Isaac Mayz      | 37. Margaret Witherow  |
| 18. Edward Wise     | 38. James Johnson      |
| 19. H. B. Sturgart  | 39.                    |
| 20. W. L. Wise      | 40.                    |
| 21. Wells Bloom     | 41.                    |

In re. View and In the Court of  
Locating of Public Common Pleas of  
Road in Tunk Dif. Clearfield County

No. 13 May Term 1888

Argument of Alonzo D. Mason 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 Sessions 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 therefor 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 Sessions 1875, set out and deter-  
mined the width of the road. 112 Pa. St. 212  
Road in Silver Lake 3 N.Y.S. 659

By the 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> & 21<sup>st</sup> 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 & unopened", but not opened &c. &c.

By the act of May 3-1855- 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. Herdy, J. D. Spangle & J. N. Beers were appointed to view the said road. The report of view 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

indicate that the road is not a necessity. From the testimony of petitioners witnessed it is shown that Mr. Sam'l. C. Snyder is the only one in the Township who is desirous of having the road opened. The expense in opening the road would be heavy & burdensome to the tax payers. Daniel Blom puts the cost at \$400. to \$500.-; Isaac Ray estimates cost at \$600.-; Snyder Blom estimates cost at \$600.-; M. H. Blom estimates cost at \$1000.-; J. N. Herdly one of the viewers at \$1000.-; J. N. Beers one of the viewers at \$800.- to \$1000.-; J. D. Spangle at \$1000.-; J. W. Johnson says it would cost \$2.<sup>50</sup> per rod; John Rea 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 Rhom's stone comes,  
At this place Mr. John E. Witherow has  
testified he offered the ground for the  
School House. The weight of the testi-  
mony is against the opening of this road,  
and that it would be useless if opened  
& burdensome to the tax payers.

No. 13 May 7/85.

In re. Vacate  
Bond in that  
Burship.

Agreement

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 James  
Rea Samuel Rea Jr Edward DWise Jos McNeel Smith M McNeel  
David T Mays Isaac Rea TH<sup>o</sup> 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

John 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 making such 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-  
eeting

In the Court of Quarter Sessions  
of Clearfield County

To the Honorable the judge of  
said Court

We the undersigned, persons ap-  
pointed 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 af-  
firmed, 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 therefore to be vacated.

Witness our hands the 19<sup>th</sup> day of  
May A. D. 1888

J. D. Spaney  
J. H. Beers  
J. M. Keverly

County of Clearfield }  
State of Pennsylvania } \$.

Personally appeared before me a Notary  
Public in the said County John, M. Beers,  
Jacob D. Spangle, and James M. Heevey,  
who upon being duly sworn according  
to law deprecate, 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 & burdensome.

And will so report:-

Given this day of 18 day  
of May 1888. - John D. Spangle (S)  
John M. Beers (S)  
James M. Heevey (S)  
Albert P. Madsen

# Clearfield County, ss: 100

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 8<sup>th</sup> day of May \_\_\_\_\_, A. D. 1888, before Judges of said Court, upon a petition of sundry inhabitants of the township of Rose, 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 Creekbed creek and the public road at same. Said land described as follows: Beginning at the public road about 40 perches North West of Alexander Bloom's line, thence through land of Er. Davis North 7<sup>1</sup>/<sub>2</sub>° East 90 perches, thence through Bloom's land, — 20° West 56 perches, North 17<sup>1</sup>/<sub>2</sub>° East 51 perches, thence of Bloom and others, thence on their line — 37° North 45 perches, thence through land of Truman Root, North 52° East 15 perches, North 37° East 31 perches to line of Rose and John Morgan, thence on the line between them North 54° East 82<sup>1</sup>/<sub>2</sub> perches through Morgan's land North 48° East 28 perches, thence North 21<sup>1</sup>/<sub>2</sub> degrees East 25<sup>1</sup>/<sub>2</sub> perches to line of Samuel Bea

thence between him and John Morgan North 37° East to the public road at Samuel Bea's land, which road your petitioners conceive is useless and burdensome to the inhabitants of said township.

and therefore praying the Court to appoint proper persons to view and ~~lay out~~ <sup>vacate</sup> 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 Steverly — who, after being respectively sworn or affirmed to perform the duties of their appointment with impartiality and fidelity, are to view the grounds ~~proposed~~ <sup>for</sup> said road, and if they view the same and any two of the actual viewers agree that there is <sup>no</sup> occasion for such road, they shall proceed to ~~lay out~~ <sup>vacate</sup> 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 ensealing 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 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.  
Viewers cannot interfere with damages assessed by the original viewers, except so far as the location may be changed by  
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.

## No. 13. View Sessions, 1888

Mr. M. Bunn	Days 1	Amount.
J. W. Sprangle	Miles 32	
	Days 1	
Jac. W. Henry	Days 1	
	Miles 32	
	Days	
	Miles	
	Days	
	Miles	

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

Sept 10, 1888 Recd  
C. J. C. M. T.  
By the County

Filed....., 188

Fees \$1, paid by J. MacLean

MacLean