

No.

7 May

Term,

1897

Private Road

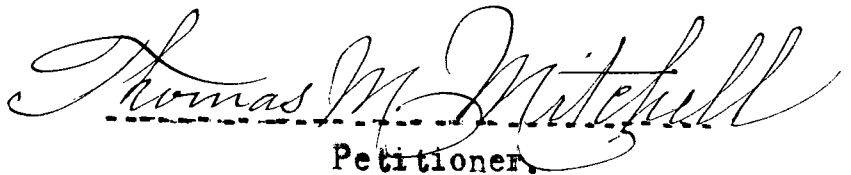
Versus

Burnside Township

Contents:

To the Honorable Cyrus Gordon, President Judge of the Court of Quarter Sessions of Clearfield County, Pa.

The petition of Thomas M. Mitchell, of the township of Burnside, County of Clearfield and State of Pennsylvania, respectfully represents: That your petitioner labors under great inconvenience for want of a private road, to lead from the public road running from Harmony School House to Five Points, to the Dwelling House of your petitioner, in said county. Your petitioner, therefore, prays the Court to appoint proper persons to view and lay out the same, according to law; and he will ever pray, &c.


Petitioner.

No. 7 May Sec. 1894
Private Receipt for
Beverly Johnson

Dec 7 1894
J. H. Kelley

And more May 7, 1894,
Action read and cannot
and not Henry Byers.

Attestured by Samuel R. Kelley

all appointed witnesses
to view the same and
and make return of
The same to J. H. Kelley
1894. By the Court
Cyrus S. Kelley

JAMES H. KELLEY,
Attorney-at-Law,
CLEARFIELD, PA.

John C. Clark & Sons, 230 Dock Street, Philadelphia.

In the Court of Quarter Sessions of Cheshire
County.

In re private road } No. 7 May SS. 1894.
in
Barnside Township }

Now 12th day of April. 1897. J. B. Smead. by
Fred B. B. his attorney, assrs leave of Court
to amend his petition to set proceedings
aside in above mentioned case, and to
give the following additional reasons, why
said proceedings should be set aside.

8th The report of viewers does not show that
personal notice of said view and of the
intended assessment of the damages of
J. B. Smead, and the time and place,
etc: thereof, was given to him as required
by law.

9th The report of viewers does not show
that the viewers were sworn as required
by law

10th The draft attached to the report of viewers
shows that the road as laid out through
land of J. B. Smead, could have been
laid out through land of T. W. Mitchell
the petitioner for the private road.

J. B. Smead. by his
att. Fred B. B.

No. 1 May 55. 94

Miss Bivins Dead

in

Overwide Trip.

Nov 12th April 97

have granted to
the additional
reasons within men-
tioned, where proceeding
should be at once.

By McCand
Cyus Gordon

Ed

Strasburg, Pa.

1.20

By paper 6 mo.

Ex. No. 21.

Harry C. Randall

886						
may	21	To 1 paper coff		15		
1	"	" " corn starch		10		
1	"	1 box dried beef		25		
1	"	1 can Tomatoes		12		
1	"	1 cigar		03	65	
Gabriel Palmer						
2	2	To one bush potatoes		20		
4	4	1 1/2 sack flour		63		
1	1	" "				

171

Waverly Sept 24th '96
Messrs Prothonotaries of
Please give J. Wm. Mitchell
thirty dollars and fifty
cents damage resulting
is to my credit there, and
oblige yours &c.
James Mitchell

in the Court of Quarter Sessions of Cheazfield
County.

In re Private Road No. 7 May 55. 1894.
in
Bewinside Township

To the Honorable Cyrus Gordon Judge
of said Court.

The petition of Jackson Smead re-
spectfully represents:

That R. M. Mitchell, late of Bewinside
Township, Cheazfield County, Pa. dec. on
the 2nd day of May 1894, petitioned your
Honor for the appointment of viewers to
view and lay out a private road to lead
from the public road running from
Harmony School House to Five Points,
to his dwelling house in said Township,
and Harry Byers, H. H. Vurd and Russel
Abravange were appointed viewers.

That said viewers viewed and laid out
a private road running through lands
of Martha Brickley, James Fishel and
your petitioner, and made return
thereof to said Court, which return was
confirmed. W. Si. on Sept. 7th 1894, and
was confirmed absolutely on 25th May
1895.

That said viewers assessed the dam-
ages done to lands of your petitioner
in the sum of Twenty Dollars.

That said T. M. Mitchell, the petitioner for said private road died on the 11th day of December 1896.

That the opening order for said road was not lifted during the life time of said T. M. Mitchell.

That J. P. Fry, executor of said T. M. Mitchell, by deed dated 22th February 1897, conveyed to Sarah Ann Chapman of Burnside Township, the real estate of said T. M. Mitchell, for whose use said private road was laid out.

✓ That the damages assessed to your petitioner have never been paid to him, tendered or brought into court.

That the opening order for said road was issued to J. M. Mitchell one of the heirs of said T. M. Mitchell on the 7th day of January 1897, and said road is about to be opened by the owner of said premises.

Your petitioner alleges that there was never sufficient reason or necessity for the laying out of said private road as said T. M. Mitchell had sufficient way and outlets to and from his property, and that if said road is opened your petitioner's lands will be greatly damaged and depreciated in value, and the damages assessed to him by the viewers are wholly insufficient for the damages

sustained.

Your petitioner therefore prays your Honor to grant a rule on J. M. Mitchell and Sarah Ann Chapman to show cause why said opening order should not be recalled, and the whole proceeding in this case set aside for the following reasons, viz:

1st That the sections of the General Road Law of June 13th, 1836 in regard to private roads are unconstitutional because the taking of private property for private use is in violation of the Constitution.

2nd The report of viewers is illegal and void because when the assessment of damages was made the Court had not fixed the width of the road, and the report does not show that the viewers proposed any width as the basis of their estimate.

3rd The confirmation in. si. of the report of viewers is illegal and void because the Court ordered a road opened 33 feet wide, in violation of section 5th Act 13 June 1836.

4th That the report of viewers says that the private road is necessary for the use of Thomas M. Mitchell. Said Thomas M. Mitchell is now deceased, and there is now no necessity for said road.

5th That although said T. M. Mitchell lived more than 18 mos. after said report of viewers was confirmed absolutely, neither he nor any one for him lifted.

the opening order, and after his decease there was no authority for any one to lift the opening order.

- 6th That the damages assessed are insufficient.
7th That the opening order was issued before your petitioner received damages.

And he will ever pray etc.

J. B. Smeed

Chazfield County } ss.

Personally appeared before me a Justice of the Peace in and for said county, Jackson Smeed, who being duly sworn according to law says the facts set forth in this petition are true and correct to the best of his knowledge and belief.

Sworn & subscribed }
this 8 day of April 1892 }

J. B. Smeed

E. B. Rainey J. P.

Now April, 5th 1897, service accepted for J. M. Mitchell
and Sarah Ann Chapman and issue of Rule waived.
Kelly & Paterson.

no. 1 May SS. 1894.

ARGUMENT

in re

Private Road

in

Beverly Township

Petition of J. B. Smead
to strike off opening Ord-
er and set proceedings
aside.

now 5 day of April 1897.
petition presented, read
and considered, and a
rule is granted as
prayed for.

At. next argument
court.

By the Court
Eugene Gordon

FILED. APR 5 1897 P. L.

W. B. S.

TO THE HONORABLE CYRUS GORDON, PRESIDENT JUDGE OF THE
COURT OF QUARTER SESSIONS OF CLEARFIELD, PA.:

Ms
The Petition of ~~James~~ James Chapman, by ~~his~~ Attorney, S. V.
Wilson, respectfully sets forth:

1st. That one, Thomas M. Mitchell was petitioner for a
private road leading from his dwelling house to the public
road running from Harmony school house to Five Points.

2nd. That the said Thomas M. Mitchell died on or about
the 17 day of *Dec* 1896, ~~intestate~~, leaving to survive
him amongst other heirs, his ~~brother~~ *sister Sarah Jane Chapman*, ~~John C. Mitchell~~.

3rd. That on the 14th day of July, 1897, the Court made
an order directing that the confirmation of the report of
the original view should be stricken off, which proceeding
was had to No. 7, May T., 1894, as appears from the record,
that the report be remanded back to the same viewers for amend-
ment, or supplementary report had at cost of petitioner for
road.

4th. That on the 6th day of September, 1897, the view-
erd presented their report under the above order of court and
reported in favor of a private road as set forth in the map
attached to said report to No. 7, May T., 1894.

Your Petitioner now prays the Court that ~~John C. Mitchell~~ *Sarah Jane Chapman*
a sister
one of the heirs and ~~a brother~~ of the said Thomas M. Mitchell
shall appear upon the record and become a party to the pro-
ceeding to the use of *Ms* James Chapman, for the reason that the
said *Ms* James Chapman was the purchaser of the property over
which the road was partly to be laid, and as a consideration
for the purchase of said property, the Petitioner Thomas M.
Mitchell, now deceased, agreed with the said *Ms* James Chapman
that he would obtain a private road from the court for the
benefit of the said *Ms* James Chapman, the purchaser aforesaid.
and in possession of the premises when
this order was made -

(2)

That it appearing from the record that the said report has not been confirmed nisi. so as aforesaid filed the 6th day of September, 1894, Your Petitioner prays the Court for the confirmation nisi. and that the width of the road shall be made at such a width as the Court shall deem proper and right, not exceeding twenty-five feet.

That Your Petitioner, by his Attorney, S. V. Wilson, is familiar with all the facts set forth in the foregoing Petition He therefore prays:

1st. That the above record be amended as within prayed for.

2nd. That the confirmation of the said report be confirmed nisi, and that the objections filed to the report ~~be~~ of viewers under date 6th September, 1897 shall be overruled.

Clearfield County ss:

Personally appeared before me S. V. Wilson, Attorney for Jas. Chapman, who being duly sworn according to law saith that the facts set forth in the foregoing Petition are true and correct to the best of his knoweldge and belief.

Sworn and subscribed)
before me this 7)
day of May, A.D. 1898)

S. V. Wilson
Atty for Jas. Chapman

S. V. Wilson
Atty for Jas. Chapman

7 May 1894

Nov 7 June 1898
Revised Council
as written / may
for
by the Council
Cyrus Gordon
ML

exceptions to report of Viewers filed
September 6th, 1897.

1st The Court erred in referring the report back to the viewers, and at the costs of the petitioner, because T. M. Mitchell, the petitioner, was dead when said order was made, and by the death of the petitioner, all proceedings under the petition abated.

2nd The report of viewers is void because by the death of the petitioner, the proceedings have abated.

3rd The report of viewers is void, because the report was not confirmed. Hi. Si. at Sept. sessions 1897, being the next term after the order to view was made, and the width of the road was not fixed at said term.

Now Oct. 4th 1897 I hereby certify that the report of Viewers should not be confirmed because of the legal reasons above set forth.

W. B. Bell.

Atty. for J. B. Smead
exceptant.

7
#th The assessment of damages to J. B. Smead are not sufficient, and should not be approved for the following reason. viz: Harry Byers, one of said viewers, told the attorney for J. B. Smead, a few days before the view was held, that the viewers would not allow any more damages to said J. B. Smead than had been assessed on the former view, and that said J. B. Smead would not get as much damages as had been assessed to him on the former view.

The action of the viewers in assessing damages was arbitrary, and due consideration was not given by the viewers to the testimony of witnesses of J. B. Smead at the view, in regard to damages sustained by him.

Wm. B. Belts.

Clearfield County, Pa.

Personally appeared before me Wm. B. Belts, who being duly sworn according to law, say the facts set forth in the ^{1st} exception are true to the best of his knowledge and belief.

Sworn & subscribed

before me this day

7 October 1892

J. H. Gentry, Jr.
Pm

Wm. B. Belts.

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 7th day of May, A. D. 1894, before Judge of said Court, upon a petition of ^{Thomas M. Mitchell} ~~summary~~ inhabitants of the township of Burnside

in said County, setting forth that He labors under great inconvenience for want of a private road to lead from the public road running from Harmony School House to his point to the dwelling house of Thomas M. Mitchell

and therefore praying the Court to appoint proper persons to view and lay out the same according to law, ^{Make report at Sept 1894}

whereupon the Court, upon due consideration had of the premises, do order and appoint Harry Davis H. H. Hurd Russell Roubalough

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 the 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 land 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 land 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.

J. J. J. J.
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~~ Thos M. Mitchell at and before the enrolling and delivery hereof, have remised, released and forever quit-claimed; and do hereby remise, release and forever quit-claim to the said Thos M. Mitchell 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 25th day of July
A. D. 1894.

Martha Brickley Seal

Seal

Seal

Seal

ASSESTMENT 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 James Fishel the sum of two and ⁵⁰/₁₀₀ dollars
To Jackson Smead the sum of twenty dollars
To the sum of

Witness our hands this 25th day of July, A. D. 1894.

H H Hurd

Russell Bonabough

Harry Byers

To The Honorable Cyrus Gordon President Judge
of the Court of Quarter Sessions of Cheshire County
Pa. We the undersigned viewers appointed by the within
order of Court to view and lay out the road therein men-
tioned respectfully report that we gave good and
lawful notice of said road view and met a greasable Thirties
on the 25th day of July A D 1894 all being present and
having been first solemnly sworn or affirmed we have
viewed the ground for the proposed road, and have laid
it out as follows to wit: beginning at a point on the
public road leading from Harmony School House
to five points where James Fishel's line crosses
said road thence by line between James Fishel's
and Mrs Martha Brickley's land North five and one half
degrees East twenty seven and two tenth perches to a post, thence
through unimproved land land of said James Fishel and Jackson
Smead North sixty and one half degrees East eight and six tenth
perches to post thence as follows through woods land of said
Jackson Smead North thirty five and three fourth degrees East
four and two tenth perches to a White Oak thence North eight
teen and one half degrees East seven and five tenth perches
to post thence North five degrees East seven and eight tenth
perches to a maple thence North eleven degrees fifty min-
utes west five and seven tenth perches to post thence
North twenty three and one half degrees West eight and two
tenth perches to a White Oak thence North thirty five and
one half degrees West nine and nine tenth perches to a
post ten feet west of line of said J Smead and on land of
Thos Mitchell thence by line parallel with said Smead's
line and ten feet distant West therefrom North five and one
half degrees East twenty five perches to post at house
of said Thos Mitchell which road as aforesaid laid
out is necessary for a private road for the use of the said
Thos Mitchell A plot or draft of which road so as
aforesaid laid out is hereto annexed showing courses
distances and improvements

Damages are assessed at there in this report to pass through
whose land the road passes

Witness our hands this twenty fifth
day of July A D 1894

H H Hurd

Viewers {

Russell Corabough

Harry Byers

165
170

65

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.

AMOUNT.

Harry Byers	}	Days 2	}	Miles 4 1/2	\$ 12.10
H. H. Hurd	}	Days 1	}	Miles 3	\$ 230
Russell Rouben	}	Days 1	}	Miles 6	\$ 260
	}	Days	}	Miles	
	}	Days	}	Miles	

July Sessions 1895
 Continued to May
 Sessions 1895
 By the Court
 Cyrus Gordon
 1895
 May 25 May 1895 Cont.
 -formed absolutely
 By the Court
 Cyrus Gordon

No. 7 May Sessions, 1894

ORDER

To view and lay out a road for
 private use in the township of
 Russell, Clearfield Co.
 Sept — Court 7 Sept 1894
 read and confirmed N. Si.
 Road to be opened 33 feet
 wide, except where there is
 side hill cutting or embank-
 ment and bridging, there to
 be 16 feet wide.

By the Court
Cyrus Gordon

File Sessions 1894
 Continued to July Sessions
 1895 - By the Court
 Cyrus Gordon

Filed Sept 1894

Fees \$1.25 paid by J. H. Kelly

Now the July 1897 on a motion of the Hurd & Co.
 -ception filed in small taxes and that the confirmation
 of the Report might be stricken off. The other exceptions
 are overruled. It is ordered therefore that the
 Confirmation nisi of 7 Sept 1894 and absolute of
 25 May 1895 be and they are hereby stricken
 off, and the Report is referred back to the same
 viewers for amended or Supplemental Report, at
 cost of Petitioner for Road.
 By the Court
 Cyrus Gordon

FILED. SEP 6 1897

To The Honorable Cy-
rus Gordon President Judge
of the Court of Quarter-
Sessions of Clearfield Pa
we, The undersigned viewmen
appointed by the ~~com~~ annexed
order of court to view and
lay out the road therein
mentioned respectfully report,
that we gave good and lawful
notice of said roadview by
posting notices in public
places in the vicinity and
by serving notices on the own-
ers of land through which
the road passes, five days or
more before the day appointed for
the view and that we met a-
greeable to said notices and

having been: severally sworn
or affirmed we have viewed
and laid out and do return
for private use the follow-
ing road to wit: Beginning
at a post on road leading
from Harmony school house
to five points where line of
James Fishel crosses said road
thence, by said line being line
of Martha Brickley and said
James Fishel's land North five
and one half degrees East twen-
ty six and eight tenth perches to
a post, thence through land of
said James Fishel and Jackson
Ernead North sixty degrees East
(at + 4.2 perches crossing said Jas. Fishel's
line) eight and seven-tenth perches

to a post Thence North
Thirty five and three fourth
degrees East four and two-
tenth perches to a White Oak
stump. Thence continuing
Through wood land of said
Jackson Smead, North eighteen
and one half degrees East
seven and five tenth per-
ches to a post Thence North
five degrees East seven and
eight tenth perches to a
Maple stump Thence North
eleven degrees and fifty min-
utes West five and seven-
tenth perches to a post Thence
North twenty three and one half
degrees West eight and two-tenth
perches to a post, Thence North

thirty five and one half
degrees west (at + eight and
nine tenth perches crossing line
of said Jackson Smead) ten
and two tenth perches to a
post Thence on land (improved)
of Sara A. Chapman (formerly
Thomas M. Mitchell) North
eighty one degrees West twenty
and seven tenth perches to a
post Thence North twenty three
and one half degrees East ten
and eight tenth perches to
a post Thence North eighty
four and one half degrees
East six perches to residence
of Thomas M. Mitchell Deceased.
a plot or draft of which
road so as aforesaid laid

out is hereto annexed showing courses, distances and improvements along said road which road is necessary in our opinion for a private road. Damages assessed; to James Fishel two and one half dollars, to Jackson Smead, twenty dollars. Witness our hands this ninth day of August A.D. 1897,

Viewers { Harry Byers
W H Threl
Russell Bonabauz

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~~ ^{the} ~~road~~ ^{road} ~~described~~ ^{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 James Fisher the sum of two and one half dollars
" Jackson Smead " " " twenty dollars

Witness our hands this
ninth day of August A D
1897

Viewers { Harry Bjers
H H Heiser
Russell Bonabauer

Know all men by these
presents; That we, The under-
signed owners of land through
which the road located by the
viewers, under the annexed
order, passes pass and in
consideration of the sum of
one dollar to us respect-
fully paid by
at and before the sealing and
delivery hereof, have remised, released
and forever quitclaimed; And
do hereby remise, release and
forever quitclaim 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 in-
der me, 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 afore-
said. Witness our hands
and seals this ninth
day of August A D 1897

Martha Briggs

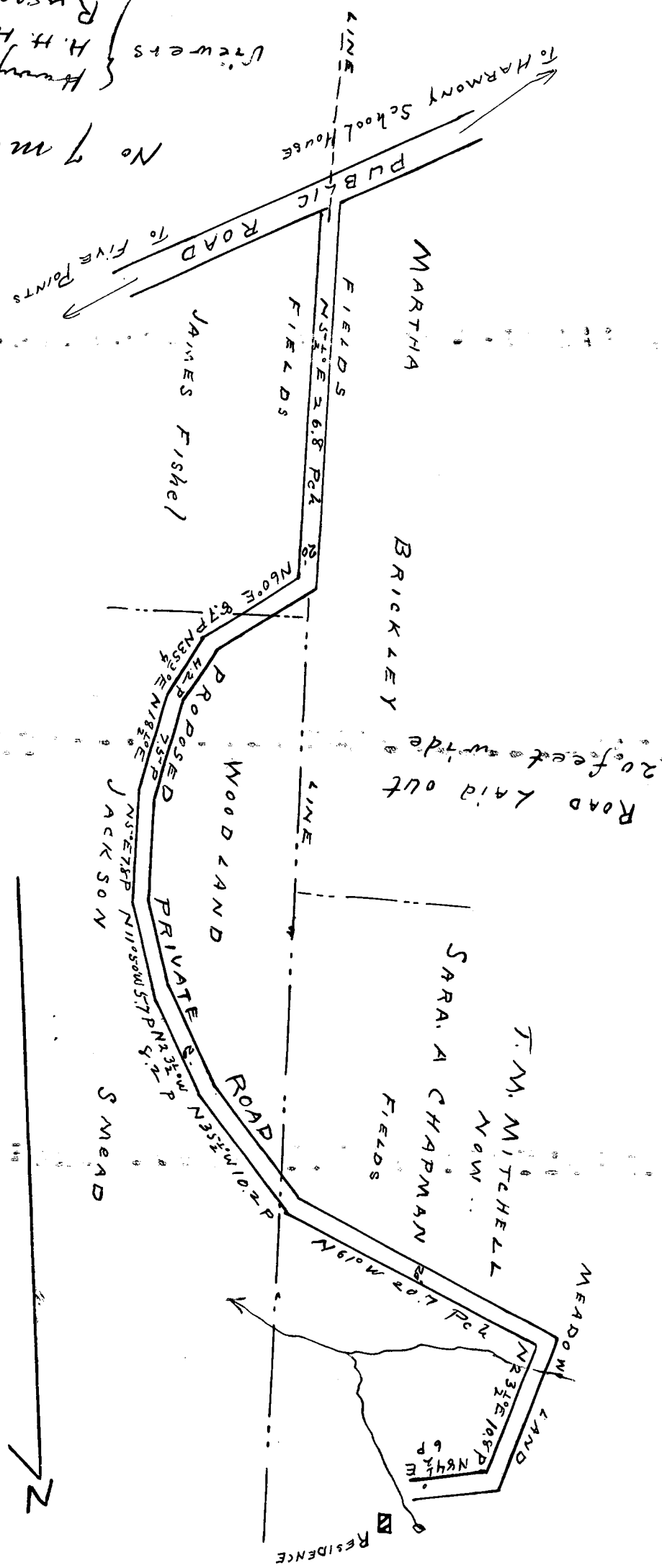
Seal

Seal

Scale 10 Pch = 1 inch

Witnesses
H. H. Hurd
Henry Byers
Russell Rarabangh

No 7 may 5 1894



In the Court of Quarter Sessions of Clearfield
County, Pa.

In Re Private Road
in

Brunside Township

No. 7 May-
Session 1894.

To the Honorable Cyrus Gordon Presi-
dent Judge of said Court:

Sarah Ann Chapman, by her
agent James Chapman makes
answer to the petition and excep-
tions filed in the above case as
follows: Sarah Ann Chapman
is the owner of the premises, leading
to which the private road was
laid out by the viewer, having
purchased the same from the
executor of T. M. Mitchell, deceased
by and dated Feb 27 1887. Recorded
in Deed Book No. 96 at page 305,
which deed conveys all and singu-
lar the rights, liberties, privileges,
hereditaments, and appurtenances
whosoever thence belonging, and
all the estate, right, title and vic-

trust, property claim and demand whatsoever of the said Thomas M. Mitchell at and immediately before the time of his decease, in law or equity; or otherwise whatsoever, of, in, to, or out of the same. - To the first exception the defendant says the sections of the general road law of June 13th 1836, in regard to private roads are not unconstitutional.

To the second exception defendant says the report of viewers is not illegal and void because said viewers did not propose any width as the basis of their estimate as it is not the province of the viewers to fix the width of any road, that being a matter wholly for the Court.

To the third exceptions defendant says: The confirmation Nisi of the report of viewers is not illegal and void because the Court ordered a road opened 33 feet wide. In this case the Court used the printed form which is used in public roads

and the width of thirty-three feet having been printed therein the attention of the Court was not called to the fact that this was a private road. The fact is that the road has not been opened more than 20 feet, and deponent is willing that the Court shall correct the error made therein.

To the fourth exception deponent says that the report of the viewers shows that the road is necessary for the use of Thomas M. Mitchell and common sense shows that it is equally necessary for any person occupying the same farm.

To the fifth exception deponent says that T. M. Mitchell did lift the opening order eleven months before the date of his death and served a written notice on J. B. Snicek of his intention to open the road and did open said road.

To the sixth exception defendant says the damages allowed J. B. Smeed are sufficient.

To the seventh exception defendant says the opening order was issued on the 7th day of January 1896, and at that time, and before the order was issued T. M. Mitchell paid all the costs of every kind in any manner connected with the road and also all the damages allowed by the viewers to the prothonotary, which payment included the damages allowed to J. B. Smeed.

To the eighth exception defendant says the report of the viewers shows that they gave "good and lawful notice of said road view."

To the ninth exception defendant says
the report of viewers does show
that the views were sworn as re-
quired by law.

To the tenth exception defendant says
that the draft attached to the report
of viewers does not show that the
road could have been laid out
through lands of T. M. Mitchell.

James Chapman

Clarified Twenty-2.

James Chapman, agent of Sarah
Ann Chapman, being duly af-
firmed according to law says
the answer above made are true
and correct as he verily believes

July 10th 1877

J. Quincy
Clerk

James Chapman

No. 7 May Session 1894

In Re. Private Road
in

Burnside Township

Answer of Petitioner
to exceptions filed

RECORDED IN 1894

Wilson and

KELLEY & PATERSON