

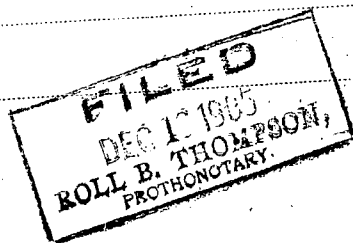
4 September Term, 1899
2 S. Clearfield Co
No. 126 October Term, 1905.

Superior Court.

In Re Public Road
in Union Township
Appeal of
Union Township &
petitioners

REMITTITUR.

Atty	3.00
Appeal & Petitioners	12.00



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Att'y 3.00

Appeal & Petition 12.00

FILED
DEC 1 1905
ROLL B. THOMPSON,
PROTHONOTARY.

IN THE SUPERIOR COURT OF PENNSYLVANIA:

The Commonwealth of Pennsylvania,

TO THE JUSTICES of the *Quarter Sessions Court*

for the

County of

Deerfield

GREETING:

Whereas, By virtue of our Writ of Certiorari from our SUPERIOR COURT of Pennsylvania Sitting at Philadelphia,

returnable in the same Court on the
hundred and

five a Record was brought into the same Court, upon appeal by

fourth

Monday of

October

in the year of our Lord one thousand nine

Union Township and petitioners

from your

dece

made in the matter of

the 4 September term, 1899 wherein

Jacob Boruck

is appellee

in the Public Road in Union Township

And it was so proceeded in our said Superior Court, that the following

dece

was made, to wit:

The sustain the second and third assignments of error and reverse the decree and remittitur the proceedings and the road and order that the costs of this appeal be paid by the appellee
And the record and proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the Act of Assembly in such cases made and provided) ordered by the said Superior Court to be remitted to the

Court of *Quarter Sessions*

for the County of

Deerfield

aforesaid, as well for execution or otherwise as to justice shall appertain: Whereupon we here remit you the Record of the *dece* aforesaid and the proceedings thereupon, in order for execution or otherwise, as aforesaid.

Witness, the Honorable CHARLES E. RICE, Doctor of Laws, President Judge of our said Superior Court, at Philadelphia, the

day of

December

in the year of our Lord one thousand nine hundred and

nine

John O'Brien
Prothonotary.

IN THE SUPERIOR COURT OF PENNSYLVANIA.

In the matter of a Public : In the Court of Quarter Sessions
Road in Union Township : of Clearfield County.
: No. 4, Spetember Sessions, 1899.
: Superior Court,
: No. 126, Oct. Tr., 1905.

Filed Dec. 11, 1905.

Opinion by Morrison, J.

This record might be fitly described as a comedy of errors, but the only questions which can now be considered are such as go to the jurisdiction of the Court, as it is too late to review the irregularities and errors which might have been raised by exceptions before the final confirmation. It is and must be conceded that the proceedings must now stand unless they are found to be void. Of course a void judgment, decree or order can be stricken from the record at any time when it is brought to the attention of the Court.

On May 19th, 1899, a petition was presented to the Court for the appointment of viewers to lay out a public road and three viewers were appointed. These viewers not having acted in pursuance of their appointment, the same petition was again presented to the Court on December 4, 1899, and the same

viewers were reappointed. On February 9, 1900, viewers report filed and February 15th, 1900 confirmed ~~ma~~ ni si. On May 11, 1900, confirmed absolutely and on October 11, 1900, order to open issued.

After this road had been opened and public money expended thereon to a considerable amount, the Borough of Du Bois on December 14th, 1903, petitioned the Court to set aside the confirmation and strike off the report because but two viewers met and acted and made report ~~xxx~~ and for other reasons stated in the petition. On this petition a rule to show cause was granted as prayed for.

It appears from the record that on December 21, 1901, a petition was presented and viewers appointed to view, vacate and ~~supply~~ supply the road in question and that on April 22, 1902, the viewers reported against the prayer of the petition to vacate and supply. On November 22, 1904, Patton, P. J., of the 33rd. Judicial District, specially presiding, filed a lengthy opinion reviewing the alleged errors in the record and proceedings of the road laid out and opened as above referred to and made the following decree: "And now, November 26, 1904, the petition is granted, the report of the viewers is set aside and all proceedings quashed and the respondents directed to to

The assignments of error are as follows: 1. The Court erred in stating in its opinion as follows: "The order issued to the viewers has upon it both the seals of the Common Pleas and Quarter Sessions". 2. The Court erred in stating in the opinion filed as follows: "Neither the petition, the report of the viewers or draft set forth the township or county in which the road is located". 3. The Court erred in its decree, which decree is as follows: "Now, November 26, 1904, the petition is granted, the report of viewers is set aside and all proceedings quashed and the respondents directed to pay the costs".

We only find in this record three questions which seem worthy of consideration, in view of the fact that no exceptions were filed to the original report of viewers and that the road was lawfully opened and in use by the public for about three years prior to the attempt to set aside and quash the proceedings. 1. It is said that the original petition was addressed, to the Court of Common Pleas and that it did not designate the township or county in which the proposed road was located. It is true that the petition was inadvertently addressed to the Court of Common Pleas, but it was filed in the Quarter Sessions and endorsed in the same court and the order to the viewers was issued from the Quarter Sessions and signed

having failed to act under the first appointment, it is very

appointed at the May and December Terms, 1899. The viewers

regular, notwithstanding the fact that the same viewers were

and appointed three viewers, and we think this appointment was

Court of Quarter Sessions had jurisdiction of the subject matter

warrant the conclusion that the proceedings were void. The

signed by two viewers. In our opinion this objection does not

all proceedings, and the reason are void because it was only

a report and is strenuously contended that th

in that action.

in which Township, Clearfield County, and that there is no merit

tion, proceedings, orders, etc. that he proposed road was

merit. Also think that it suffices. Sessions is wholly without

were not in the Court of Quarter Se

We therefore, conclude that the or

lately and the order to open wa

therein, and confirmed by said

of viewers was made to the Co

seal over it. In addition, the report

impressing the Quarter Session's

this was a mistake and that he im-

the clerk certifies that by mistake, placed upon the order but

Common Pleas was first appears that the seal of the Court of

upon the order. It, and the seal of that Court was impressed

by the clerk there

clear that the Court had power at the next regular term to -
reappoint the same or other viewers upon the same petition.
This was done and the viewers directed to report at the next
regular term, and they did report at said term. Therefore, we
see no merit in the objection that the viewers did ~~xxx not~~ ~~report~~
report at the December Term. All the cases upon this point hold
in favor of the regularity of the action of the Court in con-
tinuing the authority of the viewers by reappointing them on
December 4, 1899, and ordering them to report at the next term.

As to the objection that only two viewers reported,
we do not consider it fatal to the proceedings. No exception
was filed to the report and it is not denied but practically
conceded that the party instrumental in having the proceedings
set aside and quashed had full notice of the original petition
and all the proceedings and never filed an exception nor moved
to have the proceedings set aside, until about three years after
the final confirmation. In view of the facts in this case, we
think it ought now to be presumed that before the final con-
firmation of the report of viewers, the Court ascertained to ~~x~~
its satisfaction that the viewers were all qualified and present,
notwithstanding the fact that the report is only signed by two
viewers and does not show on its face that the other one was
present and qualified.

passed upon by the Supreme Court and Sharswood, J. speaking for the Court, said (p. 453): "Everything is to be presumed in favor of the regularity of the proceedings in a Court of Justice; - - - - -. The second ~~assignment~~ of error is, that it does not appear by the report that the viewers were all present. This exception was not made in the Court below, and if made there in all probability the report would have been amended according to the fact. - - - - - It is enough to say that it has often been decided in this Court that it need not appear on the face of the report that all the viewers were present at the view". Citing several cases. We think the question of the report being signed by but two viewers was raised too late. To sustain the decree of the Court below will in effect allow the petitioners to appeal from the final confirmation of these road proceedings more than three years after the entry of the final decree. If the petitioners were aggrieved, they ought to have appealed within six months from May 11, ¹⁹⁰⁰ ~~1900~~, and this rule applies with great force where they do not deny having due notice and knowledge of the proceedings: Road in Adams Township, 130 Pa., 190; Road in North Franklin Township, 8 Pa. Sup. Ct., 353, Winter Avenue, 23 Pa., Sup. Ct., 353. In Road in Elk Township, 2 C. C. R., 45, McPherson, J., held as stated in the syllabus: "A jury of three ~~viewers~~ reviewed

these two, one had been notified by mistake, another party having been appointed. The ^{exceptant} ~~expectant~~ was present at the view and made no objection^s. ^{the} ~~th~~ Held, that ~~th~~ analogy of the rule concerning jurors would be followed and the report would not be set aside". This ruling was mde when exceptions had been filed in due time, and if it is sound, and we think it is, it applies with much greater force where the question is not raised until more than three years after confirmation. See also Commonwealth v. Robert Thompson, 4 Philadelphia, 215, opinion by Allison, J/; also Mill Creek Road, 9 C. C. R., ~~522~~ 592, McPherson, J.

The Court below cites and seems to rely on Morrison's Lane, 3 S. & R., ~~2~~ 209, where it was not stated in the report of reviewers of a public road that they were all sworn, the proceedings were quashed. But this was raised by exceptions at the proper time and we do not regard it in conflict with Springbrook Road, 64 Pa., 451., and if it were, the latter case would control because the decision was made in 1870, while the former was made under the act of 1815 ~~in~~ in 1817.

The Court also cited and relied on O'Hara Township Road, 152 Pa., 319, but we do not consider it controlling because in that case the appeal was prmptly taken. The Court cited Norwegian Street, 81 Pa., 349, but that was a decision on exceptions duly filed. Nor do we consider Harris. annellant. v. Mercur, 202 Pa., ~~one~~ one.

a controlling case on the facts before us.

3. The only other objection to the record which we consider at all serious is that the termini of the road are not fixed with sufficient accuracy. In considering this question it must be borne in mind that this road had been open and in use by the public for more than three years before the present attack upon it. The petition called for a public road to begin at the old supply road near a mine operated by Henry Wertz, and to intersect the road from Home Camp to ~~Rockton~~ Rockton, about one mile below Home Camp. The report of the viewers shows that they began "at a point on the old supply road near coal mine opened by Henry Wertz" and thence located the road by courses and distances to a point" eight feet south from a line and ~~parallel~~ ^{parallel} with it with centre of road to road leading from Home Camp to Rockton at post by marked stump, a plot or draft of road as laid out aforesaid is hereunto annexed, showing courses, distances and improvements which road is necessary in our opinion for a public road". If we assume that the starting terminus is sufficiently accurate, there is no question but what the road can be located by a surveyor ~~also~~ following the courses and distances and this will inevitably locate the other terminus, regardless of the post and marked stump referred to. Where a road has been opened and in use by the public for years, we do not think it should be constructed

oid because the termini are not fixed with such accuracy as many of the cases require. It is not improbable that if exceptions had been ~~filed~~ filed before confirmation, or if the question under consideration had been raised by petition and motion before the road was opened and public money expended thereon, the location of the termini of this road might have been held too indefinite.: Hector Township Road, 19 Pa. Sup. Ct., 124, O'Hara Township Road, 152 Pa., 319. In both of these cases the attacks upon the records were promptly made.

J. The present case there does not seem to have been any difficulty encountered in locating and opening the road and we do not think the inaccurate description of the termini, furnishes grounds sufficient to warrant setting aside the report and the proceedings at this late day. Moreover, we think the termini are located better than in O'Hara Township, and Hector Township Roads.

We sustain the second and third assignments of error and reverse the decree and reinstate the proceedings and the road, and order that the costs of this appeal be paid by the appellee.