

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

SUPERIOR COURT

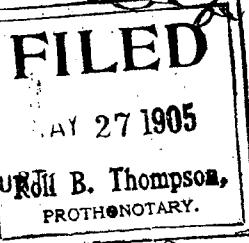
In Re. Public Road
in Union Township
Appeal of
Union Township & petitioners

CERTIORARI to the Court of Quarter Sessions for the County of Clearfield
Returnable the Fourth Monday
of October 1905

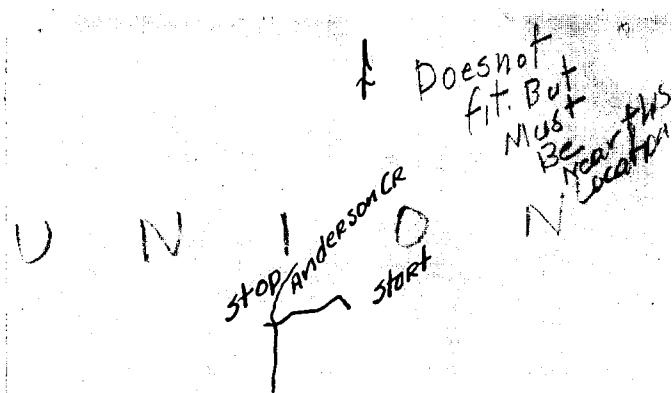
Rule on the Appellee, to appear and plead
on the Return-day of the Writ.

Service of notice of an
order to appear by
24/8/05 M. C. Reitz

FILED



Murray & O'Laughlin



UNION Twp.

Conf. by Q.S. Court May 11, 1900

Conf. by Superior Court Oct. 4, 1905

33'-16'

Beginning at a point on the "old Supply Road" near coal mine operated by Harry Wertz — to intersect the road from Home Camp to Rockton about a mile below Home Camp.

Quarter Sessions
Among the Records and Proceedings enrolled in the Court of ~~Quarter Sessions~~ in
and for the county of Clearfield, in the Commonwealth of Pennsylvania, to No. 4

September Term, 1899, is contained the following:

COPY OF Road DOCKET ENTRY.

Public Road

in

Union Township

19 May 1899 Petition filed

To the Honorable Judges, etc.

The petition of the undersigned citizens of Union Township, Clearfield County, Pa. respectfully represents that they are in need of a public road to begin on the old supply road near a mine operated by Henry Wertz and to intersect the road from Home Camp to Rockton, about one mile below Home Camp. They therefore pray the Court to appoint viewers to view the premises and make report thereon as provided by the law, and they will ever pray.

Nov. 19, 1899 petition read and considered and Harry Byers, Wm. T. McCorkle and Thomas Smith are appointed viewers to view and make report to next term of Court. By the Court

Cyrus Gordon.

4 Dec. 99, petition again presented to the Court and Harry Byers, W. T. McCorkle and Thomas Smith appointed viewers to make report to next term. By the Court.

28 Dec. 1899 order to view issued to M. & S.

Now, 9th Feby 1900 report of viewers filed.

Now, to wit 15 Feby. 1900 read and confirmed Ni. Si. Road to be opened 33 feet wide, except where there is side hill cutting or embankment and bridging there to be 16 feet wide. By the Court, Cyrus Gordon, P. J.

11 May 1900, confirmed absolute. By the Court.

Grant H. Thompson, Pro.

To the Honorable Judge of the Court of Quarter Sessions of Clearfield County. We the undersigned viewers appointed by the within order of Court to view and lay out the road therein mentioned respectfully report that we gave good and lawful notice of said road view including notices given to County Coms. and Supervisors of Union Twp. attached thereto, and met on the day mentioned therein, the two undersigned viewers being present and having been severally sworn or affirmed, we viewed and laid out the following road to wit: Beginning at a point on the old supply road near coal mine opened by Harry Wertz, thence through unimproved land of Jno. Parish and R. Laborde north 26¹-2⁰ west 8 9-10 perches to a post, thence north 46⁰ 40' west 8 4-10 perches to a hemlock stump, thence north 84¹-2⁰ west 9 2-10 perches to a maple, thence south 78⁰ west 6 4-10 perches to a dead beech, thence south 62⁰ 15' west 9 6-10 perches to a post, thence south 52⁰ 40' west 30 perches to a post, thence south 65⁰ west 32 6-10 perches to a post, thence on line between land of J. A. Hummel and A. Bailey south 88¹-2⁰ west 46 1-10 perches to a hemlock stump, thence through land of A. Bailey aforesaid south 47⁰ west 25 7-10 perches to a post, thence south 59⁰ west 18 9-10 perches crossing Anderson Creek to a post, thence through improved land of E. & I. Kline and E. Fletcher S/ 88 1-2⁰ west 14 perches, being 8 feet south from line and parallel with it with center 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. We believe no owner of land through which the road aforesaid passes is entitled to damages by reason of the location or opening the same.

Witness our hands this 24th day of January, A.D. 1900.

Viewers Harry Byers

By report filed 9th Feby 1900 Thomas Smith (signed)

11th Oct. 1900 Opening Order issued to Murray & Smith, On Arg. list.

Dec. 14, 1903 Rule to strike off confirmation absolute, issue and service waived.

Dec. 14th 1903 petition read and rule executed as prayed for

By the Court

March 14, 1904, Additional exceptions filed by leave of Court.
Eodie, exception to this order allowed to attorney for road.

March 21, 1904, answer filed.

May 25, 1904, Answer of Union Township filed.

Oct. 5, 1904, depositions filed. On argument list.

Nov. 30, 1904, Opinion and Decree filed. Report of viewers is set aside and all proceedings quashed and respondents to pay costs, and exception noted and sealed for respondents.

By the Court.

25 May, 1905, Bond in sum of \$100 filed with W. P. Mahaffey and A. Harwick surety for appeal to Superior Court.

25 May, 1905, bond approved. Roll B. Thompson, Clerk.

May 27, 1905, Certiorari from Superior Court filed. Returnable fourth Monday of October 1905.

Service of notice of writ accepted May 29, 1905, W. C. Pentz for appellee (as per endorsement on writ).

In the Court of Common Pleas of Clearfield County, Pa.

To the Honorable Judge of said Court.

The petition of the undersigned citizens of Union Township, Clearfield County, Pa. respectfully represents:

That they are in need of a public road to begin on the old supply road near a mine operated by Henry Wertz, and to intersect the road from Home Camp to Rockton, about one mile below Home Camp. They, therefore, pray the Court to appoint viewers to view the premises and make report thereon as provided by law.

And they will ever pray etc.,

Names	Names.
C. V. Bailey	D. Jordan
George Bailey	G. O. Spicher
Alfred Bailey	Levi Spicher
Peter Shaffer	Lewis Corp
J. H. Riddle	James Henry
Daniel Smith	Will Donald
David Siders	H. H. Brown
Thomas Cooper	Eliz. Kline.
George Corp	D. B. Shaffer
Frank	E. S. Bourbaker
J. H. Riddle	C. Dr. Gobosak
George Rimer	J. G. Blawie
John Kline	W. S. Bailey
W. S. Bailey	Eliz. Kline.
	Harry. E. a. Borden
	D. E. Shaffer

" 38 H Feb 10

We the above named Petitioners
do respectfully Recommend as Surveyors

E. J. Cummings Esq

Z. E. Dressler

George C. Kirk - Surveyor

Amherst St.

Petition for Public

~~Mr. Sec. H. 1899
forers of Cheverne
Chapman. Report
be made to fully
P. O. S.~~

Nov. Dec. 4 1899
million again presented
to the Compt. and
Henry Davis, P. J.
McClellan & others
and authorized
granted to make
effort to meet him
at the Amherst

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and authorized
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effort to meet him
at the Amherst

Nov. May 19th 1899
and the Massachusetts Army
Rifles, Young McCollum
and Thomas Smith

are appointed messengers to
see & make report to
the Compt. & Compt.

Nov. May 19th 1899
and the Massachusetts Army
Rifles, Young McCollum
and Thomas Smith

Nov. May 19th 1899
and the Massachusetts Army
Rifles, Young McCollum
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and the Massachusetts Army
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and Thomas Smith

Nov. May 19th 1899
and the Massachusetts Army
Rifles, Young McCollum
and Thomas Smith

Dec. 19 May 1899

Grant of Warrant

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 19 day of May, A. D. 1899, before Judge of said Court, upon a petition of sundry inhabitants of the township of Minion

in said county, setting forth that that they are in need of a public road to begin at the old supply road near a mine desired by Harry West and to intersect the road from Home Camp to Rockton, about one mile below Home Camp.

and therefore praying the Court to appoint proper persons to view and lay out the same according to law, ^{mines having not reported on Dec. 4, 1899. Pittman again presented} whereupon the Court, upon due consideration had of the premises, do order and appoint Harry Buyers, Wm. F. W. Cole, W. Thomas Smith ^{to report at Pittman, Jan. 1, 1900} 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.

Frank Thompson
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 County of Clearfield at and before the sealing and delivery hereof, have remised, released and forever quit-claimed; and do hereby remise, release and forever quit-claim to the said County of Clearfield 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 22 day of January
A. D. 1890

R H Linn Seal

J G Kline Seal

Elizale Kline Seal

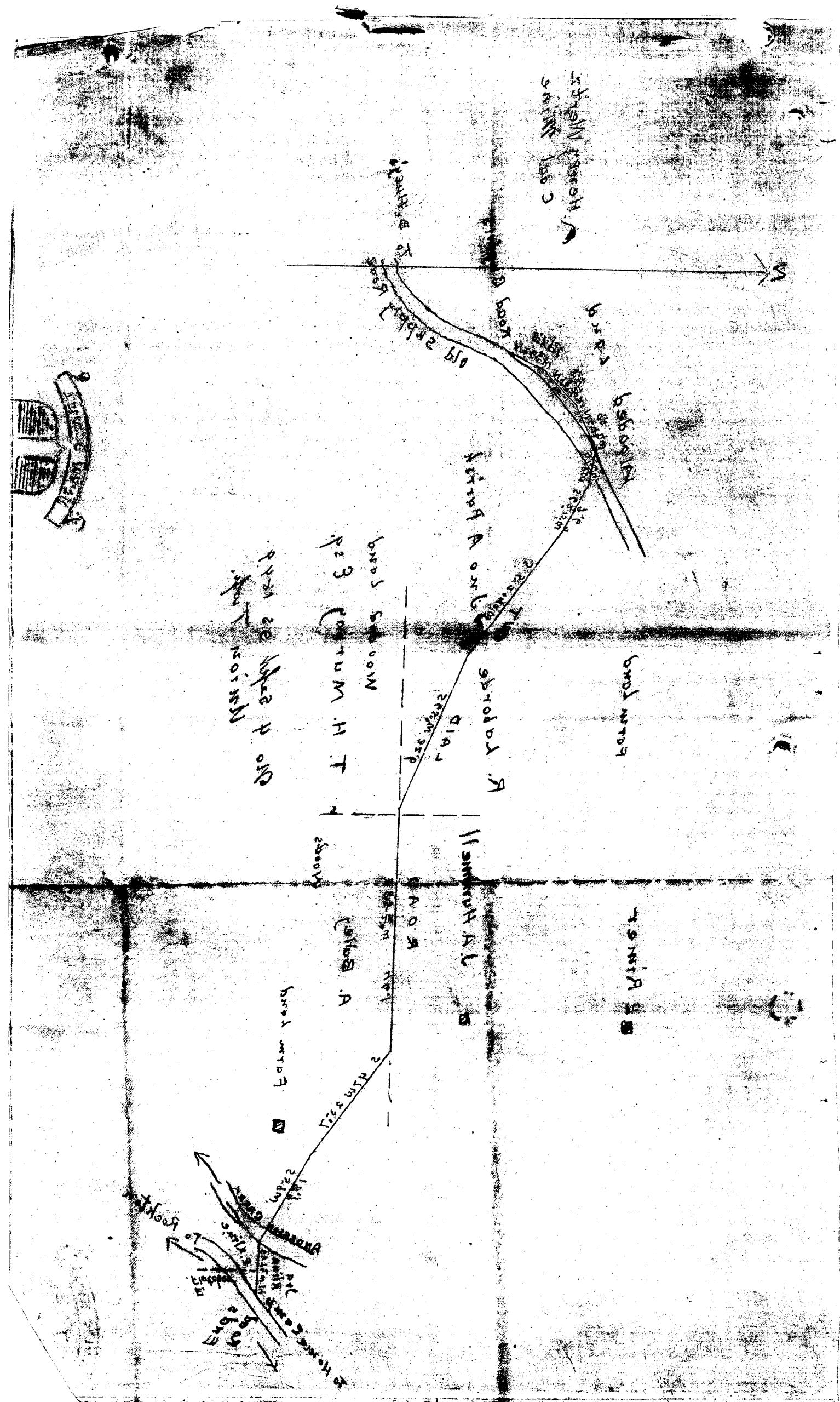
Seal

ASSESSMENT OF DAMAGES.

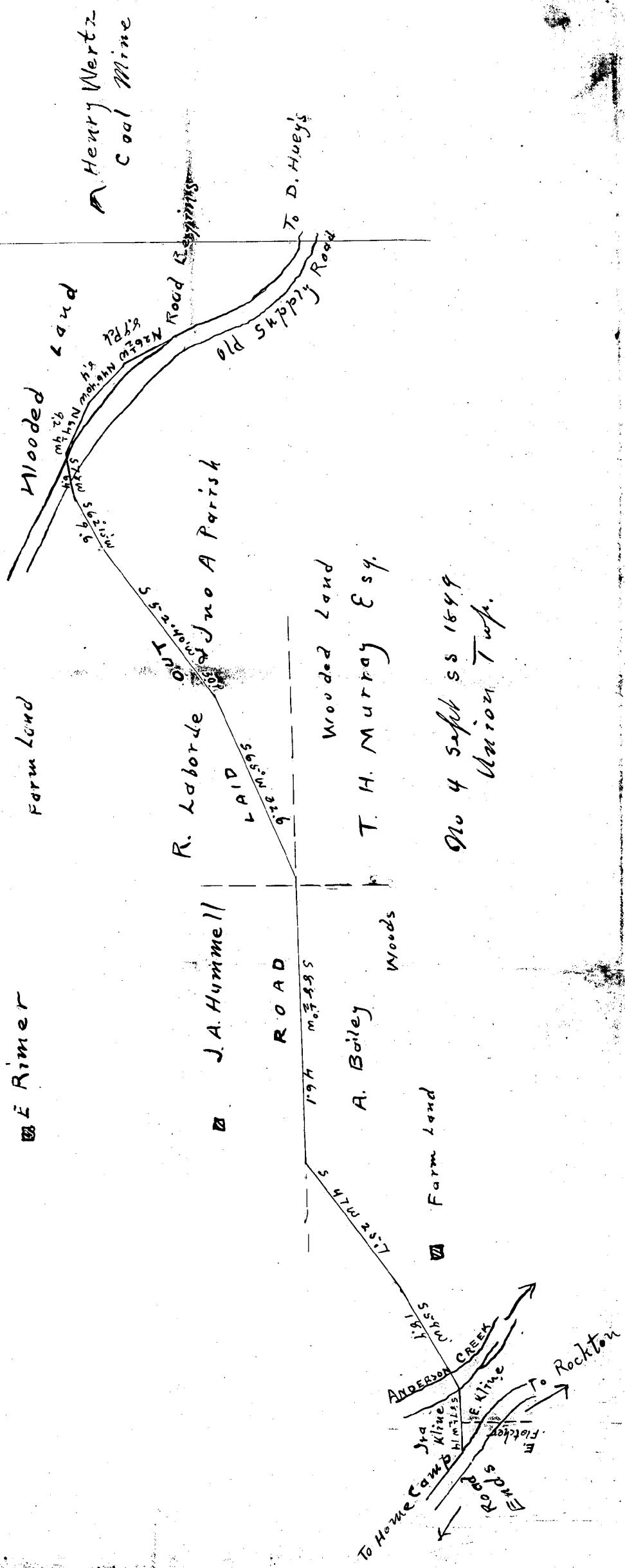
The following persons, having refused to release the damages to which they respectively may be entitled by reason of the location and the opening of the said road in the annexed return described, we, the undersigned viewers, under oath in pursuance of our duty, under the Act of Assembly, do assess their 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. 1890.



N



To the Honorable John Gordon President Judge of the Court of
Quarter Sessions of Clearfield County, we the undersigned
viewers appointed by the within order of court to view and
lay out the road therein mentioned respectfully report that we
gave good and lawful notice of said road view including notices
given to Co Comr and Supervisor of Union Twp attached hereto
and met on the day mentioned therein, the two undersigned viewers
being present and having been severally sworn of affirmed we
viewed and laid out the following road to wit, beginning at a point
on the old supply road near coal mine operated by Henry Wertz
thence through unimproved land of Jno Parish and R Laborde
North twenty-six and one half degrees West eight and nine tenth
perches to a post thence North forty six degrees forty minutes West
eight and four tenth perches to a Hemlock stump thence North
sixty four and one fourth degrees West nine and two tenth perches
to a Maple thence South seventy eight degrees West six and four
tenth perches to a dead Beech thence South eighty two degrees fifteen
minutes West nine and six tenth perches to a post thence South fifty
two degrees forty minutes West Thirty perches to a post thence South
Sixty-five degrees West Thirty-two and six tenth perches to a post
thence on line between land of J A Hummell and A Bailey South
eighty-eight and one half degrees West forty-six and one tenth
perches to a Hemlock stump thence through land of A Bailey
aforesaid South forty seven degrees West twenty-five and seven
tenth perches to a post thence South fifty-nine degrees West
eighteen and nine tenth perches crossing Anderson Creek to a
post thence through unimproved land of E & J Kline and E Fletcher
588 $\frac{1}{2}$ W fourteen perches, being 8 feet south from line and parallel
with it with centre of road, to Road leading from Home Camp
to Rockton at post by marked stump, a flat or draft of road
as laid out aforesaid is hereto annexed showing courses
distances and improvements which road is necessary in
our opinion for a public road. We believe no owner of land through
which the road aforesaid passes is entitled to damages by reason
of the locating or opening the same. Witness our hands this
Twenty fourth day of January A D 1900

Viewers { Harry Byers
Thomas Smith

John H. Hinman

No. 4 Dept. Sessions, 1899

ORDER

To view and lay out a road for

Clearfield Co.
Clearfield Co.

July 16, 1890,
Loring, S. D.
Received and confirmed
by Si. Ki. Si.

Road to be opened 33 feet wide, except where there is side hill cutting or embankment and bridging, there to be 18 feet wide.

1000 feet above.
New Mex. Ground
11 May, 1900
Determined by a check

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.				
	Days 3			
	Harry Byers	Days 2	Miles 2	\$14.2
	Thomas Smith	Days 2	Miles 2	\$6.2
	Ben Herring	Days 1	Miles	15.0
	J. E. Hennell	Days 1	Miles	15.0
	Jesse Skidmore	Days 1	Miles	13.0

To the Honorable the Judge of the Court of Quarter Sessions of Clearfield County.

The petition of the Borough of LuBois by its Water Committee D.H. Butler H.J. Boyer, Joe Bensinger and J.W. Roser, respectfully represents:

That a petition was presented to said Court on the 4th day of December, 1899, asking that a public road be laid out, beginning at the Old Supply Road near the H. Wertz coal Bank and ending in the Home Camp Road, and thereupon Harry Beyers, W.T. McCorkle and Thomas Smith were appointed Viewers to view and lay out said road; That Harry Beyers and Thomas, Smith, two of said Viewers, met on said road and viewed and laid out the same, and reported to Court that one of the Viewers had not met with them and had not viewed the said road; that said road was laid out across a Reservoir or dam that was then under contemplation of construction for the supplying of the Borough of LuBois with water for domestic and other purposes; that a part of the land over which said road was laid was at that time under condemnation proceedings, and the title thereof has since been acquired by the Borough of LuBois for said water supply; that prior to the laying out of said road, the Borough of LuBois had by its Ordinance taken said location for their reservoir site; that since said road was laid out, said dam has been built and constructed. The said road built across said dam is injurious to said Borough of LuBois and its water rights; that the said public road was viewed by two Viewers, as appears by said Report, and the Old Supply Road in which said road begins, was not a public road or a public place, but an old road used ye man to go to the Camps and had not in any manner been used or built by the public.

Your petitioners therefore pray the Court to set aside the confirmation absolute of said road, and to strike off the Report of Viewers made in this case, and they will ever pray, etc.,

Done in the 12th day
of December 1903
At the County
Commissioner

COMMISSION EXPIRES 6-3-1008

D. H. Butler
H. J. Boyer
J. W. Roser
Joe Bensinger

Roach

Mo. 4 Sept. 85. 1879

In Re Board in
~~unwritten~~ -

Dec 14 1903 service ac-
cused. This is the 14th
A.O. hearing
for the record.

14 ac 1803 held
real & some personal
as measured by
Rec. not other argu-
ment other

By the Court
James Hendry

86-83

W. C. PENZI
Attorney at Law
DU BOIS, PA.

In Relation to : In the Court of ~~Common Pleas~~ Sessions of
Public Road in : Clearfield County.
Union Township : No. 4 September Sessions, 1899.

14th day of March, 1904, the Borough of DuBois by its Attorney, Wm. Pentz, prays and asks leave to file additional exceptions and reasons for the setting aside of above stated road, as follows:

1st. The petition in above case is to the Court of Common Pleas of Clearfield County, and the order is made in that Court and is filed to No. 4 September Sessions Term, 1899, and not September Sessions, 1899.

2nd. The petition does not set out the Township or County in which the road either begins or ends.

3rd. So far as the petition is concerned there is nothing in it to designate where the road should be located.

4th. The terminus of the road is not sufficiently accurate as contemplated by the Act of Assembly.

5th. The Report of Viewers does not set forth the termini of the road sufficiently accurate.

6th. There is nothing in the Viewers' Report or the draft attached to indicate in what Township the said road was laid out.

Wm. Pentz
Attala & Wilson, Boro

In Registration to : In the Court of General Session of
Classifying Court : Public Record in
Mo. 4 September Session, 1888. Union Township

With a view of the effect, the Board will be enabled to take the necessary steps.

say. So far as the befitton is concerned there is nothing in
which the loss of sports befitton goes on. The befitton says
say. The befitton goes on. The befitton goes on.

• Conference by the Vice of Assembly

2549. The Report of the African Despotism Committee to the Secretary of State.

• The following is the Report of the First Annual Meeting of the Association of the Bar of the City of New York, held on the 15th of April, 1870.

In the matter of the road in § In the Court of Quarter Sessions
Union Township, § of Clearfield County.
Clearfield County, Pa. § No. Dec. Sessions, 190

The Borough of DuBois by its Attorney W.C. Pentz excepts further, and asks that the confirmation of the Viewers Report be set aside, for the reason that the proceedings in this case do not show and do not have return notices to supervisors and the County Commissioners, or any other person as required by law.

W.C. Pentz
Atty. for DuBois Borough.

In Relation to : In the Court of Quarter Sessions of
Public Road in : Clearfield County.
Union Township. : No. 4, September Session, 1899.

The Township of Union answering ^{the} petition of the Borough of DuBois, denying the right of the petitioners to make their application, sets forth:-

That the road laid out in this proceeding had been in public use for many years prior thereto, and that this proceeding simply declared that to be a Public Road, which was already a Public Highway by dedication. That the owners of the land occupied by said road recognized it as a Public Road, and it was so treated by the public. That the supply road had been long used by the public, and accepted by the Township as a Public Road.

That this road was opened, a large part of the road built, a good bridge constructed across Anderson Creek, and the Township relying upon the decree of the court heretofore made without objection on the part of any person in interest. That to construct another Public Road which should reach the persons living across Anderson Creek, would be very expensive imposing a burden upon the Township beyond its means.

That this road and its bridge are ^{not} injurious to the Borough of DuBois and its Water Rights ~~excepted~~. That the said Borough would be required by the Township to put the road in a passable condition; the said road being now obstructed by the said Borough and rendered impassable. That any possible injury done to the ~~Borough of DuBois~~ by compelling ~~it~~ to abandon the continuance of this road is less than that done to the Township of Union by compelling it to abandon the road and to construct another.

*The Township of Union
by its attorney
Mingletin Bell*

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENN'A.

Answer to Rule on Petition of Borough of DuBois in Union Township Road.

On behalf of the petitioners for the road (reserving all matter of exception and denying the right of the petitioners for Rule to sustain their application) the following matters are set forth.

First. That it is not true that the land over which the road passes in whole or in part was under condemnation proceedings at the time the road proceedings originated and when the road was located.

Second. That the supply road referred to had been used by the public for Twenty years prior to the road proceedings and prior to that time was maintained and kept up by the township.

Third. That the road in question was opened in pursuance of the order laying out the same, and a large part of the said road was built and completed at the expense of the township, including a good bridge across Anderson Creek.

Fourth. That the coal mine referred to was then and has been for some years used for supplying a large part of the township with coal.

Fifth. That a number of persons living across the creek would be accommodated by the road in question apart from the interest that a large portion of the citizens have in the coal bank in question.

Sixth. That on the 21st of December, 1902 a petition to vacate and supply was presented to the said Court asking for the appointment of viewers to vacate the road in question and to supply it by a road "beginning on the old supply road near mine formerly operated by Henry Wertz and to intersect a public road from Frank Colveys to Home Camp at a point near a bridge across Anderson Creek at the Chandler Dam". In pursuance of which petition on the same day viewers were appointed who, after viewing the premises, refused to vacate the road in question or to supply it by another road as prayed for. That the sole grounds set forth for the vacation of said road was that the Borough of DuBois was constructing water works and building a reservoir which would affect the said road.

Seventh. That by a ~~deed~~ which the Borough of DuBois obtained from Thomas H. Murray covering land upon both sides of Anderson Creek, which deed is dated the 15th of December, 1900 and recorded in Deed Book No. 125, page 174, there was reserved to the grantor the full and free right of way between contour lines 1660 and 1665 upon and along each of said pieces of land conveyed by said deed, which reservation was intended to cover the right of way upon each side of said creek.

And further saith not.

J. A. Parish

County of Clearfield, I ss.
State of Pennsylvania.

Personally appeared before me, J. A. Parish, who being duly sworn or affirmed according to law, saith that the facts set forth in the foregoing petition are true and correct as he verily believes.

Sworn and subscribed to before me a Justice of the Peace
this 17th day of March, A.D., 1904.

R. E. Dresler, Jr.

*My Commission Expires the
first Monday in May, 1907*

No 4 Sept 3 1881.

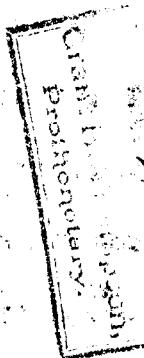
Passed

Public Record

in

Union Imp.

Answer to Rule 5
Strike off Confirmation



Mro.

In Re the Public Road

In the Court of Quarter

in
Union Township.

: Sessions of Clearfield County.
: No. 4 Sept. T., 1899.

Opinion Patton, P.J., 33 Judicial District, Specially Presiding on the petition of the Borough of Du Bois to set aside the confirmation of the Report of Viewers.

Nov. 26, 1904, The petition for the public road in this case was presented May 19, 1899, and viewers appointed. Nothing seems to have been done by them under their appointment. On Dec. 4, 1899, the petition was again presented and the same viewers re-appointed. Two of the viewers made their report on 4 Jany., 1900. Said report was confirmed Nisi 15 Feby., 1900, and absolutely on 11 May, 1900. It was not until Dec. 14, 1903 that the Borough of Du Bois presented the present application to set aside the absolute confirmation of the road. This being the state of the record, we need not now concern ourselves with mere irregularities in the proceedings, (and their name is legion), but can only examine into those matters that show that the proceedings are void for want of jurisdiction.

Objections to the jurisdiction are of two classes, between which there is a clear and well settled distinction; first-- those relating to the authority of the Court over the subject matter; and secondly, those relating to its authority over parties. Objections of the first class cannot be waived, nor jurisdiction obtained by acquiescence." English vs. English, 19 Sup. Ct. Rep. 586." "In all cases in the Courts where the authority to proceed is conferred by statute, and where the manner of obtaining jurisdiction is prescribed by statute, the mode of proceeding is mandatory, and must be strictly complied with or the proceeding will be utterly void." Norwegian Street, 81 Pa., 349.

"When upon the undisputed facts, the Courts are without authority to enter an order confirming a report of viewers, that order may be directly attacked by a party in interest at any time before

it has been carried into execution. Such an order is similar to a judgment void upon its face, which may be stricken off on motion.

Crescent Tp. Road, 18 Sup. Ct. Rep., 160. Taking these opinions and authorities as our guide, let us examine the record in this case. At the very inception of the case, we find in the petition for the road, "In the Court of Common Pleas of Clearfield County, Pa., To the Honorable Judge of said Court". And concludes with the prayer to the Court (i.e. the Common Pleas Court) to appoint the viewers. This the Common Pleas Court had no authority to do. By the Act of 13 June, 1836, P.L.555, the petition must be presented to the Court of Quarter Sessions, and the viewers appointed. On the back of the petition is written "Quarter Ss.", but that is no part of the record. It is evidently written on by the attorney for the petitioners, As the same judge is the presiding officer in both the Common Pleas and Quarter Sessions, we are unable to tell from the record in what Court he was acting when the re-appointment was made, except from the petition. To make the matter more confusing, the order issued to the viewers has upon it both the seals of the Common Pleas Court and the Quarter Sessions. The seal is what gives authority to the process or order of the Court. An order to viewers without it is a nullity. Brysons Road, 2 P.& W., 207. What can we say of an order that has the seals of both Courts upon it? It is an anomaly. The viewers would not know to which Court to report. The public could not tell to which Court to go to search the records or to make objections to the proceedings. The taking of private property for public use, is a high prerogative, and should be strictly exercised. The words of the Supreme Court in Daugherty vs. Commonwealth, 69 Pa., 286, can be well applied to the state of the record in this case. "That such a practise must beget inextricable confusion, doubt and uncertainty, is apparent from the records sent up by these writs. Each Court is bound by the law to keep a record of its own proceedings, but what kind of a record must that be which is so blended with the record of another Court, as to make it impossible to separate one from the other. There can be no excuse for a practise so vicious and obstructive to the right

administration and true ends of justice." It appears from the record before us that the order to the viewers was signed by the Clerk of the Quarter Sessions, while all the subsequent papers were filed by the Prothonotary of the Common Pleas. Which ever way you look, confusion and uncertainty appears. Such a record cannot legally stand.

Equally fatal is the record that shows upon its face that but two of the viewers met and were sworn. The Act of 8 May, 1889, P.L. 129, provides that in all proceedings to lay out a public road, the viewers shall consist of three fair, judicious and impartial persons. The record shows that three were appointed viewers and but two were sworn and but two viewed the road or made report to the Court.

The Act of 13 June, 1836, Sec. 1, requires the viewers to be qualified as therein provided, and the 52 Sec. of the same Act provides that "all viewers before they proceed to the duties of their appointment, shall make oath or affirmation to perform the same impartially." A list of the cases collected in Springbrook Road, 64 Pa. 451, hold that it need not appear on the face of the report that all the viewers were present at the view, but the authorities are equally clear that where the report shows upon its face that only two of them were sworn or viewed the road, the report will be set aside.

In Re Road in Plum Tp. 7th. Kulp, 233,

" " " Butler Tp. 6th. " 443.

" " " Foster " 1st. " 249.

" " " Ryon " 3rd. " 76.

Three viewers must convene, but two may decide. In Re Road Viewers 8 C.C., 557. In Re Morrison Lane, 2 S.& R., 210, it did not appear that the fifth viewer was sworn. He did not sign the report. Held fatal and the proceedings were quashed.

In Broad Street Road, 7 S.& R., 444, the Court held that the law must be taken as written, and all the viewers must be sworn, although but some of them make the report, The reasons for the law being

enforced as written is logically and forceably stated by Chief Justice Tilghman in his opinion. We also think it fatal to the proceedings that the petition for the appointment of viewers was filed May 19, 1899 and viewers appointed that day, ^{and} as far as the record shows nothing further was done until Dec. 4, 1899, when the petition was again presented and the viewers re-appointed. When the viewers were appointed in May Term, they were bound to report to the next term or have the order continued, after showing some good cause to the Court for not reporting. But when they failed to report at the next term, all parties interested were justified in considering the proceedings abandoned. "It is error to confirm a report made in pursuance of an order abandoned or not followed up as the statute prescribes." Frankstown Township Road, 26 Pa., 472, "When a statute fixes a time within which an act must be done, the Courts have no power to enlarge it, although it relates to a mere question of practice."

Harris vs. Mercur, 202 Pa., 313. Neither the petition, report of the viewers, or draft, set forth the Township or County in which the road is located. This, to us, seems fatal. There is nothing on the face of the report to show the Court has jurisdiction. The people interested in the matter would have no record notice that it would effect the tax payers or land owners of Union Tp. "The petition must state the township in which the road prayed for is proposed to be laid out."

Road from Wilson Farm, 1 Years. 170.

It is unfortunate in this proceeding that the errors in the record were not sooner discovered and relief sought. But it was the duty of the Supervisors of Union Tp. to have examined the record and if they found it void upon its face, not to have expended the money of the Township in constructing a road, that they had no legal right to build. It is clear that exceptions as to matters appearing on the face of the record may be filed after final confirmation of the report.

O'Hara Township Road, 152 Pa., 320.

And now, Nov. 16 1904, the petition is granted, the Report of the Viewers is set aside and all proceedings quashed, and the Respondents directed to pay the costs.

W. P. Ballou

Prest. Judge 33 Judicial Dist.

Specially Presiding.

And now Nov 26 1904 the Respondents
are apt to the above order opinion
and decree and at their request
hereby affirms same

W. P. Ballou P. J.

33 Judicial District

Specially Presiding

No. 4 Sept. Term, 1899.

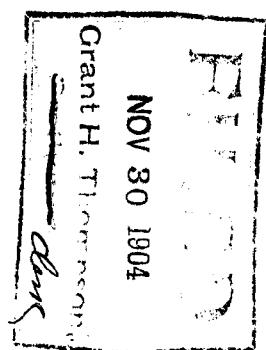
In Re the Road

in

Union Township.

OPINION SETTING ASIDE

THE REPORT OF THE VIEWERS.



0

Certificate of Clerk as to seal.

In the Court of Quarter Sessions
of Blairfield County.
In re Public Road. }
Union Twp } No 4 Sep Sess, 1899.
mt.

I hereby certify that the seal attached or
stamped to the order to view, in above stated
case is the seal of the Court of Quarter
Sessions of Blairfield County. by mistake
the seal of the Court of Common Pleas
was first used and thereupon the seal of
the Court of Quarter Sessions stamped over it.
This will appear by a comparison of
the two seals thus

This mistake occurs in this way frequently as
the two seals stand together and the Common
Pleas seal is used most frequently but in this
case as in other cases where an inadvertence
occurs it is corrected by stamping the proper
seal over.

On witness whereof I have hereunto set
my hand and seal this 23 day of Nov
A.D. 1904 James H. Thompson
Clerk.

Clearfield County)(SS.

Personally appeared before me Frank Hutton, of DuBois, Pa. who being duly sworn according to law says that he was counsel for the Borough of DuBois for the year 1903, that he appeared before the viewers at the time they met on the application view, vacate and supply a public road in Union Township by which it was sought to vacate the road beginning on the old supply road near the Henry Wertz mines to intersect the road from Home Camp to Rockton about one mile below Home Camp and supply the same by laying out a public road beginning at the same point to intersect a public road from Frank Colby's to Home Camp at or near a bridge crossing Anderson Creek near Chandler dam. That he was not there by authority of DuBois Borough, but was there of his own volition to acquaint himself with the situation and inform himself as to the action of the viewers, that he there represented that the Borough would favor said application, and further represents says that to the best of his knowledge no report has ever been made on said view.

Frank Hutton

Sworn and subscribed before me
this 13th day of April, A.D. 1904

I. G. Hutton
S. C. Hutton, Notary Public, 1904

In the matter of the public road in Union Township:

17 day of May 1904, it is agreed that testimony be taken before Jet Kearns, Notary Public, at the office of W.C. Pentz, in the Borough of DuBois, Clearfield County, Pennsylvania, on Wednesday the first day of June, 1904, between the hours of nine o'clock a.m. and six o'clock p.m. to be read in the argument of this case, with the same force and effect as if a rule had been regularly issued out of the Court and served.

W. Pentz - Atty. for Exceptants

Singleton Bell Atty. for Supervisors

Murray J. Anglin Atty. for Petitioners

CLEARFIELD COUNTY, SS:

COMMONWEALTH OF PENNSYLVANIA TO

W. McDonald. Jos Taylor.

We Command You that setting aside all manner of business and excuses whatsoever, you be and appear in your proper person before Jet Kearns at Dubois, in thw County of Clearfield and State of Pennsylvania at the office of W.C. Pentz on the first day of June 1904, between the hours of nine o'clock Am. and six o'clock P.M. there to testify to the truth according to your knowledge in a certain case now pending in the Court of Common pleas of Clearfield County, Pennsylvania, relating to the public road in Union Township, and that on the part of the Exceptants.

And this you are not to omit under the penalty that may be attached.

WITNESS my hand and Official seal this 23rd day of May, A.D., 1904

Jet Kearns

Notary Public.

CLEARFIELD COUNTY, SS:

Personally appeared before me a Notary Public in and for said County Wm. McIntosh who being duly affirmed according to law, deposes and says that he served above notice on W. McDonald by reading to him the above contents and also ~~xxxxxxxxxxxxxx~~ by reading the same to the wife of Jos. Taylor, on the 27th day of May, 1904. Affirmed and subscribed before me this : 28th day of May, A.D., 1904.

William M. McIntosh

Jet Kearns

Notary Public.

In Re. Public road : In the Court of Common Pleas of
in Union Township, : Clearfield County.
Clearfield County, Pa. : No. Term , 1904.

Deposition of witnesses produced, sworn and affirmed by me the first day of June, 1904, at the office of W.C. Pentz in the Borough of DuBois, Clearfield County, Pennsylvania, between the hours of nine o'clock a.m. and six o'clock p.m. by virtue of annexed agreement between W.C. Pentz, Atty. for Exceptants, Singleton Bell, Atty. for Supervisors and Murray & Langhem Attys. for Petitioners, and notice hereto attached, for the examination of witnesses in a certain cause depending in said Court, relating to the Public Road in Union Township, and that on the part of Exceptants.

George C. Kirk called and duly affirmed, says:

By. W.C. Pentz for Exceptants.

Q. What is your business Squire?

A. Engineering.

Q. State if you run the lines for the water system of DuBois Borough in Union Township?

A. Yes sir.

Q. Who run the contour lines?

A. I did.

Q. Do you know where the road in controversy is located?

A. Yes sir.

Q. How long have you been familiar with that?

A. Well, I have only been there once since it has been laid out as a public road.

Q. I am now reading from Deed Thomas H. Murray, Esq., to Borough of DuBois dated 15th December, 1900 and recorded at Clearfield, Pa. in Deed Book No. 125, page 174 containing this reservation:

"Reserving however, full highway right of way in the space between contour lines 1660 and 1665, upon and along each of said pieces, and also

the right of way by bridge across Montgomery Run for trans-lead or railroad. The same to be constructed as to not injure the water."

Are you familiar with contour lines 1660 and 1665?

A. Yes sir.

Q. State how far that would be over the public road that is now opened?

A. In some places I should judge it would be as much as 800 feet, some places not over 400 or 500 feet.

Q. When you say it is not over 800 feet what part do you refer to?

A. Next to the west line.

Q. Would that reservation as contained in this deed take that road through the dam as now constructed?

A. No, I think not. It is 1135 feet along Murray's line from Montgomery Creek up to his corner to beech corner.

Q. That is across Anderson Creek?

A. No, it could not go across Anderson Creek at that elevation from the north side nor from the south side.

Q. Does that reservation take the road across Montgomery Run above the flow line of the dam at the highest point?

A. The road would cross above the 1665 elevation.

Q. Is that the highest limit of the flow line?

A. Well that would be higher than the flow line but it was made that high. The elevation or the contour line was made that high.

Q. That contour then was higher than the flow line?

A. Yes.

Q. State how Montgomery goes into Anderson, that is what angle?

A. Well it goes in at very nearly a right angle.

Q. This reservation that I read to you in the deed does it cross Montgomery Run at a right angle; would it be parallel with Anderson's Creek and at right angles with Montgomery Run?

A. Pretty near.

Q. Then would the reservation in anyway carry that road across the dam to DuBois Borough?

A. It could not and stay up to that elevation, because that elevation runs clean up to the dam.

Q. What is the present elevation?

A. I don't know.

Q. When did you run these lines Squire?

A. In the fall of 1899 from the 15th of September until about the Holidays I finished it.

Q. You commenced the 15th of September 1899 to run the lines for the dam?

A. Yes sir.

Q. How far did you run up the Creek?

A. I run up the Creek --- Do you mean Anderson or Montgomery?

Q. Both of them?

A. I went up Anderson Creek from the place of starting below the Bailey dam 10,200 feet.

Q. Is the breast of the Bailey Dam the location of the present dam for the water system?

A. That is where it was located.

Q. How far is this road above the dam?

A. It is about 2,000 feet above. The road was a little below my contour line.

Q. For whom were you working at the time you did this work out there?

A. The Borough of DuBois.

Q. What were they doing there?

A. Locating a water line and place for the dam.

Q. Did you finish in December of 1899?

A. Along about the holidays.

Q. State whether or not the water system and the dam is now built upon the surveys made by you?

A. They are, yes sir.

Q. On whose land does the breast of this dam rest?

A. It was on lands owned by the Blanchard Estate at that time.

Q. Do you know how wide the dam is about where this road crosses? When it is up to its flow line as contemplated?

A. The flow line as contemplated is 26 feet.

Q. How high would the 26 feet it contemplated throw the water with reference to the contour lines?

A. What would throw it up to about 1660.

Q. And the 1665 contour line would be about how high above that?

A. It would be five feet above it.

Q. How wide would this 1660 flow line make the dam at that point?

A. From one flow line to the other it would be about 700 feet. Of course I can't tell exactly but it would be in the neighborhood of 700 feet.

Q. About how much water would there be at that point Squire?

A. In depth?

Q. Yes.

A. Well if you would raise the breast of the dam to 26 feet it would throw about in the neighborhood of twenty feet there.

CROSS-EXAMINATION

Mr. for Petitioners.

Q. Squire Kirk the reservation in the deed that was read to you, you remember in that reservation they have the right to cross either Montgomery or Anderson Creek?

A. Yes they would have the right to cross either Montgomery or Anderson but to stay up to that elevation they would have to cross Montgomery Run about 2,000 feet above the mouth of it and then they would have to cross Anderson Creek 200 feet above the present Chandler Dam.

Q. How far would the 1660 elevation run above the Chandler Dam?

A. From the breast of the present dam up to Chandler Dam it is 9700 feet, and the 1660 elevation I judge would run at least 400 or 500 feet above Chandler Dam yet.

Q. Wouldn't it be possible for them to go down the Creek or couldn't they go down the Creek further than what you stated if they made a bridge of considerable elevation?

A. They could cross at the present bridge on Anderson Creek just below the Chandler Dam. There is a bridge there and a public road there, but that is not included as I understand it in this contour.

Q. What would prevent them from crossing where the bridge is now if that bridge was left?

A. They could cross there by leaving the bridge but it would cost more than Union Township or DuBois Borough or I would pay for crossing there. Besides

that it would always be a filthy place the water in that dam.

Q. But they could cross at that point?

A. Yes by spending money; you could go across anything if you pay the money.

Q. It is entirely possible for them to do it though?

A. Yes. And to keep up to the 1660 elevation it would take at least 700 feet of a bridge across there that is where the road is located. /

Napoleon McDonald called and sworn, says:

By W.C.Pentz.

Q. Mr. McDonald, where do you live?

A. Home Camp.

Q. How long have you lived there?

A. 34 years.

Q. What year did you go into that country Mr. McDonald?

A. 1870.

Q. You were a young man then were you?

A. Yes sir.

Q. Have you been in that section ever since?

A. Yes sir.

Q. Are you familiar with a road out there called the "Supply Road"?

A. Yes I have been on that road a good many times.

Q. What was that road?

A. It is a road that was built purposely for hauling supplies back and forth.

Q. Who built it?

A. I couldn't say who built it, when I went there I worked for Craig and Blanchard.

Q. Was the road built when you came there?

A. Yes sir.

Q. How long is it since Craig & Blanchard exhausted their lumber operation in that country?

A. It would be a good while in the neighborhood of twenty years anyway to the best of my knowledge more or less.

Q. State whether or not that road was kept up by anyone after they quit using it?

A. Not by anyone.

Q. Did you ever occupy the position of supervisor in Union Township?

A. Yes sir.

Q. How long ago was that?

A. About five or six years along there.

Q. How long were you supervisor?

A. One term.

Q. Where did this supply or toat road as you call it run with reference to this public road that is in controversy?

A. Why we used it to drive around Montgomery Camp.

Q. Did it run along the public road at the south end?

A. ~~Not~~ Not exactly the south end no, in the middle. They used a portion of it for a public road.

Q. I mean did the south end, end in a public road?

A. No.

Q. Did the other end?

A. No. We didn't use it for a public road we didn't ~~use~~ use it for that

Q. In their ~~x~~ Answer, they state this road was maintained and kept up by the Township. Is that correct?

A. Not that I know of, not to my knowledge.

Q. How close do you live to that road?

A. The road runs right through my property.

Q. How long have you lived there?

A. ~~I~~ I have been living there ever since 1879.

Q. Since you have lived there has there been any work done on that Supply road or toat road?

A. No.

Q. Did you work your road tax out in that neighborhood?

A. Yes sir.

Q. Do you know of your neighbors living in there working out their road tax?

A. Yes.

Q. Do you know of any of them working road tax out on that road?

A. No sir.

Q. State if any part of that toat road was taken and used for a public road and where does it run.

A. There was a piece and it was turned into a Township road. I suppose there was about 3,000 feet of it. It was ~~xxxx~~ turned into a township road after it was turned into a toat road.

Q. Was that a part that goes up into the vicinity of Mr. Murray's Coal Bank?

A. No.

Q. How far is it away from it?

A. It is pretty close on it, a half mile.

Q. Where abouts was this piece of road located with reference to the Creek, that piece that was used by the Township?

A. It was on the west side the side next to DuBois.

Q. Was any on the other side of the Creek ever used or worked upon?

A. No. There was about twelve feet of a bride about 800 or 900 feet long that they used to cross on that and it got rotten and I cleaned it away.

Q. When did you clean that away?

A. I cleaned that away sometime about '84 or '85..

Q. Has there been any bridge maintained across the Creek on that road since '85?

A. On that road, not that I know of.

* * *
CROSS-EXAMINATION

Singleton Bell ~~for~~ Supervisors.

Q. Where did that road cross Anderson Creek?

A. Right at Home Camp.

Q. About what was the length of the old Supply Road as you first knew it?

A. It was in the neighborhood of seven miles.

Q. Where did it start from?

A. It started at coal run.

Q. And ended where?

A. It ended at what we call Montgomery Dam.

Q. Where is this piece of road located that ~~xxxxxxxxxx~~^{they} used as a Township road?

A. From the Post Office at Home Camp to Muzz Run and I judge that is about 4,000 feet more or less.

Q. Do you remember about when it was?

A. No I couldn't tell exactly.

Q. Give us your best impression about how long ago, it was?

A. I think in about '74 or '75nalong there.

Q. Are there people living along the old supply road after it crosses Anderson Creek below Home Camp?

A. Not any more. There is a family there some place but I can't tell exactly where they are located, a dellow by the name of Dan Huey.

Q. Is that road opened so that people can drive along that side by Anderson Creek?

A. I couldn't say exactly.

Q. How long since you have been over it?

A. I would come across a piece of it now and then with cattle. I haven't been on the ground . I have been at the coal bank but I don't know where the road exactly is.

Q. About when was it that this bridge across the Creek at the old supply road ceased to be used as a bridge?

A. It is sometime ago about '82 or '83. The last that road was used was by Mr. Henry Bailey who was lumbering up in there for Mr. DuBois. I don't exactly remember the year.

James Taylor called and affirmed says:

Q. Where do you live Mr. Taylor?

A. I live about a mile east of Rockton.

Q. In union Township?

A. Yes sir.

Q. How long have you lived there?

A. I have lived there five years.

Q. Are you familiar with what was called the Old Supply or Toat road?

A. I have been on it frequently. I used to be quite familiar with it.

Q. When did you first become acquainted with that road?

A. I couldn't tell you that, it is a long time ago.

Q. How many years have you known it?

A. I suppose it is 25 anyway or more.

Q. You have heard it described here by Mr. McDonald. Do you know how long the road was?

A. No I couldn't tell you the length of it.

Q. Where did the eastern end or the end towards Anderson Creek where did it end?

A. When I first knew it it ended at what we call the Montgomery Dam.

Q. What was that dam used for?

A. For driving logs, a logging dam.

Q. When was that Camp abandoned?

A. I couldn't tell you, I do not know how long, that is a good while ago.

Q. About how long, how many years do you think, 15 20 or 10?

A. It is 20 years.

Q. Did you ever occupy ~~the~~ position of Supervisor in your Township?

A. I did, one year.

Q. How long ago?

A. Three years ago.

Q. Did you do any work on this toat road as supervisor?

A. A little work.

Q. Where?

A. Well between Anderson Creek and where Perry's live.

Q. Was that on the toat road or the new public road?

A. That was on the new public road.

Q. Well I mean on this old toat road down across where Mr. McDonald described?

A. No sir, I didn't do any work on that.

Q. Do you know of any work being done by the Township on that road?
A. I do not.

Q. How long is it since that toat road has been abandoned to your knowledge
A. It has been 20 years since that road has been used for a toat road to
the best of my knowledge.

Q. It never was a public road was it?

A. No sir, it was built by lumbermen in there.

Q. And used entirely for logging purposes?

A. Yes sir. Blanchard's built it to haul supplies into the Camp.

Q. Was that all it was ever used for?

A. Yes sir, all I know it to be used for. They hauled some lumber on it
but not a great deal that I know of.

Q. When the Blanchard lumber camp ceased to exist, then the road as I
understand it ceased to be of use?

A. The road was not used until quite a while afterward when Mr. Bailey and
Wayne had a job further up Montgomery and they used that road ~~as~~ a part of
the time.

Q. How long did they use it?

A. I don't know, probably not more than one winter that I know of.

CROSS-EXAMINATION

By Mr.

Q. Mr. Bailey you are living at Home Camp yet?

A. No sir I don't.

Q. Have you been there lately?

A. I was there yesterday.

Q. Is there anyone living on the east side of Anderson Creek that is
between Anderson and Montgomery?

A. Anderson Creek is pretty long remember. You mean is there anyone
living on Anderson Creek close to that toat road do you?

Q. No I asked you is there anyone living between Anderson Creek and
Montgomery?

A. Yes there is one or two families living up in that country.

Q. How near are they to the Bailey Dam?

A. What part of the Bailey Dam do you mean. The west of the dam?

Q. I mean the Bailey Dam?

A. I suppose it is a mile or a little over a mile to where Parrish **lives**. Dan Huey lives still up farther but not on that route at all.

Q. Is there anyone living up there besides Parrish?

A. All that I know of.

Q. Is there any cleared land there?

A. Parrish has a piece and Labord has a piece but he doesn't live there.

Q. Is there any other cleared land?

A. There is some cleared where Horner used to live and some where Rimer used to live.

Q. Now between the two where they join is that land cleared or is it wild desolate country?

A. It aint cleared.

Q. It is being farmed at all?

A. It isn't cleared.

Q. Can't you stand within sight of Home Camp road and see that it is cleared?

A. Yes those two places I told you of Parrish and Labord are cleared and other few places that have been abandoned.

Q. Well there is Parrish and Labord and two or three other people that have cleared land there?

A. Not on that side. There is only Parrish and Labord.

Q. Do you know that the only two pieces are Parrish & Labord right in the vicinity of Bailey Dam?

A. That is all I know of.

Q. Do they live there?

A. Parrish lives there.

Q. How does Parrish get over to Home Camp?

A. I don't know.

Q. Is there any way for them to get across?

A. None that I know of not without going up by Chandler Dam.

Q. How far would that be?

A. You mean from where Parrish lives to Chandler?

Q. No from where Parrish lives to Rockton by way of Chandler Dam?

A. I suppose it would be all of five miles around that way.

Q. How far would it be if there was a road laid out in a direct line?

A. From Parrish to Rockton, I suppose they would reach it in three miles it might be a little more.

Q. It might be a little more than five miles the other way. It is a long five miles pretty close to six?

A. I would call it a long five miles.

Q. Then it would be about twice as far the other way?

A. I suppose it would be pretty near.

Q. What kind of land is that there, is it good land?

Q. What do you mean for farming?

Q. Yes?

A. I suppose it would be pretty good for farming.

Q. Is there coal in that vicinity?

A. I suppose that there is.

Q. You know there is coal mines opened up there?

A. Yes.

Q. Where do the people get their coal from on this side of Anderson Creek?

A. Some get coal at Hurley and some get coal at other places, wherever they can get it.

Q. Where did they get it before this water was backed up in there?

A. I couldn't tell you where they got their coal.

Q. Didn't they get their coal across over this land across on the west side of the Creek?

A. Yes. Some did and some didn't.

Q. Was the coal over there the best they could get?

A. Some thought it was and some thought it wasn't.

Q. Wasn't it a more convenient place to get it than any other place they went to?

A. It was more convenient for them that lived handy.

Q. Where do these people get it now?

A. I don't know.

Q. They can't get it there can they?

A. They can't get it through at the present time, it seems there aint no bridge across.

Q. Well then this land that I spoke about that lays on the east side of Anderson Creek and between Anderson Creek and Montgomery, this is practically shut at from the outside world isn't it?

A. Well I wont say that ~~is~~ it is practically shut out; part of it to get out you would have to go quite a ways around. We can't go ahead and say that all the people are shut out. These people who live up there Dan Huey lives in that vicinity he spoke about but he has a road of his own and he wouldn't go that way if he had to I don't suppose he is so contrary but that has nothing to do with this. Those people that live down next to the dam or that one that lives there that shuts them out. You might say they have no township road at all except that.

Q. How long have you known the bridge there that crosses the Creek Mr. Taylor?

A. Do you mean the township bridge .

Q. Any kind of a bridge that is a bridge for persons to drive across?

A. Well now I can't possibly tell you how long since a bridge was there.

Q. Is it 20 years?

A. No sir.

Q. fifteen?

A. I don't think it is over ten years ~~xxxx~~ since Mr. Jones built a bridge across there whether it is that long, I can't say.

Q. Has that bridge been used constantly during that time?

A. Of course it was used by whoever went across there, only in low water time when they would ford the creek; the bridge was not very safe to cross.

Q. How was it when the water was high?

A. Then they would have to cross. I say the bridge was not ~~is~~ safe to cross or at least the people complained of it.

Q. That was the only way the people had ^{to get} over there by that bridge wasn't it?

A. Yes that's the only road they had out.

Q. Now the only way they have you say is to go by Chandler Dam and that is

about twice as far as the old bridge?

A. I said that was the only way they could get out that they could drive.

Q. And that is twice as far?

A. I am not sure that they can drive that way.

RE-DIRECT.

Q. Mr. Taylor if a road were to run down or to cross Montgomery Run couldn't a road be gotten to come from the present road across Montgomery Run above this dam and reach the Kline road that would throw them as near Rockton as the old road?

A. Well I don't think it would. There would not be a great deal of difference; most of the difference would be in the location. That would be a much heavier road.

Q. Can't a road be gotten down there?

A. I suppose.

Q. How far is it from the Kline road up the Creek to this road? Is it over a half mile, I mean the road that is in controversy?

A. Well I should say it was a half mile, probably a little over.

Q. Then how far is it up to Chandler Dam up the Creek?

A. I can't tell.

Q. Is it over a mile and a half?

A. No I don't think it is over a mile. You mean from where the bridge crosses, up to Chandler Dam? I don't think that it is over a mile and a half.

Q. Then there is three roads that crosses the Creek there in two miles as it now stands?

A. Yes.

Q. Does the Chandler Dam road and the Kline Road go up into the same neighborhood that is the terminus of the roads come out in about the same neighborhood?

A. No.

Q. Where does the Chandler Dam road end?

A. It comes on through to Huston Township. The Kline road leads off at the Rockton road.

Q. As I understand the road in controversy goes up into the woods and stops

A. Well it appears so I don't know, they told me it went up to a big pine stump and stopped.

Q. When you find the stopping place what is there there? Was there any public road or any public arrangement there school-house or anything?

A. There was a coal mine.

Q. How near to this road; does the road end at this coal mine?

A. This side of it.

RE- CROSS.

Q. There could be a road across Montgomery and ~~not~~ connect on to Kline road you say?

A. Yes.

Q. Would it be an expensive road?

A. I would call it so.

Q. Wouldn't you call it very expensive?

A. It would cost.

Q. You would have to cross Montgomery Run that would involve one bridge then you would have to go down and cross Anderson Creek?

A. Not necessarily, not to connect with the Kline road.

Q. How would you get to the Kline road?

A. You wouldn't have to cross Anderson Creek after you crossed Montgomery.

Q. How would you get up on to the Kline road?

A. Well that would be a matter for the surveyors to fix.

Q. You said there could be a road. I asked you how would you get that road?

A. The only way I would know would be to make a dug road there.

Q. And you would have to run it up hill?

A. Certainly.

Q. You cannot say yourself how to get that road there?

A. I never went over the ground with any idea of a road.

Q. You say they could get a road there?

A. Certainly.

Q. Well how would they get it there?

A. Dig, shovel, pull out stumps.

Q. You would cross Montgomery on a bridge?

A. Yes.

Q. You would go around this reservoir and go up around the Kline road?

A. You would go up hill certainly.

Q. And make a dug out road?

A. Certainly.

Q. Wouldn't it be considerably dug out?

A. Quite a hard road to make.

Q. If you would cross Anderson Creek and go up around to Home Camp, how far would that be?

A. I can't tell exactly.

Q. Would it be farther to go that way than to go directly across?

A. It would be a mile farther.

Q. How far is it in a direct line?

A. From Parrishes out it would be a mile and a half anyway.

Q. To go around it would be two mile and a half?

A. I suppose so.

Squire Kirk re-called.

Q. Did you see this bridge that was constructed across the Creek out there on the road in controversy?

A. Yes, the bridge that was there when I was doing the work there yes.

Q. What kind of a bridge was it?

A. It was a wooden bridge. It was in bad condition when we were there.

Q. What kind of abutments?

A. My recollection is that they were made out of old hemlock logs.

Q. How wide was it?

A. Just what crossed the Creek I judge was about 50 or 60 feet but the whole length of the bridge across the flat must have been not less than 200 feet.

Q. Squire are you familiar with the country out there around where this road is?

A. Fairly so.

Q. How long have you known it?

A. I knew that country before Blanchard's were done logging there.

Q. State whether or not a road can be constructed to cross and intersect with the Kline road, a good road?

A. Yes there could be a good road made across there reasonably good from Parrishes to Montgomery until you struck the south side of the hill then come down around ~~back~~ from Anderson Creek to Whitehead road.

Q. Is that the road that is immediately below the dam?

A. Yes.

Q. Would that throw the road further from Parrishes than the road that is in controversy?

A. I think it would be a little further from Rockton to Parrishes to go in across Anderson Creek below the dam and then go up around and cross on Montgomery. He would have quite a little bit further to Home Camp.

Q. The construction of the road across Montgomery as you suggested, would that take out this road across the dam and take out that bridge?

A. Yes, it would.

Q. And leave the maintenance of only two bridges when there would be three necessary if the road in controversy was let alone, this the Chandler Dam, Kline and this one.

A. The Chandler Dam bridge Bailey Dam and then if there would be a road constructed ~~now~~ from Parrishes, there would be a bridge across Montgomery.

Q. How would that compare in length to the bridge across Anderson Creek?

A. I suppose it would be probably 40 feet. Of course it would take some filling.

CROSS-EXAMINATION

Q. Squire would that be easy or difficult to build?

A. I don't believe it would be difficult to build. all to go from Parrishes across Montgomery.

Q. You would have to build a bridge across Montgomery and then you would have to go up the hill?

A. No, not very far.

Q. Well you would have to go up an elevation wouldn't you?

A. The 1660 grade there, you wouldn't be more than ten feet up on the bank if you would be that far.

Q. Then you would have to go down again to cross Anderson Creek. You went up on this road and then you come down again?

A. You keep on that contour line and you go out the public road at about the same elevation.

Q. You have to go up the hill after you cross Montgomery at an elevation of ten feet you say?

A. You would have to go I suppose ten feet from the present fall that is there.

Q. Then you would have to come down?

A. You would follow the grade.

Q. Would it be a good road on a good grade?

A. It would.

Q. Would it be a dug out road?

A. Yes.

Q. Would it be cheap or expensive?

A. I do not think it would be very expensive. A side hill grade is considered about the cheapest road you can make.

Q. Would it be further to Home Camp?

A. Certainly it would be further.

Q. How much further?

A. From where the present road crosses down to where the Bailey road comes out, I judge would be about a mile further.

Q. How far is it altogether around, that is take this road you proposed now; how far is it that way?

A. I couldn't tell you the distance.

Q. How far is it in a direct line over the old road from Parrishes out into the Home Camp road?

A. I judge it would not exceed three-fourths of a mile.

Q. And it would be a mile and three-fourths around the other way?

A. Yes it would be that counting from Home Camp around, fully that.

Q. You would have just as many bridges to keep up by that road?

A. They would only have one outside of what they have alreadt to keep up.

Mr. Pentz.

Q. Squire you have laid out a great many public roads in the County?

A. Yes quite a number.

Q. How many years experience?

A. Over 40 years.

Q. State whether or not you have looked over this ground with a view to laying out a road as described above?

A. Yes I have.

Q. And in your judgment the grade would be good?

A. Yes.

Q. You say you think it would not be an expensive road to build or keep up?

A. I don't think it would. My experience in road building and laying them out is that ~~xxxxxxgak~~ when we can get a side-hill grade it is the cheapest grade we can get to build.

Mr.

Q. But when you have to go up a hill Squire?

A. You don't have to go up a hill. The 1660 elevation is right at the foot of the hill.

Q. You say you have to go up an elevation of ten feet?

A. Not exceeding that.

Q. Now don't you have to go down again to get across Anderson Creek?

A. You would go the water grade down about the grade of Montgomery and the you would come out at the 1660 elevation. Where you strike the public road you would be 30 feet above Anderson Creek.

Q. Then you would have to come down the hill. How far is it from the point at which you would cross Montgomery Creek down to the point at which you would cross Anderson Creek?

A. I do not think it would be much over a half mile.

Q. ~~xxxxxxgak~~ That road would go along the side of the hill?

A. Along the foot.

Q. How would it be when you come to the Reservoir. Wouldn't it be running

right along the side of the Reservoir?

A. Yes along the side of the Reservoir.

Q. Wouldn't there be danger of polluting the water by that?

A. I don't think very much. Of course if it was a public road where the general travelling public would travel then there might be some.

Q. Now from the time you cross Montgomery wouldn't you have to keep on an ascent all around that hill?

A. No. Montgomery is a stream that flows quite fast. To run out the 1660 elevation, where you would cross Montgomery above that elevation would run down that hill almost level, in fact it would be level.

Q. After you cross Montgomery isn't it a running side-hill country?

A. Not necessarily so. There is good hard wood timber growing there such as maple birch and beech and so on. There was real fine hardwood timber in there when I was there.

Q. Would it be a convenient or an inconvenient road for a man living on the east side of the Creek if he wanted to go to Home Camp?

A. Of course it wouldn't be quite so convenient as a line starting across the dam, but taking into consideration the road that could be made there, it wouldn't be much out of the way.

I hereby certify that the above witnesses were duly qualified and examined at the time and place stated in above caption before me.



J. P. Kearns
Notary Public.

ORDINANCE 120.

WHEREAS, The Borough of DuBois, Clearfield county, Pennsylvania, is now the owner of Water works for furnishing water to the citizens and inhabitants of the Borough of DuBois for domestic purposes and for fire purposes and flushing sewers and cleaning streets. And whereas, the supply of pure wholesome water is now inadequate to furnish sufficient quantity of water for said purposes and it is necessary for the said Borough of DuBois to seek some other source s to supply and to appropriate some stream or streams outside of the limits of the said borough and to carry said stream or streams into the borough.

AND WHEREAS, It appears that the only adequate supply of water that can be obtained for said purposes, is on Anderson's Creek, situated in the township of Union, and its branches, consisting of Anderson's Creek, Montgomery Run and other branches, streams, runs and springs that flow into said Anderson's Creek, which said branches streams and springs are now located in the townships of Pike, Union, Huston and Pine in said county of Clearfield.

THEREFORE, Be it ordained by the Town Council of the Borough of DuBois in Council assembled, and it is hereby ordained by authority of the same.

SECTION 1. That the said Borough of DuBois in order to improve its supply of water, do appropriate the waters from Anderson's Creek, situate in Union township, beginning one mile below the mouth of Montgomery Run, and that it appropriate and take for said purposes all the waters of the said Anderson's Creek and its branches, and all springs, brooks, rills, rivulets and runs that now flow into the said Anderson's Creek above said point on Montgomery run, or one mile below the mouth of said Montgomery Run and for said purposes to erect a dam or dams, reservoirs, pools and ponds for the storage of said water on said Anderson's creek at a point or points either immediately below the mouth of said Montgomery Run or at some point not exceeding one mile below said Montgomery run. And that said borough further conduct said water in pipes, pipe lines, conduits or in some other manner from said dam into the said borough of DuBois through over, upon or under such land or lands as may be necessary for the carrying and delivering of the said water into the borough of DuBois and to connect with, and be supplied into the pipe line or lines for distribution now

owned or controlled by the said borough of DuBois, and its reservoirs now erected connecting with said pipe lines with also the right to erect additional dam or dams, reservoir or reservoirs for the purpose of supplying said borough of DuBois with water for said purposes.

SECTION 11. The Water Committee of said borough of DuBois are hereby authorized and empowered and directed to at once proceed to locate a dam or dams on said Anderson's Creek at a point or points between the mouth of said Montgomery Run or for one mile below the mouth of said run on said Anderson's Creek in said Union township, Clearfield county, Pennsylvania, and for that purpose to purchase if possible by agreement, and if not by agreement, then to proceed as required by the Act of Assembly for the acquiring of said land for said purposes, and make such survey or surveys and locate lines on land, mark the same upon the ground necessary for the conducting of said water from said dam into the borough of DuBois and to locate such reservoir or reservoirs as may be necessary for said purposes and to purchase the right of way for such pipe lines, conduits, or other means for the conveying of said water into the borough, and if said rights of way can not be purchased, then to proceed to have same condemned as required by law, as well as sites and locations for reservoirs for the proper storing, keeping and holding of said water for said purposes. And the said water committee are further authorized, directed and empowered to proceed to make such contract or contracts for labor, material and other matters as pertains to secure and procure said water as may be necessary to safely conduct the same into the borough.

Ordained and enacted this 5th day of September, A. D., 1899.

Wm. Menzie,
President of Council.

Attest: L. S. Hay, Clerk of Council.

Approved this 5th day of September, A. D., 1899,
H. S. Knarr,

Chief Burgess.

I hereby certify that this is a correct copy of ordinance # 120 as recorded in Ordinance book (C) pages, 104, 105 and 106.

Attest:

June 4, 1904

J. C. Weaver

Secretary of Council.

Wm. Menzie
President of Council
1899

No. Terr. 1904

In Re. Public Road in

Union Township,

Clearfield County, Penn'a.

Testimony

on part of Exceptants.

Notary fee --- \$9.00

W. C. PENTZ,
Attorney at Law,
DU BOIS, PA.

IN THE QUARTER SESSION OF CLEARFIELD COUNTY, PENNA.

Public Road in Union Township, : No. 4 September Session, 1899.

It is hereby agreed that the deposition to be taken on behalf of the said road, shall be taken without Rule and by agreement of counsel and acceptance; reserving the right to object to the admissibility as evidence of any portion of said testimony herein produced at the argument of the cause. *including affidavits of Fiduciary Bank*
The signatures of witnesses are hereby waived.

M. C. Parry
Notary Public in and for the County of Clearfield
S. Bell & Harry & O'Laughlin for Plaintiff

Deposition of witnesses called, sworn and examined before me, Benjamin F. Chase, Notary Public in and for the County of Clearfield on the 30th day of September, A. D., 1904, at the office of Bell & Hartwick in the Borough of Clearfield.

Testimony of James Taylor.

Q. Do you reside in Union Township?

A. I do.

Q. What year were you Supervisor of that Township?

A. I think it was the year 1901, three years ago.

Q. Are you acquainted with the location of this disputed road?

A. Yes, I am acquainted with it.

Q. What did you do as Supervisor with reference to that road?

A. I opened up part of the road and worked on it from the Creek up to where the road ended after crossing the Creek.

Q. About what distance in length would that be, Mr. Taylor?

A. I could not tell the exact distance but would say that it was between three quarters and one mile.

Q. Did you know as a citizen of work being done by the Township the year before?

A. Yes, I knew of something being done.

Q. Was the work that you did as Supervisor, with the public taxes?

A. Yes sir.

Q. Have you any approximate or any idea of about the amount the Township expended on that work while you were Supervisor?

A. I could not tell the exact amount, but would say it was in the neighborhood of \$35 or \$40; that was about as much as I expended on it.

Q. Did you put this road in condition so that people could travel on it?

A. Yes, I fixed it so they could use it.

Q. Was the work done by you on this road a part of the general account audited by the Township?

A. Yes sir, I did not keep the work separate.

Testimony of Samuel R. Bloom.

Q. Are you a resident of Union Township?

A. Yes sir, I am,

Q. What years were you Supervisor?

A. 1902 and 1903.

Q. Are you acquainted with this road in dispute?

A. Yes sir.

Q. What did you do with reference to the road in 1902?

A. I went on with men and filled it up, plowed it, hauled stone and such like to make the road in condition to haul coal, etc.

Q. What about the bridge across the Creek?

A. I delayed the bridge until I got notice from the District Attorney to build the bridge; I notified the DuBois counsel for them to build a bridge or we would build one to suit ourselves. They did not say I should build one, so I went on and built the bridge and that was all there was of it.

Q. Up to that time, Mr. Bloom, about what amount of public money was expended in the work on that road and bridge during that term?

A. I could not tell exactly, but suppose in the neighborhood of between \$25 or \$30; it might be more, or not quite so much.

Q. State what you did the next year?

A. I went on working at the road, fixed it up in good shape and I suppose the whole amount expended on the bridge would amount to \$250.00, as near as I could figure it because I did not keep track of it.

Q. These matters were not kept separate from your general business as Supervisor, were they?

A. No, sir.

Q. What happened to this bridge during this time?

A. At times, owing to the high water, it was made impassable and of course I notified the Borough to make it passable.

Q. Who did you notify?

A. Who did you notify?

A. I notified the attorney for the Borough of DuBois, Mr. Pentz.

Q. Did you serve that notice?

A. Yes sir.

Q. How?

A. I served it by word.

Q. Did you not give a written notice to some of them?

A. No, I gave no written notices at all.

Q. Were any arrangements made with you about repairing it?

A. Mr. Pentz told me to go ahead and fix the bridge and they would pay the bill.

Q. What was done as to repairing it?

A. I drew a check for the amount.

Q. Do you remember the amount?

A. Yes sir, \$12.10.

Q. That was during the year 1903?

A. Yes sir.

Q. As a result of this work, was this road in a condition fit for public travel?

A. It was; of course after it was overflowed late in the Fall, I guess it got quite bad, as all roads do.

Testimony of S. P. Welty.

Q. What official position do you hold in Union Township?

A. Township Clerk.

Q. As such, do you have custody of the books of the Township?

A. Yes sir, I have.

Q. State whether or not, the books show a repayment to the township of DuBois Borough of any sum of money in 1903.

A. They do.

Q. What is it ?

A. \$12.10

Q. Do your books show what it is for?

A. Yes; for repairing bridge.

Q. By whom was it paid ?

A. By Du Bois Borough.

Q. Were there any other bridge repairs as shown by the account except this one ?

A. No sir.

Q. What is the exact ~~xxxx~~ entry as set out on the books ?

A. "To amount paid by the supervisor, S. R. Bloom, by the Borough of DuBois for repairing bridge across reservoir."

Q. In the settlement of the township for 1901-02 and 03, were you present ?

A. Yes sir, I was.

Q. In those settlements, were the supervisors allowed or disallowed for the work done upon this road ?

A. They were allowed.

Q. Where do you live in Union Township?

A. I live nearly three quarters of a mile from the reservoir on this disputed road.

Q. How close to the line of this road do you live?

A. Something like 500 yards; it runs on part of my property.

Q. Do you use this road?

A. It is all the one I have to use.

Q. When was it opened so you could use it?

A. It was opened about three years ago as near as I can recollect, and I have used it every since.

Q. Do you know what supervisor first worked on part of this road?

A. D. W. Laborde.

Q. That was in the year 1900?

A. I think so.

Q. What other years after that and under what supervisors was work done on that road?

A. The next year by James Taylor, and the year following, by Mr. S. R. Bloom, if I recollect right and then the next two years by Mr. Bloom.

Q. State whether or not the road was opened up by the supervisors for public travel.

A. It was in condition for the public to travel.

Q. Did the public use the road after being opened?

A. They did.

Q. While Mr. Laborde was supervisor, did you have a conversation with Mr. Engleman of the DuBois Council and Mr. Hutton, their solicitor?

A. I did.

Q. State, Mr. Parrish, to what extent this road is used by the citizens of that country.

A. It is used generally right along when people can travel it.

John A. Parrish.

Q. How many of your citizens do you know of having used that road? at different times?

A. I know of 32 that used it for traveling.

Q. Do you yourself work your taxes on that road?

A. Yes sir, I have every since it has been opened for the last three years.

COSTS.

James Taylor,

Mileage, 23 miles at 6¢ per mile,	\$1.38
Expense,	1.00

Samuel R. Bloom,

Mileage, 23 miles at 6¢ per mile,	1.38
Expense,	1.00

S. P. Welty,

Mileage, 22 miles at 6¢ per mile,	1.32
Expense,	1.00

John A. Parrish,

Mileage, 28 miles at 6¢ per mile,	1.68
Expense,	1.00

B. F. Chase. Taking Deposition, 4.00

Total,	\$13.76
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CLEARFIELD COUNTY, SS.

I do hereby certify that the within testimony was taken in shorthand and reduced to typewriting on the day and date herein named, and that the same is correct *as given*.

WITNESS my hand and notarial seal the 30th day of September, A.D., 1904.

Benjamin F. Chase
Notary Public.

My Commission Expires Jan. 26th 1907.

AGREEMENT this 9th day of 1905, between counsel as follows: It is agreed that the Abstract of proceedings in Appellants' book contains the substance of the petition to set aside decree of confirmation absolute, and answers thereto and the exceptions, so that the same need not be otherwise printed and that the testimony in narrative form, as above set out, including affidavit of Frank Hutton, and certificate of Clerk as to seal contains the testimony at the hearing, other than the papers and records offered.

*W. R. Penry
Atty General's Office
Murray & Daugherty
Counsel for Roads*

DEPARTMENT OF JUSTICE

বাংলাদেশ রেজিমেন্ট মির প্রিমিয়া

জাতীয়ত্বাত্মক

নং ৪ সেপ্টেম্বর প্রিমেয়া প্রিমেয়া

BENJAMIN F. CHASE
ATTORNEY AT LAW
CLEVELAND, OH

SEARCHED INDEXED SERIALIZED FILED

Commonwealth of Pennsylvania, } ss:
County of Clearfield,

I, Roll B. Thompson, ^{Prothonotary},
of the Court of Common Pleas in and for said county, do hereby certify
that the foregoing is a full, true and correct copy of the whole record of
the cause therein stated, wherein In Re
Public Road in Union Township.

Plaintiff, and _____

Defendant, so full and entire as the same remains of record before the said Court, at No. 1
Dept Term, A. D. 1899.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this
25 day of Dept ^{1905.}

Roll B. Thompson ^{PROTHONOTARY. Clerk}

I, Allison O. Smith, President Judge of the Forty-sixth Judicial District, composed of the Courts of Oyer and Terminer; Quarter Sessions, and General Jail Delivery, Orphans' Court and Court of Common Pleas, do certify that Roll B. Thompson by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of Dept so doing and now is Prothonotary in and for said county of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

Allison O. Smith
PRESIDENT JUDGE.

Commonwealth of Pennsylvania, } ss.
County of Clearfield.

I, Roll B. Thompson, Prothonotary of the Court of Common Pleas in and for said county, do certify that the Honorable Allison O. Smith, by whom the foregoing attestation was made and who has thereunto subscribed his name, was at the time of making thereof and still is President Judge of the Court of Oyer and Terminer, Quarter Sessions and General Jail Delivery, Orphans' Court and Court of Common Pleas, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 25 day of Dept, A. D. 1905.

Roll B. Thompson
PROTHONOTARY

No. _____ Term, 1900

versus

EXEMPLIFIED RECORD

From Clearfield County.

Debt, - - - - - \$⁰⁰ -----

Int. from. -----

Costs, -----

Entered and filed _____, 1900

PROTHONOTARY.

THE SUPERIOR COURT OF PENNSYLVANIA, } ss:
SITTING AT PHILADELPHIA.

The Commonwealth of Pennsylvania,

TO THE JUSTICES of the Court of Quarter Sessions for the County of Clearfield of the
GREETING: We being willing for certain causes, to be certified of the matter of
Affidavit of Union Township and petitioners from the decree
of the 4 September Term 1839 wherein said
Borough is appellee.
In Re Public Road in Union Township.

before you, or some of you, depending, Do COMMAND YOU, that the record and proceedings aforesaid, with all things touching the same, before the Justices of our Superior Court of Pennsylvania, at a Superior Court to be holden at Philadelphia, the
Monday of October next,
so full and entire as in our Court before you remain, you certify and send, together with this Writ, that we may further
cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable CHARLES E. RICE, Doctor of Laws, President Judge of our said Superior
Court at Philadelphia, the 16th day of May
one thousand nine hundred and six

Deputy Sheriff John Green
Prothonotary.

To the Honorable the Judges of the Superior Court of the Commonwealth of Pennsylvania,
at Philadelphia:—

The record and process, and all things touching the same, so full and entire as before us they
remain, we certify and send, as within we are commanded.

L.S.

L.S.

No.

146

October Term, 1905

SUPERIOR COURT

In the Public Court

In Union Township

Appeal of
Union Township & Settlements

CERTIORARI to the Court of Quarter Sessions

for the County of Clearfield

Returnable the First Monday

of October 1905

Rule on the Appellee, to appear and plead

on the Return-day of the Writ.

Servic'd to Kenneth G. and
Wm. C. Thompson by
Wm. C. Thompson

FILED

OCT 21 1905

AY 27 1905

WILL B. Thompson,
PROTHONOTARY.

Dollars.

are surety in the within case, in the sum of

I certify that

H. C. McHaffey and C. J. Thompson