

No. *5*

Sept

Sessions, 190

COMMONWEALTH

VERSUS

Vacate & Supply
Public Road

in

Burnside Twp.

Vol. #5 Page 16

Charge

Port Rt. 62

JAMES H. KELLEY

DISTRICT ATT

Clearfield County, ss:

At a Court of Quarter Sessions of the Peace of the
county of Clearfield, Pennsylvania, held at Clear-
field, in and for said county, on the 3
day of June, A. D. 1907, before the
Judge of said Court, upon a petition of sundry
inhabitants of the township of Burnside
in said county, setting forth that

a public road leading from the south end
of the upper iron bridge in Burnside Boro
to a point at or near the east end of the
iron bridge spanning the Susquehanna River
at Slabtown is unsafe and dangerous to
travel and is flooded during high water.
The petitioners respectfully petition that a new road be
viewed and located beginning at a point
on Main St in the Norley addition of Burnside
to a point at or near the east end of said
iron bridge at Slabtown

and therefore praying the Court to appoint proper persons to view ~~vacate &~~
~~supply~~ the same according to law,
whereupon the Court, upon due consideration had of the premises, do order and
appoint J. S. McGraw, B. Blamire & John Linnor
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 vacate~~
~~a supply~~ 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 particu-
larly, 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 pro-
cure 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.

Frederic B. 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..... at and before the enrolling and delivery hereof, have remised, released and forever quit-claimed; and do hereby remise, release and forever quit-claim to the said..... all damages that may arise to us respectively by reason of the location and opening of the said road, so that neither we nor any of us, nor any person claiming under us, can or may hereafter ask, sue for, demand, have or receive any damages for injuries arising or growing out of the location and opening of the road aforesaid.

Witness our hands and seals this..... day of..... A. D. 190.....

..... Seal

..... Seal

..... 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 Nathy property..... the sum of Twenty dollars (\$20.00)
To J. M. McLough property..... the sum of Sixty dollars (\$60.00)
To..... the sum of.....

Witness our hands this 3 day of July A. D. 1907.

J. S. McCreary

E. B. Patrick

John L. Conner

No 5, Sept. 1907.

*Witness our Hands this 20th day of August 1910
 as to damage to property of J. M. McLough.
 See supplemental report.*

J. S. McCreary

John L. Conner

E. B. Patrick

} Viewers

To The Honorable Court of Quarter Sessions
of Clearfield County. -

July 3, 1907

Burnside, Pa. We the undersigned Viewers appointed by Your Honorable Court, No 5 Sept Session 1907. Having served and posted legal notice; met on the 2nd day of July 1907. and being affirmed according to Act of Assembly, proceeded to view the proposed location for new Road as well as the road to be vacated. We unanimously find as follows. The "River Road" from South Bridge in Burnside Boos being for the most part only a few feet above the low water line, overflows at high water, is hard to keep up, and as will be shown by accompanying notes a very circuitous route between the designated points, and is not necessary as an outlet for any citizens of the Township. We further find that by supplying a road conforming to the accompanied notes and draft the distance can be very materially shortened, better ground found for a road, which when made will be much less expensive to maintain, and with the exception of a short distance at the point where survey crosses the Boos line, a very easy grade, not exceeding 2 degrees, and at the said point can be made fairly good grade by cutting through the point for about 100 feet. We therefore heartily recommend the change as shown by draft attached which is a part of this report. Notes of survey For Vacation - Beginning point "B" in draft thence following the River Road the several courses and distances given on draft which is a part of this report: 3132' to Boos line, 6106' to Sawmill run bridge. a total of 8331' to point "C", intersection of new survey. Also recommending for Vacation the part of "Harmony Road" from point near Sawmill run bridge to intersection of new survey, about 500'. Supplying as follows - Starting at Upper River bridge in Burnside Boos, South end, thence along Main St, Nottley addition, South 986 feet to Boos line, thence still South, along line of Dr. Engg, through Nottley land, South 583', thence through land of J. McCallough by various courses and distances 1609.7' to Nottley line. ~~thence~~ (to Harmony Road) Road to Sawmill Run 300', and still along base of hill to point "C" a total distance from "B" to "C" of 5631', from "A" to "C" 4645', in Burnside Twp. No damage asked, but owing to the young timber that must be cut on Nottley property we award to owners of same \$20.00 damage. Respectfully submitted,

To Vacate 8331'
To Construct 4645'
3686' Dif.

J. M. Truitt
J. B. Ketcher
John. C. Loomer } Viewers

ORDER

To view plans & maps, use in the road for public use in the township of Sumas, Clearfield County

Sept- Sessions, 1907, read and confirmed N. 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. See The Com. R.

December Session 1927
Confirmed absolutely
J. E. P. D.

formed absolutely
By the Court
J. P. M. J. M. M.

Filed

Fees \$1.25 paid by City

James M. Jones

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.

J. M. Tracy } *Days* 4 20.00
3069 } *Miles* 42 21.00
2210

C.B. Patrick } Days 7
3070 Miles 6 30

John Cornwell 2011 Days 2 Miles 6 6 30

John Norway } Days 2
Miles 6
400 3072

Miles 38.70

ROAD VIEWERS' NOTICE

NOTICE IS HEREBY GIVEN that the undersigned Viewers, appointed by the Court of Quarter Sessions of Clearfield county, Pennsylvania,

to view *Vacate & supply* Road leading from *South end of upper iron bridge Burnside Bor.*

in *—* Township, to *a point near the East end of iron bridge spanning Susq. River at Slabtown*

in *Burnside* Township, in the county aforesaid, will meet at the *Place* house of *West*

, in *Burnside Bor.* Township, on *Tuesday*, the *2nd* day of *July*, A. D. 1907, at 1 o'clock P. M., to attend to the duty assigned them, of which time and place aforesaid all parties interested will please take notice.

J. M. Treacy Esqr
H. B. Patrick
John Cornes
Viewers.

Testimony At June 15, 1907.

Devin accepted this 19th day of June
1907

For A Commissioner
A. C. Devin *W. E. R. R. R.*

ROAD VIEWERS' NOTICE

NOTICE IS HEREBY GIVEN that the undersigned Viewers, appointed by the Court of Quarter Sessions of Clearfield county, Pennsylvania, to view *Vacate & supply* Road leading from

South end of upper iron bridge

in *Burnside Bros* Township, to a point near the East end of iron bridge spanning the Susq River at Slabtown

in *Burnside* Township, in the county aforesaid, will meet at the ^{Place} house of *View*, in *Burnside Bros*

Township, on *Tuesday*, the *2nd* day of *July*, A. D. 1907, at 1 o'clock P. M., to attend to the duty assigned them, of which time and place aforesaid all parties interested will please take notice.

J. M. Freery, Engd.
H. B. Patrick
John Conner
Viewers.

Kerrison R. June 14, 1907.
(over)

We the undersigned Supervisors
of roads in Burnside Township Clear-
field County Pa. do hereby accept ser-
vice of within notice this 17 day of
June 1907

John H. Curry } Supervisors

Notice was duly served on J. J. Young and Miles King who
have not signed this notice.

Certified this 17th day of June 1907

J. H. McCune

No 5-807 MS
1907
Public Road

Mar 16th 1907.

To the Hon ,Allison O Smith. President Judge of the quater sessions of
Clearfield .co, Pa. We the undersigned petitioners of Burnside . Township,
and Burnside , Borough,being property owners and tax payers respectively
ask the Hon court to appoint competent viewers to view , vacate ,and
supply A public road leading from the south end of the upper iron bridge
in the Borough of Burnside,to A point at or near the East endof the iron
bridge spanning the susquehannah river at Slabtown in Burnside Twp, your
petitioners would respectively show that the present road is situated
almost entirely on the bankof the river ,therefore is unsafe and dangerous
to travel and would further show the said road during times of high water
is flooded and impassible for days being filled with ice and drift which
we are compelled tonremove at great cost to the Borough and Township
The citizens of Patchinville , And Burnside ,forward and receive their mail
over this road and are much inconvenienced in the mail service ,We would
respectfully ask that A new road be viewed and located begining on A point
on main street in the Hotley addition of Burnside , To A point at or near
the east end of the iron bridge at Slabtown For which your petitioners will
ever pray,

John H. Patterson
W. L. Darr
G. H. Powell
Chas. B. Anderson
Frank B. Bick
J. W. Smith
Robert C. Smith

Chas. B. Anderson
E. G. H. H. H.
E. R. R. R. R.
Chas. B. Anderson

Chas. B. Anderson
J. W. Smith
J. W. Smith

Carl Patrick
K. A. Smith
Chas. B. Anderson

B. F. B. B. B.
Chas. B. Anderson
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Chas. B. Anderson

Geo. W. Griffith
H. C. Conner
Renova Kim
W. B. Patrick
Charles Howard
J. C. B. B. B.

J. W. Smith
W. B. Patrick
Daniel J. B. B.
Ray C. Patchin

Chas. B. Anderson
G. H. H. H.
Robert B. B.
J. E. B. B.
E. C. B. B.

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John Nowry

~~To Jonas Lamer~~, One of the Supervisors of Burnside Township:-

You are hereby notified that an application will be made to the Honorable Allison O. Smith, President Judge of the Court of Quarter Sessions of Clearfield County, by a number of the inhabitants of Burnside Township, on Monday the third day of June, A. D. 1907, at 10:00 o'clock, A. M. for the appointment of the viewers to vacate and supply a public road leading from the ^{South end of the} ~~upper~~ Iron Bridge in the Borough of Burnside to a point at or near the East end of the Iron Bridge spanning the Susquehanna River at Slab Town, in Burnside Township, at which time and place you may be present if you so desire.

John H. Pateman

State of Pennsylvania)
:SS
County of Clearfield,)

John H. Pateman being duly sworn according to Law deposes and says that he served the above notice on the above named *John Nowry* ~~Jonas Lamer~~, on the 16th day of May, A. D. 1907, by handing him a true and attested copy thereof, and making the contents known to him.

John H. Pateman

Sworn and subscribed before me the 28th day of May, A. D. 1907.

Matthew Iron

My Commission Expires
First Monday in May, 1911.

Miles King
~~To George Bee~~, one of the Supervisors of Burnside Township:-

You are hereby notified that an application will be made to the Honorable Allison O. Smith, President Judge of the Court of Quarter Sessions of Clearfield County, by a number of the inhabitants of Burnside Township, on Monday the third day of June, A. D. 1907, at 10:00 o'clock A. M. for the appointment of the viewers to vacate and supply a public road leading from the South end of the upper Iron Bridge ^{in the Borough of Burnside} to a point at or near the East end of the Iron Bridge spanning the Susquehanna River at Slab Town, in Burnside Township, at which time and place you may be present if you so desire.

Ernest Riddle

State of Pennsylvania)
: SS
County of Clearfield)

Ernest Riddle being duly sworn according to Law ^{Miles}
deposes and says that he served the above notice on the above named ~~George~~
^{King} ~~Bee~~ on the 24th day of May, A. D. 1907, by handing him a true and
attested copy thereof and making the contents known to him.

Ernest Riddle

Sworn and subscribed before me the 28th day of May A. D.
1907.

Matthew Iron J.P.

To T. J. Young, One of the Supervisors of Burnside Township:-

You are hereby notified that an application will be made to the Honorable Allison O. Smith, President Judge of the Court of Quarter Sessions of Clearfield County, by a number of the inhabitants of Burnside Township, on Monday the third day of June, A. D. 1907, at 10:00 o'clock A. M. for the appointment of the viewers to vacate and supply a public road leading from the South end of the upper Iron Bridge ^{in the Borough of Burnside} to a point at or near the East end of the Iron Bridge spanning the Susquehannah River at Slab Town, in Burnside Township, at which time and place you may be present if you so desire.

Ernest Riddle

State of Pennsylvania,)
 : SS
County of Clearfield,)

Ernest Riddle being duly sworn according to Law deposes and says that he served the above notice on the above named T. J. Young, on the 25th day of May, A. D. 1907, by handing him a true and attested copy thereof, and making the contents known to him.

Ernest Riddle

Sworn and subscribed before me the 28th day of May, A. D. 1907.

Matthew Irvin J. P.

My Commission Expires
First Monday in May, 1911.

Public road in Burnside Township.

Court of Quarter Sessions, No. 5 Sept. Term 1907.

Vacate and Supply public road leading from the South end of the upper bridge in the Borough of Burnside to a point at or near the East end of the iron bridge spanning the Susquehanna river at Slabtown in Burnside Township.

Certificate.

This is to certify that the the above named road is made through the land of J. W. McCullough Burnside, Pa. *March 16* 1911.

John Henry
Edward Crossman

Supervisors of Burnside
Township.

Road Beside Town -
Sept 10 5 - Sept 1 1907

Certificate of Surfer-
vices that road
is made

Public road in Burnside Township.

Court of Quarter Sessions, No. 5 Sept. Term 1907.

Vacate and Supply public road leading from the South end of the upper bridge in the Borough of Burnside to a point at or near the East end of the iron bridge spanning the Susquehanna river at Slabtown in Burnside Township.

Certificate.

This is to certify that the the above named road is made through the land of J.W. McCullough
Burnside, Pa. *March 16* 1911.

John Henry
Edward Crossman

Supervisors of Burnside
Township.

Road Beside Town-
ship No 5 Sept 1 1907

Certificate of Surfer-
vices that road
is made

KERRMOOR, PA. Aug 9-1910

Notice is hereby given, that we the undersigned
viewers appointed by the Court to assess damages
accruing to the property of J. M. McCullough,
in Burnside Twp, Clearfield County Pa by reason
of the construction of a Public Road laid out
through same under order of Court, #5 Sept ss
1907, will meet for said purpose Saturday
Aug 20th 8 A.M. on the property of J. M.
McCullough in said Burnside Twp.

J. S. McCree }
C. B. Patrick } Viewers
J. Blommer }

Service of above notice accepted this 10th day
of August 1910

Harry Byers }
att'y for J. M. McCullough

In the Court of Quarter Sessions
of Clearfield County, Penna.,
Vacate^{and} Supply
a Public Road No. 5 Sept. 28. 1907.
in Road,
Burnside Twp.

July 18th 1910; Petition to refer back viewers report filed,

July 18th 1910, Opinion & Decree filed.

Now, July 12th 1910 within petition pre-
sented, read and considered, and
thereupon J. S. McCreery, L. B. Patrick^{and}
John B. Conner are appointed viewers
and the said report of the former view
is referred back to said viewers for
the single purpose of viewing and as-
sessing damages if any accruing to
the petitioner J. W. McCollough by virtue
of the laying out and opening of the
said road through the property of the
said J. W. McCollough and to make report
thereon to the next sessions of the said
Court.

By the Court,

State of Pennsylvania^{*}
County of Clearfield,
ss.

Certified from the records of
above Court this 19th day of July
A. D. 1910.

Roll B. Thompson, Clerk.

Nov. 5. April 22, 1907.

Revel

In Re Revels & Aug. 1907

Public Revel

in

Revels Journal

Revels & Revels

Sept ss #5, 1907.

Report of reviewers. Decree of Court
given July 12, 1910.

To the Honorable Allison D. Smith, Judge of the several Courts of
Clearfield County.

We the the undersigned viewers appointed by Your Honor to review,
for the sole purpose of assessing damage to the property of J.W.
McCullough, by reason of the construction of a road through same, as
laid out under accompanying order, met in accordance with notices
duly served, and being severally affirmed, inquired into same.

We find that your former viewers were misinformed as to the location
of the boundaries of the McCullough property: - the road occupying a-
bout 1600 feet lineal, of same; while the former measurement made on-
ly 609.7 feet. We therefore assess to the said J.W. McCullough the
sum of \$60.00 which is in our opinion a fair estimate of the damage
thereto accruing by reason of the opening of said road.

Burnside Township,

August 20" 1910.

Respectfully submitted.

J.S. McCreery	22 m	2.20
	2d	10.00
John B. Conner	2m	.20
	1d	3.00
C.B. Pattrick	2m	.20
	1d	3.00

J.S. McCreery
John B. Conner
C.B. Pattrick } Viewers

5 Sept 5 1907
Proof

Sept. ss#5, 1910.

Report of reviewers.

September Session 1910
confirmed. Ni Si

By the Court
Alison J. Smith
JG

December Session 1910
confirmed absolutely

By the Court
Alison J. Smith
JG

In Re. Vacation and Supply) In the Court of Quarter Sessions
of Public Road in Burnside) of Clearfield County.
Township.) No. 5 September Sessions 1907.

Sur Petition of J. W. McCullough to refer back Viewers Report.

OPINION.

The petition of J. W. McCullough was presented June 14th, 1910, setting forth the proceedings in the above stated road in Burnside Township and that said road was, upon due confirmation, subsequently partly opened through the land of the petitioner and that he had suffered damaged thereby for which he had received no compensation; that he had no notice of the view or of the proceedings thereunder until after the same had been duly opened within the past year. On presentation of said petition we were under the impression that the petitioner was too late and that he could have no relief under our road law.

For this reason we have held the matter under advisement until the present time.

An examination of the authority in North Union Township road, 150 Pa. 512, and other cases, leads us to the opinion however that there would be nothing fatal to the proceedings in granting the prayer of the petitioner. If his allegation is correct, he should have been notified of the view or should have been awarded damages, whether claimed or not, even if such damages so awarded had been only nominal. It clearly appears, both from the petition and from the papers themselves, that the viewers in this case did not clearly understand their powers and duties in the premises. In all cases where private land is taken for a public purpose there must be a clear setting out of damages incurred by that taking, or the fact that there were no damages or a release obtained for damages. In this

case there is not such a clear finding as to the McCullough property, but simply a statement in the general Report that no damages were claimed as to owners generally and an award to one owner. Had the Viewers in this case awarded even only nominal damages to McCullough, duly confirmed, there could have been no redress. The petitioner, at any rate, does not appear to have had a day in Court and we are of opinion that the Report should go back to them for the single purpose of assessing damages to petitioner.

It also comes to the knowledge of the Court that one of the Viewers, John C. Conner, is deceased. We therefore substitute his son, John B. Conner, for the purposes of this re-view or re-reference. At least ten days notice of the time and place of view should be given to the petitioner or his Counsel.

The following order is therefore made:

Now, July 12th, 1910, within petition presented, read and considered, and thereupon J. S. McCreery, C. B. Payrick and John B. Conner are appointed Viewers and the said Report of the former View is referred back to said Viewers for the single purpose of viewing and assessing damages, if any, accruing to the petitioner, J. W. McCullough, by virtue of the laying out and opening of the said road through the property of the said J. W. McCullough and to make report thereon to the next sessions of the said Court.

By the Court,

Allison D. Smith
P. J.

To the Honorable Allison O. Smith President
Judge of the Court of Quarter Sessions of Clearfield County
Pennsylvania;

The petition of the undersigned J.W. McCullough an
owner of land in the township of Burnside, County of Clear-
field and State of Pennsylvania, Respectfully represents;

First. That a petition was presented to your honora-
ble Court to number 5 September sessions 1907 asking for va-
cation and supply of the road therein mentioned in Burnside
Township, and that viewers were appointed agreeable to
prayer of said petitioners who laid out and vacated roads
as appears by report made by them to said Court.

Second. That an opening order was issued for the road
laid out as aforesaid and lately, within one year, a part
of the said road was made and opened for travel and is now
in use as a public road through land of your petitioner.

Third. That the viewers who laid out the road aforesaid
gave your petitioner who is a resident of the State of Mary-
land no notice of the view aforesaid, that he was not pres-
ent at view, and received no notice whatever of proceedings
to open said road.

Fourth. That the said viewers made report that no dam-
age was claimed, and that said road passes through land of
A. McCullough, but they made no effort to obtain a release
of damages from your petitioner, although at time of view a
deed was of record to him for land through which a part of
the road passes; and A. McCullough named as owner had been
deceased for several years.

Fifth. The land of your petitioner is greatly damaged
by the laying out and opening of the road aforesaid for rea-
sons among others as follows:

1. Said road passes diagonally through the tract, which is a small one, and takes from the owner a large portion of his land.

2. Two extra lines of fence will be needed to enclose the sides of the land next said road.

3. Small pieces or points are left where road passes through which are practically useless to the owner.

4. All the timber on the right of way was destroyed in making said road.

Your petitioner therefore, respectfully requests that the report of the said viewers be referred back to them for correction and the appraisement of damages sustained by him, in accordance with act of assembly in such case made and provided,

And he will ever pray,

J. W. McCullough

Petitioner.

County of Garrett,
State of Maryland. } ss.

On the Eleventh day of June A.D. 1910 personally appeared before me J. W. McCullough aforesaid who being duly sworn according to law says that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

Sworn and subscribed to before me this 11 day of June
A.D. 1910.

R. M. Holman
Notary Public.

Am Coult of the Seniors

210

ms 5 Sept 55 1907

New June 14, 1910 within
petition presented and
considered

K. Byers JTH

KURTZ DNOS, CLEARFIELD, PA.

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15. 11. 1951

No. 5 September Sessions 1907.

In Re. Vacation and Supply of
Public Road in Burnside Township.

Sur Petition of J. W. McCullough
to refer back Viewers Report.

OPINION.

Slabtown

Sawyer Run

Vacate B to C by River Supply A to C.
Survey of Road View in Burnside Tl.
Made July 2nd 1907, Ord. 18 Sept. 20.
Scale - 400' = 1".

J.S. McCREERY
C.B. PATTERSON
J.C. GUNTER

Viewers

Burnside Township

Boys Line

