

No. 13 Sept Term, 190

on Re Petition for  
Private Road

<sup>versus by</sup>  
Alvin, Steel

in  
Lawrence Twp

X

REPORT OF VIEWERS.

To the Honorable Allison O. Smith, President and Sole Judge of the Court of Quarter Sessions of the Peace of Clearfield County.

We the undersigned, appointed by an order of the said Court dated June 23rd, 1909, to view the premises of Annie Mitchell in Lawrence Township, and to ascertain whether a road as prayed for by your petitioner, Alvin Hess, was necessary, and if so to lay out such a road or way, and to assess the damages which the said Annie Mitchell might sustain by reason of the opening of such a road or way, in pursuance of the Act of the General Assembly approved the 9th day of July, A. D. 1897, with the supplements thereto, respectfully report:

That the said Annie Mitchell was duly served with written notice of the time and place of our meeting to view said road or way.

That we met at that said time to wit: on the 19th day of July A. D. 1909, at 1:00 P. M., for the purpose of performing our duties as imposed by said order, at the said premises of Annie Mitchell in Lawrence Township, over and through which the proposed road or way was to be laid out, at which time and place the respondent Annie Mitchell was represented by her attorney, W. C. Miller Esq.

After having been severally sworn or affirmed according to law, we proceeded to view the premises, lay out the said road or way, and to assess the damages, as directed. And after having carefully viewed the same and taken into consideration the damage which would be sustained by the said Annie Mitchell by reason of such road or way passing over or through her land, as well as also the advantages to be derived from its passage, and the probability of the land reverting to the said Annie Mitchell within a reasonable time, we are of the opinion that said road or way, with sufficient surface ground on the

intervening land or lands for the turning of wagons and teams is necessary, and have accordingly laid out such a road or way with adequate turning-ground for teams and wagons, a description of which is as follows: Beginning at a post in the public road leading from Clear field to Glen Richey, thence along the centre line of the road <sup>proposed</sup> ~~away~~ ~~South~~ twelve feet in width, eighty-six degrees, forty-five minutes West, a distance of two hundred and forty-eight and five-tenths feet, to a post, thence along said centre line North eighty-eight degrees fifteen minutes West, a distance of sixty-six and three tenths feet to a post, the said road gradually widening from a width of twelve feet to a width of nineteen feet, as shown on the draft hereto attached.

The said ground for the turning of wagons and teams is bounded and described as follows, beginning at the centre post last mentioned hereinabove, thence South five and one fourth degrees West a distance of thirteen feet, thence South six degrees East a distance of thirteen feet, thence South eighty-four degrees West, a distance of four feet to a post marking the centre of the drift or heading as laid out to the proposed mine of the petitioner, Alvin Hess, thence South eighty-four degrees West, a distance of four feet, thence North eighty-four and three-fourths degrees West, a distance of fifty feet, thence North five and one-fourth degrees East, a distance of thirty-four feet, thence South eighty-three and one half degrees East, a distance of fifty-five and nine tenths feet, thence South, five and one fourth degrees West to the post and place of beginning, and containing 43/1000 of an Acre, more or less.

The road or way extending to and through the mouth of the drift or heading, to the line of property of the said Alvin Hess, being described as follows, Beginning at the post in the centre of the tramway or road, hereinabove mentioned, thence South 6 degrees

East, a distance of eighty feet, a road or way eight feet in width, along said described centre line, to the point at which the herewith attached draft shows the proposed drift opening, thence by the same course viz: South six degrees East, a distance two hundred and fifty eight feet, along said centre line, underground, and under the hereinabove mentioned public road leading from Clearfield to Glen Richey, a drift six feet in width, to the line of property of the said Alvin Hess.

Said courses and distances being taken from, and subject to, the draft of the same made by one of your viewers, and hereunto attached,

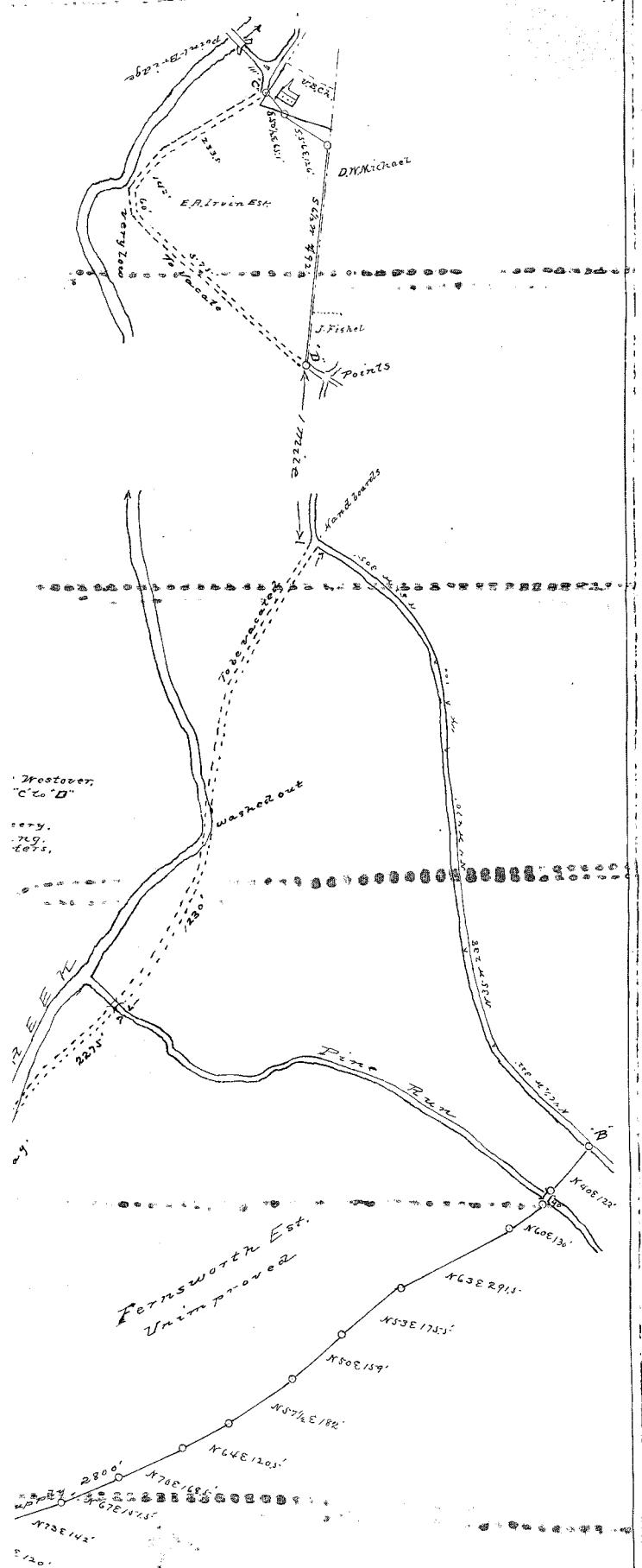
And we do further find that the said Annie Mitchell will sustain by the opening of such road or way with the ground for the turning of wagons and teams, damage to the amount of Seventy-five Dollars, and we do, accordingly, assess the same at that sum.

Witness our hands and seals this 16<sup>th</sup> day of Aug A. D.  
1909.

Harry Byers (SEAL)

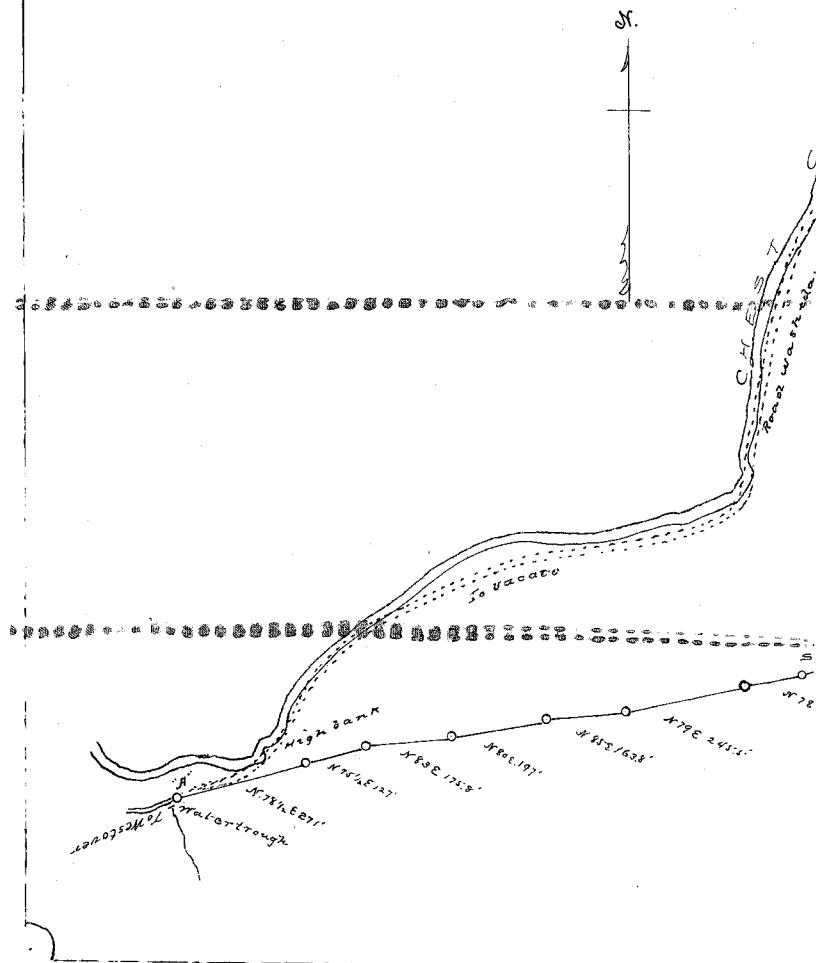
L. Lanning (SEAL)

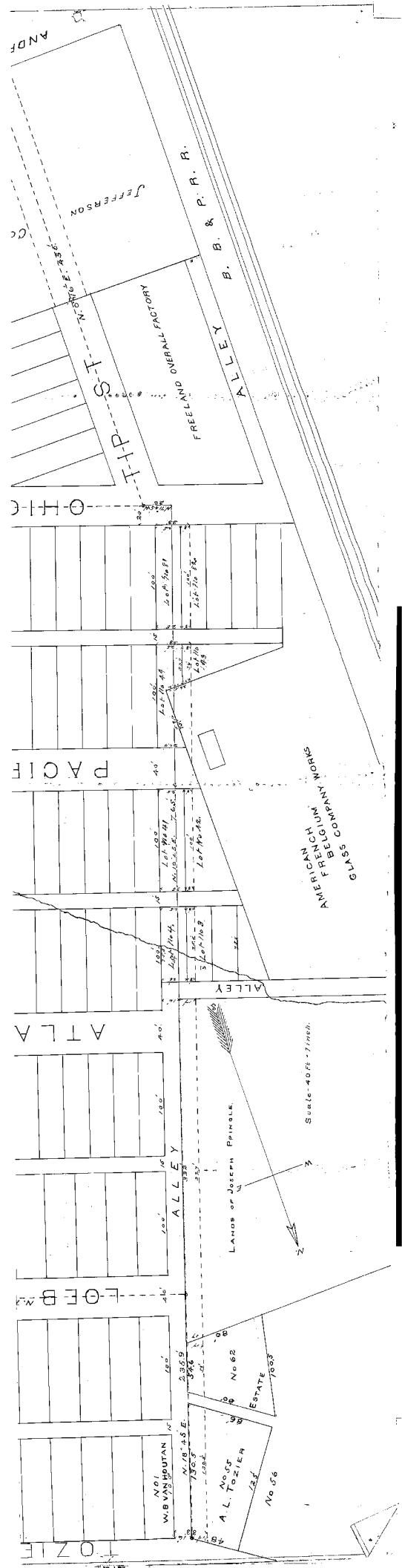
Geo D. Runk (SEAL)



No 5 Sept. 1909. Chest 72  
MAP showing Survey of Road between Five Points and  
vacating portion marked :: Supplying H'to B' &  
viewed July 1-2, 1909. Scale-200' = 1 in.

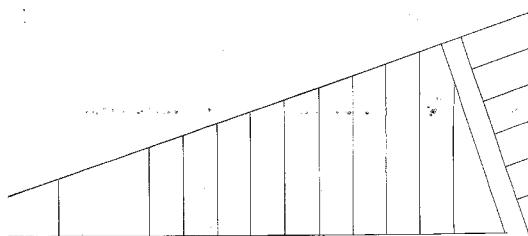
J.S. McCr  
L. Denn  
V. McCra



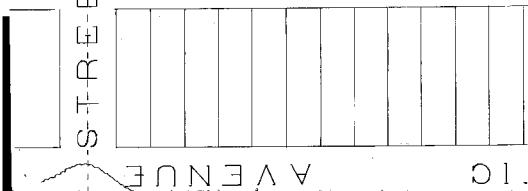
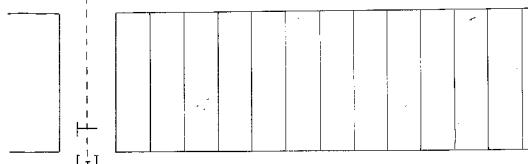


EW  
MALONEY ROAD

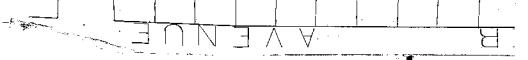
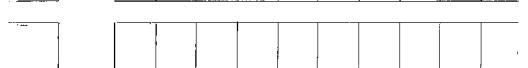
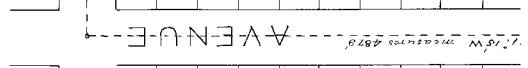
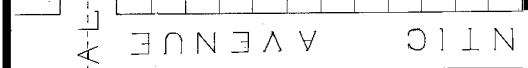
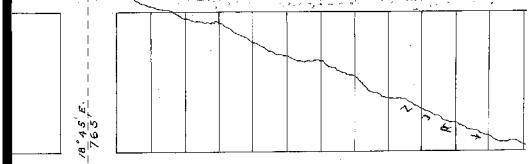
AL ANG IRON COMPANY



AVENUE AVENUE AVENUE



1C AVENUE





No 13 Sept 1908

Report of viewers

September Sessions 1908  
read and confirmed the  
final order to be drawn  
by counsel for petitioners  
in accordance with the  
Assembly regulating  
and prescribing  
the Court  
William Gilbert Jr.

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY.

In Re. Application of #  
ALVIN HESS for private road in # No. 13, Sept. Sessions, 1909.  
Lawrence Township. #

EXCEPTIONS.

And NOW, September 10 A. D., 1909, Annie Mitchell by her attorney, W. C. Miller, excepts to the report of the Viewers in the above entitled case and assigns the following reasons:-

FIRST- The petition in this case does not sufficiently designate the termini of said road;

SECOND- The report of the Viewers does not designate with sufficient accuracy the point or place of beginning of said road;

THIRD- The alleged road, as petitioned for and laid out by the Viewers, is a private road for a distance of only 248.5 ft; the part laid out under the surface of the land of said Annie Mitchell is not a private road but a tram road or railroad. The .043 acre of land alleged to be appropriated for turning ground is not intended for that purpose alone; but is intended to include ground for a coal mine opening, for a tipple, and place to deposit coal from the mine cars and for loading from said place into wagons, and the alleged road as a whole is not a private road contemplated by the Act of Assembly under which said proceedings is conducted;

FOURTH- The report of the Viewers is defective and void because it does not show on its face that Alvin Hess, the petitioner, is the owner of any bituminous coal, iron ore or fire clay underlying adjacent land to the land owned by Annie Mitchell and over and through which this alleged private road is proposed to be

laid and built;

FIFTH- This proceeding is intended for the purpose of allowing Alvin Hess to enter upon the private lands of Annie Mitchell and open a coal drift, mine or bank, on her land, and to drive a heading through the vein, or seam of coal owned by the said Annie Mitchell in her land so as to mine and remove the coal in the same seam or vein lying beyond the line of the land of Annie Mitchell, to build a tipple or dump at said opening, together with such bin or holder as may be necessary to store the coal as mined and to load it therefrom into wagons, to construct only an ordinary bank opening, drift or heading, and not a private road, under the surface of the land of said Annie Mitchell, and lay in said heading or drift a railroad track made of ties and iron or other rails and run thereon regular mine bank cars, and not to drive or haul wagons on or in such part of the alleged private road. Such a proceeding is not authorized by the Act of July 9, 1897, P. L. 213, or any Supplement thereto, and the whole proceeding is illegal and void;

SIXTH- The report of the viewers and the entire proceedings in this case are void because a private road, as contemplated by the said Act of Assembly of July 9, 1897, P. L. 213, has not been laid out and reported by the Viewers;

SEVENTH- Even if the Act of July 9, 1897, P. L. 213, authorized such a proceeding, the Act would be unconstitutional and void for the reason that it would take and appropriate private property to a private use, which is in violation of the constitution of the State.

W. C. Miller

Attorney for Annie Mitchell,  
Exceptant.

State of Pennsylvania.

SS.

County of Clearfield.

On the 15 day of September A. D., 1909, personally appeared before me, W. C. Miller, who being duly sworn according to law doth depose and say, that he is attorney for Annie Mitchell in the above proceeding; that the facts stated in the foregoing exceptions, so far as they are based upon his own information, are true and correct; and so far as based upon information received from others, he believes them to be true and correct.

W. C. Miller

Sworn to and subscribed before me this

15 day of September A. D., 1909.

Robert Thompson  
Proby

No. 13, Sept. Sessions, 1909.

In Re Application of  
ALVIN HESS for private road  
in Lawrence Township.

EXCEPTIONS by Annie Mitchell.

*W. C. Miller*  
W. C. MILLER,  
ATTORNEY AT LAW,  
CLEARFIELD, PA.

# Know all Men by these Presents,

that we, Alvin Hess and Austin Haney

are held and firmly  
bound unto The Commonwealth of Pennsylvania

in the sum of One Hundred

Dollars, lawful money of the United States of America, to be paid unto the said  
Commonwealth of Pennsylvania, its

certain attorney, executors, ~~successors~~, administrators or assigns, to which payment well and  
truly to be made, we do bind ourselves, our, heirs,  
executors and administrators, firmly by these presents. Sealed with our  
seals, and dated the twenty-sixth day of June :

in the year of our Lord one thousand nine hundred nine

The condition of this obligation is such that if  
the above bounden Alvin Hess his heirs, executors  
administrators or assigns shall and will  
well and truly pay the costs incurred  
by a view awarded by the president judge  
of Clearfield County on the 23rd day of  
June, 1909, upon the petition of the  
paid Alvin Hess dated the 22nd day of  
June A.D. 1909, together with any expenses  
incurred thereby, as provided in an act  
of Assembly approved the 4th day of  
April, A.D. 1907, then this obligation  
to be void and of no effect, or else  
to be and remain in full force and virtue.

Signed, Sealed and Delivered  
in the presence of

Hugh B. Woodward

} Alvin Hess  
Austin Haney



Bond.

Alvin Hess  
Austin Stanley  
to  
Com. of Pennsylvania

Dated June 26, 1909  
From \$100 ~~90~~  
xx

Now this 26<sup>th</sup> day  
of June 1909 this  
bond approved.  
Alvin Smith  
O.D.

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 26th day of June, A. D. 1909, before the <sup>Hon.</sup> Judge of said Court, upon a petition of sundry inhabitants of the township of Lawrence

, in said county, setting forth that he desires a private road, and room for his wagons on the property of Anne Mitchell in Lawrence Township adjoining property of said Anne Sess.

"that such road or right of way will necessarily be partly covered across the surface of the said and partly beneath and under the said surface and that your petitioner desires sufficient ground, upon the said surface for the ingress and egress, and for the turning of such Wagons and Teams as are necessary to remove the Coal mines"

and therefore praying the Court to appoint proper persons to view the same according to law, whereupon the Court, upon due consideration had of the premises do order and appoint Harry Byers, Leander Denning, <sup>and</sup> E. D. Peacock 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 petitioner, 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.

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

Witness our hands and seals this ..... day of .....  
A. D. 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 ..... the sum of .....

To ..... the sum of .....

To ..... the sum of .....

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

NOTE:—In case of a private road, the release must be executed in favor of the petitioner for said road.  
Also.—Viewers will carefully note the number of days employed, and set the amount out at the foot of their return.  
Viewers cannot interfere with damages assessed by the original viewers, except so far as the location may be changed by the viewers.  
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.
<i>Harry Ryers</i> } Days 2 <del>\$ 10.00</del> 0
<i>L. Remm</i> } Days 1 <del>\$ 3.20</del> 0
<i>Geo. Pritch</i> } Days 1 <del>\$ 3.20</del> 0
Days ..... } Miles 2 <del>\$ 3.20</del> 0
Days ..... } Miles ..... 0
Days ..... } Miles ..... 0
Days ..... } Miles ..... 0

*No 3 Night Sessions, 1909*

**ORDER**

*To viewers and lay out a road for general use in the township of Lawrence Clearfield County*

*Sessions, 1909, read and confirmed Ni. Si. Road to be opened 39 feet wide, except where there is side hill cutting or embankment and bridging, there to be 16 feet wide.*

*190  
Fees \$ 1.25 paid by Remm Her*

Alvin Heas  
as  
Ferd Mitchell  
James "  
Clyde Clay working  
Co.

---

No 4504 Sept. 1, 1905.

Pro Thompson 2.00

Trespass

**DEPOSITED BY**

*IN THE*  
***CLEARFIELD TRUST CO.***

-190-

To the honorable ALLISON O. SMITH, President, and sole Judge of the Court of Quarter Sessions of the Peace in and for the County of Clearfield.

The petition of the undersigned, Alvin Hess, of the Township of Lawrence, County of Clearfield, and State of Pennsylvania, respectfully sheweth: that your petitioner is seised and possessed of certain land in the township of Lawrence, County and State, aforesaid, and further, that he is desirous of mining and removing certain coal from under the said tract of land, and further, that in order to mine and remove said coal, it will necessary for him to have a road or way, through and across certain land likewise situate in the Township of Lawrence, County and State aforesaid, of which the title is in Annie Mitchell of the Borough of Clearfield, and County and State aforesaid; that such road or right of way will necessarily be partly over and across the surface of the said tract, and partly beneath and under the said surface; and that your petitioner desires sufficient ground upon the said surface for the ingress and egress, and for the turning of such wagons and teams as are necessary in order to remove the coal mined.

Your petitioner further avers that the said Annie Mitchell has refused and continues to refuse to grant or sell him such a road or way, with sufficient adjacent ground for the turning of wagons and teams as above set forth, and therefore prays the Court to appoint viewers to view and lay out the same, and to appraise and ascertain the damages incurred, in accordance with the Act of Assembly of 1901, P. L. 259, in such case made and provided.

And he will ever pray, etc.

Alvin Hess

Petitioner.

No. 13 Sept 7 1909

In Re  
Petition of Alvin M. Kline  
for  
Wife

26

A. H. WOODWARD,  
ATTORNEY AT LAW,  
CLEARFIELD, PENNA.