

No.

4 Sept

Term, 1912

Public Road

versus

Woodward Lup,

K.D. # 5 - Page 121

Petition refused

In the Court of Quarter Sessions of Clearfield County, Pennsylvania
In Re. Public Road in Woodward) No. 4 September Sessions, 1912.
Township.)

The petition of John and Anna Zakutney presents a state of facts in which it seems apparent that a very considerable injustice will be done to these parties unless some remedy is afforded by law.

By the proceeding brought to the above number and term a public road was laid out passing through the land of the petitioners one portion of which afforded them a convenient and short route to Houtzdale and other points and access to the High School, and being as the petitioners believed to their advantage they released their rights to the damages occasioned by the taking of a portion of their land for said road. Subsequently, by proceedings brought to No. 4 September Sessions, 1914, a portion of the road was vacated, no part of the road was vacated being upon the land of the petitioners and being the part which afforded them the access and outlet which was advantageous to them. Upon this state of facts they have asked that the Report of Viewers to this number and term be referred back to the original viewers or to a new set of viewers to consider and determine the damages sustained by the petitioners and make report thereof. Moved by the apparent injustice done the petitioners, in addition to the researches of Counsel, the Court has examined the authorities with a view to seeing whether any power exists in the Court by which it can refer back this proceeding.

We regard it as well settled by the authorities that where the road has been confirmed and the road actually opened on the ground, with the consequent expenditure of public moneys, the proceedings cannot be opened and the confirmation set aside except under the narrow circumstances which were presented in the Crescent Township Road case, this matter having been authoritatively settled by the Union Township road case from this District. The release

is a part of this proceeding and we can find no authority which indicates that there is any power in the Court to set it aside upon this proceeding, and even could it be set aside such action must stand upon later facts not existing at the time of the view nor of the confirmation, and the authorities seem entirely clear that any remedy sought on the matter of damages must be upon the statute and by the proceeding therein provided. So that even could this release be set aside, that alone would be insufficient. It is equally clear that the proceedings cannot be referred back to the original viewers, unless the proceeding be opened and the confirmation absolute set aside, and we are unable to find any statutory procedure under which these damages can now be referred to a new set of viewers.

While the land was taken as a part of the original road, the damages done arise by reason of the vacation of a part thereof, for which no right to damages exists. The petitioners felt at the time the road was laid out that they were not damaged by the establishment of the whole road and they do not now allege that they were so damaged. They do contend that they are seriously damaged and injured by the said public road as it is now constituted, but this arises from the vacation of a part thereof and as the Legislature has not seen fit to provide any remedy in such case, as we look at it we are without any power to help the petitioners or to permit them to be heard on the point they now raise, to wit, that they are damaged by the road as now constituted. The law as to damages arising upon vacation is fully discussed in *Howell vs Morrisville Borough*, 212 Pa. St. 349 and seems to be conclusive that upon the facts here presented this petition cannot be granted.

Now, November 11th, 1915, prayer of petitioners refused.
Exception noted and bill sealed.

By the Court,

Samuel B. Beebe
P. J.

No. 4 September Session, 1912.

In Re. Public Road in Woodward
Jurisdiction.

OPINION and DECREE.

No. 4. Sept. 11. 1912
Road.

Shire Road in
Woodward Corp.

Petition

LIVERIGHT & KREBS
ATTORNEYS AT LAW
CLEARFIELD, PA.

KURTZ STATIONERY STORE, CLEARFIELD, PA.

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD CO., PA.

IN. RE. PUBLIC ROAD)
IN WOODWARD TOWNSHIP)

No. 4

September SS. 1912

To the Hon. Singleton Bell, President Judge.

The petition of John and Anna Zakmatyey respectfully represent

(1) That they are the owners of a certain tract of land situate in Woodward Township, Clearfield County, to them conveyed by Joseph Kristoffby deed dated 24th April, 1891, recorded at Clearfield in deed book 63 page 287, containing eleven acres, more or less.

(2) That by proceedings brought to No. 4, September Sessions, 1912 Court of Quarter Sessions of Clearfield County, a public road "leading from a point in the public street where lot of late John Farror in West Houtzdale abuts on same, and said point being 1260 feet distant from the intersection of said public street with the public road leading from Houtzdale to Madera, and ending at point in public road opposite the Ocean school building and at the intersection of two public roads leading from Hendersons and intersecting or forking so as to lead into the borough of Brisbin, the one by the West side and the other by the North side," was laid out and in duecourse confirmed.

(3) That said public road as thus laid out would have been a benefit and convenience to petitioners and their families, and if opened would have afforded them access to the High School, a convenient and shorter route to Houtzdale and other trading points, and otherwise would have been of use and value to them in the way of saving distance to points tributary to their property.

(4) That said road as laid out traversed the property of petitioners lineally for a distance of three-eighths of a mile or more, and took and occupied $1\frac{1}{4}$ acres of their land; that deeming it to be to their advantage for reasons hereinbefore stated that the road as laid out should become an accomplished fact, petitioners by

John Zakutney released their rights to damages occasioned by the establishment of said road, which release became a matter of record.

(5) That the road so as aforesaid laid out through petitioners and other properties never was actually opened. That by proceedings brought to No. 4 September Session 1914, Court of Quarter Sessions of Clearfield County, a large part thereof, to wit 3536 feet, was vacated, against the objections and protest of petitioners, and said vacation, notwithstanding such protest was at December Term 1914 confirmed in due course. That no part of said road where it traverses the property of petitioners has been vacated, but the whole thereof through such property has been permitted to stand as a de facto as well as de jure road, for the use and convenience of the traveling public seeking to reach Ocean School House, the road to Brisbin, and other places, points and roads therewith connecting or thereto tributary. That on the 29 day of *April* 1915, an opening order was issued for the residue of said road remaining after said vacation proceedings and the actual opening thereof has been begun.

(6) Petitioners aver that the road as now laid out is of no use whatsoever to them, is not a convenience and is of no conceivable benefit to them. That on the contrary it is a burden and an inconvenience. They further aver that they never would have released their right to damages, but for the fact that the road as originally laid out would have been a convenience and an aid to them as hereinbefore set forth; and only upon the assumption that the said road would become an established fact, and be actually opened in due time for their use, would they have executed any such release. Further in this behalf they aver that they are seriously damaged and injured by the said public road as it is now constituted, and that their release as aforesaid is, without consideration, and to require them to be bound thereby would be unjust and against good morals.

(7) Petitioners therefore pray that the proceedings be opened and that confirmation absolute of said road be set aside, that their said release be set aside and stricken from the record, and

that the proceedings be referred back either to the original viewers or to a new set of viewers to consider and determine the damages sustained by the petitioners, and make report thereon; and that the Court make such other orders as may be appropriate in the premises, and will relieve petitioners under the circumstances

138 ^{his} John + Zakutney
- Mack
a3 Annie Zakutney

State of Pennsylvania)
County of Clearfield) SS:

John Zakutney, being duly sworn according to law, deposes and says that the facts set out in the foregoing petition are true and correct.

Subscribed and Sworn to
before me this 7 day
of August 1915

J. A. McCalland J.P.
My Comm. Expires
Jan 1916

138 ^{his} John + Zakutney
- Mack

In the Court of Quarter Session of Clearfield County.

In re. Petition)
for a Public Road) No. 4 September Term 1912.
in Woodward) Rule on Supervisors, etc.
Township)

To the Honorable Singleton Bell President Judge of the Court of Quarter Session of Clearfield County.

The Answer of William Phelps, P. F. Hennosy and Ashley F. Martin, the Board of Supervisors of Woodward Township to the petition of Joseph Petrusky and Stephen Zakutny, respectfully represents:

That it is true that on the 20th day of January 1914 an order to open said road was issued out of the Court of Quarter Sessions, and duly served upon the respondents, and that said road has not been opened; that the respondents have been unable to comply with the order of the Court on account of the unsafe conditions of the ground upon which said road has been laid out; that the ground has been undermined and is beginning to "cave in" making it dangerous for workmen, as well as teams and pedestrians, and that part of the said ground has "caved in" since the original petition was filed, two years ago; that after the road was laid out a majority of the original petitioners were dissatisfied with its location and abandoned the proceedings, and that a petition for vacating said road, signed by a majority of the signers of the original petition was presented to your Honorable Court and viewers appointed, and said petition filed to No. September sessions 1914.

The respondents pray that the said petition of Joseph Petrusky and Stephen Zakutny be dismissed, and the Rule discharged, at the cost of the petitioners. And submit themselves to the further orders of the Court.

William Phelps
P. F. Hennosy
Ashley Martin

William Phelps, P. F. Hennesy and Ashley T. Martin above
named being duly sworn according to law saith that the facts contained
in the above Answer, are true to the best of their knowledge and be-
lief.

William Phelps

P. F. Hennesy

Ashley T. Martin

1914.

Sworn and subscribed to before me this 26th day of May A. D.

John M. McGrath
Notary Public
My Comm. expires Feb. 27, 1917.

4 Sept 1912

Answer of Defendants

RECEIVED
JUL 27 1912
U.S. DISTRICT COURT
HOUTZDALE, PA.

J. B. MOGRATH
ATTORNEY AT LAW
HOUTZDALE, PA.

KURTZ BROS., CLEARFIELD, PA.