

No. 2 Egypt Ter.

Petition for
Inval Road in

VERSUS

Pandy Township

In the Court of Quarter Sessions of Clearfield County, Pennsylvania
In Re. Petition of P. A. Hoover) No. 2 September Sessions, 1914.
for private road across land of)
Minnie Lyons.)

In this case an inspection of the papers shows that on 9th September, 1914, the Court made the following order: "September Sessions, 1914, read and confirmed ni si, road to be opened thirty three feet wide except where there is side hill cutting or embankment and bridging, there to be sixteen feet wide". This error was made by inadvertence, it being the ordinary order printed upon the road papers and the Court failing to notice that this was a private road. An examination of the report and draft shows a fatal variance therein. From the point of beginning in the public road, known as the John R. Shaffer road, the report lays out a private road North 86 degrees west 173 9/10 feet, while on the draft attached the course of this road is stated to be South 80 degrees 11 minutes east 173 9/10 feet, from the same starting point. This defect is radical and material, and would prevent confirmation had it been observed. Divers other legal questions are involved, raised by the exceptions, one of which is that there is an assessment of damages without anything in the report indicating the width at which the viewers fixed this private road. The attorney for the petitioner has presented an elaborate brief, which contends that viewers of public roads are bound under the law to assess damages and to lay out the road without reference to the width thereof, anything contained in the report as to breadth being mere surplusage, and he urges that there is no difference in

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reason between viewers acting with reference to private roads and those acting with reference to public roads, and we confess that we are wholly unable to see why any different rule exists. We are confronted, however, with Road in Plum Creek Township, 110 Pa. St. 544, which lays down a different rule, saying, as to private roads: "When the assessment was made the Court had not fixed the width of the road and the viewers proposed none as to basis of their estimate. This was of itself an error fatal to the report," and we feel constrained to follow the rule thus laid down, as the industry of counsel and examination of the Court has not disclosed any later utterance of the Supreme Court indicating any intention to depart from this rule.

Upon first examination the Court was of opinion that this matter could be referred back to the viewers, who could proceed by amending their report, but upon later consideration it seems as though this were a matter of some uncertainty; in view of the requirement of the law that personal notice must be given to the land owner of the hearing for the assessment of damages, and as this whole proceeding is at the expense of the petitioner, in any regard there is practically no difference between referring back this report and setting it aside.

Now, this 9th day of March, A. D. 1915, the confirmation nisi is set aside as inadvertently made, and the report of viewers is set aside because of fatal variations between the report of the viewers and the draft attached, and the power of viewers is hereby enlarged and continued to the next sessions of the Court.

By the Court,

Sungled Bee

P. J.

No. 2 September Sessions, 1914.

In Re. Petition of P. A. Hoover
for private road across land of
Minnie Lyons.

OPINION.

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY.

TO THE HONORABLE JUDGE OF THE SAID COURT:

The petition of the undersigned respectfully sets forth;

That he is a citizen of Sandy Township of Clearfield County Pennsylvania and is the owner of land in the said Township;

That there is neither a Public Road nor a Private Road either to or past his house and in consequence he labors under great inconvenience for the want of access to his house and premises;

Wherefore he prays that your Honorable Court will appoint proper persons to view and lay out a private Road from his house in the said Township, to a point in the Public Road, commonly known as the "John R. Shaffer Road" where the Private Road of Roy Shaffer intersects with the said John R. Shaffer Road. And he will ever pray etc.

Perry Hoover

Affidavit.

County of Clearfield ss.
State of Pennsylvania

Before me, a Notary Public duly commissioned in and for the said County, personally appeared Perry Hoover, the petitioner, who by me being duly sworn according to law doth de pose and say that the foregoing facts are true and correct to the best of his knowledge and belief.

Sworn and subscribed before me *Perry Hoover*
this 13th day of May, 1914.

Perry Hoover
My Commission Expires May 2, 1915.

BOND.

KNOW ALL MEN BY THESE PRESENTS, that we, Perry Hoover, as Principal and E. W. Kelly and G. W. Whitmore as sureties are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of One Hundred Dollars, to be paid to the said Commonwealth, to which payment, well and truly to be made, we do bind ourselves, and each of us, our heirs, executors, administrators and assigns, jointly and severally by these presents. Sealed with our seals and dated the 18th day of May, 1914.

Whereas, of even date herewith, the Judge of the Court of Quarter Sessions of Clearfield County hath appointed viewers to view and lay out a Private Road in accordance with the above petition, NOW, the condition of this obligation is such that if the said Perry Hoover shall pay into the hands of the Prothonotary of Clearfield County, all such costs and damages assessed to him as petitioner in the said proceeding within ten days after confirmation absolute of the proceeding, then this obligation to be void and of none effect, otherwise to be in full effect and virtue. Sealed with our seals and signed this 18th day of May 1914.

Perry Hoover (SEAL)

E. W. Kelly (SEAL)

G. W. Whitmore (SEAL)

CERTIFICATE.

I hereby certify that the foregoing petition for the appointment of Road Viewers is lawful and conforms to the purpose of the petitioner, and that the same is regular and in due form.

James B. Rose
Atty. for petitioner.

Now June 8, 1914, it appearing to the Court that E. H. Harman is related by marriage to the petitioner, the appointment of E. H. Harman heretofore made is vacated, and A. G. Kramer of Clearfield appointed to serve writs E. G. Boyce and H. S. Madsen.

By the Court
Frankland Bldg. 6.

	18 Sept. Term 1914
	Petition for removal to another day and private Room in same building
	Done on the 18th day of September 1914 At the office of the Court of Common Councils and Signed by E. G. Boyce, H. S. Madsen and E. H. Harman
	are appointed to serve the writs to the Plaintiff and the Court and Signed by E. G. Boyce Attorney at Law and Notary Public Dubois, Pa.

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