

No.3 September Session,
1919.

In Re: Applicant, 17

PRIVATE ROAD IN CHEST TWP.

AMOS. H. WESTOVER.

Versus

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY.

In Re: Application :
-of- :
Amos H. Westover for private : No.3, September Session, 1919.
road in Chest Township, cross- :
ing lands of David Lloyd. :

Exceptions by David Lloyd to Report of Viewers.

And now, the 18th day of October, A. D. 1919,
David Lloyd, by his Attorneys, Miller & Hartswick, excepts to the
report of the viewers in the above entitled case and assigns the
following causes of exceptions.

FIRST. The petition in this case does not sufficiently
designate the termini of said road, and is therefore invalid and
can not support the proceeding had thereon, or the report of the
viewers.

SECOND. The report of the viewers does not designate
with sufficient accuracy the termini of said proposed road, and is
insufficient to support the subsequent proceedings, or the laying
out of said road.

THIRD. The petition in this case shows on its face that
the private road sought to be obtained is for the purpose of trans-
porting bituminous coal from the coal bank of the petitioner over
and across the lands of David Lloyd; that it would be the taking

No. 3 September Session,
1919.

In Re: Application
of
Amos H. Westover for private road in Chest Township crossing lands of David Lloyd.

Exceptions on the part of
David Lloyd.

RECORDED
INDEXED
615-37-100
CLEARFIELD

MILLER & HARTSWICK
ATTORNEYS AT LAW
CLEARFIELD, PA.

BALTIMORE OFFICE SUPPLY CO., BALTIMORE

In the Court of Quarter Sessions of Clearfield County, Penna.
Private Road in Chest Township. No. 3 September Sessions 1919

As this proceeding now stands the question is one of power to lay out such a road. It is not disputed that the Act of May 17, 1901, P. L. 259, by its language, authorizes such a road as is here presented, but it is strongly argued and various authorities seem to give support to the claim that it was not in the power of the Legislature to so enact and that this law is unconstitutional at least as to facts like these. The system of roads in Pennsylvania is one designed for the well-being, convenience and advantage of its people and a part of that system involves the opening and maintenance of private roads. Owing to its mineral deposits the policy of the State regarding access and transportation to market has been liberal, as indicated by various Acts of Assembly. On the question here pending the Legislature has spoken on a subject of general public interest along the lines of the expressed policy of the State and this Court will not hold such an Act unconstitutional, except in a clear case. We incline to the view that the Act is constitutional, at all events it is not so clearly otherwise as to justify this Court in so holding.

Now, April 20th, 1920, exception dismissed, Report of Viewers confirmed absolutely, and exception noted and bill sealed to exceptant.

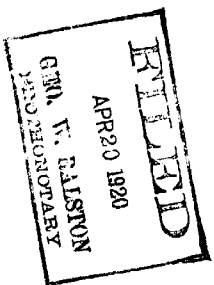
By the Court,


P. J.

No. 3 September Sessions, 1919.

Private Road in Chest Township.

OPINION and DECREE.



TO: Amos. H. Westover.

Sir.

You are hereby notified; that the undersigned viewers appointed by the Court of Quarter Sessions of Clearfield County Pa to view and lay out a private road, leading from a point in the public road leading from Westover to Ansonville, at a point near the residence of S. J. Rodkey in Chest Township, to the Coal bank of Amos H Westover over land of David Lloyd, with the necessary ground for the turning of wagons and teams at the said coal bank, in Chest Township in the County aforesaid; will meet at the house of S. J. Rodkey in Chest Township on Thursday the 31. day of July A. D. 1919 at two o'clock P. M. to attend to the duty assigned them; of which time and place all parties interested in said road, either for or against the same will please take notice.

And that the public hearing required by the Act of Assembly and the Rules of Court to be held by the viewers in order to give all parties interested in the said road, either for or against the same a chance to be heard by the viewers, before the filing of their report in Court, Will be held in the Arbitration Room in the Court House in Clearfield Pa on Friday the First day of August A, D, 1919 at ten (10) o'clock A. M. when and where all parties interested in said road, either for or against the same may appear and be heard.

A G Krancer
E D Billotte
J. H. Shingleton
VIEWERS.

Now July 27 1919 service accepted of above notice.

Amos H. Westover

To:- David, Lloyd

Sir. You are hereby notified; that the undersigned ^{viewers} appointed by the Court of Quarter Sessions of Clearfield County Pa to view and lay out a private road, leading from a point in the public road, leading from Westover to Ansonville, at a point near the residence of ~~Mr~~ S. J. Rodkey in Chest Township, to the Coal Bank of Amos H Westover, over land of David Lloyd, with the necessary ground, for the turning of wagons and teams at the said coal bank; in Chest Township in the County aforesaid; will meet at the house of S. J. Rodkey in Chest Township on Thursday the 31st, day of July A. D. 1919 at two (2) o'clock P. M. to attend to the duty assigned them; of which time and place all parties interested in said road, either for or against the same will please take notice.

And that the public hearing required by the Act of Assembly and the Rules of Court to be held by the viewers in order to give all parties interested in the said road, either for or against the same a chance to be heard by the viewers, before the filing of their report in court, will be held in the Arbitration Room in the Court House in Clearfield Pa on Friday the First (1) day of August A. D. 1919 at ten o'clock A. M. when and where all parties interested in said road, either for or against the same may appear and be heard.

A. G. Kramer
E. D. Billotte
J. L. Spangler
VIEWERS.

Now July, 19 1919 served the above notice on David Lloyd personally by handing him a true and correct copy of same.

S. J. Rodkey

TO:- Jesse, E. Dale, H. H. Spencer, and Austin Haney.

County Commissioner, of Clearfield, County, Pa.

You are hereby notified; that, the undersigned viewers appointed by the Court of Quarter Sessions of Clearfield County Pa: to view and lay out a private road, Leading from a point in the public road leading from, Westover to Ansonville; at a point near the residence of S. J. Rodkey in Chest Township, to the coal bank of Amos H Westover; over land of David Lloyd; with the necessary ground for the turning of wagons and teams at the said coal bank. In Chest Township in the County aforesaid; will meet at the house of S. J. Rodkey in Chest Township on Thursday the Thirty first day of July A. D. 1919 at two (2) o'clock P. M. to attend to the duty assigned them; of which time and place all parties interested in said road either for or against the same will please take notice.

And that the public hearing required by the Act of Assembly and the rules of Court to be held by the viewers in order to give all parties interested in the said road, either for or against the same a chance to be heard by the viewers, before the filing of their report in Court, will be held in the Arbitration Room in the Court House in Clearfield Pa on Friday the first (1) day of August A. D. 1919 at 10, o'clock A.M when and where all parties interested in said road, either for or against the same may appear and be heard.

E. G. Kravetz
E. D. Billotte
J. H. Spencer
VIEWERS.

Now 1919 service accepted of the foregoing notice for the County Commissioners of Clearfield County Pa.

L. C. Morris
Clerk.

Clearfield County, ss:

At a Court of Quarter Sessions of the Peace of the County of Clearfield, held at Clearfield, Pa., in and for said County, on the Third day of July, in the year of our Lord one thousand nine hundred and eighteen.

Judge of the same Court: Upon the petition of ~~sundry inhabitants of the Township of~~
Amos H. Westover

in said County, setting forth that he labors under great inconvenience for want of a Private Road to lead from his Coal Mine in Chest Township to the Public road leading from Westover to Ansonville near the residence of S.J. Hockey at Corner of said Hockey and the line of Westoverboro, and Chest Township, said road to be laid out over lands of David Lloyd.

and therefore, praying the Court to appoint proper persons to view and lay out the road between the points mentioned, whereupon the Court upon due consideration had of the premises, do order and appoint from and among the County Board of Viewers A.C. Kramer. E.D. Billett.
Jas W Spangle.

who have been duly appointed by the Court and filed their oaths of office and are duly qualified to perform the duties of their appointment with impartiality and according to the best of their judgment, are to view the ground proposed for the said road, and if they view the same, and a majority of the actual viewers agree that there is occasion for such road, they shall proceed to lay out the same, as agreeable to the desire of the petitioner as may be, having respect to the best ground for a road and the shortest distance, in such a manner as to do the least injury to private property; and shall make report thereof, stating particularly whether they judge the same necessary for a public or private road, together with a plot or draft thereof, and the courses and distances and references to the improvements through which the same may pass; (and wherever practicable, the viewers shall lay out the said road at an elevation not exceeding five degrees, except at the crossing of ravines and streams, when by moderate filling and bridging the declination of the road may be preserved within that limit,) to the next Court of Quarter Sessions to be held for the said County.

And if the viewers aforesaid shall decide in favor of locating a public road, they shall obtain from the persons through whose lands the said road shall pass, releases from any damages that may arise to them on opening the same; but if the owner or owners of such land refuse to release their claim to damages, the said viewers shall assess the same, taking into view the advantages as well as disadvantages arising from said location, and make report of such assessments; which report they shall in like manner transmit to the next Court of Quarter Sessions, with the draft or plot aforesaid. In which said reports they shall state that they have been sworn or affirmed according to law, and that due and legal notice was given of the time when, and place where, they should meet, to view and lay out said road, and the time and place of hearing

By order of the Court.

Singleton Bell P.J.

John H. Moore, Clerk.

RETURN OF VIEWERS.

To the Honorable the Judge of the Court of Quarter Sessions of the Peace for the County of Clearfield:

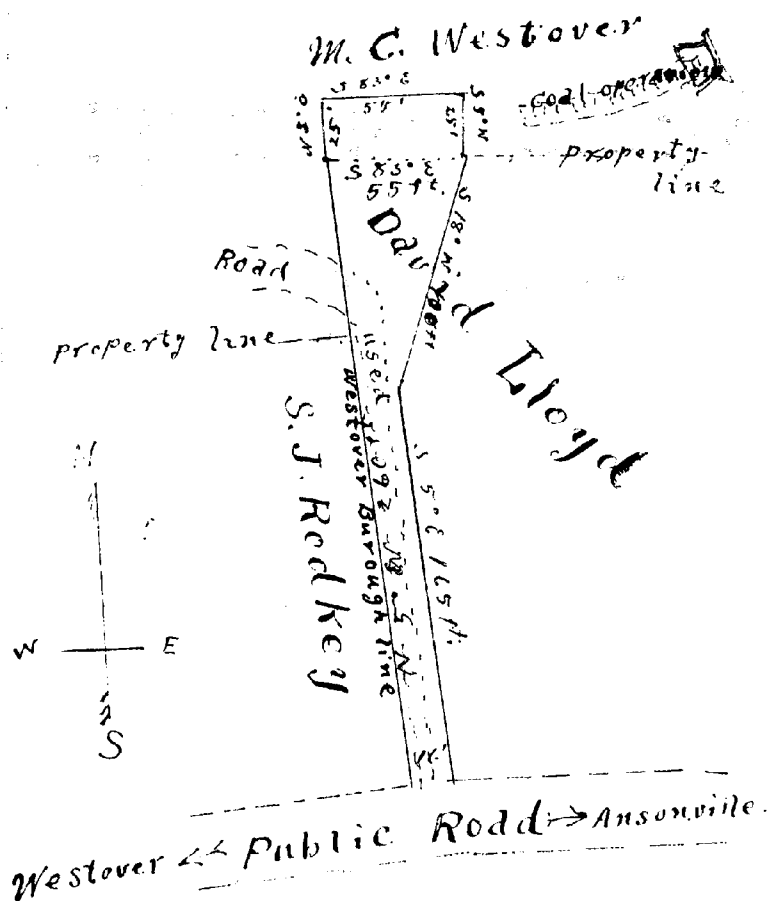
We, the undersigned viewers, duly appointed by your Honorable Court by the foregoing order, from and among the County Board of Viewers who have been duly appointed by your Honorable Court and have filed their oaths of office in the Court of Common Pleas of Clearfield County, beg leave to report as follows:

That notice of the time of view and of the hearing day was duly served according to law upon the Commissioners of Clearfield County and ~~the owner of the land~~ owner of the land and Amos H Westover the petitioner David Lloyd the ~~and that three~~ notices thereof were posted along the route of the proposed road, that the said view would be held on the 31, day of July, A. D. 1919, and the hearing to be held in the Arbitration room, at the Court House, in Clearfield, Pa., on the First day of August, 1919, at 10, o'clock A. M. That the viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view besides the viewers; David Lloyd the owner of the land over whose property passes and Amos H Westover the petitioner for the road and S. J. Rodkey; -----

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the first day of August, A. D. 1919, when the following appearances were noted: Amos H Westover, Frank G Conley, S J Rodkey, David McDonald, Ross Westover, Gurney Westover, David Lloyd, H F Lawhead, S W Blake, Wm S Lloyd. and Daniel Woods; -----

After the view and hearing above mentioned, the undersigned, ~~viewers~~ viewers, do agree that there is an occasion for a road as desired by the petitioner, and that the same is neccessary for a Private ----- road; And having had respect to the shortest distance and the best ground for such road we have laid out in such manner as shall do the least injury to private property, and as far as practicable agreeably to the desire of the petitioner, and do return for private use the following described road, to-wit: Beginning in the township road, leading from Westover to Ansonville at a point near the residence of S J Rodkey in Chest Township to the tippie of the coal bank of Amos H Westover over land of David Lloyd as follows; running; north five (5) degrees, west along line of land of S J Rodkey, two hundred and sixty five (265) feet to line of land of M C Westover; said road being sixteen (16) feet in width for one hundred and sixty five (165) feet when the eastern line in order to give sufficient ground for the turning of teams and wagons at the tippie of the coal bank runs north eighteen (18) degrees, east one hundred (100) feet to the property line of land of M C Westover making the distance from the eastern to the western line along the property of M C Westover fifty five (55) feet including a strip fifty five feet in length by twenty five (25) feet in width on land of the said M C Westover, adjoining land of the said David Lloyd, necessary for the turning of wagons and teams at the coal tippie of the said Amos H Westover as shown on the a draft attached as part of the report. The amount of the land occupied of the David Lloyd property is along the adjoining property line and is less then one sixteenth (1/16) part of an acre; and the amount occupied on the adjoining land of M C Westover is less then one thirtieth (1/30) part of an acre. -----

These proceedings; are under the provisions of the Act of Assembly of May 17th 1901 P L page 259, to lay out a private road to a bituminous coal mine with sufficient surface ground on the intervening land for the turning of wagons and teams. The question raised before the viewers at the hearing, that the Act is unconstitutional and that the



Draft Showing location
of private Road laid out for
Amos Westover in Chest township.
Clearfield Co. Pa. July 31st 1919.

By A. G. Kramer
E. O. Billotte
James Spangler

Scale $1\frac{1}{2}" = 100\text{ ft.}$ viewers.

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proceedings can therefore not be sustained, which proposition however under the authorities cited by the learned council does not in the opinion of the viewers sustain the point raised. The authorities referred to refer to other acts of Assembly and refer to tram roads and lateral Railroads which are only for the private individual benefit of the owners thereof and can not be used by any one but the owner thereof and is therefore taking private property for the benefit of a private individual which the supreme court hold cannot be done for the reason that a tram way or a lateral railroad is only for the owner and no benefit to any one else and is therefore unconstitutional and cannot be sustained; but the question has never been raised in reference to the act of 1901 and has therefore never been decided unconstitutional.

It is simply an extension of the common road law of 1836 and the supplements thereto which authorizes the laying out of and construction of private roads which the supreme court has held to be necessary and therefore constitutional

In the case of Waddell Appeal 84, Pa. Rep page 90, the Supreme Court says; The right of the Legislature to authorize the construction of private roads over the land of another, is predicated upon the fact that these roads over the land of another shall be made to connect with a public highway or place of necessary public resort; or with a private road leading to a highway and the public have an implied right or license to use the same.

In 241, Pa Rep page 313 Justice Elkins in delivering the opinion of the Court says: That private roads are subject to be used by the public, in passing to and from land connected with public highways, and as a result the public have a use in the private way and upon this ground alone has this right been sustained. This is settled law in our state and there is no disposition to question the soundness of it; A private road is for the benefit of all parties at large. And not only for the particular individual alone who applies for the same, but all parties have free access to the same.

In the case of the Poland Coal Co case; 58, Sup, Court Rep page 323: Justice Henderson in delivering the opinion of



James W. H. H.
8.13.110 H.
James W. H. H.

A. D. 1919.

WITNESS our hands and seals this first day of August

and we herewith return releases obtained and copy of the notices.

David Lloyd
\$40.00
M. C. Westover
\$10.00

thereof as follows:

the following persons having refused to release the damages to which they respectfully may be entitled by the reason of the location and opening of the said road, we, the undersigned viewers, after having considered the advantages to be derived to them, do assess them damages and make report

when it was not practicable to preserve it within that limit.
The undersigned further report that they endeavored to procure from all the owners of the land over which the said road passes releases in writing of all claims to damages that may arise from opening the same, and that they procured such releases from

excepting
and that a plan or draft of said road showing courses and distances and the properties affected is hereto attached and made a part hereof, said road being at an elevation not exceeding five degrees,

objection and report in favor of said road.
and that the objections are not well founded; therefore overrule the community. The viewers are therefore of opinion that said road is necessary leading from Westover to Ansonville for several parties living in said living close to it which is the only outlet to the aforesaid public road occasion to use the same for a number of years and is now used by parties west, besides said road has been open and used by the public having had there being no other outlet to said coal bank: ~~besides said road has been~~ be compelled to pass over said private road, to get in to said coal bank, therefore have the cost of hauling the same: All these will have occasion or of coal and go there with their own teams and haul their own coal and the community where the farmers having teams of their own can get their supply ad intends to operate said coal bank for the purpose of supplying the inhabitants of Westover and the community with coal; and being in a farming to the coal bank being opened or Amos H. Westover the applicant for the road laid out is two hundred and sixty (260) feet in length, over open ground, of Ansonville in Jordan Township; through a farming community, the road road leading from the Borough of Westover in Chest Township to the village is nevertheless in the nature of a public road; it leads from the public land for that purpose. While this is an application for a private road it the general power of the Commonwealth to establish roads and to condemn it and are open to those who have occasion to use them. They exist under the State, and essential to the enjoyment of those which are strictly public Court says, private roads, are part of the system of public roads, or

1007.5

ORDER

Sept. Session, 1919

By the County
Engineer J. H. H.

Exposition 1889