

Road

DOCKET No. 5

Number	Term	Year
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1	Dec	1920
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Petition for the Appointment of
viewers to view and layout a private
road in Lawrence Twp.

Versus

X

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD, PA.

in the matter of)
private road in)
Lawrence Township.)

Road Docket No. I)
December Sessions)
1920)

EXCEPTIONS TO REPORT.

Joseph McGoe and A. M. Liveright, trustees, by their Attorneys, Smith & Smith, hereby file the following exceptions to the report of the Viewers in the above named case:

- I. That the Act of Assembly of May 17, 1901, P. L. 260, under which this proceeding is had is unconstitutional in that it seeks to authorize the taking of private property for a private use.
- II. Said Act of Assembly cannot be given such effect as to authorize the taking of private property for private use.
- III. The taking of private property under private road proceedings can be sustained only where a public use is made to appear; and no necessity for public use of the proposed road herein is shown.
- IV. The Petitioners herein have no right of eminent domain under which the laying out of this road may be sustained.
- V. The Viewers admitted testimony to show a proposed or intended use of the Graham lands for farming purposes, to show one of the uses for the proposed road; that such testimony was improper in this proceeding and cannot properly be used to sustain the finding of the Viewers herein.
- VI. That the course of said road, as laid out by the viewers inflicts unnecessary injury on the premises of the McGoey estate in that it fails to use a road way already constructed on said estate though being a part of its course and lays out instead a new course through timber lands and thereby unnecessarily destroying growing timber & cutting the said McGoey estate lands; that such departure from the road way already constructed is unnecessary and at a very slight advantage in distance and grade.
- VII. That the amount of damage allowed to the McGoey estate and to Clark Bros. et al., for whom A. M. Liveright is trustee is entirely inadequate and insufficient to compensate them for the damage done to their respective properties by the laying out of said road.

ACADEMIC STAFF

VIII. That there is no authority in law for the appropriation of the already existing private road over the lands of the McGoeey estate and A. M. Liveright, trustee, for the purposes set forth in this ~~preceding~~ proceeding.

Respectfully submitted,

Smith & Smith

IN THE COURT OF QUARTER
SESSIONS OF CLEARFIELD
COUNTY, PENNSYLVANIA.

Road Docket No. 1, Dec. 33
1920

In the matter of private
road in Lawrence Township.

EXCEPTIONS TO REPORT.

FILED

JAN 6 1921

GEO. W. REEDTON

SMITH & SMITH

ATTORNEYS-AT-LAW
CLEARFIELD, PENNA

THE REPUBLICAN, CLEARFIELD, PA.

In the Court of Quarter Sessions of Clearfield County, Penna.

In "e. Private Road in Lawrence) No. 1 December Term, 1920.

Township.

)

Upon a petition presented by Howard Wrigley and others Viewers were appointed on November 2nd, 1920, who filed their Report on December 6th, 1920, reporting that there was a necessity for a private road, which they proceeded to lay out and state in detail in said report; and from the proceeding it would appear that the said private road was upon lands of Clark Bros., A. M. Liveright, Trustee, and Ross A. Lambert and others, Joseph McGoeey and others, and the Amor C. Graham Estate and Bernice Graham; one terminus is on the public road from Clearfield to Litz' Bridge and the other upon lands of Amor C. Graham Estate and Bernice Graham at a coal tipple situate upon said lands. The petition is by the Amor C. Graham Estate and Bernice Graham, and Howard Wrigley and John Goodrow, who appear from the petition to be operating a coal mine on the lands of the Graham Estate and Bernice Graham. Joseph McGoeey and A. M. Liveright, Trustees, filed exceptions, the first, second, third and fourth practically denying the constitutionality of the laws authorizing the laying out of such a road, the fifth going to the admission of testimony before the Viewers, the sixth that the location inflicted unnecessary injury, the seventh that the damages was inadequate, and the eighth denying the power to lay this private road upon, in part, and already existing private road.

The last exception does not seem to have much weight. Rearick's Private Road, 7 Superior Court 548. Nor can we consider the fifth exception as to the admission of improper testimony before the Viewers. The location of the road and the amount of damages is primarily for the Viewers and therefore we do not

regard the sixth and seventh exceptions as being now effective in
in the present proceeding.

This leaves for consideration the question raised by the first four exceptions and which practically amount to a denial of the power of the Legislature to authorize the creation of such a road, averring that it is purely the taking of private property for private use. Standing only upon the facts we would not regard this case as presenting any serious difficulty, as this is a petition of the owners of certain lands for a private road from their lands to a highway and therefore falls within the Act of June 13th, 1836 and its amendments, particularly the Act of April 4, 1901, P. L. 65. The difficulty which arises exists because the petition concludes: "They, therefore, pray your Honorable Court to appoint viewers to view and lay out said private road as provided by the Act of Assembly of May 17, 1901, P. L. 259, and will ever pray." No step has been taken in the proceeding which would not be the appropriate step required in a petition drawn under the amending Act of April 4, 1901, and, as we look at it, the portion of the prayer which calls for a proceeding under the Act of May 17, 1901, may well be treated as pure surplusage. Certainly the road here laid out needs no support from the later Act. It is purely a road upon the surface, it does not provide for turning ground upon the intervening land or lands, and is for all practical purposes purely a proceeding as an ordinary private road.

The constitutionality of the private road laws was settled in Pocopson Road, 16 Pa. St. 15, and by many subsequent decisions, and is not disputed, and, as stated, upon the facts presented the law recognizes the right to lay out such a road across the lands of the exceptants as was here done.

Even if the effect of the petition is to restrict con-

sideration here to the Act of May 17, 1901, the declaration of the Legislature is plain and positive and ought not to be lightly disregarded by the lower Court. It is in keeping with the general policy of the law of Pennsylvania ^{and} with the needs of opportunity for the development of its mineral resources, and there exists no good reason that we can see why the owner of minerals has not as much right in fact to have a private road reaching that real estate as he would have to reach the surface of his land, using that term in the ordinary sense, or for the purpose of the removal of timber. We are unable to see any good distinction, either in reason or in the law, between the road as here laid out and the various roads which have been sustained by the Court, and in the absence of any ruling by an appellate Court denying the constitutionality of the Act of May 17, 1901, and we may add that no persuasive opinion has been presented from any Court upon that subject, we decline to treat a law of such importance as being unconstitutional.

The various exceptions are overruled, exception noted and bill sealed to the exceptants, and the road is directed to be marked confirmed n. si.

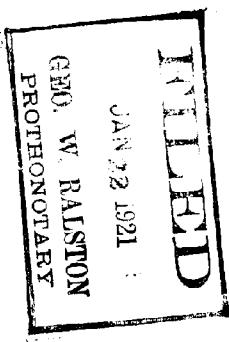
By the Court,

Singleton Bell
P. J.

No. # December Sessions, 1920.

In Re. Private Road in Lawrence
Township.

OPINION and DECREE.



KNOW ALL MEN BY THESE PRESENTS THAT WE Howard Wrigley, John Goodrow ^{Nannie S} Graham and Bernice Graham all of Clearfield County Pa are held and firmly bound unto County Commissioner of Clearfield County in the sum of two hundred (\$200.00) Dollars, lawful money of the United States of America to be paid to the said County Commissioners their certain Attorney or assigns; to which payment well and truly to be made ^{we} bind ourselves, our heirs, executors, administrators, and every of them jointly and severly firmly by these presents.

SEALED WITH OUR SEALS AND DATED THE 18th day of October A. D. one thousand nine hundred and twenty (1920).

Whereas the heirs of the said Amor C Graham and Bernice Graham and Howard Wrigley and John Goodrow, having filed a petition in the Court of Quarter Sessions of Clearfield County Pennsylvania for the appointment of viewers to view and lay out a private road, leading from a point in the public road leading from Clearfield to Litz's Bridge, over land of Clark Bros, A M Liveright and Ross Lambert and over land of the McGoeey estate to the boundry line of the land of ~~mm~~ the heirs of the Amor C Graham Estate and Bernice Graham in Lawrence Township in the County aforesaid.

NOW the condition of this obligation is such; that if the above bounden Howard Wrigley John Goodrow ^{Nannie S} Graham and Bernice Graham or either of them shall pay or cause to be paid all the costs of the proceeding in said case that the county become liable for including the cost of the viewers; then this obligation shall become null and void; otherwise shall remain in full force and virtue.

WITNESS OUR HANDS AND SEALS THE DAY AND YEAR ABOVE WRITTEN

Sealed and delivered #
in the presence of #
#

R G Kraman

Howard Wrigley (SEAL)
John Goodrow (SEAL)
Nannie S Graham (SEAL)
Bernice Graham (SEAL)

NO, DECEMBER TERM 1920

R O N D:-
In Re Application for a pri-
vate Road in Lawrence Township

New Mex. D. 1920,
Bend of the road
Private Court
Singleholt Bell
N.Y.

Branner & Branner.

In the Court of Quarter Sessions of Clearfield County, Pennsylvania.

In Re.) No. 1 December Sessions, 1920.
:
Private Road in Lawrence)
:
Township.)

Now, December 8th, 1920, it is ordered that this case
be placed upon the Argument List and notice given to the respec-
tive Counsel.

By the Court,

Singleton Bell

P. J.

TO THE HONORABLE SINGLETON BELL PRESIDENT JUDGE OF THE
COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY PENNSYLVANIA:

The undersigned petitioners: Respectfully Represent.
That they labor under great inconvenience for want of a private
road, to lead from a point in the public road, leading from
Clearfield to Litz Bridge about eight hundred (800) feet below or
south east of the barn, on the farm of what was formily James
Wrigley now owned by Clark Brothers, A M Liveright Ross Lambert
and others in Lawrence Township ~~in~~ Clearfield County Pa:

Thence over the property of the said Clark Bros, A M
Liveright and Ross Lambert about seven hundred (700) feet more or
less to land of the McGoe Estate. Thence over land of the
McGoey Estate about fifteen hundred (1500) feet more or less to
line of land of the Amor C Graham Estate and Burnice Graham at a
point about fifty feet south east of the spring on the land of
the said McGoe Estate to a bituminus coal operation being opened
by Howard Wrigley and John Goodrow on the land of the said Amor
C Graham Estate and Burnice Graham in Lawrence Township in the
County aforesaid. To enable the owners of the said land and the
operators of said coal to get their coal to market there being no
other outlet or way out to the Township road to get said coal to
market.

They there~~for~~ pray your Honorable Court to appoint view-
ers to view and lay out said private road as provided by the Act
of Assembly of May the 17th 1901 P. L. 259 and will ever pray.

Howard Wrigley
John Goodrow
Amor C Graham
Adrian C Graham
Burnice Graham

Cecil C Graham

William Wayne Graham

Clearfield County, SS.

Personally appeared before me Geo Ralston,
Clerk of Quarter Session and for said county Howard Wrigley,
and John Goodnow, who being by me duly sworn according to
law deposes and say that the facts set forth in the foregoing
petition are true and correct to the best of his knowledge and
belief.

Sworn and subscribed to before
me this the 18 day of October
A. D. 1920.

Geo W Ralston
Prothonotary

Howard Wrigley
John ^{his} Goodnow
mark

Yo, / JUGLEIER 2000.

PETITION FOR THE APPOINTMENT
OF VICTIMS TO VICTIM AND LAW
OF A PRIVATE ROAD IN LAUREL
TOWNSHIP CLEARFIELD CO, PA.

Nov 20, 1920 French
Helen E. D. Bellotte
et al. Michaels an attorney
brought to me from
the Bank and made
report to the Court at 8:30
1920. 1321 the Court
Angela D. Bellotte

Nov 1, 1920

KRAMER & KRAMER
ATTORNEYS AT LAW
CLEARFIELD, PENNSYLVANIA

236 THE REPUBLICAN, CLEARFIELD, PA.
By attorney,

No. 1 Dec. Sessions, 1920

ORDER

To view & lay out a road for private use in the township of Larimore, Clearfield County.

Note. An increase 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 the 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.

DAY. MILES AM'T.

Frank Acidm	2	62	16.0
E. J. Bellotte	4	78	33.90
J. J. Michaels	30	20	

Dec. Session, 1920,
read and confirmed by Si.
Road to be opened 33 feet
wide, except where there is
side hill cutting or embank-
ment and bridging, there to
be 16 feet wide.

January 22, 1921, confirmed and
by order of court.

By the Clerk
Feb 14, 1921
Approved absolutely
by the town
M. G. M. B. S. B.

Filed
Fees \$1.25 paid by -

U. S. DEPT.
CITY OF BISMARCK
STATE OF NORTH DAKOTA

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

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. 1911.

SEAL
SEAL
SEAL
SEAL

By order of the Court.

Mr. or Mrs. Robert Cher.

In said County, setting forth that—

judges of the same court: Upon the publication of sundry inhabitants of the township of Laramie

At a Court of Quarter Sessions of the Peace of the County of Clerkefield, held at Clerkefield, Pa., in and for said County, on the 2nd day of No. 2003, in the year one thousand nine hundred and forty.

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 Board of Supervisors of the Township of other parties in interest notices thereof were posted along the route of the proposed road, that the said view would be held on the 23rd day of November, A. D. 1920, and the hearing to be held in the Arbitration room, at the Court House, in Clearfield, Pa., on the 25th day of November, 1920, at 1:30 o'clock P. M. That all the viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view Howard Wrigley, John Goodrow for the petitioners and Wallace Smith Esq., Atty for protestants, Ross Lambert and Joseph McGahey property owners protesting

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 25th day of November A. D. 1920, when the following appearances were noted: Clarence R. Kramer Atty for the petitioners, Wallace Smith, Esq., Atty for protestants, Bernice Graim, Howard Wrigley, John Goodrow, Allen Wrigley, Emmett Lease, Albert Goss Joseph McGahey.

After the view and hearing above mentioned, the undersigned, the majority of the said viewers, do agree that there is occasion for a road as desired by the petitioner, and that the same is necessary 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 at a point on the Public Road leading from Clearfield to Litz about 500 feet East of the bridge running by the Wrigley property, thence Bridge in Lawrence Township, Clearfield County, Pennsylvania; thence South 28° East, One Hundred Sixty seven (167) feet; thence North 75° East, One Hundred Eighty Three (183) feet; thence South 59° East, Forty Three (43) feet; thence South 42° East, Ninety (90) feet; thence South 40° East, Two Hundred (200) feet; thence South 44° 30' East, One Hundred (100) feet; thence South 40° East Two Hundred (200) feet; thence South 29° 30' East, Two Hundred (200) feet; thence South 27° 30' East, Two Hundred (200) feet; thence South 16° 30' East, Two Hundred (200) feet; thence South 5° 45' East, Two Hundred (200) feet; thence South 8° East, One Hundred Fifty Four (154) feet; thence South 2° East One Hundred Thirty Eight (138) feet to turn at Coal Mine. The viewers recommend that the road be made sixteen (16) feet wide except a section One Hundred Eighty Three (183) feet long on the lands of Clark and others where said proposed road crosses a ravine by what is known as the Wrigley Bridge, where we are of the opinion it should be Twenty (20) feet wide.

To Clark Bros, A, M, Liveright, Ross Lambert and others

You are hereby notified, that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County, to view and lay out a private road, leading from a point in the public road, leading from Clearfield to Litz Bridge, about 800 feet below or south east of the barn on what used to be the property of James Wrigley, now owned by the Clark Brothers, A, M, Liveright, Ross Lambert and others. Thence over the land of the said Clark Brothers A, M, Liveright and Ross Lambert and others, and land of McGoeey estate and of Berenice Graham and the heirs of the Amor C Graham Estate, in Lawrence Township; to the Coal Bank of Howard Wrigley and John Goodrow, on land of the said Berenice Graham and the heirs of the said Amor C Graham Estate, which said road to be laid out is about 2200 feet in length, in Lawrence Township in the County aforesaid, will meet at the Barn on the farm of the said Clark Brothers, A, M, Liveright and Ross Lambert; in Lawrence Township, on Tuesday the 23, day of November A. D. 1920 at nine (9) o'clock A. M. to attend to the duty of their appointment, of which time and place aforesaid all parties interested in the said road will please take notice.

And that the public hearing as required by the Act of Assembly and the Rules of Court, to be held by the viewers, in order to give all parties concerned, either for or against the laying out and granting of said private road 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 Tuesday the 23, day of November A, D, 1920 at one thirty (1.30) o'clock P. M. at which time and place all parties interested in said road either in favor of or against the same may attend and be heard.

Frank Hutton
E. D. Billotte
J. F. Michaels
VIEWERS.

Now November 13th 1920 served this notice on A. M. Liveright and Ross Lambert personally by handing to each of the a true and correct copy of same

• 294714

TO T, R, WEIMER, JESSE, E, DALE, AND, M, L. FARRELL.
COUNTY COMMISSIONER OF CLEARFIELD COUNTY PA.

Notice is hereby given; that the undersigned Viewers, appointed by the Court of Quarter Sessions of Clearfield County, Pennsylvania to view and lay out a private Road leading from a point in the public road, leading from Clearfield to Litz Bridg, about 800 feet below or south east of the barn on what used to be the property of James Wrigley, now owned by the Clark Brothers, A, M, Liveright, Ross Lambert and others. Thence over the land of the said Clark Brothers A, M, Liveright and Ross Lambert and others and land of McGahey estate and of Berenice Graham and the heirs of the Amor C Graham Estate, in Lawrence Township to the Coal Bank of Howard Wrigley and John Goodrow, on land of the said Berenice Graham and the heirs of the said Amor C Graham, Estate. Which said road to be laid out is about 2200 feet in length, in Lawrence Township in the County aforesaid, will meet at the Barn on the farm of the said Clark Bros, A, M, Liveright and Ross Lambert; in Lawrence Township, on Tuesday the 23, day of November A, D. 1920 at nine (9) o'clock A. M. to attend to the duty of their appointment, of which time and place aforesaid all parties interested will please take notice.

And that the public hearing as required by the Act of Assembly and the Rules of Court to be held by the viewers, in order to give all parties concerned, either for or against the granting and laying out of said private road 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 Tuesday the 23, day of November A, D. 1920 at one thirty (1.30) o'clock P. M. at which time and place all parties interested in said road either for or against the same may appear and be heard.

Frank Hutton
E. D. Billotte
J. S. Michaels
Viewers

COMMISSIONERS TO OVERSEEED COMM. BY.

LO L' B' AINEE' TESSE' E' DVE' AND' R' R' EVBHEFF'.

To *Joseph* McGoey, manager of the

McGoey Estate

You are hereby notified that the undersigned viewers appointed by the Court of Quarter Sessions of Clearfield County Pennsylvania to view and lay out a private road, leading from a point in the public road, leading from Clearfield to Litz Bridge, about 800 feet below or south east of the barn on what used to be the property of James Wrigley, now owned by the Clark Brothers, A, M, Liveright, Ross Lambert and others. Thence over the land of the said Clark Bros, A, M, Liveright, Ross Lambert and others, and land of *McGoey* estate and of Berenice Graham and the heirs of the Amor C Graham Estate, in Lawrence Township, to the Coal Bank of Howard Wrigley and John Goodrow, on land of the said Berenice Graham and the heirs of the said Amor C Graham Estate;

Which said road to be laid out is about 2200 feet in length, in Lawrence Township in the County aforesaid, will meet at the Barn on the farm of the said Clark Brothers, A, M, Liveright and Ross Lambert; in Lawrence Township, on Tuesday the 23, day of November A. D. 1920 at nine (9) o'clock A. M. to attend to the duty of their appointment, of which time and place aforesaid all parties interested will please take notice.

And that the public hearing as required by the Act of Assembly and the Rules of Court to be held by the viewers, in order to give all parties concerned, either for or against the laying out and granting of said private road 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 Tuesday the 23, day of November A. D. 1920 at one thirty (1-30) o'clock P. M. at which time and place all parties interested in said road, either for or against the same may appear and be heard.

Frank Hutton

John Bellotte

J. J. Michaels

VIEWERS.

Now November 13th 1920 served this notice on Joseph McGahey
AIEMEBS personally by handing to him a true and correct copy of same.

~~correct copy of same.~~
~~Howard Aspinwall~~

to fit a car to be interrupted as quickly as possible and that the
car is to be taken by the first available bus.

the first to return, would be the only
one whose statements are the first to return.

RELEASE OF DAMAGES.

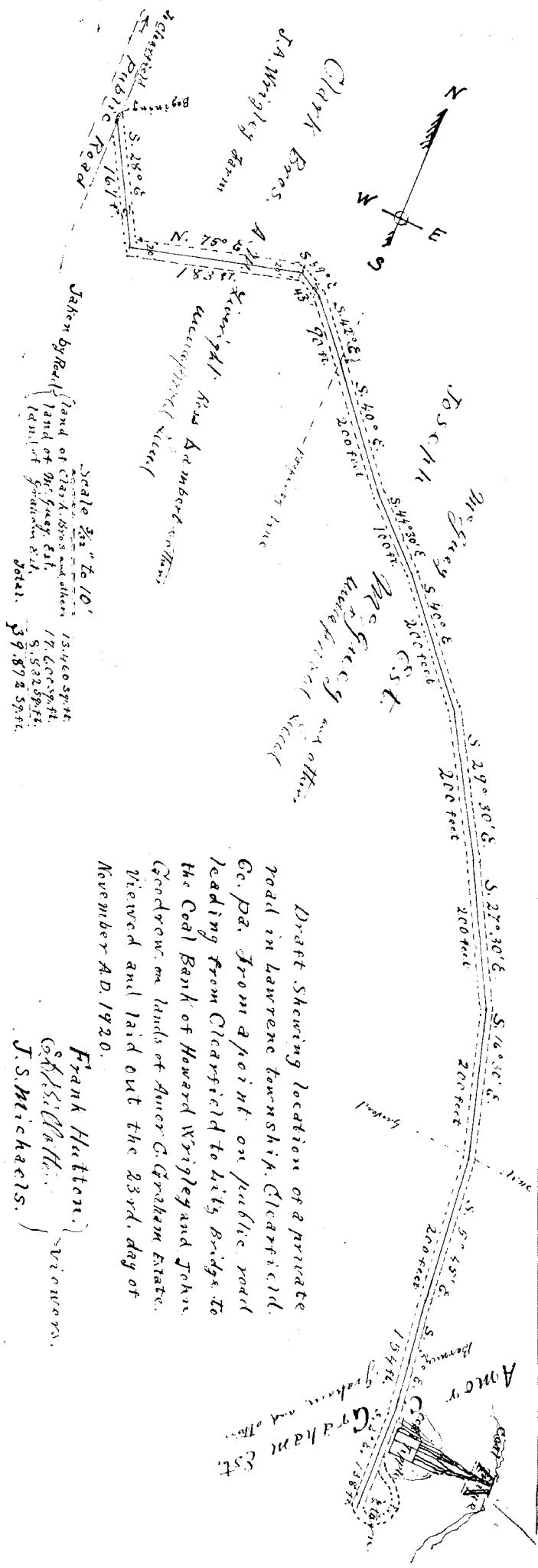
KNOW ALL MEN BY THESE PRESENTS: That we the undersigned owners of lands over which the private road, as laid out by the viewers on the annexed order attached; That for and in consideration, of the benefit derived by the construction of said road to the aforesaid Coal Bank, have remised, released and forever quit-claimed, and do hereby release and forever quit-claim, all damages that may arise to us respectively, by reason of the laying out constructing and opening of said private road; and that we, 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 laying out or construction of said road.

Witness our hands and seals, this the 23d, day of November, A.D. 1920.

Beverice Graham (SEAL)

Harrison Graham (SEAL)

Adrianul D. Graham (SEAL)



Draft showing location of a private road in Lawrence township, Clearfield, Pa. from a point on public road leading from Clearfield to Lutz Bridge to the Coal Bank of Howard Wrigley and John Leander W. on lands of Amos G. Graham Estate. Viewed and laid out the 23rd. day of November A.D. 1920.

Frank Hatton, }
G. H. Miller, }
J. S. Michaels. } vicars.