

DOCKET No. 6

Number	Term	Year
8	Sept	1924

Private road in Bigler Twp

Versus

X

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

In Re. Private Road in) No. 8 September Sessions, 1924.
Bigler Township.)
: Exceptions to Viewers Report.

Upon petition being presented Viewers were appointed to view and report on petition for private road. Exceptions were filed to the confirmation of the Viewers Report, the exceptants assigning eight reasons why the report should not be confirmed. The third and fourth reasons assigned were abandoned. There is no merit in the second, fifth, sixth and eighth assignments, and there would be no useful purpose in discussing the same. That leaves for consideration the first and seventh exceptions.

The first exception raises a question that the road awarded is not described in the Report. An examination of the Report discloses that this contention is correct, although there is attached to and made a part of the Report a print containing an actual survey of the road as laid out, giving metes and bounds and directions fully. This meets the requirements of the law as to sufficient identification. However, it would be good practice for the Reports of Viewers to have in addition to the print a description of the proposed road.

The seventh exception raises a question that the View and Report not having been made to the Term to which the appointment was made and the powers of the Viewers not enlarged, that the Report should be set aside. There is no force in this contention. If all other matters were regular, there is nothing to prevent the Court of its own motion in correcting this harmless oversight.

This disposes of all the exceptions raised and if this was all this case presented the Report would be confirmed. However, an examination of the records and Report of Viewers discloses that the land over which the proposed private road was to be laid out

is subject to a life estate with remainder in fee; that there was no notice given to the holder of the fee or any one legally authorized to represent them of this proceedings to view, etc. The Viewers apparently felt that if the duration of the rights to a private road were limited to the time when the life estate ceased to exist, that notice to the remainderman would not be required, possibly on the theory that the remainderman would not be affected. It is apparent that such a conclusion is not sustainable. The Act of Assembly provides that notice must be given to all parties in interest in the property that is to be condemned, notice to all the parties whose rights in the property may be affected, and it would be hard to conceive who would have a greater interest in a property or whose rights could be more seriously affected by condemnation of land than the holders of the fee. A prerequisite to jurisdiction is notice. Having failed to give notice to the owners of the fee the Viewers could not act. Therefore, this View must be set aside and dismissed.

Now, December 19th, 1925, Viewers Report is dismissed at the costs of the petitioners, the Lena Coal Company. Exceptions noted and bill sealed to the petitioners.

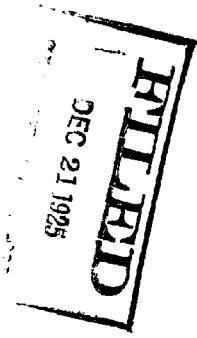
By the Court,


A. R. Chase
P. J.

No. 3 September Sessions, 1924.

In Re. Private Road in Bigler
Township.

OPINION and DECREE.



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

In re: Petition for :
Private Road in Bigler :
Township. :
:

PETITION.

To the Honorable A.R. Chase, President Judge of said Court.

The petition of the Lena Coal Company respectfully
represents:-

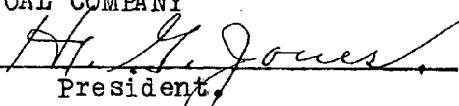
That it labors under an inconvenience for want of a private road leading from the public road connecting the village of Smoke Run and the village of Beccaria, in Bigler Township, Clearfield County, Pennsylvania, at a point near the Smoke Run Station of the Pennsylvania Railroad Company, and running thence a distance of about five hundred feet along a roadway now existing and across the land of Otto Ball to a point where said roadway now existing enters the land of the John Beyer Estate, the coal under which is under lease to the petitioner; all of said road hereby petitioned for being in the Township of Bigler, Clearfield County, Pennsylvania.

That the said roadway now existing is not a public road nor is the same a private road which the petitioner has any legal right to use, but that the use of said roadway has been permitted since the year 1916 by the owners of said Otto Ball property until within the past three months; that said roadway connects with a roadway upon said John Beyer Estate property which leads to the tipple and mine of the petitioner, and also to certain houses owned by the petitioner and in which three different families live; that by reason of the closing of said roadway your petitioner and its tenants have no outlet from their property to said public road and railroad station.

YOUR PETITIONER THEREFORE PRAYS THE COURT to appoint proper persons to view and lay out the road above prayed for according to law.


R. J. Farmer
Secretary and Treasurer

LENA COAL COMPANY

By 
H. G. Jones
President

STATE OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

R.H. Sommerville, Secretary and Treasurer of the Lena Coal Company, being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true and correct, and that he is duly authorized by the Board of Directors of said Corporation to file this Petition and take this affidavit.

Sworn and subscribed before me

this 8 day of August, A.D. 1924.

H. D. Dukewicz

Notary Public

My Commission Expires August 1926

O R D E R.

AND NOW August _____, 1924, upon presentation of the above petition and due consideration thereof, the Court hereby appoints _____, _____, and _____ viewers, to view the ground proposed for the said private road prayed for, and if they agree that there is occasion for such road, to proceed to lay out the same agreeably to the desire of the petitioner, having respect to the best ground for a road and the shortest distance, and in such a manner as to do the least injury to private property; said viewers to make report of their proceedings to the next Court of Quarter Sessions and to furnish with said report a plot or draft of said road and the courses and distances, together with the improvements through which it may pass; and to assess the damages to any person or persons whose property may be taken or injured by the laying out of said road.

By the Court,

President Judge.

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

Sept 20 1924

In re: Petition for Private
Road in Bigler Township.

PETITION.

On August 15th 1924

J. L. Edwards Esq.,
Harry Rose, and
James Spangler are
affidated to witness
to this and sayeth

Before me

H. L. Williams
Geo. W. L. Tuck
Clerk
CLEARFIELD TOWNSHIP

SMITH & SMITH

ATTORNEYS AT LAW
CLEARFIELD, PENNSYLVANIA

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

In Re Private Road) No. 8 September Sessions, 1924.
In Bigler Township)

EXCEPTANT'S BRIEF

FIRST, That a report of viewers which does not describe the termini of a road will be set aside upon exception taken.

"Bean's road 35 Penn. 280
Road in lower Merion, 58 Pa. 66.
Ward Vs. Letzkus, 152 Pa. 319.

SECOND, Where the petition for the view designates intermediate points, the report of the viewers will be set aside upon exception.

112 Pa. 183, 110 Pa. 544
Road in lower Merion, Supra.
McConnell's Mill Road, 32 Pa. 285.

THIRD, The remote end of the private road awarded must end in another Private Road or in a Public Highway.

Act 1901, P. L. 65.
Sandy Lick Creek Road, 51 Pa. 94.
Killbuck Private Road in 77 Pa. 39

FOURTH, The viewers have no power to limit their grant of a private road to the duration of a life estate. Their province is to grant the prayer of the petition or to refuse it. The termination of the petitioners rights in a private road is effected by a petition and view to vacate.

Act of June 13, 1836, P. L. 551, Sect. 18, cited in Pepper Lewis Digest of St., Col. 6576.

*Statutes in derogation of individual rights
must be strictly construed* 20 Corpus Juris 877
245 Pa. 338 348
36 2 1148

FIFTH, The powers of the viewers continue only until the term of Court following their appointment. A continuance not granted at or during the term to which the report is returnable is without validity.

Road in Manheim Township, 80 Superior Ct. 581

No order appears in the records of this case continuing the powers of the viewers.

Respectfully submitted.



Attorneys for the Exceptant.

In The Court of Quarter
Sessions of Clearfield Co.
Pa. No. 8 Sept. Sessions,
1924.

IN RE PRIVATE ROAD
IN BIGLER TOWNSHIP

EXCEPTANT'S BRIEF

KRAMER & KRAMER
ATTORNEYS AT LAW
CLEARFIELD, PA.

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

In Re Private Road)
in Bigler Township.) No. 8 September Sessions, 1924.

EXCEPTIONS TO VIEWERS' REPORT.

Now, August 18th, 1925, exceptions are filed to the above report of the viewers, as follows:

FIRST, That the private road awarded is not described in the report.

SECOND, That the owner of the land is not named in the report.

ab THIRD, That the remote end of the private road is not in a public highway.

ab FOURTH, That neither terminus of the private road is at a dwelling house, plantation, coal mine or other legal destination of a private road.

FIFTH, That the private road awarded runs along an existing roadway.

SIXTH, That the petition sets forth more than the two termini of the road prayed for, attempting to designate intermediate points also.

Seventh, That the powers of the viewers had expired at the

time their report was filed.

EIGHTH, That the viewers have no power to limit their grant of a private road to the duration of a life estate, and such a limitation renders the report null.

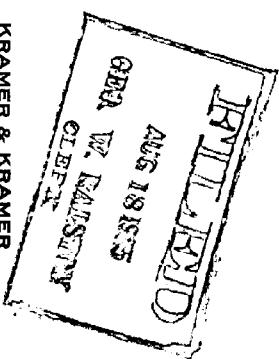
John B. McGrath

Clarence R. Warner
- Attorneys for Otto Ball.

In the Court of Quarter Sessions
of Clearfield County, Pa.
No. 8 Jept. Term, 1924.

in Re Private Road in
Bigler Township.

Exceptions to report of
Viewers.



KRAMER & KRAMER
ATTORNEYS AT LAW
CLEARFIELD, PA.

That the said roadway now existing is not a public road nor is the same a private road which the petitioner has any legal right to use, but that the use of said roadway has been permitted since the year 1916 by the owners of said Otto Ball property until within the past three months that said roadway connects with a roadway upon said John Beyer Estate that said roadway connects with a roadway upon said John Beyer Estate property which leads to the tipple and mine of the petitioner, and also to certain houses owned by the petitioner and in which three different families live; that by reason of the closing of said roadway your petitioner and its tenants have no outlet from their property to said public road and railroad station.

RETURN OF VIEWERS

13 M 1925

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, be 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~~ Otto Ball

Bigler and that three notices thereof were posted along the route of the proposed road, that the said view would be held on the 31st day of December

A. D. 1924, and the hearing to be held in the Arbitration Room, at the Court House, in Clearfield, Pa., on the 2nd day of January, 1925, at two o'clock P. M. That

three viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view John Miller, Supt. of

Lena Coal Co., Otto Ball, A. L. Ball and J. A. Copenhaver

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 2nd day of January A. D. 1925, when the following appearances were noted: W. Wallace Smith, Esq., Attorney, James Gray, Pres. and John Miller, Supt., of Lena Coal Co., petitioner, with Geo. A. Goupt, Aaron Imler, Frank Belin, Mike Vancos, witnesses;

C. R. Kramer, Esq., with Otto Ball, A. L. Ball and J. A. Copenhaver; All sworn, examined and cross-examined by counsel and your Board.

After the view and hearing above mentioned, the undersigned, the majority of the said viewers, do agree that there is no occasion for a road as desired by the petitioner, and that the same is not 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 necessary for private use the following described road, to wit beginning. We further find that the road herein described and now existing is not a public road nor is the same a private road which the petitioner has any legal right to use, but that the use thereof has been permitted since the year 1916 by the owners thereof until the summer of 1924; that the said road connects with the road upon the Beyer Estate which leads to the mining operation of the petitioner, and also to certain dwelling houses in which three families live; that McGully, Broberg & Imler are the owners of a coal mining operation over which road their output was hauled by wagon or truck; and that it is the easily accessible outlet of the Mike Vancos farm; that the present road was constructed and built by the late C. C. Ball, deceased, and sons. The question of the title to said premises and the interest of Otto Ball the rein and thereto having been raised, hearing continued until January 16th, 1925 at 10:30 A. M., by agreement of parties in interest.

At the adjourned hearing, January 16th, 1925, there appeared W. Wallace Smith, Esq., Attorney for petition, J. B. McGrath, Esq., Attorney for Otto Ball, and H. B. Hartwick, Esq., Attorney for the Executor and Trustee of the C. C. Ball Estate.

Otto Ball recalled, examined and cross-examined, and claims damages to the amount of \$1750.00 as follows:

Cost of building present road, \$1500.00

Removing Fence 200.00

Land Taken, value, 50.00 \$1750.00

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 15th day of August in the year of our Lord one thousand nine hundred twenty four

LENA COAL COMPANY

Judge of the same Court: Upon the petition of sundry in-
habitants of the Township of Bigler

in said County, setting forth that it labors under an incon-
venience for want of a private road leading from the public road connecting the
village of Smoke Run and the village of Beccaria, in Bigler Twp. at a point near
the Smoke Run Station of the Pennsylvania Railroad Company, and running thence a
distance of about five hundred feet along a roadway now existing and across the
land of Otto Ball to a point where said roadway now existing enters the land of
the John Beyer Estate, the coal under which is under lease to the petitioner;
all of said road hereby petitioned for being in the Twp of Bigler.

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 JOHN SCOLLINS, Esq., Harry Reese and James 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 judgement, 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.

Ges W. Ralston, Clerk.

TO: Otto Ball, of Bigler Township, Clearfield County,
Pennsylvania:

You are hereby notified that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County, Pennsylvania, in re: No. 8, September Sessions, 1924, to view a Road for private use leading from the public road connecting the Village of Smoke Run and the Village of Beccaria in Bigler Township at a point near the Smoke Run Station of the Pennsylvania Railroad Company and running thence a distance of about 500 feet along a roadway now existing and across the land of Otto Ball to a point where the said roadway now existing enters the land of the John Beyer Estate, in Bigler Township, in the County aforesaid, will meet at the Station of the Pennsylvania Railroad Company in Smoke Run in said Township of Bigler aforesaid on Wednesday, the 31st day of December, A.D. 1924 at two (2) o'clock P.M. to attend to the duties assigned them; all parties interested will take notice.

And that the public hearing as required by Act of Assembly and Rules of Court to be held by the viewers before the filing of their report in Court in order to give all parties interested in the said road a chance to be heard will be held in the Arbitration Room in the Court House in Clearfield on Friday, the 2nd day of January, A.D. 1925, at two (2) o'clock P.M., at which time and place all parties interested may attend and be heard.

On the 22 day of December, 1924, service of the above notice is
accepted for the owner of the premises.

W. WALLACE SMITH
ATTORNEY-AT-LAW
CLEARFIELD, PENN'A.

December 12, 1924.

John Scollins, Esq.
Houtzdale, Pa.

Dear Mr. Scollins: -

This will acknowledge receipt and acceptance of service of the notice of the View to be held for the road on the land of Otto Ball on December 31 and the hearing on January 2. This acceptance by me is on behalf of the petitioners. I presume you will see that the service is properly made and accepted upon Otto Ball.

Very truly yours,

W. Wallace Smith

WWS:AW

LOUIS BEYER
LEASED TO
LENA COAL CO

C. G. BALL ESTATE.

Digler
PRIVATE ROAD IN ~~DECARTA T.W.P.~~
CLEARFIELD COUNTY PA.
VIEWED AND LAID OUT
DECEMBER 31-1924 BY

JOHN SCOLLINS ESQ
H. A. REESE
J. W. SPANGLE

SCALE 1" = 200'

PROPERTY OF
P.R.R. CO.
PUBLIC
ROAD

SMOKE RUN
STATION

BEGINNING

N 15° 00' W 959'

N 12° 15' W 300'

R.R. RIGHT OF WAY
MOSHANON BRANCH OFF P.R.R.

ENDING

and reservation of the right to participate in the use of said road without cost or expense to himself for the maintenance thereof; by agreement of parties in interest, hearing continued until June 29, 1925.

Now, June 29th, 1925, at the adjourned hearing, W. Wallace Smith, Esq., Atty for petitioner, and C. R. Kramer, Esq., Atty for Otto Ball, appear. Petitioner asks that it be granted an exclusive private road for the duration of the life Estate of Otto Ball.

Whereupon, after viewing the premises and conditions and hearing the evidence, your Board unanimously find, agree and return that the prayer of the petitioner be granted; that the damages as claimed are excessive; that said road be twenty feet in width, and that petitioner remove the fence to conform with the line thereof at its own expense.

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, excepting _____

when it was not practical 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 _____

the following persons having refused to release the damages to which they respectfully may be entitled by 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 thereof as follows: To Otto Ball, life tenant, two hundred and fifty (\$250.00) Dollars.

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

WITNESS our hands and seals this 30th day of June

A. D. 1925.

