

DOCKET No. 6

Number	Term	Year
6	May	1926

Petition to vacate road in _____

Brady Twp _____

Versus

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X

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY.

Of May Term, 1926 :
No. 6 : Brief on behalf of Brady Township.
In Re Vacation of Public :
Road in Brady Township. :
.....

Counsel for Brady Township contends that the Exceptions filed in this case are not in proper form and ought to be dismissed.

The exceptions are endorsed upon the Report of the Viewers; - a form not sanctioned by the practice which has always obtained in this court.

The established practice has always been for the Exceptant to either sign the exceptions, or in case the exceptions be signed by counsel, then for the exceptant to make the affidavit to the exceptions. In this case the name of the exceptant is not affixed to the exceptions nor has he made the usual affidavit.

The Exceptions, three in number, complain, first, that the road in question is shown by the record to be located in two different townships of the county, Brady Township and Bell Township, but that the petitioners seek only the vacation of that part of the road which is in Brady Township. Admitting this to be true, wherein is the action objectionable?

This road is shown to be a public road, layed out by view, but opened only in part. Prior to the Act of Assembly of May 3, 1855, P. L. 422, there was by legislative enactment, jurisdiction conferred upon the courts of Quarter Sessions of the several counties of the state to appoint viewers to view and vacate the whole or part of a road which had become useless, inconvenient or burdensome, after the road had been opened, and in another section of the same Act, (the Act of June 13, 1836) jurisdiction was conferred to appoint viewers to view and vacate, upon petition of a majority of the original petitioners, when no part of the road sought to be vacated, had been opened. It appears that this general road act did not confer jurisdiction to appoint viewers to view and vacate a road which was opened only in part. To remedy this condition, the legislature passed the Act of May 3d., 1855, P. L. 422, which has not been repealed or amended, supplementing the general act of 1836. This Act is as follows; -

"Be it Enacted &c. That the several courts of quarter sessions of this commonwealth shall have the power, within their respective counties, to inquire of and to change or vacate the whole or any part of any public or private road which may have been laid out by authority of law, and opened in part; and the said court shall proceed therein by views and reviews in the manner provided for the vacating of other roads by existing laws; Provided, that this act shall not apply to state roads authorized by a special law, or to any street, lane or road within any incorporated city or borough"

Whether the petitioners desired the vacation of all of the road or only a part of the road becomes immaterial in view of the law which would allow the vacation of part or all. The viewers recommended vacation of a part; that part which had been opened and which was in Brady Township. It cannot be successfully contended that the viewers had no right to recommend vacation of less than was asked for, nor is it a reversible error that the petition described the road as being in Brady Township, when in fact a part of it is in Bell Township. The language used by Mr. Justice Trunkey in the case of the Road in Borough of Belle Vernon, reported in 41 Leg. Int., page 358, is exactly in point here. The Court said in part:-

"Nor does it appear in what township or townships the road is located. It may be inferred that part of it is in Belle Vernon, yet this is not directly set forth. None of these things is a fatal defect. In the approval of the report of the viewers, a large discretion is committed to the court of quarter sessions. A road may be so precisely described, and the circumstances such, that the omission to name the township where it is located would be harmless; and, as the statute does not expressly require the township to be named, the omission is not cause for reversal". Also see Vacation of Madison & Harmony Schoolhouse Road 37 Pa., 418.

The second and third objections go to the same matter practically; that is, that the part unvacated does not end at any place of public resort, but runs into a cul de sac. That objection undoubtedly would be well taken, if in fact that unvacated part were actually opened for public travel. But as set forth in the petition, that section, which is the western end of the road, has never been opened at all. The real objection to leaving a part of a road unvacated which runs into a cul de sac, is that the effect is to make such a section practically a private road but imposes the maintenance upon the public. This objection can have no standing where to unvacated part is not opened and the burden of maintenance is in consequence not imposed upon any one.

On this point see Vacation of Madison Road, 2 Chest. 374; 2 Banc. 35.

To The ROAD SUPERVISORS OF BRADY TOWNSHIP CLEARFIELD CO., PA.

You are hereby notified that the undersigned viewers appointed by the Court of Quarter Sessions of Clearfield County, Pennsylvania to view for vacation a road leading from what is known as the "Mahaffey Road near the East Branch School House in Brady Township to the Jefferson County line in a Public Road locally known as the "GOON RUE ROAD" near the house of William Rhodes in Brady Township, in the County aforesaid, will meet at the intersection of said road with the Mahaffey Road in Brady Township, on Monday the 19th day of April 1926 at nine o'clock A.M. to attend to the duties assigned them. And that the required Public Hearing will be held in the Court House in the Borough of Clearfield, Pa. on Wednesday the 21st day of April 1926 at ten o'clock A.M. when and where you may attend and be heard if you so desire.

Frank Schuttm
E. Fry
George R. Lueber

DuBois, Pa. March 29th 1926

Viewers.

Now March 29 1926, service of above notice is accepted for the Supervisors of Brady Township.

Ernest A. May

To the COMMISSIONERS OF CLEARFIELD COUNTY, PENNSYLVANIA

This is to notify you that the undersigned Viewers appointed by the Court of Quarter Sessions of Clearfield County, Pennsylvania to view for vacation a road leading from what is known as the Mihaffey Road near the East Branch School House in Brady Township to the Jefferson County line in a Public road locally known as the "COON RUN ROAD" near the house of William Rhodes, in Brady Township in the County aforesaid will meet at the intersection of said road with the Mihaffey Road in Brady Township, on Monday the 19th day of April 1926 at nine o'clock A.M. to attend to the duty assigned them. And that the required Public Hearing will be held in the Court House in the Borough of Clearfield on Wednesday the 21st day of April 1926 at ten o'clock A.M. when and where you may attend and be heard if you so desire.

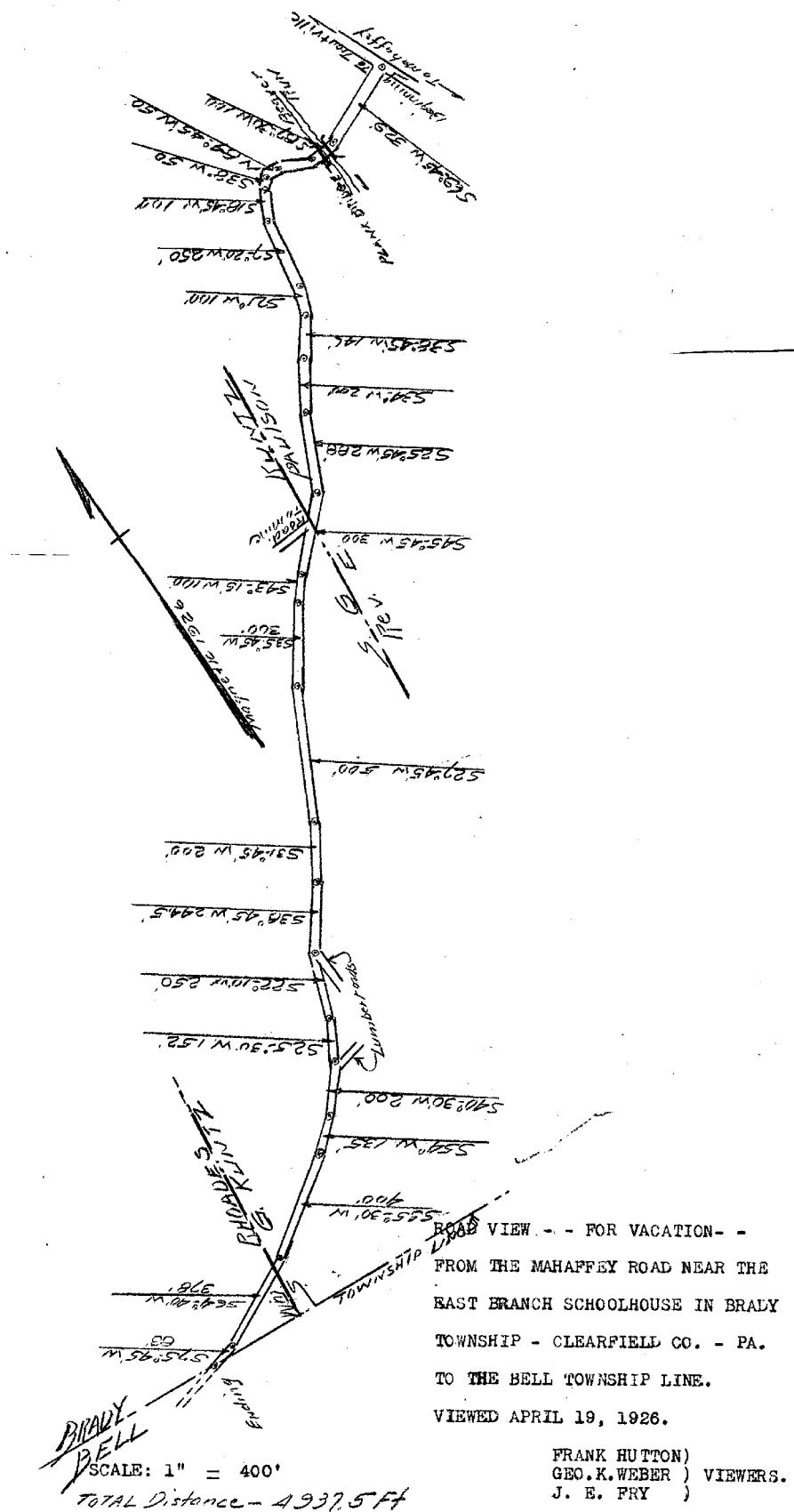
Frank Kullin
J. E. Fry
George K. Weber

Dubois Pa. March 29th 1926

Viewers

Not Mar. 29 1926 service of the above notice is accepted
for the Commissioners of Clearfield County

L. O. Morris
clerk



CLEARFIELD COUNTY, SS.:

At a Court of Quarter Sessions of the Peace of the County of Clearfield, Pa., held at Clearfield, Pa., in and for said County, on the 15th day of February in the year of our Lord, one thousand nine hundred and twenty six

A. R. CHASE

By the Honorable ~~Stephen~~ President Judge of the said Court: Upon the petition of sundry

inhabitants of the Township of BRADY, in the County aforesaid setting forth that many years

ago, viewers were appointed and after view, there was layed out as a public road in Brady Twp. a township road beginning in what is known as the Mahaffey Road, near the East Branch School House, and ending at the Jefferson County line in a public road locally known as the Coon Run Road, near the house of William Rhodes, the said road being approximately one and one half miles in length and all in Brady Twp.

That the westerly end of said road that is the end terminating in the Coon Run Road, was never opened for public travel by the Twp Supervisors and the road as a whole has become useless, inconvenient and burdensome to the inhabitants of the said Twp. of Brady for the reason that a part of said road is layed out through low swampy land, making it difficult to construct and maintain a passable road for the most of the year and in addition thereto, the same has been for many years practically abandoned by the traveling public as a highway, and there being throughout it entire length, no dwellings or cultivated lands requiring the maintenance of a public road.

and, therefore, praying the Court to appoint proper persons to view and vacate said road between the points mentioned, whereupon the said Court, upon due consideration had of the premises, do order and ap-

point from and among the County Board of Viewers Frank Hutton, Esq. J. E. Fry and

George K. Weber who have been duly appointed by the said Court on the

County Board of Viewers, and filed their oaths of office in the office of the Court of Common Pleas of the County aforesaid, as required by law and are, therefore, duly qualified to perform the duties of their appointment, with impartiality and according to the best of their judgment; are to view the said road, and after having viewed the same, if they, or a majority of them, do agree that there is no necessity for said road, they shall proceed to vacate the same as agreeably to the desire of the petitioners as may be, and make report thereof to the next Court of Quarter Sessions to be held in and for said County, stating particularly whether there is any necessity for said road, or whether the same should be vacated; and the reason why, together with a plot, or draft, thereof showing the courses and distances with reference to the improvements through which said road passes.

And in case the viewers aforesaid shall decide in favor of vacating said road, they shall obtain from the persons through whose lands the said road passes, or otherwise affected, or damaged, by the vacating of said road, releases from whatever damage they may sustain by the vacation of said road; and in case the owners of such lands, or persons affected, thereby refuse to release their claim to damages, the said Viewers shall assess the same, taking into consideration the advantages, as well as the disadvantages, arising from the vacation of said road; and make report of such assessment; 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 the place where they would meet, to view said road and the time and place of hearing.

By order of the Court.

Geo W. Palston
Clerk.

RETURN OF VIEWERS.

TO THE HONORABLE THE JUDGE OF QUARTER SESSIONS OF THE PEACE, IN AND FOR THE COUNTY OF CLEARFIELD, PA.

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 the 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 BRADY, and that Four notices thereof were posted along the route of the said road to be vacated, that the said view would be held on the

19th day of April, A. D. 1926, and that the public hearing, as required by the Act of Assembly, and the Rules of Court, would be held in the Arbitration Room in the Court House, in Clearfield,

Pa., on the 21st day of April A. D., 1926, at ten o'clock A.M., and that said Viewers, appointed by the said order, viewed the road desired to be vacated, and that there were present at the view H.W.Bonsall Supervisor of Brady Twp. James H. Snyder Supervisor, H.F.Kirk, Sec. of Board, W.D.Weber and Adam Haag, citizens

parties interested, either in favor of or against vacating said road. And that the aforesaid hearing was held in the Arbitration Room in the Court House, in Clearfield, Pa., on the 21st day of April,

A. D. 1926, when the parties interested in the said road were in attendance:

H.W.Bonsall, Supervisor who was sworn and examined

And that after the view and hearing above mentioned, the undersigned Viewers do agree that said road has become useless, inconvenient and burdensome to the Township of Brady. The Viewers found the road asked to be vacated runs through Brady Township a distance of 4937.5 feet to the dividing line between Bell and Brady Townships and through the lands of Rev E. Paulson, S.G.Kuntz and Wm Rhodes. This land is all unimproved land at the present time; formerly there had been a clearing on the S.G.Kuntz land and a small one in the Wm Rhodes land. There is a country coal mine on Kuntz's land from which the viewers are advised Mr Kuntz mines each Autumn coal for his own use and for such of his neighbors as may desire it, the evidence being that it does not amount to 1000 bushels per year. The Viewers did not find a track of horse or vehicle of any kind, except near the Mahaffey -- Troutville end of the road on the Paulson land, where we found one track of wagon where they are cutting some timber. The coal mine and equipment of S.G. Kuntz's is in a dilapidated condition, is not used at this time and does not give any indication having been used in any recent time.

This road crosses Beaver Run by means of an old wooden structure in a dilapidated condition and which must be forthwith replaced, if

the road in question is to remain a Public Highway. The evidence is that the Supervisors of Brady Township have had a representative of the State Highway Department inspect this bridge and he refuses to permit the Township to construct other than a concrete bridge without liability of the Township losing its share of State funds available for Township aid in building bridges. The Inspector estimated the cost of this bridge at \$1500.00, one half of which the Township would have to pay. There are no surface indications that the road is used or that the district have done any recent work on it, there are ~~several~~ places along it that should be drained. H.E. Ginter who owns property in Brady Township and A.J. Anthony, who owns a farm just over the line in Jefferson County have protested, personally, to the Viewers against the vacation of this road, but were not present at either the view nor hearing nor were they represented. It is the opinion of the Viewers that Brady Township should not be required to maintain this road for all the use that is apparently made of it and that those who might have use for it can with very little expense if they so desire, maintain it as a Private Road. We therefore recommend that the said road be vacated to the dividing line between Bell and Brady Townships, from its intersection with the Mahaffey-Troutville road as petitioned for.

and that a plan, or draft, of said road to be vacated showing the courses and distances, and over whose property the said road passes, is hereto attached and made a part hereof.

The undersigned Viewers further report that they endeavored to procure from all parties affected by the vacation of said road, or over whose properties said road passes, or in any way damaged by the vacation of said road, a release in writing of all claims to damages that may arise from the vacation thereof, and that they procured such release from: No releases.

And that the following persons having, in the opinion of the Viewers, been damaged by the vacation of said road, and having refused to release the damages to which they may be respectively entitled to by reason of the vacation, and closing up 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:

No damages assessed

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

Witness our hands and seals this 29th day of April, A. D. 19 26.

Amel. Hupton [SEAL.]

J. O. Fay [SEAL.]

Frank Webor [SEAL.]

Viewers.

13 Aug. 1826. S. G. Renty by his attorney D. J. Dentz,
except to the vacation of winter report and complaint
mation thereof for the following reasons

First. The petitioner in this case admits that the
said road extends into his township, which
is also shown by the original road record
and it is asked to vacate in Brady Township
only

Second. The proceeding in this case shows
that only that part of the road ~~should~~
is the Brady Township and that part vacated
ends at the Brady Township line, and not in
a public road or public place.

Third. If this part of this road is vacated
it will leave a public road in Bell Township
with one terminus in a cut on one

*Brady & Perry
atop for vacated*

NOTE.—In case 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 considera-
tion the advantages as well as the disadvantages
of the road, they will report to that effect.

	Days	Miles	Amt'
.....
.....
.....
.....

No. 6 MAY Term 19 26
ORDER TO VACATE

To view and vacate road situate
in the Township of Brady
Clearfield County.

Now May Sessions 19 26
read and confirmed Ni. Si.

By the Court

Now May Sessions 19 26
confirmed absolute.

By the Court

*John Chase
P. J.*

<i>John Chase</i>
MAY 3 1826
GEO. W. RALSTON
CLERK

Filed 19
Atty,
Fees \$1.25 paid by
E. G. Boose, Atty.