

Road DOCKET No. 6

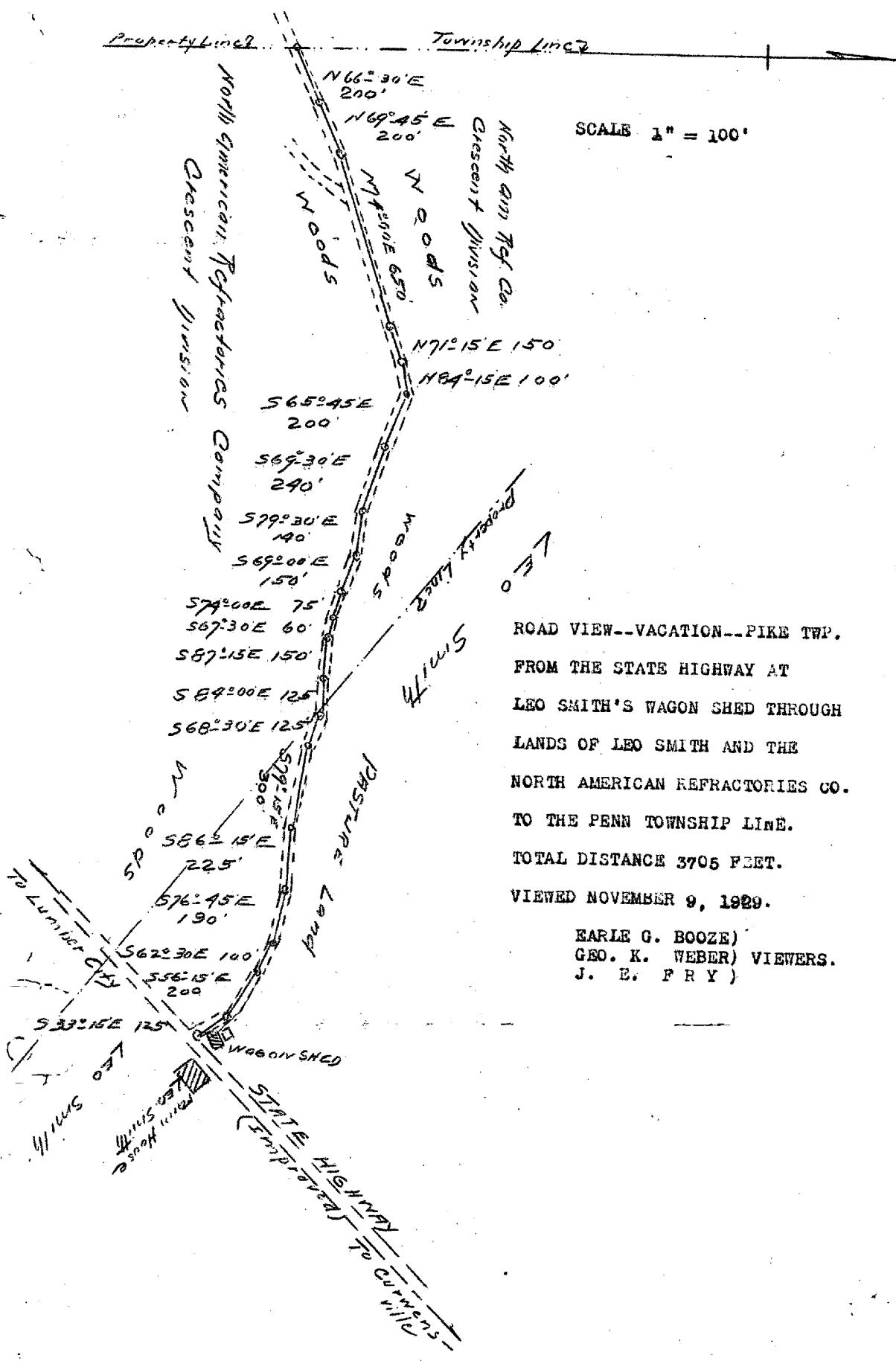
Number	Term	Year
5	Dec ss	1929

Petition to vacate road in

Pike Township

Versus

Moses Owners  
Mr. Geo M. Passmore



*Original*

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY.

In the Matter of the : Of December Sessions  
Proposed Vacation of : 1929.  
Public Road in Pike :  
Township. : No. 5.

To the Commissioners of Clearfield County, and to the  
Supervisors of Pike Township;

Please take notice that the undersigned have been appointed  
by the Court to view, and if they or a majority of them agree that  
there is no necessity for the same, to vacate a certain public  
road which is in Pike Township, beginning at the State Highway  
on the left side of the Susquehanna River at the wagon shed of  
Lee Smith and others running westerly to the line of Penn Township.

For purpose of viewing the premises, the Viewers will meet  
at the wagon shed of Lee Smith in Pike Township aforesaid, at 1.30  
o'clock P. M., Saturday, the ninth day of November, 1929.

The public hearing in the matter required of the Viewers will  
be held in the Arbitration Room in the Court House at Clearfield,  
Pa., on Monday, the eleventh day of November, at 9.30 o'clock  
A. M. at which time you may attend if you desire and be heard.

DuBois, Pa.  
Oct. 29, 1929.

*George R. Dove*  
*George Urban*  
*J. E. Frij*  
Viewers.

Now, October 29th, 1929, service is accepted for the Commissioners  
of Clearfield County.

*L. O. Morris*  
Clerk.

So die, service is accepted for the Supervisors of Pike Township.

*Bell & Bell*  
Solicitors.

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 28th day of October in the year of our Lord, one thousand nine hundred and twenty nine

A. R. CHASE

By the Honorable ~~President Judge~~, President Judge of the said Court: Upon the petition of sundry inhabitants of the Township of Pike, in the County aforesaid setting forth that .....

~~There is a certain road in said township which has been maintained to some extent as a public road beginning at the state highway on the left side of the Susquehanna River at the wagon shed of Lee Smith and thence extending through lands of Lee Smith and others running westerly to the line of Penn Township.~~

That said road runs or much of its distance through wet or swampy land and is about three quarters of a mile in length in Pike Township.

That said road is not used by the general public to any considerable extent and is not necessary as a public highway. That to put the road in a condition which highways are required by law to be maintained will involve a very considerable out lay and that the township of Pike is not financially able to spend considerable sums on unused roads.

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 Earl G. Boose, Esq., J. E. Frye

and George 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 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. Rabston*

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 ~~Pike~~, and that ~~three~~ notices thereof were posted along the route of the said road to be vacated, that the said view would be held on the ninth day of November, A. D. 1929, 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 eleventh day of November, A. D., 1929, at 9.30 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 J. Frank Thompson, Walter Long, and Joseph Smay, Supervisors of Pike Township, and also J. P. Watt, William Hipps, Raymond Long, G. M. Passmore, Leo Smith, Geo Addleman, Doyle Thompson and Oliver Smith,

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 eleventh day of November, A. D. 1929, when the parties interested in the said road were in attendance: The above named

Supervisors, with F. Cortez Bell Esq., Solicitor, G. M. Passmore, with Edward T. Kelley Esq., his counsel, and also divers other citizens of Pike Township. Upon request of counsel for both petitioners and for the remonstrants against the proposed vacation and also upon agreement of the parties present to testify later, the hearing was adjourned until Friday,

And that after the view and hearing above mentioned, the undersigned Viewers do agree that said road has become useless, inconvenient and burdensome November 15, 1929, at 9.00 o'clock A. M. At this hour there appeared Frank Thompson, Walter Long and Joseph Smay, Supervisors, with F. Cortez Bell Esq., their counsel and also George Addleman, Frank Wise and others to urge the vacation of the said road; the said Supervisors and witnesses being duly sworn, testified in support of the proposed vacation. Opposing the vacation there appeared G. M. Passmore, with Edw. T. Kelley Esq., his counsel, and also as witnesses, W. A. Hipps, Reuben Whittaker and J. B. Garrison, all of whom were sworn and testified against the proposed vacation.

The Viewers having met in session on Nov. 16th, 1929 to consider the matter referred to them and to frame a report to the Court, do respectfully report as follows;

That the Petition itself does not aver that the road is a public or a private road and it appears as a matter of law that in order to give the Court jurisdiction, it must be averred, if a public road, that the road was not laid out by Act of Assembly. See Road in Salem Township, 23 Dist Rep, page 140, and the several authorities therein cited.

An examination of the records of the Court of Quarter Sessions of Clearfield County fail to disclose that this road ever was laid out as a public road under authority of the Court and no testimony was adduced to prove that this road was so laid out. Testimony was adduced to prove that the road records of Pike Township do not show that the road authorities of the Township ever accepted the road as a part of the highway system of Pike Township by any formal act of its Supervisors duly recorded. It is a matter of record in the Court of Quarter Sessions of Clearfield County, that on August 26, 1907, a petition was presented to the Court praying for a Rule upon the Supervisors of Pike Township to show cause why the road should not be opened. The proceedings are indexed as No. 8, Sept. Sessions, 1907. Petitioners averred that the road had been laid out by authority of Court and that the same was confirmed Absolutely Aug. 31, 1846 and an opening order issued, but it was in the same petition set out that the road had never been actually opened. Hon. Allison O. Smith, P. J. eventually discharged the Rule which had been granted, but without filing any opinion.

The Viewers are of the opinion that since the petition for vacation does not disclose the character of the road and the record and the testimony fails to supply this omission, that the Viewers are without jurisdiction to return the road for vacation, as described in the petition and they therefore do not return the same for vacation.

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 vacating 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:

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:

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

Witness our hands and seals this 16th day of November, A. D. 1929

*Earl D. Dorsey* [SEAL]

*George R. Weber* [SEAL]

*J. E. Fry* [SEAL]

Viewers.

No. 5. Dec Term 19 29

**ORDER TO VACATE**

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 consideration the advantages as well as the disadvantages of the road, they will report to that effect.

	Days	Miles	Am't
J. E. Fry	2	26	\$17.60
GEO. K. Zehn	3	75	30 <sup>20</sup>
E. G. Boose	5	108	\$48.30

Now 1929 Sessions 1929

read and confirmed Ni. Si.

By the Court.

*A. P. Johnson*  
Sessions 1929

confirmed absolute.

By the Court.

*A. P. Johnson*  
P. J.

Filed 19

Atty, Bell & Bell

Fees \$1.25 paid by

NOTICE TO SUPERVISORS.

April 27th. 1929.

We the undersigned citizens and patrons of the road leading from Lee, Smith's to Claude Freeman's farm in Pike and Penn Townships, hereby notify the Supervisors of Pike Township to repair said road and put it in passable condition, as far as the Penn Township line.

1	J. McPassmore	O. L. Bloom
2	Leo Smith	Joseph Staag
3	Ziff Partell	Ed Donny
	W. A. Hupps	C. V. Caldwell
	Jasman	J. E. Ridge
4	M. R. Porter	Frank Wiese
5	Geo. C. Johnson	Wayne Addleman
6	L. O. Fletcher	
7	E. C. Everett	
8	Jesse Rafferty	
9	J. R. Matte	
10	O. V. Shirley	
11	W. R. Nordin	
12	J. W. Connoff	
13	J. V. Ferguson	
14	J. C. Johnson	
15	Mary L. Hile	
16	Reuben Fletcher	
17	Harriet Bloom	
18	R. H. Hupps	

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

In Re:

Vacation of road in  
Pike Township.

To Honorable A. R. Chase, President Judge

The petition of the undersigned, who are citizens  
and tax payers of the Township of Pike, Clearfield County,  
Pennsylvania, respectfully represents:

That there is a certain road in said Township which has  
been maintained to some extent as a public road beginning at  
the state highway on the left side of the Susquehanna River  
at the wagon shed of Lee Smith and thence extending through  
lands of Lee Smith and others running westerly to the line of  
Penn Township.

That said road runs or much of its distance through  
wet or swampy land and is about three quarters of a mile in  
length in Pike Township.

That said road is not used by the general public  
to any considerable extent and is not necessary as a public  
highway. That to put the road in a condition which highways  
are required by law to be maintained will involve a very  
considerable outlay and that the township of Pike is not  
financially able to spend considerable sums on unused roads.

They, therefore, pray that the road as aforesaid  
be vacated as a public road and that viewers be appointed to  
the end that the proper proceedings be had.

And they will ever pray.

Frank Thompson  
Walter Long  
Joseph Smay

*act 22-29*  
Franklin B D 2  
*act 22-29*  
Olanta  
*act 22-29*  
Clearfield Rd 10 1/1

Robert DeWeer  
Walter E. Long  
Joseph Simay  
Geo Melchior  
Roy Malvern  
John W. Porter  
Wm. G. Porter  
H. G. Poile  
Geo Addleman  
Leo Smith  
R. Whitaker  
Walter R. Tins  
Frank Wise  
W. L. Doway  
Geo L. Whitaker  
J. Lynn Kester  
John Morris  
Mike Bassidy  
B. Brown Galvin  
Fay Thompson  
Joseph T. Burnell

Curwensville Pa Oct 29  
 Olanta Pa Oct 22 1929  
Bearfield Rd 4 1  
Curwensville Pa 22, 1929  
 " " "  
 " " "  
 " " "  
Curwensville Pa 22-29  
 " " " "  
Curwensville Pa  
Grampian R.D. 2  
Grampian R.D. 2  
Curwensville

CLEARFIELD COUNTY: SS

Frank Thompson, being sworn according to law deposes and says that the facts set forth in the foregoing petition are true.

Sworn and subscribed  
to before me this  
day of 23<sup>rd</sup> A. D. 1929.

John A. Dall Jr.

Frank Thompson

MY COMMISSION EXPIRES ~~1933~~  
MONDAY IN JANUARY, 1934.

5 Dec 22 1929

Mr. Justice Oliver Wendell Holmes,  
U. S. Supreme Court, Washington.

Dear Sir:

Enclosed is a copy of  
the opinion of the Court.

Very truly yours,

John W. Bell,  
Attala, Mississippi,  
Date, 1929.

An application was made to  
the Court for a rehearing, but  
was refused by the Court on  
the 21st of Dec. 1929.

Very truly yours,  
John W. Bell.

John W. Bell,  
Attala, Mississippi,  
Date, 1929.

John W. Bell,  
Attala, Mississippi,  
Date, 1929.