

ROAD
DOCKET No. 6

Number	Term	Year
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3	SEPT	1935
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DECATUR TOWNSHIP: PETITION OF
WILLIAM BROOKS BUTLER FOR APPT OF
VIEWERS TO ASSESS DAMAGES .

Versus

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

In re:

WILLIAM BROOKS BUTLER

:

No. 3, September Term, 1935

ANSWER TO PETITION FOR APPOINTMENT OF A BOARD OF VIEW

To the Honorable W. Wallace Smith, President Judge.

To the petition of William Brooks Butler, County of Clearfield, acting by its County Commissioners, makes answer as follows:

1. Admitted.
2. Neither admitted nor denied, and petitioner is asked to make proof of the averments.
3. Admitted to be substantially correct.
4. Neither admitted nor denied, and the petitioner is requested to make proof of the averments.
5. Admitted.
6. Admitted; but it is denied that the County of Clearfield assumed any liability in respect of plaintiff's premises.
7. Denied. On the contrary it is averred that plaintiff's property was benefited.
8. Denied as to alleged failure of Clearfield County to comply with the requirements of the Act of May 31, 1911, P. L. 468, section 16, and its supplements. It is admitted that no attempt has been made to enter into any agreement with petitioner. In that connection respondent avers that it is not responsible for the alleged damages said to have been suffered by the petitioner.
9. Respondent says that there being no averment that plaintiff's property has been taken, injured or destroyed by the alleged change of grade, width and existing lines of the highway, and in the general improvement thereof, there is no liability on the part of the respondent. In support of this statement the respondent attaches as Exhibit "1" a copy of the notification from the Secretary of Highways to County Commissioners, bearing date August 2, 1934.

WHEREFORE respondent prays that the petition of William Brooks Butler for appointment of viewers be dismissed.

COUNTY OF CLEARFIELD

By J. C. Gatehouse

T. R. Weimer

W. V. Carr

STATE OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :
:

J. C. Gatehouse, T. R. Weimer and Willard V. Carr, being duly sworn, depose and say that the averments of the foregoing answer are true and correct to the best of their knowledge, information and belief.

J. C. Gatehouse

T. R. Weimer

W. V. Carr

Subscribed and sworn to before me
the 29th day of July, 1936.

Mary A. C. Lucas
Chief Clerk

EXHIBIT 1

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF HIGHWAYS

HARRISBURG

AUGUST 2, 1934

In your reply please
refer to O. R. 221
Clearfield
R-57

Commissioners of Clearfield County,
Clearfield,
Pennsylvania

Gentlemen:

We are forwarding to you a print of the approved plans for the relocation, construction and condemnation of right-of-way for Route 57, Decatur Township, Clearfield County, between Stations 1196/00 and 1273/19, for which the county has assumed responsibility for property damages.

If any property is condemned by these plans for which releases have not been obtained, the county should endeavor to secure them at the earliest opportunity.

If any structures are to be removed, prompt action should be taken by the county so that construction may not be delayed.

Very truly yours,

S. S. Lewis

Secretary of Highways

By P. M. Tebbs

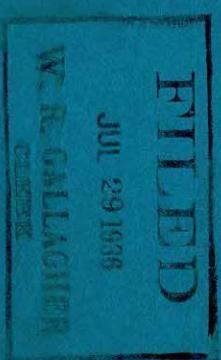
P. M. Tebbs
Deputy Secretary of Highways

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

No. 3, Sept. Term, 1935

In re:WILLIAM BROOKS BUTLER

ANSWER TO PETITION FOR
APPOINTMENT OF A BOARD OF
VIEW



A. M. LIVERRIGHT
County Solicitor

Service accepted
by copper Aug 11, 1936
by copper
J. H. Thompson
M. E. J.

IN RE:

WILLIAM BROOKS BUTLER

versus

In the Court of QUARTER SESSIONS

of Clearfield County, Pa.

No. 3 Sept ss ~~Term~~ 19 35

~~Fix~~ No. 19

And now, July 15, 1936, A. D. 19 36, petition read and considered, and a rule is granted on County Commissioners to show cause why viewers should not be appointed to view and assess damages as they may find suffered by the petitioner.

Returnable First Monday of August next.

By the Court,

W. WALLACE SMITH
HON. SINGLETON BELL, P. J.

Certified from the record this 21st day
of July, 19 36

Mr. P. Gallagher
Prothonotary

July 21, 1936, at 3:30 o'clock P. M. Served the within Rule on the County Commissioners by handing to Myra Lucas, Commissioner's Clerk in the County Commissioners Office, Clearfield, Pa. a true and attested copy of the original and making known unto her the contents thereof.

So Answers,

Clarence H. Ammerman
Sheriff.

ROAD DOCKET NO ⁶
IN RE: WILLIAM BROOKS BUTLER
No. 3 Sept Term, 1935
ORIGINAL

VERSUS

RULE ON

COUNTY COMMISSIONERS

Sheriff Ammerman, \$2.90

Thompson & Litke

Attorney for Plaintiff

Attorney for Plaintiff

Attorney for Defendant

In Re: WILLIAM BROOKS BUTLER

versus

In the Court of Common Pleas

of Clearfield County, Pa.

No. 245

Sept. Term, 19 35

3
Fi.Fa., No. 19

And now, July 22, A. D. 19 35, petition read and considered,
and a rule is granted on County Commissioners of Clearfield County
to show cause why viewers should not be appointed. Returnable
Friday, July 26, 1935 at 2:00 P. M.

Returnable

By the Court,

W. WALLACE SMITH
HON. ~~W. WALLACE SMITH~~, P. J.

Certified from the record this 22nd day

of July, 19 35.


W. Wallace Smith
Prothonotary

3
No. 845 Sept. Term, 1935

In re: WILLIAM BROOKS BUTLER

versus

RULE ON

Clearfield County Commissioners

Sheriff

Thompson & Little

Attorney for Plaintiff

Attorney for Plaintiff

Attorney for Defendant

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

In Re: William Brooks Butler. : No....
: Term....., 1935.

PETITION FOR THE APPOINTMENT OF A BOARD OF VIEW.

TO THE HONORABLE W. WALLACE SMITH, PRESIDENT JUDGE OF THE SAID COURT:

The petition of William Brooks Butler respectfully
represents :

(1) That by indenture dated March 14, 1915, Ira C. McCloskey, High Sheriff of Clearfield County sold to William Brooks Butler, the petitioner herein, the hereinafter described parcel of ground situate at Point Lookout, Clearfield County, opposite the town of Philipsburg, Centre County, Pennsylvania.

(2) The said Ira C. McCloskey, High Sheriff of Clearfield County, sold the said property as the property of Sarah A. Butler and Thomas E. Clark, Guardian of Sarah A. Butler, at the suit of Thomas E. Clark. The said property is described as follows:

"All that certain tract or parcel of land situate in Decatur Township, Clearfield County, Pa., Bounded and described as follows: On the South by the Erie Turnpike; On the East by land of George D. Morgan; On the North by the Beaver Run, and on the West by land of J.D. McGirk (formerly) Containing Fourteen acres more or less, and having thereon erected a two story frame homestead with out buildings, three double frame tenement house, one triple tenement house."

(3) That the Pennsylvania Department of Highways, by virtue of the building of a bridge and its approaches at Point Lookout, Clearfield County, said bridge spanning the

Moshannon Creek, appropriated property of William Brooks Butler and caused severe loss and damage thereto, and that compensation for such damage/has not been fixed or agreed upon between the County of Clearfield and your petitioner.

(4) The said bridge together with its approaches, was in process of construction during the fall and winter months of 1934 and 1935, and the said damages to claimant's property were occasioned at that time and have continued to exist since.

(5) Your petitioner therefore prays your Honorable Court to appoint viewers from the Board of View of Clearfield County to assess the damages arising as aforesaid to the property of your petitioner, William Brooks Butler, and to report the same to your Honorable Court in such cases made and provided.

And your petitioner will ever pray, etc.

COMMONWEALTH OF PENNA. : : SS:
COUNTY OF Centre : :

William Brooks Butler deposes and says that he is the petitioner above mentioned, and that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.

Sworn to and subscribed before me this 28th day of June, 1935.

Wm. Brooks Butler
J. M. Pearce
MY COMMISSION EXPIRES FIRST MONDAY
IN JANUARY 1940.

DECREE

AND NOW to wit: this.....day of June, 1935,
on motion of Thompson & Litke, Attorneys for the petitioner,
the Court appoints the undersigned as a Board of View upon the
foregoing petition and further orders that the said Board of
View shall perform their duties in accordance with the laws and
Acts of Assembly in such case made and provided and to report
before or during the.....term of Court, 1935.

P.J.

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

No. 2453
Term. Sept., 1935

IN RE:

WILLIAM BROOKS BUTLER

PETITION FOR THE APPOINTMENT OF
A BOARD OF VIEW.

Rehment July 23, 1935.
and rendered not in effect
until Friday Aug 26, 1935

Ex 2.0 P.M. Seal

THOMPSON & LITKE
ATTORNEYS AT LAW
PHILIPSBURG, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

IN RE:

WILLIAM BROOKS BUTLER

: No. 3 September Term 1935

:

ANSWER OF CLEARFIELD COUNTY COMMISSIONERS

TO THE HONORABLE W. WALLACE SMITH, PRESIDENT JUDGE:

To the petition of William Brooks Butler at the above number and term, for the appointment of viewers, the County of Clearfield, acting by its County Commissioners, makes answer as follows:

(1). The averments of the petition are inadequate in that they do not set forth the character or class of bridge that spans Moshannon Creek so that respondents may determine whether in any event there could be any liability upon the County of Clearfield.

(2). The petition is inadequate in that it does not set forth the highway route number, parts of which are connected by the bridge said to span Moshannon Creek, nor indicate the character of the highway involved.

(3). The petition is inadequate in that it does not state what property of William Brooks Butler is alleged to have been appropriated.

(4). The petition fails to state that an effort has been made to come to an agreement with the County of Clearfield.

(5). The petition fails to state the nature of the alleged loss and damage inflicted upon William Brooks Butler.

(6). The Court will take judicial notice of the fact that Moshannon Creek is the boundary line between Clearfield and Centre Counties in the State of Pennsylvania; and the procedure by which petitioner seeks to have viewers appointed is not in

-2-

conformance with the statute relating to intercounty bridges.

(7). There is no showing on the face of the petition of any liability on the part of the County of Clearfield.

WHEREFORE, respondents respectfully ask the Court to dismiss the petition or to quash it, as the case may be.

CLEARFIELD COUNTY

BY J. C. Gatehouse
W. T. Thorp
W. V. Carr
County Commissioners

STATE OF PENNSYLVANIA:
: SS:
COUNTY OF CLEARFIELD :

J. C. Gatehouse, William T. Thorp and Willard V. Carr, Clearfield County Commissioners, being duly sworn, depose and say that the facts set out in their foregoing answer are true and correct, to the best of their knowledge, information and belief.

Subscribed and sworn to before
me this 1 day of August 1935.

W. R. Hallahan
Wm. T. Thorp

J. C. Gatehouse
W. T. Thorp
W. V. Carr

MY COMMISSION EXPIRES
FIRST MONDAY OF JANUARY, 1936

John C. Gallagher
vs. Commonwealth of Pennsylvania
in the Court of Common Pleas
of Clearfield County, Penna.
No. 3 September Term, 1935

IN RE
WILLIAM BROOKS BUMPER

ANSWER OF CLEARFIELD COUNTY COMMISSIONERS	FILED AUG 1 1935 W. R. GALLAGHER PROTHONOTARY
--	--

UNRIGHT & SMITH
ATTORNEYS AT LAW
CLEARFIELD, PA.

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

In re: WILLIAM BROOKS BUTLER :

: No. 3 September Term, 1935.

OPINION

This matter, which is a proceeding before the Court for the appointment of viewers and assessment of damages, comes before the Court on petition, answer and petitioner's reply to answer. The answer sets forth that the petition is defective in various respects and asks that it be dismissed or quashed by reason thereof. Most of these defects alleged are in the nature of indefiniteness in description and particularly in that the petition does not make it clear whether the damage is alleged to have occurred because of the building of a bridge and its approaches or because of a change in the highway. In his reply the petitioner states the facts more fully as to the property and the manner in which it was alleged to have been damaged. He also states that the appropriation of property and damage to the petitioner were due to the reconstruction and improvement of the highway and the approaches leading to the bridge, rather than to the bridge itself. If it were not for the other matter hereinafter mentioned, we think it would be possible for the Court to regard the reply as an amendment to the petition, although not so denominated, and if so treated it would cure the defects complained of with the one exception.

The one defect alleged which in our view makes it necessary to refuse the petition as filed is the failure to aver the jurisdictional facts necessary to fix liability upon Clearfield County.

While proceedings of this kind are not bound by the strict terms of the Practice Act as pleadings in other cases, the petition should show the jurisdictional facts. Both the petition and reply attempt to fix liability upon Clearfield County alone. The road in question being a portion of a state highway, the proceedings for re-location and collection of damages are governed by the Act of July 12, 1935, P.L. 946, Sec. 3, 36 P.S. 171, Supplement, which was largely a reenactment of previous legislation. Under this Act, which provides for notice from the Secretary of Highways to the County Commissioners of a proposed re-location involving change of width or of existing lines and locations, the two situations are provided for, namely where the County approves and consents to the change and becomes liable for the damages, and the other that "whenever the County Commissioners do not consent to or approve any such change of width or of existing lines and location, and the Secretary of Highways determines such change to be necessary, he shall when possible, enter into an agreement, etc. and such damages shall be paid by the Commonwealth out of moneys in the Motor License Fund; or if such agreement cannot be made, the owners..... may present their or its petition, etc. but the damages when ascertained shall be paid by the Commonwealth out of moneys in the Motor License Fund. " The petition and the reply in this case failed to show what proceedings were taken and failed to allege the consent and approval of the County Commissioners. As the taking of the necessary proceedings is the basis of the County's liability, if it exists, we think the County Commissioners are entitled to have the facts upon which such liability is asserted set forth in the petition. If the petitioner is unable, because of insufficient knowledge and

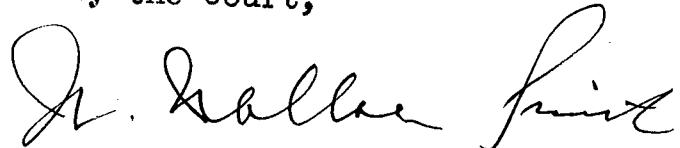
inability to obtain knowledge of actions taken by the officials, and thereby asserts that the liability may be upon either the County or the Commonwealth, the facts should be pleaded so far as possible and the reasons for inability to plead them set forth. It is apparent that if the petition were sustained in its present form and after proof was taken it appeared that the County was not liable, the Commonwealth could not be held liable. ^{in this proceeding} If the Commonwealth is liable or if there is doubt as to whether the liability is that of the County or the Commonwealth, both should, in our opinion, be notified.

Under the circumstances, because of the fundamental question involved as to who is liable for the damages alleged, and also because it would seem better, as a matter of good pleading and practice that the petition should stand by itself, rather than require the support of a reply to sustain the action, we think it best to refuse the petition, but with leave to file a new petition not involving the defects of the original petition herein.

O R D E R

AND NOW April 4, 1936, the petition in its present form is refused, and leave is granted to the petitioner to file a new petition setting forth the facts alleged to sustain liability within a period of fifteen days from the date hereof.

By the Court,



President Judge.

No. 3 September Term, 1935.

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

In re: WILLIAM BROOKS

BUTLER

OPINION

FILED
C
APR 4 1936
W. R. GALLAGHER
CLERK

IN THE COURT OF QUARTER SESSION OF CLEARFIELD COUNTY, PENNSYLVANIA

Re:

William Brooks Butler

|| No. 3 September Term, 1935

To the Hon. W. Wallace Smith, President Judge of said Court:

REPLY OF PETITIONER TO ANSWER OF CLEARFIELD COUNTY COMMISSIONERS

William Brooks Butler, petitioner in the above matter, replies to Answer of the Clearfield County Commissioners as follows:

1. The bridge mentioned in Paragraph 1 of the Answer of the Clearfield County Commissioners is an inter-county bridge, spanning the Moshannon Creek at the boundary of Clearfield County and Centre County and the damages of which petitioner complains were sustained by him in Clearfield County, along the highway leading to the said inter-county bridge.

2. The highway route number in question is U.S. Route 322, commonly known as the Lakes-to-Sea Highway. Your petitioner owns a house and lot along the said highway and near to said bridge and its approaches, the description of which property is set forth more accurately in his original petition filed. By virtue of the said highway being changed in character as to location, grade, width, etc. the property of your petitioner was damaged as heretofore and hereinafter set forth.

3. The property of William Brooks Butler, alleged to have been appropriated, is real property which abutts on the said Lakes-to-Sea Highway, near the said bridge and its approaches. By virtue of the change in location, grade, width, etc. of the said Lakes-to-Sea highway, leading to said bridge in Clearfield County, the said

property of William Brooks Butler has been made highly difficult of access and its value has been greatly decreased.

1911
4. By virtue of the Act of May 31, /P.L. 468, Section 16 and its supplements and amendments, 36 Purdon, Section 171, page 28, it is the duty of the County Commissioners to try to enter into an agreement with the owner or owners of property alleged to have been damaged, where the Secretary of Highways has undertaken the construction, reconstruction or improvement of any State highway. Thus far the County Commissioners have made no effort to enter into an agreement with the petitioner herein.

5. The nature of the alleged loss and damage inflicted upon William Brooks Butler is as follows: by virtue of the reconstruction and improvement of the said highway, namely the Lakes-to-Sea Highway, property of William Brooks Butler was appropriated; the said property was made highly difficult of access and by virtue of such appropriation of property which adjoins the Lakes-to-Sea Highway and by virtue of the difficulty of access to his property after the said reconstruction, petitioner's property became greatly decreased in value, to his great damage and loss.

6. Your petitioner avers that by virtue of the re-building of the said inter-county bridge, the Pennsylvania Department of Highways reconstructed and improved the highway and its approaches leading to said bridge, the said approaches and highway situate in Clearfield County. The appropriation and damage to petitioner's property is due to the reconstruction and improvement of the highway and its approaches leading to said bridge and is not directly due to the bridge itself.

7. By virtue of Act of Assembly which are binding upon the County of Clearfield, as well as others, the County of Clearfield is liable for damage done to petitioner's property as indicated in the original petition, as well as in this reply. For further reference thereto, see the Act of May 31, 1911, P.L. 468, Section 16, as amended; June 26, 1931, P.L. 1388, Section 4; April 13, 1933, P.L. 41, Section 1; 1933 Special Session, Jan. 2, 1934, P.L. 209, Section 1.

WHEREFORE, your petitioner requests that the Court appoint viewers to view the premises and assess damages in his favor, as the viewers may find them to exist.

Young & Litke
Attorneys for Petitioner

COMMONWEALTH OF PENNA.)
COUNTY OF CENTRE) SS:

Before me, the subscriber, a Justice of the Peace, personally appeared William Litke, who, being duly sworn according to law, deposes and says that he has authority to make this affidavit on behalf of William Brooks Butler, and that the facts set forth in the foregoing Reply are true and correct to the best of his knowledge, information and belief.

Sworn to and subscribed before me this 5th day of August, 1935

John Pearce
J.P.
MY COMMISSION EXPIRES FIRST MONDAY
IN JANUARY 1940

245.

IN THE COURT OF QUARTER SESSIONS
OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 3 September Term, 1935

Re: William Brooks Butler

Wm. Brooks Butler
Petitioner to Answer
People vs. Brooks Butler
Case No. 3, 1935, on Appeal from the Court of Quarter Sessions of Clearfield County, Pennsylvania, on the 17th day of August, 1935.

REPLY OF PETITIONER TO ANSWER OF
CLEARFIELD COUNTY COMMISSIONERS

W. R. GALLAGHER
PROTHONOTARY

FILED
AUG 6 1935
W. R. GALLAGHER
PROTHONOTARY

THOMPSON & LITKE
ATTORNEYS AT LAW
PHILIPSBURG, PENNSYLVANIA

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

In re: : No. 3, September Term, 1935
William Brooks Butler : :

PETITION FOR THE APPOINTMENT OF A BOARD
OF VIEW.

TO THE HONORABLE W. WALLACE SMITH, PRESIDENT JUDGE OF THE SAID COURT:

The petition of William Brooks Butler respectfully
represents:

(1) That the petitioner herein is William Brooks
Butler, a resident of Point Lookout, Clearfield County, Pennsylvania.

(2). That the petitioner is the owner of a certain
house and lot, sold by Ira C. McCloskey, High Sheriff of Clearfield
County, to the petitioner as the property of Sarah A. Butler and
Thomas E. Clark, Guardian of Sarah A. Butler, at the suit of Thomas
E. Clark, the said property is described as follows:

"All that certain tract or parcel of land situate in
Decatur Township, Clearfield County, Pa., bounded and
described as follows: On the South by the Erie Turnpike;
on the East by land of George D. Morgan; on the North by
the Beaver Run, and on the West by land of J. D. McGirk
(formerly) containing Fourteen acres more or less, and
having thereon erected a two story frame homestead
with out buildings, three double frame tenement house,
one triple tenement house."

(3) The said Erie Turnpike, above mentioned, is at
present known as the Lakes to Sea Highway, at the point of petitioner's
property it is the communicating highway between the town of Philips-

(1)

burg, Centre County, and the town of Clearfield, in Clearfield County. The said Lakes to Sea Highway is further known as United States Highway No. 322, and as Penna. Legislative Route No. 57.

(4) During the fall and winter months of 1934, and during the early part of 1935, the Commonwealth of Pennsylvania, Department of Highways made certain changes in the said Lakes to Sea Highway, at and along the line of petitioner's property, which change consisted in changing the grade, width, and the existing lines of said highway, as well as general improvement thereof.

(5) Before the said Department of Highways entered upon the program of improvement of said highway, the Secretary of Highways duly notified the County Commissioners of Clearfield County of the proposed changes, in conformity with Section 16 of the Act of May 31, 1911, P.L. 468, and its amendments.

(6) The County Commissioners of Clearfield County, upon receipt of said notice of the proposed reconstruction and improvement of said highway, agreed to said proposed changes and further agreed to assume liability for the property damages in connection with this project.

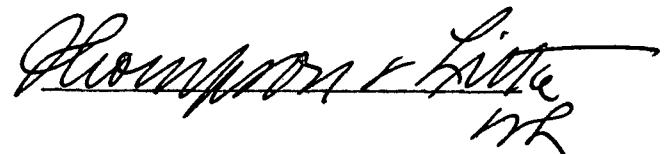
(7) By virtue of the said improvements on said Highway by the Pennsylvania Department of Highways, the petitioner's property was damaged in that it was made highly difficult of access, and its value greatly decreased, caused largely by the change in the width, location, grade, etc. of the said highway.

(8) The County Commissioners of Clearfield County have failed to comply with the requirements of the Act of Assembly, May 31, 1911, P. L. 468, Section 16, and its supplements, and have made no attempt to enter into any agreement with petitioner to

reimburse petitioner for the damages he has suffered as stated herein.

WHEREFORE, your petitioner prays your Honorable Court to appoint viewers to view the premises of petitioner, and to assess such damages as they may find suffered by petitioner, and to report the same to your Honorable Court as in such cases made and proved.-

And your petitioner will ever pray, etc.



COMMONWEALTH OF PENNA. :
COUNTY OF CENTRE : SS:

William Brooks Butler deposes and says that he is the petitioner above mentioned, and that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.



Sworn to and subscribed before me this..... day of April, 1936.



MY COMMISSION EXPIRED FIRST MONDAY
IN JANUARY 1940

IN THE COURT OF QUARTER SESSIONS
OF CLEARFIELD COUNTY, PENNA.
No. 3.

September Term, 1935

WILLIAM BROOKS BUTLER.

IN RE:

PETITION FOR THE APPOINTMENT OF
A BOARD OF VIEW.

Sheriff Zimmerman #3.50

EX-1117
APR 20 1936
W. R. GALLAGHER
PROTHONOTARY

THOMPSON & LITKE
ATTORNEYS AT LAW
PHILADELPHIA, PENNSYLVANIA

Sheriff.

Lawrence A. Zimmerman
So Answers,

April 22, 1936 at 10:00 o'clock A. M. Served the within petition for the
appointment of a Board of View, on the County Commissioners of Clearfield
County, Penna., by handing to Myra Lucas, Secretary to said Commissioners
a true and attested copy of the same, in the office of the Commissioners
of Clearfield County, and making known unto her the contents thereof.