

In re proceedings to vacate  
road  
in  
The Townships of Allegheny  
& Cambria

In the Court of Quarter Sessions  
of Cambria County Pennsylvania  
No 5 of June Term, 1893.  
Road Docket.

Costs to be paid by petitioners for re-view.

J.C. Darby, Clerk Q. S.	.30 ✓
Henry Scanlan, Surveyor	8.70 ✓
George Shettig, Viewer	2.40 ✓
H. McMullen, Viewer	2.40 ✓
John Farren, Chainman	1.50
M. Farren, Chainman	1.50
	<u>16.80</u>

We hereby acknowledge payment of the amounts due us  
respectively in above stated case.

Mr. <sup>Henry</sup> Scanlan  
Executive of Henry Scanlan  
Witness C. C. Adams  
H. R. McMullen  
George Shettig

In re proceedings to vacate  
Road  
in  
The Townships of Allegheny &  
Cambria

In the Court of Quarter Sessions  
of Cambria County, Pennsylvania.  
No. 10 of March Term, 1894.  
Road Docket.

EXCEPTANT'S BILL.

J. A. Shoemaker, Witness	\$1.00 ✓
Hugh R. McMullen "	1.36 ✓
Henry Scanlan "	2.02 ✓
Isidore <i>Seymour</i> Witness	1.18 ✓
Michael Zolner on Subpoena	.21 ✓
Wm. S. Tierney on Subpoena	.99
J. C. Farren, on subpoena	1.14
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P. J. Little, Notary Public	7.02
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	\$14.90

We hereby acknowledge payment of the amounts due us  
respectively as shown by above list.

H. R. McMullen  
Mrs. Ann Scanlan, Executrix  
of Henry Scanlan deceased  
J. A. Shoemaker  
Isidore Seymour  
Michael Zolner

In Re road in Allegheny Town-  
ship, leading from near house  
of Loretto Litzinger

to

point near house of Daniel  
Carney in Cambria Township.

In the Court of Quarter Sessions  
of Cambria County Pennsylvania.  
No. 10 March Sess. 1894 R. D.

DEPOSITIONS OF WITNESSES, taken before me this Fifteenth  
day of January 1895 at the Attorney's Room, and from there  
adjourned to the Court Room, between the hours of eight o'clock  
A. M. and eleven o'clock P. M. by virtue of the annexed Rule of  
Court and Notice thereon endorsed for the examination of witnesses  
in above stated cause on the part of the Exceptants.

R. E. Creswell for Petitioners.

M. D. Kittell for Exceptants.

J. A. Shoemaker, Esq., called and sworn.

By Mr. Kittell:

Q. What is your occupation? A. Surveyor.

Q. How long have you been Surveyor? A. About thirty Years.

Q. Do you know where the roads as described in these proceedings leading from a point on a public road known as the Loretto Road in Allegheny Township near the house of Loretto Litzinger and extending to a point on the public road in Cambria Township near the house of Daniel Carney? A. I know where the house of Daniel Carney is, I don't know where Loretto Litzinger is.

Q. Do you know of any public road that can be described by the termini named in these proceedings? A. Well I don't know any party by the name of Loretto Litzinger.

Q. Assuming that the first terminus named is a farm belonging to the heirs of William Litzinger who ~~lived~~ lived in Loretto, would you know that farm? A. Yes I know a farm belonging to the heirs of William Litzinger.

Q. Is there any one public road leading from a point on that farm to a point in Cambria Township near the house of Daniel Carney? A. Yes there is a road leading from there that intersects with a public road leading from here to Buck's Mills; the public road from here to Buck's Mills passes Daniel Carney's.

Q. How far is Dan. Carney's house from the point where that road intersects the public road leading in the direction of Buck's Mill? A. It is about a third of a mile.

Q. Is there any house nearer than Daniel Carney's house to the end of the road? A. Patrick Farren.

Q. How close is it? A. Probably about three hundred feet.

Q. State whether you were a viewer appointed by the Court on a former occasion; to pass upon the expediency of vacating this road? A. I was.

Q. At what time of the year was that view held? A. Thirty-first day of August 1893.

Q. Is this your report of that view (Paper shown to witness) A. It is the report of that view, I believe I didn't sign that report.

Q. Why didn't you sign it? A. I was opposed to the vacating of it at the time and two being a majority.

Q. For what reason were you opposed to it? A. Various reasons.

Q. State them? A. Well I didn't think it was for the sake of vacating the road that it was done, I thought it was a matter of spite between some neighbors and I thought that is all it was gotten up for.

Q. Did you consider whether the road was useless, inconvenient and burdensome to the inhabitants of the township?

— Objected to by Mr. Cresswell because it was properly a part of the viewers report.

A. No, I think it is a convenience to some of them at times, especially in winter season when the roads are drifted up.

Q. How long have you known this disputed road? A. A good many years twenty or twenty-five years, I don't know how long.

Q. State whether you have frequently travelled the road? A. I have.

Q. What has been its general condition? A. It has been a good as the ordinary byroad or township road connecting two or more public roads; there seems to be no work done on it, it is a means of getting from one road to the other without travelling around a great ways.

Crossexamination by Mr. R. E. Creswell.

Q. Mr. Shoemaker, are you familiar with the roads in that part of the County? A. Yes sir.

Q. Would you know what road was alluded to by the description as follows: " Beginning at a point on the public road known as the Loretto Road in Allegheny Township, near the house of Loretto Litzinger and extending to a point on the public road in Cambria Township near the house of Daniel Carney? A. I would naturally presume it is the house of the heirs of William Litzinger, but I know no party by the name of Loretto Litzinger.

Q. And by that answer you would designated this road? A. Well taking it in connection with the house of Daniel Carney from that point over on the road to Buck's Mills, giving that point at Daniel Carney, I would naturally take that as a starting point. On the other hand, if you hadn't given the house of Daniel Carney I wouldn't have thought of that being the place.

Q. Then from this description you would know that it was this particular road? A. Well I wouldn't know positively, I would suppose it was though. There are other Litzinger Families living in Allegheny Township, and it may be some of these Litzinger Families for that matter.

Q. I mean by taking the whole description the Litzinger farm at one end of the road and Daniel Carney at the other, would you know that it is this particular road? A. Yes if you would say to begin at the Litzinger Farm at one end and the Daniel Carney at the other, I would naturally suppose it was that road over to Buck's mills.

Q. You would describe the termini of that road then beginning at or near the Litzinger Farm and extending to a public road near the farm of Daniel Carney? A. No, I wouldn't describe it that way I would describe it as beginning at the Litzinger farm and ending at the farm of Patrick Farrrens, because to end at Daniel Carney's you would have to come on this other public road from Buck's Mill to Ebensburg.

Q. Don't you know that this road divides the properties of Mr. Farrren and Mr. Carney? A. I think it does a portion of the way. At the same time Mr. Farrren's is very close to the terminus of the road while Mr. Carney is about a third of a mile.

Q. You mean the buildings? A. Yes, I mean the buildings.

Q. How many views have you been on that road? A. Only one that I remember of, years ago, I may have been on one, but I don't remember it though.

Q. Mr. Shoemaker, are there not two other roads within a short distance on either side of this one, leading in the same directions? A. Well there would probably land at the same place, but they lead in many other directions before they get there, it is quite a round.

Q. Is there not very steep hills on this road? A. Why there is but two hills on it, one down and one up and they are not very steep hills about as steep as out on this public road leading to Dick Owens, about as steep as that.

Q. Can you give us the grade in figures? A. Well I would judge it to be a seven degrees grade.

Q. Could you describe the number of farm houses, school houses or churches on this road? A. Yes, it wouldn't be hard to describe, I believe there are only two houses on this road, one at Farrens and one at Litzingers, I don't remember of any other houses on this road.

Q. Is Farren's house on this road or one leading to Loretto? A. There is very little distance between the two, he may be a little closer to one road than to this, there is very little distance.

Q. Is that road not a swampy and ugly road? A. Why hilly roads aren't generally swampy, I said it was hilly, and I can't say it is swampy too.

Q. Isn't the road Corduroyed? A. I am not positive about that, there is a part of it goes through a little flat, and I don't remember whether it is corduroyed or not.

Q. Mr. Shoemaker you state that the reason that you didn't sign that report was because you thought there was a matter of spite between some neighbors and that was the reason that that proceeding was gotten up? A. Yes, I thought that was the reason that proceeding was gotten up.

Q. Will you explain what and who you mean? A. No, I won't do anything of the kind, I don't think that is necessary at all.

Q. Had you any positive knowledge that that was the reason? A. Well I couldn't say that it was positive knowledge.

Q. It was hearsay? Yes partly.

Re-Direct Examination by Mr. Kittel<sup>1</sup>:

Q. The first point described in the petition for appointment of viewers in this case is "A point on a public road known as the Loretto Road, In Allegheny Township" What public road is known as the Loretto Road in Allegheny Township? A. That would depend upon what point you want to take it from, you take it from Loretto or Buck's Mills. There is no particular point, you strike Allegheny Township out here at James Scanlan's and you might call the road past there the public road, or you might call that the Loretto Road leading from Buck's Mills to Loretto, we call the road here from Town the Loretto Road, right where the two roads fork.

Q. Are there not many roads in Allegheny Township known as Loretto Roads? A. Yes sir.

Q. Does this disputed road come out on any of the main thoroughfares leading to Loretto? A. Yes at the other end it would, it would come out on the road leading from Buck's Mills to Loretto or Ebensburg.

*J. A. Shoemaker*

William J. Tierney called and sworn.

By Mr. Kittel:

Q. Where do you live? A. I live in Cambria Township.

Q. How long have you lived there? A. About fifty-six years.

Q. What is your occupation? A. Farmer.

Q. Are you acquainted with the roads in Cambria Township and in Allegheny Township? A. I am to a pretty good extent.

Q. State whether you are well acquainted with the road in those two townships in the vicinity of your home? A. I am.

Q. The road in dispute in this case is described in the petition to the Court asking for the appointment of viewers as a road "Beginning at a point on a public road known as the Loretto Road in Allegheny Township near the house of Loretto Litzinger and extending to a point on the public road in Cambria Township near the house of Daniel Carney"; where is that road located? A. I cannot locate it by the description.

Q. Cannot locate it by that description? A. No sir.

Q. Where is the public road in Allegheny Township known as the Loretto Road? A. I don't know.

Q. Is there more than one road in Allegheny Township known as the Loretto Road? A. Those roads that lead to Loretto are known as the Loretto Road, there are many roads in Allegheny Township known as the Loretto Road from certain points.

Q. Where is the house of Loretto Litzinger in Allegheny Township? A. I don't know such a person.

Q. State whether or not you are well acquainted with the persons in Allegheny Township bearing the family name of Litzinger? A. I know the family of William Litzinger all of them.

Q. Where do they live? A. Two of them live in Loretto.

Q. The others, One of them, the third one lives some where about Oil City.

Q. Do you know of any family of Litzingers in Allegheny Township? A. Yes sir, I know one family in Allegheny Township.

Q. Where do they live? A. They live at Bradily Junction.

Q. How far distant from your home? A. About two miles.

Q. What general direction from your home do they live? A. North East.

Q. On what public road in Cambria Township is the house of Daniel Carney located? A. On what we call the main road from Joseph Illigs to Ebensburg.

Q. Is there any other public road in Cambria Township passing through the farm of Daniel Carney? A. There is one other road crosses through a portion of his farm; two others.

Q. How far from his house is the nearest of these two other roads? A. Fifteen hundred and twenty-four feet.

Q. What public road is that you now refer to? A. It is a road crossing from a point between Patrick Farren and Daniel Carney, into Allegheny Township at the property of Henry Glass. connecting a road running to William Buck's, from the Ebensburg and Loretto Road.

Q. How did you ascertain the distance from Daniel Carney's house to the termini of the road just described? A. I took a measure.

Q. Did any body assist you? A. Yes sir.

Q. Who? A. John C. Farren.

Q. Assuming for the present that the point of beginning

of the road described in this petition is at a point in Allegheny Township near the house on a farm belonging to the heirs of William Litzinger who lived in Loretto, and extending to a point on the public road in Cambria Township near the house of Daniel Carney, what road or thoroughfare would be covered by that description? A. It would be a little less than one mile from one neighborhood in Allegheny Township to another neighborhood in Cambria Township.

Q. What public road or roads would be covered by that description? A. There is none but that one.

Q. Would that description embrace one public road only, or the whole of one public road and a part of another? A. It would embrace something less than a mile of one road, and fifteen hundred and twenty-four feet of the main road.

Q. State whether you are acquainted with a public road leading from a point at or near Patrick Farrens in Cambria Township to a point on the road from Buck's Mills to the Ebensburg and Loretto Road at or near the farm of William Litzinger's heirs in Allegheny Township? A. I am.

Q. Assuming that that is the road intended in this proceeding to vacate a public road, state whether in your judgment that road is useless, inconvenient, and burdensome to the inhabitants of the townships in which the same is located? A. It is not.

Q. Why do you say that the road is not useless, inconvenient and burdensome? A. Because it is essential to public travel both directions; because it don't cost much to keep it up, and because it makes much a shorter route for the parties in Cambria Township in our locality to get to market to get to

Bradley's Station which is our nearest Station to get to a coal station near Loretto to get to Gallitzin, Cresson, Lilly's, which is our general market.

Q. How many persons do you know use this road last described? in preference to other roads? And name them? A. Farrens, William Tierney, John Tierney, John Phalen, now representing the Murray Farm, James Farren in Carroll Township, in Allegheny there are many in coming into our neighborhood use this road; James Scanlan that is in Cambria Township; Daniel Carney I forgot. In Allegheny Township, Joseph McMullen, Joseph Scanlan, John Bannan, and others; Michael Bradley I saw use it in the last date.

Q. What is the condition of this last described road? A. It is at present in fair condition.

Q. How does it compare with other cross or byroads which are not main thoroughfares? A. As good if not better than the majority.

Q. How does it compare in point of grade with the other roads used and travelled by you in your locality? A. It is a lighter grade than any other that we can reach those points described by me.

Q. If this last described road was vacated, how much longer distance would you have to travel in going to Loretto or points on the Loretto Road between Henry Glasses and Loretto? A. At present, by the way of a road I could not reach Loretto any other way nor that point at Henry Glasses than by William Buck's and thence to Loretto, and from there to that point.

Q. How much farther would that be? A. It would be between three and four miles.

Q. Do you know of a public road which intersects the road leading from ----- Ebensburg to Loretto at Bradley's Station and extending thence in a general North Westerly direction to what is known as the Old Carrolltown Road? A. I do.

Q. Does that road intersect the road leading from Ebensburg to Illig's, formerly Behe's Mill? A. Yes sir.

Q. Is not that point of intersection South of Daniel Carney's house? A. It is.

Q. What is the distance from Patrick Farrens to Bradley's Station by that road? A. I think it is over two miles.

Q. What is the present condition of the road from Bradley's Station to the point of intersection South of Carney's house?

A. It is impassible.

Q. From what cause? A. From snow drifts.

Q. How long has it been that way? A. In and about a month.

Q. State whether that cross road can be safely travelled now?

A. It can not.

\* Q. What amount of money would be necessary to expend for the purpose of placing in good repair the road leading from Patrick Farren's to the Buck's Mill Road in Allegheny Township? A. From twelve to fifteen Dollars.

Q. What would be the annual expense of keeping that road in repair? A. It can be done for ten Dollars.

Q. State whether or not you would be willing to repair that road and to keep it in repair for the sums named? A. I am willing to take charge of it, for the sum I have mentioned, for five years, and article with the Auditors of the two Townships having a time specified that they would pay me and keep it in good repair.

Q. State whether you would be willing to obligate yourself to that contract and secure the performance of it? A. I am.

Q. Are you the owner of real estate? A. Yes sir.

Q. Is it encumbered? A. No sir.

Q. Is this disputed road open now; and in safe condition for travel? A. Yes sir.

Q. If that part of the public road between Daniel Carney's house and Patrick Farren's farm is vacated together with the cross road leading to the Buck's Mill Road, how could you and the persons in your vicinity get to Ebensburg? A. By the Way of William Bucks, thence up to the Glass Property, if the road was open, I understand it is not open now.

Q. How much farther would that be in reaching Ebensburg? A. Something between three and four miles.

Q. If the road up to the Glass place is not open, how would you reach Ebensburg? A. By the way of Loretto.

Q. And how much longer would that be? A. About one mile further.

2 Cross Examination by Mr. Creswell:

Q. Where do you live Mr. Tierney? A. In Cambria Township.

Q. In what Township is this road in question located? A. If I understand the road; it is located about one-half in Cambria Township and the other half in Allegheny Township.

Q. How long is that road beginning at the point near Dan. Carney's and running to a point near the Litzinger Farm on the other road? A. It is something over a mile.

Q. How far is either terminus of that road from your home? A. About three quarters of a mile.

Q. How near to any part of that road do you live? A. About three quarters of a mile.

Q. Do you live on or near any other public road? A.. Yes sir

Q. To what places does that road lead in either direction?

A. My road

Q. The Road you live on? A. To Ebensburg and Bradley Junction.

Q. To what point do you desire to go when you use this road spoken of, I mean the road in dispute? A. I desire to go to Loretto, to Bradley's Station, to the Coal Station, this side of Loretto.

Q. In your business how many times a year is it necessary for you to use this road? A. It is necessary in and about once a week if not oftener.

Q. Is it necessary that you use this road when there are other roads in the near vicinity leading in the same direction? A. Yes sir.

Q. Do you always use this disputed road to go to the points you have named? A. No sir.

Q. When it is necessary for you to go to any of the points named with a wheeled vehicle you usually take one of the other roads don't you? A. No sir.

Q. Is that your nearest road to Bradley's Station? A. I think it is.

Q. You say that you are acquainted with all the members of the family of William Litzinger? A. I think I am.

Q. And you are positive that there are none of that family named Loretto? A. I don't know any.

Q. You will not say that there is not one by that name? A. There might be one of the family that I don't know.

Q. Do you know who owns that farm? At this time?

A. Which farm?

Q. The Litzinger farm, at present? A. My understanding is that Eugene Litzinger owns that farm.

Q. Where does he live? A. In Loretto.

Q. Do you know about where the division line between the properties of Daniel Carney and Mr. Farren is? A. Yes sir.

Q. Where is that line? on the road? A. The road comes out on it.

Q. On whose land is that road? A. It is on the land of Patrick Farren, Daniel Carney, and Eugene Litzinger.

Q. How far does it run through or along Farren's land?

A. But a short distance, between seventy-five and one hundred yards, I think.

Q. Do you know if the whole width of the road that distance or only a part width is on the land of Mr. Farren? A. My understanding is that it is divided on the line, between Patrick Farren and Mr. Humphrey's at the time that the road was located.

Q. Do you know if there is an offset in the road or was it run on a straight line? A. There are two or three winds in the road.

Q. I mean on the line between Farren and Dan. Carney's on the line? A. I think it is straight from the fact that that line is straight.

Q. Do you know of any road other than this one in dispute beginning at or near any Litzinger Farm in Allegheny Township and terminating on another road at or near Daniel Carneys? A No Sir.

Q. Then if a description of the road reading "Beginning at a point at or near the farm of Litzinger and terminating at or near the farm or place of Daniel Carney", would be such a description as would designate to you this particular road? A. I would suppose it to be the road in dispute.

Q. You draw this conclusion from the fact that no other road in Allegheny Township begins at or near the farm of any person by the name of Litzinger and terminates at or near the farm of Daniel Carney? A. Yes sir.

Q. When did you measure the distance from Daniel Carney's to this road? A. On the Third day of this month, this date.

Q. Why did you measure it? A. To find its distance.

Q. What was the purpose of finding that distance? A. To locate this road.

Q. Why did you want to locate this road if you didn't know by the description that this was the road in dispute? A. To find it out.

Q. To find what out? A. The distance.

Q. Why did you want to find out the distance to that particular road, from Dan. Carney's house unless you knew that that was the road for which these proceedings were instituted to vacate?

A. I expected to be asked here as a witness what the distance was.

Q. Didn't you know when you measured that, that there was proceedings instituted to vacate that road? and that that was the reason that you measured it? A. I knew there was proceedings to vacate the road, and my other answer gave you why I measured it.

Q. How did you know that was the particular road they were trying to vacate? A. I supposed it was.

Q. Why did you suppose so? A. From the fact that this road had been described otherwise in a former view that was held on it.

Q. Mr. Tierney you stated in your direct testimony that there was one or two other roads crossing through portions of Dan. Carney's farm, does either of those two roads mentioned by you lead into Allegheny Township? A. One of them does.

Q. Which one, A. The Main road past my farm.

Q. That is the one that leads to Bradily Junction? A. Yes sir

Q. And don't lead in the same direction as the road sought to be vacated? A. Not by going to Bradily Junction.

Q. In a description "A road leading from a point near the Litzinger Farm in Allegheny Township to or near the farm of Daniel Carney in Cambria Township" would you conclude that either of these other roads you mentioned was described? A. No sir.

Q. When did you last travel the road in question? A. Today between the hours of eight and nine o'clock.

Q. In what condition is it now? A. Sledding condition.

Q. Is it not very much drifted? A. I don't consider it much drifted, I drove it with two horses and a big sled without any trouble.

Re-direct examination by Mr. Kittell:

Q. In your cross examination, you told some of the purposes for which you would use this disputed road in travelling in a general direction of Loretto; state whether or not you also use that road at times in going to church at Loretto? A. Yes sir I do

Q. You generally attend church at Ebensburg? A. Yes sir.

Q. Do other persons than yourself use that road in going to church at Loretto? A. Yes sir other persons use that road for going to church.

. State whether you make use of the road in visiting friends and relations? A. I do frequently.

Q. Have you relations living in the direction of Loretto? A. My wife's relations are living there.

Q. State what road is used by you and your wife or by your wife's relations in exchanging visits? A. This road generally.

Re-cross examination by Mr. Creswell:

Q. Is the road in question the nearest and best route to Ebensburg? A. No sir.

*Wm J Tierney*

Henry Scanlan, Esq., called and sworn:

By Mr. Kittell:

Q. Where do you reside? A. Carrolltown, Cambria County.

Q. What is your occupation? A. Surveyor and Justice of the Peace.

Q. Do you hold any official position in the county other than Justice of the Peace? A. County Surveyor.

Q. How long have you been the County Surveyor? A. From fifty-six to the present day with the exception of three years that I would not have it.

Q. How long have you been a surveyor? A. Near onto forty years.

Q. What is your age? A. I will be seventy-seven if I live to the Fourteenth of next April.

Q. Where were you born? A. I can't tell you only from hearsay, I was told that I was borne in Cambria County.

Q. Where was your home in your younger days? A. In Cambria Township about three miles North East of Ebensburg.

Q. How close is that to the disputed road in this case? A. About half a mile, may be a little bit more.

Q. Are you acquainted with this disputed road? A. I have been on it, I have surveyed it.

Q. Report of Viewers appointed by the Court to view and lay out a road from a point on the road from Ebensburg ~~and~~ to Behe's Mill to a point on the Road from Ebensburg to Buck's Mill shown to witness and he is asked to state whether he was one of the viewers appointed by the Court to lay out that road? A. I was.

Q. Look at the draft attached to this report and state

please whether ~~that~~ draft coorrectly shows the disputed road? A. I couldn't just say that, it does not give me the courses and distances on it, but it represents the shape of the road.

Q. You were appointed not long ago by the Court as one of the re-viewers for the purpose of considering the question of vacating this road, were you not? A. Yes.

Q. Report of viewers filed to No. 5 of June Sessions 1893 Road Docket shown to witness and he is asked to state whether this is the report made by the viewers thus appointed? A. This is the report.

Q. Have you known this road ever since it was laid out? A. I have known it and travelled it before it was a laid out-road.

Q. And ever since? A. And have traveled it since.

Q. Are you acquainted with the public roads in Cambria and Allegheny Townships in the vicinity of this cross road? A. I have been on them, was raised very close to them.

Q. The petition asking for the appointment of viewers in this case now under consideration asks for the appointment of viewers to vacate a road "Beginning at a point on a public road known as the Loretto Road in Allegheny Township near the house of Loretto Litzinger, and extending to a point on the public road in Cambria Township, near the house of Daniel Carney" please state where the road in Allegheny Township is that is known and designated as the Loretto Road? A. Can't answer that; simply for this fact, the road leading from our place to Loretto we call the Loretto Road, If I were at Ebensburg and was going to Loretto I would call that the Loretto Road; If I were at St. Augustine, and going to Loretto, I would call that the Loretto Road, so would I from Gallitzin and the Summit.

Q. Do you know where the house is in Allegheny Township that is known as the house of Loretto Litzinger? A. If there would be any such a place it would be a house on the Chest Spring and Loretto Road.

Q. Why? A. There is where a lady of that name resided at one day.

Q. Do you know any other lady in Allegheny Township by the name of Loretto Litzinger? A. I do not.

Q. Do you know where the house of Daniel Carney is in Cambria Township? A. I do.

Q. On what public road is it located? A. It is located on a road that would lead from Behe's Saw Mill to Ebensburg.

Q. Is that house at or near the terminus of the road laid out in 1855 and to vacate which proceedings were instituted some couple of years ago? A. I never measured it but you can't see the house from where that road strikes the township road, I suppose it would be in the neighborhood of some eighty rods.

Q. Is the house visible from the end of that road? A. Where this road strikes that township road, no sir, at least I could not see it.

Q. State whether your experience as a viewer and surveyor in laying out roads for public use and passing upon the expediency of vacating and supplying public roads has been considerable or otherwise? A. I have laid out a great many roads in Cambria County, the different parts of it.

Q. If an order of Court were placed in your hands for the purpose of passing upon the expediency of vacating a road beginning at a point on a public road known as the Loretto Road in

Allegheny Township near the house of Loretto Litzinger and extending to a point on the public road in Cambria Township near the house of Daniel Carney, what road would you view, and how would you ascertain it? A. I would know where Dan. Carney was but then I am done, unless I would have to go on the Chest Springs and Loretto Road there is where Loretto Litzinger lived, that is the only point where I would know.

Q. If you ascertained that the point of beginning in Allegheny Township was at or near the house on the farm of the heirs of William Litzinger, what ~~ground~~ ground would necessarily have to be viewed in order to reach the point designated on the public road in Cambria Township, near the house of Dan. Carney?

A. I would go onto the Chest Springs Road if I wanted to ascertain the point, as Loretto Litzinger <sup>never</sup> lived along the line in the neighborhood of the Henry Glass farm.

Q. But if you ascertained that the point of beginning was on the Buck's Mill road at Henry Glass's place, and that you were to view the road to Dan. Carney's house what ground will you go over? I would go over the ground where the road is now.

Q. In traversing that ground would you necessarily have to travel on more of a public road than this cross road? A. The road that leads from near the Henry Glass farm to Patrick Farrans on the public road.

Q. Would that take you to a point on the public road at or near the house of Daniel Carney's? A. I would have too much of a hill to get up to make a road that would be passible.

Q. What in your judgment is the condition of this cross road as respects the travelling public? A. I consider it very good, I consider it in a good condition for a cross road, really in better condition than many cross roads in the County.

Q. Is it ~~in a~~ condition safe for travel? A. The last time I was on it it was in fair condition.

Q. State whether in your judgment this road is useless, inconvenient, and burdensome to the inhabitants of the townships?

A. I consider the road useful and necessary and convenient to the citizens and travelling public.

Q. Why? A. Because it is a shorter route, it is better grade less distant.

Q. How do the grades on this cross road compare with the grades on the other public roads in that locality? A. With the exception of one little pinch of a hill going up to Mr. Farrens the grade on it is fair.

Q. Did you hear the estimates placed by William Tierney here to-day as to the cost of placing that road in fair condition and keeping it in repair? A. I did.

Q. State whether in your judgment the estimate of expense made by him is a correct estimate? A. His estimate would be high if anything.

Q. Are you acquainted with William Tierney? . Yes I have seen ~~the~~ gentleman.

Q. State whether he is a reputable citizen? A. So far as I know; I never heard anything to the contrary of it.

Q. What is his financial standing? A. I suppose it is a little like myself, has a little bit, but nothing to spare.

Q. ---, Is he of sufficient financial ability to make good his proposed contract, <sup>with</sup> ~~the~~ the Supervisors and Auditors of said townships? A. If he would promise to do a thing for me, if I had his promise or his note, I would risk it.

Q. If the public road leading from Ebensburg to Behe's Mill, or as it is now known Illig's Mill is vacated, North of Daniel Carney's house from a point at or near his house to a point on the line between Daniel Carney and Patrick Farren, and thence extending on this cross road to the Henry Glass farm what would be the effect on persons travelling the road from Ebensburg to Illigs Mill or back? A. You would have to vacate I am not certain as to the distance, you would have to vacate something in the neighborhood of that road to accomplish that fact.

Q. What effect would that have to the public travel on that road? A. It stopps it.

Q. Is that road from Ebensburg to Illig's Mill a main thoroughfare? A. It is a main Thoroughfare from that Mill to Ebensburg.

Cross examination by Mr. Creswell:

Q. You do not live in either Allegheny or Cambria Townships?  
A. No sir.

Q. Is there a road beginning at or near the Litzinger property designated <sup>by</sup> you as being situated on the Chest Springs Road and leading from thence to or near the property of Daniel Carney? A. My answer is that Loretto Litzinger resided on the Chest Spring and Loretto Road.

Q. Whether or not from that property you designate from the Loretto Property on the Chest Springs Road leading to Daniel Carneys? A. Yes you could by going to Buck's Mill and from there to Daniel Carney's.

Q. If you had directions from the Court to vacate a road beginning "at or near the property of Daniel Carney in Cambria Township and running to a road known as a Loretto Road near the Litzinger farm in Allegheny Townshi" what road would you vacate? A. It is middling hard for me to get on a road at or near Dan. Carney's house, because there is none in sight.

I mean at or near Dan. Carney's property? A. Well if there is a road there and there was an order put in my hands to vacate it I would follow that road if I found one there, and if it was in the opinion of the viewers that it should be vacated, I would vacate it, and if not in the opinion of the viewers to vacate it, I would leave it a public road.

Q. You know that there is a road leading off of the main road between the properties of Daniel Carney and Mr. Farren and that the termination of that road is on the road leading from Chambersburg to Buck's Mills and near the Litzinger property? A. Yes there is such a road there.

Q. When was the last time you were over that road 'Squire? I really can't tell you it is about a year ago. I believe the 22nd of January 1894.

Q. Isn't Allegheny Township and Cambria Township both burdened with public roads? A. I think they ought to have some more.

Re-direct examination by Mr. Kittell

Q. In stating that in your opinion this cross road is necessary to accommodate the travelling public, will you please give in detail your reasons for thinking so? A. Persons wanting to go across to that portion of Allegheny or from that portion of Allegheny to this portion of Cambria must come a round by Winterset or go North by way of Buck's Mills, adding considerable distance to make those points.

Q. And how would the grades on those two last described routes compare with the grades on this cross road? A. The grades on the Winterset road is good, but the grade on the Buck's Mills road is dangerous to life and property ~~four~~ four houses could not pull what two could pull on those hills, they are steep and dangerous.

Q. Would the closing of this cross road have any effect financially, on the farms of Patrick Farren, William Tierney and other farms further North on that cross road?

Objected to because it is immaterial.

A. It would be beneficial to the names mentioned as well as to a great portion of the citizens of Allegheny Township having business across the township at that point.

Q. Well I wouldn't give as much for the farms it would be injurious and render the farms less in value, because I believe the road is a benefit to Allegheny and Cambria Township both and to the Citizens.

*Henry Scanlan*

John C. Farren called and sworn.

By Mr. Kittell:

Q. Mr. Farren, where do you live? A. In Cambria Township.

Q. You are a son of Patrick Farrens? A. Yes sir.

Q. How many men are there in your family? A. There are three brothers of us and my father, four of us.

Q. Are all of you owners of real estate in that vicinity?  
A. Yes sir.

Q. How many farms do you own there? A. We own three farms and a piece of unimproved land, four pieces of land.

Q. What quantity of land have you all told? A. I think about three hundred and sixty-some acres.

Q. Your farm adjoins the North line of Daniel Carney's farm? A. Yes sir.

Q. There is a public road going from Ebensburg to Illig's Mill that passes through Daniel Carney's farm and your farm? A. Yes sir.

Q. Is there not a public road starting on the line between Daniel Carney and yourselves and extending to a point in Allegheny Township on a farm belonging to the heirs of William Litzinger deceased? A. Yes sir.

Q. What distance is it from the beginning of that road on a line between Carney and yourself to Daniel Carney's house? A. Fifteen hundred and twenty-four feet.

Q. What distance is it from that point to your house? A. To the end of the road to our house is Four hundred and sixty-seven feet.

Q. Did you ascertain those distances from actual measurement?

A. Yes sir.

Q. Is Daniel Carney's house visible from that end of the road? A. I think not.

Q. Is your own house visible from that end of the road? A. Yes sir.

Q. What is the condition of this cross road just described as relates to public travel? A. It is in a safe condition.

Q. How long have you known that road? A. I have known it ever since I commenced to mind, I don't think it was long after it was built.

Q. What persons do you know personally to have travelled that road back or forwards? A. Well I can't give you the names of all but here are some of the names that I saw; our own family, William Tierney, James Whalen, Alex Strittmatter and Brother, Daniel Carney, Phillip Illig, Louis Kaylor, Michael Bradley, Joseph Scanlan, James Scanlan, John Bannan's boys, George Stock, F. A. Devereaux, Isidore Seymour, H. R. McMullen, Huxter, Gallitzin Butcher, rigs from Gallitzin, and rigs from Ebensburg. And there are others that I saw driving it that I did not know who they were.

Q. The road might be travelled many times by persons whom you would not see either? A. Yes sir.

Q. State Mr. Farren whether or not you consider this road necessary to accommodate the travelling public? A. I do.

Q. Is the road a useless road? A. No sir.

Q. Is it an inconvenient road to travel? A. No sir.

Q. Is it a road that is burdensome to the inhabitants of the Townships? A. I think not.

Q. Why do you consider the road necessary to accommodate the public travel? A. Well the people living there in the vicinity has to get back and forwards and because when people travel it I think it necessary to accommodate them.

Q. If this road were shut up you could still get to Loretto?  
A. Yes sir by going around you could.

Q. Which would be your best way to get to Loretto if this road was shut up? A. By Buck's Mills.

Q. Would that road be longer or shorter? A. It would be longer.

Q. By how much? A. I would suppose about a mile and a half.

Q. Could you not also get to Loretto by coming some distance on the road towards Ebensburg and then travelling a cross road to Bradley's Station on the road from Ebensburg to Loretto? A. Not at present.

Q. Why not? A. The cross road from Ebensburg and Illig Mill road to Winterset Station is drifted shut.

Q. For how long a time has it been drifted shut? A. Since the first drifty weather we had, about two or three weeks.

Q. Do you know of that road being closed by drifts in other winters? A. Yes sir, I think it is closed almost every winter.

Q. How much longer around to Loretto is that road from your place? A. I think it is about a mile and a quarter or there about

Q. How do the grades on this disputed road starting from your line, compare with the grades on the other public roads in that vicinity? A. They are not as heavy grades on that road.

Q. How does this cross road compare in its general condition of the travel with other cross roads in your locality?

A. Favorably.

Q. Did you hear William Tierney's estimate of the amount of money necessary to repair this disputed road and to keep it in a good condition for a period of five years? A. Yes sir.

Q. State whether you know William Tierney's financial standing? A. I think I can guess pretty close.

Q. Do you consider him of sufficient financial ability to make good his proposed contract with the Supervisors and Auditors of those two Townships? A. Yes sir.

Q. What effect if any would the closing of this disputed road have on the value of your farms and the other farms North of here along the road to Illig's Mill? A. It would depreciate the value no doubt.

Q. Have these persons whom you have named as travelling the road crossed over it in recent time, or do you mean that they have crossed over it in years gone by? A. I mean that they have crossed over it inside of the last year; it would make a large list to name all I have seen travelling it.

Q. Do you use this disputed road in hauling to or from Winterset, formerly known as Bradley Station? A. Yes sir; we have hauled coal, lumber, beed and linn wood to and from the station.

Cross examination by Mr. Creswell:

Q. Mr. Farren, to what places do you use this disputed road to go? A. To Winterset Station, or to Loretto Road Station, to Loretto, Gallitzin, Cresson, or any points east.

Q. Are there any other roads in the immediate vicinity leading to the same places directly or indirectly? A. Not in the

immediate vicinity.

Q. How far is it to Gallitzin from your place by this road and how far by any other? A. It is about ten miles by this road, and about eleven and a half by way of buck's Mills.

Q. Where do you attend church? A. In Ebensburg.

Q. Where do you usually do your marketing? A. We do our small marketing in Ebensburg.

Q. And where do you do your large marketing? A. We have sold at Gallitzin and Cresson and those places.

Q. How many times a year is it necessary for you to use this disputed road to go to market? A. I couldn't answer that question.

Q. About how many times? A. I couldn't tell I couldn't tell how many sales we would make.

Q. Do you use it once a year? A. Yes sir.

Q. Do you use it once a year to go to church.

Q. Do you ever use that road to go to Ebensburg? A. Yes sir we have.

Q. How frequently? A. Well when our main road is closed we drive there, not very frequently.

Q. How many times in your recollection have you used that road because the main road was closed? A. It is pretty hard to answer that, a half a dozen times.

Q. Isn't that road usually closed before the main road is? A. No sir.

Q. How does it come that you haul your heavy loads up the road past Bradley Station instead of using this disputed road? We don't haul loads past the Station, except when we are hauling to the Station.

Q. How often during a year did you use that road? A. Before it came into dispute? A. I couldn't answer that question.

Q. Havn't you used it more since this dispute arose than you ever did before? A. No sir.

Q. Mr. Farren what was your purpose in working on this road without compensation just prior to these views that were made?

A. Why we had twenty cord of lin wood to haul over, we knew the supervisors wouldn't fix it and we had to prepare it for our own use.

Q. Have you hauled that lin wood? A. Part of it.

Q. How many loads have you hauled over that road since you fixed it? A. I could not say they are hauling lin wood now, and I could not tell you how many trips they made.

Q. Now havn't you only hauled that wood out to the road?

A. We have it hauled out to the road and part of the way along the road and are hauling it to the station now these days.

Q. Wasn't your purpose in repairing that road to have the viewers report favorably on it? A. No sir.

Q. You hadn't thought of it? A. I had.

Q. Then your purpose was to prepare that road for the viewers

A. No sir; it was to prepare it to haul lumber from Illig's mill and we expected to haul the wood out in a week or so at that time we could not make sales just then when we calculated to haul it out and had to let it lay over.

Q. How many loads of lumber did you haul from Illig's Mill over that road after you fixed it? A. I hauled one it was a good while afterwards it was last Saturday; but Jim Whalen and I think Phillip Illig was hauling lumber there at that time.

Q. Did you ever try to induce people, any person to haul over and use that road for the purpose of showing that the road was necessary? A. Yes sir.

Q. Then you have been trying to make testimony for the purpose of keeping that road from being vacated? A. Not directly.

Q. Mr. Farren didn't you tell John Bannan that one time not to venture over that road because there was danger of him getting killed? A. No sir I never did.

Q. Did you ever talk to John Bannan about it? A. No sir, not that I remember.

Q. When you have any lumber or wood or heavy freight to ship at Bradley's Station, don't you haul it past Dm. Carney's place? A. Not always.

Q. Don't you usually go that way? A. Yes sir.

Q. You had a book in your hands a few minutes ago from which you read the names of a number of people who travelled that road back and forwards? A. When did you write them names down? A. The other day.

Q. You didn't write them down at the time you seen people passing along there? A. No sir.

Q. How many times did you see any of the people named pass along that road? A. I could hardly answer that; I could not give you the amount of times.

Q. Did you see any of them pass along once? A. I saw some of them pass once a week through the summer; Hugh McMullen huxtered through there and drove once a week.

Q. Is there any person living along that road or in the immediate neighborhood of it between your place and the Litzinger property? A. No sir.

Q. There are no people living in there who uses this road as a necessity to get out to the main roads? A. Not living along the road there a'n't, excepting Mr. Seymore on the Ditzinger Place.

Q. That is on the other end of the Road? A. Not quite.

Q. It is not a road of necessity? A. I think it is.

Q. Why do you think so? A. Because it is used by the people

Q. People living along the road? Or people from either end of it? A. People from both ends of it.

Q. Is it necessary? A. for any prson to use that road to get out to the main roads? A. Yes, we have to use it to get out to the Loretto Road, and all in that section use i .

Q. Is that all the way you can get to the Loretto Road? A. It is the only weay we can get to the Loretto Road by the way of a road.

Q. Is there any person living in that section of the County between the road leading past your place and Dan Carneys and the road designated here as the Loretto Road and living in the immediate neighborhood of this cross road who can't get out to one of main roads, except by using this cross road? A. If I understand it right <sup>Seymour</sup> Isidore is the only person living along this road and he has to use it.

Q. Isidore Seymour lives on the Litzinger Farm at or near the terminus of the disputed road? A. Yes sir.

Q. Mr. Farren you stated in your direct testimony that when the main road was closed you always used this one? A. Not always. We go the fields along the main road sometimes when the main road was closed.

Q. Mr. Farren in a description of a road beginning on a point of a public road known as the Loretto Road in Allegheny Township near the house of Loretto Litzinger and extending to a point on the public road in Cambria Township, near the house of Daniel Carney, would <sup>it</sup> describe this disputed road sufficiently for you to identify it?

Objected that parol testimony could not be introduced to attempt to show a particular road described in the petition or the order of the Court. It is required that the termini of roads shall in all proceedings in Court be given with percision, and only the place of beginning and place of ending of the road as described in such proceedings can be taken as the termini of the road.

A. It would me.

*J. B. Farren*

William Tierney recalled on the part of Exceptants.

By Mr. Kittell:

Q. Did you hear the testimony of Mr. Hughes in reference to what he said and what you said in relation to his being a candidate for re-election to the office of supervisor of Cambria Township? A. Yes sir I did.

Q. Please state where that conversation took place and what was said by him and by you? A. Mr. Hughes and I met at Bert Denny's Bar room and as socible farmers had a drink together and Mr. Hughes commenced talking politics, township politics concerning the coming election and the words I do not recollect, it amounted to the fact that if our corner would support Mr. Hughes at the coming township election which would be last Spring, in February, he would not proceed any farther in the persecution I might term it of our rights in our corner; and I promised Mr. Hughes so far as I was concerned I would give him my support and any support that I could bring him if he had any opppsition at the coming election. And finding that he had no opposition, I did not make any effort.

Q. Who opened that conversation? A. John M. Hughes.

Cross-examination by Mr. Creswell:

Q. You admit that such a conversation occurred between you and Mr. Hughes? A. Yes sir.

Q. How long before the view was that? A. This was before the spring election, I think it was about the last of this month or the first of February last year.

Q. Was Mr. Hughes elected at that election? A. I think he was; he is acting as supervisor now.

Q. Was this action to vacate this road pending? A. Yes sir.

*Wm. A. J. Turner*

STATE OF PENNSYLVANIA |  
                                  | SS.  
COUNTY OF CAMBRIA |

I do hereby certify that the above witnesses were duly qualified and examined at the time and place stated in the above Caption; that the same was reduced to writing by me, in the presence of said witnesses, and having been approved by them, they subscribed their names thereto in my presence.

Witness my hand and Notarial Seal this Twenty-first day of January A. D. 1895.

*J. L. Lister*  
Notary Public

In re Road in  
Allegheny Township  
leading from near  
house of Lott's Citizens

Quarter Sess  
In the Court of Common Pleas  
of Cambria County, Pa.

of Mar Sess.  
Term, A. D. 1894, No. 10  
RD.

to  
point near house of  
Dan. Carney Cambria Twp.

And now, to-wit, the 11<sup>th</sup> day of Jan, A. D. 1895, Rule  
on part of Exceptants to take depositions of witnesses  
to be read on the hearing of the above stated case.

CAMBRIA COUNTY, SS:

Extract from the Record of said Court. Certified the

11<sup>th</sup> of Jan. 1895.

J. H. Dickey, Prothonotary.

To F. J. O'Connor Esq. Attorney for Petitioners in  
aforesaid Road

TAKE NOTICE, That in pursuance of the above Rule the depositions of witnesses to be read in evi-  
dence on the hearing of the above stated cause on part of  
the Exceptants will be taken at the Attorney's Room in  
the Court House in Ebensburg Pa. on Tuesday  
the Fifteenth day of January, A. D. 1895, between the hours  
of Eight o'clock A. M., and Eleven o'clock P. M., before P. J. Little,  
a Notary Public in and for said County  
or by some other person of competent authority, at the time and place aforesaid, when and where you may  
attend if you think proper.

M. A. Mitchell  
Atty for Exceptants



No 10 Mar Term 1894 R.D.

In re road from near Loretto  
Sitzingers in Allegheny Twp.

to

Near Daniel Carney's in Cambria  
Township.

Depositions on part of Excep-  
tants.

Filed 22 Jan'y 1895

Notarys fee \$7<sup>00</sup>

In a road from <sup>near</sup> Levitts depuys in  
Alleghen Twp to  
Blair's Cemetery in  
Cambria

In the Court of Quarter Sessions  
Common Pleas  
of Cambria County, Pa.

of March Term, A. D. 1894, No. 10  
Ral

And now, to-wit, the 24 day of Dec, A. D. 1894; Rule  
on part of Petitioners to take depositions of witnesses  
to be read on the hearing of the above stated case.

CAMBRIA COUNTY, SS:

Extract from the Record of said Court. Certified the

24 of Dec 1894  
J. C. Wainwright Prothonotary.  
Cambria Co., Pa.

To Escapants on M. D. Kittell Esq then attorney

TAKE NOTICE, That in pursuance of the above Rule the depositions of witnesses to be read in evi-  
dence on the Argument of the above stated Case on part of  
the Petitioners will be taken at the Court House  
Chenaburg on Tuesday  
the 15<sup>th</sup> day of January, A. D. 1895, between the hours  
of Ten o'clock A. M., and Two o'clock P. M., before P. J. Lattin

Notary Public & Common in and for said County  
or by some other person of competent authority, at the time and place aforesaid, when and where you may  
attend if you think proper.

P. J. O'Connor and  
R. C. Brown  
attys for  
Petitioners

No. 10 New Series 1894  
Rd

Done road from Lortia  
Liquor in Allegheny  
Sub to new Daniel  
Liquor in Casselton  
Sub

Service accepted  
M. A. Hill  
Major Captain  
Pohelmer

RULE ON PART OF

F. J. Hornes

In re road from near Loretto | In the Court of Quarter Sessions  
Litzinger's in Allegheny Town- | of Cambria County Pennsylvania.  
ship, |  
to | No. 10 March Sessions 1894 R. D.  
Hear Daniel Carney's in Cam- |  
bria. |

DEPOSITIONS OF WITNESSES, taken before me, this Fifteenth day of January 1895, between the hours of ten o'clock A. M. and ten o'clock P. M. in the Court House at Ebensburg Penn'a. by virtue of the annexed Rule of Court and notice thereon endorsed for the examination of witness in above stated cause.

R. E. Creswell, Esq., appeared for Petitioners.

M. D. Kittell Esq., appeared for Exceptants.

John P. Hertzog called and sworn on the part of  
Petitioners.

By R. F. Creswell, Esq.

Q. Mr. Hertzog where do you live? A. Allegheny Township.

Q. State what is your business? A. I have been supervisor,  
and also live on a farm.

Q. You are supervisor for Allegheny Township for the present?

A. Yes sir.

Q. State whether or not you were a party to the petition  
to vacate a road leading from near Litzinger's Property in Alle-  
gheny Township to Near Dan. Carney's property in Cambria Township?

A. I am for the citizens of our Township.

Q. Will you state why it was sought to vacate the road? A.  
Yes the road was what I call an unnecessary road and also a  
dangerous road, it has been laying a kind of a commons there and I  
was afraid as one of the supervisors that our citizens would  
get into trouble about the road paying damages, men getting in  
there strangers not knowing anything about the road and as far as  
the Township is concerned we are getting entirely too many roads  
in Allegheny Township and the Supervisors will be a burden on the  
tax payers keeping up so many roads. Them is the reasons I object-  
ed to the road, I could tell by the road it wasn't travelled  
any to amount to anything and in very bad shape, I saw ditches  
in that road three or four feet deep and also is a very steep hill  
a hilly road that I claim that there is no township can build  
a good road out of it to stay there, it is too steep; there is  
a place from the creek in our township leading up toward Litzingers  
there in the neighborhood of four or five hundred feet and from

ten to fifteen feet to the hundred.

Q. State whether or not you think this road is necessary for the accommodation of the travelling public? A. I think not.

Q. State when to your knowledge there was any work done on it by the township? A. There has not been any work done on that road by the townships for two years or over, it may have been more than that, but I have watched it because I was interested in the road ever since.

Q. The road has been in litigation before this last petition has been presented? A. Yes sir.

Q. State if there was any other roads leading from or near this road to any points near the terminus of the road in Cambria Township? A. There is there is one leading from past Mr. Farrers house up past Dan. Carney's and runs on to Ebensburg, and also a road on the Ebensburg Road running over to Winterset we always called it Bradley Station, and also from the opposite side over the Litzinger Farm there is a road coming up past Bucks leading towards Ebensburg and Loretto.

Q. Could persons living in the vicinity of the beginning of this road in Allegheny Township reach the point of its termination in Cambria Township without adding materially to the distance?

A. Why they would be a little added to the distance, but a much better road, a far better.

Q. About how much farther A. In the neighborhood of a half mile, something like that.

Q. From a description of a road beginning at a point on a public road known as the Loretto Road in Allegheny Township near the house of Loretto Litzinger and extending to a point on the

public road in Cambria Township near the house of Daniel Carney could you identify this road that is sought to be vacated? A. Yes sir, and I think they all understood it, but the parties appeared to be all on the ground the day that the view was.

Cross examination by Mr. Kittell.

Q. When were you first elected Supervisor of Allegheny Township? A. Three years this February coming.

Q. At what place in Allegheny Township do you reside? A. pretty handy to the line between Gallitzin and Allegheny Townships.

Q. You live East of Loretto? A. Yes kind of East of it.

Q. How far away from this disputed road? A. In the neighborhood of five miles I judge.

Q. Who is the other supervisor of Allegheny Township? A. At this time, Zach. Kaylor.

Q. Mr. Kaylor has charge of the roads in one end of the Township and you have charge of the roads in the other end? A. I want you to understand that when I went into this thing I had charge of the whole township, there was no other supervisor but myself.

Q. Does not Mr. Kaylor at the present time have charge of the roads in one end of the township and you in the other end? A. He has so far as supervisor is concerned and if one neglects his duty the other is held responsible for it and has got to go and attend to it.

Q. Will you please state whether or not Mr. Kaylor does not have charge of the road in one end of the township and you in the other end? A. That is only a division among ourselves,

as Supervisors.

Q. The part of the disputed road in Allegheny Township is in Mr. Kaylors end of the Township as you and he have divided it off between yourselves. A. It is now, but it wasn't at the time this dispute started.

Q. Mr. Hertzog, have you filed your bond as supervisor of Allegheny Township?

Objected to, the bond itself is the best proof and if a bond is required is executed and on file, there has been nothing shown by the other side to lay grounds for oral testimony in relation to the bond.

A. That don't matter in this case at all; my bond is all right. My Attorney has got a hold of that bond.

Q. You havn't filed it? A. There are a good many things have not been filed I want you to understand. My bond is filed every year until this year and my attorney has got my bond now.

Q. Has that bond yet been delivered to the Auditors of Allegheny Township? A. I don't know whether it has.

Q. Is there not a proceeding now in Court to declare the Office of Supervision held by you vacant, because of your failure to deliver your bond to the Auditors of the Township.

Objected to because it is immaterial and irrelevant, and could be no part of this case, as he is the party in office and in control at this time and that his bonds were filed at the time this proceeding was started.

A. Yes sir.

Q. What do you know as the road called the Loretto Road in Allegheny Township? A. Well there are all called the Loretto roads as a general thing when we are going to Loretto.

Q. Any road in Allegheny Township which a man would travel in going to Loretto would be the Loretto Road to him? A. Yes sir.

Q. Do you know any person in Allegheny Township by the name of Loretto Litzinger? A. I don't know any body in the Township.

Q. Do you know of any house in Allegheny Township belonging to Loretto Litzinger? A. Yes sir I do.

Q. Is Loretto Litzinger a man or a woman? A. Well there is both.

Q. Do you know of any person whose christian or given name is Loretto Litzinger? A. We call them the Loretto Litzingers.

Q. Do you know any man or woman whose christian or given name is Loretto Litzinger? A. They call Loretto Litzingers.

Q. Do you not mean by Loretto Litzingers a person of the family by the name of Litzingers who live in Loretto? A. Yes I mean that family.

Q. Do the Litzingers who live in Loretto own more than one property in Allegheny Township? A. Well I think so by what I hear I am not certain.

Q. Do they not own or pay tax on the old Kaylor Farm at Kaylor Station? A. I hear they own it that is I know about it.

Q. And are there not still other properties in Allegheny Township? A. Not as I know of.

Q. Have you been over the whole of the disputed road? A. Different times.

Q. When was the first time when you travelled the whole of that road? A. Why something over two years ago.

Q. About the time this trouble first commenced? A. Before that.

Q. How recently have you been on this disputed road? A.

I have been seven or eight times on it.

Q. How recently? A. Last night.

Q. There is a public road leading from Ebensburg by way of Illig's Mill to Buck's Mill? A. I think there is.

Q. That is the road which passes the houses of Daniel Carney, Patrick Farren, William Tierney, and John Tierney? A. Why there is different roads branches of that road and there is one comes up this other way and comes out, out here North

Q. This is a main road that leads from Ebensburg to Illigs Mill and then on to Buck's Mill? A. It is from the North side

Q. There is also a road from Ebensburg by way of Henry Glasses farm to Buck's Mill? A. Yes sir.

Q. A person starting from Ebensburg could go by either of those roads to Buck's Mill? A. Yes sir.

Q. This disputed road begins at a point on the first road on the line between Patrick Farren and Daniel <sup>Carney</sup> Tierney and ends in the second road at the Henry Glass place? A. We always called it the Litzinger Place.

Q. It is on the Litzinger Farm just opposite the Glass place  
A. Yes sir.

Q. It is a cross road from one of these roads to the other? A. Yes sir.

Q. There is also another cross road leading from Winterset Station, formerly Bradley Station to a point on the hill South of Daniel Carney's that also connects those two roads? A. Yes sir.

Q. If the disputed road would be closed up by the Court, Farrens and Tierneys could come on toward Ebensburg passing through Dan. Carney's farm and then take the first intersecting road and

go by way of Winterset Station to Loretto? A. Yes sir that would be a far best road for them to drive anyhow.

Q. How much further around would it be for them to travel that road and reach Henry Glasses farm? A. It would be in the neighborhood of one half to three quarters of a mile along there.

Q. Do you know the ----- total length of the disputed road? A. Not exactly, I don't; I would suppose it is in the neighborhood of a mile or a little over it, I never measured it.

Q. Have you since you were elected supervisor of Allegheny Township done any repairs on the disputed road? A. No sir.

Q. Did you place any danger signals on that disputed road?  
A. No sir.

Re-direct examination by Mr. Creswell.

Q. Mr. Hertzog was it the purpose or intention to vacate any portion of the road leading past Dan. Carneys .

Objected that the purpose or intention of the moving parties in this case is not material as the viewers and the Court are confined to the entire road lying between the termini described in the petition.

A. No sir..

*John G. Hertzog*

John Bannan called and sworn.

By Mr. Creswell:

Q. Where do you live Mr. Bannan? A. In Allegheny Township

Q. How long have you lived there? A. Forty-one years.

Q. How near to any point on this road in question do you live? A. About a quarter of a mile, there is one farm between us.

Q. Is it ever necessary for you to use that road? A. I have not used that road only once in ten or twelve years.

Q. Do you travel back and forth to the different points  
A. I mean that one time that I went clear through.

Q. Do you travel back and forth to the different points named by Mr. Farren frequently? A. Not that road.

Q. Is there any other road in that immediate vicinity leading in the same direction and terminating on the road that leads past Dan. Carney's. A. There is about from where I live a mile or so to the right and left of this road there is a way to get around.

Q. Is that road in your opinion a road of necessity? A. I consider it a burden to the tax payers of Allegheny Township.

Q. To whom is that road useful? A. Well all that I know that uses it of any account would be Farrens, William Tierney, Daniel Carney.

Q. Did Mr. Farren in a conversation held with you tell you not to use that road that it was dangerous? A. I wish to explain that it was a mistake; I went to that settlement by the round way; last fall was a year and I and my family some of them was at Michael Hoons and it was getting late in the afternoon my wife asked one of the farren family if we could come home that near road, the answer is no, it is not safe, don't take your children or yourself on that road, I can mention the person if it is necessary.

Q. Was that person Mr. Farren? A. It was Mary Ann Farren.  
Then I had to drive home back around again.

Q. Mr. Sannan if I were to describe a road as beginning at a point on a public road known as the Loretto Road in Allegheny Township near the house of Loretto Litzingers and extending to a point on the public road in Cambria Township near the house of Daniel Carney would that be sufficient to designate this road sought to be vacated? A. Why yes, yes it will.

Q. Were you ever a viewer on that road? A. Yes sir.

Q. What was the purpose of that view? A. Well the purpose of that view was whether that road was actually necessary where it was, or whether it was burdensome on the tax payers of Allegheny Township.

Q. State whether or not to your knowledge there had been any work done by any persons prior to that view for the purpose of putting the road in good condition? A. I hadn't travelled the road previous to the day that I viewed it, but --- I was told that --- there had been work on it.

Q. Could you see from the condition of the road that work had been recently done upon it? A. Well from the appearance of the road there had been some little surfacing done lately.

Q. What is the condition of that road now? A. I am not able to answer that at all.

Q. What is the grade there amount to? A. Well it is down one pretty heavy grade and up another, I would consider at the steepest point it would raise eight feet to the hundred.

Cross examination by Mr. Kittell:

Q. Are there not just as steep roads elsewhere in that vicinity? A. I don't know of any road that is or has been so impassible .

Q. Are there not other roads in that locality with points as steep on them as this one? A. There may be but not any that I travel.

Q. Is not the road from Glasses down to Buck's mills even steeper than on this disputed road? A. No sir.

Q. Is not the road coming into Ebensburg from Loretto at the Grave Yard Hill just outside of the Borough of Ebensburg as steep as that or steeper? A. It may be as steep, but at the same time it is ditched and the water kept off, and kept in good order.

Q. How often have you travelled over the full length of this disputed road in the last ten years? A. Well I hauled ten bushel of potatoes over it and it was in such a condition with ruts and bad surface that I got out of the sled for afraid of being hurt.

Q. You have not answered my question; is it because you are hard of hearing or did not understand my question? A. Yes I suppose so.

Q. I asked you how often you have travelled over this disputed road inside the last ten years? A. Twice I know of besides the day I viewed.

Q. You are hard of hearing? A. But still I hear all you talk.

Q. When a person talks in a loud tone of voice as I am doing now you can understand them, but you cannot understand language spoken in an ordinary tone of voice? A. Not unless they are very particular in how they speak.

Q. In going from your farm to church or to a railroad station or to a school house, or to a mill, you would travel in a direction away from this disputed road? I don't understand; I would

for safety to myself and team.

Q. You attend church at Loretto? A. Yes sir.

Q. And where you live is East of this disputed road? A. Yes sir.

Q. Loretto is still further East from your place? A. Yes sir.

Q. Therefore if this road was in ever so good a condition you would not travel it in going to church? A. No sir.

Q. If the road was in ever so good a condition, you would not travel it in going to mill, or to a school house, or to a railroad station? A. No sir.

Q. And the reason is that it would be taking you away from the direction you wanted to go? A. That would be the reason.

Q. Michael Hoon lives on the road leading from Illig's Mill up to Carrolltown? A. Yes sir, and it is a short distance from that disputed road.

Q. In going by the disputed road by Loretto he would have to come down off of the Carrolltown Road past the Phalen place and then come up on the Ebensburg Road past John Tierneys, William Tierneys and Patrick Farrens before he would come to the disputed Road? A. Yes sir.

Q. It would be nearer for him in going to Loretto to come down off of the Carrolltown Road and to Loretto by way of Buck's Mills? A. Yes sir.

Q. And therefore he would have no reason to travel the disputed road unless he might happen to want to go to some point close to the Henry Glass farm? A. Yes sir.

Q. This disputed road crossed the valley of one of the branches of the Chest Creek? A. Yes sir.

Q. If the disputed road is closed up Farrens and Tierneys would either have to come up past Dan. Carney's and get on the high ground leading around South of the head of that branch of the Chest Creek and come back to Henry Glasses on the Loretto Road or else go down by Illig's Mill and in by that way to Loretto?

A. Yes sir Yes, but they never travel that to church into Loretto. They belong to the Ebensburg Church.

Q. You do not live on the disputed road? A. No sir.

Q. Is your house in sight of it? A. No sir.

Q. In working about on your farm you could not see who do travel on the disputed road? A. No not on my own farm.

Q. In order to see any person travelling on the disputed road, you would necessarily have to be away from your own farm?

A. Yes sir I would have to be off my place.

Q. Don't you stick pretty close to your own home? A. Oh, no, I attend to outside business all the time, no person else to do it

*John Bannan*

Eugene Litzinger called and sworn.

By Mr. Creswell.

Q. Where do you live? A. Loretto Borough.

Q. Do you know this road sought to be vacated? A. Yes sir I do.

Q. How long have you known that road and been using it? A. I have known that road for about thirty years.

Q. Did you ever live in the immediate vicinity of that road? A. I lived on the farm known as the Enos McMullen place between seven and eight years and this road runs right past the house and barn.

Q. Will you state the condition of that road since you have known it? A. I never considered it a good Township Road since the first time I drove it.

Q. How long since you have been over it? A. Well I suppose about two years or two years and a half since I have been over it.

Q. What are the objectionable features to the road Mr. Litzinger? A. The principal objections I have to it are on account of the ditches and wash outs they are almost in the centre of the roads in some places. And the last time I speak of, I was most afraid to put the horse across the bridge on account of needing repair, it was in very bad condition when I went over it.

Q. Is it possible for the supervisors with the usual expenditure of money on that kind of a road to keep it in good repair? Well from the road leading from the finger board out to Mr. Bucks out to a strip of woods belonging to Mr. Mr. Dan. Carney and myself that part of it could be kept up without very much expense but the balance would need a good bit of repair, it looks as if it had been turned into pasture.

Q. Is the road such a one that could be made good for hauling over? A. It might be, but I wouldn't like to haul over it.

Q. What kind of grade is on the road? A. It is pretty steep grade on part of it that is the Cambria Township part of it.

Q. Mr. Litzinger is that road much used? A. It was not.

Q. Is the road a necessity— to any person? A. I can't say really that it is to the general public any use.

Q. Is that road of any use to Farrens, and Tierneys for the purpose of going to Ebensburg? A. I don't see why it should be it would be kind of out of the road to come that way to Ebensburg.

Q. Did you know that a proceedings were instituted for the purpose of vacating this road? A. I did yes sir.

Q. Did you see any of the notices? A. I heard tell of them.

Q. Now Mr. Litzinger, if I were to describe a road beginning at a point on a public road known as the Loretto Road in Allegheny Township near the house of Loretto Litzingers and extending to a point on the public road in Cambria Township, near the house of Daniel Carney, would you identify the road sought to be vacated? A. No sir, I would not, for I never heard of it — by that name.

Q. If I were to designate the road as beginning at a point at or near the farm of Daniel Carney in Cambria Township and terminating at a point on the Loretto Road near the farm of Loreto Litzingers, would you identify that road? A. Well I suppose that is the road that is in controversy now.

Q. You say then you would n't identify that by a former? A. No sir, for I never heard of it by that name.

Q. Was this view for the purpose of vacating the road in

question generally known ? A. I think it was.

Q. Mr. Litzinger are you a tax payer in Allegheny Township?

A. I am yes sir.

Q. Do you own property adjoining this road? A. I own the farm ---- known as the Enos McMullen place, have owned it since last Summer

Q. ----- Don't you own property adjoining that road? A. Yes sir I do.

Q. What is your opinion in relation to the cost of maintaining that road, is it an advantage or a disadvantage to the tax payers of Allegheny Township? A. I don't really think it is necessary to keep up that road for four or five individuals.

Cross examination by Mr. Kittell.

Q. You are a son of William Litzinger? A. Yes sir.

Q. This farm at the eastern terminus of the disputed road belonged until in last year to his heirs? A. Yes sir.

Q. Who were they? A. B. W. Litzinger and H. C. Litzinger of Millerstown and myself.

Q. You three were the only heirs? A. The only heirs.

Q. You were known as the Litzingers at Loretto? A. Yes sir and pretty well known too!

Q. Do you know any body by the name of Loretto Litzinger? A. Yes sir I do.

Q. Is Loretto Litzinger a man or woman? A. She is a Sister in the Convent.

Q. Where is her place of residence? A. I cannot tell you exactly, she belongs to the Sisters of Mercy, and lives near Pittsburg.

Q. Where was her home before entering the convent? A. They lived out at the forks of the road leading from Chest Springs

to Loretto, where the Carrolltown road leads off, the farm is now owned by Harry Pruner.

Q. She was a daughter of George Litzinger? A. Yes sir.

Q. There home was immediately North of Loretto? A: Yes sir.

Q. How far distance is that point from this disputed road?

A. Well I suppose it would be two mile or two and a half.

Q. What road in Allegheny Township do you know as the Loretto Road? A. Well I don't know any particular road.

Q. If you were asked to designate a point in Allegheny Township on the Loretto Road at the house of Loretto Litzinger what place would you point out or designate? A. I would have to study a little bit, I would simply tell them I didn't know a road by that name, it is the Loretto and Chest Springs road as we generally call it.

Q. Then the only point in Allegheny Township on the Loretto Road near the house of Loretto Litzinger would be designated <sup>by</sup> you as the house where Loretto Litzinger lived would be along the road leading from Loretto to Chest Springs? A. Yes sir.

Q. What point on the public road in Cambria Township near the house of Daniel Carney would you designate----- would that point be at or near Daniel Carney's house? A. It would be near Daniel Carney's house, it would not be right at his house.

Q. You havn't travelled over this disputed road for some two or three years? A. It is in the neighborhood of two or two and a half years as near as I can recollect it.

Q. You found the road then in bad condition? A. Well I made the remark to the person that was with me that if God forgive me for going over the road then I would never do it again.

Q. The bridge was then out of repair? A. I considered it very unsafe and I didn't know it until I was near the middle of the bridge.

Q. The road had evidently not been kept in repair? A. No sir it had not, it was never kept in repair when I lived there, that is not to amount to anything.

Q. Do you know the fact that William Cole or some other person had been cutting timber on the Carney land and on the Farren land for the last two or three years? A. Yes sir I do; I don't know where they got the timber, but I was down there for lumber.

Q. He had a saw mill? A. Yes sir.

Q. Do you know whether the lumber cut at that mill was hauled out over this disputed road? A. No sir I don't.

Q. Do you know of your own knowledge what the present condition of that road is? A. No sir I do not.

Q. You could only determine that, or determine its present condition by travelling over the road? A. I wouldn't have to travel very far over the road.

Q. This disputed road is not a main thoroughfare? A. Not for the general public it is not.

Q. The general travelling public going from one town to another in that part of the County would not have occasion to use this disputed road? A. No sir not the general public, a few individuals would have.

Q. If Mr. Cole hauled this lumber that he cut to Bradley's Station, now called Winterset Station would he not necessarily have to use this disputed road? A. He would have to use part of it.

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*Eugene Litzinger*

Thomas Bishop called and sworn:

By Mr. Creswell:

Q. Where do you live? A. Allegheny Township.

Q. How far do you live from this road? A. Well as near as I can tell about four miles.

Q. Were you ever a supervisor of Allegheny Township? A. Yes sir.

Q. Had you charge of the roads of that part of the Township? A. Allegheny Township side.

Q. During your term of Office did you do any work on this road? A. Yes sir.

Q. When was that? A. In 1892.

Q. Is that road much travelled? A. It wasn't much travelled when I was working.

Q. Has it the appearance of a road that was much travelled? A. No sir.

Q. What was the condition of the road at that time? A. It was in a pretty bad condition, the year before there was no work done on it.

Q. Is it a hard road to keep in good condition? A. Yes sir it is, that is the Allegheny Side the other side I am not acquainted with, I never was over on the other side.

Q. Would an expenditure of ten dollars a year keep that road in good condition? A. No sir it would not.

Q. In your opinion how much money would have to be expended each year to keep it in good condition? A. Well I believe it would take about twenty or twenty-five Dollars anyhow.

Q. Is that road dangerous? A. It was then, if it would be fixed right it would not be a bad road, but it was not worked.

Q. Did you express any fear? A. I had a road machine and it was pretty dangerous to work with it, it was pretty stumpy and rocky/

Q. Do you know whether or not that road is generally used?

A. I live too far away I don't know? A. It wasn't generally used when I was about it.

Cross examination by Mr. Kittell.

Q. How many years were you supervisor of Allegheny Township?

A. One.

Q. How many days did you work on the Allegheny Township part of the road? A. I think I worked a day and half, there was not very much travelling done, and I thought I would not put very much expense on it.

Q. The amount of money you expended on this road is small?

A. Yes sir, I thought it was much use it was not travelled much and no body else done any work on it and I done the same.

Q. The road had not received much attention for some years before that by the supervisor? A. That is the way it looked.

Q. Have you ever travelled the entire length of this disputed road? A. No sir, never was farther than to the bridge between the townships.

Q. You don't live in sight of this road? A. No sir.

Q. You have not been over it since you did the work? A. Over a piece of it, but not to travel over it.

Q. You don't know of your own knowledge who uses it or travels over it? A. No I never seen any body on it I seen Dan. Carney over it once.

Q. You are not in a position to see who does use the road?

A. No sir.

Q. You think Mr. Tierney would lose money by entering into his proposed contract? A. Yes sir he would.

Q. And the township would be the gainer by that? A. He would have to make two tracts and in some places wagons could not pass one another, there is only one tract, and he would have to make two tracts if he wanted to make a lawful road.

*Thomas Bishop*

Henry Itel called and sworn.

By Mr. Creswell.

Q. Where do you live Mr. Itel? A. Allegheny Township.

Q. How near to the road in question do you live? A. I now live about seven miles from it.

Q. Have you recently lived in the vicinity of that road?

A. I lived right along side of it, on the Litzinger Farm.

Q. State whether or not you ever travelled the road and if so in what condition it was? A. I went over it a few times while I was living there. I never considered it a road fit to travel.

Q. Was it a road in general use? A. There was Dan Carney and Farrens, and Will Tierney they used it some a chance time, it wasn't a regular road for them to use.

Q. How long ago was it that you lived there? A. It will be two years I think the twenty-seventh of this month since I left there.

Q. Could you see passers by from where you lived on that road? A. A chance neighbor would pass back and forward.

Q. I mean could you see every person who passed up and down that road from your house? A. Yes I lived in the Litzinger house on the Litzinger farm, and the buildings are right along side of the road.

Q. How frequently did people pass over that road to the best of your knowledge? A. Well some times may be for a week or two I would not see any one, other times a couple of rigs would pass in one day by accident.

Q. Hasn't it always been more of a cow path than a road? A. Why it was intended for a road although it never looked like a township road.

Q. You are a tax payer in the Township? A. Yes sir.

Cross examination by Mr. Kittell.

Q. How long did you live on the Litzinger Farm? A. Five years.

Q. People did travel on the road both ways? A. At times, Tierneys and Carney a chance time would go through that way.

Q. Persons might have travelled over that road without you seeing them? A. Certainly they might have, I wasn't at the road or at the buildings all the time.

Q. Many persons might pass over the road and you would not see them? A. That is very true although a wagon passing or a sled would leave a mark.

Q. Did you see any hauling over that road? A. Dan. Carney hauled a few loads of potatoes up that way.

Q. Didn't Farrens haul coal out that way? A. Yes and hauled bailed hay about a car load, of course, I don't know how much. They didn't haul a load at any one time.

Q. To what point did they haul at that time? A. They hauled at that time they told me to James Scanlan's barn, to leave the hay there until they would get an order for it.

Q. James Scanlan's barn is near to Bradley's Station now called Winterset? A. Yes it is near to the station.

Q. Were you living on the Litzinger farm when William Coal had his saw mill there? A. Yes I was living there at that time, he had his saw mill there may be a year or more, I could not tell the length of time.

Q. The saw mill was down in the hollow? A. Yes sir.

Q. Was the lumber that was cut at that mill hauled out over this disputed road? A. Yes at that time when I was living there.

Q. To what point was it hauled? A. To Bradley's Station as it was called at that time, some of it, and part I don't know where.

Q. Was it hauled out on wagons or sleds? A. Both.

Q. How long had he the mill there? A. It might have been there a year may be more or less, it was gone though before I left.

Q. If this disputed road were closed up, how would the person living on the Litzinger Farm get over to Farrens by public road? A. I don't see what they would want to go over there.

Q. How would they get there by public road? A. Go around by Winterset, Bradley Station as we used to call it.

Q. How much farther around would it be to Farrens? A. The farms join, but it would be a good bit longer, but I don't know how much.

Q. Would it not be more than a mile further around by that road? A. I wouldn't know, I can't answer that question.

Re-direct examination by Mr. Creswell.

Q. Do you remember the time that hauling was done over that road that the parties hauling had to cut a road around through the woods? A. At the time that Cole had his mill there, James Driskel of Allegheny Township was supervisor and he had to fix up the road some as far as he could do with the amount of tax in that corner and Cole and the two Weaklands they put on a good bit of work at their own expense and got a kind of a road made out of it. But as Mark Weakland said all this it was a Bitch of a road all the time.

Q. Don't you know that they cut a road up through the woods up to the station? A. That was in Cambria Township, that wasn't on the township road at all; since you mention it I do remember.

Q. Wasn't that road made for the purpose of avoiding hauling over this road? A. They cut a road through the woods to avoid the hills and distance and the bad places in the township road in Allegheny Township.

Re-Cross-examination by Mr. Kittell.

Q. Didn't they cut that road up in the winter season? A. They cut that road up through the woods in the fall of the year I don't remember what time.

Q. That gave them a more direct way to reach Bradley's Station? A. It was a shorter distance and a better grade.

Q. It was cut through the woods? A. Yes to James Scanlan's field.

Q. In a Southerly direction towards Bradley's Station? It was cut toward Bradley's Station.

Q. By that road going through the woods they could also avoid snow drifts on the Ebensburg Road between Brandley's station and Henry Glasses? A. Along by Scanlan's they could.

*F. H. Steel*

William T. McConnell called and sworn.

By Mr. Creswell:

Q. Where do you live Mr. McConnell? A. In Summerhill Borough.

Q. What is your business? A. I have several kinds of business I make a living at, surveyor, justice of the peace and I do odd jobs.

Q. State whether or not you was a surveyor appointed by the Court to view a road leading from a point near the farm of Litzingers in Allegheny Township to a point near Dan. Carney's in Cambria Township? A. I was.

Q. What was the purpose of that view? A. I suppose to see whether the road should be vacated or not, is the order we had.

Q. Will you state what was the condition of that road at the time you viewed it? A. It didn't appear to be a very good road. It looked to be rather steep and not very good ground for a road either.

Q. Is there a road be there? A. Yes sir there is the appearance of a road, it has been used as a road.

Q. Who were the other viewers on the road? A. John T. Long and John D. Wenteroth.

Q. State whether or not those viewers were sworn? A. They was before we started on the road.

Q. What were you reasons for vacating the road? A. We had heard some of the reasons from the citizens and then we heard reasons for not vacating it again and then we travelled over the road and then we considered it rather a burden on the Township.

Cross examination by Mr. Kittell:

Q. You three viewers all came together on the train? A. yes sir.

Q. On the morning of the day of view and got off the train at Bradley Station or Winterset Station as it is now called? A. Yes sir.

Q. How did you reach the road in question from Bradley's Station? A. We got in a wagon there?

Q. Whose wagon was it? A. Well I believe it was Daniel Carney's., he was driving any way.

Q. He met you there and took you to the end of the road in Allegheny Township at the Litzinger Farm? A. Yes sir.

Q. Were you sworn at that end of the road? A. Yes sir. We stepped off a little piece from the other men and were sworn.

Q. Who administered the oath to the viewers? A. Squire Long and myself, I do<sup>n</sup>'t recollect how it was done, I believe 'Squire Long swore me and I sworn him and John Wenderoth.

Q. Did you take and subscribe a written oath? A. No sir, we did it by the uplifted hand.

Q. What was the form of the oath taken by the viewers? A. It is the common form with the uplifted hand.

Q. What were the viewers sworn to do? A. To obey the instructions of that order to the best of their knowledge and judgment/

Q. Who else besides Daniel Carney met the viewers at Bradley Station and accompanied them to the Litzinger Farm? A. Mr. Hughes the Supervisor and Mr. Hertzog, there might of been others, but I did not recollect of them.

Q. They were township supervisors, A. Yes sir, so they said.

Q. Had you been over this disputed road before the day of view? A. Some years ago I was.

Q. How many years ago? A. It was some seven or eight years ago, in 1877 was the first year I was over Eugene Litzinger lived on the farm then.

Q. Did the viewers walk over the road or drive over it? A. We were going over it and come to the conclusion we might as well ride as wade the mud.

Q. You drove over the entire cross road to the line between Daniel Carney's and Patrick Farrens? A. We drove from one end of the road to the other.

Q. Did you take any level or make any measurements to ascertain the grade of the road or the length of it? A. No sir, if we were going to vacate the whole road there was no use to make any measurements, and if were going to leave it there was no use.

Q. What length of time was consumed in driving over the road? A. I could not tell you that, about as fast a horse would walk over it/

Q. Did the viewers stop at any point on the road and get out of the wagon and examine the road bed? A. No sir.

Q. There were quite a number of persons gathered about there that day interested in your proceedings? A. Yes sir.

Q. A number of these persons were in favor of closing the road and a number were in favor of keeping it open. A. Yes sir.

Q. There was quite a discussion among them? A. They were explaining the thing to us.

Q. The feeling ran a little high among these contestant parties, A. I believe so.

Q. You viewers then got into the wagon with Daniel Carney for a driver and drove into Ebensburg and left these people dispute among themselves? A. That is the way we done.

Q. You did not retrace the disputed road but came on the thoroughfare directly into Ebensburg? A. Yes sir.

Q. When was the report signed? A. It was on the next Monday; this was on Saturday we were over the Road and it was on Monday.

Q. The view was held on The Saturday preceeding the first day of the term of Court and the report of viewers was not written out and signed until Monday the first day of the term? A. Yes sir.

Q. Where were the viewers when it was signed? A. In Summerhill.

Q. Would the viewers have known of their own knowledge of the place of beginning of this road from the description given in the order "Beginning at a point on a public road known as the Loretto Road in Allegheny Township near the house of Loretto Litzinger?" A. Being strangers I don't suppose they would, it bothered me a little.

Q. Who told you that the point on the William Litzinger farm was the place of beginning? A. I believe Mr. Carney told me where it was; I asked him where it was and he told me.

Q. But for the information thus given to you would you have known the place of beginning of this road from the description in the order? A. At that end of the road I would not have known it.

Q. Did you as one of the Viewers or did all three of the viewers examine the road from the point on the line between

between the land of Patrick Farren and Daniel Carney to a point at or near the house of Daniel Carney with a view of determining whether that part of a public road should be vacated or not, A. No we didn't we calculated when we got to that road we were through with it.

Q. The Viewers then did not examine the road from Patrick Farrens line to a point on the public road at or near Daniel Carney's house? A. No sir, we didn't consider we had anything to do with that road.

Q. Look at the notice of the time and place of the meeting of viewers which notice is attached to the report and state please in whose handwriting that notice is made out? A. I wrote that I think.

Q. You prepared a set of road notices to be posted up? A. Yes sir.

Q. And this is one of them? A. That is one of them, I wrote I suppose a half a dozen of them.

Q. They were all worded alike, ? A. I could not say whether they were or not it was late in the evening and I wrote them in a hurry. I was surveying and quit my work to write these notices, and was in a hurry to get back to work again.

Q. They were all intended to be alike? A. Yes sir.

Q. How long were the viewers engaged in the performance of their duties from the time they were sworn until the time they left the scene of the disputed road? A. I don't know we didn't stop very long there just started the road and drove around and paid a little attention to the road as we were going over, and drove on to Ebensburg.

Q. You might have been a half an hour in all? A. It would take us more than a half an hour to go over the road, not a great deal either.

Q. You didn't drive along either of the public roads connected by this disputed road North of the disputed road with a view of ascertaining how many persons lived in the vicinity of the disputed road North of it? A. No sir I did not.

*John J. McConnell*

David J. Price called and sworn.

By R. E. Creswell Esq.

Q. Where do you live Mr. Price? A. I live three miles out from Ebensburg.

Q. In what Township do you live? A. Cambria Township.

Q. Were you ever supervisor in Cambria Township? A. Yes sir I was for three years.

Q. State the dates? A. I can't tell exactly six or seven years back.

Q. Mr. Price while acting as supervisor did you ever have charge of this road in question? A. Yes sir.

Q. Have you been over the road? A. Yes sir.

Q. Will you just state the kind of a road it has been and what condition it is in? A. It is gutters and not fit to travel.

Q. Was it ever a road that was much used by the public in your memory? A. I could not say whether it has been used.

Q. How long is it since you have been over the road? A. The Last Summer two years is the last time I was over it that I remember of/

Q. What condition was the road in at that time? A. It wasn't in very good condition.

Q. What was your business on the road at that time? A. I was one of the viewers.

Q. For what purpose was that view held? A. It was held to vacate the road I guess.

Q. Was the road vacated at that time? A. No sir.

Q. Was there ever at any time any person or persons who requested you to retire from that view and not serve? A. No sir.

Cross examination by Mr. Kittell;

Q. You were supervisor having charge of the roads in that end of Cambria Township for three years? A. Two or three I don't know which.

Q. And it has been some six or seven years since you were last supervisor? A. Yes sir.

Q. While you were supervisor, did you do any work on this road? A. I done some.

Q. Each year while you were supervisor? A. No sir.

Q. As a matter of fact didn't you only work on it once? A. I gave them orders to work more than once, and I don't know whether they did nor not, I believe they did.

Q. That was all during the same year, within two years.

Q. How much money was expended on this disputed road while you were supervisor? A. I can't tell you, I do<sup>n</sup>'t mind, there was a good bit.

Q. When you say a good bit do you mean ten or fifteen dollars, A. About ten.

Q. Were you back on this road from the time you were supervisor until the time you acted as a viewer? A. No sir.

Q. Have you been over since you acted as a viewer? A. No sir.

Q. Then of your own knowledge you don't know what condition the road is in now? A. No I don't.

Q. Were you under the impression while you were a supervisor that the road ought to be vacated? A. I idn't think anything about it.

Q. Do you know of your own knowledge what persons travelled this road? A. Farrens and Tierneys is about all I know/

and then the grass is knee high.

Q. Have you seen any persons travelling this road? A. No sir.

Q. Then how do you know of your own knowledge who does use it? A. They told me they were travelling it.

Q. How far away from this road do you live? A. Across the country about two miles.

Q. Persons may travel this road without you seeing them?

A. Yes sir. *David I. Pyle*

M. D. Kittell Esq., as Counsel for exceptants withdraws the Fourth exception to the report of viewers in this case which exception reads "Notice of the time and place of the meeting of viewers was not ~~be~~ given as required by law.

~~E.~~ J. Humphreys called and sworn.

By R. E. Creswell:

Q. Where do you live Mr. Humphrey's? A. Cambria Township, Cambria County.

Q. What is your present Business? A. Farmer.

Q. Are you a Court Official, and if so in what Capacity? A. Yes sir, Court Crier.

Q. Have you ever been supervisor of Cambria Township and if so what year or years? A. Yes sir I have, two terms, 1891 and 1892.

Q. State whether or not, while you were supervisor you had charge of this road? A. I had of the part that is in Cambria Township.

Q. State whether or not during your term of office any work was done on that road? A. Well during the first year that I was supervisor I did not know that it was a township road, but the second year there was some work done on it, I gave Mr. Farren orders to fix the bridge he told me that he done so and that is all I know about it.

~~Q.~~ Were you over the road during your term? A. No sir I was not.

Q. Have you ever been over the road? A. Over part of it.

Q. When were you over it? A. I was over part of it last November.

Q. What condition was it in then? A. The part I was on was badly broken up washed out with water.

Q. From the condition that the road was in at that time, could there have been any amount of travel done on it? A. No sir there was no wagoning done of any account.

Q. Was the road in a dangerous condition to travel on? A. I would not say it is in a dangerous condition, the part I was on.

Cross examination by Mr. Kittell:

Q. That part of the road that you saw was entirely safe for public travel? A. Well what I said it wasn't in a dangerous condition.

Q. It was safe for prsons to travel over? A. It wasn't in a dangerous condition, but it wasn't fit for a man to haul a load on.

Q. You were not supervisor then? A. No sir.

Q. Were you not travelling through the woods hunting? A. A little bit before that and after that I was, I was on a hunting trip.

Q. That was late in the fall? A. The latter part of November

*E. J. Humphreys*

Counsel for the petitioners and for the exceptants offer jointly the offer to view and lay out a road to lead from a point on the road from Ebensburg to Behe's Mill to a point on the road from Ebensburg to Buck's Mill and the report of viewers thereto attached which report was confirmed absolutely on the 2nd day of April 1856.

Also all petitions, orders, and reports filed to No. 5 June Sessions 1893 R. D.

And all petitions, orders and reports filed to No. 10 of March Term 1894 R. D., and the record of all three proceedings as contained in the Road Dockets in the Office of the Clerk of the Court of Quarter Sessions.

Also a folded map of the County of Cambria for the purpose of showing the location of the road in dispute as well as the other public roads in that vicinity.

Daniel Carney called and sworn.

By Mr. Creswell.

Q. Where do you live and what is your business? A. I live in Cambria Township and am a farmer.

Q. How near to the road sought to be vacated do you live? A. It is eighty or eighty-one rod.

Q. On whose land is that road? A. That road is on my land and on Mr. Litzingers.

Q. Does it terminate on another road which leads past your house? A. Yes sir.

Q. Is that a road in general use in that vicinity? A. Well it is never used any at all only what I use it until this dispute arose.

Q. What did you use it for? A. Well I would haul my crop up what I had on that side of the land, and when I wanted to go to Loretto when I had a light rig.

Q. In what condition has that road been in from the time you first knew it down to the present time? A. Well it has been in a bad condition ever since I came there, it was in such condition that I never could haul a load of hay over the road, nor I never knowed any other man to with exception of Mr. Bannan hauled a half a ton, and Mr. Farren hauled some bailed hay over it I understood I didn't see him.

Q. Is the road hilly and rough? A. Yes sir it is both hilly and rough, and the road is <sup>im</sup>onpassable the whole year around. That I mean is to drive with any safety.

Q. How much farther would you have to drive by any other route to reach the same point over at the Litzinger farm? A. I would judge about half a mile, and if I would be at Mr. Blooms place I would be about as far from Loretto as at my place on this disputed road, so I believe it would make half a mile difference.

Q. Would that route be a good safe road? A. Yes sir that is a good road, that is the way I do my heavy hauling, and every other neighbor does the same, if they have any hauling to do that is the way the do it, until this dispute arose.

Q. On an average how many times do you use that road across there? A. Well that road I use some times once a week and sometimes oftener and sometimes I don't go once in two or three weeks, but I believe I use that road oftener than all the men in the settlement.

Q. Do you think that is a road of general use or necessity? A. Well I do not. Especially in the condition it is kept in. And it couldn't be a good road if it was worked on because the biggest part of the road is swampy.

Q. What is your opinion about it being vacated? A. I don't think it is any use the way it is for no man can haul a load over it, and it is onsafe.

Q. If a road was described as beginning at a point on the public road known as the Loretto Road in Allegheny Township near the house of Loretto Litzinger and extending to a point on the public road in Cambria Township near the house of Daniel Carney would you know what road was ment? A. Well I would know it is the road that is in dispute now.

Q. Were you along with the viewers the last day the road was viewed? A. Yes sir I was.

Q. Were you present when the viewers were sworn? A. I was I was sitting in my wagon when they were sworn looking at them, I wathhed them sworn.

Q. Will you state how they were sworn? A. I think Mr. McConnell swore Mr. Long and Mr. Wenderoth and then Mr. Long swore Mr. McConnell.

Q. Was this before or after the view that they were sworn?

A. It was before they started to go over the road.

Q. Was there a number of the citizens of Allegheny and Cambria Townships along the route that day? A. There was.

Q. About how many? A. Indeed I couldn't tell I would judge about ten or twelve men there that day may be more.

Q. Do you remember of the viewers stopping at a point in the road to look back over it and examine the road? A. Yes sir I do that is on the hill coming up toward the other road, they told me to stop.

Cross examination by Mr. Kittell.

Q. Mr. Carney is this disputed road visible from your house?

A. Yes sir you can see it from my house, part of it, you can't see the whole road.

Q. How many rods of it can you see from your house? A. I can see very near about half the road, there are some spots I cannot see, but I can see very near half of it from my house.

The end of the road between Farrens and your line runs along side of the bank for some distance? A. Yes sir.

Q. The part of the road then that is visible from your house, is the Allegheny Township end of it? A. Yes sir.

Q. No part of the road in Cambria Township is visible from your house? A. Yes sir I can see a part of it, not the end of it, but from Allegheny Township until it comes up to a bend at a pair of bars I have.

Q. That part of the road next to Farrens is not visible to your house? A. No sir it is not.

Q. You don't see every body that travells that road? A. No, I am not there all the time, but I can see anybody the same as if I was on the road, if I was looking.

Q. People could travel on the road without you seeing them or knowing them? A. Yes sir, if I would be away.

Q. These people named by Mr. Farren, as having travelled the road could have travelled it ---- without you knowing it? A. They could but all the travel they did of any account is after this trouble was raised, they might have passed over it once or twice.

Q. You generally attend church at Loretto? A. Yes sir I do.

Q. Don't you travel this disputed road in going to church there? A. Yes sir.

Q. Did you measure the distance from your house to Farrens land? A. Yes sir I did, and when I put up a fence there I put eighty-one rods there.

Q. You put up a wire fence? A. Yes sir.

Q. What is the length of the railings on that wire fence? A. Twenty feet.

Q. How many railings are there on that fence? A. I can't tell you, I never measured them; I measured that by a sixteen and a half foot line.

Q. When did you make that measurement? A. I think I made that measurement when I got the posts out for the fence, and I measured it to know how much wire to get and I am pretty certain it is eighty-one rods.

Q. How long ago is that? A. It is a good little while ago, because I had the wire a good while before I put the fence up.

Q. It was some years ago? A. Yes sir it was.

Q. Mr. McConnell is not correct in saying that the viewers did not stop in passing over the disputed road? A. They told me to stop once and looked at the condition of the road.

.. You heard Mr. McConnell say that the viewers did not stop in passing over the disputed road? A. I didn't pay any attention to that, as I remember of.

Q. If he said so he is not correct? A. Well the man is made a mistake, because I remember of them asking me to stop.

Q. The road starting at the Allegheny Township end comes down a hill? A. Yes sir it comes down to Mr. Litzinger's buildings.

Q. And then it passes over low ground to the creek? A. Yes sir it does.

Q. And then rises up over another hill? A. It rises up grade.

Q. What proportion of the road is on a grade down or up?

A. It is pretty much all hilly, more or less grade on hills, there is a piece at the upper end level.

*his*  
*Daniel Carney*  
*Mark*

John M. Hughes called and sworn.

By Mr. Creswell.

Q. Where do you live? A. Cambria Township.

Q. Are you the present Supervisor of Cambria Township? A.

I am.

Q. Do you know the road now in dispute? A. I do.

Q. Are you one of the parties to this proceeding? A. Yes

sir.

Q. Have you been over the road recently? A. I haven't been since the view.

Q. What was the condition of the road at that time? A.

~~not~~ Very good.

Q. Was it in a passible condition for teams? A. It was for a light load.

Q. Have you done any work on that road? A. No sir.

Q. Why did you start this proceeding to vacate the road?

A. I thought we had enough of roads without it.

Q. Is the road one of general use in the neighborhood?

A. Well I don't think it is.

Q. Was there any person went to you and asked you to withdraw from this action and if you did so they would get you several votes at the next election? A. Yes sir.

Q. Who was the parties? A. William Tierney.

Q. Any person else? A. No sir.

Q. Is William Tierney one of the contestants in this case?

A. He is.

Cross Examination by Mr. Kittell.

Q. Who opened that conversation with William Tierney? A.

Well him and me was talking one day out here at Denny's on the

pavement.

Q. Wasn't this conversation in the bar room? A. No this was outside.

Q. Didn't you say to Mr. Tierney that you were going to be a candidate again? A. I did.

Q. And didn't you solicit his support at the election? A. No sir I did not.

Q. Didn't you ask Mr. Tierney if he wouldn't vote for you if you drop this? A. I might have said if I drop if he would vote for me and he said he would.

Q. And didn't you say that you wanted to be elected again and then there would be no more trouble — — — about this road or words to that effect? A. No sir I didn't say words like that at all.

*John M. Hughes*

STATE OF PENNSYLVANIA |  
                                  | SS.  
COUNTY OF CAMBRIA |

I do hereby certify that the above witnesses were duly qualified and examined at the time and place stated in the above Caption; that the same was reduced to writing by me, in the presence of said witnesses, and having been approved by them was subscribed to in my presence.

Witness my hand and Notarial Seal this Fifteenth day of  
January A. D. 1895.

*P. J. Little*  
*Notary Public*

No 10 Mar Term 1894

Road Docket

In re road from near Soutto  
Litzingers in Allegheny Twp.  
to near Samuel Carneys in  
Cambria Twp.

Filed 22 Jan'y 1895

Depositions on part of  
Petitioners.

Notary's Fee \$8<sup>00</sup>  
Paid.

Commonwealth of Pennsylvania, }  
County of Cambria, } ss.

At a Court of Quarter Sessions of the Peace of the County of Cambria  
held at Obuchinsky in the the said County, on the 16th day of  
May A. D. 1894, before the Honorable the Judges of the same  
Court: Upon the petition of divers inhabitants of the township of Allegheny & Cambria  
in the said County, setting forth that they labor under inconvenience for want of

~~road or highway, to lead from~~  
~~a road has long since been laid out and beginning at~~  
~~a point on a public road known as the Lortts Road~~  
~~in Allegheny Township near the house of Lortts Litzinger~~  
~~and extending to a point on the public road in Cam-~~  
~~bria Township near the house of Daniel Barney in~~  
~~said County which said road your petitioners~~  
~~conceive is now become useless, unimportant and~~  
~~burdensome.~~

and therefore praying the Court to appoint proper persons to <sup>view</sup> view and ~~lay out~~ the  
same according to law. The Court upon due consideration had of the premises, do  
order and appoint M. J. McConnell SURVEYOR,  
and John S. Long & John D. Mestrich

VIEWERS, to view the ground proposed for said  
road, and if they view the same, and shall agree that there is occasion for such  
road, they shall proceed to <sup>locate</sup> lay out the same, having respect to the shortest distance  
and the best ground for a road, and in such manner as shall do the least injury to  
private property, and also be, as far as practicable, agreeable to the desire of the  
petitioners, and that they make a report of their proceedings to the next Court  
of Quarter Sessions to be held for said County, 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 it may pass.

BY THE COURT.

Attest:

J. H. Darby  
Clerk.

To the Honorable Judge of the Court  
 We the Subscribers appointed to view  
 the road therein mentioned report that  
 in pursuance of said order and after  
 being severally sworn according to law  
 we have viewed the said road and are  
 of the opinion that the same is in  
 our opinion useless inconvenient and  
 burdensome and ought therefore to be  
 vacated

Witness our hands and seals this 22<sup>nd</sup>  
 day of June A.D. 1894

Wm. J. McConnell Seal  
 John J. Long Seal  
 John D. Wentworth Seal

Time

Wm. J. McConnell	1	Day	23	Miles	Ornat
John J. Long	1	"	"	"	"
John D. Wentworth	1	"	"	"	"

Notice of view to vacate Road  
 in Allegheny and Cambria Townships  
 from Lobetto & Buck Road near Eugene Letzinger  
 to a Point near said townships in Cambria  
 Township. We the Jurors appointed to vacate  
 said Road will meet at the Point near  
 Eugene Letzinger's farm on Saturday June  
 2<sup>nd</sup> 1894. at 11 O'clock A.M. to attend the  
 duties of our appointment  
 May 22 1894

Wm. J. McConnell  
 John J. Long  
 John D. Wentworth

Printed

land such location may be made releases from all claims for damages that might arise from the opening of such road or the building of such bridge; and in every case where said viewers shall fail to procure such releases, and it shall appear to them that any damages will be sustained, it shall be their duty to assess the damages and make report thereof signed by a majority of their number, and return the same, together with all releases obtained, to the Court of Quarter Sessions, and the damages so assessed shall be conclusive, or may be subject to appeal, review or modification, as may be provided by existing laws in the different counties of this Commonwealth."

"The persons appointed as aforesaid shall view such ground, and if they shall agree that there is occasion for a road, they shall proceed to lay out the same, having respect to the shortest distance, and the best ground for a road, and in such manner as shall do the least injury to private property, and also be, as far as practicable, agreeable to the desire of the petitioners."

"The viewers, as aforesaid, shall make report, at the next term of said Court, and in the said report shall state particularly: first, who of them were present at the view; second, whether they were severally sworn or affirmed; third, whether the road desired be necessary for a public or private road; they shall also annex and return to the Court a plot or draft thereof, stating the courses and distances, and noting briefly the improvements through which it may pass; and, whenever practicable, the viewers shall lay out the said roads at an elevation not exceeding five degrees (except at the crossing of ravines and streams), where, by moderate filling and bridging, the declination of the road may be preserved within that limit."

No. 10

Mar. Sess. 1894  
R.R.

Order to view a road from  
vicinity  
of  
Lodgepole  
Ck.  
in  
Alleybury  
Twp.  
by  
new  
line  
of  
Main  
Carrage  
in  
Canaan  
Twp.

Viewers: H. J. McConnell  
John J. Long  
Geo. W. Northcutt

Filed 7 June 1894

Letk & Lang (Per. G. Hall, Esq.) 90  
J. W. Hall  
J. W. Hall

3 July 1894 Read and confirmed nisi and put to proof  
and to be opened soft with. By the Court

Carrolltown

Spikes or  
Clay Hill

Clear Springs

St Augustine



In the matter of the Report of  
Viewers vacating road  
in  
The Townships of Cambria and  
Allegheny.

In the Court of Quarter Sessions  
of Cambria County, Pa.  
No. 10 March Sessions 1894.  
Road Docket.

EXCEPTIONS.

1st. The petition for appointment of viewers does not set forth in a clear and distinct manner the situation and other circumstances of such road or highway, or of the part which the applicants desire to have vacated.

2nd. The termini of the said Road are not described with sufficient certainty.

3rd. The Viewers were not sworn before proceeding to the duties of their appointment to perform the same impartially and according to the best of their judgment.

4th. Notice of the time and place of the meeting of viewers was not given as required by law.

5th. Said Road has not become useless, inconvenient and burdensome.

6th. The report does not contain any description of the road, other than the termini, and does not have any draft attached thereto.

7th. The viewers do not show in their report any cause or reason for believing that the road has become useless, inconvenient or burdensome.

8th. The report was not filed until after the return day, and was not made out and signed by the viewers until after the return day.

9th. The appointment of viewers was not preceded by the proper steps required by law in order to authorize their appointment for the purpose of viewing the road sought to be vacated.

*Ritchell Little*  
*Attys for Patrick Farnon, et al*  
*Exponents*

No 10 March Term 1894 PAW

In re proceedings to  
vacate Road in Allegheny  
and Cambria Townships

Exceptions

Filed 3 Sept. 1894

Stittell v Little

In re proceedings to vacate a road } In the Court of Quarter  
 beginning at a joint on a public } Sessions of the County  
 road known as the Loretta road in } of Cambria, Pa.  
 Allegheny Township, near the house of }  
 Loretta Litzinger }  
 and } No. 10 March Term,  
 Extending to a joint on the public } 1894,  
 road in Cambria Township, near the } Road docket.  
 house of Daniel Carney }

### Exceptants' Brief.

A petition to vacate a road or any portion of it, should set forth distinctly the situation and other circumstances of that fact which the petitioners desire to have vacated.

If this be not done, and the defect be not supplied by the report of the viewers, it is fatal to the proceedings.

Road in Rose Township.	36, P.D.R. 87
Nelson's Mill Road	2 Leg. Opin. 54
{ Road in Abingdon, etc	9 Montgomery. 190
same case	Vol 3. District Reports. 226

The burden of proof is placed upon the petitioners to vacate.

In re Road in Exeter Township. 1 Bull. 363.

A view and Report, made after the return day of the Order is too late.

In re vacation of Road in Madison. 2 Lancaster 35  
Metzler August Road 62 P.H. 151.

The road in question is imperfectly and erroneously described

Charters Road	48 P.H.	314
Beams Road	35 P.H.	280
Road in Jackson Twp	10 Lanc Lawlerin	253
Road in O'Hara Twp.	152 P.H.	319
Road in Cheltenham	3 Montgomery	37
Sidely Road.	2 Westmoreland	275. (see

Brightly's Digest page 3907. Sec. 60.

The viewers were not sworn to perform their duties impartially and according to the best of their judgment. This is a fatal defect.

In re Cambria Township.	75 P.H.	357
In re Foster Township.	1 Philp.	100.
In re Kidder Township	1 Philp.	10.
In re Road in East Donegal Twp.	90 P.H.	190

No 10 march sess. 1894

Road Rocket

In re proceedings to  
vacate a road in  
Allegheny and Cambria  
Townships.

Exceptants' Brief  
of Authorities

Kittell's Little

The report heretofore made is not operative now as an offset to this report for the reason that two views were named by the court at the instance of the petitioner. That was, only in opposition to the report then filed and the proceedings were all disposed of, at that time, as such. This is, an entirely new proceeding.

The Litzinger farm stated as that of Loritta Litzinger is the only Litzinger farm upon this road from which the highway in dispute leads, and Daniel Carney is the only Carney living on the Public Road to which it leads therefore there could be no mistake follow from the description contained in the petition and none did follow.

The road is not used by one of its <sup>occupants</sup> ~~contractors~~ for any of the purposes contemplated and recognized as such. Convince the lack of which establishes the right to a public road, to wit:

Lang's Church. — no one uses it for this purpose  
" " school — none of them " " " "  
" " market — " " " " " " " "  
" " mill — " " " " " " " "

The test should be: does such necessity exist for this road as would warrant the granting of this road now, in the absence of its ever having been done? If this is a fair test the conclusion should not be difficult to reach.

There is nothing in all of the exceptions or points raised by the exceptants that shows any advantage, taken of the parties who object to the vacation of the road.

All of the parties opposed to vacating the road were on hand, none were taken advantage of and all knew just where to go.

The decisions relied upon are 9, P.F. Smith page

31, P.F. Smith 118, Especially as to exception 3 in that case

The report needs no draft when it vacates the entire road, especially when a draft is on record either the original or other reports. The reports conform with the best established forms and the petition likewise follows the fixed forms.

109, P.F. Smith 118.

Such particularity is not required in this proceeding as in criminal cases in the 2<sup>d</sup> S. and only such description as will identify the road is required. All of the persons went to this road and no one hesitated or doubted what road was meant.

The entire matter being in the discretion of the Court Justice, rather than technicality should guide. As full and fair hearing has been had in this case and <sup>as could be looked for in further proceedings</sup> more technicalities should not operate to cause this entire matter to be gone over in order to remove a slight technicality which could cause no injustice. The Supreme Court will not review.

In re proceedings to vacate road leading from near house of Loretta Outinger in Allegheny Township }  
 of Cambria County Pa. }  
 to }  
 Point near house of Daniel Carney in Cambria Twp. }  
 the Court of Quarter Sessions }  
 do 10 March Term 1895 }  
 Road Booklet.

Exceptants Bill of Costs

J. A. Shoemaker	Witness	1 day	1.00
Henry Scanlan	"	1 " 17 miles	2.02
H. R. McMullen	"	1 " 6 "	1.36
<del>Sigmond</del> Seymour	"	1 " 3 "	1.18
Michael Shner	Constable	Serving subpoena	.21
W. J. Carney	Serving subpoena	14 miles, 1 witness served	.99
J. Little	Notary Public	taking depositions	7.00
			<hr/> 13.76
J. C. Farrow	Serving subpoena	10 miles, serving 2 witnesses	1.14
			<hr/> 14.90

Cambria County, Pa.  
 Wm. J. Tierney being duly sworn according to law says that above bill of costs as it stands stated is correct, that the witnesses were in attendance, and he believed them material; and that the charge for mileage is correct, to the best of his knowledge and belief.  
 Sworn and subscribed } Wm. J. Tierney  
 March 26<sup>th</sup>, 1895, before }  
 Jas. L. Darby, Notary

No 10 March Term, 1894.  
Road Docket

In re proceedings to vacate  
Road in Cambria and  
Allegheny Townships

Accepted Bill  
of costs.

Fine \$6 Mar. 1894;

(Paid)

R. L.

IN THE MATTER OF THE REPORT  
OF VIEWERS VACATING ROAD IN  
THE TOWNSHIPS OF CAMBRIA  
AND ALLEGHENY.

IN THE COURT OF QUARTER SESSIONS  
OF CAMBRIA COUNTY, PA.  
NO. 10 March Sessions 1894.  
ROAD DOCKET.

#####

OPINION OF THE COURT.

On the 16th. day of May 1894, a number of inhabitants of Allegheny and Cambria Townships in Cambria County presented their petition to the Court of Quarter Sessions of that County, setting forth, that a public road had long since been laid out beginning at a point on a public road known as the Lorotta road in Allegheny township, near the house of Lorotta Litzinger and extending to a point on the public road in Cambria township, near the house of Daniel Carnoy in said township, which said road your petitioners conceive has now become useless, inconvenient and burdensome, and pray the Court to appoint viewers to view and vacate the same agreeably to the Act of Assembly &c., upon which petition the Court appointed viewers, who on June 7th. 1894 filed their report, recommending that the said road be vacated, to which report Patrick Farron et al., on the 3rd. of September afterwards filed the following exceptions:

- 1.--The petition for appointment of viewers does not set forth in a clear and distinct manner the situation and other circumstances of such road or highway, or of the part which the applicants desire to have vacated.
- 2.--The termini of the said road are not described with sufficient cer-

tainty.

- 3.--The viewers were not sworn before proceeding to the duties of their appointment to perform the same impartially and according to the best of their judgment.
- 4.--Notice of the time and place of the meeting of viewers was not given as required by law.
- 5.--Said road has not become useless, inconvenient and burdensome.
- 6.--The report does not contain any description of the road, other than the termini, and does not have any draft attached thereto.
- 7.--The viewers do not show in their report any cause or reason for believing that the road has become useless, inconvenient or burdensome.
- 8.--The report was not filed until after the return day, and was not made out and signed by the viewers until after the return day.
- 9.--The appointment of viewers was not preceded by the proper steps required by law in order to authorize their appointment for the purpose of viewing the road sought to be vacated.

The fourth exception is withdrawn. The first, second, sixth and ninth may be considered together. Section 18, Act 13th. June 1856, P.L. 558, Purdon's Digest page 1883, section 62, upon which these proceedings are based, reads as follows; "The Court aforesaid shall within their respective counties have authority, upon application to them by petition to inquire of and change or vacate the whole or any part of any private or public road which may have been laid out by authority of law, whenever the same shall become useless, inconvenient or burdensome and the said Court shall proceed therein by viewers and re-viewers in the manner provided for the laying out of public roads and highways", and the 23 section of the same Act, Section 66, Purdon's Digest page 1883, requires that, "every application to vacate any road as aforesaid shall be in

writing signed by the applicants; it shall set forth in a clear and distinct manner the situation and other circumstances of such road or highway or of the part thereof which the applicants may desire to have vacated as aforesaid".

This road was originally laid out in June 1855 and the opening order issued in April 1856. A draft was attached to the report of viewers in the original proceedings but the petition for vacation in no way refers to the number and Term of the original case nor to the draft of the same, but describes it as the "Loretta road in Allegheny township, near the house of Loretta Litzinger and extending to a point on the public road in Cambria township near the house of Daniel Carney".

There is no accurate description of either of the public roads into which this road runs. The proof does not show that there is any Loretta Litzinger owning land or living near the road in dispute, but that there are some Litzingers owning land there who live in the town of Loretta, some few miles distant who are called the "Loretta Litzingers". Daniel Carney's house is at the other end of the road and some fifteen hundred feet from where it strikes the other public road not named or described in either petition or report of viewers and if the road were vacated according to the description given in the petition and report of viewers, the supervisors, when ordered to enforce the decree of the Court, would have to close about fifteen hundred feet of the road on which Daniel Carney lives. The petition in this case does not set forth in a clear and distinct manner the situation and other circumstances of the road, as is required by law and the defects of the petition have not been cured by the report of viewers.

Road in Ross Township. 30 P.S.R., p 87.

Without a sufficient description of the parts to be vacated the jurisdiction of the Court cannot attach.

Chartiers Township Road. 48 P.S.R.,p 315.

O'Hara Township, 152 P.S.R.,p319.

Bean's Road, 35 P.S.R.,p 280.

Therefore these four exceptions are sustained.

In the third exception it is alleged that the viewers were not sworn according to law before proceeding to the duties of their appointment to perform the same impartially and according to the best of their judgment. The report shows that "after being severally sworn according to law" they viewed the said road,&c. If this were all the exception would not be sustained but William T.McCunnell,who administered the oath to the other two viewers,says they were sworn "to obey the instructions of the order to the best of their knowledge and judgment".

See his testimony,page 26.

The Act of June 15th,1836,section 53,requires the viewers to make oath to perform their duty "impartially and according to the best of their judgment",and the Supreme Court,in the case of Cambria Street, 75 P.S.R.,p 332,set aside the report of viewers and proceedings thereon because the form of oath taken by the viewers was not according to the requirement of the law. It was hold in the case of Road in East Donegal Township,90 P.S.R.,p 190,that whenever it appears affirmatively upon the report that the jury was sworn "according to law" we must presume,until the contrary appears,that they were sworn in the manner prescribed by the Act of Assembly,but in this case the contrary appears by the testimony of William T.McConnell. The were sworn "to obey the instructions of the order to the best of their knowledge and judgment".

This is clearly outside of the requirements of the Act of Assembly and this exception must be sustained.

I do not think it important for the report of the viewers to show any cause or reason for believing that the road has become useless, inconvenient and burdensome. It is enough that they find it so, therefore the seventh exception is dismissed. Neither is the eighth important in this case from the view taken of the other exceptions sustained, and it is dismissed without any opinion as to the law or further comment thereon. The fifth exception is last considered. "Said road has not become useless, inconvenient and burdensome" In a proceeding to vacate a road laid out and opened the burden is on the petitioners of satisfying the Court that it has become useless, inconvenient and burdensome. From the proof in this case, I am of opinion that there is still some use for this road. It may not be generally needed, but if there is some need or use for it, then it is not useless. It is a little shorter way for some persons in the Carney neighborhood to get to Loretta. If it were vacated they would have farther to go and would have to twice cross the railroad track and pass some distance along it and therefore take more risk in this respect. So long as the road is necessary for the use of a considerable portion of the people or convenient to them if not absolutely necessary we cannot conclude that it has become useless and inconvenient. On a view of the facts I am not satisfied that the road in question is useless, inconvenient and burdensome, therefore this exception is also sustained.

For the foregoing reasons the entire proceedings must be quashed and the said proceedings are therefore quashed and report of viewers set aside at the cost of petitioners.

Feb. 18. 1895

By the Court

John M. Green P.  
17 W. Union St. Chicago, Ill.

No. 10 Mar. Term 1874  
P. 20

In the matter of the Report  
of Viewers vacating Road in  
the Townships of Cambria and  
Allegheny.

OPINION OF THE COURT.

Filed 19 Feb. 1874

To the Honorable A.V. Barker, President Judge of the Court of Quarter Sessions in and for Cambria County.

The petition of the undersigned inhabitants of the Township of Allegheny and Cambria Township in said County, respectfully sheweth: public

That a road has long since been laid out beginning at a point on a public road known as the Loretta Road in Allegheny Township, near the house of Loretta Litzinger and extending to a point on the public road in Cambria Township near the house of Daniel Carney, in said County, which said road your petitioners conceive is now become useless, inconvenient and burdensome.

Your petitioners therefore pray the Court that the said Road may be vacated agreeably to the act of general Assembly in such case made and provided, And they will ever pray, etc.

Jack Kaylar	John M. Higgins
John Hentz	John Hentz
Eugene Litzinger	John Hentz
William Haid	George Hamman
W. Melhorn	Adam Hamman
J. A. Seymour	William Eckhardt
C. J. Melhorn	Joseph Eckhardt
Lib. Melhorn	Joseph Rigger
Wm. Stoy	Phil. Rigger
J. L. Furbish	A. S. Buck
Peter DeLoe	John E. ...
J. L. ...	B. J. Bradley
L. A. ...	Joe A. ...
Ed. J. ...	James ...
Geo. H. ...	Geo. ...

Wm Sarker  
Emanuel Sarker  
J J Buck

Joseph Hoag  
Henry & Clem  
Geo. Leit  
Thomas Burtch

G. W. Davis  
Daniel Davis  
Thomas J Reese

J W Tudor  
Leyrus Jones

W. J. Davis  
R. A. Hughes

John J Davis  
David J. Davis

Newton Page  
John D. Jones

Wm G. Jyle  
Evan M. Jyle

Jonathan Fox

John G Bowers  
Daniel H Jones  
Elias D Jones  
Richard E. Jones  
Warren E. Jones  
Hugh E Jones

Green R. Jones  
E. J. Humphreys

H. D. Poyer  
E. J. Bennett  
A. E. Marsh  
J. Hoover

Daniel J Davis  
David M Davis

H. J. McLaughlin  
Geo H. Root  
H. A. Devereaux

Adam Smith  
Mr. Michel Murphy

Willie Murphy  
M. G. Murphy

B. F. Marsh  
John R. Davis

Fred Bloom

No. 10 New Bern 1894

Petition of citizens of Allegheny  
and Cambria Counties for  
the appointment of viewers  
to locate a road leading from  
near Soratto Fitzgeralds to a point  
on the Public Road in Cambria  
County

May 16<sup>th</sup> 1894

W. D. McCune

John J. Long

John D. Trout

applicants viewers  
By the Court

Filed 16 May 1894

J. J. O'Connor