

TO THE HONORABLE A. V. BARKER, PRESIDENT JUDGE OF THE COURT OF  
QUARTER SESSIONS OF CAMERON COUNTY:

The petition of the undersigned, inhabitants of the Township of  
Stonycreek, in said county, respectfully represents:

That they labor under great inconvenience for want of a public  
road or highway beginning at a point on the public road near Samuel  
Smith's, on Solomons' Run in said township, of Stonycreek and ending at  
a point or post at public road, said road leading up near Jerry Walters  
at edge of Richland Township, in the township of Stonycreek.

The petitioners therefore pray the court to appoint three persons  
qualified according to law, to view the ground proposed for such road,  
and, if they see occasion, lay out the same, and make report of their pro-  
ceedings to the next term of this court.

NAMES

NAMES

W. B. Shumaker

H. C. Wright

W. L. Woods

Reuben S. Griffith

Eli Knipple

Harman H. Miller

Eora Setwiler

Albert H. [unclear]

E. Geyer

James G. Moch

John Hughes

Albert Knipple

J. L. Miller

S. D. Rager

John R. Lyson

T. M. Goy

Edward Marsh

W. S. [unclear]

Wm. [unclear]

A. L. Moch

Oliver S. Linnear

John McMock

W. Griffith

F. Griffith

Dr J H Farley

Ernest Vignol

Edward A. Campbell

Wm H. Temple

W. Muffington

S. S. Griffith

Alie Meringer

J. W. Lohr

Abu Bungan Bru

Reuben S. Griffith

W. H. Higgins

David Harrison

Charles Coyle

John S. Farley

Charles L. Hooten

State of Pennsylvania,

County of Cambria, SS:

*Harman A. Miller*, one of the above petitioners,  
being duly sworn according to law, says that the facts set forth  
in the foregoing petition are just and true, and that the signa-  
tures to the same, viz.: from Jerry Walter and J. L. Miller to  
Abe Fungardner and John E. Kock, inclusive, are those of the inhab-  
itants of the townships of Stonycreek and in their own respective  
handwritings.

"Signed"

*Harman A. Miller*

Sworn and subscribed before me this *15th* day of *August* A.D., 1896.

*[Signature]*  
Notary Public.

Aug 7<sup>th</sup> August 1896  
In the Quorum Session

Petition for the Laying  
out of a Public Road  
in Stonycreek Twp. from  
Saml Smith to the  
Run to edge of Richland Twp  
in Stonycreek near  
Jerry Walters

Now Aug 17<sup>th</sup> 1896  
The within petition  
read and considered and  
D. W. Hershberger  
John S. Blewett  
and William Flick Esq  
as surveyor to view and  
report  
By the Court

Filed 17 Aug. 1896.

JAMES M. WALTERS,  
ATTORNEY AT LAW,  
JOHNSTOWN, PA.

To the Honorable the Judge  
of the within named court,

We the subscribers  
appointed by the within order  
of court to view the ground  
proposed for said road, doth  
respectfully report; That having  
gave duly and timely notice of  
time and place of meeting of the  
viewers by six type written notices  
stuck up in the most conspicuous  
places adjacent to this route,  
upwards of ten days prior  
to our time of meeting, (one  
of these notices is hereto annexed)  
And we do further report that  
having met agreeably to said  
notice on Thursday the 5<sup>th</sup> day  
of Nov. 1896, and after each  
of us being duly affirmed, we  
proceed to examine the ground  
proposed for said route, And  
that we have laid out and do  
report a road for public use  
according to the following  
courses & distances, A draft  
whereof is hereto annexed,  
beginning at a post at the edge

a public road near Samuel  
Smiths also Solomons Run in  
Stony creek Township thence  
through lands of Heirs of George  
Messengers South ten degrees West  
twenty six & a half perches to R<sup>o</sup>, thence  
South six degrees west eleven & two tenths  
perches to post, thence up along <sup>Shiners</sup> ~~Shiners~~  
Run South eleven & a half degrees east  
twenty one & three tenths perches to Maple,  
thence South five degrees east six & seven  
tenths perches to post, thence South seven teen  
& a half ~~perches~~ <sup>degrees</sup> West twenty five per-  
ches to a post, thence South forty six  
degrees West six & two tenths perches to a  
post opposite lower falls, thence South  
fifty two deg. West nine & seven tenths perches  
to Iron Wood, thence South forty three & a half  
degrees West ten & seven tenths perches to a post,  
thence South twenty eight & a half degrees west  
six & a half perches to a Birch, thence  
South thirty five degrees east four perches  
to a Birch (across Run, here must be a  
Bridge) thence South five degrees east seven  
perches to a Linu, thence South thirty three  
deg. West seven perches to a post opposite  
upper falls, thence South three degrees west nine  
and & one tenth perches to a Birch, thence

South thirty three degrees west three &  
three tenths perches a Birch, thence South  
sixty five <sup>deg.</sup> west thirteen perches to a Birch  
on break Griffiths land, thence through  
said Griffiths land South thirty seven degrees  
west ten & seven tenths perches to a post,  
thence South seventeen degrees west  
thirteen & six tenths perches to a post, thence  
South twenty three degrees West four perches  
to post cross run, thence South four degrees  
West ~~two~~ <sup>thirteen & seven tenths</sup> perches to a post, cross run  
(Bridge) thence South thirty eight deg. West  
seventeen & eight tenth perches to a post, thence  
South thirteen degrees West seven & a half  
perches to a post, thence South eight deg.  
West fourteen & four tenth perches to  
Bridge some corner four perches more  
to a post, thence South seventeen  
degrees east, twenty six & nine tenths  
perches to a post, thence by Andrew  
Millers land South twenty eight  
degrees east twenty three perches  
to post on Public road leading  
up passed Jerry Walters in  
Richland Township

Witness our hands and seals  
the day and year above dated.

Wm Slick Seal  
W. W. Harshberger Seal  
John S. Blough Seal

Wm Slick 2 days

3 miles

W. W. Harshberger 1 day

John S. Blough 1 day

2 miles

NOTICE is hereby given that the voters appointed by the Court  
of Quarter Sessions to view the ground for a public road beginning at  
a point on road near Samuel Smiths on Solomons Run, and ending at a  
post on public road near Jerry Walters at edge of Richland twp. in  
St. Lawrence twp. will meet at the house of Samuel Smiths in said  
township on Thursday on the 5<sup>th</sup> day of Nov. 1896,  
at ten o'clock A.M. for the purpose of viewing the said ground.

Oct 24<sup>th</sup> 1896

Viewers

Wm Slick  
W. W. Harshberger  
John S. Blough

We the undersigned parties owning lands on line of a Public road to be laid out by viewors appointed by the Court, from a point on a public road near Samuel Smith in Stony Creek Township to a point in the edge of Richland Township and intersecting on a public road leading from the Johnstown & Scalp Level Turnpike up passed Jerry Watters, In consideration of said road being laid out & framed as a public road, do hereby release all damages caused or to be caused to us or either of us by the opening of the said, and we agree not to claim any damages for the opening or construction of the same.

Nov. 5th 1896

Witness present  
 Witness to A.C. Miller.

Jerry Walter

A.C. Miller

W. A. Grogan

A.C. Miller

Lincoln Messenger

A. C. Miller

E. A. Ramm

Geo. Messenger

Seal

Seal

Seal

Seal

Seal

Seal

Seal

Seal



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

At a Court of Quarter Sessions of the Peace of the County of Cambria held at Ebensburg in the said County, on the ~~thirteenth~~ day of August A. D. 1896, before the Honorable Judge of the said Court: Upon the petition of divers inhabitants of the township of ~~Shony Creek~~ in the said County, setting forth that they labor under inconvenience for want of a public road or highway, to lead from a point on the public road near Samuel Smith's, on Salomon's Run in said Township of ~~Shony Creek~~ and ending at a point or part of public road, said road leading up near Jerry Malters at edge of Reblund Township

and therefore praying the Court to appoint proper persons to view and lay out the same according to law. The Court upon due consideration had of the premises, do order and appoint William Sleek SURVEYOR and D. W. Hushburger and John S. Laugh

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 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. M. Davis

Clerk.

NOTE.—"It shall be the duty of all persons appointed in the several counties of this Commonwealth to view and review any public or private road or bridge, if they shall decide in favor of locating said road or bridge, to endeavor to procure from the persons over whose 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. 17 June term 1896  
 per

No. ....

Order to view a road for present  
 use of road from Samuel Smith's  
 on Solomon's Run, & each  
 at least at public road level  
 Road leading up near ferry  
 Millers at edge of Rockland  
 Top view showing correct bridge

Filed & received 1896

Viewers  
 W. D. Cook  
 D. M. Henderson  
 John S. Deane

Let. Lewis for atty 90

Walders

Jan. 20<sup>th</sup> 1897 approved and the breadth  
 of the road fixed at thirty feet. —  
 15 Jan'y 1898 Confirmed  
 S W Davis est  
 By the Court.

In re road in Struversburg Township,  
No. 7 June Sessions 1896 Road Docket.

The report of viewers in above case was confirmed absolutely 21<sup>st</sup> April 1897 and 14<sup>th</sup> June leave was asked to file exceptions inure pro tunc. The right to file such exceptions to matters appearing on the face of the record is undoubted, O'Hara Township Road 152 P.S.R. 319, and we will first consider whether matters subject to exception and fatal to the proceedings appear thereon. The first three exceptions allege a failure on the part of the viewers to designate the termini of the road with definiteness and certainty, and it is further alleged that they do not report the same termini as mentioned in the petition.

We have carefully examined the many cases cited on this subject in Mitchell's Penna. Road Law on pages 23 to 34, inclusive, more particularly to discover the rules to be applied in determining the sufficiency of the description of the termini in the petition and report, and the discretion to be allowed viewers in fixing the precise termini when the petition does not designate them with exactness. We conclude from these cases and the principles applied therein that reasonable certainty in the naming of the ends of the road in the petition is indispensable.

but absolute precision of definition is not required. Any substantial variation by the viewers from the termini point will vitiate their work, but exact correspondence between the ends named is not necessary. The termini of the report must correspond with those of the petition, and the report must precisely define these termini. The latter requisite must be so complied with ~~and~~ that the road can be located by the Supervisors whose duty it is to open the same, and when this occurs minor discrepancies and insubstantial variations will not be allowed by the Courts to interfere with the confirmation of the report. As in all matters there must be some substantial error likely to cause injury to some one or render it difficult for the Supervisors to perform their duties.

We have found no case that would seem to make it our duty to set aside the report of viewers in this case. Reasonable certainty certainly exists in the petition and there is no substantial variation in the report of viewers, and we think that we would have no difficulty in taking up the report of viewers, or an order to view based on it, and locating the road, the location of the streams on the draft, the fact that a part of the road had already been used as a public road, with the description given in the report would certainly enable a supervisor to go on the ground and

locate it, especially one residing in the township. When once this objection cannot be raised to the proceedings the Court will overlook matters out of substance in the report. - And we are more than satisfied that no difficulty arises in the locating of the road from the fact that it is not so alleged by either supervisor although both are hostile to the road, apparently, and were examined as witnesses.

The fourth, fifth and sixth exceptions alleged error on the part of the viewers in naming a butting property owners, and failure to assess damage to proper parties. It is a very difficult thing for viewers ~~to do~~ when titles are disputed and names of heirs not made known to them and land lines are uncertain to perform their duties strictly in accordance with the letter and the spirit of the road law; and hence in this case the viewers failed to obtain releases from some of the Messenger heirs or to assess any damage to them, the same as to Frank Berkeley, and it was a very natural thing for them to do, in fact the most natural thing to do, to accept a release from U. A. <sup>Griffith</sup> ~~Berkeley~~ for the land occupied by him. - These mistakes naturally grew out of the peculiar circumstances involved and do not constitute such failures to perform their duty as ~~are~~ to

either necessities or warrant us in setting aside their report. - There is ample authority for recommitting the report for the correction of errors, ~~as~~ as have occurred in this proceeding. - Potts Appeal 15 P.S.R. 414, Road in Hempfield 122 D. 439 and cases therein cited, and we call special attention to the suggestions of Justice Bell in the last case as to the propriety of recommitting a report for correction rather than setting it aside. -

The eighth exception requires no attention as the provision in the act of 1891 invoked herein has been declared unconstitutional. See Road in Otto Township 2 Pa. Sup. Court Reports 20. -

The matter suggested in the 9th exception was disposed of when the ~~fact~~<sup>report</sup> was confirmed absolutely and cannot be considered here.

The proceedings referred to in the tenth exception did not "fail" in the sense required by the rule of Court. -

We have also in this case applications ~~from~~ for appeals from the assessment of damages under the provisions of the act of Apr. 15th 1891 on the part of Frank Berkey and Abner Griffith, persons to whom no damages were assessed and from whom no releases were obtained, but the act is of very doubtful application to our

mind and as the report never go back for correction it will be a much less cumbersome method to ascertain the damages in the usual way, and if any of the parties are aggrieved the right to appeal under said act can be determined on application for an appeal. It is needless to add here that the "deed of right way" given to Mr. Watter by Griffith and others cannot be taken into consideration in these proceedings as the general public must be released from all damages and the right to use the road must be general.

In regard to the land occupied by U. A. Griffith it would seem from the evidence that he is the party entitled to receive any damages to be assessed and having power to release the same, but the viewers should endeavor to obtain a release from Abner Griffith and if they are unable to do so they should report whether his interest has sustained any damage and if any assess the amount.

And now Aug. 11, 1897 it is ordered that this report of viewers be re-committed to the same viewers, with instructions to mark on the draft the names of any adjoining land owners not already known, and further to endeavor to ~~obtain~~ procure from the persons over whose land the said road passes <sup>(who have not already released)</sup> and all persons interested therein, releases from all claims

for damages that might arise from the opening of such road, 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, and where it does not appear to them that any damages are sustained they shall, <sup>so</sup> report to the Court, and they shall give notice of the time and place of meeting for the purposes aforesaid as required by law and shall also serve notices on the County Commissioners, - and further the rules heretofore granted to show cause why appeals should not be awarded to Frank Berkeley and Abner Griffith are discharged and the rule to show cause why exceptions should not be filed in pro time is discharged. -

By the Court,

No. 7 June Sess. 1896 R.D.

In re petitions for  
leave to appeal,  
and for leave to file  
exceptions in pro  
time.

Opinion and decree.

Filed 11 Aug 1897

*Winter Sessions*  
In the Court of ~~Common Pleas~~  
of Cambria County, Pa.

*In re Road*  
*in*  
*Pony Creek Twp*

of *James* Term, A. D. 1896, No. *1* *Road*  
*Appeal of Frank Berkey*

And now, to-wit, the *23* day of *July*, A. D. 189*7*, Rule  
on part of *petitioners for Road* 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

*23* of *July*, 189*7*.

*J. H. Davis* ~~Prothonotary~~  
Clerk

To *Charles C. Green, Esq., Atty for Appellant*

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 for Road* will be taken at the *Office of T. J. Stettin*  
*Esq. 22 Anna Hall Johnson* on *Friday & Saturday*  
the *30 & 31* day of *July*, A. D. 189*7* between the hours  
of *9* o'clock A. M., and *10* o'clock P. M., before *T. J. Stettin*  
*Esq. Commissioner of the Peace* 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.

*James J. Marshall*  
*Atty for Petitioners*

Ms 7 James Reed 1836 R29

Dear Mr Reed

in

Shirley's note book

Adelphi of  
George Berkeley

RULE ON PART OF Settlements.

For Reed to take debt  
of the case of 1836  
the same testimony taken  
on the evidence of the  
J. J. Stillson & 2d  
Deacons, &c., & the  
Walter's & the

In Re. Road : In the Court of Quarter Sessions  
of Cambria County, Pa.  
in : Of June Term, A. D. 1896.  
: No. 7. R. D.  
Stonycreek Twp. : Appeal of Frank Berkey.

DEPOSITIONS OF PART OF PETITIONERS FOR ROAD.

Depositions of witnesses, produced, sworn or affirmed, and examined before me, the undersigned, a notary public, sitting by agreement of counsel in the above-stated case, as commissioner to take testimony on the part of said petitioner, at my office Room No. 2, Alma Hall, Main Street, Johnstown, Pa., on Friday, the 30th day of July, A. D. 1897, between the hour of 10:00 o'clock A. M. and 10:00 o'clock P. M. of said day, by virtue of the annexed rule of court and notice thereto attached, for the examination of witnesses in the cause above-mentioned as depending in said court and undetermined, being the appeal of Frank Berkey in the matter of the above mentioned road case.

*Thomas J. Still*  
Notary Public,  
sitting at Johnstown, Pa.

James M. Walters, Esq., appeared for the petitioners for road, and conducted all the direct and re-direct examinations.

Charles C. Greer, Esq., appeared for Frank Berkey, the exceptant, and conducted all the cross and re-cross examinations:

JOHN S. BLOUGH called and affirmed and testifies as follows:

(Harry Doerr, Esq., sworn as interpreter for this witness)

Q.--Where do you live?

A.--In Richland Township, Cambria County.

Q.--Were you one of the three viewers to lay out and view a road to lead from a point on the public road near Samuel Smith's on Solomons Run in township of Stonycreek and ending at a point or post on public road leading up near Jerry Walter's at the edge of Richland Township in the Township of Stonycreek?

A.--Yes.

Q.--State whether or not in the running of the line of said road along the line of Frank Berkey's property whether the new road encroaches upon or takes any land belonging to Frank Berkey, as laid out by the viewers?

A.--I think it takes a little of it but I don't think it damages. It might be, I'm not certain.

Q.--Witness is asked to state whether if any of Berkey's ground was taken for the road, whether or not the benefits which Berkey would derive from the opening of the road along by his land would be greater or as great as the damages sustained by reason of the taking of any of his land.

Objected to on the part of the attorney of the appellant as being improper and irrelevant, for the reason that Mr. Blough as a viewer should have assessed damages in the report and under this rule the question of damages is not relevant.

A.--Well if the property was mine I would rather lost the ground and pay ten dollars for the benefit derived from the road.

Q.--Frank Berkey claims that he is damaged Twenty-five dollars by the opening of this road; state whether or not in your opinion he is damaged any whatever?

Objected to as leading, and as improper and irrelevant for the reasons given above.

A.-- Not one cent's worth of damage.

Q.--State Mr. Blough whether or not that portion of the road along Mr. Berkey's land taken into the new road as a part of the new road had been used by the public as a public road and how long?

A.--People traveled over it for twenty-five or thirty years .

Cross-examination by Mr. Greer.

Q.--Mr. Blough, do you say that the part that passes Frank Berkey's house and laid is a public road or not?

A.--I do not know whether it was laid out as a public road but it was traveled.

Q.--Do you mean by the term public road, a road which is travelled over by parties, whether it has ever been laid out or not.

A.--When I say a public road I mean a township road .

Q.--Do you mean to say then that the part of the road in question has for years been a Township road?

A.--I didn't mean that it was a township road exactly but it was travelled by the people and used by teams.

*John S. Blaylock*

MR. HARMAN MILLER called and affirmed, and testifies as follows:

Q. Where do you live Mr. Miller?

A.--Stonycreek Township, Cambria County?

Q.--Do you own property there.

A.--Yes Sir.

Q.--State Mr. Miller whether or not you are acquainted with the lay of the property of Frank Berkey, and how it has been bounded by roads and travelled upon by the general public.

Objected to as being improper and irrelevant.

A.--A township road in front of his house, and this new road is at one end of the line of his land, it's been travelled upon as long as I can recollect any thing, a good many years back; I suppose thirty years back.

Q.--State whether or not the lines as now run for the new road as staked off along by Mr. Berkey's property are still in the old road as used by the public, of which you have spoken, and whether or not it encroaches inside of the fence line as now erected of Frank Berkey's enclosure?

A.--I can't say whether it went on the inside; I don't know.

Q.--State whether or not in your opinion Mr. Berkey will be benefitted or damaged by the opening of this road.

Objected to as being improper and irrelevant.

A.--He'll be benefitted.

Q.--To what extent, supposing he would loose a few feet of ground

along the length of his line on said road, would he be benefitted in addition to the losing of said few feet of ground, by reason of the opening of the new road?

A.--A good bit more than he would lose..

Cross-examination conducted by Mr. Greer.

Q.--Granting that the road is a public road, has it ever been vacated to your knowledge, Mr. Miller?

A.--Not to my knowledge.

*Harman A. Miller*

JEREMIAH WALTER called and sworn, and testifies as follows:

Q. State where you live Mr. Walters.

A.--I live in Richland Township.

Q.--State Mr. Walters how long that portion of a public road running along by Frank Berkey's property has been used and travelled as such a road; and opened to the public?

A.--I know it to be used for over thirty years.

Q.--State whether or not, knowing the location of the present lines of the new road, any property will be taken as claimed by Frank Berkey?

A.--If they want to open the road thirty-two feet there will be some of his land taken.

or not

Q.--State whether in your opinion Frank Berkey will be benefitted to a greater extent than he would be damaged by the taking of a few feet along the line of his property by the opening of the road as now confirmed by the Court?

Objected to as irrelevant and improper.

A.-- I would think he would be benefitted.

Q.--State whether or not after the confirmation of this road, in order to pacify rather than to reimburse Frank Berkey, you offered

to pay Frank Berkey the sum of Twenty-five dollars, the extent he was damaged or would be damaged by the opening of the road, and whether or not he refused?

A.--I went to his house and told him that he should go to my attorney and he would draw up a writing that I would be bound to pay him twenty-five dollars. He agreed he would see his attorney and he would do so.

Q.--State whether or not you are a free holder, and whether or not Mr. Berkey is at present indebted to you?

A.--I am a free holder, and Mr. Frank Berkey is indebted to me.

Cross-examination conducted by Mr. Greer.

Q.--State whether to your knowledge Frank Berkey ever went to his Attorney and stated to him his proposition?

A.--I could not tell.

Q.--State whether or not this proposition was made after the appeal by Frank Berkey had been taken?

A.--It was made before and afterward.

Q.--State whether or not Mr. Walter or any body representing him ever made that proposition to Mr. Berkey's attorney?

A.--I didn't, and I don't know of anyone else going.

Q.--Why did you offer twenty-five dollars to Mr. Berkey, Mr. Walter?

A.--So he should be satisfied and make no further trouble.

*Jerry Walter*

CAMBRIA COUNTY, SS:

I hereby certify that the above or foregoing depositions, consisting of the caption and five pages of typewritten matter, numbered at the bottom of each page consecutively from 1 to 5 inclusive, are the full and correct testimony of all the witnesses produced, duly qualified and examined before me at the time and place set forth in the above or foregoing caption and annexed rule of the Court of Quarter Sessions of Cambria County, with notice thereto attached, and dated the 23rd day of July, A. D., 1897, and that each witness subscribed his name to his depositions in my presence.

In testimony whereof, I have hereunto set my hand and notarial seal this thirtieth day of July, A. D., 1897.



*Thomas J. Still*  
Notary Public,  
*Attorney Commission*

No. 7 June Term, 1896 R. D.  
In the Court of Quarter Sessions,

In Re Road in  
Stony Creek Twp.

Deposition on the  
part of the petitioners in  
Appeal of Frank Berkey

Costs 1500 words  
# 3.00

Rec'd payment  
Thomas J. Itell

Filed 2 Aug 1897

THOMAS J. ITELL,  
ATTORNEY AT LAW,  
JOHNSTOWN, PA.

HENRY HALL, PRINTER, INDIANA, PA.

In re Road  
in  
Stony Creek Township.

In the Court of Quarter Sessions of Cambria  
County.

No. 7 Road Docket, June Sessions, 1896.

Depositions of Witnesses produced, sworn and examined by me, at my office room No. 5 Woolf Block, Johnstown, Pa., on Saturday the seventeenth day of April, A. D. 1897, by virtue of the annexed Rule of Court of Quarter Sessions of Cambria County, Pennsylvania and notice thereto attached, for the examination of witness in a certain cause depending in said Court and undetermined, ~~wherein~~ being in re Road in Stony Creek Township, entered to No. 7 Road Docket, June Sessions, 1896.

Daniel L. Parsons and C. C. Greer, Esqrs. appeared for the remonstrators.

James M. Walters, Esq., appeared for the petitioners.

James M. Walters, Esq. attorney for the petitioners protests to the taking of this testimony and objects for the reason that the objectors or so called exceptants or remonstrators in this case are not properly before the Court: nor on the record ~~as required~~ as required by the Rules of said Court and the law, and therefore are not entitled to a Rule to take depositions and testimony in order to get it before the Court.

Charles Voré being duly sworn testifies as follows:

Q. Where do you reside?

A. In Stony Creek Township.

Q. What is your business in Stony Creek Township?

A. I am *one of the Road Superintendents in* Stony Creek Township.

Q. Are you acquainted with the location of the proposed road, new road in Stony Creek Township?

A. I never was over the route of this road, and where it was laid out.

Q. Were you ever over the route before it was laid out?

A. No sir.

Q. Would you kindly state the character of the country where the proposed road is laid out?

A. It is rough.

Q. State in your opinion whether or not the road is necessary?

A. It is not necessary.

Q. State in your opinion as Supervisor whether or not the Township can bear the expense of this road?

A. It cannot.

Q. Can you state whether or not there has been two roads already granted which are not yet opened *in* that Township?

A. There has.

Q. Do you know where they are, if you do state?

A. Yes: in Stony Creek Township, one runs from Moxham up to the Blough line, about one mile and a half as near as I can tell; the other is from Strayer Street in Dale Borough to Walnut Grove.

Q. Are there any bridges on any of these roads?

A. Yes sir, *three*.

Q. How are they distributed?

A. They are all three on the one road, on the road from Strayer Street to Walnut Grove?

Q. Would you kindly state whether or not the river hasn't washed away part of the Moxham road, proposed Moxham road as it is laid out?

A. It has washed some of it away.

Q. That is it has washed away some of the work that has already been done on the road?

A. Yes sir.

Q. What would it cost to repair and complete this road, the Moxham road?

A. It will cost the township fifteen hundred dollars to complete this road.

Q. What will it cost in your opinion to complete the other road?

A.

A. That is a pretty hard question to answer, but not less than three hundred dollars.

Q. Kindly state if the township is able to bear this expense?

A. I don't think it is.

Q. In your opinion do you think it would be burdensome on the Township, the people of the township?

A. Yes sir.

Q. What is the amount of the duplicate for the coming year?

A. We haven't laid the taxes yet.

Q. What was the duplicate for last year?

A. Between thirteen and fourteen hundred dollars.

Q. How many mills was that?

A. At five mills.

Q. Was that to meet the running expenses of the township ~~paid~~ during the year?

A. Yes sir.

Q. What millage was laid last year?

A. Five Mills.

Q. Are there any money in the Treasury now?

A. No sir.

Q. Did you want to borrow three hundred dollar to repair the Moxham road that has been washed away?

A. Yes sir.

Q. Did you succeed in doing it?

A. No sir.

Q. Why?

A. I couldn't get it.

Q. Why couldn't you get it?

A. The people were afraid to lend it to the township, was all the reason I can give.

Q. Did any of the inhabitants of the township ever object to your laying a an extra millage for the completion of the Moxham road?

A. Yes sir.

James M. Walters, Esq., objects, the last question and answer together with many others preceding it, in this examination (is objected to) as being irrelevant and immaterial and not in conformity with such allegations as have been made in their petition of the objectors as presented to Court.

Q. What condition are the roads in Stony Creek Township at present?

A. In a bad condition.

Q. Please state what it would cost in your opinion to repair the roads during the coming year?

A. I think we will have to lay five mills tax again the same as last year.

Q. Is that exclusive of the opening of the two roads yet unfinished, or will there be an additional millage required to the opening of them?

A. I think the five mills will open them roads, the two roads that are granted.

Q. You stated in your previous examination that it would require thirteen hundred dollars to repair the roads as they now exist, the ordinary running expenses, do you now mean to state that the said five mills will now repair the present roads and also complete the two unfinished roads?

A. I said that the five mills would open the road, I think would open the road, but I don't say would complete the road, to open the road and complete the road is a different thing?

A. In your opinion how many additional mills would have to be laid to complete these two roads now open?

A. If you wanted to complete them and make them good roads, it would take ten mills altogether.

Cross-examined by Mr. Walters.

Qa State whether or not you are a property owner in the township?

A. I made an assignment of my real estate to an assignee, now am I the owner or is my assignee?

Q. Has that real estate been offered for sale?

A. Yes sir.

Q. Has the whole of your real estate had a sufficient bid upon the same to pay off all of your indebtedness?

Objected to by Mr. Parsons for the reason that it is irrelevant.

A. No sir, it hasn't.

Q. What, Mr. Vore, is the assessed valuation of the real estate in Stony Creek Township?

Township? for 1896.

A. I can't tell for this year, and I would have to figure it up for last year according to the duplicate.

205  
 $\frac{1400.00}{28000}$

Q. Then how do you undertake to say Mr. Vore, not knowing what the assessed valuation was last year, how much the millage would be? this year?

~~A.~~ Objected to as improper and irrelevant by Mr. Greer.

A. Well I know the valuation will not be any less this year than it was last.

Q. State Mr. Vore whether the township is indebted by reason of the Road Taxes alone?

A. No.

Q. In your examination in chief, you have answered in reply to a question put to you by your counsel "were you ever over the route before it was laid out" and you answered to that question "No sir", and yet later on when asked the question by your counsel to state the character of the Country where the proposed road is laid out, you say it is rough, please reconcile these two contradictory statements?

A. I have travelled the hollow road going up there and I know the country is rough on both sides.

Q. State whether or not you live in the village of Walnut Grove?

A. No sir, I don't.

Q. Or adjacent to it?

A. No, I live on a farm above Moxham, in Stony Creek Township.

Q. When did you move from Walnut Grove?

A. Two years ago yesterday.

Q. Were not the county taxes laid for the township prior to your removal for the year 1896?

~~A.~~ Objected to for the reason that it is immaterial?

A. I don't know, I have nothing to do with County taxes.

Q. In reply to a question as to your ability to borrow \$500.00 to repair the Moxham road, that was washed away, you say that the people were afraid to lend it to the township, which was all the reason you could give, please state the names of any of these people that refused to lend as wealthy a township which has no indebtedness \$500.00 to repair a bridge or road?

A. Mr. Miltenberger, and Yoder, I don't know the first names of either of them.

*Charles A. Rose*

John D. Raymon being duly affirmed testifies as follows:

Q. Where do you live?

A. In Walnut Grove, Stony Creek Township, Cambria County.

Q. What official position do you hold in Stony Creek Township?

A. I am supervisor.

Q. Are you acquainted with the proposed location of this new road?

A. No, sir, I never was over it.

Q. Were you ever near the place that the road is supposed to be?

A. I have been at the places where the road strats from one township road to the other.

Q. From your general knowledge, would you believe that the road is over a level or a hilly country?

Objected to as to the witness' general knowledge not having been over the same his testimony can ~~not~~ not be material nor is it fair to the witness to insist upon an examination of this kind.

A. Well, it is a little hilly.

Q. In your opinion is this new road necessary or not?

A. I couldn't just say it is necessary, it might be for a few people.

Q. Name those that it would benefit in your opinion?

A. It might benefit Jerry Walters and <sup>Harman</sup> ~~Miller~~ Miller, a little.

Q. Any others?

A. No others that I know of.

Q. Are there other roads at or near the beginning of this proposed road or near or at the residence of this said <sup>Harman</sup> ~~Miller~~ Miller and Jerry Walters by which they could reach the City of Johnstown?

A. Yes sir, there are roads that they can reach the City of Johnstown.

Q. State in your opinion, as supervisor whether or not the township can bear the expense of this new road?

A. Well, I guess they can bear it, but it will cost a good bit.

Q. State whether or not it would be burdensome to the taxpayers in the Township if they were compelled to bear it?

A. It comes pretty hard on the taxpayers.

Q. Is Mr. Jeremiah Walter a tax payer in your township?

A. No sir.

Q. Is Mr. Miller a tax payer?

A. Yes sir.

Q. What is the amount of his assessment?

A. I couldn't tell that.

Q. State whether or not there have been two roads granted in Stony Creek Township that have not yet been opened?

A. Yes sir.

Q. Your brother supervisor's testimony as to the cost of completing these two new roads, is his estimate in your opinion correct?

A. I couldn't tell about the Moxham road, but I know mine that I have to open can't be opened for three hundred dollars.

Q. What one do you have to open?

A. From Dale Borough out to Walnut Grove.

Q. What do you think it would cost?

A. I can't tell exactly but it will cost more than three hundred dollars to build three bridges.

Q. How much will it cost to complete the road in addition to the bridges?

A. That don't cost must, about one hundred dollars.

Q. What was last years millage?

A. Five mills they told me, I wasn't supervisor last year.

Q. What is the present condition of the roads in Stony Creek Township?

A. Well, they are pretty bad someplaces now.

Cross-examined by Mr. Walters.

Q. Do you own property in Stony Creek Township?

A. No sir.

Q. You state in your answer to name those that it would benefit in your opinion by the opening of this road, that it might benefit Jerry Walter and <sup>Harman</sup> Miller a little, and ~~than afterwards say no others~~

~~than afterwards say no others~~

1/10

Miller a little, and then afterwards say, no others that you know of, not having been over the road as laid out: how can you so testify?

A. I thought it would be a little nearer to town for them and they would not have to pay toll, and that would be a benefit to them.

Q. State whether or not: Mr. Raymon the present road from Walnut Grove, public road, to Geistown is a very hilly road at several places?

A. Yes it is.

Q. State whether or not there is any other road outside of the proposed road ~~that~~ that runs as direct after leaving Walnut Grove and as short a distance and as good a grade as the proposed road would be?

A. I don't know the new road. There is only one road leading from Geistown to Walnut Grove.

Q. State whether or not you signed a petition in favor of the proposed road?

Objected to by Mr. Greer as being not contained in the direct examination.

A. I signed a petition for the first road.

Re-direct by Mr. Greer?

Q. Was that the petition under which these proceedings are now carried on? or was it a former petition?

A. I signed a petition for Jerry Walters.

*John D. Raymon*

Jacob Jacoby being duly affirmed testifies as follows:

Q. Do you live in Stony Creek Township?

A. I do. I am a property holder in that township.

Q. Are you acquainted with the route of the proposed new road?

A. I am.

Q. State whether or not in your opinion the proposed road is necessary?

A. It is not.

Q. Why is it not necessary?

A. Because there is no body on that rout that would use it.

Q. Do you know whether or not the proposed route of the new road is hilly?

A. It is hilly.

Q. Explain what work is necessary to be done to open the road?

A. The only way I know someone told me ~~there~~ there would be six bridges, but I

don't know that: but I know there will have to be ~~some~~ bridges.

Q. State whether or not there will have to be a deep cut made at the falls at Sam's Run?

A. From what I claim they can't make a cut to get down unless they go way round the hill.

Q. Then part of this road as proposed is impracticable?

A. It is most impossible to get a road down over them falls.

Q. Does this proposed new road go down over the falls?

A. I didn't say it does, but it is impossible to go down if it does.

Q. State if the road in the wintertime would be dangerous?

A. It would undoubtedly be dangerous; it would be an icy road.

Q. Is there a likelihood that the road would be drifted shut in the wintertime?

A. I don't think it would drift shut, because the hills are so high no storm could get in there.

Q. Please state whether or not the road runs along the side of the hill and if it does whether it would not be necessary to build retaining walls?

A. If it would it would not ~~be necessary to~~ stay open long: they would have to build something.

Q. Is there any likelihood of the run overflowing and washing the road and bridges away?

A. Undoubtedly it would be unless they build very high up.

Q. Then if the road would have to be built, high, it would be on the side of the hill, and retaining walls would be necessary?

A. That is what I said it would have to be.

Q. Would it be farther to go by the proposed new road to Walnut Grove than by the Turnpike?

A. Oh, yes, it is farther.

Q. How much farther?

A. It is fully a mile and a half further by the new road down into Walnut Grove.

Q. Please state what is the difference in the grade between the new road and the turnpike?

A. It could not be built with less grade than the Turnpike.

Q. Who owns the real estate adjoining the proposed new road?

A. <sup>Harman</sup> ~~Miller~~ Miller in that corner; and another man I don't know, and Von Lunen owns a piece that comes down to the new road.

Q. How much of this property is improved?

A. All that I know is improved, is by rocks and hills and timber.

Q. Does any farm land adjoin the road?

A. No sir.

Q. Who would this road benefit?

A. <sup>Harman</sup> ~~Miller~~ Miller and Mr. Walter: that is all it would benefit and it wouldn't benefit them any.

Q. What in your opinion would be the cost of this proposed new road?

A. For the distance that it has, I believe it would cost the end of two ~~thousands~~ thousand dollars.

Q. Do you think that this cost would be burdensome upon the tax payers of Stony Creek township?

A. I do, because we paid more tax already than the law would allow us.  
Cross-examined by Mr. Walters.

State what part of Stony Creek do you live in?

A. In Walnut Grove, that is in this end of the township.

Q. Isn't it because of that, that you don't ~~want~~ want this road opened?

Objected to by Mr. Greer as not being contained in the direct examination.

A. No sir: I claim it is unnecessary for every one to have it opened, as it <sup>is</sup> but expense into the township.

Q. You have stated in your examination in chief that you have not been along this road as it is laid out, and yet you say in another answer you made in a question propounded to you that the new road could not be built with less grade than the Turnpike, now do you undertake to answer in that manner?

A. Because you have at least thirty-five feet to get down that way, it is an impossible matter to get below them falls with that grade.

Q. State now it comes that you are under the impression that this proposed new road is to go down over the falls? And also that there is to be more

~~than~~ two bridges built, as is recommended by the viewers.

A. By Mr. Walters, he said when he opened the first road he blasted up rock down to the falls: that is all that I have said in there: One of the viewers said, he went around the falls and crossed over; <sup>and back again</sup> one of the viewers told me there would be more than two; Mr. Blough told me that.

Q. You have stated in your examination in chief, Mr. Jacoby, that only two persons would be benefited by the opening of this new road and then afterwards you say and it wouldn't benefit them any, is this what you mean?

A. I <sup>say</sup> so yet, it wouldn't benefit them any.

*Jacoby Jacoby*

Frank Berkeley being duly sworn testifies as follows: *(Mr. Schaderas interprets)*

Q. I am a resident and property owner in Stony Creek Township?

Q. Are you acquainted with the proposed new road?

A. I am as far as the falls, farther I am not.

Q. Do you regard the road as being necessary?

A. Not.

Q. Do you think the ~~main~~ cost of the road would be burdensome to the taxpayers of Stony Creek Township?

A. It would cost at least one thousand dollars. It would cost too much money, it would be hard on the taxpayers.

Q. Does the proposed new road pass through your land?

A. Yes sir.

Q. Does it damage your land?

A. It does, and I want to have it paid for.

Q. Has it been paid for?

A. No sir, no person has ever asked him in regard to it.

Q. Did any one ever tender you payment or offer you damages?

A. No.

Q. Did the township or the viewers ever give a bond or security for the ~~dam-~~

*ages?*

A. No.

Q. Did you ever claim damages and if so how much?

A. No person has ever asked me for it.

11 *[Signature]*

Q. How much damages do you claim?

A. Twenty-eight feet at the upper end and eight feet at the lower end, and the length is between three hundred and fourteen and three hundred and sixteen feet.

Q. Do you mean the eight feet and twenty-eight feet are widths?

A. Yes, it is the widths.

Q. How much land do you own?

A. Not quite two acres?

~~By Mr. Walters: Do you own any other land?~~

Q. State the amount of damages in your opinion resulting in the taking of your land for the proposed new road?

A. It is worth twenty-five dollars to me and I will not take less.

Cross-examined by Mr. Walters.

Q. From whom did you buy and when?

A. From Peter Angle, in 1889.

Q. When you bought this ground was there a public road went by you?

A. At the upper end.

Q. Wasn't that road past your ground and into the woods when you went there first?

A. It was there, yes.

Q. ~~Wasn't that~~ Doesn't the description in your deed call for a road?

A. No sir. (Objected to as it is secondary evidence.)

Q. Were you there when the viewers were out there?

A. No, I was working in Cambria.

Q. Do you know whether the viewers saw your wife or left any notice there?

A. Jerry Walter said to my wife that I had to give half of the road and ~~Miller~~ Miller ~~the~~ the other half. The viewers left no notice.

Q. How does he know the viewers left no notice there?

A. Nobody talked to my wife but Jerry Walters.

Q. How do you know that this proposed road would take your land if you don't know where the ~~the~~ view is?

A. By where ~~they~~ they placed the stakes on my land.

Q. Who placed them stakes there?

A. I don't know.

Q. Are these sticks out side of <sup>YOUR</sup> fence or inside of your fence?

A. They are outside on the public road .

Q. You have testified in you examination in chief that this road is not necessary, now do you say that because you have no horse or cattle?

A. I have a cow, but no horse.

Q. Now much would you have to go out of your way if you had a horse to come to town, in driving to town to get to the public road as it now is over the proposed road?

Objected to for the reason that it was not contained in the direct examination, he was asked nothing containing distances.

A. The new road would be three quarters of a mile ~~farther~~ farther.

Q.

*Edward Berney*

Recalled by Mr. Greer

Q. Was there ever a snowdrift along the line of this proposed new road?

~~Objected to~~ Objected to for the following reason, that the witness having testified for his counsel in his direct examination that he did not know exactly where the proposed new road was laid out, ~~cannot answer the question.~~

A. I have seen high snows.

Q. Are you not acquainted with some parts of this proposed new road?

A. I am acquainted with the upper end, and the high snow is up there.

Q. Would Mr. Harmon Miller and Mr. Andrew Miller and Amos Hoffman and Mr. Sam Smith, would they not be able to get onto a public road from their farms without inconvenience without the assistance of this proposed new road?

*Yes*  
Cross-examined by Mr. Walters.

Q. You have stated in your cross examination when asked how do you know that this proposed road would take your land, if you don't know where the view is whereas in your redirect examination upon a question put to you by your counsel are you not acquainted with some parts of this proposed new road, you say you are acquainted with the upper end and the high snow is up there, state whether or not you only know this by where they placed the stakes on your land,

as testified to in your cross-examination:

*by Mr. Greer*  
Objected to, for the reason that the witness is being asked questions concerning his direct examination whereas he can only be cross-examined by his redirect examination.

A. I know where the road is to go over my land by the stakes.

*Frank Bilsby*

George Shrader being duly affirmed testifies as follows:

I reside in Stony Creek Township: I am a property holder there: I am assessor of the township, also President of the School Board.

Q. How much is the school board in debt?

Objected to by Mr. Walters for the reason that it is not in accordance with such objection as the so-called exceptants or remonstrators to the road gave set forth in their petition to the Court and it is therefore irrelevant.

A. I think the debt is \$2100.00 and the interest accumulated is \$100.00

Q. Do you know any part of the location of this proposed new road?

A. I went over the ground, and know the location of the road, that is the location of the ground.

Q. Would it or would it not in your opinion be an expensive road to complete and maintain?

A. I think it will be very expensive.

Q. Do you deem the road a necessary one?

A. I don't deem it necessary.

Q. Would its completion and maintenance be burdensome to the taxpayers, in view of the townships indebtedness and other roads having to be completed and maintained?

A. It would.

Q. Aside from the question of indebtedness do you think the advantage to be gained by those owning property or residing along it would be commensurate with the expense of completing and maintaining it?

A. I don't think it would.

Q. How many persons have land improved adjoining the proposed road?

A. I think Uriah Griffith cleared out a piece and ~~Harman~~ Miller.

Harman

Does Mr. Griffith live on the part that he has cleared?

A. No sir.

Q. State whether or not the land bordering on this road is by far for the most part unimproved and uncultivated?

A. My answer is, the most part is unimproved.

Q. State what benefit would be derived from this road, the chief benefit?

A. It might be a benefit to Harman Miller

Q. State whether or not one advantage would be the escape from paying toll on the turnpike by persons living along the new road?

A. They would avoid the paying of toll.

Q. Have you reason to believe that is the object of some of the promoters of this new road to avoid the paying of toll?

A. I have, I think in my judgment that is the reason.

Q. You say you are assessor in the township, state whether or not the following parties own real estate in the township?

~~By any of the following persons and real estate~~  
H. B. Right, M. L. Wonders, Albert Kuntz, E. Guyer, Joseph L. Mock, Al Ripple, J. L. Miller, F. B. Kager, John A. Bayton, W. S. Chase, Dr. J. E. Farley, William H. Temple, W. S. Buffington, John Lohr, J. H. Diggins, Charles Croyle?

Answer: I think none of them do, but I am not positive as to Messrs. Mock, Miller, Temple and Lohr, but I think they don't.

Q. What is the residence of Clarence Marsh?

A. I think he lives in Dale Borough. He has no property in Stony Creek Township.

Q. Are you acquainted with some of the names on the remonstrance?

A. I know some of them.

Q. Among the names thereon that you know, state who are property owners? <sup>(real estate)</sup>

A. Joseph Hoffman, George Schraer, James Penrod, U. A. Griffith, William Griffith, Lowman E. Griffith, Harry Authors, Archy Wisinger, S. S. Grumbling, Jacob Jacoby, John Jacoby, William Jacoby and Harry Jacoby and Levi Jacoby, Christ Dipple, Henry Rice, Henry Rice, Jr., Daniel Cauffield, Henry Constable, John H. Constable, and I think old Man Fred Zong, Walter Downey, and ~~xxxx~~ Emmanuel Blough, Tobias Yoder. I think there are others but I can't remember them now.

Q. State whether or not the following named persons are owners of realty in Stony Creek Township?

A. Eli Griffin, Jacob and Vincent Meneely, Hiram Leventry, Elmer Constable and Bert Constable, Louis Buck, Mrs. Grumbling, Thomas Stettler?

A. I think they are all property owners. These are all real estate owners.  
Cross-examined by Mr. Walters.

Q. You say you are opposed to this road?

A. I am not as far as the road is concerned, but I am opposed to it in the condition the township is in at the present time, the township has more debt now than it can carry.

Q. Isn't it just lately that you have formed this opposition on account of the condition the township is in?

A. I have been this way for a long time on that.

Q. State whether or not Mr. Shrader you told Jerry Walters you wanted to see that road opened for him?

Objected to as not being referred to in the direct examination.

A. I did not, I can tell you what I said to him, the very words.

Q. State whether or not you told Mr. Walter you would not oppose the road?

A. No sir. Not in them words.

Q. You live on the Turnpike, do you not?

A. Yes sir.

Q. Of course the road would be of no direct advantage to you?

A. It would not.

Q. You have stated here the condition financially of the School Board in the Township, that you are a School Director and assessor, state in view of the fact that you seem to be acquainted with the financial status of affairs in the township, what the township is at present indebted for the maintenance of roads?

A. I can't tell that.

Q. Do you know what it would require to keep up three-quarters of a mile of road?

A. I could not answer that.

Q. Not knowing how great or small it would take of funds to keep three-fourths of a



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

In re Road

in  
Stonycrest Imp

of June Sess Term, A. D. 1896, No. 7 Rd

And now, to-wit, the Twelfth day of April, A. D. 1897, 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

12 of April 1897  
S. W. Davis Clerk Prothonotary.

To James M. Batters, Esq., Atty for  
Petitioners

"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 Exceptants will be taken at the office of Wm  
Williams, Esq., No. 13 Block, Johnstown, Pa. on Friday & Saturday  
the Sixteenth & seventeenth day of April, A. D. 1897, between the hours  
of 10 o'clock A. M., and 10 o'clock P. M., before Wm

Williams, Esq., Commissioner 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.

Samuel L. Parsons  
Atty for Exceptants

And now April 12, 1897  
the within Rule served  
upon James M. Mal-  
ter, Esq., Atty for  
Petitioner, by leaving  
a copy of same at  
his place of Residence  
with an adult mem-  
ber of his family  
Saml. Parsons,  
Atty for Excipients.

to J. M. A. 1896. R.D.

In re Road

Strongest Jump

RULE ON PART OF Excipients  
to take depositions

Parsons

No. 7 June Session 1896,  
Stone Road in  
Stony Creek Twp

Depositions of  
Witnesses taken on  
the part of the re-  
monstrators, be-  
fore Wm. Williams  
April 17, 1897

Filed 19 April 1897

WM. WILLIAMS,  
ATTORNEY AT LAW,  
JOHNSTOWN, PA.

HENRY HALL, PRINTER, INDIANA, PA.

To the Honorable A. V. Parker, President Judge  
of the Court of Quarter Sessions, of the Peace  
in and for the County of Cambria, Penna.

The petition of the undersigned inhabitants of the Township of Stonycreek, in said county, respectfully sheweth that a petition hath lately been sent to your honor, for the laying out of a road from a point on the public road near Samuel Smith's on Solomon's Run, in said Township of Stonycreek, and ending at a point or post, at public road, said road leading up near Jerry Walters, at edge of Richland Township in said Township of Stonycreek, which, if granted, will be injurious to your petitioners, and burdensome to the inhabitants of the township through which the same will pass. Your petitioners further declare that said road is unnecessary.

Your petitioners, therefore, pray your honor not to grant the former petitioner's petition, and they will ever pray.

Charles A. Corely  
Levi Gaerly  
Sam. W. Birch  
James Loring  
Henry Mitchell  
John Parker

D. B. [unclear]  
Jacob [unclear]  
C. [unclear]  
Daniel [unclear]  
J. [unclear]  
S. G. [unclear]

J. D. Bruchling  
Geo. A. Mackey  
John B. Jacoby  
G. J. Wilson  
Harry Jacoby  
Lewis H. Bucke  
William Jacoby  
Jacob Bush  
Jos B Singer  
Chas. F. Johnson  
Jethro B. Jacoby  
Geo. Schrader  
Wm. Hoffman  
J. H. Schade  
W. W. Arthur  
Lawrence Griffith  
Frank Meeker  
A. C. Knight  
V. E. Mearns  
Paul Mearns  
Eckey Messinger  
William J. Jacoby  
Thomas Myers  
Eli Griffith  
William Griffith  
Wm. Griffith  
James D. Griffith

A. M. Messinger  
Frank White  
E. Egan  
Cyrus Sopher  
Lehrat Sippel  
August Sippel  
William Koch  
Henry Reis  
H. S. Kiesel  
Henry Sippel  
John Krumm  
Bernhard Palm  
William Palm  
H. M. Browning  
H. H. Hinchman  
Lewis Leventy  
Henry Courtney  
William Courtney  
Albert Courtney  
Elijah D. Marsh  
Frank Pittner  
H. H. Kruger  
J. H. Duke  
Ed. White  
Chas. Leventy

Sheridan, Fricke

Harold W. Womler

Andrew Shivers

& W. George

Peter Keiser

Glenn Blough  
H. O. Downey

John Hines

George Harding

John D. Raymond

Pro 4 June 1896  
In the Court of Quicks  
Sessions of Cecil Co.

In re Bond on Writ of Habeas  
Corpus, Cecil Co., Pa.

Remonstrance against  
approval of report of  
jurors

Wm. W. Mason 1897

DeBarrows

-: IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PA: -

In Re. Road                      Of June Term, 1896, No. 7.

in                      Appeal of Abner Griffith.

Stony Creek Township.

Depositions of witnesses produced, sworn or affirmed and examined before me at my office, Room No. 3 Woolf Block, Jonastown, Cambria County, Pa., between the hours of nine o'clock, A.M. and nine o'clock, P.M. of Friday, the thirtieth day of July, A.D. 1897, by virtue of the annexed Rules of Court of Quarter Sessions of Cambria County, Pennsylvania, and notice thereto attached for the examination of witnesses in the above stated case on the part of Abner Griffith.

Charles C. Green, Esq., appeared for Abner Griffith.

James M. Walters, Esq., appeared for the road.

Uriah Abner Griffith being duly affirmed testifies as follows:

Q. Where do you reside?

A. In Stony Creek Township.

Q. Are you the Uriah Griffith mentioned in the report or return of viewers appointed to view a road in Stony Creek Township presented to the proper Court the fourteenth day of August, A.D. 1896, and also in the return of the viewers appointed to lay out and view said road?

A. I suppose so.

Q. Are you not sure of it?

A. I am not sure whether they are the ones or not.

Q. Has a public road been laid out over land on which you live or not?

A. Not that I know of. I don't know anything at all about it, only that I was told they had laid out a road through there, thirty-two feet wide. I don't know where the road really does go only by the stakes.

Q. Do these stakes run over land on which you reside?

A. Yes sir.

Q. In whom is the title of the land on which you reside?

Objected to by Mr. Walters for the reason and before the witness may answer thereto that having already signed papers of release as to any damages which he, the auntsible owner and claimant to the land at the time in which the viewers were going through and laying out said road, he had signed and which is affixed to the viewers report, and furthermore that the property has been in his possession and that he has paid taxes upon the same in his name and has reaped the benefits of all the crops from the same and that though he may not have the possession of the deed or papers by which he came into the possession and ownership of the land, yet he is such owner and should carefully weigh the answer he may make to the last question propounded to him

*by Mr. Greer*  
*Uriah Abner Griffith*

Q. Do you have the deed for it?

A. Yes sir.

Q. Will you produce it?

A. Yes sir, and the same is offered in evidence, to be used on the argument of this case and marked "Exhibit A".

Objected to for reasons which the counsel for the petitioner of the road expect to show by evidence, other evidence, that Abner Griffith is not bona fide the owner of the ground as set forth in said deed at this time, nor was he at the time of the opening up and securing of releases of the land from the property holders and owners along the line of said road.

Q. Has Abner Griffith made and executed a deed for this land or any part thereof to you at any time?

A. He never made me any deed.

Q. State how you hold the land on which you reside and over which the proposed road passes?

A. I was to have this land in certain conditions, at his death provided I paid so much interest per acre for this land. There was writings drawn up to that effect: if these interest wasn't paid up, then the land was to be sold for his benefit.

Q. State whether or not you have these papers in your possession?

A. No sir.

Q. State whether or not you held yourself out as the owner in fee simple of this land?

A. No.

Q. State whether or not your father is yet alive?

A. Yes sir.

Q. State his condition of health and his age?

A. His health is good considering his age, which is going on 85: he can walk around some.

Q. State whether or not you had any notice of this road going over your premises by the viewers?

A. No sir, I never knowed anything of it.

Q. State whether or not you ever signed a paper presented to you by Mr. Jerry Walters and what the nature of that paper was to the best of

your knowledge?

A. No, I never signed a paper presented by Mr. Walter. I signed a paper at Fisher's office. Mr. Walter came to me on the Street on Saturday and wanted me to come down to Squire Fisher's and sign a paper: he said it would take but a few minutes and it was in regard to that road back there and it would only take a few minutes. So I went along with him down to the Squire's office and I was under the impression it was for a private road, never had any idea they were after a township road. I don't remember of the paper being read to me or any body saying what was in it or any thing about it. Then Mr. Walter wanted me to pay a dollar to pay expenses and I told him, No sir that I wouldn't pay nothing as the road was no benefit to me, but if he wanted a private road there he might have it.

Q. State the amount of damage done the land by reason of this public road going over it?

A. It is worth about one hundred and twenty-five <sup>dollars</sup> or one hundred and fifty dollars if I had to move the fences: it takes very near an acre of ground.

Q. <sup>State</sup> whether you or your father have ever received or been made a tender of this sum or any part thereof?

A. Not that I know of.

Q. State whether or not your father could come to town on any days?

A. He could come on nice days like to-day, but of course there are days not fit for him to be out.

Q. State whether or not you own any land in fee simple along the road laid out in question?

A. No sir, I am paying interest for it, the same as paying rent for it.

Cross-examined by Mr. Walters.

Q. State whether or not you have used the new public road for hauling out anything from your farm?

Objected to by Mr. Greer as irrelevant and improper.

Q. I haul on it some times back and forth but not very often. I just go

Q.

that way to go into the fields.

Q. In your examination in chief, in response to the question put by the Attorney for your father Abner Griffith, whether Abner Griffith made and executed a deed for this land or any part thereof to you at any time, in your answer you say "he never made me any deed" but afterwards in explaining how you hold possession of the property, you say you have the land in certain conditions at his death provided you paid so much interest per acre for this land, that there were writings drawn up to that effect, now please state whether those writings were under seal, whether you have paid the interest ever since on the land in accordance with the prescribed conditions in said paper and if you have not, who has the possession of those writings and further whether they were acknowledged before an officer authorized to take acknowledg<sup>ments</sup> or papers?

A. I don't know if the writings were under seal, I couldn't say; I didn't come up to the terms of the papers, I am trying to though, but I am back; I think Linton holds the papers; I know he had them, but what became of them I don't know; they were not acknowledged that I know of; I don't remember of their being acknowledged.

Q. Don't you know Mr. Griffith that by your compliance of the conditions set forth in those papers made between yourself and his other children in the division of the property, that the title was vested in you and that at the same instance, or at the same instance of your father's death those papers could be placed of record and be as effective to all intents and purposes as if a deed in fee simple had been made directly over by your father to and handed to you?

A. I think not; I think he could sell the whole thing, and put the money in his pocket and use it himself; He told me that yesterday.

Q. How long ago was it that these papers were made?

A. Right after the flood; shortly after the flood, about eight years ago.

Q. What was the purpose of your father then making these papers, at the age of seventy-five and giving you and your brother's and sisters their

proportionate shares, and the actual possession of your property, if not done with the intention of deeding the same over to you?

A. Well he was getting old and wasn't able to work any more, and he thought by putting it in that shape he would have enough money to live on and if not he could fall back on the old farm again.

Q. Then it was not for the purpose of quieting any disputes already arisen or that might thereafter arise in the division of his property and the saving of expenses of administration of his estate after his death that he made the division among you provided he was looked after and cared for prior to his death?

A. Yes sir, I believe that was his idea.

Q. and that therefore these papers which were made by him were wholly binding and effective to all intents and purposes saving that the interest to be paid to him as though deeds had been made directly to you.

*Mr. Dincer* Objected to as irrelevant, improper and not the best evidence, *by*  
A. I don't think so: they are not as good as a deed: I can't sell any of those lands without father signing too.

Q. State whether or not under the terms among others in the writings made between you with the other children and your father, that you would have and has had by reason thereof a life estate in this property?

In other words under the terms of those writings you are on that land for life and can only be ejected from it and the ownership by refusing to comply with the requirements as to the payment of interest.

A. I think so with the understanding, yet father claims that if he sees fit to take it from me he can do so: that is what he claims.

Q. State whether or not Mr. Griffith that there has been a road open along your property which is a part of the new road as now laid out by the Court and traveled over for many years by the public?

A. No sir, there never was a public road there: there has been a road open there, a private road, for a good many years, but not for the public.

Q. Hasn't that been used by the public for twenty-five years to your knowledge?

A. It is only a private road used by Mr. Miller and Messenger, they have a piece of ground there and ~~xxxx~~ they use it sometimes, but not very often it has no end, it just runs back there.

Q. Isn't there a part of this road that runs up by Abner Griffiths, not this new adopted road, that was a public road and afterwards vacated?

A. I remember now that through Berkeys only, but that piece from there on where it now is was not a public road not from where this dispute is now not through this piece, only through Berkey's that is vacated.

Q. Wasn't that a road about which they had a suit in the old District Court and which you think is vacated?

A. Yes, there was a suit about that road but it has been vacated.

Q. Did you not sign the original petition <sup>and supplemental petition</sup> for the opening of this road? and exercise the right of ownership in the land as now claimed by Abner Griffiths by signing deeds of release properly acknowledged before an Alderman of the City of Jonestown as well also signing a paper of release with other property holders along said new road, which was given to and attached to the report of the viewers, for the opening and laying out of this road as now adopted by the Court?

Objected to as irrelevant and immaterial, by Mr. Greer.

A. I signed the original petition with the understanding that it was a private road. I had no idea it was to be a public road. I wouldn't think so. It was a misunderstanding on the signing of those in the first place or I never would have signed them.

Q. Have you any other way to get out from this land of yours other than going across your land or out the old road as you say was vacated than over this new road?

A. My father when he made this left ten feet of a road to get any place we wanted that is along the old road.

Q. That being the case that is necessary to use a part of this old vacated road or else the new road as made which is partly made out of this old, and as you say, vacated road and your having no other way to get out then, is it not rather an advantage to your land to have this

new road along the same rather than a disadvantage?

Objected to as irrelevant and improper, by *Mr. Green*

Q. No sir.

*Mr. A. Griffith*

Cambria County, ss.

I hereby certify that the above witnesses were duly qualified and examined at the time and place stated in the above caption and signed their depositions in my presence.

*Wm. Williams*  
Commissioner and Notary Public

*Costs*  
*2000 words at 20¢ per 100 \$ 4.00*  
*Qualifying 1 witness. \$ 0.00*  
*\$ 4.00*

10  
22  
25  
30  
39  
38  
176  
12  
211.2  
0.2  
14.224

In the Court of <sup>Quarter Sessions</sup> ~~Common Pleas~~  
of Cambria County, Pa.

In re Road in  
Stony Creek Township

of June Term, A. D. 1896, No. 7

Appeal of Abner Griffith

And now, to-wit, the 23<sup>rd</sup> day of July, A. D. 1897, Rule  
on part of appellant 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

23<sup>rd</sup> of July 1897.  
S. W. Davis Prothonotary.

To

James M. Walters, Esq. 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 appellant will be taken at the office of the undersigned

in Wolf Run, Huston, Pa. on Friday & Saturday

the 25<sup>th</sup> & 26<sup>th</sup> day of July, A. D. 1897, between the hours

of 9 o'clock A. M., and 9 o'clock P. M., before

William E. [unclear] in and for said Circuit

or by some other person of competent authority, at the time and place aforesaid, when and where you may  
attend if you think proper.

Charles [unclear]  
Appellant

I beg to certify that  
Rule - July 21 1897

No. 7 June Session 1898

In re Board of  
Stamford Township

RULE ON PART OF  
To Take Depositions

Given  
under my examination  
and under oath  
at the City of  
Stamford

No. 7 June Session 1896

In Re Road in  
Stony Creek Township

Appeal of Abner Leaf  
fith

Depositions of witnesses  
taken on the part of the ap-  
pellant by Wm. Williams  
July 30, 1897

Filed 2 Aug 1897

WM. WILLIAMS,  
ATTORNEY AT LAW,  
JOHNSTOWN, PA.

HENRY HALL, PRINTER, INDIANA, PA.

-: IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PA: -  
In Re Road Of June Term, A. D. 1896, No. 7.  
in appeal of Frank Berkey.  
Stony Creek Township.

Depositions of witnesses produced sworn or affirmed and examined before me at my office Room No. 5 Wolf Block, Johnstown, Pa., between the hours of nine o'clock, A. M. and nine o'clock, P. M. of Friday the thirtieth day of July, A. D. 1897, by virtue of the annexed Rule of Court of Quarter Sessions of Cambria County, Pa. and notice thereto attached for the examination of witnesses in the above stated case on the part of Frank Berkey.

Charles C. Greer, Esq., appeared for Frank Berkey.

James M. Walters, Esq. appeared for the Road.

Frank Berkey, being duly sworn testifies as follows:

Q. Where do you live?

A. In Stony Creek Township.

Q. Do you own any real estate in Stony Creek Township?

A. I own land there.

Q. Do you have the deed for the land you own?

A. Yes sir.

Q. Will you produce the deed.

A. Deed produced and marked "Exhibit A" and offered in evidence:

Objected to by James A. Walters, esq.; generally but in particular to the description in said deed, wherein it calls for land beginning at a post on the north side of a public road and in the ~~middle~~<sup>middle</sup> of a private road, thence along the middle of said private road, \*\*\*\*, for the reason that no designation of a road as private in said deed can change the fact nor alter it being a public road, which the road therein mentioned has been almost time out of memory; and further that the evidence of the same designated as a private road being a public road can be found among the records of the Old District Court of Cambria County, in the case of Hoffman and Griffith.

Q. How much of your land is taken by the proposed new road? on which you took your appeal?

A. I don't know, I didn't measure it, I know my line.

Q. About how much of your land is taken?

A. I measured it last Sunday from the corner of my fence to the post twenty-five feet and three inches.

Q. Where is that post, in what part of the private road is that post?

A. Where is that post to which you measured.

A. I measured from my fence to my line.

Q. How far along the road did you measure along the road in front of your place.

A. I measured 273 feet. I measured with a tapeline.

Q. Was this along the private road?

A. Yes, it was along my line.

Q. How much have you been damaged or will you be damaged by this road?

A. Not less than Twenty-five Dollars.

Cross-examined by Mr. Walters.

Q. You say you are damaged not a da

Mr. Walters states that it is the duty of the Commissioner to take down the testimony as it falls from the lips of the witness, the same as it is done by the stenographer in Court in order to inform the Court from all the language and answers made to the questions propounded by the counsel, the character of the witness when the action themselves cannot be observed by the Court, showing motive, feeling, etc.

Q. State whether or not you were offered the full amount of damages claimed by you by Jerry Walters?

A. He offered it to me.

Q. State whether or not you measured or had measured by any competent surveyor the amount of ground now enclosed by the fences surrounding your present piece of ground and whether there was found by said measurement within said enclosure sufficient land to cover the amount called for in your deed.

A. No, I had no surveyor. I did not measure my lot all round. I measured the length of the new road.

*Ernest Berney*

AMOS D. Hoffman being duly affirmed testifies as follows:

Q. Where do you reside?

A. In Richland Township.

Q. Are you acquainted with the location of Mr. Frank Berkey's property?

A. Yes sir.

Q. State to the best of your knowledge how much of ~~xxxx~~ his land is taken by the proposed new road?

A. It is about the half of the width of the road.

Q. How much of the length of the road?

A. I don't know the exact length of the line along that side of the space:

Q. As near as you can estimate?

A. Probably about fifteen rods as near as I can tell, the deed will tell that.

Q. State whether or not if the road was laid out to the width of thirty-two feet, whether the present fence of Mr. Berkey will have to be removed?

A. It will have to be removed to give the road the proper width.

Cross-examined by Mr. Walters.

Q. What will be the proper width of the road?

A. I think thirty-two feet is the width of roads.

Q. When it is based on the strength that the road will be thirty-two feet wide that you think it will encroach on Mr. Berkey's ground?

A. Only sixteen feet on Mr. Berkeys, and sixteen feet on Mr. Millers.

Q. If the road will be made thirty-two feet wide the fence will have to be removed?

Q. How much?

A. That is more than I am able to tell, just how far.

Q. Did you measure or make any measurements for this road? and what did you base your measurement from?

A. Not myself I didn't, but I helped to measure it, I helped to carry the chain.

Q. State whether or not you measured the amount of land within the

enclosure mentioned in the description in Mr. Berkey's deed?

A. I didn't.

Q.

*J. Amos D. Hoffmann*

Cambria County, ss.

I hereby certify that the above witnesses were duly qualified and examined at the time and place stated in the above caption and subscribed their depositions in my presence.

*Wm. Williams*  
Notary Public and Commissioner.



*Certs*  
*888 words @ 20¢ per 100 \$1.75*  
*Qualifying two witnesses 20*  
*1.75*

10  
23  
16  
21  
4  
74  
12  
888  
2  
1.776

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

*In re Road in  
Stony Creek Township*

of *June* Term, A. D. 189*6*, No. *7*

appeal of *Frank Berkey*

And now, to-wit, the *23<sup>rd</sup>* day of *July*, A. D. 189*7*, Rule  
on part of *Appellant* 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

*23* of *July* 189*7*.  
*S. W. Davis* Prothonotary.

To *Jas. M. Walters Esq. atty for Petitioners*

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 *appellant* will be taken at the *office of W. M. Williams*  
*at No. 131 in Johnson's Corn* on *Tuesday*

the *30<sup>th</sup> & 31<sup>st</sup>* days of *July*, A. D. 189*7*, between the hours  
of *9* o'clock A. M., and *9* o'clock P. M. before *W. M. Williams*

*Esq. Commissioner* 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.

*Charles C. Green*  
*att'y for Appellant*

Mr 7 June Seavina 1898

Dear Madam,  
Thank you for your letter

RULE ON PART OF APPELLANTS  
to take deposition

Green  
in my 24th coming into  
the court  
James P. P. P.  
W. P. P. P.

July 7 June Sessions 1896

In Re Road in  
Stony Creek Township  
Appeal of Frank  
Berkey

Depositions taken on the  
part of Frank Berkey before  
Wm Williams July 30, 1897

Filed 2 Aug 1897

WM. WILLIAMS,  
ATTORNEY AT LAW  
JOHNSTOWN, PA.

HENRY HALL, PRINTER, INDIANA, PA.

- IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PA. -

In re: Road of June Sessions, A. D. 1896, No. 7.

in  
Stony Creek Township. exceptions of John Raymond.

Depositions of witnesses produced, sworn and affirmed and examined before me at my office Room No. 3 Wolf Block, Johnstown, Cambria County, Pennsylvania, between the hours of nine o'clock, A. M. and nine o'clock, P. M. of Friday, the thirtieth day of July, in the year of our Lord, one thousand eight hundred and ninety-seven, by virtue of the annexed rule of Quarter Sessions of Cambria County, Pa., and notice thereto attached for the examination of witnesses in the above stated case on the part of the exceptant.

Charles C. Greer, Esq., appeared for John Raymond.

James M. Walters, Esq., appeared for the road.

John D. Raymond being duly affirmed testifies as follows:

Q. Where do you reside?

A. In Stony Creek Township, Cambria County, Pa.

Q. What official position do you hold in the Township?

A. I am Supervisor.

Q. You have filed exceptions in the matter in hearing?

A. Yes sir.

Q. Are you acquainted with the situation of Samuel Smith's land in that Township?

A. Yes sir, I know where it is along the road?

Q. About how far along the public road does it extend?

A. About a hundred rods.

Q. How long or how far along his lands does Solomon's run extend <sup>does</sup>?

A. About as far as the road runs.

Q. <sup>Are</sup> ~~Does~~ the land of the heirs of George Messenger ~~is~~ bounded by the public road?

A. I can't tell that.

Q. State whether or not the land of the heirs of George Messenger adjoin the lands of Samuel Smith?

A. I don't know that.

Q. State how far along the public road leading to Jerry Walter <sup>does</sup> the land of Jerry Walter extend?

A. Objected to <sup>by</sup> Mr. Walters that the testimony of this witness who is not a surveyor nor <sup>was</sup> he one of the viewers for the laying out and opening of this road and that the report and draft in the proceedings is of record in the Quarter Sessions of Cambria County where the proper legal data can be secured and that therefore this testimony in this particular is immaterial and improper.

A. A half a mile I guess, I can't tell exactly.

Q. Name the abutting property <sup>owners</sup> along that new road, all that you know of?

A. Frank Berkey.

Q. State whether or not this proposed new road is unnecessary, expensive and burdensome to taxpayers?

A. Objected to as the matter is already res adjudicata in the Quarter Sessions of Cambria County?

A. Yes it is expensive.

Q. State the amount of mills laid this year for road tax?

A. Five.

Q. State whether or not they were laid before the rule opening this road was granted?

A. Yes they were.

Q. State whether or not you have other orders from the Court to open roads in Stony Creek Township made previous to this one?

A. Yes sir.

Q. State how much of your duplicate you have expended in the opening of these roads?

A. We have not enough to open them.

Q. Have you any money left?

A. No, we have not enough to open that one road.

Q. State whether or not you have been using all available time this summer in carrying out the former order of ~~the~~ Court?

A. Yes sir.

Cross-examined by J. M. Walters, Esq.

Q. At whose instance did you file exceptions in this matter?

A. They say they are going to return me if I don't go on and I have no tax.

Q. Then it was because of these threats that you filed these exceptions?

A. Yes, they said they would return me by such a time if I don't work on that road.

Q. Name some of the parties that threatened you?

A. Jerry Walter told me that you told him that if I didn't go to work in June he was going to return me; so did Miller.

Q. Was it because of their threatening to return you for not opening up this road, that you filed exceptions long after you had the order

to open this road?

Objected to by Mr. Greer as being entirely improper.

A. I thought I might get into trouble and that I could get out that way: I thought that that way I could get a chance from Court to lay a tax or get out some way or other.

Q. Did you think this or ~~anything else~~ were you advise to this this?

A. I thought it myself: some of the taxpayers told me I had better go and see a lawyer about it.

Q. Name some of the taxpayers who told you?

A. Louis Buek, Jacob Jacoby, some of the Griffins,

Q. Who up at the upper end of this road told you?

A. Nobody just near that road?

Q. Did any of the Turnpike Company tell you to go to a lawyer? or Mr. Schrader?

Objected to by Mr. Greer.

A. No sir.

Q. Did you go to a lawyer?

A. Yes sir.

Q. Did you go to whom did you go and what advice did you get?

A. I went to Mr. Greer:

Q. State whether or not the order of Court to open that road and notice to comply with that order had been served upon you and whether you of your own motion refused to comply with the order of the Court and the notice to open it or upon advice received not to do so?

Objected to by Mr. Greer as improper, irrelevant, immaterial and not proper.

A. I had no advice not to do so.

Q. State Mr. Raymond, why you did not proceed to levy a tax in accordance with the law and order of Court to open that road, knowing you had not sufficient funds to do so, a special tax to open up the roads made before the road in question?

A. Objected to as improper

A. I went with the other supervisor and we see that we can't levy a

special tax before we see whether we have tax enough.

Q. Have you made any effort since to see whether you have tax enough?

A. I know we have not tax enough.

Q. When did you know this first?

A. It is a month.

Q. Is it any longer than a month?

A. I know right a way I hadn't enough with <sup>out</sup> laying a special tax.

Q. State Mr. Raymond, whether or not you signed petitions for the opening of this road?

A. I signed a petition for the opening of the first road?

Q. State whether or not you did not sign a petition for the opening of the second road as now opened?

A. I don't mind as I did.

Q. State whether or not you own property in the township?

A. I don't own none.

Q. In your examination in chief among others the question was asked you by your counsel to state whether or not you have been using all available time this summer in carrying out the former order of Court, please say whether or not the time expended by you in contesting the order of the Court to open this last road is included in the term all your available time?

Objected to by Mr. Greer because it is a  calculated to  entangle the witness, and is irrelevant and immaterial?

A. I don't understand that right.

Q. State Mr. Raymond, how many trips you made from the Township to Jonestown to see counsel in order to contest the opening of this road in accordance with the order of Court, and the advice or notice you got from some of the taxpayers who told you that you had better go to a lawyer and see about it the laying of a tax, &c. in this case?

A. I didn't say the taxpayers said I should go and see a lawyer about levying a tax, they said I should go and see a lawyer to see that I was safe.

Q. State whether or not you made a trip to Johnstown, one trip, or more, to Johnstown to secure advice and have a petition prepared and presented to the Court of Quarter Sessions of Cambria County, or *for* the purpose of signing exceptions, swearing to the same, and have counsel file them at Court objecting to the opening up of the road, the order for which you at that time had from the same Court to open up? or if you made more than one trip to do so.

A. I was down here one time, but I didn't come purpose: I was down here and talked to him as I do.

*John J. Raymond*

Louis Von Luner being duly affirmed testifies as follows:-

Q. Where do you reside?

A. Seventeenth Ward, Johnstown, Pa.

Q. Do you own land in Stony Creek Township over which this proposed road will run?

A. Yes sir.

Q. Have you released your claim for damages, did you ever sign a release for damages?

A. I never claimed any: I believe I did.

Q. Are you certain whether you did or did not?

A. I am not certain.

Q. State whether or not the lands of the heirs of George Messenger in Stony Creek Township are bounded on any place by a public road near Solomon's run or near Samuel Smiths?

A. I don't know.

Q. How many are the heirs of George Messenger to your knowledge?

A. About five that I know, I believe: John, George, William, one daughter but I don't know her name.

Cross-examined by J. M. Walters, Esq.,

Q. Please state how you came into possession of the lands you own in

Stony Creek Township?

A. I bought it from Abner Griffith.

Q. ~~Was~~ Was that the outgrowth of the same deal that was made when Mr. Griffith made the arrangements with the balance of the heirs.

A. He divided his farm into lots, and they were appraised and some of the heirs took them at the appraisement; the others were sold at public sale. I bought mine at the sale, to be paid for at his death, and to pay interest from the time of the sale till his death.

Q. So that you hold yours after the same manner and growing out of the same estate partition that Uriah Griffith now does?

A. Yes sir.

*Louis Von Lumen*

Re-called by J.M. Walters, Esq.

Q. Since your examination in chief, and being shown a paper signed and acknowledged by you before A.C. Fisher, Alderman, releasing any claim for damage which you might have by reason of the widening or opening up of this public road, are you not now in a position to answer affirmatively that you did sign a paper releasing any damages to the opening up of said road.

A. Yes sir, I am.

*Louis Von Lumen*

Jerry Walter being duly sworn testifies as follows:

Q. Where do you live.

A. Richland Township, Cambria County.

Q. State whether or not you are familiar with the location of the lands of the Messenger heirs in Stony Creek Township?

A. I am with a part of it.

Q. State whether or not to your knowledge any of their lands abuts or adjoins a public road near Samuel Smith's, also Solomon's Run in Stony Creek Township?

A. To the best of my knowledge it doesn't extend down that far.

*Jerry Walter*

Lincoln Messenger being duly sworn testifies as follows:

Q. Where do you reside?

A. Seventh Ward, Johnstown, Pa.

Q. Are you one of the heirs of George Messenger?

A. Yes sir.

Q. How many are the heirs of George Messenger

A. Six.

Q. Do they own land in Stony Creek Township?

A. Yes sir.

Q. Have they released for damages over their land in Stony Creek Township?

A. I can't say for all of them: I have released.

Q. Do they all have an interest in that land?

A. Yes sir.

Q. Does that land adjoin a public road near Samuel Smith also near Solomon's Run .

Q. How near does it come to that point?

A. About one hundred and fifty ~~feet~~ <sup>yards</sup>.

Q. Whose lands intervene between the lands of the Messenger heirs and a public road near Samuel Smith's and Solomon's Run in Stony Creek Township?

A. We would either have to cross the Myers tract or the Murry tract.

Q. Do you know whether or not Myers or Murry abut on this proposed road

A. One or the other does.

Cross-examined by Mr. Walters:

Q. Since your examination in chief, and the exhibiting to you of a deed of release made by all of the heirs except one to Jerry Walter for any damages caused by reason of the opening up of the road in question here: that you are satisfied that six-sevenths of the heirs have signed papers of release for the same & releasing any damages?

A. Yes.

*Lincoln Messenger*

George Schrader being duly sworn testifies as follows:

Q. Where do you reside?

A. In Stony Creek Township.

Q. State whether or not you are acquainted with the facts of this proposed road, whether it has been laid out, and the situation of the road in general?

A. I know the location of the ground where the proposed road is to go through.

Q. State whether or not, in your opinion this road is unnecessary, expensive and burdensome to the taxpayers if opened as proposed.

Objected to by Mr. Walters for the reason that the road is not a proposed road, that it is already laid out and the order of the Court to open the same is in the hands of the supervisors of the Township and that therefore the same is res adjudicata and the question can have no bearing whatever in this, that the question and answer can have no bearing whatever in this collateral proceeding.

A. The said road is ~~not~~ necessary, burdensome and expensive to the taxpayers of Stony Creek Township.

*Geo. Schrader*

Urian A. Griffith being duly affirmed testifies as follows:

Q. Where do you reside?

A. In Stony Creek Township.

Q. State whether or not the farm on which you live is improved or is under cultivation?

A. The biggest part of it is.

Q. State whether or not the part is under cultivation through which this road passes?

A. We are using it just for pasture.

Q. State whether or not other parts of the road so far as you know has improvements along it, on or near it?

A. ~~Objected to~~ by Mr. Walters for the reason that in the exceptions filed by the exceptants or objectors in this matter no mention is made whatever as to the improvements or not along said road, and that the matter is therefore irrelevant and can have no bearing on the question excepted to as issue in this case.

A. I believe not, none any ways handy.

Q. In whom is the fee simple of the land in which you live?

A. Objected to for the reason that it can have no bearing whatever in the present exceptions in this case in whom the title to the land might or might not be in for they have their proper remedy by appeal if not awarded damages to the proper and legal owners whereas this present proceeding is an exception to a case already adjudicated and that the only purpose the exceptants can possibly have in their prayer to open up the proceedings in this case would be for the purpose of a review and order to vacate or to have the report as already long confirmed by the Court recommitted to the former viewers for the purpose of amendment or correction and the awarding of damages to person who may have been overlooked and not given damages if they so deserved and that therefore the testimony which the exceptants seek to adduce in this collateral proceeding to fix the amount of damages sustained by one who may have owned property along said route and not awarded the same, the question is therefore irrelevant, improper and immaterial.

A. Abner Griffith.

Cross-examined by Mr. Walters.

Q. State whether or not you have been in the ~~xxxxx~~ personal possession actual and to all legal intents and purposes the owner of said lands by reason of a life estate which you now hold in it through papers executed by your father which upon his death will leave you in possession and of the ownership in fee simple in the land along this route of which you say the title is now in Abner Griffith?

A. It is a pretty hard thing or question to answer it.

*Abner Griffith*

C. A. Vore being duly affirmed testifies as follows:

Q. Where do you reside?

A. In Stony Creek Township.

Q. In what official capacity are you employed in that township?

A. Supervisor.

Q. State whether or not you regard this road as burdensome, unnecessary and expensive to the taxpayers?

A. I do.

Q. State whether or not there are now orders for the opening of two roads in Stony Creek Township not yet opened exclusive of this one?

A. Yes sir, there is.

Q. State whether or not the duplicate is exhausted or about exhausted in the opening of those two roads?

A. It is about exhausted.

Mr. James M. Walters objects to all of this testimony that the same is irrelevant and immaterial in view of the exceptions filed by the Supervisor in this proceeding.

*C. A. Vore*

Cambria County, ss.

I hereby certify that the above witnesses were duly qualified and examined before me at the time and place stated in the above caption and each signed his depositions in my presence.

*W. Williams*  
Commissioner and Notary Public.

*Costs*  
2400 words @ 20c per 100 = \$4.80  
Qualifying 7 witnesses @ 10 <sup>20</sup> = \$15.00



10  
18  
21  
23  
18  
20  
18  
17  
26  
12  
203  
12  
24.32  
# 02  
48.72

10.

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

*In re Road*  
*in*  
*Stony Creek Twp*

of *June Term, A. D. 1896, No. 7*

*Excerptis of John Raymond*

And now, to-wit, the *Twentysecond* day of *July*, A. D. 1897, Rule  
on part of *John Raymond Excerptis* 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

*22* of *July* 1897.  
*S. W. Davis* Clerk  
Prothonotary.

To *James Waller Esq. at P. Robinson*

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 *Excerptis* on part of  
the *Excerptis* will be taken at the *Johnstown or at Shipping*  
*conwellian in way of* on *July Thursday*  
the *27th* day of *July*, A. D. 1897, between the hours  
of *9* o'clock A. M., and *9* o'clock P. M., before

*Wm. Williams, Esq. Commissioner* 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.

*Charles O. Green*  
*atty for recipient*



No 7 June Sessions, 1896

In Re Road in  
Stony Creek Township

Exceptions of John Ray-  
mond

Depositions taken on the  
part of John Raymond be-  
fore Wm Williams July  
30, 1897

Filed Aug 1897

WM. WILLIAMS,  
ATTORNEY AT LAW,  
JOHNSTOWN, PA.

HENRY HALL, PRINTER, INDIANA, PA.