

TO THE HONORABLE FRANCIS J. O'CONNOR, PRESIDENT JUDGE OF THE COURT OF
QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA.

The petition of Steve Gallitze of the Township of Barr, in said County and State respectfully represents:

That on the 12th day of September 1906 the petition of Annie E. Euszkauckas by her agent, E. Euszkauckas, was presented to your Honor setting forth that she is the owner of a certain farm situate in said Township of Barr, and praying for the appointment of viewers to lay out a private road "to lead from at or near the barn situate on said farm to a point on the public road leading from Barnesboro to Moss Creek, at or near the pump house of the West Branch Mine."

That on the same day viewers were appointed who went upon the ground on the first day of December, 1906, and laid out a road for private use partly through land of your petitioner, and whose report bearing date the 1st day of December 1906 should have been returned and filed within the first week of the December Term of Court, 1906, as provided by Rule of Court.

That the viewers failed to return and file their report within the first week of said term, and on Monday December 10th, 1906, the attorney for said Annie E. Euszkauckas moved the Court to extend the time for filing the report of viewers until the next Argument Court, which motion was granted by the Court without notice to your petitioner.

That the report of viewers was filed in said Court on the 8th day of January 1907 (although the time for the Argument Court for the December Term was on the 22nd day of January 1907), and on the 21st day of March 1907 the report of viewers was confirmed, and on the same day an order to open was issued by the Clerk of said Court.

Your petitioner further represents that under the law in such cases made and provided, and the Rule of Court hereinabove referred to, the failure to have the report of the viewers returned and filed within the first week of the Court, or to have the time for filing thereof

extended during the first week of said Term, resulted in the order of the Court expiring by its own terms, and that no new life could be infused into it by any order made thereafter continuing the time for filing the report; and that while the Court had power to continue the order to view, such continuance could only have been made within the life of the original order, and the continuance should have been until the next succeeding term of the Court, to be regular.

Your petitioner further represents that even if the order of Court made on the 10th day of December 1906 continuing the time for filing the report of viewers until the next Argument Court had been regular, yet the report of viewers filed prior to the Argument Court was irregular and without merit, as said report could only properly be filed at the Argument Court.

Your petitioner further represents that in accordance with the laws regulating the same, it was the duty of the said Annie E. Euszkauckas to have paid or tendered the amount of damages to your petitioner before securing from the Clerk of the Court an order to open said road, and that said damages were neither paid nor tendered prior to that time, nor has payment yet been made, and that the order of Court was therefore prematurely issued without satisfactory proof being made that the damages had been paid or tendered, or the damages produced and paid in to the Clerk of the Court.

Your petitioner further represents that in her petition for the appointment of viewers, said Annie E. Euszkauckas sets forth that she is the owner of a certain farm situate in said Township of Barr, from which farm the private road was sought to a point on the public road leading from Barnesboro to Moss Creek, whereas the title to said farm is not in the said Annie E. Euszkauckas, but is in one Joseph O'Kowicz and that said Annie E. Euszkauckas is but a tenant on said farm, and therefore not a proper party to petition the Court for the appointment of viewers.

Your petitioner further represents that because of the irregularity hereinabove set forth as to the time of the filing of the report of the viewers, he was misled and did not have a proper opportunity of filing exceptions to the report of the viewers, and now showing to the Court that he is injured by the opening of said road far in excess of the amount of damages awarded by said report of viewers, and that there are other matters shown by said report of viewers which are the subject of proper exceptions, therefore prays your Honor to make an order suspending the proceedings for the opening of said road, and to grant a rule on the said Annie E. Euszkauckas to show cause why the order to open said road should not be vacated, and the report of the viewers be set aside. And he will etc.

Stij Galicova

Cambria County, ss.

Steve Gallitze being duly sworn according to law says that the matters set forth in the foregoing petition are true, as he verily believes.

Sworn and subscribed before me
this 29th day of March, 1907.

Subscribed

Stij Galicova

J. M. Bradley, Jr.
My commission expires the first
Monday in May, A. D. 1908.

And now, April 2nd, 1907, the foregoing petition read and considered, and the Court grant a Rule on Annie E. Euszkauckas to show cause why the order to open road should not be vacated and the report of viewers set aside, returnable ^{at Argument Court} ~~next Term~~. And it is further ordered that the proceedings for the opening of said road be suspended pending the hearing and decision on said rule to show cause.

By the Court

11

No. 4 Sept. Sessions, 1906.

Road Docket.

Petition of Steve Gallitze
for Rule on Annie E. Euszkauck-
as to show cause why order to
open road should not be va-
cated, etc.

Filed 2 April, 1907.

Kittell.