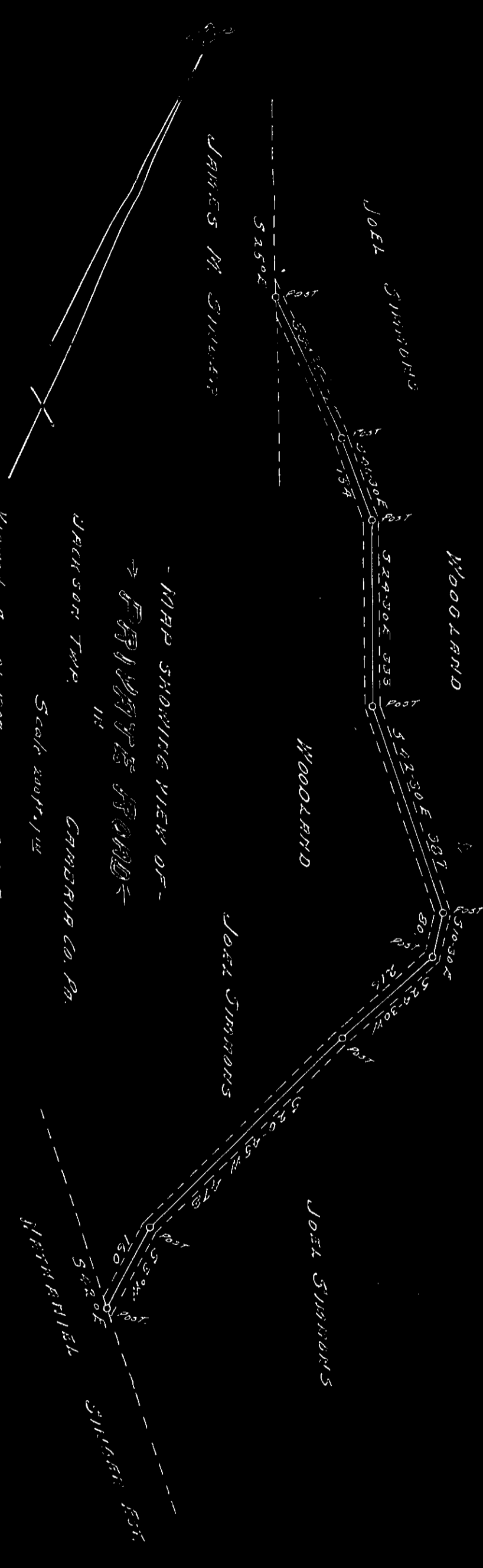


R.D. # 11, June 1907

Rot Microfilm



MAP SHOWING VIEW OF  
 → WOODLAND ←

DACKSON TWP. IN CAMDEN CO. PA.

Scale 200 ft. = 1 in.

Platted Aug. 24-1807  
 No. 11- June Session, 1807

S. A. FETTERMAN  
 ROBT. WIRNER  
 PETER KELLY } PLATERS



MAP SHOWING VIEW OF  
**PRIVATE ROAD**  
 IN

JACKSON TWP. CAMBRIA CO. PA.  
 Scale 200 FT. = 1 IN.

Viewed Aug. 26-1907  
 No. 11- JUNE SESSION, 1907

S. G. FETTERMAN  
 ROBT. YARNER  
 PETER KELLY } VIEWERS

IN THE MATTER of THE PETITION OF JAMES SINGER FOR A PRIVATE ROAD IN JACKSON TOWN- SHIP, CAMBRIA COUNTY.)	{	In the Court of Quarter Sessions of Cambria County, Pennsylvania.  No. 11 June Sessions, 1907.
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BRIEF OF EXCEPTANT TO REPORT OF VIEWERS.

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The Act of 4 April, 1901, P. L. 65, referred to by counsel for petition does not avail the petitioner, for any purpose, as no question is raised by the exceptions which is covered by this Act. This Act of 1901 simply amended the eleventh section of the old Act of June 13, 1836, by changing the initial point of private roads from the dwellings or plantations mentioned in the Act of 1836 to lands and leaseholds and by giving associations, partnerships, stock-companies or corporations the same right to petition for private roads as was given to one or more persons under the old Act.

The first exception is to the effect that neither the petition for view nor the report of viewers sets forth with reasonable certainty or clearness the beginning or ending of the desired road.

The decisions under the former Act, 1836, hold that the beginning point must be at either a dwelling or the plantation as distinguished from unimproved lands of the petitioner. To enable one to secure a private road from any part of his land or leaseholds the Act of 1901 was passed. But the first exception is not directed to the contention that the initial point of this road is not located at either the dwelling or the plantation of the petitioner, but the contention therein is that the expression in the petition "from a point on his (James Singer's) land in Jackson Township" is not a reasonably certain designation of the point at which the road is to begin. In neither the petition nor the report of viewers nor in the

draft accompanying the report is there any particular designation of either the beginning or the ending of this road. Under the petition, the viewers could have located the initial point of this road at any point on the land of James Singer in Jackson Township, no matter in what part of the township any of his land may have been situated and could have run the road to any saw-mill which may have happened to be located at any point on the private road leading to the public road running from Johnstown to Ebensburg.

Under the report of viewers and the draft attached thereto this private road could likewise be opened from any point on any such land of James Singer to any such saw-mill.

The draft attached to the report of viewers does not designate any particular point on the land of James Singer; does not indicate any saw-mill whatever and does not indicate the location of any private road leading to the Johnstown and Ebensburg road. It would be an utter impossibility for any one, save perhaps the viewers themselves, to go upon the ground and locate this private road from either the report of viewers or from the draft thereto attached.

This exception is conclusively sustained by the following cases: Keeling's Road, 59 Pa. page 358, O'Hara Township Road, 152 Pa. page 319.

The second exception is as follows: "SECOND. The petition for view and the report of viewers do not conform with respect to the beginning of the said private road."

The petition sets forth that the private road is to run from a point on the land of James Singer in Jackson Township while the report of viewers sets forth that the private road is to run through the land of Joel Simmons and that "they laid out the same for private use from a point on his land in Jackson Township," referring thereby to land of Joel Simmons. See Boyer's Road, 37 Pa. page 257.

Furthermore the petition for view specifies that the private road desired is to run "to a saw-mill and private road leading to public road leading from Johnstown to Ebensburg at estate of Nathaniel Singer, deceased," while the report of viewers fixes the terminus of the road at "a saw-mill and said private road leading to a public road leading from Johnstown to Ebensburg to a point at estate of Nathaniel Singer, deceased." From these two designations of the terminus of this road the discrepancy therein is apparent. The petition for view fixes the terminus at a private road at estate of Nathaniel Singer, deceased, while the report of viewers establishes the same at a private road leading to a point at estate of Nathaniel Singer, deceased.

"That the termini reported by the viewers should correspond with those designated in the petition and order is clear upon reason and authority. They are the initials which describe the proceeding, and limit the authority delegated by the Court to the viewers. When once the viewers cut loose from the order the identity of the proceeding is lost." Cassville Borough Road 4 Superior Court, page 511. Union Township Road 29 Superior Court, page 179, and cases therein cited.

The third exception is in the words of both the Act of 1836 and of 1901, which require: the private road to lead "to a highway or place of necessary public resort, or to any private way leading to a highway."

The draft attached to the report of viewers, which is intended to show the various locations in connection with this private road, locates the terminus at some indefinite point on the estate of Nathaniel Singer, deceased, and therefrom it is apparent that the private road will be simply a blind thoroughfare terminating somewhere on the Nathaniel Singer estate, where there is neither a highway or place of necessary public resort or any private way leading

to a highway, and, therefore, this terminus not being in compliance with the Act of Assembly cannot be permitted to remain as the terminus of a private road, which it is apparent does not serve the purpose contemplated by the law. In addition to the exceptions already filed we ask leave to file the following exception, to wit:

FOURTH. The petitioner, James M. Singer, could reach the terminus of the desired private road through his own land.

In support of our right to file this exception at this time to this matter patent on the face of the record, we cite the case of Beans Road, 35 Pa. 280. O'Hara Township Road, 152 Pa. 319.

An examination of the draft attached to the report of viewers discloses the fact that James M. Singer cannot only reach the terminus of this desired private road from his own land but that he has a more direct route thereto from his own land than through the land of Joel Simmons, and this being the case he is not entitled to cross the land of the latter but must employ his own property for that purpose. As it was cited in the case of Ogden et al. vs. Grove 38 Pa. 487, "the right of way from necessity over the land of another is always of strict necessity, and the necessity must not be created by the party claiming the right of way. It never exists, when a man can get to his own property through his own land." See page 419.

  
Attorneys for Exceptants.

In the Court of Quarter  
Sessions of Cambria County.

No. 11, June Sessions, 1907.

IN THE MATTER

of

THE PETITION OF JAMES  
SINGER FOR A PRIVATE  
ROAD IN JACKSON TOWN-  
SHIP, CAMBRIA COUNTY.

Brief of Exceptants to Re-  
port of Viewers.

IN RE PRIVATE ROAD  
IN  
JACKSON TOWNSHIP.



In the Court of Quarter Sessions of  
Cambria County, Pa.  
No.

Exceptions.

Subsequent to the filing of the report of viewers in the above-stated proceeding counsel for the owner of the land over which the road applied for was laid out and returned as necessary for a private road filed exceptions, the main one of which complains that the termini of the road are not set forth with sufficient certainty; that the petition prays for viewers to view and lay out from the plantation of the petitioner in Jackson Township, and that the report does not follow the petition, in that the pronoun "he" while probably intended to refer to the petitioner as used in the report refers to the land owner, and for these reasons argues that the proceedings are fatally defective.

In the draft accompanying the report of viewers the one terminus of the road is definitely located. Beginning at this terminus the courses and distances are given over the entire line of the road until it reaches the line of the land of the petitioner, and this road as laid out comes fully and clearly within the road prayed for in the petition. Its one terminus is definitely located, the other is at the lands belonging to the petitioner in Jackson township, and the courses and distances make the location of the road certain.

The objections are entirely technical, and at first blush would seem to be unsurmountable. On closer view, however, they are not so formidable as at first appearance, and the proposition that if the courses and distances are given and one of the termini sufficiently fixed so that by following the courses and distances

shown upon the map, the other terminus can be located is supported by not only the lower but the appellate courts of this state. See Cornplanter Township Road, 26 Superior Court, 20.

Notwithstanding these decisions, however, the court might be justified in setting aside this view, if the objections went to the merit of the controversy, but their technical character inclines the court to take different action, and we, therefore, enter the following order:

And now, June 1, 1908, the exceptions filed in the above-stated proceeding are dismissed and the report of viewers is confirmed absolutely.

  
\_\_\_\_\_

No. 11 June Sessions, 1907  
RD.

In re Private Road  
in  
Jackson Township.

Opinion and decree of the  
court dismissing exceptions  
and confirming report of  
viewers absolutely.

Filed, June, 1908.

REPORT OF VIEWERS.

-----  
To Hon. F. J. O'Connor, Judge of the Court of Quarter Sessions of Cambria County.  
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We, the undersigned Viewers, appointed by the within order of Court, would respectfully submit the following report:

That they were all present on the premises to be viewed on the 26th day of August, 1907, after due and legal notice had been given as required by law, and also a notice was served personally upon Joel Simmons, through whose land said private road will pass, and after all had been duly sworn and affirmed, they proceeded to view the line of said proposed private road, and find that there is occasion and necessity for the same, and they laid out the same for private use from a point on his land in Jackson Township, Cambria County., to a Saw Mill; and said Private Road leading to Public Road, leading from Johnstown to Ebensburg, to a point at estate of Nathaniel Singer, deceased.

They have also attached a plot or draft of said road to this report, showing the courses, distances, and the improvements, through which the same passes; and we further do allow Joel Simmons *Fifteen Dollars* damages; and we further recommend that the said private road shall be *24* feet wide.

WITNESS OUR HANDS THIS 26TH DAY OF AUGUST, 1907.

*S. G. Fetterman*  
*Robert Warner*  
*Peter Kelly*  
VIEWERS.

STATE OF PENNSYLVANIA :

CAMBRIA COUNTY SS :

S. G. Fetterman, *Poler* — Kelly, and

*Robert Varner* viewers appointed by the Court

to view and lay out a Private Road in Jackson Township,  
Cambria County, as appointed by the petition and order of  
said Court, being first duly sworn according to law say:

That they will perform the duties of their appointment  
impartially, and according to the best of their judgment.

SWORN AND SUBSCRIBED BEFORE ME :

THIS <sup>26<sup>th</sup></sup> ~~25<sup>th</sup>~~ DAY OF AUGUST, 1907. :

*J. C. Wakefield,*  
*Justice of the Peace,*

*S. G. Fetterman*  
*Robert Varner*  
*Peter Sully*

*my commission expires on the*  
*next Monday in - 7 P. M. - 1909.*

TAKE NOTICE.

-----

The undersigned Viewers, appointed by the Court to view and lay out a Private Road in Jackson Township, Cambria County, Pa., beginning at a point on land of James M. Singer, in said Township; over or along land of Joel Simmons, to a Saw Mill, at or near Private Road which leads to Singer estate, at Public Road leading from Ebensburg to Johnstown; the said Viewers will meet on the ground to attend to the performance of their duties connected with said appointment, on Monday, the 26th day of August, 1907, at 10 o'clock a. m.

*S. G. Fetterman*  
*Robert Varner*  
*Peter Kelly*

VIEWERS.

THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
I, the undersigned, a Notary Public in and for the State of California, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of the County of San Francisco, California, in and to which said original is duly recorded.

Witness my hand and seal of office at San Francisco, California, this 19th day of August, 1907.  
James H. King

NOTARY PUBLIC

TAKE NOTICE.

-----

The undersigned Viewers, appointed by the Court to view and lay out a Private Road in Jackson Township, Cambria County, Pa., beginning at a point on land of James M. Singer, in said Township; over or along land of Joel Simmons, to a Saw Mill, at or near Private Road which leads to Singer estate, at Public Road leading from Ebensburg to Johnstown; the said Viewers will meet on the ground to attend to the performance of their duties connected with said appointment, on Monday, the 26th day of August, 1907, at 10 o'clock a. m.

*S. G. Fetterman*  
*Robert Varner*  
*Peter Kelly*

VIEWERS.



NO. 11, June SESSION, 1907.

Order to view for private  
road in Jackson Township  
for James M. Singer

Viewers.  
S. G. Fetterman  
Robt. Varner  
Peter Kelly

Clerk ..... 90 cts.  
Zimmerman



In the matter of the Petition ) In the Court of Quarter Sessions  
of James Singer for a private ( of Cambria County, Pennsylvania.  
road in Jackson Township. ) No. 11 June Sessions 1907.

And now September 24th A. D. 1907, Joel Simons through whose land the said private road runs, by his attorneys, Forest & Percy Allen Rose, comes into Court and files the following exceptions to the petition for view and the report of viewers in the above stated proceedings.

First, Neither the petition for view nor the report of viewers sets forth with reasonable certainty or clearness the beginning or ending of the said private road.

Second, The petition for view and the report of viewers do not conform with respect to the beginning of the said private road.

Third, The road petitioned for and reported does not terminate at a highway or place of necessary public resort or at any private way leading to a highway.

Forest and Percy Allen Rose

Attorneys for Exceptant.

Affidavit Attached.

No. 11 June Sess. 1907.

Road Docket.

In re Road  
in  
Jackson Township.

Copy

Exceptions.

Filed 26 Sept. 1907.

Forest and Percy Allen Rose .

*copy*

REPORT OF VIEWERS.

-----

To Hon. F. J. O'Connor, Judge of the Court of Quarter Sessions of Cambria County.

-----

We, the undersigned Viewers, appointed by the within order of Court, would respectfully submit the following report:

That they were all present on the premises to be viewed on the 31st day of August, 1907, after due and legal notice had been given as required by law, and also a notice was served personally upon Joel Simmons, through whose land said private road will pass, and after all had been duly sworn and affirmed, they proceeded to view the line of said proposed private road, and find that there is occasion and necessity for the same, and they laid out the same for private use from a point on his land in Jackson

*Cheshburg*

*Chop, Cambria Co., to a Saw Mill, and Private Road leading to Public Road, leading from Johnstown to a point. at estate of Nathaniel Singer, Dec.*

They have also attached a plot or draft of said road to this report, showing the courses, distances, and the improvements, through which the same passes; and we further do allow Joel Simmons damages; and we further recommend that the said private road shall be feet wide.

WITNESS OUR HANDS THIS 31ST DAY OF AUGUST, 1907.

VIEWERS.

The exceptions to the road, while there are three, virtually cover only one, that is, to the terminal. The beginning and ending, nor is there a denial that they are sufficiently set out in the petition and report, but only alleged that they are not sufficiently set out. The same strict rules applicable to public roads do not come up in a petition for a private road from the fact that it only affects two individuals, but whereas in a public road the public is effected, or we may say the whole community, and therefore there is more importance attached to it than where there is a private road.

As to the termini beginning or ending of the road, all the acts and decisions, particularly the Act of 1836, are done away with by the amendment to the Act of 1836 by Act of April 4, 1901, P. L. page 65.

Under the Act of June 13, 1836, the purpose or object of having a private road was from a man's dwelling or plantation where he had no means of getting out from his land only through his neighbor's, and therefore under that Statute he would necessarily have to designate such plantation or dwelling in his petition and the report should also set out where a private road begins and ends.

However, it was found out through experience that private roads became necessary in other matters and therefore legislation was extended so as to enable parties to go from their own lands to public roads or other places by means of a private road where there was no plantation or dwelling for the purposes of taking stone and minerals and other substances from their lands where there was no way out, and the words dwellings and plantations were amended under the Act of April 4, 1901, so as to read from his land.

So if a man has land he does not <sup>need</sup> have to have a dwelling house, nor must it be his plantation, and therefore such private road can be laid out from any part of his lands and the beginning of the road is sufficiently laid out when it leads from such land, and as to the ending of the road it is sufficient if it ends on any private road leading to a public road. This we have sufficiently done by the petition and the report.

as the ending of the road is at the saw mill or a private road leading from Johnstown to Ebensburg at the estate of Nathaniel Singer conforming in every respect to the wording of the Act of 1901.

In addition to that the party from whom this road is taken is really not injured, as it covers only a little of his land and also where it is not cultivated nor used by him and being of very little width and ample damages and far more than it is worth has been awarded.

Singer Road

Agreement

THIS AGREEMENT IS MADE THIS 15th DAY OF FEBRUARY 1920

BETWEEN THE SINGERS ROAD TRUST AND THE SINGERS ROAD TRUST

OF THE COUNTY OF ... STATE OF ...

AND THE SINGERS ROAD TRUST

OF THE COUNTY OF ... STATE OF ...

AND THE SINGERS ROAD TRUST

OF THE COUNTY OF ... STATE OF ...

TO HON. F. J. O'CONNOR, JUDGE OF THE COURT OF QUARTER  
SESSIONS OF CAMBRIA COUNTY.

-----  
The petition of James M. Singer respectfully represents:

That he labors under great inconvenience for want  
of a private road to lead from a point on his land in  
Jackson Township, Cambria County, to a saw-mill, and private  
road leading to Public road, leading from Johnstown to  
Ebensburg at estate of <sup>Nathaniel Decy</sup> ~~James~~ Singer.

That the private road is for the purpose of taking  
out timber from his land to a public highway; that it will  
be necessary to go over land of Joel Simmons about Five  
Hundred <sup>yards more or less</sup> ~~(500) feet~~, in order to remove said timber, there  
being no other reasonable way to get said timber out or  
from his land.

He, therefore, prays the Court to appoint persons  
duly qualified to view the ground, proposed for said private  
road.

and he will ever, etc.

STATE OF PENNSYLVANIA :  
CAMBRIA COUNTY SS :

*James M. Singer*

Personally appeared before me a Justice of the  
Peace, in and for said County, James M. Singer, who being  
duly sworn according to law says: That the facts set forth  
in the foregoing petition are true and correct to the best  
of his knowledge and belief.

Signed and sealed this

day of 1907.

*affirmed and subscribed  
before me this 23rd day of  
July A.D. 1907.  
J. E. Wakefield  
Justice of the Peace  
my commission expires on the  
first Monday in May A.D. 1909.*

*James M. Singer*

1011 June 20 1907 Rd.

Petition of James  
M. Singer  
For a Private Road  
in Jackson Wisp.

Filed 6 August, 1907.

And now ~~set~~  
1907 the following  
were appointed  
A. G. Zimmerman, R. H.  
Vanner and Peter Kelly;  
Rebund 1<sup>st</sup> Monday Sep  
1907

*By the Court*

JACOB ZIMMERMAN,  
ATTORNEY AT LAW,  
301 BEDFORD STREET,  
CITY OF JOHNSTOWN, PA.

Wm. F. Bockmiller, Balto., Md.

IN THE MATTER ( In the Court of Quarter Sessions of Cambria  
of ) County, Pennsylvania.  
THE PETITION OF JAMES ( No. 11, June Sessions, 1907.  
SINGER FOR A PRIVATE )  
ROAD IN JACKSON TOWN- ( )  
SHIP. )

AND NOW, September 24<sup>th</sup>, A. D. 1907, Joel Simmons, through whose land the said private road runs, by his attorneys, Forest & Percy Allen Rose, comes into Court and files the following exceptions to the petition for view and the report of viewers in the above stated proceedings:

FIRST. Neither the petition for view nor the report of viewers sets forth with reasonable certainty, or clearness, the beginning or ending of the said private road.

SECOND. The petition for view and the report of viewers do not conform with respect to the beginning of the said private road.

THIRD. The road petitioned for and reported does not terminate at a highway or place of necessary public resort or at any private way leading to a highway.

Forest & Percy Allen Rose.  
Attorneys for Exceptant.

STATE OF PENNSYLVANIA )  
) SS:  
COUNTY OF CAMBRIA )

On the 24 day of September, A. D. 1907, before me, the subscriber, a Notary Public in and for said county, personally came V. S. Simmons, agent of Joel Simmons the above named exceptant, who being cognizant of the facts and who being by me duly sworn according to law, did depose and say that the matters set forth in the above and foregoing exceptions are true and correct, according to the best of his knowledge, information and belief.

V. S. Simmons

Sworn and subscribed to before me, the day and year aforesaid, as witness my hand and notarial seal.

W. E. Marsh  
Notary Public.

Commission Expires Feby. 2nd, 1910

12  
In the Court of Quarter  
Sessions of Cambria County.  
No. 11, June Sessions,  
1907.

IN THE MATTER

of

THE PETITION OF JAMES  
SINGER, FOR A PRIVATE  
ROAD IN JACKSON TOWN-  
SHIP, CAMBRIA COUNTY.

Exceptions to petition for  
view and report of viewers.

*Filed 26 Sept 1907*

FOREST & PERCY ALLEN ROSE,  
ATTORNEYS & COUNSELORS AT LAW,  
JOHNSTOWN, PA.  
FISHER BLDG. 607 MAIN STREET.

PETER PAUL & SON, BUFFALO