

REPORT OF VIEWERS.

To the Honorable Francis J. O'Connor, President Judge of the Court of Quarter Sessions of Cambria County, Penn'a.

We, the undersigned viewers appointed by your Honorable Court to view a certain road lying partly in the township of Washington and partly in the township of Portage, in the county of Cambria, Penn'a., as shown by the order of Court hereto attached, respectfully report:

That havin given due public notice of the view and of the time and place of meeting of the viewers; we met at the time and place appointed and after having been duly sworn according to law, proceeded to view the said road and are of the opinion that the same is not necessary for a public road and should be vacated.

A draft of the said road is hereto attached and made a part of this report, showing that the road takes the following courses and distances, viz; Beginning at a point near the Robine Schol House, in the township of Washington, on the road leading from the cross roads at the said School House to the borough of Cassandra and to Portage, thence North $78 \frac{1}{2}$ degrees West seven hundred and seventy five feet, thence South $84 \frac{3}{4}$ degrees West three hundred and six feet, thence South $89 \frac{1}{2}$ degrees West one hundred and three feet, thence South $76 \frac{1}{4}$ degrees West five hundred and seventy five feet, thence South 65 degrees West three hundred and twelve feet, thence South $55 \frac{1}{2}$ degrees West two hundred and fifty feet, thence South 66 degrees West two hundred and fifty feet, thence South $67 \frac{1}{4}$ degrees West two hundred and thirty feet, thence South $71 \frac{1}{2}$ degrees West two hundred feet to the line dividing the township of Washington from the township of Portage, thence South $48 \frac{1}{2}$ degrees West two hundred feet, thence South 72 degrees West two hundred and ninety six feet, thence South $76 \frac{3}{4}$ degrees West one hundred and sixty eight feet, thence South 73 degrees West four

hundred feet, thence South 80 1/2 degrees West two hundred feet, thence North 88 1/4 degrees West one hundred feet, thence North 72 degrees West two hundred and ninety nine feet, thence North 78 1/4 degrees West two hundred feet, thence North 62 1/2 degrees West one hundred and sixty feet to the township road leading to Portage at a point just South of a small stream near the Thomas Donahoe farm. We are of the opinion that the said road should be vacated for the reason that it has long since fallen into disuse by the public and that the cost of keeping up the same is more than should be borne by the public for the benefit of one person, who it appears frequently uses a portion of the said road, to wit, about two fifths of the Easterly end of the road; and being for the whole distance through uncleared land is unlikely to become of benefit or convenience to the general public for some time to come: hence we believe the road as shown on the attached draft should be vacated and the citizens of the township relieved of the expense and responsibility of keeping up the same.

Witness our hands this day of May A. D. 1909.

Alfred M. Shoemaker.
Simon Conrad
Thomas Hanna

Viewers.

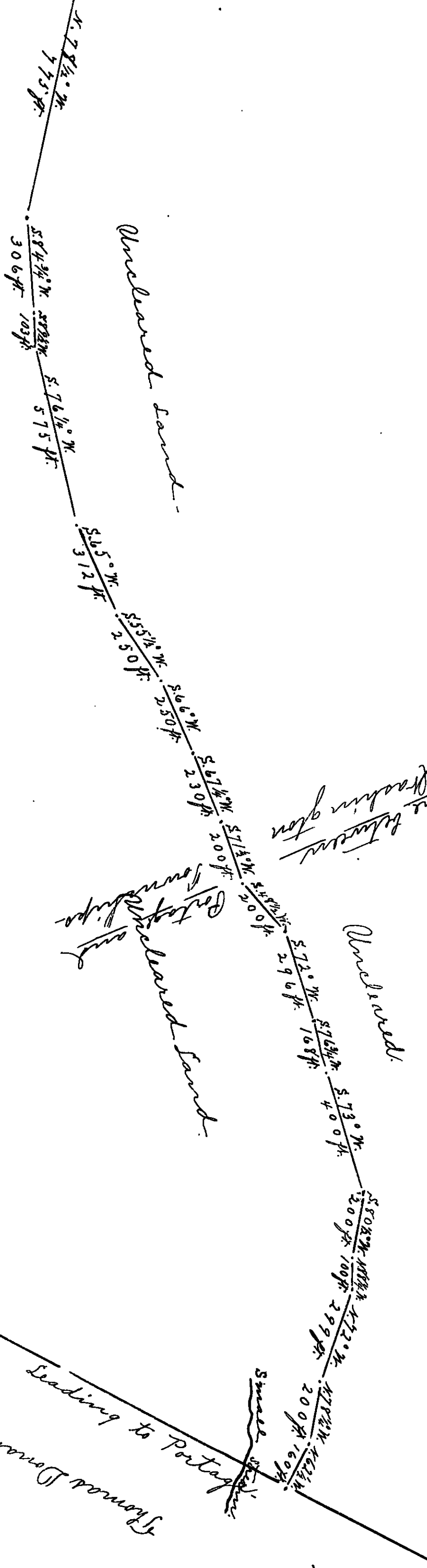
Cost of View
 Alfred M. Shoemaker 3 days \$15.00
 " " 18 mi. .90
 Thomas Hanna 1 day 3.00
 " " 5 mi. .25
 Simon Conrad 1 day 3.00
 " " 5 mi. .25

 \$22.40

To Cassandra and Portage

Robine
Schmidt
from Lilly

to Portage



Uncleared

Draft of Rodin Washington & Portage Township,
Cambria County, Pennsylvania. Ordered upon an
Order of the Court of Quarter Sessions dated May 4th 1909.
No. 8. March Session 1909.
View held May 20th 1909, and above road
proposed to be vacated -
Alfred W. Shoemaker, Thomas Hanna, Jr.,
my Simon Conrad, Viewers.

ROAD NOTICE.

Notice is hereby given that the viewers appointed by the Court of Quarter Sessions of Cambria County, Pennsylvania, to view the ground and report to the Court upon the expediency of vacating ----- a part of a public road leading from a point near the Robine School House on road leading from the Borough of Lilly to the Borough of Portage, and extending -----

to a point on the same road near the house of Thomas Donahce, in the Township of Washington -----

will meet at Robine School House in the Township of Washington aforesaid, on the 20th day of May, 1909, at 10 o'clock A.M. for the purpose of performing the duties of their appointment.

Alfred M. Shoemaker

Thomas Hanna Jr.

Simon Conrad

May 7th ----- 1909 -----

Viewers.

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 fourth day of May A. D. 1909, before the Honorable Judge of the said Court: Upon the petition of divers inhabitants of the Township of Washington, in the said County, setting forth that they labor under inconvenience for want of a

~~road or highway, to lead from~~
~~as roads has been since~~ from ~~said~~ in ~~said~~ township ~~beginning~~
~~at a point near the~~ Robert Scholtz ~~House~~ on ~~road~~ leading ~~from~~
~~the Borough of Lilly to the~~ Borough of Postage, ~~and extending to a~~
~~point on the same road near the~~ house of Thomas Donahoe, ~~which~~
~~road your petitioners~~ conceive ~~has~~ become ~~useless, inconvenient and~~
~~burdensome by reason of the~~ fact ~~that it is no longer necessary to~~
~~accommodate the~~ travelling ~~public, and is very expensive to~~ keep
~~in repair. Your petitioners~~ have ~~been~~ unable ~~to~~ find ~~the~~ record ~~of~~ said
~~road in the Road Docket in the~~ office ~~of~~ the ~~clerk~~ of ~~said~~ court ~~and~~
~~are therefore unable to comply with the~~ Rule ~~of~~ court ~~requiring~~ a
~~particular reference to the~~ number ~~and~~ terms ~~of~~ said ~~road, by the~~
~~place in the Road Docket where~~ said ~~record~~ may ~~be~~ found.

and therefore praying the Court to appoint proper persons to ^{view} ~~view~~ and ^{vacate} ~~lay-out~~ the same according to law. The Court, upon due consideration had of the premises, do order and appoint Alfred M. Thomaker surveyor, and

Thomas Hanna, Jr. and Simon Conrad viewers, to view the ground proposed for said ^{vacation} ~~road~~, and if they view the same, and shall agree that there is ^{no} ~~is~~ occasion for such road, they shall proceed to ^{vacate} ~~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 ~~desires~~ 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:

S. S. Kirkhead, 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 person or 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."

H1

NO. 8, March SESSION, 1909.

Order to view and locate
road in Washington
Township

7 June 1909. Filed in
Open Court

Viewers.
Wanda M. Sherman
Thomas Norman, Jr.
James Deming

Clerk ... K. H. Hall
K. H. Hall

ENCLOSURE MOUNTAIN-HEAD ELECTRIC PRINT.
Any in 1910, exception was
taken.
By the Court

7 June 1909. Approved

By the Court

IN THE COURT OF QUARTER SESSIONS § NO. 8, MARCH SESSIONS 1909.
OF CAMBRIA COUNTY, PENNSYLVANIA §

In re proceedings to vacate road in Washington Township from Robine School House to house of Thomas Donahoe.

Brief on behalf of Hugh McNulty, exceptant to the petition and the report of viewers in the aforesaid proceedings.

The first two exceptions raise the point as to the sufficiency of the petition. The petition does not set forth sufficient facts to give the Court jurisdiction as it must state whether the road to be vacated is a public road or a private road, and if it is a public road how it became so.

In re road in York Township 11 Disct. Rep. 706, Judge Stuart held, "The fourth exception raises the question as to whether the recital in the petition that the road 'has long since existed and been used as a public road although there is no record of the same', is sufficient to show whether the road is a public road. This may be doubted in view of the decisions as to what constitutes a public road by dedication and use. It is not sufficient as to the latter; Root v. Com. 98 Pa. 170; Com. v. Phila. tec. R. R. Co. 185 Pa. 271; and there is no allegation of a dedication to public use. It would seem therefore that the allegation is insufficient. The petition ^{should} show a public use for twenty one years, or a dedication by the owners to public use and the exercise of public authority over the road by the Supervisors. In the absence of a record this would be sufficient to show a public road."

The petition in the present case does not even state that the road is a public road. It simply states, "that a road has long since been laid out in said Township, etc." , and concludes with the prayer, "That the said road may be vacated." It is nowhere referred to as a public road so that it is clearly insufficient to give the Court jurisdiction.

In re road in East Hempfield Township. 21 Lanc. L. R. 226 , the Court, Hasslor J. held, that , "In order to sustain this report it will

be necessary that the Court be satisfied that a road coming under one of the descriptions in these Acts of Assembly, already exists, or the same cannot be vacated. In order to give the Court jurisdiction it will be necessary to set forth how the road became a road".

The petition in the present case fails to show this. It is true there is an averment that the petitioners have been unable to find the record of said road in the Road Docket in the Office of the Clerk of said Court; but there is no averment that the road was laid out under an order of Court or by authority of law.

The Third and Fourth exceptions filed raise an even more serious question, and one which we believe is fatal. The petition sets forth the description of the road to be vacated as follows: "That a road has long since been laid out in said Washington Township beginning at a point near the Robine School House in road leading from the Borough of Lilly to the Borough of Portago, and extending to a point in the same road near the house of Thomas Donahoe".

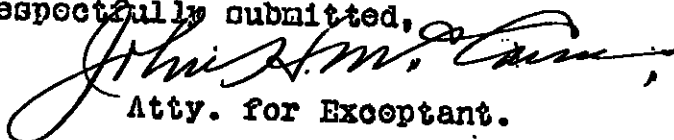
The petition is that of the inhabitants of the Township of Washington. Now the draft accompanying the report of the viewers clearly shows that one of the termini of the road sought to be vacated; viz., the house of Thomas Donahoe, is located in Portage Township about one - third of a mile from the dividing line of Washington and Portage Township as may be seen from an examination of said draft.

The question never seems to have been raised in the cases but the principle is so elementary as to be obvious at a glance, that the Court would have no jurisdiction to vacate a road lying partly in Portage Township and having one of the termini therein, upon the petition of inhabitants of Washington Township. Yet this is the prayer of the petitioners and the report of the viewers appointed by the Court in said case, report the vacation of the road as shown in the attached draft, which shows it to be partly in Washington and partly in Portage Townships and which said viewers set forth is located partly in Washington Township and partly in Portage Township.

The report of the viewers is undoubtedly beyond their authority in the order to view. The jurisdiction of the Court is raised by a petition of the inhabitants of the Township wherein the road sought to be vacated is situated, and a petition to vacate a road in another Township would be analogous to an assumption of extra territorial power and of no avail.

It is submitted upon the facts as above set forth which will sufficiently appear to the Court, upon an examination of the petition, Report of Viewers, and draft thereto attached, that the Court was without jurisdiction and the exceptions would be sustained.

Respectfully submitted,


Atty. for Exceptant.

No. 8. March Second 1914.

IN THE COURT OF QUARTER SESSIONS
OF CAMBRIA COUNTY.

In re Proceedings to vacate road
in Washington Township.

BRIEF ON BEHALF OF EXCEPTANT.

John A. M. Cane,
Atty. for Exceptant.

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

The petition of the undersigned inhabitants of the Township of
Washington, in said County, respectfully represents:

That a road has long since been laid out in said township be-
ginning at a point near the Robine School House on road leading from
the Borough of Lilly to the Borough of Portage, and extending to a
point on the same road near the house of Thomas Donahoe, which road
your petitioners conceive has become useless, inconvenient and bur-
densome by reason of the fact that it is no longer necessary to ac-
commodate the traveling public, and is very expensive to keep in re-
pair. Your petitioners have been unable to find the record of
said road in the Road Docket in the office of the Clerk of said Court
and are therefore unable to comply with the Rule of Court requiring
a particular reference to the number and term of said road, or the
place in the Road Docket where said record may be found.

They therefore pray the Court that the said road may be va-
cated agreeably to the Act of Assembly in such case made and pro-
vided. And they will etc.

*Herman Bender
David T. Brown
Henry Krommacker
John Carr*

*Simon Clinger
Joseph Decker
M. Brown
E. J. Brown
E. J. Hamer
Peter Robine*

Cambria County, ss.

David Brown, one of said petitioners
being duly sworn according to law says that the matters set forth
in the foregoing petition are true, as he verily believe.

Sworn and subscribed before me
this *first* day of *May*, 1909.

C. A. McQuigle

JUSTICE OF THE PEACE,

MY COMMISSION EXPIRES MAY 3, 1909.

§
§
§
§
§
§
§
§
§
§

David H. Brown

Mar & March Sessions 1909.

In re proceedings to vacate
road in Washington Township
from Robine School House to
House of Thomas Donahoe.

Petition for appointment of
viewers.

May 11, 1909, this petition
presented, considered and
afforded Mr. Shoemaker,
Thomas Hanna Jr. and Simon
Conrad are appointed viewers
By the Court.

Filed 4 May, 1909,

Kittell.

No. 8 March Sessions 1909.

In the Court of Quarter Sessions of Cambria County Pennsylvania.

In re Proceedings to vacate road in Washington Township, from Robine School House to house of Thomas Donahoe.

Exceptions to the petition for appointment of viewers, and to the report of the viewers as returned thereon.

John H. McCann, Esq., Counsel for Hugh McNulty, ^{of Washington Township} in his behalf
excepts to the aforesaid petition and report of viewers for the following reasons:-

(1) Because the petition does not state whether the road to be vacated is a public or a private road.

(2) Because if a public road, the petition fails to set out how said road became a public road.

(3) Because the viewers exceeded their authority in that they have reported the vacation of a road lying partly in Washington Township and partly in Portage Township, while their authority extended only to the vacation of a road in Washington Township.

(4) Upon the petition presented, the Court had no jurisdiction to appoint viewers to vacate the road therein described because said road as described in the report of the viewers, and which description coincides with the road described in said petition is located partly in Washington Township and partly in Portage Township.


Atty. for Exceptant.

State of Pennsylvania 0
County of Cambria 0 ss
0

Before me, the subscriber, one of the Justices of the Peace in and for said County, personally appeared Hugh McNulty, who, having been duly sworn according to law doth depose and say that the matters alleged in the foregoing exceptions are true and correct as he verily believes.

Hugh McNulty

Sworn to and subscribed before me
this 23rd day of August 1909.

C. A. McGeigle
Justice of the Peace.

JUSTICE OF THE PEACE,
MY COMMISSION EXPIRES MAY 4, 1914.

J. D. Brawley, Portage Twp.
A. Brawley
Samuel McIlwain, Portage Pa
Hughie Jones, Portage Pa
L. W. Stara, Portage Pa
J. M. George, Washington Twp Pa
J. M. Shan
John Litzinger
John H. [unclear] Twp
Thomas A. Lance
Joseph Lance, Washington Pa

John M^c Tamany Washington Council

P E Brady

W S Lowe

W S Lowe

Jacob Bender

W E ...

James ...

Frank Robins

God Robins

Mission Diehl

ARR

H M Jones

E ...

No. 8 March Sessions 1909.

In the Court of Quarter Sessions
of Cambria County Pennsylvania.

Exceptions to the Petition for
Appointment of Viewers, and
to the report of the Viewers
as returned thereon.

Filed 25 August, 1909.

John H. McCann,
Atty. for Exceptant.