

No. 7 June Sessions, 1910, R. D.

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

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In Re Order to view & lay out  
a public Road from North  
Railroad Street, at Portage  
Borough, to Old Gorman  
Station, in Portage Twp.

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Blue Print accompanying  
Report of Viewers

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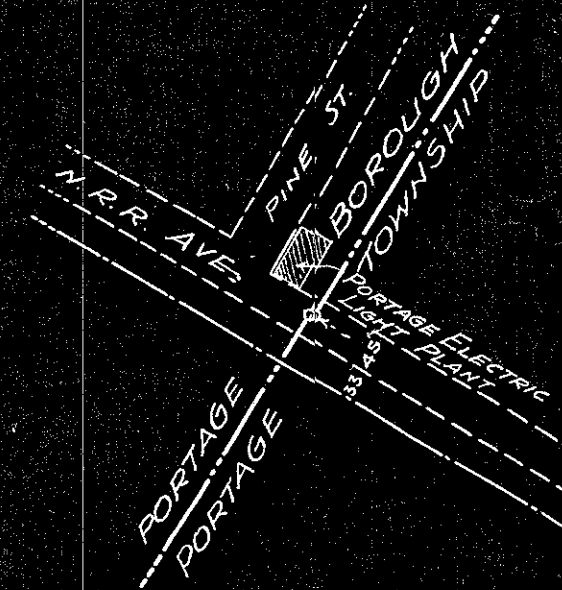
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Thomas J. Stell,

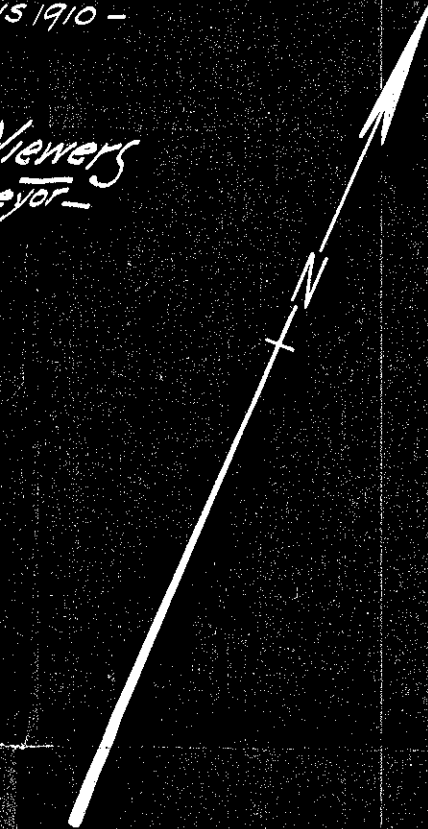
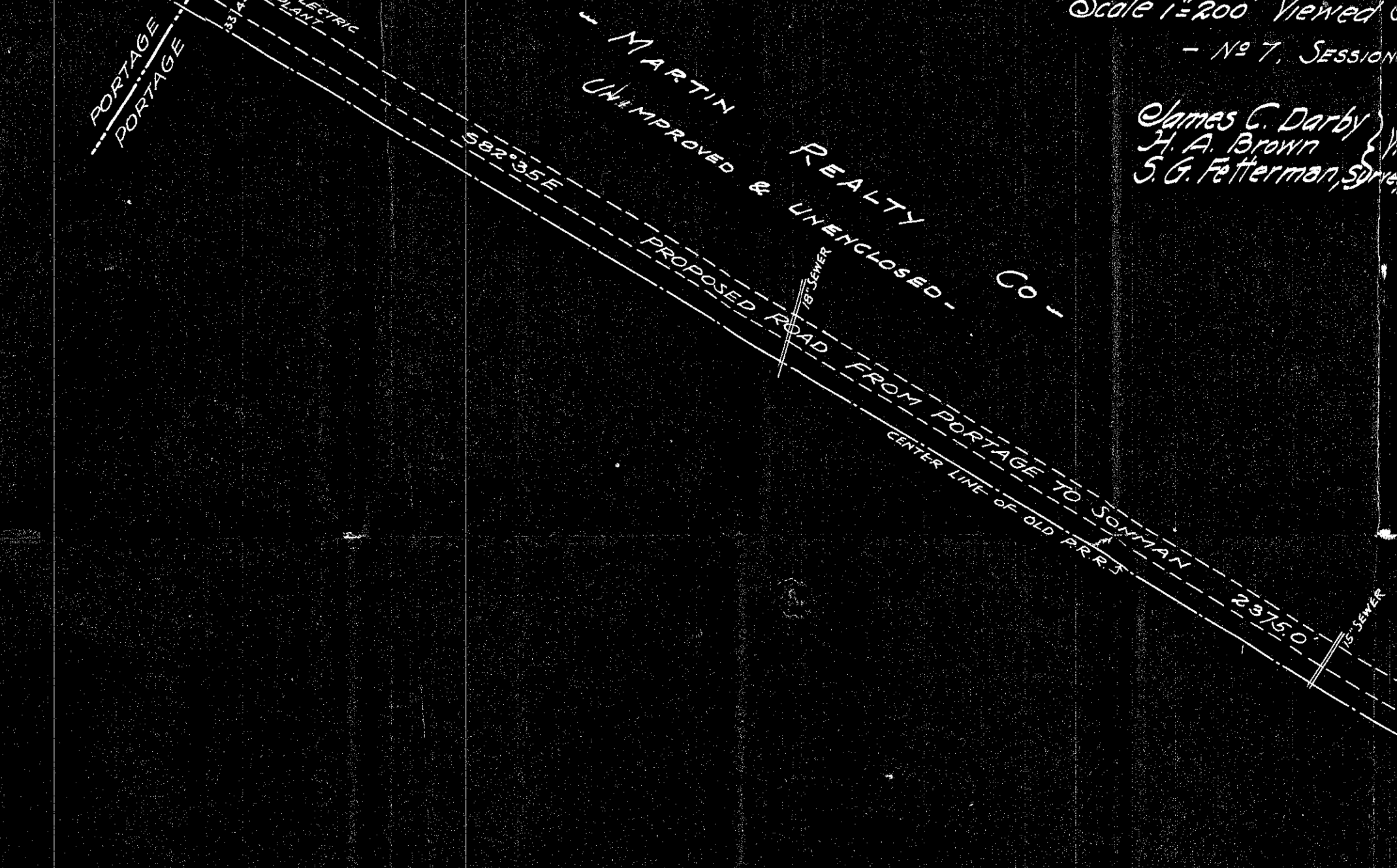
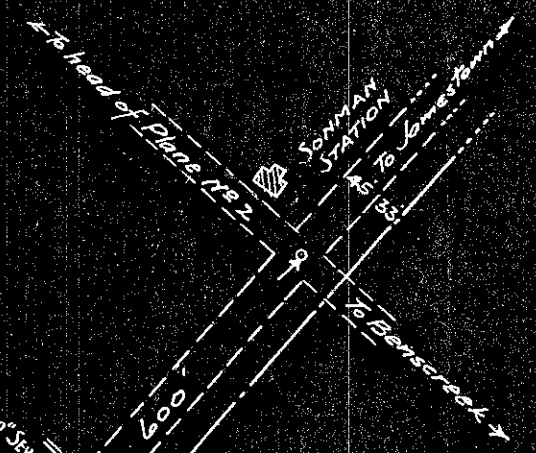
MAP  
 OF PROPOSED NEW PUBLIC ROAD  
 - IN -  
 PORTAGE TWP. CAMBRIA CO. PA.  
 Leading from North Railroad Avenue  
 at Portage Boro. Line to  
 Old Sonman Station.  
 Scale 1"=200' Viewed Aug. 29, 1910  
 - No 7, Session 1910 -

James C. Darby & Viewers  
 J. A. Brown  
 S. G. Fetterman, Surveyor



MARTIN REALTY  
 UNIMPROVED & UNENCLOSED - CO -

CAMBRIA MINING & MANUFACTURING CO -  
 UNIMPROVED AND UNENCLOSED



PROPERTY LINE

5° CURVE FOR 13450' RADIUS = 11474'

2° CURVE FOR 663' RADIUS = 28438'

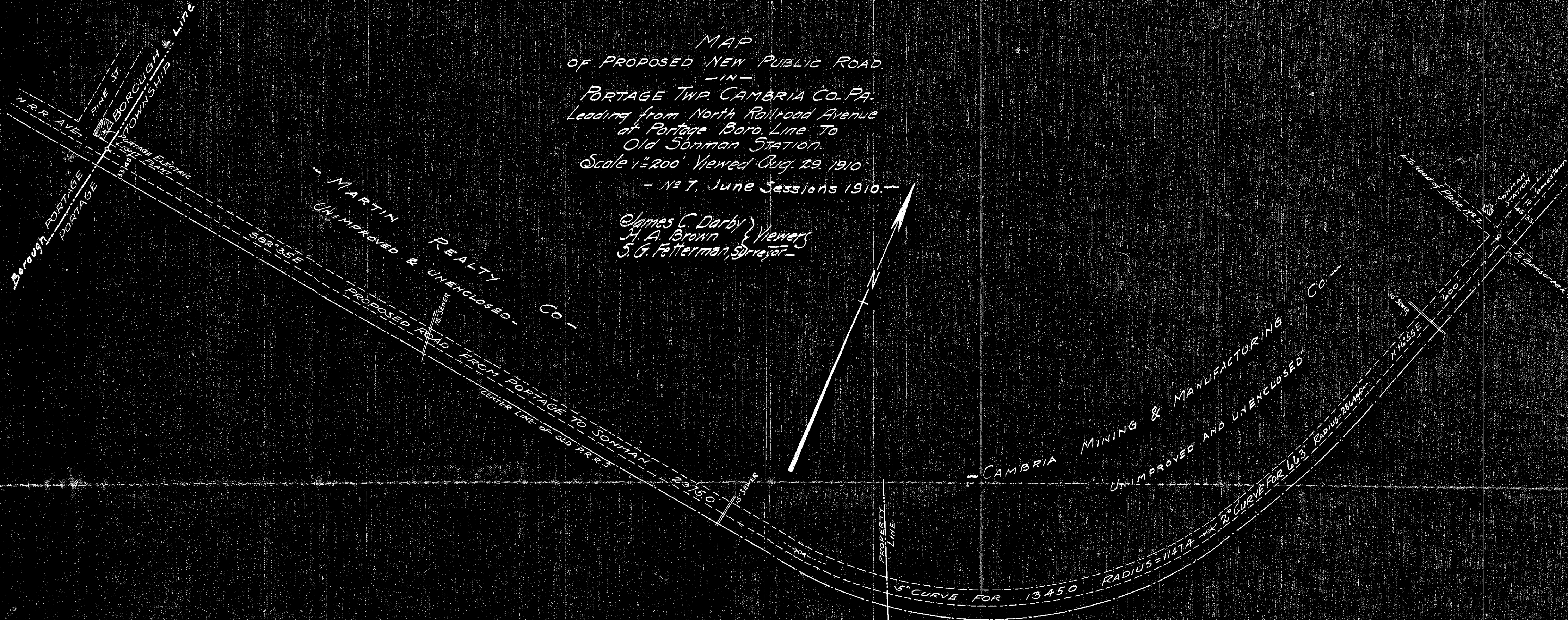
L. A. # 7 June 1910  
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MAP  
OF PROPOSED NEW PUBLIC ROAD.

- IN -  
PORTAGE TWP. CAMBRIA CO. PA.  
Leading from North Railroad Avenue  
at Portage Boro. Line To  
Old Sonman Station.  
Scale 1"=200' Viewed Aug. 29, 1910  
- No 7, June Sessions 1910. -

James C. Darby } Viewers  
H. A. Brown }  
S. G. Fetterman, Surveyor -



Notes → Read instructions on back of order 7.9.9-

Commonwealth of Pennsylvania, }  
County of Cambria. }

At a Court of Quarter Sessions of the Peace of the County of Cambria held at Ebensburg, in the said County, on the... Second ...day of... August ...A. D. 1900 , before the Honorable Judge of the said Court: Upon the petition of divers inhabitants of the Township Portage <sup>Borough</sup> of... Portage ...in the said County, setting forth that they labor under inconvenience for want of a... public ...road or highway, to lead from North Railroad Street, a public highway of said Borough, at the line between the Borough of Portage and the Township of Portage, and 75 feet easterly along said North Railroad Street from its intersection with the Prav. Street in said Borough, through said Township, to what is known as the old Sanman Station in said Township, at the intersection of the road leading from said station to Jamestown and the road leading from said station to the head of Plane No. 2,

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 S. G. Fitterman ...surveyor, and

H. A. Brown and Jas. S. Darby ...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 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."

NO. 7, January SESSION, 1904.

Order to view and lay out a road in Putnam Borough and Tamshishu.

Viewers.

E. S. Johnson  
H. A. Brown  
Jas. L. Darby

Clerk Kimberly 90 cts.  
Stall

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA.

In re Appointment of Viewers ) Of June Sessions, 1910.  
to View and Lay out a Public )  
Road or highway to Lead from )  
North Railroad Street, at Line )  
of Portage Borough, through ) No. 7, Road Docket.  
Portage Township, to Old Sonman )  
Station in said Township. )

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R E P O R T O F V I E W E R S .

To the Honorable Francis J. O'Connor, President Judge of said Court;-

The undersigned viewers appointed by your honorable court, by the annexed order, do report that having given due and legal public notice as required by law, also having given notice to the supervisors of Portage Township and to the County Commissioners of Cambria County, as appears by papers hereto annexed, they all met at the time and place appointed in said notice; to wit,- at the westerly terminus of said proposed new road, on Monday, the 29th day of August, A. D., 1910, at 10 o'clock in the forenoon, and having been first duly sworn to perform their duties under said appointment impartially and according to the best of their judgment, they proceeded to view the ground for said proposed road, and after due consideration the viewers were of the opinion that there is occasion for a public road between the points, or termini, mentioned in said petition and order, and they accordingly proceeded to lay out the same according to law, having respect to the shortest distance and the best ground for a road and in such manner as to do the least injury to private property, and, as far as practicable, agreeable to the desire of the petitioners; to wit,- beginning at North Railroad Street (also called North Railroad Avenue), at the line between the Borough of Portage and the Township of Portage, 75 feet easterly along said North Railroad Avenue, or Railroad Street, from its intersection with Pine Street in said Borough; thence through

the said township of Portage the following courses and distances:-  
South 82 degrees 35 minutes east a distance of 2375 feet to a post;  
thence by a 5-degree curve to the left, radius 1147.4 feet, a distance  
of 1345 feet to a post; thence by a 2-degree curve to the left,  
radius 2864.9 feet, a distance of 663 feet to a post; thence north  
16 degrees 55 minutes east a distance of 600 feet to a post, at  
intersection of the public road leading to Jamestown and the  
public road leading from said station to the head of Plane No. 2,  
~~mark~~ all of said road being at an elevation not exceeding 5 degrees  
excepting at crossing of ravines or streams, where by moderate filling  
and bridging the declination of the road may be preserved within that  
limit, the said road passing through and upon land of the Martin  
Realty Company, unimproved and unenclosed, and land of the Cambria  
Mining and Manufacturing Company, unimproved and unenclosed, as  
indicated by the map or draft hereto annexed, and made a part of  
this report.

Besides all three of the viewers, there were present at  
said view, Albert Wynkoop and Jacob Kreitzberger, two of the  
supervisors of Portage Township, Andrew B. Crighton, and J. S.  
Barlow, representing the Martin Realty Company, one of the land own-  
ers over which said road was laid out, and James Strahhan, represent-  
ing the Cambria Mining and Manufacturing Company, the other land  
owner through whose land the said road was laid out. There were  
also present a number of the petitioners and others interested in the  
petition. We endeavored to procure releases from the said land  
owners, through their representatives, but were unable to do so.  
In as much as the said road as laid out, if opened, would be of  
great benefit to the said land owners by opening up and rendering  
their land accessible, we are of the opinion that no damages would  
thereby result to said land, as the land taken for said road would

thereby result to said land, as the land taken for said road would be fully compensated for by the benefits to the remaining land, and accordingly we awarded no damages to said land owners; all of which is respectfully submitted.

S. G. Fetterman  
Geo. W. Dwyer  
H. A. Brown

Viewers.

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA.

In Re Order to View Site for Proposed Location of Public Road in Portage Township, Extending from the easterly Terminus of Railroad Street in the Borough of Portage, at the Line Between the said Borough and the Township of Portage, and extending to the Old Schman Station at Intersection of the Road Leading from said Station to Jamstown and the Road Leading from said Station to the Head of Plane No. 2.

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No. 7, June Sessions, 1910.

STATE OF PENNSYLVANIA, )  
(SS:  
COUNTY OF CAMBRIA, )

S. G. Fetterman, H. A. Brown and Jas. C.

Darby, the viewers mentioned in the above-named order, being duly sworn according to law, say that they will perform their duties under said appointment impartially and according to the best of their judgment.

S. G. Fetterman  
H. A. Brown  
Jas. C. Darby

Sworn and subscribed to before me this

29 day of August, A. D., 1910.

John J. [Signature]  
Justice of the Peace

My Commission Expires  
Monday in May, 1914

NOTICE OF ROAD VIEW.

No. 7, June Sessions, 1910.

\*\*\*\*\*

The undersigned viewers appointed by the Court of Quarter Sessions of Cambria County to view the site, or location, for a proposed new public road extending from North Railroad Street in Portage Township at the line between the Borough of Portage and the Township of Portage, and extending through said township to what is known as the Old Sonman Station at the intersection of the public road leading from said station to Jamestown and the road leading from said station to the head of Plane No. 2, hereby give public notice that for the purpose of attending to the duties of said appointment they will meet at the place mentioned for the westerly terminus of said road, on the line between the Borough of Portage and the Township of Portage, on Monday, the 29th day of August, A. D., 1910, at 10:00 o'clock in the forenoon, when and where all persons interested may attend if they see proper.

S. G. FETTERMAN,  
H. A. BROWN,  
JAS. C. DARBY,

Viewers.

August 12, 1910.

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Portage Township, Cambria County, Pa.,

August 13, 1910.

THIS IS TO ACKNOWLEDGE that the undersigned, the supervisors of Portage Township, have had due notice of the above-mentioned road view.

Wm. Stoll  
Albert Wysocky  
Jacob Kaminetzky  
Supervisors.

NOTICE OF ROAD VIEW.

No. 7, June Sessions, 1910.

\*\*\*\*\*

The undersigned viewers appointed by the Court of Quarter Sessions of Cambria County to view the site, or location, for a proposed new public road extending from North Railroad Street in Portage Township at the line between the Borough of Portage and the Township of Portage, and extending through said township to what is known as the Old Sonman Station at the intersection of the public road leading from said station to Jamestown and the road leading from said station to the head of Plane No. 2, hereby give public notice that for the purpose of attending to the duties of said appointment they will meet at the place mentioned for the westerly terminus of said road, on the line between the Borough of Portage and the Township of Portage, on Monday, the 29th day of August, A. D., 1910, at 10:00 o'clock in the forenoon, when and where all persons interested may attend if they see proper.

S. G. BETTERMAN,  
H. A. BROWN,  
JAS. C. DARBY,

Viewers.

August 12, 1910.

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OFFICE OF COUNTY COMMISSIONERS.

Ebensburg, Pa., August 12, 1910.

THIS IS TO ACKNOWLEDGE that the County Commissioners have had due notice of the above road view.

*C. E. Troopell*

Clerk.

*per M. Clume*  
Trans. Clerk

**NOTICE OF ROAD VIEW.**

**No. 7, June Sessions, 1910.**

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The undersigned viewers appointed by the Court of Quarter Sessions of Cambria County to view the site, or location, for a proposed new public road extending from North Railroad Street in Portage Township at the line between the Borough of Portage and the Township of Portage, and extending through said township to what is known as the Old Somman Station at the intersection of the public road leading from said station to Jamestown and the road leading from said station to the head of Plane No. 2, hereby give public notice that for the purpose of attending to the duties of said appointment they will meet at the place mentioned for the westerly terminus of said road, on the line between the Borough of Portage and the Township of Portage, on Monday, the 29th day of August, A. D., 1910, at 10:00 o'clock in the forenoon, when and where all persons interested may attend if they see proper.

**S. G. FETTERMAN,  
H. A. BROWN,  
JAS. C. DARBY,**

**Viewers.**

**August 12, 1910.**

Bill of Costs

S. G. Fetterman, Surveyor,

To 1 day in field	\$5.00
To 1 day in office	5.00
To mileage 16 miles @ 5¢	80
	<hr/>
	\$10.80

J. C. Darby, Viewer,

To 1 day as viewer	\$3.00
To mileage 16 miles @ 5¢	80
	<hr/>
	\$3.80

H. A. Brown, Viewer,

To 1 day as viewer	\$3.00
To mileage 16 miles @ 5¢	80
	<hr/>
	\$3.80

No. 7 June Sessions, 1910. R. D.  
In the Court of Quarter Sessions,

In Re Order to View and  
Layout a public Road  
from Portage Row line,  
at North Railroad Street, to  
old Common Station, in  
Portage Township.

Report of Viewers

Filed 9 September, 1910.  
in open Court.

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

HENRY HALL, PRINTER, INDIANA, PA.

9 April, 1910, approved and beareth true as true  
by  
[Signature]

KNOW ALL MEN BY THESE PRESENTS;

That we, J. H. Lute and D. J. Boucher are held and firmly bound unto the Commonwealth of Pennsylvania, for the use of the County of Cambria, in the sum of One Hundred (\$100.00) Dollars, to be paid to the said County of Cambria, its certain Attorneys or Assigns: to which payment well and truly to be made and done we do bind ourselves, our heirs, executors, administrators and every of them, firmly by these presents. Sealed with our seals and dated the 14th day of September, A. D. 1910.

The condition of the obligation is such, that if the above bounden J. H. Lute and D. J. Boucher

their heirs, executors, administrators, or any of them, shall and do well and truly pay, or caused to be paid unto the County of Cambria, its Attorneys or assigns, all the costs that might or will accrue in the proceedings had in and for the purpose of viewing and laying out a public road in the Township of Barr, County of Cambria and State of Pennsylvania, beginning at a point at or near the property of J. H. Lute on the public road leading from Moss Creek to Barnesboro and extending to a point at or near the property of Annie R. Shell upon the line between the Borough of Barnesboro and the Township of Barr, without fraud or further delay, then this obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

Sealed and Delivered in the presence of

*Max B. ...*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Seal)  
(Seal)  
(Seal)

BCND.

Barr Township  
to  
The County of Cambria.

*Filed 11 October, 1910.*

*Oct. 11, 1910, this land  
is approved  
By the land*

IN THE COURT OF QUARTER SESSION OF CAMBRIA COUNTY, PENNSYLVANIA.

June Sessions, 1910.

To the Honorable Francis J. O'Connor, President Judge of said Court;

The undersigned taxable inhabitants and citizens of the Township of Portage and of the Borough of Portage, in the County of Cambria, respectfully represent:-

That they labor under great inconvenience for want of a public road, or highway, to extend from North Railroad Street, a public highway of said borough, at the line between the Borough of Portage and the Township of Portage, and <sup>75</sup> feet easterly along said North Railroad Street from its intersection with Pine Street in said borough, through said township, to what is known as the old Sonman Station, in said Township, at the intersection of the road leading from said station to Jamestown and the road leading from said station to the head of Plane No. 2; and they accordingly pray your Honorable Court to appoint proper persons to view and lay out the same, according to law; and they will ever pray, etc.

1 J. J. Schofield M.D.  
2 Charles Munnys  
3 W. H. Triggel  
4 John Doney  
5 M. J. George  
6 Thomas Cullen  
7 A. G. Loghnow  
8 L. L. Varner  
9 Chas. Boland  
10 Josef Kern  
11 Wm. Stelzel

12 Joseph Hanakam  
13 Jacob Kreuzberger Jr  
14 Jacob Brunner  
15 Henry Reiter  
16 Conrad Baumert  
17 Louis Dorsch  
18 Heinrich Wagner  
19 Maik & Baydick  
20 J. L. Griffith  
21 Philip Schmieder Jr  
22 A. Johnson

23 Andrew Harris

24 John H. Lamer

25 Wenzl Kandelik

26 Meinrad Ruffing

27 Edmund Flinn

28 Thomas Jinnad

29 F W Hoffman

30 John B Meyer

31 A. J. Goldstein

Harry Widetz

Jesse F. Linn

August Lampert

W. J. J. J. J.

David J. McDonald

E. S. McLaugh

Hermon Beck

Thos Reynolds

Wm Reese

John Kerwig

Nicolaus Meyer

Joseph Podgorschek

Peter Maul

Peter Kelt

Thos Richards

E. A. Bruning

John Miller

George Yekley

Ed Bortman

Harry Croft

William T. Bowser

THIS IS TO CERTIFY that the undersigned, the supervisors of Portage township, have had due notice of the intended presentation to the court of the annexed petition for the appointment of viewers to lay out a public road from North Railroad street at the Portage borough line to Sonman station, in said township.

Amos Still

Albert Wynkoop

Jacob Kunitzberger

Supervisors.

This is to certify that the County Commissioners of Cambria County, have had due notice of the intended presentation of the foregoing petition,

John H. ...

Clerk

CAMBRIA COUNTY, SS:-

George Yeckley and Joseph Hanuakani  
two of the above-named petitioners, being duly sworn according  
to law, say that the statements of fact set forth in the  
above and foregoing petition are true and correct, as they  
verily believe.

George Yeckley  
Joseph Hanuakani

Sworn and subscribed to before me this 30 day of  
July A. D., 1910.

John J. [Signature]  
Notary Public

MY COMMISSION EXPIRES  
My commission expires JANUARY 18, 1913

No. 7 June Sessions 1910, P. D.

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

Petition of Inhabi-  
tants of Portage Township  
and Portage Boro' for the  
Appointment of Viewers to  
view and lay out a public  
road in said Twp. from  
North Railroad Street, at  
Portage Boro' line to old Common  
Station, in Portage Twp.

Filed 2 Aug 1910

Now Aug 24 1910, the  
within petition read and pre-  
sented in open Court, and  
upon due consideration  
thereof, W. H. Bellerman, Wm. J. Dancy,  
and W. A. Brown are appointed  
viewers, to report at next  
term of Court,

By Wm. J. Dancy

Thomas J. Lee,



No. 7 June Sess. 1910 Road

Docket.

In re Road in Mortgage

Township.

Additional Exception to  
Petition and Report..

*Filed 6 August, 1912  
with leave of court.*

Kittell & Shettig.

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

In re Road in Portage Township.

No.7 June Sessions, 1910 Road Docket.

AGREEMENT OF COUNSEL.

And now, *6th* May, 1913, it is hereby agreed between Counsel for petitioners and Counsel for exceptants in the above stated proceeding, that no depositions need be taken by either party upon the Rule to show cause issued 17th February, 1913, and now pending. Counsel for petitioners agrees that the filing of the affidavit of Paul Nelson dated 22nd April, 1913, shall be in lieu of depositions on the part of the exceptants, and Counsel for Exceptants agree that the Ordinance of the Borough of Portage recited in the Answer to said Rule shall be deemed as proved.

*Thomas J. Still*  
\_\_\_\_\_  
Attorney for Petitioners  
*Rittell & Shetty*  
\_\_\_\_\_  
Attorneys for Exceptants.

No.7 June Sessions, 1910

Road Docket

In re Road in Portage Town-  
ship.

Agreement of Counsel..

*Filed May 1913*

In Re Road in

Portage Township..

In the Court of Quarter Sessions  
of Cambria County, Pennsylvania.  
[No.7, June Sessions, 1910. R.D.

O P I N I O N.

This proceeding was begun by the petition of certain inhabitants of the Township of Portage and the Borough of Portage to the Court of Quarter Sessions, praying that a public road be laid out "from North Railroad Street, a public highway of said Borough, at the line between the Borough of Portage and the Township of Portage, and seventy-five feet easterly along the said North Railroad Street from its intersection with Pine Street, in said Borough, through said Township to what is known as the old Sonman Station in said Township, at the intersection of the road leading from said station to Jamestown, and the road leading from the said station to Plane No.2."

On this petition viewers were appointed August 2, 1910, and said viewers reported to the Court at December Sessions, 1910, recommending said road as prayed for in said petition. To this report, exceptions were filed by Messrs. Kittell & Shettig, attorneys for Paul Nelson and James Strachan. Thus the proceedings stood until August 6, 1912, when additional exceptions to the petition and the report of the viewers were filed with leave of court, which said exceptions averred:

"The petition for appointment of viewers filed to the above stated proceedings is not in conformity with the provisions of the Act of Assembly of 23rd April, 1909, P.L. 142, entitled 'An Act requiring all petitions for the laying out or vacation of a public road to fix definitely the points of beginning and ending, and requiring the Clerk of the Court of Quarter Sessions in any County to certify the report of the jury of view to the State Highway Department.' The said Act of Assembly

requires that the petition shall fix definitely the point of beginning and the point of ending of the proposed road by giving the exact distance from any intersecting public road, street, or railroad already opened, and this the petitioners have failed to do;"

which said exception on motion of counsel for the petitioners was dismissed for reasons set forth in an opinion by this court filed February 19, 1913. But on February 17, 1913, the petition of Paul Nelson and James Strachan was filed, setting forth certain facts relative to the former exceptions by them filed and the confirmation of the report of viewers in this proceeding, and praying for a rule to show cause why they should not be permitted to identify themselves by showing their respective places of residence and the fact that they were such interested persons as to entitle them to be heard as such exceptants in this proceeding, and at the same time renewed their former exception alleging the indefiniteness of the terminus of said proposed road at the Borough line, averring that the same did not conform to the requirements of the Act of Assembly of April 23, 1909, P.L. 142, in that the said Act of Assembly requires "that the petition shall fix definitely the point of beginning and the point of ending of the proposed road, by giving the exact distance from any intersecting public road, street or railraod already opened."

It is urged by counsel for the petitioners for the proposed road that it is now too late to raise the question of the indefiniteness of the terminus, and further that the terminus in question is definite and designated in conformity with the Act of Assembly, and that the rule granted should be discharged and the exception therein contained should be dismissed.

We are of the opinion that the exceptions to the petition for the appointment of viewers in this case are substantial and raise a jurisdictional question, if they be now entertained. In view of the fact that the same question as to the sufficient designation of the beginning of said proposed road in the said Borough of Portage was raised in the original exceptions which were filed in time, but were disregarded on the former hearing in this case because of the lack of identification of the parties excepting, and are now renewed by the persons petitioning for the rule to show cause why they, the former exceptants, should not be permitted to perfect said former exceptions filed by them by averring their interest in the proceeding, and also praying that they be permitted to renew their former exceptions, which averred defects alleged by exceptants to be apparent on the fact of the record, we are of the opinion that the question is now properly raised by them and should be at this time considered by the Court. We cannot agree with counsel for the exceptants, however, that the defects alleged are apparent on the fact of the record in the sense understood in such cases, as contended for, and were it not for the fact that the exceptions now urged under the present rule to show cause filed February 17, 1913, are the same which were alleged under the exceptions filed August 6, 1912, with leave of court, and in connection with the fact that by depositions of witnesses taken under said exceptions filed August 6, 1912, it was clearly established that Pine Street in the Borough of Portage was not "a public street of said Borough already opened," thus establishing the fact that the beginning of said proposed public road with North Railroad Street in the said Borough of Portage is indefinite and is not in compliance with the Act of

Assembly, we would be compelled to hold otherwise; but in this case, if we were to deny the rule prayed for and dismiss the exceptions under it and final confirmation of this proposed road follow, it would result in a public road being laid out and ordered opened in defiance of the letter and spirit of the Act of Assembly approved the 23rd day of April, 1909, P.L. 142, and this with the facts clearly established before the Court. Therefore, we have concluded that the rule granted February 17, 1913, should be and the same is hereby made absolute, and the exceptions renewed under said rule be and the same are herein treated as having been originally filed August 6, 1912, by leave of Court; thus raising directly the question of the jurisdictional defect which the exceptants contend are contained in the petition for the appointment of viewers. The petition for the appointment of viewers does not aver that Pine Street in the said Borough of Portage, the alleged intersecting street, is a public street of said Borough already opened for travel, and the facts established by depositions taken in support of the exceptions filed August 6, 1912, with leave of Court, are that said Pine Street is not opened for travel nor marked upon the ground, but exists only in name upon a map adopted by the said Borough in accepting a plan of lots, streets and alleys in said Borough of Portage, laid out by one John C. Martin, now deceased, which, we hold, is not in compliance with the requirements of the Act of Assembly hereinbefore referred to in this case. Having determined that the exceptants are entitled to be heard, and having also determined that the terminus of that part of the proposed public road which begins on North Railroad Street in the said Borough of Portage is indefinite and uncertain and is not in conformity with the requirements

of the Act of Assembly approved the 23rd day of April, 1909,  
P.L. 142, the exceptions are sustained.

And now, August 5, 1913, it is ordered, adjudged and  
decreed that the original petition for the appointment of  
viewers in this case, the report of the said viewers and all  
proceedings thereon, be and they are hereby vacated and set  
aside at the cost of the petitioners.

By the Court

In the Court of Quarter Sessions of Cambria County, Pa.  
No.7, June Sessions, 1910.  
Road Docket.

In Re Road in Portage Twp.

OPINION AND DECREE.

*Filed 5 Aug 1913*

Marlin W. Stephens,  
President Judge 42<sup>nd</sup> Judicial District of Penna.,  
Johnstown, Pa.

In the Orphans' Court of Common Pleas of  
Cumberland County, Penna.

In Re Petition of Inhabitants of Portage  
Township and Portage Borough for ap-  
pointment of viewers to view and lay  
out a public Road from North  
Railroad Avenue (or Street) to Old  
Common Station in  
Portage Twp. -

Report of viewers filed Sept. 9, 1910; No. June Session, 1910,  
Road Docket, Vol. 5, p. 284.

Now, Nov. 21, 1910, it appearing that the proposed  
road as viewed and laid out is a continuation  
of North Railroad Avenue (or Street) in Portage  
Borough, lying in Portage Township, the order  
of Court made Sept. 9, 1910, fixing the width, or  
breadth of said road at thirty feet is amended,  
on motion of attorney for petitioners, and the  
width or breadth of said road is fixed at  
forty-five feet (45 ft.) to correspond  
with the width of the connecting street, or  
avenue,

By the Court

No. 7 June Sessions, 1910, R.D.

In the Court of Quarter  
Sessions -

In Re Road in Portage  
Twp. from North  
Railroad st, at Portage  
Boro line, to old  
Southern Station,

Filed 21 Novem. 1910.

---

Thomas J. Still.

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA.

In Re Petition to lay out a Public Road from North Railroad Street at the line of the Borough of Portage, to Sonman Station, in Portage Township.

No. 7, June Sessions, 1910, R. D.

KNOW ALL MEN BY THESE PRESENTS, That we, George Gabley,

John Dancy, Thomas Cullen,  
J. J. Schofield, are held and firmly bound unto the Commonwealth of Pennsylvania, for the use of Cambria County, in the sum of Fifty (50.00) Dollars, to which payment well and truly to be made to the said Commonwealth for the use of the said county, its certain attorneys, successors and assigns, we do bind ourselves, firmly by these presents. Sealed with our seals and dated the 30th day of July, A. D., 1910.

WHEREAS, the undersigned, among others, have petitioned, or are about to petition, the Court of Quarter Sessions of Cambria County, for an order to view and lay out a public road in accordance with the prayer contained in the petition referred to in the above caption.

NOW, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the petitioners in the above proceeding asking for the appointment of viewers shall pay or cause to be paid unto the County Treasurer of said County in such case as the court may direct, the costs and expenses of the viewers in the said proceeding, in case the same shall be required by the said court to be paid, then this obligation shall become void and of no effect; otherwise to be and remain in full force and virtue.

Signed, sealed and delivered in the presence of:

Smith Hawksby  
Ede Bortman  
Clara Dancy

George Gabley (SEAL)  
John Dancy (SEAL)  
Thomas Cullen (SEAL)  
J. J. Schofield M.D. (SEAL)

No. 7 June Session 1910 R.D.,  
Justice Court Quarter Session  
of Columbia County,

In Re Petition for Affirmation  
of County, versus to view  
and lay out public Road  
from North Railroad St.  
at Portage Ford Line, to  
Old Union Station, in  
Portage Twp.

RECORD

Bound

Now Aug 2, 1910, the  
within bond approved

*Repetition*  
Suled Aug 1910  
V. D. T. 10.  
OFFICE OF CLERK OF DISTRICT COURT  
COLUMBIA COUNTY, MISSOURI  
PORTAGE TOWNSHIP, MISSOURI

Thomas J. Hall,

No. 7 June Session 1910 R.D.

*James D. ...*  
*John D. ...*  
*...*  
(SHEAT)  
(SHEAT)  
(SHEAT)  
(SHEAT)

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA.

\*\*\*\*\*

No. 7 June Sessions, 1910, Road Docket.

\*\*\*\*\*

In Re Exceptions to Report of Viewers filed December 1, 1910.

\*\*\*\*\*

MOTION FOR DISMISSAL OF EXCEPTIONS.

Now, January 24, 1912, <sup>before</sup> ~~reaching~~ reaching the above-stated case at Argument Court, on the question of the exceptions filed December 1, 1910, counsel for the petitioners in said proceedings moves the Court to dismiss the said exceptions for the following reasons:-

(1) These exceptions being as to matters of fact <sup>not appearing on the record</sup> and no depositions having been taken to establish the alleged facts, the exceptions cannot be considered by the Court.

(2) There is nothing appearing on the record that either of the persons in whose behalf the exceptions are signed by the attorney for the exceptions, is an inhabitant or tax payer of the Township of Portage, or in any way entitled to be heard in the proceeding.

(3) The first exception being as to the qualification or competency of one of the viewers, was made too late; such an objection or exception is in the nature of a challenge to a juror for cause, and cannot be made after a party interested has taken his chance of a report in his favor; the time to make such objection or take such exception is before the viewers act, or at the very latest before the filing of the report.

(4) The second exception refers to another road proceeding of the same number and term as the present proceeding, to wit.;- No. 7 June Sessions, 1910, and is therefore meaningless and ineffective.

There being no other exceptions filed, counsel for the petitioners moves the Court, upon the dismissal of the above-exceptions, to confirm the report of viewers absolutely.

*Thomas J. Stoll*  
\_\_\_\_\_  
Attorney for Petitioners.

EXHIBIT 4 - 10/1/70

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PETITIONERS'  
EXHIBIT NO. 4 - 10/1/70

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EXHIBIT NO. 4 - 10/1/70

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OF CANTON COUNTY  
EXHIBIT NO. 4 - 10/1/70

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EXHIBIT NO. 4 - 10/1/70

No. 7 June Sessions, 1910.

Road Docket.

IN THE COURT OF QUARTER SESSIONS  
OF CAMBRIA COUNTY.

\*\*\*\*\*

IN RE ROAD IN PORTAGE TOWNSHIP.

\*\*\*\*\*

MOTION FOR DISMISSAL OF EX-  
CEPTIONS.

\*\*\*\*\*

*Filed 24 January 1912*

THOMAS J. ITELL.

COPIED FOR THE RECORDS OF THE COURT

APPROVED FOR OFFICE USE

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA.

*In Re Petition for Appointment  
of Viewers to lay out public Road  
from North Railroad Street at  
Portage Boro line to old Bon-  
nach Station, in Portage  
Township.*

*No. 7 June Sessions 1910  
Road Booket,*

*Additional*

MOTION TO DISMISS EXCEPTIONS.

Now, August 14, 1912, Thomas J. Itell, attorney for petitioners in the above-stated proceeding, files the following as exceptions or objections to the exception~~s~~ to report of viewers filed on the 6th day of August, 1912, and by reason thereof moves the Court ~~to~~ forthwith to dismiss the said exception or exceptions, to wit,-

(1) That the said exception filed August 6, 1912, was filed too late, being in violation of Rule 18 of the Court of Quarter Sessions of Cambria County, relative to roads and bridges, which said rule, requires all exceptions to the confirmation of the report of viewers of roads to be filed on or before the first day of the term, <sup>following, at which</sup> that the report is made, according to which the last day for filing exceptions was the first Monday of December 1910.

(2) That the said exception was signed by Messrs. Kittell and Shettig, but it nowhere appears for whom the said attorneys are acting, or that they represent any person or persons having any right to be heard in relation to said proceeding.

(3) Said exception is not true as a matter of fact, the material averment contained therein to the effect that the petition does not state definitely the points of beginning and ending of said road, by not giving the distance from the nearest intersecting road or street, is not true as will appear from a reading of the petition and by a reference to the draft or plot accompanying the report of viewers, in both of which clearly appears the

the distance of the point of beginning on North Railroad Avenue or street at the Portage Borough line, and public street or highway of said borough, seventy-five (75) feet easterly along said street or avenue from its intersection with Pine Street, another public street or highway of said borough, and the point of ending is fixed at the intersection of two public roads at old Sonman Station, which is a substantial and complete compliance with the requirements of the Act of Assembly of April 23, 1909, P. L. 142, being the Act upon which the exception purports to be founded.

All of which matters herein alleged will appear from the reading and inspection of said petition, the report of viewers and the draft thereof annexed, and the same are urged upon the Court as reasons why the said exception should be dismissed forthwith and the report of viewers confirmed.

*Thomas J. Still*  
Attorney for Petitioners.

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IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA.

No. 7 June Sessions, 1910. Road Docket.

\*\*\*\*\*

To the Honorable Marlin Bingham Stephens, President Judge of the  
above-named Court,-

J. F. Schofield, Charles Mangus, W. H. Troxell, John Dougherty, M. J. George, Thomas Cullen and others, the petitioners in the above-stated proceeding, by Thomas J. Itell their attorney, replying to the petition of Paul Nelson and James Strachan, presented to your Honorable Court on the 17th of February, 1913, for answer thereto and to the rule to show cause issued on the same date, and as reasons why the rule should be discharged and the petition dismissed, respectfully set forth:-

(1) The petitioners admit the facts set forth in the first, second and third paragraphs of the said petition, but deny that the said facts are themselves material, or that they may properly be considered as grounds upon which to base the exception contained in the latter part of said petition.

(2) The petitioners admit the filing of the exception on the 6th of August, 1912, but deny that the said exception was properly received or filed on said date, the time for filing exceptions having expired on the first Monday of December, 1910, and likewise deny that said exception is to any defect apparent upon the face of the proceedings, as the termini of said proposed road are definitely fixed both in the petition and in the report of viewers and accompanying draft, with respect to intersection or junction of public roads or streets, and distance therefrom, as required by the Act of Assembly mentioned in said exception.

(3) That the petitioners have no means of knowing whether the matters set forth in the fifth and sixth paragraphs of

said petition of February 17th, 1913, and will not have until the same shall have been established by proper testimony; the petitioners, however, deny that the said matters can now be properly considered by the Court, or that they are of themselves material or admissible at this stage of the proceedings, or that they can now be made the basis for the introduction of other matters alleged to be material.

(4) The petitioners deny the averment contained in the exception, to the effect that the proceedings are not in conformity with the provisions of the Act of Assembly of April 23, 1909, P. L. 142. The petition, report of viewers and the accompanying draft all show the initial point of said road to be at North Railroad Street (also called North Railroad Avenue) at the line between the Borough of Portage and the Township of Portage, seventy-five (75) feet easterly along said avenue or street from its intersection with Pine Street in said Borough, and the terminus ad. quem being old Sonman Station at the intersection or junction of the public road leading to Jamestown and the public road leading from said station to the head of Plane No. 2. That both of said roads named as the terminus ad. quem. of said road are public roads and highways of the said township, as will appear by a reference to the road proceedings contained in the Office of the Clerk of Quarter Sessions of Cambria County, and that the said North Railroad Avenue and the intersecting or adjoining Pine Street are public highways of the Borough of Portage, will appear by a reference to the dedication thereof by John C. Martin, contained in a plot duly acknowledged <sup>by him on the 21st day of July 1892</sup> and recorded ~~in the~~ in the Office for the Recording of Deeds in and for Cambria County in Miscellaneous Record Book Vol. 6, at page 111, and by an ordinance of the Borough of Portage duly adopted and enacted by the town council and approved by the Chief Burgess thereof, contained in the Ordinance Book of said Borough on pages 154 and 155 and on

the copy of the Borough map therein referred to and filed in the office of the \_\_\_\_\_, as required by law, the material part of said ordinance being as follows:-

"AN ORDINANCE adopting a plan of the Borough, defining the location and limits of the streets and alleys of said Borough, and vacating all highways not shown on the map.

"Sec. 1. That the map or plan of the Borough of Portage as prepared and submitted by S. G. Fetterman, Civil Engineer, and now on file in the office of the clerk of the Borough of Portage, be and the same is hereby adopted as the official plan of the said Borough, and that all Sub-Divisions of property hereinafter made shall conform thereto.

"Sec. 2. That the location and limits, courses and distances and widths of the streets, avenues, and alleys of the said Borough as laid down and located on the said plan, be and the same are hereby declared to be Public highways of the Borough of Portage."

Passed finally this 12th day of October A. D. 1908.

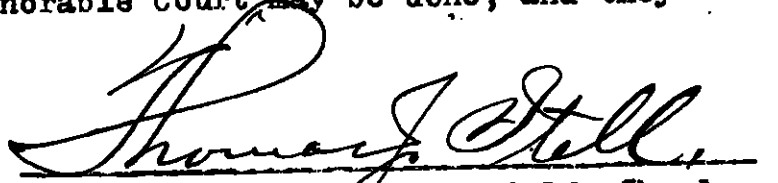
PAUL NELSON, Sec.

Approved this 12th day of October, A. D. 1908.

WILLIAM FLINN, BURGESS.

(5) The petitioners further represent that the aforesaid exception cannot be filed or considered at this date, the time for filing exceptions having, according to Rule 18 of the Court of Quarter Sessions, expired on the first Monday of December, 1910; that the aforesaid petition filed February 17th, 1913, does not ask that the exception contained therein be filed nunc pro tunc as of the first Monday of December, 1910, nor does the rule to show cause, granted, contain anything to that effect.

The petitioners, therefore, alleging and averring that the said rule should be discharged and the petition dismissed, <sup>for the reasons set forth</sup> which ~~they~~ respectfully pray your Honorable Court <sup>that the same</sup> may be done; and they will ever pray, etc.



Attorney for J. E. Schofield, Charles Mangus, W. H. Trozell, John Dougherty M. J. George, Thomas Cullen, and others, the petitioners for the appointment of viewers in the above proceeding.

CAMBRIA COUNTY, SS:

Thomas J. Itell, the attorney for the petitioners for appointment of viewers in the above-stated proceeding, being duly sworn according to law, says that the statements of fact set forth in the above and foregoing answer and petition are true and correct as he verily believes.

Thomas J. Itell

Sworn and subscribed to before me this 1st day of March, A. D. 1913.

Dan L Parsons

Notary Public.

My commission expires Feb. 21, 1915.

1st June Session, 1910. R.D.

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

In Re Order to view Road from  
North Railroad Street, at  
Portageboro line to Old  
German Station in Portage  
Township - -

In Re Rule to show Cause  
etc. granted February 19, 1913.

Answers of Petitioners and  
Motion for discharge of Rule -

Filed 3 March 1913

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

HENRY HALL, PRINTER, INDIANA, PA.

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA..

No.7 June Sessions, 1910- Road Docket.

To the Honorable Marlin B. Stephens, President Judge of the above named Court..

The petition of Paul Nelson and James Strachan respectfully represents:.

That on August 2nd, 1910 a petition was presented by certain inhabitants of Portage Township and of Portage Borough, in said County, to the above number and sessions, asking for the appointment of viewers to view and lay out a road from Portage Borough to old Sonman Station in Portage Township..

That the Court appointed S. G. Fetterman, H. A. Brown and James C. Darby viewers, as prayed for in said petition, who made their report to the September Sessions of said Court in favor of the road asked for by the petitioners..

That exceptions to said report of viewers were filed within the time provided by law, and the Rules of Court, which exceptions are by Kittell & Shettig, Attorneys for Paul Nelson, James Strachan et al, exceptants..

That an additional exception was filed on behalf of said exceptants on the 6th day of August, 1912, which said exception is to a defect apparent upon the face of the proceedings..

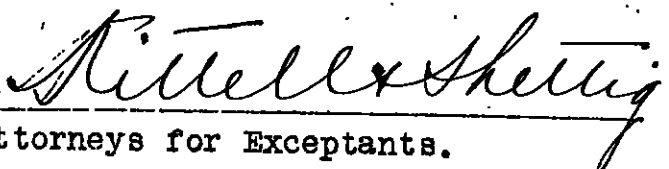
That by inadvertence the first recited exceptions failed to set forth the names of all of the exceptants, their places of residence, and their interest in the said proposed road..

Your petitioners therefore showing that the first exceptions were filed within the time required by law and the rules of Court, and the last mentioned exception was filed to a defect apparent upon the face of the proceedings, therefore pray the Court that they may be now permitted to file an exception showing, first, that the names and places of residence of the exceptants on behalf of whom said Paul

Nelson and James Strachan acted in filing the exceptions above mentioned are as follows: Paul Nelson, residence Portage Borough near one of the termini of said proposed road; James Strachan, residence Portage Township, near the other termini of said road; L. B. Callahan residence Portage Township near one of the termini of said road; Sonman Shaft Coal Co. a coal mining company having its mining operations in Portage Township near one of the termini of said road, and the Cambria Mining & Manufacturing Company, a corporation owning lands in Portage Township through which the route of the proposed road runs. Second, that the above named exceptants thus identified by their respective places of residence and ownership of property be permitted as such to file the following exception:

The petition for appointment of viewers filed to the above stated proceedings is not in conformity with the provisions of the Act of Assembly of 23rd April, 1909 P.L. 142, entitled "An Act requiring all petitions for the laying out or vacation of a public road to fix definitely the points of beginning and ending, and requiring the Clerk of the Court of Quarter Sessions in any County to certify the report of the jury or view to the State Highway Department". The said Act of Assembly requires that the petition shall fix definitely the point of beginning and the point of ending of the proposed road by giving the exact distance from any intersecting public road street, or railroad already opened, and this the petitioners have failed to do.

And they will etc.

  
Attorneys for Exceptants.

Cambria County, ss.

Philip N. Shettig being duly sworn according to law says that he is of Counsel for Exceptants, and that the matters set forth in the foregoing petition are true, as he verily believes.

Sworn and subscribed before me  
this 17th day of February, 1913

A. S. Kirkland  
Clerk

Philip N. Shettig

No. 7 June Sessions, 1910  
Road Docket.

In re Road in Portage  
Township.

*Filed 17 February, 1913.*

*Now 17<sup>th</sup> February, 1913,  
within petition read  
and a rule to show cause  
why prayer thereof should  
not be granted, is issued-  
returnable on the first  
Monday of March next.  
By the Court*

In re Proceedings for road  
from Sonman Station in Port-  
age Township

to

The Borough of Portage


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

No. 7 June Sessions, 1910

EXCEPTIONS TO REPORT OF VIEWERS.

I. S. G. Fetterman, one of the viewers, was not a "fair, judicious and impartial person" such as intended by the law regulating proceedings in road cases, The Fetterman Engineering Company, of which he is a member, having surveyed the ground and made a draft of the survey of the route for the proposed road before the time the petition for appointment of viewers was presented to the Court.

II. Prior proceedings are pending for a public road from the old Sonman Station to the Borough of Portage, as shown by said proceedings entered in this Court to No. 7 June Sessions, 1910. If the report of viewers in said case is confirmed by the Court and said proposed road opened for public use, there will be no occasion for the proposed road reported by the viewers in this present case, as the roads would be practically parallel and both have the same termini, viz, the old Sonman Station as the place of beginning, and the Borough of Portage as the place of ending.

  
Attorneys for Paul Nelson, James  
Strachen et al, Exceptants.



No.7 June Sessions,1910 R.D.

In re proceedings for road  
from Sonman Station in Port-  
age Township

to

The Borough of Portage.

Exceptions to report of  
Viewers.

*Filed 1 Dec 1910*

Kittell & Shettig.

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

In re Road  
in  
Portage Township

of *June Term*, A. D. 1900, No. 7 R. D.

And now to wit, the *16th* day of *Oct* A. D. 190*2*, Rule  
on part of *Exceptants* to take deposition of witnesses  
before *J. C. Sharbaugh*, Esq., Commissioner, to be read on the  
hearing of the above stated case.

Cambria County, ss:

Extract from the Record of said Court, Cer-  
tified the *16th* of *Oct*  
190*2*.

*D. D. Kirkhead*  
*Deputy Notary*  
Clerk

To *Thomas J. Stell, Esq.* attorney for petitioners in  
above stated proceedings

TAKE NOTICE, That in pursuance of the above Rule the deposition of witnesses to  
be read in evidence on the *hearing* of the above stated *case* on  
part of the *Exceptants* will be taken at the *Office of J. C. Sharbaugh,*  
*Ebensburg, Pennsylvania* on ~~Friday~~ *Saturday*  
the ~~18th~~ *19th* day of *October* A. D. 190*2*, between the hours  
of *8:00* o'clock A. M., and *8:00* o'clock P. M., before *Said*  
*J. C. Sharbaugh, a 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.

*Service accepted.*  
*Thomas J. Stell,*  
*Att'y for Petitioners*

*Kittell & Shettig*  
*Attys. for Exceptants*

No. 7 June Term, 1900.  
R.D.

In re Road  
in  
Portage Township

Rule on part of Exemptants  
To take depositions

K. & D.

SESSIONS  
-: IN THE COURT OF QUARTER ~~SESS.~~ OF CAMBRIA COUNTY:-

--oOo--

In re Road                               #           No. 7 R. D. June Sess. 1910.  
  #  
in   #  
  #  
Portage Township.                       #

DEPOSITIONS

Of witnesses taken in the above-stated case before F.C. Sharbaugh, Commissioner to take testimony, at his office, Center Ward, Borough of Ebensburg, Pa., on the 19th day of October, 1912, pursuant to Rule issued out of the Court of Quarter Sessions of Cambria County, copy of which, with acceptance of service noted thereon, is hereto attached.

APPEARANCES:

For the Exceptants, Philip N. Shettig, Esq.  
For the Road, Thomas J. Itell, Esq.

By Mr. Itell: The taking of depositions at this time is objected to for the reason that the exceptions, under which it is proposed to take the depositions, were not filed in accordance with the rules of court, and for that reason same should not be considered by the Court.

P. F. Campbell called, sworn.

DIRECT-EXAMINATION by Mr. Shettig:

Q-- Where do you reside? A-- Portage.

Q-- How long have you resided at Portage? A-- About nine years, but I have been a resident of the community for about nineteen years.

Q-- Are you acquainted with the streets and ~~XXXXXXXXXX~~

through-fares of Portage? A-- Yes, sir.

Q-- What official position do you occupy in the Borough of Portage? A-- Borough Engineer.

Q-- You are a surveyor and civil engineer by profession, I understand? A-- Yes, sir.

Q-- From your knowledge of the location of the thoroughfares of Portage, gained from your residence there and from your official connection with affairs of the Borough, do you know where Pine Street in the Borough of Portage is? A-- Yes.

Q-- Do you know the character of the ground over which Pine Street is laid out? A-- Yes, sir.

Q-- Will you state whether Pine Street has ever been opened for public travel? A-- It has not to my knowledge.

Q-- That is you mean you know it has not? A-- Yes, it has not been.

Q-- Will you state what this map represents? A-- This map represents a plan of the Borough of Portage.

Q-- State whether or not it depicts Pine Street and North Railroad Street? A-- It does.

Q-- State from your knowledge and as borne out by the map whether Pine Street intersects North Railroad Street?

A-- It does not.

Map is offered in evidence particularly for the purpose of showing that Pine Street and North Railroad Avenue do not intersect with each other.

(No objection)

Q-- In stating that Pine Street was not opened for public travel state whether or not any part of Pine Street

was ever opened for public travel? A -- No, sir.

CROSS-EXAMINATION by Mr. Itell:

Q-- What do you mean when you say that Pine Street and North Railroad Street (or Avenue) do not intersect? A-- I mean as the definition of the word indicates, that it does not cross over.

Q-- You do not mean to say that North Railroad Avenue and Pine Street on the plan you have offered do not come together or join each other at a point about seventy-five feet westerly from the easterly Borough line? A-- No; that wasn't my answer; they do come together, they connect but don't intersect.

Q-- Please define the word "intersect" as you want to have it understood in your testimony? A-- Well, the word "intersect" would be where two streets would cross over; the point of intersection would be where the center of the two streets would cross over, and as Pine Street does not cross over North Railroad Avenue it does not intersect it.

Q-- Then you say that it is only where two roads ~~xxxx~~ cross each other -- in other words, form a cross-roads-- as commonly expressed-- that they intersect? A-- Yes.

Q-- That is your definition of intersect? A-- Yes.

Q-- Where did you learn that definition? A-- I might have learned it at school, but I refer you to Webster.

Q-- You know that the land designated as the site of Pine Street on this draft, which you say is an official map of the Borough of Portage, has been open and unobstructed for travel and ~~is~~ <sup>for</sup> any one who wishes to travel it for the last fifteen years or more; is that not a fact? A--No, sir; not in that sense.

Q-- Not in what sense? A-- Not as a street, it has not been opened.

Q-- What has been erected on it or in the way of obstructing anyone from passing over it? A-- The condition of the ground is against it for public travel.

Q-- You are referring to the grade of it? A-- And to the condition as it has been since I have known it.

Q-- Isn't it a fact that all the land on both sides of the street, including Pine Street itself, is entirely unfenced and unobstructed excepting for a distance of two squares from North Railroad Avenue to Washington Street and beyond? A-- It is not.

Q-- It is not obstructed? A-- No, sir.

Q-- What is there that obstructs it or would hinder any one from traveling over it? A-- Well, the condition of the ground there and the ravine running down along part of it.

Q-- That depression or ravine is at the upper end of Pine Street, next to Railroad Avenue, isn't it? A-- Yes, and at the lower end.

Q-- Just after passing the depression, near Railroad Avenue, there is nothing at all in the way of preventing any one from going along the site of Pine Street down to Washington Street and beyond? A-- Nothing but the condition of the ground as a high-way.

Q-- There is nothing more in here than there would be in traveling over any point of ground; nothing to prevent any one from passing along or over it? A-- Well, the condition of other places might be different, more favorable, than on Pine Street.

Q-- ~~And~~ There is no visible obstruction of any kind in here of anyone's traveling Pine Street excepting the small depression near Railroad Avenue or North Railroad

Street or Avenue? A-- And the depression near Washington Street.

Q-- That is below and beyond Washington Street? A--Yes, and there is a depression, a very bad one, at Washington Street, on Pine.

Q-- The only thing then in here that leads <sup>you</sup> to say Pine Street has not been opened for use for a period of fifteen years or more is the lack of or want of its being graded; isn't that a fact? A-- And being opened; that is a fact that it has not been opened.

Q-- The question is, do you not say that it has not been opened by reason of the fact that the surface of the street has not been graded? A-- Yes.

Q-- You knew Mr. J. C. Martin? A-- Yes.

Q-- You are acquainted with Mr. Martin's plan of lots? A-- Yes.

Q-- You know that Mr. Martin owned lots where Pine Street is now? A-- Yes.

Q-- And on both sides of it for some distance? A-- Yes.

Q-- You know that he laid out this street known as Pine Street on his plot or plan? A-- Yes.

Q-- And that he also laid out on his plan North Railroad Avenue from Pine Street easterly to the Borough Line and beyond? A-- Yes, on the plan.

Q-- And on the ground? A-- I don't know that.

Q-- You know that people have bought land on both sides of Pine Street from Mr. Martin? A-- Yes.

Q-- You were for several years Mr. Martin's real estate agent, were you not? A-- Yes, sir.

Q-- For how long were you in that position? A-- About ten years.

RE-DIRECT EXAMINATION by Mr. Shettig:

Q-- Is Pine Street a traveled high-way? A-- No.

Q-- Has it ever been? A-- No.

Q-- Has the Borough ever done any work on this street?

A-- Not to my knowledge.

Q-- If the Borough had done any work you would have known of it? A-- I would have known of it.

RE-CROSS EXAMINATION by Mr. Itell:

Q-- This map which has been offered in evidence is a blue-print of the official map of the Borough of Portage, is it? A-- Yes.

Q-- On it this street called Pine Street is one of the designated high-ways of the Borough? A-- Yes, sir.

Paul Nelson, called, sworn.

DIRECT EXAMINATION by Mr. Shettig:

Q-- Where do you reside? A-- Portage Borough.

Q-- Are you acquainted with the streets of Portage Borough? A-- With quite a number of them.

Q-- Are you acquainted with what is known as Pine Street

A-- Yes, sir.

Q-- Will you state whether or not Pine Street intersects with North Railroad Avenue? A-- It does not.

Q-- Will you state whether or not Pine Street has been opened for public use?

Objected to unless the witness qualifies himself to show that he is competent to testify in this matter.

Q-- Are you acquainted with the character of the ground over which Pine Street is laid out? A-- I have been over it many times.

Q-- Will you state whether or not that ground shows an opened street where Pine Street is located? A-- Couldn't ~~xxx~~ tell whether it was laid out for a street or what; there are no signs of a street.

Q-- Is it traveled high-way? A-- No, sir.

Q-- Is it in condition to be traveled by the public? A-- No, sir; it is <sup>not</sup> in condition to be traveled.

Q-- Has any work been done on Pine Street in the way of putting it in condition for travel? A-- Not during the last six years or a little more, since I have been in Portage.

Q-- Does the appearance of Pine Street indicate that any work was ever done on it for the purpose of putting it in condition? A-- No, sir; not originally in the way of improving it.

Q-- What is the condition of that street? A-- The ground is rather rough and there is a ditch runs down through it from the power house which drains the water across it from the power house and at the upper end where it joins North Railroad Avenue there is a gully or deep hole there.

Q-- How deep? A-- Possibly four or five feet; right at the lower side it wouldn't be more than that-- on the west side of the street.

Q-- Is it practicable to travel Pine Street? A-- It might be possible to get over it.

Q-- Is it in fact an opened street or thoroughfare? A-- No, sir; it is not considered so; unless he knew where it was a stranger would not recognise it as a street at all.

CROSS-EXAMINATION by Mr. Itell:

Q-- People travel from North Railroad Avenue down across toward Washington Street and over the location of where Pine Street is every day, do they not, or almost? A-- No, sir.

Q-- What is there to prevent them? A-- I have just stated what it was, the condition of the ground, rough and uneven, and a ditch or gully there; in fact, no one wants to drive it-- no necessity for driving it-- no buildings on it-- no one lives on it on either side of it.

Q-- It is like any other street in a portion of a town laid out and not built upon? A-- No, it is not; some of it much rougher and some of it not quite so rough.

Q-- This is your signature that appears to this blue print that has been offered in evidence? A-- Yes, sir.

Q-- Would you say that Pine Street and North Railroad Avenue on this plan join or connect but do not intersect? A-- Yes, sir.

Peter Seymour, called, sworn.

DIRECT EXAMINATION by Mr. Shettig:

Q-- Where do you reside? A-- Portage Borough.

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

Q-- Are you acquainted with the streets and thoroughfares of Portage Borough? A-- Yes, sir.

Q-- Do you know Pine Street as laid out? A-- Yes, sir; I know Pine Street.

Q-- Will you state whether or not Pine Street is an opened street? A-- No, sir; it is not; it is laying open as a commons, that is all, never was opened up.

Q-- Was it ever worked by the Borough or improved or put in condition for travel? A-- No, sir.

Q-- What is the character of the ground on which it is laid out? A-- Very rough, very bad; the condition of the ground is bad.

Q-- State whether or not you have been Street Commissioner of Portage Borough? A-- I have.

Q-- During the time you were Street Commissioner did you ever do any work on this street? A-- Never.

Q-- Was it considered by the Borough authorities as a street of the Borough?

Objected as being incompetent testimony on that question, it being shown that the street is laid out on the official Borough map and that the witness is not in a position to contradict that offer by him.

A-- I never heard of it being considered as a street; of course it is a laid out street, but it never was worked on.

Q-- Was it laid out since you have been residing at Portage? A-- Oh, yes.

Q-- But never worked on? A-- Never worked on.

Q-- Is it traveled? A-- It is not traveled by the public; they do cross over it from the power house coming down to Washington Street, and they cross over it from the lumber yard to go to the livery stable-- they just cross over it-- they don't travel the length of the street.

Q-- Is it in condition to be traveled? A-- No,

CROSS EXAMINATION by Mr. Itell:

Q-- The lots along Pine Street are not built upon, are they? A-- No, sir.

Q-- And when they drive from the power house to the livery stable it is nearer to go across lots than to follow the street around to its intersection? A-- There is no street there; it is laid out but there is no street there; they cross over.

Q-- You mean there is no graded street? A-- No; it is not a graded street.

Q-- You know that the street is laid out on the land? A-- Yes, certainly I know that.

Q-- If it were not for the fact that the lots are not fenced up in going from the power house to Washington Street they would travel straight instead of cutting across lots?

A-- No, sir; it would be impossible, they couldn't travel straight in its present condition.

By Mr. Shettig:

Q-- Does Pine Street intersect with North Railroad Avenue? A-- No, sir.

By Mr. Itell:

Q-- What do you mean when you say it does not intersect? A-- I mean that it has not been worked on and does not intersect with the other street.

Q-- Has not been brought up to it? A-- No.

Q-- But on the plan the two streets join? A-- They connect; yes, sir.

James Strachan called, sworn.

DIRECT EXAMINATION by Mr. Shettig:

Q-- Where do you reside? A-- Sonman.

Q-- Are you acquainted in Portage? A-- Yes.

Q-- Sonman is near by Portage? A-- One mile from there.

Q-- Do you know the streets and thoroughfares of Portage Borough? A-- Very well, yes.

Q-- Do you know the location of North Railroad Avenue and of Pine Street? A-- Yes.

Q-- State whether or not Pine Street intersects with

North Railroad Avenue? A-- It does not.

Q-- State whether or not Pine Street is an opened street? A-- It is not.

Q-- Is it traveled by the public? A-- No, sir.

Q-- Has it ever been traveled by the public? A--No, sir.

Q-- Is it in condition to be traveled by the public?  
A-- No, sir.

Q-- What is its condition? A-- The street has never been opened, it is a sort of dumping ground and a waterway, and it wouldn't be possible to drive through that street, as laid out on the map.

CROSS EXAMINATION by Mr. Itell:

Q-- What do you mean when you say that Pine Street and North Railroad Avenue do not intersect? A-- It does not cross over North Railroad Avenue.

Q-- North Railroad Avenue and Pine Street However join or connect, do they not? A-- Well, that would be according to your definition whether they do or not; they connect as laid out on the map, yes; but as to connecting the streets-- it has not been worked so it is possible to drive them-- and I wouldn't like to say that they connect ~~next to~~ Pine Street; as to the map it connects with North Railroad Avenue, at a big hole, where you would have to drive down on Railroad Street and come up again, - a hole of about six feet in depth.

By Mr. Shettig: W

Q-- Will you state whether or not North Railroad Avenue as ~~is~~ called on the map is also known as North Railroad Street, or spoken of as North Railroad Street-- are

they the same high-way? A-- Yes, I always understood it as such.

Reese Diehl called, sworn.

DIRECT EXAMINATION by Mr. Shettig:

Q-- Where do you live? A-- Portage.

Q-- What is your business? A-- Photographer.

Q-- Will you state whether or not you took certain photographs showing portions of Pine Street and of North Railroad Street or Avenue in Portage recently? A-- I did.

Q-- Will you state whether or not the photographs which I hand you are the photographs which you took, also whether or not you developed these photographs yourself? A-- I did,

Q-- Photograph marked "Exhibit A" is handed to the witness and he is asked to state what it shows? A-- This is a photograph that I took, and it shows North Railroad Avenue looking east.

Q-- I call your attention to the large frame building shown on the photograph and ask you what it is? A-- Yeck-

Yeckley's hotel.

Q-- I also call your attention to a concrete or stone building and ask you to state what it is? A-- The Portage power house.

Q-- What lies between the concrete building and the frame building? A-- Pine Street runs through that portion.

Q-- I also hand you photograph marked "Exhibit B" and ask you what it shows? A-- It shows the land on the north side of North Railroad Street, looking in the direction of North Railroad Street.

Q-- I call your attention to a frame building on this photograph and ask you what it is? A-- Yeckley's hotel.

Q-- What is the land shown to the left of Yeckley's hotel composed of? A-- I understand it is a fifty-foot lot and the piece joining is Pine Street.

Q-- Where does Pine Street begin on that photograph by anything that the photograph shows?

Objected to for the reason that the witness has not qualified himself to be able to testify on this point.

A-- About from this point (indicated pencil mark on photograph) to the left is part of Pine Street.

Q-- I show you another photograph, marked "Exhibit CC" and ask what it shows? A-- It shows a view looking west on Railroad Street from the east side of Pine Street.

Q-- I call your attention to a frame building shown on the photograph and ask you what it is? A-- It is Yeckley's hotel.

Q-- I call your attention to a weedy condition to the left of this building, extending for quite a distance to a depression, and ask you what comprises that? A-- Pine Street

Q-- I also call your attention to an apparently traveled road and ask you whether or not that is a part of Pine Street? A-- No, sir; that is property on the east side of Pine Street.

CROSS EXAMINATION BY Mr. Itell;

Q-- Who told you where Pine Street is located on the ground when you went to take these photographs? A-- Mr. Paul Nelson.

Q-- Was he a Borough Engineer or surveyor? A-- No, sir.

Q-- Mr. Nelson pointed out to you where the street is? A-- I also afterwards located the street on the map.

Q-- But you didn't see any measurements made on in comparison with the use of the map, nor any stakes or any other marks upon the ground to indicate to you corners of lots or lines of the streets? A-- We did make some measurements; yes, sir.

Q-- Who did? A-- Paul Nelson and myself.

Q-- Is Paul Nelson a surveyor? A-- Not to my knowledge.

Q-- Are you? A-- No.

Q-- How did you know where to start to make these measurements? A-- Nelson had some interest in this and no doubt looked it up on the map and knew where to make the measurements; that is my judgment.

Q-- This road lying to the right of the central part of the picture comes down in the direction of where Pine Street goes and goes on part way beyond Pine Street, does it not? A-- They mostly use that road to haul coal in to that electric power plant.

Q-- When you go down this way from the power house and on down toward Washington Street and toward the livery

stable, you travel this road, don't you? A-- You cross over to go to the livery stable.

Q-- And it goes part way along Pine Street, but farther down, the lots are unfenced, and it leads over across the lots; isn't that a fact? A-- To my judgment it touches Pine Street right at the beginning, right here (indicates spot on draft by making pencil marks) and to my judgment it does not touch Pine Street at all until it crosses over down at the livery.

Q-- You say it is parallel with Pine Street? A-- In the same direction, yes, but not exactly.

Q-- But it does not go very far until it comes partly on Pine Street, is that it? A-- It is almost a square, almost goes down to the alley, before it crosses.

Q-- Mark on this photograph where you say it touches Pine Street on Railroad Avenue. (Witness indicates spot by making two lead pencil "X" marks)

Paul Nelson recalled.

By Mr. Shettig:

Q-- Were you present with Mr. Diehl when he took the photographs in question? A-- Yes, sir.

Q-- Did you point out the location of Pine Street on the ground to Mr. Diehl? A-- I did.

Q-- You were acquainted with the location of Pine Street?  
A-- I was.


Counsel for the Road offers tracing of portion of J. C. Martin's plan of lots in the Borough of Portage, Cambria County, Pennsylvania, as signed and acknowledged by J. C. Martin before J. D. Parrish, Justice-of-the-Peace, in and for Cambria County, on the 3rd day of January, 1893, recorded same day in the office for the recording of deeds, etc. in and for Cambria County in Miscellaneous Record Book Vol. 6, page 111 showing, inter alia, North Railroad Street or Avenue and Pine Street, fifty feet in width, connecting or intersecting with North Railroad Avenue, and by said acknowledgement and recording of said plan dedicated to public use as a high-way.

Objected to unless followed by proof that the street known as Pine Street on said plan was actually opened prior to the institution of proceedings on this petition.

THE TESTIMONY CLOSES.

State of Pennsylvania,  
County of Cambria, ss:

I hereby certify that the foregoing depositions of witnesses in the above-stated proceeding were taken before me, a commissioner to take testimony, at my office, at the time and in the manner stated in the caption hereof, and that the foregoing pages Nos. 1 to 17, both inclusive, contain a true and correct transcript of the testimony of the witnesses so taken as aforesaid.

  
\_\_\_\_\_  
Commissioner to take testimony  
Official Stenographer.

In the Court of Quarter  
Sessions of Cambria County.

In re Road  
in  
Portage Township.

DEPOSITIONS OF WITNESSES.

*Sworn by Mr. [Signature]*  
*by [Signature]*  
*Commissioner*

*Filed 22 Oct 1912*

F. C. SHARBAUGH,  
OFFICIAL - STENOGRAPHER  
FOR THE  
Forty-Seventh Judicial District  
PENNSYLVANIA.



for the petitioners, who aver in their petition that they are residents of Portage Township and Portage Borough, that the exceptions thus filed are not sufficient to entitle the exceptants to be heard in this proceeding.

We have not been able to find statutory requirements for either the petitioners or exceptants in proceedings of this character; but, notwithstanding the fact of no apparent statutory requirements, we have heretofore, as if by common consent, as evidenced by the practise in road proceedings in our Court of Quarter sessions, which has existed as far back as we have <sup>had</sup> opportunity to investigate the fact, held that only those persons who are residents of the County, or most generally, the township affected or through or in which the road is sought to be established, can petition for a public road in said county, township or district, and those who seek to oppose the same must be of the same class of persons or must, in some way, be affected either as tax payers, owners of property affected by the opening of the proposed road, or by serving in a representative capacity ~~of~~ and their interests as such be affected.

Mr. Trickett in his work entitled "Pennsylvania Road Law", on page 123 says: "Doubtless anyone who could petition for a road could also except to the report of ~~viewers~~ <sup>viewers</sup> or reviewers." This seems to us to be a reasonable and fair proposition. No one can complain, whether petitioner or exceptant, if placed upon the same plane, and the reason for the Court's requiring ~~some~~ some averment of interest, is too apparent to need further discussion.

Now, as to who may petition for a public road can only be determined from the practise in our courts, and it seems to have always been the practise to hold that some necessary averment of interest was necessary to give the parties standing in Court to be heard in favor of or against the road proceeding. The above-

quoted author says in chapter two, page ten, of the same work, "The Act of Assembly does not prescribe the qualification of persons on whose petition the Court of Quarter Sessions may act, but they must be inhabitants of the county, probably the inhabitants of any township of a county may petition in any other township thereof."

While there is no statutory requirement which defines the qualifications of either the petitioners for a road or the exceptants to the proceedings to obtain the same, yet we are of the opinion that it is reasonable and proper that they should be more than mere intermeddlers who may seek to foist an unnecessary burden on the community in which they have no interest or responsibility or endeavor to delay or hinder a just and proper demand for a necessary public highway. So it is that the courts heretofore have held that those who desire to be heard for and against a ~~the~~ proceeding to lay out and open a public road should have and aver an interest in the result as property owners and tax payers, or inhabitants of the neighborhood, township or county. If such an interest is required of the petitioner it must be conceded that the same, or a similiar interest, should be required of the exceptant. If this be true then we ~~we~~ must conclude that the same interest should be averred by an exceptant as well as by a petitioner. The Court will not assume, from the fact that a person is named as an exceptant, that he has such interest as will entitle him to be heard where neither the exceptants themselves nor the record of the case disclose that the exceptant is in any way directly or remotely interested in the result. ~~Further~~ Our conclusions in this case may be at variance with those held by judges of other <sup>Courts</sup> Quarter Sessions in this State, but we feel that so far as this Court is concerned, and until some of our Appellate Courts pass directly upon the qualifications of petitioners and exceptants in proceedings of this character we should hold to this view.

Now, February ~~17~~<sup>18</sup>, 1913, after full argument and upon due consideration, it is ordered, adjudged and decreed that the motions in this case of January 24th, 1912 and August 14, 1912, to dismiss exceptions, be and same are sustained, and the exceptions filed ~~since~~ ~~dismissed~~ December 1, 1912, and August 6th, 1912, be and same are dismissed at the costs of the exceptants.

By the Court

No. 7 June Sessions 191D

R. D.

In the Court of Quarter  
Sessions of Cambria County.

In re proceedings for Road  
from Sonman Station in  
Portage Township  
to the  
Borough of Portage.

Opinion and  
Decree of the Court.

*Filed 19 July 1913*

F. C. SHARBAUGH,  
OFFICIAL - STENOGRAPHER  
FOR THE  
Forty-Seventh Judicial District  
PENNSYLVANIA.

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