

In Re Petition to vacage a  
Public Road in Clearfield  
and Dean Townships.

In the Court of Quarter Sessions  
of Cambria County, Pennsylvania.  
No. 9, June Sessions, 1912.

OPINION BY THE COURT.

This case arose upon exceptions to the Report of Viewers and the petition upon which the same was based, to vacate a public road in the townships of Clearfield and Dean, in this County.

The second exception in this case seems to be the most important, and is as follows: "The petition is fatally defective in not complying with the requirements of the Act of the 23rd of April, 1909, P. L. 142, by fixing definitely the place of beginning." The petition reads as follows: "\*\*\*\*\* beginning at a point in Clearfield Township in the public road leading from the Lucas Moyer School House to 'Burnt Mill' (also known as the McDermitt Road) 1200 feet south from a point where the public road leading from St. Augustine to Ashville intersects said McDermitt Road, and passing through a part of Clearfield Township, etc. \*\*\*\*\*". The question here raised seems to be based upon the fact that the Lucas Moyer or McDermitt Road ends at the St. Augustine and Ashville Road, and at the point of ending of this road it connects with another public road known as the Sutton Road. These two distinct and separate roads, known as the Lucas Moyer or McDermitt Road and the Sutton Road form a continuous public road and at the point of connection the St. Augustine and Ashville road intersects the same, and

at 1200 feet south on the Lucas Moyer or McDermitt Road from this intersection is the point of beginning of the public road now sought to be vacated, which is, as we view it, designated and definitely established and fixed with an unmistakable certainty that the same could at any time be definitely located by any one who may have occasion to do so. It is true what now appears to be known as the Sutton Road and which forms as a physical fact a continuation of the Lucas Moyer or McDermitt Road, was not referred to in the petition to vacate, but the same was located as being part, or a continuation of the Lucas Moyer road, and we fail to see how the mere fact of a failure to designate where one public highway ends and another begins can have any effect in this case, especially where the two form one continuous public highway and where it is the location of the intersecting public road, as in this case the St. Augustine and Ashville road, which forms the basis or landmark in locating the point of beginning of the road in question. All of these roads at this point, at least, are conceded to be already opened.

On the case of Salisbury Township Road, 19 Dist. Repts. 1120, the court said: "The express purpose of the Act is to have an accurate designation of the proposed road so that the State Highway Department Survey may be complete and up to date;" and to this we will add that for the further reason that upon a survey of the road the same may be definitely located upon the ground, which is all important in the furtherance of our present contemplated system of road improvements. We are of the opinion that the point of beginning as designated in the petition to vacate the road in this case is definitely fixed and is in compliance with the letter and spirit of the Act of April 23rd, 1909, P. L. 142.

The fourth exception, is as follows: The petition is fatally defective in not complying with the Act of the 23rd of April, 1909, P. L. 142, in fixing definitely the place of ending of the road sought to be vacated." The designation of the point of ending as set forth in the petition to vacate is as follows: "\*\*\*\*\* to a point in the public road known as the Ashville and Dysart Road, 1045 feet north from a point where the public road leading to Baker's Mines intersects said Ashville and Dysart Road", and then the petition proceeds and gives the number and term of the proceedings to lay out the road now sought to be vacated as well as giving the volume and page of the Road Docket in the office of the Prothonotary and Clerk of the Court of Quarter Sessions in which the same is recorded. It is further urged on the part of the exceptant that the public road leading to Baker's Mines does not intersect the said Ashville and Dysart Road, as alleged in the petition to vacate, and that the language of the Act of Assembly is explicit and that the beginning or ending must be fixed from an "intersecting public road, street or railroad already opened." This, we concede, is the language of the Act of Assembly and that the same is mandatory. The fact is that in this case the road leading to Baker's Mines from the Ashville and Dysart Road does not intersect with the same, but simply connects or is joined with the Ashville and Dysart Road, and that the nearest actual intersecting road with the Ashville and Dysart Road, upon which the point of ending of the road to be vacated, is fixed, is between three and four miles, an unreasonable distance from the point of ending or terminus. It would be clearly impracticable to hold that the petition to vacate in this case should give the exact distance of the point of ending on the Ashville and Dysart Road from the nearest intersect-

ing public road, in the sense that the intersecting road was one that cut through or crossed the Ashville and Dysart road, as this would require a measurement for a distance of miles which would be uncertain and inexact and would tend to defeat the clear intention of the Legislature when they enacted by the Act of April 23, 1909, P. L. 142, that "all petitions \*\*\*\*\* shall fix definitely the point of beginning and the point of ending by giving the exact distance from an intersecting road, street or railroad already opened" when to locate such an intersecting road with the road upon which the point of ending is located, it would be impracticable to fix the exact distance. But as we read and understand the opinion of President Judge Rice of the Superior Court in Kennedy Township Road, 50 Pa. Superior Court 26, we are satisfied from what was said by him in that case that we have at least a suggestion that will aid us in determining the question before us; that is, whether or not the ending of the road proposed to be vacated, at a point on a public road at an exact distance given from a public road already opened and touching or opening into said road upon which said ending point is located, rather than in fact intersecting with the same, is a compliance with the Act of April 23, 1909, P. L. 142. In the case last cited, Judge Rice said: "Having regard to the purpose of the enactment, the words may be and should be so construed as relating to or at least including a road, street or railroad which intersects the public road upon which the terminal point of the road proposed to be laid out is situated. We need not in the present case, stop to inquire whether the word: "intersect" is used in the literal sense of crossing, or in that sense as well as in the sense of touching and opening into. But that it refers to the crossing or joining or opening into the road upon which the terminal point is situated, we entertain no doubt.

This seems to clear the doubt, if any exists, of the fact at least where it would be impractical to give the exact distance from an intersecting public road with the public road upon which the point of beginning or ending is located, that the exact distance to said point may be given from a public road already opened which joins or opens into the road upon which the terminal point is given. We are of the opinion that the terminal point given of the road proposed to be vacated in this case is definitely fixed and is in compliance with the true meaning and intent of the requirements of the Act of Assembly approved the 23rd day of April, 1909, P. L. 142.

The exception which raises the question as to whether or not the viewers or reviewers in this case, who have filed their oath of office under the provisions of the Act of 23rd of June, 1911, P. L. 1123, which provides: "Section 3. \*\*\*\*\* Each member of the Board of viewers, before entering upon the duties of his office, shall take and subscribe to an oath or affirmation to perform faithfully all the duties imposed upon him by law" should, in addition thereto also be required to take and subscribe to the oath required of road viewers under the act of June 13th, 1836, P. L. 551, section 53, we believe to be without merit. We are of the opinion that the oath required to be taken by members of the Board of View under the third section of the Act of 1911, P. L. 1123, if taken and filed as provided for by that Act is all that is required of the them.

And now, April 24<sup>th</sup> A.D., 1913, after full hearing and upon due consideration, all of the exceptions to the confirmation of the report of viewers in this case are over ruled, and the

Prothonotary is directed to enter an order of final confirmation in this case, as is provided by law and the Rules of Court.

By the Court

To which order and decree the exceptant, James Tiernan, excepts, and prays that a bill be sealed: all of which is the day and year aforesaid accordingly done.

By the Court

In the Court of Quarter Sessions of Cambria County, Pa.  
No. 9 June Sessions, 1912.

In Re Petition to Vacate a  
Public Road in Clearfield  
and Dean Townships.

OPINION AND DECREE.

Filed 27 April 1913

Marlin W. Stephens,  
President Judge 47<sup>th</sup> Judicial District of Penna.,  
Johnstown, Pa.

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

In re petition to vacate public road in Clearfield and Dean Townships.

No. 9 June Sessions, 1912.

PETITION FOR REVIEW.

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

The petition of the undersigned inhabitants and taxpayers of the Townships of Clearfield and Dean, in the County of Cambria and State of Pennsylvania, respectfully represents.

That a petition was presented to this Court to No. 9 June Sessions, 1912, praying the Court to vacate a public road described in said petition by the following points of beginning and ending: "Beginning at a point in Clearfield Township in the public road leading from the Lucas Moyer school house to Burnt Mill (also known as the McDermitt Road) 1200 feet South from a point where the public road leading from St. Augustine to Ashville intersects said McDermitt Road \*\*\*\* to a point in the public road known as the Ashville and Dysart Road 1045 feet North from a point where the public road leading to Bakers Mines intersects said Ashville-Dysart Road."

Whereupon the Court appointed viewers for the purpose aforesaid whose report recommending the vacation of said road was filed at September Sessions of said Court.

Your petitioners further represent that they and other inhabitants and taxpayers of said Townships of Clearfield and Dean will be greatly inconvenienced and damaged if the report of Viewers is permitted to stand and said road to be vacated, as the said road is necessary for the use of the public in said townships.

Your petitioners therefore pray the Court to appoint

reviewers in the above proceeding; and, as the petition for viewers in this proceeding does not correctly designate the place of beginning and the place of ending of the road proposed to be vacated, your petitticners aver such places of beginning and ending are as follows: "Beginning at a point on the public road laid out as leading from the Lucas Moyer school house in Clearfield Township to the Dry Gap Road in Dean Township, said point being South 900 feet measured along said first mentioned road from an intersection formed by the road first mentioned, the road from St. Augustine to Ashville and the road from the road from St. Augustine to Ashville, beginning near the Lucas Moyer school house to point in public road about sixty rods Southeast of the residence of David Sutton, deceased, in Clearfield Township; and ending at a point in Dean Township on the road from Ashville to Dysart at a distance of 4552 feet measured along said Ashville-Dysart Road from the point of intersection of said Ashville-Dysart Road with a public road known as the Dry Gap Road or road leading over the mountain to Altoona.

And they will ever pray, etc.

CLEARFIELD TOWNSHIP.

<u>James Beringer</u>	<u>J. F. Kuley</u>
<u>Joseph Beringer</u>	<u>Samuel D. Lee</u>
<u>John Boudin</u>	<u>Thomas Byrd</u>
<u>Hiram Palmer</u>	<u>Francis Tierman</u>
<u>James Tierman</u>	<u>Rich Adams</u>

DEAN TOWNSHIP.

<u>W. E. Ranner</u>	<u>John A. Swires</u>
<u>J. S. Beldin</u>	<u>J. P. Swire</u>
<u>Frank Maple</u>	<u>J. W. Pison</u>
<u>Charles DeLoach</u>	<u>Joseph Beringer</u>
<u>B. F. Adams</u>	<u>Charles Brubie</u>
<u>Frank H. Adams</u>	<u>J. C. Grimes</u>
<u>John Swire</u>	<u>John Grimes</u>

Cambria County, ss:

James Tiernan being duly sworn according to law says that the matters set forth in the foregoing petition are true and correct as he verily believes.

Sworn and subscribed before me  
this 30<sup>th</sup> day of November, 1912.

J. J. Rhoady, Jr.

James Tiernan

No. 9 June Sessions, 1912.

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

In re Petition to Vacate Public  
Road in Clearfield and Dean Town-  
ships.

*Filed 4 Decemr. 1912,*

*Now 4 Dec. 1912, within  
petition read and ordered to  
be filed. By the Court*

PETITION FOR REVIEW.

*Now 6 May 1913. the  
Court appoint  
S. A. Niskey by  
J. D. Kettle  
Adam Sherman  
reviewers as prayed for  
By the Court*

Kittell & Shettig.

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

In re petition to vacate public road in Clearfield and Dean Townships.

No. 9 June Sessions, 1912.

EXCEPTIONS TO REPORT OF VIEWERS.

James Tiernan, a resident and tax<sup>payer</sup> of Clearfield Township, Cambria County, being a party interested in the road sought to be vacated by above proceedings files these exceptions to the Report of Viewers and the petition upon which the same was based.

1. The petition is misleading and inaccurate in that it alleges a desire to vacate the said road, whereas upon a careful inspection of the road described in the petition and from knowledge of the premises, it is found that only a portion of the road in question is sought to be vacated.

2. The petition is fatally defective in not complying with the requirements of the Act of 23 April, 1909, P. L., 142, by fixing definitely the place of beginning, in that,

a. It alleges the road from the Lucas Moyer school house to the Burnt Mill to have been an intersecting road with the road leading from St. Augustine to Ashville; whereas said Lucas Moyer-Burnt Mill Road does not intersect with the St. Augustine-Ashville Road, but ends thereat, and the intersection is completed by a certain other public road known as a public road beginning at a public road leading from St. Augustine to Ashville at a point<sup>near</sup> Lucas Moyer school house and ending at public road at point about sixty rods southeast of residence of David Sutton, deceased, in Clearfield Township, which said road was laid out to No. 4 September Sessions, 1891, said proceedings being recorded in Road Docket Vol. 4 at page 269. Said last mentioned road is not mentioned in the petition in fixing the place of beginning of the road (or portion of road) sought to be vacated.

b. The petition alleges that the place of beginning of the road (or portion of road) sought to be vacated is located 1200 feet South from the alleged intersection of the Lucas Moyer-Burnt Mill Road with the St. Augustine-Ashville Road; whereas the exact distance from the intersection to the place of beginning of the road (or portion of road) sought to be vacated is in reality much less than 1200 feet.

3. The petition is fatally defective in referring to the road (or portion of road) sought to be vacated as the road leading from the Lucas Moyer school house to the Burnt Mill. The records of this Court do not show that any such road was ever laid out and opened by authority of Court. And the caption of the petition shows the road in question to be a road from the Lucas Moyer school house to the Ashville and Dysart Road, the records of this Court not showing that any such road was ever laid out and opened by authority of Court; the proceedings referred to in the petition as recorded in the Road Docket showing the laying out and opening of a road different from either of the roads mentioned in the petition as the road to be vacated.

4. The petition is fatally defective in now complying with the Act of 23 April, 1909, P. L., 142, in fixing definitely the place of ending of the road sought to be vacated in that,

a. It does not fix the distance from said place of ending to some intersecting road but fixes said distance by a road leading to Bakers Mines (petition does not state from whence) which said road does not intersect with the Ashville-Dysart Road, but ends thereon.

b. The distance from said alleged intersecting road given in the petition is not the exact distance; the petition gives such distance as 1045 feet, whereas the exact distance required to be given is in reality very much less than 1045 feet.

5. The viewers were influenced in arriving at their decision and report by certain papers shown them by persons in-

terested in having this road vacated, said papers purporting to be rights-of-way or releases for a private road for this exceptant through the lands of persons whose property will intervene between his residence and the public road should this road be vacated.

6. The viewers were guilty of misconduct and showed ignorance and failure to understand their duties under their appointment as evidenced by remarks made by at least two of said viewers to the effect that after examining the road they would decide in favor of the party having the largest crowd present.

Kittell & Shetty  
Attorneys for Exceptant.

Cambria County, ss:

James Tiernan being duly sworn according to law says that the matters of fact alleged in the foregoing exceptions are true and correct as he verily believes.

Sworn and subscribed before me  
this 26 day of November, 1912.

J. J. Rhody J.P.

his  
James T. Tiernan  
mark

No. 9 June Sessions, 1912.

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

In re Petition to Vacate Public  
Road in Clearfield and Dean Town-  
ships.

EXCEPTIONS TO REPORT OF VIEWERS.

*Filed 7 December, 1912.*

Kittell & Shettig.

-: IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY :-

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In re Petition to vacate  
public road in Dean and  
Clearfield Townships.

No. 9 R.D. June Sess. 1912.

#### DEPOSITIONS

Of witnesses on part of Petitioners in abovestated case taken before F.C. Sharbaugh, Commissioner to take testimony, at the Attorneys' Room, Court House, Borough of Ebensburg, County of Cambria and State of Pennsylvania, January 16th, 1913, pursuant to Rule, copy of which is hereto attached, and agreement of counsel on part of both Exceptant and Petitioners that depositions might be taken on both sides on the same Rule by the said F. C. Sharbaugh, in short-hand, reduced to typewriting, and without the necessity of having <sup>the witnesses</sup> sign the same.

#### Appearances,

For the Petitioners, Messrs. McCann and Hibbs.

For the Exceptant, Messrs. Kittell & Shettig.

Marcellus Wharton, sworn.

DIRECT EXAMINATION by Mr. McCann:

Q-- You are one of the supervisors of Clearfield Township? A-- Yes.

Q-- You were present at the view? A-- Yes, sir.

Q-- And you measured the distance from the Ashville-St. Augustine road, along the McDermitt or Sutton road, to the point where the road sought to be vacated in these proceedings begins, did you not? A-- Yes, sir.

Q-- What was the distance? A-- Twelve hundred feet.

Q-- How often did you measure that? A-- we measured it three times.

Q-- You found it the same each time? A-- Yes, sir.

Q-- What did you measure it with? A-- Fifty-foot tape line.

Q-- You are positive about that distance? A-- I am positive about that distance.

Q-- You measured the distance from the Dean Township terminus to the road leading to Baker's mines? A-- Yes.

Q-- What was that distance? A-- 1,045 feet.

Q-- How often did you measure that road? A-- Twice.

Q-- Since these exceptions were filed? A-- I measured it yesterday afternoon.

Q-- And found the distance the same? A - The same as before.

Q-- How did you measure that? A-- With a fifty-foot tape line.

Q-- The McDermitt road which passes the Lucas Moyer school house crosses the Ashville-St. Augustine road, does it not, through Clearfield Township? A-- There is a cross-road there.

Q-- In other words, the road leading from Ashville to St. Augustine crosses the McDermitt road near the Lucas Moyer school house? A-- Yes.

Q-- It was at that point you began the measurement? A-- I began the measurement at that point.

Q-- And found it was twelve hundred feet? A-- Twelve hundred feet.

Q-- From that point to where? A-- To where we began to vacate.

Q-- The road which you seek to vacate begins at that point in the McDermitt road and ends in the Ashville -Dysart road in Dean Township? A-- Yes.

Q-- Ten hundred and forty-five feet from the road branching off the Ashville-Dysart road leading to Bakers' Mines? A-- Yes, sir.

Q-- You were present at the view? A-- Yes, sir.

Q-- State whether or not you saw any papers handed to the viewers? A-- Yes, sir.

Q-- State what occurred? A-- I gave Mr. Shoemaker a paper and I saw Mr. Tiernan give each one of the viewers, I believe, a paper; I know I saw him give Mr. Shoemaker a paper.

Q-- What did Mr. Shoemaker say when you gave him the paper? A-- He said he could not consider them, that they were not legal, that they were not legally gotten up, the ones I gave him.

Q-- What did he say about Mr. Tiernan's paper? A-- He didn't say anything about that, ~~know~~ at least I didn't hear him say anything.

Q-- You heard Mr. Shoemaker say that he could not consider them? A-- He said the papers I gave him was not legal.

Q-- Did you hear Mr. Campbell make any remarks? A-- I did not hear him make any remarks like that.

Q-- About the size of the crowd? A-- No, sir; I did not hear that.

Q-- Who was with you when you made the measurements? A-- William Wilt.

Q-- Is he here? A-- Yes, sir.

CROSS-EXAMINATION by Mr. Shettig:

Q-- You do not mean that you were in a position to have heard everything that Mr. Campbell said? A-- Certainly not, no.

Q-- Now the road that you call the McDermitt road, as I understand it, is the road which, when laid out, extended from the Lucas Moyer school house to the Dry Gap road?

A-- No, sir.

Q-- What do you understand to be the McDermitt road? A-- What I understand as the McDermitt road runs around and back into Ashville.

Q-- You are not seeking in this proceeding to vacate any part of the McDermitt road, are you? A-- No, sir.

Q-- You are not seeking to vacate any part of the public road which leads, or did lead, from the Lucas Moyer school house to the Dry Gap road? A-- Part of it; from where this road twelve hundred feet from the school house --where it comes out on to the McDermitt road-- from there to the Ashville and Dysart road in Dean Township.

Q-- I do not think that you understand the question: as I understand this, the road from the Lucas Moyer school house to the Dry Gap road must have been laid out prior to the road known as the McDermitt road? A-- I could not say as to that:

Q-- Isn't it a fact that the McDermitt road cuts off from the road leading from the school house to the Dry Gap road at a point about nine or twelve hundred feet from the school house? A-- I always knew it as the McDermitt road from the school house around to Ashville.

Q-- You regarded the entire road from the school house around to Ashville as the McDermitt road? A-- Yes.

Q-- You know that the end of the road next to the school house was part of ~~the~~ another road known as the road from the school house to the Dry Gap road? A-- No, sir; I do not know that.

Q-- Do you know of a road called the Sutton road? A-- Yes.

Q-- That is the road that comes into the Ashville- St. Augustine road at the Lucas Moyer school house? A-- Yes, sir.

Q-- And that road together with the road which you have referred to as the McDermitt road forms a cross-road with the Ashville-St. Augustine road? A-- yes, sir.

Q-- The road which you call the McDermitt road does not itself cross the Ashville-St. Augustine road but merely runs into the last mentioned road? ~~xxxxxxx~~ A-- It is a cross road.

Q-- You have said you regarded the road from the school house to Ashville as being the McDermitt road? A-- Yes.

Q-- Does that road cross the Ashville and St. Augustine road? A-- I could not tell you that; I do not know how it was laid out or anything like that.

Q-- But you do know that the Sutton road is a continuation of what you call the McDermitt road? A-- I wouldn't know whether it is a continuation or not; the four roads come together there.

Q-- You have measured this and found it to be twelve hundred feet? A-- yes.

Q-- You used a tape line? A-- Yes.

Q-- A fifty-foot tape line? A-- Yes.

Q-- And how did you measure --along the center of the road? A-- The center of the road.

Q-- You did not take a straight line --you took the curves where there were curves in the road? A-- We took the center of the road; there are no curves to amount to anything.

Q-- At the other end --at the Dean Township end-- does this road to Bakers' Mines cross the Ashville-Dysart road? A-- No, sir.

RE-DIRECT EXAMINATION by Mr. McCann:

Q-- Do you know whether any road cross the Ashville and Dysart road at any place beyond that point? A-- At Dysart there is a road comes in from Clearfield Township at the railroad crossing.

Q-- How far is that away? A-- In the neighborhood of two miles; ~~the~~

Q-- The Ashville and Dysart road ends in that road? A-- No, it runs on through Dysart.

Q-- Does that road cross clear over it? A-- It is not a cross-road from where the road comes into the Ashville-Dysart road from the Buckhorn.

Q-- It is the same road leading to Bakers' Mines? A-- No, sir; the road comes down from the Buckhorn on to the Dysart-Ashville road, then it is probably two hundred yards down from there where a road leads off across the railroad and into the township.

Q-- The road which comes down from Bakers' Mines does not cross the other road at any place? A-- It does at Condron.

Q-- Where is that? A-- In the neighborhood of two miles beyond Dysart.

Q-- How far would that be from the end of the Dean Township terminus of the township road? A-- I judge it would

be four miles.

Q-- You don't know when that road was laid out? A-- No, sir.

Q-- That road does cross? A-- That one does cross.

By Mr. Shettig:

Q-- These papers you handed to the viewers you handed to them with the hope that they would influence the viewers in vacating the road by showing that they were persons living along the road who could get private roads, is that the idea?

A-- Not altogether. I just gave them to show that Mr. Tiernan wouldn't be shut in and have to come out at his own expense, or that it wouldn't cost him anything to get out.

William Wilt, sworn.

DIRECT EXAMINATION by Mr. McCann:

Q-- Were you with Mr. Wharton when he made the measurements that he has testified to? A-- Yes, sir.

Q-- State whether or not you helped him to check up the measurements? A-- I carried the end of the tape line, stretched it up tight, and made it twelve hundred feet.

Q-- These measurements are right? A-- Yes.

Q-- On both ends of the road? A-- Yes; the Dean Township end was ten hundred and forty-five feet.

Q-- To the road leading to the Ashville-Dysart road leading to Bakers' mines? A-- Yes.

CROSS-EXAMINATION by Mr. Shettig:

Q-- If anybody else measured it and didn't get the same result would he be correct or incorrect? A-- How would he be correct if he got anything different?. When a man marks the end of his own measurement each time I don't see how he is going to make a mistake.

By Mr. McCann:

Q-- You measured it very carefully did you? A-- Yes.

Q-- You knew you had to measure it carefully because you were coming into court? A-- Yes.

R. E. Peterson, sworn.

DIRECT EXAMINATION by Mr. McCann:

Q-- Do you know how long Mr. Tiernan's road has been open from the point where it is now sought to be vacated to his residence and through to the McDermitt road in Clearfield Township? A-- No, I don't. I have heard some old residents down there say that it is something like twenty years more or less.

Q-- Where was the part of the Dry Gap road that has been vacated? A-- It joins the road leading from Ashville to Dysart, around opposite where the road is that they seek to vacate now; it opened out on to the road and up ~~on~~ around the Dry Gap road about two and one-half miles from the Buckhorn.

Q-- Did it cross the old Ashville-Dysart road there?

A-- I guess this road was there before the Ashville and Dysart road was put through.

Q-- Was it in that proceeding locating the Ashville-Dysart road that that end of the Dry Gap road was vacated?

A-- No, sir; it has only been vacated about four or five years ago.

Q-- You did not do any of the measuring of the distances down there? A-- No, sir.

Q-- You could not say what the distance is from the Dean Township end of Mr. Tiernan's road to the road leading to Bakers' Mines? A-- No, I could not. I am familiar with the road and I have been over both ends of it. I am positive though that from the Lucas Moyer school house to the McDermitt road is farther than from the end of Mr. Tiernan's road up to the Bakers' Mines road; I am sure of that,

By Mr. Shettig:

Q-- You would not attempt to put in feet any of the distances? A-- No, sir.

Adjourned to meet at 1:30 P.M. at the office of Kittell & Shettig.

Afternoon Session.

Joseph Shoffner, sworn.

DIRECT EXAMINATION by Mr. McCann:

Q-- Were you at the view held in this case? A-- Yes, sir.

Q-- State whether or not you heard any conversations between any of the parties who were present at the view and any of the viewers? A-- I did not hear any conversation relating to anything about the view at all.

Q-- Did you hear Mr. Campbell say that he would decide the view according to the crowd or party that had the largest crowd? A-- I did not.

CROSS-EXAMINATION by Mr. Shettig:

Q-- Were you in a position to have heard everything that was said? A-- I was within fifteen feet of them.

Q-- Considerable talk going on at the time? A-- There wasn't so very much.

Q-- You would not say that Mr. Campbell could not have said that as you have not heard it? A-- No, sir; I would not say that, but I did not hear anything.

J. J. Grove, sworn.

DIRECT EXAMINATION by Mr. McCann:

Q-- You were present at the view in this case? A-- yes, sir.

Q-- State whether or not you heard Mr. Campbell say anything about deciding the view in favor of the party who had the largest crowd there? A-- Indeed I did not.

Q-- Were you present during all of the proceeding? A-- I was there when they started; they were all mixed up in starting and were getting ready to start when the talk was going on. I was off maybe ten or twelve feet from them, and there was nothing discussed of the kind that I heard.

By Mr. Shettig:

Q-- Were you in a position where you would have heard it if it had been said? A-- If it had been said loud enough likely I could have caught part of it anyhow.

A. M. Shoemaker, sworn.

DIRECT EXAMINATION by Mr. McCann:

Q-- You were one of the viewers in this proceeding?

A-- I was.

Q-- You were present during the entire time of the view?

A-- I was.

Q-- State whether or not any papers were handed to you by any of the parties present? A-- There were some papers handed to me either by some of the parties who were there at the time or by one of the other viewers; I would not be sure who handed them to me.

Q-- Do you remember what you stated to the party who handed the papers to you at the time, if anything? A-- I am not positive whether I said anything.

Q-- Did these papers have any influence upon you in determining your action or the action of any of the Board of Viewers? A-- As for the other members of the viewers I could not state positively, but so far as I am concerned they did not with me.

Q-- Did you tell the other viewers that they need not consider these papers? A-- I am not positive as to what was told them, and I am not sure whether they saw them at all.

Q-- Did you hear Mr. Campbell, <sup>of</sup> one of the viewers, say to any of the parties who attended the view that the viewers would decide in favor of the party having the largest crowd present? A-- I don't know that I heard any statement of that kind.

Q-- Did anything of the kind have any weight in determining the report of the viewers in their determination? A-- Absolutely none with me. To the best of my recollection the parties who were anxious for the road had the greater ~~XXXXXXXX~~

representation there, but as I recall we decided that the road should be vacated.

Q-- You stated your reasons in the report, did you not, for the vacation of the road? A-- My recollection is that we probably stated some of our reasons, I would not say all; I have not looked at the report since it was gotten up and I am not positive just what we did state in it.

Q-- You say you did not measure the distance from the termina of the road to the intersecting roads mentioned in the petition? A9- I do not recall that we did. It seems to me from one termini of the road to the intersecting road was close on to three-fourths or four-fifths of a mile; that is my recollection, but we did not measure it; we measured the road from one termini to the other though.


Q-- Did any influence other than your observation of the premises guide you in your determination as a board of viewers in arriving at the conclusion set forth in your report? A-- I do not recollect anything other than we acted on our pbservation of the ground, the road generally, and the few occupants and farms along the road.

No cross-examination.

(The testimony of part of petitioners closes)

State of Pennsylvania,<sup>ss</sup>  
County of Cambria, ss)

I hereby certify that the foregoing depositions of witnesses on part of the Petitioners in the matter of the Petition to vacate public road in Dean and Clearfield Townships, entered to No. 9 R.D., June Sessions, 1912, were taken before me as Commissioner pursuant to Rule, copy of which is hereto attached and made part of this report, and agreement of Counsel as noted in the caption to these depositions.

 (SEAL)  
Commissioner to take testimony  
and Court Stenographer.

-----  
In re Petition to vacate  
public road in Dean  
Township.  
-----  
-----  
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Quarter Sessions  
In the Court of ~~Common Pleas~~ of Cambria  
County, Pa.

Of ~~June Sessions~~ <sup>1913</sup> ~~1902~~, A. D. ~~1902~~, No. 9 B. D.

And now, to wit, the eleventh day of January A. D. ~~1902~~ <sup>1913</sup>; Rule  
on part of Exceptants to take deposition of witnesses  
before F. 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 eleventh of January  
~~1902~~. 1913

(Seal of Court)

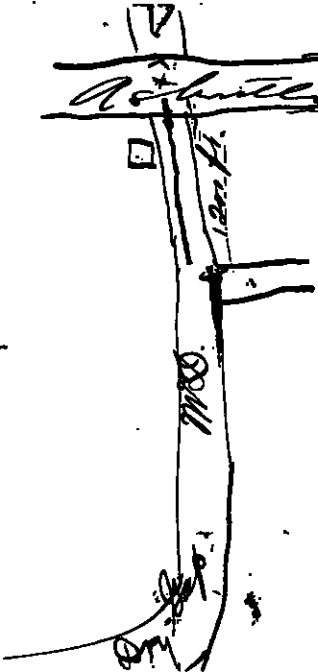
S. S. Kinkead  
Clerk. ~~Printed Name~~

To: the petitioners in the above stated pro-  
ceedings, or their counsel, John H. McLean, Esq.  
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 Exceptions on  
part of the Exceptant will be taken at the office of F. C. Sharbaugh  
Esq. Ebensburg, Cambria Co., Pa. on Thursday  
the 16th day of January A. D. 1913, between the hours  
of 9:00 o'clock A. M., and 9:00 o'clock P. M., before said  
F. C. Sharbaugh, Esq. 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.

Rittell Shetty  
attys. for Exceptant.

-1887-

1. = 140 H. to 147 R. O. =



*Admitted to SA*

No. 9 June Sess. 1912 R. D. ~~xxxxxxx~~

In re Road

in

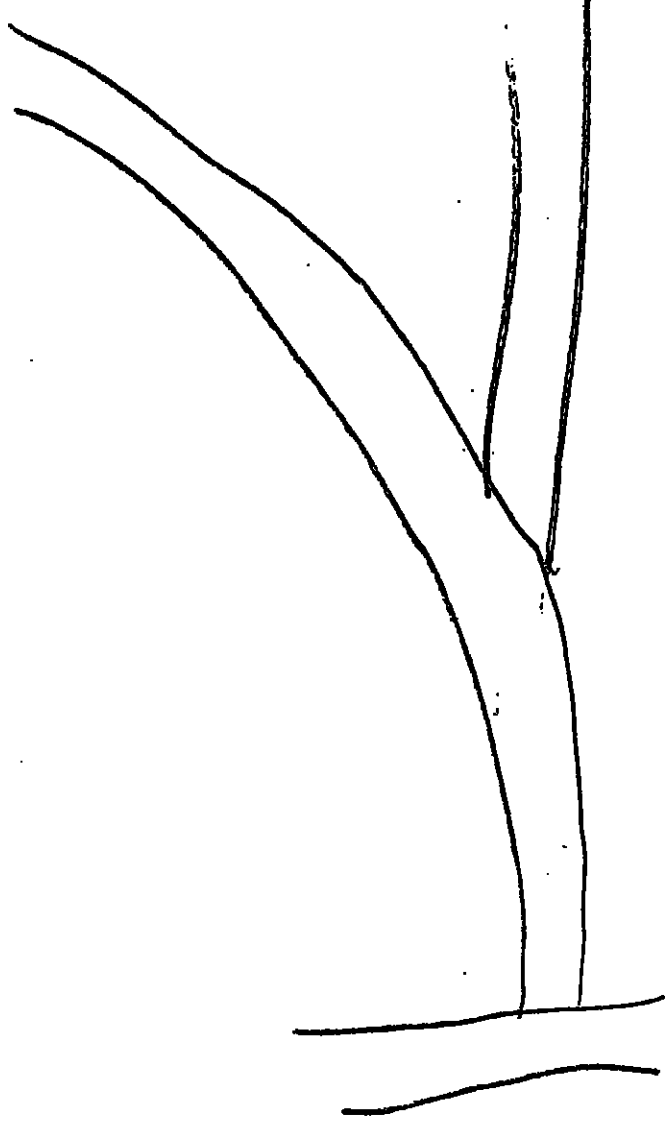
Dean Township.

Copy

Rule on part of Excerptants

To take depositions

K. & S.



No. 9 R.D., June .

In the Court of Quarter  
Sessions of Cambria County.

In Re  
Petition to Vacate Public  
Road in Dean and Clearfield  
Townships.

Depositions of Petitioners'  
Witnesses.

*Commission for \$5.00  
Paid by J. H. F. Co. Comm. by  
F. C. Sharbaugh.*

*Filed 27 April 1913*

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

MOUNTAINEER-HERALD PRINT, EBENSBURG, PA.

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

In re Petition to vacate  
public road in Dean  
Township.

Of June ~~Session~~, A. D. ~~1908~~<sup>1912</sup>, No. 9-R.D.

And now, to wit, the eleventh day of January A. D. ~~1908~~<sup>1913</sup>, Rule  
on part of Exceptants to take deposition of witnesses  
before F. 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 eleventh of January,  
~~1908~~ 1913

A. A. Kirkend  
Clerk. ~~RECORDED~~

To the petitioners in the above stated proceed-  
ing, or their counsel, John H. McCann, Esq.  
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 Exceptions on  
part of the Exceptant will be taken at the Office of F. C. Shar-  
baugh, Esq., Cambria Co., Pa. on Thursday  
the 16th day of January A. D. 1913, between the hours  
of 9:00 o'clock A. M., and 9:00 o'clock P. M., before said  
F. C. Sharbaugh, Esq., 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.

Kittell Shettig  
Attys. for Exceptant

Now, 16 Jan'y, 1913, service accepted.

John H. McCann  
Att'y. for Petitioners.



-: IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY:-

-ooOoo-

In re Petition to vacate public road in Dean and Clearfield Townships. No. 9 R.D. June Sess. 1912.

DEPOSITIONS

Of witnesses on part of Exceptant in above-stated case taken before F. C. Sharbaugh, Commissioner totake testimony, Attorneys! Room, Court House, at ~~his office in the Center Ward~~ Borough of Ebensburg, County of Cambria and State of Pennsylvania, January 16th, 1913, pursuant to Rule, copy of which is heretc attached, and agreement of Counsel on part of both Exceptant and Petitioners that depositions might be taken on both sides on the same rule by the said F. C. Sharbaugh, reduced to typewriting without the necessity of having the witnesses sign the same.

Appearances:

For the Exceptant, Messrs. Kittell & Shettig.

For the Petitioners, Messrs. McCann and Hibbs.

Counsel for Exceptant offer in evidence Road Docket of Cambria County for the purpose of showing that no public road was ever laid out by order of Court leading from the Lucas Moyer School House to Burnt Mills, as alleged in the petition which seeks to vacate --or seems to seek to vacate-- such alleged road or a portion thereof.

Counsel for Exceptant offer in evidence Record of Proceedings entered to No. 7 of December Sessions, 1887, Road Docket, Court of Quarter Sessions of Cambria County, for the purpose of showing that the road referred to in the petition

~~XXXXXXXXXXXXXXXXXXXX~~

in this case, as recorded in Vol. 4 at page 142 of the Road Docket, is not a road leading from the Lucas Moyer School House to B<sup>u</sup>rn<sup>t</sup> Mills, but is a public road leading from the Lucas Moyer School House to the Dry Gap road in Dean Township.

Counsel for Petitioners object to the offer, first, for the reason that it is too general; second, for the reason that it is immaterial what the name of the road may be so long as it is the road described in the original petition.

James Tiernan sworn.

DIRECT EXAMINATION by Mr. Shettig:

Q-- Where do you reside? A-- Clearfield Township.

Q-- Are you a property owner and a taxpayer in Clearfield Township? A-- Yes, sir.

Q-- You are the person who filed exceptions to the report of viewers in this case? A-- Yes, sir.

Q-- Do you live along the road that is sought to be vacated by this proceeding? A-- Yes, sir.

Q-- There is a public road leading from the road known as the St. Augustine and Ashville Road which passes your farm? A-- Yes.

Q-- Is that the road that is sought to be vacated by this proceeding? A-- Yes.

Q-- In 1887 a road was laid out by order of Court which leads, or is described as leading, from the L<sup>u</sup>cas Moyer School House to the Dry Gap, in Dean Township; is that the road which passes your place? A-- Yes, that is the road.

Q-- Is that the road which these proceedings seek to vacate or a portion of it? A-- A portion.

Q-- What portion of this road is sought to be vacated by these proceedings? A-- Where they commenced is what we call the McDermitt road that runs past our place and ends at the Dysart road in Dean Township, -the Dysart and Ashville road.

Q-- Were you present at the view? A-- Yes.

Q-- When you say where they began do you refer to where the viewers began to make their survey or measurements? A-- I don't understand that.

Q-- Where did the viewers begin? A-- They began about or just nine hundred feet from the school house to where we call the McDermitt road.

Q-- Is this the point that is named in the petition as being twelve hundred feet from the St. Augustine-Ashville road? A-- Yes, that is the place on the ground.

Q-- Does the road from the Lucas Moyer School House to the dry Gap road intersect or cross the St. Augustine-Ashville road? A-- Yes, there is a road comes in right at the school house.

Q-- Does the Dry Gap road cross it? A-- Yes, it crosses at Dysart.

Q-- At the school house I mean? A-- At the school house, yes, where they left off, that road runs or crosses the St. Augustine road from that point back.

Q-- We will speak of this road that they are trying to vacate as your road; does your road itself cross the road from St. Augustine to Ashville or does it stop in the road from St. Augustine to Ashville at the school house? A-- There

is a part they ain't vacated; it stops there.

Q--- I mean any part of the road? A-- Yes, it stops at the school house.

Q-- Is there across-roads at the school house? A-- Yes.

Q-- How is that cross-road formed? A-- By what we call the Sutton road comes in there at the school house.

Q-- Is the Sutton road a continuation on the ground of your road? A-- Yes.

Q-- A public road was laid out by order of Court which is described in this way in the proceeding; "Beginning in the public road leading from St. Augustine to Ashville at a point near the Lucas Moyer School House and ending at public road at point about sixty rods southeast of the residence of David Sutton, deceased, in Clearfield Township." State whether or not that is the Sutton road? A-- That is the Sutton road.

Q-- As I understand this Sutton road comes into the road from St. Augustine to Ashville on one side and your road comes into this St. Augustine-Ashville road on the other side at the same point? A-- Yes, at the same point.

Q-- And these three roads form a <sup>CROSS</sup> ~~XXX~~-roads or intersection, is that correct? A-- The Sutton road comes in there and our road comes in there and the Ashville-St. Augustine road comes in there.

Q-- Then they make a cross-roads? A-- Yes, I would think so.

Q-- State whether or not you measured the distance from the public road leading from St. Augustine to Ashville to the point where the viewers or where this petition establishes the place of beginning of the road sought to be vacated?

A-- Me and Mr. McGuire measured it at nine hundred feet exactly.

Q-- What did you measure it with? A-- A fifty-foot tape line, and we stretched the tape line up tight and yet there was six inches on the tape line over fifty feet in each measurement.

Q-- In other words, your tape line was fifty and one-half feet in length? A-- Yes.

Q-- How did you arrive at nine hundred feet --did you count the number of feet on the tape line? A-- The number of lengths of the tape line.

Q-- Was this measuring done accurately? A-- Yes, sir.

Q-- Do you swear that nine hundred feet is the distance? A-- Yes.

Q-- You measured as I understand from the road to Baker's Mines, along the Ashville-Dysart road, to the point where the road sought to be vacated comes into the Ashville-Dysart road? A-- Yes.

Q-- Who assisted you in this measurement? A-- Mr. Hiram McGuire.

Q-- The same gentleman who assisted in the measuring of the other line? A-- Yes.

Q-- What was the distance? A-- Nine hundred feet.

Q-- State whether or not this measurement was made in the same manner as the measurement at the other end of the road? A-- Yes, the same and with the same line and on the same day.

Q-- Is nine hundred feet the accurate distance? A-- Nine hundred feet is the distance.

Q-- Could it be more than nine hundred feet? A-- No.

Q-- Does the road to Baker's Mines cross over the Ashville and Dysart road? A-- No.

Q-- Then there is no cross-roads formed by the Ashville-Dysart road and the road to Baker's Mines? A-- No, sir; there is a cross-road at Dysart, what they call the Dry Gap road crosses over it.

Q-- But there is not at the point mentioned in this petition? A-- No.

Q-- You were present at the view? A-- Yes.

Q-- What if anything do you know about certain papers being shown to the viewers by persons active in attempting to vacate the road? A-- Mr. Wharton handed a paper to Mr. Shoemaker of the Board of Viewers that Mr. McDermitt had signed for me a road out, and Mr. Grove had also signed for me a road.

Q-- Who is Mr. Wharton? A-- That gentleman sitting there.

Q-- What office does he occupy? A-- Supervisor of Clearfield Township.

Q-- Did you read those papers? A-- No, sir.

Q-- Do you know what was done with them by Mr. Shoemaker? A-- He put them in his pocket.

Q-- Did he state anything about the legal effect of the papers? A-- I said to Mr. Shoemaker, "That is no good," and he said undoubtedly it was good. I said, "Mrs. McDermitt couldn't sign me a road, she had only a lifetime interest."

Q-- What if any remarks did <sup>any</sup> of the viewers make concerning the size of the crowd for and against the proceeding? A-- I heard Mr. Campbell saying that they would go and locate the road and they would count sides and whichever had the biggest majority that is the way they would have to decide.

Q-- Was there any other person present to your knowledge and in position to have heard Mr. Campbell make that remark?

A-- Mr. O'Malley heard it.

Q-- Who else? A-- My brother Frank Tiernan.

Q-- Was this remark made before the viewers had visited the various parts of the road? A-- On the commencement, at the school house, before they commenced measuring on up nine hundred feet farther.

Counsel for Exceptant offers in evidence proceedings in the Quarter Sessions to No. 4 September Sessions, 1891, R.D., Vol. 4, page 269, showing the laying out of a public road beginning at public road leading from St. Augustine to Ashville at a point near the Lucas Moyer School House and ending at public road at a point about sixty rods southeast of the residence of David Sutton, deceased, in Clearfield Township. This being the road identified by the witness as the road which makes the intersection or cross-road at the Lucas Moyer School House and being road which exception No. 2 (A) alleges is not mentioned in the petition in establishing the place of beginning under the Act of 1809.

CROSS-EXAMINATION by Mr. McCann:

Q-- You say you measured the distance from the Ashville and St. Augustine road, which passes the Lucas Moyer school house, to the beginning of this road which is sought to be vacated? A-- We measured the road from the St. Augustine road to the place that the viewers commenced to vacate the nine hundred feet.

Q-- And at that point the McDermitt road meets the road leading from St. Augustine to Ashville? A-- Where they commenced to vacate, yes.

Q-- And on the opposite side of the road, just beyond the McDermitt road, there is a continuance of the road, is there not? A-- Which road?

Q-- The McDermitt road in effect crosses the Ashville-Dysart road and goes on through Clearfield Township? A-- No, sir.

Q-- There is a cross-road at the Lucas Moyer school house? A-- Yes; that is known as our road.

Q-- The road there at the Lucas Moyer school house? A-- The McDermitt road was taken off that road.

Q-- The McDermitt road in effect is the same as though that road had again crossed the McDermitt road and continued on beyond the Ashville and Dysart road? A-- Is that the road you mean that you are trying to vacate?

Q-- No, sir; I mean the McDermitt road? A-- What we call the McDermott road, it goes around above that.

Q-- Isn't there a road crosses right there? A-- No, sir; there is the St. Augustine road comes into the Chest Springs road there, but there is no road crossing there; the McDermitt road just comes into the Ashville road.

Q-- Does the Sutton road come in there? A-- Yes, at the school house.

Q-- The Sutton road is a continuation of the McDermitt road? A-- No, sir; the McDermitt road is a road that was taken off the road you are trying to vacate; the McDermitt commences where you people commence to vacate the road at the one end.

Q-- The point we are trying to get at is this; isn't it true that the two roads cross at or near the Lucas Moyer school house? A-- Yes.

Q-- There is a cross road there? A-- There is a cross road there.

Q-- Tell what forms that cross-roads? A-- This road that they call the McDermitt road --I don't call it that-- it crosses from there into the Sutton road and runs into what I call the Chest Springs road.

Q-- Then there is an intersecting road at that point, - the two roads come together at that point? A-- Yes, sir.

Q-- You say that is nine hundred feet instead of twelve hundred feet? A-- I have said so.

Q-- How often did you measure it? A-- Once.

Q-- You have stated that the other terminus of your road is in Dean Township; where does that end? A-- On the Dysart and Ashville road.

Q- You measured over the distance from where that road ends to the road that leads into the Ashville and Dysart road to Baker's Mines? A-- Yes.

Q-- How far did you find it to be? A-- Nine hundred feet.

Q-- You say that the road leading from Baker's Mines to the Ashville-Dysart road does not cut clear across, continuing beyond the Ashville road? A-- Yes, sir; it does not intersect the road.

Q-- How far did you say that was? A-- Nine hundred feet.

Q-- You say certain remarks were made to the viewers on the day of the view by certain citizens or persons who were present at the view? A-- Yes, sir.

Q-- Did Mr. Shoemaker say anything to you when these papers were handed to him? A-- Not to my recollection.

Q-- Did Mr. Campbell say anything to you other than that he would decide in favor of the one with the largest crowd? A-- No, sir.

Q-- Wasn't he joking when he said that? A-- I didn't

think that he was joking; there was no smile on his face anyhow.

Q-- Did you say anything to the viewers? A-- Oh, yes; I got my "row" in.

Q-- Did you hand any papers to the viewers? A-- Yes

Q-- What was on that? A-- I think it was a paper showing four or six years ago report of viewers that were sent down there to vacate and who sent in a very strong report for a township road.

Q-- Who had the largest crowd present? A- Well, they had of course; I couldn't say that either, because there were some men there that I didn't know which side they were on.

Q-- Do you think that the viewers did decide by the largest crowd? A-- I couldn't say that.

Hiram McGuire, sworn.

DIRECT EXAMINATION by Mr. Shettig:

Q-- Where do you live? A-- Handy to St. Augustine, within a mile of there.

Q-- In Clearfield Township? A-- Yes.

Q-- You have heard Mr. Tiernan testify to the measurements which you and he together made in this case? A-- Yes.

Q-- Will you state whether or not he has testified correctly? A-- According to my belief he has.

CROSS-EXAMINATION by Mr. McCann:

Q-- You are the man who helped measure this? A-- Yes, sir.

Q-- Did you hear any remarks made by any of the viewers? A-- No, sir; I didn't hear them make any remarks. I was behind a piece and I saw Mr. Wharton, the supervisor, hand up papers but I wasn't close enough to hear what was said about them.

Q-- Did you see Mr. Tiernan hand up some papers? A-- I think he handed his in before I got there.

James O'Malley sworn.

DIRECT EXAMINATION by Mr. Shettig:

Q-- Were you present at the view in this case? A-- Yes, sir.

Q-- Did you hear any conversation between Mr. Wharton, one of the supervisors, and the members of the Board of Viewers? A-- Yes, sir.

Q-- In connection with certain papers? A-- Yes.

Q-- Tell what happened? A-- I was standing right there and I saw Mr. Wharton handing the papers up.

Q-- To which one <sup>of</sup> the viewers, if you know? A-- To Mr. Shoemaker.

Q-- Did you hear Mr. Wharton saying what the papers were? A-- He said they were from Mr. McDermitt giving Mr. Tiernan a right out, also a Mr. Grove.

Q-- That is from Mr. Grove giving to Mr. Tiernan a right out.

Q-- Did you hear any remarks made by the viewers concerning the papers? A-- No, I did not.

Q-- Did you hear any remarks made by any of the viewers concerning the size of the crowd on the respective sides of this controversy? A-- Yes, sir; I heard Mr. Campbell say that they would go by the biggest crowd.

Q-- Who else was there in position to hear that remark? A-- There were a few of them; they all could hear it if they wanted to.

Q-- When was the remark made? A-- Right after they landed there, after they got the papers.

Q-- Did you think from Mr. Campbell's manner that he was joking when he made that remark? A-- I didn't think so.

Q-- Was he serious looking? A-- I could not say.

Q-- State whether or not this remark led you to the belief that that was the way the viewers would decide? A-- Yes, that was my opinion or belief.

CROSS-EXAMINATION by Mr. McCann:

Q-- Did the other side go out and gather up a crowd after that? A-- No, sir.

Q-- Do you know who had the biggest crowd present? A-- Mr. Wharton had.

Q-- Do you know how many were in his crowd? A-- Could not tell, did not count them.

Q-- Do you know how many Mr. Tiernan had? A-- There were four there that I know of and maybe five.

Q-- With Mr. Tiernan himself? A-- Yes, sir.

Q-- Do you know Pat Campbell, one of the viewers? A-- I seen him there.

Q-- That is the first time you ever saw him? A-- Yes, sir.

Q-- You did not know whether he was joking or not, did you? A-- It did not look to me as though he was joking, the way he said it.

Q-- He said it in a pretty serious way, did he? A-- Yes, sir.

Q-- Do you live along that road? A-- No, sir; I live in Altoona.

Q-- You were just there as one of Mr. Tiernan's crowd? A-- I was there, and I came near getting my neck broke there the night before when the bridge broke down.

Q-- You are not a resident of Clearfield Township? A-- No, sir.

Frank Tiernan, sworn.

DIRECT EXAMINATION by Mr. Shettig:

Q-- Where do you live? A-- In Clearfield Township.

Q-- Were you at the view in this proceeding? A-- Yes, sir.

Q-- Did you see any papers delivered to the viewers by the supervisors or any of them? A-- Yes, I seen Mr. Wharton handing papers.

Q-- Did you hear anything said by Mr. Wharton as to what the papers were? A-- He said, Mr. McDermitt would give both of us a right out, and also John Grove a right out, that they had never shut it up.

Q-- Did the viewers make any remarks concerning these papers? A-- Well, yes, Mr. Campbell did.

Q-- That was not with reference to the papers was it?

A-- No, sir.

Q-- Did you hear Mr. Campbell or any other of the viewers make any remarks concerning the size of the crowd on the respective sides? A-- Yes, I heard Mr. Campbell say that they would have the right to take the largest crowd and decide in favor of the largest crowd.

Q-- When was it? A-- Well, it was at the time they started to vacate, I suppose when they came there.

CROSS-EXAMINATION by Mr. McCann:

Q-- Who all were in your crowd? A-- Well, there were five or six of us.

Q-- Who were they? A-- Mr. McGuire, my brother James, Mr. Boland, Mr. Connelly, Mr. O'Malley and Mr. Adams.

Exceptant files the further exception that the report of viewers shows upon its face that the viewers were not sworn in accordance with the Act of Assembly relating to road Views.

Hiram McGuire, recalled.

DIRECT EXAMINATION by Mr. Shettig:

Q-- Which of the two roads --that is the road leading from the Lucas Moyer school house to the Dry Gap road, and the road known as the McDermitt road --was laid out first?

A-- What I would call the Tiernan road was laid out first; the other leading from the St. Augustine road to Millside might have been, but it was vacated at the time Tiernan got the order for his road.

Q-- Will you state whether or not you were along on this view? A-- I was along on this view; I was either a viewer or a chain carrier; I guess I was a chain carrier, and I think you will find my name on the petition.

Q-- Where does that road run from as laid out by the viewers? A-- That road runs from the Lucas Moyer school house to the top of the hill and into the Dry Gap road leading from Dysart to Altoona.

Q-- Where you along when the McDermitt road view was held? A-- No, sir; I was not, but it was held after Tiernan got the use of his road.

James Tiernan recalled.

DIRECT EXAMINATION by Mr. Shettig:

Q-- Were you along on the view on the road we last spoke of? A-- Yes.

Q-- Where did the viewers begin? A-- I was not along all the way; I wasn't there at the school house when they commenced.

Q-- Do you know whether that road was laid out before the McDermitt road? A-- Yes; it was laid out about one year before the McDermitt road; as near as I can recall.

Q-- You were along with me over at the Court House a while ago looking at the records of the road which you stated was the McDermitt road? A-- Yes.

Q-- The road which is shown by the draft and which runs through lands of McDermitt's, Bridget Wills and D. M. Krotzer? A-- Yes, sir.

Counsel offer in evidence proceedings to No. 12, September Sessions, 1888, R. D. Vol. 4, page 178, the caption of which shows that the proceeding was a petition to lay out public road lead from the school house of Lucas Moyer to Ashville in Clearfield Township, for the purpose of showing that the road laid out under these proceedings and known as the McDermitt road does not intersect with or join or come within one thousand or more feet of joining with the road leading from Ashville to St. Augustine.

CROSS-EXAMINATION by Mr. McCann:

Q-- Were you along the McDermitt road view? A-- Yes.

Q-- Where did they commence? A-- At the pine tree.

Q-- Is that the point that you say is nine hundred feet from the Ashville-St. Augustine road? A-- Yes.

Q-- Was the other part of the road still there? A--  
Sure.

Q-- That is, from there over to the Ashville and St.  
Augustine road? A-- Yes.

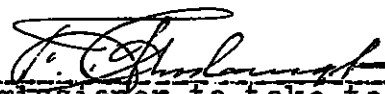
Q-- That nine hundred feet you talked about? A-- Yes.

Q-- Why would they begin to lay out a public road nine  
hundred feet from the other road and no proceeding to show  
that that was a public road? A-- I can't answer that.

(The testimony closes on part of Exceptant).

State of Pennsylvania, §  
County of Cambria, ss §

I hereby certify that the foregoing depositions of witnesses on part of the Exceptant in the matter of the petition to vacate public road in Dean and Clearfield Townships, entered to No. 9 R.D., June Sessions, 1912, were taken before me as Commissioner pursuant to Rule, copy of which is hereto attached and made a part of this report, and agreement of Counsel as noted in the caption to these depositions.

 (SEAL)  
Commissioner to take testimony  
and Court Stenographer.

No. 9 R.D. June Sess. 1912.

In the Court of Quarter  
Sessions of Cambria County.

In re  
Petition to Vacate Public  
Road in Dean and Clearfield  
Townships.

Depositions of Exceptant's  
Witnesses.

*Commissioner fee \$7.00  
Paid by Kirtland Shetler Esq.  
[Signature]*

*Filed 12 Feby 1913*

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

MOUNTAINEER-HERALD PRINT, EBENSBURG, PA.

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.....6th.....day of May.....A. D. 1913, before the Honorable Judge of the said Court: ~~Upon~~The petition of divers inhabitants of the Township of Clearfield and Dean....., ~~in the said County setting forth that they labor under incon-~~  
~~venient and dangerous conditions in the said County setting forth that they labor under incon-~~  
~~venient and dangerous conditions in the said County setting forth that they labor under incon-~~  
 respectfully represent That a petition was presented to This Court to H No. 9 June Sessions 1912, praying the Court to vacate a public road described in said petition by the following points of beginning and ending: "Beginning at a point in Clearfield Township in the public road leading from the Lucas Moyer School house to Burnt Mill (Also known as the McDermitt Road) 1200 feet South from a point where the public road leading from St. Augustine to Ashville intersects said McDermitt Road to a point in the public road known as the Achville Road 1045 feet North from a point where the public road leading to Bakers Mines intersects said Ashville-Dysart Road". Whereupon the Court appointed viewers for the purpose aforesaid whose report recommending the vacation of said road was filed at Sept. Sessions of said Court. Your Petitioners further represent that they and others inhabitants and taxpayers of said Townships of Clearfield and Dean will be greatly inconvenienced and damaged if the report of Viewers is permitted to stand and said road to be vacated as the said road is necessary for the use of the public in said Townships. Your petitioners therefore pray the Court to appoint reviewers in the above proceedings; and as the...  
~~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. E. Dickey.....surveyor, and.....J. D. Ritter and Adam Shuman.....Re-  
 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:

*A. J. Kinkead*, Clerk.

NO. 9 June SESSION, 19012

Order to Re-view Road in Clearfield and Dean Townships

Certified July 4 1913

Filed 14 June 1913

Re-Viewers.

S. E. Dickey
J. D. Ritter
Adam Shuman

Clerk for Atty. K. 90 cts. Kittell & Shettig

HERNIMORE MOUNTAIN-HERALD ELECTRIC PRINT.

30325

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."


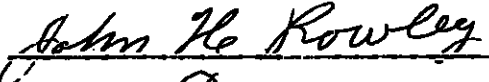




N-O-T-I-C-E

To the Supervisors of the Townships of Clearfield and Dean, respectively,  
in Cambria County.

NOTICE is hereby given to you that on Monday the 10 th day of June, 1912, at 10 O'clock A.M. I will present to the Court of Quarter-Sessions of said County of Cambria, a petition of sundry inhabitants of the townships of Clearfield and Dean respectively, praying for the appointment of viewers to vacate a public road situate in said townships, beginning in a point in Clearfield Township in the road leading from the Lucas Moyer School-house to Burnt Mill 1200 feet south from a point where the road leading from St. Augustine to Ashville intersects the last mentioned road, and ending at a point in the "Ashville and Dysart Road" in Dean Township 1045 feet north from a point where the Township road leading to Baker's Mines intersects said Ashville and Dysart Road.

  
ATTORNEY FOR PETITIONERS.

We hereby accept and waive service of above notice this 25 day of May, 1912.

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
SUPERVISORS OF CLEARFIELD TOWNSHIP  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
SUPERVISORS OF DEAN TOWNSHIP.

I hereby accept service of the above notice for the County Commissioners.

\_\_\_\_\_  
Clerk.

To the Honorable Marlin B. Stephens, President Judge of the Court of Quarter Sessions of Cambria County, Pennsylvania.

The petition of the undersigned, citizens and tax-payers, and residents of the Townships of Clearfield and Dean, respectively, in the County of Cambria and State of Pennsylvania, respectfully represents:-

That a public road long since laid out through said Townships of Clearfield and Dean, beginning at a point in Clearfield Township in the Public Road leading from the Lucas Moyer School House to "Burnt Mill" (Also known as the "McDermitt Road), 1200 feet South from a point where the public Road leading from St. Augustine to Ashville intersects said McDermitt Road, and passing through a part of Clearfield Township through or along lands of John McDermitt, John Grove, Angus Condron, James Tierney, Frank Tierney and other Condron lands to the Clearfield Township line and Clearfield Creek; thence across said Clearfield Creek into Dean Township, and thence through Dean Township to a point in the Public Road known as the Ashville and Dysart Road 1045 feet North from a point where the Public Road leading to Baker's Mines intersects said Ashville and Dysart Road,<sup>4</sup> has become useless, inconvenient, and burdensome to the inhabitants of said Townships of Clearfield and Dean.

That a record of said Road as originally laid out is entered to No. 7, December Term, 1887, Road Docket, and is duly recorded in Road Docket Vol. 4, page 143, in the Office of the Prothonotary and Clerk of the Court of Quarter Sessions of Cambria County, Pennsylvania.

Your petitioners therefore pray the Court that the said road may be vacated agreeably to the Act of Assembly in such case made and provided.

And they will ever pray, etc.

Residents of Clearfield Township.

Patrick Link  
 Elmer Wharton  
 Frank Wharton  
 Gerald Adams  
 Joseph A. Adams  
 R. W. Blossier  
 Charles Adams  
 J. G. Martin  
 Martin Thomas  
 James G. ...  
 A. A. ...  
 J. M. ...  
 William K. ...  
 Chas. Koll  
 M. J. ...  
 James J. ...  
 Z. J. ...  
 John Gerbee  
 Edward Storm  
 Joseph S. ...  
 Joseph W. ...  
 A. J. Sutter  
 John Sutter  
 Blair Sutter  
 Alex Ivory  
 Gerbee Ivory  
 P. H. ...  
 Bobm ...  
 Robert ...  
 ... Feigh  
 Milton A. ...  
 George R. ...

Residents of Dean Township.

Lewis Taylor  
 R. K. ...  
 David Post  
 W. ...  
 William ...  
 M. A. ...  
 George ...  
 Jas H. ...

...  
 ...  
 ...

Residents of Clearfield Township

John Buttenworth

Francis Chidow

J. W. McConnell

L. D. Thomas

Wm. J. Conrad

Juanes H. Bailey

Chas. R. Rusey

Burt Steele

E. Lewis Seymour

Frank Hartzog

Gust Adams

Water W. Buck

Thos. C. Durbin

William Adams

Joseph E. Chemrod

Larry Muligan

Henry Leitzinger

James M. Buck

William Stinger

Bernard Stinger

Bob McConnell

Thos J. McConnell

Gust Saltzger

Robt E. Ewing

Henry Hearn

Wm. Chidow

Arthur W. Cornell

A. Saltzger

Allen Craig

Residents of Dean Township

G. B. Plesker

M. A. McDonald

Germano Costa

Frank Fanchella

Det. Jacob

Wm. J. ...

A. Salzman

A. M. M. M.

Thomas Dunigan

Louella Lucas

W. M. M.

Joseph C. Lang

John Britton

W. M. M.

W. M. M.

H. J. Linneman

W. M. M.

W. M. M.

W. M. M.

W. M. M.

W. M. M.

J. B. Nagle

George Swires jr

Ralph M. M.

W. M. M.

J. J. Sheehan

W. M. M.

W. M. M.

George Conrad

W. M. M.

W. M. M.

Clearfield Trap

A. Shoffner

John Link

Marcellus Wharton

John Adams  
H. M. Shoffner

James H. Baker  
Jas A. Brewster  
Charles Bird  
J. A. Ryan  
B. J. Ryan  
J. H. Smith  
T. J. Smith  
W. J. Smith

John H. Smith  
H. E. M. M. M.  
Jas A. Hoover  
Charles S. S.  
W. D. Lingers  
James Adams  
John H. P. P.  
P. M. M. M.

Pat Mulligan  
John T. Boy

STATE OF PENNSYLVANIA

COUNTY OF CAMBRIA

\*  
\*  
\*\*SS  
\*  
\*

Marcellus Wharton, being duly sworn according to law,  
deposes and says, that the matters set forth in the above and foregoing  
petition are true and correct, as he verily believes.

Marcellus Wharton

R. B. Peterson

Justice of the Peace.  
My Commission Expires  
the first Monday in May 1913

In the Court of Quarter-Sessions of Cambria County, Penn'a.

Petition of the inhabitants of Clearfield and Dean Townships, respectively, for the appointment of viewers to vacate a public road in said Townships beginning at a point on the McDermitt Road near the Lucas Moyer School-house in Clearfield Township, and ending at a point in the ~~township~~

~~in the township of Ashville~~  
~~and beyond road in~~  
Clearfield Township

Filed 10 June 1912

And now June 10, 1912, the within petition read and considered by the Court, and the prayer thereof is granted, and the Court appoint

*A. M. Macomber, John L. Sargent, C. F. Campbell*

Viewers, as prayed for therein, to report next term of Court.

*By the Court*

JOHN H. McCANN  
ATTORNEY AT LAW  
EBENSBURG, PENNSYLVANIA

KNOW ALL MEN BY THESE PRESENTS, that we William Pitt  
John Adams-----of the Township of Clearfield,

County of Cambria, and State of Pennsylvania, are held and firmly bound unto the County of Cambria, in the sum of fifty dollars, lawful money of the United States; to be paid to the said County of Cambria, its certain attorney, its successors or assigns; to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, firmly by these presents. SEALED with our Seals and dated the 3d. day of June, 1912.

WHEREAS, a petition has this day been presented to the Court of Quarter-Sessions of said County by sundry inhabitants of the Townships of Clearfield and Dean, respectively, in said County, praying for the appointment of viewers to view and vacate a public road located in said townships, beginning in Clearfield Township at a point in the public road leading from the Lucas Moyer School-house to the "Burnt Mill", and ending at a point at the "Dry Gap" road in Dean Town-ship, as by reference to said petition will more fully appear:

Now the condition of this obligation is such, that if the petitioners for the appointment of viewers, as aforesaid, shall pay all fees and costs incident to said view into the County Treasury as the said Court may by order direct, then this obligation to be void; otherwise to be and remain in full force and virtue.

WITNESSES:

R. L. Sullivan  
\_\_\_\_\_  
\_\_\_\_\_

William Pitt (SEAL)

John Adams (SEAL)

\_\_\_\_\_  
(SEAL)

IN the Court of Quarter-  
Sessions of Cambria County,

In the matter of the Petition  
of the Inhabitants to Vacate  
a road in Clearfield and  
Dean Townships.

Bond for Costs.

*June 10<sup>th</sup> 1912*  
*Bond returned*  
*By the Court*

*Filed 10 June 1912*

JOHN H. McCANN  
ATTORNEY AT LAW  
EBENSBURG, PENNSYLVANIA

REPORT OF RE-VIEWERS

TO THE HONORABLE MARLIN B. STEPHENS, PRESIDENT JUDGE OF THE COURT  
OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA.

We, the undersigned re-viewers appointed by the annexed order of court to review the road within mentioned, respectfully, report:

That having been duly sworn as members of the permanent board of viewers shown by the records of the court, that having given due public notice of the said re-view and of the time and place of meeting of the viewers and having given notice to the public of said meeting by posting notices along the route and at the termini of said road as required by law, and by service of such notices on the commissioners of Cambria County and the Supervisors of Clearfield and Dean Townships, service of which said notices as accepted being hereto attached, we met in accordance with the notices given on the 29th day of May A. D. 1913 at ten o'clock A. M. and re-viewed the road, that the supervisors and a number of citizens of Clearfield Township were present and heard that after due consideration of all the matters so before us we are of the opinion that the road has become useless, inconvenient and burdensome and ought therefore to be vacated. A plot or draft of said road is hereto attached and made part of this report and herewith returned for public use showing said road to take the following courses and distances:

Beginning at the place of beginning above noted thence by the center of said road and through lands of Mrs. Susan McDermitt  
A.  $44^{\circ}$  E. 385 feet said line crossing the property line between John Grove and Mrs. Susan McDermitt at 232 feet; thence through lands of John Grove the following courses and distances:  
N.  $60^{\circ}$  30' E. 600 feet, N.  $47^{\circ}$  10' E. 315 feet, N.  $73^{\circ}$  15' E. 122 feet, S.  $49^{\circ}$  30' E. 296 feet, S.  $63^{\circ}$  50' E. 350 feet, S.  $84^{\circ}$  15' E. 274 feet, N.  $55^{\circ}$  20' E. 259 feet, N.  $12^{\circ}$  30' E. 400 feet, N.  $21^{\circ}$  10' E. 330 feet crossing the line of lands of James Condran Estate at 177 feet; thence through said Condran Estate N.  $16^{\circ}$  45' E

324 feet, N. 60° 05' E. 147 feet, N. 79° E. 225 feet, to a point on the line of lands of James Tiernan; thence through lands of said James Tiernan N. 83° 30' E. 300 feet, S. 37° 25' E. 124 feet, N. 73° 30' E. 247 feet, N. 70° 20' E. 191 feet, N. 32° E. 150 feet, N. 71° 05' E. 268 feet, S. 79° 03' E. 528 feet, S. 60° 30' E. 12 feet to point on line of lands of Frank Tiernan; thence through said Frank Tiernan lands S. 60° 30' E. 344 feet, S. 76° 15' E. 523 feet, S. 66° 25' E. 524 feet, S. 73° 20' E. 200 feet, S. 70° 10' E. 200 feet, N. 86° E. 215 feet, N. 70° 50' E. 137 feet, S. 83° 40' E. 311 feet, S. 81° 40' E. 200 feet to point on line of lands of Alonzo Schricher; thence through lands of said Alonzo Schricher S. 81° 40' E. 95 feet, S. 28° 10' E. 100 feet, S. 1° 10' W. 200 feet, S. 8° 40' E. 315 feet, S. 5° W. 100 feet, S. 5° E. 200 feet, S. 4° W. 100 feet, S. 18° E. crossing Clearfield Creek 285 feet, S. 32° 30' W. 400 feet, S. 18° 30' W. 250 feet, S. 27° 15' E. 336 feet, S. 68° 45' E. crossing the C. & D. Branch of the P. R. R. 243 feet to point at the place of ending in the Ashville-Dysert Road.

Witness our hands this 31st. day of May A. D. 1913.

*E. E. Dickey*

*Adam Shuman*

*J. D. Smith*

VIEWERS

ROAD NOTICE.

Notice is hereby given that the undersigned Re-viewers appointed by the Court of Quarter Sessions of Cambria County, Pa. to view the premises and report to the Court upon the expediency of vacating a portion of a public road situate partly in Clearfield Township and partly in Dean Township, beginning at a point in the public road laid out as leading from the Lucas Moyer School House in Clearfield Township to the Dry Gap road in Dean Township, said point being South 900 feet measured along said first mentioned road from the intersection formed by the said road first mentioned, the road from St. Augustine to Ashville, and the road from the St. Augustine-Ashville road, continuing near the Lucas Moyer School House, and running to a point in the public road about 60 rods Southeast of the residence of David Sutton, deceased, in Clearfield Township; and ending at a point in Dean Township on the road from Ashville to Dywarrt, at a distance of 4552 feet measured along the said Ashville-Dywarrt road, from the point of intersection of said Ashville-Dywarrt road <sup>with a road</sup> known as the Dry Gap road, or road leading over the mountain to Altoona, will meet on the premises above described, on Thursday, the 27th day of May, 1913, at 10:30 o'clock a.m. for the purpose of attending to the duties of their appointment.

May 17th, 1913

B. E. Dickey  
Adam ~~W. M. M. M.~~  
J. E. Ritter,  
Reviewers

Johnstown, Pa., May 31, 1913.

Cambria County.

For review of road in Clearfield and Dean Townships, Cambria County, Pennsylvania as per #9 June Sessions 1912.

TO S. E. DICKEY DR.

May	29	To re-view and survey. 1 day	\$5.00
		Mileage	3.30
		Livery	.70
	30	Plotting survey. 1 day	5.00
		Tracing and report. 1 day	5.00
		Tracing cloth and detail paper	.50
		Two prints to accompany report.	1.00
		Dinner	<u>.25</u>
			<del>\$21.25</del>
			21.98

TO ADAM SHUMAN DR.

May	29	To review. 1 day	5.00
		Mileage	2.10
		Livery	.65
		Dinner	<u>.35</u>
			<del>\$8.10</del>
			7.75

TO J. D. RITTER DR.

May	29	To review. 1 day	5.00
		Mileage	3.30
		Livery	.65
		Dinner	<u>.35</u>
			<del>\$9.30</del>
			8.95

petition for viewers in this proceeding does not correctly designated the place of beginning and the place of ending of the road proposed to be vacated, your petitioners ~~seaver~~ such places of beginning and ending are as follows; "Beginning at a point on the public road laid out as leading from the Lucas Moyer School house in Clearfield Township to the Dry Gap Road in Dean Twp, said point being South 900 feet measured along said first mentioned road from the intersection formed by the said road first mentioned, the road from St. Augustine to Ashville and the road from the road from St. Augustine to Ashville, beginning near the Lucas Moyer School House to point in the public road about sixty rods Southeast of the residence of David Sutton, deceased, in Clearfield Township; and ending at a point in Dean Twp., on the road from Ashville to Dysert at a distance of 4552 feet measured along said Ashville-Dysert Road from the point of intersection of said Ashville-Dysert Road with a public road known as the Dry Gap Road or road leading over the mountain to Altoona.

KNOW ALL MEN BY THESE PRESENTS, That James Tiernan and Richard Adams, both of the County of Cambria in the State of Pennsylvania, are held and firmly bound unto the County of Cambria in the sum of One Hundred (\$100.00) Dollars lawful money. To which payment well and truly to be made and done, they bind themselves, their heirs, executors and administrators, and every of them. Sealed with our hands and dated the Third<sup>3</sup> day of December, A.D., 1912.

Whereas the said James Tiernan and others have petitioned the Court of Quarter Sessions of Cambria County, Pennsylvania, for the appointment of reviewers in the matter of the proposed vacation of a certain public road partly in Clearfield Township and partly in Dean Township, in said County, entered to No. 9 June Sessions, 1912.

Now, Therefore, the Condition of this Obligation is Such, that if the said James Tiernan and the other petitioners shall <sup>pay</sup> unto the County Treasury of Cambria County the costs of said proceedings including the pay of the viewers as provided by the Act of 4th April, 1907, P. L. 44. in case the Court shall so direct, then this obligation to be void, otherwise to be and remain in full force and virtue.

Sealed and delivered in

the presence of:

Francis Tiernan

James Tiernan (Seal)

Richard Adams (Seal)

No. 9 June Term, 1912  
R. N.

In re Petition for  
Reviews in  
re road in  
Clearfield and  
Deane Twp.

Bond for Costs

Filed 4 Decemr. 1912

Now 6 May, 1913,  
within bond  
approved  
By the Court

R E P O R T   O F   V I E W E R S .

To the Honorable M. B. Stephens, President Judge of the Court of Quarter Sessions of Cambria County:-

We, the undersigned, members of the Board of Viewers of Cambria County, appointed by your Honorable Court, to view a certain Road in Dean and Clearfield Townships, this County as particularly noted in the order of Court dated June 10, 1912 and to us directed, for the purposes therein specified, respectfully report:-

That having given due notice of the view and of the time and place of meeting of the Viewers, to the County Commissioners, to the Supervisors of the Townships of Dean and Clearfield, by having them accept service of notices and to the general public by printed handbills posted in public and conspicuous places along the route and at the terminus of the road proposed to be vacated: All of us met in accordance with the notices so given and having been first duly qualified according to law to perform the duties of our appointment faithfully, impartially and to the best of our ability; we viewed the said road, noting particularly its location, the country through which it passes, as well as the improvements through which it passes, and are of opinion that the said road should be vacated.

The said road which over two and one fourth miles in length has fallen into disuse and is no longer of service as a public thoroughfare: true there are two families living along the said road, who, if the said road is vacated will have need of a private road in order to gain access from the public highways to their premises; but to our minds it is wholly unreasonable that the taxpayers of the townships should be required to keep up or maintain a stretch of Township Road of such length for the accomodation of these families and some two or

three other persons who chance to own small farms or timber lands, upon which there is no one residing, along the route of the said road. Furthermore the said road crosses the Clearfield Creek at a point where it would require a bridge spanning some seventy-eight feet, which would be required to be constructed if the said road is to be kept up as a public highway and we are of opinion that the burden of constructing such a bridge would be entirely too expensive for the taxpayers of the Township to be required to bear, and the location of the road and its almost utter uselessness--so far as the travelling public is concerned--would not under any consideration justify the construction of a County bridge of such dimensions as would be necessary to span the said creek at this point.

The said road as suggested to be vacated beginning at a point in the public road leading from the Lucas Moyer (Myers) schoolhouse to Burnt Mill (also known as the McDermott Road) 1200 ft. S. from the point where the public road leading from St. Augustine to Ashville intersects said McDermott Road and running thence N. 49 1/2 degrees E. 370 ft. through land of Mrs. J. McDermott and into lands of John and Mary Grove, thence continuing through land of said Groves, N. 52 degrees E. 600 ft. N. 57 degrees 30 minutes E. 860 ft., N. 79 degrees E. 120 ft. S. 60 degrees E. 300 ft., S. 78 1/2 degrees E. 800 ft., E. 160 ft. N. 56 degrees E. 261 ft., N. 24 degrees E. 380 ft., N. 16 degrees E. 360 ft. passing to lands of J. B. Condron, N. 16 1/2 degrees E. 270 ft., N. 63 1/2 degrees E. 200 ft., N. 89 1/2 degrees E. 200 ft, thence through land of James Tierney S. 84 degrees E. 350 ft., E. 150 ft., N. 85 degrees E. 300 ft., N. 72 1/2 degrees E. 185 ft. N. 24 degrees E. 160 ft., N. 49 degrees E. 259 ft., S. 88 degrees E. 520 ft., S. 57 degrees E. 500 ft., S. 84 degrees E. 515 ft, thence through property of Frank Tierney S. 87 degrees

E. 416 ft., S. 72 1/2 degrees E. 232 ft., S. 68 degrees E. 222 ft  
 E. 200 ft., N. 73 degrees E. 185 ft., E. 475 ft., thence through  
 Baldrige property S. 45 degrees E. 114 ft., S. 16 1/2 degrees E.  
 346 ft., S. 14 1/4 degrees E. 480 ft., S. 12 degrees E. 126 ft.,  
 S. 8 degrees East 30 ft., thence crossing the Clearfield Creek into  
 Dean Township S. 8degrees E. 50 ft., S. 35 degrees W. 440 ft. S.  
 5 degrees West 300 ft., S. 57 degrees E. 324 ft., crossing C. & C.  
 division of the P. R. R., S. 70 degrees E. 175 to a point on the  
 public Road leading from Dysart to Ashville.

A plot or draft showing the location of the said road  
 together with the courses and distances of the same is hereto attach-  
 ed and made a part of this report.

Witness our hands this twenty-fifth day of Aug., A. D. 1912.

A. M. Shoemaker

P. F. Campbell

J. L. Singer  
Viewers.

Costs of View

A. M. Shoemaker  
 2 1/2 Days 12.50  
 Horse hire <sup>2.50</sup> <sup>25</sup> <sub>feet</sub>  
 & meals — 3.75  
 Lifting Order 90  
 P. F. Campbell  
 2 1/2 Days 12.50  
 Livery hire 3.50  
 Meals 1.00  
 Chairman pd by P. F. C. 1.50  
 Hiram McQuire  
 Chairman 1.50  
 J. L. Singer  
 1 1/2 Days 7.50  
 Expenses 7.50



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. 9, June SESSION, 1912

Order to view and vacate road, d. in.

Dean and Clearfield Twp.

beginning at a point in the McDe  
ermitt road near the Lucas Moyer  
School house in Clearfield Twp.  
and ending at a point in the Ash  
ville and Dyarfield Road in  
Clearfield Twp.

Certified SEP 16 1912 G.G.C.

*Given & September 11, 1912,  
in open Court*

Viewers.  
A. M. Shoemaker  
John J. Singer  
R. F. Campbell

Clerk ..... 90 cts.

McCann

GREENBURG MOUNTAINEER-REAR-LEAD ELECTROTYPE PRINT.

Certified SEP 16 1912 G.G.C.

*4 Sept. 1912. Approved.*

*By the Court*

*22 April 1913 confirmed absolutely. S. H. Kirkhead, Clerk.*

# ROAD NOTICE

Notice is hereby given that the Viewers appointed by the Court of Quarter Sessions to view the ground where a public road has long since been laid out: to determine as to the propriety of vacating a portion of said road which extends into or through the townships of Debut & Clearfield in Cambria Co., Pa. Beginning at a point in the M'Dermitt road near the Lucas Moyer School house in Clearfield Twp., and ending at a point about 1040 ft. north from the intersection of the public road leading to Bakers mines with the Ashwill & Dybart road

will meet at the Lucas Moyer School House in the Township of Clearfield aforesaid, on the 8<sup>th</sup> day of August 1912, at 10:30 o'clock a.m. for the purpose of viewing said ground

A. M. Shoemaker  
P. F. Campbell  
John L. Singer  
Viewers.

July 25<sup>th</sup> 1912

now, July 26, 1912, per vice of  
the within notice accepted for  
the County Commissioners of  
Cambria Co., Pa. \_\_\_\_\_

\_\_\_\_\_  
H. E. Howell  
clerk

# ROAD NOTICE

Notice is hereby given that the Viewers appointed by the Court of Quarter Sessions to view the ground *with a piece of road has long*  
*been taken out to terminate at the*  
*point of vacating the said piece of*  
*road, which extends in to or through*  
*the township of Clearfield;*  
*beginning at a point in the Mendenhall*  
*road near the Cross Mountain School house in*  
*Clearfield Twp. and ending at a point in*  
*the Ash Hill & Crossroad, all of said*  
*piece of road being in Cambria Co., Pa.*

will meet at the *Cross Mountain School House* in the Township  
of *Clearfield* aforesaid, on the *5th* day of *August*  
191*2*, at *10:30* o'clock *a.m.* for the purpose of viewing said ground.

*A. M. Thorne*  
*H. H. Campbell*  
*Viewers.*

*July 25th 1912*

# ROAD NOTICE

Notice is hereby given that the Viewers appointed by the Court of Quarter Sessions to view the ground *where a piece of road has long since been laid out; to determine as to the propriety of vacating the said piece of road; which extends into or through the townships of Dean & Clearfield, in Cambria Co., Pa.*

*Beginning at a point in the McDermitt road near the Lucas Moyer School house in Clearfield Twp., and ending at a point in the Ashville & Dysart road, at about 1040 ft. north of the intersection of the road to Baker's mine with said Ashville & Dysart road.*

will meet at the *Lucas Moyer School House*, in the Township of *Clearfield* aforesaid, on the *8th* day of *August* 191*2*, at *10:30* o'clock *a.m.*, for the purpose of viewing said ground.

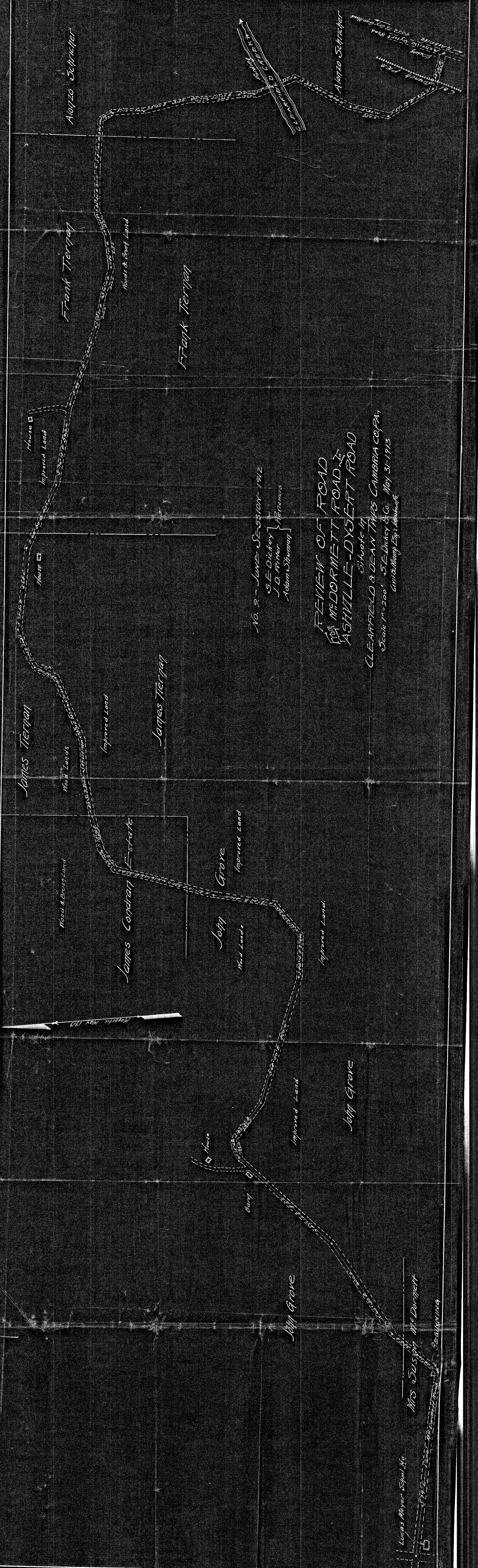
*A. M. Shoemaker*  
*P. F. Campbell*  
*John L. Singer*  
Viewers.

*July 25th* 191*2*

now, July 1912, service of the  
within notice accepted by the  
undersigned Supervisor of the  
Twp. of Clearfield, Cambria Co., Pa

Marcellus Wharton  
John H Rowley  
Joseph Dunegan  
Supervisors





Alberto Schriber

Frank Tierman

Frank Tierman

Alberto Schriber

House

Improved Land

House

James Tierman

Mud Lands

Improved Land

James Tierman

Mud & Brush Land

James Cordran Estate

Mud Lands

Grave

Improved Land

Improved Land

John Grove

House

Barry

Improved Land

John Grove

Lucas Moyer School No.

Mrs Susan McDonnell

SEANNING

NO. 9 - JUNE SESSION - 1912

S. E. Dickey  
J. D. Finner  
Adorn Sturman

REVIEW OF ROAD  
FOR McDORMETT ROAD,  
ASHVILLE-DYESS ROAD

Site No. 17  
CLEARFIELD & DEAN TRUS CAMBRIA CO., PA.  
Scale 1" = 200' S. E. Dickey & Co. May 31-1913  
Civil & Mining Eng'rs Philadelphia

