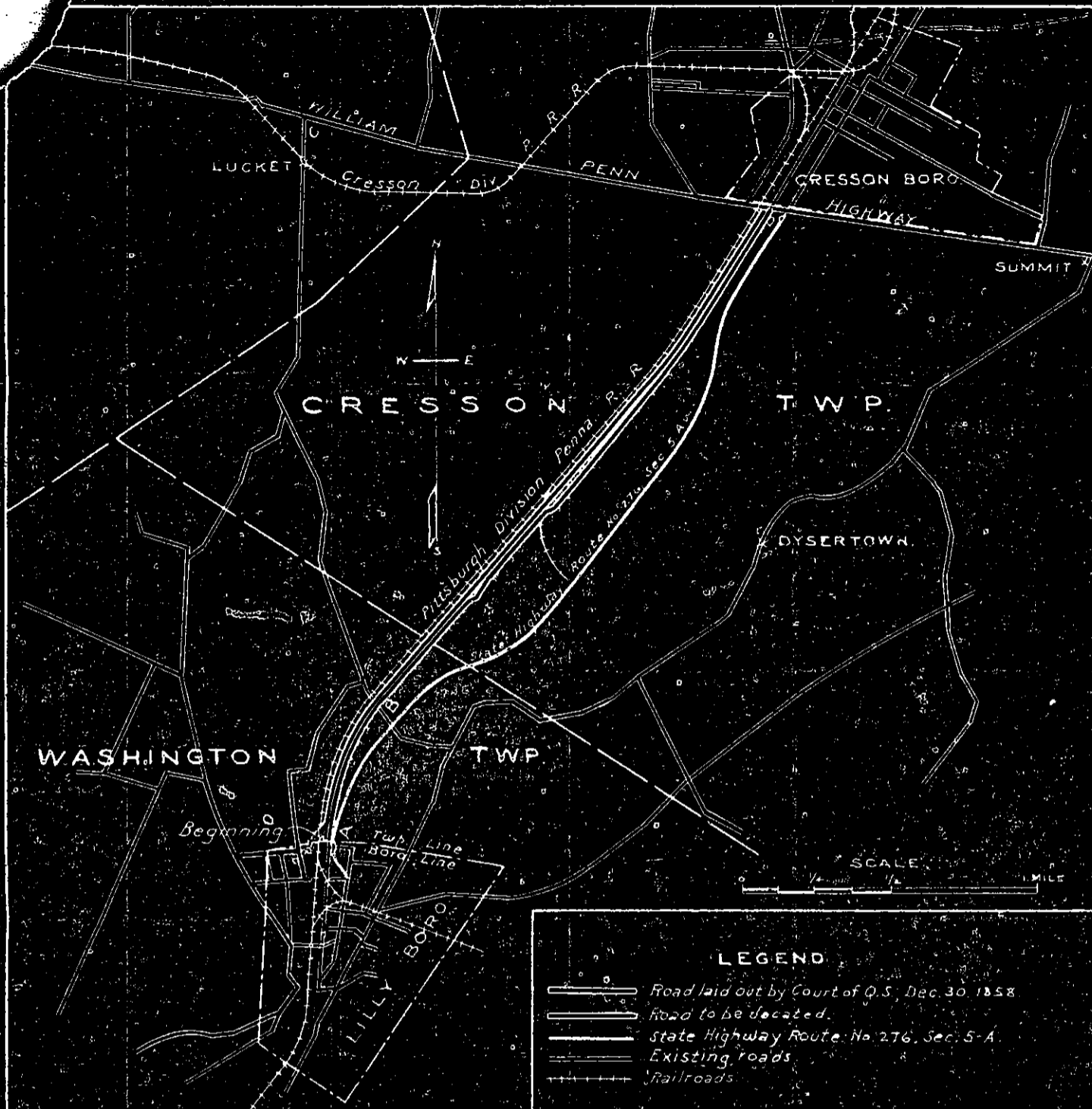


Rd # 3 Sept. 1930

Rat Microfilmed



**SKETCH SHOWING THE LOCATION OF TOWNSHIP ROADS TO BE VACATED BETWEEN THE BOROUGH OF LILLY AND THE WILLIAM PENN. HIGHWAY AT CRESSON, IN CRESSON AND WASHINGTON TOWNSHIPS, CAMBRIA COUNTY, PENNSYLVANIA.**

Description of that part of the township road, laid out at a Court of Quarter Session of the Peace, December 30, 1858, between Lilly Borough and William Penn Highway, at Cresson, Pa.:

Beginning at a point in the northerly line of the Borough of Lilly distant 35 feet eastwardly from the center line of the Pennsylvania Railroad; thence N 40° E 6 1/2 per.; N 15° E 20 per.; N 20° E 28 per.; N 23 1/2° E 21 per.; N 35° E 18 per.; N 41 1/2° E 60 1/2 per.; N 39° E 64 per., and N 36° E 116 per., to Turnpike, now William Penn Highway, at Cresson, Pa., distant 170 feet eastwardly from the center line of the Pennsylvania Railroad.

Description of township road as used between Lilly Borough and the William Penn Highway at Cresson, Pa.

Beginning at a point in the northerly line of the Borough of Lilly distant 115 feet eastwardly from the center line of the Pennsylvania Railroad, thence N 6° E 640 ft.; N 9° 30' W 330 ft.; N 12° E 300 ft.; N 18° 15' E 300 ft.; N 29° 30' E 300 ft.; N 29° 22' E 300 ft.; N 36° 10' E 300 ft.; N 41° 15' E 280 ft.; N 44° 25' E 2700 ft.; N 66° E 430 ft.; N 45° 45' E 370 ft.; N 41° 20' E 570 ft.; N 44° 55' E 500 ft.; N 49° 10' E 380 ft.; N 25° 5' E 150 ft.; N 50° 10' E 500 ft.; N 42° E 950 feet; N 36° 20' E 430 ft.; N 45° 20' 1000 ft.; N 42° 45' E 1000 ft.; N 36° 50' E 1000 ft.; N 35° E 320 ft.; and E 40° E 1290 ft., to the William Penn Highway at Cresson, Pa., and distant 170 feet eastwardly from the center line of the Pennsylvania Railroad.

1235

In the Matter of

Petition of Inhabitants  
of Cresson and Washington  
Townships for the appoint-  
ment of Viewers to vacate  
a public road in the  
Townships of Cresson and  
Washington, Cambria County,  
Pa.

EXCEPTIONS TO REPORT OF  
VIEWERS.

*Filed 29 November 1930*

Reade & Reade  
Ebensburg, Pa.

MATHIOT READE  
ATTORNEY AT LAW  
EBENSBURG, PA.

Now, November 29, 1930, I accept service of a copy  
of the within exceptions to report of viewers on behalf of  
the petitioners in the within proceedings.

Said exceptions to be filed in the office of the Clerk  
of Courts of Cambria County on November 29, 1930.

*H. Mathiot*  
Attorney for Petitioners.

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY.

In the Matter of

No. 3 September Sessions 1930.

The Petition of Inhabitants of  
Cresson and Washington Town-  
ships for the appointment of  
Viewers to vacate a public  
road between the Borough of  
Cresson and the Borough of  
Lilly, in the Townships of  
Cresson and Washington, Cam-  
bria County, Pa.

Exceptions to Report of Viewers.

To the Honorable, the Judges of said Court:

We, the undersigned inhabitants of the Townships of Cresson and Washington, Cambria County, Pennsylvania, hereby file exceptions to the Report of the Board of Viewers in the above entitled case, our said exceptions being as follows:

- 1st. The petition is defective in that it does not conform with Rule 308 of the Rules for the Courts of Oyer and Terminer and Quarter Sessions of the Peace of Cambria County requiring every petition for the vacation of a road shall contain a reference to the number and term of the original case, or to the number and page of the docket containing the record thereof.
- 2nd. The petition is defective in that it does not state specifically and with sufficient exactness how the road sought to be vacated became a public road.
- 3rd. The Report of the Viewers is defective in that it does not comply with Rule 307 of the Rules for the Courts of Oyer and Terminer and Quarter Sessions of the Peace of Cambria County requiring every report on order for view or review of a road shall be returned and filed within the first week of the term to which it is returnable.
- 4th. The Report of the Viewers recommending that the road be vacated is defective in that there is no finding that the road is useless, inconvenient, or burdensome.

5th. The Report of the Viewers is defective in that no facts are alleged upon which to base their finding that the road is no longer necessary for the accomodation of the traveling public.

6th. The Report of the Viewers stating "In all we are of the opinion that the road in question should be vacated" is defective in that no findings of fact are set forth justifying a vacation of the road.

7th. The Report of the Viewers is defective in that it contains irrelevant matter in regard to the manner in which parties living along the road could secure other outlets and in regard to railroad crossings which being private crossings do not effect the usefullness of the road for the traveling public.

8th. The viewers acted capriciously in stating that they were of the opinion that the road should be vacated and in disregarding evidence showing that the road was not in fact useless, inconvenient, or burdensome as alleged in the petition.

9th. The road is not in fact useless, inconvenient, or burdensome, and neither the Petition or Report contain statements of fact which are sufficient to give the Court jurisdiction to vacate the road.

Wherefore the undersigned inhabitants of the Township of Cresson and the Township of Washington respectfully pray your Honorable Court to withhold your approval of the Report of the Viewers and mark said Report "Not Approved" that the said road may continue as a public road for the use of the traveling public; and have authorized our attorneys, Reade & Reade, to sign these exceptions in our behalf.

Filed November 29, 1930.

Reade & Reade  
Attorneys for Exceptants.

INHABITANTS OF CRESSON TOWNSHIP.

J P Bradley

J. Johnson

Samuel Leidy  
Supervisors of Cresson Township.

R R Miller

W J Miller

J E Miller

Luke Burgoon

B A Eger

Margaret A Eger

Harriet Moore

John J. Coontz

John J. Coontz

Valenty Martynov

Robert Lane

Pete Anger

Lara Tichenoff

Harold Bradine

Giovanni Hestler

John Brown

Mrs. Blanche Friedrich

Miss Mary Leonard

S B Haupt

Jan P. ...

Charles ...

Mrs. ...

... ..

Raymond Dummer

Mrs. J. F. ...

Joseph Lynch

A. H. Eberhart

Mrs. Lena Eberhart

John Boland

Mrs. M. C. Budock

Mr. M. C. Budock

Mr. J. E. Hoffman

Mrs. J. E. Hoffman

Mrs. Mabel ...

Thomas Eger

...

...

...

...

INHABITANTS OF CRESSON TOWNSHIP.

<u>John Kindack</u>	<u>Leo Peters.</u>
<u>John Schalls.</u>	<u>Mrs. B. T. Jones</u>
<u>Joseph Freidhof</u>	<u>Warren J. McCarty</u>
<u>Paul H. Freidhof</u>	<u>Alice J. McCarty</u>
<u>Francis Freidhof</u>	<u>Joseph Eger</u>
<u>D.P. McLaugh</u>	<u>Ethel Eger.</u>
<u>Mrs. Lucina Miller</u>	<u>Mildred Warner</u>
<u>Chester Craine</u>	<u>Phil. Warner</u>
<u>Mrs. Edna Craine</u>	<u>Wm. Hamilton</u>
<u>John L. Craine</u>	<u>Grace Hamilton</u>
<u>Hattie Craine</u>	<u>Oscar Adelsberg</u>
<u>Leroy T. Craine</u>	<u>Mrs. Oscar Adelsberg</u>
<u>Pete Pantillo</u>	<u>Oscar Adelsberg Jr.</u>
<u>Thomas Craine</u>	<u>Charles Adelsberg</u>
<u>Mrs. Thomas Craine</u>	<u>Melba Adelsberg</u>
<u>Andrew Papp</u>	<u>Mrs. D.P. McLaugh</u>
<u>Mrs. Veronica Papp</u>	<u>Henry Murray</u>
<u>Leo Seymour</u>	<u>Mrs. H. L. Murray</u>
<u>Mrs. Bertha Seymour</u>	<u>Mrs. Rose Adelsberg</u>
<u>S. C. Lilly</u>	<u>H. A. Drolsbough</u>
<u>Mrs. S. C. Lilly</u>	<u>Mrs. Freidhof</u>
<u>Mrs. N. A. Drolsbough</u>	

INHABITANTS OF CRESSON TOWNSHIP

<u>William J. Rose</u>	<u>Mr J Schreiner</u>
<u>Mrs William J Rose</u>	<u>Mrs Louise Schreiner</u>
<u>James Horvitzky</u>	<u>Miss A Jane Storr</u>
<u>Mr David Ross</u>	<u>Mrs Annabel Murray</u>
<u>Mrs David Ross</u>	<u>Mr Francis Murray</u>
<u>William Stevens</u>	<u>J. F. Tomblow</u>
<u>Mrs Thekla Destenens</u>	<u>Mrs Fannie Tomblow</u>
<u>Mr Joseph Destenens</u>	<u>Mr Raphael Mulhann</u>
<u>Mr. C. H. Stevens</u>	<u>Mr James Mulhann</u>
<u>Mrs C. H. Stevens</u>	<u>Mrs Kim O'Neill</u>
<u>Paul A Boland</u>	<u>Miss John Friedrich</u>
<u>Eric Hanson Boland</u>	<u>Mr John Friedrich</u>
<u>V.P. Billington</u>	<u>Mr Edward McShay</u>
<u>Mrs Billington</u>	<u>Mrs Bessie McShay</u>
<u>Basile Templon</u>	<u>Wm Shumato</u>
<u>Mrs Basile Templon</u>	<u>Wm Shumato</u>
<u>Edward W. Templon</u>	<u>Mrs Ella J. O'Neill</u>
<u>Mrs. E. W. Templon</u>	<u>Joe J. O'Neill</u>
<u>Lars Rao</u>	<u>Arthur O'Neill</u>
<u>Mrs Mary Rao</u>	<u>Grace E. O'Neill</u>
<u>Henry P. McCormick</u>	<u>Charles Berghimer</u>
<u>Mrs Henry P. McCormick</u>	<u>Freda Berghimer</u>
<u>Reid ...</u>	<u>Elmer J. Bradley</u>
<u>Mrs Reid ...</u>	<u>Mrs ...</u>
<u>Frank J. Glavin</u>	<u>W. H. ...</u>
<u>Mr Frank J. Glavin</u>	<u>Edward M. ...</u>
<u>Malcolm C. Boule</u>	<u>A. L. ...</u>
<u>Mrs Malcolm C. Boule</u>	<u>Earl James</u>
<u>Mr ...</u>	<u>Catherine James</u>
<u>Joseph Roman</u>	<u>Carl ...</u>
<u>Mrs Catherine Roman</u>	<u>Freda ...</u>
<u>Arthur O'Neill</u>	

INHABITANTS OF WASHINGTON TOWNSHIP.

David Carney

John Carney

Mrs. Bridget Carney

Lella Rodgers

Chas. J. Rodgers

F. G. Rodgers  
Washington Twp.

Annie C. Battison

Helen M. Council  
Washington Twp.

Washington Township

State of Pennsylvania

SS:

County of Cambria

Before me, the subscriber, W. H. Byrne

A Justice of the Peace personally appeared Era P. Bradley

who being duly sworn according to law says that he is one of the exceptants, that all the statements of fact are true and correct as he verily believes; that the conclusions stated therein are correct to the best of his knowledge and belief; and that these exceptions are not filed for the purpose of delay but because deponent believes that an injustice has been done to him and to the other exceptants who have signed the exceptions.

Subscribed and sworn to before me this 28th day of November, A.D. 1930.

W. H. Byrne  
MY COMMISSION EXPIRES  
First Monday in January, 1932

Era P. Bradley

IN THE COURT OF QUARTER  
SESSIONS OF CAMBRIA COUNTY.

IN RE:

Petition of Inhabitants of  
Cresson and Washington Town-  
ships for the appointment of  
Viewers to vacate a public  
road in the Townships of  
Cresson and Washington, Cambria  
County, Pa.

Opinion of the court over-  
ruling exceptions and con-  
firming report of viewers.

*Filed 13 April 1931.*

**CLAIR W. LUTHER**  
**OFFICIAL STENOGRAPHER**  
FOR THE  
**FORTY-SEVENTH JUDICIAL DISTRICT**  
**PENNSYLVANIA**

IN RE:

Petition of Inhabitants of Cresson and Washington Townships for the appointment of Viewers to Vacate a public road in the Townships of Cresson and Washington, Cambria County, Pennsylvania.

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY.

No. 3 Sept. Sessions, 1930, R.D.

Exceptions to Report of Viewers.

\* OPINION OF THE COURT \*

Heard before Evans, P.J., McCann, J., McKenrick, J. and Reed, P.J., O.C., Specially Presiding.

EVANS, P.J.:

Nine exceptions were filed by counsel for a number of exceptants and objectors to the report of viewers and to the proceedings, and we will take up each exception in its order.

The first exception complains that the petition is defective in that it does not conform with Rule 308 of the Cambria County Rules of Court, which requires that a petition for the vacation of a road shall contain a reference to the number and term of the original case, or to the number and page of the docket containing the record thereof.

Rule 308 reads as follows: "Every petition for the review, or vacation, or change of a road, shall contain a reference to the number and term of the original case, or to the number and page of the docket containing the record thereof." This rule has been rather consistently disregarded due to the fact that it is exceedingly difficult to find the record of the proceeding of an original road, especially in the case of the older roads where the indexing and records are so deficient as to be almost impossible to identify them with the roads as they are today. However, it has usually been the practice where such record can not be found for counsel to include in their petition an averment that after careful examination they have been unable to find the record.

There is no act of assembly requiring that the petition

shall contain a reference to the proceeding where the original road was laid out, but it is simply our own rule of court and it was adopted as a matter of convenience rather than one of necessity in road proceedings. However, it is well settled that a proceeding to lay out or vacate a public road may be amended within certain limitations. In the case of Dickinson Township Road, 23 Pa. Superior Ct. 34, Judge Porter, in speaking for the court, among other things said: "The learned judge of the court below permitted the record to be amended as prayed for, which is now assigned for error. The jurisdiction of the court to entertain the proceeding was derived from an act of assembly; the rule above quoted did not deprive the court of jurisdiction of the subject-matter. The rule was but a regulation of the practice of the court, and it was within the discretion of the court to waive or suspend the operation at any time, unless some person would thereby be deprived of some right: Lance v. Bonnell, 105 Pa. 46; Dexter v. Powell, 14 Pa. Superior Ct. 162; Higgins Carpet Company v. Latimer, 165 Pa. 617. The first specification of error is dismissed." To a similar effect is Trickett on Road Law, Page 11; Road in East Hempfield Township, 2 Foster, 163; Upper Mount Bethel Road, 7 Northampton County Reporter, 29.

In the case of Dickinson Township Road, supra, attention is called to the fact that the amendment is made before the report of the viewers was filed, but, unless the matter proposed to be amended affects the jurisdiction, or some one would be deprived of some right, there is nothing to prevent the court in permitting the amendment and waiving or suspending the operation of its rules, <sup>at any time.</sup> In the present case, as we said above, the rule is merely for convenience. The averment is not jurisdictional, nor is the right of any person affected by the omission from the petition, and while we prefer not to wipe out the rule entirely for the reason that it is a convenience to have the information therein required in the pe-

petition when it may be readily obtained, yet no one being injured and the costs of the proceeding, which are substantial, having been incurred, it would seem to us to be an injustice to dismiss the proceeding because of the failure to comply strictly with this particular rule of court. However, counsel for the petitioners have asked and obtained leave of court to amend their original petition, in which they specifically set forth the record of the original road as being contained in Road Docket Vol. 2, Page 382, under date of December 30, 1858. The first exception is therefore overruled.

The second exception complains that the petition is defective in that it does not state specifically and with sufficient exactness how the road sought to be vacated became a public road.

If there were any merit in this exception, which we doubt very much, it is cured by the amendment to the petition, which we allowed. The second exception is therefore overruled.

The third exception complains that the report is defective in that it does not comply with Rule 307 of the Rules of Court requiring every report on order for view or review of a road to be returned and filed within the first week of the term to which it is returnable.

Rule 307 provides, in part, as follows: "Every report on order for view or review of a road shall be returned and filed within the first week of the term to which it is returnable." This objection is answered in the case of Mead Township Road, 66 Pa. 185, where Mr. Justice Agnew, in discussing the matter of the time of the return of the report of viewers, among other things said: "The chief question in this case, as to the time of the confirmation of the report of viewers, was decided here at last term in the 'Road from Herrick's to Cussewago Bridge.' We there held that when the report is filed in due time, to wit, at or before the term to which it is returnable, and is ready to be taken up by the court, but has

to pass over to an adjourned court, the confirmation nisi then will not vitiate the proceedings." The rule in question is for the purpose of fixing the time during the term when the report may last be filed. It is totally immaterial how long before the last day the report may be filed, but it must be filed within that time so that it may lay over until the following term for examination and exceptions. It is argued by counsel for exceptants that by reason of the early filing of the report their exceptions must have been filed before the term to which it was filed by the viewers. No such contention is made by the proponents of the road and none could be successfully made. The exceptants had a full period from the required time of filing until the next term to file their exceptions, and did file them within the time fixed. The third exception is therefore overruled.

The fourth exception is that the report of the viewers is defective in that there is no finding that the road is useless, inconvenient or burdensome.

We are unable to agree with complainants for the reason that the report of the viewers specifically finds as follows: "And having carefully viewed the whole situation, we are of the opinion that the road in question is no longer necessary for the accommodation of the traveling public, and therefore should be Vacated." And again in the report of the viewers we find the following: "In the opinion of the viewers the road is no longer necessary for the accommodation of the traveling public." It is true that the report uses the word "opinion," but the report shows that the viewers went over the road, complied with the requirements of the law as to notice, and so forth, and after careful consideration they find that the road is no longer necessary for the accommodation of the traveling public. It is not necessary that the viewers find the road to be useless, inconvenient and burdensome, but only that it is useless, inconvenient or burden-

some: Bristol Township Road, 49 Pa. Superior Ct. 549. The case of Sewickley Township Road, 23 Pa. Superior Ct. 170, relied upon by counsel for exceptants, is not authority for their contention. In that case the viewers had reported that they were of the opinion that the road was becoming useless<sup>and</sup>/inconvenient, and the Superior Court reversed because it was necessary in order to vacate the road that it should be actually useless or inconvenient at the time of the examination and report of the viewers. No road may be vacated under the act of assembly until it is either useless, inconvenient or burdensome. The fourth exception is therefore overruled.

In the fifth exception it is complained that the report is defective in that no facts are alleged on which to base the finding of the viewers that the road is no longer necessary for the accommodation of the traveling public. The fifth exception conflicts with the complaint made in the fourth exception, in that it admits a finding on the part of the viewers that the road is no longer necessary for the accommodation of the traveling public. An examination of the report of the viewers, however, shows that they found that there was only one family living along the northerly end of the road for a distance of one and three-quarters miles, nor for half a mile on the southerly end; that there are three families living on the west side and two on the east side of the Pennsylvania Railroad, and those on the west side reach the present road by two very dangerous grade crossings and that these parties can secure another outlet to the public roads; that those on the west side of the Pennsylvania Railroad could secure other outlets which will be safe, and by which they can reach the public highway. They further find that the township should not be required to keep this road up for the accommodation of the few individuals, and further call attention to the danger to some of the individuals in using the crossings over the railroad. The only inference in conclusion to be drawn from the findings is

that the road is really a private road maintained for the use of the few families living along the same. It is true the viewers do not say the general public do not use the road, but they do find in effect that it is being used only by the few private individuals living along the same, which is one and the same thing. The fifth exception is therefore overruled.

The sixth exception complains of the statement in the viewers report that they are of the opinion that the road in question should be vacated, the complaint being that the report is defective in that no facts are found justifying the conclusion. The court might even receive the report without having facts found which would sustain the finding of the viewers that the road is useless, but in the present case we feel that there are sufficient facts found to indicate that they are matters warranting and sustaining the conclusion of the viewers that the road was useless to the general traveling public. In this exception counsel again complain that there is no finding that the road is useless, inconvenient or burdensome, apparently being under the impression that all three conditions must be found, but, as pointed out above, this contention is unsound. The sixth exception is therefore overruled.

The seventh exception complains that the report is defective in that it contains irrelevant matters, in regard to the manner in which parties living along the road could secure other outlets and in regard to railroad crossings. Even if the matters referred to were irrelevant, it would be no ground for setting aside the report of the viewers, but we are not prepared to admit that the matters complained of are irrelevant. The seventh exception is therefore overruled.

In the eighth exception it is complained that the viewers acted capriciously in stating that they were of the opinion that the road should be vacated, and in disregarding evidence showing that

the road was not in fact useless, inconvenient or burdensome as alleged in the petition. Under this exception it is contended that the court should and may consider and review the testimony taken before the viewers and set aside the conclusion of the viewers if the court does not agree with it. With this position we are unable to agree. In Ohio & Ross Township Road, 166 Pa. 132, Mr. Chief Justice Sterrett, in discussing the case in which it had been alleged that the court below should have considered the testimony taken before the viewers and reached its own conclusion as to the necessity for the road, among other things said: "Finally the court sustained the exceptions, set aside the reports of the viewers and re-reviewers, and confirmed the report of the reviewers, saying: 'We think the evidence does not show a necessity for a public road.' This remark would appear to indicate that the learned court's decision was based, not upon the report of either viewers, reviewers or re-reviewers, but upon the mass of testimony on sort of general appeal from the reports of viewers, etc. Strictly speaking, that testimony is no part of the record before us; nor do we think it was properly before the court below on the question of necessity or non-necessity of the proposed road. That question should be determined in the duly appointed mode of proceeding, by views, reviews and, in the discretion of the court, re-reviews." In the case of Walnut Street, 24 Pa. Superior Ct. 114, cited by counsel for exceptants, the distinction between the case there relied upon and the question we have here is pointed out by Judge Rice in a quotation from an opinion of Mr. Justice Agnew in the case of Norris's Appeal, 61 Pa. 422, which quotation is as follows: "The only questions which could come before the Court of Quarter Sessions, were those relating to the assessment for damages, excepting questions of irregularity in the proceedings." The cases of the Opening of Wharton Street, 48 Pa. 487, West Donegal Township Road, 21 Pa. Superior Ct. 620, Schuylkill River Road, 19 Pa. Superior Ct. 376, and Walnut Street, 24 Pa. Superior Ct. 114, were

all cases involving the matter of damages, and, on the question of damages the court may review the report of the viewers but not their conclusions as to the necessity or non-necessity of a public road. Their findings on these questions are final and conclusive, and have the same force and effect as the verdict of a jury, on the questions of fact. The eighth exception is therefore overruled.

The ninth exception covers the same complaint made in the eighth exception, in that it asks the court to review the judgment of the viewers in their conclusion that the road was in fact useless. The same cases are relied upon by counsel for the exceptants and what we have said as to the eighth exception disposes of the ninth. The ninth exception is therefore overruled.

DECREE

AND NOW, April 13<sup>th</sup>, 1931, after argument and due consideration, all of the exceptions in the above stated proceedings are overruled and the report of the viewers confirmed.

BY THE COURT:

Evans P.J.

EXCEPTION

To all of which counsel for exceptants excepts and prays that an exception be noted and bill sealed; all of which is, the day and year aforesaid, accordingly done.

John E. Evans, P.J. (Seal).

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

In the Matter of

The Petition of Inhabitants of  
Cresson and Washington Townships  
for the appointment of Viewers to  
vacate a public road between the  
Borough of Cresson and the Borough  
of Lilly, in the Townships of  
Cresson and Washington, Cambria  
County, Pennsylvania.

AMENDED PETITION.

*Filed 3 March 1931.*

F. J. HARTMANN,  
ATTORNEY,  
KRENSBURG,  
CAMBRIA COUNTY, PA.

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY.

In the Matter of

The Petition of Inhabitants	:	
of Cresson and Washington	:	No. 3 Sept. Sessions, 1930,
Townships for the appoint-	:	
ment of Viewers to vacate a	:	Road Docket.
public road between the	:	
Borough of Cresson and the	:	
Borough of Lilly, in the	:	
Townships of Cresson and	:	
Washington, Cambria County,	:	
Pennsylvania.	:	

TO THE HONORABLE, THE JUDGES OF THE COURT OF QUARTER SESSIONS OF  
THE PEACE IN AND FOR THE COUNTY AFORESAID:

The Amended Petition of the inhabitants of the Township of  
Washington and the Township of Cresson in said County, respectfully  
represents:

With leave of Court F. J. Hartmann, Attorney for Petitioners  
in the above proceeding, files this their Amended Petition for the  
purpose of having it appear in said proceeding in what volume and at  
what page the record of the original proceeding laying out the road  
to be vacated is contained, to-wit: the original case does not have  
a number and term, but the record of the laying out of the road  
originally is contained in Road Docket Volume 2 at page 382 under  
date of December 30, 1858.

  
\_\_\_\_\_  
Attorney for Petitioners.

STATE OF PENNSYLVANIA, :  
: ss.  
COUNTY OF CAMBRIA, :

F. J. Hartmann, being duly sworn according to law, deposes and says that the fact set forth above is true and correct as he verily believes. This affidavit is made by the Attorney on account of the expense, inconvenience and time required to secure the signatures of the original petitioners, and because the fact averred in the petition is a matter of record in the Court aforesaid.

Sworn and subscribed before me :  
this <sup>2<sup>nd</sup></sup> day of <sup>March</sup> ~~February~~, 1931. :  
G. W. Williams, :  
Pro. :  
: :  
: :  
: :

F. J. Hartmann

And now, March 2<sup>nd</sup>, 1931, F. J. Hartmann, Attorney for the Petitioners, moves the Court aforesaid for leave to file the above Amended Petition, nunc pro tunc.

F. J. Hartmann  
Attorney for Petitioners.

And now, March 2<sup>nd</sup>, 1931, leave granted to file the Amended Petition aforesaid, nunc pro tunc.

By the Court  
Evans P. J.

R E P O R T O F V I E W E R ' S .

To the Honourable, the Judges of the Court of Quarter Sessions of Cambria County, Pennsylvania.

We, the undersigned members of the Permanent Board of Viewers of Cambria County, Pa., appointed by your honorable Court, upon the attached order, and therein directed to view and determine as to the propriety of vacating a certain piece of public road extending from the Southerly boundry line of the Borough of Cresson to the Northerly boundry line of the Borough of Lilly, in the townships of Cresson and Washington, said county and state, respectfully report:

That having given due public notice of the view and of the time and place of meeting of the viewers to the Commissioners of the County of Cambria and to the Supervisors of the Townships of Washington and Cresson and to the traveling public by printed hand bills posted in public and conspicuous places at and near the termini and along the route of the road sought to be vacated; all of us met at the southerly line of the Borough of Cresson, in accord with the notices given and posted as aforesaid, and having been each duly sworn according to law to perform the duties of our appointment faithfully, impartially and according to the best of our judgment and ability: And having carefully viewed the whole situation we are of the opinion that the road in question is no longer necessary for the accomodation of the traveling public and therefore should be vacated.

The piece of public road recommended to be vacated is takes the following courses and distances, as indicated on the plot or draft hereto attached and made a part of this report, viz: Beginning at the southerly line of the Borough of Cresson and 170 feet Eastward from the center line of the P. R. R. and extending thence S. 40° 10' W. 740.5 ft., S. 41° W. 320.4 ft., S. 40° 45' W. 470 ft. S. 44° W. 427 ft., S. 47° W. 308 ft., S. 49° W. 1399 ft., S. 49° 50' W. 371.5 ft., S. 29° W. 164 ft., S. 49° W. 617 ft., S. 52° W. 133.5 ft., S. 42° 30' W. 308 ft., S. 43° 20' W. 293 ft., S. 43° W. 135.3

ft., S. 42° 30' W. 126.2 ft., S. 57° W. 139 ft., S. 46° E. 343.7  
ft., S. 36° W. 93 ft., S. 46° E. 213.3 ft., S. 43° W. 227 ft., S.

25° 10' W. 71.4 ft., S. 79° 30' W. 117.6 ft., S. 43° E. 2167 ft.,  
S. 51° E. 405.4 ft., S. 45° W. 311.5 ft., S. 36° 30' W. 457.6 ft.,  
S. 25° 30' W. 402 ft., S. 13° 30' W. 396.5 ft., S. 4° E. 333 ft.,  
and S. 15° 10' W. 143 ft., more or less along the improved high-  
way to the northerly end of Lilly Borough at the point indicated  
on the attached order of the Court.

There is no one living along the northerly end of the road for a  
distance of about one and three fourth miles nor for about half a  
mile of the southerly end.

In the opinion of the viewers the road is no longer necessary  
for the accomodation of the traveling public.

There are three families living on the west side and two on the  
east side of the P.R.R. and those on the west side reach the pres-  
ent road by two very dangerous grade crossings; that these parties  
can all secure another outlet to the public roads.

That those on the west side of the P. & R. could secure one  
of three other outlets which would be safe by means of which they  
could reach the public highway and those on the east side could  
reach the improved highway between Cresson and Lilly Boroughs.

We are of the opinion that the townships should not be required  
to keep the road for the accomodation of these few individuals  
and that the danger of the grade crossings is such that those now  
using same should should for their own safety secure another out-  
let.

In all we are of the opinion that the road in question should  
be vacated.

Witness our hands this 5th. day of November, A. D., 1930.

Adam Shuman  
J. D. Ritter  
A. M. Shoemaker  
Viewers.

NOTICE OF VIEW.

Notice is hereby given that the Viewers appointed by the Court of Quarter Sessions of Cambria County, Pa., to view and determine as to the propriety of vacating a certain piece of public road in Washington and Cresson Townships, said county and state:

Beginning at a point on the Northerly side of Lilly Borough, distant 35 ft. Eastwardly from the center line of the Pennsylvania Railroad and ending on the Turnpike leading from Ebensburg to Hollidaysburg; now the William Penn Highway; at the Southerly line of the Borough of Cresson, distant 170 ft. Eastwardly from the center line of said Pennsylvania Railroad: will meet at the point of ending, above designated, at the Southerly line of the Borough of Cresson on the 27th. day of October, 1930, at 9:00 a. m., for the purpose of performing the duties of our appointment.

A. H. Shoemaker,

J. D. Ritter and

Adam Shuman,

Viewers.

Now, October 25th., 1930, service of the above notice is hereby accepted for the Commissioners of Cambria County, Pa.

*George E. Corbett*

NOTICE OF VIEW.

Notice is hereby given that the viewers appointed by the Court of Quarter Sessions of Cambria County, Pa., to view and determine as to the propriety of vacating a certain piece of public road in Washington and Crookston Townships, said county and state: beginning at a point on the Northerly line of the Borough of Lilly, distant 35 feet Eastwardly from the center line of the Pennsylvania Railroad and ending on the Turnpike leading from Mechanicsburg to Hollidaysburg; near the Millers Run Highway; at the Southerly line of the Borough of Crookston, distant 170 feet Eastwardly from the center line of said Pennsylvania Railroad: will meet at the point of ending, above designated, at the Southerly line of the Borough of Crookston on the 27th. day of October 1933, at 9:00 a. m., for the purpose of performing the duties of our appointment.

A. L. Schenker,

J. D. Mitter and

Adam Shuman,

Viewers.

Cost of View.

A. M. Shoemaker.  
 Preparing, posting & serving  
 notices of view and notifying viewers \$24.00  
 Stenographer & stationery & stamps — 2.00  
 Automobile hire — 3.00  
 Day on view as per act of assembly 12.00  
 24 miles @ 10¢ per mi. — 2.40  
 Engineering work - obtaining data,  
 plotting & drafting 11,412 ft of road 53.45  
 Going over testimony & consult-  
 ation with viewers — — 6.00  
 Preparing, having signed as-  
 sembling & filing report of viewers 24.00  
 Stenographer & stationery 2.20

J. D. Ritter \$129.65  
 1 1/2 Days  
 88 mi. @ 10¢ per mi (two trips) 8.80  
 \$26.80

Adam Shuman  
 1 Day \$12.00  
 46 miles 4.60  
 \$16.60

J. Allbecker  
 M. D. Bowker

State of Pennsylvania

§3.

County of Cambria

Before me, James McClune, Deputy Controller, personally came A. M. Shoemaker, one of the viewers named on the attached order of Court who being by me duly sworn according to law deposes and says that the time and expenses charged for on the attached bill are correct and the items of cost as indicated on the bill are paid to the best of his knowledge and belief.

A. M. Shoemaker

Sworn and subscribed to before me this 10th. day of Nov.,

A. D., 1930.

James McClune  
Deputy Controller.



125 R

1238

No. 3 September SESSIONS, 1920

Order to view and vacate road

in Washington and Cresson

Townships \_\_\_\_\_

and  
Report of Viewers

Subscribed November 10 1920

A. M. Shoemaker

Adam Shuman

J. D. Ritter

Viewers

Clerk \_\_\_\_\_ 90 cts.

**CERTIFIED**  
*[Signature]*  
CLERK

NOTE. "It shall be the duty of all persons appointed in the several counties of this Commonwealth to view and review any public or private road or bridge, if they shall decide in favor of locating said road or bridge, to endeavor to procure from the person or persons over whose land such location may be made releases from all claims for damages that might arise from the opening of such road or the building of such bridge; and in every case where said viewers shall fail to procure such releases, and it shall appear to them that any damages will be sustained, it shall be their duty to assess the damages and make report thereof signed by a majority of their number, and return the same, together with all releases obtained, to the Court of Quarter Sessions, and the damages so assessed shall be conclusive, or may be subject to appeal, review or modification, as may be provided by existing laws in the different counties of this Commonwealth."

"The persons appointed as aforesaid shall view such ground, and if they shall agree that there is occasion for a road, they shall proceed to lay out the same, having respect to the shortest distance, and the best ground for a road, and in such manner as shall do the least injury to private property, and also be, as far as practicable, agreeable to the desire of the petitioners."

"The viewers, as aforesaid, shall make report at the next term of said Court, and in the said report shall state particularly: First, who of them were present at the view; second, whether they were severally sworn or affirmed; third, whether the road desired be necessary for a public or private road; they shall also annex and return to the Court a plot or draft thereof, stating the courses and distances, and noting briefly the improvements through which it may pass; and, whenever practicable, the viewers shall lay out the said roads at an elevation not exceeding five degrees (except at the crossing of ravines and streams), where, by moderate filling and bridging, the declination of the road may be preserved within that limit."

*E. J. ...*

*8 Dec. 1930 Approved*

*By [Signature] Clerk of Court*



of Cambria County, Pennsylvania.

No. 3. September Sessions 1930

PETITION OF INHABITANTS OF  
CRESSON AND WASHINGTON TOWNSHIPS  
FOR THE APPOINTMENT OF VIEWERS  
TO VACATE A PUBLIC ROAD BETWEEN  
THE BOROUGH OF CRESSON AND THE  
BOROUGH OF LILLY, IN THE TOWN-  
SHIPS OF CRESSON AND WASHINGTON,  
CAMBRIA COUNTY, PENNSYLVANIA.

21238

Filed 6 October 1930

F. J. HARTMANN,  
ATTORNEY,  
KRENSBURG,  
CAMBRIA COUNTY, PA.

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

TO THE HONORABLE, THE JUDGES OF THE COURT OF QUARTER SESSIONS OF  
THE PEACE IN AND FOR THE COUNTY AFORESAID:

The Petition of the undersigned, inhabitants of the Township of Washington and the Township of Cresson in said County, respectfully represents:

1. That part of a public road was laid out in 1858 leading from Lilly to Cresson, in said County, to-wit:

Beginning at a point on the Northerly line of the Borough of Lilly distant 35 feet Eastwardly from the center line of the Pennsylvania Railroad and ending on the turnpike leading from Ebensburg to Hellidaysburg, now William Penn Highway, at the Southern line of the Borough of Cresson, distant 170 feet Eastwardly from the center line of said Pennsylvania Railroad.

2. That the said described piece or road between the points of beginning and ending has now become useless, inconvenient and burdensome inasmuch as an improved concrete road has been constructed between the points of beginning and ending, or practically so, parallelling said old road, which said new improved road is known as State Highway Route No. 276, Section 5A.

3. That the said road now useless, inconvenient and burdensome and the said new state highway practically begin at the same points of beginning and ending and the entire roads practically parallel each other. A plan is hereto attached showing the road which has become useless, inconvenient and burdensome in red and the said new improved highway, in white, which said plan is made part of this petition and marked Exhibit "A".

4. That notice of the presentation of this petition has been accepted by the Supervisors of Washington Township and by the Supervisors of Cresson Township, and also by the Commissioners of Cambria County, as is shown by their several acceptances of service hereto attached and marked Exhibit "B".

Your petitioners therefore pray the Court that the said public road beginning at a point on the Northerly line of the Borough of Lilly distant 35 feet Eastwardly from the center line of the Pennsylvania Railroad and ending on the Southerly Borough line of Cresson Borough on the William Penn Highway distant 170 feet Eastwardly from the center line of said Pennsylvania Railroad be vacated agreeably to the Acts of the General Assembly in such case made and provided. And they will ever pray, etc.

SUPERVISORS OF CRESSON TOWNSHIP.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Supervisors.

SUPERVISORS OF WASHINGTON TOWNSHIP.

*W J Monahan*  
 \_\_\_\_\_  
*Wm. Dumas*  
 \_\_\_\_\_  
*Jacob Bender*  
 \_\_\_\_\_  
 Supervisors.

INHABITANTS OF CRESSON TOWNSHIP.

*Wm L. Brown*  
 \_\_\_\_\_  
*Emuel*  
 \_\_\_\_\_  
*Mrs E A Gibson*  
 \_\_\_\_\_  
*R A Donnell*  
 \_\_\_\_\_  
*John V Luther*  
 \_\_\_\_\_  
*A J Hines*  
 \_\_\_\_\_  
*James O Shell*  
 \_\_\_\_\_  
*Richard Byers*  
 \_\_\_\_\_  
*B M Byrne*  
 \_\_\_\_\_  
*John W Kanner*  
 \_\_\_\_\_  
*J J Darragh*  
 \_\_\_\_\_

INHABITANTS OF WASHINGTON TOWNSHIP.

*John George*  
 \_\_\_\_\_  
*Vincent Licari*  
 \_\_\_\_\_  
*James [unclear]*  
 \_\_\_\_\_  
*Chas. Rodgers*  
 \_\_\_\_\_  
*Robert Luns*  
 \_\_\_\_\_  
*David Polgren*  
 \_\_\_\_\_  
*Dan [unclear]*  
 \_\_\_\_\_  
*Stoney Dembosky*  
 \_\_\_\_\_  
*Mike Motel*  
 \_\_\_\_\_  
*Herman Behe*  
 \_\_\_\_\_  
*Francis Bender*  
 \_\_\_\_\_

*B. P. Smith*  
*H. E. Swartz*  
*C. G. Zimmerman*  
*J. E. Weisiger*

*David. Penton*  
*Richard Bender*  
*Joe Bender*  
*C. M. Muller*  
*Mrs. Isabell Glenn*  
*Richard Glenn*  
*John Belle*  
*Martin Belle*  
*Sydney D. Diehl*  
*Peter Robins*  
*Harren D. Bender*  
*Merion Diehl*  
*Frank Robins*  
*Chas. Mouahan*

STATE OF PENNSYLVANIA, :  
COUNTY OF CAMBRIA, : ss.

*A. J. Hines*

being duly sworn according to law, deposes and says that he is one of the petitioners aforesaid, and that the facts set forth in the foregoing petition are true and correct to the best of his knowledge and belief.

Sworn and subscribed before me  
this 21st day of August, 1930.

*W. H. Byrne*

*A. J. Hines*

*J. P.*  
MY COMMISSION EXPIRES  
First Monday in January, 1932

- : O R D E R : -

And now, October 6th, 1930, the foregoing petition of the Inhabitants of the Townships of Washington and Cresson in said County, for the vacation of a public road between the points in said petition specified having been presented and read, the Court, after due consideration, do order and appoint Ally Shuman Esq., Adam Shuman and J. D. Ritter, who are to view the road in said petition prayed to be vacated, and to consider and judge whether it has become useless, inconvenient and burdensome, and if they agree that the same is become useless, inconvenient and burdensome they shall make report accordingly to the next Court of Quarter Sessions to be held for said County.

By the Court  
Evans P J

" EXHIBIT B "

We, the undersigned, being the Supervisors of Washington Township, in the County of Cambria and State of Pennsylvania, do hereby acknowledge to have received notice of the presentation of the foregoing petition praying for the vacation of a public road located between the boroughs of Lilly and Cresson in said County, and we hereby accept service of the same, which acceptance is to have the same force and effect as if the notice required to be served upon us according to law had actually been so served.

*Wm. Monahan*

*Wm. Dumm*

*Jacob Bender*  
Supervisors of Washington  
Township.

Print each 9/10/30

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

IN THE MATTER OF THE PETITION OF INHABITANTS OF THE TOWNSHIP OF WASHINGTON AND THE TOWNSHIP OF CRESSON, IN SAID COUNTY, FOR THE VACATION OF A PUBLIC ROAD BETWEEN THE BOROUGH OF CRESSON AND THE BOROUGH OF LILLY, IN THE TOWNSHIPS OF WASHINGTON AND CRESSON, CAMBRIA COUNTY, PENNSYLVANIA.

You are hereby notified that on October 6th, 1930 there will be presented to the above named Court the petition of inhabitants of Cresson and Washington Townships praying for the vacation of a public road located between the Boroughs of Lilly and Cresson, in said County, and further praying that viewers be appointed to view the said road and report to the above named Court according to law.

J. F. Kehm  
Attorney for Petitioners

STATE OF PENNSYLVANIA, :  
  :     ss.  
COUNTY OF CAMBRIA,         :

J. A. Cornell

being duly sworn according to law, deposes and says that he did serve notice on all of the supervisors of Cresson Township of the presentation of the above mentioned petition, as follows:

F. J. Lench, John P. Bradley,  
Conrad Friedrich

by handing each one of them a true and correct copy of the above notice personally.

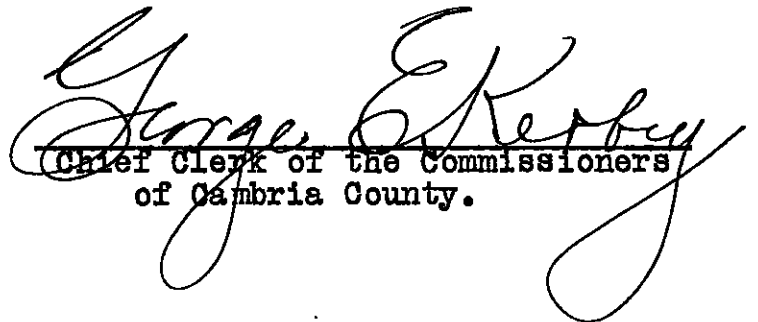
Sworn and subscribed before me :  
this 9th day of September :  
1930. :

Reginald Long

J. H. Conner

NOTARY PUBLIC  
COMMISSION EXPIRES MARCH 1, 1931

We, the Commissioners of Cambria County, do hereby accept service of notice of the presentation to the Court of Quarter Sessions of Cambria County of the petition of the inhabitants of Washington and Cresson Townships, praying for the vacation of a public road located between the Boroughs of Lilly and Cresson in said County, with the same force and effect as if the notice required by law to be served upon us had actually been served.

  
Chief Clerk of the Commissioners  
of Cambria County.