

R 11# 2 Dec 1907  
Nat Microfilmed

Road supplied and Approved  
N. 79° E. 1414

B. F. Beers

Improved Land

Market St.

Rowland  
Dick

C. H. Lantz  
(Hotel)

Chas.  
Bates

N. 76° 30' E. 500 Road Vacated

N. 61° E. 700

Main St

To Fallers Bridge

PLAN OF

PROPOSED PUBLIC ROAD IN

READE TOWNSHIP, CAMBRIA CO. PA.

SCALE: 1" = 100 VIEWED FEB. 29. 1908.

Jno L. Elder  
Surveyor

Viewers appointed upon an order of the  
Court of Quarter Sessions, dated Dec 4 1907.  
Jno. L. Elder, A. L. Rutter, John Mulhollen.

To the Commissioners of Cambria County,

You are respectfully notified that on April 20, 1909. a petition will be presented to the Court of Quarter Sessions for Cambria County, asking for viewers, to view and lay out a road in Croyle Township, Cambria County, beginning at acpoint on a public road at the foot of the hill east of the three arch stone Pennsylvania Railroad Bridge, at the west end of the deep cut in Croyle Township, and ending on a public road near the stone arch bridge over the old Portage Railroad near the est end of the present deep cut in said Croyle Township, and to vacate the present public road connecting the aforesaid points.

*Elmer Sherbine*  
-----  
Atty. for Petitioners.

And now April 12, 1909, service of the above notice is hereby acknowledged.

..... *L. C. Hoffell* .....  
Commissioners Clerk.

Cambria County SS.

Before me A Justice of the Peace in and for the Borough of Wilmore, personally appeared John Smith, who being duly sworn according to law deposes and says, that on the Tenth day of April, A. D., 1909, notice was served on the Supervisors for Croyle Township, said County, of the intention to make application to the Court of Quarter Sessions of Cambria County on the 20th day of April, A. D., 1909 for the appointment of viewers to vacate and lay out a road, beginning at a point on public road at the foot of the hill east of the three arch Pennsylvania Railroad Bridge, at the west end of the deep cut in Croyle Township, and ending on the public road near the Stone Arch Bridge over the old Portage Railroad near the East end of the present deep cut in Croyle Township.

Sworn to and subscribed before me, this 15th day of April, A. D., 1909.

J.S. *John M. Smith* ---

*A. J. Kelly* - J.P. ---  
My commission expires  
*First Monday in May 1910*

KNOW ALL MEN BY THESE PRESENTS, that we M. H. Beers  
M. L. Glasgow and M. E. Glasgow are  
held and firmly bound unto the Commissioners of Cambria County, their  
successors and assigns, in the sum of Fifty Dollars (\$50.00.) to be  
paid to said Commissioners of Cambria County or their certain att-  
orney, successors and assigns; to which payment well and truly to be  
made and done we do bind ourselves, our heirs, executors and ad-  
ministrators and every of them, by these presents. Sealed with our  
seals and dated this second day of December A. D. 1907.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the undersigned  
and other petitioners for the laying out of a public road in Reade  
Township, Cambria County, beginning at the intersection of Main and  
Market Streets in the Village of Fallen Timber, Township and County  
aforesaid, and to extend in an Easterly direction and connect with  
and end at the public road between Clearfield, or Fallen Timber,  
bridge and Joseph Hollens Mill, at a point near the residence of  
B. F. Beers, Township and County aforesaid; and the vacation of a  
portion of the above mentioned road from Clearfield, or Fallen Timber,  
bridge to Joseph Hollen's Mill, in case the first above mentioned  
road is approved and laid out, viewers to view the ground proposed  
for said public road and decide as to the advisability of vacating  
a portion of the above mentioned road having this day been appointed  
by the Court of Quarter Sessions of Cambria County, shall pay all  
fees and costs of said viewers into the County treasury if the Court  
by order direct them to do so then this obligation to be void and  
of none effect, other wise to be and remain in full force and virtue.

Sealed and delivered in  
the presence of:

---

M. H. Beers (SEAL)  
M. L. Glasgow (SEAL)  
M. E. Glasgow (SEAL)

No. 2 December, 1907.

In the Court of Quarter  
Sessions of Cambria Co.

In rePetition of

Inhabitants of Reade Twp.  
for the appointment of  
viewers to view the ground  
for a proposed road from  
Fallen Timber to a point on  
the public road from Clear-  
field Bridge to Jos. Holler's  
Mill, etc.

Bond.

And now, December 2d, 1907,  
the within bond approved.

*[Signature]*

*Filed 2 December, 1907.*

BARKER & BARKER,  
ATTORNEYS AT LAW,  
EBENSBURG, PA.

HENRY HALL, PRINTER, INDIANA, PA.

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

NO. 2, DECEMBER SESSIONS, 1907.

PETITION FOR APPOINTMENT OF VIEWERS TO VIEW GROUND FOR PROPOSED ROAD IN READE TOWNSHIP.

----oOo----

The petition upon which the above stated proceeding is founded sets forth that the petitioners labor under great inconvenience for want of a public road, etc., in Reade Township, Cambria County, and prays for the appointment of three qualified persons according to law to view the ground proposed for said road, and if they see occasion to lay out the same, to inquire of and vacate a portion of the public road in the township and county aforesaid now opened from Clearfield or Fallen Timber Bridge to Joseph Hollin's Mill, which portion of said road "will become useless by reason of the laying out of the proposed road,"etc.

Viewers were appointed, and upon their report being filed, M. D. Kittell, Esq., counsel for Isabella Bates, a resident of said township, filed four exceptions, the first of which ~~upon argument~~ was abandoned upon hearing, but the remaining three have been urged as grounds for setting aside the proceeding. The first two of the remaining three go to the jurisdiction of the court, and the fourth goes to the conduct of the viewers.

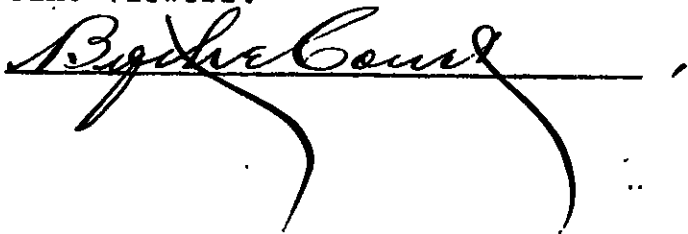
It is contended that the court had no jurisdiction to appoint viewers to vacate a road upon the petition presented and above recited, in this, that before the court can appoint viewers to vacate a road, or any portion of it, some cause must be present and existing. In other words, that there is no Act of Assembly or law extant in the state of Pennsylvania which will authorize the court to appoint viewers to create a

condition, and then act upon cause so created for vacating a road. If this position is correct, the court was without jurisdiction at the time of the appointment of viewers, for no other reason for vacating of the road is set forth. Had the petition stated that the road had become useless, burdensome or inconvenient, without specifying in what manner, and the report of viewers when filed set forth with specific certainty the manner in which the cause arose or the conditions present at the time of the presentation of the petition, the court could properly refuse to set aside the proceedings on exception; but, under the present petition, no such cause was even hinted at as existing at the time the petition was presented, and for this reason we believe the court was without jurisdiction to appoint viewers. That a road, or a portion of a road may be vacated and supplied, there seems to be no question, and where this position was taken in cases cited, we believe that the several courts had such proceedings in mind.

After a full examination of authorities, we are satisfied that the position of counsel for exceptant in this particular is sound, and that exception number two must be sustained.

From the foregoing it becomes unnecessary for us to further pass upon exceptions, but we might suggest that the action of two of the viewers in this case rendered the validity of the report exceedingly doubtful.

And now, December 7, 1908, the proceedings had in the above-stated cause are set aside at the costs of the petitioners, for the reason that the court upon the petition presented was without jurisdiction to appoint viewers.

A handwritten signature in cursive script, appearing to read "Judge C. C. Bond", written over a horizontal line.



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

No. 2, December Sessions, 1907.

In re petition  
for appointment of viewers  
to view ground for proposed  
road in Reade Township.

Opinion and decree of the  
court setting aside proceedings in above case.

*Filed 7 December 1908.*

In re petition for appointment of viewers to view the ground for a proposed road in Reade Township.

§ In the Court Of Quarter Sessions of  
§ Cambria County, Pa.  
§ No. 2 Dec. Sessions 1907.

Exceptions to proceedings.

1. The parties who made application to the Court for the appointment of viewers in above stated proceeding failed to give written notice to the road supervisors of the Township of Reade of the time and place of said application, and no copy of such notice properly attested, has been filed among the records of the Court. *written*

2. There is no law authorizing the appointment of viewers to view the ground for a public road, and if the viewers see occasion to lay out a road, then to inquire of and report in favor of vacating a portion of another public road. Proceedings may be instituted for the appointment of viewers to view a road, or part of a road, and if they vacate the same, to supply the part vacated by another public road.

3. In order that the Court may have jurisdiction to appoint viewers with authority to report in favor of vacating a road, or part of a road, it is necessary not only that it appear by the petition that the road, or part of road sought to be vacated is useless, inconvenient or burdensome, but the particular respect in which said road or part of road is useless, inconvenient and burdensome must be set forth in the petition for appointment of viewers. Such averment is not contained in the petition in the present case.

4. The report of viewers filed in above stated case was prepared in advance of the meeting of the viewers and was in the possession of the viewers, or one of them, before the viewers met and were sworn to perform their duties.

*M. D. Pittell*  
Attorney for Isabella Bates.

Cambria County, ss.

Charles G. Bates being duly sworn according to law  
says that the matters set forth in the foregoing Exceptions are true,  
as he verily believes.

Sworn and subscribed before me  
this 29<sup>th</sup> day of ~~May~~ 1908.

Wm. McHugh J. T.

Commission Expires 1st Monday in May 1909.

Charles G. Bates

No.2 Dec. Sessions 1907

In re petition for appointment of viewers to view the ground for a proposed road in Reade Township.

Exceptions to Proceedings.

*Filed 1 June, 1908,*

Kittell.

In re petition for appointment  
of viewers to view the ground  
for a proposed road in Reade  
Township.

) In the Court of Quarter Sessions  
( of Cambria County.  
( No. 2 December Sessions, 1907.

Brief on the part of Petitioners.

1:  
The first exception was withdrawn by counsel for the exceptant  
at the time of the argument.

II and III.

The second exception seems to be based entirely on an extract from Trickett's Road Law which in turn is based on the case of Blakely Road, 8 C.C.Rep., 498. A careful examination of the last named case shows that the form of petition and method of procedure was not condemned on account of the question raised in the second exception in the present case. What was condemned was the failure to "set forth, in a clear and distinct manner, the situation and other circumstances of such road or highway or of the part thereof which the applicants may desire to have vacated", as required by the 23d section of the Act of 1836. The petition in the above case was almost identical with the petition in the case now before the Court and instead of criticizing the form of application the Court said in his opinion "There can be no doubt of the propriety of joining proceedings to vacate with those to relay a road or parts of a road", It is true the Judge Archbald referred to the petition in Smith's forms in the manner stated by counsel for the exceptant, and cited Road in Ross Township, 36 Pa., 87, as his authority for so doing, but he referred to the omission of the statement required by the 23rd section of the Act and not to the form of the petition. In neither of the cases cited above was the decision made on the ground that the Court did not have jurisdiction on account of the application of the petitioners to lay out a new road and vacate the part of an old road supplied

by the new.

In the case of Ross Township Road, 36 Pa., 88, the portion of the opinion cited by counsel for exceptant did not refer to the application to lay out a road and vacate a part of another which would thereby become useless. It referred to the failure to comply with the 23rd section of the Act, as will readily be seen from the following extract from said opinion.

"It was framed in entire disregard of the requirements of the Act of Assembly. That enacts that every application to vacate a road shall set forth in a clear and distinct manner the situation and other circumstances of such road or highway, or of the part thereof which the applicants may desire to have vacated. In the present case this defect in the petition was not supplied or cured by the report of viewers."

The above would seem to be sufficient to dispose of the second exception but we desire to cite Road in Cheltenham Township 26 Pa. C. C., 1, which case is identical with the one before the Court in form of petition and other circumstances.

"A petition to lay out a new road and vacate the part of an old road supplied by the new will be sustained where the new road has but one terminus in the old road and the part to be vacated is specifically designated and the reasons for the vacation are fully set forth."

1 Syl.

In the above case Judge Schwartz said in his opinion (page 2)

"If the new road supplies a definite part of the old road, we see no reason why a jury may not vacate the useless part, if the petition calls special attention to this feature of the case so that all parties interested may have a hearing. A similar proceeding was upheld in Chanceford Road, 1 Del. 432. We do not think that Road in Ross Township, 36 Pa., 87, condemns this form of procedure, as intimated in Blakely Road, 8 Pa. C. C. R., 488. What the Court condemned was the failure "to set forth in a clear and distinct manner the situation and other circumstances of such road or highway or of the part thereof which the applicants may desire to have vacated". In the application pending before us the part to be vacated is specifically named, and the reasons and circumstances are set forth.

The form of petition here used is no stranger to us, but is found among our records and is approved by one of the standard Form Books."

Counsel for exceptant laid little stress on the third exception, either in his brief or in his argument, probably for the reason that anything that was omitted by the petitioners in their petition was amply supplied by the report of viewers. The petition sets forth that the part of the road which they desire to have vacated will become "useless " by reason of the laying out of the new road prayed for. We contend that the use of the word "useless" is a sufficient compliance with the 23d section of the Act of Assembly to enable the court to legally appoint viewers for the purposes prayed for.

" The Act of June 13th, 1836, which provides that a road may be vacated whenever it becomes useless, inconvenient or burdensome is in the disjunctive, and all three elements need not be present."  
Hanover Twp. Road 1 Leh. 52.

In our argument we contended that there was a sufficient statement of the facts made in the petition to warrant the court in appointing viewers under the 23d section of the Act and even assuming that there was an omission in this respect it was cured by the report of the viewers which found that " the road so vacated is inconvenient and burdensome to keep in good condition, it being laid out on low swampy ground, having several grades, also having a small bridge which it is an expense to the township to keep in repair, while the first mentioned road is laid out on high, dry ground and has a much better grade." That this omission can be cured by the report of viewers is clear from the expression of opinion in Ross Township Road (supra) where the court said, in referring to an alleged defect under the 23d section " In the present case the defect in the petition was not cured or supplied by the report of viewers". The court will notice that in other cases cited in this brief the same suggestion is made; that a defect in the petition can be cured by the report.

Even though the petition fail to set forth in full the words of the 23d section the courts have held that the report of viewers will not be set aside for that reason, and have further held that this information is solely for the benefit and information of the court and that the court may dispense with it.

"In proceedings to vacate a road, the report of viewers will not be set aside because the petition does not set forth in a clear and distinct manner the situation and other circumstances of the road to be vacated."

Lower Nazareth Twp. Road 1 North. 81.

In the opinion in the above case Judge Schuyler said:- " In his first exception exceptant complains that the petition is defective in that it does not " set forth in a clear and distinct manner the situation and other circumstances" of the part of the road which the applicant desires to have vacated. The petition is certainly defective in the particular mentioned, but we think this is not sufficient ground for setting aside the report of viewers. The information for which the act makes provision is for the benefit of the Court exclusively, and if the court sees fit to dispense with it no one is harmed.

" A report will not be set aside because neither the petition nor the report sets forth the situation of the part desired to be vacated other than the general statement that the road is inconvenient, useless and burdensome.

West Earl Twp. Road 21 Lane., 58; East Hempfield Road 21 Lane. 225; 9 North., 237; Lower Merion Road 20 Montg., 164.

" The omission to state in the petition why the part of the road alleged to be inconvenient is so, is not fatal on appeal.

Road in Manheim Twp. 12 S. C. 279.

In the above case Rice P. J. said " It was of such a case that Mr. Justice Clark said ' To move the discretion of the court it is certainly proper to recite in the petition the particular defects in the present location of the road, and to suggest that it is possible to remedy their defects by supplying another' He did not decide that this must be done, but only that to do so was not cause for reversing the order of the quarter sessions confirming the report. No case has been called to our attention which decides that the



omission of the petition to specify why the part of the road alleged to be inconvenient is so is fatal on appeal."

IV.

There is absolutely no merit in the fourth exception. Two of the viewers met upon the ground at the time fixed in the notices and after having been sworn viewed the premises. The third viewer was absent. Notices were again posted fixing for the view the Saturday before the first day of the term to which the order was returnable. On account of the shortness of the time for the preparation of the report before the time for filing the surveyor took with him the report afterwards signed and filed. The other viewers did not know until after they had viewed the ground that the report had been prepared in advance. How, then, can it be said that the viewers were improperly influenced by the fact that the report was prepared in advance, when by the erasure of a line or two in the report and the insertion of a negative they could have reported against the road had they so desired. In order to set aside the view for the reason assigned in the fourth exception the court must be satisfied that the viewers were improperly influenced in their decision by the fact that one of them had in his possession the report afterwards filed, and there is nothing in the evidence to so satisfy the court. On the contrary the testimony taken shows that the viewers were not influenced in the least by this fact, and that they felt at perfect liberty to change the report had their conclusions been adverse to the laying out and vacating of the road.

Respectfully submitted.

*Barry & Barry*

No. 2 December Sessions 1907.

In the Court of Q. S. of Cambria County.

In re. Petition for appointment of viewers to view the ground for a proposed road in Reade Township.

Brief on the part of Petitioner

B. & B.

In Re Road  
in  
Reade Township

*Quarter Session*  
In the Court of ~~Common Pleas~~ of Cambria  
County, Pa.  
of Dec. <sup>Term</sup> Term, A. D. 1907, No. 2. R.D.  
Exceptions

And now, to wit, the 10th day of October A. D. 1908, Rule  
on part of *Excerptants* to take depositions of witnesses  
before *F. B. Sharbaugh*, Esq., Commissioner, to be read on the  
hearing of the above stated case.

Cambria County, ss:

Extract from the Record of said Court, Certified the  
10th of October 1908  
*A. S. Kinkadee*, Prothonotary.  
*clerk*

To \_\_\_\_\_  
\_\_\_\_\_

TAKE NOTICE, That in pursuance of the above Rule the depositions of witnesses to be read in  
evidence on the \_\_\_\_\_ of the above stated \_\_\_\_\_ on part of  
the \_\_\_\_\_ will be taken at the \_\_\_\_\_  
\_\_\_\_\_ on \_\_\_\_\_

the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 190\_\_\_\_, between the hours  
of \_\_\_\_\_ o'clock A. M., and \_\_\_\_\_ o'clock P. M., before \_\_\_\_\_  
\_\_\_\_\_ in and for said \_\_\_\_\_

or by some other person of competent authority, at the time and place aforesaid, when and where you  
may attend if you think proper.

No. 2 Dec. Term, 1907

R.D.

In re Road

in

Reade Township

Filed 6 November 1908

Rule on part of Exceptants

To take depositions

Kittice

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

--ooOoo--

In Re Road	§	No. 2 R. D., 1907.
in	§	
Reade Township.	§	Exceptions.

DEPOSITION

Of J. L. Elder, Jr., taken before F. C. Sharbaugh, Commissioner to take testimony, at his office in the Center Ward, Borough of Ebensburg, County of Cambria and State of Pennsylvania, on the 5th day of November, A. D. 1908, pursuant to rule, copy of which is attached hereto, and agreement of counsel hereinafter noted.

APPEARANCES:

For the exceptants, M. D. Kittell, Esq.

For the Respondents, F. D. Barker, Esq.

It is agreed by counsel for petitioner and counsel for exceptant that depositions may be taken under this rule without notice.

John L. Elder, Jr., called, sworn.

DIRECT EXAMINATION by Mr. Kittell:

Q--- You were one of the viewers in the matter of the road proceedings in Reade Township, entered to No. 2 of the December Sessions, 1907? A--- Yes.

Q--- I hand you report of viewers filed in said case, which report bears your signature, and that of the other

viewers; kindly state when that report was prepared? A--- We had the report with us when we went out there; the report was prepared before we went out.

Q--- Was there any change made in the report after the view was held and before it was signed? A--- I don't recall now whether there was or not.

Q--- State please whether the findings in favor of laying out a road for the public and the vacating of a portion of another road were contained in the report as prepared and taken with you on the morning of the view? A--- By way of explanation, I would say that we had a previous day set for the view and one of the viewers was unable to get there.

Q--- Which one was that? A--- Mr. Mulhollen. And I was under the impression that they would not go ahead with the view, but Mr. Rutter and I went ahead with the view and agreed upon recommending the road, and then came back and Mr. Barker said we would have to have another view with the third man there. We merely had time to give the ten days' notice and so we had the report prepared from our previous view and we took the report with us and agreed upon what is practically in this report. I don't remember of any changes being made in it.

Q--- Mr. Rutter and you met on the ground on a day previous to the 29th of February, 1908? A--- Yes, sir.

Q--- And viewed the premises and agreed upon the findings that were reduced to writing in advance of the 29th of February? A--- Yes, sir.

Q--- You left your home on the morning of the 29th of February, on the morning train, and went to the place of meeting and where you held the view? A--- Yes.

Q--- And this report which was previously prepared was in your possession at that time? A--- Yes.

CROSS-EXAMINATION by Mr. Barker:

Q--- Did this report in any way influence you in your finding on the day of the second meeting of the viewers? A--- It did not.

Q--- No instructions were given to you that this report was binding or that you had no power to change it at the time of the view? A--- No, sir.

Q--- When did Mr. Mulhollen first see this report? A--- It was after we had gone over the ground and had agreed to lay out the road there that I read the report to them.

Q--- Was it your understanding that the report was given to you as a matter of convenience for the viewers or on account of the short length of time between the date of making the view and the date of the meeting of the court <sup>at</sup> which the report was to be filed? A--- Yes, sir.


Q--- Do you not frequently have reports handed to you in advance of the holding of the view which are not binding but which are given you merely as a matter of convenience on account of the difficulty of securing the signatures of viewers, after the view is held? A--- Well, in the case of road and bridge views it is hard to do that. Probably we have done it in bridge views, have had reports prepared in advance.

Q--- You did not consider this report in any way binding upon you and the other viewers? A--- No, sir.

Q--- Had you decided to find differently from that the finding in the report you would have felt at perfect liberty to refuse to lay out the road and to vacate the part indicated in the view? A--- Oh, yes; if we had found differently, certainly.

CERTIFICATE.

I hereby certify that the foregoing is a correct transcript of the deposition of J. Laird Elder, Esq., witness on part of the exceptants, in the matter of the rule in Re Road in Reade Township, No. 2, December Sessions, 1907, and that said deposition was taken at the time, place and in the manner stated in the caption hereto and the agreement above noted.

  
Commissioner to take testimony.



In re Petition for appointment of viewers to view the ground for a proposed road in Reade Township.

§ In the Court of Quarter Sessions  
§  
§ of Cambria County, Pa.  
§  
§ No. 2 Dec. Sessions, 1907.

BRIEF on part of Exceptant.

I.

Exception No. 1 was based upon a misapprehension concerning the state of the record, and as it has no foundation in fact, it is therefore withdrawn.

II. and III.

The petition for appointment of viewers was not in accordance with any Act of Assembly, and the proceeding is wholly unauthorized by law. Section 18 of the General Road Law of 1836 gives the Court authority "to inquire of and to change or vacate the whole, or any part of any private or public road which may have been laid out by authority of law, whenever the same shall become useless, inconvenient or burdensome". Section 23 of the same Act reads: "Every application to vacate any road as aforesaid \* \* \* shall set forth in a clear and distinct manner, the situation and other circumstances of such road or highway, or of the part thereof which the applicants may desire to have vacated as aforesaid".

It is apparent that the Legislature intended that no proceeding to vacate a road should be instituted until the court would be apprised of the fact that the road, or part of the road sought to be vacated, was either no longer needed for travel, or that it was inconvenient to the persons accustomed to travel it, or such an expense to the parties bound to keep it in repair, that it should be closed to travel, and if another outlet was necessary that it should be supplied in place of the road vacated. The particular respect in which the

road sought to be vacated had become useless, inconvenient or burdensome should appear in the application. The proceeding intended by law is one to vacate a road for any of the causes mentioned in the Act of Assembly, and to supply the part thus vacated by a better road, if another road would be needed to accommodate the public or private travel as the case might be.

In the case now before the Court the proceeding was reversed, and it was sought first to have a road laid out for public use and then, if successful in this respect, to close a part of another road which it was alleged would then become useless because of the new road. The Court will observe the distinction between the present case and the condition contemplated by law with respect to vacating a road. By the law it is intended that before there is a proceeding to vacate a road, or part of a road, that the road, or part to be vacated has already become useless, inconvenient or burdensome, so that the condition must exist before the application is made to the Court for the appointment of viewers. In the present proceeding the road sought to be vacated will only become useless, inconvenient or burdensome upon condition that the Court will confirm the report of viewers, and the new road be opened out for the use of the traveling public.

There is no authority to vacate a road simply because, if another road shall be opened, it will become useless. The viewers, under such a petition, would be authorized to lay out a new road and still leave the old road standing; thus making two parallel roads between the same points.

Trickett's Road Law, page 231.

Blakely Road, 8 C.C.Rep., 498.

In the case of Blakely Road (supra) the application for appointment of viewers was in form the same as the application in the case now under consideration by this Court, and in both cases the applicants seem to have followed a form found in the form books. In the case

of Blakely Road the Court declined to appoint viewers, holding that they were without authority to do so under the form of the application presented, and the Court severely criticised the form of the petition given in Smith's Forms. Judge Archibald, disposing of the case, referred to a decision in the case of Ross Township Road 36 Pa., 87, and said "In the latter case, a petition, in form such as the one now before us, was said to be 'framed in entire disregard of the Act of Assembly', and the ruling there made effectually disposes of the present application."

In the case of Ross Township Road, 36 Pa., 88, the Supreme Court in an opinion by Judge Strong said: "The proceedings in this case are radically defective. The original petition was for the appointment of viewers 'to lay out and locate a public road' between two designated points, and also 'to vacate such part or parts of any other road or roads as it may supersede'. The object of the petition was therefore two-fold, the establishment of a new highway, and the vacation of parts of existing roads. It was framed in entire disregard of the requirements of the Act of Assembly."

#### IV.

One of the viewers testified that the report of the viewers was prepared in advance of the day of the meeting and taken by him to the meeting of viewers, and that after the meeting, the report was signed by all three viewers. By way of explanation he said that on a previous day when it was intended that the viewers should meet one was not present and that two of the viewers went over the ground and agreed upon their findings, and that this was the basis for the preparation of their report. The 4th exception should prevail and be considered by the Court sufficient without anything else to set aside the report of viewers. By the admission of one of the viewers two

of them had their minds made up concerning the merits of the proceeding in advance of the time of the meeting of viewers and in advance of the time when they were sworn to perform them "impartially and according to the best of their judgment". Any act of the viewers or any condition which would satisfy the Court that the viewers did not perform their duties impartially on the day of the view, is considered sufficient to set aside their report. While the particular point raised by the 4th exception in this proceeding has not been passed upon by the Court, yet there are a great many decisions where courts have set aside reports of viewers because of matters tending to show that the viewers minds were influenced in some way other than by what they saw and heard in the strict performance of their duties on the day and time when the view was held.

It is respectfully submitted that the 2nd, 3rd and 4th exceptions should be sustained.

  
Attorney for Exceptant.

No.2 December Sessions,1907

In re Petition for appointment of viewers to view the ground for a proposed road in Reade Township.

Brief on part of Exceptant.

Kittell.

No. 2 18 Term, 1908

Received June 8 1908

from Prothonotary of Cambria  
County.

Exceptions &  
Report

ZOB

Atty. for \_\_\_\_\_

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY.

To the Honorable Francis J. O'Connor, President Judge of the above named Court:-

We the undersigned, viewers appointed by the annexed order of Court do report:-

That, in pursuance thereof, all the viewers met at the time and place appointed for the holding of said view, to-wit, the residence of W. H. Ross in the Village of Fallen Timber, Reade Township, Cambria County, Pa., and after having been duly sworn to perform the duties of their appointment impartially and to the best of their judgment, as appears by oath hereto annexed, all the viewers named in said order viewed the ground proposed for the within mentioned road and the undersigned, being all the viewers named in said order, do agree that there is occasion for a road as prayed for by the petitioners and that the same is necessary for a public road and, having due regard for the most advantageous location and the best grade, we have laid out and do return for public use the following described road:-

Beginning at the intersection of Main and Market Streets in the Village of Fallen Timber, County, Township and State aforesaid, thence North 79° 00' East 1414 feet to a point in the public road between Clearfield, or Fallen Timber Bridge and Joseph Hollen's Mill, near the residence of B. F. Beers. The undersigned further report that they endeavored to procure from the owners of the land over which said road passes releases in writing of all claims for damages that may arise from the opening of the same. That the only land over which said road as laid out passes is a part of Market Street in the Village of Fallen Timber which land has long since been dedicated to public use, and has for many years been used by the public as a road, and land of B. F. Beers. That they have failed to procure a release of damages from B. F. Beers and therefore, having taken

into consideration the advantages to be derived by the said B. F. Beers by reason of the road passing through his land, we have assessed the damage sustained by the said B. F. Beers at \$100.00.

And we further report that we have viewed and do vacate the following described road, to-wit:- A portion of the public road between Clearfield, or Fallen Timber, bridge and Joseph Hollen's mill, beginning at the intersection of said road with Main Street in the Village of Fallen Timber, thence by the center of said road North 72° 30' East 240 feet; North 76° 30' East 500 feet and North 67° 00' East 700 feet to a point in the said public road near the residence of B. F. Beers, which by reason of the laying out of the first mentioned road will become useless and for the further reason that the road so vacated is inconvenient and burdensome to keep in good condition, it being laid out on low, swampy ground having several grades, also having a small bridge which is an expense to the Township to maintain and keep in repair, while the first mentioned road as laid out is on high dry ground and has a much better grade.

We further report that before the said view public notice of the time and place of the meeting of the viewers was given to all parties in interest according to law by posting the required number of notices in the most public places in the vicinity and at the termini of said road, and by copies of said notice served on the supervisors of Reade Township and the County Commissioners, all of which was done ten days before the view was held and will appear by return and acceptance hereto attached.

We hereunto annex a plot or draft showing the said roads as laid out and vacated, stating the courses and distances and noting briefly the improvements through which the same passes and herewith return a copy of the said notice.

Jno L. Elder 3 days	15.00
mileage	3.20
A. L. Rutter 2 day	6.00
mileage	20
J. C. Mulhollen 1 day	3.00
mileage	60

Jno. L. Elder  
A. L. Rutter  
J. C. Mulhollen



State of Pennsylvania, )  
County of Cambria ) SS.

Before me the subscriber, a Justice of the Peace in and for said County, personally appeared Jno. L. Elder, A L. Rutter and John Mulhollen, viewers appointed by the annexed order, who, being duly sworn, depose and say that they will perform the duties of their appointment impartially and to the best of their judgment and ability.

Sworn and subscribed before me  
this 29th day of February, 1908.

*E. J. Traylor*  
Justice of the Peace.  
My Commission Expires the  
Monday in May, 1911.

*Jno. L. Elder*

*A. L. Rutter*

*A. B. Mulhollen*

Commonwealth of Pennsylvania, }  
County of Cambria. }

At a Court of Quarter Sessions of the Peace of the County of Cambria held at Ebensburg, in the said County, on the Fourth day of December A. D. 1907, before the Honorable Judge of the said Court: Upon the petition of divers inhabitants of the Township of Reade, in the said County, setting forth that they labor under inconvenience for want of a Public road or highway, to lead from the intersection of Main and Market Streets in the village of Fallen Timbers, Reade Twp, Cambria County, and to extend in an easterly direction and connect with and end at the public road between Clearfield, or Fallen Timbers, bridge and Joseph Hollen's Mill, at a point near the residence of B. E. Beers, Reade Twp, County aforesaid. The petitioners therefore pray the Court to appoint three persons, qualified according to law, to view the ground proposed for said road, and, if they see occasion to lay out the same, to inquire of and vacate a portion of the public road, all in the Twp and County aforesaid now opened from Clearfield, or Fallen Timbers, Bridge to Joseph Hollen's Mill, which said road was laid out and opened by order of this Court on April 12th, 1857, (R. D. Vol. 2, page 99), which portion of said road will become useless by reason of the laying out of the proposed road, and make report of their proceedings to the next term of Court.

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

Jno. L. Elder surveyor, and  
A. J. Rutter and John Mulhollen

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:

L. E. Howell, Clerk.

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

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

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

NO. 2, December Session, 1907

Order to view Public Road  
in Reader Township

Viewers.

James L. Elders  
C. J. Rutherford 2  
John Mulholland 6

Clerk By Elders 90 cts.

B. B.

To John Owens, Conrad Hahn and Charles Leventry,  
Commissioners of Cambria County, Pa.

Take Notice:-

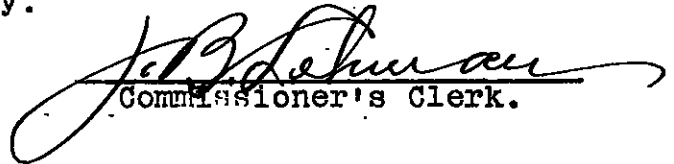
That the three viewers appointed by the Court of Quarter Sessions of Cambria County, Pennsylvania, to view the ground for a proposed road to lead from the intersection of Main and Market Streets in the Village of Fallen Timber, Reade Township, Cambria County, Penn'a., and to extend in an easterly direction and connect with and end at the public road between Clearfield, or Fallen Timber, bridge and Joseph Hollen's mill, at a point near the residence of B. F. Beers, and if they see occasion to lay out the same to inquire of and vacate a portion of the road now opened between Clearfield, or Fallen Timber, bridge and Joseph Hollen's mill which portion of the said road will become useless by reason of the laying out of the proposed road, will meet at the residence of W. H. Ross, Fallen Timber, Reade Township, on the 29th day of February, 1908, <sup>at 10 o'clock A. M.</sup> for the purpose of performing the duties of their appointment.

A. J. Rutter,

John Mulhollen,

Jno. L. Elder.  
Viewers.

Now, February 19th, 1908, service of the above notice accepted for the Commissioners of Cambria County.

  
Commissioner's Clerk.

ROAD NOTICE.

Notice is hereby given that the three viewers appointed by the Court of Quarter Sessions of Cambria County, Pennsylvania, to view the ground for a proposed road to lead from the intersection of Main and Market Streets in the Village of Fallen Timber, Reade Township, Cambria County, Pa., and to extend in an Easterly direction and connect with and end at the public road between Clearfield, or Fallen Timber, bridge, and Joseph Hollen's Mill, at a point near the residence of B. F. Beers, and if they see occasion to lay out the same to inquire of and vacate a portion of the road now opened between Clearfield, or Fallen Timber, bridge and Joseph Hollen's Mill, which portion of said road will become useless by reason of the laying out of the proposed road, will meet at the residence of W. H. Ross, Fallen Timber, Reade Township, on the 29th day of February, 1908, at 10 o'clock A. M., for the purpose of performing the duties of their appointment.

A. J. Rutter,  
John Mulhollen,  
Jno. L. Elder.

February 19th, 1908.

Viewers.

I hereby certify that the above is a true and correct copy of the original notice in this proceeding.

B. F. Beers

Served the above notice February 19th, 1908, on M. L. Troxell, W. E. Glasgow and James Warner, Supervisors of Reade Township, Cambria County, Pa., by handing each of them a true and correct copy and making known to each of them the contents of same.

B. F. Beers

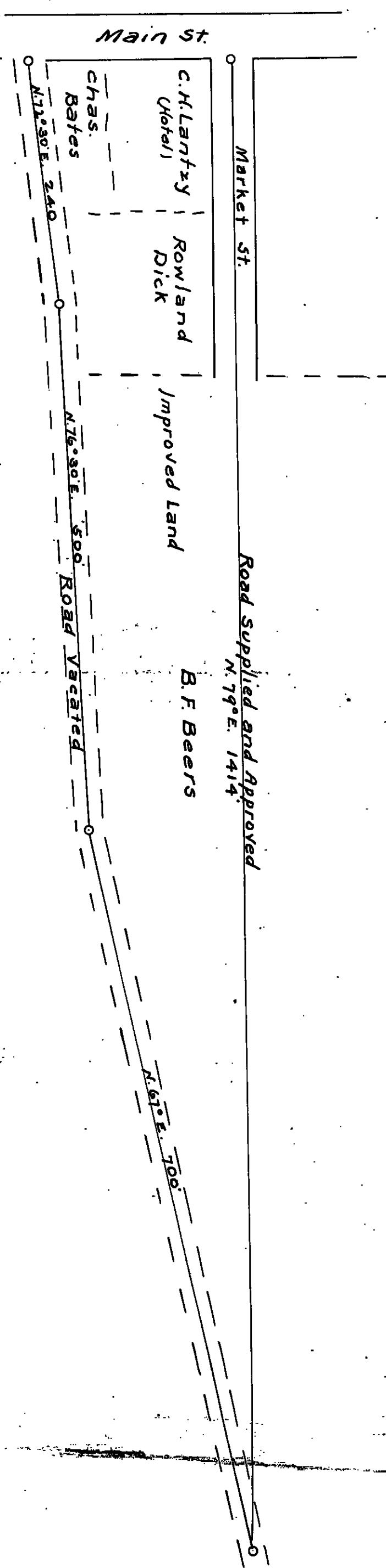
ROAD NOTICE.

Notice is hereby given that the three viewers appointed by the Court of Quarter Sessions of Cambria County, Pennsylvania, to view the ground for a proposed road to lead from the intersection of Main and Market Streets in the Village of Fallen Timber, Reade Township, Cambria County, Pennsylvania, and to extend in an easterly direction and connect with and end at the public road between Clearfield, or Fallen Timber, bridge, and Joseph Hollen's mill, at a point near the residence of B. F. Beers, and if they see occasion to lay out the same to inquire of and vacate a portion of the road now opened from Clearfield, or Fallen Timber, bridge and Joseph Hollen's Mill, which portion of said road will become useless by reason of the laying out of the proposed road, will meet at the residence of W. H. Ross, Fallen Timber, in the Township aforesaid, on the 29th day of February, 1908, at 10 o'clock A. M., for the purpose of performing the duties of their appointment.

February 19th, 1908.

A. J. Rutter,  
John Mulhollen,  
Jno. L. Elder.  
Viewers.

To Fallen Timber  
Bridge



Viewers appointed upon an order of the  
Court of Quarter Sessions, dated Dec 4 1907  
Jno. L. Elder, R. L. Rutter, John Mulhollen.

PLAN OF  
PROPOSED PUBLIC ROAD IN  
READE TOWNSHIP, CAMBRIA CO. PA.

SCALE: 1"=100. VIEWED FEB. 29. 1908.

Jno. L. Elder  
Surveyor

In the Court of Quarter Sessions  
of Cambria County.

No. 2. December Sessions, 1907.

Report of Viewers appointed  
to view ground for a proposed  
road in Reade Township.

Filed 2 March, 1908

*in Open Court.*

B. & B.

*Spent 14, 1908, afternoon and breakfast at  
Thurby's feet,  
Bryant's*



IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY.

To the Honorable Francis J. O'Connor,

President Judge of the above named Court:-

The petition of the undersigned, inhabitants of the Township of Reade, in the County aforesaid, respectfully represents:-

That they labor under great inconvenience for want of a public road to begin at the intersection of Main and Market Streets in the Village of <sup>Brady Twp., Cambria County.</sup> Fallen Timber, and to extend in an Easterly direction and connect with and end at the public road between Clearfield, or Fallen Timber, bridge and Joseph Hollens Mill, at a point near the residence of B. F. Beers, <sup>Brady Twp. County aforesaid.</sup>

The petitioners therefore pray the Court to appoint three persons, qualified according to law, to view the ground proposed for said road, and, if they see occasion to lay out the same, to inquire of and vacate a portion <sup>all in the Twp & County aforesaid</sup> of the public road, now opened from Clearfield, or Fallen Timber, Bridge to Joseph Hollen's Mill, which said road was laid out and opened by order of this Court on April 12th, 1851, ( R. D. Vol. 2, page 99 ), which portion of said road will become useless by reason of the laying out of the proposed road, and make report of their proceedings to the next term of Court. And they will ever pray, etc.,

W. O. Bach  
J. H. M. Charters  
John H. Charters  
D. C. Kiser  
J. P. Stine  
R. B. Youngkin  
James Oskell

J. J. Glass  
B. M. Manaway  
Frederick Jaeger  
John Twine Sr  
L. M. Twine  
P. V. Twine  
G. J. Troyell

L. C. Popple

Abel Torrell

S. P. Beachmont

Perot Kishner

Frank Stone

Isaac Truesell

A. E. Schmitt

L. L. Hazzard

L. L. Mulholland

B. T. Truesell

Oliver Spruce

Geo. Truesell

Mr. H. C. Copley

L. M. Yeasick

T. M. Powell

J. E. Miller

Jno A Mc Cartney

J. H. Van Deyoe

George R. Miller

P. W. Anthony

Samuel Sill

Frank Anthony

W. H. Ross

B. F. Burr

G. J. Gray

B. J. Sorkin

C. H. Sargent

J. L. Shubert

Charles Deane

W. C. Powell

A. C. Lovell

J. W. Loebe

R. L. Bower

G. C. S. S. S.

M. H. Burr

J. B. Anderson

Robt Mentzer

B. Teller

Ray McCartney

E. A. Woods

H. W. R. Co

Geo. Hahn

J. L. S. S.

Geo. S. S.

T. H. S.

A. B. Adams

J. A. Edmiston

M. J. [unclear]

C. B. [unclear]

Benjamin [unclear]

W. O. Kieffer

J. R. Weaver

W. J. Stevens

C. C. Martz

J. M. Spidle

Quat Edmiston

Jos. Gregg

W. Trimboth

Wm. Dougherty

Samuel Truell

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J. D. Samples

A. M. Kuhn

M. E. [unclear]

P. M. [unclear]

W. L. Binnix

A. [unclear]

Frank Maschberger

Charles Bell

Warren Barnhart

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State of Pennsylvania, )  
County of Cambria. ) SS.

Before me, the subscriber, a Justice of the Peace in and for said County, personally appeared W. H. Beers, who, having first been duly sworn according to law, did depose and say that the facts set forth in the within and foregoing petition are true and correct to the best of his knowledge, information and belief.

Sworn and subscribed before me

this 27 day of October, 1907.

J. J. Trovill, JP  
My Commission Expires as first  
Monday in May, 1912.

W. H. Beers

To L. V. Trozell, one of the Supervisors of Reade Township, Cambria County, Pennsylvania.

You are hereby notified that on Monday the second day of December, 1907, the petition of certain inhabitants of Reade Township, County and State aforesaid, will be presented to the Court of Quarter Sessions of Cambria County setting forth " that they labor under great inconvenience for want of a public road to begin at the intersection of Main and Market Streets in the Village of Fallen Timber, Township, County and State aforesaid, and to extend in an Easterly direction and connect with and end at the public road between Clearfield, or Fallen Timber, bridge and Joseph Hollen's Mill, at a point at or near the residence of B. F. Beers, in the Township, County and State aforesaid." And praying the Court to appoint three persons, qualified according to law to view the ground proposed for said road and, if they see occasion to lay out the same, to inquire of and vacate a portion of the public road, all in the Township, County and State aforesaid, now opened from Clearfield, or Fallen Timber, bridge to Joseph Hollen's Mill, which portion of said road will become useless by reason of the laying out of the proposed road.

Barker & Barker.  
Attorneys for Petitioners.

I hereby certify that I served the above notice on \_\_\_\_\_

L. V. Trozell, one of the Supervisors of Reade Township, Cambria County, Pa., on November 22, 1907, by handing a true copy of the same to him personally.

W. H. B. W. H. B. Beers (SEAL)

To M. E. Glasgow, one of the Supervisors of Reade Township, Cambria County, Pennsylvania.

You are hereby notified that on Monday, the second day of December, 1907, the petition of certain inhabitants of Reade Township, County and State aforesaid, will be presented to the Court of Quarter Sessions of Cambria County, setting forth " that they labor under great inconvenience for want of a public road to begin at the intersection of Main and Market Streets in the Village of Fallen Timber, Township, County and State aforesaid, and to extend in an Easterly direction and connect with and end at the public road between Clearfield, or Fallen Timber, bridge and Joseph Hollens Mill, at a point near the residence of B. F. Beers, in the Township, County and State aforesaid. " And praying the Court to appoint three persons, qualified according to law, to view the ground proposed for said road, and, if they see occasion to lay out the same, to inquire of and vacate a portion of the said public road all in the Township, County aforesaid, now opened from Clearfield, or Fallen Timber, bridge to Joseph Hollen's Mill, which portion of the said road will become useless by reason of the laying out of the proposed road.

Barker & Barker,  
Attorneys for Petitioners.

I hereby certify that I served the above notice on \_\_\_\_\_

M. E. Glasgow, one of the Supervisors of Reade Township, Cambria County, Pa., on November 22, 1907, by handing a true copy of the same to him personally.

W. H. B. W. H. B. (SEAL)

To James Chamber, Supervisor of Reade Township,  
Cambria County, Pennsylvania.

You are hereby notified that on Monday, the second day of December, 1907, the petition of certain inhabitants of Reade Township, County and State aforesaid, will be presented to the Court of Quarter Sessions of Cambria County setting forth " that they labor under great inconvenience for want of a public road to begin at the intersection of Main and Market Streets in the Village of Fallen Timber, Township, County and State aforesaid, and to extend in an Easterly direction and connect with and end at the public road between Clearfield, or Fallen Timber, Bridge, and Joseph Hollen's Mill, at a point near the residence of B. F. Beers, in the Township, County and State aforesaid." And praying the said Court to appoint three persons, qualified according to law, to view the ground proposed for said road, and, if they see occasion to lay out the same, to inquire of and vacate a portion of the public road, all in the Township and County aforesaid, now opened from Clearfield, or Fallen Timber, bridge to Joseph Hollen's Mill, which portion of said road will become useless by reason of the laying out of the proposed road.

Barker & Barker.  
Attorneys for Petitioners.

I hereby certify that I served the above notice on \_\_\_\_\_

James Chamber, one of the Supervisors of Reade Township, Cambria County, Pa., on November 15, 1907, by handing a true copy of the same to him personally.

W. H. H. Beers (SEAL)

In the Co. Quarter Sessions  
of Cumberland County.

No 2, Dec. Sess. 1907.

Petition of inhabitants of Reade  
Township for the appointment of  
viewers to view the ground for  
a proposed road from Fallen Timber  
to a point on the public road from  
Clearfield Bridge to Jos. Hollens  
Mill, etc.

*Filed 2 December, 1907,*

And now December 2d, 1907, the  
within petition presented, con-  
sidered, and

*By the Court*  
*A. J. Rutter, John M. McCallister,*  
*and Jno L. Elder,*  
appointed viewers.

*By the Court*

B. & E.