PLATTED IN VOL. B, PAGE 193
1556

No. 259

PETITIONER,

M. N. Allen et al

Petition filed April 27 1905

Viewers appointed May 1 1905

Report filed June 5 1905

Date of hearing July 3 1905

"Proposed Change"
Report approved June 7th 1905

Order of survey 190

Surveyor's Report filed June 5 1905

Declared County Road Sept 8 1906

See Book 9 + 10 Commissioners' Proceedings,

pages 595, 610, 618, 182

Recorded, Road Book, pages

County Clerk

THE REPUBLICAN, BOZEMAN, MONT.

No. 259

Road Petition

Petitioner M. N. Allen et al

Filed April 27 1905

A. A. Cameron
Co Clerk

Petition For Road.

To The Hon. Board of County Commissioners, of Gallatin County, Mont.:

The Undersigned, *Your petitioners, Citizens of the United States, respectfully show and represent that they are residents of and freeholders in Road District No.* 3 *, in the County of Gallatin, State of Montana, and taxable therein for road purposes, where the road, hereafter petitioned for, is to be located, laid out and established, if this petition be granted; that the proposed road is a public convenience, and, we think, the public good requires it.*

Your petitioners do respectfully ask and petition that a County Road forty *feet in width, to be a public highway, to be laid out, located and established.*

And show:

(a) *The general route of the proposed road.*
(b) *Over what lands it is proposed to be established.*
(c) *Who are the owners thereof.*
(d) *Whether such of them as can be found, consent thereto.*
(e) *Who of them do not consent.*
(f) *The probable cost of such right-of-way where such consent is not had.*
(g) *The necessity for and advantages of the proposed road as follows, to-wit:*

(a) Commencing at the Southwest corner of Section twenty three (23) Township One (1) South, Range five (5) East thence North on section lines one and one fourth mile (1 1/4) to the Northeast quarter of Southeast quarter of Section Fifteen (15) same Twp. and Range thence west one half mile; thence north one fourth of a mile to the center of section fifteen, thence west one half mile to the center of west line of section fifteen, thence north one half mile on section line between sections fifteen and sixteen, Thence west one half mile on section line between sections (9) nine and sixteen, thence north one and one fourth mile through center of sections nine and four to the Flannery and Belgrade Road. (All sections are in Township One South of Range Five East).

(b & c) 40 feet off the west side of SW 4 of Sec. 23.- 20 feet off the west side of NW 4 of Sec. 23.- 20 feet off the east side of NE 4 of Sec. 22.- 20 feet off the east side and 20 feet off the north side of S 1/2 of SE 4 Sec. 15. all in Twp. 1. South of Range 5. East belonging to Chas Beck; 20 feet off the West side of SW 4 of SW 4 of Sec. 14. T. 1. S. R. 5 E. belonging to J. W. Nelson; 20 feet off the South side of NE 1/4 of SE 1/4 of Sec. 15. T. 1. S. R. 5 E. belonging to E. N. Schumacher; 20 feet off the South and 20 feet off the West side of NW 1/4 of SE 1/4 of Sec. 15. and 20 feet off the South side of SE 1/4 of NW 1/4 of Sec. 15. T. 1. S. R. 5 E. belonging to Catherine Flannery; 20 feet off the East side of NW 1/4 of SW 1/4 of Sec. 15. and 20 feet off the North side of N 1/2 of SW 1/4 of Sec. 15. and 20 feet off the south side ~~of~~ and 20 feet off the west side of W 1/2 of NW 1/4 of Sec. 15. all in T. 1. S. R. 5. E. belonging to J. H. Wells; 20 feet off the east and north side of NE 1/4 of Sec. 16. T. 1. S. R. 5 E. belonging to Chas Border; 20 feet off the south and west side of E 1/2 of Sec. 9. T. 1. S. R. 5. E. belonging to Pat Toohey;

(over)

20 feet off the east side of W½ of Sec. 9. T. 1. S. R. 5. E. belonging to Chas Backes; and 20 feet on each side of quarter section line through the S½ of S½ of Sec. 4. T. 1. S. R. 5. E. belonging to James Arnold Jr:

(d.) Those that do consent, are: Chas Beck, J. N. Wells, Chas Border, Chas Backes, Mrs Cath. Flannery, E. N. Schumacher,

(e.) Those who do not consent are Pat Pookey.

(f.) Probable cost of right of way in judgement of petitioners is nothing.

(g.) Gives outlet to numerous settlers along the proposed route.

Bozeman Chronicle Print.

OFFICE OF

County Clerk and Recorder,

GALLATIN COUNTY, MONTANA.

HON. ~~J. L. PATTERSON,~~ Geo. E. Davis
Chairman of the Board of County Commissioners, Gallatin County, Montana.

DEAR SIR:—You are hereby notified that a petition for a County Road has been received in this office, signed by M. N. Allen and others, freeholders *of Road District No.* 3

The petition above referred to, petitions that a Road be established, commencing at the S.W. corner of Sec 23, T1S, R5E, thence north on Sec. lines 1¼ miles to the NE¼ of SE¼ of Sec 15, thence west ½ mile, thence north ¼ mile to center of Sec 15, thence west ½ mile to center of west line of Sec 15, thence north ½ mile on Sec line between Sec 15 & 16, thence west ½ mile on Sec line between Sec 9 & 16, thence north 1¼ miles through center of Sec 9 & 4, to Flannery & Belgrade road, all in T1S, R5E.

You are hereby notified to appoint three Viewers to view the above proposed Road.

Yours, Very Respectfully,

A. A. Cameron
County Clerk and Recorder.

Dated at, Bozeman, Montana, this 1 *day of* May 1905.

OFFICE OF

The Board of County Commissioners,

GALLATIN COUNTY, MONTANA.

MR. ~~E. V. BLANKENSHIP,~~ A. A. Cameron,
County Clerk, Gallatin County, Montana.

DEAR SIR:—In pursuance of the above notice, I hereby appoint:

C. M. Thorpe
A. N. Bull
Don Cameron

to act in behalf of the Board of County Commissioners as viewers of the above petitioned Road

Yours, Very Respectfully,

Geo. E. Davis
Chairman of the Board of County Commissioners, Gallatin County, Montana.

Dated at Bozeman, Montana, this first *day of* May 1905.

Bozeman, Montana, May, 8, 1905.

Dear Sir:-

You are hereby notified that we the undersigned Road Viewers appointed by the Board of County Commissioners of the County of Gallatin, State of Montana, to view and lay out a proposed new road as petitioned for by M. F. Allenm et al, will meet for such view on the 22d day of May, 1905, at 9 o'clock A.M. at the point designated in said petition as the starting point of said proposed road, which is described as follows, to wit:-

Commencing at the S.W.Cor. of Sec. 23, T.1 S., R.5 E.; thence N. on Sec. lines 1-1/4 miles to the N.E.Cor. of the S.E.1/4 of the S.E.1/4 of Sec. 15, same T. and R/ ; thence west 1/2 mile; thence north 1/4 mile to the Center of Sec. 15; thence west 1/2 mile to the west 1/4 Sec. Cor. of Sec. 15; thence north 1/2 mile on Sec. line between Sections 15 & 16, to the N.W.Cor. of Sec. 15; thence west 1/2 mile on Sec. line between Sections 9 & 16 to the S.1/4 Cor of Sec. 9; thence N. 1-1/4 miles through center of Sections 9 & 4 to the Flannery~~xRxax~~ and Belgrade Road, All in T.1 S.,R.5 E.

You are invited to be present at such viewing.

C. M. Thorpe,

Don. Cameron,

A. N. Bull,

Viewers.

Copies of the above notice were mailed on the above date to Chas. Beck/ Geo. E. Luce, M.H.Allen, J.H.Wells, Chas. Border, J. [illegible] Chas. Backes, Pat Toohey, Matt Flannery and James Arnoldall of Bozeman/

Warrant for Road Viewers.

County Clerk's Office,
Gallatin County, Montana.

Mr. C. M. Thorpe, Don Cameron and A. N. Bull

You are hereby notified that you were duly appointed Road Viewer by ~~Chairman of~~ *the Board of County Commissioners of Gallatin County, Montana, on the* 1st *day of* May *1905, to view and lay out a proposed road, as prayed for in the petition of* M. N. Allen *and others, described as follows, to-wit:*

Commencing at the southwest corner of Sec. 23, T. 1. S. R. 5. E., thence north on section line one and one-fourth miles, to the N. E. 1/4 of S. E. 1/4 of Sec. 15, thence west one half mile, thence north one fourth mile to the center of section 15, thence west one half mile to the center of west line of section 15, thence north one half mile on section line between sections 15 & 16, thence west one half mile on section line between sections 9 & 16, thence north one and one fourth miles through center of sections 9 & 4, to the Flannery & Belgrade road. All sections being in T. 1. S. R. 5. E.

You are hereby ordered to meet, to be sworn according to law and assume the duties of your office, in company with yourselves *, who were duly appointed as Viewers on said road by* ~~the Chairman of~~ *the Board of County Commissioners on the* 22nd *day of* May *1905, at 9 o'clock, a. m. commencing at the place designated in said petition as the starting point of the road sought to be* established *and proceed to view and lay out the same by setting stakes, blazing trees, turning furrows, or other appropriate monuments to the terminus named in said petition, by the most practical route that you in your judgment can find. You shall notify the resident owner or agent of land over which it passes, of the proposed route; ascertain whether such owner consents thereto and the amount of damages, if any, claimed or demanded for the right of way over the same. You shall estimate the actual damage to any land over which the proposed road passes and the cost of any bridges or grading necessary. You shall report the necessity for and the public convenience to be subserved by the highway, if opened, and whether the opening thereof or the change therein proposed should be made, and make and sign a report of your proceedings, as required by law.*

Roads shall, in all cases, when practical, be laid out on subdivisional or section lines.

In witness whereof I hereunto set my hand, at my office this 6th *day of* May *1905.*

A. A. Cameron
County Clerk,

By _____
Deputy.

Oath of Road Viewers.

STATE OF MONTANA,
County of Gallatin. } ss.

I, the undersigned, having been appointed a road viewer, do hereby solemnly swear that I will faithfully and impartially perform, according to law, the duties of ROAD VIEWER, as per instructions embodied in the notice of appointment by the Board of County Commissioners.

D. Cameron

Subscribed and sworn to before me this 22nd *day of* May 1905

C. M. Thurber
Co Auditor

☞ This must be returned to the County Clerk after execution.

OATH OF ROAD VIEWERS.—Bozeman Chronicle Print.

Oath of Road Viewers.

STATE OF MONTANA,
County of Gallatin. } ss.

I, the undersigned, having been appointed a road viewer, do hereby solemnly swear that I will faithfully and impartially perform, according to law, the duties of ROAD VIEWER, as per instructions embodied in the notice of appointment by the Board of County Commissioners.

C. M. Thurber

Subscribed and sworn to before me this 20th *day of* May 1905

A. A. Cameron
Co Clerk

☞ This must be returned to the County Clerk after execution.

Oath of Road Viewers.

STATE OF MONTANA,
County of Gallatin. } ss.

I, the undersigned, having been appointed a road viewer, do hereby solemnly swear that I will faithfully and impartially perform, according to law, the duties of ROAD VIEWER, as per instructions embodied in the notice of appointment by the Board of County Commissioners.

A. N. Bull

Subscribed and sworn to before me this 22nd *day of* May *1905*

C. M. Thorpe
Co Clerk

☞ This must be returned to the County Clerk after execution.

REPORT OF ROAD VIEWERS.

ROAD NO. 259

TO THE HONORABLE BOARD OF COUNTY COMMISSIONERS OF GALLATIN COUNTY, MONTANA:

We, the undersigned Road Viewers, consisting of A. N. Bull, Don Cameron, + C. M. Thorpe

appointed to view a proposed road running from the S.W. Corner of Sec. 23 T. 1 S. R. 5 E. northwesterly *to* the Flannery + Belgrade Road in Sec 4 T. 1 S. R. 5 E. *as described in the annexed petition, say, That on the* 22 *day of* May *A. D., 1905 we assembled at the place designated in the petition, as the starting point of such proposed road and proceeded to view the same, and submit the following report:*

1. The width of the proposed road, the description of the center line of the same, the length, how defined, the marks and sources, grades, character of ground, description of the land and owners of the same, over which the proposed road passes, and probable cost of constructing the said road, as follows:

The width of the proposed road is 40 feet.
The description of the center line of the 40 foot right of way is as follows to-wit:— Beginning at a point 20 feet East of the S.W. Corner of Sec 23 T. 1 S. R. 5 E. thence north parallel with the West line of said Sec. 23, to the N. line of the S.W. 1/4 of said Sec 23, thence West 20 feet to the N.W. Cor. of said S.W. 1/4, thence north along the section line between sections 22 + 23, and between sections 14 + 15 to the N.W. Cor. of the S.W. 1/4 of S.W. 1/4 of Sec 14, thence West 1/2 mile to the N.W. Cor. of S.W. 1/4 of S.E. 1/4 of Sec. 15, thence North 1/4 mile to the Center of said Sec. 15 thence West 1/2 mile to the West 1/4 Sec Cor of said Sec 15, thence north 1/2 mile to the N.W. Corner of said Sec 15.

Thence West 1/2 mile between sections 9 + 16 to the South 1/4 Sec. Cor. of Sec. 9, thence North along the North and south 1/4 Sec. line of sections 9 and 4, 1 1/4 miles to the Flannery and Belgrade Road, the same being the terminus of the road as petitioned for.
The length of the proposed road is 4 3/4 miles.
The line of the road is defined by stakes and monuments the road having been surveyed.
The land over which the proposed road passes is nearly level and is suitable for road building.
The probable cost of constructing the proposed road

is as follows

For grading $241.00

There are 6 crossings of the West channel of the East Gallatin River of which require bridges, the other four crossings have hard gravel bottoms and good fords at present, would require no bridges We have made our Estimate for only the two bridges and fords at the other crossings. With such culverts as are required and would reduce the probable cost of $464.00

making the probable cost of the road $705.00

to bridge the other 4 crossings would probably cost $400. more.

See accompanying map for names of land owners.

2. *The names of the land owners who consent to give the right of way, and we hereto attach their written consent, as follows:*

M.H. Allen, Chas Beck, E.H. Shumacher, J.H. Wells, ~~J.W. Nelson~~, Matt Flannery, Chas. Border, Chas Backes, James Arnold, Chas. Border & Chas. Backes having previously given consent, and James Arnold having been paid for the right of way

3. *The names of the land owners who do not consent, and the amount of damages claimed by each, as follows:*

Pat Fahey, claims damages for land at $20.00 per acre 365 acres. $7300

For fence. 175.00

Total damage claimed. $248.00

J.W. Nelson consents to give the land but asks the cost of moving 1/8 mile of fence & building 1/8 mile of new fence which we estimate at $25.00

4. *The estimate of damages in excess of benefits to the owner of any land over which it is proposed to run the highway, as follows:*

We believe the benefits to Pat Fahey will fully equal the damages as he has no public road to his land. We would recommend that J.W. Nelson be allowed $25.00

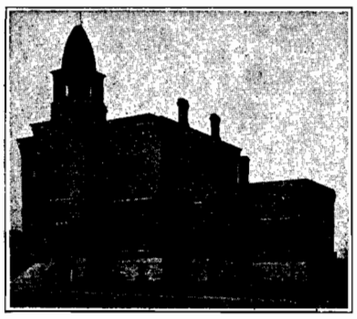
5. *The following facts, bearing upon the subject, which may be of importance to the Board:*

J.H. Wells desires to change the road from the line as petitioned for and as surveyed and agreed to. to run from the S.E. Cor. of the W½ of N.W¼ of Sec 15. thence north ½ mile. thence west ¼ mile to the N.W. Cor. of said Sec. 15 On this line we find that Chas. Beck consents. but Matt Flannery consents provided J.H. Wells will give him a small corner north of creek at N.W. Corner of Sec. 15. The cost of building the road on this line will probably be $25.00 greater than on the line as surveyed. We would recommend this change if it can be made without extra cost to the County.

We believe said road ——— *to be practical and* ——— *of public utility and necessity and do* ——— *recommend the establishment of the same.*

Dated May 23 1905 ~~A. D., 189~~

A. J. Bell
D. Cameron
C. M. Thorpe
} *Road Viewers.*



C. M. THORPE
COUNTY SURVEYOR GALLATIN COUNTY

OFFICE IN CITY HALL

Bozeman, Montana, March 5, 1906.

To the Honorable Board of County Commissioners of

Gallatin County, Montana.

Gentlemen:- I hereby certify to your Honorable Body that I have this day filed in the office of the County Clerk, the Plat and Field Notes of "M H. ALLEN ROAD" No. 259

Very respectfully,

C. M. Thorpe
County Surveyor.

County Clerk's Office.

Bozeman, Montana, June 9th, 1905.

Mr Patrick Toohey,

Belgrade, Montana.

Dear Sir:-

The Board of County Commissioners of Gallatin County will meet in adjourned regular session Monday, July 3rd, 1905, and at that time will give final consideration to the road petitioned for by M.H.Allen, Chas.Beck and others.

You are hereby notified to be present at the Commissioner's office at the above date, at 11.00 O'Clock, A.M., and your claims for damages, etc, will be heard.

The viewers on the above road allowed you no damages.

Very truly,

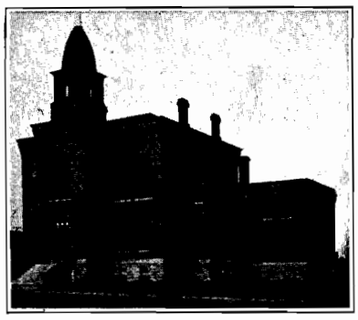
A. A. Cameron

County Clerk.

a copy of above notice mailed to Patrick Toohey June 9, 1905.

A A Cameron

co clk



ALLAN CAMERON, *Clerk and Recorder*

E. H. SCHUMACHER, *Deputy.*
GERTRUDE M. CAMERON, *Deputy.*

...Office Of

County Clerk and Recorder

Gallatin County

Bozeman, Montana, July 5 1905

Mr. Patrick Tookey
Belgrade, Mont.

Dear Sir.

The Board of County Commissioners have instructed me to notify the Co. Attorney to commence condemnation proceedings against you to procure a right of way for the Allen road.

The Board also instructed the Chairman, Mr Davis, to try and arrange with you about moving your fence on the line of the road, and authorized him to make such arrangement, if possible, out of court.

However, Mr Brown has been let the contract and the right of way must be procured at once, and the matter settled.

Very truly
A A Cameron
Co Clk

Copy mailed July 5, 1905.

This memorandum, made and entered into by and between George E. Doyle, T. J. Kirk and E. D. Sawyer, County Commissioners of Gallatin County, Montana for and on behalf of said Gallatin County, parties of the first part, and Charles F. Beck, J. A. Nelson, E. H. Schumacher, Katherine Flannery, J. H. Wells ~~and~~ M. H. Allen, and George E. Price parties of the second part, Witnesseth:

That whereas it is proposed by said Commissioners to open a certain county road hereinafter described upon condition that parties of the second part donate the right of way therefor and either set back or construct fences made necessary by the opening of said road.

Now therefore we the undersigned hereby donate the following lands for said right of way, to wit:

Charles F. Beck, a strip of land forty feet in width (20 feet on either side of sec line) along the west side of SW¼ of Sec. 23, Tp 1 S R. 5 E; also a strip of land forty feet wide along the section line (20 feet on either side of sec line) on the west side of NW¼ said Section 23.; also a strip of land twenty feet wide along the east side of and the north side of

S² of S E⁴ Sec. 15 said Tp and Range

George E. Lane, a little triangular piece of ground off the north east ~~north~~ corner of N W⁴ Sec. 26, said Tp & Range

M. H. Allan, a little triangular corner off the north east corner of the S E⁴ Sec. 22 Said Tp and Range

J. W. Nilson a strip of ground 20 feet wide off the west side of S W⁴ of S W⁴ Sec. 14 said Tp and Range

E. H. Schumacher, a strip of ground twenty feet wide off the South side of N E⁴ of S E⁴ Sec. 15, said Tp & Range

Catherine Flannery, a strip of ground 20 feet wide off the south side and off the west side of N W⁴ of S E⁴ of said Sec. 15; also a strip of ground off the south side of S E⁴ of N W⁴ of Said Sec. 15; also a little triangular piece of ground off the south-west corner of S W⁴ of N E⁴ said Sec. 15.

J. H. Wells, a strip of ground twenty feet in width off the east side and off the north side of N E⁴ of S W⁴ of Sec. 15; also a strip of ground twenty feet wide off the north side of N W⁴ of S W⁴ said Sec. 15; also a strip of ground twenty feet wide off the south side of S W⁴ of N W⁴ of said Sec. 15

The right of way above described is to constitute a portion of the right of way for a road described in Road Petition No 257 by R.V. Spain et al, which Petition is by reference hereby made a part hereof for the purpose of describing the terminals and other parts of said proposed road as proposed to be hereby modified.

In witness whereof we have hereunto set our hands on this tenth day of April, 1905.

Geo. E. Davis
Chas. D. Kirk
E. F. Sacry
C. F. Beck
} County Commissioners Gallatin Co

M J Flannery
Catherine Flannery
by M J Flannery
M. P. Allen
J. N. Wells
E. H. Schumacher

That in fact all the remainder of said right-of-way for said proposed road has been opened graded and worked and dedicated to public use.

July 3. Fowler appears before Board and states his objection and refuses to accept the award of damages made by the viewers. Whereupon the Board offers to move back and erect a portion of ~~said~~ the fences along said proposed right-of-way as an inducement. That 30 days etc.

...BOARD OF...
COUNTY COMMISSIONERS
GALLATIN COUNTY, MONTANA.

COMMISSIONERS
GEO. E. DAVIS, CHAIRMAN
THOS. S. KIRK,
E. F. SAWYER.

BOZEMAN, MONT. July 6 1905

Mr. A. J. Walrath
Co Attorney,
Bozeman, Mont

Dear Sir:-

At an adjourned regular meeting of the Board of County Commissioners of Gallatin County, Mont and, held on Wednesday, July 5, 1905, an order was made and duly entered in the Commissioner's Journal instructing me to notify you to commence an action in the District Court against Patrick Tookey to procure a right of way from the said Patrick Tookey along the West side of the East half of Section nine, Township One South, Range Five east, according to petition of M. A. Allen and others, known as road No 259 and as more particularly set forth in said petition.

Very truly
A. A. Cameron
Clerk

Memo. Brief
re
Cancellation of
Park & Public
Highway

Mr. George D. Pease,

County Attorney,

Bozeman, Montana.

Dear Sir:-

Referring to the matter submitted by you while you were in Helena a short time ago, namely as to ~~whether~~ the form ~~is~~ of a complaint in an action commenced under the order of the board of county commissioners under the provisions of section 64 of the Road Act of 1903, Laws 1903, p. 84, for the condemnation of a right of way for a public highway, I beg to submit the following:

In the case of County of Sonoma v. Crozier, 118 Cal. 680, it was held that a complaint in an action by a county to condemn land for a right of way, brought under the provisions of section 2690, Political Code, and section 1244, C. C. P. (Cal.), "which merely avers the filing of a sufficient petition and the giving and approval of the bond, and that afterward such proceedings were had that, on a day specified, the board of supervisors of the county, by order duly given and made, directed the district attorney to institute condemnation proceedings, but which fails to state that viewers were appointed, or that they proceeded to lay out the road, or that they made or filed any report, or that the report was approved, or that damages awarded had been tendered to defendant and refused by him, fails to state a cause of action." Reading this decision you will note that the court definitely holds that in a

complaint of this kind, the proceedings had prior to the commencement of the action must be alleged. While this has reference to the condemnation of land for a private road, the proceedings were instituted under the general law of eminent domain and the proceeding is entirely the same as in condemning land for a public road; especially is this so in view of the decision of the California court in the case of Monterey Co. v. Cushing, 83 Cal. 511, in which it is held that the private road spoken of in the same statute are really county or public roads. Article Title VI, Part III (sections 2711-2716) of the Political Code of California. Section 64, of the Montana Road Act, which provides that the board of county commissioners may, by order, direct proceedings to be instituted by the county attorney, is the same as section 2690, Political Code of California, except that the first sentence of the latter section allows only ten days from the date of award, whereas section 64 allows thirty days for the acceptance by the owner of the award of the board. To section 2690, however, is added the following, which does not appear in section 64, "In such suit no informality in the proceedings of the board shall vitiate said suit, but the said order of the board directing the district attorney to bring suit shall be conclusive proof of the regularity thereof; and the said suit shall be determined by the court or jury in accordance with

the rights of the respective parties, as shown in court independent of said proceedings before said board."

It is apparent, therefore, that the California decisions upon this subject are to a large extent in point as concerns the procedure ~~ax~~ in this state. The right to condemn land for such a public road is a statutory one for the convenience of the general public. The fact that a petition has been filed, viewers appointed who have made a report, and action had thereon by the board of county commissioners, is essential to show a right under the statute to extend the road through an individual's land. In other words, the fact of these proceedings having been had gives rise to the right and must be alleged under subdivision three, section 2217, C. C. P. of Montana. The action of condemnation is simply to enforce this right, and to ascertain judicially the damage caused to the land owner.

In looking up this matter, there is another proposition which has occurred to me, and which you will undoubtedly encounter before you have gone very far into any proceedings of this kind, for that reason I have taken the liberty to suggest it to you. As stated above, the provisions of our Road Act, so far as applicable here, are substantially copied from the California code. Section 64 of our Road Act refers to Title VII, Part III (Sections 1237-1264) of the Code of Civil Procedure of California, which is

likewise given the subject of "eminent domain". Section 2217 C. C. P. (Mont.), providing what the complaint must contain, is almost word for word the same as section 1244 C. C. P. (Cal.). There is this important difference between the two acts, however, that whereas section 2220 of our code of Civil Procedure provides that the court or judge "must make an order appointing three competent persons, resident in said county, commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other person interested in such property, as damages by reason of the appropriation of said property." There is no similar provision in the California law. Section 1247, C. C. P. (Cal.) takes the place of our section 2220, C. C. P., and provides "The court shall have power: (1) To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivisinn of section twelve hundred and forty; (2) To hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor; (3) To determine the respective rights of different parties seeking condemnation of the same property." Section 1248, C. C. P. (Cal.) provides that "The court, jury, or referee must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:"--following which are six subdivisions, five of which are substantially the same as the five

subdivisions of section 2221, C. C. P. (Mont.), there being another subdivision added to the California section that "If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle-guards where fences may cross the line of such railroad."

You will see from this that the adoption in our Road Act of the provisions from California above mentioned will lead to a different procedure here, inasmuch as we have the provisions for the appointment of three commissioners who are to examine the right of way and make their report after the condemnation proceedings are begun. These commissioners, it is true, will perform very much the same work as the three viewers provided for in the Road Act have already performed, but inasmuch as the legislature has seen fit to prescribe that the procedure in these condemnation suits shall be that of Title VII, Part III, C. C. P. there would be no logical reason for omitting an essential part of it. Certainly to do so would be taking a serious risk. To omit so much of such procedure as provides for the appointment of commissioners would necessitate a substantial departure therefrom, inasmuch as there is no provision for the matter being heard before a jury until after an award of the commissioners and an appeal to the court by at least one of the parties. Until commissioners are appointed and an appeal taken from their award, no method is provid-

ed of getting the matter before the court and jury on the merits and there would be no authority for omitting such appointment of commissioners, award and appeal and at once go into a trial of the matter before a jury. This result, of course, is brought about by the adoption by the legislature of the provisions of the California Political Code in this regard, in framing the Road Act, without following them out and seeing where they would lead to when our procedure is applied to them.

In looking this matter up I have run across a number of California decisions bearing on different phases of it, and although I presume you have found the same cases I will subjoin them hereto, as they may be of some use to you if you have not happened to run across them:

Cal. S. R. R. Co. v. S. P. R. R. Co. 67 Cal. 60;
Monterey Co. v. Cushing, 83 Cal. 507;
Bishop v. Superior ct. 87 Cal. 226;
City of Los Angeles, v. Pomeroy, 124 Cal. 609:
St. etc. R. R. Co. v. Gould, 122 Cal. 601;
City of Pasadena v. Stimson, 91 Cal. 252;
Tehoma Co. v. Bryan, 68 Cal. 60;
Lake Co. v. Allman, 102 Cal. 432;
County of Siskiyou v. Gomlich, 110 Cal. 95;
County of Sonoma v. Grozier, 118 Cal. 680;
Co. of San Mateo v. Coburn, 130 Cal. 632;
Co. of Sutter v. Tinsdale, 136 Cal. 474.

The plaintiff complains of defendant and for its cause of action alleges.

I.

That plaintiff is a municipal corporation and a legal subdivision of the state of Montana.

II

That ~~the above~~ defendant Patrick Toohey is the owner of the East Half of Section Nine (9) in Township One (1) South of Range Five (5) East ~~in~~ said Gallatin County; that of the East Half of said Section Nine ~~the property claimed~~ the following portions are desired and claimed by plaintiff as a part of the right-of-way of a public highway which highway is hereinafter described in paragraph ___ of this complaint, to wit: A strip of ground twenty feet in width off the south side of said East Half of said Section Nine throughout the entire length thereof; also a strip of ground twenty feet in width off the west side of said East Half of said Section Nine from and connecting with said strip last above described and extending northward along the entire west side thereof to the North West corner of said East Half of said Section Nine.

III.

(a) That on or about April 27, 1905 one M. W. Bunell and eleven other persons who were on said date residents and freeholders in Road District No 3 of Gallatin County, State of Montana, petitioned in writing the Board of County Commissioners of said Gallatin County to lay out and open a new public highway forty feet in width in said road district No 3, which public highway so petitioned for is described as follows, to wit: (Description from petition)

(b) That thereafter on May 1, 1905, the Board of County Commissioners appointed C. M. Thorpe, A. N. Bull and Don Cameron, all of whom were then and there disinterested persons not interested citizens and freeholders of said Gallatin County, to view said ~~pr~~ right-of-way for said proposed public highway on May 22, 1905.

(c) That thereupon, and prior to May 22, 1905, said viewers qualified as such and thereafter, on May 22, 1905, viewed said right-of-way for said proposed public highway, and thereafter, to wit, on May 23, 1905, said viewers duly made out and filed their report thereon, whereby they recommended the establishment of said road, ~~recommending also said Board of Viewers on said report also suggested and recommended that said proposed route be changed in such manner as to traverse the~~ on the ~~line~~ route described in the petition; also said viewers in their report suggested a slight change in the proposed route, which they deemed more feasible than the route petitioned for.

d That in said report said viewers reported against allowing defendant any damage for ~~his~~ the portion of said right of way which passes over his said lands. Said viewers reported that the benefits from said road to defendant would be equal to his damages

(e) ~~(d)~~ That thereafter on _____ the Board of County Commissioners fixed July 3, 1905, at 11:00 o'clock A.M. as the day and time for hearing the same and thereupon caused defendant as a non-consenting owner of a portion of said right-of way for said road to be duly notified by registered mail postage prepaid of the time and place of the hearing on said petition

(e) That thereafter on July 3, 1905 at the appointed time and place set for said hearing said Board of County Commissioners ~~did accepted adopted and approved~~ the report of the viewers in said petition ~~and thereupon ordered opened and established a public highway and adopted the report and the right of way for which described~~

and said Board thereupon ordered the said road surveyed, to wit: (Set Thorpe's notes of survey)

IV.

That defendant is the owner of the following described lands which plaintiff by this action seeks to condemn for the right-of way for a portion of said proposed highway to wit: A strip of land ~~comp~~ twenty feet wide off the South side of ~~the~~ the entire length of East Half of Section Nine (9) ~~through~~ in Township One (1) South of Range Five (5) East in Gallatin County, Montana. Also a strip of ground twenty feet in width off the West side of said East Half of said Section Nine from and connecting with said strip of land last above described northward along the entire west side thereof to the North West corner of said East Half of said Section Nine. Said lands in this paragraph described as the lands sought in this action to be condemned comprise 3.65 acres and are indicated on the map of said proposed road hereto attached marked "Exhibit A." and hereof made by this reference made a part.

V

That at said hearing on the report of said viewers on July 3, 1905 the Board of County Commissioners ~~adjudged~~ awarded to defendant for said right of way the sum of thirty dollars. That more than thirty days have elapsed since defendant was notified of the award of said viewers allowing him no damages for said right-of-way and that he has at all times since said notification refused and he now refuses to deliver to plaintiff said right-of-way.

the meeting and thereupon notified him of the same

VI.

That on _____ 1905 said Board of County Commissioners by ~~an~~ order duly ~~entered~~ made directed the County attorney of Gallatin County to institute proceedings to procure the right-of-way from defendant hereinbefore described in accordance with the provisions of Title VII Part III of the Code of Civil Procedure of 1895.

VII.

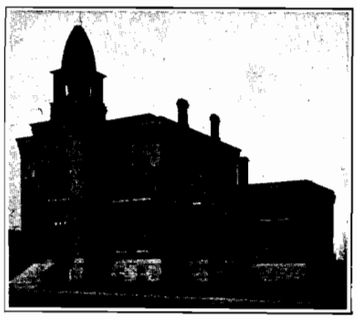
That "Exhibit A" hereto attached shows the general route and the termini of said road also the land belonging to defendant which plaintiff seeks hereby to condemn for road purposes as aforesaid.

VII.

That said lands ~~xxxx~~ hereby sought to be condemned are necessary for use as the right-of-way for said proposed road; that in fact, all the remainder of said proposed road has been opened, worked and graded by plaintiff and dedicated to public use, all other abutting owners thereon having accepted the several awards made to them by the said viewers and said Board of Commissioners.

Wherefore, plaintiff prays

1.
2.
3.
4.
} Prayer.



ALLAN CAMERON, *Clerk and Recorder*

E. H. SCHUMACHER, *Deputy.*
GERTRUDE M. CAMERON, *Deputy.*

...Office Of

County Clerk and Recorder

Gallatin County

Bozeman, Montana, June 7 1905

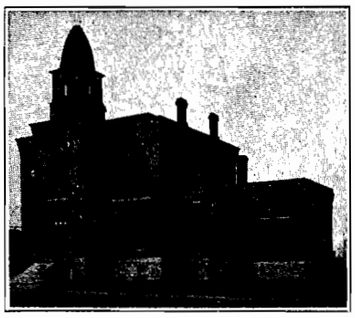
Hon. Board of Co. Commissioners
Bozeman, Mont.

Gentlemen —

I hereby agree that if road No 259, petitioned for by M. H. Allen et al is established to conform with the dotted lines marked "Proposed Change" on the plat which is a part of said petition or to run on the east side of the ~~N~~ W¼ of NW¼ of Sec 15, T1S, R5E instead of on the west side of the ~~N~~ W¼ of NW¼ of said section, that I will pay to Gallatin County any amount not exceeding fifty dollars ($50.00) necessary to make the proposed change as good a road as the route petitioned for, and also agree to allow the crossings across the different streams as now used on the said road to be used for traffic, whether said crossings are on the line as surveyed or otherwise, until the County builds bridges across said streams.

J. H. Wells

$43.25 paid to Gallatin County by check from J. H. Wells to A. A. Cameron Co Clk, on Oct 6, 1906. — that being the difference in cost of construction.



C. M. THORPE
COUNTY SURVEYOR GALLATIN COUNTY

OFFICE IN CITY HALL

Bozeman, Montana, June 5, 1905.

To the Honorable Board of County Commissioners

Of the County of Gallatin, State of Montana,

Gentlemen:-

As ordered by you I did on the 18th, 19th, and 20th days of April, make a survey of the proposed Allen Road, No. 259 on the line as designated in the agreement of April 10th, 1905, All subdivision corners which are angle points in the line of said survey are substantially marked with cast iron monuments. Fence stakes were also set 30 feet each side of the center line.

Respectfully,

C. M. Thorpe,
Co. Surveyor.

By L. S. Thorpe
Deputy.

REGISTRY RETURN RECEIPT.

Form No. 1548.

Received from the Postmaster at Bozeman, Mont.
(Delivering office.)

Registered {Letter / ~~Parcel~~} *No.* [illegible]27 *, from* Bozeman, Mont.
(Office of origin.)

Addressed to Don Cameron
(Name of addressee.)

Date 5/12 *, 190*
(Date of delivery.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

Don Cameron
(Signature or name of addressee.)

Christina Cameron.
(Signature of addressee's agent.)

A registered article must not be delivered to anyone but the addressee, except upon the addressee's written order. When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

REGISTRY RETURN RECEIPT.

Form No. 1548.

Received from the Postmaster at Bozeman, Mont.
(Delivering office.)

Registered {Letter / ~~Parcel~~} *No.* 1028 *, from* Bozeman, Mont.
(Office of origin.)

Addressed to A. N. Bull
(Name of addressee.)

Date 5-8 *, 190*
(Date of delivery.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

A. N. Bull
(Signature or name of addressee.)

(Signature of addressee's agent.)

A registered article must not be delivered to anyone but the addressee, except upon the addressee's written order. When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

REGISTRY RETURN RECEIPT.

Form No. 1548.

Received from the Postmaster at Bozeman, Mont.
(Delivering office.)

Registered {Letter / ~~Parcel~~} *No.* 1041 *, from* Bozeman, Mont.
(Office of origin.)

Addressed to C. M. Thorpe
(Name of addressee.)

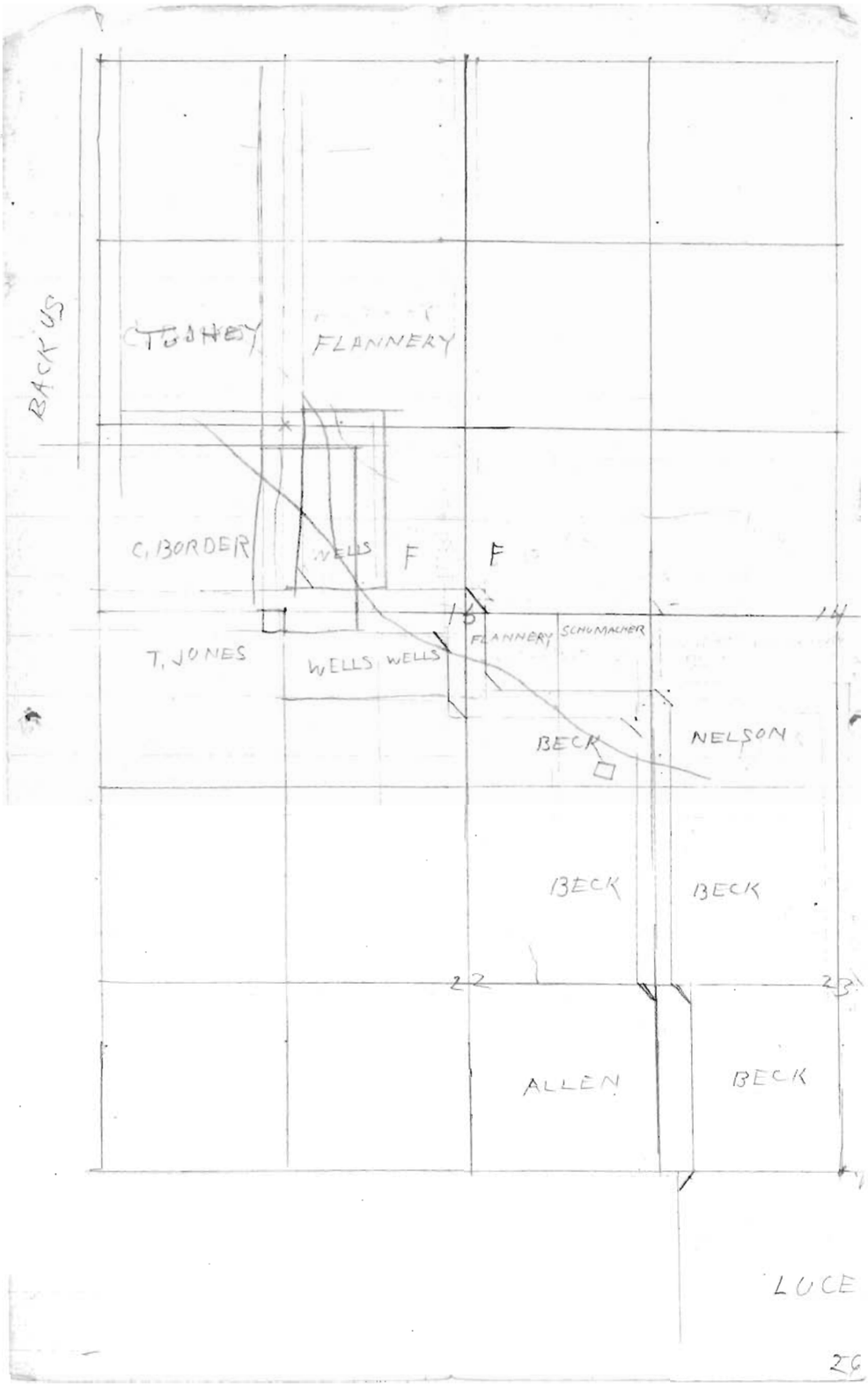
Date May 10 *, 190* 5
(Date of delivery.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

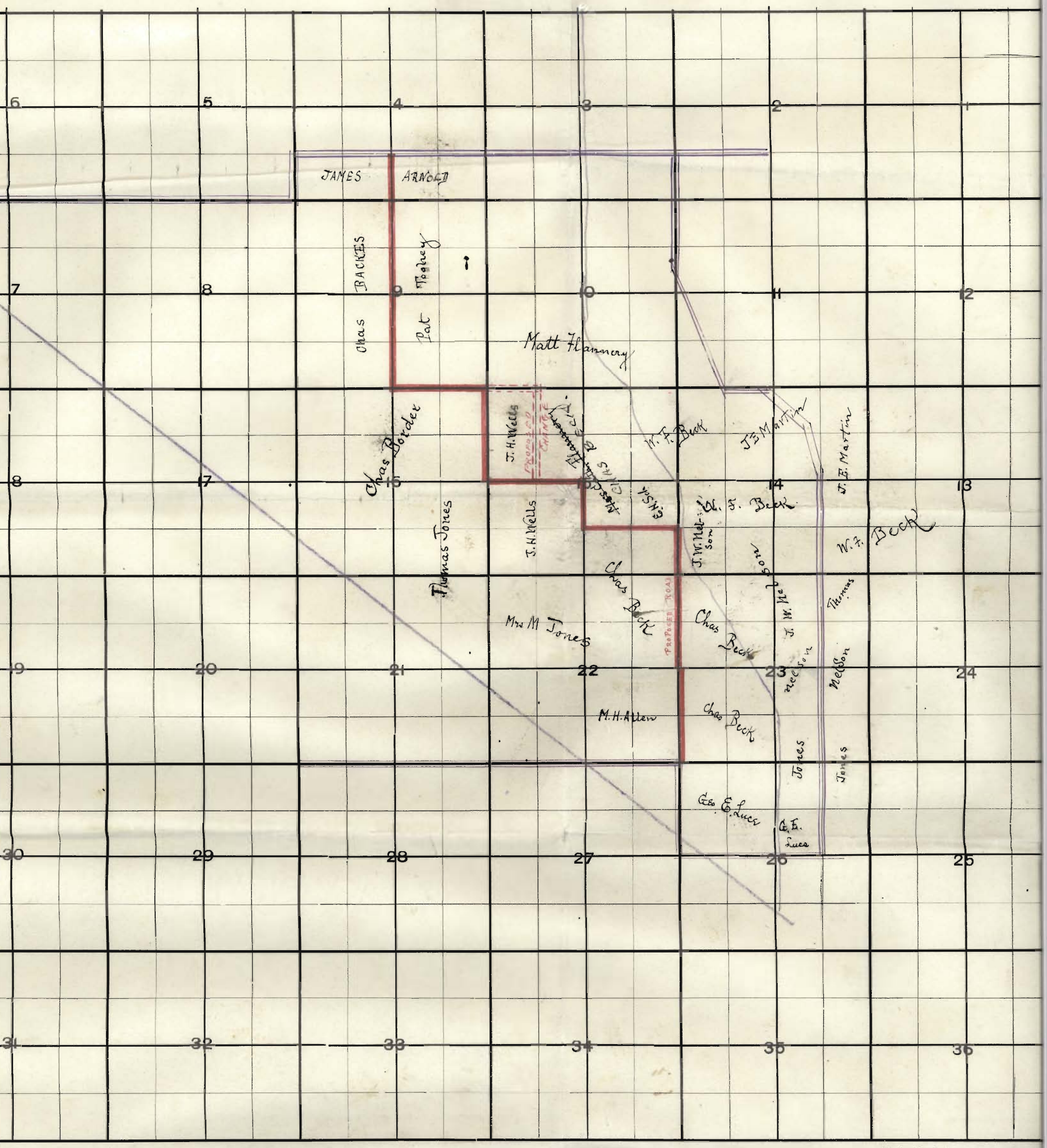
C. M. Thorpe
(Signature or name of addressee.)

(Signature of addressee's agent.)

A registered article must not be delivered to anyone but the addressee, except upon the addressee's written order. When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.


BACK US
TOONEY
FLANNERY
C. BORDER
WELLS
F
F
16
14
T. JONES
WELLS
WELLS
FLANNERY
SCHUMACHER
BECK
NELSON
BECK
BECK
22
23
ALLEN
BECK
LUCE
26

Township No. 1. South Range No. 5. East. Mer.



Scale 40 chains to an inch.