

No. 398

PETITIONER,

Otto Simut et al

Petition filed Apr 9th 1903

Viewers appointed 190

Report filed 190

Date of hearing 190

Report approved 190

Order of survey 190

Surveyor's Report filed 190

Declared County Road 190

THE WITHIN Petition IS EXAMINED FOUND CORRECT, AND IS HEREBY APPROVED

BY ORDER OF THE BOARD, THIS THE DAY OF A. D. 191

CHAIRMAN. ATTEST: COUNTY CLERK.

See Book Commissioners' Proceedings,

pages

Recorded, Road Book, pages

County 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 and freeholders in Road District No....., in the County of Gallatin, State of Montana, and taxable therein for road purposes, when the road, hereinafter 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) The general route of the proposed road is on the section line between Sections 21 and 22, and 21 and 28 of Township 2 South of Range 6 East, beginning at a point where the Fort Willis road intersects the Rocky Canyon road at the Northwest corner of said Section 22; thence South on the section line between said sections 21 and 22 to the northwest corner of Section 27, said township and range; thence West one-half mile on the section line between Sections 21 and 28, said township and range, to intersect with what is known as the "Nichols" road, the said road to be twenty feet on each said of said section lines.

(b) The proposed road will be established over the following described lands, to-wit: The West half of Section 22, and the East half of Section 21, and the Northeast quarter of Section 28 and the Southeast quarter of Section 21, said township and range. The northwest quarter of section 22, said township and range, is owned by W. C. O'Connell, and the southwest quarter of section 22 is owned by Charles Carolus. The East half of said Section 21 is State land, and the Northeast quarter of section 28 is owned by L. F. Sievert.

(c) The owners of the lands over which said road will traverse are set forth in paragraph B and are W. C. O'Connell, Charles Carolus, The State of Montana, and L. F. Sievert.

(d) All the owners consent thereto or will consent thereto, except, perhaps, Charles Carolus.

(e) Charles Carolus may not consent unless he is paid damages.

(f) Your petitioners would state that in their opinion the right

of way will not cost anything, except, perhaps, that part of the right of way taken from land owned by Charles Carolus.

(g) The necessity for and the advantages of the proposed new road are as follows:

O. E. Sievert owns the NW $\frac{1}{4}$  of Section 27, and C. H. Sievert owns the SW $\frac{1}{4}$  of said Section 27 and L. F. Sievert owns the NE $\frac{1}{4}$  of Section 28, all in said Township 2 South of Range 6 East and at the present time and under the present conditions are without means of egress and ingress to and from any County road and are unable to get to any County road or any regularly established road except over lands of other persons and by the permission of the owners of such lands.

Your petitioners are advised that the State of Montana is ready and willing to donate a right of way over the State lands, to-wit: Sections 21 and 28, said township and range.

NAMES

NAMES

- 1 Otto Sievert.
- 2 L. F. Sievert.
- 3 C. H. Sievert. (by Otto.)
- 4 William Cornell.
- 5 W. R. Phipps
- 6 Cal Brenden
- 7 J. W. Jenkins

- 6 Robert O Cornell
- 7 A. C. Harding.
- 8 W. H. Williams
- 9 G. S. Wood
- 10 Harry Wood
- Atto Smartson
- Geo Hoell

No. 398

Road Petition

Petitioner Otto Sievert  
Filed Apr 9th 1913

Petition for Road

IN COMMISSIONER'S COURT, GALLATIN COUNTY, MONTANA.

IN THE MATTER OF THE PETITION  
OF OTTO SIEVERT, ET. AL. FOR THE  
ESTABLISHMENT OF A COMMON HIGHWAY.

HEARING ON ESTABLISHING THE LOCATION OF  
HIGHWAY.

Before the Honorable County Commissioners  
Chas. Waterman, Chas. Callaghan, and Chas. Overstreet.

Appearances: W. S. Hartman, appearing for  
the petitioners.

W. R. C. Stewart, appearing for  
the objectors.

Transcript of Testimony June 17, 1914.

OFFICE OF COUNTY CLERK & RECORDER,

Gallatin County

State of Montana

SS.

Filed January 2, 1917 at 7<sup>35</sup>  
o'clock P. M.

By

W. R. C. Stewart

County Clerk & Recorder.

By

Deputy.

Fee \$

Charles Carolus one of the objectors, being first duly sworn testified as follows:

-----DIRECT EXAMINATION

BY MR. STEWART.

Q State your name?

A Charles Carolus

Q Are you the Mr. Carolus who owns the southwest quarter of Section 28 Township 2, south of Range 60?

A Yes sir.

Q What part of it do you own, Mr. Carolus?

A An undivided half interest.

Q What sort of a title have you to the southeast quarter of Section 21?

A I got it from the State of Montana.

Q What is your mode of farming operations on those two quarters?

A Well, I farm about half each year, and work it in that convenient way that it is now.

Q Where is the pasture on that half section?

A In the center of the field.

Q In what field?

A Section 21---the southeast quarter of section 21.

Q Is there any road on the west of the southeast quarter of section 21?

A Yes sir.

Q Do you know the width of that road?

A I am not positive but I think it is a sixty foot road.

Q It is a well traveled road---can be traveled on?

A Yes sir.

Q Do they go over there with threshing machinery? Threshing machine outfits?

A Yes sir.

Q They do each year for a number of years?

A Yes sir.

Q Who owns that strip of road that is between the northwest corner of the southeast quarter of section 23 and the road---the main road that runs east and west past Darby Taylor's place?

A That belongs to me,--to my place---that is an undivided interest too---it belongs to me.

Q Who has occupied that for all these years?

A I have

Q How many years have you lived there and been acquainted with that?

A Fifteen years.

Q You and your co-owner, own that road?

A Yes sir.

Q And just occupy it in that way?

A Yes sir.

Q Where is the water that you have for your stock and other purposes on these three hundred and twenty acres?

A On the northwest corner of section 23

right there by the building.

Q The northeast corner of the southwest quarter of Section 23?

A Yes sir.

Q What sort of means have you there for getting water?

A A pump there and a well.

Q Where do you water the stock that you pasture over on Section 31.

A Right there on section 22.

Q I wish you would state exactly what you have done towards leaving a means of ingress and egress along the east side of section 31?

A There has always been a road there---two gates across the road---that is all that has ever hindered them from traveling there.

Q They have had undisputed use of that for all these years?

A No sir, <sup>Q</sup> They have had the use of it as they wanted it as long---since it has been?

A Yes.

Q You never interfered with them one way or the other?

A No sir.

Q What is the width of the road that runs out to the main road from your house?

A Thirty three feet?

Q Thirty three feet?

A Yes sir.

Q Who else travels this road---this road between section 21 and 22---except yourself--- up to that corner?

A The two Mr. Sieferts.

Q Are you acquainted with the land of E. H. Sieferts? L. C. Siefert that runs south east of you? A

A Yes sir.

Q What quarter section---And the quarter section that lies just east of it---which is the northwest of section 27?

A Yes sir.

Q Are you acquainted with that?

A Yes sir.

Q What means of getting out have the Sieferts except going over this road that they are proposing to build in there?

A Through their own ground to this other road.

Q That is to say from Lowes Sievert's house---what is known as the Nickols road?

A Yes sir.

Q That is the road that runs north and south there---

A Yes sir.

Q You have been over the ground between Lowes Sievert's house and that road?



A Yes sir.

Q What is your estimate ---what would it cost to construct a road from where Lowe Sievert's buildings are across to the Nickols road?

A I dont believe it would cost such an awful price to construct that road, I dont believe it would exceed over one hundred and fifty dollars.

Q The road being on a grade?

A Well it would have to be a grade and a fill.

Q You are referring perhaps to what they petitioned for?

A Yes.

Q I am not referring to that---I say what means do they have of getting across there if there is any, by dropping south from his house a little ways and

A (interrupting) By dropping south from his house /a little ways, he could go out with a very little grade.

Q Now, are you acquainted with the ground that lies between Otto Sievert's place and the road that runs up through the Woods Place?

A Yes sir.

Q Describe that ground and the condition of it there---first the distance <sup>and</sup> between that house and that road.

A The distance is just a half a mile---there is practically no hills---of course the country is rolling there the same as any where else--it is practically

Q (interrupting) You have been over

that road with loads of stuff?

A Yes sir.

Q Is there any swamp in there or ravines to be crossed?

A There is one ravine---and one spring branch to be crossed.

Q Have you hawled over that when it wasn't frozen?

A Yes sir.

Q State when and what it was you hawled through there/

A I hawled wood last spring---I didn't go particularly on this same road, but I believe it would have been better if I had of. I hawled wood for L. F. Sievert last spring and a year ago when the frost was just coming out.

Q How much did you hawl across there?

A Forty seven hundred with two horses with mud very near hub deep.

Q I would ask you where this Otto Sievert delivers wood from there.

A To Gordon---he goes through those fields.

Q Were you estimating the amount of your damage---will you estimate the amount of your damage if this road were constructed as it is petitioned for---in the first place/<sup>how close</sup>would it have to go to your house?

A He would have to go within forty feet of the house.

Q You would rather have twenty five hundred would you?

A I would take all I can get.

Q You and young Wilhelm own the south west corner of section 23.

Q How much of your land and the land of your co-tenant would it have to take out?

MR HARTMAN: The petition states it would be twenty feet.

A Twenty feet.

Q Twenty feet of the leased land and twenty feet of the other.

MR HARTMAN: He has nothing to do with the leased land, the state of Montana is the one that we have to go to about that.

Q What do you estimate the amount of your damage --- what do you estimate the damage would be on account of your farming operations there and the way you have for watering the ranch etc. if they constructed the road through there.

A I estimate that my damages wouldn't be less than one thousand dollars.

Q Would you want to take one thousand dollars and have it done?

A No I wouldn't be anxious to.

MR. STEWART: That is all.

-----CROSS EXAMINATION

BY MR HARTMAN:

Q You would rather have twenty five hundred wouldn't you?

A I would take all I can get.

Q You and young Wilhelm own the south west corner of section 23.

A Yes sir.

Q Then you own a strip of the west side of the northwest quarter of section 22?

A Yes sir.

Q That is forty feet wide?

A No thirty three.

Q That strip is thirty three feet wide?

A Yes sir.

Q If this proposed road would take twenty feet off of the west side of that strip and twenty feet off the west side of the southwest quarter of 22?

A Yes.

Q Your barn and house is in the southwest quarter of section 22?

A Yes.

Q Very well you and Wilhelm own

A (interrupting) They are on the northwest corner of the southwest quarter of section 22.

Q The buildings are on the northwest corner of the southwest quarter of the section 22?

A Yes sir.

Q About forty feet from what would<sup>be</sup> the east line of this road, when it is constructed?

A Yes sir.

Q And this water that you speak of is it in the northwest corner of the southeast quarter of the southwest quarter of 22?

A The northwest corner.

Q How far from the road when it is constructed?

A Not oversixty feet.

Q What is that---a spring or well?

A It is a well.

Q A well that you have constructed there?

A Yes sir.

Q How far from your house?

A I think about between forty and fifty feet--I never measured it.

Q But the well and the house and barn will all be on the east side of this road if constructed.

A Yes sir.

Q On the --On your southwest quarter of section 22?

A Yes sir.

Q And this lease you speak of is on the southeast quarter of 21?

A Yes sir.

Q Now then you speak of the road--- people have to use this road that you speak of---this road as I understand you runs from the southwest ~~corner~~ of the southwest quarter of section 22 to the northwest corner of the northwest quarter of the section 22?

A Yes sir.

Q And touches this other road?

A Yes sir.

Q You say there some gates on that road?

A Yes sir.

Q Where are the gates?

A Right there by the house.

Q5 You have one across the road at your house?

A Yes sir.

Q Where is the other one?

MR STEWART: He misunderstands you, there is no gate on this road

MR HARTMAN: No he doesn't ---this is a private road you have been talking about---that Sievert has been using to get to the road?

A Yes sir.

Q That road runs from the southwest corner of section 22 to the northwest corner of 23?

A Not a private road.

Q That Sievert has been using?

A Yes

Q Where does it lie?

A That lies right west of the line between Section 21 and 22.

Q Lies on the state land?

A Part on the state land until they get down to my private road.

Q Where is your private road?

A That is along the west line of section 22,---the northwest corner,--

Q It is a thirty three feet strip?

A Yes

Q That is your private road?

A Yes sir.

Q Now then the road that lies all on your land--that is a private road?

A Yes sir.

Q That lies on the thirty three feet strip?

A Yes sir.

Q Where is the gate on that private road?

A At the south end of the road.

Q At the south end of the road close to the house?

A Yes sir.

Q Now then where is the other gate that you spoke of that Sievert has to open when he travels that road?

A Right there at the same place.

Q Two gates?

A Yes, about thirty feet apart.

Q Where is the rest of this private road you have given Sievert the leave to travel over?

A That is on section 21.

Q Section 21?

A Yes sir.

Q On the state land?

A Yes sir.

Q So Sievert can go now on the state land from the northwest corner of his section--that is Otto Sievert---on the state land for half a mile until he gets to this gate to go onto your private road?

A Yes sir.

Q Then he can open that gate and go over and open another gate and go through this private road of yours until the north end of it strikes the road running east and west?

A Yes sir.

Q That is the Fort Ellis road?

A No, the Rocky Canyon road--the Fort Ellis road intersects there.

Q There is no gate at the north end of this private road?

A No sir.

Q But there are two gates at the south end?

A Yes sir.

Q Now then did I understand you to say that Mr. Sievert has the right to use that road?

A He hasn't the right but he has been using it.

Q He has been using the road?

A Yes sir.

Q You haven't granted him any right?

A No sir.

Q Or any permission to use the road, in writing?

A No sir.

Q Nothing but what could be revoked at any time that you wished to tell him to quit going through your place there?

A No sir.

Q Now, do you know whether he has got any right from the State to get across the southeast



quarter of section 21?

A No I dont.

Q You dont know anything about it?

A I dont know anything, if he has any right from the state.

Q In other words then it is just at your sufferance that Mr. Sievert can get out to that road?

A By this private road yes.

Q At any time you say to him that you will not allow him to go through on your private property anymore that is the end of it.

A That is right, -but I never said anything like that.

Q You dont pretend that he has any right to go through there do you?

A No, I dont say that he has.

Q In other words you can show that when ever you please---you could shut him off whenever you please, that it would be perfectly within you rights under the law and might not be improbable but within your legal rights.

A Yes sir.

Q Otto Sievert owns the northwest quarter of section 27?

A Yes sir.

Q That lies immediately south of the southwest quarter of 22 that you and Wilhelm own?

A Yes sir.

Q L. C. Sievert owns the northwest quarter of 28?

A Yes sir.

Q But it is immediately south of the southquarter section---the southeast quarter of 21 which you have leased?

A Yes sir.

Q I understood you to say that it would be a great deal cheaper to construct a road on the line between the southeast quarter of 21 and the northeast quarter of 28 there over to that Nickols road, than to construct this proposed road?

A No, not right square on the line--it would have to go south of the line.

Q It would have to go down, and if they would go/south far enough on the line between Sievert's place and the state quarter that you have leased they could make a very good road through there?

A Yes

Q But it would be considerably more expensive to construct a road right on that line between the southeast quarter of section 21 and the northeast quarter of section 28?

A Yes.

Q Then it would be to construct this road as they propose it?

A Yes

Q Now, you said something to Sievert about coming over from the east and getting to another road and that he actually does go that way to hawl his grain to Gordon?

A Yes sir.

Q Than it would be to cross either from the southeast quarter of 23 or the northeast quarter of 27?

A He would have to cross between---

Q (interrupting) He would have to cross on a line between these two?

A Yes sir.

Q Who owns the southeast quarter of 22?

A The southeast quarter of 22, I think that is Ed. Sharp.

Q Who owns the northeast quarter of 27.

A The northeast quarter?

Q Yes, the northeast quarter of 27

A F. Jenkins.

Q So that if he ~~XXXXXXXX~~ was to get a road out to the public road that lies along on the east line of 22 and 27, he would have to get a road from Jenkins and Sharp?

A Yes sir.

Q If he put it on that line?

A Yes sir.

Q So that the line you went along when you hauled the forty seven hundred pounds of grain---was that the line you went along when you hauled the forty seven pounds of grain?

A No I cut north of that line and road through Jenkins field.

Q That was the time you hauled the forty-seven hundred pounds with a team through mud hub deep?

A Yes, through mud hub deep.

Q You say that would make a particularly good road if the mud was hub deep there---you think that Jenkins himself would be any more willing to have Sievert put a road through there then you are to have him put one through?

A They were willing to give him a foad last spring provided he would fence it, but he wouldn't take it.

Q They are perfectly willing to have him do that?

A I dont know as to that now, but they were at that time.

Q Well now then if a man was coming to Bozeman from Sievert's house what would be the most direct route for him to pursue---to go north or to go east or to go west?

A Which Sievert are you referring to?

Q To Ott Sievert.

A Well it wouldn't be any further for him to go straight west then it would for him to go north.

Q It wouldn't be any further for him to go straight west then it would be for him to go west?

A No sir, not particularly.

Q He would have to go a half mile from the east corner of his land to get to any other road at all wouldn't he?

A A half mile?

Q Yes, a half mile ?

A Yes a half mile.

Q If he went the other way he would have to go a half mile west?

A He would have to go a mile.

Q What from the north west corner-- where his buildings are--what part of the northwest quarter of 27 is Sievert's buildings on?

A The south/<sup>east</sup>corner.

Q Down in the senter of the section?

A Right--Yes, in the center of the section.

Q In what part of the northeast quarter of 28 are Sievert's buildings on.

A On the northeast quarter.

Q On the northeast corner--that is L. F. Sievert?

A Yes

Q Close to the northeast corner?

A Yes

Q C.H. Sievert seems to own the south west ~~quarter of~~ section 27, where are his buildings?

A In the northeast quarter.

Q Very close to Otto Sievert's buildings?

A Yes.

MR HARTMAN: That is all

-----RE DIRECT EXAMINATION  
BY MR STEWART.

Q Who owns the southeast quarter of section 28 which is the land that lays beside the Nichols road that runs on up there?

A That is controlled by Otto Sievert.

Q So that the Nichols road runs the full length of that side--of that also.

A Yes sir.

Q Mr. Hartman asked you about going

from Otto Sievert's house to Bozeman---wouldn't the nearest way and the best road be to go directly west--- to the Nichols road and then follow the Nichols road?

A Yes sir.

Q He would go all the way on his own land?

A Yes to the Nichols road.

Q C. H. Sievert would go all the way on his land to this road(indicating)?

A Yes sir.

Q As a matter of fact there is no open road that touches that land at all except this state land.

A No.

Q It is part of the road you have in there?

A Yes sir.

Q How much did you spend on that bridge on that part of the road of yours,---what would be a fair estimate of what that cost you at the time you put it in?

A I think a fair estimate would be about estimate would be about one hundred and fifty dollars.

Q That is on this private road of yours?

A Yes sir.

Q Which you used and which the Sieverts have used all the time?

A Yes sir.

Q They say that Sieverts dont use this road and haven't for hawling out their grain for several years.

A No sir.

21.

Q When they use it what do they use  
if for?

A Only to come to town and haul coal  
out to me for threshing---that is practically  
all they use it for.

Q This bridge that is on the road  
between this private road and yours opposite  
O'Brien's house is on the land that they are  
taking for this road?

A It is opposite it.

That is all

-----RE CROSS EXAMINATION  
BY MR HARTMAN.

Q Where is the school house that  
the Sievert's children attend school there?

A There are two school houses  
that the children go to school at, the Louis children  
they go down past the house---and go north, there  
is a house that is used there at Ft. Ellis as a  
school house, and Otto's children they go over  
to Bear Canyon---

Q Where do C. H. Sievert's children go?

MR WATERMAN: That is the old gentleman?

Q You said Otto Sievert controlled  
the southeast quarter of 28, what do you mean by  
that?

A I suppose he has got his lease from  
the state.

Q He doesn't own it?

A Not that I know of.

Q If he were going to go over to the Nichols road he had to go over L. F. Sievert's land over this state land you say he has a lease on or on the land between those two quarters, or on the line between them?

A Yes sir.

Q If he went over there---if he got a road there from the southwest corner of the northwest quarter of 27 he would have to go---he would have to buy part of the L. F. Sievert's land and part of the state land---the southeast quarter of 28?

A Yes sir.

-----RE DIRECT EXAMINATION  
BY MR STEWART.

Q In this contemplated purchase there is none of the land of the Sievert's coming out of the public road?

A No sir.

Q They are taking it all off of you?

A Yes sir.

Q That is all.



J. J. Bryan, a witness produced upon behalf of objectors, being first duly sworn testified as follows:

## -----DIRECT EXAMINATION

BY MR STEWART.

Q What is your name?

A J. J. Bryan.

Q You live on the northeast quarter of 21?

A Yes sir.

Q Which is state land?

A Yes sir.

Q You had it leased from the state?

A Yes sir.

Q How long have you resided there?

A I have been there some twenty odd years?

Q What part of that quarter section of land is your house on?

A My house is on the southeast corner.

Q What means have you of getting over to the road from Bozeman to Livingston down to the field--do you travel anybody's private road?

A Occasionally I switch on the private road that Harry Carolus owns.

Q What means of protection or have you on the east side of that northeast quarter of section 21?

A I have a barbwire fence.

Q What is the condition of the land that runs along that fence, is it farm land or otherwise?

A It is practically all farm land.

Q Is it in crop at this time?

A Yes sir.

Q It is the place that they have petitioned to take twenty feet off?

A Yes sir.

Q You don't own the land, you own the fences and the telephone poles?

A Yes, I own the fences.

Q Have you any interest in the telephone poles?

A Yes, I have a one thirteenth interest there are thirteen of us in the company.

Q It is contemplated by this petition to change that road from a private road which Carolus owned and as used for road purposes all these years and set it over twenty feet on to the state land from you---What do you consider your damage if they set over on that State land?

A About one hundred dollars.

Q And what do you figure it would cost to move that one half mile of fence that stands along the east side of the land that you have leased there?

A I couldn't move it for less than fifty dollars.

Q Are you acquainted with the Carolus land?

A Yes sir.

Q Who used that private road except the Caroluses and the road that extends on the east side of the <sup>state</sup> land that Carolus has leased?

A Who uses it.

Q Yes,

A Outside of Charley?

Q Yes

A Otto Sievert and Lou Sievert

Q Do they deliver their grain and haul over that road?

A No they dont

Q Where do they deliver their gran to?

A They generally deliver it to Gordon.

Q Now on the west side of this quarter section you have leased from the state what is the condition over there?

A There is a county road that was put there about fifteen years ago, that was put there---well it was put there about two miles I believe it is from the main road---for the benefit of George Nichols.

Q George Nichols?

A Yes sir.

Q Does that pass by the land of Sievert's up there?

A Yes sir.

Q Are you acquainted with the country between L. F. Sievert's house and this road.

A Yes sir.

Q What is the condition as to a man being able to pass from there over to that road ?

A From Sievert's house?

Q Yes

A A man could go to that road quite handy by going through the field but to follow the

line it would be a hard proposition---there are several gulches to cross and quite a hill to climb about---but by going half/<sup>way</sup>to the quarter line south from Mr. Sievert's north line you could get a fairly good road up there.

Q How would it compare with the road if they took it off Carelus and took it off his land?

A I think it would be practically as good as road as he would have going down by Carolus's

Q Has Sievert got that quarter section fenced off ~~so he~~ could use it or is it all in an open field?

A It is practically in one field -- there is a house west---I believe it is all in one field.

Q Are you acquainted with Chas. Carolus's pasture? On the southeast corner of 21 and where he has to water his stock across of section 22.

A Yes sir.

Q And his correll and ranch there etc.,

A Yes sir.

Q I would like to ask you what you consider the damage to him would be for instance, if the stock what he has there would have to --- I would like to ask what you would consider the damage to him would be if he would have to allow a road to be opened up and kept open the full length of his place there---interferring with his stock and pasture and interferring with his farming operations?

A Well, if it were a lay out of mine I wouldn't want to run a road through there for two thousand dollars, under the conditions.

Q There is no water on this southeast quarter of section 21?

A No sir.

Q Are you acquainted with Otto Sievert's land and where it lays and where he lives?

A Yes sir.

Q Do you know of this offer that was made by Jenkins and Sharp to Otto to let him have a right of way for a road through the land across to Wood's ranch?

A Yes sir.

Q What sort of a place is it to the Wood road---

A It is practically level---of course it is not entirely level, there is a little spring branch there to cross but outside of that the road is practically as level as any of that land in that part of the country.

Q Have you ever hawled across there with teams etc.

A No, I never did but I have been through there quite a number of times.

Q Now if you were at present and as things stand there now---as the road arrangements are---if you were at Ott Sievert's place and wanted to come to Bozeman what would you say was the most direct route.

A The most direct route would be that---would be with a flying machine, across the hills.

Q Well suppose that you had a team.

A Well if you had a team you would go right due west from his house till you struck the Nichols road,

Q And then following the Nichols road?

A Yes follow that to intersect with the Livingston road.

Q That would give you practically a level road---and would be the shortest route.

A Yes, practically the same distance as if he came down by Mr. Carolus.

MR STEWART: That is all.

-----CROSS EXAMINATION

BY MR HARTMAN

Q If you went from Ott Sievert's house and went due west to the Nichols road you would have to cross either over L. F. Sievert's land or over the state land south of it wouldn't you?

A Yes sir.

Q I think you said that there was a spring branch on this road between Ott Sievert's and the road east on the northeast corner of 27 that would make that road bad for a little ways--especially from that spring branch it would be a very good road--~~aside~~ from that spring branch it would be a very good road.

A All the spring branch would make any difference a man would have to put in a little bridge there.

Q You dont know that that was the place along the road or any other new road where 47 00weight goes in up to the hub?

A A 4700weight would go into the hub most any place in that part of the country when the frost was going out.

Q I thought you said that road on the line between the northeast quarter of 28 and the southeast quarter of 21 would be a bad place to construct a road---they would have to go down a quarter of a mile below that line to get over to the Nichols road.

A Right on the line I said, a man would have to cross two gulches and climb a hill and by going a quarter of a mile south of that there is more level ground of course.

Q In other words if instead of going on the line between L. E. Sievert's place and the state land you went a quarter of a mile south you would go over a good road throug L. F. Sievert's.

A Yes sir.

MR HARTMAN : That is all

-----RE DIRECTED EXAMINATION  
BY MR. STEWART.

Q Are there any other statements that you wish to make?

MR. WATERMAN: If there any more questions that you wish to ask, why ask the questions.

MR STEWART: I am asking one now.

A I have no more?

That is all.

WITNESS EXCUSED.

Daniel Bryan, a witness produced upon behalf of the objectors, being first duly sworn testified as follows:

-----DIRECT EXAMINATION

BY MR STEWART

Q What is your name?

A Daniel Bryan.

Q You have owned property up in this community---up in this vicinity where you brother and the Carolus live have you not?

A Yes, I own part of that land that Geo. Nichols has now,--up there at the southern terminus of that Nichols road.

Q How long did you live up there and were you acquainted with the country and the land?

A Oh, I lived up there 22 years.

Q Twenty two years?

A Yes

Q Were you there when the Nichols road was put in there?

A I wasn't there at the time that they were getting it, but after they had the road granted---; that summer, I had been up in the Flathead Lake country and shortly after the road was granted I came back home.

Q You know where your son's back lives?

A I ought to, I lived there about twenty years.

Q You know the Carolus land of course?



A Yes, I know it generally.

Q You are acquainted with that private road from Carolus's house up to the other road?

A Yes, I know that road.

Q Who uses that road except the Caroluses

Q Who uses it generally do you mean?

Q Yes,

A The Carolus family uses it and Jack Brower uses it occasionally,---and the Sievert family have been using it pretty steady and once and a while a stranger will come that way.

Q Do you know where Charley Carolus' pasture---do you know where he pastures his stock in the summer?

A Yes sir.

Q On that land which is south of your son's land?

A Yes sir.

Q You are acquainted with the manner in which he has corral built and where he gets the water for his stock there?

A Yes sir.

Q You know the manner in which he found it up there?

A Yes sir.

Q What do you think the damages to the Caroluses would be if that situation was changed and a forty foot county road half on section 21 and half on section 22 was cut in there and maintained clear through there?

A That is a pretty hard question but for myself, I would hardly have it there under any

conditions whatsoever, not if I could possibly help it, I would consider it a detriment and of at least a couple of thousand of dollars.

Q That would interfere with his farming arrangement of those lands?

A What.

Q That would interfere with his farming arrangement of those lands?

A It would interfere with the watering of stock---from the access of the water back and forth to his pasture lands---his pasture land being on one side of that road and his buildings and barns and corrells on the other side of the road.

Q You know where the Sievert boys live south of there?

A Yes sir.

Q Do you know the means they have had of getting out to the road <sup>etc</sup> to ~~get for their own?~~

A Yes, I have known them to travel this road that is under discussion here and I have known them to travel the Nichols road--sometimes travel the Carolus road.

Q Is the Nichols road as convenient for them as this road is?

A I would think that it would be,--where the older Sievert live where the old gentleman lives there---he frequently travels the Nichols road.--I know they have a gate out at the Nichols road where he went in to on his own, and he always kept that gate locked and didn't want anybody to go through there.

He didnt want any strangers to go through there--I thought he was willing to---I wont say about that-- he kept the gate locked and I kinda reasoned that-- I didn't think that was square thing for him to do to lock people out who wanted to go out through that gate.

Q / <sup>Was</sup> At the same time he was using this road that came down through Carolus's place all that time?

A Yes.

Q Do you know where Ed. Sievert lives?

A Yes

Q And the country in between that and that road that is a half mile east of that?

A What

Q The country between where Ed lives and the road that is a half mile east of that--that runs down east of the Jenkins place.

A When you leave the Nichols road?

Q No on the other side of the Nichols road--

A I am not much acquainted with that locality---I ought to be too but I am not, I think he can get over across there.

Q Do you know whether he does or not?

A No I dont know anything about that--- I only know about the read through hearsay.

Q What do you think the damage would be to Jake Bryan place by reason of taking twenty feet off and requiring him to move his fence?

A I dont know just what it might be, he would have to move the whole fence and put up a new fence it would practically double the expense of building a new fence all right enough---that is, the labor would double the expense, leaving out of account the material---I dont know what it would be worth, it would be worth--

MR HARTMAN: Oh, make it five thousand dollars.

A (interrupting) Look here my lad, that dont go, I believe you have already had some testimony on that point, my brother is the best judge of that matter.

Jake Carolus, a witness produced upon behalf of the objectors, being first duly sworn testified as follows:

-----DIRECT EXAMINATION

BY MR STEWART:

Q Where do you live Mr. Carolus?

A I live up what is called Kelley Canyon,

Q You are the father of Chas. Carolus?

A Yes.

Q Are you acquainted with the land that he and his young brother own--the southwest quarter of section 22?

A Yes

Q 2S of Range 16

A Yes sir.

Q And the land that Charley has leased from the state?

A Yes.

Q Were you up there at the time he purchased that right of way or road through there to the Rocky Canyon road?

A Yes sir.

Q Did you work on that road; part of that time?

A Yes sir, we put in that grain---and we cut out some house logs---some logs that had been prepared for a log house and we used part of them for a bridge.

Q What was the expense of building that road--of building that bridge?

A I would estimate the same as about a hundred and fifty dollars.

Q Was that road used by anybody else besides, your son and yourself?

A Yes sir.

Q Who used it?

A The Sieverts, they all used it.

Q Did you ever interfere with their use of that road?

A We never objected.

Q There are no gates on it?

A There are gates right there by the house.

Q On the road itself?

A No sir.

Q Always been open all the way through?

A Always been open all the way through--- they have a gate up there in their corner,---at their own corner, they have to open that the same as they would have to open the gate to the county road there---they keep that closed---we have a gate right down there at the house and we have a lane that runs out to the pasture and between the lane there is a gate between the lane and the other road that goes north.

Q So the cattle can go to water ~~byxxxx~~ back and forth?

A Yes sir.

Q But it is necessary to have these two gates in there?

A Yes sir.

Q There has never been any interference with their use of this road during all of these years?

A Never.

Q I want to ask you what the extent, what would you consider the damage to Charles Carolus by reason of interfering with his farming operation and the damage

of his equipment there if a road forty feet wide should be established clear through there?

A Well sir, I really wouldn't make any estimate of it, I leave it go at my son's estimation.

Q One thousand dollars?

A Yes sir, something like that.

Q Who would have the use of that road at all except Charley Carolus?

A Nobody but strangers and the Siefert's.

Q The Siefert's have never been interfered with in the use of the road have they?

A No sir.

Q You know where the Siefert's live on that land south of your son's?

A Yes sir.

Q You know the country around there?

A I didn't take much of an observation of the conditions of the country around there, but as I understand you can get around pretty well.

Q You know where L. E. Siefert's house is?

A Yes sir.

Q Are you acquainted with the land that is, that lays between his house and what is called the Nichols road across there?

A I am.

Q Do you know whether it would be possible for him to drive across there?

A I think so, I have driven across there myself.

Q As a matter of fact that is the way they take the threshing machine out is it not?

A Yes sir.

Q Out through the Nichols road and up and down the Nichols road?

A Yes sir.

Q In hawling the grain they delivered that generally over at Gordon.

A They do if any amount to hawl---some times they hawl the grain down over that road of ours when they come to town and take a little jag of grain along.

Q I want to ask you what you think the--- a comparative cost of what would be ---I want to ask you what you think a comparative cost would be of Siefert building that road on his own land across from his own house---I mean L. H. Siefert--to the Nichols road, as compared with building a road down and Chas. Carolus's.

A No, I couldn't tell you exactly it would depend on the way they go---if they wanted to make a road over the hill and would have to grade them --- or whether they would care to go around and not grade them, cutting out the grading.

Q Are you acquainted with where Jenkins lives on Section 27.

A Yes sir.

Q Have you been from Ed. Siefert's across to what is called the Wood place?

A I never have been across that way, I have been up and down the creek some from Siefert's house, but I didn't pay any attention to the road.



Q Do you know whether Ed. Siefert uses that way to go across there?

A I presume he does, but I never saw him, use it.

Q What do you estimate the damage would be to Bryan by reason of his having to set the fence over and give up thirty feet about half a mile long of, his lease for three years?

A I should judge about one hundred or one hundred and fifty dollars.

Q You are aware of the fact are you not that the place where this proposed road is that the Siefert insist upon would cross this bridge?

A No

Q5 But you estimate that it would cost one hundred and fifty dollars.

A Yes sir.

-----CROSS EXAMINATION B

BY MR HARTMAN:

Q If this road was put in there to the west of this bridge, do you think it would be a damage not to be permitted to cross the bridge or could it be so arranged that he couldn't cross the bridge.

A If would go on a straightline you would have to move the bridge---that bridge would be on the line almost---that is on the east line of the fence there.

Q Would there have to be a fence?

A You would want put a bridge in the center of the road

Q Would there have to be a bridge on that point on the new road?

A Yes, and a dogoned good one too.

Q If there was a good one ---good bridge put along in there even Chas. Calotus and yourself could use the new bridge couldn't you?

A I presume we could.

Q I dont consider you would be particularly damaged by having to go across there on a bridge on a county bridge?

A I dont think we would damaged by going across a county bridge we would have to practically pay for it, in the long run in taxes.

Q You think you would pay the biggest part of this do you?

A No I wouldn't.

Q Now if I understand you, a good road could be constructed from Ed. Siefert's place across to the Nichols road across L. H. Siefert's place.

A Yes, as I see there.

Q How far across of L. H. Siefert's line would it be?

A I couldn't tell you I didn't pay any particular attention---I have traveled across that land and have threshed there and went out threshing that way, thats all I know.

Q As a matter of fact, a man can go out to the Nichols road from Siefert's land there, most any place across the Siefert road.

A Yes

Q Has L. H. got a gateeacross the Nichols road?

A Yes.

Q He can get out when he wants to?

A Yes

Q How far is that gate from the northwest corner of Siefert's land?

A I guess it is somewhere around a quarter of a mile.

Q A quarter of a mile south?

A Yes

Q And Ed could drive across L. F. land and go through that gate and get to the Nichols road?

A Yes

Q However, if they put a public road through there they couldn't keep a gate there---they would have to fence it on each side?

A That depends on their own convenience, if they wanted a land there they could.

Q I am talking about a public highway, that would have to be left open.

A That is what we are trying to get a way from now.

MR. STEWART: That is not in the petition.

Q In other words when, if you have a private road there of course you are entitled to the gate and if the public road were there it would have to be left open all the time.

A I guess that is it.

That is all

WITNESS EXCUSED.

The Objectors rest

"PETITIONER'S CASE

Otto Siefert, one of the petitioners, being first duly sworn testified as follows:

-----DIRECT EXAMINATION

BY MR HARTMAN.

Q You are the owner of the northwest corner of Section 27?

A Yes sir.

Q What ever that township and range is, I have forgotten.

MR STEWART: Two South Six East.

Q Yes

Q How long have you lived there Mr. Siefert?

A Let me see, I think we moved out at that place in 1896---eighteen years ago.

Q Where are your buildings---what part of the northwest quarter of 27?

A In the southeast corner.

Q Southeast corner?

A Yes sir.

Q How are they arranged---that is to say have you got it fenced?

A Yes sir.

Q All around?

A Yes sir.

Q Do you own any other land there, than the northwest quarter of 27?

A No sir.

Q What means of getting to the public road---upon the public road have you?

A Well---a good many times we ship a car of wheat that we hawl down over Jenkins field--- we generally go down over the middle of his field--- all together we might go out that way six times a year.

Q You would go east when you go that way?

A Yes sir.

Q How far do you have to go to get to the public road?

A It is a half a mile straight across but kind of kitty corner---from the southwest ~~quarxxx~~ <sup>corner</sup> of the quarter to the northeast corner.

Q. Mr. Jenkins lives immediately east of you does he? A. Yes sir.

AQ That is the way you go when you hawl wheat to Gordon siding?

A Yes sir.

Q What is the direction towards Bozeman.

A We always traveled down by Mr. Carolus's

Q Is that the direction to go towards Bozeman.

A I go a half a mile west from my west side and they we put in a couple of grades there, heavy grades, and we go straight north to where Rocky Canyon road intersects the Ft. Ellis road.

Q How about attending school?

A My children---I havent got any road for my children to go to school, they go down through Jenkins place, kitty corner and they go across the field kitty corner there and through the fence there by George Hays.

Q Where is the school house that they attend school located?

A A half a mile north of my house and about a mile and one quarter possible a little better east, on the section line.

Q Where do the L. F. Sievert children attend school?

A They go straight out north down to the Ft. Ellis school.

Q Where is that with reference to that proposed road ?

A It is on the road all the way.

Q The school house I mean.

A The school house is on the northeast corner of what is known as the old Pattee place--right opposite the Ft. Ellis gate.

Q Where is it with reference to this proposed road on the line between section 21 and 22.

A I will try and tell you as near as I can. It is three quarters of a mile north at where this proposed road starts.

Q That is up at this Rocky Canyon road?

A Yes sir.

Q Three quarters of a mile north of that?

A Yes sir.

Q Is there a road to the school house from the Rocky Canyon road?

A O<sup>4</sup> Charley Carolus's place there is a road all the way to the school house.

Q Under what arrangement have you been using this private road of Mr. Carolus's.

A First we lived where Charley Carolus lives now for three years, we used it from his place, on out--practically the same as it is now, only it jogged down in a gully a little way.,--after we lived there for three years we moved where we are at the present time, and have lived ever since, and we used the same road ever since.

Q What arrangement or right to use the road have you got

A 5 Nothing any more than we have just been traveling on it.

Q You havent any right to do it---you never obtained any right to do so?

A No sir.

Q What have you to say as to whether or not it has got any gates upon it and if so where?

A There are two gates at Mr. Carolus ' house  
Chas. Carolus's house

Q What do you have to do with reference to opening and shutting these gates?

A Well, when we get down to Chas. Caroluses we jump out of the buggy and open and shut the gate.

Q You can leave them open?

A We always have to shut them, we never neglected that.

Q It is a private right of way?

A Yes sir.

Q You recognized his right to keep the gate closed?

A I certainly do.

Q Have you any other ~~xxxx~~<sup>right</sup> except mere courtesy to go through there---and just mere courtesy.

A That is all.

Q You dont claim any right?

A No sir.

Q Now what ~~have~~ you to say as to the best route there for a road to best serve yourself and your brother and such members of the public as might want to use the road?

A I cant see any other road ~~xxxxxxx~~ except proposed road,<sup>Q.</sup> it is the only road north of the ~~xxxxxx~~ section line between section 21 and 22

A Yes, it is a natural road all the way---

Q If you were to attempt to go right through to the east, what would be the disadvantages there, where in would that be less advantageous proposition, that the one running north along the proposed road?

A Outside of going across that grain field five or six times a year we object to going away from town every time we use the road.

Q The road you use most and the one that would be most convenient for people there, would be the proposed road?

A Yes, and the best road.

That is all.



## -----REDIRECT EXAMINATION

BY MR STEWART

Q How often do you come to town; a year besides the time you go out through Jenkins?

A In the winter time we come to town two or three times a week.

Q Part of those times you go out on the Nichols road across the---out the other way there dont you?

A No sir.

Q Well part of that time you come out of that road to come to town---the Jenkins road?

A No sir.

Q You always come through the Carolus place?

A Father has a pasture there, and a few times we went through the pasture to see how the stock was.

Q Who has charge of your father's place now?

A I have charge of it.

Q You have a right to go on there when you want to.

A Yes sir.

Q And it dont interfere with anybody?

A No sir, but father is not able to take care of anything himself.

Q Going from your house on this other place there is two grades that you have to cross.

A Coming to town or going back?

Q Isn't there a grade that you go up coming from Lewis' house to the old house?

A Yes.

Q A pretty steep grade?

A We had to make a grade there to keep from tipping over.

Q That is the place where you live--- and kitty corner from your place to Jenkins place--- this place where you live and kitty corner from your place to the Jenkin place when you go on that road--- that goes down a little grade all the way?

A Yes, to the middle of a field.

Q He has offered to let you have a right of way to the road hasnt he?

A It was on the line between him and Stafford.

Q When was it that he offered to let you do that?

A About a year ago---he said he would let me have it if Stafford would let me have it, but Stafford wouldn't let me have it.

Q Jenkins would let you have enough if you would pay him enough for allowing a road across it?

A No sir, I offered to pay him for it but he wouldn't do that.

Q Charley Carolus would let you go a half a mile east of where it is now?

A Because the fellows on the petition that signed the remonstrance were against it he would <sup>not</sup> do it.

Q You never made any effort to go through that way---you said you didn't want to go through that way.

A I have tried every way in the world to get it, every time I tried to get it he said that he would never have a road through there as long as he could help it.

Q Mr. Carolus told you that

A Yes sir.

Q Is that the language he used.

A That was a half a mile east of where we are trying to get the road now.

Q Is that the language he used.

A Yes sir.

Q When was that

A On and off for several years.

Q He has been talking to you that way all this period?

A Yes

Q Yet strange to say he has allowed you to go up and down his place all these years?

A I mean to say that he said, I shall never have a county road or main road made from the main road or from his house where his private road ends on south,---half a mile south

Q You and he talked about that ?

A Yes

Q You have been neighbors up there?

A Yes sir.

Q Get along pretty well?

A Always did, and I havent got anything against him.

Q You think he has got something against you?

A On the road proposition, I know he has.

Q Now then, when you go over,--in going across your own particular land ---in the first place you petitioned in his petition for the road to run at the corner at the gate where you come into Carolus's road right straight west to the Nichols road?

A Yes sir.

Q You didn't think that was practical or the engineer didn't?

A The engineers put it to me this way--- they didn't want the other road up there---they thought they couldn't open up any new road unless there was an outlet on both ends, that is the reason we showed that half mile in there.

Q You were willing to take half of his land for a road across there in order to get an outlet to that.

A 5 It didn't belong to him, it belonged to the state, my brother would give him half of the road and put his own fence up.

Q Isnt it a fact that west of his house you could get across---the Nichols house---you could get across to the Nichols house just as well as you can by the Carolus house.

A It wouldn't make as good a road.

Q You do go out that way with a threshing maching?

A There never has been a threshing machine across that road---it may be that they can get over it since this new cattle path.

Q I am talking about where ~~the~~ Lewis house is down to the Nichols road .

A Through the middle of the field you can go through.

Q There is a gate over there to let you out on the road?

A There is a gate through there.

Q Yes, so you do go there generally and Lou does also.

A He might have gone that way once or twice since he has been there.

Q That is a quicker route than to come down by Carolus's and open three gates.

A It isn't as nice a road, it would have to be fixed up a good deal to make a good road out of it.

Q This southeast quarter of 28---have you a lease on that from the state?

A My father has a certificate of purchase.

Q You wouldn't be interfered with in going that way?

A No sir.

Q That wouldn't make it out of the way any?

A No, but you couldn't go up those hills with an empty rig.

Q You couldn't get along after you crossed Lou's land?

A No sir.

Q You have been up this Nichols road havent you, within the last few weeks or days.

A I go across there with my horses to work since my brother died last summer.

Q This Nichols road is a sixty foot road ? A couple of good traveled roads in the middle there?

A Yes

Q Looks as if a man could get a couple loads of hay along side in that road there?

A I presume so.

Q It is a very large road? And it dont have any appearance of having been used for any purpose.

A It has never been used.

Q This road from Carolus's corner down to the house is in the same fix, it has big ruts in it?

A Yes, on account of there never been any work done on it, now we are riding up next to the fence, we are crowded in so that we have only room enough to go along with a buggy.

Q You have lots of road there yet?

A The road is wide enough to travel/

Q You can pass a man on it with a team?

A I dont think so.

Q Would you say that it is not wide enough to cross a man in a rig or automobile?

A If you would pass me I would say go on, I will pay the damages.

Q If there were a couple of those automatic coupling gates put in there?--

A (interrupting) You would have a runaway every time you opened the gate, <sup>Q.</sup> you dont know whether they would use them---

A We go down to Ott Mathews occasionally and when we open those gates, I generally get down and open them---I always open the gate.

That is all

-----REDIRECT EXAMINATION

BY MR HARTMAN

Q I understand Mr. Siefert, you can cross your brother's land to the Nichols road, and you can also cross through this land in the southeast

~~quarter~~ quarter of 28 that your father owned and get to the Nichols road by opening the gate to the road?

A Yes sir.

Q And you have never been interfered with in going through Carolus's by opening and shutting the gate?

A No sir.

Q And probably most any of your neighbors around there would let you go through their land as long as you didn't claim any ~~right~~ right and you opened and shut the gate?

A Yes sir.

Q What you are after now, is to get a road where you wouldn't have to open and shut a gate.

A That is right.

Q Your buildings are down in the southeast corner of the northwest corner of 27?

A Yes sir.

Q Where are your brother's buildings?

A They are in the northeast corner of the northwest quarter of section 27.

Q The northeast quarter of 28 you mean.

A Yes.

Q They are not on your land?

A No sir.

That is all

## -----RECROSS EXAMINATION

BY MR STEWART:

Q Now then you heard the report of these reviewers, you know what they reported here?

A Yes, I heard it read.

Q The only proposition is, ---one proposition is, that you are benefited to the extent of two hundred and eight six dollars by reason of this road, --- you understood that --- there was a provision there to that effect.

A Yes sir.

Q Do you know of anybody else benefited by this up there except yourself?

A Any one that wants to come to my place.

Q Really that would be your own benefit, the fellows coming in to your place.

A Yes, anybody that wants to go back and forth.

Q5 And the balance of five hundred and some dollars you think is a benefit to the other community up there, outside of the two hundred and eighty six dollars which they say you should pay --- five hundred and thirty eight dollars I think it is --- you think the balance of five hundred and thirty eight dollars is to the benefit, is a benefit to the community at large in addition to what is a benefit to you?

A I think so if there is any balance --- I think it is all estimated too high.



55 Q I understand that the commissioners in that report suggest that you should pay the county two hundred and eighty six dollars, do you think that is right?

A It is just this way about it, we want a road and if we cant get it in any other way, I am willing to pay it.

Q You are willing to pay it?

A If I have to, I will pay it---every body else has a road and I think I am entitled to one.

Q Do you---did you tell the county surveyor that you would pay two hundred and eighty six dollars if he would put it in the report that way?

A I didn't say I would pay that amount

Q Last winter when they hd another report up there you told them you would pay part of it.

A Yes sir.

Q Did you ever figure on what it would cost to get a road ---a right of way---and build a road from your place right straight across on the line from your corner there to this Jenkins road?

A I never figured on it.

Q Did you ever figure on what it would cost to fix a couple of low grades in Lou's field so there would be a road left from his house across to the Nichols road and get out that way?

A I didn't figure on it---cutting the land in two in the middle.

Q The road could be there without the fence

A You wouldn't have a road long.

Q There would be a place where you could drive in and out---you never figured on any of those ways?

A No sir I didn't figure on that because there is no place for a road.

Q Is it your idea that is the commissioners approve this, that you are going to pay this two hundred and eighty six dollars or did you figure the county is to pay it?

A As I said before, if I cant get a road any other way, I will pay it, but if the county would pay part of it, I would appreciate it, I am entitled to a road.

Q So you think they ought to pay it all?

A We have been paying taxes here, we have done considerable road work on our own place besides paying road taxes every year, and it seems to me we are entitled to a road the same as anybody else.

Q You have never done any work on Carolus's road, private road?

A No sir, that bridge in there is perfectly worthless, but if the road is put in there, a large-- they can still travel over that road if they want to,-- if they put a forty foot road in there, twenty on each side of the line, the bridge can still be used.

Q You dont think that an automatic gate would work?

A No sir.

Q You would still be confronted with a gate at each end of Carolus's field?

A I would be willing to give the land along the north side for the road up there---of course I couldn't leave that open because my ~~xxaxk~~ premises would be open to the public.

Q Then Lou would have to put a gate in there?

A He would have to put one in up to his house or leave it open.

That is all.

L. F. Sievert

One of the PETITIONERS,  
being first duly sworn,  
testified as follows:

-----DIRECT EXAMINATION

BY MR HARTMAN:--

Q You are one of the petitioners?

A Yes sir.

Q You own the northeast quarter of twenty eight

A I do

Q The northeast corner of your land then  
will be the center of the proposed road.

A The south end, yes sir.

Q The northeast corner of your land would  
be the center of the south end of the proposed road?

A Yes sir.

Q How far is it from the south end of that  
proposed road to the school house to which you have  
to send your children to school?

A Just about two miles.

Q Where is the school house--in what direct-  
ion from that south end of that proposed road?

A Due north.

Q How far north?

A From the south end it would be about  
a mile and three quarters.

Q If that proposed road is constructed  
will there be a road straight through then from that  
corner to the school house?

A Yes sir.

Q How do your children have to go to school  
now---how do they go?

A They have to go down that same lane  
where we are trying to get our road now--- part of

the time they have to go through a bull pen---very often last winter the children were stopped from going home on account of a big bull; I saw one of the neighbors on the street one day and I told him if that bull ever hurt one of my children I would kill the bull--- I think a man would be justified in doing so.

Q How many gates do they have to open after getting out of your place to go through on that road?

A Two.

Q What is the course which you pursue in getting out to the public road from your place?

A By going over this same route that we are petitioning a road for.

Q That is through the land now--along the lane between section twenty one and twenty two?

A Yes sir.

Q Where do you go into the southeast quarter of section twenty one---How far from the southeast corner of it?

A It is right at the corner.

Q Is there a gate there at the corner?

A Yes sir.

Q That land is fenced there?

A Yes sir.

Q Is there a fence on the east side of Corolus's southeast quarter of twenty two?

A Yes sir.

Q Is there one on the west side?

A No sir.

Q No fence on the west side?

A On the west side of what?

Q The southwest quarter of twenty two?

A Yes there is a fence clear around it.

Q There is a fence clear around the southwest quarter of twenty two?

A Yes sir.

Q On the west side too?

A Yes sir.

Q And then you---in going up to the south end of the private road of Cololus you would go entirely on the southeast quarter of twenty one---the state land.

A Yes sir.

Q That is what accounts for the two gates up there?

A Yes, they have a cattle lead.

Q Have you ever acquired any right to go through there?

A No sir.

Q Always have to keep those gates shut?

A Yes sir.

Q You say that notwithstanding there is a road here on the west side of your northwest quarter of twenty eight you find it more convenient in getting out to the public road to go this other way?

A I do.

Q Going north?

A Yes sir.

Q Why

A In going on the Nichols road I would have to go kitty corner through my farming land and a man needs pretty near all the farm land he can get up in that country.

Q What sort of a road is the Nichols road when you get to it?

A It is no road at all---it is a very poor road.

Q Is that the place where Judge Stewart spoke of two and one half tons of hay to the acre---- Do you know of any other better route for a public highway to accommodate yourself and your brother than the one that is proposed to be placed on the line intersecting sections twenty one and twenty two?

A No sir.

Q What are the objections to a road running east there for a mile from that northeast corner and striking that road?

A There is a big coulee going through there and when you get down to Jenkins house there is quite a little swamp in there and it would cost a good deal of money to put a road in there.

Q You have to get a right of way over the south side of Corolus's land?

A Yes sir.

Q And onto the Jenkins and Stafford land?

A Yes sir.

Q What is the objection to going west to connect with the Nichols road?

A That is a very poor road-- there are

two coulees to go through and it would cost considerable money to construct a road through there.

MR STEWART: That is on the line?

A Yes--I wouldn't want to have a road through the center of my farm land.

Q How far south of that north line would you have to go to get a good road?

A You would have to go pretty near kitty corner through my field and have the same work to do as you would on the line.

Q You don't want to have a public road go through you that way?

A I don't think that very many of us would.

-----GROSS EXAMINATION

BY MR STEWART:--

What do you think it would damage you if you had a public road through your field there?

A I don't know--- it is taking the one hundred and sixty acres and kitty cornering through it--- cuts it right in two making a three cornered piece.

Q Pretty expensive piece of business--- you wouldn't want it done for one or two thousand dollars?

A I don't think so.

Q Suppose you had 320 and had a road right through the center of it.

A If I thought that my neighbors needed it I would grant them a right of way and put up my own

fence

Q I infer that that neighbor that had the bull was Charlie Corolus?

A Yes sir.

Q What happened after you told him that?

A It wasn't very long before he sold the bull--- I came in the morning he sold him to report it to the county attorney; my wife had been out to find out where the bull was before the children went to school.

Q It was with reference to the bull that you were going to report to the county attorney?

A Yes, not Corolus.

Q Not Corolus?

A Just the bull.

Q He got the bull out of there as soon as you told him about it?

A He knew it all the time because the children were detained there a good many even<sup>ings</sup> and he would come out and drive the bull away so they could go through.

Q The children were never injured by the bull?

A No and I didn't want them to be either. I didn't want to wait until one of them was killed.

Q He drove it away then?

A Yes sir.

Q You never had any trouble there except this bull trouble?

A No sir, I never had that trouble with him; he never knew that I was going to do anything until right now.



Q He got rid of it without him knowing anything about it?

A Yes sir.

Q You lived there neighbors to Corolus's a good many years?

A Yes, and always the best of friends.

Q Never had any trouble about this road?

A Yes sir.

Q How would it be if they would put in one of those automatic opening gates?

A I don't like them because I went down to my father in laws one time and I had a little experience with that kind of a gate; as I pulled the thing down or as I let the gate down it rubbed on the wheel and as I went through the gate feel between me and the horses; I didn't have any injury though; another man there had the same experience but he didn't get out so easy.

Q Did you have any arrangement with the viewers of the county engineer in regard to paying the damages here that the viewers suggested you should pay

A No nothing more than what my brother said.

Q You figure on being in with him on that

A Yes sir.

Q You figured you would pay that if you had a chance to get the road through?

A Yes we would rather pay it than to have trouble over it.

Q You figured that--- you signed a petitio  
n

for this road I believe--the original petition---  
two petitions have been filed?

A Yes sir.

Q In this it was arranged that this road  
should run from its terminal across to the Nichols road  
across a couple of gulches there?

A Yes sir.

Q It was abandoned by the commissioners and  
by the viewers after it got up there?

A Yes sir.

Q That isn't a practical place for a road  
straight across there?

A No It isn't.

Q If you were to go a little west and  
meander around would you be able to go across to the  
Nichols road without crossing the gulch?

A Not unless we went kitty corner across  
my field.

Q You could go across if you went kitty  
corner across your field--- as a matter of fact that  
is the way they have been going with the threshing machine

A No sir, Always had to make a jog and  
cut into Jack O'Brien's field.

Q Your brother said he was figuring on  
building a road from the terminal of this proposed  
road across on his land toward the Jenkins road--that  
is the road that you--- that would go east--directly  
from your place--going east directly from the east end  
of this road--- from the corner north of your house there--

A I don't know anything about that.

Q Do you think that is a practical place

to build a road straight across there on that side?

A No I do not.

Q Could it be built in there?

A It could be built.

THAT IS ALL

-----RE DIRECT EXAMINATION

BY MR HARTMAN:--

Judge Stewart was asking you about your brothers figuring to build a road from the south end of this proposed road east on the line between him and Corelus?

A Yes sir.

Q And my understanding was that you said that you didn't think that would be a good place for a road?

A No I think it would be hard to make a road there---there is a high hill there and a big coulee to go through; he has a good road down to the south end of this proposed road.

Q Your brother has?

A Yes sir.

Q His buildings are in the southeast corner of his place?

A Yes sir.

Q He has a good road from his buildings in a general northwesterly direction up to this point (indicating)

A Yes sir.

Q He has a gate there to get out of his

enclosure.

A Yes, I cut off a little corner in my field to give him a gate through there.

Q That is the southeast quarter of 21 that Corolus has leased---does he farm it?

A Yes sir.

Q What does he put in it?

A I don't know what he has sowed in it this year--- I suppose barley.

Q Do you go on the barley in going through there?

A We would have to in passing any teams except in a place or two where we could pass.

Q Your passage is right along the east side of it?

A Yes sir.

Q Do you keep to your side of the field?

A Yes sir.

Q But to the left the field is all farmed.

A Yes sir.

Q Got something sowed in it?

A Part of the way it is sowed to grain, and part of the way it is summer fallowed. It is farm land all the way down.

Q Who farms it?

A He farms it.

Q Plows it all?

A Yes sir.

Q All plow land?

A

A Yes, from one end to the other.

Q I am speaking now of the leased land from the state--the southeast quarter of 21?

A Yes sir.

THAT IS ALL.

WITNESS EXCUSED.

FRED BROWN

A witness produced upon  
behalf of the Petitioners  
being first duly sworn,  
testified as follows:

-----DIRECT EXAMINATION

BY MR HARTMAN:--

Q You are the county surveyor?

A Yes sir.

Q And Ex Officio and by appointment one of  
the viewers that made the review of this road and filed  
the viewers report?

A Yes sir.

Q As an engineer and viewer also you went over  
the situation out there in company with the other  
viewers ,

A Yes sir.

Q Went out on the ground?

A Yes sir.

Q And made the assessments or estimates  
as to the damages to these people along with the other  
viewers?

A Yes sir.

Q You agreed upon these estimates as to  
what the damages would be?

A Yes we did.

Q What have you to say as to whether these  
damages which you awarded these various people are the  
correct amount which in your judgment they would be  
damaged?

A They are.

Q What have you to say as to whether or not  
the statement in your report that this road was

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feasible and practicable and necessary and ought to be constructed is correct or not?

A Yes it is.

Q What have you to say as to whether it is the most feasible plan that--in looking the ground over, you could see in order to effect the best results to put a public road in there to serve both the Sieverts as well as the general public?

A Yes it is.

Q What was the idea of the viewers and your own idea as an engineer in eliminating from the proposed road that part of it that ran from the northeast quarter of section twenty eight along in a westerly direction on the line between 21 and 28 to the Nichols road?

A We could see no necessity for it and it would be a very expensive piece of road to build.

Q Where will that road run with reference to that bridge on the private road of the Carolus's?

A The bridge will be on the east side of the road.

Q It wouldn't be in part of this road?

A It would be in the road but over on the east side .

Q It wouldn't be used as a bridge at that point?

A It could be but it wouldn't be used for a bridge on a county road.

Q In estimating the cost of construction here you estimated the cost of a new bridge there?

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A Yes sir.

Q How much of a bridge will that be?

A I don't know.

Q You estimated its cost.

A Yes we figured at the time what it would be worth.

THAT IS ALL.

-----CROSS EXAMINATION

BY MR STEWART:

Q That would be a concrete bridge thatought to be in there?

A We expect to put in a concrete culvert and fill over the top of it.

Q You didn't see any bull out there?

A Not while I was there.

THAT IS ALL.

WITNESS EXCUSED.



REBUTTAL.

CHARLES COROLUS

One of the objectors  
recalled.

-----DIRECT EXAMINATION

BY MR STEWART:

Q Can you state the width of the road you have along the west side of the section 21 there?

A State the width?

Q Yes.

A The width has been---

MR HARTMAN (Interrupting) The west side of 21?

Q The east side of 21-- over the private road up to the corner.

A I should judge taken on an average about ten or twelve feet wide but it has been all the way along there from one rod and one half to two rods wide up there until this spring when I plowed it up; the people were traveling up next to the fence and the weeds were growing there and I turned them over.

Q What kind of weeds?

A Fan weeds.

Q You never entered any objection to them traveling on that road next to the fence?

A No sir.

Q You have no objection to it now?

A No sir.

Q How about this bull business--did you know there was serious trouble about the bull?

A I didn't know it until I went visiting this winter and the man stayed there at the place--the

children came home from school one evening and the bull was down at the gate----he was a calf and wanted to play with the children.

Q How old was he?

A A short two year old; the man told me that he had to let the children through; I was particular afterwards to watch him; in the morning I would drive him out to where they pastured Mr Sievert's cattle; in the evening when he came in I would put him in the barn; as soon as I saw he was getting ugly I sold him as soon as I got a chance; I think

Mr Brion will state the same thing because he was at the house time and time again when I would put the calf in the barn; he was there one evening when the children came there--- I made it a point to watch the bull when the children came through; Jack will tell you the same thing; they came down one evening and I told them to go on through and they did; I don't state but what he would hurt them if he got a chance; as soon as I ~~he~~ found that out I sold him.

Q You haven't any bull now?

A No sir, I have two milk cows and two yearling calves.

THAT IS ALL

WITNESS EXCUSED.

FINIS.