

IN THE COURT OF COMMON PLEAS OF
GREENE COUNTY, PENNSYLVANIA.
CRIMINAL DIVISION
NO. 245 CRIMINAL SESSION, 1970.

IN RE:

UNNAMED CEMETERY IN WAYNE
TOWNSHIP, GREENE COUNTY,
PENNSYLVANIA.

AGREED STATEMENT OF FACTS.

302

00

*Filed
July 3, 1970
A. Dineen
Clerk*

POLLOCK, POLLOCK & THOMAS
ATTORNEYS AT LAW
WAYNESBURG, PA.

IN THE COURT OF COMMON PLEAS OF GREENE COUNTY, PENNSYLVANIA -
CRIMINAL DIVISION

IN RE: UNNAMED CEMETERY IN) NO. 245 CRIMINAL SESSION, 1970.
WAYNE TOWNSHIP, GREENE
COUNTY, PENNSYLVANIA.)

AGREED STATEMENT OF FACTS.

It is hereby agreed by counsel for the parties to the above proceeding to show cause why the supervisors of Wayne Township should not care for and maintain an unnamed cemetery, as more fully described in the petition. The cemetery was created by a reservation in the deed from Hudson D. Brock and S. V. Brock, his wife, to John A. Brock dated February 2, 1880 and recorded in the Recorder's Office of Greene County, Pennsylvania, on August 11, 1887 in Deed Book Vol. 40, page 65.

That the reservation is described in the following language:

"Out of which is reserved by first party one-half acre; one half of which is a burial lot now in use, which is to be extended equal distances East, South, and West until it contains 1/4 of an acre; the other 1/4 acre is reserved as a road to said burial lot, to run from gate to run road immediately East of hay mow to Southeast corner of said burial lot, which road is to be used only for the purposes of funerals and making necessary repairs on said burial lot and is not to be plowed by second party."

That the surrounding tract of land has become vested in Allen F. Phillips and June S. Phillips, his wife, by deed from Clarence E. Kiger, et ux., dated September 20, 1963 and recorded in said Recorder's Office in Deed Book Vol. 523, page 527.

That there is no recorded deed or other proceedings whereby the 1/2 acre reserved by the said Hudson D. Brock was ever transferred to any other person or corporation.

That the said Hudson D. Brock died January 25, 1920; that no Letters of Administration were ever issued on his estate; that the said Hudson D. Brock did not have any issue surviving him at the time of his death. That Susan V. Brock, the wife of Hudson D. Brock, died November 19, 1901.

That Joseph Brock was the father of Hudson D. Brock, John A. Brock, Dan S. Brock, Mary Jane Cox, Anna Elizabeth Donley, Cynthia Ann Strosnider, Maria Louisa Brock Phillips and Margaret A. Owen, who died July 22, 1843 leaving a son, David R. Cwen.

Dan S. Brock died November 29, 1886, leaving to survive him a widow, Charlotte Brock, and one son Lem S. Brock.

John A. Brock died February 13, 1897, leaving to survive him Sarah J. Brock, a widow, who died October 17, 1907, Clarissa J. Bennington, a daughter, C. C. Brock, a son, Joseph P. Brock, a son, Hanna E. Arnett, a daughter, R. E. Brock, a son, John H. Brock, a son, William S. Brock, a son, Sarah V. Brock, later known as Sadie Newell, a daughter, and J. S. Brock, a son.

That the following persons are buried in said cemetery:

John T. Headley, born July 20, 1830.

Elizabeth Headley, born August 29, 1829, died May 9, 1887.

Martha B. Phillips, 1852-1877 (New Marker).

David Brock, 1824-1892 (New Marker).

Elizabeth Brock, died April 23, 1872, age 41 years 11 months 8 days.

Maria S. Brock, died October 5, 1888, age 76 years 5 months 23 days.

Joseph Laws (Brock) child of D. S. and C. Brock, died September 11, 1865, age 1 year 10 months 24 days.

Simon Grant (Brock) child of D. S. and C. Brock, died September 21, 1865, age 8 months 4 days.

Elizabeth Josephine (Brock) child of D. S. & C. Brock, died September 22, 1865, age 4 years 4 months 18 days.

Edwin W. (Brock), son of D. S. and C. Brock, died December 30, 1868, age 8 months 26 days.

Dan S. Brock died November 29, 1886.

John A. Brock, born May 13, 1819, died February 13, 1897.

Sarah Brock, born May 21, 1828, died October 17, 1907.

Margaret A. Owen, wife of John Owen, died July 22, 1843; age
20 years 19 days.

Infant daughter of J. A. Brock died 1865.

Infant son of J. A. Brock died 1845.

Joseph Brock, died June 15, 1864, age 72 years 7 months 3 days.

Hannah Brock, died March 7, 1883, age 85 years 19 days.

Joseph H. Brock, son of Jos. and H. Brock, died January 29, 1843,
age 12 years 8 months, 1 day.

Sadie V. Newell

Three of the persons buried in said cemetery are relatives of
Gurnie Brock, one of the petitioners. David Brock and Elizabeth
Brock are the grandparents of the said Gurnie Brock, and Martha
B. Phillips is an aunt of the said Gurnie Brock.

There are no records in the Register of Wills Office of
Greene County, Pennsylvania, nor in the office of the Clerk of the
Orphans' Court of said county concerning the deaths or estates of
Mary Jane Cox, Anna Elizabeth Donley, Cynthia Ann Strosnider or
Maria Louisa Brock Phillips, nor have the undersigned been able to
learn anything concerning them or their families from inquiries
made.

There are no records of any deeds from Hudson D. Brock
or any other persons for burial lots in said cemetery.

There is no known plan of lots for said cemetery.

There is no dedication of said cemetery to the public
for public burial purposes.

William R. Davis
Attorney for Petitioners.

Erving B. Pollock
Attorney for Wayne Township
Supervisors.

NO. 240 1970

IN RE:

UNNAMED CEMETERY IN
WAYNE TOWNSHIP, GREENE
COUNTY, PENNSYLVANIA

PETITION and ORDER

*Filed
July 3 1970
at Harrisburg*

WILLIAM R. DAVIS
R. WALLACE MAXWELL
ATTORNEY AT LAW
63 EAST HIGH STREET
WAYNESBURG, PA. 15370

*East. Copy
Harrisburg
7-6-70*

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom date, and
address where delivered

☐ Deliver ONLY
to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.

048858

INSURED NO.

DATE DELIVERED

July 7
1970

SIGNATURE OR NAME OF ADDRESSEE *(Must always be filled in)*

HAROLD EDDY SECY.
WAYNE TWP.

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

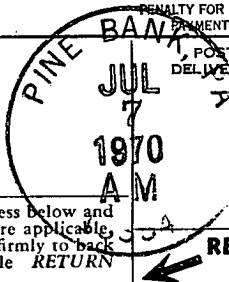
Stella B. Eddy

SHOW WHERE DELIVERED *(only if requested)*

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300

POSTMARK OF
DELIVERING OFFICE



INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article **RETURN RECEIPT REQUESTED.**

**RETURN
TO**

NAME OF SENDER

AL DARNEY

STREET AND NO. OR P.O. BOX

CLERK OF COURTS

POST OFFICE, STATE, AND ZIP CODE

Wynnesburg, Penna. 15378

No 245 Cenn 1970

048858

No.

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO

STREET AND NO.

P.O., STATE AND ZIP CODE

POSTMARK
OR DATE

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN
RECEIPT
SERVICES

1. Shows to whom and date delivered 10¢
With delivery to addressee only 60¢
2. Shows to whom, date and where delivered .. 35¢
With delivery to addressee only 85¢

DELIVER TO ADDRESSEE ONLY 50¢

SPECIAL DELIVERY (2 pounds or less) 30¢

POD Form 3800
Sep. 1968NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side)

**STICK POSTAGE STAMPS TO ARTICLE TO COVER POSTAGE (first class or airmail),
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, **leaving the receipt attached**, and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified-mail number and your name and address on a return receipt card, Form 3811, and attach it to the back of the article by means of the gummed ends. Endorse front of article **RETURN RECEIPT REQUESTED**.
4. If you want the article delivered only to the addressee, endorse it on the front **DELIVER TO ADDRESSEE ONLY**. Place the same endorsement in line 2 of the return receipt card if that service is requested.
5. Save this receipt and present it when you make inquiry.

IN THE COURT OF COMMON PLEAS OF GREENE COUNTY, PENNSYLVANIA -
CRIMINAL DIVISION

IN RE: UNNAMED CEMETERY IN WAYNE)
TOWNSHIP GREENE COUNTY,)
PENNSYLVANIA)

NO. 240 - *Crim. Sec.* 1970

ORDER

AND NOW, July 3, 1970, upon consideration

of the foregoing Petition, it is hereby Ordered and Directed that the Clerk of Courts of Greene County, Pennsylvania, issue a rule upon the Supervisors of Wayne Township to show cause why the said Supervisors should not care for and maintain the unnamed cemetery described in the foregoing Petition.

Rule returnable within 20 days from this
date, and set the matter for hearing
on July 24, 1970

ATTEST:

BY THE COURT:

Al Dorney
Clerk of Courts

Ann T. H. [Signature]
President Judge

IN THE COURT OF COMMON PLEAS OF GREENE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

IN RE: UNNAMED CEMETERY IN WAYNE) NO. , 1970
TOWNSHIP, GREENE COUNTY,
PENNSYLVANIA)

P E T I T I O N

TO THE HONORABLE GLENN R. TOOTHMAN, PRESIDENT JUDGE OF SAID COURT:

The petition of Twenty-five (25) or more residents of Wayne Township, Greene County, Pennsylvania, respectfully represents:

(1) That your petitioners are all residents of Wayne Township, Greene County, Pennsylvania.

(2) That situate in Wayne Township, Greene County, Pennsylvania, is an unnamed cemetery which was excepted and reserved in deed from Hudson D. Brock, and wife, to John A Brock dated September 2, 1880, and recorded in the Recorder's Office in Deed Book Vol. 40, page 65, said exception and reservation being as follows:

Out of which is reserved by first party one-half acre; one half of which is a burial lot now in use, which is to be extended equal distances East, South, and West until it contains 1/4 of an acre; the other 1/4 acre is reserved as a road to said burial lot, to run from gate to run road immediately East of hay mow to Southeast corner of said burial lot, which road is to be used only for the purposes of funerals and making necessary repairs on said burial lot and is not to be plowed by second party.

(3) That the aforesaid cemetery is located on a tract of land presently owned by Allen F. Phillips et ux., having been conveyed by Clarence E. Kiger, and wife, to Allen F. Phillips et ux., by deed dated September 20, 1963, and recorded in the Recorder's Office of Greene County, Pennsylvania, in Deed Book Vol. 523, page 527.

(4) That the aforesaid tract of land upon which the said cemetery is located is bounded and described as follows:

BEGINNING at a W.O. on bank, corner to Lawrence R. Phillips land; thence by same, South 21° East 16.8 perches to stones; thence by same, down the bank, North 85-1/4° East 6.3 perches to stone planted near Phillips stable; thence crossing Rudolph Run, North 43-1/2° East 6.3 perches to stone planted at corner common to said Phillips, Columbus

O. Shultz, et al.; thence by Shultz and crossing eastern branch of Rudolph, North $3-1/2^{\circ}$ East 6.2 perches to stone planted on western side of said branch; thence by said Shultz recrossing said branch, South $87-1/2^{\circ}$ East 3.5 perches to stone planted in road near said Shultz' yard fence; thence up the road with said Shultz, North $42-1/2^{\circ}$ East 11.9 perches to stone at upper edge of road; thence in road with Shultz, North 17° East 26.7 perches to point in road on old line; thence by Burbridge Brock Heirs; thence North 67° West 42.5 perches to R. O. and W. O.; thence by Charles Watson, now Dulaney, South $28-1/2^{\circ}$ West 26.7 perches to stone planted in road; thence down the western branch of Rudolph in and near the road, South $42-1/2^{\circ}$ East 24.1 perches to stone planted between the creek and road; thence by land of C. C. Brock, South 30° West 5.4 perches to W. O., the place of BEGINNING,

CONTAINING 10 Acres and 108 Perches, strict measure.

(5) That said unnamed cemetery is abandoned and is being neglected.

(6) That it is in the best interest of your petitioners and other residents of Wayne Township that the Supervisors of Wayne Township, Greene County, Pennsylvania be directed to care for and maintain the said cemetery under the Act of May 1, 1933, P.L. 103, as amended, 53 P.S. Sec. 65728.

WHEREFORE, your Petitioners pray your Honorable Court to issue a rule upon the Supervisors of Wayne Township to show cause why said Supervisors should not care for and maintain the unnamed cemetery described in the foregoing Petition.

Allen L. Phillips
June L. Phillips
Willis Walters
Tera Walters
Gladys Lemley.
Alice F. Lemley
Ray H. Hoskins
Velva Hoskins
Imogene Rogers
Carl Rogers
Jesse Jones
Nellie Jones
Dwight Headley
Albert Nien
Virgil Nien
William L. Dulaney
Genevieve Dulaney
Helen Zimmerman
Robert C. Zimmerman
Goldie Zimmerman
John L. McDonald
Ora McDonald

Raymond W. Foy
George H. Powell
Mildred E. Powell
Ed Stockdale
Ruth Stockdale
Guernie Brock
Jewel Brock
Beverly Wade
Artie Wade
Myrtle Moore
Arnell Moore
James T. Calvert
Torrey L. Dulaney
Raymond Kiger
Pearson F. Dulaney
Grace J. Dulaney
Delbert Calvert
Donny's Calvert
William H. Oose
Anna Belle Jones
Jesse Jones
Harold Kighm

10	25
----	----

IN THE COURT OF COMMON PLEAS
GREENE COUNTY, PENNSYLVANIA
IN THE CRIMINAL DIVISION
NO. 245, CRIMINAL SESSIONS, 1970

IN RE:

UNNAMED CEMETERY IN WAYNE
TOWNSHIP, GREENE COUNTY,
PENNSYLVANIA.

OPINION AND ORDER

3.00
4.50
1.50
75
1.50
19.25
MB
OP

Facts
Ret. & Order
Opinion & Order
C. Copy
Hearing Court.

THIRTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA
GLENN TOOTHMAN
PRESIDENT JUDGE
WAYNESBURG, PA.

Filed - Aug 14 1970
at 5:00 PM

Ret. & Order
Opinion & Order

Copies
to
David
Patterson
at
Waynesburg

IN THE COURT OF COMMON PLEAS OF GREENE COUNTY, PENNSYLVANIA
IN THE CRIMINAL DIVISION

IN RE:)
UNNAMED CEMETERY IN WAYNE) NO. 245, CRIMINAL SESSIONS, 1970
TOWNSHIP, GREENE COUNTY,)
PENNSYLVANIA.)

APPEARANCES:

William R. Davis, Esquire, for the
Petitioners

Ewing B. Pollock, Esquire, for the Wayne
Township Supervisors

Hearing Held: July 31, 1970.

OPINION

On July 3, 1970, forty-four (44) citizens, residents of Wayne Township, Greene County, Pennsylvania, petitioned this court to order the supervisors of that township to take over the care of a cemetery located on one-half (1/2) acre of land reserved for burials in the deed of Hudson D. Brock to John A. Brock dated September 2, 1880, and recorded in Deed Book Vol. 40, p. 65. We granted a rule upon the supervisors, who answered through counsel that such a task, even though now authorized by law, Act of May 1, 1933, P. L. 103 as amended; 53 P. S. 65728, and although it limits the extent of expenditures to Two Hundred (\$200.00) Dollars per cemetery, would place an excessive burden upon the township budget since there are approximately twenty-six (26)

such cemeteries in the township, all of which may need or deserve similar assistance. A hearing was scheduled for July 24, 1970, and was continued until July 31, 1970, when counsel for the petitioners and for the township filed an agreed statement of facts and presented oral arguments on the question.

The issue impressed us as involving sufficient substance that is deserved our reflective judgment and the expression of a conclusion in the form of a written opinion, rather than us making merely a summary decree without setting forth the reasons for it.

THIRTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA
The facts disclose a reasonably common circumstance surrounding family or private burial plots such as this, which at one time were customarily identified and used as the final resting place for members of the family taken by death. It was fitting. The families in those days lived close together and burial closeby was in reality a continuation of the closeness with which the families lived. The title to this parcel of land, by virtue of the reservation mentioned supra, appears to be vested in the heirs of Hudson D. Brock, and contains approximately twenty (20) graves mostly of the members of the Brock family. The plot was never conveyed to, nor was any non-profit cemetery corporation created, and the records yield no evidence of any dedication of the land for public burial. We consider these factors, however, of slight moment as to the main issue, since under the law every burial site, however informal was its origin, is of genuine public regard. And we should note that it is doubted that under our present series of complex statutory regulations applicable to practically every phase of cemeteries and burials, such a circumstance as this can now or will hereafter be duplicated. This still leaves, though, the perplexing problem of the moral and legal liability for the care and upkeep of the grave sites such as this of the many dead who now rest in their quiet, unnoticed,

ofttimes unmarked, and many times, untended graveyards.

The Act under which this petition is brought reads as follows:

"When any cemetery or burial ground, incorporated or unincorporated, is abandoned, or is being neglected, although occasionally used for burial purposes, either of the following actions may be taken:

(1) The township supervisors may give notice to the owner thereof, directing him to remove the weeds, refuse and debris therefrom within thirty (30) days, If not removed within thirty (30) days the supervisors shall cause the same to be done All costs and expenses of such removal shall be debt owed the township by the owner of the cemetery or burial ground . . . or

(2) the court of quarter sessions of the county, upon the petition of twenty-five (25) residents of the township wherein such cemetery is located, may direct the supervisors to care for such cemetery at a cost of not more than two hundred dollars in any one year

We agree with and underscore the sentiment expressed by the court in the case of First Evangelical Lutheran Church Petition, 13 D. & C. 2^d 93, p. 99 where it is stated:

"No proceedings, however, dealing with a cemetery should be taken lightly, even by the court, and due consideration must be given to the sentiment and respect we all hold for the memory, and place of repose of our dead."

And this case is not greatly dissimilar from the case, In Re: Limestone Cemetery, 24 D. & C. 2^d 281, in which Judge Flick very ably wades through the perplexing plight of a lawfully constituted but financially defunct cemetery association asking to lean financially upon the court's authority to compel a reluctant board of supervisors to take over the upkeep and maintenance costs or a part, at least, of their cemetery care. In that instance, the Court did compel the expenditure of the then (1960) statutory limit of One Hundred (\$100.00) Dollars to be paid to and used by the cemetery trustees for the care and maintenance costs, hopefully supplementing their own efforts to raise and secure private

funds.

THIRTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA

Yet we do not believe that this result resolves the larger and more basic problem raised by the issue in this case. It is suggested by the supervisors that if they are directed to expend Two Hundred (\$200.00) Dollars for this cemetery, they may be called upon to do the same for approximately twenty-six (26) more such abandoned and neglected cemeteries in their township, vesting in them a progressively increasing burden of township labor and finances. While we have no record of, nor is there thought to exist any exact count of similarly situated cemeteries throughout this county, the actual number might well run into the hundreds, and while we need concern ourselves with only the one cemetery and single township responsibility directed to our attention in this proceeding, we cannot, in good conscience and legal persuasion, forget the precedent making force our ruling in this case will have upon all of the other public and private, incorporated and unincorporated cemeteries that may be similarly situated, who may ask for and be equally deserving of their fair portion of public funds to attend to the spiraling costs of the upkeep of these cemeteries.

In this regard we are well aware of the obvious and perceptible changes in the prevalent attitudes and concepts influencing our social order and know that such changes in attitudes among a large segment of the public will inevitably gain substantial recognition in the acceptance or rejection of our governmental responsibilities. Some of these changes in our attitudes are, in fact, in certain instances, being impelled by the influence of science, the mobility of our social order and a constant ebb and flow of economic forces. The familiar roots and ties in a community, or in a family, consequently suffer from geographic dispersion, as well as from a natural process of attrition.

In an age when with some life itself seems to have lost its reverence, it is not so strange that we should see a decline in our efforts to visibly demonstrate our respect for the dead. There was a time, there was a day when neighbors, friends, and the whole community could organize from the resources of private initiation to improve a road, clear a field, clean up a cemetery or build a barn. Now we turn to government to plant our trees, build our dams, fertilize our crops, clean our air and water, select our food, in fact, to attend to most all of our needs and wants from pre-birth medical care through day care, head start, pre-school, undergraduate and postgraduate programs, job corps and job training, job re-location, job security, home financing, welfare subsidies, to burial benefits, and now we are asked to fill in the final vacancy, perpetual cemetery care. As our taxes mount and the distressed taxpayer begs for relief, the variety of expensive, expansive, experimental programs are constantly enlarged and are poured out in profuse quantity from our legislative and congressional well springs. Such a pattern cannot and will not end at the stroke of a judicial pen in a case such as this, we know, but certainly such an instance as this may well bring to many minds the need for clarifying and perhaps curtailing the responsibilities of government, hopefully to reduce our taxes, and thereby, at least, let our system work as it was originally intended, on the basic premise that private initiative can and ought to undergird our public causes, for our forefathers who deserve our honor and respect in more significant ways other than only their grave care, earned their freedom so that they could earn a living, raise their families, and make their own way. We do not understand that they either wanted or expected their government to become the means and master of their destiny. They would be unwilling, we are sure, to have found that their successful revolt against the tyranny of the crown, was traded in for the tyranny of taxation.

This court accordingly exercising the discretion vested in it by the Act is unwilling to order the burden of the cemetery upon the Wayne Township Supervisors.

The strains of Thomas Gray's celebrated Elegy Written in a Country Churchyard came to our mind, as we contemplate our subject, especially two of its verses which seem an appropriate requim to our deliberations:

"Nor you, ye Proud, impute to these the fault,
If Mem'ry o'er their tomb no trophies raise,
Where thro' the long'drawn aisle and fretted vault
The pealing anthem swells the note of praise.

Can storied urn or animated bust
Back to its mansion call the fleeting breath?
Can honour's voice provoke the silent dust
Or Flatt'ry soothe the dull cold ear of Death?"

ORDER

AND NOW, this 14th day of August, 1970, the rule is hereby dismissed for the reasons cited above.

ATTEST:

BY THE COURT:

Al. [Signature]
Clerk of Common Pleas Court

[Signature]
President Judge

THIRTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA