

DOCKET No. 5

Number Term Year

4 May SS 1922

Petition of Burke Albert to

assess damages

Versus

X

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

To the Honorable Singleton Bell, Judge of said Court.

The petition of Burke Albert, of the Township of Bradford, County of Clearfield and State of Pennsylvania, respectfully sets forth:

First: That your petitioner resides in the Township of Bradford, County of Clearfield and State of Pennsylvania, and is the owner of real estate, Deed to said real estate being recorded at Clearfield in the office of the Recorder of Deeds in Deed Book 197, page 181, and through said real estate and for some distance, as shown by the Deed hereinbefore referred to, Route No. 57 of the State Highway passes.

Second: That said real estate owned by your petitioner through which said State Highway passes, consists of two (2) pieces, said Deed being recorded in Clearfield in Deed Book No. 197, page 181, and being the same premises which the said Burke Albert purchased from Lewis Kline and wife; the premises being specifically described as follows:

The First Thereof, beginning at a stone in ground at pike and corner of Isaac Kline land, thence West sixty-two (62) degrees South eight (8) rods; thence North nine and one-half ( $9\frac{1}{2}$ ) rods; thence West sixty-six (66) degrees South seventeen (17) rods to Township Road; thence North twenty and one-half ( $20\frac{1}{2}$ ) rods to stone; thence East twenty-four (24) rods to stone; thence South six (6) rods to place of beginning, and being one (1) Acre. Being the same premises which George Bowersox, by Deed dated April 20th, 1893 and recorded in Deed Book 79, Page 244 granted and conveyed to the said Lewis Kline, grantor herein.

The Other Thereof, beginning at a stone corner; thence along the turnpike South eighty-six (86) degrees West seventeen (17) perches

to "stones"; thence by land, now or formerly, of Isaac Kline; South nine and one-half ( $9\frac{1}{2}$ ) perches to stones; thence by same North sixty-six degrees East seventeen (17) perches to stones on the public road; thence by public road North nine and one-half ( $9\frac{1}{2}$ ) perches to stones and place of beginning, containing One (1) Acre, more or less, and being the same premises which C. W. Smith and E. W. Smith, Executors of the last Will and Testament of Josiah W. Smith, deceased, by Deed bearing date the 25th day of February 1891, and recorded in Deed Book 63, page 78, granted and conveyed to the said Lewis F. Kline.

Third: Your petitioner further represents that during the years 1920 and 1921 the State Highway Commissioners under-took the construction, re-construction and improvement of the public State Highway hereinbefore referred to, running through the lands of your petitioner and now known as State Highway Route No. 57, and by reason of said construction and improvement a change of existing lines and location was necessary on said section of said State Highway, running through the lands of the petitioner as hereinbefore described and referred to as of record. The said changes in the lines and Highway extended through and over a greater portion of the distance of said State Highway which passed through and by the lands of your petitioner.

Fourth: That the said State Highway Commissioners, on the aforesaid part of said Route No. 57, running through and by the lands of your petitioner, so changed the said road as to take from the petitioner a portion and section of the petitioner's real estate and so caused grievous damages to your petitioner by destroying the use of the water of the said petitioner, and further damaged the petitioner, by reason of said construction, improvement, etc., by changing the lines and directions of said road and that said road was so changed so as to cause great damage to the value of the petitioner's property; especially the spring and waters as hereinbefore referred to. Said changes and alterations of said road

being such as to practically destroy the use of the petitioner's property for said purposes and said State Highway being so changed and altered as to take from the petitioner not only ground in front of his dwelling house and home but otherwise greatly damaging your petitioner, etc., which damages have greatly depreciated the value of his premises.

Fifth: That the said State Highway Commissioners notified the Commissioners of Clearfield County of the contemplated change of such existing lines and locations. That the said County Commissioners and your petitioner, at several different times, attempted to adjust the damages but the Commissioners and your petitioner have never been able to agree upon the amount of damages suffered by your petitioner by reason of the aforesaid changes of the said lines and locations of said Highway. That said State Highway Commissioners proceeded with the work of completing said State Highway, making said changes, alterations of said road and necessitated great damage to your petitioner.

Sixth: That the said County Commissioners of Clearfield County and your petitioner have never been able to reach an agreement as to damages suffered by your petitioner by reason of the acts set forth above your petitioner and Commissioners having been negotiating settlement up to within a few weeks preceding this petition.

Your petitioner therefore prays your Honorable Court to appoint viewers to go upon said land and appraise and determine such damages as your petitioner may have suffered in accordance with the Act of Assembly governing such cases.

And he will ever pray.

Burke Albert

CLEARFIELD COUNTY, SS:

Burke Albert, being duly sworn according to law, deposes and says that the facts set forth above of which he is acquainted with are true and correct and as to the facts that are set forth which he has received from information are from reliable sources and he expects to be able to prove.

Burke Albert

Sworn and Subscribed to  
before me this 3  
day of April A. D., 1922.

Geo W. Paden  
Prothonotary

Now this 8 day of April A. D., 1922, we hereby accept service notice of this petition by copy thereof and waive issuance of the same.

L. C. Morris  
Deersl

Mo 4 May 22 1922

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

BURKE ALBERT

VS

COMMISSIONERS OF CLEARFIELD  
COUNTY.

PETITION FOR APPOINTMENT OF  
VIEWERS TO ASSESS DAMAGES  
CAUSED BY CHANGE OF ROAD.

John S. H. 1922, W. H. Kramer  
Henry Reen, G. D. Bellah  
and friends, citizens to the  
and inhabitants of the village  
of Fairbury.

John S. H. Kramer

APR 8 1922  
T. L. Proffitt, R. M.

ED. W. RAUSTON

CLERK

CHASE & CHASE  
CLEARFIELD, PA.

KEYSTONE BUILDING

1000 Paged by City  
125 Paged by City

Beginning at a stone in ground at pike and corner of Isaac Kline land thence west  $62^{\circ}$  south 8 rods; thence north  $9\frac{1}{2}$  rods; thence west  $66^{\circ}$  south 17 rods to Twp road; thence north  $20\frac{1}{2}$  rods to stone; thence east 24 rods to stone thence south 6 rods to place of beginning and being one acre.

The Other thereof, beginning at a stone corner; thence along the turnpike south  $86^{\circ}$  west 17 perches to "stones"; thence by land now or formerly of Isaac Kline; South  $9\frac{1}{2}$  perches to stones; thence by same north  $66^{\circ}$  east 17 perches to stones on the public road; thence by public road north  $9\frac{1}{2}$  perches to stones and place of beginning, containing one acre.

Your petitioner further represents that during the year 1920 and 1921 the State Highway Commissioner under-took the construction, and improvement of the public state Highway hereinbefore referred to, running through the lands of your petitioner and now known as state Highway Route No. 57 that the petitioner has sustained previous damages

Clearfield County, ss:

At a Court of Quarter Sessions of the Peace of the County of Clearfield, held at Clearfield, Pa., in and for said County, on the 8th day of April in the year of our Lord one thousand nine hundred twenty-two

Burke Albert  
Judge of the same Court: Upon the petition of ~~subscribers~~  
inhabitants of the Township of Bradford  
in said County, setting forth that he ownes real estate  
in said Bradford Twp through which Route No. 57 of the State Highway  
passes, the prmisses being described as follows:

and therefore, praying the Court to appoint proper persons to view and lay out the road between the points mentioned, whereupon the Court upon due consideration had of the premises, do order and appoint from and among the County Board of Viewers A. G. Kramer, Esq.  
Harry Reese and E. D. Billotte

who have been duly appointed by the Court and filed their oaths of office and are duly qualified to perform the duties of their appointment with impartiality and according to the best of their judgement, are to view the ground proposed for the said road, and if they view the same, and a majority of the actual viewers agree that there is occasion for such road they shall proceed to lay out the same, as agreeable to the desire of the petitioner as may be, having respect to the best ground for a road and the shortest distance, in such a manner as to do the least injury to private property; and shall make report thereof, stating particularly whether they judge the same necessary for a public or private road, together with a plot or draft thereof, and the courses and distances and references to the improvements through which the same may pass; (and wherever practicable, the viewers shall lay out the said road at an elevation not exceeding five degrees, except at the crossing of ravines and streams, when by moderate filling and bridging the declination of the road may be preserved within that limit,) to the next Court of Quarter Sessions to be held for the said County.

And if the viewers aforesaid shall decide in favor of locating a public road, they shall obtain from the persons through whose lands the said road shall pass, releases from any damages that may arise to them on opening the same; but if the owner or owners of such land refuse to release their claim to damages, the said viewers shall assess the same, taking into view the advantages as well as disadvantages arising from said location, and make report of such assessments; which report they shall in like manner transmit to the next Court of Quarter Sessions, with the draft or plot aforesaid. In which said reports they shall state that they have been sworn or affirmed according to law, and that due and legal notice was given of the time when, and place where, they should meet, to view and lay out said road, and the time and place of hearing

By order of the Court.

*Geo. W. Ralston*, Clerk.

# RETURN OF VIEWERS

To the Honorable the Judge of the Court of Quarter Sessions of the Peace for the County of Clearfield:

We, the undersigned viewers, duly appointed by your Honorable Court by the foregoing order from and among the County Board of Viewers who have been duly appointed by your Honorable Court and have filed their oaths of office in the Court of Common Pleas of Clearfield County, be leave to report as follows:

A. M. Bloom and Walter M. Knapp

Law Library  
That the hearing was held in the ~~Arbitration Room~~, in the Court House, at Clearfield, Pa., on the 20th day of April A. D. 1922, when the following appearances were noted: Burke Albert the claimant E. B. Albert, Walter M. Knepp and A. M. Bloom, as witnesses.

The claimant Burke Albert is the owner of two acres of land situate in Bradford Township, Clearfield county Pennsylvania abutting on the State Road on Route No 57, leading from Clearfield to Philipsburg and that said land has thereon erected a house and other buildings. That in 1920 and 1921 the State Highway Commissioner in exercising the power conferred upon him by the Act of Assembly of 1911 P. L. 468, in the construction of the said Highway, changed the line of the location of the said Highway along the property of the said claimant and in so doing not only took a portion of the land of the said petitioner consisting of a strip along the front of his property; from five to six feet in width and about 500, feet in length, destroying the fence along the front of his property; a part of his garden, some eight or ten plum trees, a pine shade tree in front of his house, a lot of shrubry and his spring of water, close to the house where he got his supply of water which has been which has been entirely destroyed so that the water has become unfit to use compelling him ever since to haul or carry his water from the springs of his neighbors some four or five hundred feet distance, thereby injuring and damaging his property, not only by the land taken but by destruction of a part of his garden his fence along the front of his property, shrubery, fruit trees and the inconvenience of being without water. There is therefore in the opinion of the viewers no question about the claimant being somewhat damaged by the change of the line of the road along his property. line.

TO; T. R. WEIMER, JESSE, E. DALE, AND M. L. FARRELL.  
COUNTY COMMISSIONERS OF CLEARFIELD COUNTY, PA:

You are hereby notified; that the undersigned viewers appointed by the Court of Quarter Sessions of Clearfield County Pa to view the premises of Burke Albert the petitioner and assess the damages caused to the property; situate in Bradford Township Clearfield County Pa, by the improvement of the State Highway; Route number 57, leading from Clearfield to Philipsburg; through the property of the said Burke Albert by the changing of the line of the road through his premises and the destroying of the spring of water from which he secured his supply of water, and otherwise greatly injuring and damaging his property; for which damages the County of Clearfield is liable.

In pursuance whereof, the said viewers will meet on the premises of the said petitioner in the Township of Bradford in the County of Clearfield and State of Pennsylvania on Wednesday April the 19th 1922 at 1.30 o'clock P. M. to attend to the duty assigned them, of which time and place aforesaid you will please take notice.

And that the public hearing required by the Act of Assembly and the Rules of Court to be held by the viewers before the filing of their report in Court, in order to give all parties interested in the case a chance to be heard by the viewers, will be held in the Arbitration Room in the Court House in Clearfield Pa on Thursday the 20th day of April A. D. 1922 at nine (9) o'clock A. M. when and where all parties interested may attend and be heard.

A. G. Kramer  
A. A. Rees  
E. D. Billotte

VIEWERS.

Now April 11, 1922 service accepted for the County Commissioners of Clearfield County Pa and time of service waived.

L. C. Norrie  
Clerk.

TO, BURKE, ALBERT. You are hereby notified: That the undersigned viewers; appointed by the Court of Quarter Sessions of Clearfield County Pa; to view the premises, and assess the damages caused to your property situate in Bradford Township Clearfield County Penna; by the improvement of the State Highway from Clearfield to Philipsburg on Route number 57, by the change of the line of the road through your property and assess the damages younthereby sustained for which the County of Clearfield is liable.

In pursuance whereof the said viewers will meet on your aforesaid premises, in the Township of Bradford in the County aforesaid; on Wednesday the 19th day of April A. D. 1922 at 1.30 o'clock P. M. to attend to the duty assigned them, of which time and place aforesaid, you will please take notice.

And that the public hearing required by the Act of Assembly and the Rules of Court to be held by the viewers, before the filing of their report in Court, in order to give all parties interested in the case a chance to be heard by the viewers, will be held in the Arbitration Room in the Court House in Clearfield Pa on Thursday April 20th 1922 at nine (9) o'clock A. M. when and where all parties interested may appear and be heard.

A G Kramer

H A Rees

E A Billotte

VIEWERS.

Now April 12<sup>th</sup> 1922 service accepted for Burke Albert the petitioner and personal service waived as also the time of the service

Charles Hoss

Attorney for Burke Albert.



not only by the land actually taken or destroyed but as much so from the inconvenience he suffers. In the case of Allison vs E. M. Biglow 68, Pa, Sup, Court Rep, 219 it is held that a party may be damaged as much by the inconvenience he suffers as by the value of the land taken

The measure of damages has been decided to be the difference in the value of the property before and after the land has been taken or the inconvenience inflicted on the claimant.

The testimony of the claimant and several witnesses at the hearing was that the property before the construction of the State road was worth from \$1700.00 to \$1800.00 and is not worth now over \$1400.00, which shows a depreciation in the value of the property from \$300.00 to \$400.00.

The Viewers therefore after a careful inspection of the property at the view made and the testimony produced at the hearing as to the difference in the value of the property before and after the construction of the State Highway are fully convinced, that the property has been damaged at least the sum of \$300.00

They therefore assess the damages of Burke Albert the claimant after having considered the advantages derived to him by the construction of the said State Highway past his property at the sum of three hundred (\$300.00) Dollars.

and that a plan or draft of said road showing courses and distances and the properties affected is hereto attached and made a part hereof, said road being at an elevation not exceeding five degrees, excepting

*Handwritten signature of the viewers*  
The undersigned Viewers having considered the damage to the property of the claimant Burke Albert, and the inconvenience to him by the construction of the State Highway past his property, do assess the damages to him as follows:

the following persons having refused to release the damages to which they respectively may be entitled by reason of the location and opening of the said road, we the undersigned viewers, after having considered the advantages to be derived to them, do assess them damages and make report thereof as follows:

*Handwritten signature of the viewers*  
and herewith return a copy of the notices served.

WITNESS our hands and seals this 20<sup>th</sup> day of April;

A. D. 1922.

*A. G. Kramer*

Seal

*K. A. Reese*

Seal

*E. J. Billotte*

Seal

Seal