

DOCKET No. 5

Number Term Year
7 Feb Ss 1922

Petition of W. F. Moore for viewers
to assess damages in Brady Twp

Versus

X

COMMONWEALTH

In the Court of Quarter Sessions of Clearfield County.

In Re Indictment
Samuel
A. F. Moore

No. 100 Sessions, A. D. 1922
 Indictment,
 Verdict,
 Com. Bill of Costs Sessions, 1922

| | | | | |
|---|--|--|--|------------|
| Justice, | | | | |
| " | | | | |
| Witnesses at Hearing, | | | | |
| Constable, | | | | |
| Sub Constable, <u>A. F. Moore 3 miles</u> | | | | <u>20</u> |
| " <u>6 miles</u> | | | | <u>120</u> |
| " | | | | |
| " | | | | |
| " | | | | |
| Dist. Att'y | | | | |
| Clerk, | | | | |
| Fine | | | | |
| | | | | |

Certified from the Record,

Clerk

| | | | | | | |
|------------------------|---------------|--------|-----------|--|--|------------|
| <u>Geo. Shinglers</u> | In attendance | 1 days | <u>20</u> | | | |
| | Miles direct | | <u>34</u> | | | <u>236</u> |
| <u>Har. McLaughlin</u> | In attendance | 1 days | <u>2</u> | | | |
| | Miles direct | | <u>34</u> | | | <u>236</u> |
| <u>Bert Knapp</u> | In attendance | 1 days | <u>20</u> | | | |
| | Miles direct | | | | | |
| | In attendance | days | | | | |
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| | In attendance | days | | | | |
| | Miles direct | | | | | |

Clearfield County, ss:

Personally appeared A. F. Moore, who being sworn according to law doth depose and say that the above bill of costs is correct; that the witnesses named were present and material, and the miles actually traveled as above stated.

Sworn and subscribed before me this 27 day of Jan, 1922

John J. Rutz
 BY COMMISSION EXPIRES MARCH 7, 1928

A. F. Moore

CERTIFICATE.

I, District Attorney of Clearfield county, hereby certify that the witnesses above named were subpoenaed by me and were in attendance, and were necessary for the trial of this case.

DISTRICT ATTORNEY.

No. Sessions, 190

COMMONWEALTH

versus

Commonwealth Bill of Costs.

Amount,

\$

Filed

, 190

PROTHONOTARY.

DISTRICT ATTORNEY.



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 19 day of
January in the year of our Lord
one thousand nine hundred twenty-two.

Judge of the same Court: Upon the petition of
W. F. MOORE
~~and his heirs~~ of the Township of Brady

in said County, setting forth that he is the owner
of a farm in Brady Twp. situate along Route No. 59. That the State of
Penna. commenced to improve said highway in the year 1921, that in the
laying of said road, the State Highway Dept. of Penna has cut a deep
ditch through the property of your petitioner and has greatly damaged
it. That, under the laws of the State of Penna. the County of Clearfield
is liable for said damages. That your petitioner is unable to agree with
the Commissioners or to get any adjustment of said damages

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., J. E. Fry 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 impartial-
ity and according to the best of their judgment; 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 dis-
tance, 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, beg leave to report as follows:

That notice of the time of view and of the hearing day was duly served according to law upon the Commissioners of Clearfield County and the petitioner and that ~~the said view would be held on the 26th day of January A. D. 1922, and the hearing to be held in the Council Chamber in the City of DuBois Pa. on the 27th day of January, 1922, at 9 o'clock A. M. That the viewers appointed by the said order viewed the premises and that there were present at the view W. C. Pentz Esq and W. F. Moore the petitioner~~

~~the said view would be held on the 26th day of January A. D. 1922, and the hearing to be held in the Council Chamber in the City of DuBois Pa. on the 27th day of January, 1922, at 9 o'clock A. M. That the viewers appointed by the said order viewed the premises and that there were present at the view W. C. Pentz Esq and W. F. Moore the petitioner~~
Council Chamber in DuBois Pa parties in interest. That the hearing was held in the ~~Council Chamber in DuBois Pa~~ on the 27th day of January A. D. 1922, when the following appearances were noted: W. F. Moore the petitioner with his Attorney W. C. Pentz Esq, and his witnesses: And A H Woodward Esq Solicitor for the County Commissioners, including T R Weimer and M L Farrell of the board of County Commissioners with several witnesses.

~~That the claimant W F Moore is the owner of a farm in Brady Township County of Clearfield and State of Pennsylvania; along the State Highway, Route Number 59, leading from DuBois to Luthersburg and in the improvement of the said Highway a ditch or drain four feet six inches (4 1/2) wide; five (5) feet in depth and seventy five (75) feet in length was constructed from the edge of the said Highway over the land of the said petitioner for the draining of the water from the said Highway which has been left an open drain or ditch.~~
That the claimant W F Moore is the owner of a farm in Brady Township County of Clearfield and State of Pennsylvania; along the State Highway, Route Number 59, leading from DuBois to Luthersburg and in the improvement of the said Highway a ditch or drain four feet six inches (4 1/2) wide; five (5) feet in depth and seventy five (75) feet in length was constructed from the edge of the said Highway over the land of the said petitioner for the draining of the water from the said Highway which has been left an open drain or ditch.

The testimony of several witnesses called and examined before the viewers at the hearing fixed the damages of Mr Moore, from nine (\$900.00) Hundred to a thousand (\$1000.00) dollars for the construction of the said drain through his field. This in the opinion of the viewers is excessive.

This case in the opinion of the viewing is diferent from an elevation or depression of the grade where no damages are allowed or collectable because in that case it dont take or effect the property of the abutting property holder; but the change of the lines of the road or the taking or injuring the property, or in any other way by which the property of the owner along the public highway is injured or damaged or inconvenienced by a change or improvement of a public road is entitled to recover whatever damages he sustains; while prior to the improvement of the said road the water drained from the road over the land of the petitioner was scattered along quite a distance and not drained over his land in a large bulk and therefore did littl e if any damages to his land or crops but it is quite diferent when it is collected into a large body it may and undoubtedly will do considerable more damage to the land and crops growing on it.

In the case of Allison vs Biglow, State Highway Commissioner of Pennsylvania 68, Superior Court Report page 219, it was held, that where a public road were to be opened in the usual and regular way there could not be much doubt; the paymaster must pay not only for the land actually taken in opening the new road but also for any injury to; or destruction of the property of an abutting owner necessarily brought about by the construction of the new road, at the grade affixed.

Under the Constitution is vested the same right of compensation of one whose property has been injured or destroyed, as it does where his land has been taken, which cannot be taken away by legislative enactment without due compensation to the owner.

But the damages claimed in this case is not for the water drained onto his land but for the digging of an open ditch or drain to them damage and inconvenience of the petitioner in the use and the farming of the said field.

But it is claimed as the testimony produced before the viewers at the hearing that the claimant prior to the improvement of the said road; signed an agreement releasing all damages. But the claimant claims, that the construction of the open ditch or drain through his field was in not set out in the said release or mentioned to him or he would not have signed it and is therefor not covered by the said release, which is not denied. But as said release or agreement was not submitted or shown to the viewers and no testimony produced as to what it contains the viewers are unable to state whether covers the ditch or not; the viewers therefore assess the damages the claimant sustains by the construction of said drain what it will cost for seventy five feet of fifteen inch drain pipe, the laying of the same and the filling in of the ditch which the viewers figure will cost about \$103.00.

They therefore assess the damages to the claimant W, F, Moore at \$103.00

*IN THE MATTER OF ASSESSMENT OF * IN THE COURT OF QUARTER SESSIONS
*DAMAGES, W. F. MOORE IN BRADY * OF CLEARFIELD COUNTY
*TOWNSHIP. *
***** No. FEBRUARY TERM, 1922

Jan. 27, 1922

It is agreed that the above stated case shall be heard by
A. G. Kramer, J. S. Michaels, and E. D. Billotte as if notices
had been regularly issued and served and any return made by the
said viewers shall have the same force and effect as if the
notice had been served and J. S. Michaels shall be substituted
instead of J. E. Frey.

Rey & Pals
Attys for Plaintiff
A. H. Woodward
County Solicitor

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 _____

when it was not practicable to preserve it within that limit.




The undersigned further report that they endeavored to procure from all the owners of the land over which the said road passes releases in writing of all claims to damages that may arise from opening the same, and that they procured such releases from _____

the following persons having refused to release the damages to which they respectfully may be entitled by the 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 their damages and make report thereof as follows: _____

~~and we herewith return releases obtained and~~ copy of the notices.

WITNESS our hands and seals this 27th day of January

A. D. 1892

A. G. Kramer 
E. B. Billette 
J. S. Michael 

No. 7 Feb Sessions, 1922

ORDER

To view and assess damages to W. F. Moore road for use in the

township of Brady Clearfield County

July 24 Session, 1923

read and confirmed

road to be opened 88 feet

wide, except where there is

stone hill cutting or embankment

and bridging, there to be 10 feet wide.

My the Court
Ingelman & Bell

Filed 19

Fees \$1.25 paid by

Pentz & Pentz, Atty's.,

Note - In case of a private road, the release must be executed in favor of the petitioner for said road.
Also, viewers will carefully note the number of days employed and set the amount out at the foot of their return.
Reviewers cannot interfere with the damages assessed by the original viewers, except so far as the location may be changed by the reviewers.
N. B. - If the viewers believe the parties are not entitled to damages, taking into consideration the advantages as well as the disadvantages of the road, they will report to that effect.

| | DAYS | MILES AM'T. |
|----------------|------|-------------|
| A. G. Kransky | 3 | 22.50 |
| E. W. Billotto | 3 | 22.50 |
| J. D. Michael | 2 | 15.00 |

FILED
FEB 9 1922
GEO. W. RAISTON
CLERK

RELEASE OF DAMAGES.

Know all men by these presents, that we, the undersigned owners of lands through which the road located by the viewers, under the annexed order, passes for and in consideration of the sum of one dollar to us respectively paid by

at and before the ensealing and delivery hereof, have remised, released and forever quit-claimed, and do hereby remise, release and forever quit-claim to the said

all damages that may arise to us respectively by reason of the location and opening of the said road, so that neither we nor any of us, nor any person claiming under us, can or may hereafter ask, sue for, demand, have or receive any damages for injuries arising or growing out of the location and opening of the road aforesaid.

Witness our hands and seals this day of

A. D. 191

SEAL
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TO THE HONORABLE, THE JUDGE OF THE COURT OF QUARTER SESSIONS
OF THE COUNTY OF CLEARFIELD:

The petition of W. F. MOORE respectfully represents:

That he is the owner of a farm in Brady Township, Clearfield County, Pennsylvania; situate along Route No. 59.

That the State of Pennsylvania commenced to improve said highway in the year 1921 and has improved said highway by laying a concrete road. That in the laying of said road, the State

Highway Department of Pennsylvania has cut a deep ditch through the property of your petitioner and has greatly damaged it.

That, under the laws of the State of Pennsylvania, the County of Clearfield is liable for said damages. That your petitioner

has tried to agree with the Commissioners of said County for fair compensation for the damages done him by virtue of said ditch being cut in his field. That he is unable to agree with the Commissioners or to get any adjustment of said damages.

Your petitioner, therefore, prays the Court to appoint three (3) competent viewers under the laws of the State of Pennsylvania to view and assess the damages that he has sustained by virtue of said improvement.

W. F. Moore

STATE OF PENNSYLVANIA

SS:

COUNTY OF CLEARFIELD

Personally appeared before me, ^{an Alderman} ~~a Notary Public~~

in and for said County and State, W. F. MOORE, who being duly sworn according to law deposes and says that the facts set forth in the foregoing petition are correct and true to the best of his knowledge and belief

W. F. Moore

Sworn and subscribed before me

this 18th day of January, 1921.

Josiah D. Webb ALDERMAN

COMMISSION EXPIRES JANUARY 4th, 1923

No 7 Feb 28 1922

IN THE COURT OF QUARTER
SESSIONS OF THE COUNTY
OF CLARKEFIELD

In re: ASSESSMENT OF
DAMAGES TO W. F. MOORE

PETITION FOR VIEWERS

Jan 19 1921, At a Court
of the County of Clarkefield
an affidavit sworn as
follows.

Myself Court
Clerk of the County of Clarkefield

FILED

JAN 19 1922

GEO. W. BENTZ
ATTORNEYS AT LAW
DUBOIS, PA.

BALTIMORE OFFICE SUPPLY CO., BALTIMORE, MD.

2,750 Pa. Reg. No.

Chas. J. Young 16 1921
Office receipt for County Commissioners
S. C. Johnson, Clerk