

Road DOCKET No. 5

Number Term Year

3 Sept 1923

The Petition of D. Kendall for  
Appt of Viewers to assess damages

in Bloom Twp

Versus

\$450

No. 3 *John 88/1823*  
John 88/1823

C. H. KENDALL

Versus

CLEARFIELD COUNTY

*Plaintiff*..... *Bill of Costs*

For..... *Defended* Term 190...

Date..... 190.....

Amount - - - \$.....

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY.

.....	Of.....	May Sessions.....	xxviii, 1923.....
C. L. KENDALL.....	No.....		
Versus		.....	Bill of Costs
CLEARFIELD COUNTY.....	At.....	.....	Term, 190.....
.....	.....	.....	.....

			Dollars	Cents
William Michaels	one	Days in attendance. 17.....	Miles direct travel	3 02
William Thorpe	"	Days in attendance. 13.....	Miles direct travel	2 78
William Thomas	"	Days in attendance. 17.....	Miles direct travel	3 02
John Wrigglesworth	"	Days in attendance. 14.....	Miles direct travel	2 84
T. L. Korb	"	Days in attendance. 18.....	Miles direct travel	3 08
William Dicky	"	Days in attendance. 15.....	Miles direct travel	2 90
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Days in attendance.....	Miles direct travel	.....
		Serving subpennas.....	Wilness.....	.....
		.....	Miles distance.....	.....
Whole amount of bill.....			17	64

CLEARFIELD COUNTY, SS:

Personally appeared before me a Justice of Peace, C. L. Kendall, who being duly sworn, saith the above Bill of Costs is correct, that the witnesses named were subpoenaed, necessary, material, and in attendance as above stated, and that the mileage is correct as he believes.

Sworn to and subscribed before me this

20 day of June, A. D. 1923.

John Y. Rafferty, Justice of Peace  
MY COMMISSION EXPIRES  
JANUARY 1ST, 1928

*C. L. Kendall*

sumed under subpoena  
on the within named  
Mr. Mechanics, Mr. Thomas  
A. L. Clark my self  
Mr. Thomas John's wife  
wishes by re-demand  
them

6 Service \$3.50  
19 miles due 7.50  
C. \$11.10

C. L. Kendall am. do  
know says the above  
item is true and  
correct and be made  
the witness of service  
and transcribe the miles  
as set forth

C. L. Kendall  
Sworn and subscribed  
before me this 15  
day of June 1923

Geo W. Ralston  
Prothonotary

No. 3. Sept. .... Term, 1923

C. L. Kendall

vs.

Clefield County

Commissioners. Subpoena.

, Attorney.

Commissioners Subpoena.

COUNTY OF CLEARFIELD, ss:

The Commonwealth of Pennsylvania, to John Thompson William  
McGall, Esq. Clerk of the County of Clearfield.  
Command you, that setting aside all manner of business and excuses whatsoever, you  
be and appear in your proper person before A. G. Everett, Esq. Commissioner  
Esq., Commissioner, at the Court House in Clearfield  
Pa., on the 15 day of June next, at 12 o'clock P. M., there to  
testify the truth according to your knowledge in a certain case now pending and then and there  
to be tried, wherein John K. Kendall.....

Plaintiff  
Clearfield County Defendant..... And this  
that on the part of the Plaintiff..... And this  
you are not to omit under penalty of five hundred pounds.

WITNESS, the Honorable SINGLETON BELL, President Judge of our said  
Court, at Clearfield, Pa., the 8<sup>th</sup> day of June.....

Anno Domini, one thousand nine hundred and ten.....

Geo. M. Fletcher  
Prothonotary.

TO THE HONORABLE, THE JUDGE OF THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY:

The petition of C. L. KENDALL respectfully  
represents:

That he is the owner of a farm situate in  
Bloom Township, Clearfield County, Pennsylvania, on the  
State Highway commonly known as Highway Route No. 59;

That the Highway Department of Pennsylvania  
in constructing and improving their new highway entered  
upon the land of your petitioner and made fills and cuts  
and constructed ditches and has destroyed a large amount  
of valuable timber, which greatly and seriously injures  
it;

That by virtue of the laws of the State of  
Pennsylvania, the County of Clearfield is responsible for  
said damages;

That your petitioner has tried to agree with  
the Commissioners of the County of Clearfield for the pay-  
ment of the damages done to the property of your petitioner  
by reason of the construction of said highway, and the said  
Commissioners and your petitioner cannot agree upon what is  
a fair and just compensation.

Your petitioner therefore prays the Court to  
appoint viewers as provided by the laws of the State of  
Pennsylvania, to view and assess the damages due your  
petitioner for the constructing of the said highway.

And he will ever pray, etc.

C L Kendall

STATE OF PENNSYLVANIA

SS:

COUNTY OF CLEARFIELD

G. L. Kendall, being sworn, says the facts set forth in the foregoing petition are correct and true.

Sworn and subscribed before  
me this 10 day of May, 1923

G. L. Kendall

John J. Rafferty  
MY COMMISSION EXPIRES  
JANUARY 1ST, 1924

IN THE COURT OF COMMON PLEAS  
OF CLARKEFIELD COUNTY

3 Sept. 1923

J. C. KENDALL

P E T I T I O N

14 May 1923 Petition  
recovered and unrecd  
A. J. Brown & Co. vs.  
R. S. Mechale  
are affirmed and  
to review the premises  
and answer the claim  
expenses and expenses  
in due course

Geo. W. Stegeman  
A. H. Penitz & Penitz  
CH. ATTORNEYS AT LAW  
CLARKEFIELD, PA.

2-15 May 1923

# 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:

That notice of the time of view and of the hearing day was duly served according to law upon the Commissioners of Clearfield County ~~W. C. Pentz Esq. Attorney for the claimant and others~~ and that ~~notices were given to the parties in interest~~

~~proposed~~ that the said view would be held on the 14th day of June A. D. 1923, and the hearing to be held in the Arbitration Room, at the Court House, in Clearfield, Pa., on the 15th day of June, 1923, at 8.30 o'clock A. M. That the viewers appointed by the said order viewed the ground proposed for the above ~~mentioned road~~ and that there were present at the view J. C. Kendall the claimant and W. C. Pentz Esq. Attorney for the claimant and others;

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 15th day of June A. D. 1923, when the following appearances were noted: W. C. Pentz Esq. Attorney for the claimant and A. H. Woodward Esq. County Solicitor when the following witnesses were called and examined on the part of the claimant, to wit. J. C. Kendall, the claimant, William Michaels, William Thorp, William Thomas and John Wrigeworth

After the view and hearing above mentioned, the undersigned, the majority of the said viewers, do agree that there is no occasion for a road as desired by the petitioner, and that the same is not necessary for a public road: And having had respect to the shortest distance and the best ground for such road we have laid out in such manner as shall do the least injury to private property, and as far as practicable agreeably to the desire of the petitioner, and do return for the following described road to wit:

That J. C. Kendall the claimant is the owner of a tract of land consisting of eighty (80) acres about forty acres cleared the balance is woodland, situate in Bloom Township in Clearfield County Pennsylvania west of Grampian through the woodland part of said property the State Highway Commissioner in 1923 constructed a state Highway on Route Number 59, leading from Luthersburg to Grampian a distance through the claimants land a distance of 1560 feet in length which said road is fifty (50) feet in width, including an open sewer about 600 feet in length to drain the water of the road about two feet in depth and about two feet in width said road bed taking one and three fourth of an acre of land covered with timber. That 300 feet of said road bed is a cut at the deepest point 17, feet in depth and the average depth is from 12, to 13 feet in depth and the balance of the road bed is a fill from four to six feet in height making it very difficult to get across from one side of the road to the other. The testimony of Mr Kendall is that the woodland is used for pasture and to enable him to continue to use it for pasture he will have to erect a wire fence along each side of the road the entire distance the road passes through his land a distance of 1560 feet along each side of the road or 3120 feet in length to protect and keep his stock off the state road, to keep them from getting run over and getting killed, hurt or crippled: the pasturing by a farmer of his cattle is a great benefit and profit to a farmer.

It has been decided, that one may suffer as much if not more damages by the inconvenience he suffers, than by the amount and value of the land taken or destroyed, 68. Superior Court Report, page 219.

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 14th day of May in the year of our Lord one thousand nine hundred twenty three

J. G. KENDALL

Judge of the same Court: Upon the petition of ~~John~~  
~~John~~ of the Township of BLOOM

in said County, setting forth that he is the owner of a farm situate in Bloom Twp. Clearfield County, Pa. on the State Highway commonly known as Highway Route No. 59; That the Highway Dept. of Penna. in constructing and improving their new highway entered upon the land of your petitioner and made fills, cuts and constructed ditches and has destroyed a large amount of valuable timber, which greatly and seriously injures it and has been unable to agree with the Commissioners of Clearfield County as to the amount of damages sustained by said construction

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.  
E. D. Billotte, Esq and J. S. Michaels,

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 Palstone, Clerk.

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 ~~J. A.~~ Kendall the petitioner and assess the damages caused to his property by the change of the route No 59, of the State Highway, leading from Luthersburg to Grampian through the property of the petitioner, situate in Bloom Township Clearfield County Pa by the amount of the land taken, and by the cuts, fillings, ditches and drains cut; for which damages the County of Clearfield is liable.

And whereas in pursuance of the aforesaid order of Court the said viewers will meet in the discharge of their duty on the premises of the said petitioner at the point where the said State Highway enters the said premises on Thursday the 14th day of June A. D. 1923 at two thirty (2.30) o'clock P. M. to attend to the duty assigned them; of which time and place all parties interested will please take notice.

And that the public hearing as 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 Friday June 15th A. D. 1923, at eight thirty (8.30) o'clock A. M. when and where all parties interested may attend and be heard.

R. G. Kramer  
E. W. Billatt  
J. S. Michaels

VIEWERS.

Now June 4, 1923 service accepted for the County Commissioners of Clearfield County Pa.

L. C. Morris  
Clerk.

To. *J C* Kendall.

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 you sustained by the change of the route of the State Highway No 59; leading from Luthersburg to Grampian through your property situate in Bloom Township Clearfield County Pa. By the amount of the land taken, and by the cuts, filling, ditches and drains cut for which damages the County of Clearfield is liable.

And whereas in pursuance of the aforesaid order of Court the said viewers will meet on your aforesaid premises at the point where the said State Highway enters the same on Thursday the 14th day of June A. D. 1923 at two thirty (2.30) P. M. to attend to the duty assigned them, of which time and place all parties interested will please take notice.

And that the public hearing as 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 Friday the 15th day of June A. D. 1923 at eight thirty (8.30) o'clock A. M. when and where all parties interested may attend and be heard.

*A G Kramer.*  
*E D Billotte.*  
*J S Michaels.*

28 May 1923 Service accepted

VIEWERS.

*Buy & Sell  
Attn: for Kramer*

The witnesses produced all agree that the claimant has been damaged but as to the amount they differ materially or how much his property has been depreciated there is considerable difference as to the amount some fix the amount he has been damaged at eight hundred (\$800.00) dollars while some fix it as low as four hundred (\$400.00) dollars so to fix the amount the claimant has been damaged or his property depreciated in value by the state road through it in value rests almost entirely on the judgment or opinion of the viewers; the viewers therefore after having carefully viewed and inspected the premises are of the opinion that the claimant derives no special benefits from the construction of said road through his property: That all the benefits he derives is the general benefits that all other residents or property owners living along the said road who are not in the least damaged or inconvenienced thereby, who have no land taken or suffered the inconvenience the claimant suffers. The viewers are therefore fully convinced, that the property of the claimant has been depreciated in value over and above all the benefits he derived in the sum of four hundred and fifty (\$450.00) dollars.

They therefore appraise or assess the damages that J. C. Kendall the claimant sustained by the construction of the aforesaid state highway through his farm at the aforesaid sum of four hundred and fifty (\$450.00) 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, preceding

~~which is now subject to assessment 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 on 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 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, to assess them damages and make report thereof as follows:

~~which is now subject to assessment and over in the offices.~~  
WITNESS our hands and seals this 24<sup>th</sup> day of July  
A. D. 1925.

A. G. Kraemer Seal  
E. J. Billotto Seal  
J. S. Michaels Seal  
Seal

No 3 Sent Sessions 19 23

23

## ORDER

To view & assess damages to a  
property for J. C. KENDALL use in the  
township of Bloom .

NOTE.—In case of a private road, the release must be executed in favor of the petitioner for whom it is intended.

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 advantageous to that effect

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\_\_\_\_ Sessions, 19\_\_\_\_, read and confirmed Ni. Si. Road to be opened 33 feet wide, except where there is side hill cutting or embankment and bridging, there to be 16 feet wide.

Filed 19  
Fees \$1.25 paid by         
Pentz & Pentz, Attorneys

**FILLED**  
JUL 27 1923  
**GEO. W. BALSTON**  
**CLEVELAND**

## 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 respectfully 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. 192* \_\_\_\_.

— Seal — Seal — Seal — Seal —