

DOCKET No.5

| Number | Term | Year |
|--------|------|---------|
| 4 | Dec | SS 1923 |

Petition of Cushake Coal Mining Co
for viewers to assess damages

Versus

X

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

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 claimant Cushake Coal Mining Company the claimant _____

~~proposed road~~, that the said view would be held on the 30th day of October
A.D. 1923, and the hearing to be held in the Arbitration Room, at the Court House, in Clear-
field, Pa., on the 31st, day of October _____, 1923, at nine 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 William C Browne the President
of the said Corporation.

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 31st day of October A. D. 1923, when the following appearances were noted: William C Browne president of the Cushake Coal Company with his Attorney John M Urey Esq and the following witnesses to wit; D. P. Work and E. E. Kentz. Also the County Commissioners including A. H. Woodward Esq the County Solicitor and the County Commissioners Clerk L. C. Norris.

[illegible]

That after the view and hearing the fact was established, That the claimant: The Cushman Coal Mining Company a Corporation is the owner of a coal operation, consisting of several hundred acres of Coal land mostly in Burnside Township Clearfield County Pennsylvania including a Coal Tipple, over a portion of the land of the said coal company the State Highway Department erected a State Highway past their coal operation (871) feet in length by thirty five (35) feet in width past the coal Tipple of the said claimants. That in the construction of the said Highway the Highway Department destroyed a portion of their Coal Tipple, requiring an extension of the trustle work from the mine of the Tipple eight span of about, eighty feet in length in addition to a bridge or trustle work over the State Highway a distance of thirty five (35) feet in length a total length of about one hundred and fifteen feet (115)

That in the opinion of the viewers that all the damages that the claimant sustained was the cost of the extension of the trustle work, including the bridge across the Highway and the cost of the moving of the Tipple; the value of the one and a third of an acre of the land covered by the road bed of the land of the claimant used; which in the opinion of the viewers does not exceed eight hundred and fifty(\$850.00) dollars.

As to the cost of the putting in of the siding, the Public Service Commission made the following order.

" That all costs, and expenses incident to the construction of the Crossing shall be born and paid for by the State Highway Department.

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 10th day of October

in the year of our Lord one thousand nine hundred
twenty three

~~CUSHAKE COAL MINING COMPANY~~

Judge of the same Court: Upon the petition of ~~sundry~~ ~~xxxx~~

~~habitants~~ of the Township of Burnside

in said County, setting forth that the State Highway
Commissioner of the State of Pennsylvania, during the year 1921, undertook
the construction of an improved State Highway on Route No. 262 through
the Twp. of Burnside, and during the years 1921 and 1922 did construct said
road of concrete. And in construction of said road changed the original
location of the same and took and appropriated land and property belonging
to your petitioner and interfered with its coal operation. That petitioner
was the owner of a coal tipple and tram road across, which said road was
so located and constructed

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 and J. S. Micheals

who have been duly appointed by the Court and filed their oaths of office and are duly quali-
fied 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.

Hes W. Balster, Clerk.

TO: T. R. WEIMER. JESSE. E. DALE AND M. L. FARRELL.

The County Commissioners of Clearfield County, Penna.

You are hereby notified; that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County Pa; To view and assess the damages that the Cushake Coal Mining Company have sustained by the construction of the improved State Highway on Route No 262 through the Township of Burnside in the County of Clearfield through the premises of the said Cushake Coal Mining Company by the amount of their land appropriated to said purpose and the interfering with their Coal operation.

That the said viewers in pursuance by the authority and power on them conferred by the aforesaid order of Court will meet on the premises of the aforesaid claimants in the Township of Burnside County of Clearfield and State of Pennsylvania on Tuesday the thirtieth (30th) day of October A. D. 1923 at nine thirty (9.30) o'clock A. M. to attend to the duty assigned them, of which time and place you 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 said proceedings a chance to be heard by the viewers, will be held by the viewers in the Arbitration Room in the Court House in Clearfield Pa on Wednesday the Thirty first (31th) day of October A. D. 1923 at nine (9) o'clock A. M. when and where all parties interested may attend and be heard.

A. G. Kramer
E. D. Billotts
J. S. Michalls
VIEWERS.

Now October 19th 1923 service accepted for the County Commissioners of Clearfield County Penna.

L. Norris
Clerk.

TO THE CUSHAKE COAL MINING COMPANY.

You are hereby notified; that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County Pa; to view and assess the damages you have sustained by the construction of the improved State Highway on Route No 262 through the Township of Burnside in the County of Clearfield through your premises by the amount of your land appropriated and the interfering with your Coal operation.

That the said viewers in pursuance by the authority and power on them conferred by the aforesaid order of Court will meet on your aforesaid premises in Burnside Township Clearfield County Pa on tuesday the thirtieth (30th) day of October A. D. 1923 at nine thirty (9.30) o'clock A. M. to attend to the duty assigned them, of which time and place you 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 said proceedings a chance to be heard by the viewers will be held by the viewers in the Arbitration Room in the Court House in Clearfield Pa on Wednesday (the Thirty first (31st) day October A. D. 1923 at nine o'clock A. M. when and where all parties interested may attend and be heard.

A. G. Kramer
E. D. Billotts
J. A. Michalls
Viewers.

19th. 1923
Now October 19th service accepted for the Cushake Coal Mining company and personal service waived.

John M. Drey
Atty. for Cushake
Coal Mining Co.

and thereafter the crossing be maintained by the Pennsylvania Railroad Company.

" Also the further order: That in each and every movement of the locomotive, car or train, over said crossing herein approved, a flagman or other employee of said Railroad Company, shall precede such movement, to warn the public of the approach of such locomotive car or train.

And as there is no law requiring the County to pay for the fencing of a State Highway as claimed in this case the viewers allow no damages for the fencing of the State Highway, through the land of the said claimants.

The benefits in favor of the claimant are in the opinion of the viewers by no means special to the benefit of the claimants.

The viewers therefore assess the damages to the claimant at the sum of eight Hundred and fifty (\$850.00) dollars the cost or expense of the extension of the trustle and the cost of the moving of the tipple which in the opinion of the viewers is fully covered by the sum of eight hundred and fifty (\$850.00) Dollars. They therefore assess the damages to the Cushman Coal Company the claimant at the said sum of eight hundred and fifty (\$850.00) 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

when it was not practical 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 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:

WITNESS our hands and seals this 10th day of November;

A. D. 1923.

A. G. Krasser Seal
E. B. Billotte Seal
J. S. Michael Seal
Seal

No. 4 Dec Sessions, 19__

ORDER

To view and assess damages to
Cushake Coal Mining Company
road for use in 1/4

township of Burnside

Clearfield County

Dec. 31 Sessions, 1923

read and confirmed ~~Ni Si Road~~ ^{to be}
opened 33 feet wide, except where there
is side hill cutting or embankment an
bridging there to be 16 feet wide.

Myth Lord
Angelus Bee

Filed 19__

Fees \$1.25 paid by

J. M. Urey, Atty.

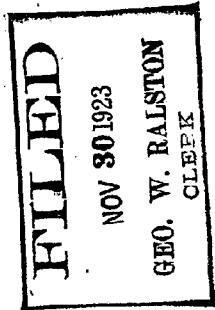
NOTE.—In case of a private road, the release must be executed in favor of the petitioner for said road.

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 | AMT. |
|--|------|-------|------|
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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

In the Court of Quarter Sessions of Clearfield County, Pa.

| | | | |
|------------------------------|---|-----|-------------------------------|
| In re: Construction of State | : | No. | December Sessions 1923. |
| Highway Route No. 262. | : | | Petition of Cushake Coal Min- |
| | : | | ing Company for Appointment |
| | : | | of Viewers. |

To Hon. Singleton Bell, President Judge of said Court:

The petition of the Cushake Coal Mining Company, respectfully represents;

First. That the State Highway Commissioner of the State of Pennsylvania, during the year 1921, undertook the construction of an improved State Highway on Route No. 262 through the Township of Burnside in said County, and during the years 1921 and 1922 did construct said road of concrete.

Second. That in the construction of said road the State Highway Commissioner changed the original location of the same and took and appropriated land and property belonging to your petitioner, and interfered with its coal operation.

Third. That your petitioner during the time that said road was relocated and constructed was the owner of certain lands through and over which the same was relocated and constructed, and during said time was the owner of a coal tipple and tram road across which said road was so located and constructed.

Fourth. That your petitioner sustained damages by reason of the change of the existing lines and location, and the construction of said road, and has been unable to agree with the County Commissioners of Clearfield County as to the amount of said damages.

Your petitioner therefore prays the Court to appoint viewers to ascertain and assess said damages as provided by the Act of

Assembly of April 6, 1921, P. L. 107, amending Section 16 of the Act of May 31, 1911, P. L. 468, and as provided by other Acts of Assembly relating to the ascertainment and assessment of damages for opening public highways.

Cushake Coal Mining Company,

By Wm C Browne

Attest:

President.

F. P. Browne

Secretary.

State of Pennsylvania,

County of Clearfield. SS.

William C. Browne, being duly sworn according to law says, that he is President of the Cushake Coal Mining Company, the petitioner above named, and that the facts set forth in the foregoing petition are true and correct to the best of his knowledge and belief.

Wm C Browne Pres

Sworn and subscribed to before

me this 8th day of October, A. D.

1923.

Mrs Lida Browne
notary

My Commission expires
January 1, 1924

Now Oct. 10, 1923, service accepted and
personal service is hereby waived for T. R.
Weimer, J. E. Dale and M. L. Farrell, County
Commissioners of Clearfield County.
L. C. Norris
Clerk

In the Court of Quarter Session
of Clearfield County, Pa.

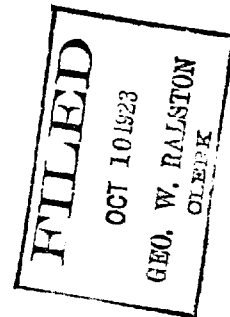
No. 4 Dec. Sessions 1923.

In re: Construction of State

Highway No. 262.

Petition of Oushake Coal Mining

Company for Appointment of Viewers



Urey.

Now Oct 10, 1923 B. G. Kramer, Jr., E. D. Bellotti Jr. and J. S. Michaels
are appointed viewers as prayed for.

By the Court
Engelhardt Bell
D.