

DOCKET No. 5

Number Term Year

13 Sept 1923

Petition of Thomas C. Way for
viewers to assess damages in Pike

Twp.

Versus

X

That the State Highway Commissioner of the State of Penna. has undertaken the construction of an improved State Highway, known as Route No. 59 through said premises, a change of width and existing line and location, and now lines and location being occasioned thereby. That your petitioner has sustained damages by reason of said construction and has been unable to agree with the County Commissioners of Clearfield County, as to the damages sustained by him.

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 30th day of July
in the year of our Lord one thousand nine hundred twenty three

THOMAS C. WAY

Judge of the same Court: Upon the petition of sundry
habitants of the Township of PIKE

in said County, setting forth that he is the owner of property bounded & described as follows: Beginning at a post corner of Joseph Spencer tract; thence by tract line N. $39^{\circ} 45'$ E 205.1 perches to a post; thence along land of Joseph Spencer Est. N. $64^{\circ} 30'$ W. 95.6 perches to a post; thence along land of Jason Spencer Est. S $40^{\circ} 45'$ W. 87 perches to Samuel Arnold Est. tract; thence along said tract S. 2° W. 120 perches to a post corner of Jason Spencer Estate; thence S. 51° E. 91 perches to a post and place of beginning. Containing 91 acres 20 perches net; reserving portion conveyed to B. R. & P. Ry Co.

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. 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.

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 ~~and the Board of Supervisors of the Township of Pax~~

~~and that notices thereof were posted along the route of the proposed road~~
~~and that the said view would be held on the 14th day of August~~
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 August, 1923, 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 the claimant Thomas C Way~~

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 15th day of August A. D. 1923, when the following appearances were noted: Thomas C Way the claimant with his Attorney John M Chase jr who represented A. M. Liveright Esq the claimant's Attorney and C. F. Hays, A. O. Bilger and E. G. Spencer who were called as witnesses on the part of the claimant, and A. H. Woodward Esq County solicitor and T. R. Weimer, Jesse E. Dale and M. L. Farrell the County Commissioners. After the view and hearing above mentioned, the undersigned, ~~the majority of the said~~ ~~viewers,~~ ~~consequently~~ ~~on~~ occasion for a road as desired by the petitioner, and that

~~the same is~~ ~~not~~ necessary for ~~a~~ ~~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~~ the following described road, to wit

Beginning Respectfully Report: That Thomas C Way the claimant, is the owner of a farm of one hundred (100) acres of land situate in Pike Township Clearfield County Pennsylvania, about one mile above Bridgport, of which there is some forty (40) acres clearfield and under cultivation. The balance is woodland. On the cleared land on the lower side of the road he has erected a two story frame dwelling house, a frame barn and other necessary out buildings; through which his said tract of land the State Highway Commissioner in 1922 and 1923 constructed a State Highway on Route Number (59) leading from Grampian to Curwensville through the entire length of the claimant's land a distance of 2862 feet, with a road bed including the slopes and fills of fifty (50) feet in width, which is along a steep side hill with a cut on the upper side of the road of from five to fifteen (15) feet in depth and a fill on the lower side of the road of about the same height; with a fill in front of the claimants house of about fifteen (15) feet in height and within forty two (42) feet of his house covering over a spring of water which was piped into his house which spring now comes out at the foot of the fill, and is used by the claimant: but is claimed that the water is no good, has a bad taste.

There are also two drains or sewers across the highway to drain the water from the upper side of the road about three hundred (300) feet apart close to his buildings, the one of which discharges the water right above his house and barn from which it is claimed the water flows right down to his house and barn into his cellar and into the lower floor of the house and therefore effects his buildings. The other drain does not materially effect his buildings. It is therefore claimed that he will have to move his house some four hundred (400) feet further away from the State road and onto higher ground and dig a well to get water.

TO, Thomas, C Way.

Sir.

You are hereby notified:- That the undersigned viewers, appointed by the Court Quarter Sessions of Clearfield County Pa to view your premises, and assess the damages caused to your property situate in Pike, Township Clearfield County Pa, by the construction of the State Highway leading from Crampian to Curwensville on Route Number 59 by the change of the location thereof through your said premises sustaining damages for which damages the County of Clearfield is liable.

By virtue of their appointment in the discharge of the duties of their appointment the viewers will meet on your said premises in the Township of Pike in the County of Clearfield on Tuesday August the 14th 1923 at one (1) o'clock P. M. to attend to the duty assigned 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 Wednesday the 15th day of August A. D. 1923 at nine (9) o'clock A. M. when and where all parties in any way interested in the said matter may attend and be heard.

A G Kramer
E D Billotte
J S Michaels

VIEWERS.

Served by, this 3d day of August, 1923.

Thomas C. Way
by Amiswright his atty.

TO: T R WEIMER, JESSE, E, DALE AND M. L, FARRELL. County
Commissions 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 Thomas C Way the petitioner and assess the damages caused to his property, situate in Pike Township Clearfield County Pa, by the location of the State Highway Route Number 59 leading from Grampian to Curwensville through his property by changing the location of said highway through his property by which the said petitioner claims to be greatly damaged 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 Pike in the County and State aforesaid on Tuesday the fourteenth (14th) day of August A. D. 1923 at one (1) o'clock P. M. to attend to the duty assigned them, of which time and place aforesaid all parties interested 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 Wednesday the 15th day of August A. D. 1923 at nine o'clock A. M. when and where all parties in any way interested in the matter may attend and be heard.

A. G. Kramer
E. D. Billott
J. S. Michaels

VIEWERS.

Now August 3rd 1923 service accepted for the County Commissioners of Clearfield County Pa.

L. C. Norris
Clerk.

CONTINUED FROM PAGE No, 3.

They are appointed to view the premises and from that view aided by all the information they can derive from an inspection of the property it is competent for them to arrive at a final conclusion which does not accord with the testimony, or the opinion of the witnesses: It is perfectly proper and highly advisable to seek the light afforded by the testimony of the witnesses, but the evidence as to the amount of the damages and the value of the property is after all but the mere opinion of the witnesses, and unless it coincides with the judgment of the viewers, is not and should not be in itself conclusive upon their action: Their primary duty is to view the premises and then to receive and balance the testimony from that view. In Re Barbadoes Street Norristown 8, Phila page 498.

The value of the three acres of the land taken for the road bed being a rough uninproved stony side hill is of very little value. The viewers therefore after taking into consideration, the cost of moving the house, the changes if necessary to be made to drain the water of the sewers, from the buildings, the cost of digging of a well, and the building of a fence along the upper side of the road 90 rods in length to keep his cattle of the road, the value of the three apple trees close to the State Highway which will probably be destroyed does not in the opinion of the viewers exceed the sum of four hundred (\$400.00) dollars or depreciate the value of the property more than the cost or value thereof.

And as to the approaches to and from the road the viewers were informed by the Highway Inspector, that as they needed a lot of dirt to level off the road bed that they will be glad to construct the approaches for the dirt free of charge or cost; so that the approaches can therefore not be considered in fixing the amount of the damages.

So that the viewers therefore fix or assess the damages that the claimant has sustained over and above all the benefits he derives from the said road at the sum of four hundred (\$400.00) dollars.

It is also claimed that he will have to construct two approaches, The one from his buildings up onto the state highway to enable him to get up onto the road some twenty or twenty five feet in length and at the upper end next the road on account of a bank will require a cut several feet in depth; and from the upper side of the road on account of a deep cut or sloop from the bed of the road up onto the top of the cut it will require an approach a cut next the highway of about fifteen (15) feet in depth sloping up on account of the steepness of the side hill of about seventy five (75) feet in length to enable the claimant to get up and down to and from his cleared land on the top of a steep ascend quite a distance above the state highway.

He will also have to erect a fence along the upper side of the road to enable him to pasture his stock on his woodland; some ninety (90) rod in length at a cost of about one dollar (\$1.00) a rod to keep his cattle of the highway.

But the viewers after carefully inspecting the premises and heard the testimony produced at the hearing as to the amount the property has been damaged or depreciated in value, by the construction of the said highway through the property of the ~~new~~ claimant are unable to agree with the witnesses as to the amount the property has been damaged nor are the obligated or bound by the testimony or opinion of the witnesses, as has been decided by the Court in 8th Phila, Rp 498; That neither the oath or duty of the road jurors or viewers -- compell them to draw conclusions exclusively from the testimony: Continued on added sheet Page 4. 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 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 their damages and make report thereon as follows:

~~As aforesaid releases obtained and copy of the same.~~

WITNESS our hands and seals this 26th day of August

A. D. 1925.

A. G. Branner Seal
E. A. Billotte Seal
J. S. Michaels Seal
Seal

No. 13 Sept. 1927 Sessions, 1927

ORDER

To view and assess damages xx
~~for~~ for Thomas C. Way use in the
township of Pike
Clearfield County

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.

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 —

A. M. Liveright, Atty.

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENN'A.

In re:

Construction of State Highway
Route No. 59 : Petition of Thomas C. Way,
for the Appointment of
Viewers.

To the Honorable Singleton Bell, President Judge of said Court:-

The petition of Thomas C. Way respectfully represents;

(1). That he is the owner of property in Pike Township, Clearfield County, Pennsylvania, conveyed to him by deed of April 22, 1911, from Maria and Robert B. Way, recorded in Deed Book 183, page 556; said premises are bounded and described as follows:

Beginning at a post corner of Joseph Spencer tract; thence by tract line, North 39 degrees 45 minutes East 205.1 perches to a post; thence along land of Joseph Spencer Estate, North 64 degrees 30 minutes West 95.6 perches to a post; thence along land of Jason Spencer Estate, South 40 degrees 45 minutes West 87 perches to Samuel Arnold Estate tract; thence along said tract South 2 degrees West 120 perches to a post corner of Jason Spencer Estate; thence South 51 degrees East 91 perches to a post and place of beginning. Containing 91 acres 20 perches net; reserving portion conveyed to B.R.& P. Ry. Company.

(2). That the State Highway Commissioner of the State of Pennsylvania, has undertaken the construction of an improved State highway, known as Route No. 59 through said premises, a change of width and existing lines and location, and new lines and location being occasioned thereby.

(3). That your petitioner has sustained damages by reason of said construction and has been unable to agree with the County Commissioners of Clearfield County, as to the damages sustained by him.

Your petitioner, therefore, prays the Court to appoint Viewers to ascertain and assess his damages as provided by Act of April 6, 1921, amending Section 16 of the Act of May 31, 1911, P.L. 468. Said amendatory Act being No. 62 of the Statutes of 1921, and as provided by other pertinent Acts of Assembly.

STATE OF PENNSYLVANIA: COUNTY OF CLEARFIELD: SS:

T.C.W. Thos C Way

Thomas C. Way, the petitioner above named, being duly sworn, deposes and says that the facts set out in his foregoing petition are true and correct.

Subscribed and sworn to before me the 1st day of April, 1923. T. E. W. Thos C. Way

John A. Daley

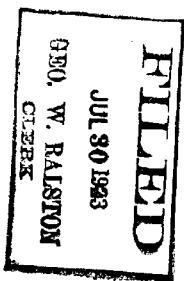
July 30, 1923. At the suggestion of Dr. Charles E. M. Madsen
an offshoot known as *Leptothrix* was separated from the
type of *Leptothrix* found by Dr. M. J. S. Williams
July 20, 1900.

Mo 13 Sept 20 1923

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

In re:
Construction of State Highway
Route No. _____

Petition of Thomas C. Way for
Appointment of Viewers.



A. M. Liveright,
Clearfield, Penn'a.

2¹⁵ by attorney