

DOCKET No. 6

Number	Term	Year
2	Ded ss.	1925

Petition of James T. Mitchell for

Appt. of viewers in Greenwood Twp

Versus

Bill of witnesses cost in the James T. Mitchell Damage case,

No 2. December, Session. 1925

Charles Thorp	One day	\$2.00
Milage 42, miles at 3, cts per mile		<u>1.26</u>
		\$3.26
W. P. Stephenson	One day	\$2.00
Milage 60, miles at 3, cts per mile		<u>1.80</u>
		\$3.80
Harry Mitchell	One day	\$2.00
Milage 42, mile at 3, cts per mile		<u>1.26</u>
		\$3.26
	Total	<u>\$10.32</u>

Beginning at ~~post~~ on the bank of the West Branch of the Susquehanna River, thence by lands now or formerly of James Elder N. $3/4^{\circ}$ W. 167 perches to a point. thence S. $203/4^{\circ}$ W. 51 perches to a red oak; thence S. 54° E. 129 perches to a white oak corner; thence down the river its several courses and distances 1072 $\frac{2}{3}$ perches to the place of beginning. Containing 107 acres 159 perches.

Beginning at a post; thence by lands of A. B. Tate Est. S 62° E 91° perches to black oak (down); thence south $52\frac{1}{4}^{\circ}$ E. 192 perches to a post on the bank of the river. Thence S. 32° W. 37 perches; thence S. 4° W 18° perches thence S. 54° W. $3\frac{3}{10}$ perches; thence N. $41\frac{1}{2}^{\circ}$ W. $5\frac{3}{10}$ perches to a stump. Thence S. $36\frac{1}{2}^{\circ}$ W. $19\frac{2}{10}$ perches to a post; thence S. 61° W. 13 perches. Thence N. $18\frac{1}{2}^{\circ}$ W. 16 perches, thence S. $70\frac{1}{2}^{\circ}$ W. 15 perches. thence S. $77\frac{1}{2}^{\circ}$ W. 15 perches to post. thence S. $25\frac{1}{4}^{\circ}$ W. $72\frac{8}{10}$ perches to beech. thence N. 29° W. 148 perches to place of beginning. Containing 81 acres and 43 perches more or less.

That a public road has existed running from the Borough of Mahaffey to Bells Landing.

That the aforesaid road has been improved. That because of the construction of said highway the fair market value of your petitioners property has been greatly lessened and materially diminished.

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~~ for the claimant Attorneys Stephenson notices thereof were posted along the route of the proposed road, that the said view would be held on the 10th day of November A. D. 1925, and the hearing to be held in the Arbitration Room, at the Court House, in Clearfield, Pa., on the 11th day of November 1925, at 9 o'clock A. M. That viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view James T. Mitchell the claimant and W. P. Stephenson.

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 11th day of November A. D. 1925, when the following appearances were noted: James T. Mitchell, Charles Thorp, W. P. Stephenson and Harry Mitchell; -----

~~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 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 to return for use the following described road, to wit Beginning Or increase the water shed draining the water onto his premises:~~

~~Woolheater vs Mifflin Township 74, Superior Court Report page 557. which was not done in this case. Where Supervisors in the exercise of their reasonable discretion for the purpose of maintaining a road construct side ditches in order to carry off the surface water falling upon and onto the road, a land owner whose property was subject to a natural servitude of drainage from the road and from land above the road cannot recover damages because water flows extensively on his premises, in flood time.~~

~~De, Noble vs, Wilkins Township, 74, Superior Court Report page 389,~~

~~There was no testimony produced at the hearing showing that the water discharged at the end of the drains below the road is of any particular damage to the land of the claimant; the claimant is therefore not entitled to damages, as neither the act of Assembly of May 31, 1911 nor any of the amendments or supplements thereto render the county liable for the cost of the extension of said drains to a flowing stream or a swamp~~

~~Nor is the point covered by the act of April 29th 1925 P. L. 369, which provides for damages sustained by the owner or owners of land entered upon by the Department of Highways for the purposes of cutting, opening, maintaining and repairing drains or ditches, inlets or outlets shall be paid by the county or counties, within which said property is~~

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 9th day of October

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

James T. Mitchell

Judge of the same Court: Upon the petition of ~~John~~
John Banks of the Township of Greenwood

in said County, setting forth that he is the owner of a lot of ground situate in Greenwood Twp, bounded and 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 Aaron G. Kramer, Esq., Harry Reese and James Spangle

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 improved roads through which the same may pass; and where ever 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 the limits to the next State or County line 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 whose lands the said road shall pass, release from any damages they may aise to them in opening the same, but if the persons or owners of such land shall refuse to make such 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 plan of said road. 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.

And whereas the claimant James T. Mitchell being the owner of one hundred and eighty five (185) acres of land, situate in Greenwood Township Clearfield County Pennsylvania; of which about one hundred (100) acres are clearfield and under cultivation, about twelve (12) acres of the remainder is woods land covered with young thrifty growing timber part of which is in size from eight (8) inches up and the balance is unimproved land used for pasture.

That during the year 1925 the State Highway Commissioner by his contractor and employees, by the authority vested in him by the Act of Assembly of May 31st A. D. 1911 P. L. page 468 and the supplements and amendments thereto entered upon and constructed over the improved and wood land of the claimant a State Highway leading from Mahaffey to the village of Bells Landing on Route Number (62) in Clearfield County, which said road through the land including the drains along the sides of said of said claimant is about forty two (42) feet in width by three thousand one hundred and eighty seven (3187) feet in length covering a slight fraction over three acres of claimant's land all of which with the exception of about three (300) feet of woods land of the same width the balance is all cleared farm land and in good state of cultivation which land in the opinion of the viewers is worth one hundred (\$100.00) per acre or a total of three hundred (\$300.00) dollars.

In addition to the land taken for the road bed they also constructed three drains from the lower side of the road through the land of the claimant to carry the water from the upper side of the road: The one of which is about one hundred (100.) feet in length from three feet in depth at the upper end next the road down to a level with the top of the ground at the lower end of the drain. another one about fifty feet in length smaller in size and the third one about twenty five feet in length which take about one half acre of the claimants land worth fifty dollars

\$50.00

The twenty trees from eight inches up in size with the other smaller timber destroyed was worth at least

\$100.00

The cost and labor of the construction of two or three bridges or culverts

across the drain at the upper side of the road so as to be able to get up from the road into his fields with his team and farming tools to the upper side of the road and to haul his hay and grain over the road down to his barn which said bridges or culverts will have to be from eight to ten feet in length also to get up and down over a similer ditch and up over a fill about four feet in highth at the lower side of the road including the inconvenience of farming around the drains on the lower side of the road is a damage by the inconvenience including the expenses of at least

\$150.00

And the inconvenience of having to drive his cattle from his barn to his pasture across the State road and back in the evening twice each day a distance of at least one fourth of a mile during the summer season is a hindrance and an inconvenience which damages his property in value at least

\$200.00

But as to the damages claimed for the extension of the drains at the lower side of the road to Hazlett Run or to a swamp because the water that flows through said drains is only the water that falls on claimants land from rains or the melting of snow on the upper side of the road and is and is not except on extraordinary occasions enough to harm his field at the end of the drain where the water scatters it being down grade and has always been the natural flow of the water before the construction of the road, And therefore unless by draining the water through under the road is collected in such large quantity as to greatly injure his land below the road as to injure the land below the road the county is not liable for the cost of the extension of the drains it being the natural flow of the water over that particular water shed.

Taylor vs Canton Township; 30, Superior Court Report of Pa page 305.

A township is not responsible for damages caused by water which naturally drains over land of one of its property owners; such owner must take care of the water which naturally flows upon his land, but a township cannot divert water to his land from the land of another

TO; JESSE, E, DALE, T, R. WEIMER, AND B. W. McCRACKEN.
COUNTY COMMISSIONER'S OF CLEARFIELD COUNTY PENNSYLVANIA:

You are hereby notified, that the undersigned viewers appointed by the Court of Quarter Sessions of Clearfield County Pennsylvania; to view and assess the damages that James T Mitchell has sustained by the construction of the State Highway through his premises situate in Greenwood Township in the County and State aforesaid and in pursuance of the said order of Court the said viewers will meet at the residence of the said James T Mitchell in Greenwood Township on Tuesday November tenth (10th) 1925 at nine o'clock A. M. to view and inspect the said premises of which time and place you will please take notice.

And that the public hearing in the case 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 a chance to be heard will be held in the Arbitration Room in the Court House in Clearfield Pa, on wednesday November the eleventh (11th) 1925 at nine (9) o'clock A. M. when and where all parties interested may attend and be heard.

A G Kramer
W A Rees
James W Spangler
Viewers

Now October the 21 1925 service accepted for the County Commissioners of Clearfield County Pa.

L O Morris
Clerk.

TO: JAMES, T, MITCHELL, OF GREENWOOD TOWNSHIP CLEARFIELD COUNTY, PENNSYLVANIA.

You are hereby notified, that the undersigned viewers appointed by the Court of Quarter Sessions of Clearfield County Pennsylvania, to view and assess the damages that you have sustained by the construction of the State Highway on Route Number 62, through your property situate in the Township of Greenwood in the County and State aforesaid, the said therefore in persuance of the order of the said Court will meet at your residence in Greenwood Township on Tuesday November the tenth (10th) 1925 at nine (9) o'clock A. M. to view and inspect your said premises; at which time and place you will please take notice.

And that the public hearing in the case 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 a chance to be heard will be held in the Arbitration Room in the Court House in Clearfield Pa, on Wednesday November the eleventh(11th) 1925 at nine (9) o'clock A. M. when and where all parties interested may attend and be heard.

A G Kramer
H A Reese
James W Spangle
VIEWERS.

Nov Nov, 3, 1925 service of above notice made by
Copy

Bill Boulton & Farayth

land taken by the construction of said drains and for the inconvenience the claimant suffers by said drains in farming around them: Therefore in the absence of any testimony showing any damages caused by the discharge of the water at the end of the drains the viewers cannot award any damages for the extension of the drains:-

The viewers therefore award James T Mitchell the claimant the following damages; to wit:

The value of three acres of land taken by the bed of the road at \$100.00 per acre	\$300.00
For one half acre of land destroyed by the drains	50.00
By the value of the timber destroyed	100.00
The cost of three bridges or culverts to be erected across the drains at the upper and lower side of the road to enable the claimant to get up into his at the upper side of the road and down on the lower side of the road	100.00
The inconveniences he suffers which is an item of damages for having to drive his cattle from his barn up to his pasture land and back down from his pasture fields to his barn and the inconvenience of farming around the drains at the lower side of the road	250.00
Total amount of damages awarded	\$800.00

All which is respectfully submitted.

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 by them, to assess them damages and make report thereof as follows:

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

WITNESS our hands and seals this 19th day of November; -----

A. D. 1925.

A. G. Kramer *Seal*
K. A. Reese *Seal*
James W. Spangle *Seal*
Seal

No. 2 Dec _____ Sessions,

ORDER

To view and assess damage
caused by James T. Mitch
Wexford to Greenwood
township of 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 players 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 one 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 said, they will report to that effect.

Sessions,

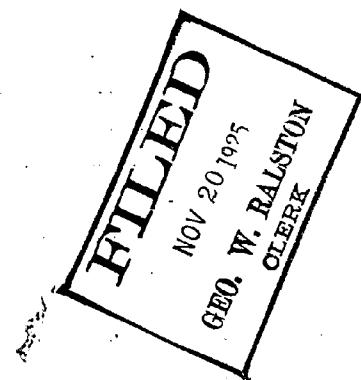
7*i.* *Si.* *RG*

77

76 feet *wide*

Filed _____
Fees \$1.25 paid by _____

Bell, Boulton & Forsyth



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 af 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 _____

Seal,

Seal.

Seal.

Seal.

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

To the Honorable A. R. Chase, President Judge of said Court.

Petition of James T. Mitchell respectfully represents:

1. That he is the owner of a lot of ground situated in Greenwood Township, Clearfield County, Pennsylvania, bounded and described as follows:

FIRST: Beginning at a post on the bank of the West Branch of the Susquehanna River; thence by lands now or formerly of James Elder north fifty-nine and three-fourth (59 3/4) degrees west one hundred sixty-seven (167) perches to a point; thence south twenty and three-fourth (20 3/4) degrees west fifty-one (51) perches to a red oak; thence south fifty-four (54) degrees east one hundred twenty-nine (129) perches to a white oak corner; thence down the river, its several courses and distances one hundred seven and two-thirds (107 2/3) perches to the place of beginning. Containing one hundred seven (107) acres one hundred fifty-nine (159) perches.

EXCEPTING AND RESERVING out of the same, three acres one hundred thirty-eight (138) perches, sold to A. B. Tate, by a deed, dated the 22nd day of November, A. D. 1866.

SECOND: Beginning at a post; thence by lands of A. B. Tate Estate south sixty-two (62) degrees east ninety-one perches (91) to black oak (down); thence south fifty-two and one-half (52 1/2) degrees east one hundred twenty-nine (192) perches to a post on the bank of the River; thence south thirty-two degrees (32) west thirty-seven (37) perches; thence south four (4) degrees west eighteen (18) perches; thence south fifty-four (54) degrees west three and three-tenth (3 3/10) perches; thence north forty-one and one-half (41 1/2) degrees west five and three-tenth (5/3/10) perches to a stump; thence south thirty-six and one-half (36 1/2) degrees west nineteen and two-tenth (19 2/10) perches to a post; thence south sixty-one (61) degrees west thirteen (13) perches; thence north eighteen and one-half (18 1/2) degrees west sixteen (16) perches; thence south seventy and one-half (70 1/2) degrees west fifteen (15) perches; thence south seventy-seven and one-half (77 1/2) degrees west fifteen (15) perches to post; thence south twenty-five and one-fourth (25 1/4) degrees west seventy-two and eight-tenth (72 8/10) perches to beech; thence north twenty-nine (29) degrees west one hundred forty-eight (148) perches to place of beginning. Containing eighty-one (81) acres and forty-three (43) perches, more or less.

2. That a public road has long since existed, running from the Borough of Mahaffey to the village of Bells Landing, all of which is in Clearfield County, Pennsylvania.

3. That the aforesaid public road has been improved as a permanent highway, by action had of the Commonwealth of Pennsylvania, acting by and through the State Highway Commissioner and his subordinates, and is known and designated, in the

Highway system of Pennsylvania, as part of Route 62, as provided in the Act of May 31st, 1911, P. L. 468, section 6.

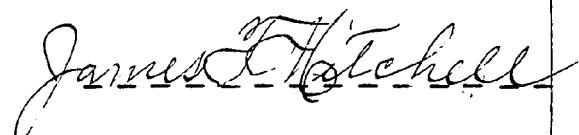
4. That said public road has been relocated, so that, by the new location thereof, a strip of land approximately fifty feet in width has been taken for the purpose of construction of said highway across the land of your petitioner for an approximate distance of three thousand one hundred seventy-five (3175) feet.

5. That the Commonwealth of Pennsylvania, by its officers, agents and contractors, went on the said lands of your petitioner, took material portions thereof for the purpose of construction of said highway, and appropriated the land of your petitioner for said highway purposes and, in the course of construction of said highway, has built a steep embankment, rendering access of your petitioner to and from his field and buildings extremely difficult and burdensome, and has built culverts and ditches along and under said road, causing the drainage thereof to be emptied into and upon the fields of your petitioner, greatly to their detriment and damage.

6. That the road, as now constructed, is a complete change of the lines and location of said highway, as the same previously existed.

7. That, because of the construction of said highway, the fair market value of your petitioner's property has been greatly lessened and materially diminished.

THEREFORE, your petitioner prays your Honorable Court to appoint viewers to appraise and determine the damages so suffered and that further proceedings be had as provided by the Acts of Assembly relating thereto. And he will ever pray.



State of Pennsylvania :

:<

County of Clearfield :

Before me, the subscriber hereto, came James T. Mitchell,
who, being duly sworn according to law, deposes and says that
the facts set forth in the above petition are true and correct.

James T. Mitchell

Sworn and subscribed to before me
this 8th day of October, A.D. 1925.

Geo W. Ralston ---
Prothonotary

Now, October 10th, 1925, the within petition having been
read and considered Aaron S. Kramer Esq., Harry Reese,
and James Spangle Esq.

are appointed viewers to proceed as required by the Act of
Assembly relating thereto.

BY THE COURT

A. W. Chase
P. J.

IN THE COURT OF QUARTER
SESSIONS OF CLEARFIELD COUNTY
PENNSYLVANIA

No. 2 December Term 1925

In re:

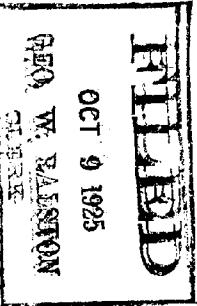
Assessment of damages

James T. Mitchell Estate

Petition for Viewers

FILED

OCT 9 1925



BOULTON, FORSYTH & BELL
ATTORNEYS AT LAW
CLEARFIELD, PA.