

DOCKET No. 6

| Number | Term | Year |
|--------|------|------|
| 5      | May  | 1925 |

Petition to assess damages to

Jerda Custard

**Versus**

36 feet  
free air

Brownell  
Brooks

Bunting & Burt

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

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

The petition of Jerda Custard of Decatur Township, Clearfield County, Pennsylvania, respectfully represents that she is the owner of a certain piece of land situate in Decatur Township, Clearfield County, Pennsylvania, containing about 3.2 acres and bounded and described as follows:

Beginning at the Northeast corner of William Cartright's lands being North 47 degrees 47 minutes East 500 feet from the Northwest corner of the Joseph Harrison tract; thence along said lands South 33 degrees 23 minutes East 209 feet to the Houtzdale road; thence along the North side thereof North 35 degrees 52 minutes East 223.7 feet North 44 degrees 30 minutes East 187.5 feet and North 58 degrees 29 minutes East 282 feet to a post; thence by land of the Kittanning Coal Company North 31 degrees 31 minutes West 224 feet to lands of J. Mills Hale; thence along said land South 47 degrees 47 minutes West 788 feet to the place of beginning.

That there are improvements upon the said ground, being in part a two-story frame dwelling house 36 feet by 16 feet, with the necessary out-buildings and a one-story frame store building; that the land is cultivated land with apple and pear trees growing thereon, and had a spring of water near the dwelling house.

That along the Southern side of said piece of land there has been and was at the time your petitioner purchased the same, a certain public road or highway running from Osceola to Houtzdale.

That the Commonwealth of Pennsylvania, by its Highway Department, has proceeded to construct a state highway between Osceola and Houtzdale on what is known as Route No. 234, along the southern side of said land and did so proceed therewith during the year 1920 and during the months of June, July, August, September and October 1924 and prior thereto; and that the said Commonwealth of Pennsylvania by its agents and employees, went upon the said lands and did proceed to construct a public highway upon said lands and your petitioner is informed and believes, the said State Highway Department did appropriate for said purpose a considerable portion of the lands of your petitioner, which was not heretofore used as a public highway, but was taken for highway purposes for the construction of the state road; and the said State Highway Department did appropriate a considerable portion of the land of your petitioner which was not therefore used as a public highway, and used the same for a dumping place for ground which accumulated in the grading of said road, and by doing so has destroyed the land so taken and not used for highway purposes for any use of your petitioner, and by so doing destroyed the crops of your petitioner by covering same.

That in addition thereto in the construction of the state highway, the work has been proceeded with in accordance with the plans and specifications of the Highway Department and the grade has been raised considerably above the line of the former highway and has caused your petitioner to expend a considerable sum in the building of a retaining wall to prevent further encroachment upon the lands of your petitioner; and that said change in grade has caused surface drainage to seriously damage the dwelling house of your petitioner and the store building hereinbefore mentioned; and a culvert drain placed in the highway so built, has turned the surface water from the south side of said road into the spring,

the water supply of your petitioner, and has destroyed the same; and the said highway construction has done divers other damages to the lands of your petitioner.

That your petitioner has protested but without avail, and is unable to secure any reasonable compensation for the damage done as aforesaid.

Your petitioner, therefore, prays that viewers be appointed to ascertain the extent of the damages done to the petitioner, and she will ever pray.

Jerda Custard  
Petitioner.

State of Pennsylvania :  
County of Clearfield : SS.

Jerda Custard being duly sworn according to law deposes and says that the facts set forth in the foregoing petition are true and correct.

Jerda Custard

Sworn and subscribed to before me this - 19 - day of November A.D. 1924.

Clitheroe Baird  
NOTARY PUBLIC  
My Commission Expires Feb. 28, 1927

Now, March 16, 1925, the within petition  
having been considered, J.W. Bellows Esq.,  
Harry Reese and Jack Michaels  
are appointed viewers as prayed for.

BY THE COURT.

A.B. Chase  
P.J.

IN THE COURT OF QUARTER  
SESSIONS OF CLEARFIELD COUNTY  
PENNSYLVANIA  
No. 5 ~~May~~ Sessions 1925

PETITION OF JERDA CUSTARD FOR  
APPOINTMENT OF VIEWERS TO  
ASSESS DAMAGES.

FILED  
MAR 16 1925  
GEO. W. RALSTON  
Clerk

LAW OFFICES OF

CHASE & CHASE  
CLEARFIELD, PA.  
KEYSTONE BUILDING

275-By ally  
D

she is the owner of a certain piece of land situate in Decatur Twp., containing about 3.2 acres and bounded and described as follows;

Beginning at the Northeast corner of William Cartwright's lands being North 47° 47' East 500 feet from the Northwest corner of the Joseph Harrison tract; thence along said lands South 33° 23' East 209 feet to the Houtzdale road; thence along the North side thereof North 35° 52' East 223.7 feet North 44° 30' East 187.5 feet and North 58° 29' East 382 feet to a post; thence by land of the Kittanning Coal Company North 31° 31' West 234 feet to lands of J. Mills Hale; thence along said land South 47° 47' West 788 feet to the place of beginning.

That along the Southern side of said piece of land there has been and was at the time your petitioner purchased the same, a certain public road or highway running from Osceola to Houtzdale.

That the Comth. of Penna. by its Highway Dept. has proceeded to construct a state highway between Osceola and Houtzdale on what is known as Route No. 234, along the southern side of said land and by so doing has destroyed the land of your petitioner.

TO: - THE COUNTY COMMISSIONERS OF CLEARFIELD COUNTY, PENNSYLVANIA:

You are hereby notified that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County, Pennsylvania, to No. 5 May Sessions, 1925, to view and assess damages done to the property of Jerda Custard in the construction of the State Highway, commonly known as Route No. 234 in Decatur Township, in the County aforesaid, will meet at the house of Jerda Custard in said Township on Saturday, the 4th day of April, A.D. 1925 at ten (10) o'clock A. M. to attend to the duties assigned them; all parties interested will take notice.

And that the public hearing as required by Act of Assembly and 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 damages an opportunity to be heard will be held in the Arbitration Room in the Court House in Clearfield on Monday, the 6th day of April, A.D. 1925, at ten (10) o'clock A. M., at which time and place all parties interested may attend and be heard.

John Scallion  
H.A. Reese  
J.D. Michael  
Viewers

Dated, March 21st, 1925.

Now, March 23rd, 1925, service of the above Notice is accepted for the Commissioners of Clearfield County.

L.C. Morris  
Clerk

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

*Joe A. Shantz*  
(Signature or name of addressee.)

(Signature of addressee's agent.)

*3/24/*  
Date of delivery, *3/24/*, 1925

Form 3811

GOVERNMENT PRINTING OFFICE

6-0116

Post Office Department

OFFICIAL BUSINESS

REGISTERED ARTICLE  
No. 11895  
INSURED PARCEL  
No. 1005

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300

|                                  |  |
|----------------------------------|--|
| POSTMARK OF DELIVERING<br>OFFICE |  |
| BOSTON, MASS., MAR 25, 1905      |  |
| 9:30 AM                          |  |
| AMERICAN POST OFFICE             |  |
| AND DATE OF DELIVERY             |  |
| No. _____                        |  |

Return to *John Schleser*

Street and Number,  
or Post Office Box,

Post Office at *Braintree, Mass.*  
State *Mass.*

o6-6116

TO:- Joseph A. Ashcroft, Robert N. Showers And K. O. Kephart,  
Supervisors of Decatur Township, Clearfield County, Penna.:

You are hereby notified that the undersigned  
viewers, appointed by the Court of Quarter Sessions of Clearfield  
County, Pennsylvania, to No. 5 May Sessions, 1925, to view and  
assess damages done to the property of Jerda Custard in the  
construction of the State Highway, commonly known as Route No.  
234 in Decatur Township, in the County aforesaid, will meet at  
the house of Jerda Custard in said Township on Saturday, the  
4th day of April, A.D. 1925 at ten (10) o'clock A. M. to attend  
to the duties assigned them; all parties interested will take  
notice.

And that the public hearing as required by  
Act of Assembly and 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 damages an opportunity to be heard  
will be held in the Arbitration Room in the Court House in Clear-  
field on Monday, the 6th day of April, A.D. 1925, at ten (10)  
o'clock A. M., at which time and place all parties interested  
may attend and be heard.

*John Scallion*  
*R. A. Reese*  
*J. P. Michael*  
Viewers

Dated, March 21st, 1925.

Now, March 21st, 1925, service of the above Notice is  
accepted for the Supervisors of Decatur Township.

County of Clearfield, SS:

Personally appeared before me the subscriber, a Justice of the Peace in and for said County, John Scollins of Houtzdale Borough, who being duly sworn according to law doth depose and say:

That on the 23rd day of March, 1925, he served copies of the within Notice on the reverse side hereof upon Joseph A. Ashcroft, Robert N. Showers and E. O. Kephart, Supervisors of Decatur Township, by depositing same in the Post-office in Houtzdale, properly addressed, marked "Registered; Return receipt requested," with the proper amount of postage prepaid thereon; and attached hereto are the return receipt cards showing deliveries thereof to the aforesaid addressees: Joseph A. Ashcroft, Robert N. Showers and E. O. Kephart, Supervisors aforesaid.

Sworn and subscribed before me this 3d day of April, A.D. 1925.

John Scollins  
Geo H. Palley Prothonotary

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 16th day of March in the year of our Lord one thousand nine hundred twenty five

Jerda Custard  
Judge of the same Court: Upon the petition of ~~Wendy Cox~~  
~~Wendy Cox~~ of the Township of Decatur in said County, setting forth that

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 John Scollins, Esq. Harry Reese and Jack 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 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, 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

Decatur and that three notices thereof were posted along the route of the proposed road, that the said view would be held on the 4th day of April

A. D. 1925, and the hearing to be held in the Arbitration Room, at the Court House, in Clearfield, Pa., on the 6th day of April, 1925, at 10 o'clock A. M. That

all the viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view Jos. Timchak, James

Ibbeson, Axel Pearson, Mrs. Wm. Ibbeson, Wm. Ibbeson, Ernest Pearson, and Joseph Custard and Jerda Custard (petitioner),

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 6th day of April A. D. 1925, when the following appearances were noted: J. Mitchell Chase, Esq., for petitioner; L. C.

Norris, Clerk of County Commissioners; Jerda Custard, petitioner; Joseph Custard, James Ibbeson, Jos. Timchak and Mrs. Wm. Ibbeson, witnesses on behalf of petitioner; Petitioner and witnesses each being duly sworn, examined and cross-examined by counsel, clerk and your Board.

After the view and hearing above mentioned, the undersigned, the majority of the said viewers, do agree that there is occasion for a road as desired by the petitioner, and that the same is 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 use the following described road, to wit Beginning

We do agree that damages have been sustained by the petitioner. We further find that Route #234 of the Pennsylvania State system of Highways leading from Osceola Mills Borough to Houtzdale Borough has been relocated, regraded and improved as a permanent highway, and that by the relocation, regrading and construction thereof a small strip of petitioner's land fronting thereon was taken as shown on the map or draft thereof hereto attached and made a part hereof. That the relocation and change of grade thereof resulted in the partial destruction of the front fence and the building of a retaining wall in front of petitioner's property, approximately 157 feet in length and 3 feet in height. The amount of damage as testified to: by the petitioner, is \$2300; Joseph Custard \$2000; James Ibbeson and Joseph Timchak, \$1500.

After viewing the premises and conditions and hearing the evidence and taking into consideration the benefits accruing thereto by reason of the improvement of said Route #234 as a permanent highway, your viewers are of the opinion that the foregoing estimates are excessive, but that the petitioner should be compensated for the land taken and occupied and the damages caused her.

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 them damages and make report thereof as follows: To Jerda Custard: One hundred and fifty  
(\$150.00) Dollars

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

WITNESS our hands and seals this 8th day of April  
A. D. 1925.

R. W. Kellin Seal  
N. A. Reese Seal  
J. S. Michaels Seal  
Seal

No. 5 May Sessions, 19 25

## ORDER

To view and assess damages to  
border Jerala. Custard ~~week in the~~  
township of Decatur  
Clearfield County  
From Jan 9 to 19 & 6  
Sessions, 19

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.

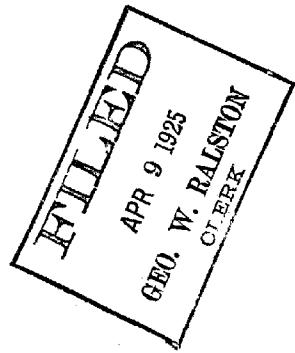
Reviewers cannot interfere with the damages  
assessed by the original viewers, except so far as  
the location may be changed by the reviewers.

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.    |
|----------------|------|-------|---------|
| H. A. Reege    | 3    | 96    | \$27.30 |
| J. S. Michaels | 3    | 188   | \$31.90 |
| John Scollins  | 3    | 68    | \$25.90 |

By the court  
A. Johnson  
P. H.

19  
Court W. H. S.  
Fees \$1.25 paid by  
J. Mitchell Chase, Atty



## 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. 1922 \_\_\_\_\_.

Seal

Seal

Seal

Seal