

DOCKET No. 6

Number	Term	Year
<u>7,</u>	<u>Feb</u>	<u>1926</u>

Petition of R. R. Barber for Appt. of
Viewers to assess damages in Bell Twp.

Versus

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

In re: Reconstruction of :
Route No. 62 State Highway. :
Damages of R.R. Barber. :

PETITION.

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

The petition of R.R. Barber respectfully represents:-

(1). That he is the owner of a certain farm situate in Bell Township, Clearfield County, Pennsylvania, containing approximately 124 acres, title to which was derived as to 84 acres from Lucinda Ross by deed dated March 19, 1925, recorded in Clearfield County in Deed Book 274, page 184, and the other part by deed of Milton Ross dated March 19, 1925, recorded in Clearfield County in Deed Book 271, page 271.

(2). That the State Highway Commissioner of the State of Pennsylvania has undertaken and proceeded with the construction of an improved State Highway, being Route No. 62, particularly the portion thereof between McGees Mills and Burnside, which passes through the farm of your petitioner aforesaid.

(3). That your petitioner has sustained damages by reason of the reconstruction of said State Highway, the course of which has been considerably changed and upon which a change of width and existing lines and locations has been occasioned; and that the construction of said portion of the State Highway through the lands of your petitioner has proceeded so far that the grading thereof has been done.

(4). That your petitioner has been damaged by the taking of a substantial quantity of ground from his premises aforesaid and in various other particulars by the change in location of said road.

(5). That your petitioner has been unable to agree with the County Commissioners of Clearfield County on the amount of damages to be paid to your petitioner for the land appropriated and

RECEIVED
JAN 12 1926
ED. F. BARBER
CLEARFIELD

IN THE COURT OF COMMON PLEAS
SESSIONS OF CLEARFIELD COUNTY
PENNSYLVANIA.

In re: Reconstruction of
Route No. 62 State Highway.
Damages of R.R. Barber.

PETITION.

Now Jan 12th 1926
Baron & Berman Esq.
having been and each
of them are appointed
by the court
Attorneys
for the said

W. WALLACE SMITH
ATTORNEY AT LAW
CLEARFIELD, PENNSYLVANIA

7.00

TO: Jesse, E, Dale. T. R. Weimer and B. W. McCracken.
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 view and inspect the farm property of R. R. Barber situate in Bell Township in the county and State aforesaid containing (124) acres of land and assess the damages that he has sustained by the construction of the State Highway leading from the Borough of Burnside to the village of McGees in Bell Township on Route Number 62, lately laid out and graded by the contractors and employees of the State Highway Commissioners through the farm of the said claimant for which damages if any the county of Clearfield is liable.

You are therefore hereby notified, that the said viewers will meet on the said farm on the said State Highway in the Township of Bell county and State aforesaid on Tuesday January the twenty sixth (26th) A. D. 1926 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 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 Wednesday the twenty seventh day of January A. D. 1926 at nine (9) o'clock A. M. at which time and place all parties interested may attend and be heard.

A. G. Kramer

H. A. Reese

J. S. Michaels

VIEWERS.

Now January 18 1926 service accepted for the County Commissioners
of Clearfield County Penna.

L. Q. Morris

Clerk.

TO; R, R, Barber.

Dear Sir:

You are hereby notified; That the undersigned viewers appointed by the Court of Quarter Sessions of Clearfield County Pennsylvania to view and inspect your farm property consisting of 124 acres situate in Bell Township County and State aforesaid and assess the damages you sustained by the construction of the State Highway lately constructed through the same leading from the Borough of Burnside to the village of McGees in Bell Township on Route Number 62, lately laid out and graded by the Contractors and their employees of the State Highway Commission which if any damages you sustain the County of Clearfield is liable.

You are therefore hereby notified, that the said viewers will meet on your said farm in Bell Township County and State aforesaid on Tuesday January the twenty sixth (26th) A. D. 1926 at nine o'clock A. M. to view and inspect the said premises of which time and place of meeting 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 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 (27th) day of January A. D. 1926 at nine (9) o'clock A. M. at which time and place all parties interested may attend and be heard.

A. G. Kramer
H. A. Rees
J. S. Michaels.
VIEWERS

Now January 18th 1926 service accepted for R. R. Barber the claimant and personal service waived.

Wm. Walter Smith
A. C. Thomas
Attys for R. R. Barber.

IN THE COURT OF Winter Session OF CLEARFIELD COUNTY.

R. R. Barber

Of..... Term, 190.....

No.....

Claimant's Bill of Costs

Versus

Clearfield County

At Term, 190.....

Before the Venues

			Dollars	Cents
<u>C. C. Melzer</u>	<u>1</u> Days in attendance.....	<u>30</u> Miles direct travel	<u>3</u>	<u>80</u>
	Days in attendance.....	Miles direct travel		
	Days in attendance.....	Miles direct travel		
	Days in attendance.....	Miles direct travel		
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	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 subpoenas.....	Witness.....		
	Miles distance.....			
Whole amount of bill.....				

CLEARFIELD COUNTY, SS:

Personally appeared before me..... R. R. Barber....., 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

27 day of January, A. D. 1926

Geo. W. Ralston, Prothonotary

R. R. Barber

No.....Term 190.....

Versus

Bill of Costs

For.....Term 190 ...

Date..... 190....

Amount - - - \$.....

That the claimant R, R, Barber is the owner of a certain tract of land situate in Bell Township Clearfield County and State of Pennsylvania, containing approximately 124, acres, a part of which is cleared and under cultivation, and the balance is unimproved woods land, through which portion of the cleared land of the said farm the State Highway Commissioner, during the year 1925 by his contractor and employees constructed an improved State Highway on Route Number 62, leading from the Borough of Burnside to the village of McGees in Bell Township, County and State aforesaid; And the said State Highway Commissioner in exercising the power and authority conferred upon him by the act of Assembly of May 31, 1911 P. L. page 468, and the supplements and amendments thereto; changed the location of the said road or Highway through the aforesaid tract of land of the claimant from the location of the Township road and thereby has taken a strip of the claimant's land on an average of about forty five feet on width by 1238 feet in length; That the amount of the land taken for the said road consists of one and a fourth acre; that the land taken at the south east land of the claimants farm about one fourth of an acre is very steep side hill extending down to the right of way of the Railroad and therefore not very valuable not worth over eighty (\$80.00) dollars an acre, the one fourth of an acre taken and occupied by the State road is therefore in the opinion of the not worth over \$20.00 and is therefore assessed at twenty (\$20.00) dollars. The remainder of the land taken and destroyed one acre is appraised at one hundred (\$100.00) dollars; The land therefore taken and destroyed by the construction of the road is valued and appraised at \$120.00. 100.00.

For the sixteen apple trees destroyed; as there was no testimony produced as to the kind of fruit they produced whether good or poor or whether they were good bearing trees or not as the fruit from some trees

is worth considerable more than the fruit from other trees in the same orchard so that some trees would be cheap at \$20.00 while others may be dear at said price the viewers therefore even up the trees and assess them at \$20.00 a piece, they therefore assess the apple trees at \$320.00

As to the value of the of the three small walnut trees destroyed as there was no testimony produced as to the size, age, or condition of the trees nor as to how much the lumber they would have produced, or as to the value of walnut lumber of that size and nature was worth in Pennsylvania, was worth; Mr Barber's testimony that he had seen walnut trees of near that size sold in Arkansas at \$100.00 a tree, but as the price of walnut trees or lumber in Arkansas may be vastly different from the value in Pennsylvania and as the trees he referred to were likely grown in the woods while these trees were ~~were~~ grown in the open and as any body that knows anything about timber knows that timber grown in the woods is far superior and worth considerable more than small scrubby trees grown out in the clear; Therefore under the circumstances these trees from the best information the viewers were of not very much value they therefore value and appraise the value of said trees at the (\$10.00) for the three trees

The claimant is also damaged by being shut in, unable to get in or out from his buildings onto the State road or into his buildings on account of the cut or drain along the upper side of the State road: And is therefore to enable him any access to or out from his buildings require a construction of two culverts or bridges over the drain of the State Highway at a cost of about twenty five (\$25.00 each for the cost of the labor and material for each bridge or culvert or fifty (\$50.00) dollars for the two culverts the, the viewers therefore assess the damages for the construction of the two culverts at fifty (\$50.00) dollars

As to the fencing, As there is no law requiring the claimant to fence in his farm or any part thereof, except for his own benefit or convenience, so that where the fence is not taken down injured, or destroyed the county is not liable or required to build the claimant a new fence. All the county is liable for is when or where it is necessary to take down or remove a fence and only then the cost of moving it as the viewers therefore cannot see the necessity of moving the fence in this case they cannot see that they are justified in awarding the claimant any damages

As to the road from the State road up to his house will be supplied by a culvert across the drain of the State Road will be put in as good a condition as it was before the viewers cannot see that he can be damaged any and therefore would not be justified in awarding him any damages they therefore award him no damages for repairing his road up to his barn or into his house further than the expense of the culvert across the drain of of the State road.

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 12th day of January in the year of our Lord one thousand nine hundred twenty six

R. R. Barber

Judge of the same Court: Upon the petition of ~~subscribes~~ ~~habitants~~ of the Township of Bell

in said County, setting forth that he is the owner of a certain farm situate in Bell Twp. containing approximately 124 acres.

That the State Highway Commissioner has undertaken the construction of an improved State Highway, being Route No. 62, particularly the portion thereof between McGees Mills and Burnside, which passes through the farm of your petitioner. That your petitioner sustained damages by reason of the reconstruction of said State Highway by the taking of a substantial quantity of ground from his premises. That your petitioner has been unable to agree with the County Commissioners on the amount of damages to be paid to your petitioner

assess damages

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 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 moderate filling and bridging the declination of the road may be preserved within that limit) and report

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 M. 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~~ ~~And the~~ ~~MMMMM~~ Petitioner ~~notices thereof were posted along the route of the proposed road,~~ that the said view would be held on the 25th day of January A. D. 1926, and the hearing to be held in the Arbitration Room, at the Court House, in Clearfield, Pa., on the 27th day of January, 1926, at 9 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 R. R. Barber the petitioner

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 27th day of January A. D. 1926, when the following appearances were noted: R. R. Barber the claimant with C. C. McGee and J. F. Iford his witnesses and W. Wallace, Smith his attorney, And Jesse, E. Dale, and B. W. McCracken two of the county Commissioners with their Attorney John M. Chase of Liveright & Chase Attorneys for the County Commissioners.

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 ~~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

~~the cost or expense of the construction of the culvert across the drain of the State road they cannot conceive that the claimant is damaged any as it leaves his road to the house and barn in the same condition as it was before they therefore allow no damages for injury to the road or the construction of a new road. into his house or barn.~~

~~As to the grape vines: As there was no testimony produced as to what kind of grape vines they were, what if any thing they were worth whether they bore any grapes or not; the testimony of the witnesses was that they could not tell any thing about them as they never noticed them or paid any attention to them. The viewers therefore cannot assess any damages for the grape vines.~~

~~As to the injury claimed to the front lawn or yard as the house is quite a distance from the road from twenty to twenty five feet and as the lawn is sloping towards the road and as the land taken including the slope is covered by the damages awarded for the road bed at the rate of a hundred (\$100.00) dollars an acre being along the side and not through the middle of the farm the viewers consider that the damages awarded for the road bed covers also the damages to the front lawn and therefore award no extra damages for the land taken from the front lawn or on account of the cut of the road in front of the house thereby obscuring the parties occupying the cars passing along the road. The viewers cannot see that is such a damage that under the law the county is liable for they they therefore are not justified to allow and for said item.~~

As to the damages claimed for two ton of hay destroyed is not such a damage as is covered by the Act of Assembly fixing the damages rendering the county liable and in case it was in a ~~poor~~ condition to be removed it should have been cut and taken off and if not fit to be cut and removed it necessarily was of very ^{little} value and besides it was not the Highway Commissioner but the contractor and as it was necessary for the contractor to take it off to proceed with his job and claimant ~~and~~ ^{he} knew that fact and failed to cut and remove the hay it was his fault that the hay was destroyed the county is not liable and the claimant is therefore not entitled to any damages. The viewers can therefore not allow any damages for the hay destroyed.

The viewers therefore assess the damages to R, R, Barber the claimant as follows:

For the one and a fourth ($1\frac{1}{4}$) acres of land for the bed of the road and the slopes and fills and drains	\$120.00
For the 16, apple trees destroyed at \$20.00 a tree	320.00
For the three small walnut trees destroyed	10.00
The cost of the two culverts or bridges necessary to erect across the drain of the road to enable for the claimant into his buildings and fields of the State road	\$50.00
Total amount of damages awarded	\$500.00

Cost of witnesses awarded attending hearing \$3.80

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:

We herewith return

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

WITNESS our hands and seals this 2d day of February.

A. D. 1926.

<i>A. G. Kramer</i>	Seal
<i>H. A. Reese</i>	Seal
<i>J. S. Michaels</i>	Seal

No. 7 Feb Sessions, 19

ORDER

To view and assess damages to a
road for R. R. BARBER use in the
township of Bell
Clearfield County
Am. Feb 2nd 1926
Sessions, 19

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

By the court
A. H. H. H.

How made 9th 1926

Confirmed absolutely
By the court
A. H. H. H.

42264
Filed 19

Fees \$1.25 paid by

W. Wallace Smith, Atty.,

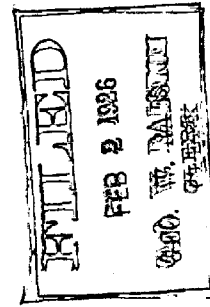
NOTE: In case of a private road, the release must be executed in favor of the petitioner for said road.

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.



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