

load DOCKET No. 6

Number	Term	Year
1	May	1927

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Petition of John W. Hurd for Appt.

of Viewers to assess damages

Chest Twp

**Versus**

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IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY  
PENNSYLVANIA.

John W. Hurd                    )  
                                  )  
                                  )  
vs                                )  
                                  )  
Clearfield County               )

May Session 1927.  
No. \_\_\_\_\_

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

Petition of John W. Hurd respectfully represents:-

FIRST: That he is the owner of certain tracts of land situate in Chest Township, Clearfield County, Pennsylvania, bounded and described as follows:-

THE FIRST THEREOF, beginning at south east corner, bounded on the south by land of William and McEwen, on the west by land of John Breth, on the east by land of Robert Pennington and William Thurston, on north by land of Jacob Breth, containing (90) ninety acres, more or less

THE SECOND THEREOF, beginning at a post, thence by land of H. H. Hurd, north eighty-six and one fourth degrees ( $85\frac{1}{4}$ ) west thirty-four (34) perches to a post, thence along Chest Creek, south thirty-two and one half ( $32\frac{1}{2}$ ) west twelve (12) perches, one (1) link, south twenty-eight degrees (28) west nine (9) perches, south fifty degrees (50) west fifteen (15) perches and half of a perch ( $\frac{1}{2}$ ) south nine degrees (9) east twenty-four (24) perches, south thirty-eight and one half degrees ( $38\frac{1}{2}$ ) west twenty-six (26) perches and one (1) link, south one fourth degree ( $\frac{1}{4}$ ) east thirteen (13) perches, eight links (8) south eighteen and three fourths degrees ( $18\frac{3}{4}$ ) west twenty perches, south eighteen degrees (18) east thirty (30) perches to a stone, thence by land of Isaac Solley, south eighty-eight degrees (88) east sixty (60) perches to a post thence by land of W. W. Wilson, north three and one half ( $3\frac{1}{2}$ ) east one hundred thirty-eight (138) perches to place of beginning, Containing forty-nine (49) acres, one hundred seven (107) perches and eight (8) links more or less on allowance.

Both of the above described tracts of land being the same title to which was conveyed to your petitioner by deed from Henry Hurd and wife dated the 15th day of August 1884, recorded in deed book 45, page 563.

THE THIRD THEREOF, beginning at a June berry tree on the public road by land of William Wood, thence along said public road thirty-two and one fourth degrees ( $32\frac{1}{4}$ ) west sixty-three (63) perches to a post, thence north three degrees (3) east fifteen and four tenths ( $15\frac{4}{10}$ ) perches to a post, thence south sixty-nine and three fourths ( $69\frac{3}{4}$ ) degrees east one (1) perch to a post, thence north four and one half ( $4\frac{1}{2}$ ) degrees probably forty (40) perches to a post, thence south eighty-three and three fourths

(83 $\frac{3}{4}$ ) east thirty and four tenths (30  $\frac{4}{10}$ ) perches to a June berry tree and place of beginning, containing five (5) acres, more or less.

Being the same property title to which was conveyed to your petitioner by deed from William Woods et al, dated 2nd day of November 1895, recorded in deed book 96, page 258.

SECOND: That a public road has long existed, running from Westover Borough, through the village of Lajose, all of which lies within Clearfield County, Pennsylvania.

THIRD: That the aforesaid public road has been improved as a public highway by act of the Commonwealth of Pennsylvania, being known and designated as "route No. 221" in the highway system of the Commonwealth of Pennsylvania as provided by the act of May 31, 1911. P. L. 468, section 6.

FOURTH: That the road as relocated has necessitated a change in the lines and location of said highway and the taking by the commonwealth of a certain of your petitioner's land, being a strip through the entire lengths of his farm, approximately one half ( $\frac{1}{2}$ ) mile in length and varying from forty (40) to ninety (90) feet in width.

FIFTH: That the commonwealth of Pennsylvania, acting through its officers and agents have entered upon the land of your petitioner, taken the same as before averred and in addition thereto have placed various cuts, fills, embankments, ditches, and sewers thereon so as to render access as to remainder of same, and its use as farm land impracticable and in the construction of said road cut, remove or injure certain of the timber of your petitioner growing on said land and because of a cut and embankment have rendered a side road leading to a coal tipple of your petitioner impossible to use.

SIXTH: That as a result of said taking by the commonwealth and the damages resulting therefrom the market

value of said property was greatly lessened and materially diminished.

WHEREFORE; your petitioner prays your honorable court to appoint viewers sufficient to appraise and determine the damage and for such further relief as provided by the acts of assembly relating thereto.

John W. Hurd

STATE OF PENNSYLVANIA :  
COUNTY OF CLEARFIELD : SS

Before me, the subscriber hereto, came John W. Hard, who being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true and correct to the best of his knowledge and belief.

*John W. Hard*

Sworn and subscribed to before me  
this 12th day of February, A. D. 1927.

*R. C. Markle*  
*My Commission Expires Jan. 1, 1932*

O R D E R

Now, February 1927, the within petition having  
been read and considered \_\_\_\_\_,  
\_\_\_\_\_, are appointed viewers to proceed as re-  
quired by the acts of assembly relating thereto.

BY THE COURT

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Now May Session 1927 the power of the  
viewers enlarged to Sept session 1927.

By the court  
A. R. Chase  
C. J.

IN THE COURT OF QUARTER  
SESSIONS OF CLEARFIELD COUNTY  
PENNSYLVANIA  
May Sessions 1927

John W. Hurd  
VS

Clearfield County

P E T I T I O N

Now Feb 28<sup>th</sup> 1927

A. G. Homan Esq.,  
of Belletts P. S.

Wants to see affidavits  
viewers to return  
deposit.

By the court  
A. R. Chase  
C. J.

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

THE FIRST THEREOF, beginning at south east corner, bounded on the south by land of William and McEwen, on the west by land of John Breth, on the east by land of Robert Pennington and William Thurston, on north by land of Jacob Breth, containing 90 acres more or less

THE SECOND THEREOF, beginning at a post, thence by land of H. H. Hurd, north eighty-six and one fourth degrees, west  $34\frac{1}{4}$  perches to a post, thence along Chest Creek, south  $32\frac{1}{2}$  west 12 perches, one link, south 28° west 9 perches, south 50 degrees west 15 perches and half of a perch south 9 degrees east 24 perches, south  $38\frac{1}{2}$  degrees west 26 perches and one link, south  $1\frac{1}{4}$  degrees east 13 perches, 3 links south  $18\frac{1}{4}$  degrees west 20 perches, south 18 degrees east 30 perches to a stone, thence by land of Isaac Solley, south 88 degrees east 60 perches to a post thence by land of W. W. Wilson, north  $3\frac{1}{2}$  east 138 perches to place of beginning, Containing 49 acres, 107 perches and 3 links more or less on allowance.

Both of the above described tracts of land being the same title to which was conveyed to your petitioner by deed from Henry Hurd and wife dated the 15th day of August 1884, recorded in deed book 45, page 563.

THE THIRD THEREOF, beginning at a June Berry tree on the public road by land of William Wood, thence along said public road  $32\frac{1}{4}$  west 63 perches to a post, thence north 3 degrees east 15  $\frac{4}{10}$  perches to a post, thence south  $69\frac{1}{2}$  degrees east 1 perch to a post, thence north  $4\frac{1}{2}$  degrees probably 40 perches to a post, thence south  $83\frac{3}{4}$  east 30  $\frac{4}{10}$  perches to a June berry Tree and place of beginning, containing 5 acres more or less.

THAT a public road has long existed, running from Westover Borough through the village of LaJose, all of which lies within Clearfield County.

That the Commonwealth of Penna. acting through its officers have entered upon the land of your petitioner, ~~xxxxxx~~  
~~xxxxxx~~ and have placed various cuts, fills, ditches and sewers resulting damage to the market value to said property and



As to the timber taken and destroyed,,there was no testimony produced as to the amount taken and destroyed or as to the value thereof; The viewers therefore judging from the timber standing along the side of the road as to the quantity, or quality and the kind and size of timber necessarily taken and destroyed but judging from the timber along the road that the amount of timber taken and destroyed would not exceed five thousand (5000) feet and not worth over ten ((10.00) dollars per thousand feet stumpage so that so that the viewers assess the value of the timber taken and destroyed at fifty (\$50.00) dollars.

As to the two drains or ditches cut down through the claimant's field from the lower side of the State road;;The one is forty eight (48) feet in length and at the upper end next the road is five feet in depth and five and one half in width and at the lower end is two feet in width where it discharges the water drained down from the State road in a body on the land of the claimant in a body thereby injuring the claimant's land creating somewhat of a swamp besides the land taken and destroyed by the drain by the land used or taken besides the inconvenience of farming around the said drain whereby according to the judgment of the viewers the claimant is damaged twenty five (\$25.00) dollars.

Which as per the act of Assembly of April 1925 P. L. Page 360 section three the county is liable.

As to the second drain which is one hundred and twenty five (125) feet in length and ten(10) feet in width at the upper end next the highway by six feet in depth and two and a half (2,1/2)) feet wide at the lower end where it discharges quite a large quantity of water especially during heavy rains in a body on the land of the claimant thereby creating quite a swamp the injury and damages the claimant sustained by the land destroyed by the digging of the drain and the inconvenience of farming around the drain and the swamp created by the discharge of the water at the lower end of the drain the viewers are convinced that the claimant is damaged in the amount of seventy five (\$75.00) dollars for which the county is liable as provided by the act of Assembly of April 29th 1925, P.L. page 360 section three (3).

TO:- JESSE, E, DALE: T, R, WEIMER, AND, B. W. McCracken.  
COUNTY COMMISSIONERS, OF CLEARFIELD, COUNTY PENNSYLVANIA.

SIRS:-

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 if any that John, W, Hurd the claimant sustained by the construction of the State Highway through his three certain tracts of land situate in Chest township county and State aforesaid ; The one tract containing ninety (90) acres; The second containing forty nine (49) acres, and the third containing five (5) acres. Through which the State Highway Commissioner by his contractor and employees lately constructed the State Highway leading from the Borough of Westover to the Borough of Newburg through the Township of Chest, on Route number sixty two (62); for which the damages if any the county of Clearfield is liable.

You are therefore hereby notified, that the said viewers will meet on the premises of the said John, W, Hurd in Chest Township county and State aforesaid on Tuesday the seventh (7th) day of June A. D. 1927 at nine (9) 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 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 the claimant with his witnesses as also the county commissioners with their witnesses if any a chance to appear and be heard by the viewers before disposing of the matter. Will be held in the Arbitration Room in the Court House in Clearfield Pa on Wednesday June the eighth (8th), 1927 at nine (9) o'clock A. M. at which time and place you may attend and be heard.

A. G. Kramer  
E. D. Billotte  
Jas W Spangle  
VIEWERS.

Now May 26 1927 service accepted for the county commissioners of  
Clearfield, county. Pa.

J. E. Dale  
Clerk.  
Puck

TO. John. W. Hurd.

Dear Sir,

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 if any that you the claimant John W, Hurd sustained by the construction of the State Highway through his three certain tracts of land situate in Chest township county and State aforesaid; The one tract containing ninety (90) acres. The second tract containing forty (49) nine acres and one hundred and seven (107) perches and the third containing five (5) acres, Through which the State Highway Commissioner by his contractor and employees lately constructed the State Highway, leading from the Borough of Westover to the Borough of Newburg through Chest Township on route number sixty two (62) for which damages if any the county of Clearfield is liable.

You are therefore hereby notified, that the said viewers will meet on the premises of the said John, W, Hurd the claimant in Chest Township county and State aforesaid on Tuesday the seventh (7th) day of June, A. D. 1927 at nine (9) 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 the claimant with his witnesses as also the county commissioners with their witnesses if any a chance to be heard by the viewers before disposing of the matter will be held in the Arbitration Room in the Court House in Clearfield Pa on Wednesday June the eighth (8th) 1927 at nine (9) o'clock A. M., at which time and place you may attend and be heard.

A G Kramer.  
E W Billotte.  
Jas W Spangle.  
VIEWERS.

Now May 26 1927, service accepted for John, W, Hurd the claimant and personal service waived.

Bill. Brullin Fargy's  
attn for Hurd

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 4th day of March  
in the year of our Lord one thousand nine hundred  
twenty seven

JOHN HURD

Judge of the same Court: Upon the petition of ~~subscribers~~  
~~subscribers~~ of the Township of Chest

in said County, setting forth that he is the owner of  
certain tracts of land situate in Chest Township bounded and described  
as follows:

and therefore, praying the Court to appoint proper persons to <sup>assess damages</sup>  
~~make said view~~ <sup>view and lay out the road</sup>  
~~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.  
Ed. Billotte and J. S. Spangle

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 <sup>used</sup> ~~proposed~~ for the said road, and if they view  
the same, and a majority of the actual viewers agree that <sup>has suffered damages</sup> ~~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, and report

And if the viewers aforesaid shall decide in favor of locating a public road, <sup>they</sup>  
~~shall assess the damages~~ <sup>shall assess the damages</sup>  
~~shall obtain from the persons through whose lands the said road shall pass, releases from any~~  
~~claim or 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~~  
<sup>taking into</sup> 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. Palston, 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 that~~ ~~notices thereof were posted along the route of the proposed road,~~ that the said view would be held on the seventh day of June A. D. 1927, and the hearing to be held in the Arbitration Room, at the Court House, in Clearfield, Pa., on the 8<sup>th</sup> day of June, 1927, at 9 o'clock P.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 John, W. Hurd the claimant, John, Deihl and F. M. Wood two of the Supervisors of Chest township;

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the eighth - day of June A. D. 1927, when the following appearances were noted:

John, W. Hurd with his Attorney Hon, Singleton Bell,  
and F. M. Wood one of the Supervisors of Chest Township  
with their Attorney W. A. Haggerty. Esq. and;

After the view and hearing above mentioned, the undersigned, ~~the majority of the said~~ viewers, do ~~recommend that the~~ 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

REPORT;; That the claimant John, W. Hurd is the owner of three certain tracts of land situate in Chest Township Clearfield County Pennsylvania ; the one containing ninety (90) acres the second adjoining the said tract containing one hundred and seven (107) acres and the third adjoining the aforesaid tracts containing five acres a total of two hundred and two (202) acres; A part of which is cleared and under cultivation and the balance is composed of unimproved woods land; Through which said land the State Highway Commissioner during the year 1925 & 26, by his contractor and employees constructed an improved State concrete Highway from the Borough of Westover to the Borough of Newburg on route number (221) a distance over the land of the said claimant of an average of thirty six (36) feet in width along a side hill most of the way on an average of thirty six (36) feet in width and a distance of thirty six hundred and eighty nine (3689) feet in length over the claimant's land of which (1759) feet is entirely located on the claimants land and the remainder (1930) feet in length by two thirds of the width of the new road is located on the old road for which the claimant is not entitled to any damages which only leaves about three fourth of an acre of the claimants land taken by the road and that he is entitled to collect damages which the way it cuts his land the viewers estimate the value of the land taken at the rate of one hundred (\$ 100.00) dollars making the value of the land taken for the road at seventy five (\$75.00) dollars.

\* As to the third drain mentioned by the claimant in his testimony at the hearing is no such drain as to injure or damage the claimants property in the least. It consists of a small drain through under the State Highway to drain the water from the side drain at the upper side of the public highway into the drain along the lower side of the road therefore none of his land is taken or in any way effected injured or destroyed thereby nor does it effect him in farming this land thereby. The viewers therefore do not award any damages for said drain,

For the cost or expense of the reconstruction of the road to the claimant's coal bank to supply the road destroyed by the construction of the State highway which cannot be replaced for less than seventy five (\$75.00) dollars The viewers therefore assess or award the claimant for the reconstruction of the road to his coal bank the sum of seventy five (\$75.00) dollars

The viewers therefore assess the damages to John, W, Hurd as follows,

For the value of the three fourth ( $\frac{3}{4}$ ) of an acre of land taken by the road bed	\$75.00
For the value of the timber taken and destroyed	50.00
For the damage caused by the construction of the small drain	25.00
For the damage caused by the construction of the large drain	75.00
For the reconstruction to claimants coal bank	75.00

Total amount of damages assessed, \$300.00  
Which in the opinion or judgment of the viewers covers all the damages less the benefits that the claimant sustains by said road.

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:

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

WITNESS our hands and seals this 29th day of June, -----

A. D. 1927.

A. L. Kramer Seal  
Ed. Billotte Seal  
James W. Spangle Seal  
Seal

No. 1 May Sessions, 19 27

## ORDER

To view AND ASSESS DAMAGES  
road for to John W. Hurd use in the  
township of Chest  
Clearfield County

Sessions, 19

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

*From July 27<sup>th</sup> 1927,  
with repair and  
and confirmed.  
By the court  
A. R. Hulse  
P. J.*

Filed 19

Fees \$1.25 paid by

Bell, Boulton & Forsyth, Attys.

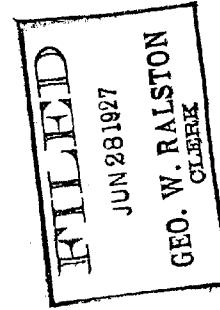
NOTE—In case of a private road, the release must be executed in favor of the petitioner for said road.

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.
A. G. Kramer	5	80	\$41.50
E. D. Billotte	3	108	\$27.40
J. W. Spangle	3	107	\$27.35



## 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