

DOCKET No. 6

Number	Term	Year
1	May ss	1928

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Petition to supply a road in Knox Twp  
and vacate the one so supplied lying  
in Knox and Jordan Twps.

Versus

R. D. #6 - Page 186

Possibly 17428

TO THE SUPERVISORS OF KNOX TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA.

Notice is hereby given that an application will be made to the Court of Quarter Sessions of Clearfield County on Monday, the 27th day of February, 1928, for the appointment of viewers to vacate and supply a portion of the road leading from New Millport to Kerrmoor via the George Patterson farm house; the part to be vacated lying part in Jordan and part in Knox Townships, and the new road to be supplied lying wholly in Knox Township, as follows:

Beginning at a point on the road leading from New Millport to Fruit Hill and Kerrmoor at or near a pine tree about ten rods South West from the George Patterson farm house, and ending at a point on said road leading to Kerrmoor at the foot of the hill and about ten rods South East of the Thomas Dunlap.

KRAMER & KRAMER  
Attorneys for the petitioner.

Now, February, 18th 1928, served on us by copy.

*J. M. Tebbel*

*Maywood Rowley*  
Supervisors of Knox Township.

TO THE SUPERVISORS OF JORDAN TOWNSHIP, CLEARFIELD COUNTY, PENNA.

Notice is hereby given that an application will be made to the Court of Quarter Sessions of Clearfield County on Monday, the 27th day of February, 1928, for the appointment of viewers to vacate and supply a portion of the road leading from New Millport to Kerrmoor, via the George Patterson farm house; the part to be vacated lying part in Jordan and part in Knox townships, and the new road to be supplied lying wholly in Knox Township, as follows:

Beginning at a point on the road leading from New Millport to Fruit Hill and Kerrmoor at or near a pine tree about ten rods South West from the George Patterson farm house, and ending at a point on said road leading to Kerrmoor at the foot of the hill and about ten rods South East of the Thomas Dunlap lane

KRAMER & KRAMER  
Attorneys for the Petitioners.

Now, February 24<sup>th</sup> 1928, served on us by copy.

Joseph T. Johnston  
Donald McKeehen  
Blake Sumner  
Supervisors of Jordan Twp.



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

In Re Petition to supply a road in Knox Township, and vacate the one so supplied lying in Knox and Jordan Townships. ) No. May Sessions, 1928.

The petition of of the undersigned inhabitants of the Townships of Knox and Jordan in the County of Clearfield, respectfully represent:

That a public road was long since laid out and opened, leading from New Millport to Kerrmoor, by way of the George Patterson farm house; that a part of said road in the Townships of Knox and Jordan has become inconvenient and burdensome and is up an excessively steep grade and practically impassable in winter; that the said road would be much improved by a change of its route as follows:

Beginning at a point on the road leading from New Millport to Fruit Hill and Kerrmoor at or near a pine tree about ten rods South West from the George Patterson farm house, and ending at a point on said road leading to Kerrmoor at the foot of the hill and about ten rods South East of the Thomas Dunlap lane,

and by the vacation of the portion of the road so supplied.

Your petitioners therefore pray the Court to appoint duly qualified persons to view the premises and to inquire into the expediency of making said change, and to otherwise proceed as directed by law.

Name	Township	Post Office
<i>R. B. Henderson</i>	<i>Knox</i>	<i>New Millport</i>
<i>C. B. Glasgow</i>	<i>Knox</i>	<i>New Millport</i>

blank Fox	Knox	New Millport
Marl Bell	"	New Millport
H. B. Norris	"	New Millport
B. V. Erhard	"	New Millport
Don Sloppy	"	New Millport
Kelly Sloppy	"	New Millport
O. G. Long	Knox	New Millport Pa.
Lucas Arnold	"	New Millport
B. R. Brown	"	New Millport Pa.
Orl Bell	Gordon	New Millport Pa.
Geo. Erhard	Knox	New Millport Pa.
Ernest Schoening	Gordon	New Millport Pa.
Lucas B. Brown	Gordon	Ansonville Pa.
Victor + Miller	Gordon	Ansonville Pa.
G. W. Bollinger	Gordon	Ansonville Pa.
C. V. Strong	"	Ansonville Pa.
N. E. H. H. H. H.	"	Ansonville Pa.
Geo. Shaffer	"	Ansonville Pa.
John Nelson	"	Ansonville Pa.
D. R. Bloom	"	Ansonville Pa.
S. S. Wilson	"	Ansonville Pa.
C. D. M. Murray	"	Ansonville Pa.
James E. Beaton	"	Ansonville Pa.
George W. Witherow	Knox	New Millport
R. A. Witherow	"	New Millport
Cecil Witherow	"	New Millport
H. B. Witherow	"	New Millport
Alvin Erhard	"	New Millport
C. E. Erhard	"	New Millport
Edm. Erhard	"	New Millport

Lynn Bell	Jordan	New Millport
E. E. Lewis	"	New Millport
Harry Mcneel	"	"
H. T. Straw	"	"
W. L. Schaefer	"	"
P. P. [unclear]	"	"

60

State of Pennsylvania, )  
County of Clearfield. ) SS.

Before me, the prothonotary, personally appeared W.L. Schoening 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; that the signatures thereto were obtained between the 13th and 18th days of February, 1928, and are each in the signer's own handwriting.

W L Schoening

Sworn to and subscribed before me  
this 18th day of February, 1928.

Geo W Palston  
Prothonotary.



In the County of Bucks, State  
of Pennsylvania before me  
this 4th day of May A.D. 1928

In the letter to my wife  
read in my book and I have  
the one so signed by me  
in that and for the same.

Re: John Weaver.

Power of Atty. 218-1328

John Weaver says  
that these are  
back numbers and  
affairs of some  
years ago.

Witness my hand  
this 4th day of May A.D. 1928

KRAMER & KRAMER  
ATTORNEYS AT LAW  
CLEARFIELD, PA.

Beginning at a point on the road leading from New Millport to Fruit Hill and Kerrmoor at or near a pine tree about ten rods south west from the George Patterson farm house, and ending at a point on said road leading to Kerrmoor at the foot of the hill and about ten rods south east of the Thomas Dunlap lane,  
and by the vacation of the portion of the road so supplied.

JORDAN TOWNSHIP

W.L. SCHOENING

N. 36° 30' W. 765

VACATED ROAD

KNOX TOWNSHIP

BEGINNING

ENDING

TO KENMORE

N. 88° 44' W. 855

N. 27° W. 78

N. 42° E. 274

T.W. DUNLAP  
IMPROVED LAND

TO HANSONVILLE




TO NEWMILFORD

PUBLIC ROAD IN KNOX TOWNSHIP  
CLEARFIELD COUNTY PA.  
VIEWED VACATED AND SUPPLIED.  
APR. 12-1928 BY JOHN SCOLLINS ESQ.  
H.A. REESE  
J.S. MICHAELS.  
SCALE 1"=100'

To ;- Joseph T. Johnson, Blake Summers and Donald McKeehan,  
Supervisors of Jordan Township, Clearfield County,  
Pennsylvania:-

You are hereby notified that the undersigned viewers,  
appointed by the Court of Quarter Sessions of Clearfield County to No.  
1, May Sessions, 1928, to view and vacate that portion of the public  
road in Knox and Jordan Townships leading from New Millport to Kerrmoor,  
by way of the George Patterson farm house, and to supply the same with  
a road as follows: Beginning at a point on the road leading from New  
Millport to Fruit Hill and Kerrmoor at or near a pine tree about ten  
rods south-west from the George Patterson farm house, and ending at a  
point on said road leading to Kerrmoor at the foot of the hill and  
about ten rods south-east of the Thomas Dunlap lane, in Knox Township,  
in the County aforesaid, will meet at the George Patterson farm house  
in said Township on Thursday, the 12th day of April, A. D. 1928, at  
eleven (11:00) o'clock A. M., to attend to the duties assigned them:  
all parties interested will take notice.


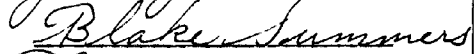
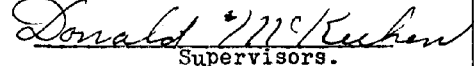
And that the public hearing as required by Act of  
Assembly and Rules of Court to be held by the viewers before the filing  
of their report in Court, in order to give all parties interested in the  
said road an opportunity to be heard, will be held in the Arbitration  
Room in the Court House in Clearfield on Friday, the 13th day of April,  
A. D. 1928 at ten (10:00) o'clock A. M., or as soon thereafter as  
counsel can be heard, at which time and place all parties interested  
may attend and be heard.

  
  
  
Viewers

Dated, March 27th, 1928.

CLEARFIELD COUNTY, SS:

Now, this 2nd day of April A. D. 1928, service  
of the above Notice is accepted for the Supervisors of Jordan Township,  
Clearfield County.

  
  
  
Supervisors.

To:- J. M. Fleck, Joseph Bloom and Maywood Rowles,  
Supervisors of Knox Township, Clearfield County,  
Pennsylvania:-

You are hereby notified that the undersigned viewers,  
appointed by the Court of Quarter Sessions of Clearfield County to No.  
1, May Sessions, 1928, to view and vacate that portion of the public  
road in Knox and Jordan Townships leading from New Millport to Kerrmoor,  
by way of the George Patterson farm house, and to supply the same with  
a road as follows: Beginning at a point on the road leading from New  
Millport to Fruit Hill and Kerrmoor at or near a pine tree about ten  
rods south-west from the George Patterson farm house, and ending at a  
point on said road leading to Kerrmoor at the foot of the hill and  
about ten rods south-east of the Thomas Dunlap lane, in Knox Township,  
in the County aforesaid, will meet at the George Patterson farm house  
in said Township on Thursday, the 12th day of April, A. D. 1928, at  
eleven (11:00) 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 road an opportunity to be heard, will be held in the Arbitration  
Room in the Court House in Clearfield on Friday, the 13th day of April,  
A. D. 1928 at ten (10:00) o'clock A. M., or as soon thereafter as  
counsel can be heard, at which time and place all parties interested  
may attend and be heard.

Dated, March 27th, 1928.

CLEARFIELD COUNTY, SS:

Now, this 1st day of April A. D. 1928, service  
of the above Notice is accepted for the Supervisors of Knox Township,  
Clearfield County.

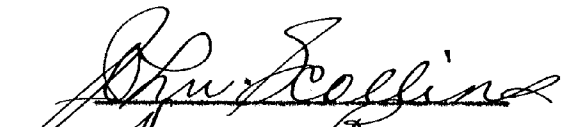

John Fleck  
J. M. Rowles  
Joe Bloom  
Supervisors

Dr. Collins  
Larry Reese  
J. D. Michael  
Viewers

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 to No. 1, May Sessions, 1928, to view and vacate that portion of the public road in Knox and Jordan Townships leading from New Millport to Kerrmoor, by way of the George Patterson farm house, and to supply the same with a road as follows: Beginning at a point on the road leading from New Millport to Fruit Hill and Kerrmoor at or near a pine tree about ten rods south-west from the George Patterson farm house, and ending at a point on said road leading to Kerrmoor at the foot of the hill and about ten rods south-east of the Thomas Dunlap lane, in Knox Township, in the County aforesaid, will meet at the George Patterson farm house in said Township on Thursday, the 12th day of April, A. D. 1928, at eleven (11:00) 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 road an opportunity to be heard, will be held in the Arbitration Room in the Court House in Clearfield on Friday, the 13th day of April, A. D. 1928 at ten (10:00) o'clock A. M., or as soon thereafter as counsel can be heard, at which time and place all parties interested may attend and be heard.

  
  
Viewers

Dated, March 27th, 1928.

CLEARFIELD COUNTY, SS:

Now, this 20 day of March, A. D. 1928, service of the above Notice is accepted for the Commissioners of Clearfield County.

  
Clerk

**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 27th day of February in the year of our Lord one thousand nine hundred twenty eight

Judge of the same Court: Upon the petition of sundry inhabitants of the Township of Knox and Jordan

in said County, setting forth that a public road was long since laid out and opened, leading from New Millport to Kerrmoor, by way of the George Patterson farm house; that a part of said road in the townships of Knox and Jordan become inconvenient and burdensome and is up an excessively steep grade and practically impassable in winter; that the said road would be much improved by a change of its route 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 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 Knox & Jordan and that three notices thereof were posted along the route of the proposed road, that the said view would be held on the 12th day of April A. D. 1928, and the hearing to be held in the Arbitration Room, at the Court House, in Clearfield, Pa., on the 13th day of April, 1928, at 10 o'clock A. M. That three viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view: J. M. Fleck, A. M. Rowles, Joseph Bloom, Supervisors of Knox Township; Harrison Norris, T. W. Dunlap, Lynn Bell, O. M. Shaffer, Lester Bloom, Melvin Dunlap, W. L. Schoening and Clark Fox,

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 13th day of April A. D. 1928, when the following appearances were noted: C. R. Kramer, Esq., Attorney for petitioners; W. L. Schoening, T. W. Dunlap and Clark Fox.

T. W. Dunlap, W. L. Schoening and Clark Fox sworn or affirmed, examined and cross-examined by counsel and your Board.

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 public 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 public use the following described road, to wit Beginning at a post on public road leading from New Millport to Kerrmoor, near the intersection of said Road with the Road leading to Fruit Hill via Ansonville; thence North 2 degrees East along the land of T. W. Dunlap 294 feet to a post; thence North 21 degrees West along land of the said T. W. Dunlap 98 feet to a post; thence still thereby North 59 degrees West 480 feet to post and ending on public Road aforesaid leading to Kerrmoor.

We further find that that portion of the public Road leading from Kerrmoor to Ansonville, beginning at a post North 36 degrees 30 minutes West 200 feet (more or less) from its intersection with the public road leading to New Millp and thence North 36 degrees 30 minutes West along the line dividing Jordan and Knox Townships 765 feet and ending at a post in said Road, has become useless, inconvenient and burdensome of up-keep, and therefore recommended for vacation.



Kramer & Kramer, A

paid by

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 Mrs. T. W. Dunlap, One Hundred (\$100.00) Dollars \_\_\_\_\_

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

WITNESS our hands and seals this 27th day of April

A. D. 1928

*John E. Collins* Seal  
*H. R. Reese* Seal  
*J. S. Michael* Seal  
Seal

No. 1 May Sessions, 19 28

## ORDER

To view and supply a  
road for public use in the  
township of Knox and vacate the on  
supplied in Knox and Jordan Twp.  
Clearfield County

Now May Sessions, 19 28

road 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.

By the Court  
H. H. H. H. H.

P. J.  
Now left 38-1828

Consigned a road by  
By the Court

Althorne  
1928

Filed  
Fees \$1.25

tya. 8

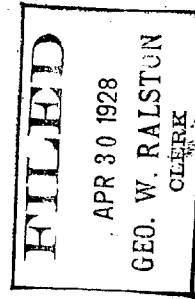
NOTE.—In case of a private road, the release  
must be executed in favor of the petitioner for  
said road.

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. Reese	4	160	\$38.00
J. S. Michaels	2	96	\$19.80
John Scollins	3	160	\$30.50
J. W. Dunlap	1	19	4.14
H. L. Sweeney	1	19	4.14
Blank for			



Pa  
has  
prac  
char

## 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

two of which covering the coal underlying one tract and the third, a tract, all of which coal is to be mined and removed upon a royalty basis and 15 cents per gross ton, respectively, and that extensive mining operations under have been carried on as shown on the Mine Map hereto attached and made part hereof.

That on the 26th day of December, 1929, the Commonwealth of Pennsylvania adopted a plan and survey for an Improved Concrete Highway between the Villages of Bigler and Allport aforesaid, and that a portion thereof traverses the leasehold interest of petitioners, beginning at Station 17+90 and continuing a distance of approximately 4470 feet to Station 62+60 and as shown on the Mine Map hereinabove referred to.

That on or about the 18th day of March, 1930, the Commonwealth acting through its qualified officials appropriated said land for the purposes of an Improved Concrete Highway under its right of eminent domain, and notified petitioners to cease mining operations underneath the route of the Highway as approved and surveyed, and that no coal other than that already removed was to be taken from the right of way thus appropriated.

We further find that the land thus appropriated diminished in value the coal land of the lessors and leasehold interest of the lessee (petitioners) and from the view and evidence produced approximately 5664 tons of recoverable coal were required to be left standing, of the market value of \$453.12 in addition to the cost of improvements of \$283.20, plus the cost of new heading work of \$350.00, placed thereon by petitioners, as elements of damages and loss to petitioners.

After taking into consideration the benefits accruing to petitioners land by the improvement of Route 668 as a State Highway, we find that petitioners have suffered a loss in damages, in the diminution in value of their premises, before the appropriation and afterwards, then and now, and do award them ten hundred, eighty-six and 32/100 (\$1086.32) dollars, as landlords and tenants, without prejudice to the respective rights of Cunard Coal Company as lessee and the Royal Coal Company as lessor of the "Peale" property.

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

WITNESS our hands and seals this 28th day of April

A. D. 1932.

*John Seecins* Seal  
*H. A. Reese* Seal  
*J. S. Michael* Seal

6.

No. 2 Feb Sessions, 1931

## ORDER

To view and assess damages for  
Chunard Coal Company use in the  
road for \_\_\_\_\_  
township of MORRIS  
Clearfield County

Now May 4<sup>th</sup> 1932  
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.

By the court

A. R. Hall

P. J.

Filed

Fees \$1.25 paid by

Boulton & I

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

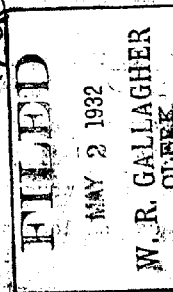
Also, viewers will carefully note the number of days employed and set the amount out at the foot of their return.

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.
J. S. Michaels	6	366	\$63.30
H. A. Reese	8	224	\$71.20
John Scollins	7	264	\$65.70
O. V. Kratzer, sten- ographer			\$ 4.75

Now June 6<sup>th</sup> 1932  
As within report having  
been filed for a period of  
thirty days and two of  
captains filed hereto the  
same is confirmed absolutely  
for the court  
A. R. Hall  
P. J.



## 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 ensembling 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

CUNARD COAL COMPANY :

v. : No. 2, February Sessions, 1931.

COUNTY OF CLEARFIELD :

Adjourned hearing held in the office of Boulton & Boulton, Borough of Clearfield, on Friday, March 13, 1931, at ten A. M., at which the following appearances were noted:

Harold J. Boulton, Esq., of Boulton & Boulton,  
Attorneys for Plaintiff.

Frank G. Smith, Esq., of Liveright & Smith,  
County Solicitors of Clearfield County.

John Scollins, Harry F. Reese and  
J. S. Michael, Board of Viewers.

- - - - -

Testimony of witnesses, produced, sworn and examined  
on the part of plaintiff.

At the request of Harry F. Reese, viewer, Mr. R. M. Hess  
was sworn and examined. (Off the record.)

- - - - -

LeBaron Smith, called and sworn, testified as follows:

Question by Mr. Boulton:

Mr. Smith, what is your position with the Cunard Coal Company?

A. I am general manager.

Q. I want you to give the history of the opening of Cunard slope,  
in brief when was this mine first opened?

A. The mine was opened in 1913.

Q. What is the nature of the operation? Is it a drift, slope  
or shaft?

A. Slope. 600 feet long.

Q. The opening of the slope is how far above the level of the  
coal?

A. 150 feet.

Q. Now, Mr. Smith, what is the acreage of the Cunard Coal Company  
property?

A. You mean to include the leases?

Q. Yes, all the leased coal.

A.- We figure approximately 1060 acres from the Morrisdale Land;  
800 acres from the Royal Coal Company. Making a total of  
about 1366 acres of recoverable coal.

- Q. Mr. Smith, what would be your estimate of the amount of dollars represented by the development of Cunard property?
- A. Approximately \$400,000.
- Q. Mr. Smith, how does the Cunard Coal Company hold its property, by that I mean, under what leases?
- A. By a lease from the Dorris heirs and a lease from the Morrisdale Land Company and a lease from the Royal Coal Company.
- Q. Is not the lease from the Morrisdale Land Company by Sheldon Potter, Trustee?
- A. Yes.
- Q. The Cunard Coal Company owns no surface or any coal in fee?
- A. It owns some surface at the openings.
- Q. But the bulk of the property is under the leases, as you have set forth?
- A. Yes.

By Mr. Boulton:

We offer the leases to the Cunard Coal Company in evidence, being  
(a) lease from the Royal Coal Company to the Cunard Coal Company,  
(b) a lease from the Dorris heirs to Cunard Coal Company, and  
(c) a lease from Sheldon Potter, Trustee, to Cunard Coal Company.

By Mr. Scollins:

Being no objections, leases are admitted.

By Mr. Boulton:

- Mr. Smith, when I asked you the dollars represented by the development and you answered in excess of \$400,000, you meant the entire cost of the property from the beginning.
- A. I did.
- Q. What I wanted you to give me was the cost of the actual opening and development of the mine to remove the coal. Can you tell me how much would be represented by that figure?
- A. Approximately \$250,000.
- Q. You know that the Highway Department of Pennsylvania has constructed a highway along what is called Route 668.
- A. I do.
- Q. And this right of way traverses the leasehold interests of Cunard Coal Company.
- A. It does.
- Q. Did you receive a letter from S. W. Jackson, Division Engineer of Division No. 2-0 of the Pennsylvania Department of Highways notifying you to cease mining any coal underneath the right of way of Route 668?

A. I did.

By Mr. Boulton:

We offer in evidence copy of letter dated March 18, 1930,  
addressed to Morrisdale Coal Company, signed by  
S. W. Jackson, Division Engineer.

By Mr. Scollins:

No objections offered, letter is admitted. (Exhibit D)

CROSS-EXAMINATION by Mr. Frank G. Smith:

Q. Mr. Smith, the coal property you state was developed in 1913?

A. Yes.

Q. You have gotten many times out of it the original investment  
in returns?

A. I don't know. I have nothing to do with the financial affairs  
of the Company. They have made some money at certain periods.

Q. Now, the improvements there, Mr. Smith, you say they cost  
upwards of \$400,000?

A. Yes, including inventory.

Q. That includes a lot of improvements put there during the  
existence of the Company?

A. Yes.

Q. Now the location of this road took no part of your improvements,  
did it?

A. It took part of the headings which were driven and on which  
yardage was paid. It made us abandon parts of the development

Q. The construction of this road, however, actually destroyed none  
of your improvements?

A. It did not.

Q. And you have headings through in under the road to get to the  
coal beyond the right of way?

A. Some headings.

Q. Well, sufficient headings to get the coal beyond the right of  
way?

A. No. We had to drive a heading along the north side of the  
new right of way which we would not have had to drive if they  
had not put a new road there. One particular heading.

Q. And it just made you work your mine on a different plan?

A. They just paid some additional heading yardage.

Q. For how long is this heading driven?

- A. I cannot answer that.
- Q. You don't know.
- A. No.
- Q. Could you give us an estimate?
- A. If the map were in evidence, I could show you on the map.
- Q. Well, could you give us an estimate from you own mind?
- A. It would cost about \$1.00 per foot for tonnage.
- Q. Would that be over and above profit they would receive from coal took out?
- A. That would be actual cost.
- Q. Well, what I am getting at, Mr. Smith, is would the coal that you got from driving this heading pay for the actual driving of the heading?
- A. I could not answer that question. That would depend on the market, on the selling price.
- Q. So then, Mr. Smith, you don't know whether or not it cost the Company \$1.00 or one cent to drive this heading or whether it recovered sufficient coal to pay them for the driving?
- A. I know that the Company paid the miners approximately \$1.00 per foot to do this work, which would not have been necessary if the new road had not been located.
- Q. But as to whether or not the Company lost anything by driving the heading, you are unable to state, which you testified it was necessary to drive on account of the construction of the highway?
- A. I was unable to state whether it cost them anything in addition to the cost of the coal.
- Q. On what leased premises is this highway constructed?
- A. On the lease from Sheldon Potter, Trustee, to Cunard Coal Company and lease from the Dorris heirs, I believe, to Cunard Coal Company, and lease from the Royal Coal Company to Cunard Coal Company.
- Q. The highway then, Mr. Smith, traverses part of the three leases?
- A. It does.
- Q. You did not calculate the number of tons that would be lost?
- A. I did not.
- Q. Your Company owns none of the coal outright.
- A. No, it does not.
- Q. All you have is the right to remove the coal, paying so much per ton for that right?



A. That is right.

Q. And do you know whether or not by the terms of the lease whether you are required to pay for coal that you can't recover?

A. The terms of our leases call for the removal of all merchantable and mineable coal.

Q. Have you notified your lessors that this coal was taken by the Commonwealth of Pennsylvania and that you would be unable to remove it?

A. We have.

Q. And you have in that way attempted to relieve any liability for the Company for the removal?

A. We have.

Q. And, of course, they recognize that you do not have to remove it under those circumstances?

A. They recognize that we dare not remove it under the circumstances.

Q. And, of course, the Company realizes that the - - -

By Mr. Boulton:

Objected to. Witness is not required to state conclusions of law.

By Mr. Scollins:

Objection sustained.

Question by Mr. Frank G. Smith:

You have advised your various lessors that the coal had been taken for a right of way and you did not intend removing it and were not going to pay royalty on it?

By Mr. Boulton:

Objected to because the witness has already answered the question.

By Mr. Scollins:

Objection sustained.

Question by Mr. Frank G. Smith:

Mr. Smith, you have taken what steps you thought were necessary in order to relieve your Company of any liability it might have to the lessors under the leases for the removal of this coal?

A. I cannot say that I have.

Q. Do you know whether or not any other officer of your Company has done so?

A. I do not.

By Mr. Reese:

Q. The north heading driven along side of the right of way, is that the 12th heading on this mine map?

A. It is.

EXAMINATION by Mr. Boulton:

Q. Mr. Smith, counsel for the County asked you whether or not the right of way and the notice from Mr. Jackson took from the Cunard Coal Company any of the development and you answered that it did not. I ask you if you do not consider the actual headings and the necessary ways underneath the surface as part of the development?

A. I do. If you will allow me to interpolate a little. Mr. Smith asked me if it destroyed any development. It did not destroy it, but we lost it.

Q. You lost the right to improvements because of this development?

A. Its use was lost. Yes.

Q. Did you have a course of development mapped out and advanced to such a point that you would be able to remove the coal in the territory of the right of way?

A. We did.

Q. Did you have to change your plans and go into additional expense to pursue another system of development to remove the same coal?

A. We did.

Q. By that you mean you had to drive this additional heading so it took double development by reason of the highway to reach the same block of coal?

A. It took some extra development.

Q. Counsel for the County asked you if you had got back the cost of the original development in the property and you answered, I believe, that you are not aware of the financial affairs of the Company.

A. That is right.

Q. Is not it a fact, Mr. Smith, that the original cost, being the sinking of the slope and the erection of the tibble, cannot be considered to be original development, and the actual driving of headings, air courses and passage ways underneath the ground, all are also a part of the Company's development?

A. They are.

Q. So the development of the mine is constant according to a set plan as shown by the mine map which you are required to keep, and any interference with the course of the development results in added expense?

A. It does.

CROSS-EXAMINATION by Counsel for County:

- Q. Mr. Smith, it is in the taking out of coal in the headings and places to use for air courses, etc., that you make your money out of, is it not?
- A. When any is made that is where it is partly made.
- Q. Yes, and so the driving of headings and air courses is really a profit to the Company, is it not as a general rule?
- A. I will answer you that question in this way, that it is the hope of the Company that there will be profits derived from headings and air courses.
- Q. And now, Mr. Smith, in regard to the headings, in the notice you had from the highway you were not told to discontinue the use of them?
- A. We were not.
- Q. And you are still using them?
- A. Some of them.
- Q. Well, it was not through any fault or on account of construction of this road that you are not using the other headings is it?
- A. In one instance it is.
- Q. What is the reason for that?
- A. We were told not to damage the highway and the cover being rather light, we would not want to drive wide rooms under this road because we feared they might cave in.
- Q. You were not prevented or told, instructed or requested to stop using any heading or air course which you had constructed through under this highway?
- A. We were not.
- Q. And the only actual thing you did stop using was the room, is that correct?
- A. No.
- Q. Well, why did you stop using this heading, if you did stop?
- A. It was to work the coal out beyond the highway, across the highway, which would have been worked by rooms from this heading and we had to drive what we have called the north heading to safe guard the right of way.
- Q. Then the driving of this north heading, Mr. Smith, was done by you as a precautionary measure to make sure that you would bring no liability on the Company?
- A. Partly. Also to mine the coal which was beyond the new road.
- Q. Did you not have sufficient headings driven under the new road at that time to take the coal out?
- A. Owing to some faults we encountered, we did not.

- Q. Oh, well then, the construction of this heading on the north was due to some faults and the construction of the highway.
- A. No, this particular heading was not driven on account of faults.
- Q. Well, was the heading which you abandoned, abandoned on account of faults?
- A. We abandoned - - -
- By Mr. Boulton:
- Objected to.
- By Mr. Scollins:
- Objection over-ruled. Answer the question.
- A. It was not.
- Q. In reality, Mr. Smith, there was no heading abandoned. The heading you spoke of abandoning is still used as a haulage way across in under the right of way, is being used to get the coal beyond the highway?
- A. That is correct.
- Q. And so there is no heading abandoned, is there?
- A. A portion of the 13th right from the old main heading was abandoned on account of taking out pillars in under the new highway. I will amplify to say that the heading is still open, but we stopped the pillar work under the highway which necessitated stopping the use of this heading.
- Q. You understand my question, Mr. Smith, and you might as well answer it. You did not abandon any heading entirely, did you?
- A. No, we did not.
- Q. And you still use that heading for a haulage way like all headings are used.
- A. No, today we are not, but it could be used.
- Q. And the only think that this highway did in regard to the heading you state in your early testimony was abandoned, was cause you to abandon pillars in headings and room, one or two rooms.
- A. That is correct.
- Q. And this heading you spoke of being constructed was just a cross heading from one heading to another of approximately a distance of 350 feet.
- A. That is correct.
- Q. And that was to take out coal which one room would have taken out if it had not been for the dip in the coal?
- A. I did not say that.
- Q. Well, it is not probably a fair question, you are not in there every day.

By Mr. Boulton:

Mr. Smith, you testified in answer to my question that in a certain place, namely what you called the north heading, a development was abandoned and a new development substituted by reason of the location of the highway.

A. I did.

Mr. R. W. Hess, being duly sworn, testified as follows:

Questioned by Mr. Boulton:

Mr. Hess, what is your position with the Cunard Coal Company.

A. Chief engineer.

Q. When did your employment with the Company begin?

A. On July first, 1923.

Q. You are familiar with the property and workings of the Cunard Coal Company?

A. I am.

Q. You are aware that a highway on part of Route 668 has been constructed over the leasehold interests of Cunard Coal Co.

A. Yes.

Q. Mr. Hess, state whether or not the Cunard Coal is made up of three leases, - one from the Royal Coal Company and two, one of 6/10 and one of 4/10 of an undivided interest in another tract, so there is really but two tracts in connection with this property, though there are three leases, two of the leases making up one of the tracts?

A. That is right.

Q. Will you state at what point the right of way of the highway enters the property on the Kylertown side, which is the Royal lease?

A. The highway enters the Royal lease at approximately 17+90 feet. That is approximate as our lease on the Royal property calls for all coal west of what is known as the "big fault".

Q. Your answer is approximate. It might be a few feet one way or the other, but the fault line has been determined by you and your answer is that it would be about Station 17+90.

A. That is right.

Q. Now, at what point does the right of way leave the property on the west, which would be on the Morrisdale Land Company - Dorris leases?

A. At approximately 62+60 feet.

- Q. Now, Mr. Hess, before you reached Station 62+60, the coal comes to an outcrop. Would you tell us approximately the location of this outcrop?
- A. The approximate location of workable outcrop is Station 47+20.
- Q. So the right of way traverses the workable coal of the Cunard Coal Company from Station 17+90 to Station 47+20.
- A. Yes.
- Q. Approximately how many feet?
- A. 2930 feet.
- Q. Now, Mr. Hess, what is your estimate of the tonnage required to be left underneath the right of way in connection with the Royal Coal property - solid and pillar coal?
- A. On the Royal property there is remaining 12,546 tons of recoverable solid coal and 1260 gross tons of pillar coal.
- Q. Do you base your calculation on any percentage of recovery?
- A. Yes, on the solid coal I took 85 per cent recovery and on the pillar coal 70 per cent.
- Q. Is that generally used among mining engineers?
- A. That is very low.
- Q. And you would say from your experience as a mining engineer it was a fair estimate for the locality?
- A. I did.
- Q. Mr. Hess, what is the estimate of the coal which must be left in place under the Morisdale Land Company - Dorris leases?
- A. On that there is 4182 gross tons of solid coal and 1482 tons of recoverable pillar coal.
- Q. What is the total of those figures which you have given?
- A. The total recoverable coal which is lost to the Cunard Coal Company is 19,416 tons.
- Q. Mr. Hess, you heard the testimony of Mr. Smith when he stated in answer to a question that the approximate cost of the development in connection with Cunard slope was \$250,000.
- A. I did.
- Q. Can you give me an estimate of the workable coal in connection with the Cunard property.
- A. You mean at the present time?
- Q. No, at the beginning.
- A. 5,000,000 tons.
- Q. Then am I right when I say that the average cost for development is five cents a ton in connection with this property?

A. That is generally figures by mining men as the cost of developing a property. You take a property undeveloped, you generally figure five cents per ton to develop that property.

Q. The figures in this case bear you out when you say the cost of developing was approximately \$250,000, on the basis of 5,000,000 tons. Q Mr. Hess, do you know how much the Cunard Coal Company had to pay or has to pay the Royal Coal Company for the coal in connection with their lease?

A. Fifteen cents per gross ton.

Q. What is the value to the Company of the coal underneath the Morrisdale-Dorris leases?

A. It should be the same, 15 cents per ton.

Q. What must be paid to the lessor?

A. Royalty at eight cents per ton.

Q. However, you say that the value of the coal to the lessee is the same as it would be in the other instance?

A. It should be. Yes.

Q. You obtained favorable terms, however?

A. Yes, the coal is both the same.

Q. Mr. Hess, will you take the map and answer a few questions in connection with changes necessary in the mine due to the construction of the road?

By Mr. Boulton: We offer blue print from a tracing of the mine map which is required to be kept by law and is in the office of the Company at Morrisdale, Pa.

By Mr. Scollins: Admitted as Exhibit "E".

Q. Mr. Hess, when this property was opened up, a certain course of development was taken for the removal of the coal in the territory in which the highway is located?

A. Yes.

Q. You estimate that development of itself cost the Company five cents per ton.

A. Yes, that is on a general estimate.

Q. So the coal left as required by the Highway represents an actual loss to the Company in the development necessary to reach it.

A. Yes.

Q. Mr. Smith testified in connection with what he termed the north heading that a certain development was abandoned and a new development undertaken to remove a certain block of coal and the abandonment was necessitated by the order of the Highway Department to leave the coal underneath the right of way?

A. In Room 10 on 11th right of the heading off second main, we had taken rock down in the room to work as a heading to remove coal laying to the right. When the Highway was

- A. (Continued) constructed we were instructed to take no coal from under the Highway. This necessitated going to the 12th right heading and driving a heading along the right of way of said highway to remove this coal, which would have been taken out of No. 10 room, thereby causing the Cunard Coal Company the cost of driving this heading, as called - "north heading".
- Q. Then, Mr. Hess, you abandoned the portion of the development and went into another heading and approached the coal from a different angle.
- A. We did.
- Q. Can you state for the purpose of the record the loss to the Company by that change? Do you have that calculated?
- A. No, it is not. Why it would mean the driving of another heading which was 350 feet and this heading cost us approximately \$1.00 per foot to drive. It would cost approximately \$350.00 for the heading.
- Q. You were already in position to remove that coal so that the yardage paid to approach it from a different angle was an additional cost?
- A. That was a loss.
- Q. You do not pay yardage in rooms?
- A. No.
- Q. The bulk of coal comes from room development?
- A. It does.
- Q. So that the driving of a heading is a necessary evil and for which you must pay \$1.00 per foot regardless of coal received therefrom.
- A. Yes.
- Q. So that the cost of driving an entry is \$1.00 per lineal foot more than the cost of driving from a room. Mr. Hess, was there any other place in the mine where the cost of reaching this coal can be apportioned to the coal which you must leave in place?
- A. Off the 11th right heading we are driving a heading to the right to pick up 10th right heading, which we would have driven through had it not been for the State Highway. This heading we figures will be cheaper for us to drive than to drive under the State Highway and leave the room coal in, but if it had not been for the State Highway, 10th right would have been driven through and thereby eliminated heading to the right of 11th right heading.
- Q. Did that change in plan necessitate any appreciable cost?
- A. Why, it will cost - all that heading would be additional.
- Q. Which you would not have had to pay if the plans were allowed to go through as originally laid out?
- A. As originally laid out, we would not have had this heading.



Q. Can you give us for the record, a calculation of that additional cost?

A. About 300 feet at \$1.00 per foot, making \$300.00?

Questioned by Counsel for County, F. G. Smith:

The last thing you spoke of was the cost of driving an extra heading of \$1.00 per lineal foot.

A. Yes.

Q. As a result of driving that heading, Mr. Hess, you have eliminated the driving of

A. Yes.

Q.

A.

Q. What is the difference in the distance that you would have to drive the 10th heading and the distance you would have to drive the present heading you spoke of.

A. There is only a couple hundred feet difference. One is driven to the dip and the other to the raise.

Q. But as actually driven, there is very little difference.

A. No, sir, a dip heading costs much more than a heading to the raise.

Q. To drive?

A. Yes. You may have to put a hoist in there or you may have water and have to put a pump in. The difference would cost \$1.00 per foot more.

Q. So the difference in cost is \$1.00 per foot more rather than \$1.00 per lineal foot?

A. Yes.

Q. You figured the cost of development at five cents per ton. Did you go to the books of the Company to determine that?

A. No, that is really - there is no book to show that. Mining men usually take that as the cost of development of a property. You have to have some standard to develop a property. That works out very close in actual practice.

Q. Then the statement of cost of five cents per ton is just an estimate engineers make generally.

A. It is very close. Some run a little over and some a little less.

Q. But as to whether or not the cost of five cents per ton in this particular mine, you don't know.

A. It did.

Q. How did you get that figure? Did you go over the books and calculate it?

A. We did, because we have just had an income tax case in Washington and I have worked it all up and it has cost just about five cents per ton. It was 4.76 per ton, is what it was up to 1927.

Q. So that is the cost that you figured out from the books, is 4.76 cents per ton and you made that up for income tax purposes.

A. That is what was taken from actual cost of the development.

Q. You made that up for the purpose of getting your income tax down?

A. No, we set that up for value for invested capital.

Q. And upon which you claim depreciation?

A. Yes.

Q. In making up that estimate, did you go back and get the whole cost from the books?

A. Every cost from the starting of the mine.

Q. And do you know what the assessed value of this property is?

A. No, I do not.

Q. You know that it is not anything like \$200,000. for taxes in Clearfield County?

A. I could not say what that is.

Q. Don't you know, Mr. Hess, as an actual fact, that it is less than \$150,000.?

A. I don't know. That really does not come under the engineering department.

Q. There has been no heading that were driven under the highway abandoned by the Company?

A. No. 10 room was driven as a heading, was abandoned. The only one abandoned.

Q. Room was it?

A. No. 10 room off 11th right is the only one abandoned.

Q. You have worked the entire amount of coal out of the room?

A. The coal was worked out with no additional cost, but to make the heading we went back and took rock for heading height.

Q. How long a room was that, Mr. Hess?

A. About 275 feet.

Q. Had it served its usefulness whenever you abandoned it?

A. No, it had not.

- Q. What were you going to do with it after you had taken all the coal out of it?
- A. We had it as a heading. We had taken all the coal out of the room, but we had it as a heading.
- Q. What were you going to use it for - to haul coal?
- A. Yes, coal. We were going to use it as a heading to haul coal out to the right of this room.
- Q. None of your main headings were abandoned as a result of this construction of the highway?
- A. No.
- Q. As a result of the construction of the highway, you had to drive two cross headings over a distance of about 300 to 350 feet each?
- A. Yes.
- Q. And one of those cross headings became necessary on account of the lay of the coal, as well as the construction of the road.
- A. No, we could have driven that with a hoist, but we could not go in through under the road, we had to come in above.
- Q. Yes, but Mr. Hess, you could have gotten the coal out that you got with the so-called north heading, with a room if it had not been for the lay of the coal.
- A. Yes.
- Q. So that heading was constructed due to the construction of the road and the lay of the coal, both?
- A. No, because if it had not been for the road, we had a way to work that.
- Q. If it had not been for the lay of the coal you could have worked it without this heading?
- A. No, we could not have worked it without the road there.
- Q. But if the coal had not been going to the dip you could have worked it without the construction of this additional heading?
- A. Well, if the coal had raised both sides, we could have.
- Q. If it had not been for the coal going to the dip, you could have worked it without the construction of this heading?
- A. Yes.
- Q. Is the construction of these two cross headings all the construction you done as the result of making this highway across your leased premises?
- A. It is the only thing at the present time. As we develop we may have more.
- Q. You know, as a mining engineer, Mr. Hess, that there is a profit made out of making these cross headings.

- A. These headings is what costs in the mine. If it was not for headings you would have a lot cheaper coal, because your cost is in the heading. When you come to a room you have no costs for rock work.
- Q. But the cost of the heading is \$1.00 per lineal foot approximately? Do you pay yardage in all your headings?
- A. Yes, all headings and back headings.
- Q. Did you ever figure out whether or not your Company made out on the coal paying this \$1.00 per foot for driving headings?
- A. The coal from the headings they do not make any profit on. If there is any profit made, it is from the rooms.
- Q. You figured out there was 12,600 tons of solid coal in the Royal property which you could not recover. Is that correct?
- A. Practically that.
- Q. And did you figure 85% recovery. Did you take the 15% from the total number of tons you figured there?
- A. Total number of tons to remain is 14,760 tons, but we will only recover practically 85%, which will give 12,546 recoverable coal lost.
- Q. And pillar coal you figured at 70% recovery?
- A. Yes.
- Q. Now, the pillar coal, Mr. Hess, it will be some years before you would be taking that out?
- A. No, there is some of it we were ready to take out when they started work on the road.
- Q. How much were you ready to take out then?
- A. I would say over half.
- Q. The balance to remain in there for years?
- A. No, it might be three or four years until they came back to that point.
- Q. Is your mine pretty well worked out?
- A. It is worked pretty well toward the property lines.
- Q. And you have very little solid coal ahead of you?
- A. No, not so much ahead.
- Q. So the most of your work or at lease which you are claiming is for the drawing out of pillars or what they call robbin' coal?
- A. No, it should be for three or four years. We have coal enough ahead to develop 2, 3 or 4 years.
- Q. There is no solid coal ahead though that the construction of this highway prevented you from recovering?
- A.

- A. We can get it with additional cost. There is no coal but what we can get, but we may have to drive dip headings instead of headings to the raise to get the coal.
- Q. The headings which you have through in under the highway are the headings which you anticipate to get the coal out through?
- A. Part of them.
- Q. Then you have other headings which you were going to drive?
- A. 8, 9 and 10 right.
- Q. Do they of necessity have to cross under the right of way?
- A. They would have had to to take the coal out beyond.
- Q. And as a result you are going to have to drive a cross heading instead?
- A. Yes.
- Q. Is that the heading you have already driven that you anticipate taking the coal out?
- A. Yes, we have started it.
- Q. So instead of driving three headings the other way, you are only driving one now.
- A. At the present time, yes, but we will break all three off this heading.
- Q. Is this coal faulty, Mr. Hess?
- A. There is a big fault at the east side of this lease and occasionally some faults through, but it would not be called faulty coal.
- Q. Are there any of these faults running through the coal that you are claiming was taken as the result of the construction of the highway?
- A. I imagine there will be, one of them.
- Q. Then you take that in consideration in estimating the number of tons of recoverable coal?
- A. Yes, these faults are nothing more than a jump up or jump down of the coal. It drops and continues, or may raise. There is no loss in coal there.
- Q. Is your coal not uniform throughout?
- A. Practically so.
- Q. What is the variation in height?
- A. I suppose it will run from about 3 feet 6 inches to four feet three inches. I used three feet nine inches in making this estimate.
- Q. What is the general run of the height of the coal in your immediate vicinity where the road goes through?

- A. About three foot nine inches.
- Q. And you take into consideration in estimating the number of tons whether there was runs of boney in it that you had to throw away.
- A. We throw the boney away. We don't use it in estimating the coal.
- Q. What is the cover on the coal there, Mr. Hess?
- A. Do you mean the thickness of the cover?
- Q. Yes.
- A. It will run from 40 feet up to 125 feet.
- Q. I am particularly anxious to know what it is under the highway.
- A. When you come down to the workable out-crop about 30 feet where we consider that we can't work any further, then it gradually goes up to where you have 100 to 125 feet cover.
- Q. I don't suppose you know anything of the financial construction of the Company either.
- A. No.
- Q. Do you know what the profit on coal actually mined and shipped from that mine at the present?
- A. I don't think the profit is very strong.
- Q. Do you have any idea?
- A. No, I do not know.
- Q. Could you give us an estimate?
- A. I am not in the selling or financial end. That is all taken care of at the Philadelphia office.
- Q. Do you know whether the Company made or lost money last year?
- A. No, I don't.
- Q. Mr. Hess, could you not give us some idea of what the profit on a ton of coal is from that mine?

Objected to by Mr. Boulton.

By Mr. Scollins:

Objection over-ruled. Answer the question.

- A. I could not.
- Q. How did you arrive at the price to the Company of 15¢ per ton?
- A. Because the Coal Company has to pay 15¢ per ton royalty.
- Q. Why did you say that the entire cost was 15¢ per ton when one of your leases calls for 15¢ per ton and the other 8¢?

- A. One lease happened to have been made many years ago and was made for 8¢, but we figures this coal is worth as much as the coal on the Peale tract.

By Counsel for County: We now object to the letter introduced from S. W. Jackson under date March 18, 1930, for the reason that the letter is not addressed to the claimant in this case and the engineer had no right or power to bind the County Commissioners of Clearfield in any manner.

We object to the allowance of any sum to Cunard Coal Company in this proceeding for the reason that the petition as presented and the evidence developed show that the Cunard Coal Company is only a lessee and does not own the coal; for the further reason that they have failed to present to the viewers any loss that they actually suffered.

By Mr. Boulton:

I believe the petition and the ~~petition~~ <sup>we</sup> is in slight variance, so move ~~to~~ <sup>amend</sup> the petition to conform with the brief.

By Mr. Scollins:

Amendments allowed.

# /

TO: Clifford Smeal, Wm. Hickson and Mike Francisco, Supervisors  
of Morris Township, Clearfield County:-

You are hereby notified that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County, Pennsylvania, to No. 2, February Sessions, 1931, to view and assess damages done to the property of the Cunard Coal Company in Morris Township by the construction of an improved highway between the village of Bigler and the village of Allport, being part of Route 668, in Clearfield County aforesaid, will meet at the Cunard Mine in Morris Township on Tuesday, the 3rd day of March, A. D. 1931 at ten (10:00) 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 Thursday, the 5th day of March, A. D. 1931 at ten (10:00) o'clock A. M., or as soon thereafter as counsel can be heard, at which time and place all parties interested may attend and be heard.

John Collins  
Harry Reese  
J. D. Michael  
Viewers

Dated, February 17, 1931.

CLEARFIELD COUNTY :SS,

Now, this 23<sup>rd</sup> day of February, A. D. 1931,  
service of the above Notice is accepted for the Supervisors of  
Morris Township, Clearfield County.

Clifford Smeal  
Mike Francisco  
William Hickson  
Supervisors



TO: The 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. 2, February Sessions, 1931, to view and assess damages done to the property of the Cusard Coal Company in Morris Township by the construction of an improved highway between the village of Bigler and the village of Allport, being part of Route 668, in Clearfield County aforesaid, will meet at the Cusard Mine in Morris Township on Tuesday, the 3rd day of March, A. D. 1931 at ten (10:00) o'clock A. M., to attend to the duties assigned them: all parties interested will take notice.

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John Tollins  
Harry Reese  
J. D. Michael  
Viewers

Dated, February 17, 1931.

CLEARFIELD COUNTY, SS:

Now, this 24<sup>th</sup> day of February, A. D. 1931, service of the above notice is hereby accepted for the Commissioners of Clearfield County.

L. C. Warrick  
Clerk

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

CUNARD COAL COMPANY :

v. : No. ,

Sessions, 1931.

COUNTY OF CLEARFIELD :

PETITION FOR VIEWERS.

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

The petition of Cunard Coal Company respectfully  
represents:

1. That it is a corporation organized and existing  
under the laws of the Commonwealth of Pennsylvania, having its  
principal office in the City of Philadelphia, and conducting its  
chief operation in the Township of Morris, County of Clearfield,  
Pennsylvania.

2. That the principal business of the Company is the  
mining and marketing of coal from its properties in Morris Town-  
ship, as aforesaid.

3. That it is the lessee of two tracts of land in  
said Township of Morris under leases as follows:

(a) A lease dated August 1, 1912, between  
Annie Dorris Chisolm, Julia Dorris, Mary Dorris  
Miller and John D. Dorris, Executors of the will  
of William Dorris, William Wallace Chisolm,  
~~Executor of John M. Dorris, lessors and~~  
Cunard Coal Company.

(b) A lease dated December 5, 1912, between  
Sheldon Potter, Trustee, lessor, and Cunard Coal  
Company.

(c) A lease dated January 3, 1924, between  
Royal Coal Company, lessor, and Cunard Coal  
Company.

Leases (a) and (b) cover the coal underlying one tract, being for an undivided four-tenths (4/10) and six-tenths (6/10) interest respectively.

4. That the leases above mentioned provide for the removal of all the coal in a certain seam underlying the tracts and the payment therefor as follows: eight (8¢) cents per gross ton in the first instance and fifteen (15¢) cents per gross ton in the second instance.

5. That the Cunard Coal Company has entered under these leases and is conducting an extensive mining operation on the same.

6. That on the 26th day of December, 1929, the Governor of Pennsylvania approved a plan and survey for an improved highway between the village of Bigler and the village of Allport, being part of Route 688.

7. That a portion of this right of way traverses the leasehold interest of the Cunard Coal Company under the leases aforesaid as follows: Beginning at Station 17+20 on the survey of the Highway Department as shown by maps on file in the office of the Commissioner of Clearfield County and continuing a distance of about 4470 feet to Station 62+60 on said survey.

8. That on the 18th day of March, 1930, the representatives of Cunard Coal Company received a letter signed by Stuart W. Jackson, Division Engineer of the Pennsylvania State Highway Department, notifying them to cease their operations underneath the route of the highway as approved, and notifying them that no coal other than that already removed was to be taken from under said right of way.

9. That a conservative estimate made by the engineers of Cunard Coal Company is to the effect that under the first tract it will be necessary to leave 5610 tons of pillar coal, and under the second tract, it will be necessary to leave in place 12,300 tons of solid coal.

10. That by reason of the location of said highway the Cunard Coal Company suffers a direct loss of the value of the coal which it must leave underneath the right of way, and in addition to the direct loss, as aforesaid, the Company is denied a reasonable profit on said coal, fails to obtain its full rights and bargain under the lease as set forth, and suffers a loss due to development of its underground workings in order to place itself in position to mine and remove said coal.

11. That the damage to the Cunard Coal Company by reason of said location of the highway is in excess of four thousand (\$4,000) dollars.

12. That on the 22nd day of April, 1930, the firm of Boulton & Boulton, attorneys for the Cunard Coal Company, wrote the commissioners of Clearfield County indicating the nature of their loss and requesting a conference upon the matter of these damages and they have had no reply to this request from said commissioners, and no offer has been made to the Company or their attorneys for an amount by way of damage due to the location of the road as aforesaid.

WHEREFORE, your petitioners pray that your Honorable Court appoint viewers to appraise and estimate the damage done by the acts of the Commonwealth, its officers, agents and contractors, in appropriating portions of the leasehold interest of your petitioner and other acts done in consequence thereof and that said viewers be appointed and report according to the acts of Assembly relating thereto.

  
Attorneys for Cunard Coal Company.

STATE OF PENNSYLVANIA :  
                              : SS:  
COUNTY OF CLEARFIELD :

Before me, the subscriber, personally appeared  
LeBaron Smith, who being duly sworn according to law doth  
depose and say that he is the Resident General Manager of  
the Cunard Coal Company and that the facts set forth in the  
foregoing petition are true and correct.

LeBaron Smith

Sworn and subscribed before me  
this 18 day of December, A. D.  
1930.

WILLIAM SLEE J.P.

My commission expires  
First Monday of Jan 1934

has said & ed of this & there viewed I  
foregoing petition and to also bearing  
duly sworn in presence of me and in belief

NOTED FOR FILE

**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 23rd day of December  
in the year of our Lord one thousand nine hundred  
thirty one

Judge of the same Court: Upon the petition of sundry in-  
habitants of the Township of Morris  
in said County, setting forth that

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 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 quali-  
fied 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, do hereby 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 Morris and that three notices thereof were posted along the route of the proposed road, that the said view would be held on the 3rd day of March A. D. 1931, and the hearing to be held in the Arbitration Room, at the Court House, in Clearfield, Pa., on the 5th day of March, 1931, at 10:00 o'clock A. M. That three viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view: L. B. Smith, R. M. Hess and R. F. Aldstadt,

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 5th & 13th day of March A. D. 1931, when the following appearances were noted: L. B. Smith, general manager, and R. M. Hess, Chief Engineer, of petitioner, with Harold J. Boulton, Esq., as counsel; Frank G. Smith, Esq., appeared for Clearfield County. L. B. Smith and R. M. Hess sworn, examined and cross-examined; testimony transcribed and hereto attached and made a part hereof. Hearing adjourned until July 24, 1931, at which time when the following

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

(Hereinafter) appearances were noted: Harold J. Boulton for petitioners and A. M. Liveright, Esq., as County Solicitor, and petition amended and by Order of Court, dated September 11, 1931, the following parties were joined as landlords and parties-plaintiff: Morrisdale Land Co., Estate of William Dorris and Rachel Wilkinson, assignee of Victor Coal & Coke Co. owned by Rembrandt Peale.

Further adjournment was then taken to March 11, 1932, by agreement of counsel, and subsequently to April 8, 1932, when arguments were concluded, at which latter hearing Harold J. Boulton, Esq., appeared for petitioners and Frank G. Smith, Esq., for Clearfield County.

A stipulation was entered of record by Harold J. Boulton, Attorney for Rachel Wilkinson and petitioner, "It is agreed that the claim of Damages under Lease of Royal Coal Company be withdrawn, without prejudice of right to claim damage in the future".

After the view and hearings above mentioned, the undersigned Board of Viewers agree that damages have been sustained by the petitioners in the construction of an Improved Highway between the Village of Bigler and the Village of Allport, being part of Route 668, in the County of Clearfield.

We further find that the petitioner, a Pennsylvania corporation whose principal business is the mining and marketing of bituminous coal, having its operations in the Township of Morris, in the County of Clearfield, is the lessee of two tracts of land in said Township:

- (1) Under Lease dated August 1, 1912 from Annie Dorris Chisolm, et al.
- (2) Under Lease dated December 5, 1912 from Sheldon Potter, Trustees, and
- (3) Under Lease dated January 3, 1924 from Royal Coal Company,