

ROAD

DOCKET No. 6

Number
2

Term
Dec. SS

Year
1936

James Beard and

Eva D. Beard

Versus

Clearfield County

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BEARD AND EVA D. BEARD :

- vs -

: No. 2 December Sessions, 1936

CLEARFIELD COUNTY :

AMENDMENT TO PETITION

To the Honorable W. Wallace Smith, President Judge of said Court:

Petitioners, James Beard and Eva D. Beard, respectfully represent:

1. That paragraph 10 of the original petition avers notification in writing by the Secretary of Highways of the Commonwealth of Pennsylvania to the County Commissioners of Clearfield County of the contemplated change in said Highway, and avers further that "a copy of said written notification being attached hereto, made a part hereof and marked petitioners' exhibit "A"."

2. That exhibit "A" as thereto attached does not embrace the section of the road on which the petitioners' leasehold interest fronts. It was attached to the original in error.

3. Your petitioners desire to amend the original petition by making a part hereof the correct notification in writing from the Secretary of Highways of the Commonwealth of Pennsylvania to the County Commissioners of Clearfield County, a copy of which said written notification is attached hereto, made a part hereof and marked petitioners' exhibit "A-1", which said exhibit "A-1" your petitioners desire the court to consider in lieu of exhibit "A" attached to the original petition.

4. Defendant complains in its motion to quash the petition for appointment of Viewers that the petitioners have not attach-

5. It is averred that the State Highway as it existed for many years prior to the construction of the new concrete driveway has been vacated, abandoned and destroyed so that the same is no longer available as an access to plaintiffs' place of business.

WHEREFORE, your petitioners pray your Honorable Court for an order authorizing the amendments to their original petition in the particulars herein set forth.

And they will ever pray,

x James B. Beard
x Eva D. Beard

STATE OF PENNSYLVANIA: : SS:
COUNTY OF CLEARFIELD :

Before me, the undersigned, personally appeared JAMES BEARD AND EVA D. BEARD, who, being duly sworn, according to law, depose and say that the facts contained in the foregoing petition are true and correct.

Sworn to and subscribed before:
me this 26th day of October,
A.D., 1936.

+ James B Beard
+ Eva R Beard

W. ALBERT RAMEY
ATTORNEY AT LAW
CLEARFIELD, PA.

H. R. Gallagher
Brothmastery

- 3 -

PETITIONERS' EXHIBIT
"A-1"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HIGHWAYS

Harrisburg

November 20, 1935

O.R. 221
Clearfield
R. 57-3

Commissioners of Clearfield County,
Clearfield,
Pennsylvania.

Gentlemen:

We are forwarding to you a print of the approved plans for the relocation, construction and condemnation of right-of-way for Route 57, Section 3, Clearfield County, between Stations 935/99.4 and 1055/47.73, for which the county has assumed responsibility for property damages.

If any property is condemned by these plans for which releases have not been obtained, the county should endeavor to secure them at the earliest opportunity.

If any structures are to be removed, prompt action should be taken by the county so that construction may not be delayed.

Very truly yours,

Warren Van Dyke
Secretary of Highways

By P. M. Tebbs
Deputy Secretary of Highways

PETITIONERS' EXHIBIT "C"

ARTICLE OF AGREEMENT, MADE and entered into this 28th day of June 1935, between Sterling Oil Company of Pennsylvania, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office at Emlenton, Pennsylvania, Venango County, hereinafter called lessor, of the first part and James B. Beard and Eva D. Beard, his wife, trading as Beard's Service Station of Township of Lawrence county of Clearfield State of Pennsylvania, hereinafter called lessee, of the second part.

WITNESSETH: That the said lessor, for and in consideration of the rents and covenants hereinafter mentioned and reserved (and on the part of the lessee to be paid, kept and performed) has demised, leased and let unto the lessee all that certain lot of ground situated on Pennsylvania State Highway route No. 322 approximately one half mile east of Clearfield, Pennsylvania, having erected thereon a metal filling station building heretofore, known and operated as Sterling Service Station No. 1 - Clearfield, Pennsylvania, also all that certain lot of land situated on Pennsylvania State Highway route No. 322 approximately one half mile west of Clearfield Pennsylvania, having erected thereon a brick and stucco filling station building heretofore known and operated as Sterling Service Station No. 2, Clearfield, Pennsylvania, together with all gasoline and oil tanks and pumps pertaining to the distribution of gasoline and oil and any other machinery or equipment, now or later installed or loaned by the lessor, for the term of one year beginning July 1, 1935, to be used as a retail gasoline and oil service station, and for the sale of such automobile accessories, supplies and equipment as are approved by the lessor, and for car washing, greasing, battery service, etc., and for no other purpose, for the total minimum rental of Four Hundred and Eighty Dollars (\$480.00) payable monthly at the rate of one-half cent per gallon of gasoline on all deliveries of gasoline made by the lessor to the lessee during each current month - such monthly rentals to be paid on or before the 15th of each succeeding month. It is further agreed between the parties that should the aggregate monthly rentals for the period of twelve months beginning July 1st, 1935 based on one-half cent per gallon of gasoline be less than Four Hundred and Eighty dollars, then and in such event the lessee will pay the lessor the difference between the total monthly rentals paid the lessor and the minimum yearly rental of Four Hundred and Eighty Dollars. Such payment to be made within twenty days after the expiration of the twelve month period beginning July 1st, 1935. It is further agreed between the parties that in the event the aggregate monthly rentals paid the lessor by the lessee for the twelve month period beginning July 1st, 1935 should exceed a total of six Hundred Dollars, then and in such event the lessor agrees to refund the lessee the difference between the rentals paid for the twelve month period beginning July 1st, 1935 and Six Hundred Dollars. Such refund to be made within twenty days after the expiration of said twelve month period. Which rent so reserved the said lessee agrees to pay regularly as it may fall due or within five days thereafter. The lessee, as security for the payment of all rent falling due under this lease, hereby grants, bargains and sells to the lessor all property, goods and merchandise of the lessee upon the premises, or to be brought thereon, without any exception.

Lessee covenants and agrees to pay for any and all gas, electric current and water used in the operation of the station. All bills to be paid direct the companies furnishing such service, in accordance with their terms.

Lessee further agrees that the properties and building or buildings, shall be kept and maintained in a manner which meets the approval of the lessor, and the business of selling and dealing in commodities heretofore mentioned to be conducted on said properties shall be conducted in a business like manner, and comply with all regulations of local authorities and the State of Pennsylvania, concerning the conduct of such business.

It is further understood and agreed that no gasoline or similar product shall be stored on said lots above ground, but the storage of gasoline shall be in all respects and at all times in accordance with the regulations of the State of Pennsylvania or the department having supervision thereof, and in accordance with the regulations of local authorities.

Any removal or attempt at removal of any goods or chattels from said premises by the lessee while any portion of the rent for the past month shall be unpaid, shall be deemed a fraudulent and clandestine removal, and the rent and chattels so removed may be followed for the space of thirty days and seized for the collection of the same by Landlord's Warrant. It is further agreed, that as often as default be made in the payment of any installment of rent when due, that the lessor may proceed by Landlord's Warrant at any time after such default, and make collection of all rent then due, with costs of such proceeding, the said lessee hereby waiving the benefit of all laws or usages exempting any property from liability for rent, and the lessor not waiving any remedies given by existing laws. The lessee hereby authorizes any attorney of any Court of Record, as often as default be made in the payment of said rental, to appear for him and confess judgment or judgments against him for the amount of rent the due and unpaid, with attorney's commission of five per cent., and costs of suit, without any stay of execution, waiving inquisition and exemption.

The premises are not to be underlet, or this lease transferred, without the lessor's consent in writing, under penalty of instant forfeiture and right of re-entry for such breach. On the expiration of this lease, the properties to be surrendered in as good condition as they now are excepting reasonable wear and tear, and accident beyond control of lessee, without further notice from said lessor.

It is further understood and agreed that the lessee will sell no other petroleum products on said dem sed premises than those manufactured or distributed by the Sterling Oil Company, Emlenton, Pennsylvania.

It is also further understood and agreed that if the above named lessee shall lawfully continue on the above described premises after the termination of the above lease, then this agreement is to continue in full force and for another year and so on from year to year until legal notice is given for removal, each renewal being subject to the conditions of this lease.

Lessee further agrees that the business shall be conducted in conformity with all regulations now or later put into effect by the United State Government or any agency thereof.

In witness Whereof the party of the first part has caused this lease to be signed by its Assistant General Manager and the said party of the second part has hereunto set his hand and seal the day and year first above written.

- 6 -

STERLING OIL COMPANY OF PENNSYLVANIA

By (signed) R. NEWTON
Assistant General Manager

Witness: A. L. WELLER

(signed) JAMES B. BEARD (SEAL)

Witness: A. L. WELLER

(signed) EVA D. BEARD (SEAL)

ORDER OF COURT

NOW, October _____, 1936, the foregoing petition having been read and considered, it is ordered and decreed that the prayer of the petitioners as hereto attached be authorized and the amendments therein prayed for are hereby approved with the same force and effect as if the same were a part of the original petition.

By the Court,

P. J.

27 Certificate 1926 review of amendment accepted for
Clearfield County
D. W. Sweeney
County Auditor

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA
No. 2 December Sessions, 1936
JAMES BEARD AND EVA D. BEARD - VS - CLEARFIELD COUNTY
AMENDMENT TO PETITION
Dec 27-1936 Inverness Illinois In the Court of the County of Clearfield Pa. W. ALBERT RAMEY ATTORNEY AT LAW CLEARFIELD, PA. The Tuttle Law Print, Publishers, Rutland, Vt.

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BEARD AND
EVA D. BEARD

- vs -

CLEARFIELD COUNTY

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:
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No. December Session, 1936

To the Honorable W. Wallace Smith, President Judge of said Court:

The petition of James Beard and Eva D. Beard respectfully represents:

1. That your petitioners are residents of Lawrence Township, Clearfield County, Pennsylvania.

2. That your petitioners are the owners of a leasehold interest in and to that certain lot or piece of ground, together with the improvements thereon, as is situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

All those two certain lots of ground known in the plan of Weaverhurst as Lots Nos. 117 and 118, bounded and described as follows:

On the North by Daisy Street; on the East by an alley; on the South by an alley; on the West by Lot No. 116 in the plan of Weaverhurst, fronting 100 feet on Daisy Street and extending back from Daisy Street a distance of 150 feet. Being the same premises which John Boyce by his deed dated February 18, 1924 conveyed to Sterling Oil Company, as recorded in Clearfield County for the recording of deeds in Deed Book 269, page 237.

3. That said lot of land, heretofore and until the 1st day of August, 1936 as well as the improvements and equipment situate thereon, has for the past eleven years been devoted to the sole and exclusive uses ordinarily incident and pertaining to a gasoline and automobile service station.

4. That your petitioners are the lessees of said lot or piece of ground and improvements and equipment thereon under and by

virtue of the terms of a written lease agreement made and entered into with Sterling Oil Company, the owner of said premises.

5. That your petitioners conducted the business of vending gasoline and such other business as is ordinarily incident and pertaining to an automobile service station on said premises in their own name and were the sole and exclusive owners of the business conducted on said premises.

6. That your petitioners' leasehold interest in said premises was of great value to them.

7. That said above described premises abuts on what is known as the Lakes-to-the-Sea Highway, being United States Route No. 322 and known as Pennsylvania Legislative Route No. 57, Section 3, and has a frontage on said highway of approximately 100 feet between stations 1024 and 1026 on said highway. Entrance to said premises by automobile for the purposes of the business hereinbefore detailed was heretofore gained from said highway.

8. In the months of June, July and August of 1936, the Secretary of Highways of the Commonwealth of Pennsylvania undertook the construction, reconstruction and improvement of said State Highway, and did construct, reconstruct and improve the same in Bradford and Lawrence Townships, Clearfield County, from stations 935 + 99.4 to station 1055 + 47.73, as approved by the Secretary of Highways and Governor of the Commonwealth of Pennsylvania on October 2, 1935, which construction, reconstruction and improvement consisted of a change of width as well as of existing lines and location of said highway.

9. The changes in said highway at the point where the petitioners' property abuts thereon consist of the construction of a

twenty-foot concrete road with a five-foot berm on each side thereof which said concrete portion of the highway and berm were constructed a distance of approximately nineteen feet north of the north line of the petitioners' property as well as a distance of five and one-half feet lower than the driving portion of said highway as existed. As a result thereof, the entrance to the petitioners' gasoline and automobile service station by automobile from said highway was completely destroyed resulting in a complete loss of the use of said premises for the purposes to which it had heretofore been devoted for the past eleven years and thus causing a total loss of value of petitioners' leasehold interest therein.

10. Before the Secretary of Highways of the Commonwealth of Pennsylvania entered upon the construction, reconstruction and improvement of said highway, he notified the County Commissioners of Clearfield County, in writing, of the contemplated change in the width and existing lines and location of said highway, a copy of said written notification being attached hereto, made a part hereof and marked petitioners' exhibit "A".

11. The County Commissioners of Clearfield County subsequently, to wit, August 31, 1935, agreed in writing to the change in width and existing lines and location of said highway, and agreed further that Clearfield County would assume any liability for property damage, resulting from the construction, reconstruction and improvement of the highway as contemplated; by resolution of the Board of said County Commissioners, a copy of said resolution being attached hereto, made a part hereof and marked petitioners' exhibit "B".

12. It is averred that the undertaking of the County Commissioners of Clearfield County has become binding upon Clearfield

County, and that said Clearfield County has received from the Commonwealth of Pennsylvania funds withheld from the liquid fuels tax and payable to it.

13. The County Commissioners of Clearfield County have refused to enter into an agreement with the petitioners as to the amount of damage to be paid to them.

WHEREFORE, your petitioners pray your Honorable Court to appoint viewers to view the premises of the petitioners and to assess such damages as they may find that petitioners' leasehold interests therein suffered, and to report the same to your Honorable Court as in such cases made and provided.

And your petitioners will ever pray, etc.

James B. Beard
Eva D. Beard

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

Before me, the undersigned, personally appeared JAMES BEARD AND EVA D. BEARD, who, being duly sworn, according to law, depose and say that the facts contained in the foregoing petition are true and correct.

Sworn to and subscribed before :
me this 8 day of September, A. D., 1936.

James B. Beard
Eva D. Beard

W. ALBERT RAMEY
ATTORNEY AT LAW
CLEARFIELD, PA.

W. Albert Ramey
Notary Public

MY COMMISSION EXPIRES FIRST
MONDAY IN JANUARY, 1940.

PETITIONERS' EXHIBIT "A"

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF HIGHWAYS

HARRISBURG

AUGUST 2, 1934

In your reply please
refer to O. R. 221
Clearfield
R-57

Commissioners of Clearfield County,
Clearfield,
Pennsylvania

Gentlemen:

We are forwarding to you a print of the approved plans for the relocation, construction and condemnation of right-of-way for Route 57, Decatur Township, Clearfield County, between Stations 1196/00 and 1273/19, for which the county has assumed responsibility for property damages.

If any property is condemned by these plans for which releases have not been obtained, the county should endeavor to secure them at the earliest opportunity.

If any structures are to be removed, prompt action should be taken by the county so that construction may not be delayed.

Very truly yours,

S. S. Lewis

Secretary of Highways

By P. M. Tebbs

P. M. Tebbs
Deputy Secretary of Highways

PETITIONERS' EXHIBIT "B"

Be it resolved by the County Commissioners of Clearfield County, that the plans submitted by the Department of Highways for the changing of the State Highway Route 57 in Bradford and Lawrence Townships between Station 935-99.4 and Station 1055-47.73 have been examined and the County Commissioners agree that the County will assume any liability for property damage resulting under Act 32, approved April 13, 1933, from the construction of the highway as contemplated by these plans; that this undertaking shall not become binding upon Clearfield County until it shall have received from or through the Commonwealth of Pennsylvania the funds that have been withheld from the Liquid Fuels Tax that would otherwise have been payable to it.

J. C. Gatehouse

W. T. Thorp

W. V. Carr

Commissioners

I hereby certify that the foregoing resolution was duly adopted at a meeting of the County Commissioners held August 31, 1935, and that it has been recorded as required by law.

Myra E. Lucas

Assistant Clerk

COUNTY SEAL

August 31, 1935

ORDER OF COURT

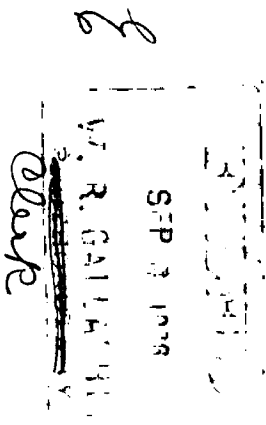
NOW, September 8, 1936, the foregoing petition, having been read and considered, it is directed that a Rule issue to the County Commissioners of Clearfield County to show cause why Viewers should not be appointed as prayed for. Returnable to first Monday of October, 1936.

By the Court,

Robert R. Riney
P.J. 55th Jud Dist
Specially Presiding

8 September 1936, same accepted and issue of rule waived.
Q.M. Fawcett
County Auditor
Clearfield County

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IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA
No. ² December Session, 1936
JAMES BEARD AND EVA D. BEARD - vs - CLEARFIELD COUNTY
PETITION FOR THE APPOINT- MENT OF A BOARD OF VIEW
 <p>W. ALBERT RAMEY ATTORNEY AT LAW CLEARFIELD, PA.</p> <p>The Turtle Law Print, Publishers, Rutland, Vt.</p>

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNA

JAMES BEARD AND EVA D. BEARD

-vs-

CLEARFIELD COUNTY

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No. 2 December Sess. 1936

ANSWER OF DEFENDANT TO THE PETITION FOR APPOINTMENT OF
VIEWERS

TO THE HONORABLE W. WALLACE SMITH, PRESIDENT JUDGE:

The County of Clearfield, by its County Commissioners, makes answer to the petition and the amended petition in this case, as follows:

(1). The establishment of any new lines and location, or revised lines and location of State Highway Route No. 57, section No. 3, in Clearfield County, from Station 935 plus 99.40 to Station 1055 plus 47.73 was not legally effectuated by the approval of the Secretary of Highways of the Commonwealth or by the Governor of the Commonwealth of Pennsylvania, until October 2, 1935, at which date the improvement undertaken and the change undertaken were established "as and for the width, lines, location and grades of said State Highway Route No. 57, Section No. 3 in Clearfield County", between the stations already designated.

(2). Prior to that date there were no legally established new lines or location in respect of which the public authorities of Clearfield County could properly have any matter before them for consideration.

(3). Exhibit "B" attached to the original petition in the case purports to show action taken by the County Commissioners of Clearfield County on August 31, 1935, in respect of the subject matter, such action was premature in law, and the recited resolution is without any legal effect to bind the County of Clearfield.

(4). The legal width of State Highway Route No. 57 at the point at which petitioners contend they have been damaged is and has been sixty feet. The premises as to which petitioners aver that injury has been inflicted upon them have been a part of the right of way of said highway for a width of not less than six feet, and the gasoline and automobile service station in respect of which petitioners claim they have been harmed, lies within the legal bounds of said highway Route No. 57, as said highway route was established for many years.

(5). Petitioners have been trespassers; and said gasoline and automobile service station upon the leasehold as to which petitioners contend they have rights, has encroached upon said highway Route No. 57, and is violative of the rights of the public.

(6). The damage alleged to have been sustained by petitioners as asserted, is primarily attributable to lowering of the grade five and one-half feet, the consequences of which, if it be a fact that the grade has been so changed, do not entitle petitioners to the appointment of Viewers.

for
WHEREFORE, the reasons assigned respondent prays that the petition be dismissed, and that the rule granted in this case be discharged.

COUNTY OF CLEARFIELD

BY J. E. Gathhouse
A. R. Werners
H. J. Carr

STATE OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

J. C. GATEHOUSE, T. R. WEIMER and WILLARD V. CARR ,
County Commissioners of Clearfield County, being duly sworn
according to law, depose and say that the facts set forth in
their foregoing Answer, where stated from their own knowledge
are true, and where stated upon information derived from others,
they believe them to be true.

Subscribed and sworn to before
me this 27th day of November
1936.

Mura E. Lucas
Chief Clerk.

J. C. Gatehouse
T. R. Weimer
W. V. Carr

74. a. R

Quarter Sessions

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.

NO. 2 DECEMBER SESSIONS

JAMES BEARD AND EVA D. BEARD

VS

COUNTY OF CLEARFIELD

ANSWER OF COUNTY OF CLEAR-
FIELD.

2.

nov. nov 20, 1936, Service accepted by copy
Walter Gann
att for def

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

JAMES BEARD and
EVA D. BEARD

VS.

CLEARFIELD COUNTY

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OPINION

James Beard and Eva D. Beard presented a petition for the appointment of viewers upon which a rule was issued to the Commissioners of Clearfield County to show cause why Viewers should not be appointed as prayed for. An answer was filed thereto and upon this petition and answer the question is before us whether or not viewers should be appointed.

The facts as they appear from the petition are as follows: Route No. 57 is a State Highway, and in June, July and August of 1936 the Secretary of Highways undertook and carried out the reconstruction of said Highway in Lawrence Township with some changes in location. The petitioners are lessees of a lot whereon, for some years prior to the improvement, they had conducted a gasoline station, to which business their premises had been adapted. The petitioners aver that they have been greatly injured by the reconstruction of the highway as it abuts on their premises. After appropriate notice of the proposed change by the Secretary of Highways, the County Commissioners assumed the liability connected therewith, in the manner provided by law.

The portions of the petition which describe the changes alleged to have caused damage are as follows:

"The changes in said highway at the point where the petitioners' property abuts thereon consist of the construction

of a twenty foot concrete road with a five foot berm on each side thereof which said concrete portion of the highway and berm were constructed a distance of approximately nineteen feet north of the north line of the petitioners' property as well as a distance of five and one-half feet lower than the driving portion of said highway as existed. As a result thereof, the entrance to the petitioners' gasoline and automobile service station by automobile from said highway was completely destroyed, resulting in a complete loss of the use of said premises for the purposes to which it had heretofore been devoted for the past eleven years and thus causing a total loss of value of petitioners' leasehold interest therein."

While the answer avers that the petitioners' property was in part within the sixty feet previously established as the State's right of way for said Highway, and that the damages alleged are therefore in part as to property upon which the petitioners have been trespassers, the fact is not admitted and is not before us. The petition is to be considered upon its averments alone.

The petition as quoted above avers two facts upon which liability is claimed to exist, namely the fact that the newly improved roadway is nineteen feet North of the petitioners' boundary line, and secondly that the new roadbed is five and one-half feet lower than formerly; and that because of these facts the entrance to the gasoline station was completely destroyed. These facts are insufficient, however, to establish liability. The second is merely a change of grade for which there is no liability unless it accompanies a taking of property.

The first, namely that the road was constructed nineteen feet North of the property is no averment of a change at all, and certainly not of a change of existing lines and directions. Even if we assume, as does the petitioners' argument, that this amounts to an averment of such a change as to leave the intervening strip of nineteen feet between the improved roadway and the petitioners' property, the petitioners are not helped. It is not the portion of the highway actually improved and used by the State which is controlling, but the actual appropriation to highway purposes. The mere fact that the course of the improved roadway is changed is insufficient, for this change may be entirely within the course previously appropriated. If there is a change in the horizontal lines of the land appropriated for highway purposes it should appear from the map filed as provided by law. The failure of this petition to show any such change in the horizontal lines of the highway is a fatal defect: State Highway Route No. 72, 71 Pa. Superior 85, 265 Pa. 369; Eshleman v. Commonwealth, 325 Pa. 521.

The petitioners' argument is further based on the assumption that it would be sufficient to show a mere change in the horizontal location and lines of the highway. But this is not enough. The change must result in the appropriation of land from the petitioners; in other words it must be an actual taking of property: State Highway Route No. 72, 71 Pa. Superior 85, 265 Pa. 369; Wangner v. Bucks County, 82 Pa. Superior 448; McGarrity v. Commonwealth, 311 Pa. 436; Allison v. Bigelow, 68 Pa. Superior 219. The petitioners' argument is that consequential damages can be recovered notwithstanding the change in width

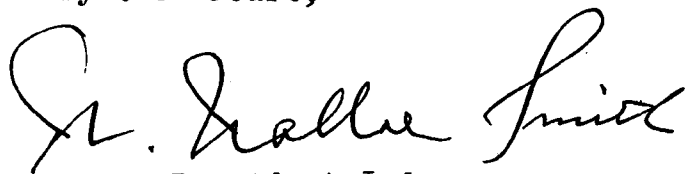
of the highway removes it away from the petitioners' premises, and therefore fails to appropriate any of their land; a contention which is contrary to the rule well established by the cases.

It is well established by the cases cited as well as many others that liability for consequential damages must be based upon a statute. The settled construction of the Act of 1911, P.L. 468, Section 16, as amended, which is the applicable statute, does not fix such liability for consequential damages unless there is an actual taking of property to which such damages are incidental. Notwithstanding that the petitioners may have incurred consequential damages, therefore, in connection with the change in the highway in front of their premises, their petition fails to aver the facts essential to liability upon the part of the County, and they are therefore not entitled to have a Board of Viewers appointed for the purpose of considering and determining such damages.

O R D E R

AND NOW June 7, 1937, in accordance with opinion filed herewith, the rule to show cause why Viewers should not be appointed is discharged, and the petition is dismissed.

By the Court,


President Judge.

No. 2 December CC 1976

IN THE COURT OF QUARTER
SESSIONS OF CLEARFIELD COUNTY
PENNSYLVANIA.

JAMES BEARD and
EVA D. BEARD

VS.

CLEARFIELD COUNTY

OPINION

James
7 1931
W. R. GALLAGHER
CLERK

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BEARD AND EVA BEARD

vs

CLEARFIELD COUNTY

:
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: No. 2 December Sessions 1936
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MOTION TO QUASH PETITION FOR APPOINTMENT OF VIEWERS

TO THE HONORABLE W. WALLACE SMITH, PRESIDENT JUDGE:

The County of Clearfield, by its County Commissioners, moves to quash the petition in this case, for the following reasons:

(1). In the course of the petition of the petitioners they assert that they "are the lessees of said land or piece of ground and improvements and equipment thereon under and by virtue of the terms of a written lease agreement made and entered into with the Sterling Oil Company, the owner of said premises."

(2). Said pleaded written lease is the foundation of the petition, and no copy of it is attached thereto, nor is its absence accounted for.

(3). No grounds are asserted by virtue of which petitioners are entitled to the appointment of viewers, the damage alleged to have been sustained being primarily by virtue of the lowering of grade five and one-half feet.

COUNTY OF CLEARFIELD

BY

J. C. Gathhouse
P. R. Hemmer
D. J. Carr

STATE OF PENNSYLVANIA:
: SS:
COUNTY OF CLEARFIELD :

J. C. GATEHOUSE, T. R. WEIMER and WILLARD V. CARR,
County Commissioners of Clearfield County, being duly sworn
according to law, depose and say that the facts set forth in
their foregoing motion are true and correct.

Subscribed and sworn to before
me this 21st day of September
1936.

Myra E. Lucas

J. C. Gatehouse
T. R. Weimer
W. V. Carr

ORDER OF COURT

this 21st day of Sept. 1936, the foregoing
motion presented and considered, and thereupon a rule is granted
upon the plaintiffs to show cause why their petition should not
be quashed. Returnable Second Monday of October, 1936.

It is further ordered that pending disposition of this
rule the requirement to file an answer to the petition is suspended,
not to be reinstated unless rule is discharged, in which event
the respondent shall have fifteen days after notice of such disposi-
tion within which to file an answer.

By the Court,

A. A. Nelson
P. J. O'Phanet
Court of Cambria County
Specially Presiding

Now, Sept 4, 1936, Service accepted by copy and
return of rule waived
W. Woodhouse
Att'y for Petitioner

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

NO. 2 DECEMBER SESSIONS 1936

JAMES BEARD AND EVA BEARD

VS

COUNTY OF CLEARFIELD

MOTION TO QUASH PETITION FOR
APPOINTMENT OF VIEWERS

But 27-1936 Motion to
quash is dismissed
but the court is not
to rule on the petition
within 10 days.

By the court
A. M. LIVERIGHT
COUNTY SOLICITOR

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