

ROAD

DOCKET No. 6

Number
2

Term
May SS

Year
1937

Sterling Oil Company

Versus

Clearfield County

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 15th day of February in the year of our Lord one thousand nine hundred thirty seven.

Judge of the same Court: Upon the petition of ~~XXXXXX~~
STERLING OIL COMPANY
~~XXXXXX~~ of the Township of LAWRENCE

in said County, setting forth that your petitioner is the owner of that certain piece or parcel of land, 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 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 Feb. 18, 1924 conveyed to Sterling Oil Co. recorded in deed Book 269,
page 237,
and therefore, praying the Court to appoint proper persons to view and assess damages
between the points mentioned, whereupon the Court upon due consideration had of the premises,
do order and appoint from and among the County Board of Viewers A. B. SHAW ,
E. D. BILLOTTE AND Harry W. Bonsall

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 and make report thereof to the Court, as provided by law. RETURNABLE sec leg.

By order of the Court.

Jesse C. Long, P. J. 54th Jud. Dist
Specially presiding.
W. R. Gallagher, Clerk.

RETURN OF VIEWERS

To the Honorable the Judge of the Court of Quarter Sessions of the Peace for the County of Clearfield:

We, the undersigned viewers, duly appointed by your Honorable Court by the foregoing order from and among the County Board of Viewers who have been duly appointed by your Honorable Court and have filed their oaths of office in the Court of Common Pleas of Clearfield County, be leave to report as follows:

That notice of the time of view and of the hearing day was duly served according to law upon the Commissioners of Clearfield County ~~and the Board of Supervisors of the Township of~~

_____ and that THREE notices thereof were posted along the route of the proposed road, that the said view would be held on the 2nd day of March

A. D. 1927, and the hearing to be held in the ^{Grand Jury} Arbitration Room, at the Court House, in Clearfield, Pa., on the 4th day of March, 1927, at 10:06 clock A.M. That

the viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view W. Albert Ramey, attorney for the petitioners, B.F. Rhoads of the Sterling Oil Company, John Laines and others.

parties in interest. That the hearing was held in the ^{Grand Jury} Arbitration Room, in the Court House, at Clearfield, Pa., on the 4th day of March A. D. 1927, when the following appearances were noted: W. Albert Ramey, attorney for the petitioner, together with the following witnesses for the petitioner, A.J. Weller, B.F. Rhoads, James Beard, John Laines, P.D. Smith, and A.E. Derminer. Robert Laine, Esq appearing for the law offices of Liveright and Smith, County solicitors.

After the view and hearing above mentioned, the undersigned, the majority of the said viewers, do agree that ~~there is xxxxx occasion for a road as desired by the petitioner, and that the same is xxxxxxxx necessary for a xxxxxxxx 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 xxxxxxxx use the following described road, to wit:~~ Beginning we as a Board of Viewer's, appointed by the Court of quarter Sessions of Clearfield County are unauthorized by authority of law to award damages to the petitioners in this proceeding.

FINDINGS OF FACT

That Section 5 of the Act of May 31, 1911, P.L. 468, designates Route #57 as that highway from Huntington to Clearfield, which by reason of the recent reconstruction of a certain section thereof upon which abuts the property of the Sterling Oil Company, situate in the Township of Lawrence, Clearfield County, Pennsylvania, a change of grade was made, so that the surface of the new concrete highway constructed at this point, is from about three and one half feet (at the Western line of said petitioners land) to about five and one half feet (at the Eastern line of said land) lower than before said construction. That no part of the petitioners land has been taken as the new highway has been constructed practically within the confines of its prescribed right of way of sixty feet, the center line of which is about thirty-five feet from the Northern edge of the petitioners property. That the newly constructed highway is built of concrete twenty feet in width with a five foot beam on each side, whereas the right of way originally appropriated at this point for highway purposes is sixty feet in width. That the petitioners property has been used as a gasoline service station, whereupon a steel building, together with the necessary equipment for the sale of gasoline

To the County Commissioners of Clearfield County, Pennsylvania.

NOTICE OF VIEW

You are hereby notified that the undersigned Viewers, appointed by the Court of Quarter Sessions of Clearfield County on the 15th day of February, A.D., 1937, to assess the damages and benefits, if any, by reason of the construction and relocation of State Highway Route #57 Sec. 3 through the property of the Sterling Oil Company, situate in the Township of Lawrence, Clearfield County Pennsylvania, will meet on the premises on Tuesday March the 2nd A.D., 1937 at 10:00 o'clock A.M. to attend the duties assigned them, and that a 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 said view an opportunity to be heard, will be held in the Grand Jury Room in the Court House at Clearfield on Thursday March the 4th A.D., 1937 at 10:00 o'clock A.M., at which time and place all parties interested may attend and be heard, if they so desire.

A.B. Shaw

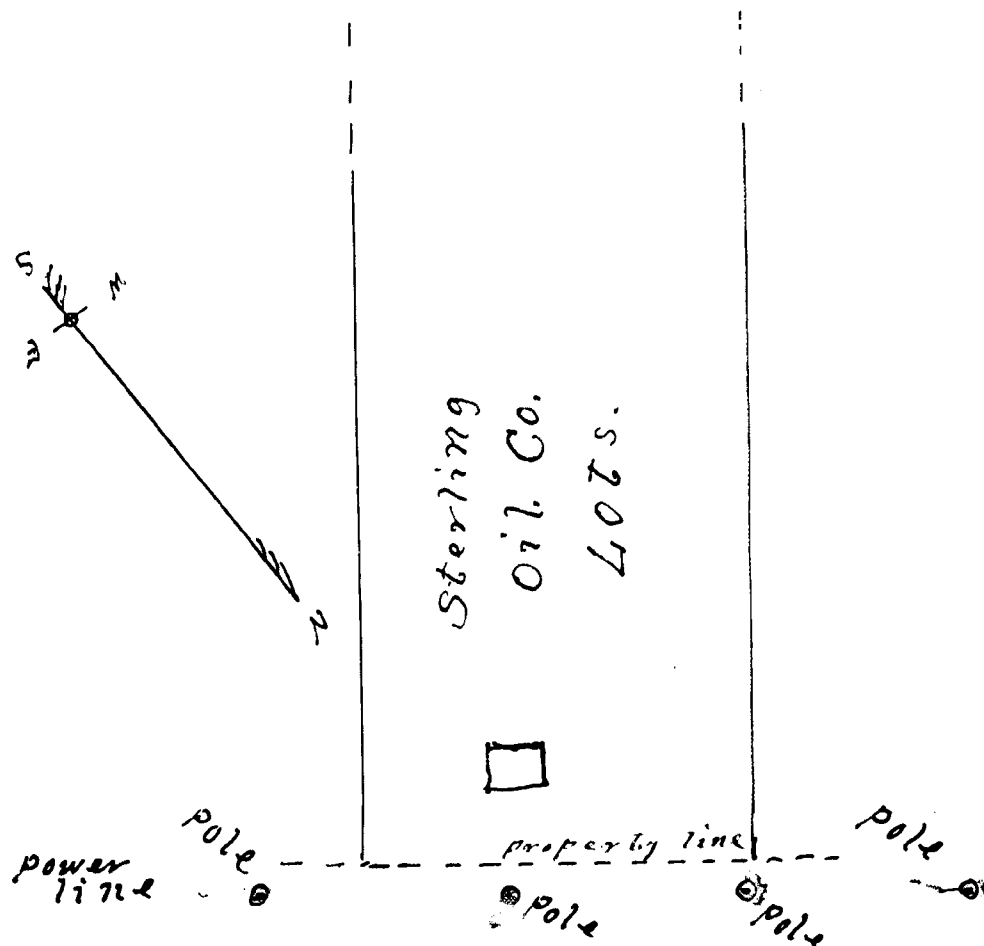
E.D. Billotte

H.W. Bonsall

Viewers.

Now this 17th day of February, A.D., 1937, service of the above notice is hereby accepted by copy on behalf of the County Commissioners of Clearfield County.

Myra E. Lucas
Clerk.



Old Road Bed

~~New Location~~
Road Bed as Lowered

Draft showing location and situation
in case of Sterling Oil Company, damage
claim, for change of Road Bed and of
lowering the same.

Viewed Mar. 2nd, A.D. 1937.

Scale 1" to 50 feet.

A. B. Shaw,

E. J. Billotte,

H. N. Bousell,
Viewers.

Road Viewers' Notice

[illegible]

in **Township to**

in Township, in the County aforesaid, will
meet at the house of
in Township, on
the day of, A. D. 1927, at
o'clock .. M., to attend to the duty assigned them, of which time and place afore-
said, all parties interested will take notice.

[illegible]

..... 1937

and oil has been erected. That by the reconstruction and change of grade of State Highway Route #57 Sec. 3a, the entrance to the petitioners gasoline and automobile service station has been impaired, making the access thereto inconvenient, and for that reason impracticable to be further operated as a gasoline service station, as a result of which damages are asked of Clearfield County, Pennsylvania.

QUESTION OF LAW

Can there be a recovery of damages by an abutting property owner where in the improvement of a State Highway the Highway Commissioner has caused a change of grade, as well as a slight change in existing lines of a highway, without taking or appropriating any part of the abutting property owners land?

DECISIONS OF LAW

The above question has been raised by a petition, for damages, presented to the Court of Quarter Sessions of Clearfield County by the Sterling Oil Company, resulting from the recent construction, reconstruction and widening of State Highway Route #57 Sec. 3a in the Township of Lawrence Clearfield County, Pennsylvania.

State Highway Route #57, extends between Huntington and Clearfield,

and is so designated by Section 5 of the Act of May 31, 1911, P.L. 468 and by virtue of the provisions of said Act Sec. 6 thereof, same under the exclusive authority and jurisdiction of the State Highway Department of Pennsylvania. By reason of this enactment any injury or damage which the Commonwealth might cause an abutting property owner by any change or alteration of said highway would be governed by the provisions of the Act of May 31, 1911, P.L. 468, its supplements and amendments.

The Act of May 31, 1911, P.L. 468, Sec. 16, was amended by the Act of April 6, 1921, P.L. 107, which placed on the various Counties of the State of Pennsylvania the burden of paying for damages to abutting property owners caused in the construction and relocation of State Highways, which heretofore had been paid out of the State Treasury.

The Commonwealth of Pennsylvania is not liable for damages to the owner of property abutting upon a State Highway so established by virtue of the Act of May 31, 1911, P.L. 468, Sections 16 and 32, by reason of damage or injury caused to said property in the process of improvement or reconstruction of such highway, involving only a change or alteration of the former grade without having changed the horizontal position of the center or side lines of the highway.

State Highway Route #72
71 Supr Court 85
265 Pa 369

The Commonwealth is not included within the provisions of the Constitution, requiring compensation to be made by municipal and other corporations for property injured or destroyed (Art XVI Sec. 8) It is only required to make or secure just compensation for property taken (Art I Sec. 10) To impose liability on the Commonwealth for property injured or destroyed, as well as taken, there must be legislative authority imposing such liability on the Commonwealth. There are a long line of cases denying liability for consequential damages where the Commonwealth appropriated the land or constructed the works or improvement, because the legislature had not assumed such liability on behalf of the Commonwealth.

Locust Street Subway Construction
117 Supr Court 86
Soldiers and Sailors Memorial Bridge
308 Pa 486
McGarity Admr vs Commonwealth
311 Pa 436

The general road law of the State of Pennsylvania is the Act of June 13, 1836, P.L. 551 Sec. 18, conferring upon the Courts authority to vacate the whole or any part of public roads, and this Act is not repealed or modified by the Act of May 31, 1911, P.L. 468, relating to State Highways and conferring upon the State Highway Commissioner power under certain circumstances to divert the course or direction of the Routes of State Highways designed in such Act. The vacation or diversion of a road or highway is not an injury to the abutting land owners within the powers of the Constitution, requiring compensation for private property, taken in the exercise of the right of eminent domain, and in the absence of special legislative provision for damages none can be recovered.

Jaeger vs Commonwealth
253 Pa 259

In view of the facts and foregoing decisions, your undersigned Viewer's are of the opinion that no award of damages can be made in this case.

No. 2 May 19 Sessions, 19
ORDER
To view and assess damages to
Sterling Oil Company use in the
roadway use in the
township of Lawrence
Clearfield County

Sessions, 19
read and confirmed Ni. Si. Road to be
opened 33 feet wide, except where there
is side hill cutting or embankment and
bridging, there to be 16 feet wide.

Filed _____ 19____
Fees \$1.25 paid by _____
W. Albert Ramey, Atty.

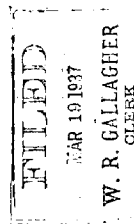
NOTE—In case of a private road, the release
must be executed in favor of the petitioner for
said road.

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

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

N. B.—If the viewers believe the parties are not
entitled to damages, taking into consideration the
entirety of the facts and circumstances of the
road, they will report to that effect.

	DAYS	MILES	AMT.
A. J. Shaw	4		40.00
E. J. Hillotte	3	62	33.10
J. W. Mossall	2	102	25.10



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 enrolling 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

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

STERLING OIL COMPANY :

- vs -

CLEARFIELD COUNTY :

No. 2 May Sessions, 1937

EXCEPTIONS

The Court having appointed Viewers who, after viewing the premises of the Sterling Oil Company, and after hearing, reported to the Court that they were unauthorized by authority of law to award damages to the petitioner, the Sterling Oil Company by its attorney, W. Albert Ramey, herewith files its exceptions to the report of the Viewers. The Viewers erred in the following respects:

1. In finding, under the law, there was no liability for damages where the Commonwealth caused a change in the existing lines of the highway without taking or appropriating any part of the petitioner's land.
2. In finding, under the law, that the Commonwealth was not liable to the petitioner for damages done to its place of business by reason of the construction of the new highway.
3. In finding, under the law, it was necessary that there be a taking of land in order to impose liability upon the Commonwealth.
4. In finding, under the law, the Commonwealth was not liable for consequential damages.
5. In finding that the new highway had been constructed within the confines of the Highway's prescribed right-of-way of sixty (60) feet.

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

42 May Sessions, 1937

STEARNS OIL COMPANY

- vs -

CLEARFIELD COUNTY

RECEIPTS

2

Amicus Clearfield
Apr 13, 1937
Frankly B. Smith
County Auditor
W. ALBERT RAMEY
ATTORNEY AT LAW
CLEARFIELD, PA.

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

STERLING OIL COMPANY

- vs -

CLEARFIELD COUNTY

:
:
:
:
:

No. December Session, 1936

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

The petition of Sterling Oil Company respectfully re-
presents:

1. That your petitioner is a corporation existing
under and by virtue of the laws of the Commonwealth of Pennsylvania
and maintaining its principal place of business at Emlenton, Penn-
sylvania.

2. That your petitioner is the owner of that certain
piece or parcel of land, 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 Weaverjurst 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 Weaver-
hurst, 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 re-
corded 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 petitioner is engaged in the business of refining and selling gasoline, lubricating oils, kerosene and greases; that said land was purchased by your petitioner on February 18, 1924 for the purpose of erecting an automobile service station; that your petitioner immediately thereafter did place on said premises and did otherwise construct thereon gasoline and oil tanks and other equipment incident and pertaining to a gasoline filling station for the purpose of vending exclusively its own products; that said premises have since the aforesaid date been used exclusively for the purposes just recited.

5. That said premises were of great value to your petitioner in its business of selling and distributing its products.

6. 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 1025 on said highway. Entrance to said premises by automobile for the purposes of the business hereinbefore detailed was heretofore gained from said highway.

7. 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 Octo-

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 petitioner's exhibit "B".

11. 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.

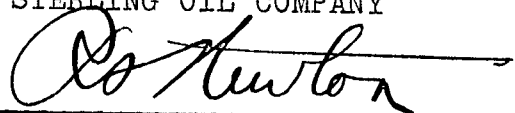
12. The County Commissioners of Clearfield County have refused to enter into an agreement with the petitioner as to the amount of damage to be paid to it.

WHEREFORE, your petitioner prays your Honorable Court to appoint viewers to view the premises of the petitioner and to assess such damages as they may find that your petitioner has suffered, and to report the same to your Honorable Court as in such cases made and provided.

And your petitioner will ever pray, etc.

STERLING OIL COMPANY

By:



~~is~~ Secretary

STATE OF PENNSYLVANIA :
COUNTY OF DeWago : SS

Before me, the undersigned, personally appeared R. S. Newton, who, being duly sworn, according to law, deposes and says that he is ^{and} secretary of Sterling Oil Company and that as such he is authorized to make this affidavit; that the facts set forth in the foregoing petition are within his knowledge and that the same are true and correct.

Sworn to and subscribed :
before me this 16th day :
of September, A.D., 1936. :

R. S. Newton

Robert L. Grimm

ROBT. L. GRIMM, Notary Public
MY COMMISSION EXPIRES
MARCH 2, 1939

PETITIONER'S EXHIBIT
"A"

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

PETITIONER'S 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

AND NOW, This 15 day of Feb ~~January~~, A. D., 1937,
the within petition presented, read and considered: Thereupon
A. B. Shaw and E. D. Dillotte and J. H. Russell,
are appointed Viewers to assess the damages of the within named
petitioner, Sterling Oil Company, and make report thereof to the
Court, as provided by law. Returnable sec. leg.

By the Court,

Jesse Long
P. J.
Sub Judicial
and Specially
Residing.

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IN THE COURT OF CHANCERY SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA	No. <i>2 May 1937</i> December Sessions, 1936
STERLING OIL COMPANY - vs - CLEARFIELD COUNTY	
PETITION FOR APPOINTMENT OF A BOARD OF TRUSTEES	
	
W. ALBERT RAMEY ATTORNEY AT LAW CLEARFIELD, PA.	
The Turtle Law Print, Publishers, Rutland, Vt.	