

ROAD

DOCKET No. 6

Number

6

Term

Sept. SS

Year

1938

Petition of J. G. KYLER for assess-
ment of damages in GOSHEN TOWNSHIP

Versus

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 June
in the year of our Lord one thousand nine hundred
and thirty-eight

J. G. KYLER
Judge of the same Court: Upon the petition of ~~subscribes~~
~~habitants~~ of the Township of Goshen
in said County, setting forth that

6.

That he is the owner of certain land located in Goshen Township,
Clearfield County, Pennsylvania, comprising of three separate tracts; one
tract thereof is in the name of him and his wife, Jennie Kyler, as tenants
by entireties; one tract in his name individually; and the third tract in
his name and the name of C. J. Kyler, his son.

That all of said tracts are situate along the Susquehanna River between
Lick Run and Shawsville, being located on the river at the mouth of
Bloody Run and Flegal Run. The first tract, held by entireties, consists
of 75 acres; the second tract held individually, consists of 27½ acres;
and the third tract held jointly with C. J. Kyler, consists of 22½ acres.

That during 1937 and into 1938, the State Highway Department made
certain changes in the lines, grades and location of the river road to
Shawsville, known as Route 17052, over and through the land of your petitioner.
As result thereof, your petitioner, his wife and his son, as owners, have
sustained various damage from the taking of said land and the cutting of
trees thereon.

That neither your petitioner nor the other owners have signed or
executed any release of damages for said property and have been unable to
obtain any compensation for their damage.

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.

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 Goshen and that three notices thereof were posted along the route of the proposed road, that the said view would be held on the 6th day of July A. D. 1938, and the hearing to be held in the Grand Jury Room, at the Court House, in Clearfield, Pa., on the 9th day of July, 1938, at 10 o'clock A. M. That the 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. G. Kyler with F. Cortez Bell, Esq., his Attorney; Warren Lingle and Guy Frelin, Supervisors of Goshen Township,

to have been (Grand Jury) parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 9th day of July A. D. 1938, when the following ~~appeared as was noted~~ but the County Commissioners having presented to the Court, on July 5th, 1938, a motion to quash the petition for the appointment of the Board of Viewers, and a rule having been granted upon the petitioners to show cause pursuant thereto: returnable the first Monday of August, 1938

~~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 xxxxxxxxxxxx road, and having due respect to the shortest distance and the best ground for such road, we have laid out in such manner as shall be the least injury to private property, and as far as practicable as nearly to the taste of the petitioner, and do return for xxxxxxxxxxxxxxxxxxxxxxxxx the following described land, to-wit: Beginning~~

And it being further ordered that pending disposition of said rule by the Court, the Viewers should refrain from taking any further steps by way of inspection of the premises, holding hearings or otherwise howsoever, except the view on July 6th.

And now, this 1st day of August, 1938, it appearing that the petitioners and the County Commissioners have agreed upon the amount of damages sustained by the petitioners, and payment thereof having been made: no further proceedings were had on this order and no damages were assessed by your Board, and no draft or plot of petitioners' land taken was made.

All of which is respectfully submitted.

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

In re: Order to view and assess damages: No. 6, Sept. ss., 1938
to land of J. G. KYLER, JENNIE KYLER and:
C. J. KYLER, in the Township of Goshen. :

You are hereby notified that the undersigned Viewers, appointed by the Court to the above number and term, "to view and assess damages to three separate tracts of land in Goshen Township as follows:

The first thereof, in the name of J. G. Kyler and Jennie Kyler, his wife, as tenants by entireties,

The second thereof, in the name of J. G. Kyler, individually, and

The third thereof in the name of J. G. Kyler and C. J. Kyler, his son

All situated along the Susquehanna River between Lick Run and Shawsville being located on the River at the mouth of Bloody Run and Flegal Run on the Improved Road known as Route 17052," will meet at the house of J. G. Kyler in Goshen Township on Wednesday, the 6th day of July, 1938 at 10 a.m., to attend to the duty assigned them, of which time and place aforesaid, all parties interested will take notice.

And that the public hearing required by Act of Assembly and the Rules of Court to be held by the Viewers before the filing of their report in Court, in order to give all parties interested in the said road an opportunity to be heard, will be held in the Grand Jury Room in the Court House, in Clearfield, on Saturday, the 9th day of July, 1938 at 10 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 Scollins
E. D. Billotte
H. A. Giles

Dated: June 18, 1938.

Viewers.

CLEARFIELD COUNTY, SS:

AND NOW, June 20, 1938, service of the above notice accepted for the County Commissioners of Clearfield County, and receipt of an attested copy thereof is hereby acknowledged.

Myra E. Lucas
Clerk.

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

In re: Order to view and assess damages: No. 6, Sect. ss., 1938
to land of J. G. KYLER, JENNIE KYLER and:
C. J. KYLER, in the Township of Goshen. :

You are hereby notified that the undersigned Viewers, appointed by the Court to the above number and term, "to view and assess damages to three separate tracts of land in Goshen Township as follows:

The first thereof, in the name of J. G. Kyler and Jennie Kyler, his wife, as tenants by entireties,

The second thereof, in the name of J. G. Kyler, individually, and

The third thereof in the name of J. G. Kyler and C. J. Kyler, his son

All situated along the Susquehanna River between Lick Run and Shawsville being located on the River at the mouth of Bloody Run and Flegal Run on the Improved Road known as Route 17052," will meet at the house of J. G. Kyler in Goshen Township on Wednesday, the 6th day of July, 1938 at 10 a.m., to attend to the duty assigned them, of which time and place aforesaid, all parties interested will take notice.

And that the public hearing required by Act of Assembly and the Rules of Court to be held by the Viewers before the filing of their report in Court, in order to give all parties interested in the said road an opportunity to be heard, will be held in the Grand Jury Room in the Court House, in Clearfield, on Saturday, the 9th day of July, 1938 at 10 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.

E. D. Billotte
N. A. Giles
Viewers.

Dated: June 18, 1938.

CLEARFIELD COUNTY, SS:

And now, June 20, 1938, service of the above notice accepted for J. G. Kyler, Jennie Kyler, and C. J. Kyler, Petitioners, and receipt of an attested copy thereof is hereby accepted.

J. G. Kyler
Jennie Kyler
C. J. Kyler
Petitioners

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

In re: Order to view and assess damages: No. 6, Sept. ss., 1938
to land of J. G. KYLER, JENNIE KYLER AND:
C. J. KYLER, in the Township of Goshen. :

You are hereby notified that the undersigned Viewers, appointed by the Court to the above number and term, "to view and assess damages to three separate tracts of land in Goshen Township as follows:

The first thereof, in the name of J. G. Kyler and Jennie Kyler, his wife, as tenants by entireties,

The second thereof, in the name of J. G. Kyler, individually, and

The third thereof in the name of J. G. Kyler and C. J. Kyler, his son

All situated along the Susquehanna River between Lick Run and Snawsville being located on the River at the mouth of Bloody Run and Flegal Run on the Improved Road known as Route 17062," will meet at the house of J. G. Kyler in Goshen Township on Wednesday, the 6th day of July, 1938 at 10 a.m., to attend to the duty assigned them, of which time and place sforesaid, all parties interested will take notice.

And that the public hearing required by Act of Assembly and the Rules of Court to be held by the Viewers before the filing of their report in Court, in order to give all parties interested in the said road an opportunity to be heard, will be held in the Grand Jury Room in the Court House, in Clearfield, on Saturday, the 9th day of July, 1938 at 10 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 Scellins
Ed. Billette
H. A. Giles
Viewers.

Dated: June 18, 1938

CLEARFIELD COUNTY, SS:

AND NOW, June 20, 1938, service of the above notice is accepted by the Township of Goshen and receipt of an attested copy thereof is hereby accepted.

Aug. K. Klein
Warren L. Lingle
Amos W. Gorman
Board of Supervisors.

ORDER

To view and assess damages ~~to~~
for land of J. G. KYLER, ~~except the~~ JENNE
~~except the~~ KYLER, and C J KYLER, in the
township of Goshen,
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.

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	AM'T.
E. D. Billotte	1	18	10.90
H. A. Giles	2	17	20.85
John Scollins	2	56	22.80

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

Deed & Silberblatt: atty

Filed

19____

Fees \$1.25 paid by_____

~~work 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~~

~~which it was not practical to procure 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

No damages assessed.

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:

No damages assessed.

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

WITNESS our hands and seals this 9th day of November

A. D. 1938.

John Seelins Seal
E. D. Billotte Seal
H. G. Giles Seal
Seal

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

Re: Assessment of damages for land of:
J. G. KYLER, JENNIE KYLER, his wife, : No. September Sessions
and C. J. KYLER, in Goshen Township, :
Clearfield County, Pa. : 1938

PETITION FOR APPOINTMENT OF VIEWERS.

TO THE HON. W. WALLACE SMITH, President Judge of said Court:

The petition of J. G. Kyler respectfully represents:

(1). That he is the owner and in possession of certain land located in Goshen Township, Clearfield County, Pennsylvania, comprising of three separate tracts; one tract thereof is in the name of him and his wife, Jennie Kyler, as tenants by entierities; one tract in his name individually; and the third tract in his name and the name of C. J. Kyler, his son.

(2). That all of said tracts are situate along the Susquehanna River between Lick Run and Shawsville, being located on the river at the mouth of Bloody Run and Flegal Run. The first tract, held by entierities, consists of 75 acres; the second tract held individually, consists of $27\frac{1}{2}$ acres; and the third tract held jointly with C. J. Kyler, consists of $22\frac{1}{2}$ acres.

(3). That during 1937 and into 1938, the State Highway Department of the Commonwealth of Pennsylvania, acting through it's agents, servants and employes, made certain changes in the lines, grades and location of the river road to Shawsville, known as Route 17052, over and through the land of your petitioner. As result thereof, your petitioner, his wife and his son, as owners, have sustained various damage from the taking of said land and the cutting of trees thereon.

(4). That neither your petitioner nor the other owners have signed or executed any release of damages for said property and have been unable to obtain any compensation for their damage.

(5). That said Route is a State Highway and your petitioner has been advised by the Highway Department that before entering upon their premises they would have had an agreement entered into as to the damages; but your petitioner has been unable to ascertain or learn the terms or conditions, date, etc. of any agreement to pay damages therefor; and the County Commissioners of the County of Clearfield have advised your petitioner that they are not liable for said damages.

(6). That other residents along said Highway have been compensated by the County of Clearfield for said damage.

WHEREFORE YOUR petitioner prays for the appointment of viewers by your Honorable Court, to go upon said premises and view the damage thereto and thereafter to hold hearing and determine the amount of damage sustained by your petitioner, and award such sum to him as may be deemed just and reasonable, and make report thereof to your Honorable Court; and he will ever pray.

J. G. Kyler

STATE OF PENNSYLVANIA :
COUNTY OF CLEARFIELD : SS

Before me, the subscriber hereto, came J. G. Kyler, who being duly sworn according to law, deposes and says the facts set forth in the within petition are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before:
me this 11th day of June A.D. :
1938. :

W. R. Gallagher
Prothonotary

J. G. Kyler

MY COMMISSION EXPIRES FIRST
MONDAY IN JANUARY, 1941

ORDER

Now, June 13 A.D. 1938, the within petition having been read and considered, John Scobins Esq. C. D. Willett and H. A. Gills, are appointed viewers to go upon the premises herein mentioned, for the purpose of view and assessment of damages as alleged in said petition.

BY THE COURT

H. Walter Smith
P.J.

<p>IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA. No. 6 Sept. Sessions 1938</p>	<p>Re: Assessment of damages for land of J. G. KYLER, and JENNIE KYLER, his wife, and C. J. KYLER, in Goshen Town- ship, Clearfield County, Pa.</p>	<p>PETITION FOR APPOINTMENT OF VIEWERS</p>	<p>now June 13 1938 service accepted by city</p>	<p><i>By Anna Dept of Highways in presence of J. Smith Solicitor County of Clearfield</i></p>	<p>FILED JUN 15 1938 W. R. GALLAGHER Notary Public KURTZ BUILDING CLEARFIELD, PENNA. 475</p>
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Served of Penna Dept of Highways by leaving a
true & correct copy at Highway Office at Clearfield
J. E. Bell

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

Re: Assessment of damages to :
land of J. G. KYLER, JENNIE : No. 6 September Sessions 1938
KYLER and C. J. KYLER in :
Goshen Township, Clearfield :
County, Pa. :

AMENDED PETITION FOR APPOINTMENT
OF VIEWERS.

TO THE HON. W. WALLACE SMITH, PRESIDENT JUDGE OF SAID COURT:

The petition of J. G. Kyler respectfully represents:

(1). That he is individually the owner of a tract of land in Goshen Township, Clearfield County, Pa.; and also of another tract in the name of him and his wife, Eliza Jane Kyler, commonly known as Jennie Kyler; and of a third tract in his name and the name of his son, C. J. Kyler, also known as Carl J. Kyler.

(2). That all the said tracts are situated along the Susquehanna River between Lick Run and Shawsville, being located at the mouth of Bloody Run and Flegal Run. The tract owned by J. G. Kyler and his wife as tenants by entireties, consists of 75 acres and 76 perches, excepting approximately one acre, deeded to Raymond Williams December 7, 1935, deed for which is recorded in Deed Book 311 at page 489. The deed for said tract being dated September 9, 1922 and recorded in Clearfield County in Deed Book 259 page 375. This tract extends along the Susquehanna River for a distance of 3000 to 4000 feet and is joined by the tract owned by J. G. Kyler individually and consisting of $27\frac{1}{2}$ acres; and being the same property which Ed. L. Shirey and Susanne, his wife, by deed dated the 28th day of December 1931, recorded in Clearfield County in Deed Book 300 page 227, deeded to your petitioner. The third tract, being owned by your petitioner and his son, Carl J. Kyler, consists of approximately 600 to 700 feet along the Susquehanna River and

and contains 22 acres, title to which vested in the grantees by deed of George and Mary Martin dated the 26th day of February 1921 and recorded in Clearfield County in Deed Book 250 page 163. All of said tracts are contiguous and the record owners thereof are agreed that any damages awarded for the same may be in one lump sum or separately, as desired; agreeing to give, on the payment of said damages, a full and complete release by all record owners.

(3). That during the year 1938 and 1938, the State Highway Department of the Commonwealth of Pennsylvania, acting through it's agents, servants and employees, made certain changes in the lines, grades and location of the river road to Shawsville, known as Route 17052, over and through the land of your petitioner, his wife and his son; and as result thereof the owners have suffered various damages for the taking of land and the cutting of trees thereon, effecting the drainage, etc.

(4). That none of the owners of said land have executed any release of damages for said property; nor have they been able to obtain any compensation therefore.

(5). That said Route is a State Highway and your petitioner has been advised by the Highway Department that before entering upon their premises they would have had an agreement entered into as to the damages; but your petitioner has been unable to ascertain or learn the terms or conditions, date, etc. of any agreement to pay damages therefore; and the County Commissioners of the County of Clearfield have advised your petitioner that they are not liable for said damages.

(6). That said damage consists, briefly, of:

A. Widening of the road and the taking of land, thereby limiting the area of the fields owned by your petitioner and his wife, between the old highway and the river.

B. That various trees were cut, there being approximately 680 Trees of over six inches in diameter, as well as a number of trees smaller in size, consisting of a number of butternut trees all in production; there being approximately 300 trees of this class on the 75 acre tract, 180 on the 27 $\frac{1}{2}$ acre tract, and 200 on the 22 acre tract.

C. That in addition thereto the fields of your petitioner and his wife, lying between the road and the river were effected; there being no open ditch for the water to drain as formerly existed, and a terra cotta pipe leading from the open ditch, as it was formerly located, to and across said field for the purpose of drainage thereof, having been destroyed in the construction of said highway, said field has become wet, soggy, and it's productivity effected by reason thereof.

D. That your petitioner and his wife owned a spring from which they got their water, which spring never failed and greatly enhanced the value of their property; but in the construction of the highway said spring was damaged and injured; though a large amount of money and labor have been wasted in work around said spring, it has been completely closed over with a stone box with a small hole and an overflow pipe, but so constructed that it leaks beneath the stone foundation, does not flow through the pipe, and in order to obtain water it is necessary to put your head through this opening, which is about two feet square, and stand on your head to get water therefrom; the condition of said spring being worse now than it was prior to the labor and material expended thereon, and the work on said spring was unnecessary in the construction of the highway.

E. That about 500 feet of said road is on an entirely new location than the former road.

F. That the home of your petitioner is now above the highway as located, there having formerly existed a stone wall to keep the bank from sliding on the road leading to your petitioner's home; which wall your petitioner was advised, would be replaced; said wall having been approximately 75 feet in length; but no effort has been made to replace the same.

WHEREFORE your petitioner prays for appointment of viewers by your Honorable Court, to go on said premises and view the damages thereto, and thereafter to hold hearing and determine the amount of damage sustained by your petitioner and award such sum to him, his wife and his son, either by separate tracts or jointly, and make report thereof to your Honorable Court; and he will ever pray.

J. G. Kyler

STATE OF PENNSYLVANIA :
COUNTY OF CLEARFIELD : SS

Before me, the subscriber hereto, came J. G. Kyler, Eliza Jane Kyler and Carl J. Kyler, all of whom being duly sworn according to law, depose and say that the facts set forth in the within petition are true and correct to the best of their knowledge and belief and that they, as owners of the property described therein, join in the prayer of the said petition, and are satisfied for an award to be made in one lump sum or by separate tracts as the viewers shall determine best.

Sworn and subscribed before :
me this 9th day of July A.D. :
1938. :

W. R. Gallagher
Prothonotary

J. G. Kyler
Mrs. Jennie Kyler
Carl J. Kyler

O R D E R

NOW, 14th day of July 1938, the within Amended Petition having been read and considered, leave to file the same in place and stead of the previous petition, is allowed and the appointments made of the viewers in the original petition to continue and stand as though this petition were filed prior to the appointment of viewers.

BY THE COURT

J. Walker Smith
P.J.

Re: Assessment of damages
to land of J. G. KYLER,
JEROME KYLER and C. J. KYLER
in Goshen Township,
Clearfield County, Pa.

FINED

FILE 14-00000

W. R. GALLAGHER
ATTENDED EDITION GORE
APPOINTMENT OF VIEWERS.

Feb 16, 1938 arrived
R. Gordon accepted
by copy.
Thank you with
comity solicitor

July 11, 1938 received of
 Ferguson & Co. Remittance
 by check - \$100.00
 at Ferguson office the day
 and being same to pay
 me & being cleared by
 J. L. B. & Co. Attorneys at Law
 1000 1/2 10th St. N. W.
 Minneapolis, Minn.
 J. L. B. & Co. Attorneys at Law
 1000 1/2 10th St. N. W.
 Minneapolis, Minn.

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

In re: Order to view and assess damages: No. 6, Sept. ss., 1938
to land of J. G. KYLER, JENNIE KYLER AND:
C. J. KYLER, in the Township of Goshen. :

You are hereby notified that the undersigned Viewers, appointed by the Court to the above number and term, "to view and assess damages to three separate tracts of land in Goshen Township as follows:

The first thereof, in the name of J. G. Kyler and Jennie Kyler, his wife, as tenants by entireties,

The second thereof, in the name of J. G. Kyler, individually, and

The third thereof in the name of J. G. Kyler and C. J. Kyler, his son

All situated along the Susquehanna River between Lick Run and Shawsville being located on the River at the mouth of Bloody Run and Flegal Run on the Improved Road known as Route 17052," will meet at the house of J. G. Kyler in Goshen Township on Wednesday, the 6th day of July, 1938 at 10 a.m., to attend to the duty assigned them, of which time and place aforesaid, all parties interested will take notice.

And that the public hearing required by Act of Assembly and the Rules of Court to be held by the Viewers before the filing of their report in Court, in order to give all parties interested in the said road an opportunity to be heard, will be held in the Grand Jury Room in the Court House, in Clearfield, on Saturday, the 9th day of July, 1938 at 10 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 Scellins
E. D. Billotte
H. A. Giles
Viewers.

Dated: June 18, 1938

CLEARFIELD COUNTY, SS:

AND NOW, June 22, 1938, service of the above notice accepted for J. G. Kyler, Jennie Kyler, and C. J. Kyler, petitioners, and receipt of an attested copy thereof is hereby accepted.

J. C. Bell
Attorney
Pro Petitioners

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

Re: Assessment of Damages for Land :
of J. G. Kyler, Jennie Kyler, his :
wife, and C. J. Kyler, in Goshen : No. 6, September Sessions, 1938
Township, Clearfield County, Pa. :

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 and the appointment of viewers pursuant thereto, for the following reasons:

1. The petition is so vague, indefinite and replete with conflicting averments that the viewers appointed by the Court will be unable to accomplish the purpose of their appointment.

a. In the course of the petition for the appointment of viewers it is averred that J. G. Kyler, petitioner, is the "owner" of three tracts of land in Goshen Township, Clearfield County, Pennsylvania, and it is also averred that one of said tracts is "in the name of him and his wife, Jennie Kyler, as tenants by entireties **** and the third tract is in his name and the name of C. J. Kyler, his son". It is further alleged that "petitioner, his wife and his son as owners, have sustained various damage from the taking of said land ****," but the prayer of the petition requests the appointment of viewers "to determine the amount of damage sustained by your petitioner." The Court's order appointing viewers provides that such appointment is "for the purpose of view and assessment of damages as alleged in said petition."

b. Petitioner fails to describe the subject premises and fails to give reference to the records where description thereof may be found.

c. Petitioner fails to set forth what lands, if any, were taken and what other specific damage was done in connection with the alleged change in lines, width and location of Route 17052.

2. As to the premises allegedly held by petitioner and his wife as tenants by entireties, the viewers cannot consider damages in respect of petitioner's interest therein since petitioner's interest is inchoate and may never mature; nor can the viewers consider damages in respect of the interest of petitioner and his wife, as tenants by entireties and owners of the entire title, since petitioner's wife is not a party to the petition or the proceeding.

3. Petitioner has failed to set forth in his said petition the facts from which the viewers could ascertain the responsibility for damages, if such damages were to be assessed, petitioner having failed to make any averment in respect of the following matters:

- a. As to whether or not the Secretary of Highways, did, prior to undertaking the construction of said route 17052, notify the County Commissioners of Clearfield County, in writing, of the contemplated change in the existing width, lines and location of the highway.
- b. As to whether or not the County Commissioners of Clearfield County agreed, in writing, to the contemplated change in width, lines and location of said highway.

COUNTY OF CLEARFIELD

By J. C. Gatehouse
T. R. Weimer
W. V. Carr
County Commissioners

STATE OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

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

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

Sworn and subscribed before me

this 5th day of July, 1938.

Myra E. Lucas
Chief Clerk.

ORDER OF COURT

Now, this *5th* day of July, 1938, the foregoing Motion presented and considered, thereupon a rule is granted upon the petitioner to show cause why his petition and the appointment of viewers pursuant thereto should not be quashed. Returnable to the first *Mon*-day of *August*, 1938.

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 the rule is discharged, in which event Clearfield County shall have fifteen (15) days after notice of such disposition, within which to file an answer. It is further ordered that pending the disposition of this rule, the viewers appointed by the court shall refrain from taking any further steps by way of inspection of the premises, holding hearings or otherwise howsoever, *except the view on July 6th.*

By the Court,

H. Walter Smith

P. J.

*New, July 5, 1938 answer accepted by city and returned
 paid waived
 Call - 11th Street
 City for Answer*

IN THE COURT OF COMMON PLEAS
 OF CHAMBERLAIN COUNTY, MINN.
 No. 8, Sept. Sessions, 1938

Re: Assessment of Damages for
 Land of J. G. Kyler et al

MOTION TO QUASH PETITION FOR
 APPOINTMENT OF VIEWERS and
 OFFER OF COURT

FILED
 JUL 6 1938
 W. R. GALLAGHER
 PROthonotary

Frank G. Smith, Esq.
 County Solicitor
 Clearfield, Pa.