

No. 11 June Sessions, 1955
Road Docket

IN THE COURT OF QUARTER
SESSIONS OF CAMBRIA COUNTY,
PENNSYLVANIA

IN THE MATTER OF THE CHANGE OF
LOCATION AND LINES OF THE HIGH-
WAY KNOWN AS STATE HIGHWAY
ROUTE NO. 222, IN THE TOWNSHIP
OF STONYCREEK, IN SAID COUNTY
AND STATE.

Appeal of Charles Wissinger and
Alda M. Wissinger, husband and
wife.

wife.
Alda M. Wissinger, husband and
wife of Charles Wissinger and

Filed - 2-20-61

BILL OF COSTS ON APPEAL

No. 11 June Sessions, 1955
Road Docket

EDWARD J. HARKINS
ATTORNEY AT LAW
FIRST NATIONAL BANK BUILDING
JOHNSTOWN, PA.

JOHNSTOWN, PA.
FIRST NATIONAL BANK BUILDING
ATTORNEY AT LAW
EDWARD J. HARKINS

BILL OF COSTS ON APPEAL

Edw. J. Harkins

IN THE QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA

PENNSYLVANIA
SESSIONS OF CAMBRIA COUNTY
IN THE COURT OF QUARTERS

AND STATE.
OF STONYCREEK, IN SAID COUNTY
ROUTE NO. 222, IN THE TOWNSHIP
OF STONYCREEK, IN SAID COUNTY
AND STATE.

IN THE MATTER OF THE CHANGE OF
LOCATION AND LINES OF THE HIGH-
WAY KNOWN AS STATE HIGHWAY
ROUTE NO. 222, IN THE TOWNSHIP
OF STONYCREEK, IN SAID COUNTY
AND STATE.

No. 11 June Sessions, 1955
Road Docket

Appeal of Charles Wissinger and
Alda M. Wissinger, husband and
wife.

BILL OF COSTS ON APPEAL

I hereby certify that the following costs on appeal
were incurred in the above stated case:

- 1. Share of printing Brief and Record \$37.21.
- 2. Filing Appeal in Supreme Court.....\$12.00.

Total.....\$49.21

Edw. J. Harkins
Attorney for Appellants

Road Docket
No. 11 June Sessions, 1955

1 copy

IN THE COURT OF QUARTER SESSIONS OF GAMBRIA COUNTY, PENNSYLVANIA

IN THE MATTER OF THE CHANGE OF LOCATION AND LINES
OF THE HIGHWAY KNOWN AS STATE HIGHWAY ROUTE NO. 222,
IN THE TOWNSHIP OF STONYCREEK, COUNTY OF GAMBRIA
AND STATE OF PENNSYLVANIA.

No. 11 June Sessions, 1955

STIPULATION OF SETTLEMENT

AND NOW, January 23, 1961, it is hereby stipulated and agreed by
and between counsel for the Department of Highways of the Commonwealth of
Pennsylvania and counsel for Charles Wissinger and Alda M. Wissinger, husband
and wife, as follows:

1. That the Department of Highways has agreed to pay to Charles
Wissinger and Alda M. Wissinger, husband and wife, the sum of \$7,800.00 as
damages for the taking of their property as a result of the change in the
existing lines and location of the aforesaid highway in 1950, and Charles
Wissinger and Alda M. Wissinger, husband and wife, have agreed to accept the
said sum in full settlement of said damages, including interest and/or
detention damages.

2. That Charles Wissinger and Alda M. Wissinger, husband and wife,
upon the payment of the said sum of \$7,800.00 to them by the Department of
Highways, will cause the record in the above captioned proceedings to be
marked settled, discontinued and ended, and/or, if necessary, secure or consent
to the securing of an order of court dismissing the viewers heretofore
appointed in the above captioned proceedings and the termination thereof, and
they will not thereafter present any further or additional claims or demands
for damages, in law, equity or otherwise.

EDWARD F. PEDUZZI

Edward F. Peduzzi
Attorney for Department of Highways

EDWARD J. HARKINS
GERALD K. GIBSON

by Gerald K. Gibson
Attorneys for Charles Wissinger and
Alda M. Wissinger

Filed -
Jan 23, 1961

No L D 11 June 1955

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Filed Jan 23, 1961

To the Honorable the Justices of the Supreme Court of the Commonwealth of Pennsylvania, sitting in and for the Western District:

The record and process, and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

Frank J. Knevel [L. S.]
Charles M. Gibson [L. S.]

No. 144

March Term, 19 59

Supreme Court

WESTERN DISTRICT

IN THE MATTER OF THE CHANGE OF LOCATION AND LINES OF THE HIGHWAY KNOWN AS STATE HIGHWAY ROUTE 222, IN THE TOWNSHIP OF STONYCREEK, COUNTY OF CAMBRIA AND STATE OF PENNSYLVANIA

APPEAL OF CHARLES WISSINGER and ALDA M. WISSINGER,

CERTIORARI to the

COURT OF QUARTER SESSIONS

for the County of CAMBRIA

Returnable the last Monday

of September A. D. 19 59

*Filed -
Apr 27, 1959
J.C. Gibson*

Edward J. Harkins
Gerald K. Gibson

Attorneys for Appellant

FILED

SEP 14 1959

SUPREME COURT
WESTERN DISTRICT

The Supreme Court of Pennsylvania, }
Western District } SS:

The Commonwealth of Pennsylvania

TO THE JUDGES of the COURT OF QUARTER SESSIONS for the County of CAMBRIA

GREETING: We being willing for certain causes to be certified of the matter of the appeal of
CHARLES WISSINGER and ALDA M. WISSINGER
from the Order of your said Court at No. 11 June Sessions 1955; IN THE
MATTER OF THE CHANGE OF LOCATION AND LINES OF THE HIGHWAY KNOWN AS STATE
HIGHWAY ROUTE 222, IN THE TOWNSHIP OF STONYCREEK, COUNTY OF CAMBRIA
AND STATE OF PENNSYLVANIA

before you, or some of you, depending, DO COMMAND YOU that the record and proceedings aforesaid, with all things touching the same, before the Justices of our Supreme Court of Pennsylvania, at Pittsburgh, in and for the Western District, on the last Monday of September 19 59, so full and entire as in your Court before you they remain, you certify and send, together with this Writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness HON. CHARLES ALVIN JONES, Doctor of Laws, Chief Justice of our said Supreme Court, the 23rd day of April in the Year of our Lord one thousand nine hundred and fifty-nine.

Amelia T. Wissinger
PROTHONOTARY

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

In re: In the matter of change
of location and lines of the highway
known as State Highway Route No. 222,
in the Township of Stonycreek in
Cambria County, Pennsylvania

No. Road Docket 11 June
Sessions, 1955

Petition of Charles Wissinger and
Alda M. Wissinger, husband and wife

DOCKET ENTRIES

May 31, 1955	Petition for appointment of viewers filed.
May 31, 1955	Order appointing viewers filed.
June 2, 1955	Order to view issued.
June 22, 1955	Date of view filed.
June 23, 1955	Petition for Rule to show cause filed by Edward F. Peduzzi, Esq.
June 23, 1955	Rule filed.
June 24, 1955	Certified copy of Rule sent to Fred Claflin.
November 28, 1955	Agreement of counsel as to time within with an answer to Rule heretofore granted is to be filed, extended.
November 28, 1955	Answer to petition for rule and to rule to show cause heretofore granted filed.
December 6, 1957	Petition for rule to show cause filed.
December 6, 1957	Order granting rule filed.
January 16, 1958:	Answer of Cambria County to Petition for rule to show cause filed.
July 17, 1958	Brief on behalf of Petitioners filed. (Pa. Dept. of Highways)
February 6, 1959	Brief on behalf of petitioners filed.
March 13, 1959	Order of Court dismissing the petition and vacating order thereon and making absolute the rule to show cause why the petition for the appointment of viewers should not be dismissed filed.
April 27, 1959	Certiorari from Supreme Court filed.

Page 2

No. Road Docket 11 June Sessions, 1955

April 27, 1959

Notice of appeal and acceptance
of service filed.

April 27, 1959

Certificate of amount in
controversy filed.

August 24, 1959

Exception to opinion and order
filed.

No. 11 *June* SESSIONS

1955. *Road Docket*

IN THE COURT OF QUARTER
SESSIONS OF CAMBRIA COUNTY,
PA.

IN THE MATTER OF THE CHANGE
OF LOCATION AND LINES OF THE
HIGHWAY KNOWN AS STATE
HIGHWAY ROUTE NO. 222, IN
THE TOWNSHIP OF STONYCREEK,
IN SAID COUNTY AND STATE.

PETITION OF CH'RLLES WISSINGER
AND ALDA M. WISSINGER, HUSBAND
AND WIFE, FOR THE APPOINT-
MENT OF VIEWERS.

LAW OFFICES

HARKINS AND WHARTON

ELEVENTH FLOOR FIRST NATIONAL BANK BLDG.

JOHNSTOWN, PA.

filed - June 1, 1955

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PA.

IN THE MATTER OF THE CHANGE OF LOCATION
AND LINES OF THE HIGHWAY KNOWN AS STATE
HIGHWAY ROUTE NO. 222, IN THE TOWNSHIP
OF STONYCREEK, IN SAID COUNTY AND STATE.

No. 11-Road Docket
June SESSIONS,
1957

PETITION OF CHARLES WISSINGER AND ALDA M.
WISSINGER, HUSBAND AND WIFE, FOR THE APPOINT-
MENT OF VIEWERS.

TO THE HONORABLE, THE JUDGES OF THE ABOVE NAMED COURT:

The petition of Charles Wissinger and Alda M. Wissinger, husband and wife, respectfully represents:

1. Your Petitioners are residents of the Township of Stonycreek, in Cambria County, Pennsylvania; their residence address being 1701 Bedford Street, Johnstown, Pennsylvania. Charles Wissinger and Alda M. Wissinger, husband and wife, are also the owners of property situate at 1713-1715 Bedford Street, and also a vacant lot fronting 46 feet on Bedford Street, Johnstown, Pennsylvania.

2. The frontage of the property situate at 1701 Bedford Street is approximately 40 feet; and the frontage of the property situate at 1713-1715 Bedford Street is approximately 40 feet; and the frontage of the vacant lot fronts 46 feet on Bedford Street. The above mentioned properties are in the Township of Stonycreek, County of Cambria and State of Pennsylvania.

3. The Department of Highways of the Commonwealth of Pennsylvania, in changing the location and grade of the public highway leading from the City of Johnstown, Cambria County, Pennsylvania, to the Borough of Windber, in Somerset County, Pennsylvania, made certain changes which affected the land owned by your Petitioners in that the new highway known as Highway Route No. 222 was extended over and above part of the land owned by your Petitioners, and above described, whereby the Commonwealth of Penn-

sylvania condemned a portion of the land of your Petitioners, said portion being a strip of land approximately 14 feet in width and extending from the Westerly line of said above mentioned land to the Easterly line of said land.

4. Your Petitioners aver that they were the owners of the land hereinabove mentioned at the time of said condemnation, and therefore, they are the only persons entitled to recover damages for the taking thereof.

5. The Secretary of Highways of the Commonwealth of Pennsylvania, under authority of law, has caused changes in existing lines and location of the highway above referred to as State Highway Route No. 222 to be made at a point on said Highway where the same now passes along and above the real estate owned by your Petitioners and hereinabove described. Such change, insofar as that portion of said Highway Route No. 222 is concerned, makes a change therein whereby said Highway has been converted into a three lane highway upon a new location which extends over and above part of Petitioners' land. As the result of said changes, the land as owned by your Petitioners has been condemned and taken for public use in connection with the changes in lines and location aboverereferred to.

6. Petitioners are advised, believe and therefore aver that a strip of land approximately 14 feet in width and 40 feet in length, comprising approximately 560 square feet of land was taken for highway purposes with respect to property situate at 1701 Bedford Street; and that a strip of land approximately 14 feet in width and 40 feet in length, comprising approximately 560 square feet of land was taken for highway purposes with respect to property situate at 1713-1715 Bedford Street, Johnstown, Pennsylvania; and that a strip of land approximately 14 feet in width and 46 feet in length, comprising approximately 644 square feet of

land was taken for highway purposes with respect to the vacant lot situate on Bedford Street, Johnstown, Pennsylvania.

7. The changes in said highway so made by the Secretary of Highways have not only taken a large part of the real estate of your Petitioners as above set forth, but did cause injury and damage to the remainder thereof.

8. Petitioners, with respect to property situate at 1701 Bedford Street, aver that prior to the change in the Highway above mentioned, the property was landscaped and protected by a stone wall with proper stone steps and side walk, and the taking of certain portions of land, and the destruction of shrubbery and landscaping, and leaving the appearance of the building from the front, in a more or less dilapidated condition, which will be expensive to remodel and repair. Petitioners also aver, with respect to property situate at 1713-1715 Bedford Street, that the property was landscaped and had been landscaped for many years prior to the change in the highway above mentioned, and also that the property was protected by a stone wall, steps and walk leading to the entrances to the dwelling. The change in the highway resulted in the total destruction of the wall and certain beautiful ornamental trees, and the steps and side walk and has left the building in an appearance of more or less dilapidated condition, to correct or remodel which will require the expenditure of considerable sums of money. Petitioners also aver, with respect to the vacant lot fronting on Bedford Street, that before the work was done on the highway, Petitioners had erected a foundation for a building to house a three car garage and an apartment above the same. A certain portion of this land was taken by the change of highway, and Petitioners claim damages for the damage to the vacant lot of land.

9. The Commonwealth of Pennsylvania, under the provisions of the Act of Assembly in such case made and provided, is required to assume all damages in connection with the aforesaid changes of the existing lines and location of said highway known as State Highway Route No. 222.

10. By the provisions of Article III, Section 303 of the Act of Assembly of the 1st day of June, 1945, P. L. 1242, it is provided that, if an agreement cannot be made between the owner of property damaged and the Secretary of Highways, said owner or the Commonwealth may present their or its petition to the Court of Quarter Sessions for the appointment of Viewers to ascertain and assess such damages, as well as any benefits accruing to the land owned by reason of the appropriation or taking of the same or a part thereof by the Secretary of Highways in connection with the change in lines and location of State Highway Routes. Said act further provides that such petition shall be presented within 6 years from the date of the approval by the Governor of the plan making the change, but not thereafter. The approval of the plan making the change, in the present case, was dated in the year 1950. While the Viewers to be appointed must take into consideration not only the damages suffered by your Petitioners by reason of the appropriation hereinabove mentioned, but must take into consideration also any benefits which may have accrued to said property by reason of the fact that the highway now passes through and over the land of petitioners; nevertheless, petitioners believe that no benefits have been derived by petitioners thereby.

11. The Petitioners allege that the fair market value of the land owned by your petitioners at the time of the condemnation was decreased by reason of the condemnation, and by reason of the fact that a certain portion of their land was actually taken for public use, but in addition thereto, they claim that the fair market value immediately after the condemnation, and as affected

by the condemnation, was less than the amount of the fair market value immediately before the condemnation.

12. Until this date, Petitioners have not been able to complete an agreement between Petitioners and the Secretary of Highways.

WHEREFORE, your Petitioners pray the Court to appoint Viewers to ascertain and assess the damages which have been suffered by the property of Petitioners by reason of the acts of the Secretary of Highways as hereinabove recited, as well as any benefits derived therefrom.

And they will ever pray, etc.

Charles Wissinger

Alde M. Wissinger

STATE OF PENNSYLVANIA

COUNTY OF CAMBRIA

SS:

Personally appeared before me, the undersigned authority,
a Notary Public in and for said County and State, CHARLES WISSINGER
AND ALDA M. WISSINGER, HUSBAND AND WIFE, who being by me first
duly sworn, depose and say that the matters set forth in the fore-
going petition are true and correct to the best of their knowledge,
information and belief.

Charles Wissinger

Alda M. Wissinger

Sworn and subscribed to before me
this 31st day of May, A. D. 1955.

Walter Kewitz
Notary Public

My Comm. Expires March 7, 1959
Johnstown, Cambria County, Pa.

O R D E R

NOW, May 31, 1955, at 12:14 o'clock P M., the foregoing petition having been read and presented to the Court, the Court does hereby appoint Fred Clappin
Howard Hunt and Robert S. Mayer,
to view the property described in the within petition and to report to the Court their findings with respect to the damages suffered by the Petitioner by reason of the appropriation, injury or destruction of certain property in the change of lines and location of State Highway Route No. 222, taking into consideration any benefits which may have accrued to said property by said change of lines and location. It is hereby directed that the above named viewers in assessing the damages shall take into consideration the advantages derived from such road passing through the land of the complainants, if any. Said viewers are directed to make their report in writing to the Court of Quarter Sessions on or before the 1st Monday of August, 1955. The viewers above appointed are hereby directed to give at least ten days' notice in writing to the Secretary of Highways and the Petitioners of the day and hour on which they will view the premises within described and conduct their hearing under this appointment.

BY THE COURT:

W. J. Smith
J.

filed - June 22, 1955

IN THE COURT OF QUARTER
SESSIONS OF CAMBRIA COUNTY
PENNSYLVANIA

IN THE MATTER OF THE CHANGE
OF LOCATION AND LINES OF THE
HIGHWAY KNOWN AS STATE
HIGHWAY ROUTE NO. 222, IN
THE TOWNSHIP OF STONYCREEK,
IN SAID COUNTY AND STATE.

6/20

PETITION FOR
RULE TO SHOW CAUSE

EDWARD F. PEDUZZI
LAW OFFICES

~~XXXXXXXXXXXXXXXXXXXX~~
418 LINCOLN STREET
JOHNSTOWN, PA.

filed June 23, 1955

AND NOW, this 20th day of June, 1955, service of the within
petition together with true copy thereof is hereby accepted.

[Signature]
MARRINS & WHARTON
Attorneys for Respondents

IN THE MATTER OF THE CHANGE OF : IN THE COURT OF QUARTER SESSIONS
LOCATION AND LINES OF THE HIGH- : OF CAMBRIA COUNTY, PENNSYLVANIA
WAY KNOWN AS STATE HIGHWAY :
ROUTE NO. 222, IN THE TOWNSHIP : No. 11 June Sessions, 1955
OF STONYCREEK, IN SAID COUNTY :
AND STATE. : Road Docket

PETITION FOR RULE TO SHOW CAUSE

TO THE HONORABLE, THE JUDGES OF THE ABOVE NAMED COURT:

The petition of the Department of Highways of the Commonwealth of Pennsylvania respectfully represents:

1. That on June 1, 1955, Charles Wissinger and Alda M. Wissinger, husband and wife, filed a petition in your Honorable Court, entered to the above number and term, praying for the appointment of viewers to ascertain and assess the damages caused to the property of the said petitioners by reason of the change in existing lines and location of the above mentioned State Highway Route No. 222, and in pursuance thereof a board of viewers was duly appointed.

2. That your petitioner, the Department of Highways of the Commonwealth of Pennsylvania, contends that the property of the said Charles Wissinger and Alda M. Wissinger, husband and wife, was not affected by the alleged changes in the existing lines and location of said State Highway Route No. 222, and that their petition for the appointment of viewers should therefore be dismissed.

3. That in support of its contention, your petitioner offers the following reasons:

a. There was no taking of any land or property, or any part thereof, belonging to the above named petitioners by reason of the alleged changes in existing lines and location of the said State Highway.

b. All changes made to the said highway in recent years were made strictly within the legal right of way thereof as established by Section Two of the plan for State Highway Route No.

222, which plan was approved by the Governor on March 19, 1924.

c. The property in question was condemned by the Commonwealth at or near the time that the legal right of way of the said highway was established, as set forth in the preceding sub-paragraph, and consequently all claims for damages are now barred by the Statute of Limitations as prescribed by the Act of Assembly.

d. The above mentioned petition for the appointment of viewers does not allege the date on which the alleged changes in existing lines and location of said highway were made.

e. The Court, for the reasons above stated, is without jurisdiction to grant the prayer of the petition of the above named individuals for the appointment of viewers.

WHEREFORE, for the reasons stated above and for such other and further reasons as may be advanced at the hearing on this matter, your petitioner prays your Honorable Court for a rule on Charles Wissinger and Alda M. Wissinger, husband and wife, to show cause why their petition for the appointment of viewers to ascertain and assess the damages caused to their property by reason of the alleged changes in existing lines and location of the said State Highway Route No. 222, should not be dismissed. Your petitioner further prays your Honorable Court to stay all proceedings pending the determination of this matter.

DEPARTMENT OF HIGHWAYS OF THE
COMMONWEALTH OF PENNSYLVANIA

by


District Engineer

COMMONWEALTH OF PENNSYLVANIA

SS:

COUNTY OF BLAIR

Personally appeared before me, a notary public in and for said County and State, V. B. Leopold, who being sworn according to law, deposes and says that he is the District Engineer for the Department of Highways of the Commonwealth of Pennsylvania and that the matters set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.


V. B. Leopold

Sworn to and subscribed before me
this 21 day of June, 1955.


Notary Public

My Commission expires

NOTARY PUBLIC

My Commission Expires December 12, 1955

RULE

AND NOW, this 22nd day of June, 1955, upon consideration of the foregoing petition and on motion of Edward F. Peduzzi, Attorney for the petitioner, a Rule is granted upon Charles Wissinger and Alda M. Wissinger, husband and wife, to show cause why their petition for the appointment of viewers to ascertain and assess damages to their property caused by the changes in existing lines and location of State Highway Route No. 222 Should not be dismissed. Rule returnable the 5th day of July, 1955.

It is further ordered that the Clerk of Courts notify the board of viewers appointed in this matter to stay all proceedings pending the final determination of this proceeding.

BY THE COURT:

McGowan
P.

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

IN THE MATTER OF THE CHANGE OF
LOCATION AND LINES OF THE HIGH-
WAY KNOWN AS STATE HIGHWAY
ROUTE NO. 222, IN THE TOWNSHIP
OF STONYCREEK, IN SAID COUNTY
AND STATE.

No. 11 June Sessions, 1955
ROAD DOCKET

AGREEMENT OF COUNSEL

NOW JULY 5, 1955, it is agreed by and between the
Counsel for the parties in the above entitled case that the time
within which an Answer to Rule heretofore Granted is to be filed,
is extended until the 28th day of November, 1955.

Edward F. Peduzzi
Richard W. [unclear]
Paul W. [unclear]

*Filed
11-28-55*

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

IN THE MATTER OF THE CHANGE
OF LOCATION AND LINES OF THE
HIGHWAY KNOWN AS STATE HIGH-
WAY ROUTE NO. 222, IN THE
TOWNSHIP OF STONYCREEK, IN
SAID COUNTY AND STATE.

*check
11-28-55*

ANSWER TO PETITION FOR RULE
AND TO RULE TO SHOW CAUSE
HERETOFORE GRANTED.

LAW OFFICES

HARKINS AND WHARTON

ELEVENTH FLOOR FIRST NATIONAL BANK BLDG.

JOHNSTOWN, PA.

Filed 11-28-55

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

IN THE MATTER OF THE CHANGE OF
LOCATION AND LINES OF THE HIGH-
WAY KNOWN AS STATE HIGHWAY
ROUTE NO. 222, IN THE TOWNSHIP
OF STONYCREEK, IN SAID COUNTY
AND STATE.

No. 11, June Sessions, 1955

ROAD DOCKET

ANSWER TO PETITION FOR RULE AND TO RULE TO
SHOW CAUSE HERETOFORE GRANTED.

TO THE HONORABLE, THE JUDGES OF THE ABOVE NAMED COURT:

CHARLES WISSINGER and ALDA M. WISSINGER, husband and wife, file the following answer to the Petition for Rule and the Rule to Show Cause heretofore granted in the above entitled case, and answer the petition of the Department of Highways of the Commonwealth of Pennsylvania as follows:

1. Admitted.
2. The contention of the Department of Highways of the Commonwealth of Pennsylvania, as set forth in the second numbered paragraph of the petition, is denied, and on the contrary, it is averred that the land described in the petition heretofore filed, was affected by the changes in the existing lines and locations of Highway Route No. 222. It is further averred that Petitioners herein received no just compensation for the difference in fair market value of the land as affected by the changes in the lines and locations of said State Highway Route No. 222, and therefore, the Board of Viewers should make an award to the Petitioners.
3. (a) Denied.
(b) Immaterial. No payment has ever been made for the taking of land or the effect of such taking.
(c) It is denied that the property in question was condemned prior to June 7, 1950, and it is contended that therefore all claims for damages may now be enforced.

(d) Denied. The petition states, "The approval of the plan making the change, in the present taking, was dated in the year 1950."

(e) It is denied that the Court is without jurisdiction to grant the prayer of the Petition for the appointment of Viewers.

4. And further answer to the petition and rule, Petitioners aver that the taking of land and the effect of such taking upon the market value of the land affected thereby was accomplished since 1950 under a plan which was approved by the Governor of the Commonwealth of Pennsylvania on June 7, 1950. That plan is of record in Book No. 2A of the State Highway Right of Way of record in the Office of the Recorder of Deeds, in and for Cambria County, Pennsylvania, where the drawings were designated as drawings for construction and condemnation of a Right of Way of Route No. 222.

5. Petitioners further contend that the establishment of an ultimate width of a State Highway was of No force and effect unless the same was filed of record in the Office of the Recorder of Deeds, in and for Cambria County, Pennsylvania. Petitioners further contend that even though an ultimate Right of Way has been established, the condemnation relates to the time of the taking, and not the time of establishing the ultimate Right of Way. It is the contention of the Petitioners in this case, that the condemnation of the property mentioned in the petition heretofore filed, was effective on and after June 7, 1950, and at no time prior thereto.

WHEREFORE, your Petitioners respectfully request your Honorable Court to discharge the rule granted on the 22nd day of June, 1955, so that the Viewers heretofore appointed, may proceed to award just compensation to the Petitioners for the difference

in the fair market value of the property of your Petitioners immediately before the taking; and the fair market value of the same immediately after the taking, and as affected thereby.

~~Alda M. Kissinger~~

Alda M. Kissinger.

STATE OF PENNSYLVANIA

COUNTY OF CAMBERIA

SS:

Personally appeared before me, the undersigned authority, a Notary Public, in and for said County and State, CHARLES WISSINGER and ALDA M. WISSINGER, husband and wife, who being by me first duly sworn, depose and say that the facts set forth in the foregoing Answer to Petition for Rule and to Rule to Show Cause heretofore granted, are true and correct to the best of their knowledge, information and belief.

Charles Wissinger

Alda M. Wissinger

Sworn and subscribed to before me
this 17th day of July, A. D. 1955.

Murray J. Shiff
Notary Public

My Comm. Expires: February 17, 1959

No. 11 June Sessions, 1955,
Road Docket.

IN THE COURT OF QUARTER
SESSIONS OF CAMBRIA COUNTY, PA.

IN THE MATTER OF THE CHANGE
OF LOCATION AND LINES OF THE
HIGHWAY KNOWN AS STATE
HIGHWAY ROUTE NO. 222, IN
THE TOWNSHIP OF STONYCREEK,
IN SAID COUNTY AND STATE.

Filed: 3-13-59

ORDER.

FRANCIS J. LEAHEY,
OFFICIAL STENOGRAPHER FOR THE
FORTY-SEVENTH JUDICIAL
DISTRICT

H copies

IN THE MATTER OF THE CHANGE : IN THE COURT OF QUARTER SESSIONS
OF LOCATION AND LINES OF THE : OF CAMBRIA COUNTY, PENNA.
HIGHWAY KNOWN AS STATE :
HIGHWAY ROUTE NO. 222, IN :
THE TOWNSHIP OF STONYCREEK, : No, 11 June Sessions, 1955, Road
IN SAID COUNTY AND STATE. : Docket.

O R D E R

NOW, March 13, 1959, in accordance with the Opinion of this Court entered to No. 6 June Sessions, 1955, Road Docket, the rule to show cause why the petition of Charles Wissinger and Alda M. Wissinger, husband and wife, for the appointment of Viewers should not be dismissed is made absolute and said petition is dismissed and the Order thereon vacated.

The rule to show cause why the County of Cambria should not be joined as an additional defendant is hereby dismissed.

BY THE COURT:

McDonald

J.

NOTE—Rule 43 requires appellant, immediately upon entering his appeal, to serve notice thereof on the opposite party or his counsel and to file promptly in the Court below proof of the service of such notice.

IN THE MATTER OF THE CHANGE OF
LOCATION AND LINES OF THE HIGHWAY
KNOWN AS STATE HIGHWAY ROUTE 222,
IN THE TOWNSHIP OF STONYCREEK,
COUNTY OF CAMBERIA AND STATE OF
PENNSYLVANIA

No. 11 June Term, 19 55
(Number in court below)

To Appellee or his Counsel:

You are hereby notified that on April 23, 1959
an appeal was taken to the Supreme Court of Pennsylvania in the above
entitled case at No. 144 March Term, 1959, by Charles Wissinger
and Alda M. Wissinger and that this appeal will be on the
list for the Week of September 28, 1959, at Pittsburgh.


Donald L. Gibbon
Attorneys for Appellant.

April 27 1959, Service of the foregoing notice is
hereby accepted.

Edward F. Peduzzi
Atty for Commonwealth
Shelby Swope Sully
By: Thomas H. Swope
Attorneys for Cambria County

No. 11 June Sessions, 1955
(Number in court below)

Notice of Appeal and
Acceptance of Service.

 Filed - Apr. 27, 1959
J.C. Stess

No. 11 June Sessions, 1955

IN THE COURT OF QUARTER SESSIONS
OF CAMBRIA COUNTY, PENNSYLVANIA

IN THE MATTER OF THE CHANGE OF
LOCATION AND LINES OF THE HIGH-
WAY KNOWN AS STATE HIGHWAY ROUTE
222, IN THE TOWNSHIP OF STONY
CREEK, COUNTY OF CAMBRIA AND
STATE OF PENNSYLVANIA.

CERTIFICATE OF AMOUNT IN CON-
TROVERSY

10. 11
1955
1959

Filed Apr 27, 1959
J.C. Stess

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA

IN THE MATTER OF THE CHANGE OF
LOCATION AND LINES OF THE HIGH-
WAY KNOWN AS STATE HIGHWAY ROUTE
222, IN THE TOWNSHIP OF STONY-
CREEK, COUNTY OF CAMBRIA AND
STATE OF PENNSYLVANIA.

No. 11 June Sessions, 1955

Case of Charles Wissinger and
Alda M. Wissinger

I hereby certify that the value of the property and the
amount in controversy in the above case tried before me is greater
than \$5,000.00.


JUDGE

Filed August 24, 1959 - J.C.W.

IN THE MATTER OF THE CHANGE OF : IN THE COURT OF QUARTER SESSIONS
LOCATION AND LINES OF THE : OF CAMBRIA COUNTY, PA.
HIGHWAY ROUTE 222, IN THE :
TOWNSHIP OF STONYCREEK, COUNTY :
OF CAMBRIA AND STATE OF :
PENNSYLVANIA. : No. 11 June Sessions, 1958.

EXCEPTION TO OPINION AND ORDER

To all of which counsel for petitioner excepts and prays
that an exception be noted and bill sealed; all of which is, the
day and year aforesaid, accordingly done.

ALTON A. McDONALD, J. (SEAL)

The Supreme Court of Pennsylvania }
Western District } ss:

The Commonwealth of Pennsylvania

TO THE JUDGES of the COURT OF QUARTER SESSIONS for the County of CAMBRIA

GREETING: WHEREAS, by virtue of our Writ of Certiorari at No. 144 of March Term, 19 59 of our Court a record in the matter of the appeal of CHARLES WISSINGER AND ALDA M. WISSINGER

from the order of your said Court at No. 11 of June Session ~~Term~~ A. D. 19 55

was brought into our Supreme Court and the said cause was there so proceeded in that on the 3rd day of June A. D. 19 60 the following decision was rendered, viz:

Pursuant to stipulation filed,
Order reversed and record remanded for further proceedings consonant with this opinion.

BOK, J.

WHEREFORE, We hereby remit you the record aforesaid with the proceedings thereon and all things touching the same so far as in this Court they remain, for the purpose of execution as to justice shall appertain in accordance with the decision of our said Supreme Court as aforesaid.

Witness the Honorable CHARLES ALVIN JONES Chief Justice of our Supreme Court, the 15th day of June in the year of our Lord one thousand nine hundred and sixty.

Samuel W. Robinson
Prothonotary

Q.S. Cambria
No. 11 June Sessions ~~1955~~ 19 55

No. 144 March Term, 19 59

Supreme Court

IN THE MATTER OF THE CHANGE OF
LOCATION AND LINES OF THE HIGHWAY
KNOWN AS STATE HIGHWAY ROUTE 222,
IN THE TOWNSHIP OF STONYCREEK,
COUNTY OF CAMBRIA AND STATE OF
PENNSYLVANIA

APPEAL OF CHARLES WISSINGER AND
ALDA M. WISSINGER

REMITTITUR

Final - June 16, 1960.
J. T. Hogan