

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. 10 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 Thomas Richard Smith and Doris Marie Smith,
husband and wife, as follows:

1. That the Department of Highways has agreed to pay to Thomas
Richard Smith and Doris Marie Smith, husband and wife, the sum of \$1,200.00
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 Thomas
Richard Smith and Doris Marie Smith, husband and wife, have agreed to accept
the said sum in full settlement for said damages, including interest and/or
detention damages.

2. That Thomas Richard Smith and Doris Marie Smith, husband and
wife, upon the payment of the said sum of \$1,200.00 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 Thomas Richard Smith
and Doris Marie Smith

*Filed -
Jan. 23, 1961*

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. 10 June Sessions, 1955.

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)

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA

Petition of Thomas Richard Smith
and Doris Marie Smith, husband and
wife, for the appointment of
Viewers in the matter of the Change
of location and lines of the highway
known as State Highway Route 222, in the
Township of Stonycreek, Cambria County
Pennsylvania.

No. 10 June Sessions 1955 Road
Docket

IN ACCOUNT WITH LILLIAN BAUMGARDNER, AGENT FOR MAHLON BAUMGARDNER, DECEASED

1955.

June 5	Preparing Notices to View	\$12.00
June 8	Posting Notices to View	12.00
	Mileage 40 miles	<u>4.00</u>
		\$28.00

11/5/59
Approved by the Court
Hessland, J.

No R.D 10 June Sessions
1955

Exhibits to be filed
June 8 before the court for trial

June 2 deposition of witness for Plaintiff

1955

IN WITNESS WHEREOF I have hereunto set my hand and seal of office at the City of New York, New York, this 10th day of June, 1955.

Filed - Nov. 5, 1959

11/2/59
G. S. Brown
of New York

RECEIVED
The Court of General Sessions of the City of New York
June 8, 1955
Attest: The Clerk of the Court
John J. [Name]

IN THE COURT OF GENERAL SESSIONS OF THE CITY OF NEW YORK

No. 10 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 Thomas Richard Smith
and Doris Marie Smith, husband
and wife.

Filed - 2-20-61

BILL OF COSTS ON APPEAL

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

No. 10 June Sessions, 1955

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

The Commonwealth of Pennsylvania

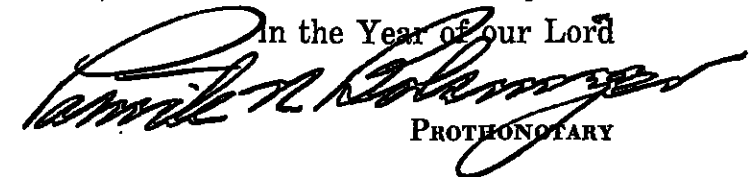
TO THE JUDGES of the COURT OF QUARTER SESSIONS for the County of CAMBRIA

GREETING: We being willing for certain causes to be certified of the matter of the appeal of
THOMAS R. SMITH and DORIS M. SMITH (otherwise Thomas Richard Smith
and Doris Marie Smith)

from the Order of your said Court at No. 10 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 1959, 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.


PROTHONOTARY

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.

Yvonne Peterman
..... [L. S.]
Pennsylvania
..... [L. S.]

2 *F2*

No. 146 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 THOMAS R. SMITH and DORIS M. SMITH (otherwise Thomas Richard Smith and Doris Marie Smith)

CERTIORARI to the COURT OF QUARTER SESSIONS

for the County of CAMBRIA
Returnable the last Monday
of September A. D. 19 59.

FILED
SEP 14 1959

Edward J. Harkins
Gerald K. Gibson SUPREME COURT
WESTERN DISTRICT

Attorneys for Appellant

Filed
Apr. 27, 1959
J.C. Hess

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 10 June
Sessions, 1959

Petition of Thomas Richard Smith and
Doris Marie Smith, 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 23, 1955	Petition for rule to show cause filed by Edward F. Peduzzi, Esq.
June 23, 1955	Rule filed.
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 Pa. Dept. of Highways, petitioner, filed.
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 10 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.

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 THOMAS RICHARD
SMITH AND DORIS MARIE SMITH,
HUSBAND AND WIFE, FOR THE
APPOINTMENT 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. 10-Road District
June SESSIONS.
1955.

PETITION OF THOMAS RICHARD SMITH AND DORIS MARIE
SMITH, HUSBAND AND WIFE, FOR THE APPOINTMENT OF
VIEWERS.

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

The petition of Thomas Richard Smith and Doris Marie Smith,
husband and wife, respectfully represents:

1. Your petitioners are residents of the Township of
Stonycreek, in Cambria County, Pennsylvania; their residence address
being _____ Bedford Street, Johnstown, Pennsylvania.

2. Your petitioners are the owners of a certain lot or
parcel of land situate, lying and being in the Township of Stonycreek,
County of Cambria and State of Pennsylvania, more particularly
bounded and described as follows:

BEGINNING at a point in the Easterly line of Bedford
Street at the corner of land now or formerly of E.
Lenhart Estate; thence by line of land now or formerly
of E. Lenhart Estate, North 52 degrees 2 minutes East
a distance of 271 feet to a point at Scott Avenue;
thence by line of Scott Avenue South 37 degrees 48 minutes
East a distance of 29.94 feet to a point; thence through
land of which this is a part the following courses
and distances: South 52 degrees 3 minutes West a
distance of 145.97 feet to a point; thence South 49
degrees 35 minutes West a distance of 53.3 feet to a
point; thence South 53 degrees 39 minutes West a
distance of 68.14 feet to a point in the Easterly line
of Bedford Street; thence by the line of Bedford Street
North 44 degrees 42 minutes West a distance of 30.46
feet to the point and place of beginning.

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 Pennsylvania 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 above referred to.

6. Petitioners are advised, believe and therefore aver that a strip of land approximately 14 feet in width and 30.46 feet in length, comprising approximately 1114 square feet of land was taken for Highway purposes.

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. By reason of the change of the line of the highway and the grade thereof, the fair market value of petitioners' property was depreciated. Petitioners claim that the permanent taking of land and the effect of said taking was such as to reduce the fair market value of the land owned by your petitioners at the time of the condemnation.

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 owner 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.

Thomas Richard Smith

Louis Marie Smith

STATE OF PENNSYLVANIA

COUNTY OF CAMBRIA

SS:

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, THOMAS RICHARD SMITH and DORIS MARIE SMITH, husband and wife, who being by me first duly sworn, depose and say that the matters set forth in the foregoing petition are true and correct to the best of their knowledge, information and belief.

Thomas Richard Smith
Doris Marie Smith

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

Walter Keenig
Notary Public

My Comm. Expires:

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

O R D E R

NOW, ~~June~~ ^{Ma} 31, 1955, at 12:15 o'clock P M., the foregoing petition having been read and presented to the Court, the Court does hereby appoint Walter Bannford
Robert Elder and Wm H Kelly,
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 petitioners 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.

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.

22

PETITION FOR

RULE TO SHOW CAUSE

filed June 23, 1955

EDWARD F. PEDUZZI
LAW OFFICES

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

AND NOW, this *22nd* day of June, 1955, service of the within
petition together with true copy thereof is hereby accepted.

HARRIS & WHEATON

[Signature]
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. 10 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, Thomas Richard Smith and Doris Marie Smith, 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 Thomas Richard Smith and Doris Marie Smith, husband 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 Five of the plan for State Highway Route No.

222, which plan was approved by the Governor on September 2, 1941.

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 Thomas Richard Smith and Doris Marie Smith, 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 duly 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 27th 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 Thomas Richard Smith and Doris Marie Smith, 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:

W. H. H. H. H.
P.J.

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

No. 10 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
Hankins & Wharton
Ray (do) J. Hankins

Filed 11-28-55

No. 10 June Sessions, 1955
ROAD DOCKET

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

*Alvick
6-26*

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 CAMBRIA COUNTY, PENNA.

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. 10, 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:

THOMAS RICHARD SMITH and DORIS MARIE SMITH, 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.

Thomas Richard Smith

Loris Marie Smith

STATE OF PENNSYLVANIA

COUNTY OF CAMBERIA

SS:

Personally appeared before me, the undersigned authority, a Notary Public, in and for said County and State, THOMAS RICHARD SMITH and DORIS MARIE SMITH, 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.

Thomas Richard Smith

Doris Marie Smith

Sworn and subscribed to before me
this 14th day of July, A. D. 1955.

Murray J. Shiffer
Notary Public

My Comm. Expires: February 17, 1959

No. 10 June Session, 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.

ORDER

Filed 3-13-59

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

4 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. 10 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 Thomas Richard Smith and Doris Marie Smith, 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 CAMBRIA AND STATE OF
PENNSYLVANIA

No. 10 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. 146 March Term, 19 59 by Thomas R. Smith and Doris
M. Smith (otherwise Thomas Richard and that this appeal will be on the
Smith and Doris Marie Smith)
list for the Week of September 28, 1959, at Pittsburgh.

Ronald T. Gibson
Attorneys for Appellant.

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

Edmond F. Peduzzi
atty for Commonwealth
Shelley, Europe & Shelley
By: Thomas H. Europe
Attorneys for Cambria County.

No. 10 June Sessions, 1955 ...
(Number in court below)

Notice of Appeal and
Acceptance of Service.

 Filed - Apr. 27, 1959
J.C. [Signature]

No. 10 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

NO. 10 1955 Sessions, June
and Court Held, 1955
Case of State Highway 222
Stony Creek, Cambria Co. Pa.

*Filed: Apr 27, 1959
J.C. [Signature]*

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Court at the City of Harrisburg, Pennsylvania, this 27th day of April, 1959.

CLERK

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. 10 June Sessions, 1955

Case of Thomas Richard Smith
and Doris Marie Smith

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



Judge

Q.S.Cambria

No. 10 June Sessions ~~1955~~ 1955

No. 146 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 THOMAS R. SMITH AND DORIS
M. SMITH (otherwise Thomas Richard
Smith and Doris Marie Smith)

REMITTITUR

Filed - June 16, 1960

J. T. Fagan

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. 146 of March Term, 19 59 of our Court a record in the matter of the appeal of THOMAS R. SMITH AND DORIS M. SMITH (otherwise Thomas Richard Smith and Doris Marie Smith)

from the order of your said Court at No. 10 of June Sessions Term, A. D. 19 55

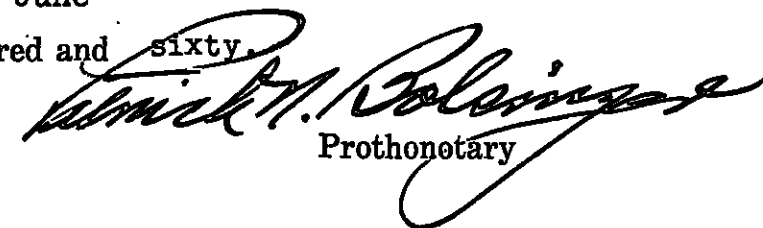
was brought into our Supreme Court and the said cause was there so proceeded in that on the 3rd day of June A. D. 19 60 the following decision was rendered, viz:

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.


Prothonotary