

APPLICATION DOCKET No. 321, 1914.

IN THE MATTER OF THE ABOLITION OF GRADE CROSSINGS OF THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY'S TRACKS OVER THE COCHECTON AND GREAT BEND TURNPIKE, AND THE CONSTRUCTION OF A CROSSING ABOVE GRADE IN THE TOWNSHIP OF GREAT BEND, SUSQUEHANNA COUNTY.

Decided April 9, 1915

The Applicant in this case asks for the approval of the abolition of two grade crossings in Great Bend Township, Susquehanna County, at a point where the Cochection and Great Bend Turnpike crosses the tracks of the Delaware, Lackawanna and Western Railroad, and known as McKinney Crossing; and the other at a point where said turnpike crosses the said railroad company's tracks and known as Florence Crossing; and for the construction of a crossing above grade in lieu thereof. The question of the damages to adjacent property owners was the principal matter at issue.

Held: That the Commission has jurisdiction in the case at issue; that it has no power to go into the question of the legality of the condemnation proceedings instituted by the railroad company; and directs that the railroad company shall pay all costs, including compensation to adjacent property owners, the amounts of which are determined.

J. H. Oliver and Frederic W. Fleitz, Representing the Applicant.

H. C. Reynolds and E. R. W. Searle, Representing the Protestants.

REPORT OF THE COMMISSION.

WALLACE, *Commissioner:*

The application in this case is for the approval of the abolition of two crossings at grade of the tracks of The Delaware, Lackawanna and Western Railroad Company in the Township of Great Bend, Susquehanna County; one at a point in said Township where the Cochection and Great Bend Turnpike, a State Highway called the Lower Road, crosses the tracks of the said Company, and known as McKinney Crossing; the other at a point in said Township where the said turnpike, called the Upper Road, crosses the tracks of the

said Railroad Company, known as Florence Crossing; and also for the construction of a crossing above grade at a point in said Township on the lands formerly of the J. E. Johnson Estate, about 1,000 feet south of the Florence Crossing. A new public highway is to be laid out to connect the Upper Road and Lower Road with this above grade crossing.

Hearings were held and full investigation had as to the dangerous condition of these grade crossings and the necessity for their abolition, which necessity was practically admitted by all the parties, and the Commission on January 7th, 1915, adopted and approved plans and specifications for the elimination of the said grade crossings. The parties in interest being unable to agree as to the amount of damages which adjacent property owners would sustain by reason of the said abolition, a further hearing was held in Scranton on January 15th, 1915, on the question of the damages due to adjacent property owners. At this hearing testimony was taken which is part of the record, and full opportunity granted to all persons in interest or affected by the abolition of the above crossings to present their claims.

The protests filed on behalf of certain property owners and the Supervisors of Great Bend Township allege that there is no power in the Commission to determine the case before us, because a portion of a public highway is vacated. We think that the provisions of Section 5, Article III, and Section 12, Article V, of the Public Service Company Laws, give the Commission exclusive jurisdiction in the matter of the abolition and construction of all crossings of public highways over the tracks of railroad companies, and also that adjacent property owners are fully and legally protected, in securing just and adequate damages which they may sustain by reason of the abolition or construction of any such crossings.

We do not think that the Commission has the power to, nor should, go into the question of the legality of the condemnation proceedings instituted by the Railroad Company to acquire the lands of James A. Florence, one of the Protestants. There is nothing in the Act which gives the Commission power to determine damages caused by reason of appropriation of land for railroad purposes, but any damages sustained by an adjacent property owner by reason of the abolition of a grade crossing must be considered and determined by the Commission.

The laying out of the new public highway from the Upper Road and the Lower Road to connect with the overhead bridge must be done by the Railroad Company, as the land upon which the highway will be located is owned by the said Company, which Company must by proper action, set over the highway to the Commonwealth of Pennsylvania, or a municipality having jurisdiction.

The Commission is of the opinion and finds and determines, after careful investigation of the testimony and record, that the abolition of the grade crossings aforesaid, in conformity with the plans and specifications approved January 7th, 1915, is necessary and proper for the accommodation, convenience and safety of the public, and also finds and determines that the following property owners have sustained damages in the amounts set opposite their names:

J. C. Florence,	\$500.00
Mrs. P. R. Barriger,	250.00
Miles Bennett,	200.00
C. A. Trowbridge,	200.00
E. H. B. Rossa,	300.00
J. A. Florence,	500.00
C. R. McKinney,	4,500.00

The Commission also finds and determines that the said Delaware, Lackawanna and Western Railroad Company shall pay all the costs and expenses incident to the abolition of said grade crossings, and the construction of the overhead crossing, including the amount of damages herein awarded to the adjacent property, and also that the said Company shall keep in repair, or make provision with the necessary authorities for payment for keeping and maintaining in repair, the Lower Road, from the McKinney Crossing to the point where the new public highway connects with said road, and also the portion of the Upper Road from the Florence Crossing to a point where the new public highway connects with said road.

An order will, therefore, be entered approving the application in this case, and directing that a Certificate of Public Convenience be issued in accordance with this finding and determination.

ORDER.

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

Now, to-wit, April 9th, 1915, It is ordered: That a Certificate of Public Convenience be issued in accordance with and more fully and at large set out in the said report hereto attached; that The Delaware, Lackawanna and Western Railroad Company shall pay, as compensation for damages caused to their property by reason of the abolition of the crossings referred to in said report, to the following adjacent property owners the amounts set opposite their names:

J. C. Florence,	\$500.00
Mrs. P. R. Barriger,	250.00
Miles Bennett,	200.00
C. A. Trowbridge,	200.00
E. H. B. Rossa,	300.00
J. A. Florence,	500.00
C. R. McKinney,	4,500.00

and also that the said Delaware, Lackawanna and Western Railroad Company shall pay all the costs and expenses incident to the abolition of the said grade crossings and the construction of the overhead crossing, that the said Railroad Company shall keep in repair, or make provisions with the necessary authorities for payment for keeping and maintaining in repair, the Lower Road from the McKinney Crossing to the point where the new highway connects with the said road, and the portion of the Upper Road from the Florence crossing to a point where the new highway connects with said road.

MUNICIPAL CONTRACT DOCKET No. 343, 1914.

IN THE MATTER OF THE APPLICATION OF THE SUPERVISORS OF CONCORD TOWNSHIP, ERIE COUNTY, FOR THE APPROVAL OF A CONTRACT DATED AUGUST 29TH, 1914, BETWEEN THE SAID TOWNSHIP AND THE PENNSYLVANIA RAILROAD COMPANY, LESSEE OF THE WESTERN NEW YORK AND PENNSYLVANIA RAILROAD.

Decided April 9, 1915.

The Pennsylvania Railroad Company, as lessee of the Western New York and Pennsylvania Railroad Company, entered into a contract with the Supervisors of Concord Township, Erie County, providing that the said Supervisors begin proceedings to close and legally vacate and abolish certain grade crossings, and construct overhead and under-grade crossings in lieu thereof. Most of the testimony produced had reference to the necessity for the proposed change.

Held: That, under the terms of the contract, the abolition of the grade crossings and the vacation of the public highways are contingent upon the proper legal action necessary to secure such abolition; that exclusive jurisdiction rests with the Commission in the matter of the construction, alteration, relocation or abolition of crossings. Under all the facts, the contract should be approved.