

DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

MAY 21, 1915 TO JULY 1, 1917

AND OPINIONS OF THE APPELLATE COURTS
IN APPEALS THEREFROM

VOLUME II

HARRISBURG, PENNA. :
J. L. L. KUHN, PRINTER TO THE COMMONWEALTH
1919

AND IT IS FURTHER ORDERED: That the Report of Commissioner Pennypacker be, and the same is hereby, made and filed as the report of the Commission, in the above entitled proceeding.

APPLICATION DOCKET NO. 329, 1915.

APPLICATION BY THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY FOR THE ABOLITION OF A CROSSING AT GRADE, AT PARKE STREET, IN THE BOROUGH OF DUNMORE, LACKAWANNA COUNTY, OVER THE RIGHT-OF-WAY OF SAID COMPANY, AND THE CONSTRUCTION OF A CROSSING ABOVE GRADE IN LIEU THEREOF.

The proceedings in this matter are for a finding and determination of the damages due adjacent property owners by reason of the abolition of the grade crossing, and the construction of a crossing above grade in lieu thereof at a point on Parke Street, in the Borough of Dunmore, the approval of the Commission to the said abolition and construction having been previously granted.

APPEARANCES:

J. H. Oliver, Representing The Delaware, Lackawanna & Western Railroad Company.

R. A. Zimmerman, Representing the Borough of Dunmore.

Joseph O'Brien and Edward J. Kelly, Representing Bridget Wilson.

James W. McDonald, Representing Edward Duffy.

OPINION.

MAGEE, *Commissioner*:

The application for the abandonment of grade crossing over the tracks of the Delaware, Lackawanna & Western Railroad Company, at the intersection of Parke Street, in the Borough of Dunmore, Lackawanna County, rests upon a contract between the said Railroad Company and the Borough of Dunmore, whereby the Borough vacated

the said Parke Street where the same intersects with the right-of-way of said Railroad Company, and wherein a viaduct or overhead crossing is provided in lieu thereof, at a point about 630 feet west of said grade crossing, between Gravity Street at the southerly approach, and Mill Street at the northerly approach. The said contract also provides that the said viaduct be constructed by, and at the sole expense of the Railroad Company; that it be maintained by the Borough; and that the Borough acquire the necessary land for the approaches to the same, as well as pay all damages caused by the construction of the said viaduct and by the vacation of the said Parke Street.

The Petition of the said Delaware, Lackawanna & Western Railroad Company was filed with The Public Service Commission on September 16th, 1915. On October 20th, 1915, a Certificate of Public Convenience was issued by the Commission, after hearing and due investigation, evidencing the Commission's approval of the plans for the abolition of the said grade crossing and the relocation of the same by the construction of the overhead crossing.

The matter before us now is the ascertainment and determination by the Commission of the damages which the owners of property taken, injured or destroyed, sustained by reason of the same. The vacated grade crossing and the viaduct in course of construction were inspected, and a hearing held in the City of Scranton by the Commission, on December 16th, 1915. The Borough of Dunmore adjoins the City of Scranton to the south. In the southerly part of the said Borough, Roaring Brook forms a deep, narrow ravine running westwardly. The hillsides adjoining this Brook have been utilized by two railroads, the Delaware, Lackawanna & Western on the southerly side of said Brook, and the Lackawanna and Wyoming Valley Railway on the northerly side of the same. The major portion of the Borough of Dunmore lies to the north of Roaring Brook, the territory to the south thereof constituting the Fifth Ward. From the Fifth Ward, the main artery of travel, and almost the only means of communication with the main part of the Borough of Dunmore and the City of Scranton, is said Parke Street, a dirt road which begins at Donegal Street in said Fifth Ward, and runs thence in a northerly direction at a descending grade, crossing first, the right-of-way of the said Delaware, Lackawanna & Western Railroad at grade, then the said Roaring Brook by a viaduct, and the said Lackawanna and Wyoming Valley Railway tracks at grade, and then extending on to a point on Mill Street.

There are three parcels of land, each containing a frame dwelling, on Parke Street, between Donegal Street and the right-of-way of the Delaware, Lackawanna & Western Railroad Company at the place of vacation; two of them at the corners of Donegal and Parke

Streets, owned respectively, by Edward Duffy, approximately 60 by 170 feet in area; and Thomas Barrett, approximately 150 by 130 by 190 feet; and the third, approximately 60 by 170 feet in area, fronting on the easterly side of Parke Street in the rear of the property of Edward Duffy, and owned by the devisees of Andrew Wilson, deceased. All of these persons claim damages for injuries to their respective properties. The lands to the north of the right-of-way of the Delaware, Lackawanna & Western Railroad on both sides of Parke Street, are owned by the Pennsylvania Coal Company and the Lackawanna & Wyoming Valley Railway Company. While only the area of the intersection of the said Parke Street and the right-of-way of the Delaware, Lackawanna & Western Railroad has been vacated, that in itself will prevent any further means of communication from Parke Street between said Fifth Ward and the remaining part of the community, and our question is whether the said owners have sustained any damages, and if so, to what extent.

It must be first taken into account that the new means of travel provided in lieu of Parke Street is a longer and more roundabout way, being at least fifty per cent. greater in distance. It must be taken into account also that no possibility remains of ever using any of the properties above mentioned for business purposes. It appears too, from the testimony, that the roadway of said Parke Street descends in front of the Barrett and Duffy residences at a grade of two to three per cent.; in front of the Wilson dwelling, at about five or six per cent., and that the roadway of said Parke Street is not more than twenty feet in width. A barrier will be erected along the southerly boundary of the Delaware, Lackawanna & Western Railroad right-of-way, and it will be almost impossible for teams to turn in the cul-de-sac thus created. The delivery of supplies to the Wilson residence will be difficult. The discontinuance of the tide of public travel, vehicular and pedestrian, over Parke Street, will result in depreciation to these three properties.

Having considered all the facts and giving due weight to the reasons advanced by all parties as to the benefits and damages caused by the vacation of said street, the elimination and relocation of said crossing, the Commission is of the opinion and finds and determines that the lands and properties of said Thomas Barrett, Edward Duffy and Andrew Wilson, devisees, have been injured, and the said owners suffered damages as follows, viz:—Thomas Barrett, one hundred dollars; Edward Duffy, one hundred dollars; the devisees of Andrew Wilson, consisting of his widow, Bridget Wilson, and his daughters, Elizabeth Wilson and Ellen Wilson, eight hundred dollars, and that the same be paid by the borough of Dunmore in accordance with said contract.

The owners of the lands to the north of the said right-of-way, the Lackawanna & Wyoming Valley Railway Company and the Pennsylvania Coal Company, do not make any claim of injury by reason of said vacation and relocation. The said borough of Dunmore has acquired all the property taken for the abutments to said viaduct in fee, and it appears that no other property has been injured or damaged by the location and construction of the same.

An Order will therefore be entered in accordance with the finding and determination herein made.

ORDER.

The Public Service Commission of the Commonwealth of Pennsylvania having issued its Certificate of Public Convenience evidencing its approval of the plans for the abolition of the crossing at grade of Parke Street, over the tracks of The Delaware, Lackawanna and Western Railroad Company in the Borough of Dunmore, Lackawanna County, and the re-location of the said crossing by the construction of an overhead crossing, and, after due notice and hearing, having ascertained and determined by its report filed herewith and made a part hereof the compensation for damages which the owners of adjacent property injured by said abolition and relocation sustained:

NOW, to-wit, December 28, 1915: The said Commission finds and determines that the lands and properties of Thomas Barrett have been injured, and the said Thomas Barrett has suffered damages to the amount of One hundred dollars (\$100.00); that the lands and properties of Edward Duffy have been injured and the said Edward Duffy has suffered damages to the amount of One hundred dollars (\$100.00); that the lands and properties of the devisees of Andrew Wilson, consisting of his widow, Bridget Wilson, and his daughters, Elizabeth Wilson and Ellen Wilson, have been injured and the said devisees have suffered damages to the amount of Eight hundred dollars (\$800.00); and that the said damages be paid to said parties by the Borough of Dunmore.