

Public Roads

in

Atwood Twp

P.S. 213 - Page 301

In the matter of Rule to show cause
why conformation of the report of
Road viewers in favor of a road in
this case should not be set aside. }
 } In the Court of Quarter Session
 } of Clearfield County Pa.
 } No. 4 May Sessions, 1888.
 }

Depositions of witnesses taken before me this 27th day of December
A. D. 1889, at the office of M'Enally & M'Curdy in the Borough of Clear-
field Pennsylvania, between the hours of 9 o'clock A.M. and 9 o'clock
P.M. by virtue of the annexed rule of Court, and notice thereon endorsed
for the examination of witnesses in a certain cause there pending.

Spencer B. Rumsey sworn,

My age is about 42 years; I am superintendant of the Lowgrade
Division of the Allegheny Valley Co. And have been since Jan'y 15th 1887;
The main line of that railroad is from Pittsburgh to Oil City, and the
Low grade division of which I am Superintendant, is from RedBank in
Clarion Co, to Drift-wood in Cameron Co. and passes through Winterburn
in Clearfield Co.

A. H. Woodward Atty for Supervisors of Huston Twp. and also Atty for said
road, objects to any testimony in relation to the location or construc-
tion of the railroad or of the culvert over Bennetts Branch to which
said road is located or to any other testimony in relation to the loca-
tion of said Township road, for the reason that said road has been con-
firmed absolutely by the Court, has been all ready opened and the rule
in this case is to strike off the conformation absolute of said road.
and can only be supported if at all, by reasons or acuses arising from
the record, in the case. That so far as the location of the road is
concerned the question has all ready been adjudicated by the Court.

And any evidence in relation to said location, is incompetent irrelevant
and immaterial.

The said Railroad Co has a stone culvert at Winterburn, in Huston Twp Clearfield Co. above which the railroad crosses. The culvert was built by the railroad company, for their purpose, and for no other purpose. This culvert was built to do away with a long high trussel. The rail-road has been in actual operation for about 16" years. The culvert is built over the Bennett's Branch or a tributary, of that stream. I do not know whether it is the main stream or not, I believe that each fork of the two forks that come to-geather at Winterburn are called Bennett's Branch, one being the South fork and the other being the North fork. The culvert referred to, is built over the South fork. The culvert is 111 feet in length. In width at the bed of the stream it is 11 feet. About 5 feet above the bed of the stream it is about ~~thirteen~~ 13 feet, then it continues at a width of ~~13~~ ⁴⁵ feet, a distance of 8 feet to the begining or spring of the arch. From the spring of the arch, to the crown of the arch is a perpendicular hight of 6 feet 6 in. I think the arch is a portion of a perfect circle. The railroad is a good many feet higher than the arch ~~than the arch~~ I would think at least 30 feet higher. I mean from the top of the stone-work of the arch. There is also a distance of several feet between the inside and the outside of the stone-work of the arch. The culvert was commenced in the early part of the year 1887. And was completed about the month of Oct 1887. It was damaged by the flood of May 31" 1889. There was a dam on the stream just above which broke away carrying debris and logs down against the culvert, forming an obstruction, preventing the water to get through fast enough, thereby undermining the foundation of the arch to such an extent that ~~45~~ feet of the arch and wing-walls fell down ⁴⁵ ^{in mid} into the bed of the stream, it is said that two million feet of logs came down at this ~~time~~ time and were from the dam above. The foundation of the culvert was injured the entire length, ~~thirty~~ ^{forty-five} feet of the broken wall and wing-walls had to ~~be~~ ^{be} rebuilt at a cost of \$13305.94 The cost of the whole culvert including the filling was over \$37.000 ^{Cost} The mason work alone was ~~or~~ ^{at} a cost of 28010.37 or as near that figure as I can ascertain. Before the culvert was built, trains passed over on tressels the length of which was 606 feet in length and in height at the highest place I think ~~60~~ ⁵⁶ feet to the top of the rail. At the

time that this culvert was built there was no township road through the tressel or near the stream where the culvert was built. The culvert has been ~~under~~ repaired or rebuilt since June 1889 because of the flood the repair work was completed sometime in Oct. past. At the time the repairing was done there was no township road opened through this culvert or near it. Neither I nor the railroad company had any knowledge of any township or public road being laid out at that place. In 1887 I was informed by some of the Supervisors of Huston township that there ~~w~~ was no road there. I never had any notice or information to the contrary. And there never was any road there: where the culvert now stands. There is a road ~~at~~ across the rail-road at each end of the tressel, over which roads, all travel has crossed since the construction of the arch, and where they cross at the present time. Those roads are still used. No road was ever opened and used through the culvert or at the place where the culvert stands. Map marked "A" Exhibit, being referred to by the witness, he says, I did not make this map but I think it is substantially ~~in~~ what it shows accurate in what it shows, in regard to the rail-road and culvert and the other roads to which I have referred. The rail-road Dapot is marked on the map. The representation towards the upper right hand corner of the map, is intended to show the culvert and filling, where formerly stood the tressel. I understand the Supervisors intend to build a road-way through the culvert, by spiking plank together (2X8) the ends of which are to rest on a projection of the culvert 4 or 5 feet above the water and in addition that to build approaches to the culvert so as to pass teams over this road through the culvert, all of which would form a very dangerous obstruction, in case of heavy rain, the raising of the gates of the dam above, or of the breaking of the dam its self, as it did in May last. The culvert being narrow it would require its full capacity to carry off the water, in case of high water, opening of the gates of the dam, or breaking of the dam, as it did in May 1889. Which would probably result in the demolishing of the culvert, which would re

CROSS EXAMINEED by A. H. Woodward.

The Allegheny Valley rail-road is in the hands of a receiver, appointed I think, by the United States District Court for the Western District of Penna. Mr. W. H. Barnes is the receiver. Mr. Barnes lives I think, in Pittsburgh or Philadelphia. I have been connected with the road about 14 years. I have been Superintendant of the Low-Grade nearly 3 years. I was special agent for the purpose of looking after transportation, and many other duties coming under the head of special agent. I had my office about 9 years in Oil City and about 2 years in Pittsburgh. While I was thus employed, I had a general knowledge of the Low-Grade division, and was very familiar with the same. I can't tell how many times I was at Winterburn; a great many times prior to my appointment to the Superintendant of the Low-Grade division. We have releases at Winterburn for double track including all slopes, ditches, &c. That is of Record and is from Geo. Creg & C. Blanchard. I do not know that the release states the width of the right of way. I think this release does not specify the width of right of way, I think. Some roads are 66 feet right of way and some are 100. The Low-Grade road is different widths. Its general width in some places 100 and others 66. I can't tell the width of the right of way below Winterburn nor immediately above. I cannot say what portion of the road is 66 feet, and what part 100. I think the tressel was built in 1873. I can't give the average height. I presume it is 40 feet on an average of 40 feet, I cannot say accurately; at the ends it is not high. At the ends it strikes the face of the hill. I can not say how high above the valley the rail-road strikes the hill. I think it is not as much as 30 feet, but it may be. I am pretty well acquainted with the topography of that country. I can't tell the distance the from Winterburn to the head of the South fork. I can not tell the grade of the stream, from Winterburn up. It is not a very sluggish stream, the fall is not very great below the tressel. I think the fall is greater above the culvert than immediately below. It is a pretty lively stream, there is a large volume of water passing down. The branches of Bennett's Branch join just below Winterburn. The branch as I would designate as the North fork, which has its rise at the summit, near the tunnel on the Allegheny Valley R.R. I have always

considered as the main stream. I would say that one stream is about as strong as the other. that is in the volume of water. I should consider that the North fork of Bennett's Branch is a trifle wider at that point than the South fork. ~~But I t~~ I cant say that the representation of the stream ^{width} ~~is~~ on this map ~~are~~ correct. The North fork of the stream is not twice as large as the South fork on this map. I never measured the ^{width of the} South fork of Bennett's Branch. I know that it fill-ed the culvert where it is 13 feet wide. It fill-ed ^{width of the} the culvert ~~that~~ at all stages of water ^{that} I have ever seen. The stream is probably ~~wider~~ below the culvert than it is at the culvert, and it may be wider in some places above. I can not tell how deep the water is at low-water. I do not know whether the stream has or has not ever over-flowed its banks prior to the flood of last May, I do not think I have ever been there, during high water except at the last flood. I know from experience that it requires all the space in the culvert to carry away the water during times of flood. I judge this from what I saw ^{the} last June flood, and since ~~the~~ that time. The water in the ~~culvert~~ stream has never filled the culvert since last June, but has been very high on several occasions, but I do not know how high. The only experience I've had there is that of the June flood last, and since that time. and that's enough.

I dont know how deep the bed of the stream is below the banks. I should say it was two or three feet deep possibly more. I have seen the water out of its banks since the June flood. ~~As~~ I have seen the water out of its banks all along the stream below the culvert. I cant tell how wide the stream would be below the culvert. The heavy rains of last May and June probably caused the dam to break. I mean the dam of Creg & Blanchard. About a quarter of a mile above the culvert. When this dam broke at Winterburn it precipitated a large amount of logs ~~down~~ against the culvert. The debris and logs and drift wood formed an obstruction choked up the culvert. This culvert is I think, 111 feet in length. The approaches to the fill are light. It does not intierly fill the valley. The rail-road track is about 15 above the valley at either end. I never made any measurements ~~ther~~ there. Where the wagon roads are now the hill is of a very nice ~~g~~ grade nad not steep. I can not tell the angle of elevation. It is an ~~easy~~ grade. I think it would not be as much as 20 degrees.

There are no other openings through the fill under the rail-road except at this culvert. We have other culverts on the rail-road ~~✓~~ along Bennett's branch, but I know of no dams above them. We have one at the mouth of Bark-Camp Run, at Bundy's. I think that Bark Camp is a smaller stream than South fork. There is a small rail-road running through this culvert for hauling logs through. This road is operated above by a small engine. In the culvert at Pennfield, I do not know whether they haul logs through or not. I don't know of my own knowledge whether there is a log slide through that culvert or not.

J. B. M'Enally Atty for the Railroad Co. objects to all testimony and questions relating to culverts on other streams, and the situation of the road in other places as being irrelevant and improper.

They may haul logs through the culvert below Pennfield, I can't say. The rail-road through the culvert at Bark Camp was ~~there~~ running through under the tressel when the culvert was built. The place where the rail-road ran was changed possibly a few feet. Nothing was said about running the road through the culvert. The culvert was built in the Summer of 1887 I think. I knew the road was there up to a year ago, it may be there yet for what I know. ~~I don't think~~ (Ques-) Did you ever object? No sir ~~✓~~ to the railroad running through under that tressel? No, Sir ~~✓~~ There was nothing ever said about it. ~~One chief objection~~ Ques- Isn't your chief apprehension for the culvert at Winterburn, because of the fact that the dam is above ~~at~~? Ans- From our past experience of last May and June, by the dam breaking, I consider it a very serious objection, and which the rail-road company, has had to pay very dearly for that experience. I think there would be difficulty be cause of the dam even though the logs and debris ~~is~~ were not there. ~~✓~~ I don't know how long Geo. Creg expects to lumber there, a number of years I expect. I don't know if any of Blanchards logs escaped or not. I think the dam broke on Creg's side and I think the majority of the logs belonged to Creg. I can't tell from my own knowledge how long the dam has been there. I'm not an engineer, but any dam is liable to break. I understood this was a very good dam. No regular road run through under the tressel. Teams used to drive through under the tressel. They did ~~not~~ drive through so as to make a well defined road under the tressel. I never saw any bark hauled through under the tressel.

Personally I have made no measurements in the neighborhood of the culvert. When I testify to the measurements of the culvert, I get my data from our engineer and bridge builder Mr. Lewis. That is true of all the measurements I have given in testimony in chief. When I say that the map offered is substantially correct, I get my say that from information derived from the engineer, ~~Mr. Lewis~~ ^{ashmead}. And not from my own personal knowledge or from any measurements that I have made. I think that the information I have in relation to the manner in which I derive the Supervisors intended to build the road, under the culvert is derived from Mr. Calaghan, but I am not sure. The manner in which they were building the approaches I saw myself. They had commenced building the approaches a couple of weeks ago out of heavy hemlock logs. Those approaches are not there now, I think the logs are lying on the bank. The employees of the rail-road company tore out these approaches by order of the division superintendent, (myself) I can't tell how far it is to the place where the two branches unite. I never was down to the mouth. I can't tell how wide the valley is. It is about ¹⁻² ~~21~~ feet from the bed of the creek to the key-stone of the arch. Above the culvert the water was to the second sash of the first story windows, and It was water and debris and logs that caused the water to rise to the spring of the arch. I was there when this culvert was built. I think we went about eight feet below the surface to obtain a foundation, and considered this a good foundation. It was not rock foundation. It was gravel or shale. We built our stone upon this foundation. The water undermined the foundation in this June flood. In rebuilding the foundation I think we went about eight feet deeper. We had no notice of any kind and know nothing of such notice as to the view upon this road, but can not say that public notice was given. Because I don't know. About two weeks ago is the first that I heard of this road when they commenced obstructing the culvert. I am sure that no one said any thing about to me prior to this time. Mr. Dodd did not see me in relation to the road. I did not know that the road had been built up to within a short distance of this culvert. I did not have any talk with any of my employees in relation to the road going through the culvert.

The first knowledge I had of this was the day they commenced putting in the cribbing. Mr. Phalan telegraphed me, who is an employee and supervisor of the track. I sent my men promptly to tear it out.

RE-EXAMINED by J. B. M'E-

I have just heard of the statement of Mr. Lewis in regard to the conversation with the Supervisors of Huston township in 1887, before we commenced building the culvert. His statement is correct. As we were going to spend a large amount of money it was very important that we made no mistake at that point and to make sure of all the Supervisors, and the statement was made in regard to township matters, that if the township road was extended from that point through the tressell it would require a double arch, which the rail-road company would provide if the Twp would contribute towards it. They thought they would not be justified in doing that and no arrangement has ever been made since. and have never met the Supervisors since that time, to my knowledge. No arrangement was made for the going through the arch which we built. I did not possess power to close such arrangements. Should the township ^{next} wanted a second arch I would of course have submitted to my superior officers, what I said was for the purpose of ascertaining their views. I always thought the north fork was a little wider. The north branch from the summit down I always took to be a shallow stream. The rail-road at Bunday's is a small tram road with a very light rail on. I think the rail-road rests upon stringers which rests upon the wall at the sides. That culvert was built in the summer of 1887. they were hauling logs there before that time. I had an idea that it was only a temporary road from information that I got from our employees that they had obtained from his (Walkers) jobbers. It was a small stream and had no dam ^{up} above it that I knew of. Under the ~~circumstances~~ I did not think it important to give it attention. I never saw Mr. Walker in regard to the matter and never made any arrangement with him about it. I never gave him any authority to go through. No damage ever arose to the rail-road by at Bunday's culvert, either during the flood of 1889 or at any other time.

RE-CROSS EX-

I do not know how heavy the engine is . It is such an engine as they use in hauling logs . I ~~do not~~ did not consider the rail road company under any obligations to build ~~a~~ ~~re~~ or ~~be~~ leave an opening under the tressel. It was estimated that the additional cost of a double arch would be about \$5.000.00 Nothing was said to me there by the Supervisors or any body else that I remember about having two roadways under the tressel. Sometimes township roads are located under the rail road- but not through a culvert 13 feet wide. It would not be an advantage to the township and rail-road co. to have the road ~~over~~ ^{under} the rail road. in this instance. As a general thing Rail-road Co's try to avoid ~~grade~~ crossings. The danger would not be very great at a grade crossing at the ~~west~~ ^{west} end of the fill. The crossing is more dangerous than the one at the east end. If people take the proper precaution it is not dangerous. As they should at all rail-road crossings I can't say how near a passenger would get to the track before he could see up the railroad. The public road is located on the west side of valley on the west side of the dam. In order to reach the east side is would be a slight ascent and slight descent. I think you would have have to go between the two tracks. ~~The-tracks-and-the-main-line--~~ That is Blanchards switch and the main line. The crossing at the that point is not dangerous, trains at that point can be seen in either direction. That's where the road has been in use for many years.

Woodward. RE-CROSS-EX-

If in crossing on the east side you would have to cross ~~and~~ Blanchards switch and then the rail-road proper it would not make the crossing dangerous. And it wouldn't be necessary to cross the Blanchard switch, anyway there is ample room to cross without crossing Blanchards switch.

SPM

Mr. Frank M. Ashmead, Sworn.

Examined by Mr. McEnally, -

What is your age. 36

What position do you occupy in relation to the Company; Engineer of the Allegheny Valley Rail Road Company. That includes this portion that passes through Winterburn; Yes sir, the entire line. Are you acquainted with this culvert and the locality; Yes sir with the immediate locality, but not well acquainted with the surrounding country except as I have viewed it on the road.

Did you make this map; Yes sir. Is that map substantially correct? That map is correct as far as our road is concerned. They simply indicate the general position of the roads which I have seen on the ground. The roads are sketched in on the map. Do these roads pass over the rail road at the end of the filling or trestle as represented in your map; Yes sir, that is, the grade track, and at the ends of the fill. In making this map did you undertake to lay down actually according to any scale the width of the streams? The width of the streams and their exact positions I took from our official map which had been made from surveys by previous engineers. I dont make the survey myself. The streams are of course variable. This survey was made some years ago-probably seven or eight; and it probably may have been taken high stage or at low. You cant say then if the scale of this map would accurately represent the width of the streams? Cannot. Can you state in regard to this culvert that is built there the size, length, height and other [dimensions]? Yes sir. What is called the square culvert is ~~the~~ ^{one hundred} little and six feet long in addition to that at both ends, or wing walls which extend out a distance of twenty four feet each farther. What is called the square? The main body of the culvert.

The length of the culvert proper is, to the best of my recollection, 106 feet both at ~~the~~ north and south ends. In addition ^{to} this length given or wing walls, also of masonry twenty four feet, or thereabouts each, in length. These wing walls diverge I suppose from the main wall of the culvert towards the shores? Yes sir. When you speak of the wing walls as being about twenty four feet, do I understand that to be the length of the wing wall sides on the ground or

the length of the direction that the culvert runs? The length of the wing wall themselves. The direct ~~on~~ prolongation of the culvert axes, -would be somewhat ~~similar~~, about twenty one feet-inside dimensions is the height. What was the width of the mason work? Thirteen feet at the spring arch passing inwardly as it descended so that the culvert is somewhat narrower, reduced I think to about eleven feet at the bed of the stream.

By Mr. Woodward. These are from actual measurements taken by you are they? Yes sir.

By Mr. McEnally. What would be the proper height from the top arch down to a line running across to the spring arch? Six feet and a half. The twenty one feet and a half you speak of includes these six feet off from the bed of the stream up to the top arch? Yes sir. How thick is the mason work just above the arch? The arch spans themselves are eighteen inches. The scan walls are filled.

Objection by Mr. Woodward. A. H. Woodward Attorney for Supervisors for Huston township and also for the road object to any testimony in relation to the location of the road, the situation of the culvert, the railroad or any testimony which does not have reference directly to matters of record constituting the objections to the said road, as the Rule in this case is to show cause why the confirmation absolute of the Court of said road should not be sticken off. And all question in relation to said road have already been passed upon by the Court and adjudicated, and said testimony is incompetant and irrelevant.

By the witness. I made the measurements to which I refer but have not got the papers before me and now testify from recollection.

By Mr. McEnally. How far above the arch is the rail road? About thirty three feet from the top of the arch to the rail.

By Mr. Woodward. To the top of the rail? Witness. Well that is a little too neat for my recollection. The rail itself is about thirty four.

How is it above the arch? Filling, earth and rock filling. That earth and rock filling extends then on each side of the culvert till it reaches the elevated ground? Yes sir. How wide a space does the filling occupy? About 150 feet in width, the place it slopes. About how wide is it at the top where the rail road is made? About eighteen to twenty feet on what is called the road.

State whether this road that is laid out as crossing the rail road at the end of

the filling near the depot crosses about grade or at grade. At grade yes sir. Is that road a road much traveled and used? I judge so from its appearance. Personally I cant recollect having seen many teams on it. Were you about Winterburn much? Not a great deal,occasionally. The road bore every indication of being a well traveled road. Was there any road that appeared to have been as much used as this? No sir. Did the road as laid down on this map, crossing at the other end of this fill, cross at grade? Yes sir at grade. Did that road have the appearance of being used? No, it bears marks of having been traveled but I should not say a constant travel. When was it you made this map? Yesterday morning. When was it you made these measurements? During the rebuilding of the culvert. Did you make this copy from another map, or from- Partly from my own data and partly from our official maps. Does this representation of the culvert, and the filling that is towards the upper right hand corner of the map indicate proportionately the filling and the culvert and the side work so as to be substantially correct? Yes sir. On its scale substantially correct. In regard to the effect of putting a little bridge in the culvert for a township road to pass over what if any would be the risk and injury arising to the rail road?

Mr. Woodward objects.

Question. What would be the effect as to risk and injury to the rail road by putting a bridge inside of the culvert for the water, to form a part of a township road?

A. H. Woodward Attorney for Supervisors objects to the question because it is simply a matter of opinion of the witness, who is an employee of the railroad company and as such an interested party, and the witness has not testified to such facts in relation to the stream and such knowledge on this part in relation to the locality, condition of the stream, height of the water, the topography of the country as would make him competent to express an opinion.

Witness. In my opinion it would jeopardise the safety of the rail road company's works, both the culvert of masonry and the embankment built for the support of their road way. It has been my professional experience that water ways even of streams which are sometimes mild and harmless in appearance, especially mountain streams should be kept open and clear from any obstruction and should be free as far as possible from the presence of any materials in the direction

from which the water has its source that would block or obstruct the water ways
unless the same be built very much larger ~~and~~ ^{than} would be required to carry the natural flow of water in the stream.

By Mr. McEnally. How is this culvert, compared with the opposite stream? Ordinarily it is ample in area to carry the water which flows through that stream but it is necessary to provide against extraordinary flow of water occasioned by certain thunder gusts or long continued rains. In that case, I think this culvert would be taxed to its full capacity.

Situated on this stream which you saw and the culvert being the size which it is, would such an approach for a township road passing through it render it dangerous for the safety of the culvert? and rail road company? It would make the possibility of danger constant. What is your business? Civil Engineer. How long have you been Civil Engineer? Seventeen years in practice. Been engaged during that time in business? Yes sir. How long have you been connected with this road? I think about twelve years. How long have you ^{known} ~~been~~ this place Winterburn, portion of the road? About ten years. In your business as Civil Engineer is it your duty or part of your business to look after or lay out culverts? and know the force and danger of water in connection of works of this kind? Yes sir that is one of the duties. What had you to do in regard to this culvert, the laying of it out, anything of that kind? I prepared the plan for it but didn't lay it out on the ground. Is it your business as Civil Engineer to prepare plans for culverts? Yes sir. Is it not necessary for you in preparing those plans to take into consideration the size and character of the streams, and the dangers that may arise in making the culverts small or large? Yes sir. Did you or did you not know that this culvert was made for the rail road company simply for its own purposes? To the best of my knowledge, made as a water way. I have already stated I have prepared the plan - I would not prepare a plan without understanding its object of course. Has it capacity without additional risk and danger ^{S.} to the rail road company to answer any other purpose than simply a water way? No, I think that is already stated.

Were you on the ground at any time during this summer flood of May and June? Not at the time of the flood or immediately afterwards. I don't recollect how ~~8~~

long. It might have been several weeks before I saw the place.

Cross Examination by Mr. Woodward.

Do you say these roads as they are represented on this draft are just sketched in here? They are not made from any measurements located on the ground?

No sir.

Do you know if the west end of the embankment here, whether there is a road now in use across the railroad here?

No sir mere rock there.

Do you know if that road was used at all during the last two years or three?

Couldnt say.

At the east end of that fill and down the road is or is there not a cut, immediately after you leave the fill or shortly after?

I dont think I catch the question exactly. Yes sir a short distance after leaving the end of the fill there is a cut.

Is there a cut-----so as there is an embankment at each end? No sir.

Is or is there not a curve upon the rail road at that point? There is not.

In going across the embankment, this hill here does not the rail road go upon a curve? Yes sir.

Does not that continue after the rail road has left the fill? Eastward, a short distance. The map will show just how far.

How is it in relation to the west end? Curve at the west end.

Is there not also a cut at the west end? Very wide cut. Wide enough to accommodate three tracks.

How many tracks are located there? One single track.

You are acquainted with the culvert at the mouth at Brock Camp Run? Yes sir.

Is an obstruction in that culvert there equally as objectionable as the culvert at Winterburn? I think not. The stream in my recollection is very much lighter, the water shed is very much less in my recollection of it and there is no dam--at least as far up as I have been up.

Then you base your opinion upon the fact that the stream is less and no dam there? Yes sir.

Now if the stream as large as the South Fork and the water shed equally as great would it be as great as the one at Winterburn? Not with the presence of a dam. Very naturally a large [stream] would be an objection.

Is that the chief objection? Is that the chief objection I think it is. If that dam would break do you say that your culvert would be sufficient to carry off the force of the water? I think it would stand in position against the force if not accompanied by logs and debris.

If it were not for the presence of the dam there and the logs and debris, the question of obstruction of a culvert by a road would be a question of minor consideration, would it not? It could be located more favorably in that case.

Did you make any measurements that furnished the basis for the representation you have here? I stated in examination in chief I took this from official maps.

I notice here a projection upon this culvert at or above, some distance above, the bed of the stream, did you state how far? ~~I think~~ ^{and that} there is one projection about five feet above the bed of the stream? Yes sir.

Are you clear in your recollection? Yes fairly so. I think about five feet. It is five feet from the bed of the stream up that far then, how far is it from that projection to the spring arch? Neighborhood of eight feet.

There has never been any difficulty taking care of the water there in that stream with the exception of last year? The culvert had only been completed one year previous to that.

Was not that ~~an~~ extraordinary flood caused by the breaking of the dam? I cant speak from personal knowledge for I wasnt there.

Would it not be so if the dam would break? Oh yes no doubt about that.

Are you acquainted with the general topography of that country? Very well.

Did you know how far the stream flows from Winterburn? Four or five miles something like that.

Do you know what the fall of the stream is? No sir.

Have you ever estimated the flow of water there? It is too irregular to be estimated.

How do you mean? The dam forms a storage reservoir which almost might retain all the water coming down the stream, so that you might have a dry bed

You are not acquainted with the stream above the dam? I have walked a short distance above the dam some years ago.

What is the fall? It is quite light.

That stream is not what is called a rapid stream? Not below. Above the dam it is about the same moderately rapid.

How does it compare with Bark Camp, Bundy's Run as it is called? As far up as I have been it lies in a flat piece of land. I have not been up to the head waters or up to where the ravine becomes narrow.

Is not this ravine rather wide for the size of the stream? Yes sir.

The mountain sides on either side of this fill, is not the grade of the mountain there rather precipitous? No sir.

Have you ever estimated the height? Can't say I have.

Have you made any measurements in relation to the height of the rail road tract above the base of the mountain, above the valley? The vertical distance, it would be the same. Your asking me data in elevation between the top of the rail at either end of the rail an end of the valley

The embankment itself tapers to grade so that if you take the initial points there is no difference.

Is or is there not very much rise from the bed of the stream coming up the foot of the mountain? That rise is about, as near as I can judge, about forty feet rise taken from the low point of the valley, scarcely that ~~say~~ thirty five to the point immediately under the end of the fill and the distance is at least 350 feet which would give a rise of ten feet to the hundred, or somewhere in the neighborhood of five degrees probably.

Have you ever measured the end of that road that goes up the east end of the fill at the rail road there? About five or six degrees.

Going up stream towards Blanchard's mill, coming up ~~up~~ from the valley towards the rail road what would be the degree of elevation? ~~That is the road I was referring to rising ten feet on the hundred.~~

Did you cross the rail road coming up from the valley over the rail road? That is the road I was referring to rising ten feet on the hundred.

I think there is a place somewhat steeper before you reach the railroad. I don't pretend to guess on these kind of things.

Would it be equally steep coming up onto the rail road on the other side down the valley? By a slight rise in the bed of the valley itself.

You think it would be the same degree of elevation? A road could be built with the same care. The road as I spoke of appearing to have the indication of being a public road not traveled is on the southeast side.

Do you know on which side of the valley it is located? The upper side of the road.

Have you been there since this road was under process of construction? No sir.

Is there not a road across the valley immediately above this fill?

Which do you think is the greater degree of elevation the east end or the west end of this fill? The west end of the road is as I recollect it somewhat longer, more winding ~~which of course~~

The one on the west end I think to be the lightest grade.

What would constitute a construction for a township road so as to put in that culvert? The timbers would be necessary to support that road. In the first place there would have to be cross timbers, acting the same as the joice of a ~~house~~ house from wall to wall; then on top of that would be flooring of heavy plank probably. These timbers always spiked in place to hold them, keeping them held down as wagons went over, then at either end of the culvert resting on each side would have to build ~~a~~ crib work, ~~the~~ the length of the wing wall which is at least twenty four feet.

In relation to the culvert---- My recollection is that it is turned to the road as you face in that direction.

In striking the road over the east end of the fill would there be danger there? Grade crossings are always dangerous. The curve would make it more so. Wouldnt the cut obstruct the view of the passenger who was coming over the rail road? I think the crossing could be seen for a distance.

Mr. The cut on the lower side has been cut out with a steam shovel. The lower side of the track is all practically level.

Wouldnt it be true that a passenger that was coming along there would not be able to see the train until he got very near ~~it~~? I think he would come quite close to it.

Now on the other side would there not be a similar objection on the east side? No to cut there is not so near as it is on the other side. He would have a very excellant view there because the curve of the road ~~ran~~ ^{running} eastward is to the left and would through a long stretch of track-probably one thousand feet.

Frank M. Ashmead

Mr. *Edward* Lewis, Sworn.

Aged about 55. Superintendant of the Allegheny Valley Rail Road. Been engaged about thirty three years. Allegheny Valley Rail Road sixteen. Think the Low Grade Division was started in my charge about fourteen years ago.

Are you acquainted with this culvert? Yes sir.

Would is built under your direction or superintendance? It was. The culvert is one hundred and six feet long on the square arch, wing walls about twenty four feet long. The water way is eleven feet or thereabouts wide up to about five feet high. Then it is about thirteen feet wide up to the spring arch; then the arch about five feet and from that basis to the spring arch eight feet. From the commencement of the spring arch to the centre arch it is six feet thick.

How high is the mason work above the centre arch? Somewhere in the neighborhood of four feet. There is a coping probably four feet that is not in view looking from the bottom extending ^{to} ~~to~~ the bottom arch probably about four feet-it might be a little more or a little less.

Then from the top mason work of the culvert or arch how high is it up to the rail road that is on top? Between thirty three and thirty four feet.

This is not the only culvert you ever built? I took charge of masonry on the Allegheny Valley Rail Road probably about eight or ten years ago.

The Counsel for the road and supervisors of Huston township objects to any test timony being offered in relation to the locateon, situation, location of the culvert under the railroad at Winterburn or of the rail road itself or location of the township road for the reason that the quistion of location of the townsh ship road has already been adjudicated by thh Court and the road confirmed absolutely, and the rule in this case is to show cause why the confirmation absolute of the road should not be sthicken off and only those matters which are of record can properly be presented in consideration of this rule and that therefore the evidence is irrelevant, incompetant and immaterial.

J. R. McEnally. State whether the building of a township road through this culvert placing the floor of the road some distance above the water so that it would raise up the walls of the culvert or in the walls of the culvert together with the additional work and ~~the~~ appurtenances that the road would re- quire and used for approaches and passing through would be an injury to the rail road, or ~~is~~ ~~excess~~ increase the risk to its property or to the travel upon it?

A. H. Woodward. Counsel for road objects to the question for the reason that is simply a matter of opinion that witness testified that he is an employee of the Allegheny Valley Rail Road Company and as such is interested in the contro- versy and that he is not competant to testify to anything except facts within his own knowledge and that he is not competant and that his opinion is not com- petant in this case and that it is irrelevant and immaterial.

My experience in rail roads for this long time has been if any culvert is ob- structed it is liable to wash out or damage the culvert and in all cases when we go over the road once or twice a year with the Division Superintendent all cwlverts are examined so that all rubbish is taken out. Sometimes go over only once a year sometimes twice ~~year~~ just as we have ^{the} ~~had~~ time. We ~~have~~ a place where ~~there was~~ ~~we had~~ a corduroy, Cedar's Run west of Brookville, where there was a corduroy road through a girder between abutments. That corduroy road got jammed up so as to be undermined.

Does not danger arise to a great extent from the water becoming dammed up at times through the obstruction and then washing under the abutments, or walls

weakning the foundations? Yes sir.

How much of the depth did this flood that occured in Cay and June take out? Nine feet six below the bottom of the original foundation. At this culvert Winterburn some places it was over ten feet deep, but other places again, probably twelve feet deep and so on.

And how deep was that below the bed of the stream? Three feet below the bed of the stream, that is in the culvert. I suppose that the banks were probably some where in the neighborhood of three feet. That is only guess work. It was shale rock.

How deep did you say that the water washed out below this foundation? Nine feet six. Curving off somewhere in the neighborhood of thirty feet, then the main upper culvert below that from a foot to three feet deep and probably from two feet to three feet under the main wall. The part that fell down was nine feet six.

When you built up the foundation the second time how deep did you make it? When you repaired the culvert? The first foundation you put there was washed out how deep did you put that second foundation? Nine feet six.

Was this wash out of nine feet six filled up with debris and logs? Yes, we found logs, sixteen foot logs pine and some rubbish in as a matter of course and some stone in.

Down toward the lower part of this culvert there are little branches that make the stream narrower than it is above? In that place it requires a bench to stand twenty feet in the clear leaving the culvert to be put in and by leaving a foot of projection in the inside it saves us from stepping up on the back. Of course have to move each bench one foot farther. It saves moving a bench that much farther back. We step up as we go on up as it requires as large stone up towards the top as it does towards the bottom.

Was this culvert built with a view to any other purpose than to accomodating the rail road? Not that I know.

So far as you know it was not built with a view of making a road?

Did you superintend the putting up this road culvert as well as the repairs? Yes sir.

Cross Examined by Mr. Woodward.

Mr. Lewis was not the principal damage caused by the flood there last year because of the fact that Blanchard's dam broke precipitating the logs down on the rail road? Yes sir

The principal cause for the damage caused there in June last by the flood was because the dam of ~~Craig~~ and Blanchard broke and precipitated down upon the culvert and the fill large quantity of logs and debris It might or might not stand the strain if the dam would break you cant tell? Cant tell. The road still increases the dammer. They will get crossed in spite of fate. In my opinion it could not be built to go out in case of a flood.

Isnt there room for the water? If the water dont come there is plenty of room. But if the water comes it has got to go through.

If there is any considerable amount of drift comes down there does it happen to shut up that culvert? It might and it might not.

How far above the water is the projection on this arch? About five feet above the paving. Sometimes three feet sometimes more.

What is the size of Bark Camp, Bundy's Run compared with the size of this fork? I think much smaller.

What is the width of this stream, South Fork at the culvert? Thats only guess work never measured it. I suppose probably some of it is four feet and five feet maybe more.

It is a very small stream? It is, that is with the water ~~shut~~ off on the dam. When the water is not shut off it is a pretty wicked little stream. It covers the bank.

Have you ever seen the stream overflow its culvert? I cant say I might and might not have seen it.

Do you know how long this stream is along the culvert above South Fork? No sir.

Know what the character of the country is? No sir dont.

You say when this culvert was put in originally that the supervisors were brought there, Who brought them? I brought one of them from Penfield. The superintendent and myself ~~met~~ them there.

Did you send for the supervisors? No sir.

In the first place we were going to build that fill, that trestle either had to be filled or renewed, it was fully as cheap to fill it as it was to renew it and not being real positive in my opinion-not being real positive of the township road being there the supervisors were brought on. I said I didn't know whether there was a township road positively laid out or not, nor we did not know this until we commenced work, at least I didn't. When we ~~are~~ ^{were} going to make permanent work we wanted to publish it.

Was it a well defined road there? No sir.

Wasn't it agreed that the township might put a road through this upper arch at that time? Not to my knowledge. And I think I was along side of Mr. Rumsey during all the conversation. I don't recollect the names. I know one lived in Penfield, and one this side of Penfield. I could probably tell the men if ~~if~~ I could see ~~see~~ them.

Do you recollect if one of them was named Dow? No sir. That was 87 spring before we commenced the trestle.



State of Pennsylvania }
County of Clearfield }⁸⁸

I do hereby certify, that the above
witnesses were duly qualified and examined
at the time and place stated in the above
Caption.

W.C. Miller,
Notary Public.

J

RULE TO TAKE DEPOSITIONS.

CLEARFIELD COUNTY, SS:

In the matter of Rule to Show
Cause why Confirmation of the
Report of ~~Report~~ viewers in
favor of a Road in this case
should not be set aside.

In the Court of ~~Common Pleas~~ of Clearfield
County, Pennsylvania.

May Sessions Term, 1888

AND NOW, to wit, the 3rd day of December, in the year of our
Lord one thousand eight hundred and eighty-nine
the ~~Applicant to set aside &c~~ enters a Rule to take the
Depositions of ancient, infirm and going witnesses, to be
read in evidence on the ~~argument~~ of this
case. Ex parte Rule of ~~Applicant to set aside &c~~, on
5 days' notice.

John Deems
Prothonotary.

To A. H. Woodward - Esq.:
atty for Huston Twp. Road

You will please take notice that, in pursuance of the foregoing rule, depositions
will be taken before W^m C. Miller Esq., or some other person
authorized to administer an oath or affirmation in Pennsylvania, in and for
the county of Clearfield, at the office of M^{onally} & M^{onally}
in the Borough of Clearfield, in the county of Clearfield
and State of Pennsylvania, on the 7th day of December, A. D.
1889, between the hours of 9 o'clock A. M., and 10 o'clock P. M., when
and where you may attend and cross-examine.

M^{onally} & M^{onally}

*Atty for Applicant
for Rule*

Clearfield, Pa., Dec. 3rd, 1889.
Dec. 3rd, 1889. Notice of this
Rule for the 7th Dec. 1889 is
accepted and objections as
to time are waived.

*A. H. Woodward
Atty for Huston Twp. Supervisor*

See Re Application
to set Confirmation of
road in Houston & W.
as follows.

Mo 4 May 20. 1888.

Deposition of Eli
Miller, in part of Allegheny
Valley R.R. Law.
Fees for taking dep. \$8.00

W.C. Miller
Notary Public.

Witnesses
Spencer B. Rumsey
Frank M. Ashmead
Edward Lewis.

Filed and on file
By the court

Dec 24 Dec 1890

McEnelly & McClosky
Attorneys.

Mo 4 May, 1888

In the matter of Public
Road in Marion Co.

Addition or modification
in supporting the
Petition by the Peeling
Valley Rail Roads to
obtain the confirmation
of the Report of the Rand.

Please grant to file with
copy of the furnished tally
of other side
by the Court

New York City
January

Very long time after
addition of the
Report of the Peeling
Valley Rail Roads

M. Tamm

11. The Report does not show that the notices were given required by the present Rule of Court No 172, which is a substitute ^{for} of the former Rule No 149. —

Said Rule requires 5 days written or printed notice to the County Commissioners of the time of all views for laying out of a road or the assessment of damages and to the owners or occupants of the seated land along the route of the proposed road, and also requires the report to state affirmatively that such notice has been given, in default of which the proceedings will be set aside. —

12. The Report does not show neither does ~~any~~ any thing of record tend to show that all the viewers, ~~that the whole number of viewers~~ personally examined the premises, in accordance with the ~~Act No 16~~ ^{the} section of the Act of May 7. ¹⁸⁴⁴ P. L. pg 570 &c. — In fact they did not all do so.

13. The Allegheny Valley Railroad Company was the occupant of seated land and of the most valuable improvements through which said located township road was laid out, and received no notice of any kind in regard ^{the locating of} to said road or assessing damages therefor. — ~~They did not receive notice nor was~~

Mo 4 Mar den 1888.

On matter of Public
Road in Fulton Co.

Letter to receive the
information of the Dept
of the Road.

Dec. 3rd 1889 State of
New York
cause of this Rule is how
cause is accepted & put in
service again. —
also notice accepted off
the additional reasons
put this day: —
Office ordered
Aug 1st for suspension
of the road Vassalboro

rule 1889 Rule

what to know cause

information abo
te should make other

off. Rd. 16 Dec 89

16 Dec 89. Hearing of the
rule continues until day to
be fixed. By the Court
W. T. Tracy

10 a.m. By the Court
W. T. Tracy

in 3 vere of the

1889

M. T. Tracy

Bennett Branch of the Lehigh and Susquehanna Bank at Winterburn in Huston township, Schuylkill County Pa.
lawfully
possessing a right of way for said Rail road or
in the soil for the purposes of said road of a
width of 66 ft at least, where the said road
was constructed and used. — That across said
tributary at that place said Company has a Culvert
rising about 20 ft or more above the stream at time
of low water, about 111 ft long, and about 16 ft
wide inside of the arches, ^{and about 40 ft} above which is the
Rail road. — The said Company has expensed
in said Culvert and its appurtenances about \$35,000.
That lately said petitioner and Company learned for the
first time that the Court authorized and confirmed
a public road passing through said Culvert
of said Company (See No 4 May Sessions 1888.)

In the Court of Quarter Sessions of Clearfield
County Pa. Of No 4 May Sessions 1888.

In the matter of a Public Road in Huston
township, Clearfield Co Pa. - Leading from a public
Road at Winterburn to Hickoryville,
which was confirmed absolutely at
February Sessions A.D. 1889.

The Petition of S. B. Runney, Superintendent of the
Low Grade Division of the Allegheny ^{Valley} Rail Road Company
on behalf of said Company respectfully presents: -
That said Company for many years past has
the Rail-road in continuous use crossing the

and the Expresses, are about to go on to make
such road, or declare their purpose as to do. -

Your petition ~~petitions~~ ~~petit.~~

1. No notice of such proceedings were ever given
to said Rail Road Company, & the said Company
was not authorized or consented to such.
2. That the said Company acted by such
act of said culvert, greatly damaged and the use of
their own property to a certain extent out of
their own control and appointment to other
purposes so as to impede not only the interests
of said Company but also of the Passengers
and freight & the transported over said road. &

3. That no damages or compensation have been paid or secured to said Company for such proposed use of their property - and that the proposed action of the Supervisor is unlawful in all respects of said Company's property, or, illegal taking of said Company's property without compensation and authorized by the Constitution or laws of this Commonwealth. -
4. That the Report of the viewers indicate that only two viewers were present at the viewing, and the proceedings were all conducted by only two of them, J. A. Volberg and Charles Brandy while the other viewer Warren Woodward took no part in said proceedings.
5. That the Report does not show that the proper notice was given (again) under the Rules of the Supreme Court and the acts of Assembly, and are ~~that~~ that

Quarter Sessions

In the Court of Common Pleas of Clearfield
County, Pennsylvania.

of the Allegheny Valley Rail Road
less to ~~sets aside~~ the Con-
firmation of the Road in this
case. -

No. 44 May Sessions Term, 1888.

AND NOW, to wit, the 9th day of December, in the year of our
Lord one thousand eight hundred and eighty-nine
the Allegheny Valley R.R. Co. enters a Rule to take the
Depositions of ancient, infirm and going witnesses, to be
read in evidence on the argument of this
case. Ex parte Rule of Allegheny Valley R.R. Co. Plff. on
5 days ~~or~~ days' notice.

W. M. O'Connor Clerk of
Said Court of
Quarter Sessions

To A. H. Woodward, Esq.;
Atty for ~~Supervisors of Huston Twp~~

You will please take notice that, in pursuance of the foregoing rule, depositions
will be taken before Wm C. Miller Esq., or some other person
authorized to administer an oath or affirmation in Pennsylvania, in and for
the county of Clearfield, at the office of McEnally & McEney
in the Borough of Clearfield, in the county of Clearfield
and State of Pennsylvania, on the 14th day of December, A. D.
1889, between the hours of 9 o'clock A. M., and 10 o'clock P. M., when
and where you may attend and cross-examine.

McEnally & McEney
Atty for the Allegheny
Valley R.R. Co.

Clearfield, Pa., Dec. 9th, 1889
Dec. 9, 1889 Service of this Rule accepted
and objections in regard to time are waived

A. H. Woodward

In the matter of Rule on
Port of Allegheny Valley
Rail Road Co. to set aside
the confirmation of the
Road in this case.

In the
Sessions of
County, Pennsylvania
No 4 May Session, 1888.

Depositions of witnesses taken before me
this 14th day of December A.D. 1889, at the
office of McEvally & McLindley in the Borough
of Clarfield, Pa., between the hours of 9 o'clock
A.M. and 10 o'clock P.M. by virtue of the
aforenamed Rule of Court and notice there-
on endorsed, for the examination of witness
es in a certain cause then pending.

J. L. Vosburg, sworn and examined by J. E. McDonald.

Q. Were you one of the viewers on this road at Winterburn to run through the culvert of the Railroad Company?

I was one of the viewers.

[Mr Woodward] We object, that the record shows who the viewers were on this road, and that's the best evidence.

[J. E. M.] State how many viewers were there.

[Woodward] We object to this.

[J. E. M.] We propose to prove by him that only two viewers were on the ground to make the view, and that the other was absent.

[A.H.W.] Objected to for the reason that the report of the viewers being a matter of record in the case is the best evidence as to what was done upon the ground and who were present.

[J. E. M.] State what viewers were on the ground?

There were two; myself and Chas. Bundy.

Was the other viewer present, Mr Hiram Woodward? Not on the day of the view. The view then was made by you and Mr Bundy alone? Yes sir.

Was any notice given by you or the other viewers, so far as you know, to the A.V.R. Co., or its officers? in regard to the time and place of the view?

[A.H.W.] We object for reasons that the report of the viewers is the best evidence of the notice that was given, the only evidence that can be received in this matter as to what was done by the viewers in pursuance of the order. The question is incompetent and irrelevant.

There was no direct notice beside the notice posted, that I know of.

[J. E. M.] Do you know of any notices being posted up? Yes sir.

Did you post up any of these notices? Yes sir, I posted the one.

How long was this before the day of the view? At least six days, I don't remember the time.

Were these written or printed notices? Printed and written both; orders furnished by the Prothonotary or clerk.

How many were posted up? There were three. Where were they posted? One at the post office building at Winterburn near the starting point, one at

Hickiville; that's the terminal, and one at Penfield.

Were these notices all posted up by you? Only one of them but the others were under my authority.

By whom were they signed? They were signed by the three viewers that were appointed. Have you got a copy of these notices? No, sir.

Were those all the notices that were given by the viewers that you know of? That's all the written notice, yes sir.

Did you give any personal notices that were not written? Yes sir.

I gave one to Mr McCormick, one of the principal land owners who is exr. for Chas. Blanchard estate; I don't remember of giving any to any one else.

Mr. H.S. McMinn

About what age are you? 41st year. What is your business? Civil engineer.

How long have you been engaged in that business? Nearly 25 years. Well, I have been an engineer in different capacities ^{on} and public works during that time. I am not connected with the A.V.R., not connected with any thing. I made a survey and map from the survey representing the situation at Winterburn.

Is this the map? Yes, sir. Marked Ex. "B".

Does this map represent the roads and other matters correctly as they are on the ground from measurement? They do, yes sir, - by actual survey.

Is the filling here and the culvert through the filling under the railroad, and the bridges of the stream on each side, represented proportionately as they are on the ground? Yes sir, scale, 100 feet to the inch; the outline of the stream may be a little wider in places; couldn't measure that; variance, you know; I didn't undertake to measure the stream accurately with all its variations.

At the place where the stream enters and departs from the culvert is there a wing-wall in the shape represented? Yes sir, flaring wing-walls.

Did you examine and ascertain the grade of the road that passes over the railroad near the depot? Yes sir.

State in regard to the character of that grade, whether good or bad.

The grade is shown by the profile that I have prepared; the grade varies; it is an easy grade.

Al H. Woodward, attorney for Huston E.p. and for the road in controversy, objects to any testimony that is offered in relation to the location of the proposed road, the location of the railroad, or of any of the roads in the neighborhood of Winterburn, for the reason that the rule in this case is to strike off the confirmation of the road, the reasons alleged are for matters of record, and the testimony proposed is incompetent and irrelevant and wholly immaterial.

[J.B.M.] Witness proceeds and says this paper marked Ex. "C" is a profile of the different roads showing their grade. The letters on this profile correspond with letters on the map marked Ex. "E" the corresponding letters representing the same point or locality; on the profile, the lines between the letters by their elevations or depressions represent the grade of the road between those points.

As a civil engineer, is it your duty and business to give attention to the building of culverts and to understand the manner in which they should be built?

Yes sir. State whether you examined this culvert that is represented on your map, over which the railroad passes? Yes sir.

What would be the risk, or effects, or danger of making a township road through that culvert so that the road would pass over a platform or floor some feet above the water, and having approaches made to enter upon the platform and to pass from it? It should consider it no place for a road, it would be an obstruction. In what way would it be dangerous, or injurious as an obstruction?

I think it would be an obstruction in the time of high water and liable to plug up the opening, prevent the free passage of the water; it would present several objections in forming a dam it would endanger the structure itself, the embankment and filling up the valley, of course, as any dam would do.

Supposing that the dam above there would break in case of high water, what would be the results, or in case of logs, debris coming downstream?

It would have the effect of stopping them and closing the opening, and the results, I pretty much to say what it would be; the embankment might hold the water and it might not; it has been washed out recently by being clogged up with logs scouring under the masonry and tearing parts out; I have seen other

piece of masonry in the same way; it has the same effect of forming a whirlpool and scouring currents.

Is not the effect of water when it is dammed up so that the elevation of the water is a little higher above the dam than it is immediately below it, to cause the washing out of what is immediately below the dam, more rapidly a great deal, than would arise if the water overflowed unobstructed?

The effect of the water falling from an elevation does more scouring; the water dammed to the top of a bank is greater danger in destroying the embankment than there would be with the water raised against the base.

In regard to the upthrusts of the road resting in or on a portion of the wall on the culverts, and being used by the public, generally as a public road, would or would not the travel and friction tend to injure the culverts or weaken it in any way, and to what extent? No sir, I do not think it would materially, not if a properly built piece of masonry.

The chief danger then, in your judgment, arises from raising a obstruction which by means of the water at certain times when the water is high, adds considerably to the danger of the culverts and their property? Yes sir.

In regard to these two streams, the north and the south Fork, which is the largest? I measured both those streams, and as near as I can determine, they take practically the same in volume of water.

Cross Examined by A. H. Woodward.

If that dam should break up there, whether there was a road through the culverts, or whether there was not, what would be the probable effect upon the culverts, precipitating them long down against it? Well, I don't know, just what the effect would be. What is your opinion, if the logs in the dam were precipitated down against the embankment thereby the breaking of the dam, would it not have the effect of damming up the culverts? I suppose so, that was the effect in the recent breaking of the dam.

There was no road there when the dam broke before through the culverts?

I don't know. There was no road at that time at least? I don't know, never saw one.

Do you mean to say, Mr. McMinn, that the amount of plank and material that would be necessary to build that road through the culvert, would increase the water flow, of itself, without any damage being precipitated upon it, be sufficient to dam up the culvert? Well, it would be sufficient if it was placed in proper position.

Would it in your opinion, have the effect of damming up the culvert, and causing other material that would come down through the flood? I think it would.

They would in every instance? Could it answer that question; it depends all together on circumstances; you are talking chances.

You think, then, other material is enough that would be used in making a road through the road dam up that culvert and prevent the flow of water through it?

It would have that tendency, yes sir. It is a wrong principle to take advantage of a culvert that is built for another purpose.

You say you took the measurements of the elevation of the various roads at Wintenburn? Yes sir.

How often have you been at Wintenburn? Can't answer that question frequently. Are you well acquainted with the location of these roads? Yes sir.

Have you ever done any work on this ground other than you have done for the railroad company? Nothing more than going over the ground years ago and making surveys for railroad.

You have located upon your drifts here, a road that is marked "R.G." is the only such road there upon the ground? Yes sir.

State whether that road breaks evidence of having been used? Yes sir.

State whether there is any bridge across the road dam down at the junction of the two streams? There is.

State whether that road is broken at the present time? Cannot.

Ever been any road located there? Wagon tracks and a bridge across the stream; part of the road is washed out so deeply; it is across the stream; there has been a dam at the breast of a hill.

In going upstream from the valley down to the rail road to the depot, what did you find the highest grade to be as the road is at present located, this road? On the simple? About 14 feet per hundred; that is the maximum grade; that.

Are you satisfied that that is accurate? That is the maximum grade; that.

spoke of the roads from Peter G.

Is that the highest grade from Maypotato? That is the highest grade, right today.

What is the highest elevation that you found upon the roads from J. to L?

There is one point upon the road where it crosses a little bridge that gives a

steeper grade than at any other point that I do not think it is hardly safe to call the grade of the road.

What is the grade of the road? ON that point, about eight feet to the banked.

How many side tracks are there there that are used by Blanchard's siding?

There are three. I have noted them.

Does the road also lead there, or run across it? It runs parallel.

How far is the siding the railway from the road? It is right immediately along side of it.

Is going downstream upon this road, is it you not going immediately between the siding and Blanchard's and the railroads? The tracks diverge from that point.

When you cross the side road to the dam there, how far take you then from the side track - isn't it right along side of the road? The side track runs across one road. As for the other road? Along side of the other road, yes sir.

Do you know whether Blanchard's take their engine there or their own?

He don't know, I don't think they have.

For what distance in going downstream would conveyance have to drive along one of these sidings of Blanchard's? About 300 feet.

Is there not a cut or near where the road crosses the rail road?

There is nothing more than a side hill cut on the upper side.

Do you know which side of the valley of the stream this proposed road is to be laid?

On one road, yes sir, on the West side. That is the Craig side? Yes sir, that is the south embankment.

In order to reach the dam, would it not be necessary to cross the valley coming down? Yes sir.

Did you examine the elevations of that road? Yes sir, and as a surveyor I can make the proper line the dam that I did you came down hill, then up hill, then down hill to the valley then up again? Yes sir.

It asked him whether he examined the road at the West end of the fill; he says he did.

State whether near the end of the fill, there is a cut, side hill cut there from

the railroad? The West end, west of the crossing.

State whether in coming down the road at the West end of the fill, whether a person would be able to see a railroad train approaching?

Could for a certain distance. How long? Depend somewhat what elevation; if he is on foot, couldn't see quite as much as if on a wagon; from 25 to 35 yards. From the crossing? Yes sir. How far away would the train then be?

It would be about the same distance.

Did you take the grade of that road over the West end?

From the railroad ~~near~~ ^{South} it is almost level.

What did you find to be the maximum grade there? About 24 feet to the hundred, ~~on the north side~~ Pretty steep, isn't it? Yes sir.

Do you consider that a township located at the West end of the fill, as the road you have noted upon the map is located, would be a safe and satisfactory road in respect to grade, first, whether it would be safe in relation to the railroad across it, and second, the cut of the road in relation to the grade?

The best road we know of is a level road; * * a road ~~may~~ be practicable for horseback but may not take a team on it; a road could be made there, certainly; a road could be made suitable every year; the road that is there now could not be used; it is not graded; it is ploughed up and not condition for travel.

Wouldn't it be a very steep road as at present located? There is one portion of it that is steep. State whether you consider this road over the end ^{of the embankment} ~~of the railroad~~ safe there, and second, whether it would be a good road in the matter of grade? Has a steep grade?

What do you say in relation to it being a safe road?

There is danger at every railroad crossing.

Where, by reason of the proximity of the hill here, and the fact that the hill hides the moving train, when you are coming downstream, whether that would not increase the danger? Why it always does; any obstruction in view in crossing.

Did you take the fall of this stream? I took the elevation at different points. What did you find the fall of the stream to be from J to C?

I don't believe I can give you that either.

Where did you take the elevation of the stream?

I took an elevation at C to run this; it was also given with other points.

You can give us then, the fall from J to F. About 9 feet and a half.

Distance, about 1100 feet.

Did you take the grade of the stream at any place below this?

No sir; below F.

Did you make any calculation as to the flow of the water, as to volume of water? yes sir.

Where did you measure the volume? Between J and about Q.

When did you measure this volume? I measured it on Thursday.

Do you know whether the stream was at that time low water, or whether it had risen some by reason of rain?

I measured the volume merely for comparison with the other streams merely to find out the volume in one stream compared with the other.

That is a small stream, is it not? Pretty good sized stream; considerable water flows down.

Do you know how far it is from Wiperburn to the source of this stream?

I think it is about three miles; it is that much anyway. It has a large watershed.

Have you been over the ground? Yes sir. I have different times; - the past years; we made a survey to the source of it; to the summit; at both streams.

Do you know whether the watershed is any larger than that of the other stream Akabach? I do not know; I rather think the other stream has a larger watershed, but I am not positive.

This stream is not what you would call a rapid stream?

Yes sir, it has considerable fall.

Is it what you would call a rapid stream for a mountain stream?

9 $\frac{1}{2}$ feet or 1100? yes sir.

Do you know anything about Bandy's Run? What do you call Bandy's Run?

Bankcamp, I know the stream.

H. J. MacLellan

State of Pennsylvania, } ss
County of Crawford }

I do hereby certify,
That the above witnesses are duly qual-
ified and examined at the time and
place stated in the above caption.

W. Miller,
notary Public.

In Re Application
to set Confirmation of
road in Huston Twp.
aside.

No 4 May Dec. 1888.

Depositions of Witness

ed, on part of Allegheny Valley RR Co.

Fees for taking dep^{ts} \$67⁵⁵
paid.

W. C. Miller
notary Public

Witnesses

J. L. Vosburg
H. S. McMinn.

Filed and on Arg't

By W. C. Miller
Filed 24 Feby 1890

MCNALLY & McCURDY, Attorneys at Law
CLIFTON, PA.

J. L. Vosburg
H. S. McMinn.

March 24th 1890 Received of Mr. Engel & Son, Cutlers
of Somers, Genesee County, N.Y. Cash Paid, Paid by
James Rogers, who engaged, for the purpose of
obtaining a Notary Public.

In Re Road in Huston
Township.

In the Court of Quarter Sessions of the
County of Chautauqua

No 4 May Sessions 1888.

Application of the Dow Grade Division of the Allegheny
Valley Railroad Co. to strike off Confirmation absolute.

The record in this case, shows that a petition to view
and lay out a public road in Huston Township, the road in
question, was presented to the Court for the appointment
of viewers on the 4th May 1888, and docketed to No
4. May Sep 1888. - That viewers were duly appointed and
their report or the report of two of the viewers appointed
was filed 25th Sept 1888. - This report had to be over to
Dec Sessions 1888, when it was confirmed No 51,
with the usual opening order, and no exception having
been filed and no remonstrance presented, it was con-
firmed absolute at Feb 1, 1889.

The petition of the Rail-
road company to strike off the Confirmation absolute
and the rule to show cause granted thereon. This was
presented and rule granted on the 3 Dec 1889. This being
the third regular term after the granting of the order
of Confirmation absolute. -

The evidence submitted upon the argu-
ment of the rule to show cause, establishes very clearly that
the petitioners before us now, did not have the notice

Complied with, and the learned counsel for the road, conceded this in his argument. He gather from the testimony further that not more than three written notices of the time and place of view were posted anywhere. - Another demonstrates the utility of the rule of court and its reasonableness, so far as it requires, actual notice to occupants and owners of seated land along the route of the proposed road. Without this, the Act of Assembly being silent as to the number of notices and where the same ~~were~~ ^{were} to be posted that were to be given, it was and had become an easy matter to so post the notices as to avoid giving notice to persons likely to or disposed to enter the location of the road.

In the consideration of this application, the first important question with which we are confronted is that of the power of the Court to strike off the confirmation absolute and dismiss the proceedings. Now for a court of record may correct its own errors after ^{the term at which} the judgment or decree ^{was entered} has gone by, is now it seems pretty well settled as to one class of cases, - It is the law of this state, settled both on reason and by authority, that a judgment or decree entered by a court without jurisdiction over the person or the subject matter, both or either is absolutely void. In the case of Wall v. Wall 23 W.N.C. 237. Williams Justice says, "If the court has no jurisdiction it is of no consequence that the proceedings have been formally conducted for they are Coram non iudice. --- So although

We have been referred to the case of Hunter's Private Road 46 & 250, in which Woodward Justice uses the language, But whether duly granted or not, that decree was final until reversed on certiorari and the road opened in pursuance of it. Can he get rid of only in the manner prescribed in the 18th and 19th Sections of our road law of 13th June 1836, and Section 1^o of the Act of 3 May 1856. Rardon 873.

An attentive reading of the facts in this case, shows that the question of jurisdiction was not raised. It is fair to infer therefore that the court had jurisdiction not only of the subject matter but of the persons to be affected by the decree of the court. The court struck off the decree of confirmation, for alleged error of the Court in making the decree, after the term had passed. But the Supreme court decided that the orders of the court were regular and the error for which reversal was had was upon the question of law, - and that for this the, the writ of certiorari was the proper remedy. This presents an entirely different question from that of striking off a void decree, made without jurisdiction of the person. A decree entered under such a state of facts, is improvidently entered and may be strucken off. Newcomer's appeal 42 & 43, and cases cited *supra*.

But it was also contended by the learned counsel for the road, that the petitioner was not entitled to notice, because the public road was in existence prior to the occupancy of the ground by the railroad company. If this was correct, then the proceedings should

24 May Semino 1888

In Re Bond in Trustee

Sup.

Opinion avorder striking
off Conformation absolute.

See *Opinion* of
Magistrate

respectfully report,
That having been present at the view of the
ground proposed for such road, and having
all been first severally sworn or affirmed,
in pursuance of the said order. We have viewed
and laid out and do return for Public use,
the following road to Mt.

Beginning at a post in center of public
Road between Lt. Buck and Sons Store and
Thibados Pool Room Winterburn Penna.
Thence South Eight and three fourth degrees East
Sixteen and one half feet to a post. Thence North
Eighty one and three fourth degrees East Two hundred
and fifty feet to a post. Thence under Allegheny
Valley Rail Road through stone culvert 20 feet
Wide. South Forty eight and one fourth degrees
East. Two hundred and twenty five feet to post in creek
Thence by Lands of Geo. Craig & Son and North end of
Lumber yard. South Twenty three and three
fourth degrees West. Two hundred and seventy four
feet to a post. Thence by same lands
South Twenty one and one half degrees East.
Five hundred and twenty one feet to old road
and junction of Road leading into lumber yard
and road leading to Craig coal Bank. Thence
By old road. South Forty two and one fourth degrees

and seven feet to a post. Thence south
and seventy one feet to a post. Thence south
and three fourth degrees East, two hundred
and thirty seven feet to a post. Thence south -

Fifteen and one fourth degrees West, Two
Hundred and five feet to a post. Thence
South Forty four and one half degrees West.
Three hundred and thirteen feet to a post. Thence
South Fifty degrees West, Five hundred and seven
feet to a post. Thence South Sixty two degrees
West, Two hundred and sixty eight feet to a post.
Thence South Seventy seven degrees West, Two
hundred and eighty two feet to a post. Thence
South Fifty degrees West. Two hundred and
twenty six feet to a post. Thence South Sixty eight
degrees West, Two hundred and sixty five feet to
a post. Thence South Eighty three and one half
degrees West. Two hundred and thirty eight feet
to a post. Thence South Fifty five degrees West
one hundred and twenty two feet to a post.
Thence South Thirty degrees West, one hundred
and fourteen feet to a post. Thence South
Fifty nine degrees West. Two hundred and
ninety six feet to a post. Thence South Eighty-
three degrees West. Two hundred and forty eight
feet to a post. Thence South Thirty three and
one fourth degrees West, one hundred and
seventy nine feet to a post. Thence South Thirteen
and one half degrees West. One hundred and
thirty feet to a post. Thence South Forty one and
one half degrees West. Four hundred and
ninety five feet to a post. Thence South Forty
degrees West, Four hundred and thirty five feet to a post

Clearfield County, ss:•••

At a Court of Quarter Sessions of the Peace of the county of Clearfield, Pennsylvania, held at Clearfield, in and for said county, on the Seventh day of May, A. D. 1888, before Judges of said Court, upon a petition of sundry inhabitants of the township of Strickton, in said county, setting forth that they labor under great inconvenience for want of a road beginning at a public road at Wittertown and leading by the nearest and best route to a place called Stocksylvania in Hickeyville in said Township

and therefore praying the Court to appoint proper persons to view and lay out the same according to law, and make report as required whereupon the Court, upon due consideration had of the premises, do order and appoint J. L. Vosburg Hiram Woodward & Chas. Bundy who, after being respectively sworn or affirmed to perform the duties of their appointment with impartiality and fidelity, are to view the grounds proposed for said road, and if they view the same and any two of the actual viewers agree that there is occasion for such road, they shall proceed to lay out the same agreeable to the desire of the petitioners, as may be, having respect to the best ground for a road and the shortest distance, and in such manner as to do least injury to private property, and state particularly whether they judge the same necessary for a public or private road, together with a plot or draft of the same, with the courses and distances and reference to the improvements through which it passes, and shall also procure releases of damages from persons through whose lands said road may pass, or failing to procure such releases, shall assess the same, if any sustained, and shall make report thereof to the next Court of Quarter Sessions to be held for said county, in which report they shall state that they have been sworn and affirmed according to law. Notice is directed to be given to the owners or occupants of seated lands through which the within road is intended to pass, of the time of the view, according to the 147th Rule of Court.

BY THE COURT.


A. M. Bloom
Clerk.

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.
Viewers cannot interfere with damages assessed by the original viewers, except so far as the location may be changed by the road wks.
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.

No. 4 May Sessions, 1888

ORDER

To view and lay out a Road
From Millhouse in the township
of Franklin Clearfield Co.

J. L. Costing	Days 2	8 ⁰⁰
	Miles 5	.50
Open Bridge	Days 1	2 ⁰⁰
	Miles 7	.70
	Days	
	Miles	

Horburg 3⁰⁰

1⁰⁰

See Sep 1888, confirmed the
sc. road to be open & about
wide, except where sides are
cutting embankments & dredging
then take 16 ft broad.

By the court

14-20
Fees \$1²⁵, paid by Woodward

Filed 26 Oct 1888
Fees \$1²⁵, paid by Woodward

Woodward