

Deposition of Witnesses produced
sworn and examined at the office
of John H. Fisher one of the Justices
of the Peace in and for Cambria
County, No 89, Franklin Street
in the Borough of Johnstown in
said County on Monday the
29th day of September 1884 be-
tween the hours of nine o'clock
A.M. and eleven o'clock P.M. of
said day in compliance with a
Rule of the Court of Quarter Sessions
of Cambria County and Notice
hereto attached, to be read in a
Cause depending in said Court
in the matter of the Exceptions to the
Report of Viewers appointed to assess
damages &c. caused by opening of
Rail Road Alley in Johnstown Boro.,
Chas L. Dick and A. V. Baister Esqs
appearing for the Exceptants,
Henry H. Kuhns & W. Horace Rose Esqs
appearing for Johnstown Borough

Anto Snyder. Sworn, testified as
follows I reside in Blairsville
Indiana County Pa. and am a
Civil Engineer of the Pennsylvania

Rail Road, I am familiar with the location of the Stony Creek Feeder, I have made surveys of the Feeder they were made in 1876, I have a draft here showing the location of the Feeder from Main Street up to the dam, the head of the Feeder, I have examined a draft attached to the Report of Viewers appointed by the Court of Quarter Sessions of Cambria County, to assess damages and award contributions in the Rail Road Alley Matter, I laid down that alley on my plan and it is shown by red tint, The draft I now present correctly shows the location of the Feeder from Main Street to the head, The names of the property holders as shown on the draft ~~along~~ along the line of the Feeder are correct at the time a suit or suits were brought by the Pennsylvania Rail Road Company against them, These suits were brought in 1881, I think.

Draft produced by the witness identified by him, marked "A" and hereto attached.

I made a survey of the Feeder in 1876. at the instance and request of the Pennsylvania Rail Road Company and who employed me. For first in stakes at that time. In 1881. before these suits were brought we retraced these lines and again set the stakes. The width of the Story book Feeder as originally laid out was fifty two feet, I visited the Feeder when this proposed alley is laid out. in the latter part of June, I saw the location of the proposed alley to day. When I visited the alley in June the Borough were putting in an embankment, when I saw it to day the embankment was completed and there was a Street Rail Way upon it. The first time I visited the alley the embankment was nearly completed. The portion of the track down next Bedford Street is on the water way. when it gets up near Spruce Street the track is on the tow path. Trains could not use this alley out side of the

Street Rail Way in the condition
it is now. I followed the Street
Rail Way from Bedford Street to
and through Spruce Street to
where it strikes Homer Street.

Question, Please state whether or
not there are any natural obsta-
cles ~~through other streets~~ to prevent
the building of this Rail Way
through other streets from the point
on Bedford Street where this alley
begins to Spruce Street.

Objected to by Mr. Rose as being
^{irrelevant and} immaterial the Convention here
arising upon exceptions filed to
Report of Reviewers appointed
to assess damages and award
contributions, the Passenger Rail
Way not being a party to this
proceeding, and it being utterly
immaterial whether a better or
advantageous route could be
obtained for the same.

Answer. No Sir, there are none.
The Story Creek Feeder was part
of the main line of Public Works of
the State of Pennsylvania, this
Rail Way on this alley would prevent

The Pennsylvania Rail Road from putting it to any use they might want to use it for. The use of the alley, ^{as a public alley,} would be inconsistent with any use for Rail Road purposes by the Pennsylvania Rail Road Company.

Cross Examined by Don Rose.

I know that the Pennsylvania Rail Road Company have sold the bed of the Stony Brook feeder from Main Street, northwardly to the Basin. I know that quite a number of private buildings and other structures are now built and are standing on the bed of the old feeder between Main Street and the old Basin. The water course from Bedford Street to the Basin has been filled up. They are a number of public streets and alleys of the Borough of Jervis town crossing the old feeder between Bedford Street and the old Basin. The old Basin and the canal have been sold by the Pennsylvania Rail

Road away down below the
forks of the Conemaugh
The Feeder has not been used
by the Pennsylvania Rail Road
as a water course since 1863.
The Pennsylvania Rail Road Co
does not own any continuous
strip of ground from ^{Main Street}
in the Borough of Johnstown, ~~the Feeder~~
to its line of Rail Road on the
south Bank of the Conemaugh
River. The Pennsylvania Rail
Road Company never had or
operated a line of Rail Road be-
tween Bedford Street and Spruce
Street. The distance from Main
Street to the head of the Feeder
is about a mile and a half.

The upper end of the Feeder ends
at the Stony Creek River at what
is known as Solomons Run.
The Pennsylvania Rail Road Co
would have a mile and a half
of the old Feeder which they own
if they wanted to use it for a
Rail Road. They would have
to get ground outside of the
Feeder if they wanted to make
a connection with their Main

I have never taken the levels from
 the mouth of this proposed alley
 at Bedford Street (by way of Bedford
 Street, extended, to Spruce Street.
 I know that there is a very steep
 grade on Bedford Street, I think
 the grade from Spruce Street up
 Hooper Street to Bedford Street,
 and both are pretty steep. There
 is slight grade in a southerly di-
 rection on along the proposed
 alley from Bedford Street to
 Spruce Street. If to reach Sandy
 Hill Cemetery and the Seventh
 Ward this alley would afford
 a much better grade for wagons
 and Carriages than by way of
 Bedford and Hooper Street, the
 distance would be slightly shorter
 if any; I do not know when
 Sandy Hill Cemetery was laid
 out and first used as a cemetery,
 I do not know that the line of
 this proposed alley has been used
 by wagons and Carriages going to
 and coming from this Cemetery.
 The width of the fence at the surface
 of the water, the water way, was thirty feet

I do not know this width from
actual survey when the Water was
in it. There was a Bridge across
the Feeder of Bedford Street, where
the Bridge, ^{stone} the water way was con-
tracted I dont know any thing
about the points above and below
if narrower than the thirty feet,
I never was along the Feeder
when it was used as such for
the Canal. I can't state from
my own observation what the
actual width of the Water way
from Bedford Street to Spruce
Street, Wagons could pass
up along the Feeder from Bedford
Street to Spruce Street. at the times
I made my surveys, The tow
path was on the side next the
Story Creek, being the right hand
side as you go up the Feeder,
If this alley is sixteen feet wide, and
framed up two wagons could
readily pass, The Railway is in
some places along this alley in
such position that I do not think
a Passenger Car and wagon
could pass, if laid along the side
of the alley they could pass, In
some parts the Railway is in the
center of the alley

Re Examined.

The Pennsylvania Rail Road Company, aside from being deprived of the use of the Alley for Rail Road purposes, would lose that much real estate which they consider valuable. I could not place any money value upon this real Estate.

Arthur Snyder

A J Whitney sworn..

I live at Allona at present, and am a Civil Engineer of the Pennsylvania Rail Road Company. I was in the employ of the Pennsylvania Rail Road Company from Feby 1859 to the present time, I was principal Assistant Engineer ^{of the Canal} from 1859 to 1863. I am acquainted and was at the time with the location of the Story Creek Feeder. The Feeder was used for navigation purposes up to and during the greater part of the Summer of 1863. I was on the ground or location of this old Feeder to day; A portion of this Feeder

remains as it ever was before
purpose, that has been held
up and that is what you
I, on the part of the
they upon this, the fact
by which the way on the
the proposed way, and
known by the
Rail Road for the
I think it is
right of way for
there or for any

Good Evening

The old Road in
as well as by the
has been abandoned since the
year 1863, for the purpose of
changes.

A. J. Murray

The Executive in order to
City of the
the Council
purpose
is to
and

Quarter Sessions

In the Court of ~~Common Pleas~~ of Cambria County, Pa.

*Bankrupt
Exception
Hudson
Johnstown
Borough*

In the matter of the
exception to report
of views appointed
to assess damages
caused by opening
Railroad Alley
in
Johnstown

Of Dec Term A. D. 1883 No 21 PD

Exception filed 27 May 1884

And now to wit, the 19 day of Sept A. D. 1884: Rule

on part of *Exceptants* to take depositions of witnesses

to be read on the hearing of the above stated case.

CAMBRIA COUNTY, SS.

Extract from the Record of said Court. Certified the

17 of Sept 1884

H. A. Shoumaker PROTHONOTARY.

To *H. H. Kuhn Esq. Solicitor for Johnstown
Borough*

Take notice, that in pursuance of the above Rule the depositions of witnesses to be read in evidence on the *hearing* of the above stated *Exceptions* on part of the *Exceptants* will be taken at the office of *John H. Fisher Esq* in *Johnstown Borough* on *Monday* the *29th* day of *Sept.* A. D. 1884, between the hours of *nine* o'clock, A. M., and *eleven* o'clock P. M., before *John H. Fisher Esq. J* Justice of the Peace in and for said *County* or before some other person of competent authority, at the time and place aforesaid, when and where you may attend if you think proper.

*Chas L. Dick
A. W. Barker
Solicitors for Exceptants*

No 2 Dec. Ann 1883 RR

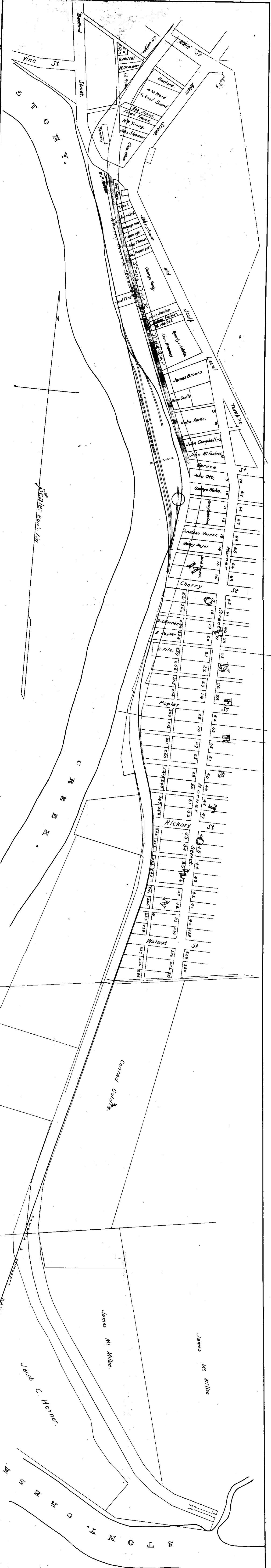
In the month of October
to report of various
appointments to various
positions we
announced by opening
Railroad Alley
in

Johnston

Book to take the
in part of receipts
(copy)

Book

Exhibit "H" identified by Milman as his communication before the Sept. 23, 1889
 S. H. Fisher



Johnstown Tuesday,
July 6, 1830.

The Board met - All the members present.

* * * * *
The President laid before the Board an estimate
of Peter Livergood of the damages to his mills
in Johnstown occasioned by the construction of the
Canal and works at that point amounting to
749 dollars and forty cents annually.

Which was read and laid on the Table.

On motion of Mr Stevenson Pres

Resolved unanimously - That the
principal Engineer upon the Western Division
be directed as early as may be consistent with
his other duties to locate a feeder from the basin
in Johnstown to a point on Stony Creek at or
near the mouth of Solomons run and such
dam and other works as may be necessary
to turn the waters of said Creek into the same.
The feeder to be 18 feet wide at bottom and thirty
feet wide at top water line and four feet deep,
and that the said feeder be staked out as far as
the same may pass through Johnstown.

Resolved - That the said Engineer
prepare and make return to the Board of a
Map showing the location of said dam and
the line of said feeder and its connection
with the Johnstown Basin.

6. 2. 2 P254
2. 2. 2 P200.

Harrisburg Wednesday March 27, 1833.
The Board met. — All the members present.

* * * * *
Resolved unanimously — That the principal Engineer upon the Western Division be required to locate a feeder from the basin at Conemaugh to Stoney Creek with the necessary ^{dam} guard lock Bridges &c. and prepare the same for contract as early as practicable.

Resolved unanimously. That the Superintendent upon the Western Division be required to advertise and put under contract the Conemaugh feeder, dam, guard lock and other works connected therewith with as little delay as possible.

Harrisburg, March 19, 1834.
The Board met. Present Mr Mitchell and Mr. Clark, President.

J. Vol 4 P. 323 The President laid before the Board a letter from S. Welsh, engineer on the Western Division, relative to the Stoney Creek feeder.

Whereupon on motion,

Resolved unanimously, That the Stoney Creek feeder at Conemaugh town be put under the charge of the supervisor on the upper portion of the Western Division.

* * * * *

Articles of Agreement entered into this 6th day of May 1833 by and between the Commonwealth of Pennsylvania by Samuel Jones Superintendent, on the Western Division of the Pennsylvania Canal, of the one part and Hugh Curren of the other part. Witnesseth; that the said Hugh Curren promises and agrees to dig, embark puddle, and construct in a substantial and workmanlike manner, all that part of the Weeder leading from Stoney Creek to the Basin at Johnstown on the Western Division Pennsylvania Canal and known and designated as the first section upon the plan of the said Weeder, in the following manner to-wit:— The banks of the Weeder to be so constructed, that the water way at all places be at least 30 feet wide at the top water line eighteen feet wide at the bottom and four feet deep, each of the banks shall be at least two feet above the top water line, and such a slope shall be preserved upon the inner side of the banks, both above and below the top water line, as that every foot perpendicular rise shall give an horizontal base of eighteen inches. The Towing path shall be on the river side of the Canal, its surface shall be at least eight feet wide, and the bank opposite the Towing path shall be at least eight feet wide, and both banks shall have a declination from the inner to the outer edge thereof, equal to half an inch to every foot of surface, the banks shall be constructed of pure, solid and compact water proof earth, and they shall be made smooth and even, with a slope on the outermost side not less than above mentioned. And it is further agreed for the purpose of giving to the banks, the necessary connection.

B.V. 20-13

2. 100. 9. 2219

44

with the earth upon which they are to be erected, that all the grass, trees, bushes, and stumps, on the space to be occupied by the Canal banks, together with all logs, brush roots and vegetable matter of all descriptions shall be wholly removed, at least fifty feet from the Centre of the Canal. And it is further agreed that all necessary grubbing shall be executed according to the directions of the Engineer appointed by the Canal Commissioners of Pennsylvania, and when required that a puddle ditch shall be excavated under the seat of each bank of such breadth and depth and shall be carried up to such a height within the embankment, as may be designated by the Engineer. And the said Hugh Curren to be paid for completing this contract as follows: For grubbing and clearing One hundred and fifty dollars. For all necessary excavation within the banks of the Canal, puddle ditch and towing path to be the same, of earth, gravel, loose stone, clay, loam or sand fourteen cents per cubic yard. For embankment when removed over one hundred feet and to be measured in the banks, Twelve and one half cents per cubic yard. For hard pan or cemented gravel eighteen cents per cubic yard. For solid or blast rock forty five cents, per cubic yard. For slate or detached rock measuring more than one cubic foot, eighteen cents per cubic yard. For slope wall per perch of twenty five cubic feet. Seventy five cents.

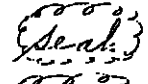
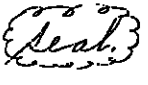
It is understood by the parties that under the term excavation, are included all drains that may occur on the section and under the term embankment is included the filling in of bridges. And that in all cases the earth for embankment

shall be taken from such places as may be directed by the Superintendent or Engineer on the line. It is also understood that no allowance shall be made for the bailing of water. It is also agreed that any items of work that may necessarily on this section not already specified in the Contract shall be estimated by the Engineer and paid for accordingly.

* * *

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

Witness
H. Rathbone

S. Jones Supt 
Hugh Curren 

Auditor General's Department.

Harrisburg, Pa., Sept. 25, 1884

I hereby Certify, that the foregoing is a true copy of the original remaining on file in this Department.

Witness my hand and Seal of Office, the day and year above written.

Thomas M. Stewart

J. B. Kile
Auditor General.




Secondly, It is not the best evidence of the matter therein sought to be proved. That the article of agreement attached to and made part of this offer is inadmissible because it purports to be a copy of the agreement which if in existence & must be produced there being no evidence of its loss, the evidence offered is but secondary, and secondly there being no evidence of the contract and completion of the work the agreement is not evidence in this proceeding, because it establishes no fact material to the contention of the parties.

Copy of Proceeding hereto attached and marked Exhibit "B"

Carrizo County, N.M.

I hereby certify that the foregoing witnesses were ^{produced} sworn and examined at the time and place stated in the caption and that they subscribed their depositions as

My presence
Witness my hand and seal
this 29th day of September 1854.
John W. Fisher 
Justice of the Peace

102. Dec. Term. 1883

In the matter of the application
of Board of Surveyors of
the State of New York
to the Board of Supervisors
of Rail Road of the
City of New York
in the matter of the
Board of Surveyors

Depositions in part
of Exception

Justice Van Dyke
Paisly. M. J. J. J.

Edw. J. J. J.

To the Honorable the Judges of the Court of Quarter Sessions for the County of Cambria.

We the undersigned, Jurors appointed by the Court of Quarter Sessions of Cambria County, to assess damages and award contributions, by reason of opening and adopting Railroad alley, in the seventh Ward of Johnstown Borough, in pursuance of the aforesaid order of said Court, do report that having given due and legal notice, in writing, to all the property owners interested therein, a copy of which notice is hereto appended and marked "Exhibit A"; and after being duly sworn and affirmed to perform our duties under the act of the General Assembly incorporating boroughs, and the several supplements thereto, with impartiality and fidelity, did on Friday, February 15, A.D. 1884, at 2 o'clock P.M., proceed to view the premises described in said order of Court, and found that the opening and adopting of said Railroad alley, in the seventh Ward of said Borough, as described in said order, caused no damage whatever to any or either of the property owners along and adjoining the lines thereof, and therefore find it unnecessary to assess damages or award contributions for advantages or disadvantages by reason of the opening and adopting of said Railroad alley by the said Borough.

A plat or draft of the aforesaid premises is herewith attached, marked "Exhibit B", and made part of this report.

All of which is respectfully submitted. Witness our hands and seals this nineteenth day of February

1 A. H. One Thousand Eight hundred and eighty four.

2 Jas. M. Weston Seal

3 A. M. Gregg Seal

4 Howard J. Roberts Seal

5 C. J. Frazier Seal

6 Margaret St Brown Seal

7 D. A. Homer Seal

8 F. W. Neary Seal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Proceeds December 1883
No. 2. Dec. 1883

Reprinted comments of
published to view every
language and several
control lines for advantage
and several others, carried
by the collection and copying
of Paul and Ellen in the
present period of publication
Germany

Small amount March 3, 1884.
The printing paper used
and several other items and
will pay over the amount
for the printing by the bank

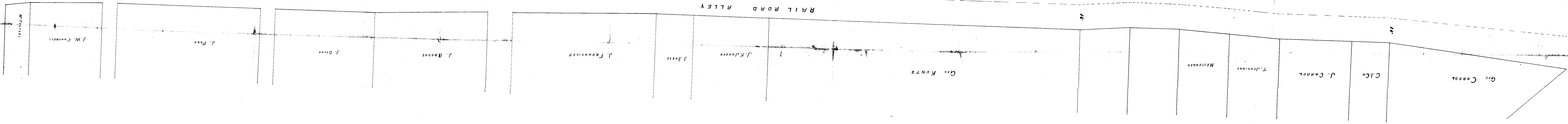
Wm. M. S. 1884

27 May 1884 Collection filed

Kuhn

B. & O. R. R.

RAIL ROAD ALLEY



"at width"

To George Carroll Sr. Cambria Iron Co. John Carroll
Thomas Jennings. Sevinat Messenger. George Kurtz Sr. John Jordan.
Joseph Seese. Jacob Bronheiser. James Brooks, Jacob Lyffe. John Smith. P. R. R. Co.
Jno W. Campbell. Sec. Branch N. R. Co. John Thomas, George Messenger

The Undersigned, having been appointed
by the Court of Quarter Sessions of
Cambria County, to view and assess
damages and award contributions,
for advantages and disadvantages
caused by opening and adopting Railroad
Alley in the Seventh Ward of Johnstown
Borough as a public Alley of said Borough,
You are hereby notified that we will meet
on the premises named for the discharge
of said duties, on Friday February 16, 1884,
at 2 O'clock P.M., when and where you can
attend if you see proper.

Witness our hands and seals this
day of February A. D. 1884.

Gas McNeill Seal
A. W. Gagg Seal
H. J. Roberts Seal
C. T. Frizer Seal
M. A. Brown Seal
P. A. Horner Seal
J. W. Kay Seal

"Exhibit A"

I hereby accept service

J. W. Mauders

4/27/84

B. O. R. R.

I hereby accept service for P. R. R. Co.

Chas. D. Dick

Att'y for P. R. R. Co.

I hereby accept service

2/7 1884

G. W. Moses agent

I hereby accept service for Cambria and

Cyrus Elder Solicitor

I hereby accept service

John W. Campbell
John Thomas

George Messinger

February 7th 1884

Served by copy left at the following named residence with an adult member of their family. George Carroll or Mrs. Carroll.

Joseph Seese, Mrs. Parkes, George Kintz or Jacob Frohnweiser.

Jacob Gruffer, copy personally, James Brooks, John Jordan, or

Levina Messenger. Accepted service John W. Campbell

George Messinger, John Thomas, G. W. Moses agent for Thomas

Jennings, Cyrus Elder, Solicitor for Cambria and Co. Chas. D. Dick

Solicitor for P. R. R. Co. J. W. Mauders agent for the S. T. C. Branch
P. R. R. Co.

I answer for B. Harris

High Constable Johnstown Borough

Residence of Attorney

Columbia County, N.Y.

At a Court of General Quarter Sessions of the Peace, hold at Eberding, in and for said County, on Wednesday, the fifth day of December A. D. 1883 before the Honorable Judges of said Court. The petition of N. W. Storey, Burgess of the Borough of Johnston and the Town Council of said Borough was presented, representing that the Town Council of said Borough, on the 18th day of September A. D. 1883 passed the following, viz: An Ordinance, declaring a Public Alley, in the Fourth Ward, from Bedford Street to Spruce Street.

It is ordained and enacted by the Burgess and Town Council of the Borough of Johnston, and it is hereby ordained and enacted by the authority of the same.

Section 1. That road or Alley in the Fourth Ward, extending from Bedford Street to Spruce Street, which has been used by the public for many years, is hereby declared to be a Public Alley of the width of sixteen feet, to be designated and known as "Railroad Alley".

Section 2. That all the ordinances of said Borough relating to Streets and Alleys, heretofore, and the same are hereby extended to and over said Railroad Alley.

Passed finally in Council September 18th A. D. 1883 and approved by the Burgess September 20th A. D. 1883. Said petition further representing, that the said Council authorized and directed said petitioner, to make the necessary application to the Court, for the appointment of viewers for the assessment and awarding of damages incident to the opening of said Alley; and therefore praying the Court to appoint seven disinterested freeholders of said Borough, who after being duly sworn

or affirmed to perform the duties under the Act of Assembly in such case made and provided, with impartiality and fidelity shall proceed to view the premises described in said Ordinance or petition, having regard both to the advantages and disadvantages, caused to the several properties along the line of and adjoining said Railroad Alley; and shall assess and allow to all persons injured thereby, such damages as they shall have sustained respectively over and above all advantages; and who shall also make assessments for contributions upon all such properties as shall be benefitted by the opening of said Alley, such sums respectively as they may have been benefitted over and above all disadvantages, and the said Viewers shall make a report of their proceedings in writing to the next Court of Quarter Sessions, describing the properties upon which assessments have been made specifically, stating, whether for contributions or for damages, with amounts respectively.

The Court upon due consideration had of the premises, appointed James McMillen, Albert M. Gregg, Howard J. Roberts, Caleb W. Frager, Morganza Penn, Benjamin F. Horner and Frank W. Kay, as Viewers, who, after giving due and legal notice of the time and place of meeting, shall proceed to view the premises, and make a full report of their proceedings as herein prayed for, to the next Court of Quarter Sessions of said County; in which report, they shall state distinctly, that they had been sworn or affirmed according to law.

By the Court
John C. Gates
Clerk J. S.

No. 2. December Dinner 1853
Room 100.

Order to have and accept

Chicago, and exhibition &
caused by the opening and
adjoining Railroad Alley,
with the several views of
Franklin's Cornfield.

Persons

- James McMillan
- Wm. H. Hoag
- Howard J. Weeks
- Walter S. Rogers
- Mary Ann Rogers
- William S. Rogers
- Frank M. Day

Oct 15-1853 at 2 P.M.

"McMillan"

Exceptions.

Mr. Barker apts. read
Dud. Smith. to P.R.R. Co. R.B. 42. p. 602
Wright P.R.R. Co. v. Foxworth et al. No. 77 Sept. 2. 1852

Reh'nd.

Depts. Reads —

259 Mr. Barker opens for Exceptions

Cts. Craig v. Allegheny 53 P.D.R. 477
Haldeman v. P.R.R. Co. 14 Wright 425
Robinson v. same 72 P.D.R. 316
Act. of Assembly May 16, 1857. P.D. 679
P.R.R. Co. Appeal. 93 P.D.R. 150
Lewis et al. v. N.Y. P.R.R. Co. 39 Leg. Int. 23
Coyne v. E. & N.E. P.R.R. Co. 3 Casey 857
Packer v. P.R.R. Co. 7 Harris 211
Hutchins v. P.R.R. Co. v. Phila. 89 P.D.R. 210
Court, v. P.D.C. P.R.R. Co. 12 Lewis 159
City of Phil. v. P.D.C. Co. 58 P.D.R. 263.

Rose for Borough:

Purd. Dig.

Court. p. 21. Sec. 3.

In re Towanda Bridge Co. 10 Norris, 216
Western P.R.R. Co. Appeal 3 Oct. 155

Kuhn

Hall v. Hall	1 Philad. R.	258
Huston v. Huston	1 W. N. C.	24
Machette v. Hodges	6 Philad. R.	296

H. H. KUHN,
Attorney-at-Law.

Johnstown, Pa., Sept 16 1884

Ho. A. Shoemaker Esq.

Ebensburg Pa.

Dear Sir; Please

put the following stated cases
on the list for argument at the
ensuing Arguement Court, viz:

Johnstown Borough Petition Error vs
William Brownson Deft in Error.

In the matter of the Exceptions to
the report of viewers, appointed to

assess damages etc caused by declaring
Railroad alley as Johnstown Borough
a public alley. In the last stated

case issue Rule to take depositions
on part of Johnstown Borough. Issue

Rule and copy and send to me.

Yours &c

Henry R. Kuhn

Atty for Johnstown Borough

No 2 Dec Term 1883 R₂

In the matter of the
exceptions to report of
juries appointed to
assess damages &
caused by opening
Railroad Alley
vs
Johnston

Process for Rules
take Depositions

Filed 16 Sept 1884

Kuhn

State of Pennsylvania
County of Cambria

Antes Snyden being
duly sworn according to law says that he is
a civil engineer by profession and that he
is familiar with the location of the Stony-
Creek Feeder in the borough of Johnstown;
that the said Stony-Creek Feeder formed a part
of the Main Line of the Public Works of the Common-
wealth of Pennsylvania, and was used by the said
Commonwealth, along with said main line to the
Pennsylvania Rail Road Company in fee simple
and that the Pennsylvania Rail Road Company
are still the owners of that portion of the
Stony-Creek Feeder hereinafter more
fully described and upon which the
authorities of Johnstown Borough are about
to grade an alley as hereinafter set forth;
that this feeder was constructed by the Common-
wealth of Pennsylvania about the year 1830
and remained in use by the public as a navigable
feeder up to the year 1862.

That he visited the said Stony-Creek Feeder
to-day (June 25th 1884) and there found
certain officers and employees of the borough
of Johnstown engaged and employed in
obstructing and grading the said Stony-
Creek Feeder commencing at Bedford Street

in said Borough and that for a distance of three or four hundred feet southwardly along and over the ground of the Pennsylvania Rail Road Company to mt. the Stony Creek Header they ~~are~~ have already filled up said Header and raised the elevation of the same in some places at least four feet.

That he was informed by a man engaged in said work that he was the street Commissioner of said Borough and that that the purpose in grading and elevating said Header was to enable the Johnstown Passenger Street Railway Company to lay their tracks thereon;

That he is informed and believes that proceedings are pending in the Courts of Cambria County to determine the right of said Borough of Johnstown to open an alley over that portion of the Stony Creek Header now proposed to be occupied by them and that said proceedings will be determined in a short time.

That the permanent obstruction of the said Stony Creek Header and the occupation for the purposes aforesaid he believes to be without authority of Law and without the consent of the owners thereof, the Pennsylvania Rail Road Company, and that if permitted it will work great damage to the property of the Pennsylvania Rail Road Company, that the portion of the Stony Creek Header occupied

and interfered with as aforesaid is remote from
the Pennsylvania Rail Road track and its office,
so that the acts complained of did not come
within the observation or knowledge of the officers
of the Pennsylvania Rail Road Company until
he having other business in the vicinity
observed it as hereinbefore recited. —

That the map attached to the ~~petition~~ in this
case is correct.

Sworn and Subscribed }
before me June 25th 1884 }
before me,
R. Thompson, J.P.

Arthur Snyder

And now June 28th 1884. on petition and affidavit read and filed and due consideration had thereof it is ordered and decreed that an order be issued restraining the borough of Johnstown its agents, servants, employees, and appointees from entering upon the property of the Pennsylvania Rail Road Company as claimed and set out and described in the petition affidavit and draft filed and from using the same in any manner whatever until the questions raised by the exceptions filed in these proceedings recited in said petition be decided and determined. And it is further ordered that a copy of the petition and affidavit filed in these proceedings be served with the order hereby made. — And on application a rule to show cause why this order shall not be dissolved will be granted returnable after five days notice to Counsel.

R. L. Johnston
 Justice, 4th District

No. 2 No. 2, June 1883
 Road-Booker.

Petition for restraining
 order, affidavit of
 Curtis Snyder, draft and
 decree of Court

Filed June 28. 1884

Dec. 1. 1884 Petition and
 affidavit, without suit.
 By the Court

Parton.

To the Honorable the Judges of Court of Quarter Sessions of Cambria County,

The petition of the Pennsylvania Rail Road Company by A. V. Barker attorney for said Corporation respectfully represents that on Dec. 5th 1883 the petition of the Burgess and Town Council of Johnstown borough was presented setting forth that the Town Council of said borough had on Sept. 18th 1883 passed an ordinance enacting that a road or alley in the Fourth ward extending from Bedford Street to Spruce Street should be "declared to be a public alley" &c. and requesting your Honorable Court to appoint viewers to assess damages &c. caused to the several properties along the line of and adjoining said alley; that your Honorable Court appointed seven disinterested persons to perform said duty whose report was filed and confirmed in on March 3^d 1884 and ordered to lay over three months for exceptions, that on May 27th 1884 exceptions were filed by your petitioners, (a copy of the same being hereto attached,) in which it is alleged that the proceedings are irregular and that the ground sought to be appropriated belongs to the petitioners and forms part of their franchises and cannot be taken for public use, and setting forth other exceptions which your petitioners believe are entitled to due weight and consideration at the hands of your Honorable Court.

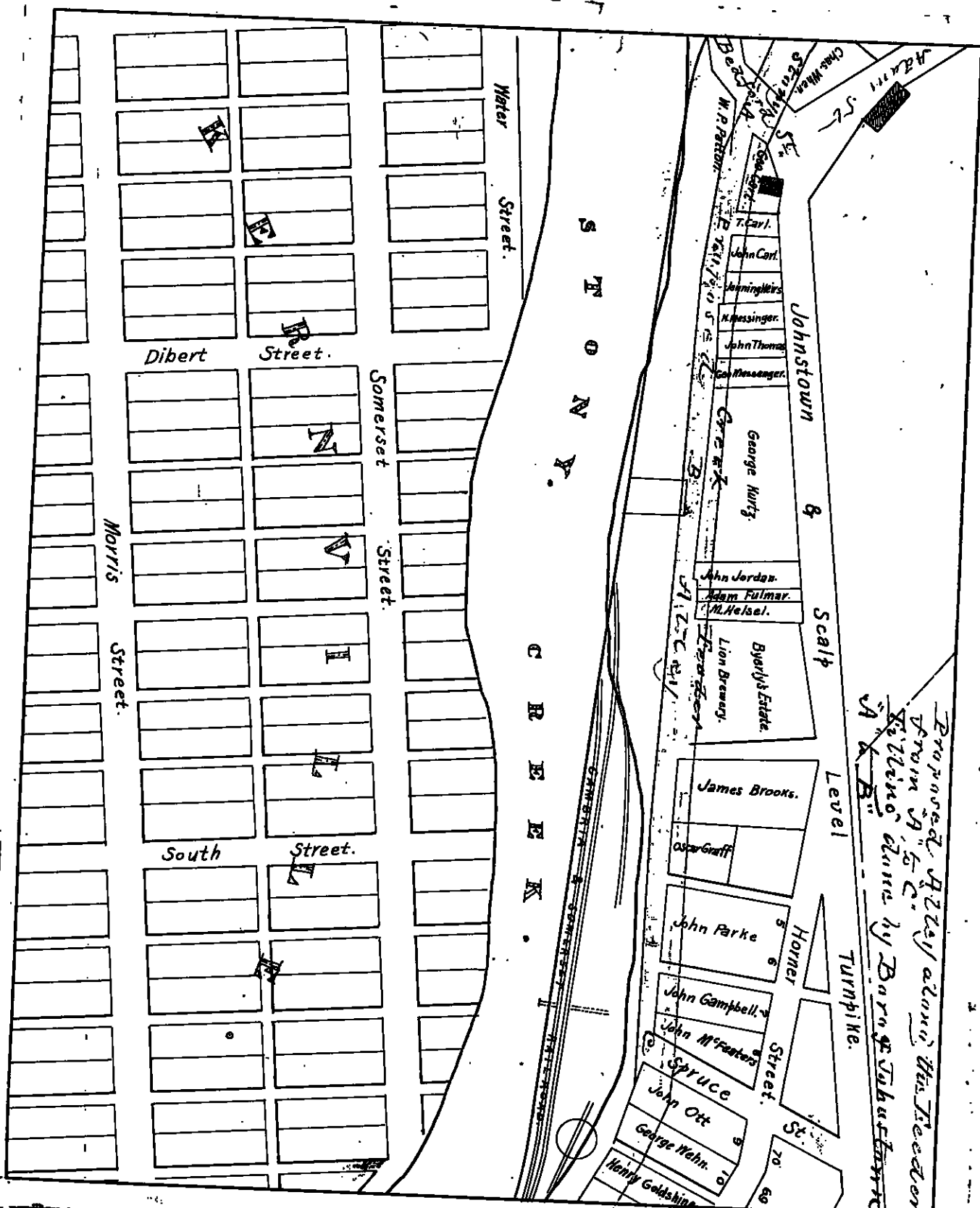
Your petitioner further representing that the exceptions filed as aforesaid are still pending and the questions raised therein

are as yet undetermined by your Honorable Court, yet notwithstanding this fact the said Burgess and Town Council, by their officers and employees, as appears from the annexed affidavit, have taken possession of the ground of the Pennsylvania Rail Road Company claimed to be appropriated for the purposes of said alley and, without authority of law, prematurely and in contempt of your Honorable Court are about to open ^{and} grade the same without awaiting the termination of the proceedings pending in your Honorable Court as hereinbefore recited ^{and} to appropriate the same, as appears from the annexed affidavit, for the purposes of a street railway company.

Your petitioner would therefore pray your Honorable Court to award an order restraining said borough of Johnstown from interfering with the property of your petitioner and restraining them from opening, grading or otherwise working on the proposed alley so far as the same is laid out on the Stony Creek Ticker, until the exceptions pending in your Honorable Court as above recited be disposed of.

And your orator will ever
Gavey &c. —

Pennsylvania Rail Road Co,
by A. W. Barker
Attorney for same
June 28th 1884.



Proposed A. T. Co. along the road
 from A. to C.
 Killino's claim by Barrage Tubular
 A & B.

S
E
N
O
N
Y

C
H
R
I
E
E
K

Dibert Street.

Street.

Somerset Street.

Street.

Morris Street.

Street.

South Street.

Johnstown &

Scalp Level

Turnpike.

Hornet Street.

Street.

St. to 60

W. R. Patton

T. Carl.

John Carl.

Johninglers

K. Messinger.

John Thomas

Col. Messenger.

George Kurtz.

John Jordan.

Adam Fulmer.

M. Nessel.

Lion Brewery.

Byrly's Estate.

James Brooks.

John Parke

John Campbell.

John McFeeters

Spruce

John Ott

George Nahn.

Henry Goldshin

Exceptions to the report of viewers appointed to assess Damages &c. by reason of the opening of an alley to be called Rail Road Alley in Johnstown Borough:

1st The proceedings under which said viewers were appointed were irregular and informal inasmuch as said alley had not been regularly laid out and opened by the acts of Assembly in such cases made and provided and by the ordinances of said borough.

2^d The proposed alley will be entirely on ground purchased or appropriated by the Commonwealth of Pennsylvania for the use of the public improvements and said ground having been conveyed to the Pennsylvania Rail Road Company and forming part of the franchises of said company, they cannot be deprived of the use and ownership of the same by a re-dedication of it to public use, by making it a public alley as is attempted to be done by these proceedings.

3^d The said alley is unnecessary. —

4th The viewers have assessed no damages to the Pennsylvania Rail Road Company, whereas if their land be appropriated for a public alley, as is attempted, great damage will result to their property. —

May 27, 1854. —

A. W. Barkus

C. L. Dick

Directors for P. R. R. Co.

In the Matter of the Report of Viewers
Appointed to view and assess damages
and award contribution for advan-
tages and disadvantages caused by
the adoption and opening of Rail Road
Alley in the Seventh Ward of Johnstown
Borough.

Opinion of the Court.

This case comes before us on exceptions
taken by the Pennsylvania Rail Road
Company to the action of Viewers ap-
pointed under the first Section of the Act
of 22^d April, 1856. The case was argued
at great length by the counsel for the
respective parties, and a large number of
authorities cited. The view that we feel
constrained to take renders a discussion of
these authorities, or even a reference to them,
unnecessary.

The Act of 1857, Section 27. (Br. Purd. p. 173
pl. 89, 90, 91, provides an ample remedy for
any party aggrieved by the action of the
borough authorities.

The Act of 1856, is supplementary to
the Act of 1857, and is in pari materia
with it. It provides, (See Br. Purd. 174 pl. 94.)

for the appointment of viewers whose duty it shall be "to view the premises described in said petition, having regard to both the advantages and disadvantages caused to the several properties along the line of and adjoining said streets and alleys; and apportion the damages sustained, and the benefits received from opening the same."

Now, it will be observed, that the viewers so appointed have nothing to do with the wisdom or unwisdom of the action of the borough authorities. Their duties are confined to the apportionment of damages and contributions.

Such being the case exceptions to their report can have no wider range than their powers. In other words, they must be limited to the questions of damages and contributions. Nothing else is properly before the court.

Of the four exceptions only the last has any reference to the question of damages. If I am right in the foregoing view the other exceptions are entirely outside the case.

As the Exemptant offered no evidence to sustain the fourth exception it follows,

that the exceptions must be dismissed.
This we do without prejudice to any remedy the exceptant may have in the premises.

And now, ~~Dec~~ 17. 1884. Exceptions dismissed without prejudice to any proceedings the exceptant may have hereof, ^{or may hereafter institute} or may hereafter institute.

Same day. Report of viewers confirmed, with costs.

By the Court.

No. 2200 Series 1883
P. D.

San Francisco
Rail Road Alley

Opinion

Filed Jan. 17. 1884

Exceptions to the report of viewers appointed to assess damages etc. by reason of the opening of an alley to be called Rail Road Alley in Johnstown Borough,

1st The proceedings under which said viewers were appointed were irregular and informal inasmuch as said alley had not been regularly laid out and opened as required by the Acts of Assembly in such cases made and provided and by the ordinances of said Borough. -

2^d The proposed alley will be entirely on ground purchased or appropriated by the Commonwealth of Pennsylvania for the use of the "public improvements," and said ground having been conveyed by the Commonwealth of Pennsylvania to the Pennsylvania Rail Road Company and forming part of the franchises of said Company, they cannot be deprived of the use and ownership of the same by a re-dedication ^{of it} to public use, by making it a public alley, as is attempted to be done by these proceedings.

3^d The said alley is unnecessary.

4th The viewers have assessed no damages to the Pennsylvania Rail Road Company, whereas if their land be appropriated for a public alley, as is attempted, great damage will result to their property.

May 27th 1884. -

W. V. Barker
C. L. Dick
Solicitors for P. R. R. Co.

W^o 2 Dec, Term 1883

P. D.

In the matter of *Levinson & Co.*

In the matter of the report
of receivers appointed to
assess damages to, by
reason of the opening of
Rau's Road alley in
Jonestown Borough

Expositions,

Filed May 29, 1884.

Parrish - Deak

To the Honorable, the Judges of the Court of Quarter Sessions of the Peace of Cambria County;

The petition of the Borough of Johnstown respectfully represents: That an order in the nature of an injunction purporting to have been issued by the Court of Quarter Sessions of Cambria County, has been served upon the municipal officers of the said Borough, restraining them from doing any work or occupying a certain piece of land in the limits of said Borough, claimed by the Pennsylvania Rail Road Company, at whose instance the said order was issued.

Your petitioner prays the Court to set aside the said order for the following reasons:

First. — The said order was not made as it purports to have been by the said Court of Quarter Sessions, but was issued out of term time, and by a single Judge.

Second. — The order was improvidently issued; there being no power given to the Court of Quarter Sessions to issue injunction or restraining order in the nature of an injunction.

Third. — The petition upon which the order or injunction was issued, was wholly insufficient even had it been addressed to the proper Court to warrant the issuance of the writ.

Fourth. — No allegation of irreparable dama-

ges is set forth or pretended to have been threatened in the specifications embraced in the petition.

Fifth. — The petition sets forth that the piece of ground embraced within the line of the proposed alley laid out by the said Borough is a part of the franchise of the Pennsylvania Rail Road which can not be taken for public use, whereas, in truth and in fact, the ground proposed to be taken is remote from the line of the Pennsylvania Rail Road line of communication. — is part of an abandoned feeder to an abandoned canal, the bed of both lying between the northerly end of said alley and the main line of the said Pennsylvania Rail Road line, having been heretofore sold by said Pennsylvania Rail Road Company, and is built upon and occupied by private parties for dwellings, etc., leaving no connection between the two points, and neither the said feeder or canal has been operated for over twenty one years.

Sixth. — The line of said proposed alley way has for the greater part been used and occupied as a public wagon road and highway for upwards of twenty one years without protest of any kind by the said Pennsylvania Rail Road Company.

Seventh. — No appreciable damage has been done by filling up of said alley way, and if any has or will be done the said complainant, the Pennsylvania Rail Road Company has a complete remedy at law therefor.

H. B. Thomas

Burgess Johnstown Borough
Henry H. Kuhn
Solicitor Johnstown Borough

Cambria County ss

Jacob Preble, a member of the Town Council of the said Borough of Johnstown, being duly sworn according to law, says that the facts set forth in the foregoing petition, as of his own knowledge, are true, and that the facts set forth therein, upon the information of others, he verily believes to be true.

Jacob Preble

Sworn and subscribed before me this thirtieth day of August A. D. one thousand eight hundred and eighty-four

John H. Fisher
Justice of the Peace

Nov 2, December 1887

Round books

Round Rail Round box

24

Birmingham at Johnston

Politics of Johnston
Birmingham for disunion
of rail line under

Sept. 1.

Ala 10 Sept 1887

John + Rose

Camden County, N. J.

The Commonwealth of Pennsylvania
to the Burgess and Town Council
of the Borough of Johnston, their agents
servants, employees, appointees and
other and each and every of them.

Greeting:

Whereas it has been
represented to us in our Court of Quarter Sessions
of the County of Camden. In the matter of the
report of a commission appointed to view, assess damages
and award contributions for advantages and
disadvantages caused by the adoption and
opening of Railroad Alley in the seventh
ward of Johnston Borough, that on December
5th 1883 the petition of the Burgess and Town
Council of Johnston Borough was presented sit-
ting for the that the Town Council of said borough
had on Sept. 18, 1883 passed an ordinance
in acting that a road or alley in the fourth
ward extending from Bedford street to Spruce
street should be "declared to be a public alley"
&c. and requesting your Honorable Court to
appoint a commission to assess damages &c. caused
to the several properties along the line of and
adjoining said alley. That your Honorable
Court appointed seven disinterested persons
to perform said duty whose report was filed
and confirmed nisi on March 3rd 1884 and
ordered to lay over three months for exception.
That on May 27, 1884 exceptions were filed
by your petitioners (a copy of same being

hereto attached) in which it is alleged that the proceedings are irregular and that the ground sought to be appropriated belongs to the petitioners and forms part of their franchises and cannot be taken for public use and setting forth other exceptions which your petitioner believes are entitled to due weight and consideration at the hands of your Honorable Court.

Your petitioner further representing that the exceptions filed as aforesaid are still pending and the questions raised therein, are as yet undetermined by your Honorable Court, yet notwithstanding this fact the said Burgess and Town Council, by their officers and employees, as appears from the annexed affidavit, have taken possession of the ground of the Pennsylvania Railroad Company claimed to be appropriated for the purposes of said alley, and without authority of law prematurely and in contempt of your Honorable Court are about to open and grade the same, without awaiting the termination of the proceedings pending in your Honorable Court as hereinbefore recited, and to appropriate the same as appears from the annexed affidavit, for the purposes of a street railway company.

And now June 28th 1884. On petition and affidavit read and filed and due consideration had thereof it is ordered and decreed that an order be issued restraining the borough of Johnstown,

its agents, servants, employees and appointees from entering upon the property of the Pennsylvania Railroad Company as claimed and set out and described in the petition, affidavit and draft filed and from using the same in any manner whatever until the questions raised by the exceptions filed in the proceedings recited in said petition be decided and determined.

And it is further ordered that a copy of the petition and affidavit filed in these proceedings be served with the order hereby made.

And on applications assailed to show cause why this order shall not be dissolved will be granted returnable after five days notice to Counsel.

By the Court
H. A. Shoups, Clerk
of the Court
and
of the Court

No 2 Dec Term 1883

Road Books

January 1884 P. R. Co

21

County of Johnston

Order of Court containing
the return of Johnston

Par Kent

June 30th 1884 I send the within writ and
H. W. Story 'burgess' by making contents known
and copy.

In Answer

Dwelling 75

C. J. Blair Dept. Supt

copy 25

Mileage 288

3.88 Supt Luther

To the Honorable the Judges of the
Court of Quarter Sessions for the
County of Cambria.

The petition of H. W. Storey, Burgess
of the Borough of Johnstown, and the
Town Council of said Borough,
respectfully represents that the Town
Council of said Borough, on eighteenth
day of September, one thousand eight
hundred and eighty three, passed
the following, viz: "An Ordinance
declaring a public Alley in the
Fourth Ward, from Bedford Street
to Spruce Street:

Be it ordained and enacted by the
Burgess and Town Council of the
Borough of Johnstown, and it is
hereby ordained and enacted by the
Authority of the same.

Section 1. That road or alley in the
Fourth Ward, extending from Bedford
Street to Spruce Street, which has
been used by the public for many
years, is hereby declared to be
a public alley of the width of
sixteen feet, to be designated and
known as Railroad Alley.

Section 2. That all of the ordi-
nances of said Borough relating
to streets and alleys be and
the same are hereby extended
to and over said Railroad Alley.

1 Passed finally in Council on the
2 eighteenth day of September, one
3 Thousand eight hundred and
4 eighty three.

5 D. J. Hornell
6 President

7 Attest
8 J. H. Fisher
9 Clerk

10 Approved September 20, 1883
11 H. W. Story
12 Burgess

13
14 Your petitioner further represents that the
15 said Council authorized and directed
16 your petitioner to make the necessary
17 application to the Court for the appoint-
18 ment of viewers for the assessment
19 and awarding of damages incident to
20 the opening of said Alley.

21 Your petitioner therefore prays your
22 Honorable Court to appoint seven dis-
23 interested freeholders of said Borough,
24 who, after being duly sworn or affirmed
25 to perform the duties under the Act of
26 Assembly in such case made and
27 provided, with impartiality and fidelity,
28 shall proceed to view the premises described
29 in said ordinance or petition, having re-
30 gard both to the advantages and disadvantages
31 cause to the several properties along the
32 line of and adjoining said Railroad

1 and shall assess and allow to all
2 persons injured thereby such damages
3 as they shall have sustained respectively
4 over and above all advantages; and
5 who shall also make assessment for
6 contributions upon all such properties as
7 shall be benefited by the opening of
8 said alley, such sums respectively as
9 they may have been benefited, over
10 and above all disadvantages;
11 and the said assessors shall make
12 a report of their proceedings in writing
13 to the next session of said Court,
14 describing the properties upon which
15 assessments have been made, specifically
16 stating whether for contribution or
17 for damages, with amounts respectively.
18 And, as my duty bound, your petitioner
19 will ever pray.

H. W. Story,
Petitioner.

20 Cambria County S.S.

21 Before me, a Justice of the Peace, in
22 and for said County personally came
23 H. W. Story the petitioner, above named
24 who being duly according to law sworn
25 that the facts set forth in the foregoing
26 petition are correct and just as therein
27 stated.

H. W. Story

28 Sworn and subscribed before me this
29 Third day of December A. D. 1883.

John H. Fisher,
Justice of the Peace

12
11
10
9
8
7
6
5
4
3
2
1

18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1

Mr. T. Webster, Jan 1883.
For the Bank of America
Associates of America Society,
December Session 1883.

Resolution of the 20th Winter Session
of the American Society of Political Economy
for the support of the study of women
to secure a better understanding
and to secure a better understanding
of the social and political conditions
of the world and especially of the
position of the woman in the
present day.

5th December, 1883

Political Head and the
following named members
authorized.

- James, W. (President)
- Albert, W. (Vice)
- Howard, J. (Secretary)
- Leah, J. (Treasurer)
- Morgan, B. (Member)
- Benjamin, A. (Member)
- Frank, W. (Member)

By the Board

Adopted on 4th March

Rush

Deposition of witnesses produced, sworn
and examined at the Office of John
H. Fisher, one of the Justices of the Peace
of the County of Cambria, 809 Bankers
Street Johnstown Borough in said
County, on Tuesday, the 30th day of
September, between the hours of
Nine o'clock A.M., and Twelve o'clock
P.M. of said day, in obedience to a
Rule of the Court of Quarter Sessions
of Cambria County and notice
hereto attached, to be read in
case depending in said Court, in
the matter of the Exceptions to report
of Viewers appointed to assess dama-
ges or caused by opening of Railroad
Alley, in Johnstown.

Henry H. Kuhn, W. Horace Rose Esq
appearing for Johnstown Borough
Lehal L. Dick Esq, appearing for
the Exceptants.

Jacob. Depts. being first duly sworn
testified as follows. I was fifty five
years of age on the 21st of April last.
My residence has been Johnstown
all my life time, every since I have
been doing business for myself, which

was 1883. My occupation has been Butchering. My father's residence was along the line of the old Feeder. His property extended over the Feeder. It was made through his property. I was engaged in running Flats on the Feeder. I am familiar with the ground on which the proposed Rail Road Alley is now laid out. I can remember of this ground being used as a public Road for forty five years last past. The Road way was on the West side of the water way of the Feeder, next the Stony Creek. The water way of the Feeder when used as a way for navigation purpose was not wide enough between Bedford Street and the bend to turn a Twenty five foot long Flat in it, with the exception of a point opposite George Kurtz's property. When there was a low place or Swamp. This low ground was on the North side of the Feeder. The width of the Road way when the Feeder was used for navigation purpose was wide enough

for two wagons to pass, except at the old ~~the~~ Slope Trail above where Jacob Horner lived, I think that this Rail Road Alley is on the old Road way except for about ten or fifteen Rods above Bedford Street where I think it touches on the water way, but from that up I think the Alley is on the old Road way, the principal portion of the Alley is on the old Road way, I think that Sandy Hole was first used as a Cemetery about 1853, and this Road was the only way to reach the Cemetery, and was used as such until Horner Street was opened some years afterwards. It was a number of years afterwards, This Road way is a better grade than Bedford Street and the west end of Horner Street, I never knew of any objection made by any person to the use of this old Road way and the public came and went at pleasure, There never was in my recollection any barricade placed

across the Road way between
Bedford Street and Spring Street.
To prevent the use of this Road
way by the public, The Feeder
is not now used as a water way
to feed the canal. The old Feeder
from Main Street with Basin, the
Basin Tsey and the Canal, is
now filled up and built upon.
The Canal for three miles below
town is filled up and has a
Rail Road track on in places and
in other places building, at
Johnstown, the Union Hall and
the Baltimore and Ohio Railroad
Depot are built directly on the
old Canal bed. Portions of the
tracks of the Somerset & Cambria
Rail Road, operated by the Balti-
more & Ohio Rail Road Company
run across a portion of the
old Basin. The Pennsylvania
Rail Road Company could not
now run a Rail Road track
from Main Street in the Borough
of Johnstown to the head of the
old Feeder ^{on the line of the old Feeder} without Crossing
" "

the tracks of the Somerset & Lancaster Rail Road in at least two places. There is a pretty heavy grade going up Bedford Street from a point where this Alley intersects Bedford Street to Horner Street, and then a pretty steep grade down Horner Street to Spruce Street. This Alley gives a much better grade to Cemetery and Seventh Ward than the other route by Bedford and West end of Horner Street. The Pennsylvania Rail Road never to my knowledge had a Rail Road track on the line of this old Feeder or any part of it.

Cross Examined by Mr Dick,
I am a defendant in a suit of Ejectment by the Pennsylvania Rail Road Company for a part of a lot along the line of the old Feeder. This Roadway was used partly as a town path and as a public Road up until the time of the abandonment of the Feeder. The elevation at the top was about

from Twenty five to thirty feet, at some places it might have been wider, it was not well dug as the Canal but dug more like a race.

Question. What value would you put upon a lot of ground in locality of Rail Road Alley fifty feet wide and One Hundred and fifty long.

Mr. Rose objected to the question as not a proper Cross Examination to any thing testified in chief by the witness on the stand, ~~but~~ his attention not having been called to any valuation of property, and the Examinants having closed their testimony and having introduced no evidence of valuation of property they cannot under any known Rule of law introduce at this stage of the proceedings and particularly by Cross Examination of this witness any evidence of the value of property along the line of the Alley

Answer. I suppose, Lot located on Rail Road Alley of the size your name would be worth Five Hundred Dollars, It is about two years when they were repairing the Street I saw a Funeral go up Rail Road Alley, this last Spring when the Road was bad I saw them coming down it, The usual course from and for some time has been ^{for funerals to go} up Bedford Street and down Homer Street.

Question. Supposing a sixteen foot Alley such as Rail Road Alley, with a Street Rail way track in the center could wagons or Carriages pass a Street Car going to or coming from the Cemetery.

Objected to as not a proper cross examination to any thing elicited from his examination as witness in chief, and secondly because it contains an assumption that the Passenger Rail way track will be laid in the center of the Alley which is not the fact.

Answer, They could not

Jacob Truitt

Jacob B. Hooper, Jr., Sworn.

I was 49 years of age last July. I reside in Seventh Ward Johnston Borough. I have lived in the vicinity of the old Feeder ever since I was born. I was born on the banks of the old Feeder. There was a public Road on the south west bank of the old Feeder, from Bedford Street to and above the mouth of Spruce Street every since I can remember. The public in general used this Road way for Carts, Wagons, Carriages horseback or by foot. There was not much travel up there but every body used it in going to the old Landing up near Capt. Graham's. Looking at the Map marked Exhibit A. This Road way began at Bedford Street continued along the water edge of the Feeder to near or above Poplar Street where it turned to the right and crossed the River. This Road way from Bedford Street to Spruce is still open and is used by the public I came down there this morning.

This Road way was never in my remembrance barricaded or obstructed or any objection made to its use by the public. Looking at the map marked Exhibit A. the red line is depicting Rail Road Alley, the alley cuts the water way of the old feeder from Bedford Street to Jacob Sands. partly, from Sands up the alley is right on the bed of the old Road way to Spruce Street.

My recollection of the width of the water way from Bedford Street might vary from twenty to twenty five feet except at two places one at Kurtz's Stable, and one where my father used to live where he had a place to turn his float in when he was floating lime. The Exhibit "A" herein referred to by the witnesses is Exhibit "A" of the Exemptants as filed with their testimony in this case. I am the son of Jacob Hornes who laid out Sandy pole cemetery and Hornestown. Now several were John Slows. Sandy pole was laid out in 1853, and the first funeral

was made there in in the Fall of 1853. Parties going to the Cemetery always used this old Feeder Road and do some times get ~~and is~~ where Rail Road Alley Iron is. At Bedford Street this Road way, and for about twenty Rods this Road way was about eight or nine feet wide from this point to the Run it was twenty five or thirty feet wide. from this up to Spruce Street it was about ten or twelve feet wide. Trays of old kinds hauling Stone or Coal and for all purposes used this Road way. Sandy Hill Cemetery and the Seventh Ward can be reached ^{by} much easier grade by way of this Alley than by way of Bedford Street. The Alley is almost level. The old feeder has not been used by the Pennsylvania Rail Road as a water course for a long time. This Feeder has not been used as a water course to feed the Canal since about 1857, at about this time it was raised ~~that~~ the Upper Canal not get through it.

The Feeder Road was used by persons going to and coming from Byerly, Brewery, and Feud, Lee Horse, and marked on the Map Exhibit "N." as the Lion Brewery and Jacob Feud, prior to the abandonment of the Feeder. The average width of the Road way since the abandonment of the Feeder from Bedford Street to Spruce Street has been about eighteen feet. My father and myself carried dirt gravel and cinder to make the Road good to the cemetery along the lower part next Bedford Street and above of the same we put in the slope with straighten and dug down the bank. The Somerset and Cambridge Rail Road operated by the Baltimore & Ohio Rail Road cross the line of the old Feeder with their tracks twice between Main Street and the upper end of the Feeder. The old Basin Feeder and Canal are filled up and houses built upon them. Baltimore & Ohio Rail Road Station Main Hill part

of the Cambridge Fork, run across it. The Engine of the mill with Mill stands sits in the middle of the old Canal, the Pennsylvania Rail Road Company never operated a Rail Road along the line of the old Feeder. The Pennsylvania Rail Road Company could not run a line of Rail Road tracks from Main Street in the Borough of Johnstown to their Main line of tracks with going through private property. The said Company could not now lay down a line of tracks from the old Beam to Main Street without going through private property nor from there to the upper end of the Feeder with crossing the tracks of the Somerset & Centre Rail Road.

Cross Examined.

I am not a defendant in a suit of ejectment brought by the Pennsylvania Rail Road Company for a part of a lot of ground along the line of the old Feeder.

That is my property, as marked on
 the map. before referred to, as Joel
 Horner, I said that about the year
 1858 or 1859, they ceased to use the
 feeder as a water way... the River
 filling it up but water did not
 cease to run until 1860 or
 1861. I fixed the date by knowing
 it was before the war... I do not re-
 member of any body cleaning out
 the feeder after the fill up in 1859,
 The Road way ^{along the feeder} was used by the
 State employes as a Tow path for
 the State flat. They some times
 did not use a horse at all, pulled
 it up. The alley as now laid on
 the Road way is not used by funeral
 processions regularly since Horner
 street was laid out. Only from
 Cherry street, and this has been
 not been used for a few years, but
 was used some last Spring.
 The alley was used since the
 Rail way was put down by some
 of the Carriagers. Coming down from
 a Funeral at the cemetery, There
 are ties and Rails now laid down
 on the Alley for a short Rail way

about two weeks ago these ties
and Rails were laid they constitute
a street Railway, nearly the whole
distance the Rail way is laid
in the middle of the Alley the ex-
ceptions being where the rails
come on and leave the alley
at the Curves, at Bedford and
Spruce Street, Trays and
Carriages could not now pass a
Street Car in the condition the
alley now is, the width of the
banks at the top ranged from twenty
five to forty feet, I remember a
Survey by some men in 1876 but
I don't remember of them driving
any stakes I do not know who
employed the men to make this
Survey, This Road way crossing
the River at the Fording opposite
Capt Grahams was only used by
the farmers in dry weather when
they could cross the River or
ford it, I do not know of my own
knowledge whether the parties that
have built on the old Feeder below
Main Street and the lumber

8

Iron Works are trespassers or not
I remember the Bridge across
the Feeder at Bedford Street. The
Bridge was about twenty two to
twenty four feet wide. That is
the logs or timbers were from
22 to 24 feet long. Not over
Twenty four feet. The ends of
the Bridge did not extend into the
Feeder. I do not know who fur-
nished the lumber for the Bridge.
The height of the Bridge from the
top of the water might have been
ten or twelve feet. Not over twelve.
I am certain. I don't remember
of the Feeder being used to fill
the Canal after the Reservoir at
South Fork broke.

Re Examined:

Question. Mr Dick has been ex-
amining you as to stowing
poth, state whether or not there
was stowing ^{from Bedford Street} poth along any
part of the Feeder, to the Basin.
Objected to by Mr Dick as being
irrelevant, and having no
bearing on the property now in
question.

Answer. There was not,
The timbers for the Bridge at Bedford Street would have to extend twelve to fifteen inches ~~over~~ to cover the places they rested upon they might have extended more or less. I don't know, so the best of my knowledge the width of the water at Bedford Street was from twenty one to twenty two feet.

Re Cross Examined,

I said before ^{that} there was a stable Flat towed by one horse from Bedford Street to the upper end of the feeder sometimes, and this once or twice in a season when the Dam needed repairs in dry weather, I think it would be preferable for Funerals going to the Cemetery to take the Bedford Street route because the ~~horses~~ ~~might~~ ~~meet~~ ~~a~~ ~~street~~ ~~car~~ ~~and~~ ~~make~~ ~~bad~~ ~~work~~.

Jacob C. Horner Jr sworn

Wesley J Rose affirmed
 I am fifty eight years old and
 resided in Johnston for fifty
 five years. I am familiar with
 the line of the old feeder of the
 Stony Creek for the old Canal.
 There was a Roadway from Bed
 Ford Street running along the
 South West Bank of the Feeder,
 along the water in the Feeder, up
 as far as the Cemetery since 1853.
 until within a year or two since
 they changed route. It was used
 by the public during this time
 for the passage of carts wagons
 and carriages and I never
 heard any objections to it, I
 know of a street Rail way track
 having been recently laid along
 this route. From my knowledge
 of the ground I would think that
 this Rail way track would be
 partly on this Roadway and
 partly on the water way. Looking
 at the map marked Exhibit "A"
 I think from my recollection that
 the Railway would be ^{partly} on the water
 way from Bedford Street to Kutz's

property and other from there to Spruce
Street on the old roadway. My
recollection of the width of the
overflow of water in the Feeder
at the Bridge at Bedford Street
would be about Eighteen feet
to twenty feet, and above Bedford
Street there was nothing to mark
the boundary on the northern
side to the Kurtz property, I
know of the guard lock at
the head of the Feeder being
dismantled and the Stone
sold by the Pennsylvania Rail
Road Company. The Stone
were removed and used by
the party that built the Bridge
over the Stony brook, at Osborns
for the Somerset and Cambria
Rail Road Company I bought
the Stone from the Pennsylvania
Rail Road Company. The Pen-
sylvania Rail Road Company
never laid or operated a line of
Rail Road tracks along the
line of the old Feeder. I bought
the Stone from the Pennsylvania Rail
Road Company in the Spring of
1880

Wesley Rose

James McMillen swears,
 I now reside in Johnston, and
 lived here since 1850. My age
 is now 62 years past, I have tra-
 velled over the old road way
 leading from Bedford Street to
 the Cemetery it was the only
 way to get to the Cemetery, this
 Cemetery was laid out some time
 after I came here I buried my
 Mother there some time in 1856
 or 1857. This road way was used
 uninterruptedly from the time
 the Cemetery was laid out
 until a few years ago. It was
 used until the Baltimore & Ohio
 Rail Road Co. got to running
 the Cars on their Road which
 crosses the line of the old feeder,
 This Road way has been used
 by myself and others since
 the Rail Road track was laid
 by the Baltimore & Ohio Rail Road
 up to the time the ~~Street~~ Street
 Railway track was laid, This
 Road has never been, to my knowl-
 edge ever fenced, barricaded
 or obstructed in any way so

as to prevent its free use of the
public.

Question State if you please if
from your own knowledge,
and give the source of your in-
formation of the fact of a sale
having been made by the
Pennsylvania Rail Road Company
of the line of the Feder. from
Main Street in the Borough
of Johnstown to the Basin of the
Pennsylvania Canal. The Basin
itself, the Canal proper from
the Basin to a point West of
Johnstown. Stating the point,
and the Bed of the Portage Rail
Road from its terminus at the
Basin extending Eastwardly
and the distance, and the time
of the sale and to whom made.

Objected to because if any such
transfer was made by the
Pennsylvania Rail Road Co.
to any person that proper deeds
for the property must have
been delivered and that the
loss of the same not having
been proven the evidence

must be secondary and not
the best evidence of such sale
of any.

Answer: The Pennsylvania
Rail Road Company sold to the
Cambria Iron Company all
their interest in the feeder from
either Locust or Main Street
to the Basin and the Basin, and
the canal from the Basin down
to the head of the one mile dam
and got a deed for the same. There
was a sale made by Edgar Thomson
late President of the Pennsylvania
Rail Road Company of the Portage
Rail Road Bed. from the Basin
to the foot of Plane No. 1. to Daniel
J. Morrill for the Cambria Iron
Company, but this sale was never
confirmed and the title of this
part of the property is still in the
P. R. R. Co. so far as I know I
was present when this sale was
made, I was present at negotiations
for sale of first property mentioned
and know that a deed was deliv-
ered for the same. The effect
of this sale of the Feeder, Basin &

land was ^{to} sever the Pennsylvania
Rail Road Company from
other portions of the Feeder
lying South of Locust or
Main Street. The Pennsylvania
Rail Road could not cross ^{at}
the Feeder lying ^{South} East of Bedford
Street from the Main line
or from the old Postage Road
without passing through private
property. I am familiar with
the lines of the proposed Alley
leading from Bedford Street
to Spruce Street. Starting at
Bedford Street part of the Alley
would be on the old roadway
and part on the water line,
~~until~~ ^{until}
~~the balance~~ about the property
of George Kurtz. The balance
of the Alley to Spruce Street
as near as I can tell would
be on the bed of the old Road
way. Buildings have been erect-
ed on the old Feeder sold by
the P. R. R. Co. To the best of my
knowledge, The Pennsylvania Rail Road
never that I know of laid track

or operated line of Rail Road
 on the line of the old Feder, I
 am the President of the Johnstown
 Passenger Rail Way.

Question. How if you know upon
 what part of Rail Road Alley
 the Johnstown Passenger Rail
 Way Company propose to lay
 and maintain its tracks, whether
 upon one side or in the center
 of the Alley.

Objected to on this ground that
 the location of the tracks of the
 Short Rail Way Company has
 already been established in
 the center of the Alley and
 that the testimony of Dr
 Dr Miller cannot now
 effect a change of the location
 of the same is begging the ques-
 tion and avoidance of the fact.

Answer. In starting in from
 Bedford Street on the curve it
 is pretty near the center, and
 from there up to Spruce Street
 it is more on the East side
 than the center, when near
 Spruce on the curve it again

goes nearer the center, there will
be room enough for team to
pass in the alley. The alley
is a better route to the Cem-
tery and the Seventh Ward
than by way of Bedford Street
and Homer Street by reason
of avoiding the grade between
Bedford and Homer Street.
The height of the crown ^{of Bedford} Street above
the level of Railroad Alley,
would be about one hundred
and fifty feet.

Cross Examined

I was a witness on this Rail Road
Alley. I was President of the
Passenger Rail Way at the time
of the view

James M. Miller
Alexander Kennedy, sworn,
I was fifty six years ^{of age} in February
last. I reside in Johnstown in
Sixth Ward. I have resided in
Johnstown Borough since 1843.
or 1844. I have been familiar with
the line of the old feeder from the
Story Creek ever since I lived
in town

There was a Roadway from Bedford Street along the South West side of the Feeder with the old Horner Cemetery. This Roadway has been there ever since I can remember. This Roadway was used by everybody that wanted to use it, and I never heard of any person objecting. Sandyvale Cemetery was laid out a good many years after the Horner Cemetery was laid out. This Roadway was used until Mr Horner laid out Horner Street. There was no other way of reaching this Cemetery but by the Roadway until Horner Street was opened. The Roadway after the opening of Horner Street, remained open for persons desiring to use it. There never was that I know of any fence, barricade or obstruction of any kind placed over or across this Roadway to prevent its use by the public. Sandyvale Cemetery has been the principal Cemetery for

Johnstown and vicinity ever
since it has been opened for
Cemetery purposes. There is
along side of Sandy (Roller
Cemetery another Cemetery
known as the German Catholic
Cemetery and they use the
same Road. I am familiar
with the line of the proposed
Alley and part of the Alley is
on the Water way and part
on the Road way. There isn't
a great deal of the Alley on the
Water way only at the lower end
next Bedford Street; and it only
extends up a short distance
when the Alley is on the Road way.
This Alley will be ^a ~~rather~~ ~~and~~
better way to reach ^{Seven} ~~Street~~
~~Street~~ than by going around
by Bedford and Hoorn Street,

Cross Examined,

This Alley way will be particu-
larly advantageous to the Passen-
ger Rail way Company because
it avoids the heavy grade on

Bedford Street. I cannot say
whether the advantages to be gained
by the grade would not be over-
balanced by the difficulty in
transferring the Street Cars

Alfred Kennedy

counsel for the Borough give
notice that they will offer
in evidence the Deed from
the Pennsylvania Rail Road
Company to the Cambria
Iron Co for parts of the
Feder, the Basin and part
of the Pennsylvania and
Recorded in the Office for
Recording of Deeds in
and for Cambria County
Vol 24. Page 685

Cambria County Pa

I hereby certify that the above
witnesses were produced sworn
and examined at the time and
place stated in the caption and
subscribed their depositions in
my presence

Witness my hand and seal

30th day of September AD 1884.
John N. Fisher ~~Secy~~
Justice of the Peace

Quarter Sessions

In the Court of ~~Common Pleas~~ of Cambria County, Pa.

Bankrupt
Exception

In the matter of the
Exception to report
of Viewers appointed
to assess damages
caused by opening
Railroad alley
in

Of 1st Term A. D. 1883 No 2 R D

Exception filed 27 May 1884

Johnstown
Borough

Johnstown

And now to wit, the 17 day of Sept A. D. 1884 Rule

on part of Johnstown Borough to take depositions of witnesses

to be read on the hearing of the above stated case.

CAMBRIA COUNTY, SS.

Extract from the Record of said Court. Certified the

17 of Sept 1884

N. A. Shoumaker PROTHONOTARY.

To L. L. Brick Esq. attorney for Penna R. R.
vs. Exceptionals above named.

Take notice, that in pursuance of the above Rule the depositions of witnesses to be read in evidence on the hearing of the above stated Exception on part of the Borough of Johnstown will be taken at the office of John H. Fisher Esq. in the Borough of Johnstown on Tuesday the 17th day of September A. D. 1884, between the hours of nine o'clock, A. M., and seven o'clock P. M., before John H. Fisher Esq. a Justice of the Peace in and for said Borough or before some other person of competent authority, at the time and place aforesaid, when and where you may attend if you think proper.

Henry H. Kuhn
W. Bruce Ruse
Solicitors for Johnstown Borough

No 2. Dec. 1833

In the Matter of the
Application of Robert
Thompson of the County
of Essex, for leave
to compound by selling
the Rann of the
Johnston Borough.

Application made
of the Borough
Johnston.

Granted this 10. 5. 33
Paid by the
Borough.

Richard M. Stone, Clerk