Int How far does this Cut Extend till you get out to the natural Surface of the ground?

Ans From a point in the Centre of the road at the Rail road Crossing is 671 feet

Int By what means did you get that?

Ans I measured it.

Int You say that the Surface of the ground is five feet higher than the cut at the crossing. State how that Cut varies till you get to the Natural Surface of the ground How it diminishes?

Ans. The surface of the ground gradually descends and what we call grade, is where the Embankments stops and they commence to excavate when there is no filling nor excavating and then it gradually deepens till along out here (pointing to the Map) it is about five feet; in some places it is Quite five feet, in some perhaps more than five feet.

Int Did you measure the depth of the Cut at those points?

Ans I did. at a distance of 100 feet it was 7 feet. that is the ditch and all. Quite a space along there the mark was shown out on each side, the depth of the original surface at 100 feet from the Crossing is 4 feet, and it gradually diminishes till it gets down to the other end and runs out.

Int How does this drawing compare with the ground surface?

Ans I made it as near as I possibly could to compare

124

with it.

Int I will enquire of you if there is any obstruction piled upright along the line of the highway?

Ans There is a length there of 28 feet, and in the deepest part it is about three feet or three and a half feet above the natural surface.

Int What, do you make the depth of the cut measure from the top of this artificial dirt?

Ans 8 3/8 feet.

Int That is from the Summit?

Ans Yes Sir.

Int What is that profile there (pointing to one of the diagrams on the map)?

Ans It is an enlarged profile showing a vertical section

Int That is where you designate 3 3/8 feet dirt?

Ans Yes Sir,

Int And it is five feet from there down to the Rail road track (pointing to points marked to be ground excavation)?

Ans Right up there it is a few inches less - a few feet east of it, it a fraction over it. Right at that point it is a little less than five feet - but there it begins to descend again - the ground is a little lower.

Int You make the depth of the Rail Road below this Summit 8 3/8 feet?

Ans 8.32 feet

Int This ditch, I understand, runs parallel with the Railroad, and when the Rail road is repaired it is thrown up?

127

Ans The dirt was thrown up both from the Railroad and and the Highway.

Int Is there any elevation on the natural surface of the north side of the Railroad extending along here (pointing to the map)?

Ans The waste dirt is scattered along there for quite a number of feet on the north side - on feet on both sides the track.

Int What other obstructions are there, if any at that point?

Ans Running from the Crossing right up over this highest point is a board fence running right up nearly on a line with the highway, up till it comes and meets with the Rail Road fence up here (again pointing to the map) that that is a Board fence also, this Board fence on the top of the Elevation is 41½ feet on the top of the 8.32 feet,

Int How high do you make that?

Ans Within a slight fraction of 13 feet.

Int That would be between this point shewing on the Map, on the highway, and the Railroad?

Ans Yes Sir, that there is a hedge there (shewing on the map) 1128 feet long and averaging 8 feet high.

Int How did you ascertain that ~~feet~~?

Ans I measured the land in the different places.

Int What was the Character of the hedge?

Ans It was an Osage orange. I should think some five or six years old, with the exception of the distance as indicated by me on the Map, and from there it was thinner and lighter. The first part was very heavy thick set fence

126

and from there it was it was lighter and smaller; still there was hedge plants all along.

Int. What is the distance from the Cattle guard to the Crossing?

Ans. On the east side it is 79 feet from the center of the Road.

Int. What is the nature of the ground from the Crossing on the Rail road track up the Highway going north east to Dover?

Ans. It is excavated for a distance of 250 feet the end of the excavation is 250 feet from the Rail Road

Int. Now is the ground for 50 feet or more, east of the excavation?

Ans. For six or eight rods it rises a little. and then it descends for 60 or 80 rods.

Int. Then it is about 6 or 8 rods to the Summit?

Ans. Yes Sir.

Int. And then it rises to the Summit?

Ans. Yes Sir; I don't think it exceeds 18 inches.

Int. Did you measure the distance from the Crossing to the whistling post?

Ans. That is 1329 feet from the center of the Crossing

Int. Now what is the nature of the Ground from the end of the Excavation on the rail road, immediately east from the crossing - or east to say, from 50 rods of land?

Ans. The [illegible] ground from the crossing gradually descends to the east all the way, and when we get onto it it is not very far from that whistling post

when there is lowish ground and a Slough. that embankment may be, I judge, 8 feet high, commencing with nothing and gradually increasing till it gets about 8 feet. I did not measure: then from this low ground it ascends again.

Int How far is it from the East end of that cut, to the end of the next cut east?

Ans 1554 feet.

Int Have you examined this cut east?

Ans Yes Sir,

Int State the character of that cut and what obstacle is it there is that would conceal the cars?

Ans That cut through a ridge in the same manner as the other, one does, and in the deepest place in the cut it is about 4½ feet and there is waste dirt thrown out in the same way as that excavation.

Int Did you take any measurement of the depth of the waste dirt, and cut together?

Ans Not on that elevation; It was further east than I paid any attention to.

Int Were you there when Mr. Hall was killed?

Ans Not at the time.

Int Have you been the place where there cars runs off on the Land?

Ans Yes Sir, I was there next day afternoon.

Int How far is the top of the Bank [illegible] that place from the Crossing?

Ans It is 80 feet from the centre of the road to the top of the Embankment.

124

Qst How high is that bank?
Ans It is 9 feet
Qst What kind of a grade is it?
Ans The track of the car was plain to see - it was 129 feet from the Centre of the road to where it Commenced to go up the grade and about 65 feet up the grade till you get to the top.
Qst If you have ever made any examinations or experiments with a view of determining the ability of a man travelling in a buggy, down the grade on the North East side of the Highway, just explain what the experiment was & what was the result of it?
Ans. I drove up here and was stopping in my buggy - Came here in the cut when a train passed by this road, and from this point at the corner of the Cattle guard, to the highest point of this excavation was 80 feet, and then from here, the length of that obstruction is 28 feet. There is a warning board Stands quite across the track of the Highway. I recollect right that stands 75 feet from the Rails, measuring in an angle, I stopped my Buggy just beside that warning board, and from there the cars passed here, and I could not see them any more.
(The words underscored indicate the points where the witness referred to the map.)
Qst How far were you from that warning board?
Ans About Eight rods.
Qst What kind of a train was it?
Ans It was a freight train.

129

Def Could you could not see it?

Ans No Sir; I could not see it at all. From the end of the Hedge to the fence there is a distance of 18 feet, and from that point a person could see a train. He could see a Locomotive a passenger cars - he could see flat cars in one place. Above there, this Hedge obstructs the view in that direction for a space of nearly 300 feet on the track. From the time you get down into that excavation about 100 feet, you could not see anything you can, except in this 18 feet and you come below this warning board & then you can see up to the whistling post.

Def How far between this thrown up dirt, and the Hedge; How far is that from the Crossing?

Ans It is 132 feet from the arm of the cattle guard to the end of the Hedge.

Def How far from the cattle guard up to the Commencement of this embankment there where the dirt is thrown up?

Ans It commences to rise within one 6 feet of the cattle guard and gradually goes up high.

Def In what direction is the crossing from the cattle guard?

Ans The Crossing of the road is southeast - the rail road is on an up grade from near the whistling post to down here the cattle guard is nearly on the East line of the Highway.

Def Was on the North side of the Rail road

130

Ans It stands right across the track, but on the north side of it. From this summit in there I never saw a train in that cut. I have stationed myself there no less than four different times.

Int Supposing a Horse to be going at the rate of four or five miles an hour at this Highway, and a Locomotive going at the rate of thirty miles an hour, I will enquire, if a man was along here, and would look out and see the train passing, would he get by the Crossing before the cars.

Ans He would not.

Int When would a man have to be, to much the cars going at 30 miles an hour?

Ans He would have to be somewhere behind this Excavation and within less than 200 feet of the track — the train going at 30 miles an hour

Int

By Wm Walker

Int That is, he going at 4 miles and the train at 30?

Ans Yes Sir.

Int How if it was 5 miles?

Ans Well Sir, it would be 200 feet if he was going 5 miles.

By W. Taylor

Int A man travelling 4 miles an hour how much space

131

does he pass over in a second?

Ans 5 feet 10 inches.

Int What does a rail road Train at 30 miles an hour go?

Ans It is about 44 feet, within a fraction of it.

Int Have you noticed this ground to see how far a train of cars could be seen there from the highway, say 30 or 40 rods northeast of the crossing?

Ans Can see it in that eastern cut.

Int How far do you locate the eastern cut from the Crossing?

Ans About 2000 feet.

Int Did you notice this Ledge at the time Wells was killed as to whether there were leaves on or not?

Ans I think there was

Int How many boards were in that board fence?

Ans In some places five, in some places four — at one place there was five boards.

Int It was 4½ feet high?

Ans Yes sir, when it passes over the top of the Embankment 4 feet 8 inches I think.

Int Were you acquainted with Mr. Wells the deceased?

Ans I was.

Int How long had you known him?

Ans About 2d years now.

Int Did you know his habits and mode of life?

Ans I was pretty well acquainted with them.

Int State to the Jury what he did?

Ans I believe his usual occupation was a Carpenter. He

132

used to work at most anything that came along;
for a number of years he was employed by the different
cemeteries as Sexton.

Int Do you know how much his earnings amounted average?

Ans I do not.

Int Can you form any estimate or judgement?

Ans I could not say, without knowing how many persons
died.

Int State what his habits were with regard to temperance,
industry, and frugality?

Ans I always considered him an honest, upright in-
-dustrious citizen.

Int Did he provide for his family?

Ans I suppose he did. I never made any enquiries
about it.

Int He had a family?

Ans Yes Sir,

Int What age was he?

Ans I could not say.

Int Use your judgement?

Ans I should say somewhere about 50 years old; he
might be more than that. I do not know exactly.

Int What was his physical condition as regards his
ability to labor and his endurance

Ans I called him a tolerably smart man for one of
his age - I employed him to make a cellar
for me. + + + + + + +

Objection to latter part of Answer.

Int Could he do a days work?

3

Ans He could do an ordinary days work.
Qst At common labor?
Ans Yes Sir.
Qst How was his eyesight?
Ans I never knew anything about it, I did not see anything, I have seen him wear specs, but I never asked him any questions nor made any inquiries about it.
Qst Did you see him frequently?
Ans Sometimes a dozen times a week.
Qst Had you conversations with him?
Ans Yes Sir.
Qst What was his power of hearing?
Ans I never had any difficulty in talking with him; I dont think I talked any louder than I do now; I had no difficulty in talking with him.
Qst Did you state how far the distance was between these two cuts here?
Ans Yes Sir.
Qst How far is Mr. Phelps house from this crossing
Ans About 400 feet.
Qst Did you measure the distance?
Ans No Sir, I did not. I judge from the distance the excavation runs up, I measure the excavation and the length of it.
Qst Did you measure the distance from the Crossing by the School House, on the south side?
Ans I did not
Qst What is your judgment about that Crossing as to

its being a dangerous Crossing.

Objected to

The Court, I think it is proper for the witness to state the condition.

Objection Overruled.

To which ruling the Counsel for the Defendant then and there excepted

Int Then is a whistling post near the crossing?

Ans Yes Sir.

Int How far from the crossing?

Ans That is about 50 feet from the Centre of the Crossing.

Int Did you see the Corpse of Wells on the premises?

Ans It was it was removed.

Int Did you see the cars then?

Ans The cars were there — I think three were there when I was there — the remainder were removed.

Int When was you on the ground after the casualty?

Ans It was the next day in the afternoon.

Int Do you know the evening he was killed?

Ans Cannot tell anything about it positively.

Int You cannot state as regards the thing?

Ans No Sir.

Int Do you know with what velocity the train?

Objected to

Objection sustained.

Cross Examined by Mr Walker

Int Did you know Mr Wells very well?

137

Ans. I have stated once about how well I knew him.

Int. I want you to state it again?

Ans. I was acquainted with him more or less

Int. Did you know him well enough as to know whether anything affected his Eyes or not.

Ans. I have stated, that I knew he wore Specs but I never asked him about it at all.

Int. Did you ever observe that he had any affection of the Eyes?

Ans. At times I supposed that he had sore eyes, but I never questioned him about it.

Int. Did you ever observe that his eyes were affected at all?

Ans. I observed it at times, I have seen him when I saw that he had sore eyes, and he wore Specs.

Int. How long ago was it that you observed he did have sore eyes?

Ans. I can't not state.

Int. Did you ever see him when more than one occasion when his eyes were sore?

Ans. I have changed my memory, and can't not state positively

Int. Did you know him well?

Ans. I never lived in the same House but knew him as well as I knew any of my own neighbors

Int. Did you meet him frequently?

Ans. Some times as much as a dozen times a week.

Int. But you cannot recollect seeing him with sore eyes more than once?

Ans. I stated that I had no recollection about it

136

Int. What is your opinion? Had his eyes been well?

Ans. I stated that I have seen him when I thought his eyes been sore, and at other times ~~when~~ I thought they been well.

Int. How many times?

Ans. I cant tell how many times.

Int. How later before his death was the last time?

Ans. I have no distinct recollection.

Int. Do you think you have seen him a great many times when his eyes were affected?

Ans. I stated once that I could not say.

Int. Can you state whether you have seen him more than once or not?

Ans. I have seen him wear specks and seen him without specks.

Int. How was it about his hearing? Do you recollect that was perfectly good?

Ans. As to it being perfectly good I could not say. There is a number of people we often meet and talk with, and we cannot say whether they are so or not.

Int. Tell the jury whether you think his hearing was at all affected.

Ans. I could not tell whether it was or not.

Int. You do not know whether his eyes were or not?

Ans. At this particular time I could not say.

Int. Do have no recollection that his eyes were affected?

Ans How many times do you want me to answer this question.

Int Or that his ears were affected?

Ans I have answered the question once.

Int How old do you think this man was?

Ans I have answered that once — perhaps 55 years old.

Int Have you any knowledge as to what his age was, or is it guesswork?

Ans It is guesswork.

Int He might have been 55?

Ans He might, for all that.

Int He might, not have been more than 55?

Ans I never asked his age.

Int And you don't know his age?

Ans Don't know his age.

Int How long did he work at carpentry?

Ans I could not state that.

Int Did you ever see him do?

Ans I have.

Int Can you state how long that is since?

Ans I could not state that positively; I know he built a number of houses in Princeton.

Int Can you state within a certainty?

Ans I should think it was somewhere in 1800.

Int Was it one two three four or ten years before his death?

Ans I could not tell.

Int Is your recollection of all these things of which you have testified as indefinite as this?

Ans You can judge of that as well as I can.

(Mr. Hudson's map handed to witness)

Int Look at this map, and say if the diagram there presented is a correct one of the ground?

Witness — In what respect?

Counsel — Is that angle the correct angle?

Ans I do not think it is.

Int What is yours

Ans I get it over 23 degrees.

Int What is that?

Ans I see this state here 22 degrees.

Int Are Error to the extent of one degree?

Ans Yes Sir

Int It is not possible it should occur in your survey?

Ans I think it does not

Int Does that properly and correctly represent the Highway?

Witness — In what respect?

Counsel — In the direction.

Ans Well sir, I suppose it is not very far from the course of the road and rail road. In my opinion it shows it very correct.

Int Now sir, tell us whether that correctly and properly represents the Rail road?

Witness — In what respect?

Counsel — In reference to direction

Ans That I could not say — the points of the compass are not indicated to show.

Int Is it not indicated? What does that arrow show?

Ans A northerly direction
Qst That is one of the points of the compass?
Ans I do not think that arrow is at a correct angle from the direction of the Railroad?
Qst How much of a deviation is there?
Ans I could not say. The Railroad is north 59 degrees east and I judge that is not so much as that.
Qst You judge from your eye?
Ans Yes Sir.
Qst Is your eye so accurate that you can tell to a few seconds?
Ans No Sir.
Qst Is that substantially correct?
Witness — What do you mean by "substantially"
Counsel — In the main.
Ans From the center of the highway where it crosses the Railroad tracks, it says here 200 feet; I measured it 250 feet to the end of the Excavation I could not say anything about that point.
Qst You recollect when that point is where the line of the Railroad and the line of the highway is intersect,
Ans Yes Sir,
Qst Should you judge it to be correct?
Ans I could not state on that whether it was correct or not, if that was intended to represent the end of the Excavation.
Qst In as it does not, You think that substantially correct with regard to that point do you not?

Ans I could not say because I could not say from what point he measured it.
Int I ask you from that point, the centre of the highway where it crosses the Railroad track - and that point opposite - that point where the lines intersect?
Ans I could not say positively whether it was correct or not
Int Is it substantially correct?
Ans I could not say as to that fact either.
Int Will you state what the distance is from that point opposite the Bank, to the end of the cut
Ans As I measured it, it is 592 feet.
Int Look at it on that Map and see what it says
Ans It does not state the distance; it states from C to D 300 feet - Cut runs out at D
Int How far is it from there? (F to D,)
Ans I think it is just 300 from there (F) to there (C), From the cattle guard it would be about 600 feet to there (D).
Int Now how far is it from D to F?
Ans That says 1600 feet - I measured it 1584.
Int It is very nearly correct then?
Ans Yes Sir.
Int It may be an error?
Ans Yes Sir.
Int What is the next?
Ans Whistling post 80 rods from the Crossing.
Int How is that?
Ans It is 80 rods 9 feet from the centre of the crossing to the

141

whistling post

Int How high is that embankment here (D to E.)?

Ans I never measured it.

Int How high is it represented to be on that plat map?

Ans It is represented from 10 to 12 feet; I did not measure it; I judge it to be about 8 feet it does not appear that he measured it — he guessed at it as well as I did.

Counsel — He did measure it.

Witness — Why did he not put it down then?

Counsel — He did put it down. I saw him measure it myself.

Int How long is that earth cut by your measurement?

Ans I should judge it to be somewhere between seven and eight hundred feet.

Int You would not think it to be correct here 600 to 700 feet?

Ans I dont know whether it would or not.

Int How deep is that cut

Ans I think I measured that cut in the deepest place, a fraction over 4½ feet.

Int You say this is correct then, I presume?

Ans Six feet it is on that, and I should presume that it includes the waste on the track from that.

Int Then at that point (the whistling post) can you see that rail road?

Ans See the road along there? (pointing to the road along the cattle guard, on the map) Of course you can.

Int How far is it from the rail road track, where

142

it crosses the centre of the highway up to the point opposite the centre of Mr. Phelps' house?

Ans Well I should judge it to be about 400 feet; I never measured it precisely, but I don't think it would vary much from 400 feet.

Inq If a horse and wagon were driving along the road at the rate of five miles an hour how long would it take them to go one mile

Ans About 12 minutes.

Inq How long to go half a mile

Ans About 6 minutes.

Inq A quarter of a mile?

Ans About 3 minutes.

Inq How long to go 40 rods?

Ans About 1½ minutes.

Inq How long to go 2 rods?

Ans Three quarters of a minute.

Inq How many feet are there in 2 rods?

Ans 33 feet.

Inq A Railroad train running at the rate of 30 miles an hour, how long would it take to go one mile?

Ans Two Minutes.

Inq How long to go half a mile?

Ans One Minute.

Inq How long to go a quarter of a mile?

Ans Half a minute.

By Mr. Taylor — I would say to the Court that Mr.

143

Winship had prepared an elaborate plan of this and was unfortunate & careless enough to leave it behind him at the Depot at Princeton. We telegraphed for it this morning and it has just now come by express, and we would therefore like to substitute it for the one on which we examined here, and which was one made hurriedly by him from his notes.

Thereupon no objection made – Counsel then Examined the witness, in identification, as follows;

Dep. Look at that Map and state whether you made it?

Ans. I did Sir,

Dep. Is that a correct profile of the road – the distances there marked and the whole topography of the crossing; made from the original notes taken on the ground and laid down by a scale?

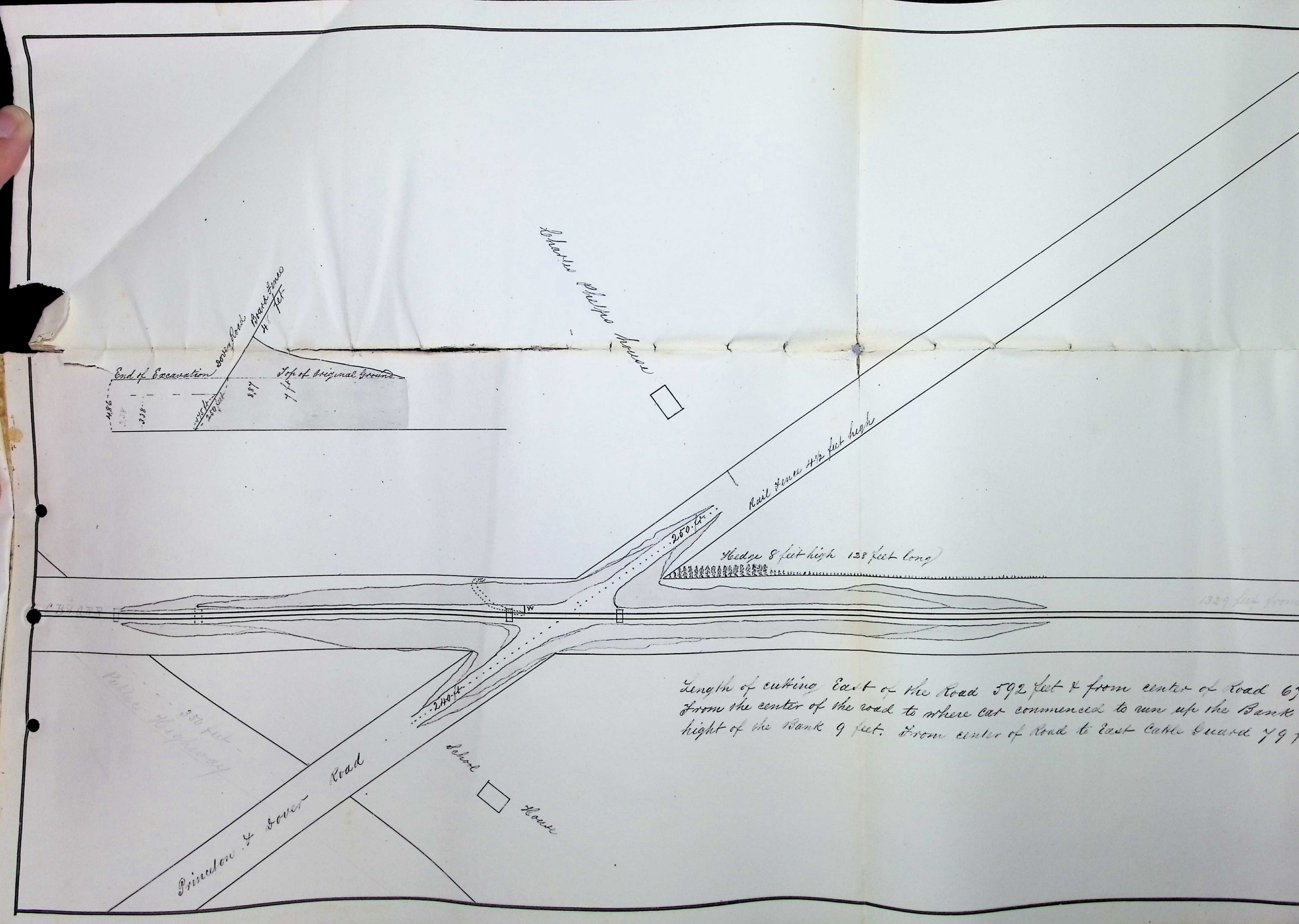
Ans. Yes Sir.

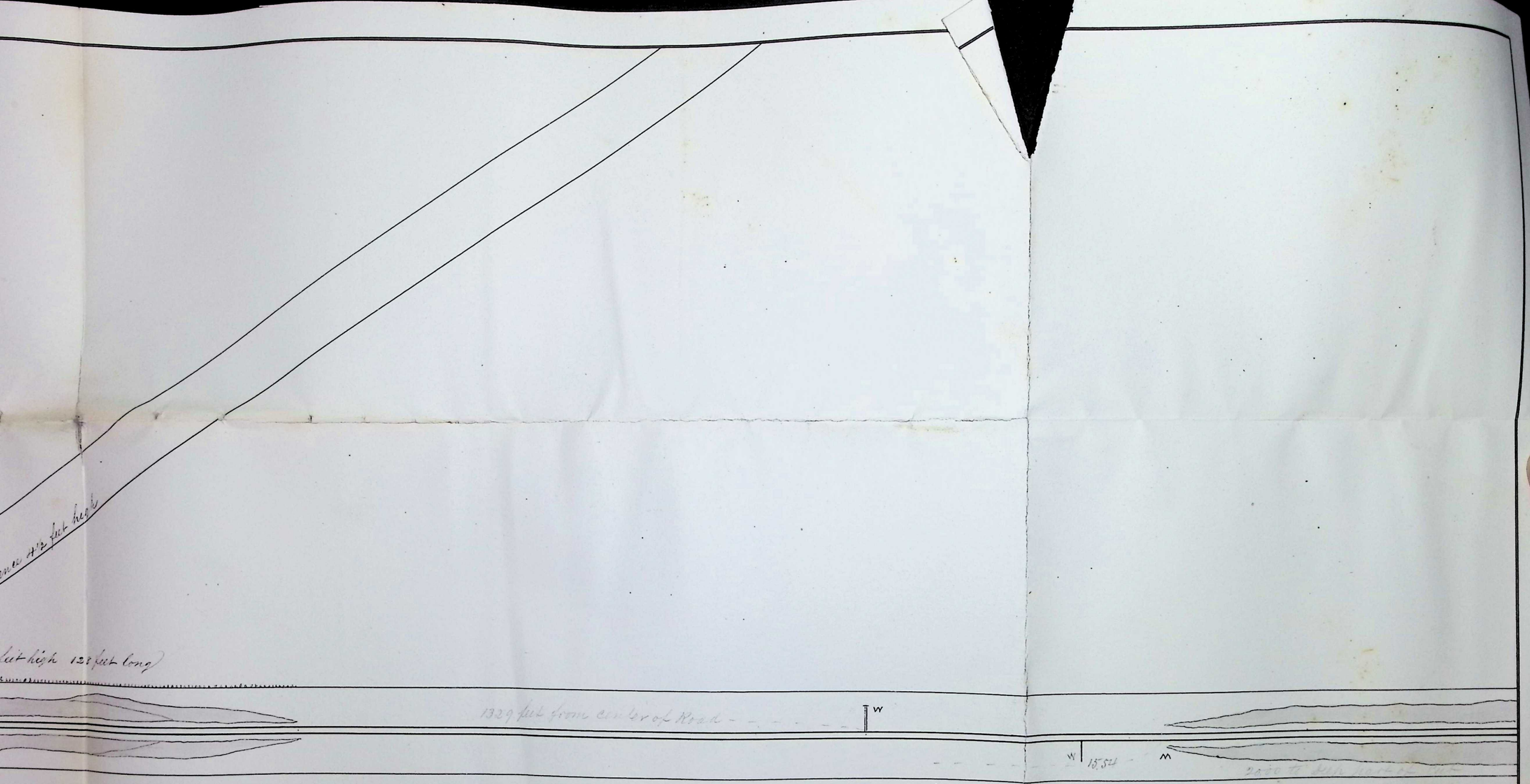
Dep. What is the scale?

Ans. 1¾ inches to the 100 feet

Mr. Winship's Map admitted and Counsel in Evidence though Not Formally offered.

144


End of Excavation
Bank fenced 4 feet
Top of Original Ground
Brandywine Creek
Rail Fence 4½ feet high
250 ft.
Hedge 8 feet high 138 feet long
240 ft.
Princeton & Dover Road
School House
Length of cutting East of the Road 592 feet & from center of Road 6
From the center of the road to where car commenced to run up the Bank
hight of the Bank 9 feet. From center of Road to East Cable Guard 79



...ing East of the Road 592 feet & from center of Road 671 ft
...ter of the road to where Car commenced to run up the Bank 138 feet. Dist up Bank 48 feet
...Bank 9 feet. From center of Road to East Cattle Guard 79 feet

Mr. Taylor, on behalf of the Plaintiffs, then offered in Evidence and read to the Jury the following depositions, the Cross Examinations, on behalf of the Defendants being read by Mr Kendall.

Deposition of W. M. Fisk.

Int 1 What is your name age occupation and place of residence?

Ans My place of residence is Princeton - my age is 57 years old on the 29th day of last October, I am at work at farming and painting. My name is William M. Fisk!

Int 2 Were you acquainted with the late William Wells of Bureau County. If so how long had you known him?

Ans I have known him some ten or twelve years I lived near by him

Int 3 If the said William Wells is now deceased you will state when and where he died and what town the means which brought him to his death. State fully and particularly all that you may know on that subject

Ans All that I can state on that subject is that the night that I heard that he was killed on the Crossing place then, I think it was on Saturday night, when I came down to the Town of Princeton I ascertained that he was killed there. That is as far as I know about that subject

Int 4 From when did you come down to town and what

14

crossing do you mean?

Ans I came down from old Mr. Phelps Barn where I had been loading hay that week it was the crossing on the road from Princeton to Dover close by Mr Phelps.

Int 5 Crossing of What?

Ans The Rail road Crossing the main travelled road.

Int 6 What rail Road?

Ans Burlington & Quincy road.

Int 7 How far was the barn of which you speak from said Crossing, at the time you spoke?

Ans I never Measured it, it was in plain sight from where I stood, about two or three feet high from the ground.

Int 8 About how far, as near as you can judge?

Ans I think I judge it to be forty or fifty rods.

Int 9 State whether you saw a train of Cars running along said rail road which you was at said barn, if so in what direction, what kind of a train was it, about what time in the day was it; if anything occured to said train at said Crossing, you will state what?

Ans I did, it was running towards the Depot it was a train of flat cars a grain train, It was the last load of hay that we was loading I think I judge it to be from a fifteen o'clock I saw the train nearing the Crossing place, I then saw a buggy and horse nearly in readiness

146

by ye across, going right along and about the time that the train struck the buggy I saw the escape of steam and heard the whistle sound twice. I then saw the horse go very quick across the track, I did not see anything of the buggy after the horse crossed the track, I saw the cars pile up on the side and saw the train stop. That is all I saw of it.

Int 10 In what direction was you from said Crossing from what direction did the cars approach said crossing, and from what direction did the said Horse and buggy approach said crossing?

Ans I should judge as near as I could that I was looking toward the South East from where I stood in the end of the Barn, the cars approached from Malden, the Horse and buggy came down the road from down towards Princeton

Int. 11 What were you doing when you first saw said cars, and about how far were said cars from the Crossing when you first observed them?

Ans I was standing looking right at the cars in the end of the Barn, I should think they were not far from the whistling post.

Int 12 State whether there was any bell rung a Whistle sounded on said Train from the time you first saw them until they arrived at the said Crossing, State all that you know on that subject.

Ans I think that I did not hear any sound of bell or whistle only there two sounds and I think if there had been I

147

should have known it.

Int 13 What two sounds do you refer to? explain.

Ans When the cars struck the wagon, about the time the cars struck the wagon.

Int 14 If there had been continuous ringing of the bell or sounding of the whistle as said train from the whistling post east of the crossing to said crossing, could you from your situation have heard such bell or whistle, what are the probabilities of the case;

Ans It was a clear night the sun shone at the time and I think if there had been sounding of the whistle or ringing of the bell I could have heard it as plain as at the time I did hear it, I did not hear any bell.

Int 15 About what distance from the crossing was said train when you heard said two sounds of the whistle?

Ans I can not say the forward car to strike the wagon

Int 16 In what shape or order was said train running?

Ans The Engine was pushing the flat cars forward.

Int 17 At what rate of speed per mile was said train running from the whistling post to the crossing according to your best judgement?

Ans I should judge as to that according as I have seen it run, before at different times that same week, pretty quick motion, every time I noticed that train I thought it had pretty quick motion.

14

Int 18 How would it speed from the whistling post to the crossing, on that occasion, compare with the usual speed of the passenger trains on said road. If you know what the usual speed of the passenger trains was?

Ans I have watched the trains a good deal and from my judgement it was running about the same speed as passenger trains.

Int 19 State, if you observed, any check in the speed of said Train from the time you first observed it until it struck the Buggy at said crossing?

Ans I did not.

Int 20 If there had been any perceptible checking of the motion of said cars could you from your position have perceived it?

Ans Yes I could.

Int 21 About how far from said Crossing was the Horse and Buggy when you first observed the train?

Ans I did not see the Horse and Buggy until it was on the quick motion of crossing the track.

Int 22 Have you ever examined the ground with a view of ascertaining what the chances were for a traveller approaching the crossing on the highway from Dover of seeing a train of cars approaching said crossing if so what were your observations in that respect?

Ans Since I have been subpoenaed, I have been on the Ground where I stood and looked each of the same placed. I saw that there was an

chance of seeing the train and buggy until until it came under the sign that is very near the crossing, I could see the ground that the cars was on plain from where I was.

Int 23 Have you examined the Highway near the crossing to see whether a traveller could see an approaching train from the East, If so what is your observations?

Ans My observations were that they could see the most of the way, could see a train.

Int 24 How is it for one hundred feet along the highway, immediately north east of the crossing if there is any obstacle by conceal the view between the highway and the rail road you will state what?

Ans I should say that there was more than one hundred feet where these flats cars could not be seen by a person on the highway, some bank of earth and fence.

Int 25 Can you state whether at the time of the collision the wind was blowing or whether it was calm?

Ans I should say there was a pleasant breeze from the North West.

Int 26 Was the breeze sufficiently strong to hinder or obstruct the sound of a rail road bell or whistle?

Ans Not when I stood.

Int 27 Was it from the Highway?

Ans I could not answer that.

Int 28 Was the Highway or your position nearer to the whistling post?

Ans The Highway was ~~near than~~ two thirds of the way and more to.

150

Int 29 What was the health and physical ability of the said William Wells at the time of his death?

Ans I could not state.

Int 30 Do you know by what means he obtained a livlihood, state if you know whether he had a family at the time of his death, and state if you know how much family were supported in his lifetime?

Ans I know'd him for about three years, I have seen him to work in several places, he called me into his garden to show me his grapes and told me had raised them he had a very nice garden, I have seed him work at carpenter work and worked with him. He had a family, I should judge by seeing him bring home things to his house that he was providing for a family.

Int 31 State, if you know, what his habits were with respect to sobriety, industry and frugality?

Ans I should say that he was a man that kept himself sober and I heard people say that he was a smart industrious man.

Int 32 In your judgement you will state as nearly as you can the pecuniary loss that his family have sustained by his death?

Ans That is the hardest question I have been asked yet, I could form some estimate if I was to tell what I, it would be my opinion that no amount of money could pay it to the family.

Int 33 State, if you know, in what circumstances his family were left with respect to property and means

14

of Delphos, at the time of his death?

Ans All I know about that is that he owned his home and lot, as he told me, I know of no other property.

Int 34 If the whistle had sounded or the bell rang when the train approached the whistling post and had so continued to sound or ring from the whistling post to the crossing; what in your judgement as to probabilities of the case, would Wells have been likely to have heard it or not, before driving on to the said crossing?

Ans I believe that I was looking at the train from about as it passed the whistling post and if there had been any whistling until those two sounds were heard I should have heard it myself. Whether he had any time to hear those two sounds I could not say.

Int 35 Could he have heard the whistle if it had sounded all the way through from the whistling post to the crossing, before he drove on to the crossing?

Ans I should think he could.

Cross Examination

Int 1 How long ago did this transaction happen state the year month and day?

Ans I dont know as I could tell you the month or the day any further than it was Saturday a year ago last fall, it might have been in the latter part of September.

157

Int 2 Was you in the Barn at the time or were you out doors?
Ans I was in the Barn standing a little above the big beam of the Barn.
Int 3. What were you doing?
Ans I was pitching hay off a scaffold on to a load on the barn floor.
Int 4. Who else was present at the time?
Ans Not any body but old Mr. Phelps.
Int 5 Did you look out of the barn door or a window or in what manner were you enabled to see the train?
Ans I looked out of the space between the siding of the barn, that was warped off by being hardwood boards.
Int 6 How large a space did you look out of?
Ans Between three and four inches wide,
Int 7 What first called your attention to look out of that space?
Ans I heard the cars coming.
Int 8. When you heard the cars ~~stop~~ did you stop your work and look out?
Ans No. I was told by Mr. Phelps ~~to stop pitching hay~~ that I might hold on from pitching down.
Int 9. Were you told by Mr. Phelps to stop pitching before you heard the cars?
Ans We had our load about as much on as he wanted and he said hold on pitching.
Int 10 Was the barn doors open at the time?
Ans The two west doors were open.
Int 11 Was the East Door Close?
Ans There was no doors in the East part of the Barn.

153

Int 12 Was there any Door or Window on that side of the Barn next to the Train?

Ans When I was up there there Wasn't

Int 13 Was the Barn sided up with clapboards or did the Boards run up and down?

Ans They run up and down.

Int 14 Were the cracks battened?

Ans Not where I was.

Int 15 Could you see any person in the road near Phelps house from your position?

Ans No near than right on that Spot where the Cars and Wagon met.

Int 16 Did you see any other person in the road or any team a Wagons from your position in the barn?

Ans I saw a Wagon on the South side of the track and I saw as many as two or three men on that side besides the Horse.

Int 17 Did you see any person on the north side of the track

Ans No.

Int 18 - Did you see enough of the transaction to know whether any accident had happened or not?

Ans Yes I saw enough to satisfy me that there was somebody hurt there. I told Mr. Phelps at the time, that I thought some one was hurt there.

Int 19 Then, if you thought that some one was hurt did you clean your business and go to the track to see?

Ans I told Mr. Phelps that I thought some one was hurt there for I saw a horse jumping on the track

154

over the track, I mentioned to Mr Phelps about going up and he said we would not have time to finish that load of hay and go, I told him that I would like to go up.

Int 20 How far was the barn when you were from the Crossing and in what direction from the Crossing when the accident happened?

Ans It was as much as fifty rods, the Crossing was south east from the Barn.

Int 21 Did Phelps House obstruct the view you had of the cars as they were passing between the whistling post and the Crossing?

Ans No,

Int 22 State, whether the cars were not coming to the west in a direction ranging but little from a direct course towards you?

Ans The cars were coming in an almost broadside position to me I could see the whole length of the train all the time.

Int 23 How far from the track, at the nearest point, was the barn?

Ans I think between forty and fifty rods.

Int 24 Do you say that the train was running fast or slow

Ans I say that it was running pretty much as it has been, I saw it several times that week, when I saw it was going a pretty good jog.

Int 25 How many miles an hour do you call a pretty good jog.

157

Ans About the same as the passenger train — about as quick as they were.

Int 26 Have you not said that the train was running slow?

Ans I don't know that I have said anything about it except what I have said to day.

Int 27 Did you not tell George O. Ide at Kendall and Ides office in Princeton about a week ago that the train that killed Wells was running slow?

Ans I did not.

Int 28 Did you not have a conversation with George O. Ide about a week ago on that subject at Kendall and Ides office?

Ans All that I said was that I knew something about that transaction

Int 29 How long were you looking out of the crack of the barn at the train?

Ans Long enough for the train to come two miles.

Int 30 — How long a time was that?

Ans I was looking out of the end of the barn before I could see the cars I heard them coming.

Int 31 What was Mr Phelps doing at this time?

Ans He was finishing the top of the load, pulling out some of the hay from the scaffold that was over the floor.

Int 32 What made you notice how fast the train was going?

Ans Because I noticed that they did go fast and mentioned to Mr Phelps that they went as fast if not faster than the passenger train.

11-6

Int 33 — What makes you remember which way the wind blew that day?

Ans He had hard work to keep the load in shape until we got a binder on, that is the way I know how the wind was that day?

Int 34 What made you notice that it blew from the North west?

Ans Because it struck the northwest corner of our load as we went out of the west door of the barn.

Int 35 — Was it blowing hard?

Ans Mr Phelps told me that he had hard work to keep the load as the wind blowed so.

Int 36 If the wind blew so hard from the northwest would it be likely that you could hear the train when you were two miles away and before you could see it coming?

Ans It is likely that I could hear it more than that. I should say the ground was froze, I am not certain that it was, at any rate sound was good and the weather clear.

Int 37 — What is your occupation?

Ans I have a good many occupations, more than I could ~~remember~~ remember them to day, I work in every branch of business that I meet with in life.

Int 38 Are you a professional man?

Ans I am.

Int 39 What is your profession?

Ans Painter by trade, sometimes carpenter, farmer.

157

Int 40 What is your principal profession?
Ans My principal profession is now to work at painting when I can get it and when I can't get it I work at anything else I can get.
Int 41 At the time of this transaction were you in the employ of Mr. Phelps?
Ans I was.
Int 42 - Were you farming at that time?
Ans I was pitching hay at that time.
Int 43 - How long had you worked for Mr. Phelps.
Ans That Saturday made six days, working in that town.
Int 44 When did you live next before coming to Geneva
Ans In the city of Buffalo
Int 45 How long did you live there?
Ans About eight months.
Int 46 When did you live before living in Buffalo?
Ans In the Town of Rome, Oneida County, New York.
Int 47. How long did you live in Rome?
Ans Five years.
Int 48 When did you live next before living in Rome?
Ans In the City of Rochester Monroe County.
Int 49 How long did you live in Rochester?
Ans Five years.
Int 50 When did you live next before living in Rochester?
Ans In the Town of Lee Oneida County New York.
Int 51 How long did you live in the Town of Lee?
Ans From the time I was two years old until I was

17-8

thirty five or six

Int 50 What was your occupation in the Town of Lee?

Ans Farmer.

Int 51 What was your occupation in Rochester?

Ans Painter, paper hanger.

Int 52 What was your occupation in Rome?

Ans Painter.

Int 53 What was your occupation in Buffalo?

Ans Painter.

Int 54 State, the year month and day that you came to Princeton?

Ans I came here in the month of August, four years ago last fall.

Int 55 In whose House did you live and in what part of the Town?

Ans I lived in the House where I now live that I live of Charles Kelsey pretty much all the time.

Int 56 Have you lived there all the time since you have been in Princeton?

Ans Pretty ~~much~~ near all the time.

Int 57 Do you not live on Vernon Street in Princeton?

Ans I cant say that I do.

Int 58 What Street do you live on?

Ans I hear a man say I live on Vernon Street.

Int 59 What was Hills occupation?

Ans He told me that he was a Carpenter by trade that he worked at since he was a young man, that was when I was at work with him on a barn in Princeton.

15-9

Int 60 Whom have you been for to work on?
Ans Mr. Mercer's
Int 61 Did Wells do the Carpenter work on the barn?
Ans He was the boss Carpenter.
Int 62 How long ago was that?
Ans A year ago last Summer.
Int 63 What Mercer did he build the barn for?
Ans The old Doctor on the back street east of Town, William I guess his name is.
Int 64 Was Carpentering Wells principal occupation while you knew him?
Ans I dont know as I am acquainted with any work I saw him doing, but he told me he had done other work in Town and he had worked at it since he was a young man.
Int 65 Do you know of his having any other business or occupation than that of Carpenter?
Ans I know that I have seen him come by my house frequently to get feed for his hogs and know that he told me that he worked at other gardens and in his own fixing them to raise grapes.
Int 66 Who did you first tell that you knew something about this case?
Ans I told my wife.
Int 67 — Did you not go to Mr. Taylor and tell him ~~anything~~ that you knew something about it?
Ans No I never went to Mr. Taylor and told him anything about it;
Int 68 How did the attorneys for Wells & Swinnatrider find

160

not that you knew anything about the case?

Ans I could not say how they formed their opinion.

Int 19. Did you not talk with administrator or his his attorneys and tell them what you could swear to in this case?

Ans I dont know who the administrators are or attorneys, any one

William H. Fisk.

The Deposition of Geo. O. Phelps.

Int 1 What is your name, age, occupation and place of residence?

Ans My name is George O. Phelps, occupation a farmer, age thirty six years, residence Princeton.

Int 2 Were you in the vicinity of the crossing mentioned by the witness Fisk at the time of the casualty mentioned by said Witness in his Deposition in this cause; If so how far from said Crossing were you at the time of said casualty?

Ans I was, I should judge about sixty rods from the place.

Int 3 In what direction were you from the said Crossing & what were you doing?

Ans I was, I think, in a west & a north direction, I was husking Corn.

Int 4 State whether you saw the train in question before the Collision took place?

Ans I dont recollect that I did.

191

Int 5 Could you have seen the train from where you were?

Ans I think I could see the train at the whistling post if I had been looking at it.

Int 6. State fully and particularly all that you may know about the said Collision?

Ans I heard the train as it was coming down the Road, I heard them whistle when I think they were at the whistling post, I heard them whistle twice afterwards, heard the train when it came in Collision, I think I heard them reverse their Engine. After I had my Cows unloaded Mr. George Burbank came to me and asked me if I knew who was killed at the crossing. I told him that I did not know that any one was killed he replied that there was a man killed there, I tied my horses in the stable and went down to the crossing, saw the body lying on the ground which I recognized to be that of Mr. Wells, one of the Cars was lying on the top of the Bank, several cars were lying crosswise of the track one or two on the side of the Bank; The Buggy was smashed to pieces the top of the buggy lay near Mr. Wells.

Int 7. For what length of time did the whistle continue to sound when you first heard it at the point which you suppose to be the whistling post?

Ans I cant state the length of time, but should think about the length of time they usually sound.

Int 8 Was it more than one blast?

Ans It was not a short blast, it was rather a prolonged blast, it was only one.

Int 9 In your judgement, supposing the train there to have been going at the usual speed of a passenger train, about how many rods would said train have run while said whistle was sounding?

Ans I should think from six to ten rods.

Int 10 Supposing then the train continued to run at said speed after said whistle ceased to sound the first time, about how many rods would said train run until you heard the second sound of the whistle?

Ans About fifty rods in my judgement.

Int 11 State whether you heard any noise at the crossing other than the sound of the whistle and the reversing of the engine indicating that there had been a collision? If so what?

Ans I did it sounded as though the train had come in contact with something.

Int 12 How long a time intervened between the sounding of the Whistle and the reverse of the Engine and the sound of the contact?

Ans I cant state the length of time, it was but a short time

Int 13 Were they nearly simultaneous?

Ans There was so much difference between them that I could hear the two distinctly.

Int 14 What time in the day did this casualty occur?

Ans I should think not far from six o'clock in the afternoon.

168

Int 15 At what rate of Speed in your judgement judging from the sound of the whistles at the time whistling post and Crossing was said Train running?

Ans I cannot state at what Speed the train was running, not seeing the train, My impression at the time was that she was not running as fast as the common freights,

Int 16 In what order was said train running?

Ans From the position of the cars after the collision I judged that she was backing down a train the train a head of her,

Int 17 What kind, and about, how many, cars composed this train?

Ans I did not count the cars my impression is there was from twelve to fifteen, they were open flat cars

Int 18 If the first whistle you heard, at what you supposed to be the whistling post, had continued to whistle until the train had reached the Crossing, could you from your position have heard it; and did it so continue to whistle?

Ans I ~~think~~ could have heard it, I think it did not so whistle,

Int 19 At what distance from the crossing did you find the body of Mr. Wells and near what point?

Ans To my recollection serves me right it was about fifteen feet from the Crossing near the whistling post for the next road west

Int 20 In what direction from said Crossing was Mr.

164

and Dover?

Ans Meldrum I should call it East of north East direction, and Dover nearly north East.

Qst 21 — State if you are acquainted with the highway for two hundred and fifty feet immediately next to said Crossing on the north side of the Railroad and with the rail road track east of said Crossing if so what is the relative position of said roads with each other, and if there is any difficulty while travelling on said two hundred and feet of highway to the crossing in seeing a train approach from the east to the said Crossing? You will state the same fully and particularly

Ans I think I am acquainted with the position of the roads there, the rail road east from the Crossing is through a cut, I should think for two hundred and fifty feet; the highway there is a cut from the track up to the land between which and the railway there is an embankment a fence of boards, and about fifty feet from the track there is a hedge.

Qst 22 Supposing a traveller to be approaching the Crossing from the North East, down through the cut of said highway, what are his chances for seeing an approaching train from the East? Within a hundred and fifty feet of the track?

Ans I should think it was a poor chance to see a train of flat cars within that distance, I don't think could be seen at all.

167

Int 23 — Suppose Wells had been travelling down the east of the highway towards the crossing, and the train had been approaching from the East, and the train had commenced to sound its whistle or ring its Bell and continued the same without intermission from the whistling post to the crossing could Wells have heard it before driving on to said crossing himself, what are the probabilities of the case?

Ans I think the probabilities are that he could.

Int 24 — Is there any doubt of that?

Ans I think not.

Int 25 — If you were acquainted with Mr. Wells in his lifetime, how long and how well did you know him, what were his habits with respect to industry economy and sobriety

Ans I was acquainted with Mr Wells, had known him for nearly upwards of twenty years was not intimately acquainted with him; always supposed him to be a sober, industrious man.

Cross Examination

Int 1 State what kind of a day it was whether cloudy, windy or pleasant, that the accident occurred, of which you speak?

Ans I cant say whether it was windy or not, my impression is that it was a pleasant day but at the time of the accident Wells,

166

Int 2 How far west of the Dover and Princeton road were you at the time?

Ans Something over a hundred rods.

Int 3 What direction were you from the crossing at the time and how far from the crossing?

Ans A little north from a north west direction probably a hundred rods from the crossing.

Int 4 Were you working in the field?

Ans I was.

Int 5 Were you facing to the East?

Ans I was.

Int 6 How long before Sanderson did the accident occur?

Ans My impression is that it was about fifteen or twenty minutes.

Int 7 State whether the ground from the Dover and Princeton road slopes to the west?

Ans The ground for about ten or fifteen rods north of the crossing slopes to the west, then from there the ground slopes to the north, then as you get north and west it slopes to the west again.

Int 8 How far from the Crossing when the accident occurred, is the barn where Dick was pitching hay and in what direction from the crossing is the barn?

Ans The barn I should think was somewhere in the neighborhood of one hundred and fifty rods in a north easterly direction

Int 9 Is the barn situated upon any road, if so upon what road, and how far is it from the barn to the

167

nearest point on the Rail road?

Ans It is situated upon a road, the road running past John Bracfields & Elijah Smiths north and south, I should think about one hundred and twenty rods.

Int 10 How much lower is the ground at the barn than the high ground about the Phelps House near the crossing?

Ans I dont know that I can answer that exactly, at the time that the house was built when the Sills were laid upon the brick wall of the house the man that was building the house and myself looked across the foundation of the house toward the barn and in my opinion the sills of the house were even with the ridge of the barn

Int 11 State whether there was a cornfield East of the barn and South of it between the barn and the Dover and Princeton road?

Ans There was a cornfield east of the barn which extended some thirty rods south and lay between the crossing and the barn.

Int 12 How far east did this cornfield extend towards the house and the Dover and Princeton road?

Ans About sixty rods,

Int 13 State whether the House obstructed the view from the barn as to any part of the Rail Road between the whistling post east of the crossing and the point of crossing where the accident occured.

Ans It did,

Qst 14. In what distance in your opinion would it obstruct the view and what part of said Railroad?

Ans In my opinion it would obstruct the view for five or six rods near where the railroad goes into the Shop.

Qst 15 What is the length of the cut east of the crossing?

Ans I should think between two and three hundred feet?

Qst 16 Is the balance of the rail road from the cut to the whistling post an embankment?

Ans It is,

Qst 17 What is the distance from the top of the high ground in the Dow and Princeton road down to the crossing where the accident occured?

Ans I should think it was twenty five or a hundred feet it may be more, I never measured the distance.

Qst 18 What has been the occupation of Wells since you knew him?

Ans He has followed digging wells, digging cisterns and digging graves and working round by the day

George D. Phelps.

Court adjourned until 8 a. m. next day

169

Second Day - Wednesday - 13th day of April 1864. Morning Session

Mr. Taylor on behalf of the Plaintiff offered in Evidence and read to the Jury the following Depositions, the cross examination in behalf of the Defendants being read by Mr. Kendall.

The Deposition of William Bacon

Int 1 What is your name age occupation and place of residence?

Ans Wm. Bacon, age sixty eight, Physician, place of Residence Princeton.

Int 2 Was you acquainted with the late William Stelle, if so how long had you known him and what do you know about his death?

Ans I knew him for ten years previous to his decease, seven years of which I resided within ten rods of him. I know nothing about his death except that I saw his corpse after death.

Int 3 When and where did you see his corpse and what was the occasion of his death?

Ans I dont remember the time, it was at his house I know nothing of the cause of his death only from hearsay.

Int 4 If the said Stelle left a family at the time of his decease, state if you was acquainted with such family and if so you will state of whom his family consisted

170

giving a description of the several members composing his family at the time of his decease?

Ans I am acquainted with his family, there were three sons; Greenbury aged about twenty four; Edson, aged about twenty two; Lucius aged about sixteen, four daughters, Eliza Jane ~~married~~ about twenty years old married; Dempsance about eighteen; Orra, about fourteen; Lucy about sixteen. And his Widow.

Int 5. State whether the said Wells was living with his said family at the time of his decease and whether he had lived with them during the time that you knew him?

Ans He was and did during the time that I was acquainted with him.

Int 6. What were the Habits of the said Wells in his lifetime with respect to sobriety, industry and economy?

Ans He was a sober, industrious, prudent man.

Int 7. What was the condition of his health and physical ability to perform Labor up to the time of his death?

Ans Health was good and performed a great deal of Labor, he was a hard working man.

Int 8 How was he usually employed and what became of the fruits of his Labor?

Ans In working by days work performing the duties of sexton in the grave yards, working on his own premises in the garden, he appropriates the avails to the support of his family.

121

Int 9 In what condition did he leave his family, with respect to property and means of support at the time of his death

Ans He left them a house and two village lots together no other means of support.

Int 10 Do you know whether said Wells had title to said lots at the time of his death?

Ans I do not.

Int 11 If said Wells was skilled in any of the Mechanical arts you will state what, and what trades did he work at?

Ans He was a carpenter and rough joiner and worked at that trade

Int 12 Do you know whether he ever worked at masonry, building cisterns and plastering?

Ans I do not know that he worked at Masonry I do know that he dug and built and plastered Cisterns, I dont know of his plastering Houses.

Int 13 What in your judgement was the pecuniary loss sustained by his widow and family by his death?

Ans I can form no judgement in which I can have any confidence.

Int 14 What was the ability of the said Wells with respect to his hearing before and at the time of his death?

Ans During my acquaintance with him his hearing was slightly impaired, I have had many Conversations with him, if a question was asked in an ordinary key of voice he would sometimes request it to be repeated

172

like others with a similar defect it gave him the appearance of being a little stupid; If he gave his attention during a conversation, he could hear with little or no elevation of voice, if the utterance was distinct. If not a loud key.

Int 15 After his attention was engaged, state whether he heard as well as men ordinarily do?

Ans I should think he did about as well, perhaps not quite

Cross Examination

Int 1 State, whether Wells to your knowledge, followed the occupation of a Carpenter and joiner as his chief business during the last few years of his life?

Ans He did not to my knowledge.

Int 2 what was his chief business?

Ans Digging cisterns, graves, working by days work as a common Laborer and working in his garden.

Int 3 Was his family industrious prudent and economical?

Ans His wife and girls were industrious his boys not as industrious as the girls. As it regards prudence and economy I am not informed

Int 4 What part of the time during the year did Wells usually work about his garden and about his house?

Ans I do not know

Int 5 State whether he was most usually employed about home?

Ans I should think not on half of the time; It is more favorable

178

however.

Int 6 State whether his family were extravagant in living and dress, whether they were wasteful or saving?

Ans They were somewhat extravagant from what I have seen. I should say they were for persons of their means. Mrs. Wells is a hard working woman, earns a good deal by washing and has kept her girls dressed in a higher degree than was suitable for persons of their means. Still I consider it very laudable and not to her disparagement.

Int 7 State, whether Mrs Wells did not earn as much or more for the family than Wells did?

Ans Mrs Wells and her daughters earned a good deal of money by washing, whether more or less than Mr Wells I do not know.

Int 8 State whether it was very seldom that Wells would go away from home with a horse and buggy, whether he was much in the habit of driving about the country with a horse and carriage?

Ans He was not in the habit of going out with a horse and buggy frequently.

Int 9 State, whether he was troubled with defective sight as well as hearing?

Ans His vision was imperfect, he could see large objects distinctly, small ones not, when I say small objects, I mean it was difficult for him to read, my impression is that he could read a newspaper - I know that he complained

of his Eyes. he was troubled with inflamed eyes occasionally.

Int 10 Was he not troubled more or less and a good deal of the time with sore eyes?

Ans According to my recollection he was, I cannot distinctly state how much of the time.

Int 11 What has been your chief business for the last few years?

Ans For forty years I was a Physician and Surgeon, for the last five years I have been a dealer in Stoves and Tinware

Int 12 In what you say in reference to defective vision and hearing of Wells, do you speak professionally as a physician, having in that capacity acquired your information, or do you simply give what you have casually observed from time to time from your acquaintance with Wells?

Ans I have acquired the knowledge from observation as an acquaintance and not from professional investigation

William Dean.

The Deposition of John Vaughan

Int 1 What is your name age occupation and place of Residence?

Ans My name is John Vaughan I am in my seventy second year, occupation I carry on My Life is a kind of farming way mackerel Poundin

Int 2 How you acquainted with the late William Wells, if so how long had you known him, where he lived during the time you knew him and what do you know about his death?

Ans I have known him about twenty six years to my knowledge he never lived anywhere else but in this Town Princeton I know nothing about his death only by hearsay. I saw his body afterwards

Int 3 How long have you lived in Princeton?

Ans Twenty six years last November.

Int 4 What were the habits of said Wells, in his lifetime, with respect to industry, sobriety and frugality?

Ans I think that he was a very industrious man, a man who worked hard. I think he was what you might term a sober man, a man who was never given to drink to my knowledge. He calculated to do the best under the circumstances.

Int 5 When did you see the corpse of said Wells?

Ans The night he was killed.

Int 6 If said Wells had a family at the time of his death you will state if you was acquainted with said family & if you were, what are the names of the members composing said family and where is said family at the time?

Ans He had a family, three boys and four girls. The oldest son was Greenbury, the oldest daughter was Eliza the next boy was Edom, the next boy was Lucien, the girls I was not so much acquainted, there

was Temperance Drunkard and Lazy I think.

Int 7 How many of said Children were minors at the time of Wm Wells death?

Ans Three girls and one boy.

Int 8 What business did the said Wm Wells follow in his lifetime and to what extent did he contribute to the support of his family?

Ans About six years after I came to this Town he followed Carpentering joining & bridge building and such and after that he had sore eyes and doctored for them considerable but he could not see sufficiently to work at Carpentering & joining so he abandoned the trade. His Eyes were so bad at that time, that he could not well support his family. This connection helped them. The next after this when he got able so that he could work he worked in part Winters in packing pork & toiling hard for some two or three years. He then undertook digging and plastering Cisterns and made good wages at it. After that there was no person here to dig Graves and people used to call on him to dig graves. This he followed as long as he lived when opportunity served. I think he got his family a good living. I have heard it remarked that they lived as well as most any family in town.

Int. 9 State if you know what the abilities of the said Wells were at the time of his death with respect to his Hearing and his sight?

Ans I dont know. His sight was pretty dim, he

could not see to read a Sermon he bought a book with large type but had to give up reading it — I have seen him come from the Post office holding a paper making some effort to try to read some in it, In regard to his deafness I dont Know any thing of my certain Knowledge, all I have heard is that I have heard others tell that he could not hear as well as he had done.

Int 10 If you had conversations with him shortly before his death, state whether he had any difficulty in hearing you speak in an ordinary tone of voice?

Ans I saw him the Sabbath before he died and all I discovered that he spoke louder than he usually did

Int 11 If you Know the disposition of the said Wells in his lifetime with respect to caution or recklessness, respecting danger, you will state what his disposition was in that respect?

Ans I have heard him tell when he was a young man how smart he was and resolute but I have always had the opinion that he was a cowardly man

Int 12 Was he a cautious or careless man about running into danger?

Ans I think he was rather cautious, I Know when he has been in Wells, when he got down ten feet or so he did not want to be in there any longer that did not show much courage he would run around and get others to take it after that,

Int 13 State if you know, whether Wells, at the time

of his death, had any experience in driving a horse and buggy?

Ans I have known him to go out with a horse and buggy to gather plums, and to go to his brother-in-laws, he did not make a practice of teaming, but when he wanted to go anywhere he always went and drove himself.

Cross Examination

Int 1 How near to Wells residence have you lived during the last few years?

Ans I have lived across three squares, between a quarter and a half mile off.

Int 2 Are you acquainted with family of Wells sufficiently to know their habits of industry frugality and economy?

Ans I dont know as I am particularly, I never went there only on an errand.

Int 3 In speaking of Wells, his habits, his economy and frugality do you speak from the general reputation which he has in that respect or from your actual observation?

Ans Only from my own observation.

Int 4 Were you frequently at his house?

Ans Not very often, If I wanted to see him I went there.

Int 5 State whether Wells was not generally at home working about his house?

179

Ans In regard to that I dont hardly know when he had anything to do for other people he did it, & when he had nothing he worked around home: but the gener=ally found a good deal to do,

Int 6 State, whether he accumulated any considerable property after years from his labor, to your knowledge?

Ans I think not, I dont think he laid up any.

Int 7 Did not his wife contribute quite as much or more to the support of his family as did Wells?

Ans I dont think she did quite as much she generally had what she got for washing for her own for extras &c.

Int 8 Dont you know that it is a fact that during the last few years Wells did but very little work for other people and that what he did was more about his house and at home?

Ans I know that he did considerable work he told me that he had all the work he could do.

Int 9 How far from the Rail Road did Wells live?

Ans About a mile

Int 10 Do you know of his having travelled upon or being about a Railroad much of any since the Railroad has been in operation?

Ans I dont.

Int 11. — Is it not a fact that he rarely use a horse and buggy?

Ans He did not keep any I have known him to go a visiting. I believe the last I came him

180

He had a house.

Int 12 For the last twenty years has he had a house?

Ans No.

Int 13 — Is it not a fact that Wells was so troubled with sore eyes that it not only prevented his labouring to a considerable extent, but prevented his seeing objects at a distance?

Ans He could chop wood; but get hold of a book a paper he would have to put it up to his Eyes — he could lay brick — he could not read at a distance, I have no idea that he could. The greatest thing was that he was deprived of reading.

Int 14 For how long a time has he been troubled with sore eyes, and defective sight?

Ans I think it came upon him about forty three or four.

Int 15 — Has that trouble continued ever since?

Ans He lay about a year and then got partially better of it, then he had spells come on again and he told me he could not tell his own son from another until he got close up to him. It continued ever since, sometimes not so bad, sometimes worse.

John Vaughan.

The Deposition of E. L. Chapman

Int 1 What is your name, age, occupation, and place of Residence?

187

Ans Everett E. Chapman, aged thirty four years occupation hardware trade, Residence Princeton.

Int 2 Are you acquainted with the crossing of the highway leading from Princeton to Dover over the Chicago Burlington & Quincy Rail road track; if so, how far is said crossing from Princeton and in what state was said Highway travelled in the fall of 1871?

Ans I am acquainted with the crossing, I think I think it was two miles from Princeton, There was considerable travel on it.

Int 3 State whether you ever examined the ground about the said crossing and especially whether you examined the highway immediatly north of said rail road track with a view of determining whether a traveller in passing along the highway from the direction of Dover could see a train of cars approaching the crossing from the East; if you made such examination you will state about what time and what was the result of your observations if there was any obstacles in the way between the highway and the rail road track to prevents such a train being seen you will state the same fully?

Ans I have examined the highway and rail road at that crossing, it was last fall I cant give the month. I found that the highway was cut down to get down to the level of the rail road leaving embankments on either side so much so as to hide cars approaching until they got within a

(V2

short distance of the road. My examination was directed more particularly to the approach of cars from the East. I placed myself in a position where I thought I would be about as high as a person would ordinarily be in a buggy at a point, say, a rod or two from the rail road and while in that position there was a train going east. When the train had passed the crossing perhaps ten to thirty rods I lost sight of it entirely.

Int 4. Supposing a traveller to be approaching the Crossing down the cut of the highway on to the Crossing and at the same time a train of cars are approaching the crossing from the East, what are the chances of his discovering the approach of said train, in case said train omitted to ring its bell or sound its whistle from the whistling post from the east to the crossing?

Ans I think there is some distance west of the whistling post that the cars might be seen but if the cars made no noise I should think a person driving would be very liable to meet with an accident. If the cars should be within, say, fifty rods of the crossing at the same time that he was coming down the grade to the crossing

Int 5. Do you know what the practice on the trains ~~was~~ passing said Crossing in the fall of 1861 was with regard to whistling, from the whistling post to the Crossing?

Ans I do not.

Int 6. What is the character of said crossing with regard to danger or hazards to the travelling public along the highway in your judgement?

1872

Ans I consider it a dangerous crossing.

Int 7 Do you know of any crossing of the Rail road now Dangerous?

Ans I do not

Int 8 Was you acquainted with the late William Wells, if so how long had you known him? And what was his habits for industry, sobriety and prudence?

Ans I was acquainted with him, have known him fourteen or fifteen years, I think he was ordinarily industrious, always supposed him temperate.

Int 9 How was the said Wells generally employed before his death; and if he had a family can you say how well he provided for them?

Ans The last few years he has been employed in digging graves, wells, cisterns &c. He had a family. I don't know how well he provided for them.

Int 10 In what County is the said crossing?

Ans In Bureau County.

Cross Examination

Int 1 What obstructions, if any, prevented you seeing the train beyond the distance of ten & thirty rods from the point of your observation at the time you speak of?

Ans An embankment of earth.

Int 2 Where was that embankment situated with ~~regard~~ reference to the position that you then occupied and the rail road and how far from you was

184

the embankment and what distance from the Rail road?

Ans The embankment is north of the rail road and nearly east of the position I occupied. The embankment was, say, twenty feet from where I stood and about the same distance from the Railroad, that is the highest portion of the embankment the portion of it that obstructed my view.

Int 3. Were you standing in the cut of the highway at the time and in the traveled track?

Ans I was standing on the embankment on the west side of the highway above the level of the track of the highway.

Int 4 About how many feet above the level of the highway opposite where you stood was the point of vision from your position?

Ans I dont know, that I can answer that I thought placed myself in such a position that I thought I would be about as high as a man in a buggy in the road opposite where I stood.

Int 5. Did you go up to the whistling post east of the crossing?

Ans I did not.

Int 6. Did you go on the railroad at all except at the crossing?

Ans I did not.

Int 7 Did you examine as to the approaching trains from the summit of the road in front of Phelps' House?

183

Ans At ~~that~~ this time I did not. I think I know how it is situated at that point.

Int 8 How far were you, when you made the examination you speak of from the summit of the Highway as you ride up from the crossing to the high ground in front of Phelps' house?

Ans I should think a rod or two.

Int 9 Is it not a fact that from the summit in the highway in front of Phelps' house a person has a most commanding view of the said road east of the crossing to and beyond the whistling post, there at ordinary Railroad Crossing?

Ans I should think it was a fact.

Int 10 Who were present with you at the time you made the examination you speak of?

Ans Col. Thompson, J. L. Taylor and Geo. Paddock.

Int 11. At whose instance and request did you make the examination?

Ans. Col. Thompson and myself were coming towards town a short distance this side of the crossing and we met Taylor and Paddock who asked us to go back with them. When we arrived at the crossing they wished us to Examine the situation of this road and crossing.

Int 12. At what time did you make the examination

Ans It was sometime last fall.

Int 13. Did you make the examination with a view of testifying in this cause?

Ans I did not. I should have stated in the answer to the

11th Cross interrogatory. That Col Thompson was requested to go back and asked me if I was willing to return with him. My examination was made to satisfy my own curiosity.

Int 14. State whether the highway is fenced at that point north of the railroad?

Ans I am not positive whether there is a fence or a hedge, but think there is either, that would be on the opposite side of the embankment from where I stood.

Int 15 How far distant from where you stood in making your examination was the fence on the east side of the Highway?

Ans I dont recollect about the fence.

Int 16. Was the Embankment of which you speak in the limits of the highway or not.

Ans It was

Int 17 How far do you live from that Crossing?

Ans About two Miles.

Int 18 How frequently within the last few years have you had occasion to pass over that crossing travelling the Highway?

Ans A dozen times a year.

Direct Examination resumed

Int 1 Did you ever examine the rail road track east of the crossing from the summit of the highway above the said cut with a view to see what is the cause view of obtaining an approaching train?

Ans I dont think I ever did.

187

Int 12 Do you know whether a traveller in passing from said Summit to the crossing at an ordinary gait would pass the crossing before a train of cars running at the ordinary speed not in view when he left the Summit would reach said crossing?

Ans I dont know.

E. L. Chapman.

F. H. Hinshich recalled and examined by Mr. Taylor.

Int I desire to ask you what rail Road this was where you saw those broken cars?

Ans The Chicago Burlington and Quincy rail road.

Int And in what County?

Ans Bureau County, in this State.

(Hinshich map shown to witness.)

Int I want you to state how far it is from the end of this embankment down by the rail road track down at that cattle guard?

Ans It may be 6 or 8 feet from the edge of the track, (as when the dirt is. It is dirt that is put thrown out as it is naturally piled up. It commences to rise about 6 or 8 feet from the track. It is low at first and then it goes on higher.

Int Ten or twenty feet from when it commences, how high would it be?

Ans From 18 to 24 inches, probably 2 feet, and from then on rose suddenly.

188

W. Taylor, on behalf of the Plaintiff offered in evidence the Letters of Administration granted to Samuel Triplett as administrator of the Estate of the late Wm. H. Wells, Admitted and considered read;

State of Illinois } ss.
Bureau County } The people of the State of Illinois, to all to whom these presents shall come, Greeting;

Know ye that Whereas Wm. H. Wells of the County of Bureau and State of Illinois died intestate, as it is said, on or about the fifteenth day of November A.D. 1861 leaving, at the time of his decease personal property in this State, which may be lost, destroyed or diminished in Value, if Speedy care be not taken of the same.

To the End therefore, that said property may be collected and preserved for those who shall appear to have a legal or interest therein, we do hereby appoint Samuel Triplett of the County of Bureau and State of Illinois Administrator of all and singular the goods and Chattels, rights, and Credits, which were of the said Wm. H. Wells at the time of his decease; With full power and Authority to secure and collect said property and debts, wheresoever the same may be found in this State, and in general to do and perform all other acts which now are or hereafter may be required of him by Law

Witness Stephen T. Paddock Clerk of County

189

Court in and for the said County of Bureau at his office in Princeton this sixteenth day of December A.D. 1861, and Probate seal of said Court hereunto affixed,

Seal

Stephen G. Paddock

Clerk of the County Court

by Wm T. Robertson Deputy.

Plaintiff rests his Case.

And thereupon the said defendant to maintain the said issue on his part gave the following testimony in Evidence to the Jury;

David McDonald, called on behalf of the Defendant, being first duly sworn was examined in Chief by Mr Kinsall and testified as follows;

Int State where you reside?

Ans I reside in Princeton Bureau County in this State,

Int How long have you resided there?

Ans Since the fall of 1849 up to the Spring of 1857 then removed to Hyannis seven miles west, and returned to Princeton in November 1860, and have resided there since that time

Int What was your business there since 1857?

Ans Was in trade a hardware store at Hyannis from 1857 to 1860 - then I was elected Sheriff till December 1862.

Int State whether you were acquainted with Mr Mills

the deceased?

Ans I was

Int How long had you known him?

Ans I think since 1848 up to the time of his death.

Int State whether you know the crossing mentioned here on the Railroad?

Ans Yes sir, I passed it very frequently the railroad crossing when it was said he was killed.

Int State whether you saw him after the accident occurred

Ans I saw him about 8 o'clock in the evening after he was killed, at his house.

Int State whether you have examined the ground at the crossing here and the surroundings where Will was killed - the crossing mentioned here as shown by this Map? (Hudson's Map handed to witness)

Ans I have sir, examined it since his death.

Int State the result of your examination - any experiments you tried - and made - just tell in your own way, what you did?

Ans There is the railroad crossing: at this point is a depression of two & feet -

Int ~~There is a railroad crossing~~ State what is the depression from a straight line taken from the Summit north to the Summit south?

Ans I will state that one time I was there and I made the line resting at each point, and I could just see under the railroad sign near the track. I should think it is near two feet, but I did not make any particular measurement.

191

Int Draw a straight line from the crossing. Then is a depression there to make it come up to this line?

Ans I could not say.

Int State whether that was the ellpiament which you made to ascertain the depth there?

Ans It has been some time since I observed — my mind is not clear upon that — I did not observe it so particularly as I did some other points.

Int State the distance of that crossing as you come up through the north cut, on the highway there; how far it is when the view on the ridge is so obstructed that you would loose sight of a train?

Ans I stepped it, and I thought I made it 70 or 71 feet from the Railroad track in going back. at the ends of that distance to the Railroad track, I could see the cars distinctly

Int Then, as you moved up this road for 25 to 30 feet, how was it?

Ans I could not see the flats, but I could see the Smoke pipe all the while. When the Ellpiament was made, there was some six or six flats, and an Engine. and when I moved from that point I could see the flats distinctly.

Int Was the flats moving at the Cutting?

Ans They was. I tried both ways I think.

Int You say the Smoke pipe was visible all the way?

Ans Yes Sir, I could see the Smoke pipe all the way.

Int And there was a point 25 to 30 feet in length that the view of the flats would be obstructed?

198

Ans Yes Sir.

Qst How was it when you passed this 20 to 30 feet, and got on the line of the railroad fence?

Ans There was one or two flats observed, but I could see the hind end and the forward end of the flats till I got on the high ground here, and then I could see them all.

Qst About what distance is that space, after you pass the Road, till you get up to the fence?

Ans I say there is a space of 70 to 75 feet when I could see the cars — after I passed this, the flats would be observed 25 to 30 feet then after that I could see the whole train of flats with the exception of one or two flats in the center of the train, all the way along till I got up to town.

Qst How was the balance of the track by the whistling post.

Ans There was a cut, and there was an embankment by the whistling post. at the whistling post itself I think there was an embankment, If you get up on the high ground you could see the track itself all the way to the whistling post.

Qst Did you make, any Experiment riding in a buggy?

Ans I did at one time, I got into a buggy and rode up from the railroad, at the time I was making the examination Mr. Young came up and I could see him about the same, standing there, as we could in the buggy. It was a low, open, buggy, and I dont think there was much difference to being on foot. When

standing upon the buggy I could see every thing distinctly. In standing on my feet on the buggy seat I could see the whole train distinctly the whole way I think a portion of this embankment is on the highway, and a portion on the rail road. The point is higher than the surface of the ground.

Int Do you know the location of Mr Phelps' barn?

Ans Yes sir, I have been by it.

Int Which way does the ground slope, west from the house to the old barn?

Ans It slopes down, nearly all the way.

Int On which side of the barn is his house?

Ans It is on the East line.

Int About what is the distance from his house to the barn, and from this crossing, to the barn - the old barn? Is it across one or two lotties?

Ans It is across one lotty I think - in the neighborhood of a quarter to half a mile - a quarter of a mile certain

Int Do you know whether his farm is a quarter section?

Ans I do not.

Int State the heights of this bank (the bank where the broken car run up) and whether a person in that barn could have seen a horse and buggy in that cut?

Ans Well sir, I dont think he could unless he was on the top of the barn: I dont know whether he could then: there is quite a fall there, and I dont think he could.

Int Could a person in the barn have seen the train, out of there?

Ans I dont think he could, in this cut. He may have seen it back, and he may have seen it there, but I dont think he could. What I judge from is the lay of the ground. The rail road is a deep cut, and the ground is high on both sides.

Int What is the prospect from the high ground in front of Mr. Phelps' house

Ans A man would see everything very distinctly up to this cut, and I think he would see the train all the way, that is if he looked. I think he would see the cars all the way from this cut (the east cut), on the high ground in front of the house. That is my impression. I think we made the Experiments, and my impression is we saw the train, I was there twice to make experiments.

Int State what you know with regard to Mr. Wells; about how old he was?

Ans All I know is by appearance — I should think he was from 60 to 65 years old.

Int State his ability to labor, with regard to his sight and hearing, and also his ability to labor.

Ans I think for the first five or six years I knew him, he was able to do a good days work, but then his eyesight was always quite poor all the time I knew him. I think it failed, though, some of the last years I knew him. For the last three years before his death, I knew but very little about him. After I came back to Princeton I saw him occasionally, but from 1857 to 1860 I did not see him, perhaps, but about three times. I was very well acquainted

with him from 1848 to 1857 – saw him once a week on an average.

Int From the time you went back to Princeton in 1860 to the time of his death, state what his condition was then?

Ans Well the impression I had was that it was not very good for labor. I think he still labored and done what he could. I do not think it was as good as it had been. I think his eyesight was poor

Int This failure, – was it any disease that was curable, or was it an infirmity of age? (Objected to)

Ans I dont Know anything about that. I have seen him have sore eyes – that is all I Know.

Int With regard to his hearing?

Ans He was a little deaf I think. I Know I have spoken to him, and he would not answer, and when I have spoken in a higher tone he would answer.

Int In a pecuniary point of view what is the value of his labor, over and above his clothing and board and the expenses of living: what was he worth to his family? State what his labor was worth, over and above his own expenses, and the expenses of living?

Ans That I dont Know; it would be simply a matter of guesswork – a matter of opinion.

Int From your knowledge of the man, state what you believe to be a fair estimate?

Objected to, as it was a matter of law.

Objection, overruled.

197

Ans I think for the next four or five years, taking it from the time he was killed, if he had went on, with perhaps the usual failing of a man of his age, I think he would have been worth something to his family; after that I dont think he would have been worth any-thing to his family; and as to the value, I could not tell, it would be a matter of opinion entirely.

Int State from your knowledge of the man what he then you think that for the next four or five years he would have been worth $50 a year over and above his usual expenses of living

Objected to as leading

Objection Sustained

Int State, as near as you can what you think his labor for the next four or five years would be worth, over and above his Expenses, and the cost of his own living?

The Court From his Ability to labor &c,

Ans I should think he would be worth $50 - he might be worth more - he might be worth $75.

Int Do you think he would be worth more than $75 for the next four or five years?

Ans I should think he would not.

Int Would you be willing to swear that he would be worth more than $50?

Ans No sir, I would not swear it; I told you it would a matter of opinion entirely.

By the Court

Int Founded upon your Knowledge of the means, & circumstances of his family, and the cost of his own keep?

Ans I should put it at $50 to $75 a year.

By Mr Kendall

Int Suppose that he should have lived from ten to fifteen years from the time he was killed — state, what if anything, over and above the Expenses of his living from the time he was killed, after the first four or five years he would be worth; whether in a pecuniary point of view. he would be worth anything to his family, over and above the Expenses of his living?

Ans I should not think he would be much because I do not think he could do, much, because I do not think he would have been in a condition to work after that. I dont think, in a question of Dollars and cents, he would have been worth anything after that time.

Int How long had he lived in the Country?

Ans I could not tell. I knew him from 1848 to the time of his death.

Int He lived at Princeton?

Ans Yes Sir.

Int How far from this Crossing?

Ans 1/2 or 2 Miles.

Int State whether this Crossing is on a prominent road?

Ans It is one of the most travelled roads in the County.

Int State whether Mr Hill had frequently travelled over, & was familiar with that road?

177

Ans I dont Know from my own knowledge, only judging from Circumstances.

Int State, whether you Know of his having friends living beyond this road?

Ans He had two brothers-in-law that lived on this road, he would have to cross in going to this place, in the Natural road that he would go.

Cross Examination by Mr. Taylor.

Int How long have you known Mr. Wells?

Ans I think from 1848 to the time of his death.

Int Do you pretend to have any better information about his age than the other witnesses that have been sworn here?

Ans I do not Know that I have.

Int Do not you Know that you do not Know as much?

Ans Well I saw him frequently from 1852 to 1854.

Int Did you ever employ him?

Ans I never did. I was a single man.

Int You never had any occasion to engage his services?

Ans No Sir.

Int You did not Know any thing about his ability to work?

Ans Nothing more than I have seen him do: I have seen him dig Wells and cisterns, and work on graves.

200 Int State to the Jury, on your oath, whether you ever saw any lagging, any slacking up of labor,

that would indicate an infirmity of age, in any operation you ever saw him do?

Ans I do not know that I did – I will say that I never saw him labor after 1857

Int And there are a good many people in Princeton you never saw labor after that time, are there not?

Ans Yes Sir.

Int Is it not a fact that he was a man of extraordinary activity for a man of his age?

Ans Was it not better than that of men of his years generally?

Ans I don't know I think it was fully as good, it might have been better.

Int Do you not know of your own knowledge and your observation of Th. Wells, that he now than earned his living, in by jobbing about town, digging Cisterns and wells, digging in gardens &c?

Ans I don't know what he did earn – I suppose he did earn more.

Int In doing these jobs?

Ans Yes Sir.

Int Do not you know also, at the price of $2 and $3 for digging graves, he would dig at least one hundred graves a year.

Ans I have no idea as to that – I do not know what they did for

Int How many burials are there in Princeton?

Ans I could not tell you.

Int How many graveyards are there?
Ans Three graveyards.
Int And the town has upwards of 3000 inhabitants?
Ans I think so.
Int And the country around it is densely peopled?
Ans Yes sir, it is a good population.
Int And they come in to bury?
Ans Yes sir, I think they do.
Int And he digs all the graves?
Ans I do not know as to that.
Int Was there any other sexton?
Ans I think he was the leading grave digger.
Int Was there any other?
Ans Not any other up to the time of his death.
Int Let me see how you figure this $50 up. How much did you allow for washing?
Ans I have made no calculation.
Int How much for lodging?
Ans I do not know.
Int How much for Board?
Ans I do not know.
Int Debtor balance?
Ans I do not know.
Int Then this $50 you did not state with any degree of certainty?
Ans No sir, I did not; I disclaimed that when I made the statement.
Int You states that as your estimate of the value of this supernumerated old man?

Ans Well, I was estimated it from from what I know of his condition?

Int You dont put a very high estimate upon the old man?

Ans You will remember that I was confined, by the question of Dollars and cents.

Int You do not estimate old men very highly?

Ans I do not in a question of Dollars and cents.

Int You would not take them for nothing?

Ans Well there are old men that I would.

Int Are you willing to swear to this Jury that there was no pecuniary value attached to this man except the manual labor of his hands? Not his direction?

Ans I will answer how ——

Int Tell this jury whether you mean by swear that these other things, outside this manual physical labor, was worth nothing?

Ans No Sir, I dont mean that; I think any man would be a loss to his family.

Int Pecuniarily I mean?

Ans Well I think so.

Int Is it not worth more than his labor?

Ans I dont know as to that; it depends a good deal upon the man. I think Mr. Wells always tried to bring his family up in the best way he could.

Int When were you first enlisted in this thing, to ferret out these things?

Ans I never was employed by the railroad Company

Int You did not volunteer your services?

Ans I was asked by Mr. Kendall if I would go up, and

Man in that railroad.

Dft When?

Ans It was in the fall – in November 1862

(Map shown to witness)

Dft How far was you up the railroad track when you was in that buggy?

Ans I started from the Railroad track in the Buggy, and drove from there slowly up to the high ground

Dft You did not place yourself in any particular position?

Ans I observed it was as I moved up slowly and saw the cars.

Dft Where were the cars?

Ans They were along in the cut, and then they moved out on the embankment. They started up here (towards the whistling post) and backed down.

Dft Did you stand up or sit down?

Ans I stood up.

Dft You do not know how it was in setting down?

Ans I think there was some 25 or 30 feet, I could not see the flats in setting down.

Dft I want to know if you will see cars that is passing up here, you can sit down in your buggy and see any part of that train: that from the highway the chimney can be seen every foot of the way sitting in a buggy?

Ans Yes sir, I think I can.

Dft Can you swear to it as a fact, that, that can be seen?

Ans I do not know whether I observed it every foot, but I think I can — that is my impression. I think I saw it every foot of the way.

Int Suppose there to be a cut 12½ feet deep, on the highway, and an embankment 3½ feet. making 8 feet high from the highway, right under that signboard or near it, are you prepared to swear that in that place you could see the smokestack or any part of that train of cars in the buggy?

Ans I do not know whether I could or not; I did not measure it; I dont know how high it is.

Int And you did not place yourself there to see whether you could see a train of cars?

Ans Oh! no, I did not at that particular point.

Int Then you dont swear to this jury, that a man near that signboard — ~~could set in a buggy~~ the alarm board, could set in a buggy and see any part of a train of cars.

Ans I think he could.

Int Are you positive he could?

Ans I just swear that I think he could.

Int Did you sit there and make an experiment to enable you to swear?

Ans Not that. The only experiment that I made was that I went from there slowly up there and I could see the smoke stack all the way up. I could not see the particular position that the smoke stack was in at that place.

Int I want to know if you swear to this jury positively, that

a train of cars approaching to this crossing can be seen at any point between the crossing and 250 feet, there and at all places along there at the same time.? that you can see any part of the train?

Ans Oh yes sir, I can, I think he could see it in a buggy at all points.

Int You do not know so?

Ans I have given it as clear as I could.

Int All you know is that you rode up this distance and you saw the cars all the way?

Ans I saw the smoke stack all the way, and there was about 25 to 30 feet where I could not see the flats.

Int How high are you?

Ans About 5 ft feet.

Int Do you mean that you could walk along there and see a train all the way?

Ans I could see a train 7½ feet from the track, and then I could not see it for some distance.

Int Could you see the smoke stack all the way, walking?

Ans I do not know that I made that appraisement in the buggy?

Int Was that hedge away there?

Ans It was there at that time. It has been some time since I was there.

Int Did you ever make any measurement of this embankment there?

Ans No sir.

Int Did you ever measure how high a man's head would be in an ordinary buggy, riding?

Ans No sir.

Int If it should turn out that that embankment was 8 feet high from the land there, what would you conclude about your ability to look over that and see the chimney stack?

Ans I do not know of that affidavit.

Int You know very well if the embankment is 8 feet high, there what would be the probability of looking over it and seeing a chimney stack?

Ans I don't think a man of height could.

Int How far east did that train go?

Ans It run through that part of the first cut east of the crossing and then on the embankment; I think the engine run pretty near to the second cut.

Int Did you stand up in the buggy or sit down.

Ans I think I stood up once and sat down once.

Int Tell what proportion of the way you stood up and sat down?

Ans At one time when I passed up I sat down all the time - at the next time I stood up in the buggy.

Int Was the cars moving during this time?

Ans They were I think.

Int Which way?

Ans I could not say; it backed down some times, and moved up sometimes.

Int Who was present?

Ans Mr. Kendall, Mr Walker, Mr. Waldron, Mr. James & I think a man named x x x x x x took his buggy and made the affidavit.

207

Int Was there any of the railroad hands present?
Ans There was a lot of Railroad hands ~~present~~ there picking up ties.
Int Was Mr. Triplett there, or his attorneys?
Ans I dont Know that he was - I speak of those that I recollect distinctly.
Int You would be likely to recollect Triplett?
Ans I think I would.
Int Do you recollect me?
Ans No, I dont Know whether you were there or not.
Int Would you do so if I was there?
Ans I think I should because you are a pretty talkative fellow, and I think I should have been likely to do.
Int Was this train anywhere else than in this cut east of this crossing where you were going up on the highway? Was it ont on the embankment?
Ans Yes Sir, and in the cut, both.
Int How far out?
Ans I think it run nearly to the second cut.
Int Was it in motion all the time you were in motion?
Ans I dont think it was.
Int Who was directing this train?
Ans There was a man there I suppose to be the Engineer - Mr. Walker and Mr. Kendall appeared to be directing matters.
Int You had nothing to do with the train?
Ans No Sir. I had not.
Int When you ordered the Engineer had to stop it?
Ans I dont Know as to that.

Dft Did you had to look when they stopped it?
Ans Yes Sir.
Dft And had nothing to do with the direction of the train at all?
Ans No Sir, Nothing of that Kind, I think I made a suggestion to Mr. Kendall once or twice before moving to certain points.
Dft You did make examination to see what the Defects of the cut was from one of those hills and the other?
Ans I just looked across.
Dft How much of that board ~~face~~ was above the level of the ground?
Ans Mr. Kendall stood on one point and saw the others, We looked at some certain points and we looked under that Signboard. I think we were conversing as to ~~Sight~~ how high a bridge would be and I think we could just look under that Signboard, I think the last time we were there we did not make an Experiment of that Kind.
Dft You do not know how that train was rigged?
Ans The got on that train at Princeton Station and rode out there.
Dft How many cars were on it?
Ans I think five or six flats and an engine; four, five, or six.
Dft There was not fourteen?
Ans I do not think there was; I could not be positive.
Dft The railroad party got up this train with a view of making these Experiments and brought it there.

Ans Well Sir, I suppose they did, of course I suppose the train was meant to have the appliances.

Qst Will you swear that that train, at any time, went east of the whistling post?

Ans No Sir, I could not say it went beyond that, it may have done, but I know it went on to the embankment.

By Mr Walker

Qst Is it your best recollection that it went over till near the east cut?

Ans Yes Sir, that is my best recollection.

Qst Suppose the Smoke Stack of an Engine is 18 feet high from the ground, and suppose a man sitting in a buggy is raised 6 feet from the ground (his head) would the embankment they have talked about here, being 8 feet high, be likely to obstruct the view of the top of the Smoke Stack?

Ans I should think not.

By Mr. Taylor

Qst How far would the Summit of that high place be from where you were sitting in the buggy?

Ans I could not say.

Qst About how high?

Ans When.

Deft When you got moved up?
Ans I should think as far as the corner of that first window there. The road along the middle of the road, and that is on the side of the road.

(Note by the Reporter. The distance here indicated by the Witness as being between where he stood and a certain window in the Room, was about 18 to 20 feet.)

O. S. James Called on behalf of the Defendants, being first duly sworn, was examined in Chief by Mr Kensall and testified as follows:

Deft Where do you live?
Ans I live in Princeton.
Deft How long have you lived there?
Ans I came there when I was 21 years old, and I am now 28.
Deft How long have you been acquainted with Mr. Mills?
Ans Ever since I have been in Princeton.
Deft State whether you know of the circumstance of his being killed, or about that time?
Ans I heard that he was killed.
Deft Did you see him after his death?
Ans I went up to the track and he lay there dead.
Deft Can say him there?
Ans Yes Sir.
Deft From the acquaintance with the man state

what you Know about his sight and hearing?

Ans He was at my office a great deal; his sight was poor; he used to come and get the morning paper, and read a great deal in my room. It is very distinct in my recollection how he used to read and ~~hold~~ how he held his paper.

Int What is your business?

Ans A photographer.

Int How near him did you sit?

Ans I should think it might be three feet perhaps 10 ~~feet~~.

Int State what you Know about his sight?

Ans In his reading he held the paper something like this (The witness here placed his hands nearly close to his eyes)

Int State what you Know about his sight in observing things at a distance?

Ans I dont Know that I can answer that, I only Know that he read a great deal at my room, and held his paper almost close to his Eyes, as to ~~distant~~ distant objects I do not Know. He held his paper quite close up. I remember that distinctly.

Int Do you Know anything about his hearing?

Ans I do not think he could hear an ordinary voice as I am speaking now?

Mr. Taylor. I cannot hear you either

Witness Cannot you, I said I did not think he could hear as loud as I was speaking at that time.

By Mr Kendall

Int How long had this difficulty of seeing and hearing been with him?

Ans My opinion would be some 15 years or more; that would be my opinion; I dont know that I could state positively; I should think it was all of that.

Int Do you know anything as to his capacity for work and labor?

Ans I thought I was very well acquainted with him.

Int What was his business?

Ans Some six years ago, he used to dig and make cisterns, but he gave that up, I think entirely, and then he began making grass and worked in gardens, I dont — know of his making any cisterns for the last few years —. He told me ——

Mr. Taylor You need not state it.

Mr. Kendall, You may state what he told you as to giving up digging Cisterns

Objected to

Objection over-ruled

Ans All I was going to say about that was, he once dug a cistern for me — I granted him to repair it. I do not know that he stated the reason — why but I understood him that he gave up digging Cisterns, and had to get another man to repair it.

Int He gave up digging cisterns — what was his business after.

Ans What I Know of him, he was digging graves and working in gardens, and jobbing some.

Int Do you Know of his helping his wife to wash or anything of that, about the house?

Ans Yes sir, I do.

Int What else, if anything, do you Know of his occupation for the last few years of his life

Ans I don't Know that I Know anything more than that he dug graves.

Int State as to his condition for labor during the last few years of his life?

Ans I do not Know his condition any further than his sight, that was the reason about the cistern as I understood it, about piping my cistern.

Int Was you along, at the time there was some examination made of the ground at the crossing?

Ans I was.

Int Do you remember the appearments made there?

Ans My memory is not as good and it is sometimes ago. I cannot be positive about the appearments, only some few things; some things I am positive about.

Int State them?

(Studying map handed to witness)

Ans I stepped off 70 feet from the center of the track up into the cut on the north side. I could then see the track. My impression was it was 70 feet I think I stepped it.

Int From the crossing up here for 70 feet, what was the view of the track?

Ans I'm 70 feet, I could see out pretty well to reach the second cut.

Int At a distance of 70 feet from the cutting?

Ans Yes Sir,

Int Was that standing on the ground, or sitting in the buggy?

Ans Sitting in a buggy and standing on the ground. and there is one thing more when the flats were there, you could walk up ~~boats~~ North, and my impression is that there was 12 feet there that you could not see the other man was here, and I was here, and there was twelve feet there between us.

Int When were the cars standing at that time?

Ans They were in that cut — the third cut, I saw them.

Int When were you?

Ans I meant to say that I went as far as I could see the flats and when I could not see I just stood when I could see it, and then 12 feet from there, the other man could see it.

Int State whether that was within the hedge here, whether you were both between the hedge and the Rail road?

Ans I cannot state anything about the hedge.

Int How was it with reference to this Knoll here that high point, whether that was the 12 feet?

Ans The 12 feet was on the Knoll, it was the Knoll itself.

Int Taking the highest part of the Knoll?

215 — Ans Yes Sir, I do not think it was 12 feet it was not more.

Int. State, whether you examined on the highground in front of Mr. Philpot's House?

Ans. I did, but do not recollect.

Int. How far does Mr Stelle live from the crossing?

Ans. About 3/4 of a mile, I guess or a mile.

Int. State what you know of his knowing of the railroad being there and in operation? Whether he had lived in Trinctor since the road was built?

Ans. He lived there since the road was built.

Int. State whether the whistles of the trains were heard freely there?

Ans. I believe we hear them every day sir.

Int. State what you know of his knowing about the crossing: whether he had frequently passed there?

Ans. I could not say: All I know was x x x x x x x x x x.

Int. Do you know of his having friends who live beyond the crossing?

Ans. Yes Sir, I knew he had.

Int. Do you know of his going up to his friends that day he was killed?

Ans. No sir.

Int. You did not know anything of the circumstance?

Ans. No sir.

Int. State whether he had lived there ever since the rail road was in operation? State near to the rail road where trains were heard every day.

Ans. My impression is that he lived in that house ever since the rail road has been built.

3

216

Cross Examined by Mr. Taylor

Sub Suppose a man had been moving in a horse and buggy, at an ordinary rate, at the point you took, and a train of cars had been moving at 30 miles an hour, would the train have got to the crossing first, or would it not.

Ans I suppose it would.

Sub Your recollection is not distinct as to the topography of this ground, as the various measurements and prospects at the various points from the railroad crossing to the Summit?

Ans Only just as I have stated.

Sub That is all you can remember about it?

Ans Yes Sir, distinctly.

Sub You have known W. Wells for how many years?

Ans From Chicago ago 21 - I am now 28.

Sub I will inquire of you if he had not been a very industrious man, during all that time?

Ans Do you want me to state all I know?

Sub Just answer that question. Is it not a fact that he was an industrious, man?

Ans I believe he was considered ~~an~~ industrious ~~man~~.

Sub ~~He~~ Up to the time of his death, was he not a man of remarkably good Constitution, for his apparent Years?

Ans It was always my impression that his Constitution was good, but his eyesight was poor.

Sub That did not prevent him doing many kinds of work that were both profitable and useful?

217

Ans I know that he worked a good deal before he died?

Int Was not that both profitable and useful?

Ans He worked in the garden a great deal,

Int He was not so blind but that he could distinguish between a vegetable and a weed?

Ans I dont know. He was around the garden,

Int Did he not keep a fine garden?

Ans He did,

Int Did he not work in other peoples gardens?

Ans I do not know if he did any further than digging.

Int He dug graves?

Ans Yes Sir,

Int Is there more skill required in digging a cistern than a grave?

Ans I dont know that there is.

Int Then he dug graves up to the time of his death? till he was killed?

Ans I suppose he did. I never saw him to dig a grave.

Int All that you can say about his vision and hearing was that he could not see as sharp as some other men, nor hear as sharp as some men?

Ans He could not see very well.

Int He could see to read by putting the paper close to his face?

Ans Yes Sir.

Int Did he have Specs?

Ans I could not say.

Int Is it not a fact, that when his attention was

directed by conversation he could hear in an ordinary tone of voice? would you have to holloa loud to him than ordinarily?

Ans He was in my room a good deal, and he did not seem to pay much attention to our ordinary talk

Qst When you talked to him, and got his attention engaged, is it not a fact that he would hear in an ordinary tone of voice?

Ans My opinion would be that you would have to speak a little louder.

By Mr. Kendall

Qst I will ask whether Mr. Wells would go to sleep in your office — fall asleep very easily?

Ans My impression would be that he has been asleep there, but I could not swear positively. My only impression would be that he had. His son was working with me.

A. H. Kelly. Called on behalf of the Defendants, being first duly sworn, was examined in Chief by Mr Kendall, and testified as follows:

Qst State how long you have lived in Princeton?

Ans Since the Spring of 1852.

Qst State whether you knew Mr. Wells in his lifetime?

Ans I did Sir,

Qst How long had you known him?

Ans I have known him from the fall of 1852 to his death.

Int What time was he killed?

Ans He was killed in 1861.

Int In the fall of 1861?

Ans Yes Sir.

Int What is your business?

Ans I have been for the last Year, a constable.

Int State what your opportunities have been, of having frequently seen him: whether you have had and opportunities to know about him?

Ans I have been as much of him as I know of the majority of men there, living on the main Street.

Int Did You know him well?

Ans Yes Sir, I did; I knew him about as well as I knew most men

Int State what age of man he was?

Ans I should judge him to be a man about the age of 60 — somewhere in that neighborhood — he might be a little more, or he might not be quite so old.

Int What has been his business since you have known him?

Ans Digging cisterns, for the first year or two: I then knew him digging graves, and working at gardening a little.

Int What do you know about his sight and hearing, and his general condition?

Ans I know it was bad.

Int How long had his sight been bad?

Ans I think his sight has been affected ever since I have known him, more or less.

220