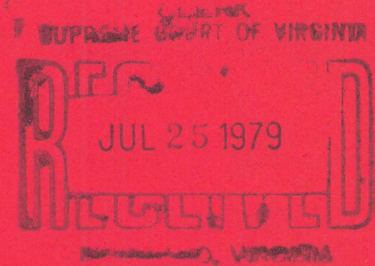


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IN THE  
SUPREME COURT OF VIRGINIA  
AT RICHMOND

---

Record No. 790111

---

SOUTHERN RAILWAY COMPANY and  
VIRGINIA AND SOUTHWESTERN RAILWAY COMPANY,

Appellants,

v.

HUGH L. BOY, JR., and MADGE E. BOY,

Appellees.

---

JOINT APPENDIX

---

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Hunton & Williams  
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Richmond, Virginia 23211

Robert T. Winston  
Mullins, Winston & Roberson  
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Norton, Virginia 24273

Counsel for Appellants

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P. O. Box 337  
Gate City, Virginia 24251

Counsel for Appellees



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TO SOUTHERN RAILWAY COMPANY and VIRGINIA AND SOUTHWESTERN  
RAILWAY COMPANY:

You are hereby notified to come forward and make the necessary repairs to the bridge serving the land owned by the undersigned in Estillville Magisterial District, Scott County, Virginia, said bridge being 0.3 mile east of Mile Post 36 and being a part of the wagon way across the railroad being owned and operated by you through the lands of the undersigned.

This notice is given to you pursuant to Section 55-16 of the Code of Virginia.

Given under our hands, this the 13th day of September, 1973.

HUGH L. BOY, JR. and MADGE E. BOY

BY C O U N S E L

QUILLEN AND CARTER, p.q.

BY: 

GATE CITY, VIRGINIA

P E T I T I O N

SOUTHERN RAILWAY COMPANY and  
VIRGINIA AND SOUTHWESTERN RAILWAY COMPANY.

DEFENDANTS

TO THE HONORABLE JOSEPH N. CRIDLIN, JUDGE OF SAID COURT:

Your petitioners would respectfully represent, aver and show unto the Honorable Court as follows:

(1) That your petitioners are the owners of certain lands which are a part of lands originally situate adjacent to both sides of the Southern Railway Company and Virginia and Southwestern Railway Company property, located in Estillville Magisterial District, Scott County, Virginia near the Daniel Boone Section of Scott County, Virginia; that said lands owned by your petitioners are a part of those lands which originally lay on both sides of the Southern Railway Company and Virginia and Southwestern Railway Company right of way, and abutted thereon, on either side.

(2) That the right of way of said Southern Railway Company and Virginia and Southwestern Railway Company originally passed through the whole of these lands.

(3) The defendants originally constructed a roadway and a wagonway leading from the public road over said railroad and through the premises now owned by the petitioners, and formerly owned by other person or persons, from the north side of said railway right of way, and over said tracts and said right of way to the other premises now owned by petitioners,

and formerly owned by other person or persons, lying on the south side of said right of way.

(4) That, as a part of said wagonway or roadway, the defendants constructed a bridge across Little Moccasin Creek, which bridge is within the scope of the wagonway or roadway and crossing, and a substantial portion of which bridge is within the confines of the right of way of the Southern Railway Company and the Virginia and Southwestern Railway Company.

(5) That from the time of the construction of said roadway and wagonway and crossing and said bridge, the defendants have maintained said bridge without any question whatsoever being raised by the defendants.

(6) That the bridge over Little Moccasin Creek and as set out hereinbefore, has fallen into a great state of disrepair, and now presents a hazardous and dangerous problem to petitioners, and to others who may use said crossing; that petitioners have repeatedly requested the defendants to repair said bridge, as is their duty to petitioners; but that defendants have consistently refused to repair said bridge.

(7) That petitioners are greatly concerned in the use of said bridge on account of its deteriorated and dilapidated condition, and are unable to secure fuel, farm and other supplies, to be transported by trucks across said railroad right of way and across said bridge to their premises on the south side of said railroad right of way.

(8) That said bridge is 0.3 miles east of Mile Post 36 and is a part of the wagonway or roadway across the railroad and the right of way owned and being used by you, the defendants, through the lands of the undersigned.

(9) That notice has been duly given to you pursuant to Section 56-16 of the Code of Virginia to come forward and make the necessary repairs to said bridge, being a part of said roadway and wagonway. Notice was duly served upon the proper agents of the Southern Railway Company and the Virginia and Southwestern Railway Company, by you, the defendants, have wholly failed to comply with the provisions of law obtaining in the premises; and have by written advices to petitioners say they have no duty to make said repairs to said bridge.

(10) This petition is filed, and application is to be made pursuant to Section 56-16 of the Code of Virginia to determine whether said wagonway and roadway and said bridge should be repaired and kept in repair by you as provided by law.

THE PRAYER OF PETITIONERS is that the said Southern Railway Company and the Virginia and Southwestern Railway Company be made parties defendant to this petition, and be required to come forward and repair and maintain said bridge, being a part of the wagonway and roadway as aforesaid; that the Court appoint three disinterested persons whose lands do not abut on said railroad right of way to constitute a Board of Commissioners, whose duties shall be to go upon said lands to determine whether said bridge on said wagonway or roadway should be repaired, and said Commissioners shall report their findings to the Circuit Court of Scott County, Virginia, and that your petitioners may have all such other further and general relief in the premises as the nature of their case may require, or to the Court should seem proper.

Respectfully submitted:

4

DEMURRER

SOUTHERN RAILWAY COMPANY  
AND  
VIRGINIA AND SOUTHWESTERN RAILWAY COMPANY DEFENDANTS

Your defendants demur to the petition filed in the above cause and state that it does not set out a cause of action, and for their grounds of demurrer state:

I.

The petition on its face shows that the petitioners do not own land that is bisected by the railroad and that the railroad and the railroad right of way do not pass through the petitioners land.

II.

The petition shows that no wagon way is needed across the railroad to go from one part of petitioners' land to the other.

III.

The statute allegedly relied on does not require the maintenance of a wagon way across a creek but by its terms only across the "road."

IV.

The statute allegedly relied on does not provide<sup>for</sup> the construction of a bridge from claimants' lands to a public highway nor for the purposes set out in the petition.

And other grounds to be assigned at bar.



MOTION FOR BILL OF PARTICULARS

SOUTHERN RAILWAY COMPANY  
AND  
VIRGINIA AND SOUTHWESTERN RAILWAY COMPANY DEFENDANTS

TO THE HONORABLE JOSEPH N. CRIDLIN, JUDGE OF SAID COURT:

Your defendants move this Honorable Court to require the  
Petitioners to file the following particulars of their claim:

I.

State the Petitioners' source of title and their chain of title back  
to a common source with the defendants' right of way.

II.

State whether the bridge is used by trucks, vehicles, etc., to  
carry fuel, etc. from the land North of the right of way or whether the bridge is  
used to carry fuel, etc., from the public highway to the land South of the  
railroad right of way.

III.

State how much of the bridge is on Petitioners' property and off  
of the railroad's right of way.

IV.

State how much repair and maintenance the Petitioners have  
performed on that portion of the bridge that is not on the defendants' right of  
way.

V.

State whether the Petitioners' claim that the portion of the wagon way that goes over the railroad tracks and the portion of the railroad that lays from end of tie to end of tie, needs repairing.

VI.

State whether a bridge would be needed across the creek in order to enable Petitioners to go from the public road to their residence in the event there were no railroad tracks or railroad right of way involved.

BILL OF PARTICULARS

SOUTHERN RAILWAY COMPANY

and

VIRGINIA AND SOUTHWESTERN RAILWAY COMPANY

DEFENDANTS

For bill of particulars requested by the defendants in the above-styled cause, the petitioners, Hugh L. Boy, Jr. and Mary G. Boy, say as follows:

(1) Petitioners do not feel that the source of title and their chain of title back to common source of the defendants right of way is in anywise pertinent to this proceeding, but petitioner does file copy of the deeds showing their chain of title. So far as petitioners know, the common source of title of the railroad right of way and lands owned by petitioners is W. D. Jones.

(2) The bridge is used by trucks, vehicles, etc. to carry supplies, food, fertilizer, etc. from the public highway to the land south of the railroad right of way; garbage is carried out by truck from the premises owned by petitioners across said bridge and said wagonway or roadway to the north side of said railway and onto the public road. One of petitioners, Hugh L. Boy, is employed at Kingsport, Tennessee and it is necessary for the said Hugh L. Boy to cross said bridge and said wagonway in order to get to his place of employment; petitioners have to use said bridge and said wagonway for their shopping at Gate City, Kingsport and the surrounding areas for the purpose

of getting from their premises to the public highway, and returning from the public highway to their place of residence.

(3) Bridge is 26 feet long and 10.5 feet thereof is on the right of way of the railroad, and approximately 15.5 feet of said bridge is on the premises of petitioners.

(4) From the time that said wagonway was constructed and from the time that said bridge was constructed the Railroad Company has performed all the maintenance of the entire bridge and said wagonway, including that portion of the bridge that is not on the defendants' right of way, as well as that portion of said bridge that is on defendants' right of way.

(5) Petitioners have never at any time in the history of said wagonway, roadway and bridge, done any maintenance and repairs to said bridge; the repairs have been done altogether by defendants. At this time, the portion of the wagonway that goes over the railroad tracks needs no general repairing, but some additional ballast possibly should be added to make the roadway smoother and move even.

(6) A bridge would be needed across the creek to enable petitioners to use vehicular traffic and for vehicular traffic to come in from the public road and across the lands of the petitioners on the north side of said railroad tracks to their residence, in the event that there was no railroad tracks or railroad right of way involved. In this connection petitioners say that such matters would be wholly immaterial to any issue in this case.

RESPECTFULLY SUBMITTED:

This deed made and entered into on this the 6th day of May, 1926, by and between Mary E. Grogan and H. P. Grogan, Jr., her husband, parties of the first part and Robert G. Smith, party of the second part.

Witnesseth, that for and in consideration of the sum of Forty Five Hundred (\$4500.00) Dollars, cash in hand paid, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant, bargain, sell and convey unto the said party of the second part with covenants of general warranty, all that certain tract or parcel of land, lying and being

in Hatfieldville Magisterial District, Scott County, Va., and on Little Moccasin Creek about 2 1/2 miles West of Gate City, and is bounded and described as follows: Beginning at a planted rock on the south side of said road corner to the tract herein described and the tract or parcel of land sold to Samuel McClellan and George S. Barter, running thence N. 77 W. with said road 18 poles to a planted rock, thence S. 80 W. with said road 18 poles to a planted rock, thence N. with said road N. 84 W. 18 poles to a planted rock, thence S. 4 W. 40 poles to a cedar, thence S. 10 1/4 E. 25 poles to a planted oak, thence N. 12 W. 25 poles to a Hickory, sourwood and chestnut, thence S. 80 1/2 E. 70 poles to the pine and chestnut oak at a rock on top of said mountain, thence with the top of said mountain eastward 70 poles to the pine on the top of said mountain, corner to the land sold to Samuel McClellan and George S. Barter, thence N. 10 W. 47 poles to the chestnut, thence S. 80 1/2 E. 25 poles to a Hickory thence N. 1/2 W. 15 poles to a white oak and thence N. 7 W. 40 poles to the beginning, containing 34 acres, more or less. It being the same land that was conveyed by H. P. and Mary E. Benton to the heirs of Ann McClellan, deceased, in the Clerk's office of Scott County in D. B. 28, P. 484, and was by deeds conveyed by the said McClellan heirs to Mary E. Grogan.

Witness the following signatures and seals.

	her	
Mary E. Grogan	(Seal)	
H. P. Grogan, Jr.	(Seal)	

Virginia, Scott County, to-wit:

I, Gus H. Addington, Deputy for H. H. Addington, Clerk of the Circuit Court of said County, do hereby certify that Mary E. Grogan and H. P. Grogan, Jr., her husband, whose names are signed to the foregoing writing, bearing date on May 6, 1926, have each acknowledged the same before me in my county and state aforesaid.

Given under my hand this May 6, 1926.

Gus H. Addington, Deputy Clerk.

Virginia, Scott County, to-wit:

In the Clerk's office of said county the 6th day of February, 1926, the foregoing writing was presented and with certificate annexed, admitted to record and duly indexed at 1 o'clock P. M. D. S. 89, P. 368.

Notary J. M. Crayton Clerk.

A copy-teste John Farrell D. Clark

This Deed made and entered into this the 11th day of August 1943 by and between Robert S. Smith and Josie B. Smith his wife parties of the first part and L.K. Spivey and Claudey Estep Spivey his wife parties of the second part all of Scott County Virginia:

Witnesseth: That for and in consideration of the payment of (\$5600.00) five thousand and six hundred dollars cash in hand, paid to the parties of the first part by the parties of the second part the receipt of which is hereby acknowledged the said parties of the first part hereby sell and convey with covenants of general warranty to the parties of the second part all that certain tract or parcel of land lying and being in Estillville District; Scott County Virginia, some 2 1/2 miles west of Gate City on the waters of Little Moccasin Creek and bounded and described as follows: Being the same identical tract which was conveyed to Robert S. Smith by Mary D. Grogan and H.P. Grogan Sr. by deed bearing date on the 5th day of May 1925, and recorded in Deed Book 89, at page 368, in Scott County Clerk's Office to which reference is made for a more particular description. This conveyance embraces a small triangular lot between the Railroad and the State Highway, upon which a small store house now stands. But the Railroad right of way is not conveyed herein. But this conveyance is made free from all encumbrances but with all the appurtenances thereunto belonging.

Witness the following signatures and seals this day and date above written:

R.S. Smith                      Seal

Josie B. Smith                      Seal

Virginia, Scott County, to-wit:

I, I.C. Coley Commissioner in Chancery for the Circuit Court of Scott County, Virginia do certify that R.S. Smith and Josie B. Smith whose names are signed to the foregoing writing bearing date on the 11th day of August, 1943 have acknowledged the same before me in my County aforesaid. Given under my hand this 11th day of August 1943.

I.C. Coley  
Commissioner in Chancery for the  
Circuit Court of Scott County, Virginia.

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Virginia, Scott County, to-wit:

In the Clerk's Office of said county the 19 day of Aug. 1943, the foregoing writing was presented, and with certificate annexed, admitted to record and duly indexed at 9:45 O'clock A.M.D.B. 118 page 164

Stamp 6.05

Teste:

HP Bontigeh  
Clerk.

A copy-teste:

C. H. Craft  
Clerk.

HP Roatrig et (County Clerk  
 and for the County of Scott, State of Virginia, do  
 certify that the within deed was duly returned in  
 this deed book, and that the same is now on file.  
 Given under my hand and seal this 13th day of Sept 1947  
HP Roatrig et  
 Clerk

The amount due for which the lien was recorded  
 in this deed has been satisfied.  
 Given under my hand this 13th day of Sept 1947  
J. R. Spivey  
 Attorney

This DEED made and entered into this the 3rd day of June, 1946, by and between L. K. SPIVEY and CLAUDIA SPIVEY, his wife, parties of the first part, and HUGH L. BOY, JR., and MADGE BOY, his wife, parties of the second part.

WITNESSETH: That for and in consideration of the sum of FOUR THOUSAND DOLLARS (\$4000.00), TWENTY FIVE HUNDRED DOLLARS (\$2500.00) of which is this day paid cash in hand by the said party of the second part to the said parties of the first part at and before the sealing and delivery of this deed, the receipt whereof is hereby acknowledged by the said parties of the first part, the remaining FIFTEEN HUNDRED DOLLARS (\$1500.00) to be represented by a negotiable promissory note, due and payable three years from date; bearing interest at the rate of six per cent per annum from date; waiving the benefit of the homestead exemption; and ten per cent attorney fee thereof if placed in hands of attorney for collection; and other good and valuable consideration, the said parties of the first part do hereby grant, bargain, sell, and convey unto the said parties of the second part, share and share alike, with covenants of general warranty, a certain triangular strip of land located in Estillville Magisterial District, Scott County, Virginia, on the waters of Little Moccasin Creek and two miles West of the Town of Gate City, Virginia, near Harcom Quarries, and being a part of the real estate conveyed to L. K. Spivey and Claudia Spivey by R. G. Smith, et ux., by deed dated the 11th day of August, 1943, and of record in the Clerk's Office of Scott County, Virginia, in Deed Book No. 118, at page 164, to which reference is hereby made for a more particular and adequate description of said tract of land; the strip of land herein conveyed being a small triangular tract located between the

of way of the Southern Railroad Company and State Highway 53 (U. S. Highway 23); adjoining the Southern Railway Company on the South; adjoining the aforesaid state highway on the North; adjoining R. W. Reed on the East; and adjoining the Southern Railway Company and State highway on the West, containing One-fourth (1/4) of an acre, more or less, together with a store building situate thereon and all other appurtenances thereto belonging and pertaining.

For the same consideration hereinbefore mentioned and described the said parties of the first part do further grant, bargain, sell, convey and delivery unto the said parties of the second part all the merchandise, fixtures, accounts receivable, and good will incident to the said store building, and all the merchandise and fixtures located in said store.

The aforesaid parties of the first part as security for the payment of the unpaid portion of the purchase money consideration herein represented by a negotiable promissory note hereby represented by a negotiable promissory note hereby reserve a vendors' lien on the real estate herein conveyed until said note together with accrued interest have been fully paid.

The aforesaid grantors covenant that they have the right to convey the said land unto the said grantees; that the said grantees shall have quiet possession of the said land, free from all encumbrances; that they have done no act to encumber the said land; and that they will execute such further assurances of the said land as may be requisite.

To have and to hold unto the said parties of the second part, their heirs and assigns forever, in fee simple.

Witness the following signatures and seals.

L. K. Spivey (Seal)

Claudia Spivey (Seal)

STATE OF VIRGINIA

COUNTY OF SCOTT, TO-WIT:

I, Edna M. Davidson, a notary public of and for the County of Scott, in the State of Virginia, doth hereby certify that L. K. Spivey and Claudia Spivey, his wife, whose names are signed to the foregoing writing, bearing date of the 3rd day of June, 1946, have this day acknowledged the same before me in my County and State aforesaid.

My term of office expires on the 28th day of June, 1947.

Given under my hand this the 3 day of June, 1946.

Edna M. Davidson, Notary Public

Virginia, Scott County, To-wit:

In the Clerk's Office of said county the 8th day of June, 1946, the foregoing writing was presented, and with certificate annexed, admitted to record and duly indexed at 9:40 o'clock A. M., D. B. 128, page 179.

Teste: W. P. Roatriger Clerk

A copy-teste: C. H. Craft Clerk.

14

This DEED made and entered into this the 2nd day of April, 1951 by and between HUGH L. BOY, JR. and MADGE BOY, his wife, parties of the first part and R. W. REED, party of the second part.

WITNESSETH: That for and in consideration of the sum of FORTY-SEVEN HUNDRED FIFTY (\$4750.00) DOLLARS, cash in hand paid by the said party of the second part to the said parties of the first part; at and before the sealing and delivery of this deed, the receipt whereof is hereby acknowledged, and other good and valuable consideration, said parties of the first part do hereby grant, bargain, sell and convey unto the party of the second part, with covenants of general warranty, a certain triangular strip of land located in Estillville Magisterial District, Scott County, Virginia, on the waters of Little Moccasin Creek, and two miles West of the Town of Gate City, Virginia, near Marceon Quarries, and being a part of the real estate conveyed to L. K. Spivey and Claudia Spivey by R. S. Smith, et ux., by deed dated the 11th day of August, 1943, and of record in the Clerk's Office of Scott County, Virginia in Deed Book 118 at page 164 to which reference is hereby made for a more particular and adequate description of said tract of land; the strip of land herein conveyed being a small triangular tract located between the right of way of the Southern Railroad Company and State Highway 58 (U. S. Highway 23); adjoining the Southern Railway Company on the South; adjoining the aforesaid state highway on the North; adjoining R. W. Reed on the East; and adjoining the Southern Railway Company and State Highway on the West, containing one-fourth (1/4) of an acre, more

belonging and pertaining.

For the same consideration hereinbefore mentioned and described, said parties of the first part do hereby grant, bargain, sell and convey and transfer and deliver all the merchandise and fixtures and chattel situate in, on and connected with the store building situate on the above mentioned real estate.

The aforesaid grantors covenant that they have the right to convey the said land unto the said grantees; that the said grantees shall have quiet possession of the said land, free from all encumbrances; that they have had no act to encumber the said land; and that they will execute such further assurance of the said land as may be requisite.

To have and to hold unto the party of the second part, his heirs and assigns forever, in fee simple.

Witness the following signatures and seals.

H. L. Boy, Jr. (SEAL)

Madge Boy (SEAL)

15

STATE OF VIRGINIA

COUNTY OF SCOTT, TO-WIT:

I, Faye A. Dishner, a notary public of and for the County and State aforesaid do hereby certify that Hugh L. Boy, Jr. and Madge Boy, his wife, whose names are signed to the foregoing writing bearing date on the 2nd day of April, 1951 have this day acknowledged the same before me in my County and State aforesaid.

Given under my hand this 2nd day of April, 1951

My Commission expires November 3, 1952.

Faye A. Dishner, NOTARY PUBLIC

Virginia, Scott County, to-wit:

In the Clerk's Office of said county the 3rd day of April, 1951, the foregoing writing was presented and with certificate annexed, admitted to record and duly indexed at 11:45

of Book A. M., p. 111, Page 222.

Stamp \$5.50

Teste:

Eva Bortright

Clerk

Clerk

The amount due for which the loan was reserved  
to this deed has been fully satisfied.

Given under my hand, this the 7 day of June 1953

James D. Spivey  
James D. Spivey

James D. Spivey  
in and for the County of Scott, in the State of Virginia, do  
certify that the name, to whom which the loan was reserved in  
this deed have been produced before me, duly recorded.

Given under my hand, this 31 day of July 1953

James D. Spivey

This DEED made and entered into this the 13th day of June, 1951, by and between L. K. Spivey and Claudia Spivey, his wife, parties of the first part, and H. L. Boy, Jr., and Madge Boy, his wife, party of the second part.

WITNESSETH: That for and in consideration of the sum of SEVENTY FIVE HUNDRED (\$7500.00) DOLLARS, FORTY FIVE HUNDRED (\$4500.00) DOLLARS, of which is this day paid cash in hand by the said party of the second part to the said parties of the first part, at and before the sealing and delivery of this deed, the receipt whereof is hereby acknowledged, the remaining \$3,000.00 to be represented by three separate Negotiable Promissory Notes, each in the principal sum of \$1,000.00, all of said notes dated the 13th day of June, 1951, and due and payable one, two, and three years from date, all of said notes bearing interest at the rate of six per cent per annum from date; waiving the benefit of the homestead exemption, and providing for a ten per cent attorney's fee if placed in the hands of an attorney for collection, said notes made and executed by the party of the second part and payable to the parties of the first part, and other good and valuable consideration, said parties of the first part do hereby grant, bargain, sell, and convey unto the said party of the second part, with covenants of general warranty, that certain tract of parcel of real estate lying and being in Estillville Magisterial District, Scott County, Virginia, and being located about two and one half miles west of Gate City on the waters of Little Moccasin Creek and on U. S. Highway No. 23, and being a part of the same tract of real estate conveyed to L. K. Spivey and Claudia Spivey, his wife, by Robert S. Smith and Josie B. Smith, his wife, by deed dated the 11th day of August, 1943, and of record in the Clerk's Office of Scott County, Virginia, in Deed Book No. 118, at Page No. 164, to which reference is hereby made, and being described as follows:

Being the same identical tract which was conveyed to Robert S. Smith by Mary D. Grogan and H. P. Grogan Sr. by deed bearing date on the 5th day of May, 1926, and recorded in Deed Book No. 69, at Page 368 in Scott County Clerk's Office to which reference is made for a more particular description. This conveyance embraces a small triangular lot between the Railroad and the State Highway, upon which a small store house now stands. But the railroad right-of-way is not conveyed herein, together with all the appurtenances thereto belonging and pertaining.

There is reserved and excepted from this conveyance the following described tracts which were conveyed by the parties of the first part to Hugh L. Boy, Jr., Dee Lane, Minnie Lane, his wife, and George E. Lynch and Annabell Lynch, his wife; the deed to Hugh L. Boy, Jr., being under deed of June 3, 1946, and of record in the Clerk's Office of Scott County, Virginia, in Deed Book No. 128, at Page No. 179, to which reference is hereby made, for a full and complete description of same, and containing 1/4 of an acre, more or less; the conveyance to Dee Lane and Minnie Lane being under date of August 26, 1946, and of record in the Clerk's Office of Scott County, Virginia, in Deed Book No. 129 at Page No. 136, to which reference is



hereby made for a full and complete description of same, and containing five acres, more or less, and the conveyance to George E. Lynch and Annabell Lynch, being under date of August 27, 1946, and being of record in the Clerk's Office of Scott County, Virginia, in Deed Book No. 129 at Page No. 143, to which reference is hereby made for a full and complete description of same, and containing twenty acres, more or less.

Parties of the first part as security for the unpaid purchase price consideration represented by the three notes aforesaid, do hereby reserve a Vendor's Lien on the real estate herein conveyed until all of said notes and accrued interest thereon have been fully and completely paid.

The aforesaid grantors covenant that they have the right to convey the said land to the said grantee; that the said grantee shall have quiet possession of the said land, free from all encumbrances; that they have done no act to encumber the said land; that they will execute such further assurances of said land as may be requisite.

To have and to hold unto the said party of the second part, his heirs and assigns forever, in fee simple.

Witness the following signatures and seals.

L. K. Spivey (SEAL)

Claudia Spivey (SEAL)

STATE OF VIRGINIA

COUNTY OF SCOTT, TO-WIT:

I, Ella Mae Ervin, a notary public of and for the County of Scott, State of Virginia, do hereby certify that L. K. Spivey and Claudia Spivey, his wife, whose names are signed to the foregoing writing, bearing date of the 13th day of June, 1951, have this day acknowledged the same before me in my County and State aforesaid.

Given under my hand this the 13th day of June, 1951.

My Commission expires May 8, 1954.

Ella Mae Ervin, NOTARY PUBLIC

Virginia, Scott County, to-wit:

In the Clerk's Office of said county the 14th day of June, 1951, the foregoing writing was presented and with certificate annexed, admitted to record and duly indexed at 10:45 o'clock A. M., D. B. 152, Page 149.

Stamp \$4.95.

Teste: E. B. Gault  
Clerk

A copy-teste:

C. H. Gault  
Deputy Clerk

THIRTIETH JUDICIAL CIRCUIT

COUNTIES OF LEE, SCOTT AND WISE

CITY OF NORTON



JUDGES:

JOSEPH N. CRIDLIN  
JONESVILLE, VIRGINIA

M. M. LONG, JR.  
ST. PAUL, VIRGINIA

February 22, 1974

Mr. Robert Winston  
Attorney at Law  
Norton, Virginia

Mr. Cecil Quillen  
Attorney at Law  
Gate City, Virginia

Re: Boy v. Southern Railway  
Darnell v. Southern Railway

Gentlemen:

I would appreciate your furnishing me with a map or plat of the area of the crossing from the property of plaintiff across the railway right of way to the public road. I am particularly concerned with the area between the railway right of way and the public road. I note that in the Boy case, the plaintiff conveyed the land he owned on the north of the railway. How does he get to the public road?

Very truly yours,

Joseph N. Cridlin

THIRTIETH JUDICIAL CIRCUIT

COUNTIES OF LEE, SCOTT AND WISE

CITY OF NORTON



May 22, 1974

JUDGES:

JOSEPH N. CRIDLIN  
JONESVILLE, VIRGINIA

M. M. LONG, JR.  
ST. PAUL, VIRGINIA

Mr. Robert Winston  
Attorney at Law  
Norton, Virginia

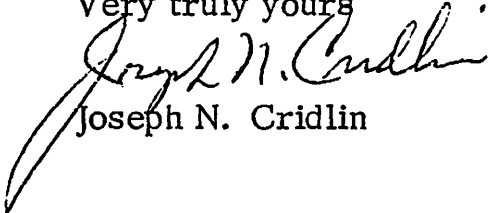
Mr. Cecil D. Quillen  
Attorney at Law  
Gate City, Virginia

Re: Boy v. Southern Railway Company, et als  
Darnell v. Southern Railway Company, et als

Gentlemen:

It is still not clear to me what land, if any, the petitioners own on the North side of the railway property, and between the railway and the highway. I would like this matter clarified by evidence, prior to passing on the demurrer in this case.

Very truly yours

  
Joseph N. Cridlin

THIRTIETH JUDICIAL CIRCUIT

COUNTIES OF LEE, SCOTT AND WISE

CITY OF NORTON



JUDGES:

JOSEPH N. CRIDLIN  
JONESVILLE, VIRGINIA

M. M. LONG, JR.  
ST. PAUL, VIRGINIA

April 5, 1975

Mr. Cecil D. Quillen  
Attorney at Law  
Gate City, Virginia

Mr. Robert T. Winston  
Attorney at Law  
Norton, Virginia

Re: Hugh L. Boy, Jr. et al v. Southern Railway Co. et al  
Ferna Darnell, et al v. Southern Railway Co. et al

Gentlemen:

These cases have been submitted to me upon demurrer.

In so far as the Darnell case is concerned it appears from the pleadings and evidence that the railroad passes through the lands of the petitioners and therefore the petition constitutes a good cause of action under Virginia code section 56-16.

As to the Boy petition it appears that at the time the crossing was constructed the railroad ran through lands of common ownership and the defendant was therefore required to build and maintain the crossing. At this time petitioners do not own land on the North side of the railroad but cross the land of another party to gain access to the highway.

I am of the opinion that the right of the petitioners who now own land South of the railroad is not lost by reason of the fact that the land to the North of the railroad is now owned by another party. There

THIRTIETH JUDICIAL CIRCUIT

COUNTIES OF LEE, SCOTT AND WISE

CITY OF NORTON



JUDGES:

JOSEPH N. CRIDLIN  
JONESVILLE, VIRGINIA

M. M. LONG, JR.  
ST. PAUL, VIRGINIA

would be no stability in such arrangement if every time the property changed ownership, the right to have a crossing maintained would be gained or lost.

I will therefore overrule the demurrer in each case.

An appropriate order may be submitted for entry.

Very truly yours,

*Joseph N. Cridlin*  
Joseph N. Cridlin



VIRGINIA:

IN THE CIRCUIT COURT FOR SCOTT COUNTY

HUGH L. BOY, JR. and  
MARY G. BOY

PETITIONERS

VS:

ORDER

SOUTHERN RAILWAY COMPANY, et al

DEFENDANTS

The Court having considered the Petition and the demurrer filed  
thereto in the above cause doth overrule the demurrer.

The defendants are given 21 days from this date within which to file  
their Answer or Grounds of Defense.

This 27 day of May, 1975.

James H. Cantelero  
JUDGE

Accepted:  
Guilherme

A copy-teste.

Jenna Darrell  
Deputy Clerk

ANSWER

SOUTHERN RAILWAY COMPANY  
and  
VIRGINIA AND SOUTHWESTERN  
RAILWAY COMPANY

DEFENDANTS

TO THE HONORABLE JOSEPH N. CRIDLIN, JUDGE OF SAID COURT:

Your defendants state that the Petitioners are not entitled to the relief requested in the above cause and for their answer to the Petition filed herein state:

I.

The Petitioners own property that is adjacent to the right of way of the defendants, and the Petitioners do not and have not at the same time owned land on both sides of the railroad and the railroad right of way. There is no duty imposed upon the defendants by Virginia Code Section 58-16.

II.

The present roadway across the railroad right of way is used to go from Petitioners' property to the public road and is not used to go from one part of Petitioners' land to the other.

III.

The statute allegedly relied on does not provide for the construction or repair of a bridge from claimants' lands to a public highway nor for the purposes set out in the Petition.

IV.

There is no legal or contractual duty on the part of the railroad to maintain or repair the bridge involved.

V.

Your respondents further state that they are not advised as to the original construction of the bridge and that any voluntary work done by defendants' personnel in the maintenance of the bridge was not because of any legal duty imposed on the railroad or any contractual duty undertaken by the railroad.

VI.

The major portion of the bridge involved is on Petitioners' property, and the duty of the railroad to repair the bridge, if any there is, would not extend to that portion of the bridge that is on Petitioners' property.

VII.

Any duty to repair the bridge is upon the Petitioners and not upon these defendants.

VIII.

These defendants call for strict proof of all allegations concerning the Petitioners' title.

THEREFORE, your respondents pray that the Petition be dismissed and that they be awarded their cost.

O R D E R

SOUTHERN RAILWAY COMPANY  
and  
VIRGINIA AND SOUTHWESTERN  
RAILWAY COMPANY

DEFENDANTS

This cause came on this day to be heard upon all the former proceedings had in said cause and was argued by counsel.

And it appearing unto the Court that, pursuant to Section 56-16 of the Code of Virginia, that petitioners are entitled to the relief prayed for in their petition with respect to the duty of the defendants to keep the wagon way or right of way in repair; and

It further appearing unto the Court that the defendants have failed and refused for more than ten (10) days, after being requested to do so, to make repairs to the bridge, a part of said wagon way across the said defendants' railroad lines; and

It further appearing unto the Court that, pursuant to Section 56-16 of the Code of Virginia, a Board of Commissioners should be appointed, the Court doth hereby ADJUDGE and ORDER that GLEN OSBORNE, C.S. DOCKERY JR., and HOWARD ELLIOT, three disinterested persons, whose lands do not abut on such railroad owned and operated by the defendants, be appointed and shall constitute a Board of Commissioners, who shall on the 15th day of AUGUST, 1975, at 10:00 a.m., go upon said premises and determine whether the said wagon way and said bridge is in need of repairs and should

be repaired by the defendants. And after going upon said premises, they may hear such evidence as either of the parties may desire to offer. The Board of Commissioners shall be duly sworn before executing the terms of this order; and they shall report their decision in writing, together with any evidence adduced before them, to be returned to, and filed in the Clerk's Office of this Court.

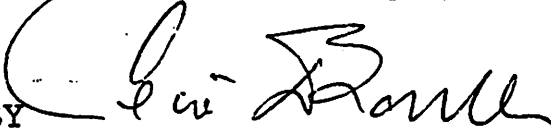
Until the coming in of such report, this cause is hereby continued.

ENTER THIS ORDER, this the 14<sup>th</sup> day of JULY, 1975.

J. N. CRIDLIN  
J U D G E

WE ASK FOR THIS ORDER:

QUILLEN AND CARTER, p.q.

BY   
GATE CITY, VIRGINIA

SEEN AND OBJECTED TO:

GREEAR, BOWEN, MULLINS & WINSTON

BY   
NORTON, VIRGINIA

Defendant requests the Commission  
to make the following findings:

1. The width of the R.R. right of way  
at the Danell property
2. Whether the Danells own any property  
north of the railroad right of way.
3. How much of the bridge is on the  
railroad right of way at the Danell  
property
4. How much of the bridge is on the  
railroad right of way at the Boy  
property
5. Whether the bridge should be repaired  
by the Railroad at each property &  
if so, how much of the bridge at each  
location.

Southern Railway Co.,  
by R.D. Winters, atty.



AUG 15, 1975

WE THE COMMISSIONERS IN THE CAUSE OF  
FERNA DARNELL, ETALS VS SOUTHERN  
RAILWAY CO, ETALS FIND THAT  
THE BRIDGE & WAGON WAY IN SAID  
PETITION ARE IN NEED OF REPAIR AND  
FURTHER AGREE THESE REPAIRS SHOULD  
BE COMPLETED BY SOUTHERN RAILWAY  
CO.

SIGNED

*Glenn Osborne*  
*C. J. [unclear]*  
*Howard K. [unclear]*

AUG 15, 1975

WE THE COMMISSIONERS IN THE CAUSE OF  
~~THE~~ HUGH L. BOY JR. & MARY C. BOY  
VS SOUTHERN RAILWAY CO, ETALS FIND  
THAT THE BRIDGE & WAGON WAY IN SAID  
PETITION ARE IN NEED OF REPAIR AND  
FURTHER AGREE THAT THESE REPAIRS  
SHOULD BE COMPLETED BY SOUTHERN  
RAILWAY,

SIGNED

*Glenn Osborne*  
*C. J. [unclear]*  
*Howard K. [unclear]*

EXCEPTIONS TO  
COMMISSIONERS REPORT

SOUTHERN RAILWAY COMPANY  
and  
VIRGINIA AND SOUTHWESTERN  
RAILWAY COMPANY

DEFENDANTS

TO: THE HONORABLE SAM COLEMAN, JUDGE OF SAID COURT:

The defendants hereby except to the findings of the Commissioners rendered in this cause on August 15, 1975 and for their grounds of exception state:

I.

The Commissioners had no statutory authority nor any jurisdiction to render a report in this cause.

II.

The findings of the Commissioners were not supported by the evidence or the law.

III.

The Commissioners did not restrict the duty of the Railroad to repair the bridge to that portion of the bridge on the railroad's right of way.

IV.

The Commissioners failed to ascertain what portion of the bridge was upon the railroads right of way.

V.

Under the evidence in this case, the Railroad does not bisect the Petitioners property and the requirements of Code Section 56-16 are not applicable. There is no duty on the defendant railroads to maintain or repair the wagon way or the bridge.

VI.

The wagon way and the bridge involved was not used for the purpose of going from one part of the Petitioners property to the other.

VII.

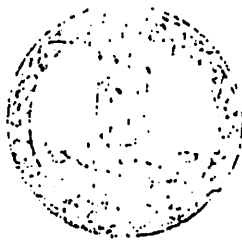
And other grounds to be assigned at bar.

SOUTHERN RAILWAY COMPANY  
and  
VIRGINIA AND SOUTHWESTERN  
RAILWAY COMPANY  
DEFENDANTS,  
By Counsel

JUDGES

M. M. LONG, JR.  
County Courthouse  
Wise, Virginia 24293  
(703) 328-8653

S. W. COLEMAN, III  
P. O. Box 696  
Gate City, Virginia 24251  
(703) 386-7322



CIRCUIT COURTS OF

County of Lee

County of Scott

County of Wise

City of Norton

THIRTIETH JUDICIAL CIRCUIT

July 17, 1978

Cecil D. Quillen, Esquire  
Attorney at Law  
Gate City, Virginia 24251

Robert T. Winston, Esquire  
Attorney at Law  
Norton, Virginia 24273

Re: Ferna Darnell et al  
vs  
Southern Railway Company et al

Gentlemen:

The petitioners in this case filed a petition pursuant to Section 56-16 of the Code of Virginia, praying that the defendants be required to repair a bridge which they alleged is a part of a wagon way and roadway constructed by defendants across defendant's railroad lines.

Defendants demurred to the petition. Depositions were taken by plaintiffs and defendants. The Court on May 27, 1975, overruled the demurrer. Thereafter the defendants filed answers. On July 14, 1975, the Court after considering the evidence and argument of counsel, entered an order reciting that the plaintiffs were entitled to the relief prayed for in their petition; that it was the duty of the defendants to keep the wagon way in repair; that the bridge was a part of the wagon way; and that the defendants had failed to repair the bridge after being given ten (10) days notice requesting them to do so.

Three commissioners were appointed to go upon the land and to determine whether the wagon way and bridge were in need of repair. The commissioners after viewing the premises and

Cecil D. Quillen, Esquire  
Robert T. Winston, Esquire  
July 17, 1978  
Page 2

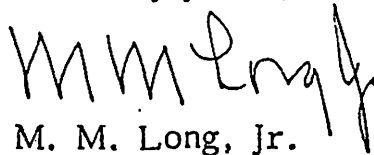
hearing evidence, filed their report stating that the bridge was in need of repair. Defendants filed exceptions to the report and the exceptions are before the Court for consideration.

The commissioners had to determine one question - whether the wagon way and bridge was in need of repairs and should be repaired. It was their finding that the bridge was in need of repairs and should be repaired by defendants. The evidence adduced supports this finding. In fact there was no evidence to the contrary.

All of the other exceptions relate to matters decided by the Court on July 14, 1975. The Court on that date decided that the plaintiffs were entitled to the relief prayed for and determined all the merits of the case with the exception of whether the bridge was in need of repairs. I do not necessarily agree with that finding, but I am of opinion that it is not incumbent upon me to review that decision, but I am limited at this time to ruling on the exceptions filed by defendants.

As stated the finding of the commissioners is supported by the evidence and the other exceptions relate to matters previously decided by the Court. For this reason, the exceptions will be overruled.

Sincerely yours,



M. M. Long, Jr.  
Judge -

MMLJr/ss

ORDER

This cause came on this day to be heard upon all the former proceedings had in said cause and was argued by counsel.

And whereas it previously appearing unto the Court that, pursuant to Section 56-16 of the Code of Virginia, that petitioners were entitled to the relief prayed for in their petition with respect to the duty of the defendants to keep the wagon way or right of way in repair; and

It previously further appearing unto the Court that the defendants have failed and refused for more than ten (10) days, after being requested to do so, to make repairs to the bridge, a part of said wagon way across the said defendants' railroad lines; and

Whereas it further appearing unto the Court that three commissioners were appointed to go upon the land and to determine whether the wagon way and bridge were in need of repair. The commissioners after viewing the premises and hearing the evidence, filed their report stating that the bridge was in need of repair. Defendants filed exceptions to the report and the exceptions are before the Court for consideration.

UPON CONSIDERATION, it is the opinion of the Court as set forth in its letter to counsel dated July 17, 1978, which is hereby made a part of the record, that the exceptions to the commissioners' report should be overruled, there being no evidence contrary to the findings of the commissioners that the aforesaid bridge is in need of repair.

It is therefore ORDERED that such exceptions be overruled and that the defendant repair such bridge as required by law.

Southern's Assignments of Error in its Petition  
for Appeal are as follows:

ASSIGNMENTS OF ERROR

1. The Court erred in overruling the defendants' demurrer.

2. There was an error in finding that there was a duty under Code §56-16 to maintain a wagonway across the railroad for parties who owned land on only one side of the railroad.

3. There was error in appointing commissioners for the purpose of deciding whether the bridge needed repairs and who should make the repairs.

4. The Court erred in entering the Order granting the Petitioners' relief and appointing Commissioners without hearing additional evidence and in not restricting the railroads' duty to that portion of the bridge located on the railroads' right-of-way.

5. The Court erred in failing to sustain the exceptions to the Commissioners' Report, and in failing to exercise its judgment over previous proceedings.

12  
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25

HUGH L. BOY

one of the Petitioners, after having first been duly sworn,  
deposes and says as follows:

DIRECT EXAMINATION

BY MR. QUILLEN:

Q. You are Mr. Hugh L. Boy, Jr., I believe?

A. Yes, sir.

Q. Mr. Boy, do you and Mrs. Madge Boy own  
lands South of the right of way of the Southern Railway and  
the Virginia and Southwestern Railway Company?

A. Yes, sir.

Q. Where is your property located with re-  
ference to the Town of Gate City?



1 A. Approximately 2 1/2 miles West of Gate City.  
2 In other words it lays right across from the little weighing  
3 station where they used to weigh trucks.

4 Q. Where the highway trucks are weighed or  
5 used to be weighed?

6 A. Yes, sir.

7 Q. Where is it with reference to Reed's Store?

8 A. Well, it is the first crossing the other  
9 side of Reed's Grocery Store.

10 Q. Now in getting to your property, how do you  
11 and your family get to your property from the highway?

12 A. Well, there is a crossing there that we  
13 cross over and onto the bridge after we leave the railroad  
14 going right off of the railroad right onto the bridge there  
15 and on over to the house.

16 Q. Now, Mr. Boy, state if you still own any  
17 land which is North of the right of way of the Southern  
18 Railway and Virginia and Southwestern Railway Company?

19 A. No, sir, I don't own any South of there now.

20 Q. The question was North?

21 A. I mean North. Yes, that's right.

22 Q. What I am getting at is there any land there  
23 between the Old 23 right of way and the Railroad right of way?

24 A. Yes, sir. There is a strip there that when  
25

1 the highway come through there and there was a strip there  
2 that belonged to the farm. That was before I bought it.  
3 There was a strip there that belonged to the farm and I used  
4 to own it and then I sold it out. I bought South then when  
5 I bought the farm.

6 Q. Did you all measure this strip that you  
7 are talking about there?

8 A. Yes, sir, I measured a strip there. We  
9 measured it this morning.

10 Q. At the time it was part of a farm, what  
11 is the width of that strip?

12 A. You see when the new highway come up through  
13 there, the old highway when it was widened out, it is still  
14 there along the same roadbed only it is widened out. And  
15 so now they leave down there at my line, where my line  
16 comes across through there, that is on the East side of my  
17 property there, we made a measurement there this morning  
18 and 6 1/2 feet is between the highway and the railroad and  
19 it tapers in, in other words it comes in up there at my  
20 crossing, it come down to 3 inches.

21 Q. And running from 6 feet down to 3 inches?

22 A. Yes, sir.

23 Q. Now with respect to the bridge, I believe  
24 you have a bridge there across the creek?

25 A. Yes, sir.

1 Q. What portion of that bridge is on the  
2 railroad right of way if you know?

3 A. There is 12 foot of the bridge on the rail-  
4 road according to their fence that they have.

5 Q. Now I want to ask you if you know how much  
6 right of way the railroad has at that point?

7 A. Yes, sir, it has 50 foot.

8 Q. I have a copy of a deed which was made  
9 back in 1881 from Elbert W. Quillen, and his wife, Sarah E.  
10 Quillen, and the Bristol Coal and Iron Narrow Gauge Railroad  
11 Company, which sets out the right of way that is conveyed  
12 to this company? That is the same right of way we are talking  
13 about here of the railroad? Is that correct?

14 A. That is correct.

15 Q. And that calls for 50 feet? Is that  
16 correct?

17 A. Yes, sir.

18 Q. And that deed is recorded in the Clerk's  
19 Office of this County in Deed Book No. 23, at page 191?

20 A. Yes, sir.

21 MR. QUILLEN: We desire to introduce  
22 a copy of this deed marked Exhibit No. 1  
23 to Hugh L. Boy.

24 (Deed was marked Exhibit No. 1, Hugh L. Boy,  
25 for identification, and filed herewith.)

1 Q. Now, Mr. Boy, at anytime when you had this  
2 land, with reference now to the North side of the railroad  
3 tracks, did you ever convey a right of way to anyone or not?

4 A. Yes, sir. I sold a right of way across the  
5 property there to Mr. Roy Lynch and his wife, Mary Ruth.

6 Q. I have here a deed dated February 12th.,  
7 1951, from H. L. Boy, Jr. and Madge Boy to Roy Lynch and  
8 Mary Ruth Lynch, which is recorded in the Clerk's Office of  
9 Scott County, Virginia, in Deed Book 150, at page 438. I  
10 will ask you to look at that deed and state if that is the  
11 original deed that conveys that right of way?

12 A. Yes, sir.

13 Q. I notice this calls for a right of way  
14 running from the right of way of State Highway No. 23 and  
15 No. 58 to the right of way of the Southern Railway Company,  
16 said right of way located 25 feet East of the edge of a 4 foot  
17 tile, and being 15 feet in width, and so forth. Now said  
18 right of way 8 1/2 feet in length from the East side and  
19 8 feet on the West side, and crossing over all of the land  
20 belonging to the said H. L. Boy, Jr, between the highway and  
21 the said railroad? That was over the strip of land as I  
22 understand it that was North of the railroad right of way  
23 at that time? Is that correct?

24 A. That's right.  
25

1 Q. And between 23 and 58 and the railroad right  
2 of way?

3 A. Yes, sir.

4 MR. QUILLEN: We desire to introduce  
5 this deed as Exhibit No. 2, Hugh L. Boy, with  
6 the right to withdraw it and return it to Mr.  
7 Lynch.

8 MR. WINSTON: That is all right.

9 MR. QUILLEN: We will supply a copy for  
10 the record.

11 MR. QUILLEN: I believe you may ask Mr. Boy.  
12

13 CROSS EXAMINATION

14 BY MR. WINSTON:

15 Q. Mr. Boy, as I understand it the railroad right  
16 of way there in front of your property is 50 feet wide?

17 A. Yes, sir. According to their fence.

18 Q. Now, Mr. Boy, you are talking about this little  
19 strip of land 6 1/2 feet wide at one corner and tapering  
20 down to 3 inches. Is that the same strip of land that you  
21 purchased in June 1946, from L. K. Spivey and Claude Spivey?

22 A. That's right.

23 Q. And that is sort of a triangular strip of  
24 land?  
25

A. That's right. There is a triangle in there.

1 Q. Well, was there a store building on that strip?

2 A. Yes, sir. I used to operate a store building  
3 on that strip.

4 Q. Is the store still there?

5 A. They made it into a dwelling now. I sold out  
6 to Reed.

7 Q. Have you sold that strip?

8 A. Yes, sir, I sold that strip.

9 Q. The whole strip?

10 A. I sold the whole strip, yes.

11 Q. When did you sell it?

12 A. Let's see, I believe it was in 1949. It was  
13 '49 or '50, but I believe it was '49.

14 Q. When you sold the strip did you retain any  
15 land on the North side of the railraod?

16 A. I bought the rest of the farm.

17 Q. Let me see if I have got it correct. You  
18 bought this triangular strip from L. K. Spivey and his wife  
19 in 1946 and that was on the North side of the railroad?

20 A. That's right.. That was a part of the farm  
21 that I now own.

22 Q. And you sold the same strip you bought in  
23 1946 to Mr. Reed? And you sold that in 1949?

24 A. In '49 I believe it was.  
25

1 Q. And who did you sell it to?

2 A. R. W. Reed.

3 Q. And then you didn't buy the other tract, that  
4 is the tract South of the railroad until 1951? Is that  
5 correct?

6 A. It was '51 or '52. I don't recall.

7 Q. And when you bought the tract South of the rail-  
8 road you had already sold that strip that you got from Mr.  
9 Spivey in 1946 to Mr. Reed.

10 A. Yes, sir. In '49.

11 Q. Do you remember when they moved the road, Old  
12 U. S. 23, in the early thirtys?

13 A. No, sir, I was young then. I remember working  
14 on it. We used to travel up and down through there with a  
15 team on the old highway but I was a very small boy.

16 Q. Do you know whether or not since the early  
17 thirtys if they have done any more widening of U. S. 23,  
18 Old U. S. 23?

19 A. Well, no, sir, not to my knowledge they haven't.

20 Q. Now, sir, this little strip you are talking  
21 about 6 1/2 feet tapering down to 3 inches, do you use that  
22 for anything?

23 A. No, sir. I sold that you see. And now, well,  
24 there are two dwelling houses on that strip through there  
25

1 and they have garden in between the highway and railroad.  
2 This man has a garden there now.

3 Q. I see. Now, Mr. Boy, this road and this bridge  
4 that we are talking about you use that to get from your  
5 home and your place South of the railroad to the public  
6 road, don't you?

7 A. Yes, sir.

8 Q. And that is the reason you use it?

9 A. That is the only way I have of getting out.

10 Q. How much of that bridge is on your property,  
11 if you know, sir?

12 A. There is 12 foot on the railroad and 14 foot  
13 on me.

14 MR. WINSTON: That is all.

15 AND FURTHER THIS DEPONENT SAYETH NOT

16 SIGNATURE WAIVED

17  
18 ROY LYNCH, SR.

19 a witness in behalf of Petitioners, after first being duly  
20 sworn, deposes and says as follows:

21 DIRECT EXAMINATION

22 BY MR. QUILLEN:

23 Q. State your name, please?

24 A Roy Lynch, Sr.  
25



1 Q. And where do you live. Mr. Lynch?

2 A. Approximately 2 1/2 miles West of Gate City.

3 Q. Where do you live with reference to where Mr.  
4 Hugh L. Boy lives?

5 A. Oh, I would say within 400 feet of him. It  
6 is almost straight across the road.

7 Q. Is your property on the South side of the  
8 railroad right of way?

9 A. My brother, my sister, and I, we have 20 acres  
10 of land that lays over in there.

11 Q. Now I want to ask you if you were up at Mr.  
12 Boy's and made some measurements there of a strip of land  
13 between the railroad right of way and the highway?

14 A. Yes, sir, I did.

15 Q. Just tell the Court what you found there?

16 A. We found down at his line we found 6 feet and  
17 1/2 down there and 3 inches up at the road crossing.

18 Q. And that is now between the railroad right of  
19 way and the highway?

20 A. The State right of way, yes.

21 Q. Now back in 1951 did you acquire a right of  
22 way over the strip of land between the highway right of  
23 way and the railroad right of way?  
24

25 A. Yes, sir, I did.

1 Q. There has been introduced, Mr. Lynch, a deed  
2 dated February 12, 1951, from H. L. Boy, Jr and Madge Boy,  
3 to Roy Lynch and Mary Ruth Lynch?

4 A. Yes, sir.

5 Q. Now look at that and state if that is the deed  
6 to the right of way you are talking about?

7 A. Yes, sir, I know it is.

8 Q. I believe it says there it is 8 1/2 feet in  
9 length on the East side and 8 feet on the West side crossing  
10 over all the land belonging to the said H. L. Boy between  
11 the highway and the said railroad?

12 A. Yes, sir. That's right.

13 MR. QUILLEN: I believe you may ask Mr. Lynch.

14  
15 CROSS EXAMINATION

16 BY MR. WINSTON:

17 Q. Mr. Lynch, this right of way you have got is  
18 that over the same land that Mr. Boy later sold to Mr. Reed?

19 A. That's right. The right of way goes across  
20 Mr. Boy into the land where my brother and sister own and  
21 where my mother and father left over there now. So actually  
22 there are two dwellings over in there.

23 Q. This strip you say you helped measure, 6 feet  
24 in width at one point and tapering down to 3 inches, is  
25 that strip the same tract of land that Mr. Boy sold to

1 Mr. Reed?

2 A. It is the same strip.

3 Q. Same strip?

4 A. Yes, sir.

5 MR. WINSTON: I believe that is all.

6 REDIRECT EXAMINATION

7 BY MR. QUILLEN:

8 Q. How do your mother and father get over to their  
9 property?

10 A. The land that they own is off of the farm that  
11 Mr. Boy owns now. When Mr. Smith owned it, he sold it to  
12 Spivey, L. K. Spivey, and then Mr. Spivey sold my brother  
13 approximately 20 acres of land. My father and mother bought  
14 it off of my brother over in there. So the right of way  
15 that we have crosses over Mr. Boy's land going in there over  
16 the same bridge, or crossing if you want to call it that.

17 Q. The same crossing?

18 A. Yes, sir.

19 Q. Is that the only way they have of getting in?

20 A. That is the only way in and that deed that  
21 you see there, I bought that right of way in order to run  
22 a water line, come out of there with water out of that  
23 mountain and so I could put a road across there to cross  
24 over into this other bottom in there where you couldn't get  
25

1 in any other way.

2 MR. QUILLEN: I believe that is all I want to ask  
3 Mr. Lynch.

4 AND FURTHER THIS DEPONENT SAYETH NOT  
5 SIGNATURE WAIVED

6 HUGH L. BOY

7 recalled for further Direct Examination, deposes and says  
8 as follows:

9 FURTHER DIRECT EXAMINATION

10 BY MR. QUILLEN:

11 Q. Mr. Boy, in your chain of title which has been  
12 introduced heretofore with the papers, I believe at one time  
13 Mr. Robert Smith owned the land that you now own South of  
14 the railroad, and also the land that is North of the railroad  
15 right of way and between the railroad right of way and the  
16 highway? Is that correct?

17 A. Yes, sir.

18 Q. And then he sold both the land on the South  
19 side and the land on the North side to Mr. L. K. Spivey?

20 A. Yes, sir.

21 Q. And then you bought first the land North of the  
22 railroad right of way and between that right of way and the  
23 highway?

24 A. That's right.  
25

1 Q. And then later on you bought the other tract?

2 A. That's right.

3 Q. In other words as I understand it both Mr. Smith  
4 and Mr. Spivey were owners of all of that property on both  
5 sides of the railroad right of way?

6 A. That's right.

7 Q. Now have you measured the distance from the  
8 center of the track to the fence which fences the railroad  
9 right of way?

10 A. Yes, sir.

11 Q. And what is that distance?

12 A. I believe it was 24 foot and 9 inches. I mean  
13 they must have set back approximately 3 inches.

14 Q. In other words practically 255 feet?

15 A. Yes, sir, it was practically 25 feet.

16 Q. And that is the right of way now South of the  
17 railroad? Is that right?

18 A. That's right. There is no fence on the North  
19 side, just on the South side.

20 MR. QUILLEN: All right, sir.

22 FURTHER CROSS EXAMINATION

23 BY MR. WINSTON:

24 Q. Summing it up, Mr. Boy, I understand you bought  
25 the tract North of the railroad right of way in '46, and

1 then you sold it before you bought the tract South of the  
2 railroad?

3 A. That's right. My brother-in-law owns a tract,  
4 well, it belongs to the same farm. And I bought the triangle  
5 in there between the highway and the railroad and when I  
6 sold it I bought the other, the mountain side.

7 MR. WINSTON: All right.

8 FURTHER REDIRECT EXAMINATION

9 BY MR. QUILLEN:

10 Q. Mr. Boy, how long have you been using that  
11 grade crossing?  
12

13 A. Well, ever since I have owned the property that  
14 is the only way I have getting in and out.

15 Q. In other words and to get to that crossing if  
16 there is any land left there between the highway right of  
17 way and the railroad right of way, you have been using that  
18 to get to the grade crossing and to the bridge upon your  
19 property? Is that right?

20 A. Yes, sir.

21 Q. And I believe that is something like 21 or 22  
22 years ago you say that you started using it?

23 A. Yes, sir.

24 Q. And you have used it continuously ever since?

25 A. Yes, sir.

ROBERT PETERS

a witness in behalf defendants, after first being duly sworn,  
deposes and says as follows:

DIRECT EXAMINATION

BY MR. WINSTON:

Q. Please state your name and position to the  
Court?

A. Robert Peters, and I am Claim Agent for Southern  
Railway Company.

Q. Mr. Peters, I believe that at my request you  
have gotten a copy of a railroad map, dated December 31,  
1927, which apparently covers the area of the Darnell and  
Boyd Property? Is that correct?

A. That's right. I have.

Q. Now from your knowledge of the area you have  
located on the map the approximate location of the Darnell  
Property and the Boyd Property?

A. Yes, I have.

Q. I hand you a Xerox excerpt and ask you if that  
is a Xerox of a portion of this map?

A. Yes, it is.

Q. Does it show where the Darnell Property and  
the Boy Property are?

A. Yes, approximately.

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1 Q. I believe you have written on there "Darnell"  
2 and "Boy", haven't you?

3 A. Yes.

4 Q. Now from this railroad map does it indicate  
5 the width of the right of way?

6 MR. QUILLEN: Is it on my copy? Where  
7 is it?

8 MR. WINSTON: I think so. Let's do this.  
9 I have one copy of the big map.

10 Q. First, let me ask you this, on this copy of  
11 this bigger map I believe you have written in red the "Boy"  
12 and "Darnell," haven't you?

13 A. Yes, that is correct.

14 Q. And where was this map kept?

15 A. This particular one came out of the engineering  
16 office in Atlanta.

17 MR. WINSTON: We offer the Big Map as  
18 Defendant's Exhibit No. 1.

19 (Big Map was marked Defendant's Exhibit No. 1  
20 for identification, and filed herewith.)

21 Q. I made excerpts, but this is the big map?

22 A. Yes, it is.

23 Q. What does it indicate is the width of the right  
24 of way in the area of the Boy Property?

25 A. A total of 50 feet, measuring 25 feet from the

53



1 center of the track.

2 Q. And coming down near the Darnell Property what  
3 does it indicate the width of the right of way is?

4 A. It is the same, 25 foot from the center all the  
5 way through there.

6 Q. Now on this 1927 map does it have the location  
7 of Old 23 that you can see?

8 A. Yes. It does.

9 Q. And does it also have a crossing across the  
10 railroad in the apparent location of the Darnells?

11 A. Yes, it does.

12 MR. WINSTON: I want to state to the Court  
13 that yesterday I obtained some highway maps  
14 from the District Office in Bristol, that is  
15 Xerox or photo copies and I had Mr. Peters to  
16 look at them this morning and give us the benefit  
17 of what correlation he can do on them.

18 Q. Mr. Peters, I believe this morning I have shown  
19 you some highway maps?

20 A. Yes, that is correct.

21 Q. And asked you to check them against the railroad  
22 maps to see if you could identify the highway map as covering  
23 the particular areas? Is that correct?

24 A. Yes.  
25

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1 Q. I first show you a highway map identified as  
2 Route 58, Project L73 A, Sheet 5 of full Sheet 10, Right  
3 of Way Y 71334, and I will ask you to look at that and if  
4 you can determine about where the Boy Property is, that is  
5 from your correlation of that with the railroad map?

6 A. I can determine in the approximate vicinity  
7 because that crossing is not shown specifically on this map.

8 Q. How did you determine, I mean how were you able  
9 to determine where it is?

10 A. Correlating from the J. M. and J. B. Snodgrass  
11 property which is across from, the original property was  
12 across from the property which Mr. Boy owns.

13 Q. Would you take a pencil then from your study  
14 of the two maps and circle where from your study the Boy  
15 Property appears to be on the highway map.

16 A. It is somewhere in this vicinity here.

17 Q. Put a "B" there for Boy?

18 A. (Witness places marking on map as requested.)

19 MR. WINSTON: We will offer this highway  
20 map as Defendant's Exhibit No. 2.

21 (Highway Map was marked Defendant's Exhibit  
22 No. 2 for identification, and filed herewith.)

23 Q. Now have you also been able to look at these  
24 highway maps that I showed you this morning and located  
25 approximately where the Darnell Property is?

55

1 A. The W. N. Darnell Property is labeled on these  
2 maps.

3 Q. Does it show Old Route 23 and 58?

4 A. Yes, it does.

5 Q. And does it apparently show where the new  
6 route is?

7 A. Yes.

8 Q. Now I will identify these as State Route 58,  
9 Project 478 A, Sheet No. 6, Revised 1-8-34, and State  
10 Route 58, Project 478, Sheet No. 7, Revised 1-8-34, and  
11 ask you if these two sheets show the Darnell Property?

12 A. Yes, it lists the property of W. N. Darnell.

13 Q. I realize you are not a highway map man but  
14 from your looking at it does it appear that the new Route  
15 58 coincides with the railroad map?

16 A. Yes, it does.

17 (Sheets 6 & 7 of highway map were marked Def-  
18 endant's Exhibits Nos. 3 and 4 respectively,  
19 for identification, and filed herewith.)

20 MR. WINSTON: I believe that is all.

21 CROSS EXAMINATION

22 BY MR. QUILLEN:

23 Q. Now, Mr. Peters, have you been on the property  
24 up there and actually seen this situation on the ground?

25 A. Yes, I have.

56

1 Q. Did you make a measurement from the center  
2 line of the railroad tracks South to the fence?

3 A. No, I did not.

4 Q. You don't know what that distance is then?

5 A. No.

6 Q. The railroad right of way is fenced along  
7 there, isn't it, through the Darnell Property?

8 A. There is an old fence that runs through there.  
9 I do not know what its correlation with the right of way  
10 would be. Assuming there was a 25 foot right of way the  
11 fence would have to be built down in the edge of the creek.

12 Q. And you didn't consider it necessary then to  
13 measure that distance?

14 A. No, I did not make any measurement from the  
15 fence to the track.

16 Q. Do you know the length of that bridge?

17 A. No, I have not measured the entire length of  
18 the bridge.

19 Q. Assuming that bridge is 25 feet, then practically  
20 all of that bridge would be on the railroad right of way,  
21 wouldn't it?

22 A. No, sir. Less than half of it would be on  
23 the 25 foot portion of the railroad.

24 MR. QUILLEN: All right. That's all.  
25

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17  
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ROBERT PETERS

a witness recalled on behalf of the defendants, after first being duly sworn, deposes and says as follows:

DIRECT EXAMINATION

BY MR. WINSTON:

Q. Mr. Peters, I believe you previously gave evidence in this case?

A. Yes, sir.

Q. Now at the time of the last hearing we had in this case I believe we went down to the Darnell Bridge and you made some measurements and made a sketch?

58

1 A. Yes. I did.

2 Q. Now I hand you a sketch and ask you if you  
3 made that sketch and if there is on there certain measurements  
4 you made?

5 A. Yes, I did.

6 Q. Now looking at the sketch I believe you have  
7 North in the right hand corner?

8 A. Yes.

9 Q. And looking on the sketch you show coming  
10 from the Darnell Property crossing the creek onto the rail-  
11 road and on to Highway 23?

12 A. That is correct.

13 Q. Now did you make measurements from the center  
14 of the track to the center of the highway?

15 A. Yes, sir.

16 Q. What was the distance between the center of  
17 the track and the center of the highway?

18 A. From the center line of the railroad to the  
19 white line of the highway is 61 foot and 10 inches.

20 Q. Now there has been evidence here that the  
21 highway had a right of way of 10 feet from the center.  
22 Assuming a 25 foot right of way from the center of the rail-  
23 road, how does that figure total distance?

24 A. That makes the two right of way lines overlap  
25 approximately 2 inches.

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1 Q. Now did you also measure from the center  
2 of the railroad to where the bridge begins?

3 A. Yes, sir.

4 Q. And what is that distance?

5 A. To the very edge of the first timber?

6 Q. Yes, sir?

7 A. That is 11 feet and 5 inches.

8 Q. What is the distance from the center of the  
9 railroad track to the fence line that has been testified to?

10 A. At the present time it measures 14 feet.

11 Q. What about to the telephone line?

12 A. From the center line of the railroad to the  
13 North edge of the telephone pole measures 13 foot and 6 inches.

14 Q. Now what is the fence built on?

15 A. The fence is built very close to the top  
16 edge of the fill on which the railroad bed is situated.

17 Q. What is the distance from the center of the  
18 track to the creek bed?

19 A. The creek is kindly uneven down through there  
20 but taking an average measurement at four or five different  
21 places it is approximately 22 feet from the center line of  
22 the railroad out to the edge of the fill. There are places  
23 that the creek runs right up against the railroad fill  
24 itself where the track has been built.  
25

60

1 Q. If the fence had been put 25 feet from the  
2 center of the track, where approximately would it have run?

3 A. Through the center of the creek.

4 Q. But the fence was put up on the edge of the  
5 fill?

6 A. Yes. Very close to the edge of it. The  
7 railroad through that entire area is built on a fill. It  
8 has been built up.

9 Q. Now if as the Petitioners maintain the right  
10 of way is only 25 feet wide, that is 12 1/2 feet from the  
11 center of the track, on their premises how much of the bridge  
12 would be on the railroad right of way?

13 A. One foot and 1 inch, or 13 inches.

14 Q. Of course assuming it is 50 feet wide, 25 feet  
15 on each side, then it would be more, wouldn't it?

16 A. It would be approximately the center of the  
17 creek.

18 MR. WINSTON: You may ask him.

19  
20 CROSS EXAMINATION

21 BY MR. QUILLEN:

22 Q. Now, Mr. Peters, I believe you show on this  
23 sketch from the center of Highway 23 to the center of the  
24 railroad track 64 feet and 10 inches? Is that correct?

25 A. Yes, sir.

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1 Q. Now with reference to the area South of the  
2 Highway right of way where is land there that is between  
3 the railroad right of way and the right of way of the high-  
4 way, is there not? On the North side I am speaking of?

5 A. No, sir, not with a 25 foot right of way  
6 from the center line.

7 Q. In other words you are stating that if the  
8 right of way is measured 25 feet from the center of the  
9 Southern Railway there is no land left there?

10 A. That is right.

11 Q. I believe you said there was an overlap of  
12 how much?

13 A. Two inches. And that could be in the width  
14 of the white line on the highway or the way it is laid out.  
15 The right of ways should meet.

16 Q. Now did you locate the exact right of way of  
17 Highway 23 there when you were making those measurements?

18 A. I measured from the center or the white stripe  
19 in the highway back 40 feet.

20 Q. In other words your thought is that the right  
21 of way is 40 feet on either side of the center line of the  
22 highway?

23 A. That is the previous evidence that was in-  
24 troduced here from the highway maps and that is the  
25 information I used in determining that.

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1 Q. Now then if you measured 12 1/2 feet from  
2 the center of the railroad track, there would be what amount  
3 of land on the North side of the railroad?

4 A. Measurement 12 1/2 foot from the center that  
5 would leave 12 foot or inch ditch line.

6 Q. There is a ditch line on the North side of  
7 the railroad?

8 A. That is correct. And that is a drainage  
9 ditch that has water running in it at the present time.

10 Q. I believe you stated if you projected 25 foot  
11 from the center line of the railroad you would go how many  
12 feet on the bridge?

13 A. It is approximately the center of the creek.  
14 I don't have that exact measurement shown on here.

15 Q. This sketch is not to scale?

16 A. It would be about one-half of the bridge.

17 Q. Half of the bridge?

18 A. That is correct.

19 Q. In other words about half of it would be on  
20 the right of way? That's all.

21 MR. WILSON: We enter this sketch as Defendants'

22 Exhibit No. 7.

23 (Sketch as marked Defendants' Exhibit No. 7  
24 and filed herewith.)

25 AND FURTHER THIS DEPONENT SAYETH NOT

SIGNATURE WAIVED

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RICHARD WATKINS

a witness called in behalf Defendants, after first being duly sworn, deposes and says as follows:

DIRECT EXAMINATION

BY MR. WINSTON:

Q. State your name, Sir?

A. Richard Watkins.

Q. What is your position with the Southern Railroad?

A. Division Engineer of the Appalachian Division.

Q. And as Division Engineer are you familiar with the right of way of the Southern Railway through Scott County, Virginia?

A. Yes, sir.

Q. There has been introduced these maps here, dated 1927, called "Right of Way and Track Map, Virginia and Southwestern Railway Company, operated by the Southern Railway Company." I believe you have looked at that map this morning, is that correct, Sir?

A. Yes, sir. I have.

Q. Now on this particular map, if you would come around here, Sir, there is notations here in red "Darnell" and "Hackney" and there is a notation "Boy." I will ask you according to this map what is the width of the right of way of Southern Railway, first in the area of the Darnell

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1 property, according to the map?

2 A. According to our right of way map, which would  
3 be 1 over 9 evaluation map, we would have 25 feet on either  
4 side of the track from the center of the track as designated  
5 at this point right here.

6 Q. What about in the area of the Boy Property,  
7 what is the width of the right of way?

8 A. In the area of the Boy Property you have the  
9 same distance which is 25 feet from the center line of the  
10 track on either side.

11 Q. Do you know of any track you have less than  
12 50 feet width, I mean of your own knowledge in Scott County?

13 A. Yes, sir, we have some on this map right here.  
14 You have at this point right here 12 1/2 feet from the center  
15 line of the track.

16 Q. That is near the Scott County Poor Farm?

17 A. Yes, sir.

18 Q. That is up the tracks West of the Darnell Area?

19 A. Yes, sir. And we also increase to a 50 foot  
20 right of way from the center line of the track just beyond  
21 the Boy Property.

22 MR. WINSTON: I believe that is all, Sir.

23 MR. QUILLEN: I want to ask you a question or  
24 two.  
25

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CROSS EXAMINATION

BY MR. QUILLEN:

Q. Point out if you will what you base the 12 1/2 feet on?

A. All right. 12.5 is designated right here if you will watch your right of way lines, this is the center line of your track and this is the right of way on the other side of the track. You come down to this survey point right here 18 17 plus 00, at that point it decreases from 25 feet from the center line of the track to 12.5 on either side. Coming back this way you have got 25 feet coming all the way through, all the way up to Boy's Property, and then it comes up to 50 feet at this station right here 18 97 plus 0.95.

Q. Have you gone on the premises before testifying this morning and viewed the premises?

A. Yes, sir.

Q. Did you make any measurements from the center of the track there at the crossing into the Darnell Property, the center line of the railroad?

A. No, sir, I made no measurements.

Q. Over to the fence?

A. No, sir.

Q. Why didn't you measure that?

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1           A. I had no need to measure it. Our right of way  
2 map shows what our right of way is there.

3           Q. How long have you known this particular prop-  
4 erty and this particular area and this particular piece of  
5 track?

6           A. I have only been here a little over a year.

7           Q. A little over a year?

8           A. Yes.

9           Q. Well, in fencing right of ways don't railroads,  
10 and particularly doesn't the Southern and Virginia and  
11 Southwestern place their fences on the right of way line?

12          A. I couldn't answer that because I am not positive  
13 how they used to place them. I don't really know.

14          Q. Well, if the Virginia and Southwestern Railway  
15 Company and Southern Railway Company had 25 feet from the  
16 center line, wouldn't they have fenced the entire 25 feet  
17 on the South side of the center line of that track?

18          A. I couldn't answer that, Sir, because you have  
19 got a creek over here and that 25 feet may have been in the  
20 creek on this side over here.

21          Q. Assuming it wasn't a creek, wouldn't you have  
22 fenced it?

23          A. I don't know. I have only been in Virginia  
24 for a year and as I say I am not that familiar with fencing.  
25

1                   Q. And of course you know nothing of the authentic-  
2                   ity of this map? You simply have a map from the files of  
3                   the Virginia and Southwestern Railway?

4                   A. No, Southern Railway map.

5                   MR. QUILLEN: That's all.

1 BY MR. QUILLEN:

2 Q. You are Mr. H. L. Boy?

3 A. Yes sir.

4 Q. And you and your wife are the petitioners in a  
5 companion suit filed here in court?

6 A. Yes sir.

7 Q. Against the railroad. Now, Mr. Boy, go ahead and  
8 explain to the commission just what the situation  
9 is in reference to that bridge there?

10 A. Well, the bridge it's in a bad state of repair.  
11 And when I moved there now the former bridge I don't  
12 know who put it in but the one that's there now  
13 I watched the railroad put it in. They put that  
14 in. I called them and told them it was in a bad  
15 state of repair that was approximately eighteen or  
16 twenty years ago, somewhere around there. They  
17 come and put in two new beams and used two of the  
18 old ones which one of the old ones had done  
19 rotted out and is gone and the other one is laying  
20 there which it's falling apart. They's only two  
21 beams there that are supporting the bridge. And  
22 when I have my coal and stuff hauled in they only  
23 bring a half load across at a time. They are

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Sharon D. Welch

Court Reporter

Gate City, Virginia 24251



1           afraid to cross it and so that's why we had to  
2           have this suit was on account of the bridge. It  
3           is in a dangerous state.

4   Q.       What about the condition of that grade crossing  
5           there?

6   A.       Well, the crossing there, the crossing is in bad  
7           shape. We had, there was big holes there right  
8           in the track that we were afraid our wheels  
9           would hang there. And my wife one day when I  
10          was gone to work she took and mixed up a little  
11          cement and poured in there to try to patch them  
12          holes afraid that the wheels would hang in there.  
13          And then the railroad just kept building up and  
14          building up and the bridge is going down and  
15          big part of the times vehicles will drag. They  
16          will drag on the bottom and --.

17   Q.       Yes sir. Now, have you also looked at Miss  
18           Ferna's bridge there?

19   A.       Yes, I looked at Ferna's bridge.

20   Q.       State briefly what that situation is?

21   A.       There as we checked her bridge, the floor on  
22           that like it is on mine, it's all dry rot and  
23           it began to fall in which she has had to put some

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1 wide timbers across long ways to keep from going  
2 down as well as I had put on mine. And the  
3 creek is washing out behind hers next to the  
4 railroad and her whole bridge needs recovering.

5 Q. I believe you may ask, Mr. Boy.

6 CROSS EXAMINATION

7 BY MR. WINSTON:

8 Q. Mr. Boy, you and your wife do not own any property  
9 to the north of the railroad right of way, do you?

10 MR. QUILLEN: Of course, we object to that, that's  
11 immaterial. The court has already made a finding  
12 that --.

13 Q. I want to get it in the record.

14 MR. QUILLEN: Alright sir and I'll make my response. Let  
15 me make my objection. If the commission please  
16 and the Court in Judge Cridlin's memorandum of  
17 opinion he made a finding that at the time of the  
18 crossing, establishment of the crossing, that a  
19 common owner owned land on both the north side and  
20 the south side of the railroad and under the  
21 statute, of course, the duty was on the railroad  
22 to provide a grade crossing, to do whatever was  
23 necessary to make access. The fact that Judge

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1 Cridlin so held and I want to dictate this into  
2 the record. "I am of the opinion that the right  
3 of petitioners who now own land south of the  
4 railroad is not lost by reason of the fact that  
5 the land to the north of the railroad is now owned  
6 by another party. There would be no stability  
7 in such an arrangement if everytime the property  
8 changed ownership the right to have a crossing  
9 maintained would be gained or lost."

10 Q. Alright sir, subject to your objection and for the  
11 record, you and your wife do not own any property  
12 north of the railroad right of way, do you sir?

13 A. No sir not now.

14 Q. Well, when you previously owned property north  
15 of the railroad right of way at that time you  
16 didn't own the property south of the railroad, did  
17 you?

18 A. No sir.

19 Q. I mean you held it at different periods of time.

20 A. That's right.

21 Q. And you use this bridge and this right of way to  
22 get to your property across the railroad and to  
23 the public road?

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Sharon B. Welch

Court Reporter

Gate City, Virginia 24231

1 A. That's the only way I have out, yes sir.

2 Q. I think that's all.

1           CLAUDE STARNES, a competent witness, after having  
2 first been duly sworn, deposed as follows:

3                           DIRECT EXAMINATION

4           BY MR. QUILLEN:

5           Q.        You are Mr. Claude Starnes, I believe?

6           A.        Yes sir.

7           Q.        Claude, are you any relation to Miss Ferna by  
8 blood or marriage?

9           A.        No sir.

10          Q.        She's your sister-in-law, isn't she?

11          A.        Yes.

12          Q.        But you're no relation by blood but by marriage  
13 you are?

14          A.        Yes.

15          Q.        What's your occupation, Claude?

16          A.        I'm a carpenter, plumber and a little of everytning.

17          Q.        Alright sir. Now, are you familiar with this  
18 bridge there that goes across Miss Ferna's  
19 property there?

20          A.        Yes sir.

21          Q.        State if you have examined that bridge on more than  
22 one occasion?

23          A.        Yes sir.

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1 Q. Tell the commission just what the condition of that  
2 bridge is?

3 A. It needs a top on it in places.

4 Q. It is in need of repair?

5 A. Yes sir.

6 Q. Have you also examined the Boy bridge?

7 A. Yes sir.

8 Q. What's the condition of that bridge?

9 A. It's pretty bad. It's about all rotted out.

10 Q. About all rotted out. I believe you may cross-  
11 examine.

12 CROSS EXAMINATION

13 BY MR. WINSTON:

14 Q. You don't know how much of the Starnes bridge is  
15 on the railroad right of way, do you sir?

16 A. Well, no not right off. It's partly on the rail-  
17 road.

18 Q. But you don't know how much. And you don't know  
19 how much of the Boy bridge is on the railroad  
20 right of way?

21 A. No sir I haven't measured it. I'd say it's about  
22 eleven feet.

23 Q. I believe that's all.

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1 FRANK WOLFENBARGER, a competent witness, after  
2 having first been duly sworn, deposed as follows:

3 DIRECT EXAMINATION

4 BY MR. QUILLEN:

5 Q. You are Mr. Rufus Wolfenbarger, I believe?

6 A. Frank.

7 Q. Frank, I'm sorry. I do apologize. Where do you  
8 live now, Mr. Wolfenbarger?

9 A. Three miles west of Gate City.

10 Q. Where do you live in reference to where Miss Ferna  
11 Darnell lives?

12 A. Just across the street not very much. I'd say  
13 fifty to one hundred feet.

14 Q. Are you familiar with that property there?

15 A. Yes sir.

16 Q. Are you also familiar with that bridge?

17 A. Yes sir.

18 Q. Have you looked at that bridge more than one time?

19 A. Yes sir, several times.

20 Q. Several times. State to the members of the commissi  
21 just what the condition of that bridge is with  
22 reference to need of repairs at this time?

23 A. Well, the floor on it seems to be pretty well

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1           decayed and the abutments, what I call, or piers  
2           at the end of the bridge they're all, look to me  
3           like they're almost washed out. So that would  
4           make the bridge pretty dangerous.

5    Q.       Yes sir. Now, have you also looked at Mr. Boy's  
6           situation there?

7    A.       Yes sir.

8    Q.       State with the reference to his situation.

9    A.       Well, his bridge is just about the same condition  
10           as --. The flooring and everything is decayed  
11           pretty bad and the ends of the bridge where  
12           they're setting on the abutments there are washed  
13           out. Of course, I talking about the crossing I  
14           don't know anything about that but the crossing is  
15           bad, very bad. And it seems to me like it's too  
16           low. It should be raised coming up to the bridge  
17           in order for it to be more easier to get on and  
18           safer.

19   Q.       I believe you may ask Mr. Wolfenbarger.

20                           CROSS EXAMINATION

21   BY MR. WINSTON:

22   Q.       Mr. Wolfenbarger, you don't know how much of the  
23           Starnes bridge is on the railroad right of way, do

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1                   you sir?

2       A.           No, I didn't measure that. But I would say it's  
3                   at least four to five feet the way I understand  
4                   the right of way there.

5       Q.           And you don't know how much of the Boy bridge is  
6                   on the railroad right of way?

7       A.           No, I don't.

8       Q.           And of course the Boy's and the Starnes use  
9                   these bridges to go over their property across  
10                  the railroad to the public road?

11      A.           That's right.

12      Q.           That's all.

13                  CLARENCE LANE, a competent witness, after having  
14      first been duly sworn, deposed as follows:

15                                   DIRECT EXAMINATION

16      BY MR. QUILLEN:

17      Q.           I believe you are Mr. Clarence Lane?

18      A.           Yes sir.

19      Q.           Where do you live, Mr. Lane?

20      A.           Approximately two and a half miles west of Gate  
21                  City.

22      Q.           Are you now working or have you retired?

23      A.           I'm retired.

- 1 Q. What was your former occupation?
- 2 A. Salesman for a grocery company.
- 3 Q. Kingsport Grocery, I believe.
- 4 A. (Nods head yes)
- 5 Q. Do you live in the general vicinity of Mrs. Ferna
- 6 Darnell and her folks?
- 7 A. Yes.
- 8 Q. Are you familiar there with that bridge Mr. Lane?
- 9 A. Yes, I've known about that bridge for several
- 10 years and recently I was there to look at the
- 11 bridge a short time ago, couple of weeks ago.
- 12 Q. Now, with reference to the need for repair, state
- 13 what you found?
- 14 A. Well, I saw that the top of the bridge, the floor,
- 15 in my opinion needed repair and that the railroad
- 16 side of the end of the bridge the water seemed to
- 17 be eating away pretty much at the foundation, the
- 18 abutment or what have you.
- 19 Q. Yes sir. Now, did you also look at the Boy bridge?
- 20 A. Yes.
- 21 Q. State what your findings are there?
- 22 A. Well, I found in my opinion that the bridge is in
- 23 a bad state of repair, needs repair very badly.

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1 And it seemed that there was originally about  
2 four beam supports on the bottom of that and actually  
3 right now there's only two beams that I found  
4 that was giving support. And it looked to me that  
5 the fact of the matter if I may make this remark,  
6 I would be afraid to drive a very heavy vehicle  
7 over the thing.

8 MR. WINSTON: We would object to what he would be afraid  
9 to do.

10 Q. You may cross-examine.

11 CROSS EXAMINATION

12 BY MR. WINSTON:

13 Q. You don't know how much of the bridge is on the  
14 railroad right of way, do you, at the Starnes  
15 property?

16 A. No, I'm not familiar with that.

17 Q. And you don't know how much of the bridge is on  
18 the railroad right of way at the Boy property?

19 A. No sir.

20 Q. I believe that's all.

21 H. L. BOY, the complainant, after having first  
22 been duly sworn, deposed as follows:

23 DIRECT EXAMINATION

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1 A. That's the only way I have out, yes sir.

2 Q. I think that's all.

6 DIRECT EXAMINATION

7 BY MR. WINSTON:

8 Q. You are Mr. Robert Peters?

9 A. Yes sir.

10 Q. What is your position with the railroad?

11 A. Claim agent.

12 Q. And Mr. Peters I believe you are familiar with  
13 the various maps and so forth of the Southern  
14 Railroad?

15 A. Yes sir.

16 Q. I'll show you a map that has been heretofore  
17 entered in evidence and ask you if you can identify  
18 what this map is? It's been entered into evidence  
19 as Defendant's Exhibit One.

20 A. Yes sir, this is a map of the right of way through  
21 the area in question where the Darnell property  
22 and the Boy property <sup>are</sup> is located.

23 Q. Would you come before the commissioners sir?

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MR PETERS AND MR. WINSTON GO BEFORE COMMISSION

Q. Is this the map of the Southern Railroad showing their trackage?

A. Yes it is.

Q. Now, have you ascertained on this map the location of the Darnell property?

A. Yes, the Darnell property is approximately where the red line is marked across here.

Q. Darnell?

A. Darnell, yes.

Q. What is the width of the railroad right of way at that point?

A. It's twenty-five feet from the center of the track for a total of 50 feet.

Q. Now, where is the Boy property? Can you ascertain on the map.

A. It's right here where the red mark is with Boy written in and it's also twenty-five feet which is shown just to the right of that from the center for a total of fifty feet.

Q. Alright sir. Now, of course, you have been on the Darnell property. We would reoffer this to the commissioners. It's already filed Exhibit one and

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1                   you can just put Reoffered, if you please ma'me.  
2                   Now, you have also been on both the Darnell and  
3                   Boy property, have you not, sir?

4       A.           Yes, I have.

5       Q.           And I believe you have made certain measurements  
6                   there at the property?

7       A.           That's correct.

8       Q.           And you've already made one sketch, I believe,  
9                   and filed with the record already. Does this appear  
10                  to be a copy of a sketch that's already filed?

11      A.           Yes it is.

12      Q.           Would you come up before the Commissioners?

13                   MR. PETERS AND MR. WINSTON GO BEFORE COMMISSIONERS  
14                   First sir, I'll ask if you measured from the center  
15                   of the railroad property towards the Darnell  
16                   property to the southern edge of the railroad right  
17                   of way.

18      A.           I measured out to the bridge toward the Darnell  
19                   property which is eleven feet and five inches to  
20                   the approximate edge of the first timber is the  
21                   measurement I took. And the actual twenty-  
22                   five foot then would be on somewhere toward the  
23                   center of the bridge which I don't have shown on

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1 the map.

2 Q. Be the center of the bridge.

3 A. Approximately.

4 Q. Now, that is based on the fifty foot right of  
5 way which the railroad claims?

6 A. Yes sir, that's right.

7 Q. Now, Miss Darnell has indicated that it's a  
8 twenty-five right of way or twelve and a half feet  
9 from the center of the tracks. How much of the  
10 bridge would be over in the right of way if it's  
11 just twelve and a half feet from the center.

12 A. According to the measurements I made it would be  
13 seven inches, approximately one timber.

14 Q. Have you also measured the Boy railroad right of  
15 way?

16 A. Yes, I have.

17 Q. How far is it from the center of the track to the  
18 middle of highway 23?

19 A. I measured sixty-four feet and ten inches to the  
20 edge of the line in the center of the road. I  
21 did not measure the actual width of the pavement  
22 but I went to the line in the center of the road.

23 Q. Line in the center of the road?

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1 A. Yes.

2 Q. And the road width of the highway right of way --.

3 A. The map that the highway engineer had here  
4 previously showed forty foot from the center.

5 Q. How far does the highway right of way come towards  
6 the railroad right of way?

7 A. It comes forty feet.

8 Q. Does it meet the railroad right of way?

9 A. Forty and it would be two inches difference there  
10 and that would possibly be in the width of the  
11 white line and my variation from the center of the  
12 highway.

13 Q. You mean two inches there.

14 A. Within two inches of it.

15 Q. In other words then the highway right of way  
16 would meet the railroad property by two inches.

17 A. That's right.

18 Q. And there would not be any strip in between?

19 MR. QUILLEN: We object to that. The Court has already found  
20 that the Darnell folks still have land north of  
21 the railroad right of way. It's finding is made  
22 for the record.

23 Q. Well, these are your measurements?

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1 A. Yes.

2 Q. That's all. We would offer this again. Let me  
3 ask you one other thing sir. Between, I believe you  
4 have sketched in here a telephone line, is that  
5 correct sir?

6 A. Yes.

7 Q. Now, what is there between the railroad and the --  
8 what is the ground and terrain like between the  
9 railroad and Highway 23?

10 A. There's a ditch just north of the track which the  
11 top width of it is approximately twelve feet  
12 with three or four feet at the bottom of the ditch.

13 Q. Did you detect whether any crops are grown between  
14 the railroad right of way and --.

15 A. I saw no evidence of any crops of any type being  
16 grown there.

17 Q. What is the terrain?

18 A. It's a ditch.

19 MR. QUILLEN: We make the same objection. All that's  
20 already been set out.

21 Q. Offer that as Defendant's Exhibit Two before the  
22 Commissioners. I believe you may ask.

23

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CROSS EXAMINATION

BY MR. QUILLEN:

Q. Now, Mr. Peters if what you are saying is true then over half of that bridge is on the railroad right of way. That's right, isn't it. You used the twenty-five feet from the center of the track.

A. What is the total length of the bridge before I can answer that?

Q. About twenty-five feet by measurement.

A. May I see the map, Mr. Winston.

MR. PETERS LOOKS AT MAP.

I don't have the -- I did not make a measurement of the width of the bridge on this drawing. And, therefore, I said it was approximately one-half on the right of way and I don't know whether it's more or less.

Q. Well, if twenty-five feet from the center would throw it about two and a half feet and you had another twelve and a half feet then you would have fifteen feet of the bridge on the right of way, wouldn't you?

A. I said there was seven inches according to my measurements.

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1 Q. You don't concede there's two and a half to three  
2 feet there?

3 A. No sir, I didn't say that.

4 Q. But you do say there's at least --.

5 A. Less than one foot.

6 Q. And that's the twenty-five foot, now I'm talking  
7 about the fifty foot overall, twenty-five from  
8 the center line. Well over half of that bridge  
9 is in the right of way of the railraod.

10 A. No sir, it is not. I said approximately --.

11 Q. Well, would you say about.

12 A. I said approximately half of it and I said I did  
13 not measure the entire length so I could not say  
14 that it was more or less.

15 Q. But you would say approximately half of that bridge  
16 then is on the railroad right of way?

17 A. Yes sir, that's the statement I made.

18 Q. That's all.

19 WILLIAM TOWNS, a competent witness, after having  
20 first been duly sworn deposed as follows:

21 DIRECT EXAMINATION

22 BY MR. WINSTON:

23 Q. Mr. Towns, what is your occupation sir?

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1 A. Land surveyor.

2 Q. I believe that you have made certain surveys for  
3 Southern Railroad and among them you have surveyed  
4 the area of the bridge to the Darnell property and  
5 the Boy property?

6 A. Yes sir.

7 Q. Now, I believe you have prepared some sketches.

8 A. Yes sir.

9 Q. Would you be able to take from your sketches or  
10 surveys those portions that cover the two pieces  
11 of property. I might state that he has other  
12 areas surveyed here but we suspect the Court is  
13 just concerned with these two areas.

14 A. This is the Darnell property.

15 MR. QUILLEN: We want to lodge a general objection to any  
16 evidence along this line because the Court has  
17 already decided this case except for the commission  
18 to go there and decide whether repairs are needed.  
19 We're not trying this lawsuit all over again,  
20 Mr. Winston.

21 MR. WINSTON: We want to get the exact measurements in the  
22 record sir, particularly if it goes to whether or  
23 not the railroad should and also how much of the

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1 bridge would be on the railroad right of way.

2 MR. QUILLEN: We say you've got to do it all.

3 MR. WINSTON: What do you mean sir.

4 MR. QUILLEN: The entire bridges in each case. They were  
5 part of the original grade crossing. That's our  
6 position in this case. Always has been, couldn't  
7 just put two cross ties up there or three and say  
8 this is a bridge.

9 MR. WINSTON: We understand that sir.

10 Q. First, I believe you have been upon the area  
11 of the Darnell property?

12 A. Yes sir.

13 Q. And at that point have you measured the width of  
14 the railroad right of way and also measured where  
15 the State Highway 23 and 58 is?

16 A. Yes sir.

17 Q. Would you come before the jury please sir? I mean  
18 Commissioners. You've got this between stations  
19 1840 and station 1860, is that correct sir?

20 A. That covers this sheet.

21 Q. And where on this particular sheet is the bridge  
22 to the Darnell property?

23 A. Right here, approximately Station 1844.

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1 Q. Is that right here, sir?

2 A. Yes sir.

3 Q. Now, have you measured the distance between the  
4 center of the railroad track in the center of the  
5 highway?

6 A. Yes sir.

7 Q. What is that distance?

8 A. 65.05 feet.

9 Q. What is the terrain between the railroad and  
10 the highway?

11 A. Okay. I show this from the railroad, bed of the  
12 railroad it goes out approximately six feet and  
13 falls into a ditch.

14 Q. Ditch?

15 A. Right. There is approximately eleven and a half  
16 foot wide entrance into the bridge that is gravel.  
17 From the top of it it falls off down into a  
18 drainage pipe which crosses under the entrance.

19 Q. Did you ascertain the width of the highway right  
20 of way?

21 A. Forty foot from center, to total of 80 foot right  
22 of way on the highway.

23 Q. Then from your measurements is there any strip of

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1 land between the railroad right of way and the  
2 highway right of way?

3 A. Yes sir. Determining to the best of my ability to  
4 the center of the road they would be five-eighths  
5 of an inch between the two right of ways.

6 Q. That is north of the railroad?

7 A. Right, with a twenty-five foot right of way.

8 Q. Well sir, with the twenty-five foot right of way  
9 how much of the bridge is on the railroad right of  
10 way?

11 A. Okay, over to the bridge it was eleven -- I brought  
12 this down and made a bigger sketch of it.

13 Q. What is the distance from the center of the rail-  
14 road --.

15 A. Eleven point forty-eight (11.48) feet. That  
16 twenty-five foot right of way would leave 13.52  
17 feet to the southern edge of the railroad right  
18 of way.

19 Q. You mean that is with twenty-five feet on each side?

20 A. Right.

21 Q. Now, if it's just 12 1/2 feet on each side how much  
22 of the bridge would be on the railroad right of way?

23 A. A foot and a quarter of an inch.

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1 Q. And this is in reference to the Darnell property?

2 A. Yes.

3 Q. We would like to introduce this as Exhibit Three  
4 before the Commissioners, that is the sketch showing  
5 the area of the Darnell property.

6 MR. QUILLEN: Same objection is made all the way through.

7 Q. Now sir, I believe you also surveyed in the area  
8 of the Boy property?

9 A. Yes sir.

10 Q. Where is the --.

11 A. Here is the Boy property.

12 Q. You're showing that on the left upper portion?

13 A. Right.

14 Q. And what is the width of the railroad right of way  
15 at that point?

16 A. Twenty-five (25) feet from the center.

17 Q. What's the distance from the center of the railroad  
18 to the bridge of the Boy property?

19 A. To the bridge?

20 Q. Yes.

21 A. It's 13.80 feet.

22 Q. Running 25 feet from the center of the railroad  
23 how much of the Boy bridge is on the railroad

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1 property?

2 A. Eleven point two (11.2) feet.

3 Q. I believe the road goes over the bridge and then  
4 onto the public highway.

5 A. Right, there's approximately 11 to 11 1/2 foot  
6 wide gravel entrance.

7 Q. This thing here is the creek, is that correct?

8 A. Yes sir.

9 Q. We would offer this as Defendant's Exhibit Four.  
10 I believe you may ask sir.

11 CROSS EXAMINATION

12 BY MR. QUILLEN:

13 Q. Your name is Towns?

14 A. Yes sir.

15 Q. Where do you live?

16 A. Jonesboro, Tennessee.

17 Q. Your profession then is surveying?

18 A. Yes sir. I'm a fulltime surveyor.

19 Q. Did you check the right of way of the State there  
20 on Old 58 when you did your surveying there?

21 A. Yes sir.

22 Q. Where did you get that information?

23 A. I found a right of way monument, concrete right of

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1 way monument and checked the distance.

2 Q. Don't you know there's about twelve feet there  
3 north of the railroad right of way on the Darnell  
4 property.

5 A. I don't understand the question.

6 Q. You are saying to the Commission there's no land  
7 north of the railroad right of way?

8 A. No sir, I didn't say that.

9 Q. That belongs to the Darnells.

10 A. I did not say that.

11 Q. What did you say?

12 A. I said there was 5/8ths. of an inch.

13 Q. 5/8ths. of an inch, that's practically no land,  
14 isn't it?

15 A. 5/8ths. of an inch.

16 Q. I think you may stand aside.

17 MR. WINSTON: We offer in evidence two deeds that is  
18 a warranty deed from John Bounds and wife to  
19 Bristol Coal and Iron Narrow Gauge Railroad dated  
20 October 29, 1880 and recorded in Deed Book 14 at  
21 Page 40. These are photostats. And also one  
22 from Rebecca Dykes to Bristol Coal and Iron Narrow  
23 Gauge Railroad Company dated October 29, 1880. This

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1 is in Deed Book 19 at page 73. We state these as -

2 MR. QUILLEN: It's not a matter for the Commission to  
3 inquire into. That's already been decided.

4 MR. WINSTON: I believe that's our evidence before the  
5 Commissioners.