

No. 3, December 188

In Re. Petitioners.

versus

The Cream Hall  
Turnpike Road Co.

Contents:

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Map of the  
Box 21 in Basement

In Re. Petitioners  
v.  
Cream Hill Turn-  
pike Road Company

No. Sept 3d, 1887  
Report of Jury of View

To the Court of Quarter Sessions of Clear-  
field County.

The undersigned, viewers appointed  
to view the Cream Hill turnpike road  
in the annexed order mentioned, and  
report under the provisions of the Act  
of 2<sup>nd</sup> June 1887, respectfully report:

First. Philip Dotts, W. J. Hoffer, H. H.  
Morrow, Daniel W. Moore and Daniel  
Stewart all the members of the jury  
and Alex<sup>2</sup> Paterson, Master were pres-  
ent at all the meetings of the jury  
of view.

Second. Thirty ~~witnesses~~ witnesses were  
examined, as follows:

32	Lewis H. Weber	Bloom tp	Age 34 yrs
14 22 1887	Jacob Pilger	Curwenville	63 "
36	Calvin Pilger	Bloom tp	35 "
37	J. D. Bitter	Near Curwenville	58 "
	C. H. Woods	Bloom tp	42 "
	Sydney Smith	" "	37 "
	J. Zilliox	" "	68 "
	Christian Duck	" "	About 59 "
	J. Holders	" "	61 "
	Joseph Spencer	Bridgewater tp	65 "
	J. J. Shugarts	Luthersburg	32 "
	John Campbell	"	41 "
	Johnson Hamilton	"	45 "
	Johnson Holden	Pike tp	58 "
	Lewis Woods	Bloom tp	About 48 "
	William Bloom	" "	65 "

They hereby condemn the same for public use, free from toll and toll gates, and they do assess the damages to which the owners of said road are entitled at the sum of Five thousand and Dollars.

In accordance with the provisions of the Act, the proceedings of the jury of view have been recorded in detail by the Master and are attached to this report together with a draft showing the portion of the road that has been condemned.

Witness our hands this eighth day of December A.D. Eighteen hundred and eighty seven.

Attest.  
Alex. Paterson  
Master

Philip Dotts  
W. J. Hoffer  
H. H. Murray  
J. W. McElroy  
Daniel Stewart

1      In Re Petitioners      )      No. Sept 22, 1887  
2      vs.      )  
3      Cream Hill Turnpike      )      Master's Report  
4      Road Company      )  
5

6      To the Honorable the Judge of the  
7      Court of Quarter Sessions of Clearfield  
8      County.

9      The Master appointed by your  
10     said Court in the above stated  
11     case under the provisions of the  
12     Act of Assembly approved June  
13     2nd A.D. 1887 respectfully reports:

14     That he presided at all the meet-  
15     ings of the viewers in accordance  
16     with the requirements of said Act af-  
17     ter having been duly affirmed  
18     before the Clerk of the Court, and  
19     his written affirmation is here  
20     appended.

21     That the viewers were examined  
22     after being sworn in their various  
23     touching their competency to serve,  
24     their impartiality and disinter-  
25     estedness, and a record thereof made  
26     which record is also annexed to  
27     this report.

28     That no objection being made by  
29     any person in interest the ju-

where further testimony was presented and taken.

The sixth meeting was in the Law Library <sup>on Dec 3 1887</sup> when testimony was closed and arguments of counsel were heard.

The seventh and last meeting was on December 8<sup>th</sup> 1887 in the Law Library when Master's charge was read to the jury, and the jury after deliberation arrived at their conclusions respecting the condemning of the road and the damages to be awarded.

Photographic notes of all the proceedings were taken by the Master, and a transcript of same is herewith filed, excepting in so far as the testimony of some witnesses has been condensed or abridged by the Master under agreement of counsel.

The delay in filing within the time called for in the Act is also covered by agreement of the parties.

Respectfully submitted

Alex. Paterson

Master

December 12<sup>th</sup> 1887.

No. Sept 28 1887  
In Re Application of Petitioners  
vs

Cream Hill Turnpike <sup>Road</sup> Company

Clearfield County, Pa.

Before me, A. M. Blom  
Clerk of the Court of Quarter Sessions  
of Clearfield County, personally ap-  
peared Alex Paterson, Master appoin-  
ted by the said Court in above sta-  
ted case, under the provisions of the  
Act of June 2 1887, who being duly  
affirmed according to law, deposes  
and saith that he will discharge the  
duties of his appointment faithfully,  
impartially and according to the best  
of his learning and ability I  
affirmed and Subscribed }  
before me this 29 Sep 1887 } Alex Paterson

Amesbury

Pa

Master's Charge to the Jury.

As we view this proceeding, gentlemen of the jury, there are two questions and but two questions that remain for you to determine. First, whether or not this road, or a part of it, shall be condemned, and, second, in the event of it being condemned what damages you will allow to the Cream Hill Turnpike Road Company for their property.

The Act of Assembly under which these proceedings are brought, empowers you to condemn this road, or a part of it, should you decree it to be for the best interests of the people of the county. Now you have to determine from the facts in the case what would be for the best interests of the people of the county. Certain witnesses testified that they believed it would be for the best interests of the county that this road be condemned. The opinion of those witnesses is of no consequence to you and should not be considered by you in arriving at your conclusion. That kind of testimony we declare is not evidence, as it is the province of the jury to determine from the facts in the case and not from the opinions of others what would be for the best interests of the people of Clearfield county in this regard. There are cases where opinions are valuable and constitute proper evidence, and upon other matters than the question referred to, they appear in this case, and should be regarded by you as evidence, but where witnesses declare what is for the best interests of the people of the county in relation to this road they simply state what the jury themselves have to determine, and so we say to you again that the opinions of those witnesses in this matter must not be allowed to influence you in any way in arriving at your conclusions.

Should you determine to condemn this road or a part of it, the question of damages necessarily follows. Considerable evidence has been presented to you bearing upon the question of <sup>the</sup> value of this road, and the opinions of witnesses have been freely given bearing upon the value. These opinions are admissible, and constitute proper evidence, and should have their due weight in your minds, gentlemen of the jury, in determining the damages to be awarded. In determining the value you must arrive at your conclusion from a consideration of all the facts in the case bearing upon the question of value. Certain facts bearing upon the question of value the petitioners failed to bring out on account of the refusal of the Cream Hill Turnpike

Road Company, or those representing that corporation to answer certain questions, for instance, what Mr. Moore paid for the stock of the corporation when he purchased from Jackson Horn. We do not say whether or not the answers to questions of this character would have been of much service to you in determining value and damages, but the jury was entitled to the information called for by these questions, and in determining the damages to be awarded this fact is against them, - the Cream Hill Turnpike Road Company - and must so be regarded.

The measure of value would not be the value of the stock of the road, it would not be the cost to the county of building such a road, nor would it be the original cost of the road, nor would it be the earning capacity of the road as presented by Mr. Moore. In determining the value all the facts bearing upon the value must be considered by you, and the question that should chiefly concern you in determining the value is this. This road, this turnpike was made for the convenience of the public; the public had rights in it as well as the corporation; the real value of the road is what it would be worth if the proper amount of its income is put upon repairs so as to keep it in good condition for the travelling public. It is not what may be made out of the road by neglecting the road and failing to put such expenses upon the road as it was by law and justice entitled to receive.

In this proceeding we do not determine whether or not this company has a right to its charter, or in fact anything else but the two questions spoken of, whether or not the road shall be condemned and what amount of damages shall be awarded.

Alexander Paterson  
Master  
December 8<sup>th</sup> 1887

210.5 *Lepe S.* 1887

Dr. R. Petitioning

The Green Hill Turn-  
pike Road Company.  
—

Wednesday December 1887

Report of the Jury of  
View, Report of the Master  
& Charge of the Master to the  
Jury.

Filed with this are the  
transcript of enemy response  
notes of proceedings &  
testimony. Also draft  
of the portion of the  
road condemned.

Dec. 12, 1887 Congress  
Decd. - By the Author  
Hough & Crammer

2022.1.17

To the Honorable David L. Krebs President Judge of the Court of Quarter Session of Clearfield County Penna.

The petition of the undersigned resident taxpayers of Clearfield County Penna respectfully represent:

1st That there is now in existence a turnpike road or highway upon which tolls are charged the traveling public.

2nd That the said turnpike or highway is owned and operated by "The Lanes Hill Turnpike Company" under a special Act of Assembly chartering said corporation passed by the Legislature of Pennsylvania on the day of

1818 and the several supplements thereto subsequently passed by the General Assembly of Pennsylvania.

3rd That the said turnpike was originally located partly in Clearfield County and partly in Jefferson County and that the part now operated and controlled by the said Company and on which tolls are charged lies almost wholly in Clearfield County ~~about~~ from or near the Borough of Unionville to the Jefferson County line.

4th That it would be for the best interest of the people of Clearfield County for the said turnpike road or highway or such part thereof as is situated in said County to become a public road free from tolls and toll-gates.

5th That due notice of this petition and

application for the appointment of a jury of view has been published in two newspapers of general circulation in Clearfield County at least 30 days previous to the time of making this application and also like notice has been given to the County Commissioners of Clearfield County at least ten days as required by Act of Assembly - proof of the said publication and notice required being hereto annexed and made a part of this application.

Your Petitioners therefore pray Your Honor to appoint a jury of view to consist of five reputable citizens of Clearfield County to view and condemn the said turnpike road or highway or part thereof in Clearfield County for public use free from tolls and toll-gates and to assess the damages to which the Company owing the same may be entitled and also pray Your Honor to appoint a master with powers and duties as set out in section "2" of the Act of General Assembly of Penna - authorizing the condemnation of turnpike roads &c passed 1887 and approved June 2, 1887 and make such other order in the premises as to Your Honor seems necessary.

And they will ever pray &c.

Names of Petitioners' names

A. Galeslow  
Alfred Bilger  
C. B. Morris

C. D. Passow  
Matt Thompson  
Miles Wall

A. H. Irvin.

Augur Bloom

J. Frank Thompson

W. D. Bates

Sam'l. Arnold

A. J. Thompson

P. J. Minkinell

J. R. Irvin

Frank Baird

G. S. Jameson

R. M. S. McVaul

H. C. Harris  
Arnold Bloom  
W. P. Late  
George Kettellayon  
J. M. Thompson

J. S. Brown  
Gus Wolf  
H. J. Thompson  
John R. Fox  
W. A. Adelmann  
W. B. Russell

H. P. Smith  
J. B. Spencer  
Howard H. Closkey  
Ed Draucker  
Will O. Smith  
A. Dutton  
W. S. Russell  
Anthony Hile Jr  
J. K. Head  
Andrew Stoner  
J. S. Graff  
J. B. Spencer  
Elmer Smith  
Alonzo Spencer  
Adam Weitz

Draucker  
Scott Ward  
H. W. Spencer  
Henry Stockbridge  
L. Garrison  
J. B. Morris  
Geo W. Ferguson  
J. S. Moore  
W. Brecksterin  
Rodney Charly  
Joseph M. Spencer  
E. C. Dunn  
Geo Pellow

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In re petition

3

Bear Creek Turnpike

In Quarter of Allegheny Co.  
to Sept 21, 1887

Jefferson Davis has completed his serv.  
out-of-pocket year.  
Cook in Harper's Bazaar.  
Poor Peter Peterson - Rose Levy

325

State of Penna }  
Clearfield County }  
of

Before me the subscriber personally  
came E.W. Gray one of the  
Editors of the DuBois Courier who being duly  
sworn says the above appended notice  
was inserted and published in said DuBois  
Courier for three successive weeks in  
the issues of July 14 - 21 & 28th 1887  
Sworn & Subscribed

this 29th Augt 1887

Truman Ames  
Notary Public

E.W. Gray

In the Court of Quarter Ss. of Clearfield  
County Pa.

In re application  
of Petitioners

No Sept-2d. 1887

Cream Hill Turnpike Co

To

James Savage } Board of Commissioners  
Clark Brown } of Clearfield County.  
L. H. McDonald }

Please take notice that application  
will be made to the Court of Quarter Ss. of  
Clearfield County on Monday Sept-12. 1887  
for the appointment of viewers to view and  
condemn the "Cream Hill Turnpike"  
running from Lanesville to the Jefferson  
County line, for public use, free from  
toll gates &c and to assess damages  
to which said owners are entitled  
as provided by Act of Assembly, appro-  
ved 2 June 1887

Ellis O. Smith  
Atty for Petitioners

Clearfield Pa

August 25, 1887

No Sept 20. 1887

Sept 20. 1887

On application of  
Petitioner

Within notice

James George

Company

Clark Brown  
Colville Indian

Notice to Commissioners

ALY

No 5 - ~~dated~~ 1957

In Re Application of  
Petitioners, 3  
James Hill <sup>of</sup> English Company

Answer 12th Sept 1887. Petition  
had and therefore, Philip Doty,  
W.H. Hoffer, H. H. Monroe, Daniel  
M. Moore, William Stewart and  
Appointed owners to view and  
what were the providers of the  
act of 2d messrs. and the  
fisher ordered that, Alvin  
Ritter be given freely ap-  
pointed Master under the pro-  
vision of said Act.

By 1st Court  
D.Z. Nichols

Filed 12 Sept 1887

Answered

John H. Nichols

In Re Petition

3

Cream Hill Turnpike

Dauphin St. of Clearfield Co

Pro

Sept-1st, 1887

State of Pennsylvania  
Clearfield County, St

LEGAL NOTICE—To Whom it May Concern:  
All parties interested hereby have notice  
that application will be made at the next Court  
of Quarter Sessions of Clearfield County, Pa., on  
Monday, September 12th, 1887, for the appoint-  
ment of a jury of view to condemn the "Cream  
Hill Turnpike," in said county, for public use,  
free from tolls and toll gates, and to assess any  
damages to which the owner or owners of said  
turnpike may be entitled, in accordance with Act  
of Assembly approved June 2d, 1887.  
ALLISON O. SMITH,  
Atty for Petitioners.  
Clearfield, Pa., July 13, 1887-3t.

Before me the subscriber personally  
came James S. Goodlander Local Editor of the Clear-  
field Republican who being duly affirmed says  
the above aforesaid notice was inserted and  
published in said paper for three successive  
weeks in the Clearfield Republican in the  
issues of July 13, July 20 & July 27, 1887  
Off & Subscribed 29  
this 29 Aug 1887 James S. Goodlander,  
AM Beeson  
Bo

No. 5. Dec. Sess. 1887

Proceeding to consider  
the Ocean Hi-Bump

exception.

Read 15 July 1886  
Amherst  
Cox

Burrell & Wrigley

1 In the matter of Proceedings to condemn the  
2 Cramond Hill Turnpike

3 N.S. Dec. Term. 1887.

4 On January 11<sup>th</sup> 1888, on the part of R. Mr.  
5 Moore owner of the Turnpike the following  
6 exceptio is filed.

7 The proceeding is illegal and cannot  
8 be sustained for the reason that the act of  
9 1887, under which it is constituted is non-  
10 constitutional, and is an unauthorized meth-  
11 od of condemning and appropriating property.

12  
13 Trulter Barrett &  
14 Murray & Gordon  
15 Atty for  
16 R. Mr. Moore  
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