

No. 3

December 188

In Rel. Petitioners.

versus

The Cream Hill  
Turnpike Road Co

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Map of the  
Ba = 1 in Basement  
of the building

In Re. Petitioners  
Cream Hill Turn-  
pike Road Company

No. Sept 25. 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 Dotto, W. J. Hoffer, H. H.  
Morrow, Daniel W. Moore and Daniel  
Stewart all the members of the jury  
and Alex<sup>r</sup> Paterson, Master were pres-  
ent at all the meetings of the jury  
of view.

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

Lewis H. Weber	Bloom tp	Age 34 yrs
Jacob Pilger	Curwensville	63 "
Calvin Pilger	Bloom tp	35 "
D. D. Bitter	Near Curwensville.	58 "
C. H. Woods	Bloom tp	42 "
Sydney Smith	" "	37 "
J. Zilliox	" "	68 "
Chas. Duck	" " About	59 "
A. Holders	" "	61 "
Joseph Spencer	Bridgeport	About 65 "
J. W. Shugart	Luthersburg	32 "
John Campbell	"	41 "
Johnson Hamblon	"	45 "
Johnson Holden	Pike tp	58 "
Lewis Woods	Bloom tp	About 48 "
William Bloom	" "	65 "

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1422  
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They hereby condemn the same for public use, free from tolls and toll gates, and they do assess the damages to which the owners of said road are entitled at the sum of Five thousand 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 Dotter  
W. J. Hoffer  
W. H. Morrow  
J. W. McFarlane  
Daniel Stewart

In Re Petitioners ) No. Sept 22 1887  
vs. )  
Cream Hill Turnpike ) Masters Report  
Road Company )

To the Honorable the Judge of the  
Court of Quarter Sessions of Clearfield  
County.

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

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

That the viewers were examined  
after being sworn in their oaths dis-  
touching their competency to serve,  
their impartiality and disinter-  
estedness, and a record thereof made  
which record is also annexed to  
this report.

That no objections being made by  
any person in interest, the jus-

where further testimony was presented and taken.

The sixth meeting was in the Law Library <sup>on Dec 3, 1887</sup>, where 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 Masters 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.

Stenographic 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<sup>r</sup> Paterson

Master

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

No. Sept S. S. 1887.  
In Re Application of Petitioners  
vs  
Cream Hill Turnpike Road Company

Clearfield County Pa.

Before me, A. M. Bloom  
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, deponeeth  
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

A. M. Bloom  
Clerk

Alex Paterson

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*



No. 5 ~~Dec~~ 30 1887

In Re Petitionary

The Cream Hill Turn-  
pike Road Company

Filed 12th 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 stenographic  
notes of proceedings &  
testimony. Also copy  
of the portion of the  
road condemned.

Dec. 22. 1887 Confirmed  
Order by the Court  
Judge McManus

Also system  
reader

Received, Clearfield Co. July 13, 1888 of the County  
Commissioners Five Thousand Dollars in full for  
condemnation as per decree of Court on within  
said Cream Hill Turnpike

R. H. Moore

That February 8, 1888, the petition to the acting officers of the  
and the within report confirmed absolutely and that part  
of the Cream Hill Turnpike road which is situated in  
Clearfield County in condemnation for public use free  
from the & toll gate and the collection of tolls on  
said Turnpike in Clearfield County shall therefore  
be and the toll gate owners are hereby ordered to discontinue  
the County Commission in favor of the condemnation  
in favor of the owner of said Turnpike for the condemnation  
making and if not so ordered petition on the said owner  
to show from the state of this decree.

By the Court

To the Honorable David L. Krebs President Judge of the Court of Quarter Sd 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.

and That the said turnpike or highway is owned and operated by "The Cream Hill Turnpike Company" under a special act of assembly chartering said corporation passed by the Legislature of Pennsylvania on the            day of

A.D. 18            and the several supplements thereto subsequently passed by the General assembly of Pennsylvania.

2nd 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~~ from or near the Borough of Unionville to the Jefferson County line.

4th That it would be for the best interests 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 other papers 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 owning 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 1867 and approved June 2, 1867 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. Gates Son

Alfred Bilger

E. B. Norris

E. D. Passmore

Watt H. Thompson

Miles Wall

A. H. Irwin

J. Frank Thompson

Saml. Arnold

F. J. Monahan

~~Wm. B. Baird~~

Wm. B. Baird

Wm. B. Baird

W. D. Yates

A. S. Thompson

J. R. Irwin

E. B. Norris

M. C. Harris  
Arnold Blovin  
W. P. Tate  
George Kettling  
J. N. Thompson

J. S. Bloom  
Gus Wolf  
H. J. Thompson  
John R. Ice  
W. A. Adelman  
W. C. Russell

H. T. Smith  
H. Spencer  
Howard H. Clokey  
Ed. H. Hawker  
Will. O. Smith  
A. E. Patton  
O. Russell  
Anthony Hills Jr  
L. K. Mead  
Andrew Stoner  
J. S. Graff  
V. H. Spencer  
Edmer Smith  
Clonze Spencer  
Adam Welch

Orancker  
Mott Sand  
W. W. Spencer  
Henry Stoddard  
L. Garrison  
J. B. Morris  
Geo. M. Ferguson  
S. S. Mott  
W. Breckstein  
Rodney Charles  
Joseph M. Spencer  
E. C. Mott  
Geo. Patton

Shady  
S. Miller  
P. S. Williams

Use ~~last~~ Application  
of Petitioners

Levee Mill Company  
Company

In re petition  
 3  
 Cream Hill Turnpike } In Quarter Sd of Alfred Co.  
 no Sept. 21. 1887

Poor Peter Patterson - Rose Terry  
 Cooke in Harper's Bazar  
 Jefferson Davis has completed his sev-  
 enty-ninth year.

copy

State of Penna }  
 Clearfield County } S

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

9  
Crescent Hill Turnpike Co

vs Sept Ss. 1887

To

James Savage  
Charles Brown  
G. H. McDonald

Board of Commissioners  
of Clearfield County.

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 "Crescent Hill Turnpike"  
running from Lewisville 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

Allison O. Smith  
Atty for Petitioners

Clearfield Pa

August 25, 1887

no Sept 29. 1887

Sept 25. 1887  
has been accepted on

an application of  
petitioners

within notice

James Hill Telephone  
Company

James Brown  
Sept 11. 1887  
11

notice to Commissioners

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No 5 Sept 1887

In Re Application of  
Retention

James Hill Tompkins Company

Answered 12th Sept 1887, Return  
Read and thereupon, Philip Doty  
W. H. Hoffer, H. H. Monroe, Daniel  
W. Moore, - James Stewart and  
appended answers to same and  
report under the provisions of the  
act of 2 June 1887, and in  
further order that, Alexander  
Benton say he and his family of -  
rented Maats under the pro-  
vision of said act  
By his Court  
D. C. Kelly

Filed 12 Sept 1887

Stewart  
at

W. H. Hoffer

In Re Petition

3

Clearfield Turnpike

Quarter Sess. of Clearfield Co  
Sept - 1887

State of Pennsylvania  
Clearfield County

**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 appointment 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,  
Att'y for Petitioners.  
Clearfield, Pa., July 13, 1887-3t.

Before me the subscriber personally  
came James J. Goodlander Local Editor of the Clear-  
field Republican who being duly affirmed says  
the above appended 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  
Sd & subscribed 29 }  
this 29 Aug 1887 } James J. Goodlander  
Attest  
Do

No. 5. Dec. Sess. 1807

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In meeting of  
Proceeding to con-  
demn <sup>the</sup> Cream Hill <sup>in</sup> parish

exception

Wm. H. Hays  
Am. Assoc.  
Secy

Burrell & W. H.

In the matter of Proceeding to condemn the  
Cream Hill Turnpike

N. 5. Dec. Sess. 1887.

now Jan'y 11<sup>th</sup> 1888. on the part of R. M.  
More owner of the Turnpike the following  
exception is filed.

The proceeding is illegal and cannot  
be sustained for the reason that the act of  
1887. under which it is instituted is un-  
constitutional, and is an unauthorized meth-  
od of condemning and appropriating property.

Walter Barrett &  
Murray & Gordon  
attys for  
R. M. More