

the citizens of Funk's-town, and its neighbourhood, when they remonstrated to the company, against taking the road from them; had this been the case, they would not have put themselves to the trouble and expense which they have done; nor is it charitable to suppose, that the president and managers of the company themselves, were aware of those provisions, else such honourable men would not have alarmed the people with unnecessary fears on the subject, nor required them to make any pecuniary sacrifices to secure a privilege already secured to them by law. Even to this day it would seem, from the language of the memorial, that they are not fully aware of all the provisions of the act alluded to.

In granting charters to these companies, it seems to have been the policy and intention of the legislature to protect the rights of the citizens of the several towns on the public roads, on or near which the turnpikes were to be made; and accordingly, it is carefully provided in the eleventh section of the act of 1804, ch. 51, that in all deviations from the beds of present roads "the road shall not be diverted or taken from any town or village, through which it now passes." And this, your committee think, settles the question finally, as to the right of the citizens of Funk's town to have the road made through that place.

The question then, and the only important one for the legislature to determine is, whether the aforesaid company have a right to erect a toll-gate within a mile of Funk's-town or not; and they contend, in their memorial, that the only restriction imposed upon them, in the erection of their toll-gates, contained in the 34th section of the act of 1804, is "That no toll-gate shall be erected within the distance of one mile from any of the towns or villages in this act mentioned." And as Funk's-town is not mentioned in the act of 1821, there is nothing to restrict them in erecting their toll-gate as near to that place as they may find it convenient.

If the doctrine of the memorialists is correct in this respect, then the president and managers have not only a right to erect a gate between Hager's-town and Funk's-town, but they might even erect a toll-gate in the very centre of the town itself, and make some of the citizens pay toll once a day when taking their horses to water; and charge toll on wagons hauling wood into town, which had not used the turnpike at all. Surely the legislature never could have intended to ruin and destroy one of the most important towns between Baltimore and Cumberland, with the exception of Frederick and Hager's-town, and this will inevitably be the result of the act of 1821, should it be construed, as contended for by the memorialists, and it could only have been one of those casual omissions which so often take place in the hurry of legislation, by which the words "and through Funk's town," were not inserted in the act of 1821. But in addition to this, it is highly probable that Funk's-town, having been so long considered a point on this road, and more than once recognized as such by former acts of the legislature, it was not considered essentially necessary to insert it. And your committee have the authority of some of the delegates who represented Washington county in 1821, for saying, that the act would not have passed at all, at least not with their approbation, had they believed that it would have been so construed as to authorise the erection of a toll-gate within a mile of Funk's-town.

The memorialists protest, "that whatever might be their right" (in regard to erecting toll gates, that they have no disposition to use it to the detriment of the people of Funk's-town, or unnecessarily to vex them with restraints upon their intercourse, further than the fair and