

File No. 7260 Continued.

OPINION.

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Mr. Fendall's first suggestion is, that the charge may not be authorized, in view of the fact, that the Turnpike, as far as North avenue, has been deeded to the city. In looking at the deeds, however, which convey to the city all of the turnpike within the old city limits, (the first Deed being dated October 8, 1825, and recorded W.G. No. 178, folio 363, and the second Deed being dated January 25, 1847, and recorded A.W.B. No. 378, folio 370), I find that they specifically reserve to the Company the right to charge and receive tolls to the same extent as the Company would have been entitled so to do, if the deeds had never been made.

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Therefore, the only question involved in Mr. Fendall's inquiry is, has the Company the right to charge toll in accordance with the limits of its gates, or can it charge only for the distance actually travelled.

In Turnpike Co. vs. Routzahn, 61 Md., 37, our Court of Appeals held that Routzahn was not chargeable with tolls only for the distance on the turnpike actually travelled by him, but that the Company had the right to charge according to the distance between gates, no matter how much or how little of the road might be used.

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Under this decision, the traveller passing through a toll gate must pay the amount of toll prescribed for that gate, regardless of the distance he actually travels, and whether he goes the entire limit of the gate or not. Therefore, under this decision of the Court of Appeals, I think that the Turnpike Company can properly charge the City the rate of toll authorized by its Charter for a journey through the toll gate in question, regardless of the distance actually travelled.

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I understand that there is no dispute as to the correctness of the amount of the bills rendered, provided the theory upon which they are rendered is correct, which, as already stated, seems to me to be the base.

I should add that I have examined the Charter of the Turnpike Co., in question, and find that the provision therein referring to the tolls which the Company is authorized to charge, is the same as the provision in the Company's Charter which was before the Court in 61 Md.

Very truly yours,

(Signed) Albert C. Ritchie,  
Assistant City Solicitor.