

Baltimore November 11th 1863

Hon. A. W. Bradford

Dear Sir:

I have just returned after an absence of a week and find on my table yours of 28th October. You have been misinformed in reference to the case against the Washington & Baltimore Turnpike Company — The proceedings were instituted by direction of the Maryland Legislature (Laws 1860 ch. 326). The writ of Sci. fa. issued as directed, but it was only in Baltimore City that an officer of the Corporation could be found to serve it on, and consequently that case only was tried — I do not in any manner represent private interests, my authority to act as Counsel being derived solely from the appointment of Gov. Hicks, the communication to me from the Executive Department bearing date the 25th Feby. 1861 — Mr. Wm Price was also appointed by the Governor to represent the State, and took part in the trial of the case in the Superior Court — Mr. Poe assisted us, he however being employed by some parties residing on the road — Mr. Price, Poe and myself tried the case in the Superior Court, and Mr. Poe and I argued it in the Court of Appeals, Mr. Price advising and assisting in preparing the Brief — It was clearly proven at the trial that the road had not been kept in the condition required by its charter, and that the Community, especially persons living near the road, had been subjected to an onerous and unjust taxation in the shape of tolls paid to this Company —

The only defence set up was that the State by incorporating the Baltimore and Ohio Rail Road Company had diverted travel from the turnpike and so impoverished the Company that it was impossible for them to keep the road in repair — The Court (Judge Martin) decided that the Company were not bound to accept the Charter; but having done so, and availed themselves of the States grant, they must perform the condition upon which the Legislature had made the grant, and that they were bound to keep the road in the condition prescribed by their charter Acts 1812, ch. 78, sec. 13. That the penalty for non performance was a forfeiture of the charter, and that the State was not estopped by the Legislation in favor of the Balto. & Ohio rail road from instituting these proceedings — that the proceedings were regular and proper, and after verdict the judgement was entered, annulling the Charter — This judgement was affirmed by the Court of Appeals after full argument. The Attorney for the Corporation then sued out a writ of error from the Supreme Court under 25th section of the Judiciary Act of Congress (1789) to test the Constitutionality of the proceedings on the part of the State of Maryland: no other question but their constitutionality will be open there, and I have no doubt that the Supreme Court will sustain the action of our Courts — The only thing to be gained by the suing out of the writ will be that a mortgagee (a Mr Conway, who I believe is really carrying on the controversy in the name of the Corporation) will gain a little time to realize some portion of his claim against the Co. at the expense of the travelling Community. The imposition has led already to several serious riots, and I am frequently applied to as States Attorney, to know if there is not some legal mode preventing this Corporation from continuing to exact tolls for the use of what is in fact no turnpike.

Very Respectfully Yours &c

R. D. Gittings