

throughout, the part which the commissioners mention and describe in their said report, along which the canal has already been so deemed to be definitively located, but along which part of its route the said rail road has not been definitively located, to wit: between Catoctin creek and Miller's narrows aforesaid, a distance of about seven miles, more or less, provided that the rail road shall not be definitively located or constructed so near to the location of the canal, as the same is now considered by the said canal company to be fixed, as to prevent the construction of a brim to the said canal of at least eight feet wide the whole distance, except between the two Catoctin creeks, along which space the brim of the canal may be reduced to a breadth not less than three feet in any place.—and further, that the rail road company may construct the rail road accordingly, on such location, so by them to be made as aforesaid, without the interference, hindrance or molestation of the said canal company, or any person or persons acting under their authority.

Seventhly. It is further agreed, as a part of this contract, and of the consideration and inducement thereto, that when either of the parties hereto shall have completed the construction of its work as far as the joint location made and recommended by the Commissioners aforesaid, acting under the order of the Chancellor of Maryland, has been effected so as to be ready to use or put such work in operation, to or near to Harper's Ferry, the examination and survey by the said or of other Commissioners, at the instance of either party, shall be renewed and extended to Cumberland in the same manner, and with the same view to the mutual accommodation and construction of the two works, as their former examination and survey aforesaid were made; and that when the location of the canal and of the rail road with such survey shall have been effected as far as Cumberland, and a return of the survey and estimates of construction, made to the Court of Chancery by the said Commissioners, it is agreed that the companies may, if so inclined, proceed to the joint and mutual construction of the two works, in the same manner, and on the same terms and conditions as hereinbefore contained, and agreed on, in regard to that portion of the route which extends from the lower Point of Rocks to Harper's Ferry, already reported on. And it is already agreed, that if either company shall decline proceeding to effect such survey or construction, or shall, for the space of thirty days after notice from the other, omit to unite or aid in such survey or construction, according to the true intent of the preceding articles of this agreement, the other company