

will appear from the order of the board of the 5th of June, submitted to Mr. Latrobe, the questions involved in the following resolution: "Resolved, that the counsel for the company be requested to consider the various acts and resolutions of the Legislature in relation to the State's subscription of three millions of dollars, authorised by the act passed June 4th, 1836, chapter 395, and that he communicate to this board at its next meeting in what particulars this company has been relieved from the stipulations in the said act of 1836, by the act of 1837, chapter 314, or by the resolutions of March 8th and 30th, 1838, or by the act of April last, or by any other proceeding of the Legislature subsequent to June, 1836."

It will be recollected that the act of 1837, chap. 314, required the State subscription to be applied to the construction of the road west of Cumberland; and it will be seen from the questions submitted to Mr. Latrobe, that the company had no idea that the act of last session repealed it. In his legal opinion, dated the 27th June, 1839, he states, that "the act of 1837 depended for its effect upon its acceptance by the stockholders. Not only was this acceptance necessary to secure payment of the subscription, as was especially provided, but, modifying, as it did the charter, the act was wholly inoperative, until the company, in general meeting of the stockholders, assented to its provisions. This they have never done; and the right of the company to choose its route, and to appropriate the State's subscription wherever it thinks proper, is as perfect as though the act of 1837 had never been passed."

He further states, that, after the Legislature adjourned in 1838, surveys were completed so far as to show, that by estimating for a plate rail and single track, and with the subscription of Wheeling, which had then been made, the funds required by the act of 1835 would be sufficient for the construction of the road from the Ohio to Harper's Ferry; that accordingly the certificates of the State directors and the engineers verified by oath were made; that the 3d and 4th stipulations of the act of 1835 were complied with; "and this was announced to the general meeting of the stockholders, called and adjourned from time to time to consider the acts of Virginia and Maryland,—and the directors will recollect, that at the last of these meetings held in the law buildings, the law of Virginia was accepted, and the law of Maryland of Dec. session 1837, chap. 314, being that in question, was laid on the table and no action has since been had on it."

It appears then, that in the spring of 1838, when it was ascertained that a certificate could be made, by estimating for a single track and a plate rail, the act of 1837 was laid on the table, there to remain for future rejection or acceptance, as the interests of the company might afterwards require. The treasurer received the certificate in November 1838, and, at the last session, the act was passed for changing the form of the stock, and delivering to the company such an amount of it, as would pay the three million subscription. The act directed the change and delivery of the