

*Third*,—That said company should be confined to the southern, or Potomac route, through Maryland, in their progress westward from the town of Cumberland—provided that no great additional distance or cost should be found in the pursuing of said route over the distance and cost on any other route.

*Fourth*,—That no part of the State's subscription of three million of dollars should be paid to the company, until it had accepted the provisions of this act.

In order to guard against any inference to the contrary, growing out of the terms of the act, it was provided, that the one million penalty should remain in full force and effect.

The conditions here enumerated, were suggested for the first time by the act of 1837. Under the original charter, and under the act of 1835, ch. 395, the right of choice of routes, and the right to appropriate the company's funds in the construction of the road, were unrestricted—and the Legislature rather countenanced than discouraged the right and probability of further applications for assistance.

The act of 1837, however, 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.

Soon after the legislature of 1837 adjourned, which was in the spring of 1838, "the particular and minute surveys of the road were completed so far as to shew that, by estimating for a plate rail and a single track, and with the subscription of one million of dollars, which had been by this time made by Wheeling, the funds available under the act of 1835, chap. 395, *would be sufficient* for the construction of a road from the Ohio river to Harper's Ferry, by way of Hagerstown, Boonsborough, and Cumberland—and, accordingly, the certificates of the State directors and the Engineers, verified by the required affidavits, were made; and the third and fourth of the stipulations above referred to were complied with. 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 December session, 1837, ch. 314,—being that in question—*was laid on the table*, and no action has since been had on it.

But while the third and fourth stipulations of the act of 1835, ch. 395, were thus complied with, the first, second, fifth and sixth relating to the 20 per cent. premium—the six months notice—the