

payment of but one million per annum—and the payments *pari passee* with other stockholders: remained uncomplied with, and still effectually prevented *the use* of the State's subscription.

To obviate the necessity of complying with these stipulations, application was made to the legislature at its late session, and the law, fresh, no doubt, in the minds of the board, was passed, placing the sterling five per cent. bonds of the State at once in the hands of the rail road company for the entire subscription, dispensing thereby with the six months notice, and without limit as to the price at which the bonds were to be sold, and without restriction as to the amount to be paid in a given period. The only conditions annexed to this law were, that the company should release its contract with the commissioners, and mortgage its property to secure the payment of the interest for three years, or leave an amount of bonds in the treasurer's hands for that purpose. The release has been executed, and the mortgage has been prepared, and is, perhaps executed also.

Thus, all the stipulations of the act of 1835, chap. 395, have either been complied with by the company, or obviated by the legislation of 1838, and the bonds of the State are now, or soon will be, in the company's hands, to be applied *whenever* they can be made available, and *wherever* the company deems best, and the law of 1837, chap. 314, *remains a dead letter on the statute book.*

Connected with the subject, though not immediately referred to in the resolutions of the board, is the situation of the penalty of one million of dollars for the use of Washington county. Under the act of 1835, chap. 395, this might have been *retained* out of the three millions subscription; for all the payments on this subscription were to be made under that act, by the treasurer, into whose hands the proceeds of the six per cent. currency bonds were to be paid; *now*, the entire fund being placed in the company's hands, there can be no such *retainer*; but, should the State desire to enforce the penalty, it must do so by *suing* the company—in which it will then be one of the largest stockholders—sue it, too, *for the benefit of one county*, without one moral or equitable consideration to sustain the suit, *and at the expense of all the other counties of the State*—a result which can scarcely be anticipated; especially when, by placing the entire subscription in the company's possession at a time when the adoption of the Virginia route was well known, without any other reservation than the lien for the payment of the interest already mentioned, the State may be said, under the circumstances, to have assented to the abandonment of the northern for the southern shore of the Potomac. Admitting, therefore, that the million penalty is still unrepealed in terms, I cannot bring myself to believe that there is the slightest probability of an attempt ever being made to enforce it.

I have the honor to be,
Most respectfully,

(Signed,)

JNO. H. B. LATROBE,
Counsel B. & O. R. R. Co., June 27, 1839.