

pronounced in the case between this company and the Baltimore and Ohio Rail Road Company in 1832, clearly defined the respective rights of the two companies in regard to the occupation of the Valley of the Potomac, and decided, that an unqualified and unrestricted *priority* in the choice of a route was vested in this company; and that "the Baltimore and Ohio Rail Road company, could not without its assent, occupy any of the difficult passes, or other places, along the river, for the route or site of their road, in such a manner as either to exclude it from a priority in the choice of a site or sites for the construction of its works, or in any manner, restrict or circumscribe it in the exercise of its prior right of election."

In view of this adjudication by the court of highest resort in the State, the Baltimore and Ohio Rail Road company, found it necessary to make application to this company for the purpose of obtaining from it such action as would enable them to proceed, when, during the past year, they determined to prosecute the extension of their road westwardly.

Three routes were proposed by the rail road company, each having a different point of departure from their present road, but two of them uniting, in or near the western limits of Cumberland, and the third at Fort Hill, on the Maryland side of the North Branch, about thirteen miles beyond Cumberland. The first, or lower line, as it was called, diverged from the road as now constructed about 2600 feet east of their Depot at Cumberland, skirted and passed over the Canal Basin at that place, crossed Wills creek at the mouth, and thence pursued the Maryland Bank of the river to Fort Hill. The second line extended from the present terminus at Cumberland, about 2000 feet on the Mount Savage road, then deflecting to the left through the town, it passed, by a viaduct over Wills creek, and by a tunnel through Academy Hill, and thence with the first mentioned line, up to the North Branch of the Potomac. The third, or Knobly route, departed from the present road near Patterson's Creek Viaduct about eight miles East of Cumberland; thence by a designated route to, and across the North Branch, and up the said river to a junction with the other lines at the northern termination of Fort Hill. From Fort Hill, westwardly to the mouth of Savage river, but one route was in view, passing along the Maryland side of the North Branch of the Potomac.

The objections on the part of this company to the first line indicated, on account of its encroachment upon, and interference with the basin of the canal at Cumberland, were obvious and insuperable, and for this reason, as well as for others of weight with the rail road company, it was soon abandoned, and their choice confined to the other two routes above described. The adoption of either of these two, equally called for some precedent action on the part of this company, and without such action, or an acquiescence equivalent to consent, it is believed that the rail road company could not have proceeded with the construction