

the 200 acres." This declaration can be reconciled with the testimony of the witnesses familiar with the subject only on the hypothesis that the legitimate "purposes of the canal" as contemplated by the charter, did not extend to docks, or such other safe places of retreat.

If this be the true construction of the charter, from which the minority of this committee begs leave to dissent, it is a sufficient answer to say, that this interpretation does not militate against the propriety of granting the prayer of the memorialists—They have petitioned for such a *modification* of their charter as the convenience of the public demands; and such as the minority of this committee deems not incompatible with the rights acquired by the counter memorialist, if these rights were even co-extensive with his claim.

The counter memorial alleges that the proprietors of the canal some time in 1813, sold to Edward Wilson, for a valuable consideration, sundry lots delineated on a plat then exhibited; on some of which costly buildings have been erected—that the deed of bargain and sale from the proprietors to Wilson contains this covenant, to wit:

"And it is mutually agreed and understood by and between the parties to these presents in the manner following: that is to say, the towing path of 20 feet on the west side of the canal, and that of 40 feet on the east side thereof, and shall at all times be considered public highways, and shall not at any time be shut up or unnecessarily obstructed."

And in virtue of this covenant the counter memorialist insists that the tow path on either side of the canal is to be kept free from obstructions, and used for the ordinary purposes of a common road for wheeled carriages.

The memorialists deny the justness of this construction, and the question is now pending in the appropriate department of the government, on whose jurisdiction the minority of this committee does not feel at liberty to trespass.

But admit that the construction of the counter memorialist is just, it is by no means improper therefore to grant the petition of the memorialists. *The right, as claimed, is but the right of using the tow path as a public road; it is certain the fee must be resident necessarily some where, and as it is not pretended that the grantors have departed from it by their deed to Wilson, it must reside in them, subject to their dominion in every mode not incompatible with the rights of the grantees,*