have not as in the said Writ of Scire Facias is suggested wilfully and for a long time neglected and failed to keep their said Road or parts thereof and bridges over the streams crossing said Road in such good order and repair as is required by the act in said Writ first mentioned but that if there has been such failure it has arisen from the act of the State herself and by and through her own means, and this the defendants are ready to verify Wherefore they pray Judgment of their Chartered and Corporate powers and franchises ought to be vacated and annulled,

2d. And for a second plea the defendants say that at the time the General Assembly of the State of Maryland was legislating for the consideration of the Naw Road mentioned in the act of the 22d of February 1830 referred to in the 1st plea the said President Managers and Company do remonstrate and protest against the said and aforesaid and declare that the consequence of the proposed action on the part of said State in constructing said Rail Road would be to reduce the tolls and revenues of said Turnpike Road so low that the whole thereof would be insufficient to keep said Turnpike Road in good and proper condition and repair whereupon the General Assembly professing to recognize the importance of preserving the Turnpike Road in its then state of usefulness did in the 4 Section of said act enact that the said President Managers and Company should be allowed and authorized to subscribe for and furnish a certain portion of the funds to be used in the construction of said Naw Road the dividends in review of which subscription were to be applicable in the first place to find and keep said Turnpike Road in good and sufficient repair

And the said President Managers and Company say that and if the purpose of so subscribing had been in any sense a just and adequate or proper mode of keeping said Turnpike road in repair yet the whole of their capital had been expended in the construction of said Turnpike Road and they had not

the means of subscribing to said Naw Road and moreover under an act of General Assembly of said State passed on the 9th of March 1833 the right to make such subscription ceased and determined within six Months after the passage of the last mentioned act and although the effect of the transportation on said Rail Road was to deprive the said President Managers and Company of much income which had the said Rail Road not been constructed might and would have been received by them and although without some just compensation for the income of which they were so deprived they could not maintain and keep the said Turnpike in any better order and repair than it now is yet no such compensation has been made and so the defendants say that they have not as in the said Writ of Scire Facias is suggested wilfully and for a long time neglected and failed to keep their said Road or parts thereof and the Bridges and the streams crossing said Road in such good order and repair as is required by the act in said Writ first mentioned but that if there has been such failure it has arisen from the act of the State herself in depriving the said President Managers and Company of such income as aforesaid and making to them no compensation therefor and under such circumstances to vacate and annul their Charter and Corporate powers and franchises would be contrary to the Constitution of the State of Maryland and to the Constitution of the United States and this the defendants are ready to verify.

Wherefore they pray Judgment of their Chartered and Corporate powers and franchises ought to be vacated and annulled

3d And for a 3d plea in this behalf the defendants say that on the 10th of February 1839 the General Assembly of the State of Maryland passed an act whereby after recciting that there was then pending in Baltimore County Court an action brought by the Washington of Baltimore Turnpike Road against