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BY THE SENATE,

FEBRUARY 3, 1858.

Read and ordered to be printed.

By order,

C. HARWOOD, Secretary.

MEMORIAL

OF THE

BONDHOLDERS OF THE CHESAPEAKE
AND OHIO CANAL COMPANY.

MEMORIAL

Faint, illegible text, likely bleed-through from the reverse side of the page. The text is mirrored and difficult to decipher.

MEMORIAL.

TO THE HONORABLE, THE SENATE
AND HOUSE OF DELEGATES OF MARYLAND :

The undersigned have been appointed a committee by the holders of bonds, issued by the Chesapeake and Ohio Canal Company, to invite, most respectfully, the particular attention of the members of the Senate and House of Delegates of Maryland, to the financial condition of that Corporation, with the hope that some law may be passed for the relief of the creditors of that Company.

The creditors for whom we appear are all friendly to that great enterprise, which was intended to open an easy communication between the immensely valuable coal fields and forests of the Alleghanies, and Tide-water of the Chesapeake. Of this many of them have given the best evidence that could be offered, in the cheerful payment of their portion of the State tax, that it became necessary to levy to maintain the credit of Maryland, which was at one time deeply involved, in consequence of the total failure of the Canal to comply with its engagements. And all of those for whom we appear, have given proofs of their indisposition to embarrass the Company, whose creditors they are, by waiting for years, not only without receiving the principal, but without even receiving the interest on the claims they severally hold. And they would all wait still longer if there was the remotest possibility of either the interest or the principal of their claims being paid without a thorough and entire change in the measures and policy, which have embarrassed so deeply the Company, with whose fate it is the misfortune of those for whom we appear, to be intimately, to some extent, connected. Many of these creditors are Marylanders, and, as good citizens, have paid, and will cheerfully continue to pay, their proportion of the taxes levied to pay the debt incurred by the State, for the benefit of the Canal. In being required so to do, they are by the laws placed upon

an equality with their fellow-citizens generally. But in being compelled by the law, to live without even the interest annually payable on their claims against the Canal Company, we must respectfully represent that they are subjected to privations unjustly imposed, and which no other citizens of Maryland are called upon to endure. To this inequality and injustice, they would still longer submit, if, in their judgment, any great public interest could thereby be promoted. But when it is conceded by impartial men, who are conversant with the subject, that the refusal of the Legislature to relieve the creditors of the Canal Company, will be seriously detrimental to the great interest that the Canal was intended to foster and cherish, we will hope that the measure we are authorized to propose will be generously adopted.

It is impossible to advert to the financial condition of this Canal Company, without experiencing a strong sensation at discovering, how large an amount of money has been expended, in a fruitless attempt to accomplish the object for which that Company was established. It is not the purpose or the province of this committee to explain how all this money was disposed of. It was expended under the direction of officers appointed by the State of Maryland. And its enormous amount, and admitted wasteful and lavish outlay, is alluded to as one of the reasons we have to offer, in justification of the earnest appeal made to the Legislature to adopt some new line of policy towards the creditors of the Canal Company. We do not expect that this policy shall be one that must place the Government of the Canal Company in the hands of its creditors. Nor do we apply for the passage of a law, that will substitute for the government of the State a government of capitalists, who will, there is good reasons to apprehend, manage the Canal Company, much more with a view to their own profits, than for the relief of those for whom we appear. If the money justly due to those in whose behalf we come before the Legislature, is to be arbitrarily withheld, it is a question of secondary importance, whether the power by which this injustice is to be perpetuated, is to be wielded by the agents or assignees of the State. Under existing laws, the President and Directors of the Canal Company, are not permitted to pay its debts; nor can its creditors compel payment. This anomalous condition in the relation of creditor and debtor was established by an act of the General Assembly of Maryland, passed March 10th, 1845. At the time of the passage of this law the Canal had been opened for navigation to Dam No. 6, fifty miles East of Cumberland. It did not yield an income, and it was foreseen that it never would yield an income, without being extended to the coal fields, sufficient to keep the work in re-

pairs, and pay its officers their salaries. The State of Maryland, the Government of the United States, and the State of Virginia, all refused to advance any more money to extricate the Canal Company, from its acknowledged absolute bankruptcy. These governments preferred to lose the very large amounts they had severally paid towards the great enterprise, rather than invest more capital in the undertaking. This very disastrous condition of affairs had continued for more than five years. The whole of the money paid by the stockholders to the Canal Company had been expended. Still the three governments named, would not consent to make further advances. The State of Maryland, as security for the payment of its advances and loans, held mortgages in the whole of the nett revenues, the water rights, lands, and other property of the Company. Notwithstanding the large investments as stockholders and creditor, Maryland refused to make any further advances to extricate the Canal Company from bankruptcy. The sober-minded men of the State had formed the opinion, that the value of the Canal, when completed to the coal fields, had been immensely over-rated, and they were unwilling to involve the State still more deeply in debt, by advances to that enterprise.

Although the governments named were unwilling to incur an expenditure necessary to extend the Canal, they consented to offer inducements to private citizens to furnish the means required for that purpose. With this view, the Legislature of Virginia, on the 20th of January, 1844, passed an act conferring full power and authority on the President and Directors of the Canal Company, to borrow money from time to time, to carry into effect the objects authorized by their charter, and to pledge the property and revenues of the Company for the payment of the same, and the interest to accrue thereon. This act of Virginia was confirmed by the United States, and by Maryland, and was accepted by the stockholders as an amendment to their charter. There was still one difficulty in the way of those who would not abandon all hope of establishing an easy, cheap, and safe mode of transportation of the coal in the Alleghanies to the Tide-Water of the Chesapeake. The Canal Company had power to mortgage its property and revenues; but Maryland held a prior mortgage on the revenues, lands, water-rights and property of the Company; and it was readily foreseen, that no prudent citizen would advance money to extend the Canal, if the mortgage to secure its payment was not to be available, until the prior incumbrances of Maryland were removed. An appeal was made to the Legislature of the State to remove the difficulty, and in response to that application, an act of

the General Assembly of Maryland, was passed March 10th, 1845, to provide for the completion of the Chesapeake and Ohio Canal to Cumberland.

The act authorised the President and Directors of the Company to borrow, upon the bonds of the Company, \$1,700,000 and to secure the payment of the interest and principal of the same, by a mortgage, on the revenues and tolls of the Company, and waived, deferred and postponed, in favor of such bonds, the rights and liens of the State on the revenue only, but not upon the lands, water rights and property of the Company. To this waiver of the rights of Maryland is attached a condition, which is expressed in a proviso to the act in these words. "And provided further, That the President and Directors of said Company shall from time to time, and at all times hereafter, have the privilege and authority to use and apply, such portion of said revenues and tolls as in their power may be necessary, to keep the said Canal in good repair for transportation, provide the requisite supply of water, and pay the salaries of officers and agents, and the current expenses of the Company.

It is highly probable that few members of the Legislature, by whom this law to complete the Canal, was passed, adverted to its peculiar provisions, at all events we consider it very certain, that those who loaned \$1700,000, to extend the Canal, by purchasing the bonds of the Company, did not know that the State had waived its prior liens only, on the revenues and tolls, and not upon the lands, water rights and property of the Company. And we feel equally confident that those who have, unfortunately, become creditors of this Company, in pursuance of the provisions of this act of March 10th, 1845, did not have their attention turned to that proviso in the law, that reserves to the President and Directors, a right to take from the tolls and revenues, any amount that shall to them seem proper and necessary, to put and keep the Canal in good condition, provide the requisite supply of water, and pay salaries of Officers and Agents and current expenses. It is fair to presume that those who furnished the money to complete the Canal, after it had been abandoned as a hopeless wreck by Maryland, Virginia and the United States, expected to have their interest paid at all events punctually. And it is not unreasonable to suppose that they, in the event of the non-payment of their interest for an unreasonable length of time, had the right secured to them, under their mortgage, to compel the Company to pay its debts. The bonds were issued to those who contracted to complete the Canal, and were by them transferred to the parties who furnished the money, for that purpose, and it is not probable that those who loaned the money, knew of these peculiar provisions of the law of

the case. The bonds it was understood were secured by a first mortgage of the Canal Company. And every one concerned would naturally suppose that it was an available mortgage. But when we come to look critically into the laws on the subject, we find that such is not the case. The bond holders have no control over the President and Directors, they are appointed first by one and then by another political party in Maryland, and when appointed have express authority reserved to them to pay to the bond holders only that portion of these revenues and tolls that is left after certain other enumerated expenses have been defrayed, which expenses may be large or small in amount according to their direction. And even if the bond holders should be of opinion unanimously, that this power was not being judiciously exercised, they have no right to arrest the proceeding and must wait for an indefinite period of time to get even the interest on their claims. That the Legislature may see the results of this legislation, we respectfully invite attention to the following statement compiled from the Books of the Canal Company:

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| Amount of bonds issued to complete the Canal to Cumberland, under the act of March 10, 1844, payable thirty-five years after date..... | \$1,700,000 |
| Amount of coupons not funded, due on said bonds and in arrears from first of July 1854, to first of January 1858, inclusive..... | 408,000 |
| Bonds issued to pay for repairs on Canal east of dam, No. 6, guaranteed by the State of Virginia, payable in 1869..... | 200,000 |
| Interest thereon unpaid, payable semi-annually..... | 66,000 |
| Loans from Banks and other Corporations for repairs of Canal, made necessary by the floods in the Potomac, in the years 1847, 1852 and 1857..... | 178,500 |
| Certificates issued to fund coupons due and unpaid prior to January 1st, 1854..... | 146,840 |
| Interest on these certificates unpaid..... | 17,000 |
| Bonds to Selden, Withers & Co., for coupons on preferred bonds paid by them..... | 140,000 |
| Interest due, and in arrear on the same from January 1st, 1852, to January 1st, 1858..... | 50,400 |
| Unfunded coupons due January 1st, 1854, and interest thereon..... | 88,800 |
| Certificates of debts payable at the pleasure of the Company, for repairs and Officers salaries, due prior to March 10th, 1844..... | 50,000 |
| Outstanding balances for repairs and improvements..... | 34,500 |
| | <hr/> |
| | \$3,080,040.40 |

From this tabular statement, it appears that the debts which the Canal Company was authorised to contract, in pursuance of the provisions of the act of March 10th, 1845, now amount to \$3,080,040.44-100.

The Canal was opened for transportation to Cumberland in November, 1850, and now, after the expiration of more than eight years since that event, we find, that those creditors of the Company, who furnished the means to extend the Canal, have not even received the interest due upon their debts, the whole of the revenues have been expended for officers' salaries, repairs, and other unavoidable objects and debts, amounting to \$283,000, contracted for these purposes are still outstanding. And in the judgment of those well acquainted with the condition and capabilities of the Canal, a further sum of not less than half a million of dollars is necessary, to pay for the two Stone Dams now being erected, near the sites of wooden dams Nos. 4 and 5, to pay for the steam pump, used on the long level west of dam No. 6, to construct another steam pump for the same level, and to put the whole line of the Canal in good navigable order. Looking to this prostrate condition of this great enterprise, to the disappointed expectations of its patriotic projectors, to the cherished hopes of its numerous suffering creditors, may we not be permitted to ask earnestly and emphatically, when? how? and by whom can these calamitous proceedings be arrested? The Chesapeake and Ohio Canal Company is indebted for interest to its numerous creditors, \$8,763,149.94. It has absorbed the liabilities and stock of the old Potomac Company; it has absorbed \$8,226,593.67. paid by its Stockholders, \$2,000,000.00 loaned by Maryland; \$200,000.00 loaned by Virginia; \$1,700,000 loaned by the holders of these preferred bonds; \$943,171.67, due to its other creditors, and all the tolls, incomes and revenues, received for five and twenty years. It may in truth, be styled an omniverous corporation.

It is certainly time for all concerned, to abandon all hopes of seeing realised, in this day and generation, the extravagant expectations of those who commenced this Canal. Experience, dear bought, has dissipated many of these fanciful illusions. It is time, high time, for all to deal with this Canal question as it is in reality, not as we would have it to be. Instead of anticipating incomes that cannot be hoped for, until immense amounts of capital, and a large additional population have been located in the Alleghanies, it would be wiser we think, to adopt measures now founded in the supposition that for eight years to come, the nett revenues of the Canal

Company may not much exceed its nett revenues for the eight years last past, and if this sober and prudent view be taken of the subject, we do not perceive how the remedial measures we have most respectfully to ask for, can be considered unreasonable or unjust.

It is not difficult to trace this disastrous condition of affairs to its prime causes. The Canal has never been finished. True it was open for transportation to Cumberland in October, 1850; but the most material parts of its structure were then believed to be, by persons best qualified to judge, utterly insufficient for the accommodation of a large and remunerative transportation. Dams Nos. 4 and 5 were so incomplete, and were built of such inferior materials, that they have never subserved the purposes for which they were designed. The long level on the Canal extending from dam No. 6 to Cumberland, a distance of fifty miles, was dependent altogether on the pool of the dam at that city, unaided by any intermediate feeder. Incessant efforts have been made to remedy these defects in original construction. Large sums of money have been expended from time to time in attempts to improve these defective Dams, without any very beneficial results. And at last the President and Directors of the Company have decided, that Stone Dams, in place of these wooden structures are indispensable, to resist the heavy floods of the Potomac when this river is high, and to guard against waste of water by leakage, when this river is at a low stage. As a substitute for the required feeder on the long level, the President and Directors undertook to have built two stationary engines, to pump the water from the river into the Canal. One of which has been finished, but in the opinion of many who have had the best opportunities to form a correct opinion, this long level of the Canal never can be in a perfect condition to invite and accommodate a large trade, until a substantial Dam has been built, near the junction of the South with the North Branch of the Potomac, so that an abundant supply of water may enter the Canal at that point. And even if these obstacles to a large trade on the Canal were removed, still, that work ought to be extended twenty-seven miles beyond its present terminus, to the great coal field in the valley of George's Creek, or be connected with that region by a slack water navigation on the river. In this Valley eight large Coal Companies have been organized to mine in the twelve feet vein of coal which is more extensive there than in any other section of Maryland.

For a time these Companies were doing an extensive and profitable business. Since the Baltimore and Ohio Railroad

Company has increased its charges on local transportation, the development of this rich region has been arrested, and many expensive improvements must be abandoned, until the Alexandria, Loudoun and Hampshire Road, is built to Piedmont, or the Canal is made accessible by some improvement extending from Cumberland, up the Valley of the North Branch to the mouth of George's Creek.

The President and Directors having contracted for two Stone Dams across the Potomac, and for one stationary steam pump, to supply water to the long level, we are advised, that to pay for these improvements, and for repairs that are indispensable at different points along the whole line of the Canal, \$500,000, will be required. Under existing laws, we fear that this large sum of money cannot be borrowed by the Company. It must, if we are right, be paid out of accruing revenues. And we understand that the President and Directors rely upon the revenues for these purposes. If the revenues are to be appropriated to these objects, and to the payment of Officers' salaries, and other repairs that cannot now be accurately estimated, we may anticipate that the whole income of the Company, for four or five years to come, will be in that way expended. And if so, for that long period, the creditors of the Company will not receive even interest on their claims. That this state of things may be reasonably apprehended, we would direct attention again to the tabular statement, constituting a part of this memorial. From that statement it will be seen that the Canal Company is indebted to banks and other corporations \$178,500, for money loaned to pay for repairs rendered necessary by the freshets in the Potomac, in the years 1847, 1852, and 1857. And from the same statement it may be learned, that the Company are indebted to the State of Virginia \$2,000,000, for a loan, to make repairs in the Canal below Dam No. 6. And the Company, in addition to these debts, owes outstanding claims, to the amount of \$84,500, for other repairs and improvements.

Now when it is remembered that these debts, making in the aggregate \$463,000, have been incurred as stated within a very short period, it is not extravagant to estimate that at the end of five years, debts to the amount of half a million of dollars more, will be added to those already existing. And that in the mean time interest even will not be paid to the creditors of the Company. It is indeed doubted by many of those, who can be taught by experience, if this Company can stagger along five years more surrounded by these accumu-

lating embarrassments. Capitalists are reluctant to loan money when its repayment cannot in any event be enforced. And contractors are reluctant to work for a Company that cannot pay, if its resources be cut off by one of those freshets that periodically appear in the Potomac. It is not for this committee to prescribe for the Honorable, the Legislature of Maryland the remedy for the serious injustice of which the creditors of this Company complain. The Canal now yields nothing, and we believe it never will yield anything, either to the State, or to the bond holders who furnished the money to extend it to Cumberland, under existing laws.

We believe that unless existing laws on this subject be amended, that the day is not very distant, when the Canal will be no longer available for the purposes of transportation from Cumberland to tide water. This calamitous termination to a great enterprise, we earnestly hope will be in the wisdom of this Legislature effectually guarded against. This, in our humble judgment, can be done if a law be passed authorising the President and Directors of the Canal Company, to borrow on its bonds, a sum sufficient to put the Canal in the best possible condition that it will admit of for transportation; to fund the debts due under the act of March 10th, 1845, and all other outstanding debts of the Company. To give character to such bonds, it would be absolutely indispensable that the law to be passed should provide for a waiver of the liens of the State of Maryland, not only on the revenues and tolls, but on the water rights, and other property of the Canal Company.

Such bonds would furnish the means to the President and Directors, if secured by a mortgage on the property of the Company, to meet all their engagements, for repairs commenced, or required, without touching the revenues of the Company. With such bonds, the creditors we appear for, would be content. And we must believe that the Legislature of Virginia, and the Congress of the United States, when the law of the 20th January, 1844, amending the charter of the Canal Company, was passed, fully expected that the State of Maryland would authorize, by a waiver of its liens, the issue of bonds of this character, whenever needed by the Canal Company.

Seeing all this, seeing that this Canal is valueless to the State, as one of the stockholders and creditors; is valueless to its numerous suffering private creditors, and is utterly insufficient to accomplish the purposes for which, by its patriotic, but too sanguine projectors, it was designed, we

cherish the hope, that the measure we have the honor to recommend, or some wiser and better measure, may receive the sanction of the present Legislature, calculated to remedy the evils to which it has been our unpleasant duty to direct attention. We ask for an act of simple justice, from the representatives of a magnanimous people, and we do not anticipate that we will have asked in vain.

L. P. BAYNE,
CHARLES H. CARTER.
A. B. DAVIS.

UNIV OF MD COLLEGE PARK



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