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BY THE HOUSE OF DELEGATES,

February 8th, 1850.

Referred to committee on Internal Improvements, and ordered  
to be printed.

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R E P O R T

FROM THE

PRESIDENT AND DIRECTORS

OF THE

CHESAPEAKE AND OHIO CANAL COMPANY.

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## REPORT.

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OFFICE CHESAPEAKE AND OHIO CANAL COMPANY, }  
Frederick, January 25th, 1850. }

*To the Honorable the General Assembly of Maryland :*

Gentlemen—In compliance with the eighth section of the act of the General Assembly of Maryland, passed at December session, 1844, chapter 281, we, in August last, transmitted to the Governor of this State a copy of our Annual Report, exhibiting the condition and prospects of the company at the close of the fiscal year, which terminated on the 31st of May last. That report has, we believe, been communicated to you with the Executive Message. We now, as has been our custom for several years past, present a statement of the situation of the company in regard to its most interesting and important transactions, at the close of the calendar year.

The total work done, under the contract for the completion of the canal to Cumberland, to the 31st December, 1849, according to the estimate of the chief engineer, made out in conformity with its provisions, amounted to \$1,173,733 79, of which there has been paid to the contractors, through their agents and attorneys, Messrs. Davis, Hale and Allen, in the bonds of the company, issued under and pursuant of the act of 1844, chapter 281, the sum of \$1,173,000; to this amount, for *work done*, is to be added \$100,000 in bonds, paid to the said parties for the same amount of current money paid by them to the trustee, for the liquidation of land claims, engineer expenses, &c., the whole of which sum has been duly expended under the orders of the board, except \$1,000 now in his hands, and \$61,500 in bonds for the like amount of interest paid by them on the bonds previously issued in July, 1848, January and July, 1849, and January, 1850, making the whole amount of bonds paid and delivered to the said contractors through their agents and attorneys, pursuant to the provisions of the contract, to this time, \$1,334,500; \$300,000 of this amount they have had guaranteed by the State of Virginia, under the act passed in their behalf by the Legislature of said State on the eighth of March, 1847, which is the whole sum authorised to be guaranteed by said act. Deduct the aggregate amount paid out to the contractors as above shown, viz: \$1,334,500 from the total consideration of the contract, viz: \$1,625,000, and the balance will be

\$290,500. From this balance the company have a right to withhold, under an existing order of the board, the sum of \$4,475, being the cost of the bridge, basin, &c., dispensed with under the arrangement with L. M. Cresap, which is explained in the annual report, leaving \$286,025 in bonds as the amount of the general consideration of the contract remaining unpaid at this date.

The total work embraced in the original plans and specifications and remaining to be done on the 1st January, 1850, according to the statement of the chief engineer, amounts at the cash prices of the August, 1845, estimate, which, as we are advised, have been found an ample measure of the actual money cost of the work, to the sum of \$235,258. From this work are to be excepted the weigh lock, at Cumberland, with a view of adopting the more approved plan of guage locks, several of which can be made at different points on the canal with more beneficial results and at the cost of a single weigh lock, and certain improvements embraced in the original specifications mainly with a view to contingencies, the estimated cost of both of which works, viz : \$33,000, the company will have the right to withhold from the consideration of the contract. This will leave the total cost of completing the canal to Cumberland on the first of January, 1850, at \$202,258. The portions of this work which in the opinion of the chief engineer may be safely and more advantageously executed after the water is admitted are estimated at \$30,000. The whole cost of the work, therefore, remaining to be done to complete the Chesapeake and Ohio Canal to Cumberland so far as to be ready for the introduction of the water and the commencement of the transportation of tonnage throughout the entire line amounted on the 1st of January, 1850, to \$172,258.

In June last, the company purchased a small mill property near Old Town, in Allegany county, from Amos P. Sheppard, with a view of dispensing with the construction of a culvert, which is a species of work injurious to a canal and very liable to damage, and of securing the water from the small stream that supplies the mill for the use of the canal in times of scarcity. The cost of the property was \$7,000, in the bonds of the company, and with a reservation of the privileges and benefits above mentioned, the board are advised that the same amount in cash can now be obtained for it.

The aggregate amount of bonds, therefore, paid out to the contractors, or their agents and attorneys, as hereinbefore stated (\$1,334,500) must be added the \$7,000 paid to Sheppard, and the \$5,000 paid to Cresap under the arrangement heretofore referred to, some other advantages having been secured to the company under said arrangement; besides the right of dispensing with the works indicated, which will explain the slight discrepancy between the sum paid and the sum withheld from the contractors, making the total amount of bonds issued under the Maryland act of 1844, chapter 281, and paid out by the company to this date \$1,346,500.

The amount of bonds authorised to be issued under the act of the class therein mentioned, is \$1,700,000, which shows a margin at this time, or balance remaining unissued, of \$353,500, applicable to the completion of the Chesapeake and Ohio Canal to Cumberland and the fulfilment of the objects of the act.

With a view of obviating future differences between the company and the contractors and of extending to them such assistance as could justly be afforded, the board, by virtue of a power conferred upon them by the contract, have agreed to waive any deduction from the general consideration on account of the change of plan in regard to the four locks, near Old Town, spoken of in the annual report, and of the omission of the culvert at Sheppard's, on condition that it be considered in full satisfaction of any claim, or supposed claim, the contractors may have against the company by reason of increased cost arising from change of plan in other works, or any extraneous matters.

In the appendix to our last annual report will be found a communication from the Hon. John Davis and Nathan Hale and Horatio Allen, Esqrs., who, as agents and attorneys of the contractors, have undertaken the charge of carrying their contract into execution under an arrangement, explained in our Twentieth Annual Report, which has likewise been laid before you, in which those gentlemen, in May last, expressed the opinion, that unless prevented by some adverse event of unusual occurrence, the canal would be in readiness for the introduction of the water between Cumberland and Dam No. 6 by the 1st of October. The high character and standing of the parties altogether forbid the idea that the opinion thus formally presented was not honestly entertained by them, but the work then remaining to be done proving heavier than they anticipated, or some other causes interposing which we are unable to explain, they failed to fulfil the promise thus made. The Maryland State agents and the board then found it necessary and expedient to extend the time limited in the contract for such purpose, first to the 25th of December, 1849, and subsequently to the 1st of April next, and also allow them until the 1st of May, for the execution of some of the coping, and such other pieces of work, as in the opinion of the chief engineer may be judiciously postponed until after the admission of the water and the opening of the navigation, with a view of enabling them to avail of the facilities of the canal for the transportation of suitable materials, the larger portion of which has to be brought, from a distance, to the points where it is required. The saving of cost in the manner proposed, which is not without precedent in the construction of a part of the present finished portion of the canal, is, we are satisfied, not only due to the contractors in their persevering efforts for the fulfilment of their arduous undertaking, but it is also demanded by a just consideration of the interests of the company.

Those who do not know, or who from any cause are incapable of appreciating the disadvantages under which the company has labored, may perhaps take exception to the time that has elapsed

since the first commencement of the work under the contract, and to the failure of the contractors, or their agents and attorneys, to finish it by the first of October last, as they had promised, but we feel assured that all impartial men who will calmly examine and reflect upon the subject, will find cause for congratulation in the progress that has now been made, and rather look forward with gratification than backward with complaint.

The early completion of the work, important as it has undoubtedly been considered, has not been heretofore the subject of most solicitude on the part of the friends of the canal. Under the provisions and restrictions of the act of 1844, it has not been a question of time, but a question of availability—not whether the canal could be finished by a given day, but whether it could be finished with the means provided for the purpose. The work is now so far advanced that we consider this problem as solved, and we have also every reasonable assurance that the canal will be completed in the ensuing spring.

In the several annual reports which have been published since the passage of the act referred to, a detailed account is given of the proceedings of the company in carrying its provisions into effect. Their reports have from time to time been laid before the Legislature, and we shall not dwell upon their contents. As, however, we are now so near the closing scene, we will take advantage of the present occasion to glance briefly at the recent history of the company in reference to the efforts for the completion of the canal, in order that it may be fairly placed before you.

At the time the act of 1844 was passed, and for several years previously, the company, as is well known, was powerless, prostrate, and utterly discredited. Its great work was only finished to Dam No. 6, about ten miles above Hancock, and its annual revenues insufficient even for the payment of those current expenses which were absolutely necessary for the maintenance of the navigation. Many of its early friends had abandoned it almost in despair, and a load of obloquy was hanging over it on account of the misfortunes or improvident measures of a former period of its history. It could, indeed, scarcely have been considered a very politic step for any set of gentlemen to connect themselves with a company so situated, for the purpose of endeavoring to rescue it from its fallen condition; for the way of the world generally is not to give credit to official labor according to the difficulties it has to overcome, but according to the measure of success with which it is crowned, and the chances of success were clearly against them. It will be borne in mind that the act of 1844 did not place any *money* at the disposal of the company for the completion of the canal, nor furnish it with State bonds, as on former occasions, nor even give the company the power to realize *money* upon its own bonds for the prohibition against the company's selling those bonds at less than par, was, under the circumstances, virtually a prohibition against its selling them at all, but it in effect, so far as the present subject is concerned, merely authorised the Board of Presi-



dent and Directors to issue the bonds of the company with preferred liens upon its revenues, as therein provided, to an amount not exceeding \$1,700,000, (which was considerably less than the amount suggested by the company at the time as expedient to be provided,) for the purposes mentioned in the act; and to contract and pay for the completion of the canal to Cumberland, &c., with said bonds. And to make the bonds of the company thus issued preferred liens on its revenues according to the provisions of the act, the liens of the State of Maryland, then having priority, were waived and postponed in their favor. Little more than one year previously, as will be seen by reference to the Governor's message, at December session, 1843, and the communication made by the State Treasurer to the Senate, under date of the 26th December, of the same year, these State liens had been advertised in the money markets of Europe and America, upon an offer to receive in exchange therefor Maryland bonds, which then commanded only about forty cents in the dollar, without attracting a bid or eliciting a single inquiry on the subject, and they must ever have continued measurably valueless to the State, without the completion of the canal to Cumberland.

The act of 1844, chapter 281, was passed on the 10th day of March, 1845. It was accepted by the stockholders of the company on the 29th of April. By the 29th of July, the guaranties of tonnage, required as a condition precedent to the issuing of the bonds were obtained, and formally approved, and on the 25th of September of the same year, a contract, which at the ensuing session of the legislature received, we believe, the approval of all the authorities of the State, was entered into for the completion of the work to Cumberland, the consideration of which was payable in the bonds. So far, therefore, as the action of the company was concerned, the provisions of the law were carried into effect with the utmost promptitude and decision. By the terms of the contract, the canal was to be finished in two years, and with a view to guard the bonds from depreciation and to ensure their adequacy for the fulfilment of the undertaking, a provision was incorporated in the contract, that no bonds were to be paid to the contractors for the work, until they should give bond with ample security for the fulfilment of the entire contract, or conclude an arrangement for the negotiation of such amount of the company's bonds to which they might become entitled, as would afford to the Maryland State agents, and the board of President and directors, a reasonable guaranty of their ability to comply with their engagements. It was not at the time deemed practicable, that the security for the immense amount that would be required, could be given, and the reliance of the contractors was on an arrangement for the negotiation. They did not, however, we believe, suppose that this could be effected until after the State of Maryland had provided for the resumption of the payment of the interest on the State debt, because they had ascertained, and indeed the company had previously been informed, as may be seen by

reference to Document CC. printed by order of the House of Delegates on the 26th of February, 1844, that capitalists regarded "the interests of the company and the State so interwoven," that whilst the State's securities were dishonored, the company's bonds could not be negotiated. The contractors felt, however, that their own private means and resources would enable them to prosecute the work until after the close of the ensuing session of the legislature, and it was confidently believed, on all sides, that, at that session, provision would be made for the payment of interest on the State debt, and that they could then make a satisfactory negotiation. Soon after the date of the contract, therefore, they commenced the work between Dam No. 6 and Cumberland, and prosecuted it until June, 1846, when the Legislature having met and adjourned without passing an act to restore the credit of the State, and their private means being exhausted, they were compelled to suspend operations.

They, however, continued actively engaged in the effort to make a negotiation, and secured the services of several distinguished gentlemen and financiers to aid them. One of the contractors went to England, for the purpose, and with the assistance of conditional promises, obtained from capitalists on this side of the Atlantic, succeeded in arranging for a negotiation there, predicated mainly upon the resumption of payment by Maryland, and upon no change taking place in the money market. As in the case of the loan for the benefit of the Illinois Canal, gentlemen had previously been appointed by English capitalists to enquire into the probable productiveness of the canal when finished, and other points submitted to them; and they had fully examined the whole subject, and made an elaborate and favorable report. At December session, 1847, this state of things was known to the Legislature, and the friends of the canal were among the most zealous and indefatigable advocates for the restoration of State faith, both on account of the good name of the State, and the known bearing of the measure upon the procurement of means for the completion of the canal. On the 6th of March, 1847, the Legislature of Maryland passed a law for funding the arrears of interest, and punctually paying the accruing interest on the state debt, after the 1st of October, 1847. On the application of the contractors, the Legislature of Virginia, on the 8th March, 1847, passed an act, accommodated to the terms of the contract, in regard to a negotiation, authorizing a guaranty of the bonds to the amount of \$300,000, which gave additional efficacy to the provisions of the act of 1844, and the District Cities and certain citizens of Alexandria, subscribed on similar terms, for \$100,000 of said bonds at their par value for the purpose of aiding the work. A panic having in the mean time, however, taken place in the English money market, the negotiation in that quarter failed, just as it was on the eve of consummation; and the contractors, turning their whole attention to this country, with the aid of the guaranty and subscriptions above mentioned, and through the medium of Messrs.

Davis, Hale and Allen, their present agents and attorneys, succeeding in concluding a satisfactory arrangement of negotiation by the 13th of November, 1847, and the time for completion having been extended to the 1st October, 1849, and some other satisfactory changes made in the contract, the work, on the 18th of the same month, was resumed, and has been steadily prosecuted ever since.

We have hitherto studiously abstained from giving any assurances, on our part, as to the particular time when the canal would be finished, for the obvious reason that the work was being prosecuted by others under a general contract, and in view of the means provided, could be successfully prosecuted in no other way, and we were not disposed to make promises, when we could not directly control the operations which were to ensure their fulfillment. We have, however, in our annual reports given from time to time a full account of the state of the work, and published and referred to the views and assurances of the agents and attorneys of the contractors, in regard to the probable time of completion; and we have, also, extended to the parties every just facility compatible with the interests of the company, and earnestly urged them on to a vigorous prosecution of the work, so as to secure its completion at the earliest practicable period. They have hitherto failed to realize the hopes held out by them in this regard, principally, we believe, because they have entertained opinions different from the chief engineer, with respect to the amount of work to be done, and the force that was requisite to do it by the stipulated time. In neglecting or refusing to employ an adequate force, they rendered their contract liable to forfeiture. But at no period, so far, could such a measure have been advisable or productive of benefit. So long as, and to the extent they were unfulfilled, the Virginia guaranty and the Alexandria and District subscriptions, would most probably have gone down with the contract in case it had been annulled, inasmuch as they appear to have had special reference to it; and, in any event, the company would have been thrown back upon the provisions of the act of 1844, to make a new contract for the work payable in bonds; and peradventure give to the new contractors increased time for the negotiation of another loan, and the execution of the work. None, certainly, can regret more than we do, the failure of the agents and attorneys of the contractors to complete the work before the close of the year, although, had it been finished after the 1st of December, it would have been of but small practical benefit before the opening of spring, as during the winter, little or no through trade could have been expected in consequence of the ice or the apprehension of it; but we nevertheless earnestly desired to see it then finished, in order, amongst many other reasons, that we might have had the satisfaction of communicating the fact to you. Many allowances are, however, to be made for the omission of the contractors to fulfil their engagements in this regard, for we believe that they have had numerous difficulties to

contend against. We would also add as a general remark in concluding this subject, that there are but few instances in the history of internal improvements in which a work of so much magnitude, and for so large an amount, has been finished by the time originally limited, even when the consideration was payable in ready money.

In our last annual Report, we explained the provisions and purposes of the act passed by the Legislature of Virginia, on the 15th of March last, entitled, "an act to aid the Chesapeake and Ohio Canal Company in certain repairs of their works and for other purposes," and exhibited, in the appendix of the report, a certified copy of the act. We also stated that in consequence of some of the conditions of the act, the company had not at that time succeeded in making it available, but the opinion was expressed, that all difficulties would be removed or surmounted, and that the assistance intended to be afforded by the State of Virginia, by the passage of the act, would be realized. We now have the gratification to state that these expectations have been fulfilled. One of the obstacles interposed, which, though not mentioned in the report, was fully made known to the gentlemen, who, under the appointment of the Legislature, represent and have charge of the State's interest in the company, was a letter received from the Governor of this State under date of the 25th of May last, intimating a doubt as to the authority of the company to avail of the provisions of the act, a copy of which had previously been furnished to him at his request. He however stated that "as it was a matter of very great importance both to the State and the canal company," he would submit the question to the Attorney General for his opinion and advice; and, to this end, desired information on certain points which he specified. On the same day, in the hope that a definite conclusion would be arrived at before the annual meeting of the company, which was near at hand, the president of the company replied at length to the enquiries of the Governor, and said, "that however highly important to the interests of Maryland and all concerned in the success of the company, the procurement of adequate means to put the canal in complete condition and repair may now be considered, the company would not be disposed to do any act, even to accomplish that object, which is not just, fair and within the scope of their authority." The sentiment was also expressed that as the question of authority had been raised, it was important that it should be settled before any final steps were taken in the matter, and the propriety of submitting it to the Attorney General was concurred in. So the matter stood until the 4th of July last, when a brief note was received from the Governor, accompanied by the opinion of the Attorney General on the subject. A copy of the note and opinion will be found in the appendix marked No. 1. By reference to the opinion, it will be seen, that this distinguished law officer of the State, is clear and decided on the question of authority, and he also fully sustains the company in

every step contemplated and taken by it in carrying the act into effect. Upon the receipt of this opinion, the board proceeded to make the necessary arrangements, which were soon satisfactorily concluded. The whole subject was then, in accordance with the provisions of the act, submitted to the board of public works of Virginia, who thereupon released the company from the obligation to construct the lock opposite the county of Berkely, which we had objected to for the reasons stated in our annual report, and authorised the treasurer of that State to affix the guaranty of the State of Virginia to the company's bonds issued under and for the purpose indicated in the act, from time to time, when required by the company to do so. See Appendix No. 2.

We will remark, in passing, that the proceeds of the bonds are, by the very terms of the act, to be applied exclusively to the repair and improvement of the canal below Dam No. 6.

Immediately upon being notified of the favorable action of the Virginia board of public works, above referred to, the company commenced the repairs. The whole amount of bonds for repairs issued by the company and guaranteed by the State of Virginia under the said act (of the 15th of March, 1849,) to this time, is \$100,000, which have been issued in denominations of \$500 and \$1,000. The bonds are only disposed of from time to time as the money is wanted for the repairs. The whole amount sold to this date is \$51,500, which have produced the nett amount of \$51,592 33 in cash. The necessity for the repairs, to avoid heavy losses from freshets, and cheapen the cost of transportation, and the policy of making them at this time, in view of the completion of the canal to Cumberland, are matters so well known to those who have been acquainted with the condition of the work for many years past, and have been so frequently adverted to in our annual reports, that we shall not here dwell upon them. By way of illustration, however, we will refer you to the terms of certain contracts which have, as we are informed, already been entered into for the transportation of coal after the opening of the navigation to Cumberland. See Appendix No. 3. It will there be perceived that with the finished portion of the canal below Dam No. 6, in the condition it was before the commencement of the repairs, the charge for carrying coal was to be \$1 21 per ton, exclusive of the toll: with the canal repaired so as to bear five feet water, the charge was to be 95 cents; and with six feet water only 75 cents per ton. These facts need no comment.

We much regret that in consequence of the difficulties interposed, the company lost the most favorable portion of the last year for the prosecution of the repairs. But although they were only commenced in August, decided and marked advantages have already resulted from them, in the increased security of the canal. They are now being pressed forward as rapidly as the weather will permit, and will continue to be so pressed until they are finished; having due regard, however, in reference to the withdrawal of the water from the canal for the purpose to the accommodation of the

trade. In the Appendix marked No. 4 will be seen the treasurer's abstract, showing the total receipts into the treasury and the disbursements therefrom during the year ending the 31st December, 1849. The amount of tolls accrued during the year ending the 31st Dec. 1849, is \$61,823 17, which is the largest amount that has ever accrued in any year since the organization of the company. It exceeds the amount accrued in 1848 by the sum of \$7,676 96. There were transported to and from various points on the canal during the last year, among other articles, 236,620 barrels of flour, 240,073 bushels of wheat, and 244,281 bushels of corn. The aggregate articles transported during the year, according to the statement of the clerk, was equivalent to 102,041 tons, which is an increase of 15,605 tons over the tonnage of 1848, and of 30,601 tons over the tonnage of 1847. For a statement of the tolls accrued in each month last year, and the articles transported, see Appendix No. 5.

The total ordinary revenues accrued during the year ending the 31st December, 1849, consisting of the tolls, water-rents, &c., amount to \$65,438.03, and the total expenses incurred, apart from those appertaining to the completion of the canal and the repairs under the Virginia act, amount to \$50,009.57, showing a surplus of revenue over expenses during the year to the amount of \$15,428.46.

The company has never before been able to present so favorable a result as this. The surplus above mentioned has been absorbed in the payment of arrears on the several divisions from 1848, and loans for repairs obtained in that and the preceding year, with the exception of a small balance remaining in the treasury on the first of the present year. We have now given you information in regard to all the transactions of the company during the past year, which we conceive could be of any general interest.

In taking a general survey of the condition of the company from the vantage ground now attained, those interested in its success, have reason to be well satisfied with the present aspect of affairs, and the prospect before them.

In behalf of the board,

J. M. COALE,  
President Chesapeake and Ohio Canal Company.

## APPENDIX.

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NO. 1.

(Copy.)

*State Department,* }  
Annapolis, July 4th, 1849. }

My dear sir—Herewith enclosed, you will receive a copy of the opinion of the Attorney General of this State in reference to the right claimed by the Chesapeake and Ohio Canal Company to issue its bonds in anticipation of revenue to raise money for the purpose of repairs and improvements. The several topics discussed in the paper, were submitted to the Attorney General on the 28th of May last, and immediately after the receipt of your letter of the 25th of the same month. The opinion, although dated 28th of June, was not received here until yesterday, and I hasten to enclose you the accompanying copy.

I am, with great respect,

Your obedient servant,

(Signed,)

PHILIP F. THOMAS.

JAMES M. COALE, Esq.

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*Baltimore, June 28th. 1849.*

Sir,—I had the honor to receive from you some time ago a communication covering certain papers, from the examination of all of which, I perceive that it is the intention of the president and directors of the Chesapeake and Ohio Canal Company to borrow on their own bonds, endorsed by the State of Virginia, and secured by a pledge of the revenues of the company, the sum of two hundred thousand dollars, for the purpose of *repairing* the canal below Dam No. 6; and the questions to which I understand you desire an answer, are—1st, whether, considering the relations which exist between the State and that company, the president and directors have the right claimed; 2d, if they have the right to borrow, whether they can effect the loan under the conditions of the law of Virginia, proposing to guarantee their bonds; the third question is, whether the president and directors can reduce the tolls of the canal since the act of 1844, ch. 281.

I have examined these questions, with all the care their importance demand; and am of the opinion—1st, that the president and directors have the right to borrow money for the purpose men-

tioned ; that they can issue their bonds for the same ; and farther, that they can pledge the revenues of the company for the payment of the bonds, with the interest.

In the original charter of the company no specific power to borrow money is given, but by the third section of the act of 1843, ch. 124, it is provided, that “ the president and directors of the Chesapeake and Ohio Canal Company, or a majority of them assembled, shall have full power and authority to borrow money from time to time, to carry into effect the objects authorised by the charter of said company, to issue bonds, or other evidences of such loans, and to pledge the property and revenues of the said company for the payment of the same, and the interest to accrue thereon, in such form, and to such extent as they may deem expedient.” It is understood that this act has been assented to by all the necessary parties. Here then are full power and authority given to borrow money, issue bonds, pledge property, &c., “ to carry into effect the objects authorised by the charter of the company.” One of the objects mentioned in the fourth section of the original charter is *to repair and keep in order* the said canal. There can then be no doubt, independent of the considerations hereafter mentioned, that the right to borrow and pledge for the purpose named exists. The difficulty is, however, supposed to be found in the adverse rights of the State of Maryland arising from liens and mortgages in her favor, on all the work and its profits, to secure her against large loans, and subscriptions to the capital stock of the company. The most important of these liens, was given under the 7th section of the act of 1835, ch. 395 ; and by the contract under that section, the company stipulated with the State to pay her out of the profits of the work, six per cent semi-annually, on the whole amount of money which should be paid to the company under and by virtue of the act. The contract is to pay out of the *profits*, and whatever might have been said to the meaning of that word, and whether there could properly be *any profits*, until all necessary repairs were made, and therefore whether even after the contract, the right to *borrow* and *pledge* for *repair* did not exist, it has received a judicial construction and is not now an open question ; for the court of appeals in the case of the State vs. the Baltimore and Ohio Rail Road Company has decided that the pledge of the rail road to the State under the 9th section of the same act (of which the language is identical with that of the 7th section,) of the *profits* of the road to indemnify the State ; meant (to use the language of the court,) “ the *gross profits*.” The receipts of the canal company are therefore pledged to the State, and the president and directors have no right to divert them from her use without her consent ; and accordingly it will be found that in a proviso to the third section of the act of 1843, ch. 124, when the power to issue bonds, to borrow money, pledge property, &c., is given, the Legislature say, “ that nothing herein contained shall be construed to impair the prior rights or liens of the State of Maryland under the mortgages



heretofore made and executed by the Chesapeake and Ohio Canal Company to the said State, but the same shall be held binding and be accordingly respected, except so far as the same may hereafter be waived, deferred, or postponed by the Legislature of said State."

The only question is whether the State has, as against *repair*, waived, deferred, or postponed her lien. If she has, it would seem to me to follow as a necessary consequence, that all the rights given under the preceding part of the section for the purpose of accomplishing that object necessarily arise. Adopting the rule of construing all acts, upon the same subject matter together, it is the same as if against *repair*, no lien had ever existed.

Has the State then, for the purpose of *repair*, waived her lien upon the receipts of the company? This is too clear to be doubted. The act of 1844, ch. 281, which authorises the company to issue bonds to the amount of seventeen hundred thousand dollars for the completion of the canal, and defers the lien of the State for their payment, and interest thereon, provides that, even as to them, the company shall not pledge the entire resources of the work, but enacts in the second proviso to the 2d section, "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 portions of said revenues and tolls as, in their opinion, may be necessary to put and keep the said canal in good condition and repair for transportation." Here then is, not only a waiver of her own lien to the extent of "*putting and keeping*" the canal in good *condition* and *repair*, but, in effect, a prohibition against the company's depriving themselves of *that power* by pledging the revenues of the work to too great an extent for the benefit of the bonds they were about to issue.

Upon the whole, it appears clear, by the construction of the various acts of Assembly referred to, that the president and directors of the canal company have the right to issue their bonds, and pledge the tolls of the work for the purpose of *raising* money "to *put and keep*" the canal in good condition and repair. If this be the true construction of the power of the company in this behalf, certain propositions would follow as corollaries which will suffice as an answer to the second inquiry.

1st. That the revenues of the company are pledged to the State of Maryland.

2d. That she has waived her lien thereon (as far as this matter is concerned,) to no *other* or *greater* extent, than "in *putting and keeping*" the canal in good repair and condition.

3d. That all the money borrowed must be used for that purpose.

4th. That in making the loan, no condition is to be attached, by which any part of the money obtained by it, or any portion of the revenues of the company are to be used for any purpose which will diminish the amount which the State ought to receive under her lien.

5th. That the president and directors of the Chesapeake and Ohio Canal Company have no right to pay or stipulate to pay, any money as a condition of obtaining said loan, on the guarantee of the State of Virginia, whereby the rightful payments to the State of Maryland will be in any degree deferred or diminished.

6th. That the canal, its lands and *all the water rights thereunto appertaining*, under the acts of 1834, ch. 241, and 1844, ch. 281, are mortgaged to the State of Maryland; and the president and directors of the company can therefore make no contract or bargain in relation thereto, or grant any privilege in the same as a condition of the said loan or guarantee.

The third question relates to the right of the president and directors to reduce the tolls on the canal since the act of 1844. By the charter this power is conferred in the following language: "The said president and directors shall have full authority, subject to the direction and control of a majority in interest of the stockholders represented in any general meeting to regulate and fix a tariff of tolls, not exceeding an average of two cents per ton per mile." The power to *fix* the tolls necessarily implies the right to change them; and I have carefully examined all the acts relating to liens and mortgages to the State, and can find nothing by which, exercising a sound discretion, they have divested themselves of this right. It can, however, only be done under the direction and control of a majority of stockholders in interest.

The State holding that relation to this work, her agents must have assented to the act, because it could not have been legally done without their sanction.

I have the honor to be,  
Your obedient servant,

(Signed,)

GEO. R. RICHARDSON,  
Attorney General of Maryland.

To his Excellency PHILIP F. THOMAS, }  
Governor of Maryland. }

## NO. 2.

At a meeting of the Board of Public Works, held at the capitol, in the city of Richmond, August 7th, 1849, it was

Resolved, That in the judgment of the Board of Public Works, the facilities already afforded to the passage of boats into and out of the Chesapeake and Ohio Canal are sufficient for the accommodation of the trade of the county of Berkely, and they do therefore, by virtue of the authority vested in them by the 6th section of the act, ch. 128, passed 15th March, 1849, to aid the Chesapeake and Ohio Canal Company in certain repairs of their work and for other purposes, hereby release the said company from the obligation to construct the lock designated by the 5th section of said act.

Resolved, That it is hereby certified and made known to the Treasurer of the Commonwealth that the Board of Public Works are satisfied that the payment of the principal and interest of the bonds of the Chesapeake and Ohio Canal Company for \$200,000, according to the terms thereof on which the said Treasurer is required by the 1st section of the act passed March 15th, 1849, ch. 128, to underwrite or endorse the guarantee of the Commonwealth, is sufficiently secured.

Resolved, also, That it be further certified to the Treasurer of the Commonwealth, that, in the opinion of the Board of Public Works, the several other pre-requisites to said guarantee required on the part of the said Chesapeake and Ohio Canal Company by the act aforesaid, have been given and complied with by said company, and that he may proceed from time to time, when thereto required by the proper authorities of said company, to affix the said guarantee to the bonds aforesaid.

*Second Auditor's Office,* }  
Richmond, Va., August 7, 1849. }

I do hereby certify that the foregoing resolutions are true copies from the minutes of the proceedings of the Board of Public Works of the State of Virginia.

Witness the seal of the said Board and my signature.

(Signed,)

J. BROWN, JR. [L. S.]

Second Auditor, and Secretary of the Board of Public Works of Virginia.

## NO. 3.

*Tunnel, Chesapeake and Ohio Canal, Dec. 12, 1848.*

HORATIO ALLEN, Esq.,

President Maryland Mining Company.

Dear sir,—I, propose to transport coal from Cumberland to Alexandria as soon as six feet water is admitted the whole length at 75 cents per ton, exclusive of toll on coal and boat, boats to be loaded and unloaded.

Should the finished portion of the canal, say from Dam No. 6 to Georgetown and also to Alexandria, be in no better condition than at present, when the portion now underway is completed, boats cannot be expected to get through carrying more than 60 tons; in that case I propose to carry coal at \$1 21 per ton, exclusive of toll on coal and boat as above.

The difference may appear large, but it is based upon a correct calculation, the same number of hands and horses are employed upon a boat to carry 60 tons that are required to carry 100 tons. You must also increase the capital for boats and horses nearly 100 per cent. I have made a very exact calculation and find the difference fully at what I have stated, say 46 cents per ton.

Should the depth of water be but 5 feet instead of 6, as is now understood, I then propose to carry coal at 95 cents per ton, exclusive of toll on coal and boats as within, and boat to be loaded and unloaded in either case.

The capital required for the purchase of boats, horses, &c., to enable the transportation of 100 tons in 12 months (the quantity I propose to carry) at prices I have offered to freight it, will not justify the expenditure for a contract for only 12 months. You will therefore consider these prices for a contract for five years, the quantity to be increased, annually, if required, by notice of four months.

Very respectfully,

Your obedient servant,

THOS. G. HARRIS.

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*Washington City, Dec. 21, 1849.*

Gen. J. M. COALE,

President Chesapeake and Ohio Canal Company.

Dear sir,—Above you have a copy of a proposition submitted to the Maryland Mining Company, which is accepted for three years, as follows: 50,000 the first year; 75,000 the second; and 100,000 tons the third year, with the increase during that time, whatever it might be.

I have also submitted the same proposition to the Frostburg and Allegany Companies, both of which have been accepted for

three years, the exact quantity, however, not being named, but not less than 100 tons per day for each company, with all the increase.

I am, very respectfully,

Your obedient servant,

THOMAS G. HARRIS,

Agent and general superintendent of the Chesapeake and Ohio  
Canal Transportation Company.

*Abstract of the receipts into and payments from the treasury of the Chesapeake and Ohio Canal Company for the year ending 31st December, 1849.*

RECEIPTS.

1849, Dec. 31st,	The receipts arise from the following sources, viz. :	
	Tolls,	\$61,926 79
	Water Rents,	2,617 69
	Rents of Houses and Lands,	521 17
	Contingent Expenses, amount received from Blacksmith's Shops,	231 13
	Hunter, Harris & Co, Contractors,	57,555 00
	Bonds, for Repairs, sold,	45,000 00
	Premiums on Bonds,	64 00
	Balance from Dec. 31st, 1848,	\$167,915 78
		11,796 25
		<u>\$179,712 03</u>

DISBURSEMENTS.

1849, Dec. 31st,	The disbursements are charged as follows, viz. :	
	Construction for repairs,	\$45,506 25
	Acquisition and condemnation of Lands,	19,569 36
	Engineer Department,	23,372 95
	Pay of Officers,	4,339 69
	Contingent Expenses,	1,000 00

Interest,	-	-	-	-	-	\$5,164 98
Printing and Stationery,	-	-	-	-	-	285 12
Coupons payable by Contractors,	-	-	-	-	-	26,908 34
Repairs under Virginia act,	-	-	-	-	-	46,000 00
Law Expenses,	-	-	-	-	-	893 49
Postages,	-	-	-	-	-	109 23
Temporary Loans,	-	-	-	-	-	3,000 00
Taxes,	-	-	-	-	-	29 66
Special Contingent Expenses,	-	-	-	-	-	500 00
In the Treasury, &c.	-	-	-	-	-	\$176,679 07
						3,032 96
						<u>\$179,712 03</u>

L. J. BRENGLE, Treasurer Ches. and Ohio Canal Company.

Treasurer's Office, Ches. and Ohio Canal Company, }  
 Frederick, January 6th, 1850.

No. 5.

## STATEMENT

*Exhibiting the amount of Tolls which accrued to the Chesapeake and Ohio Canal Company, in each month during the year ending the 31st December, 1849.*

	Ascending	Descending	Total.
1849.			
January,.....	\$4 55	\$553 61	\$557 96
February,.....	99 21	759 85	859 06
March,.....	771 65	7,941 05	8,712 70
April,.....	1,275 98	6,385 23	7,661 21
May,.....	1,122 50	6,703 63	7,826 13
June,.....	1,022 85	5,916 14	6,938 99
July,.....	221 26	1,480 57	1,701 83
August,.....	279 50	739 95	1,019 45
September,.....	1,198 74	4,440 74	5,639 48
October,.....	1,309 77	5,358 45	6,668 22
November,.....	1,157 47	6,900 39	8,057 86
December,.....	725 56	5,454 72	6,180 28
	\$9,188 84	\$52,634 33	\$61,823 17

WALTER S. RINGGOLD,

Clerk of the Chesapeake and Ohio Canal Company.

*Office Chesapeake and Ohio Canal Company, }  
Frederick, January 10, 1850. }*

*List of Articles transported on the Chesapeake and Ohio Canal during the year ending the 31st December, 1849.*

ASCENDING FROM GEORGETOWN AND INTERMEDIATE PLACES TO  
VARIOUS POINTS ON THE CANAL.

Salt Fish, barrels,	-	-	-	3,995
Salt, tons,	-	-	-	2,019
Plaister, tons,	-	-	-	6,599
Coal, tons,	-	-	-	1,236
Coke, tons,	-	-	-	2,854
Shad and Herring, fresh, tons,	-	-	-	434
Lime and Cement, tons,	-	-	-	140
Iron Ore, tons,	-	-	-	4,025
Manures, tons,	-	-	-	324
Bricks, number,	-	-	-	42,000
Lumber, board measure, feet,	-	-	-	1,617,000
Dry Goods, Groceries, and sundry articles not enumerated tons,	-	-	-	946
Equivalent to 20,778 tons.				



*List of articles transported on the Chesapeake and Ohio Canal during the year ending the 31st Dec. 1849.*

DESCENDING FROM VARIOUS POINTS ON THE CANAL TO INTER-MEDIATE PLACES AND TO GEORGETOWN, D. C.

Flour, barrels,	-	-	-	236,620
Wheat, bushels,	-	-	-	240,073
Corn, bushels,	-	-	-	244,281
Corn Meal, bushels,	-	-	-	7,225
Rye, bushels,	-	-	-	1,795
Oats, bushels,	-	-	-	13,200
Ofal, bushels,	-	-	-	45,423
Flax and other Seed, bushels,	-	-	-	1,643
Potatoes, bushels,	-	-	-	1,440
Apples, bushels,	-	-	-	12,970
Whiskey, barrels,	-	-	-	2,674
Cement, barrels,	-	-	-	1,382
Limestone, perches,	-	-	-	8,662
Stone, rough, perches,	-	-	-	17,750
Lime, tons,	-	-	-	723
Coal, bituminous, tons,	-	-	-	5,224
Iron, tons,	-	-	-	1,351
Hay, tons,	-	-	-	147
Tobacco, hhds,	-	-	-	200
Nails, kegs,	-	-	-	3,682
Wood, cords,	-	-	-	5,083
Bark, cords,	-	-	-	1,076
Lumber, board measure, feet,	-	-	-	1,560,956
Shingles, Staves, Laths, Hoop Poles, &c., number,	-	-	-	783,800
Rails, number,	-	-	-	3,906
Bricks, number,	-	-	-	39,000
Manures, tons,	-	-	-	324
Sundry articles not enumerated, tons,	-	-	-	747
Equivalent to 81,263 tons.				





