# COMPILATION OF CANAL TRADE ARTICLES FROM *DAIL MAIL* a Hagerstown, Md. newspaper, and *SHEPHERDSTOWN REGISTER* a Shepherdstown, WV newspaper, and *BALTIMORE SUN* a Baltimore, Md. newspaper, and *EVENING STAR* a Washington, D. C. newspaper 1890

Compiled by
William Bauman
C & O Canal Association Volunteer
wdbauman1086@gmail.com

JULY 2020
Revision 1, AUGUST 2020
Revision 2, MAY 2022

## A. PREFACE

In this compilation, articles were transcribed from the *Daily Mail*, a Hagerstown, Md. newspaper, the *Shepherdstown Register* a Shepherdstown, WV newspaper, the *Baltimore Sun* a Baltimore, Md. newspaper and *Evening Star*, a Washington, D. C. newspaper of 1890. I have marked the articles from the *Daily Mail* with "DM" prior to the date, those from the *Shepherdstown Register* with "SR" prior to the date, those from the *Baltimore Sun* are marked with *Sun* prior to the date, and those from the *Evening Star* are marked with "ES" prior to the date.

The *Shepherdstown Register Baltimore Sun* and *Evening Star* newspapers were found on-line.

I had not written a Canal Trade – 1890 report because the canal was closed that year and I did not expect to find any coal commerce. But after I put in the one article from the *Daily Mail,* I went on line to see if there was any information about the canal in 1890. This is what I found.

This second revision add articles from the *Shepherdstown Register* to the report.

Feel free to send additional observations for the benefit of others.

William Bauman
JULY 2020
Revision 1, AUGUST 2020
Revision 2, MAY 2022
wdbauman1086@gmail.com

**Canal Trade 1890**

*Sun*, Wed. 1/1/90, p. Suppl. 1. **THE SENATORS** – Sketches of the Men –
**John P. Poe**, democrat, from the second legislative district of Baltimore, is a well-known member of the Baltimore bar. He was born in this city about 50 years ago, and began the practice of law at the age of 21. He was city counsellor under Mayor Whyte, and is a professor in the law school of the University of Maryland. He was selected by the last Legislature to codify the laws of Maryland up to 1888, and Poe's Code, as it is called, gives general satisfaction. He will most probably be chairman of the committee on the judiciary. He is a graduate of Princeton College.
**Dr. Edward Wootton**, democrat, of Montgomery county, was born near Rockville on December 20, 1839. He was educated at Rockville Academy and Georgetown College, graduating from the latter institution when nineteen years of age. He studied medicine with Dr. N. R. Smith, and attended lectures at the Maryland University. At the breaking out of the war, he went South, and served as a surgeon in the Thirty-fifth Virginia cavalry. In 1868 he married Miss Orear, of Virginia, and returned to Montgomery county, resuming the practice of his profession, which he continued until a few years ago, when he was compelled to give up his practice because of his health. He then formed a partnership with Col. E. V. White to conduct a grain, fertilizer and general shipping business at Edward's Ferry, on the canal. Several years ago, he bought out Col. White's interest and conducted the business until the freshet of last spring, when much of his property was washed away and his business destroyed. He was elected to the Legislature two years ago, and was sent to the Senate at the recent election.

House of Delegates

**Charles H. Carter**, democrat, is a son of City Solicitor Bernard Carter, and a member of the law firm of Bernard Carter & Sons. Mr. carter was born in Baltimore in February, 1859, and was admitted to the bar in 1884. He is unmarried, and he was elected last fall to his first political office.

ES, Fri. 1/3/90, p. 4. **The Canal Packet Levied Upon Again** – The steam canal packet *Maryland*, which has been lying in the canal at Washington Junction since the flood in May last, and which was only prevented by injunction from being sold on Saturday to satisfy a judgment obtained by Randolph Nichols of Point of Rocks, has again been levied upon, this time under four judgments against the canal issued at Hagerstown some months ago in favor of A. Ensminger, E. E. Mondell, J. F. Shupp and L. Eichelberger. Unless these claims are previously settled the boat will be offered for sale on the 15th instant.

*Sun*, Tue. 1/7/90, p. 20. **Hearing in the Chesapeake and Ohio Canal Suit** – Washington, Jan. 6. - The first movement in the case since the filing of the bill of Brown and others, trustees of the Chesapeake and Ohio bondholders, vs. the C. and O. Canal Company, was made today in the entry of the following order, signed by Judge Cox, holding the Equity Court of this District: "Upon consideration of the bill of complaint herein filed, and on motion of the solicitors of the complainant, it is by the court, this 6th day of January 1890, ordered that the defendant, the Chesapeake and Ohio Canal Company, show cause on the 6th day of February, A. D. 1890, why a receiver should not be appointed as prayed for in said bill. It is further ordered that copies of orders, &c., be served upon the defendant."

It is probable that both Maryland and the District courts in which the suits have been brought will so frame the decrees as to secure unity in the management of the canal interests, and it is nor improbable that there will be a joint receivership.

*Sun,* Thu. 1/9/90, p. Suppl. 1. **C. and O. Canal** – "The Chesapeake and Ohio Canal was incorporated and constructed for the purpose of commerce through that section of the State which it traverses. It is encumbered by a vary

large debt to the State, secured by mortgages and by the interest which has accumulated upon the mortgages. It is subject to a primary lien upon its property, tolls and revenues to the extent of $500,000 and accrued interest under the express provisions of an act of 1878. It is also indebted to persons who have furnished material and labor in operating it and keeping it in repair. Claims of this class ought to be protected as far as possible. The justice of this is very apparent. Those creditors who are chiefly laborers and mechanics, have earned by their toil the money due them, and they stand in much need of it now. They relied upon prompt payment, and the delay has subjected them to serious hardships. Whilst a matter of much importance to them, the aggregate amount is not so large as to cause the State any inconvenience should provision be made for its settlement. Disastrous freshets which have occurred since the last meeting of the General Assembly have so far disabled the canal that only about three miles on the Georgetown level and a few miles near Cumberland, both of which spaces were repaired by private enterprises, are now navigable. The Chesapeake and Ohio canal was one of the great works which the State of Maryland undertook many years ago to foster and develop. There can be no question that its construction and use, has greatly aided the development of Western Maryland, and has added an amount greater than its entire cost to the taxable wealth of the State. It would seem proper that the General Assembly should consider whether any measures can properly be taken for its restoration and usefulness. This is a question in which the people of the entire State necessarily feel a deep interest, and some speedy action should be taken by your honorable body to protect the State's interest, as well as the interest of the unpaid laborers and mechanics who were employed in this great work.

SR, Fri.1/10/90, p. 4. **To Restore the Canal.** – Gen. George S. Brown, Mr. John S. Gittings, William M. Matthews, Frederick M. Colston and Bradley S. Johnson, trustees of the bondholders of the Chesapeake and Ohio Canal Company, under the act of 1844 and the mortgage of 1848, have filed bills in the Supreme Court of the District of Columbia and the circuit court for Washington county, Md., in equity asking for a receiver to take charge of the canal, to borrow money to put it in repair and to operate it. The bill charges that the company is insolvent, that it owes $1,699,500 of bonds, which are now due, with twenty-five years' interest on them; that in May last a great freshet totally wrecked the canal and made it useless, and that it is now completely destroyed as a waterway. It is stated that the company has made every reasonable effort to raise money to repair the canal, without success. The report of the president and directors of June 13, 1889, states that it will require $300,000 to repair the canal and put it in good condition, and that the company is powerless to raise this amount; that the bondholders, for whom the complainants are trustees, have a first lien on the tolls and revenues of the canal, they will lose their money and be without remedy; that if a receiver or receivers be appointed, money can be obtained to repair the canal, it can be maintained as a waterway, and revenue can be earned to pay the bondholders. Chief Judge Alvey, at Hagerstown, set the application down for a hearing on the 30th of January. The counsel for the trustees is Gen. Bradley T. Johnson, and the bill in Hagerstown was filed by Johnson & Johnson and H. H. Keedy and in Washington by Johnson & Johnson and W. M. Matthews.

Gen. Johnson is quoted as saying: "The object of this movement is to prevent the sale of the canal and to preserve it as a waterway. The bondholders are vitally interested in having the canal operated as a canal and not as a railroad. It is a great mistake to believe that the days of canals are numbered. Under proper conditions, canals can transport heavy freight like coal on terms beyond possible competition by railroads. The bondholders are not willing to advance the money to repair and operate the canal as long as it remains under political

management. We are not complaining of the personnel of the management of the system. Politics can't run a hotel, a canal or a railroad. Experience is overwhelming on that point, but we believe that the canal may be resuscitated and made a great benefit to the coal regions, the state and to the bondholders. The canals in Belgium regulate the railroad charges. The Erie canal is the great regulator of east and west transportation, and we believe that the Chesapeake and Ohio canal may be made the means of cheapening coal in Baltimore, of increasing power, and of developing a great system of manufacture. If we can get a receivership, and thus have an administration purely an industrial one, we can get the money necessary in ten days. If we cannot get the receivership, the canal must remain dry and then be sold. The question is: To whom will it be sold and for what price? We propose to save the canal and make it pay."

Governor Jackson, of Maryland, in his message to the Legislature, advocates the preservation of the canal, and says plans for that purpose will be submitted.

*Sun*, Mon. 1/13/90, p. Suppl. 1. **The B. and O. and the Canal** – Majority holders of the 1878 repair bonds of the Chesapeake and Ohio Canal Company say they will apply to the courts for the appointment of a receiver, and that they expect their application to be successful. This action will be taken without reference to the pending applications of a receiver made by the 1844 bondholders. It is well known that the Baltimore and Ohio Railroad interest controls the majority of these 1878 repair bonds, which are a mortgage on the corpus of the canal. The purpose is, if the application for a receiver obtains, to repair the canal and maintain it as a waterway. This policy has been determined upon by the railroad interests, and is not treated as in any sense a secret by its promoters. Canal bills will also be introduced in the Legislature.

*Sun*, Wed. 1/15/90, p. Suppl 1. **PROPOSED CANAL LEASE** – Annapolis, Jan. 14. – Mr. Poe brought up the Chesapeake and Ohio canal subject in a preamble and resolution, as follows:

"Whereas legal proceedings have been instituted in the Supreme Court of the District of Columbia, and also in Washington county, by the trustees of the holders of the preferred construction bonds of the Chesapeake and Ohio Canal Company, issued under the act of 1844, chapter 281, against the said Chesapeake and Ohio Canal Company, and against the trustees of the holders of the repair bonds of said canal company, issued under the act of 1878, chapter 58, for the purpose of obtaining possession of said canal and its works and for operating the same under the management of a receiver appointed by said courts; and whereas it is understood that the trustees of said last mentioned repair bonds contemplate taking similar proceedings looking to a like result; and whereas in the controversy to which these proceedings will give rise between these two claims of bondholders to their respective rights and priorities delay will occur, which will be prejudicial to the large interest held by the State in said canal as mortgagee, creditor and stockholder, and if the views of said bondholders shall prevail large additional outlay will be necessary to be made upon said canal, which will still further postpone the liens of this State upon the same; and whereas for the last twelve years the said canal has been maintained and operated at an average annual deficiency of fifty-six thousand dollars, and it is now apparent that in its present deplorable condition its restoration as a waterway capable of earning annual revenues sufficient to pay its ordinary current expenses is wholly impracticable, and that a sale or lease of said work is sooner or later inevitable; and whereas it is desirable that some steps shall be taken by this General Assembly whereby provision can be made, if possible, for a just and equitable settlement of the claims of the said preferred and repair bondholders under said acts of 1844, chapter 281, and 1878, chapter 58, respectively, at the same time for some return to this State for her heavy investment in said canal, so as to save the same from total loss; and whereas it is

well known that for several months past the board of public works have been prepared to receive and consider proposals from any responsible bidders, for the leasing of said canal, and his excellency the Governor, in his recent message to this General Assembly, strongly recommends that such lease shall be made; and whereas legislation will be necessary to authorize and make valid any such disposition of said canal and its works, and until it is known whether any person or corporation can be found with the necessary capital to enter into such lease and to carry out the proper covenants and terms thereof such legislation must be conjectural and inadequate, and may be wholly ineffectual. Therefore, be it

*"Resolved by the General Assembly of Maryland*, That in order to enable such necessary and proper legislation to be prepared and enacted by this General Assembly, the board of public works be, and they are hereby directed to advertise in such public newspapers of large and general circulation as they shall deem proper for not less than twelve days for sealed proposals to lease said Chesapeake and Ohio canal and all its property of every description, lands, water rights and franchises; the bids to be opened by said board of public works at 12 o'clock noon on Thursday, the 4th day of February, 1890, and to be reported without delay to the General Assembly for such action thereon as shall be deemed expedient.

"*Resolved further*, That the bills for the cost of such advertisement be audited by the board of public works, and that the comptroller draw his warrant therefor upon the treasurer, who shall pay the same out of any money in the treasury not otherwise appropriated."

**EARLY ACTION EXPECTED**

President Stephen Gambrill, of the Chesapeake and Ohio canal, is here with Director James A. L. McClure and Treasurer Spencer Watkins. The Poe resolution relating to the canal will be reported early from committee, which will meet tomorrow morning. The purpose is to advertise for proposals for leasing the canal and open the lists for all comers. If bids are not forthcoming, then propositions will doubtless come into the Senate, and the Legislature will, perhaps, eventually dispose of the canal business.

**THE RECEIVERSHIP CASES**

Mr. McClure says it was proposed to memorialize the Legislature to pass a resolution asking the Governor to request the attorney-general to appear in the cases where application for a receiver has been made, the attorney-general to move for a postponement until the Legislature adjourns, upon the ground that a conclusion satisfactory to all parties would doubtless be reached, but it is regarded that the receivership application is defective because the State is not a party to the suit, and in its sovereign capacity cannot be sued. If the attorney-general appeared in the case, the State would then be a party, and that would correct the defect for the applicants for a receiver.

**WHAT SENATOR GORMAN SAYS**

Senator Gorman was interviewed in Washington on the subject of appointing a receiver for the Chesapeake and Ohio Canal Company. He says he learned while in Baltimore, Monday, that the directors of the Baltimore and Ohio Railroad Company also propose to ask that a receiver be appointed. He does not know what steps have been taken in that direction as yet, but as the railroad company is largely interested in the last issue of bonds by the canal company, it is but reasonable to suppose that the directors of the road propose to take every legitimate means to protect their interest. The Senator declined to discuss the situation in detail because he is not fully acquainted with the intention of the directors of the road on this subject. He says he has very decided views on the canal question, and at the proper time he will give expression to them. His comments will be reserved until it is definitely understood what step the railroad officials propose to take.

---

The proposed sale of the Chesapeake and Ohio canal boat *Maryland* at Washington Junction tomorrow, to satisfy a judgment obtained some months ago by a number of Hagerstown, has been enjoined by an order granted by the Circuit Court at Frederick, upon the application

of C. V. S. Levy, attorney for the canal company.

Thu. 1/16/90, p. 2.[1] February 6 has been fixed for hearing the Chesapeake and Ohio canal case in Washington.

SR, Fri. 1/17/90, p. 4. **The Canal.** – Majority holders of the 1878 repair bonds of the Chesapeake and Ohio Canal Company, say they will apply to the courts for the appointment of a receiver, and that they expect their application to be successful. This action will be taken without reference to the pending application for a receiver made by the 1844 bondholders. It is well-known that the Baltimore and Ohio Railroad interest controls the majority of these 1878 repair bonds, which are a mortgage on the corpus of the canal. The purpose is, if the application for a receiver obtains, to repair the canal and maintain it as a waterway. This policy has been determined upon by the railroad interest, and is not treated as in any sense a secret by its promoters. Canal bills will also be introduced in The Maryland Legislature.

Mr. Fred Mertens, of Cumberland, has been mentioned as likely to be appointed receiver of the canal.

*Sun*, Sat. 1/18/90, p. Suppl. 1. **CANAL LEASE** – The Chesapeake and Ohio canal resolutions, providing for advertising for proposals for leasing the canal, were passed in the House, with an amendment striking out a section appropriating money to pay for the advertising and other expenses. This manner of appropriation is not regular, and the costs will come out of a contingent fund. The Senate concurred in the amendment. No opposition was made to the resolutions, and it was explained that whatever propositions are made will come before the Legislature, which can then act intelligently upon the question. Advertisement will now be made by the board of public works for twelve days before February 4.

Fri. 1/24/90, p. 3.[2] Under a recent resolution of the Legislature, the Board of Public Works has advertised for proposals for leasing the Chesapeake and Ohio Canal.

SR, Fri. 1/24/90, p. 3. Now the politicians are meddling with the poor old Chesapeake & Ohio Canal again. The politicians have already done it much more harm than all the floods put together.

*Sun*, Fri. 1/24/90, p. 1. **RAILROAD ALONG THE CANAL** – No pending legislation before the Maryland Legislature is watched with more interest here than the measures relating to the Chesapeake and Ohio canal. Many suggestions have been thrown out in the last six months as to what ought to be done and what is likely to be done. Sentiment here favors very much the project of a railroad, but it is generally conceded by practical people that there is little probability of receiving sufficient capital under any proposition to restore the canal as a waterway. Since the destructive freshet of last June, the canal has been totally abandoned, with the exception of the few miles restored and operated above Georgetown and a space of similar extent in the vicinity of Cumberland. From information which comes here to interested parties from Annapolis the impression is that a measure will be agreed upon which will result in the construction of a railroad from Cumberland to Washington, which will be tapped at Williamsport by a branch to be built by the Western Maryland Railroad. This, it is said, would be generally satisfactory, as it would give to Baltimore the advantage of cheaper coal and would also give railroad facilities to the lower parts of Washington, Frederick and Montgomery counties, and bring them at the same time in close connection with Baltimore, Georgetown and Washington.

[1] *Saint Mary's Beacon*, Leonardtown, Md.

[2] *Southern Aegis*, Bel Air, Md.

*Sun*, Mon. 1/27/90, p. Suppl 2. **A Hearing in the Chesapeake and Ohio Canal Injunction Case.** – Washington, Jan. 26. – Judge Cox took up yesterday the case of George Brown, Jr. et. al. vs. the Chesapeake and Ohio Canal Company and others, on a motion for the appointment of a receiver to take charge of the canal. This motion was resisted in its present shape by Messrs. John P. Poe and Thomas M. Lanahan, of Baltimore, counsel of the Chesapeake and Ohio Canal Company. The bondholders of 1878, whose bill for an injunction, receiver, etc., was on hearing, were represented by S. Teackle Wallis, of Baltimore, and by Messrs. Morris and Hamilton of this city. Gen. Bradley T. Johnson appeared for the bondholders of 1844. The question at issue was whether under any management whatever the Chesapeake and Ohio canal could be again put into use as a waterway in such manner as to do justice to the canal company and the bondholders, or whether a speedy sale is not the most practicable was of adjudicating the rights of all parties according to equity. The discussion of the subject was mainly in relation to the law points involved in the case, and it was contended, on the one hand, that the bondholders of 1878 were entitled to the relief they claimed in the appointment of a receiver, while it was asserted on the other [hand] that the true interests of the owners of the canal would be sacrificed to outside interests if the canal was run by others than the C. and O. Company, or by those who bought out the rights which the canal company still had in the work.

At the close of the argument Judge Cox said he would take the case under advisement. A decision is not expected until the matter has been thoroughly canvassed, and the action of the District judiciary at Washington city and the Maryland judiciary in Washington county will be needed in order to dispose of the imbrogho now existing in canal affairs.

*Sun*, Tue. 1/28/90, p. 1. **RECEIVERS FOR THE CANAL** – Washington, Jan. 27. The Chesapeake and Ohio canal case was called in equity this morning by Judge Cox, and he announced that after an examination of the case he had determined to appoint receivers to take charge of the canal, as prayed in the bill filed on behalf of the bondholders of 1878. Justice Cox in announcing the opinion of the court, said the Legislature of the State of Maryland in 1878 had authorized the Chesapeake and Ohio Canal Company to contract a loan, and had provided that the non-payment of these coupons or interest thereon should be cause authorizing the bondholders to apply for a sale of the canal. It was admitted, he said, that the canal is now in default, and while the not of the Legislature of Maryland could not create jurisdiction in the courts outside of the State, yet equity courts always possessed power to intervene in any case to prevent injustice. It was a matter of fact that the canal, in its present condition, could not be made to pay. He felt, therefore, obliged to grant the petition of the mortgagees of 1878 for the appointment of receivers, and he would sign a decree to this effect to be drawn by Messrs. Morris and Hamilton, the counsel of these bondholders.

It is understood that Mr. H. C. Winship, of Georgetown, and a Baltimore businessman will be appointed receivers, and it is designed that they shall pledge the tolls of the canal, and so raise money to put it in navigable order, so that it may be sold under the most favorable conditions.

**Annapolis, Md.** – Jan. 27. – News reached Annapolis of the decision for the appointment of receivers for the Chesapeake and Ohio canal by the court at Washington. Mr. Poe, of counsel, who appeared before the court at the hearing on last Saturday, says it will be necessary to wait until the full meaning of the purpose for which receivers were appointed is understood. On Thursday the hearing in a similar application for receivers will take place before Judge Alvey at Hagerstown. A resolution is passing through the Legislature asking the Attorney-General to appear for the State in opposing the

appointment of receivers. Mr. Poe will be of counsel for the canal company. There is talk of a bill for the sale of the canal property, and sale under a decree was insisted upon by counsel for the canal before the court at Washington. To reach that end the proceedings would be for the Attorney-General to apply to the courts for a decree of foreclosure and sale under the law as it now exists. It is apparent that the canal controversy is not yet at an end.

---

*Ibid,* Suppl. 2. A public meeting at Hancock, Washington county, adopted resolutions favoring the lease of the Chesapeake and Ohio canal for a railroad in competition with the Baltimore and Ohio Railroad and opposing its restoration as a waterway as being impracticable.

*Sun*, Wed. 1/29/90, p. 2. **The Chesapeake and Ohio Canal.** – That the long chapter of disappointments, Misfortunes and mistakes, to say nothing of actual instances of mismanagement, which constitutes the history of the Chesapeake and Ohio Canal should finally end in a court of equity, and in the appointment of receivers, cannot be much of a surprise to anybody who is at all familiar with that history. It is a result which the State – although the party chiefly interested – is practically as well as legally powerless to prevent. No legislation, no action of the State Legislature or of the board of public works, any more than of the company itself, can defeat the rights of the creditors or debar them from their legal remedies, and it is upon the application of creditors – holders of the bonds issued by authority of the act of the Legislature of 1878, chapter 58 – that the Equity Court of the District of Columbia has just appointed receivers of all the property of the canal within the jurisdiction of the court. That act was passed, as its preamble and title alike declare, for the purpose of making effectual the provisions of the act of 1844, chapter 281, so far as that act relates to putting and keeping the canal in good condition and repair, and to making it an effectual means of transportation. For that purpose, the act of 1878 authorized the issue by the company of $500,000 of repair bonds, to be secured by a mortgage of the tolls, revenues and other property, land and water rights of the company, which bonds and mortgage, when respectively made and executed, are declared by the third section of the act liens upon the property, tolls and revenues of the canal, "to be held and enjoyed in preference to any rights or liens which the State of Maryland may have," until said bonds and the coupons thereon shall be wholly paid and satisfied, "and also in preference to any other claims or liens upon the said Chesapeake and Ohio Canal Company, or its works or property." And it further provided by the same act (section 2) that the trustees named in the act, and to whom the mortgage was directed to be executed – George S. Brown, James Sloan, Jr., and Lloyd Lowndes, Jr. – in case of default in the payment of three successive coupons upon said bonds, shall proceed, upon the written application of a majority of the bondholders, to obtain from any court of equity in this State, a decree for the sale of said canal and other mortgaged property and franchises or for the appointment of a receiver, or both, as may be found necessary. It is under this express authority that a bill for a foreclosure and sale under the mortgage and for the appointment of receivers has been filed in behalf of the bondholders and in the names of the trustees in the Circuit Court for Washington County in Equity, which application has been assigned for hearing before Chief Judge Alvey at Hagerstown on Thursday of this week. Meanwhile, upon a similar bill filed in behalf of the same parties in the Equity Court of the District of Columbia, which was heard on Saturday last, that court has already acted and appointed receivers. While, of course, the act of the Maryland Legislature of 1878 could confer no additional or statutory jurisdiction upon a court of the District of Columbia, the general jurisdiction in courts of equity to entertain suits for a foreclosure and sale under mortgage where a default has occurred, and to appoint receivers, when necessary, seems

amply sufficient to enable that court to take cognizance of the proceedings, the defaulting company having its principal office and much valuable property, including the outlet and terminal facilities" of the canal itself at Georgetown, in the District of Columbia. The District Court, therefore, having personal jurisdiction over the company, its officers and agents, and also over a portion of the rest, the property of the company, after hearing argument by counsel on both sides, has considered the case a proper one for its action without awaiting that of the court at Hagerstown. To this, it would seem, no possible exception can be taken, the equitable jurisdiction of the District court being as complete as that of the Circuit Court for Washington County. Moreover, by a well-suited rule of comity between judicial tribunals in such cases, it appears that the court which first acts and sets the machinery in motion, so to speak, acquires and retains jurisdiction over the litigation to the end, thus avoiding the delays, embarrassments and expenses which would result from any possible conflict of jurisdiction or the claims of rival receivers. As the authority of a receiver is understood not to extend, by virtue of his appointment, beyond the limits of the jurisdiction of the court which appoints him, it is a common practice for other tribunals to appoint the same receiver where one court has already made its appointment. What the action of the court at Hagerstown will be, remains to be seen. Meanwhile, for practical purposes, the possession and control by the court in the District of Columbia of the company, its books, papers, &c., and of the canal at Georgetown, would seem to be quite sufficient to compel a temporary adjournment at least from the arena of political intrigue and legislation to the judicial forum of the pending struggle between those who have faith in the future of the canal and would rehabilitate it and maintain it as a waterway, and those who would either wreck the canal for their own selfish purposes or else, honestly believing it to be of no further use as a waterway, would like to see it sold or leased for other purposes. The bondholders who have expended their money upon the faith of the State's legislation of 1878 so far have the advantage both of "first blood in the fight" and of that possession which is said to be a great thing in the law.

*Sun*, Thu. 1/30/90, p. 1. **THE FATE OF THE CANAL** – Annapolis, Jan. 29. – The canal resolution asking the Attorney-General to represent the State in the receivership suits had the effect of drawing party lines somewhat in the House of Delegates. A motion of Mr. Carter to suspend the rules and put the resolution upon its passage brought out the debate. Democrats earlier in the day said they discovered that the republicans would vote as a body against the resolution, and it was known that the two-thirds vote could not be secured. When the Speaker announced that the vote shows that two-thirds had not voted for the resolution, Mr. Carter moved that the resolution be made the special order for 12:30 tomorrow, and this was carried. The canal company will take an appeal from the decision of Judge Cox in the District of Columbia. On Friday, Chief Judge Alvey will hear the case at Hagerstown.

The vote upon the motion to suspend the rules in the House and pass the canal resolution in effect suspends its passage until Thursday, (today,) when it will come up in regular order. Attorney-General Whyte will no doubt be advised without delay when it is adopted, and on Friday the hearing will take place at Hagerstown.

It is remarked that the democratic party men are not displeased with the alacrity with which the republican minority have acted together upon this and some other matters heretofore. They claim it is showing its effects upon the democrats, who do not care to be placed in solid republican company upon measures. The democrats showed a different spirit when the republican bill was up to establish a colored school in St. Mary's county, where there are schools and county commissioners as in other counties. Some democrats made the point that the bill was irregular, but other democrats insisted that the

Sy. Mary's delegation wanted the bill, and they should have it because it is a local measure. Politics could not induce such democrats to vote against this old rule among the delegations.

A member of the board of public works says he knows of at least one substantial proposal which will be made under the call for bids for the lease of the canal to be opened on February 4. What will be the future of the canal no one can tell just now. The speeches upon the question have often gone to the verge of the extreme upon both sides, and some of the debaters showed that they have not taken the time to post themselves upon the facts. It is apparent that Western Maryland republicans at least want the canal maintained as a waterway, even if the receivers shall be in the interest of the Baltimore and Ohio Railroad Company, and even if one of the receivers has been, as claimed, in the service of the Baltimore and Ohio coal concern. On the other hand, there is no doubt a strong party somewhere who want to lease or buy the canal for a railroad. It is said this party, whoever they may be, would be very willing to pay the overdue coupons on the 1878 repair bonds and pay off the half million of repair bonds besides. Of these bonds the Baltimore and Ohio party own $280,000, but it is said they would not accept the money from any source except the bankrupt canal company, who are responsible for the debt, and will not let go of their claim on the corpus of the canal if they can help it. There is not much doubt that the people who want the canal bed for a railroad would be willing to pay off the 1878 bonded indebtedness at par, compromise with the 1844 bondholders, who have a mortgage upon the revenues of the canal, pay off the floating indebtedness, and covenant to give the State some compensation (probably a good round sum) for her interest in the concern. But that would be the end of the canal, and the city of Baltimore would have a competing railroad line from Cumberland to Washington that could carry millions of [tons of] coal to tidewater at Georgetown, whereas the rehabilitated canal can only carry at best two or three hundred thousand tons. The reopening of the canal, if the people in the section it traverses are pleased, should not make the city of Baltimore unhappy.

**THE WASHINGTON RECEIVERS**

Mr. James A. L. McClure, a canal director, who is here with other canal people, says: "The appointment of Messrs. Winship and Cushwa as receivers of the canal is open to criticism. The court heard the case on Saturday and gave its decision the next Monday – a piece of railroading. Mr. Winship is of the firm of Gilmore Meredith Winship & Co. Mr. Meredith is a director of the Baltimore and Ohio Railroad Company and Mr. Winship is an agent of the Consolidation Coal Company, of which Mr. Chas. F. Mayer is president, as well as president of the railroad company. Mr. Cushwa id an agent of the Consolidation Coal Company and also of the Western Maryland Railroad. Mr. Winship is a lease of canal property at $1,500 rental a year, and Mr. Cushwa is a lease at $250 a year. Is it the right thing to make landlords of these tenants of the canal's property, and will they serve all interest or only special interests? I object to these proceedings because they are not decent."

---

Ibid, p. Suppl. 1. **CANAL RECEIVERSHIP** – Washington, Jan. 29. – The litigation in the Chesapeake and Ohio Canal case continued at the City Hall today. Receivers Winship and Cushwa qualified under Judge Cox's decree, and application was made for the appointment of John S. Gittings and Bradley T. Johnson as co-receivers. A number of petitions, &c., given below, were filed during the day.

In the morning, Victor Cushwa filed his bond in $10,000 as receiver, his surety being Thomas M. Gale, of this district. Henry C. Winship, the co-receiver, filed a like bond, with Benjamin R. Mayfield and S. Thomas Brown, of the District of Columbia, as sureties. Each of the receivers took the usual oath for faithful performance of his duties.

**Co-Receivers asked for.**

The following petition was filed: The petition of Geo. S. Brown, Charles M. Mathews, John S. Gittings, Frederick M. Colston and Bradley T. Johnson, trustee, under the mortgage of 1848 of the defendant company, who are defendants in this cause, respectfully shows – first that they represent the principal of $1,899,300 of bonds, with 23 years interest, amounting in all $4,250,000, secured by a mortgage on the tolls and revenues of the canal prior to all liens except that of the bonds of 1879, in whose behalf the proceedings were instituted, whose whole debt amounts to $590,000; that in these proceedings your honor has passed an order appointing Messrs. Winship and Cushwa receivers of the Chesapeake and Ohio Canal Company, on the nomination of the trustees of the mortgage of 1878; that these receivers are entirely satisfactory to the bondholders under the mortgage of 1848, but the trustees of said bondholders, your petitioners, respectfully represent that they hold the largest interest in the preservation of the canal and its successful operation; that they represent $4,250,000 of debt, against $300,000 of debt represented by the trustees of the mortgage of 1878, and that their cestus qui trusts only have a lien on the net tolls and revenues of the canal, and that therefore they have the largest interest in the preservation and successful operation of the canal as a highway. They therefore pray your honor to allow them to be represented in the receivership, and they ask that your honor will appoint, in addition to Messrs. Winship and Cushwa, who represent the bondholders of 1878, John S. Gittings and Bradley T. Johnson, Esqs., of the city of Baltimore, to be co-receivers with them, and that if your honor will not appoint both, then they recommend, first, that Mr. Gittings be appointed, and if the court will not appoint him, that Bradley T. Johnson be appointed.

Bradley T. Johnson, Solicitor for Petitioners.

**Urging the Sale of a Property**

John A. Hambleton & Co., of Baltimore, also filed a petition in the case, setting out that they are the bona fide owners of $25,000 of the bonds of the Chesapeake and Ohio Canal Company, secured by the mortgage of 1878, and that they aver the "interests of the said mortgage bonds will be sacrificed instead of being protected by the line of action contemplated to be taken by the trustees, under the dictation of the majority of the bondholders." They therefore ask to be admitted parties defendant on their own account in the case of Brown vs. the Canal Company.

H. G. Davis & Brother and the Davis National Bank of Piedmont set out in a petition filed today that they own $82,500 of the C. and O. bonds of 1878, and they make the same allegation that "the mortgage bonds will be sacrificed," &c., as is made by Hambleton & Co., and they, too, ask that they may be made parties defendant in the suit.

Upon these applications coming in this morning Judge Cox made an order admitting Hambleton & Co., Davis & Bro., and the Davis National Bank as defendants, but learning in a short time that the granting of these petitions would be contested, he suspended the order, and the parties named so far have not been entered as defendants in the suit.

After Messrs. Hambleton, Messrs. Davis and the Davis Bank had been admitted as defendants, and before the suspension of the order, their solicitor, Mr. Bernard Carter, of Baltimore, had filed their answers to the bill filed by G. S. Brown and others last week, and under which the receivers have been appointed. In those answers they say that it is not the interests of the bondholders of 1878 that receivers should be appointed, but that a decree should forthwith be passed by this court for the sale of the canal by trustees appointed for the purpose, without the expenditure of more money thereon for repairs or restoration.

**No Revenue from the Canal**

An affidavit of President Gambrill of the Chesapeake and Ohio Canal Company, was also filed in the case today, in which he says that all the money received by the canal company for wharfage are only received when said canal company is in operation and

shipping coal, and that therefor the said company has not received any money from this source since the destruction of the canal in May, 1889, that the only water rents paid since the said destruction of the canal in May, 1889, are paid by the millers using water on the Georgetown level, and that immediately after the freshets of 1889 all the water rents paid them were set off and applied to the restoration of that part of the canal out of which they issue for about three years from 1889, that with the exception of the rent paid by the Washington Gas Light Company, all the rents paid for the use of lands are paid for property, for stone, and other business purposed along the line of the canal, which lands are only of value to the lessees, and can only be paid for by them when the canal is in operation, and that therefore no money has been received from these rents since the freshets of May, 1889, nor will any be again paid while the canal is in its present condition; that the next rent due from the Washington Gas Light Company will be payable in July, 1890.

---

*Ibid.* p. Suppl. 2. **A Draw in the Aqueduct** – There is a proposition on foot to have a draw placed in the Aqueduct bridge which spans the Potomac river at Georgetown. Senator Gorman today introduced in the Senate a resolution, which was agreed to, directing the Secretary of War to report if the Aqueduct bridge across the Potomac river at Georgetown is or is not an obstruction to navigation. Persons who are interested in such shipping as goes above the bridge suggested the resolution in view of the fact that the harbor line extends about one mile above Georgetown. Just now there is but little shipping beyond the bridge excepting coal-barges and tugboats, but if a draw is put in the bridge, vessels will be enabled to proceed up the river as far as the outlet to the Chesapeake and Ohio canal.

---

*Ibid,* p. Suppl. 4. **House of Delegates** Petitions presented by Mr. Keedy, from 300 citizens of Washington county, praying for the restoration and perpetuation of the Chesapeake and Ohio canal as a water-way; also, from 40 citizens of Washington county.

*Sun,* Fri. 1/31/90, p. 1. Judge Alvey will hear arguments in the Chesapeake and Ohio canal case at Hagerstown, Md., today.

---

*Ibid*, p. Suppl. 1. **Appeal in the Canal Case** – Washington, Jan. 31. The removal of the forum for the Chesapeake and Ohio canal litigation to Hagerstown has made the City Hall here quiet upon that subject, but has left behind the following appeal upon the order-book of the Equity Court: Brown et. al. vs. Chesapeake and Ohio Canal Company. The clerk will enter an appeal to the General Term on behalf of defendant, C. and O. canal, from the decree of January 23, 1890, appointing a receiver in this cause. John P. Poe, T. M. Lanahan, Filmore Beall, solicitors for defendant, C. and O. Canal Co.

*Sun*, Sat. 2/1/90, p. Suppl. 1. **C. AND O. CANAL CASE** – Hagerstown, Md., Jan. 31 At 10 o'clock this morning Judge Alvey took his seat on the bench to listen to the arguments for and against the appointment of receivers for the Chesapeake and Ohio canal. The old motto of Maryland upon the gilded coat of arms on the outside did not go far astray in indicating the course of the canal troubles, for they did "increase and multiply" by the newer legal phases of the case that were absent when Judge Cox granted the motion in the District of Columbia. There was a good attendance in court to hear the distinguished lawyers assembled in the case, the audience benches holding a number of farmers and canal boatmen, while the jury stall was filled with a representation of Hagerstown's feminine loveliness.

**SIGNIFICANCE OF THE CONTENT**

A summary of today's developments showed Messrs. J. K. Cowen, S. Teackle Wallis, Keedy and Lane, the B. and O. lawyers, pushing together for the receivership, backed up by Gen. Bradley T. Johnson, who is throwing what weight there may be in the 1844 bondholders in

the same direction. Opposed to them are Mr. J. Prentiss Poe for the canal. Attorney-General Whyte for the State, and Mr. Bernard Carter for the Davis minority interests of 1878, who struggled for a quick sale and, as alleged by the other side, small profits. Gen. Johnson is expected to make a speech tomorrow for the rights of the 1844 bondholders, whose only hope must come with a receivership, whether they are recognized or not, for it was clearly intimated by those who argued for the sale that only the corpus bondholders need hope for anything out of the wreck.

**THE STATE ASKS A HEARING**

Attorney-General Whyte began the proceedings by presenting a petition to have the State made a party defendant to the suit, privileged to file and answer for the State.

Mr. Bernard Carter filed petitions in behalf of Henry G. Davis and the Davis National Bank, owners of $82,500 of the bonds of 1878, John A. Hambleton & Co., owners of $25,000 bonds of 1878, and of himself, as executor of his father's estate, owner of $10,000 bonds of 1844, and asked that they be made party defendants and allowed to answer.

Mr. Wallis made the point in effect that the minority holders had no right to so appear, as the act of 1878 provides for action by the trustees at the instance of a majority of the holders of 1878 bonds only.

Gen. Bradley T. Johnson said the minority had no right to become parties to action of their own trustees. Judge Alvey decided that the question of 1844 and 1878 should be consolidated, and that the minority representatives should be admitted to the record, while, of course, the legal decisions following should be based upon the actual applications of the law. Mr. Bradley S. Johnson then read the bill of complaint as amended in behalf of the bondholders of 1844.

**ESTIMATES AS TO REPAIRS**

Mr. Lane read affidavits of Frederick F. McComas, Wm. T. Hassett, Victor Cushwa and Jacob Masters setting forth their acquaintance with the canal, their knowledge of damages and their belief that under the receivership the canal could be repaired. In his deposition Mr. Cushwa estimated the total cost of repairs at $20,000. The answers of the canal company and of the State, both opposing the receivership and asking for a decree of sale, and other documents in the case were filed by counsel.

**MR. COWAN'S SPEECH**

Mr. John K. Cowan, for the 1878 bondholders, said when the original charter for the canal was granted, the power to mortgage the property easements and water rights of the canal was limited, but, by an act of the Virginia Legislature, to be assented to by Congress and then by the General Assembly of Maryland, the power to mortgage was very much extended. In 1878 the canal company and the trustees under the mortgage of 1844 united in petitioning the General Assembly of Maryland to issue the repair bonds of 1878 and to mortgage the canal and its revenues. The power to mortgage under the act of 1844 gave sufficient power to the canal company to issue the mortgage of 1878 without the act of 1878. This mortgage of 1878 provides for a foreclosure of the mortgage after the non-payment of three successive coupons, and provides also that under the mortgage the trustees have a right to a receiver and sale upon the request of a majority of the bondholders, and when the trustees show the non-payment of the three successive coupons their case is made out, and it belongs to the canal company to show why the mortgage should not be complied with and why we should not have a receiver. The whole bill is admitted in their answer, with the single exception that it shall be left to the court to say whether or not we have a lien on the canal. The question whether a receiver can issue certificates to repair the canal will be discussed when the time comes. This is not the time to decide that question. The receivers might deem it advisable to spend some money on the canal to repair parts of it at least, but alas, the poor old canal as a waterway must go with the Australian ballot system, with the flowers of political spring that have nothing to do with the case. The very question as to whether a receiver should be appointed is the

very reason why he should be appointed. Mr. Cowen quoted legal authority to show the right to a foreclosure of the mortgage and the right to a receiver.

With reference to the question of sale, Mr. Cowan said a receiver was necessary, first to determine what property the canal really possessed, as the statements on that point were contradictory, and added: "Can this property be sold better, as they (the counsel on the side) suggest, before this court's receivers have found what the property is? Shall it be sold like a pig in a poke? Is it necessary to sell in entirety? May there not be property in the District of Columbia, or in this county that can be sold to better advantage in part. I do not mean to sell the canal in piecemeal, but there are various properties, as shown by the company's own reports, having valuable special advantages. This court of equity has the right to decide how this canal shall be sold, whether in whole or part. They say it will be dreadful to put any more work in that canal, but it will not do, now that a receiver has been asked, to say improvements should not be made. How else can the court know if they should be made without the appointment of its own officers to report to the court?

"Everybody knows what each shovelful of earth will add to the value of the canal even if the other side wants it for a railroad, and they promise on their sacred honors it is only to be used for a waterway. What do they mean by saying it will hurt their liens by mending this canal? The canal is not to be sold as a farm; it will be either a waterway of a railroad. If it ceases to be a canal, it goes back to the farmers of Washington and Montgomery counties, the property of the farmers having been originally condemned and taken for a waterway or canal. If it ceases to be a canal, before the land can be used for a railway, it must be again condemned, if I know anything of decisions in such cases. It is all wrong to say that to put $100,000 upon the canal will be wasted, when, with the exception of the locks, every dollar's worth of work put upon it will result in good, even if it is to be used for the West Virginia Central, the Piedmont and Cumberland or the B. and O. Railroad, if that is to be the end of the whole business."

Mr. S. Teackle Wallis followed, quoting a number of authorities in support of the position taken by Mr. Cowan and read the opinion of Judge Cox appointing receivers in Washington.

Gen. Bradley T. Johnson cited authorities which he intended to use in the closing argument.

**MR. POE FOR THE COMPANY**

Nr. J. Prentiss Poe then made his argument for the canal company. "The court," he said, "has two distinct applications for a receiver on behalf of the Chesapeake and Ohio Canal Company. I desire to show there is no good ground for granting of the application. The applications come upon bill and answer. Your Honor cannot look, then, to the remarks of counsel, however factious and interesting. The very modest application is that this Circuit Court of Washington County shall run the canal until the indebtedness of five millions of dollars shall be paid. It is to appoint a custodian for an indefinite period. Can the receivership within any reasonable time wipe out the following debts: $4,2500,000 to the bondholders of 1844; $800,000 to the bondholders of 1878; $73,000 to the labor claims, to say nothing of the twenty millions due to the State?

"The canal has lost $56,000 annually. Your honor is aske to do an impossibility. I apprehend you would recoil from such a stupendous work. As I understand, the court does not lay its hand upon a public work to hold it in perpetuity." Concerning the application for authority to repair the canal, Mr. Poe, after estimating that a debt of $500,000 would have to be created to raise $250,000 for repairs, said:

"And for what? To let boats run up and down and pay revenue which is problematical. If there were a likelihood of getting such revenues as to pay the interest, your Honor might look at the question. Some suggest that you dismember the canal, or that you repair it to Williamsport. What would be the return?

Not over 15 cents a ton for coal. Hence, your Honor is asked to da a vain thing.

"The B. and O. is here only as a creditor, asking the usual remedy to collect its debt. It cannot come to get possession of this canal to strengthen it, to dole out such tonnage as it may choose – to keep it up nominally, but not actually as a waterway. Your Honor is asked to obtain the amount due to creditors, not to enable them to exercise a certain power which they may be in a position to hold. They want not a temporary but a permanent receiver. They do not ask for the receiver for the purpose of obtaining their payment due, but to put some water in the canal that some boats may go up and down.

"There is no necessity of appointing a receiver to take charge of revenue when there is none, nor is there necessity for trying to produce revenue when it has been shown no adequate revenues can be made. Suppose the court appointed the receiver and rehabilitated the canal with no sparing of expense or issuance of certificates. It would take three or four months to put it into repair from Cumberland to Georgetown. But when you know you could decree a sale and it could be sold before it could be rehabilitated, for enough to keep faith with creditors what would your Honor say? You would say: 'I'll ratify the sale, whether for a waterway or railroad.' If a purchaser could be found for $1,500,000 your honor would do it. They are not entitled to run the canal. They are only entitled to their pound of flesh. Suppose the modified views of the applicants' bill are correct. Suppose the canal were made all right by next March. Suppose the immediate sale could not be made. The suppose a later sale was ordered, with an additional debt, when it is found to be impossible to run the canal at a profit. Suppose the sale then will not pay 100 cents on the dollar to those to whom payment is due, would you not wish you had ordered the sale at a time when the proceeds would have been adequate to pay dollar for dollar? Then why not order an early sale, that all may be paid, and if a modern road of transportation takes its place, how much better for the whole State?"

**MR. CARTER URGES A SALE**

Mr. Bernard Carter said: "Let us see what your Honor has to determine. In confine myself to the bill on the mortgage of 1878. That bill asks for a same and a receiver to operate the canal to the time of a sale. We are not here to ask you to take the canal from the canal company. The canal company's answer concedes that that question is not raised. We want the people to know the substance of this case. The question is not only, shall there be a receiver, but also who shall be such receiver? The learned judge at Washington does not settle any of the real questions in this case. The real thing to be decided now or in the near future is what is to be done with the canal. We say in behalf of 100,000 minority bondholders that the canal is to be sold substantially in its present condition. One of the prayers of the bill is that a receiver be appointed to take custody of the canal with such power to repair the same, so as to protect those interested in it. Is the decree to be a decree for the sale of the canal as it is or a decree to put it in repair before it is sold? The revenues now are not adequate to pay the interest on the indebtedness of the canal. There is no allegation that there is a single dollar for receivers to take in charge. Every dollar paid as rents at Georgetown is pledged for years to come. Therefore, the only purpose of a receiver is for him to take charge of the canal and do something with it. Your Honor will not, as the court in Washington did, appoint a receiver without saying what he is to do. Have the bondholders a right to ask that money be spent on the canal? When public works are involved, courts will not appoint receivers unless for the protection of creditors. The receiver is not appointed to rehabilitate broken-down works and spend money upon them. We aver that the canal as it is today is sufficient security for the bonds of 1878, and if sold will bring largely in excess of the mortgage of 1878. You cannot authorize the expenditure of money until at least if has been ascertained by a commission in the regular way how much

money would be necessary to put it in proper condition to be sold. Gen. Johnson's bill says it would take $300,000 to repair the canal, and your honor would have to determine before authorizing the expenditure of this sum whether it would be a prior lien upon the canal."

Mr. Wallis called attention to the fact that he objected to the statement in Senator Johnson's bill that it would take $300,000 to repair the canal. He wanted to admit all the other features, but wanted to go on record as professing a belief that the canal could be repaired for less.

The hearing will be continued tomorrow.

*Sun*, Mon. 2/3/90, p. Suppl 1. **THE CANAL CONTEST** – Hagerstown, Md. Feb. 2. – The argument before Judge Alvey in the Chesapeake and Ohio canal case was concluded in Hagerstown on Saturday, the judge reserving his opinion in the case until some future day. The court hall was well filled with people interested in the canal, who came to listen to the arguments of the prominent counsel engaged in the case.

**Mr. Carter's Argument for a Sale**

Mr. Bernard Carter in concluding his speech, which he began on Friday, said he would treat the subject under three headings:

First, whether it was proper for the court to grant a decree for an immediate sale.

Second, whether receivers should be appointed with authority to spend on the canal and put it in repair, and,

Third, whether the court should appoint receivers and give them authority to operate the canal. "It is the duty of the court in the case of a bill and answer like this," said Mr. Carter, "to decree an immediate sale of the canal without the expenditure of any money on it, and receivers are appointed only when the property is in such condition at the time of foreclosure that a receiver is necessary to protect the rights of interested parties. The bill avers that the security is not sufficient. This the answer denies, and your honor is therefore bound to take that as true. We are not here considering a case in which revenues are yielded day after day, and where there is doubt as to the solvency of the thing yielding the revenue, and whether the thing when sold will pay the mortgage, but it is a case in which there is not a dime of revenue, and the pleadings aver no receipts. So that your honor is bound to pass the decree for sale. If there is doubt whether the property will, if sold, bring enough to pay the mortgage, let it be put up for sale, and if it does not bring enough, the sale can be withdrawn. Every would-be purchaser can examine the property for himself. You can add nothing to nor subtract anything form the thing to be sold. As the case is now presented, there is nothing to show how much it would cost to repair the canal. This would have to be determined in the regular way by a commission, and the money thus spent would have preference over everything else, and the minority bondholders of 1878 are entitled to be heard and to say how much money is to be put ahead of their bonds. Does anyone suppose that people are so anxious to get rid of their money that they would invest it to repair the canal without the assurance of getting it back? The only object in spending money on the canal would be to make it bring a better price. Would the price after repairs were [illegible] of the price that could be gotten without repairing the canal by an amount equal to the costs of repairs? Would not the purchasers prefer to make the repairs themselves, so that they might know how they were made? We do not ask you to decide that the canal has no life as a waterway, but we ask that you do not decide that it must of necessity have life as such. The greater part of the repairs put on the canal as a waterway would be of no use for railroad purposes. So, to repair it would be done on the assumption that it is to continue as a waterway. To warrant repairs as a waterway, it must appear that as such it will pay the running expenses and the $100,000 interest now in arrears. There is no evidence to show when these contemplated repairs can be completed. Suppose it take three months, and before that time another flood comes along and destroys it again? And you cannot guarantee

that floods will not come. How then can you be asked to spend money upon it? If there were tolls and revenue, it would be proper to have a receiver collect them, but there are none. A question has been raised as to the validity of the title under a decree to sell. The act of 1878 was valid because the act of 1844 gave the power to mortgage the canal, and it was not necessary for this to be confirmed by the Legislature of Virginia or by Congress, as has been intimated, and there can be no question about the jurisdiction of the court. I submit that your Honor has exclusive jurisdiction of this case, and that the court in the District of Columbia had no jurisdiction. The State of Maryland was not in court there, and the validity of the lien of 1878 depends upon the assent of the State of Maryland. The State had the right to say on what terms it would surrender former liens. It had the right, too, to say into what court the case should be brought in default of the payment of the three successive coupons and I submit that Judge Cox, whose decision is set up here as *res adjudicata* might at least have waited as a matter of comity until the chief judge of Maryland, within whose jurisdiction is nine-tenths of the canal, had heard the case. If the canal is to be sold, it can afterwards be operated either as a canal or railroad.

"We ask: Can there be any justification in ordering the canal to be run as a waterway indefinitely? If so, on what basis? Would it not be on the basis that it would pay expenses and the interest now in arrears? But more than water is needed even if it is repaired. Where is the evidence of enough boats to carry coal and make it pay? For the past twelve years it has been run at a loss of $56,000 per year, and would this not continue? Pass an immediate decree for sale, time only for advertisement being given, and if at that time our allegations are found to be untrue it can be determined what is to be done in the future"

**Attorney-General Whyte for the State.** Attorney-General Whyte spoke next in behalf of the State. He said: "This is a combination of creditors to get what they can out of a bad concern. The State of Maryland, too, is a creditor to the colossal amount of $21,580, 207, principal and interest, and, with the $5,000,000, of stock, has over $26,000,000 in the canal. I, in behalf of the State, ask some consideration." After giving a history of the canal and the various acts of Assembly passed by the Legislature and the various loans made by the State, Mr. Whyte continued: "The State stands first to reply to the application of the bondholders of 1844 for a receiver, and I deal with the prayers of the bill. They charge no mis-management of the canal. We have no means at hand, and hence it is impossible to put a receiver in charge of tolls and revenue when there are none, so that the gentlemen on the other side have no standing in court.

"In the case of the bondholders of 1878, it is different. Are these bonds liens upon the corpus of the canal or are they only repair bonds? Are they prior to the bonds of 1844? There is a cloud thrown over their force and effect that should be decided, that the purchaser's title may be good. The constitution provides that no sale of the State's interest is valid without a ratification by the ensuing Legislature. This question we submit to the court. The mild suggestion that these bonds may not be what they are comes from the other side – the bondholders of 1844 and the Baltimore and Ohio Railroad. They impaired these bonds and a bidder could not be found until the B. and O., through Mr. Baldwin, bought them at from 80 to 86 cents on the dollar, and with the understanding that they were to get the majority of them. They did not take these bonds as valid. They said, You must give us something more. We must have a contract for 28 $10,000 bonds in case the bonds of 1878 are not valid, so that they could fall back on the repair bonds of 1844.

"The present officers of the canal are responsible men. There are no allegations of fraud, and yet they ask to take charge of and operate the canal pending the proceedings for foreclosure. Our brothers say now is not the time to sell it. I say now is the time to settle it instead of letting it remain idle, while the B.

and O. Railroad during the coming summer will be carrying all the coal.

"I stand here to resist the appointment of a receiver, using mu own judgement, for I have had no consultation with the board of public works and have no instructions from any human being. I am here simply to do my duty.

"Why not sell the canal? Can't it be reorganized if it is going the pay and if it is a thing that would invite purchasers if repaired? Why not let it be sold and operated as a waterway without the State being in it, so that there can be no political cavil about it? Put it into the hands of plain people and let them run it. Sell it to the highest bidder – to the B. and O., the W. M. R. R., the W. Va. Central or to some new corporation, and don't appeal to the court to run a canal. I say if sold tomorrow the canal would bring enough to pay off the bonds of 1878."

Mr. Cowen – "Then you give up the bonds of 1844?"

Mr. Wythe – "I give up nothing. For forty years the State has been giving up. It is time for it to get something."

Mr. Wallis – "Do you admit that you are wrong as to the invalidity of the bonds of 1878?"

Mr. Whyte – "I am not one of those who are never wrong, like some people who never sin. I submit that question to the court. Does any court, where there are big debts, issue receivers' certificates?"

Mr. Cowen – "I know where, in case of railroad, $1,500,000 receivers' certificates were issued and made subsequent liens to the bonds."

Mr. Whyte – "Did the B. and O. indorse them to make them good? How could the canal compete with the B. and O. unless enlarged and new locks put in? Besides, you would have to have some one in the coal fields to help you. No rents and profits are due even in the District of Columbia until July, 1890, so there is now no need of a receiver to take charge of them. And let me say last, but , not least, that although this court has jurisdiction over 170 miles of the canal, and although the State is a creditor to the amount of over $26,000,000 the bondholders of 1878 go into the District of Columbia, and there in a local court – not a United States circuit court – where the canal simply debouches into the Potomac, while a bill is in this court before the chief justice of the State, and have two receivers appointed on Monday after an argument on the previous Saturday, and then say this is *res adjudicata* and that an auxiliary receiver can be appointed to act under the court at Washington. In other words, this court must follow in the wake of Judge Cox. This certainly cannot be so; the State was not represented there. It had no notice, and no one had authority to appear for the State in that court no one in Maryland is bound by the decision of that court."

**Rights of 1844 Bondholders**

Gen. Bradley T. Johnson, in behalf of the bondholders of 1844, said: "I assume this court can appoint a receiver in a proper case, and one proper case is insolvency. The State pledged to the bondholders of 1844 the rents and profits of the canal, and when the State repudiates its responsibility it enters upon a state of disaster and ruin, If the mortgage of 1878 is void your honor cannot decree a sale, but there can be no doubt as to the validity of this mortgage on the tolls and revenues of the canal, and your honor must appoint a receiver to collect. Give us a chance to run the canal. Is my security worth anything without a receiver? We don't ask a receiver to last forever. We want money raised, and if the canal can't be made to pay, there it can be sold. Since 1851 the bondholders of 1844 have had but one chance, and that was when James Clarke was made president, and in three years paid nine years interest and put it in such condition that it continued to pay for two years after his term of office expired. Then it was run on business principles. We ought to be allowed to try this experiment again. I am not afraid of the Baltimore and Ohio. I, too, am a citizen, and when I see the State in a wrong position, I have a right to protest. There are some people who are interested that are not represented her. I mean the boatmen who lived on the canal, and

the rights of these people should be protected also. My brothers want the canal sold out at once. I imagine there is something behind this, and they must know a purchaser. I want to know if they want the matter delayed and then have it sold for a railroad. The condemnation was originally for a canal. The deed conveyed to the Chesapeake and Ohio canal, and if sold now it could not be used for a railroad until it was condemned for that purpose. The longer the matter is delayed the less valuable will the canal become and the more remote the security to us."

**Mr. Wallis Closes.**

Mr. S. Teackle Wallis made the concluding argument in behalf of the bondholders of 1878, and said: "This is an interesting case because of the important questions of law, but it lies within a comparatively narrow compass. It has gone through the whole State that we are resisting a sale. We are not in favor of a sale by public outcry out of the courthouse window. Our bill is for a receiver and sale. We are in court desiring a sale, but the question is, shall it be sold now or afterwards, for the purpose of realizing enough to pay the debts? The demand for immediate sale comes from quarters that want to buy, and that as cheaply as possible. The bonds themselves are not due for twenty years. It is at our discretion whether to ask for a sale at once or not. We might get a decree for foreclosure and let the decree stand as security for the payments becoming due. Our brothers have ne standing in court to even ask for a sale, and yet they ask for a sale at once before the adjustment of priorities and rights of parties. A decree for foreclosure is a relief to be given only at a final hearing. They ask your honor to consider a sale for a railroad and presume that the Legislature will confirm it. After knowing what the Legislature has done, no one can tell what it may do. Who is going to buy with the knowledge that he does not get a fee-simple title? We ask for a receiver, not because we are compelled to, and when this case was set for a hearing nothing was said about a sale, and yet most that has been said by my brothers was on the question of a sale. But Attorney-General Whyte in his argument settled the business. It would have been much easier for the State if she had taken the opinion of the attorney-general before sending him here. The board of public works has now an advertisement in the papers to lease the canal, and here is the attorney-general in court insisting on an immediate sale. These things are incomprehensible. Although Mr. Whyte was not in Washington the State was virtually represented there by Mr. Poe, as he in a same way represents the State here. In Washington, Mr. Poe and Mr. Carter were pulling the same carriage; the State was inside but invisible, the curtains being down. The fact that Judge Cox made up his mind in a short time is no reason why he should be wrong. If the court at Washington had jurisdiction, as it had, and if all parties were in court, that decision in in the nature of *rea adjuticata*. It is at least to every person except the State. That court took possession of the exit of the canal and tried to get possession of the books, which had disappeared not by legal methods. Mr. Poe says: use the books." Perhaps he might tell me where to find them.

"The only property found in the canal office at Washington were six chairs, and these, judging from the shape and form, came from the Senate Chamber of Maryland – part of the State's interest in the corpus of the canal. They say Judge Coz has jurisdiction of but 15 out of 175 miles of canal. A man's throat is only five inches out of six feet of body. So the 15 miles are the throat of the canal, for much of the property of the canal is in the District of Columbia. Why have the rents in the District diminished? Does your honor want better evidence of mismanagement than this? Don't you want all this looked into? And yet we are told there is no use of a receiver. They have disposed of valuable property in the District and now say there is none, as if the narrow lines of technical law should be followed by a court of equity. Did any one ever hear of a foreclosure without an ascertainment of the items first? What is to become of the canal in the meantime? They want to wait until those

who want to buy can get it for a farthing. The bonds of 1878 mean something. The bondholders of 1844 joined in the application for them. Our bonds are on the corpus of the canal as well as on the revenues, with a right to a receiver or foreclosure, or both, and when the State authorized the canal to borrow money it made the trustees of the bonds of 1878 the State's trustees, and we are prior lien holders as against the State, and when we have a mortgage on the rents and profits a receiver goes as a matter of course. In the last ten years the canal company has spent $600,000, and now say they ought to be entrusted with further custody of the canal. The political management of the canal is the secret of its failure. The court can't shut its eyes to this fact. They, for nearly a year after the freshet, tried to raise money to repair the canal without success, and now they deliberately say it can't be repaired. If they could have gotten the money, they would have run it as before. Though the number of fools is larger it is by no means an inexhaustible quantity, and they did not get the money, and now they won't let a receiver try to get it.

"If the question of title is left open, that ends this case; and if there is no sale, what is to become of the canal, which is bankrupt? Will a court of equity not look into the matter? What did the Legislature mean when it said we might have a receiver? Did it not mean we could have a receiver to get for us the rents and profits? It is abhorrent to every man's sense of justice, after large sums of money have been advanced, if a court of equity cannot interfere, and the idea that this concern is going to be burdened with receiver's certificates is a reflection on this court. We do not propose to throw good money after bad, but we propose to spend some good money to make some bad money good. All the parties interested are entitled to a receiver to examine the books, the transfer of property and ground rents and real estate along the river, and is your honor to have no means to get at this matter?

The arguments began at 10 in the morning and were not concluded until after 3 o'clock.

---

Annapolis, Feb. 2 – On Tuesday proposals for leasing the Chesapeake and Ohio canal, under the provisions of the advertisement authorized by a joint resolution, will be opened by the board of public works. It is said that at least two bids are known of now, the terms of which will command the attention of the legislators. Baltimore interests are beginning to take some notice of the canal situation. An authority upon transportation matters, outside of Baltimore and Ohio circles, says: "Convert that property into a railroad from the Maryland and West Virginia coal fields, without a foot of adverse grade thence to tidewater upon the Potomac, and the coal trade of Baltimore, like its old sugar interests, will soon be numbered with the things of the past."

*Sun*, Tue. 2/4/90, p. Suppl 1. **Status of the Canal and the Condition of the Work.** – Annapolis, Feb. 3. – Chief Judge Alvey came to Annapolis this evening. He says he will give the Chesapeake and Ohio canal case a careful consideration, and will render a decision as early as practicable. He has a mass of papers to examine. Under the joint resolution of the Legislature, proposal for leasing the canal will be received by the board of public works until noon tomorrow. A meeting of the board will doubtless be held at that hour, and the results of the advertisement for the proposals will then be made known, most probably by a message from the Governor to the Legislature.

**A Canal-bed Road**

Articles were filed in the office of the Secretary of State tonight incorporating under the general law the Cumberland and Washington Railroad Company. The incorporators named are Enoch Pratt, David L. Bartlett and John A. Hambleton, of Baltimore city; Asa Willison, of Cumberland; Martin N. Rohrbach, of Frederick; E. Kurtz Johnson, of Washington city; and H. W. Talbott, of Montgomery county. The capital stock is named at two million dollars, but can be increased. The object is to build a railroad from Cumberland to Washington and to acquire the canal for the

roadbed. That is the purpose for which the company was incorporated at Rockville, Montgomery county, last Saturday. Parties interested in this project will come to Annapolis tomorrow with the purpose, it is understood, of putting in a proposal for the lease of the canal, which proposal must be in by the hour of noon. This new company is the first to step upon the scene to paly its part in the drama, which may probably have for its finale the obliteration of the canal as a waterway. The people of the State perhaps do not care a great deal for the controversy between rival railroad interests over the possession of the canal property, but they do care for the outcome, especially as it concerns the welfare of the State, and especially of Baltimore, her metropolitan city.

**An Alleged Wreck**

It goes without saying that if it had not been for the warring railroad interests the canal would by this time be a rehabilitated waterway, with the ravages of the freshets of last summer repaired and the people of the State would now be dealing with an operated canal, instead of an alleged wreck. The term alleged wreck is used advisedly, for the party who want the canal sold to a railroad corporation insist that it is awfully wrecked, while the friends of the canal say that the money has been offered long ago to repair the canal and operate it as such. Mr. Mertens, a large boat owner at Cumberland, repaired many miles of the upper end last summer at his own expense to meet his business needs, and it was estimated that twenty-three thousand dollars would put the canal in condition from Cumberland to Williamsport. Had that been done early, the Western Maryland Railroad would not be short fifty thousand dollars in its coal traffic, nor would it have been required to seek other and dearer means for getting coal to carry on its operations. Between Williamsport and Cumberland, the canal may be a wreck that the unfriendly people say it is, but their statements may be taken with a god many allowances.

**Proposals that were Rejected**

It is said to be a fact that months ago the majority of bondholders of 1878 offered to go into court and ask for receivers, one of them to be the president of the canal and the other to be named by the bondholders. The proposition was to repair the canal, for which the money was promised. That would have been giving the canal a chance, under the direction of the court, to see what the canal could do under a business management, disassociated from politics, but this and other proposals were rejected, and now the people of the State are confronted with the case as it has been permitted to come before them. The State has not received any revenue from the canal for years. Why, then, this determined effort to dispose of it forthwith while there are parties who ask permission to give it a chance to live? The same railroad interests as it seems have been after the canal for years, no matter whom the individual incorporators may now be. Is it not true that there has been on each occasion when the effort was made to get possession a strong influence at their back in the State to help them get it? The canal franchises and rights-of-way for the purpose of a railroad are very valuable. This is well known to the parties who have for years been watching it with longing eyes.

*Sun*, Wed. 2/5/90, p. Suppl 2. **The C. and O. Canal Case.** – Annapolis, Feb. 4. – Chief Judge Alvey is here on the bench of the Court of Appeals with plenty of work, and the opinion in the Chesapeake and Ohio canal receivership case will not, therefore, be delivered for some time yet. As the judge is exceedingly prompt in all he does the decision may be expected in a reasonable period.

*Sun*, Thu. 2/6/90. p. Suppl. 1. Gov. Jackson has transmitted to the General Assembly of Maryland a special message recommending that a bid for the perpetual lease of the Chesapeake and Ohio canal made by the Cumberland and Washington Railroad Company be accepted. The company offers to pay about $1,400,000, included in which sum

are the following items: To pay off the corpus bonds, principal and interest, $600,000; labor claims, $70,000; lien on Cumberland wharf property, $30,000; twenty-five percent of the construction bonds of 1844, amounting to about $425,000, and also an annuity of $15,000 to the State, redeemable upon the payment in cash of the sum of $300,000. On their part the bidders want the canal, its franchises, water rights, property of all sorts, an assignment of all the liens of the State and make a lease for 99 years, renewable forever, and the 50,000 shares of the capital stock of the Chesapeake and Ohio canal belonging to the State. The bidders propose to construct, lay one or more tracks on the canal bed and run daily trains, to put the road in operation between Cumberland and Williamsport within a year, and to the District of Columbia in two years. Opposition is already developed to the scheme in the Legislature on the ground that the Cumberland and Washington Company is a "thing of straw," organized for speculative purposes.

---

**STATUS OF THE CANAL**

Under date of Annapolis, February 4. – Mr. Stephen Gambrill, president of the Chesapeake and Ohio Canal, wrote to Gov. Jackson as follows:

"Sir: It is my duty, as president of the Chesapeake and Ohio Canal, to make to you this communication. Upon December 31, 1889, a bill in equity was filed in the Circuit Court of Washington County, Md., and in the Supreme Court of the District of Columbia, by George S. Brown and others, trustees for the bondholders of the bonds issued under the act of 1844, chapter 281, asking for the courts above named to appoint a receiver or receivers to take possession of the Chesapeake and Ohio canal, with the design that when appointed the receivers should be authorized to repair the canal and operate it. Before any hearing of the bills thus filed was had, George S. Brown and others, trustees in the mortgage issued under the provisions of the act of the Assembly of Maryland of 1878, chapter 58, on the 13th of January, 1899, filed in the Supreme Court of the District of Columbia a bill in equity asking the court to appoint receivers with authority to repair and operate the canal, and also asking for a decree for a sale of the canal. The real object of the plaintiffs in the bill, however, was not to procure a sale at this time or at any near period of time, but to have receivers appointed with authority to borrow sufficient money on receivers' certificates to repair the canal and then operate it. A similar bill was, on January 15, 1890, filed in the Circuit Court for Washington County, Md. Answers were filed by the canal company to all of these bills in both courts. The judge of the Supreme Court of the District of Columbia, upon a hearing of the bills filed by the trustees of the bondholders of 1878, (which was pressed to the hearing before the bill filed before Judge Alvey,) passed an order on January 27, 1890, appointing H. C. Winship, of Georgetown and Victor Cushwa, of Williamsport, each of them agents of the Consolidation Coal Company, as receivers, without declaring what power said receivers should hold or what their action should be. An appeal has been entered by the canal company from this order to the General Term of the court. Upon Friday last, January 21, 1890, the bills filed in the Circuit Court for Washington County came on to be heard before Chief Justice Alvey, at Hagerstown, answers having also been filed by holders of over $90,000 of the bonds issued under the act of 1878, resisting the appointment of receivers for the purpose of repairing and operating the canal, and insisting that the proper relief was a decree for the sale of the canal in its present condition. At the conclusion of the argument, on Saturday, Judge Alvey took the papers and holds the case under advisement. In view of the appointment by the court in Washington of receivers and of the avowed intention of those at whose instance they were appointed to procure authority from the court to authorize them to endeavor to repair the canal and put it in operation again. I think it is my duty to lay before you the following facts bearing upon the feasibility of this project. For twelve years past the president and board of directors of the canal

company have stated to the stockholders that it was impossible for it to compete with the low rate of charges made by the railroad unless the canal was enlarged. The principal and only paying trade for the canal is in the transportation of coal. The canal terminates at Cumberland, and average distance of 80 miles from the coal fields. From Cumberland, there are railroads leading to the coal fields as follows: First, the Baltimore and Ohio, which has not in the past and will not deliver a ton of coal to the canal; second, the Cumberland and Pennsylvania Railroad, which is now owned and controlled by the Baltimore and Ohio, and which has heretofore been the principal line in delivering coal to the canal; third, the Cumberland and George's Creek Railroad, which is the outfit for the Maryland and American, or one of the two, other coal crops; fourth, the West Virginia Central, which passes through the coal fields on the upper Potomac. Each of the last three roads, or the persons owning and operating them, own the great part of the coal on the respective lines. When the canal was in proper order, we made every effort to induce then to ship via the canal. They declined to do so to any great extent, for the simple reason that each of the said railroads connected with the B. and O. and the Pennsylvania Railroad systems at Cumberland, and could and did obtain rates from the B. and O. and the Pennsylvania Railroad to deliver the coal at Baltimore and Philadelphia for a less rate than it could be delivered by the canal at Georgetown, not withstanding that we reduced our charges to 30 cents a ton. Moreover, from the beginning, the relative disadvantages of the port at Georgetown as compared with Baltimore and the relative disadvantages of the mode of the transfer of the coal to the vessels at Georgetown as compared with Baltimore, and on the whole the greatly superior advantages of Baltimore over Georgetown, have made it always necessary for shippers of coal by canal to pay for the costly transfer of the coal from the canal boats to the vessels at Georgetown, and for freight on the vessels 25 cents a ton more than was paid for similar services by shippers of coal from Baltimore. There can, therefore, be no doubt in the minds of all well-informed people that even if the canal in its present dimensions is placed in order for navigation, it is impossible for it to earn enough to pay its running expenses."

*Sun*, Thu. 2/6/90. p. Suppl. 1. **BID FOR THE CANAL** – **Proposal Made to the State by the Washington and Cumberland Railroad Company.** – The proposal for the canal by the Washington and Cumberland Railroad Company is as follows: Rockville, Md., Feb. 4. – The Board of public works of the State of Maryland – *Gentlemen*: As counsel for the Washington and Cumberland Railroad Company, a corporation incorporated under article 23 of the Code of General Laws of Maryland, title corporations, I have the honor to submit the following proposition in compliance with the advertisement of the board of public works for proposals to lease the Chesapeake and Ohio canal, said advertisement being in conformity to a resolution passed by the General Assembly at its present session.

The corporation which I represent will be prepared at any time to give such bond or other security as the board of public works may require for the faithful performance of the contract if entered into. Said Washington and Cumberland Railroad Company will agree, and hereby proposes, to lease the Chesapeake and Ohio canal and all of the lands, water-rights, mole properties and franchises for a term of 99 years, renewable forever, upon the following terms, viz: The Legislature of Maryland shall authorize the Chesapeake and Ohio Canal Company to execute a lease to the Washington and Cumberland Railroad Company of all its property, privileges and franchises, and shall authorize said railroad to construct on the tow-path or bed or other lands of said Chesapeake and Ohio Canal Company a railroad from Cumberland, Md., to the terminus of the said canal in the District of Columbia. In consideration of the execution of such lease, said Washington and Cumberland Railroad Company will agree to pay within six months

from the execution of said lease to the treasurer of the State of Maryland, who shall receive the same under the responsibility of his office, a sum equal to the principal and interest of the repair bonds issued under the act of 1878, chapter 58, which sum the said treasurer shall at once apply to the purchase of said repair bonds and coupons thereon. The said railroad company will also agree to pay the sum of $70,000 to be applied to the payment of outstanding claims for work, labor and materials which have accrued since January 1, 1877, and down to January 1, 1890. Said claims upon presentation by the owners thereof shall be paid by the treasurer of the State their pro rata share of the aforesaid sum of $70,000. The said railroad company will also agree to pay to the treasurer the sum of $30,000, the amount of the judgements and interest thereon recovered in the Circuit Court of Allegany County, term 1878, against the Chesapeake and Ohio Canal Company, being the judgments on wharf property at Cumberland; provided that the amount so paid by the treasurer of the State to the holders of the repair bonds and coupons and for claims for labor and on said judgment, that the said debt shall not be extinguished by such payments, but shall be held as assigned and transferred to the State. The said railroad company will also agree to pay to the treasurer of the State within six months after the execution of said lease a sum equal to 25 percent of the principal of the bonds known as preferred construction bonds, issued by the Chesapeake and Ohio Canal Company under the act of 1844, chapter 281, said principal amounting to $1,699,500, and said 25 percent amounting to 424,875, which sum the State treasurer shall distribute pro rata among the holders of said preferred construction bonds. Upon the payment of said pro rata share to said bondholders they shall deliver their said bonds to the treasurer of the State, and if after the end of six months after payment to him by the Washington and Cumberland Railroad Company any part of said sum shall remain in his hands uncalled for, he shall return the same to the Washington and Cumberland Railroad.

Upon payment of the said Washington and Cumberland Railroad Company of the whole of the sums hereinbefore recited, and not before, said lease shall take effect and the title of said Washington and Cumberland Railroad Company to said Chesapeake and Ohio Canal, it franchises, water-rights and property of every description shall be subject to the covenants and stipulations of the lease, and the prior liens of every kind, including mortgages on its property, rights and franchises, shall be waived and released in favor of and transferred to and held by said Washington and Cumberland Railroad Company. The board of public works shall execute and deliver to said Washington and Cumberland Railroad Company a good and sufficient assignment of all its liens held by the State to the end that such liens shall be vested in said railroad company as fully as the same are now held by the State, and shall also transfer and deliver to said railroad company the repair bonds issued under the act of 1878, chapter 58.

The State shall assign to said company the whole of said labor claims, the judgments, and also all the bonds issued under the acts of 1844, chapter 281, which the holders thereon shall deliver to the treasurer upon the payment as hereinbefore provided. The treasurer shall, moreover, transfer to the said Washington and Cumberland Railroad Company for the period of 99 years, renewable forever, 50,000 shares of the capital stock of the Chesapeake and Ohio Canal belonging to the State.

The lease shall contain a provision for making connections and contracts with the Western Maryland Railroad Company and with any other railroad companies chartered by the State of Maryland, and provisions that the said Washington and Cumberland Railroad Company shall pro rate charges with such connecting lines, and shall contain the further provision that the said Washington and Cumberland Railroad Company shall not consolidate with or be leased to the Baltimore and Ohio Railroad Company or any other company without the consent of the General Assembly of Maryland.

The said Washington and Cumberland Railroad Company agrees to construct a railroad from Cumberland to the District of Columbia, with one or more tracks, and to run at least one passenger train each way daily, and at least one freight train each way daily for the whole length of the road, unless prevented by floods or unavoidable accidents. The said railroad company agrees to construct, complete and equip and put in running order one or more tracks for the transportation of passengers and freight between Cumberland and Williamsport, Md., within one year from the date of said lease, and within two years between Williamsport and the District of Columbia; provided that in case delay shall occur in the commencement or prosecution of said work in consequence of legal proceedings begun against said Washington and Cumberland Railroad Company by any person or corporation whatever, the time above designated shall be extended so far as to cover the period during which the operations of said company were delayed. When the railroad with at lest one track shall be completed from Cumberland to Williamsport, then the said Washington and Cumberland Railroad Company shall pay annually to the treasurer of the State of Maryland, during the continuance of the lease, the sum of $15,000. The act to be passed by the General Assembly shall further contain a provision that said Washington and Cumberland Railroad Company shall have the right at any time to perfect its title to sell the whole of the Chesapeake and Ohio canal, all of its property, works and water rights, under a mortgage which the State shall assign to it, upon giving 90 days' notice of the time, place and terms of sale.

Hattersly W. Talbott,
Counsel for the Washington and Cumberland Railroad Company.

---

**GOVERNOR'S MESSAGE**

The following is the message of the Governor to the Legislature on the canal case, and his recommendations in the premises:

*Executive Chamber*, Feb. 5, 1890. – Gentlemen of the House of Delegates: The legal proceedings instituted by the holders of the preferred construction bonds of the Chesapeake and Ohio Canal Company, issued under the act of 1844, chapter 281, amounting now, principal and interest, to more than $4,250,000, and by the holders of the repair bonds of the company issued under the act of 1878, chapter 58, amounting to about $800,000, principal and interest, for the appointment of receivers to manage and operate the canal under the direction of the Supreme Court of the District of Columbia and the Circuit Court for Washington County, have naturally attracted much attention. Based as they are upon the conceded fact of the utter insolvency of the canal company and its failure for many years to meet its ordinary expenses, they brought distinctly before the public the question whether it is worth while for further efforts to be made in any shape and under any management to preserve the canal as a waterway, or whether the fact of the inability of the company to maintain itself should be at last realized and dealt with accordingly. From the time of its completion to Cumberland, in 1850, down to June, 1889, when the disastrous freshets came which put an end to its business, its earnings, except for about ten years, were barely equal to its expenses. It furnished a most desirable means of transportation, and its tonnage at times was large, but the expenses of operating it and of making the repairs, both ordinary and extraordinary, which were constantly required, was such a steady drain upon its revenues that little of no surplus was received until 1869. In that year the prospect of the company began to improve, and the existence of a considerable net balance in the treasury led to a litigation among several classes of its creditors for a settlement of their respective rights and priorities, which, so long as there was nothing to fight over, were not deemed worth the contention. These questions were all settled by decision of our Court of Appeals in the case of the Commonwealth of Virginia against the Chesapeake and Ohio

Canal Company, thirty-second Maryland. From 1870 down to 1873 the company saved enough to pay the overdue coupons on the preferred construction bonds of 1844 down to July, 1864, which had been in arrears about from the beginning. In November, 1877, a great flood in the Potomac and other streams damaged the canal most seriously, and in order to obtain the means to make the needed repairs, bonds amounting to $500,000 were authorized to be issued by the act of 1878, chapter 58. With the money procured by the use of these bonds the canal was restored, and from the opening of the season, in April or May, 1878, down to June, 1889, the company struggled along as best it could, endeavoring to prolong its existence and meet the keen competition which was gradually, year after year, diminishing the business and reducing its revenues. Prior to the freshets of 1877, the causes which have since proved so effective in destroying the business of the canal company, began to make themselves felt. A rigorous effort was made the check these injurious influences by the important legislation of 1876 reducing the freight rates on coal of the Cumberland and Pennsylvania Railroad Company, which at that time was the only feeder of the canal at Cumberland. But the business of the company in 1877 began to languish, and after the restoration of the canal in 1878, the influence to which reference has been made, became more and more apparent; its savings steadily decreased, while its expenses were more than its receipts. The ability of the canal company to maintain itself depends upon two elements: first, a sufficiency of coal tonnage, and second, a fair rate of toll. From 1869 to 1876 both of these indispensable advantages were maintained. The result was the company prospered, and high hopes were entertained that this prosperity would continue. But in 1877 the strike came, the business of the company was absolutely suspended for a considerable period, and a large reduction in the rates of toll became necessary. The result of this diminution of tonnage and reduction of tolls was necessarily disastrous, and when following immediately after the strike of the summer of 1877, came the great flood of November of that year, the company found itself in such a deplorable financial condition as to compel the creation of a bonded debt for necessary repairs already mentioned. Without going into details, it is sufficient to say since the beginning of the misfortunes of 1877 down to the disaster of 1889, the annual excess of the expenses of the company over its receipts has been over $56,000. Such a melancholy condition of affairs could have but one end, and the end came last summer with the flood, which absolutely finished the canal as an existing waterway. The question now is: What shall be done? Shall the canal be abandoned as a waterway and replaced as a railway from Cumberland to Washington under suitable and adequate legislation, or shall it be sold under the mortgage to secure the bonds issued under the act of 1878, chapter 58, or under the mortgage s held by this State, for what it will bring at public auction, or shall further attempt to operate it by receivers appointed by the courts be acquiesced in, involving, as such attempt necessarily will, the creation of a large additional indebtedness to take priority over the heavy existing claims of the State without any prospect whatever of any better results than those already accomplished? These are the questions that the General Assembly at this session must meet and decide. With a view, no doubt, to guide you in your settlement of this important matter, joint resolutions were passed by your honorable bodies on the ___ day of January directing the board of public works to advertise to lease the canal. Public advertisement was duly made, and one bid has been received, which I have the honor to lay before the General Assembly. This proposal is, in brief, that the charter of the canal company shall be so amended as to authorize it to lease the canal and all its works, property and water rights of every description to a railroad company, which is to build a railroad from Cumberland to Washington within a definite period named in the bid. The consideration of the lease, the railroad company proposed to pay

off in full the bonds of 1878, amounting, principal and interest, to $800,000, also labor claims against the canal company for work done and materials furnished to repair and restore it, claims of the most meritorious character, amounting to about $70,000; also a judgment for $10,000, constituting a first lien on the wharf property in Cumberland; also 25 percent of the principal of the preferred construction bonds of 1844, which percentage will amount to about $425,00, and also an annuity of $15,000 to the State, redeemable upon the payment in cash of the sum of $300,000. The total price proposed to be thus paid for the lease amounts to more than one million, four hundred thousand dollars. Looking to the history, present condition and future prospects of the company, I do not hesitate to advise the acceptance of this proposition, and I consider the subject of such importance as to call for a special message from me to your honorable bodies. All reasonable men must admit that, in face of the sharp competition of the Baltimore and Ohio Railroad and the Pennsylvania system, which Cumberland (for the details of this proposition I refer you to a copy of the same herewith presented) for the coal trade, the proportion of this trade that will probably be received by the canal company, should it be restored and again opened for business, will be too small to permit the hope of a profitable business. The tolls must be reduced toa point low enough to secure tonnage. The railroad charges have been cut down to such a low point that in the contest the canal company cannot possibly earn enough to pay its expenses under existing circumstances, but few of the coal companies ship by it at all, and the tonnage from these companies is not likely to be kept up should the canal company be restored, much less increased. A trade of 300,000 tons per annum with tolls at 30 cents would yield only $90,000. If it were possible to suppose that ordinary operating expenses would not exceed this sum, without taking into account serious damage from floods and freshets, there would be no inducements for continuing any longer the experiment; which has proved so unfortunate to the company, its bondholders and the State. The advantages of the proposed lease are: The bondholders of 1878 and the labor claims will be paid in full; the bondholders of 1844 will receive for their bonds a sum far beyond what any management can realize for them; while the State will receive an annuity of $15,000. To the people of the counties of Allegany, Washington, Frederick and Montgomery a railroad will prove far more beneficial than the canal. The facilities for transportation will be manifestly superior, while the delays and uncertainties incidental to canal transportation will be greatly lessened. At Williamsport, easy connections can be made with the Western Maryland Railroad Company to the great benefit of the city of Baltimore. Further down the line, connections can be made with Frederick and points beyond, and the people of Montgomery will be enabled to reach Washington with their produce by much greater advantages than they have ever been able to do by means of the canal. It will be observed, also, that a costly road from Cumberland to Washington will bring, subject to the State and county taxation, a large source of additional revenue in place of a work which is exempt from both State and county taxation. Indeed, from every aspect in which I am able to view the subject, the proposed lease meets my approval, and I cordially recommend it to your honorable bodied. The legislation necessary to enable it to be carried into effect should be carefully drawn so as to secure the due performance lessee of all the proposed stipulations, and to require such facilities to be given to connecting railroads as may enable them to obtain a fair share of the coal traffic which the contemplated railroad will bring to the State. The construction and charter of the canal from Cumberland to Georgetown has heretofore been of no benefit to the city of Baltimore, but as the Western Maryland R. R. runs to Williamsport and there can connect with the proposed railroad to be built on the line of the canal, and as ample provision can be made in the Legislature to be adopted by you requiring

the proposed railroad to pro rate on fair terms with the Western Maryland Railroad, every guarantee will be offered that the city of Baltimore will have a new line to the coal fields of Western Maryland and Western Virginia, and the immense addition of such a line to the interest of Baltimore city was shown in a communication made to the last General Assembly by the president of the Western Maryland Railroad Company. I have good reasons to believe that unless advantage is taken at this session of the Legislature of the opportunity to utilize the canal as a railroad, the lines of railroads other than the Baltimore and Ohio system now connecting the coal fields with Cumberland will seek other outlets for their traffic, the location of which has already been made, and which, if constructed, will divert the trade to points north of Baltimore. I beg leave again to bring to your attention the following passage from my last message, referring to the canal: "The Baltimore and Ohio Railroad Company should not be permitted to own or control this great State work. With its claim of irrepealable character and right to charge exorbitant rates for transportation, it would be able to exact such tribute from the people of Western Maryland as it might determine." The interest of the whole State, therefore, demands that some provision be made to sell the canal and see that it is maintained as an independent line of transportation.

E. E. JACKSON

---

**THE CANAL CRISIS**

Annapolis, Feb. 5. – Chesapeake and Ohio canal matters occupied a leading place in the Legislature of Maryland today. Up to the hour when Gov. Jackson sent in his message, accompanied by the proposal from the Washington and Cumberland Railroad Company for a perpetual lease of the canal, all the proceedings connected with the opening of the bids were kept profoundly secret. Rumors were floating around, said to have been started by people who were believed to know something of the inside, that other bids had come in. The impression was almost forced upon a looker-on that the one expected and wanted bid had been received, and the other bids, while invited, were not sought. The aggregate amount of the bid was $1,400,000.

---

**CHESAPEAKE AND OHIO CANAL**

The President laid before the Senate a special message from the Governor in regard to the lease of the Chesapeake and Ohio canal, which was read, as was also the bid of the Washington and Cumberland Railroad Company.

On motion of Mr. Wootton, and order was passed requesting the president of the canal to furnish the Senate with the amount owing by the canal for labor and materials and amount of floating debt.

SR, Fri. 2/7/90, p. 4. **Canal Affairs.** – An imposing array of counsel made a big legal fight in Hagerstown last Friday and Saturday before Judge Alvey, the question being whether or not the court should appoint a receiver for the Chesapeake & Ohio Canal. After hearing the representatives of the various interests, Judge Alvey took the case under consideration, and will announce his opinion as soon as he has examined the papers in the case.

Articles were filed in the office of the Secretary of State of Maryland on Monday last incorporating under the general law, the Cumberland and Washington Railroad Company. The incorporators named are Enoch Pratt, David L. Bartlett and John Hambleton, of Baltimore city; Asa Wilson, of Cumberland; Martin Rohrback, of Frederick; E. Kurtz Johnson, of Washington city; and H. W. Talbott, of Montgomery county. The capital stock is named at two millions of dollars, but can be increased. The object is to build a railroad from Cumberland to Washington and to acquire the canal for the roadbed. On Wednesday, the company put in a bid to the Board of Public Works of Maryland, offering $1,400,000 for a perpetual lease of the canal and its property and rights.

*Sun*, Fri. 2/7/90, p. 1. STATE HOUSE JOTTINGS. – Mr. Colton obtained leave to introduce a bill to amend the charter of the Washington and Cumberland Railroad Company. The bill was not ready for presentation, but will come in tomorrow. As understood, it will amend the charter so as to make it conform to the proposal of the company for leasing the Chesapeake and Ohio Canal.

---

*Ibid,* p. Suppl. 2. **AN IMPORTANT CASE** – Washington, Feb. 6
The Chesapeake and Ohio Canal Company filed its answer today in the first canal case of Geo. S. Brown et. al. vs. the Chesapeake and Ohio Canal Company. The answer admits all the allegations as to mortgages, parties, &c., but calls the attention of the court to the significant fact that the plaintiffs do not allege that there has been any breach of condition, and in the absence of such an averment says it might content itself with thus adverting to the special condition of the mortgage. Still, as it desires that all the facts may be fully known to the court, it avers that the failure on its part to pay the principal and interest of the construction bonds issued under the act of 1844 was solely due to deficiency of revenue, arising from a want of business and without any fault whatever on the part of the canal company.

It asks proof of trusteeship under the mortgage, &c., admits that it is insolvent and has paid no interest on the bonds of 1844 since the coupons that fell due in July, 1864, or that the principal is not paid.

It replies that this unfortunate condition has been brought about by no fault of its own, but is wholly due to a deficiency of revenue, which its officers could neither foresee nor avert.

It submits that if the security which the bondholders were content to accept has decreased in value, this does not give the court jurisdiction to grant the remedy asked for. By the terms of the mortgage, they expressly agreed to their right to demand and receive possession of the canal was to depend upon their proving to the court that the failure of the canal company to comply with the conditions of the mortgage was due to the fault of the canal company. It its failure was caused by a deficiency in the revenue, arising from a failure of business, without fault on the part of the canal company, such fault is made to appear by the grantee in said mortgage, then the said bondholders were not entitled to the possession of the canal. The plaintiff does not even allege this.

They say further that the bondholders have their remedy at law by judgment or execution upon the canal, subject to prior liens. They are not entitled to the appointment of a receiver for above strong reasons. A receiver is not necessary to protect the canal from damage and could do nothing with its wreck. Even if the receiver could put the canal in order, its history for the last twelve years shows that the expenses of carrying on the canal exceed its revenues.

The canal company is forced to admit that under no circumstances likely to arise, can it obtain tonnage enough to compete with the Baltimore and Ohio Railroad Company in such a way as to pay its running expenses. They further allege that the State of Maryland is a necessary part of the suit and ask to be dismissed. The answer was received this afternoon by mail from Annapolis, and was immediately filed.

*Sun*, Sat. 2/8/90, p. 1. Mr. John K. Cowen and other railroad men said yesterday that the Cumberland and Washington Railroad Company, the bidder for the lease of the Chesapeake and Ohio canal, is backed up by the West Virginia Central Railway Company; that Baltimore coal interests will be injured if the proposed plans are carried into effect, and that the Western Maryland Railroad Company is bound by contract with the Baltimore and Ohio Company not to bid for a lease of the canal.

SUN, Mon. 2/10/90, p. 4. **RAILROAD ENTERPRISE** – The projectors of the

Cumberland and Washington Railroad along the towpath of the Chesapeake and Ohio canal and of its adjuncts in the District of Columbia, the Washington and Western Maryland Road, have gone so far with their plans for construction that a preliminary survey of the canal bank has been made. These plans also contemplate an independent line from the banks of the defunct waterway in Montgomery county to Baltimore. The survey was made by Mr. Charles H. Latrobe, a surveyor of long experience, who has just returned to Baltimore from a trip on horseback from Cumberland down the banks of the canal, and thence across country to Baltimore. It was not the first journey that has ever been made over this route with a view to running a railroad, and this trip, like its predecessors, will result, it is stated, in a report to the projectors that such a railroad as contemplated will be feasible, and that the cost will not be so excessive as to kill the project in its incipiency. The route, as mapped out for the proposed extension to Baltimore, would commence on the bank of the canal below Point of Rocks, cross the Metropolitan Branch of the Baltimore and Ohio at Boyd's, thence through the rich and fertile Sandy Spring neighborhood of Montgomery, down through Howard county, crossing the Patapsco river at Ellicott City, and thence to Baltimore. Terminal facilities in Baltimore have not yet been determined upon, but it was stated that either shore of the Spring Gardens would be eligible sites for the piers needed in coal traffic. Mr. Colton has leave to introduce a bill in the House amending the charter of the Cumberland and Washington Roads, and this amendment is supposed to provide for the proposed Baltimore extension of the road. Mr. Colton has said that he does not yet know what this amendment is.

**BUT THERE'S A CONDITION**

The statement was given out that this Baltimore extension could not be built, at present at least, if satisfactory pro rata rates can be made between the Cumberland and Washington and Western Maryland lines from Williamsport, where the two roads will connect, to Baltimore. Such rates, it was also stated, are, to say the least, problematical at present in view of the existing contract between the Baltimore and Ohio and Western Maryland Companies, as stated in Saturday's *Sun*, whereby the latter is to keep its hands off the canal in consideration of advantageous terms given the Western Maryland for freight traffic from Cherry Run, where the two roads are to connect, to Shippensburg, Ps., where connection is to be made between the Western Maryland and Reading systems. It was pointed out that while the Western Maryland would receive all freight offered at Williamsport, it would not, owing to this contract with the Baltimore and Ohio, be in a position to make pro rata terms with any company whose lines are on the bank of the canal, and that if it did so it might be hampered by the Baltimore and Ohio in the traffic arrangements which have been entered into by the two companies. In absence of any satisfactory agreement, it was stated that the Cumberland and Washington would push its own way to Baltimore.

**PRESIDENT DAVIS AND THE LEASE**

A *Sun* reporter yesterday asked President Henry G. Davis of the West Virginia Central Railway Company, at his home in Washington, if his company is backing the Cumberland and Washington Road, or if it was in any way giving it its support. Mr. Davis evinced a reluctance to be interviewed on any subject, but he answered without hesitation that his company was not backing the new project; that it had all it could attend to, to develop the coal and lumber fields it now owns. "I am not directly interested myself," he continued, "in the new road except as a coal shipper who is badly in need of an additional outlet to tidewater. I am in favor of a railroad along the towpath of the canal because it is progressive. I favor it on the same broad, general principle that I favor the Belt Railroad in Baltimore or any similar progressive move."

**A BENEFIT TO BALTIMORE**

"Would such a railroad benefit or injure Baltimore's interests?" the ex-Senator was asked.

"It would prove of great benefit, because the coal to be shipped over it must go to Baltimore, if not by the Western Maryland, then by an independent line. Washington could not be the terminus, because vessel rates are23 cents higher per ton from Washington than from Baltimore to eastern points, and it is absurd to say that the Potomac would be dredged out or that Point Lookout would be a terminus. What is there to attract vessels to either point? What is there to attract vessels to Baltimore? Is there not some other industry there besides coal? Do not vessels take cargoes of general merchandise and ice especially to Baltimore, and receive coal as a return cargo? These should certainly be factors in inducing the road to seek a terminus in Baltimore."

**B. AND O. AGREEMENTS**

"Are the traffic arrangements of your road with the B. and O. satisfactory?

"Certainly, they are; but the trouble is the B. and O. cannot handle the freight we offer it. Why, our output of coal last year was 400,000 tons less than that of the past year, and it was all because the B. and O. could not take our cars to tidewater. It has not been the only road which has suffered with too much business; all the trunk lines have, and as the demand for coal, and, in fact, all products is increasing with the growth of the country, what will be the consequence this year, the next, and the next, and so on? If there is not another outlet from the mining region, I tell you that the coal which should come to Baltimore will find its way up the Cumberland Valley and thence across Pennsylvania to the seaboard. We have been so pressed for facilities that we have been compelled to send nearly 100,000 tons over the Pennsylvania line to Philadelphia. Fully 100,000 tons have gone to Harrisburg and thence by the Northern Central to Baltimore. Our piers are in Baltimore, and thither we want our coal hauled."

**NO RELEIF FOR THE PRESSURE**

"Would not the repair of the canal and its maintenance as a waterway relieve this pressure you speak of?

"It would not, because all told there are not 100 boats on the canal today, and many of these are worm eaten and warped by the sun. Not a boat has been built for three years. If all the boats now stretched out along the canal could be repaired, they could not transport 11,000 tons a day, and this would not relieve the pressure. The mules are also scattered. As proven in numerous cases, the days of canal traffic are over. If the B. and O. wants the canal maintained as a waterway, why did it not bid for it as this railroad company has done?"

"Would you give all your traffic to this new road?"

"I would not. The B. and O. would, most probably, receive half."

*Sun*, Tue. 2/11/90, p. 3. **Washington and Cumberland Railroad** – Senator Getty, of Garrett, chairman of the Senate committee on corporations, will probably introduce on Tuesday a bill to amend the charter of the Washington and Cumberland Railroad Company. It provides for an enlargement of the powers of the company beyond those granted under the general incorporation law. These include the right to borrow money, connect with other roads, &c.

**THE CANAL LEASE**

Dr. Shaw asked leave of the committee of ways and means to introduce a bill entitled an act to authorize the Chesapeake and Ohio Canal Company to lease its canal and all its works to the Washington and Cumberland Railroad Company, and to lease and release all the liens of this State upon the canal and all its property in favor of the lessee. It is stated that the bill has not yet been drafted. Dr. Shaw is chairman of the House ways and means committee, to whom were referred the message of the Governor and the proposal to lease the canal. He says his committee will draft and report a bill in accordance with the leave which he asked for tonight.

The amended Washington and Cumberland Railroad charter will provide for borrowing money not to exceed eight millions of dollars.

**THE FORTHCOMING BILL**

It is understood that the proposed legislation for leasing the canal to the Washington and Cumberland Railroad Company will provide "for the most liberal traffic arrangements with the Western Maryland Railroad Company upon the best terms that are given the most favored customer." This is said to be almost the language of the bill as it will come in tomorrow.

The amended charter of the Washington and Cumberland Railroad Company provides that the main office of the company shall be in the city of Baltimore. It provides that the company shall construct one or more tracks from Cumberland to Washington, may connect with other railroads, shall maintain and operate such portions of the canal as are not used for railroad purposes, and may borrow money not to exceed $8,000,000. It will be competent under this amended charter for the company to construct a chartered railroad from the canal road to Baltimore.

**THE WESTREN MATYLAND ROAD**

It is said that the purpose of connecting the proposed canal railroad with the Western Maryland Railroad is entertained by the Washington and Cumberland Railroad managers. The statement is positive that a connection with Baltimore city will be made. A director of the Western Maryland Railroad Company makes a rather clear showing of the scope of the traffic contract with the Baltimore and Ohio Railroad. That contract includes the construction by the Western Maryland of a road from Williamsport to the Baltimore and Ohio tracks at Cherry Run. It provides for an exchange of traffic but says nothing whatever about binding the Western Maryland not to engage in competing or other enterprises, and the canal is not mentioned in any way. The director says that the Western Maryland is in a position to accept business from the Baltimore and Ohio, the Washington and Cumberland, or any other road. The board of directors would not have entered into a contract with the Baltimore and Ohio which could be possibly construed to mean that the Western Maryland will not take traffic from one of a dozen roads if it is offered. Besides, it must be remembered that the cost of construction of the road from Williamsport to Cherry Run is to be borne by the Western Maryland. Inconclusion, the director said: "It is about this time that this warfare upon the Western Maryland road, owned by the city of Baltimore, should cease. We have the Pennsylvania Railroad crippling us in Baltimore with proscriptive terminal and tunnel charges, and attempting to keep us from getting out of their clutches and reaching tidewater over our own lines. On the other end there is the Baltimore and Ohio Road wanting to put out the inference that the Western Maryland, because of a traffic contract which is not intended to give it business to Baltimore, cannot arrange with another company which wants to get to Baltimore over its own lines."

The conclusion to be drawn from the director's explanation is that the Western Maryland Road, while it is not a party to the canal lease proposal, is in a position to make a traffic agreement with the road when it is completed to Williamsport.

*Sun*, Wed. 2/12/90, p. 1. **The Chesapeake and Ohio Canal** – When the Board of Public Works, acting under the authority of the Legislature, advertised for bids for the Canal, is was a matter of general surprise that the Western Maryland Railroad Company, which two years ago presented forty reasons why the Canal from Williamsport to Cumberland, should be leased to them, was not now a competitor for it. That surprise gave way to amazement and indignation when on Saturday last *The Sun* published an account of the transaction, in which it affirms that a written agreement exists between that Company and the B. and O. Company, "that in consideration of the advantageous traffic arrangement afforded by the B. and O. to the W. M. road the latter will keep its hands off the Canal, thereby not becoming an active competitor of the B. and O. for the product of the coal mines of Western Maryland." This statement is repeated in *The Sun* of Monday, February 10, and Mr.

John K. Cowen, the general counsel of the B. and O. road, is also reported in *The Sun* of last Saturday as "confirming the statement that the W. M. R. R. Company is not and could not be a bidder for the Canal property." The public must therefore accept this statement as true, and if true it is most significant in view of events now transpiring.

The State of Maryland is deeply involved in the Canal, and the City of Baltimore has a large financial interest in the Western Maryland R. R., and yet they find the B. and O. making a bargain with the W. Maryland by which it is driven from the field as a feeder, purchaser or possible lessee of the Canal, thus leaving the State helpless and at the absolute mercy of the B. and O. in dealing with the Canal question. It was not deemed probable that any home corporation would be formed to lease it, and the hue and cry it was in order to raise against the West Virginia R. R., a foreign corporation, protected by the B. and O. in that quarter, so that when it went into Court and asked for a receiver to take charge of the Canal to the end that they, as the holders of a majority of the bonds of 1878, might secure their money, or, what they most desired, have the Canal put on its feet by means of receiver's certificates, they were playing with loaded dice, for they supposed their only antagonist was bought off.

Another feature of this transaction will scarcely prove more agreeable to our people. By the terms of this bargain, the B. and O. is to deliver coal to the Western Maryland to be hauled and distributed "among the large manufacturing cities and town of Central and Eastern Pennsylvania," but the W. M. road is under contract not to become a competitor of the B. and O. "in carrying coal to tidewater." In other words, the city of Baltimore is not to have under this arrangement the advantage of any competition in the coal business, but is to be dependent on the B. and O. road and entirely at its mercy as to freight charges. The reason assigned for all this is delightfully ingenious. Mr. Cowen thinks the Canal ought to be repaired and run as a waterway because "if a railroad is built on its banks, a coal rate war will surely follow." He further thinks that the competition of the Virginia coal fields will injure the coal fields of Western Maryland, and therefore all railroad competition ought to be driven off.

Not long ago, when Mr. Cowen was on the stump as a free trader, he was indignant at the tariff on coal, and thought our people ought to have the benefit of free coal from Nova Scotia and other points. But now it seems the people of Baltimore ought not to have cheap coal by the certain method of competition, but ought to take it and be thankful on any terms the B. and O. sees proper to furnish it, while the coal fields of a certain locality are protected at the public expense for the benefit of his corporation. Mr. Cowen holds up his hands in horror at the idea of the Cumberland and Washington R. R. Co. securing a lease of the Canal on the terms proposed in its bid. Why, he exclaims, the graded road is worth at least $3,680,000, the tunnel is certainly worth a million, and the expensive piers, aqueducts, etc., would be worth to a railroad company from a million and a-half to two millions of dollars. He further says the Cumberland property of the Canal is worth for manufacturing purposes from two to three hundred thousand dollars, and the property in the District of Columbia is valued at a million to a million and a-half. This would make a total of over $8,000,000, and yet Mr. Cowen has recently gone into court to have a receiver appointed in order to secure a paltry $380,000, and asks to have the Canal put in running order, when it is the undisputed fact that for years it has not been able to earn its expenses, and when, according to his account, it is worth, if sold, $8,000,000.

Now, when Judge Alvey considers seriously, if there is room for serious thought about it, whether it is proper to appoint a receiver, he will probably take into account these facts, and especially will he bear in mind the fact that the executive and legislative departments of the State government are seeking to make some permanent arrangement

by which to settle this vexed canal question forever.

A TAXPAYER

*Sun*, Thu. 2/13/90, p. 1. **The Canal Steal.** Governor Jackson, in his message of January1 to the Legislature, aske that body to submit to the people an amendment to section three, Article 12, of the Constitution of Maryland, in order to authorize the sale of the State's interest in the Chesapeake and Ohio Canal without the necessity of having such sale be ratified by a succeeding Legislature. The constitutional amendment was drawn by the Governor, and the act authorizing its submission to the people has passed the Senate of Maryland, and it is expected will, of course, pass the House of Delegates.

The Governor adopted the usual view of the Constitution, that it prohibits the sale of the Washington Branch stock of the Baltimore and Ohio Railroad, and also prohibits the sale of the State's interest in the Chesapeake and Ohio Canal, unless, in the language of the Constitution, such sale "shall be ratified by the ensuing General Assembly."

Section 3, Article 12 of the Constitution, after authorizing the sale of the State's interest in certain corporations, under regulations to be prescribed by the Legislature, and the receipt in payment therefor of the "bonds and registered debt now owing by the State equal in amount to the price obtained for the State's said interest," contains the following proviso: "Provided, that the interest of the State in the Washington Branch of the Baltimore and Ohio Railroad, be reserved and excepted from sale; and provided further, that no sale or contract of sale of the State's interest in the Chesapeake and Ohio Canal, the Chesapeake and Delaware Canal, and the Susquehanna and Tidewater Canal companies *shall go into effect until the same shall be ratified by the ensuing General Assembly.*"

The Constitution of 1864 contains the same provision against the sale of the State's interest in the canal, and it was in that year for the first time introduced into the organic law of the State. In the convention which adopted that Constitution, Mr. Daniel Clarke, from prince George's County, in the debate upon this section, gave the following construction of the language of the instrument: The Board of Public Works must sell "subject to such regulations and conditions as the Legislature may prescribe; therefore, the Legislature has got to lay down the rules and regulations to govern them before they can act. Not only that, but under the proposition I propose to offer you take out three other works in which large interests are involved – the Chesapeake and Ohio Canal, the Chesapeake and Delaware Canal and the Tidewater Canal – and you say not only that they shall be sold subject to such regulations as the Legislature may prescribe, but that there shall be an additional safeguard around the sale, that, although they may act subject to the regulations and conditions prescribed by the Legislature, as they might misconstrue them *there shall be a subsequent ratification of their action by the Legislature before the sale which they make shall be valid.* What could better insure the safety of the public works and the carrying out of these directions of sale so as to protect the interests of the State?"

Mr. Clarke also said, in regard to a proposition submitted by Mr. Stirling, of Baltimore: "The gentleman proposes to exempt the sale of the Chesapeake and Ohio Canal, the Chesapeake and Delaware Canal and the Tidewater Canal, that there shall be no sale. I propose that the sale shall be made, subject to the regulations and conditions prescribed by the Legislature, and *subject further to ratification by the ensuing Legislature.*"

In the same debate the Hon, Oliver Miller, now Judge of the Court of Appeals, put the same construction upon this constitutional provision. He said: "If nothing is said in this Constitution about the sale of it, the Legislature may sell all the State's interest in these works for five dollars, if they choose, and put the money into the State treasury. Is it not wise and proper that we should put a restraining power upon the Legislature in that respect? We

say they shall not sell the interest themselves; we say they shall not constitute the Board; we say they shall not go around among the people of the Sate and select a board by which the property shall be sold, but we say that this sale shall be confided to officers of the State entrusted with the management and financial affairs of the State, the credit of the State and the honor of the State; that they shall be the parties that shall exercise this power to sell; but we say the Legislature shall prescribe the rules and regulations under which they are to act, and not this board."

* * * * * * * * * * * *

"The effect of passing the majority report as it stands without tying down the Legislature by prohibiting through all time, or until this Constitution is amended, any sale whatever of the State's interest in these works would be simply to leave it to future legislation. The question will go before the people – how these works shall be disposed of. Under what regulations shall they be disposed of? *And then the question will again come before the people at the next election.*"

From the above quotations it will appear that the construction given to this constitutional provision by the Governor in his message of January first, was the same given it in the convention which first adopted it. On the fifth of February, however, Governor Jackson sent a special message to the Legislature recommending the passage of the necessary legislation for the acceptance by the State of a proposal therewith submitted, made by the Washington and Cumberland Railroad Company to the Board of Public Works.

A bill has been introduced into the Legislature to carry out the proposal of the Washington and Cumberland Railroad Company. The substance of the bill is as follows: "That the Railroad Company shall pay into the State treasury the principal and interest of the bonds of 1878, amounting to $390,000; certain labor claims to the amount of $75,000, and a judgment of $30,000. Upon the making of these payments of the prior lien claims upon the Chesapeake and Ohio Canal, the lease of all the property of the Canal Company to the Washington and Cumberland Railroad Company shall take effect, and the Railroad Company shall at once become entitled to all of the franchises, rights and properties of the Canal Company; moreover, as soon as the above payments are made, in the language of the act, "The prior liens of this State as mortgagee and creditor upon the said canal, and all its property, property rights and franchises shall be waived and released in favor of and *be transferred to and held by said Washington and Cumberland Railroad Company, and the Board of Public Works shall execute and deliver to said Washington and Cumberland Railroad Company a good and sufficient assignment of all of said liens held by this State, to the end that said liens shall be vested in said Railroad Company as fully as the same are now held by this State."*

After the Railroad Company has thus acquired by lease from the Canal Company all of its property, and after the Board of Public Works has executed to the Railroad Company an assignment of all the State's liens as mortgage creditor, then the Canal Company is required to pay to the State treasurer twenty-five percent of the principal of the preferred construction bonds of 1844, amounting to $425,000; but the act adroitly provides that if the holders of the bonds under the act of 1844 will not accept the twenty-five percent, thus deposited by the Railroad Company with the State treasurer within six months after the deposit, then and in that event the Railroad Company will reclaim from the State treasurer the amount which it had deposited for the purpose of extinguishing these bonds.

The act further provides that *after*, and not before, the railroad is completed upon the towpath to Williamsport, then the Railroad Company shall commence the payment of an annuity of $15,000 a year to the State, which annuity it may redeem upon the payment of $300,000 to the State The act, it is true, provides that the railroad shall be completed to Williamsport within one year from the date of the lease, unless prevented by legal proceedings

begun by the Railroad company itself or by others. There is no time within which the lease is required to be made, and there is no penalty or forfeiture exacted if the Canal Company does not comply with this obligation to construct the road within the time named in the act. All these little directions are conveniently absent.

The substance, therefore, of the act is that the State of Maryland undertakes to place the Washington and Cumberland Railroad Company in possession of the Chesapeake and Ohio canal as lessee of the Chesapeake and Ohio Canal Company, and it thus gives possession of the canal to the railroad company as soon as the latter has deposited with the State treasurer about $700,000 to take up the admitted prior and valid liens upon the canal, which liens the State treasurer is required to at once transfer to the railroad company. As soon as this is done, all the prior liens of the State as mortgagee and creditor of the canal are transferred immediately by operation of the act itself to the Railroad Company, and the Board of Public Works are required to execute and deliver to that company an assignment of all of the State's interest as a mortgagee or creditor; and likewise an assignment must be made by the Board of Public Works of all of the State's stock in the Chesapeake and Ohio Canal Company.

The Washington and Cumberland Railroad Company, therefore, acquires possession of the entire canal and its property, and becomes the assignee of all the State's interest in the canal upon the payment of $700,000 for the admittedly prior and valid liens upon the canal property, and there is not the slightest security that the railroad company, which thus gets all the interest of the State in the canal, will ever construct a railroad or will construct one within any reasonable time, or that it will ever pay $15,000 or any other sum to the State. A more barefaced transaction than this was never presented to or considered by a Legislature.

It must be clear from this statement of the substance of the bill presented to the Legislature in accordance with the Governor's recommendation that there is an assignment and transfer of the State's interest in the canal, and that such an assignment and transfer of the State's interest is a *sale* of such interest*;* indeed, in regard to the State's mortgage indebtedness, the act itself purports upon its face that the Board of Public Works shall make an absolute transfer and assignment thereof to the Railroad company. In regard to the stock of the canal, it simply authorizes the Board of Public Works to transfer the stock to the railroad company, to be held by the latter for *ninety-nine years, renewable forever*. This, of course, is a thin device for asserting that the assignment and transfer of the State's interest, as far as the stock is concerned, is a *lease* of the stock. There is no man living, or who has ever lived, who ever heard of the lease of a share of stock for ninety-nine years, renewable forever. It certainly is an instrument unknown to any form of law. A "statesman" must have the cheek of a canal mule to assert that a transfer of the State's interest in the canal as is provided in this act is not a *sale* thereof, and if a sale thereof then it is clearly unconstitutional, or else Governor Jackson and the State of Maryland have been deluded, when the former proposed and the latter passed a law providing for an amendment to the constitution authorizing a sale to be made by one Legislature without the ratification of another.

The Constitution also provides that when the Board of Public Works shall sell the State's interest in any internal improvement, such as the Chesapeake and Ohio Canal, that they can only receive in payment for the purchase price of the property sold "the bonds and registered debt now (then) owing by the State equal in amount to the price obtained for the State's said interest."

The proposition of the Washington and Cumberland Railroad Company and the bill which has been framed upon it ignore this provision of the Constitution entirely. The object of this clause, as stated in the debates of 1864, was to prevent the use of the funds obtained from the sale of the State's interest in

the public works for any other purpose save the payment of the State's indebtedness, and the framers of the instrument carefully guarded this purpose by providing that the Board of Public Works could only accept in payment for the State's interest the bonds of the State equal in amount to the purchase price. The Governor of Maryland has not only, therefore, asked the Legislature to violate the provision of the Constitution prohibiting the sale of the Chesapeake and Ohio Canal by the Board of Public Works except when ratified by the ensuing General Assemble, but he has asked that body to violate the other clause of the same section and to take payment for the State's interest in something else than the bonds or registered debt of the State.

The Democratic party, as well as the Republican party, in its platform, announced it purpose to preserve the canal as a waterway. The Governor of the State violates the pledge of the party in its platform; the Legislature is asked to do precisely the same thing, and in violating the pledges of the platform they both trample upon the Constitution as they themselves have interpreted it, and they proceed to sell and give title to the State's interest in the canal and to ignore the constitutional provision which requires the purchase price to ne paid in the bonds of the State.

The Canal Company has property in Washington estimated at from $1,000,000 to $1,500,000. Its viaducts cross the several streams between Cumberland and Washington, which are made of stone, and therefore will make magnificent bridges, are worth probably another $1,000,000; its roadbed is worth to any railroad company wishing to build a line of road $20,000 a mile.

All these valuable properties are to be given to the Washington and Cumberland Railroad for the sum of $700,000, with the contingent obligation to pay to the State $15,000 a year when the Railroad Company gets ready to make such payment and with the further contingent obligation to pay $425,000 to the holders of the bonds of 1844, if they are willing to accept that sum, and to pay them nothing if they do not choose to sacrifice their securities.

It is shrewdly suspected that the $15,000 a year, while nominally payable to the State, is really under the arrangement with the party owning the out lock in Washington as appropriation of that sum of money to the owners of that property. The contract with reference to the outlet lock and the obligations of the State relating thereto are quite worthy of examination to see whether or not this $15,000, instead of being really a payment to the State, may not be an appropriation by the State for the benefit of the owners of this improvement.

In any event, unless the $15,000 a year does in some way inure to the benefit of parties interested in securing this legislation, or some of them, the same power which secures the passage of this act will doubtless in due time secure the release from the obligation to pay the annuity.

To do all this the Constitution of Maryland is to be violated, the platform of the "party" is to be cast to the winds, and the political manager, who constitutes in point of fact the body corporate "known as the Washington and Cumberland Railroad Company," is to be rewarded by the gift to him of the canal. **CUMBERLAND.**

---

**The Chesapeake and Ohio Canal**

According to Gen. Hood's statement contained in *The Sun* of yesterday, there is a proposition pending between the road he represents and the B. and O., that in consideration of certain traffic arrangements now reduced to contract "the Western Maryland would take no part in the Coming Canal controversy." But, says President Hood, the B. and O. has not agreed to give us Baltimore business at Cherry Run, nor has it executed any arrangement that would hamper the relation of the Western Maryland with any other road. While this statement confirms substantially what has already been said upon the subject, it clears the atmosphere to some extent touching the necessity of building another road to Baltimore in order to

secure competition with the B. and O. at this point. But in all that is said about the present phase of the Canal question, the constant assertion is, that any line of railroad built on the Canal will seek tidewater at Washington of some other point in the District of Columbia, and to that extent divert trade from this city.

This is an old contention – as old as the Canal itself – and it is curious to observe how often it is dragged from its retirement, dressed up with new clothes, and made to masquerade in all the changing phases of the Canal problem. There is no one who is familiar with the history of the B. and O. Railroad and the Canal who will not recall the successive stages of development in which this argument has done service. When the Canal was first chartered, it was held that it would take all the trade, because it was the cheaper line of transportation. The fallacy of this suggestion did not long survive, and now, when we find the B. and O., through a long series of years, slowly strangling the Canal by its reduced freight charges, we wonder at the simplicity which entertained for a moment the hue and cry raised against the Canal at that time. Again, when the Canal and railroad both reached the Point of Rocks there was a renewal of the controversy between them, and meetings were held in Baltimore to create a hostile impression against the Canal.

At last the B. and O. was completed to the Ohio river and the Canal to Cumberland without the effect predicted, for it was obvious that trade was not diverted from this city. When later on, the B. and O. began its Metropolitan Branch from the Point of Rocks to Washington, the same argument was employed against it, that the construction of such a road would injure the trade of this city, and the feeling was so strong that there was great opposition to granting the right to construct the branch road. It was, however, built, and as it furnishes a far better grade than the Ohio line by the Patapsco, and all the through passenger travel is now over it from Baltimore to the West, instead of diverting trade from this centre, it has largely augmented it. It is true the B. and O. was willing that some part at least of this trade should seek another outlet, and they attempted to create a shipping point on the Potomac, opposite Alexandria, and this very Mr. Winship, who was a few days ago appointed by Judge Cox, one of the canal receivers, as the agent of the B. and O. constructed wharves opposite Alexandria. But it was an absolute failure, for the simple reason that trade has centered in Baltimore and cannot be diverted so long as it has better facilities for handling it than the cities in the District. And so it would inevitable be with a road built down the canal, and the assertion to the contrary is but the echo of the exploded fallacy of former times.

Let us glance for a moment at the road it is proposed to build if the Legislature and Executive Departments of the State government are permitted to represent and provide for the public interests. From Baltimore to Williamsport is about one hundred miles, and from that point to Cumberland is eighty-four miles. From Cumberland via West Virginia Central it is one hundred miles more to the heart of West Virginia. Baltimore has only the B. and O. to bring this trade to her, for by the contract between the B. and O. and the Western Maryland, the latter company is to receive none of it when the Branch is built to Cherry Run, but with the Canal rod in operation, this City would have two lines of road and the advantage of competition which is now denied her people.

If it is aske how the Canal road is to reach this City, the answer is obvious. Provision will be made in any charter the Legislature may grant for giving the most favorable terms to the Western Maryland road, and if it turns out either that the B. and O. has bargained away the right of the Western Maryland to bring coal to this market, or that the grades of the Western Maryland will prevent it from competing, then the Canal road will build a branch to this City, and settle the question of competition for all time.

Nor must it be overlooked that a road from Williamsport to Washington passes through a country rich in agriculture, and can

easily form connections with that part of Virginia from Leesburg South which would bring to Baltimore over either its own branch or over the B. and O. or the Baltimore and Potomac a large trade which is now compelled to go to Newport News and Norfolk or via the Cumberland Valley Road to Philadelphia and New York. There is no room for competition between Washington and Baltimore, for the laws of trade ordain with absolute certainty that in commercial affairs the enormous facilities of this city must prevail over the smaller uncommercial cities of the District. All roads did not more certainly lead to Rome than must all railroads in this region lead to Baltimore. They may go on to New York afterwards and leave us in the lurch, as seems to be the fashion now, but they must stop here at least long enough to build up their fortunes before they seek an outlet to some rival city.

---

**The Chesapeake and Ohio Canal.**

*Messrs. Editors:*

I have noted with some surprise the publication of "A Taxpayer" under the above heading of *The Sun* of this date.

Surely it must have been written before the appearance of my statement in *The Sun* of yesterday, as I therein flatly denied all the statements reiterated by "A Taxpayer." It would seem to be puerile to go on indefinitely with ascertain and denial.

Should "A Taxpayer" desire to see the contract so satisfactory to this company, and which is so vexing his soul, he will be afforded an opportunity upon calling at this office.

Very respectfully.

J. M. Hood,
President, W. M. R. R. Co.

Baltimore, Feb. 12, 1890.

SR, Fri. 2/14/90 p. 4. The plans of the Cumberland and Washington Company for a railroad along the banks of the Chesapeake and Ohio Canal include an extension of the road from a point on the canal below Point of Rocks through Montgomery, Howard and Baltimore counties to Baltimore city if a satisfactory traffic arrangement cannot be made with the Western Maryland Company at Williamsport, which is regarded doubtful, in view of contracts with the B. and O. President Henry G. Davis, of the West Virginia Central Railway Company, gives his views on the proposed use of the canal towpath as a railroad bed, favoring the proposition.

*Sun*, Fri. 2/14/90, p. Suppl. 2. **THE CANAL LEASE** – Senate bill to lease the Chesapeake and Ohio canal to the Washington and Cumberland Railroad being on its second reading, was, on motion of Mr. Wootton, made the special order for 12:30 o'clock on Tuesday next.

---

**CANAL LEASE BILL**

Mr. Rich offered the following order: That the attorney-general be and is hereby requested to furnish the House by Wednesday next, if he can, his opinion upon the following points in reference to the provisions of House bill No. 82 in reference to leasing the Chesapeake and Ohio canal to the Washington and Cumberland Railroad:

1. Are any of the provisions of said bill in conflict with any of the provisions of the constitution of this State?
2. Are any of the provisions of the said bill onerous on the State or impossible of performance by it?
3. Are the interests and property rights of the State as fully protected by the provisions of the said bill as they can be consistently with the terms of the bid made by the Washington and Cumberland Railroad Company to the board of public works for a lease of the Chesapeake and Ohio canal?

Mr. Shaw opposed the order. He said that it could have no other purpose than delay the bill. If the bill was unconstitutional, even though it passed both houses, it would be an easy matter to have it so declared. The passage of the bill could do no harm to any interest involved.

Mr. Rich then spoke upon the merits of the order, and made a powerful speech in

behalf of its adoption. He said that it was a most important matter, because there were some features contained in the bill itself, that appeared to him to be strikingly novel. He had compared the bill with the bid accompanying the Governor's message some days ago and found that it did not correspond. For instance, in the bid there is a provision in reference to the payment of the bonds of 1844; in the bill there is no such provision. In the bid, they promise to pay for the canal six months after the execution of the lease; in the bill there is a provision permitting them to wait until twelve months have elapsed before paying. I only ask you to get the opinion of the attorney-general on these questions. The bill also contained a provision that all rights of the State shall be postponed and subservient to a mortgage the company proposes to create, amounting to $8,000,000. There was not a single provision in the bill requiring that the bonds of 1844 are to be paid before the execution of the mortgage. He did not propose to discuss the bill at this time. He asked the opinion of the attorney-general for several reasons. There was, he said, a provision in the constitution of the State that in case of the sale of the Chesapeake and Ohio Canal, such sale shall be ratified by the Legislature following. Again, the bill provides that the canal shall be leased for 99 years, renewable forever, and shall transfer all of the canal stock to the railroad company. He wanted to know what the position of the State would be then, after the execution of the lease. With reference to the second question in his order: "Are any of the provisions of the said bill impossible of performance by it?" Mr. Rich said he did not want the State of Maryland to hold herself up to ridicule by imposing on herself something that it cannot carry out. Surely, he said, there was nothing unfair in any of this to the railroad or to anybody else. In speaking to the question as to whether or not the interests of the State were fully protected in the bill, he called the attention of the House to the bid from the railroad, in which they promised to pay the bonds of 1878 and 1844, $70,000 for labor and material that was due, and the $30,000 judgment in Cumberland. But in this bill they promise, or they are given twelve months to pay the '78 bonds and the two smaller claims, but for the bonds of 1844 there is no protection whatever. And these bonds, or rather the amount of 25 percent, is nearly $500,000. And unless such protection is given, then the State will be derelict in its duty. No man would hesitate longer than he to criticize the board of public works, but he did not regard this bill as emanating from that source. It comes from this railroad company, and we should protect certainly the interests of the State as against it. There is hardly one provision in the bill to protect the State, but there is any number of provisions in it allowing the State to waive its rights in favor of the railroad. He did not see any reason for undue haste in the matter. The Governor had advised that we have the lease drawn under the supervision of the attorney-general. In this bill the railroad company attempt to prescribe the terms of the lease. He did not see how anything could be lost by a few days' delay.

Mr. Kilgour opposed the order. He remembered that thirty years ago it was his privilege to represent in part, Allegany county. At that period, he introduced in this House a measure looking to the disposition of the canal. It was defeated. A great work has now become useless and powerless and a measure is now before you looking to the transfer of the canal to a corporation that proposed to lay a road from the coal fields to the District of Columbia. I an here and I say emphatically, that I am here to declare that I will give my unqualified support in favor of the adoption of every line in that bill, without obliterating a single letter, or the crossing od a "t," and I am proud to say and to know that the very best element of my constituents are here behind me approving and urging me on. This order, introduced by the gentleman from Baltimore county, is for the sole purpose of delay. The Governor took into his consideration this vexed question, and if he had any doubts about its provisions, he would have acted accordingly. The gentleman asks for the opinion of the attorney-general. We

don't want his opinion. We have all the light on the subject we need. This question has been discussed in the public press, in public places and on this floor, and at this late hour what can be the purpose of such an order but delay, and delays are dangerous.

Mr. Meloy then took the floor and said that the bill was not placed in his desk until this morning, and in the press of business he had had no time to read a line of what the gentlemen from Montgomery (Mr. Kilgore) represented as being so perfect. I do not impute any motives whatever to the gentleman, but I might well ask him, and every member of this House might well ask him, if he expects that they will debase themselves to fake as their opinion the mere dictum of nay single individual that he has examined the bill and is prepared to stand by it through thick and thin. It is all right in his judgment, but the honorable gentleman probably had previous opportunities for examining it. "Delays are dangerous," says the gentlemen. So they are, and I am not willing to rush blindfolded into the darkness. I have the paramount interests of the State to consider. I have glanced over the propositions of the railroad company and the message of the Executive, but not with that care to enable the formation of a satisfactory judgment, and I have yet to learn why we should hasten this bill to a culmination. Mr. Meloy could not conceive how the gentleman will distinguish between the lease for 99 years and absolute sale, which the constitution of the State says shall not be done. If that be true, then the passage of the bill even by this House would be negatory before the law. Mr. Meloy then spoke of the richness of the territory through which the canal passed, of the greatness of the water power in the Potomac, and urged the Delegates to make haste slowly.

Mr. Shaw said: "The bill has been drawn in pursuance of the provisions of a proposal made by a railroad company to the State for the lease of the Chesapeake and Ohio Canal. The Governor, the chief executive of the State, transmitted it to this body accompanied by a message from himself, in which he said: 'The proposed lease meets my approval and I cordially recommend it to your honorable body.' Coming as it does thus indorsed, it is not as if it were a new measure suddenly thrust upon us. But after a full, clear investigation of the proposal and all it contained, the highest official in the State, the Governor, recommended that the proposal be accepted. Then in pursuance of that recommendation the committee of ways and means bring in a bill to carry into effect the provisions of the proposed lease. If that bill contained anything not in accordance with the proposal made by the parties proposing to lease the canal, then it would not be in accordance with the recommendation of the Governor. But my honorable friend from Baltimore county (Mr. Rich) has failed to show that one single provision of the bill is not in strict accordance of that lease. He calls attention to the bonds of 1844 not being provided for. Mr. Shaw then read from page 8 of the official bill the clause which says: "Said Washington and Cumberland Railroad Company shall also pay to the State treasurer, within twelve months, 25 percent of the principal of the bands issued by the Chesapeake and Ohio Canal Company under the act of 1844,' and continued: Now, the very best evidence that provision was made in this bill for the liquidation of these bonds is that the bonds have been advanced on the money exchanges from 16 to 27 cents on the dollar, and there is no place more sensitive than the stock exchanges of the country. There is nothing so cowardly as money. Indeed, it has been well said that the only thing more cowardly than a million dollars was two million dollars. And the very fact that these bonds have advanced in price on these exchanges is evidence sufficient that their liquidation has been provided for in this bill. Then the gentleman from Baltimore county tells you that in case these bondholders shall refuse to accept the proposal to lease the canal as provided for in this bill the whole bill would a nudity. I say that if the bondholders refuse to accept, the whole matter goes into court, and then the canal would be disposed of to the highest bidder

under the supervision of the courts. Answering Mr. Meloy about the vast possibilities of the water-power of the Potomac, Mr. Shaw said that these "vast possibilities" were not called to the attention of the people until this bid was made, and submitted an abstract from a sworn statement of a B. and O. official made in the court at Washington to the effect that "the canal was deteriorating daily." There was no desire, he said, to put this matter through hastily; neither was there any reason for unnecessary delay. But, that in order that no injustice be done, I will say that if the House votes down this order I will move that this bill be made the special order for Wednesday next at one o'clock.

Mr. Rich again took the floor and made another vigorous and able speech. In reply to the statement of the gentleman from Carroll county that the bill had been drawn in order to carry into execution the recommendations of the Governor, he asked the delegates to read certain portions of the original bill and certain portions of the bill. The bill promised to make certain payments six months after the execution; the bill allows them twelve months. The bill provided for the payment within six months of the bonds of 1878 in full, the $70,000 of claims, the judgement for $30,000 on wharf property in Cumberland and 25 percent of the bonds of 1844, amounting to $424,875. The bill provides that all the payments shall be made within twelve months after the execution of the lease, thus extending the time for payment of any purchase money whatever for the canal. The bill further provides that upon payment of the bonds of 1878, the $70,000 for claims and $30,000 judgment, *but not the bonds of 1844*, the said lease should take effect, and the title of all property, rights, &c., of the said canal should vest in the Cumberland and Washington Railroad Co., and the liens of the State as mortgagee or creditor upon the canal should be waived, released and transferred to the Washington and Cumberland Railroad Company. He urged again that under these provisions and other terms of the act, the State had no security for the 1844 bonds. Replying to the charges that his order was for the sole purpose of delay, Mr. Rich said: "I want no man to say that mine is a dilatory motion, and for no other purpose. I want everybody to understand that I am in favor of giving the bill earnest consideration. I do not want to defeat the scheme of transferring the canal. But if you individually sell or buy a valuable property, would you not desire to consult your counsel? And will you force the State to accept this bill without going to her attorney to know if these propositions are fair and just to her? The gentleman from Carroll has abandoned the strongest argument he advanced against my order when he offers to make the bill the order for next Wednesday. They said may order was for the purpose of delay, yet they want it killed, and are at the same time willing to make the bill the order for next Wednesday. That is hardly consistent, when the attorney-general's opinion would be here by next Tuesday.

Mr. Carter spoke briefly against Mr. Rich's order, and Mr. Swindell, of Baltimore city, for it. The order was then adopted – yeas 58, nays 23.

On motion of Mr. Philbin, the bill to lease the canal to the Washington and Cumberland Railroad was then made the order for next Wednesday at one o'clock.

---

**The Canal Question**

Cumberland, Md., Feb. 10, 1890.

*Editors Baltimore Sun*:

I have read your correspondent's conversation with President Davis, of the West Va. C. R. R., and in reply state that there are over200 boats than can be and will be placed in good condition to transport coal from Cumberland to Georgetown as soon as the Canal is made navigable. The boats will average in carrying capacity 112 tons gross, and with ordinary dispatch in loading and unloading, could make 2½ trips per month, each boat delivering over the Canal 280 tons per month, or in a period of nine months, one boat would deliver at the port of Georgetown, 2,520 gross tons of coal; 200 boats can deliver in one season 504,000 gross

tons of coal. In the above calculation I do not include the grain, lumber and limestone boats.

In reference to the number of mules, when the canal suspended, the prices of mules were so low the owners had to keep their stock, and these are now available at any time the canal is put in order.

President Davis's contract with the Pennsylvania Railroad provides that the West Virginia Central Railroad will deliver one-half of all the coal transported over the West Virginia Central Railroad to the Pennsylvania Railroad at Cumberland, and President Davis has only the other half of the coal mined in West Virginia to ship by the Baltimore and Ohio Railroad and other lines of transportation. It is certainly to the interest of the city of Baltimore that the Chesapeake and Ohio Canal be maintained intact. It is not to be supposed that the West Virginia and Pennsylvania Railroad capitalists are as directly interest in the advancement of Maryland's welfare as those who are now and have been for years laboring to advance the interest of the State.

FREDERICK MERTENS
of Cumberland, Md.

*Sun*, Sat. 2/15/90, p. Suppl. 2. **Views on the Canal Lease Question** – The Washington Star of Monday published interviews with Congressman McComas, of Maryland, and Mr. E. Kurtz Johnson, of Washington, on the canal question. Mr. McComas said: "I have been studying the matter all summer. The canal is in my district, and I am of course, interested. I am and have always been in favor of keeping the canal as a waterway and having nothing to do with a railway. The establishment of two railroads would not pay Washington for the loss of the canal as a carrier for heavy freights. I understand that the Chesapeake and Ohio canal is one of the longest in the world, and, put on business principles, I have not the shadow of a doubt but what it would proves a paying investment. Nothing can compare to a waterway as a carrier of heavy freight, such as coal. England and the European governments understand this, and in those countries even where canal have been abandoned, they are being re-established for the purpose of carrying the coal to the larger cities."

Mr. Johnson said of the proposed new line to Baltimore: "In all the talk I have had with my associates, Washington has always been regarded as the Southern terminal of the new railroad. There is no question but that the building of a railroad from Cumberland to this city would be of the greatest advantage to Washington, and for that reason I am favorable to the enterprise. Of course, such a railroad would not be of advantage to Baltimore, and no doubt this proposed change, if such is to be made, is advocated by Baltimore interests. It will not have my support. One cause of the high freight rates to this city by water is due to the fact that boats are obliged to return empty. If, however, there is Cumberland coal here for transportation, then the boats can make a profitable return trip and the rates will be much lower. Since the plan of building a railroad from Cumberland has been made public, I find that it has met with general favor among the citizens of Washington. I have had men tell me that they would like to take stock in the new road. There is no doubt but that the new road will be of great benefit to this city."

*Sun*, Mon. 2/17/90, p. 1. **The Chesapeake and Ohio Canal.** – There was not a single reason given by the Western Maryland Railroad two years ago in favor of a lease of part of the Canal to that Company which does not now apply with far greater force in favor of the proposed lease to the newly-chartered railroad company, which has made the only bid for it. Indeed, the circumstances existing today are of such a character as to imperatively demand some action on the part of the Legislature to protect the public interests involved. It is all very well for the bondholders to go into Court and look out for themselves and the corporation standing behind them, but unless, through the active interference of the Executive and Legislative departments, the State's interests are protected, they will certainly be sacrificed to the greed and trickery of the B. and O.

Railroad. There is not a taxpayer in the State who is not interested, and to the people living along the line of the Canal the result is of absorbing moment.

The Western Maryland said two years ago, that the effect of a lease would be "to substitute a live railroad for a dead canal! – to give the mining region a new all-rail line to tidewat4er at Baltimore – to open a new short line to the Southwest when the West Virginia Central is completed to the C. and O. R. R. It gave as a further reason "that it was safer to have the State's interests disposed of by the Legislature than by the auctioneer – that owing to ever-increasing railroad competition Canal tolls can never be restored from 34 to 92 cents, hence prosperity to the waterway can never return." Again, said the Western Maryland, "it will enlarge the market for Cumberland Coal and cheaper fuel to the Maryland consumer." This, in addition to much else, was urged in favor of the lease at that time proposed, but owing to objections made that the Canal might see better days and ought not in any event be dismembered by cutting off the upper part of it, the scheme was abandoned. If the Canal had at that time been a useless ditch, as it is now because of the flood of last year, and the bondholders moving to get advantage of the State, it is highly probable the Western Maryland proposition would have been more graciously received. Now the State is face to face with a dilemma, in which it must act or be beaten by other interests. If the joint plan on foot between the bondholders of 1878 with the B. and O. behind them, and the bondholders of 1844 is carried out by the Courts, it is reasonably certain that not only will the State suffer a complete loss of its investment, but the country traversed by the Canal will remain in its present undeveloped condition and without transportation facilities upon which they can rely. It was from this quarter that most of the objection has heretofore come to any disposition of the Canal, but now the people of that region are waking up to their best interests and popular feeling is rapidly developing in favor of carrying out the lease now being considered at Annapolis. The Legislature and the people must expect every conceivable obstacle thrown in the way of consummating this arrangement, for the subtle and powerful influences the Canal has always felt are more actively at work today than ever before. It is discovered that the grades on the Western Maryland road are so steep that it cannot haul to advantage coal delivered to it for this market. This was not known two years ago when it applied for the lease, and was only found out when the B. and O. Bargained with it in such a way as to induce it "to keep its hands off the Canal." Again, when the lease proposes the payment of 25 cents on the dollar of the bonds of 1844, and a financial paper published here shows that for two years past these bonds have been selling in this market at 10 cents on the dollar, instantly some unknown but *perfectly well known hand* manipulates the market and puts up the price to 27½. The next thing heard on the streets is a sneer at the bid of 25 cents "when the bonds are selling at a higher price." And so, to the bitter end this war will be waged against the Canal and the State, in the hope of getting possession of one and outwitting the other. If there was ever a time when the State authorities were called upon to move with vigor and promptness it is now. Every consideration and every interest point to the absolute necessity of making a final settlement of this Canal business. It has been a losing enterprise from the beginning. It has served its purpose at an enormous outlay of money, and has for years been a bone of contention in the State. It is assailed now by every hostile interest that can attack it, and it is in imminent peril of passing into hands that will sue it for purpose hostile to the best interests of the State, and especially of the City. The "locomotive has beaten the mule," said the Western Maryland Company two years ago, but what shall be said now when even the mule has been washed away and the Canal not even a "periodic puddle."

---

**It is a Steal**
**Cumberland's Reply.**

*To the Editors of The Sun:*

Your correspondent on the 14th inst. endeavored at answer the communication I had addressed to *The Sun*. My chief argument was that the Canal Act now pending before the Legislature of Maryland was unconstitutional because it undertook to authorize the Board of Public Works to make a "sale, or contract of sale, of the State's interest in the Chesapeake and Ohio Canal" without the ratification od such sale by "the ensuing General Assembly."

Your correspondent admits the correctness of my position that "no sale, or contract of sale, of the State's interest in the Chesapeake and Ohio Canal" made by the Board of Public Works "can go into effect until the same shall be ratified by the "ensuing General Assembly." There is, therefore, no difference between us upon the construction of the Constitution. We both agree that a sale of the State's interest requires the action of two Legislatures to make it valid and effective. It is necessary for disputants to always have a common ground from which to begin the discussion. Our common ground is that the Constitution of Maryland prohibits the sale of the State's interest in the Chesapeake and Ohio Canal by the present Legislature without a ratification by the next General Assembly.

The single question therefore in dispute is, does the Act proposed by the Washington and Cumberland Railroad Company, and recommended by the Governor, make a sale of the State's interest in the Canal? At this point your correspondent adopts a common trick of the debater who knows he is wrong, and gives what Logicians term the "Thermotropic argument."

We have all seen the juggler with his suspended card, upon one side of which was a cage, and on the other a bird; or, upon one side of which would be a saddled horse, and on the other a man with a whip. By rapidly revolving the cards suspended from a string you will see the bird in the cage and the man astride the horse. This little devise is known as the "Thermotropic." All that is required to get the exact position of the objects is to stop the whirling card, and then you will see that the cage and bird and man and horse are on opposite sides of the card.

Your correspondent has performed this feat, and indeed all who have spoken in behalf of the measure do the same thing when they come to assert the Constitutionality of the Canal Act, because they say, it authorizes a lease and not a sale.

When they assert that the Act authorizes a lease, they assert what is true, and it is also true that a lease in not necessarily a sale; but the Act authorizes two things:

*First* – It gives power to the Canal Company to lease its property to the Railroad Company and the power to the Railroad Company to accept such lease and fix the terms thereof.

*Second* – Having done this, that is, having given the power to lease, the Act goes further, and undertakes to dispose of "the State's interest in the Chesapeake and Ohio Canal." Your correspondent skillfully turns the card so as to make these two things appear together as one, and thus tosses aside the Constitutional objection by saying that "it is a lease and not a sale." But the point is, it is a lease of what? The answer is, it is a lease of the Canal to a Railroad Company. Certainly that is true, but the Railroad Company would not become Lessee of the Canal unless the State would in some way or other dispose of "its interest in the Chesapeake and Ohio Canal." Hos does the act undertake to dispose of this interest? We answer this question by first asking what is the present interest of the State of Maryland in the Chesapeake and Ohio Canal? It is –

(1) – A mortgage claim against the Canal Company secured by the Mortgage of 1835 and confirmed by the Mortgage of 1846 under the Act of 1844

(2) – Certain shares of common and preferred stock in the Canal Company. Does the Legislature by the Act in question undertake to dispose of the State's Mortgage claim and the State's preferred stock? It most certainly does. The Act provides in express terms that upon the Railroad Company making certain payments then, "the prior liens of this State as *Mortgagee*

and *creditor* upon the said Canal and all its property, rights and franchises shall be waived and released in favor of, *and be transferred to and held by the said Washington and Cumberland Railroad Company and the Board of Public Works shall execute and deliver to said Washington and Cumberland Railroad Company a good and sufficient assignment of all of said liens held by this State to the end that said liens shall be vested in said Railroad Company as fully as the same are now held by this State."*

Does not this clearly transfer all of the State's interest as Mortgagee and creditor to the Railroad Company? Is not the entire interest of the State as such Mortgagee and creditor in the language of the Act "*assigned*" to the Railroad Company? Do not the Board of Public Works execute an *assignment* of the State's Mortgage claim to the Railroad Company, *"to the end that said liens shall be vested in said Railroad Company as fully as the same are now held by the State?"* Do you know of any better recognized form of words to express a sale than this?

Does not the State part with its entire interest as Mortgagee and creditor to the Railroad Company, not by way of lease, but by way of "assignment" of its entire interest to the Railroad Company?

Let your correspondent moreover tell me what is meant by leasing a Mortgage debt. "The State's interest in the Chesapeake and Ohio Canal" of which I am now speaking is a Mortgage claim. The Act does not purport to lease this Mortgage claim to the Railroad Company, but makes an absolute assignment of such claim, using the most apt and technical words of *sale and transfer*, the words well known to the law. But, pray tell me, what would a lease of a Mortgage debt be? Who ever heard of such a thing as a lease of a Mortgage debt? Again, however, the exact position of the Railroad Company in reference to the Mortgage debt of the State is clearly defined in Section six of the Act. This section provides that in case any of the holders of the Bonds of 1844 refuse to accept their pro rata share as paid by the Railroad Company to the Treasurer of the State, then "it shall be lawful for the said Washington and Cumberland Railroad Company or its Attorney or Attorneys duly constituted by law *as the assignee of the Mortgage* executed by the said Chesapeake and Ohio Canal Company to the State of Maryland," to proceed to sell at public sale the whole of the Chesapeake and Ohio Canal. This Section therefore distinctly recognizes that there would be an absolute transfer of the State's title to its Mortgage debt to the Railroad Company, properly describes the Railroad Company "*as the assignee*" of such debt and clothes it with all the incidents of absolute title.

I would like your correspondent now to answer this argument. It will not do to say, as he does, - "So far as its contention is based upon the Constitutional right of the State to lease the Canal, it is but a rehash of what was said two years ago on that subject when opinion was divided, to some extent. The weight of it was to the effect that such a *lease* was not prohibited by the provision in the Constitution which *prohibits a sale without the ratification of a subsequent Legislature."*

I call his attention again to his use of the Thermotropic. Let him stop the whirling card and he will see that the lease of the Canal is on one side and the "sale of the State's interest in the Canal" is on the *opposite* side of the card.

But what does the Act purport to do with the State's stock in the Chesapeake and Ohio Canal?

The State is the owner of over fifty thousand shares of Common and Preferred stock. In the language of the Constitution this is a part of the "State's interest in the Chesapeake and Ohio Canal," which cannot be sold as your Correspondent admits, except by the action of two Legislatures. The act provides not only for the transfer and assignment of the State's Mortgage debt to the Railroad Company, but it also provides for the transfer of the State's stock to the Railroad Company.

The language is as follows:

"The Treasurer shall thereupon transfer to said Washington and Cumberland Railroad Company for ninety-nine years, renewable forever, the whole of the capital stock of said Chesapeake and Ohio Canal Company belonging to this State."

Is not this, though apparently in the terms of a lease, an absolute sale of the capital stock owned by the State to the Railroad Company? It would be insulting the intelligence of any Court, even a Piepoudre tribunal, to suppose that an absolute transfer of shares of stock held by the transferee for ninety-nine years, renewable forever, was not a sale of that stock. But look a little more narrowly into the Act. It authorizes the Canal Company to lease its property to the Railroad Company for ninety-nine years, renewable forever, and provides that the Railroad Company shall make certain payments to the holders of the liens upon the Canal, and then shall pay to the State after the Railroad is constructed to Williamsport, $15,000 per year, '*which said annuity shall be redeemable by said Washington and Cumberland Railroad Company at its option upon six months' notice upon the payment of $300,000 to the State.*"

Even the lease of the Canal is really a sale because it authorizes the Railroad Company on six months' notice to extinguish the rent of $15,000 a year by the payment of $300,000.

What, then, becomes of the theory that the transfer of the stock to the Canal Company for ninety-nine years, renewable forever, is a *lease* of shares of stock instead of a sale or "contract for sale?" The Constitution provides not only *that there shall be no sale of the State's interest, but no contract of sale*. Now if I give a man a thing forever subject to a rent, and authorize him to redeem that rent and hold forever free from rent, is that not a contract to let him buy the whole title, in other words, "a contract of sale?"

The provisions in reference to the leasing of the Canal clearly provide for the Canal's redeeming the annuity by the payment of the gross sum of $300,000 and as to the Canal itself, that is certainly a contract of sale, and therefore the thin device of *leasing* shares of stock for ninety-nine years, renewable forever, as a part of the lease of a canal for a like period of time must be of no avail, because on the face of the Act there is certainly a contract of sale. It is, however, useless to discuss the question of whether an absolute transfer of shares of stock, the title to which becomes complete in the transferee for 99 years, renewable, is or is not a sale.

I think now I have demonstrated the proposition that there is an absolute assignment and transfer, and therefore a *sale* of the "State's interest in the Chesapeake and Ohio Canal" as mortgagee and creditor, and that a transfer of the State's interest in the Preferred and Common Stock for 99 years, renewable forever, is also a sale of such stock. Your correspondent must therefore agree with me that the members of the Legislature in voting for this bill are clearly violating their official oaths which they took to support the Constitution of the State.

Doubtless the considerations which I have suggested had their full weight with that sage of Democracy, Mr. George Colton, when he stated that the Legislature did not need the opinion of the Democratic Attorney-General upon the constitutionality of the Act.

Does Dr. Shaw think he is adding to his laurels by refusing to take the opinion of the Attorney-General on a proposition which is so plainly contrary to the Constitution which he has sworn to support? The Legislature did not hesitate to ask by unanimous vote the Attorney-General's opinion as to the constitutionality of Mr. Laird's bill to repeal the Act of 1878, Chapter 155, relating to the Baltimore and Ohio Railroad Company. Mr. Rich made a gallant fight to secure the opinion of the State's chief Law Officer. Dr. Shaw made a gallant fight to secure the opinion, *not* of the State's chief Law Officer, but of those other advisers, of whose judgment on a constitutional question he seems to entertain so high an opinion, namely the Honorable Judges "Gene," "Michael," "Morris," "Sonny," et. al., all of whom arrived

on the scene the morning after Mr. Rich had succeeded in getting the Legislature to ask for the opinion of the Attorney-General. This high Court of Appeals soon reversed the previous order, and like Michael Fadgen, the Street Superintendent of the 9th Ward, they gave the members of the Legislature their opinion upon the grave Constitutional questions involved. We Congratulate Dr. Shaw on the selection for the Sate of Maryland of these worthy advisers to the exclusion of the State's distinguished Attorney-General.

I am happy to find that your correspondent agrees with me upon the construction of another clause of Section 3, Article 12, of the Constitution. He and I both agree that under that section there can be no sale of the State's interest in the works of internal improvement, whether as a stockholder or creditor, unless the purchase price is to be paid in the Bonds and registered debt owing by the State. His answer, however, to my arguments on this point is as follows: "The suggestion that the Constitution is violated by the provision requiring the payment of the $15,000 reserved to the State in money, instead of in bonds or registered debt of the State, *as required in the case of a sale*, must, of course, depend upon the question already raised as to whether the proposed lease amounts to a sale."

You will observe that your correspondent admits that if the Act does sell the State's interest in the Canal, that the price which the State is to receive for such interest must be paid in the Bonds or registered debt of the State. I think I have shown that the transfer of the State's Mortgage claim and of its stock is a sale. The only consideration in the Act is an annuity of $15,000 a year *redeemable by the payment of* $300,000. So as to make the title absolute, the Act require these sums to be paid in money and not in the registered debt of the State. Does it not, therefore, clearly violate this clause of the Constitution? The Judges, however, to whom the Legislature thought fit to apply, have doubtless given due consideration to this point and have advised Dr. Shaw and his friends accordingly. That this transaction authorized by the Act is a sale of the "State's interest in the Canal" an evasion and therefore a violation of the constitutional provision relating to such sale, is most clearly proven by the very ingenious attempt to conceal the true nature of the transaction which runs through the entire Act. We have here applied to a transfer of the State's interest in the stock an expression never heard before as to stock, to wit, a "transfer for 99 years, renewable forever," as if that word made it less a sale; but when it came to authorizing the transfer of the State's Mortgage interest to the Railroad Company, the wand of the Magician dropped from his hands; even *he* could not call the transfer of the Mortgage debt to the Railroad Company, so as to vest it in the State's full title to such debt, a *lease*.

The grotesqueness of using this expression as to a transfer of stock had been sufficiently obvious to the Draughtsman; the sense of the ridiculous was too strong for him when it came to applying this expression to a Mortgage interest, and he had to use the ordinary words of sale. Without the possession of this, the so-called "Lease" would have no value to the "Lessee," so the mask had to be dropped and an express sale of this interest authorized. No wonder that the thing had to be kept from the inspection of the Attorney-General.

I am surprised that your correspondent did not make the defense of the Canal Act so common in case of illegal sales of liquor. The indicted liquor seller pleads that the forbidden transaction was not a *sale*, only a *gift* of the stimulant. I can not controvert this position – it is a *gift* of the State's interest in the Canal to the Chief Political Manager of the State, and as he has no right to *receive* what the Legislature has no right to give, we might just as well call the affair a "steal." There is another reply to my argument which I think is equally effective – the celebrated plea of the Hon. "Tim" Campbell in defense of an unconstitutional act – "What's the constitution 'twixt friends/"

CUMBERLAND

*Sun*, Tue. 2/18/90, p. 1. **Mine Owners and Boat Builders want to Lease it.** – Annapolis, Md. Feb. 17 – In an interview late tonight with Mr. Owen Hitchens and Mr. R. H. Gordon, of Cumberland, it was stated a proposition was made on behalf of the mine owners and operators and boat builders and owners of the Cumberland region for a lease of purchase of the Chesapeake and Ohio canal. All bills for labor and materials due by the canal company are to be paid in full. The canal is to be restored as a waterway. Bonds of 1878 and interest are to be secured or paid. A first mortgage is to be given to the bondholders of 1844 or trustees for their use for the sum of one million dollars, payable in forty years at four percent, secured by a lien upon all the land of the company outside of the actual land occupied by the canal, and to be further secured, if necessary, for the payment of the interest, by first lien upon the water rents and leases collected by said company, and further to secure the State of Maryland by a second mortgage covering the corpus of the canal for the sum of $1,000,000, payable in fifty years with interest at four percent, or redeemable at the option of the Sate at the present time, or upon such notice as may hereafter be agreed upon, for the sum of six hundred thousand dollars cash. A company is to be organized to carry out the provisions of this agreement, under the direction and advise of the board of public works and the attorney-general. These provisions may be altered by the text of the offer, which is to be made in the Legislature tomorrow, but there will be no material changes. Messrs. Owen Hitchens, Frederick Mertens, Wm. R. Povey, Park Agnew, of J. P. Agnew & Co., R. H. Gordon and others will be among the incorporators. Bond will be given for the performance of the obligations under this contract, if made.

*Sun*, Tue. 2/18/90, p. 1. The soul of "Cumberland" is vexed lest the proposed lease of the Chesapeake and Ohio Canal to the W. & C. Railroad Company should turn out to be a sale and not a lease. It was scarcely necessary to travel all the way to Cumberland for some superstitious person to present this view in a column of small type, for it was already before the public on the very face of the Canal bill, for the provision therein contained pledging the faith of the State to a ratification by the next ensuing Legislature shows that the point was considered and guarded against by whoever prepared it. It is certainly not a question layman can settle, and as it may never arise, it is not a question that will probably ever find its way into the Courts.

If the transaction is a *lease*, it is eminently proper the Legislature should authorize it, and if a sale, the Legislature *must* under the Constitution prescribe the "regulations and conditions" before the Board of Public Works can act. If it is a *lease*, there will be no necessity for a ratification hereafter, but if it is a sale, a ratification will be necessary to give it validity, as all agree. If the next Legislature refuses to ratify, then the question which "Cumberland" has already settled to his own satisfaction will become important, but if the State keeps faith with the W. & C. R. R. Co. and ratifies the lease or sale, that will end the matter, without the inte4rvention of the Courts. But "Cumberland" is evidently solicitous that the Sate is being outwitted in this business, or would like the public to think so, and is so afraid the Legislature may transcend its constitutional powers that the thinks it monstrous that the opinion of the Attorney-General was not taken upon the questions Mr. Rich wanted considered.

Assuming every word to be true that "Cumberland" has written upon this subject, how is the State injured by this Canal Act? The Constitution, it is true, provides that no sale of the State's interest in the Canal shall go into effect until ratified by the ensuing Legislature, but how will a failure to ratify, even supposing this transaction to constitute a sale, injure the State or the bondholders? The W. and C. R. R. Co., the lessee or vendee, as the case may be, take all the risk. If they choose to enter upon the property with the State's consent, and under a transfer to them of the State's interest, and

make valuable improvements, and it should turn out that a sale has been made which the Legislature of 1892 refuses to ratify, I can understand how the R. R. Co. may find themselves in an awkward position. But how is the State hurt by the improvement of its property which is now absolutely worthless, or how are the bondholders of 1878 hurt, who will have received their money in full , or the bondholders of 1844, who have no lien at all on the corpus of the Canal and who can never hope to realize anything for their bonds unless under some such arrangement as is contemplated by the Canal Act? Is it to be supposed that the State's mortgage and the common and preferred stock it holds, and which "Cumberland" laments so bitterly, is to pass from its hands, will be suddenly elevated from their present worthless condition and become valuable in the hands of the Railroad Co.? Certainly, the State incurs no risk of a pecuniary kind, unless it is shown that its interest is worth more that the W. & C. R. R. Co. is required by the Canal Act to pay for it. Mere assertion cannot settle that question, and there is absolutely no evidence to satisfy any impartial mind that a fair market value is not to be paid for the property. At all events, it was the only bid offered, and there is no one else with whom the State can deal if it desires to save anything from the Canal wreck.

But suppose the Canal is not disposed of under this Act, what then is to be its fate? This side of the case "Cumberland" carefully avoids. For years before the freshets of 1889, when the Canal was in running order, its losses averaged about $56,000 a year. No one denies this fact. The result is that the holders of its repair bonds, receiving no interest, are in a position to ask for the sale of the property. If they had gone into Court for that purpose alone, there would have been no opposition to a decree or order of sale. But the corporation holding a majority of these bonds, and holding them for the purpose of keeping its grip on the Canal, did not want it sold, simply because it was not in a position to buy, and wanted no competition in that quarter. Consequently, receivers were aske for, a devise of corporation wreckers the world over, not to sell, but to take possession of the property, issue receivers' Certificates to put it in running order again, that it may be run at a loss for the special advantage and delectation of the B. & O. Railroad Company. No wonder Judge Alvey hesitates to take a step fraught with such serious consequences, and if Judge Cox had waited, as every suggestion of judicial courtesy required him to do, until he could confer with Judge Alvey, it is possible he would have realized that it is not the duty of a Court to be made the cat's paw of every tricky corporation.

It has been the complaint for years in this State, and in no quarter louder than in that now opposing the lease of the Canal, that it was a political machine, run in the interest of a party, and that it ought to be gotten rid of and eliminated from our politics. Is it not odd that when the day at last arrives when it is about to be disposed of, those who have clamored loudest against it are trying to continue it as a Canal, provided it is run by receivers they can control? Aye, run until receivers' certificates accumulate, and are bought up at a large discount as the bonds have been, and then when the treasury of the B. & O. Railroad Company will permit, the thunderbolt can be made to fall at their pleasure, and the Canal pass forever into their grasp.

But what becomes of the State's interests in the meantime whether paid for in dollars or in its bonds or registered debt; what becomes of the common interest of this community, when all competition to the coal fields is destroyed and the city is left to the mercy of a single corporation? The B. & O. R. R. Co. feel the ground slipping beneath their feet, and will interpose any and every form of obstacle to a settlement of this disturbing Canal question. If columns of type are devoted to the argument of constitutional difficulties already provided for, or raise the false cry of fraud in obtaining signatures to petitions, or manifest solicitude for Dr. Shaw and his "laurels," it all emanates from the same quarter and is the work of the B. & O. "juggler" whose suspended

sword over the head of the Canal is now a menace to the public interest, the Legislature is bound to protect.

*Sun*, Wed. 2/19/90, p. 1. **THE CANAL PROBLEM** – Annapolis, Feb. 18. – The Chesapeake and Ohio canal lease measure came before the Senate today in a shape that was not expected by the friends of the railroad lease scheme until this morning. Late on Monday night the opponents of that measure allowed it to be known that they would present a new bid, as outlined in a dispatch to *The Sun*. When the trains arrived this morning, crowds of people came from Western Maryland and some form Baltimore city, and it was soon apparent that the railroad lease bill was to have serious opposition. Petitions were introduced in the Senate, with some signers for and many against the railroad lease.

Senator Pearre offered the new proposal in the shape of a memorial, the text of which is as follows:

**WATERWAY BIDDERS**

*"To the Senate and House of Delegates of Maryland* – The undersigned respectfully desire to present to your honorable bodies the following proposition relating to the reorganization of the Chesapeake and Ohio canal.

"First. That they will form a corporation, if authorized by the Legislature of Maryland, for the purpose of acquiring the Chesapeake and Ohio canal and for preserving the same as a waterway upon the following terms:

"1. The canal and all its property to be sold under proper foreclosure proceedings to be instituted under the existing mortgages made by the canal company to the State of Maryland, as well as under the proceedings now pending for the foreclosure of the mortgage executed by the canal company under to provisions of the act of 1878, chapter 58.

"2. A corporation to be formed by the undersigned and their associates, as may be authorized by the Legislature of Maryland, will purchase the canal and operate the same as a waterway, and will issue securities to provide for the discharge of the various liens now upon the canal, as follows:

"For the amount of money required to put the waterway in efficient repair, and for the amount of the principal and interest of the bonds issued under the act of 1878, chapter 58, and for the claims now due for labor and materials, not exceeding $75,000. The new corporation so organized shall issue bonds bearing six percent interest, payable demi-annually and having fifty years to run from the date thereof, and secured by a first mortgage and line upon the property belonging to the canal company in the District of Columbia and along its line, and which is not needed for the purposes of the canal as a waterway.

"The new corporation will undertake to pay to such of the holders of the bonds of 1878 as may not accept the new bonds in lieu of the old, the principal and interest of their bonds, the same to be then transferred to the new corporation, or to such parties as it may designate, in order that the same may be exchanged for the new bonds.

"For the retirement of the bonds issued under the act of 1844, chapter 281, the new corporation shall issue first mortgage bonds bearing four percent interest, payable semi-annually and having fifty years to run from the date thereof, to the amount of one million dollars, to be secured by a first mortgage upon the entire canal from Cumberland to Georgetown, and all property that is appurtenant thereto or connected therewith and necessary to the use of the canal as a waterway.

"The Holders of said bonds of 1844 shall be entitled to receive their pro rata proportion of these new first mortgage bonds according to their several holdings. These new bonds shall especially pledge to revenue derived from the use of the water-power of the canal in the District of Columbia and elsewhere to the payment of the principal and interest thereof, and it is estimated that the revenues from this source alone will be equal to the interest upon these bonds. To provide for the State's interest in the canal second mortgage bonds to the amount of $1,000,000, bearing interest at the

rate of four percent per annum, payable semi-annually and having fifty years to run, shall be issued by the new company and secured by a second mortgage upon the same property as is covered by the first mortgage on the canal, as hereinbefore stated.

"Should the State desire to dispose of these second mortgage bonds, the new corporation will agree to provide a purchaser therefore who will pay the sum of $600,000.

"The detail of an act creating the new corporation and providing for this mode of reorganizing the Chesapeake and Ohio Canal Company and readjusting its various debts and liens shall be prepared by the board of public works and the attorney-general in connection with the counsel of the new corporation.

"Should the above not be acceptable to the Legislature, we make this alternative proposition: That the undersigned will pay $35,000 a year rental to the State instead of $15,000 a year, as provided in the proposition of the Washington and Cumberland Railroad Company, and that, instead of the provisions relating to the construction of a railroad on the canal, the same shall be changed so as to provide for the placing of the canal in repair as a waterway. All other provisions to remain the same as in the proposition of the Washington and Cumberland Railroad Company, and the payment of the rentals of the State shall commence as soon as the title of the new corporation to the canal and its property is determined, the State to take all necessary proceedings to vest its title in the new company at the expense of the new corporation. The details of this act shall be prepared by the attorney-general so as to cover fully the interests of the State and the various lien holders upon the canal, who are to be provided for under this proposition.

"We believe the canal can be put in running order and shipping coal within three months, and if there be any delay in the State perfecting the title to the canal and its property, certificates can be issued for the purpose of repairing the canal, which need not exceed over $150,000, and we guarantee that these certificates shall be taken at par.

"In the meantime, the State can take all the requisite proceedings to perfect the proper transfer of the canal and its property and all the interests of the State therein to the new corporation, so as to secure to the State its new mortgage bonds, as hereinbefore provided for, or the cash for the same should the State desire to sell them for $600,000.

"Immediately upon the acceptance by the Legislature of the above proposition, the corporation to be organized by it will give good and sufficient security; to be approved in such manner as may be provided, for the faithful performance of the provisions of the above proposition. – J. J. Alexander, Owen Hitchens, Park Agnew, R. H. Gordon, Wm. P. Percy."

**ACTION OF THE SENATE**

When the hour of 12:30 arrived, the time set for the second reading of the railroad lease bill, Mr. Randall moved that it be referred to the judiciary committee, with the new proposal, so that the legal features of both could be examined. This brought on a debate, in which Messrs. Poe, Pearre, Wentz, Stake, Peter, Urner, Randall, Silver and others took part. The motion for reference to the judiciary committee was lost by 12 yeas to 13 nays. Mr. Pearre then moved that both proposals be referred to the finance committee. This was carried by 13 yeas to 12 nays. To quote Col. John L. Thomas, who said he was here in the interest of the maintenance of the canal, "the canal element got the first blood." It was a close call, indeed, and the friends of the railroad lease, who wanted the bill to go along upon its second reading, were disappointed. They claimed that two of the Senators who are on the side of the bill voted to refer to the finance committee, with the understanding that both measures will have prompt consideration. Senator Toadvin, the only absentee, is set down on the side of the railroad lease proposal. Of course, in a contest as bitter as this canal measure has engendered, there are charges and countercharges, with crowds of outside people enlisted on both sides. The railroad lease party

claim the new proposal is a delusion invented to gain time and in the line of a program intended to leave the canal question where it was when the Legislature assembled. On the other side, the railroad scheme is denounced as a steal, by which the State is to give up valuable property rights for next to nothing. It is to the credit of the Senators that they voted to refer the proposals to their finance committee for consideration. With the armfuls of amendments which opponents of the railroad lease have prepared, it will doubtless look not unlike a veteran of the war if it finally gets through. Senators talk of spending a week in discussing the bill or bills.

**MR. URNER'S POSITION**

Senator Urner, while he is inclined to the proposition for a railroad on the canal, is always disposed to do the fair thing in matters of legislation, says the new proposal is too important to be passed over with indifference. It is backed by respectable business men, whose proposition deserves consideration. They offer to give the State twice as much money as is offered by the railroad lease bill, or $600,000 instead of $300,000, and besides, the promise to take care of the other interests upon terms that appear to be fair. Mr. Urner does not believe the canal can be maintained as an independent waterway, but he thinks its acquisition as an adjunct to the Baltimore and Ohio Railroad Company would not be a bad deal for the latter, which cannot now carry its coal traffic. He says that at the price offered in the new bid it would be a bargain to the Baltimore and Ohio, which would certainly do all it can to dispose of the possibility of a line that would be a direct parallel from the coal fields to tidewater.

**A BONA FIDE BID**

The mine owners' bid, as the new proposal is called by its friends, it is insisted, is bona fide all the way through. Mr. Owen Hitchens says the gentlemen who have gone into the enterprise represent all interests which desire the maintenance of the canal as such, and are responsible financially. He has information that the draft of a bill will be here in the morning to meet the promises made in the proposal. A company will be incorporated to lease the canal as a waterway, and a sufficient bond will be given for a million dollars if demanded.

**INTEREST IN THE MATTER**

Tomorrow the railroad lease bill will come up in the House on the second reading. It is said the memorial offered in the Senate by Mr. Pearre will be presented in the House, and a motion made to refer both the bill and the proposal to a committee. A sharp contest is more than probable, and both sides will be here in strong force, as they were today. The hotels tonight are crowded with Western Marylanders, and Montgomery county has sent a small army. The Senate finance committee will take up the new proposal without delay, but it is not probable that they will report upon it for a day or two. The canal agitation has absorbed the attention of the Legislature to the exclusion of other leading topics. Even the gas bill people appeared to be taking a rest, and nothing has been heard from them except some angry vaporings about the opposition their scheme encounters.

**THE STATE'S HOLDINGS**

Mr. Collins offered an order in the House, which was adopted, asking the State treasurer to furnish by tomorrow a statement of the number of 1878 and 1844 bonds that are owned by the State; also, the terms of the agreement between the State and the Potomac Lock and Dock Company, and whether the $15,000 per year offered to the State by the Washington and Cumberland Railroad Company will not be required to be paid to the lock and dock company under the agreement. It has for some days been intimated that the probabilities are that the State may be held for the $15,000 rental claimed by the lock and dock company, in which event the State treasury would get nothing from the lease of the canal for a railroad under the pending measure. The railroad lease bill is set for a second reading in the House tomorrow.

*Sun*, Thu. 2/20/90, p. 1. **RUSHING THE RAILROAD JOB** – Annapolis, Feb. 19. – The mine-owners' bills for the restoration of the Chesapeake and Ohio canal as a waterway, under the terms of the bid presented to the Legislature on Tuesday, were introduced today in the Senate and House by Senator Pearce, of Allegany, and Delegate Kemp, of Garrett. One of the two bills is entitled "An act to provide for the restoration of the C. and O. canal as a waterway and the reorganization of the canal company, and to authorize the foreclosure of the mortgages and the enforcement of the liens thereon held by the State, and to regulate the mode of judicial sale of the canal, and to authorize the Allegany and Tidewater Canal Company to purchase the same upon compliance with certain terms, and to authorize the board of public works to sell the State's interest in the canal and transfer it to the Allegany and Tidewater Canal and Transportation Company."

The bill provides that at any sale under the decree of the court, the Allegany and Tidewater Canal and Transportation Company shall have the right to bid for and purchase the property and hold the same. Then follow the terms of the bid as provided in the proposal heretofore published, placing the sum of $600,000 for the benefit of the State. The attorney-general is authorized to institute legal proceedings for the foreclosure of the mortgage. When a bond for $600,000 shall be filed or approved by the attorney-general, he is directed to consent for the State to the issue of the necessary receivers' certificates for placing the canal in repair and in fit condition as a waterway. If a judicial sale does not take place, then the board of public works are directed to enter into an agreement with the Allegany and Tidewater Canal and Transportation Company to sell and transfer all the interests of the State in the C. and O. Canal Company for the sum of $600,000; provided that the sale shall be ratified at the next session of the Legislature.

The other bill provides for the incorporation of the Allegany and Tidewater Canal and Transportation Company, and authorizes it to lease or otherwise acquire the canal and its property, tights, privileges, franchises and immunities. The incorporators are Messrs. J. J. Alexander, David Sloan, Owen Hitchens, Frederick Mertens, Park Agnew, Wm. R. Percy and Robert H. Gordon. The capital stock is fixed at $1,000,000. When 10 percent of the capital stock is subscribed and $10 paid on each share, a board of seven directors shall be elected. The company is invested with the power of eminent domain for the purpose of acquiring private property for its uses. It is empowered to borrow money, issue bonds on mortgage and to have the other powers peculiar to transportation corporations.

When the House took up the railroad canal lease bill for a second reading there was a lively debate, as was expected. Mr. Rich moved that the bill be recommitted to the ways and means committee, and he made the point that the new proposal for restoring the canal as a waterway should be given respectful consideration. Messrs. Rich, Keedy, Kilgour, Shaw and others took part in the debate. After Dr. Shaw concluded his speech, he called for the previous question, which was sustained by a rising vote. Then amid considerable excitement, the roll was called upon the motion to refer the bill back to the ways and means committee, and it was defeated by yeas 35, nays 51. This is a test vote, and unless there is a change of front hereafter, the railroad canal lease bill will go through. A motion was made to adjourn, but this also was defeated, and Reading Clerk Townsend commenced the reading of the bill by sections. Only one section was finished, with amendments, when the House took a recess until evening.

**SOLID AND RECKLESS MAJORITY**

Friends of the mine-owners canal bill use some very plain language in expressing their surprise at the way in which Dr. Shaw called for the previous question upon the proposition to refer the railroad lease bill back to the ways and means committee, where both the bills for the canal could be considered. Mr. Rich had an amendment on the Speaker's desk when the previous question was called, but that went by

the board along with everything else which did not meet the wishes of the majority. The House all through this canal lease business has shown a purpose to push the railroad lease bill on the railroading plan. When that measure was introduced last week and referred to the ways and means committee, a pressure was put upon the committee to report it back at once. Mr. Rich and other committeemen objected, and they only agreed that the bill should be reported upon a promise that when it was printed, they would be given time to read it. On Thursday last, when the Rich order was passed by the House to refer the questions involved to the attorney-general, Mr. Rich said he had not been given a chance to read it. Dr. Shaw, who opposed Mr. Rich, admitted that he had not read the bill. Dr. Shaw is the chairman of the ways and means committee. Therefore, the spectacle is presented to the people of Maryland of its representatives in the House of Delegates passing a bill of the prime importance of this one, which disposes of the interests of the State in the canal without its provisions having been read in the committee which reported the measure. So determined is the apparent purpose to pass this railroad lease bill, and only this one, that if the mine-owners' bill pledged to give the State six million dollars instead of six hundred thousand dollars, it is to be doubted whether the majority would give it serious consideration for a single day. That bill, signed by reputable business men, lies cold in death already, although it only came to the House today. The railroad lease bill may be the most meritorious measure now pending, but merit of the bill will not remove from it the odium of the machine-like momentum with which it is being pushed through the House. This car of Juggernaut has crushed out Mr. Rich and his friends with a remorselessness that would not admit of the belief that there is very much conscientious scruple lying around loose.

**THAT LOCK AND DOCK LEASE**

Nr. Collins on Tuesday had an order adopted asking the State treasurer to furnish today a statement of the contract between the State and the Potomac Lock and Dock Company, which now gets $15,000 a year. A belief prevails that the State will be held responsible for the payment of this $15,000 after the railroad lease is ratified. In other words, the $15,000 a year which the canal-railroad company promises to pay the State will have to be turned over to the Lock and Dock Company, and the State will get not a cent from the deal. The State treasurer left Annapolis this morning, but he telegraphed Mr. Collins from Washington that he had just read in a morning newspaper of the order, and that he will soon be here to give the information.

**READY WITH THE MONEY**

The friends of the lease or sale of the canal for a waterway, state that if any objection is made to the present bill for its maintenance as a waterway upon the ground that it is made for delay, they are willing to have the Legislature fix a shorter time than one week for the filing of the necessary bond to comply with the terms of their offer. This offer is not made for delay, but business, and they further state that if the Legislature desires the six hundred thousand dollars in money instead of bonds, they will pay the amount as soon as the bill is passed. They are ready to accept all necessary and proper amendments to secure the speedy operation of the canal and its maintenance as a waterway.

**A CROWDED HOUSE**

The hall of the House was crowded tonight with lookers-on, who listened to the debate upon the second reading of the canal railroad lease bill, which was continued from the day recess. Dr. Shaw was the leader for the bill, with Mr. Hattersley, W. Talbott, Asa Willison, Mr. Stephen, B. Gambrill and others near at hand. Among the listeners were Messrs. Thomas M. Lanahan, ex-Governor Oden Bowie, Michael Bannon and I. Freeman Rasin. Mr. Rasin was engaged today with the democratic members of the city delegation in reaching agreements upon the Baltimore city appointments. He insisted that he had no personal concern in the pending bill, but all of his political friends are on the side of the measure.

**AMENDED AND POSTPONED**

Amendments were accepted by the House, including the striking out of twelve and insertion of six months as the date of making the financial obligations of the lessees effective. Connections are to be made with the Western Maryland and the Frederick Line Railroad at convenient places; striking out a clause that these connections shall be made by mutual agreement. Amendment was carried to require connections with the Drum Point Railroad now building. This stirred the anger of the city members. Mr. Beauchamp opposed this as a direct hit at Baltimore. He said he is well aware of the opportunities such a connection would give to have a deep-water port at Drum Point, and he proposed to fight for Baltimore. Mr. Fitzgerald, after an attempt had failed to reconsider the vote by which the Drum Point Railroad was put into the bill, moved to postpone further consideration of the bill until 1 P.M. tomorrow. Dr. Shaw objected that valuable time would be lost. Mr. Fitzgerald said that as a friend of the bill he appealed to his friends to postpone. If that amendment remains in, he said the city delegation may be compelled to vote against the bill upon its final passage, and defeat it, too. He wanted time to look into the effect of that amendment, as it relates to the welfare of Baltimore. Dr. Shaw yielded and the consideration of the bill goes over until tomorrow.

**PART OF THE DEAL.**

Contractor Merges, of the Drum Point Road, has been hard at work for two days to get his road into the bill, and he secured votes for the bill as part of the deal. Mr. Collins will offer an amendment to require the lessees to provide for the contract with the Potomac Lock and Dock Co., and to pay the State $15,000 a year outside of that. Mr. Laird has amendments to provide that upon the failure of the lessees to comply with the terms of the lease the State shall sell the property, the purchasers to be incorporated to build a railroad.

**JUDGE ALVEY'S OPINION**

A report prevails that Chief Judge Alvey's decision in the canal receivership case will probably be filed at Hagerstown tomorrow. (Thursday.)

---

**THE CANAL LEASE LOBBY**

Annapolis, Feb. 19. – The bill providing for the lease of the Chesapeake and Ohio canal to the Washington and Cumberland Railroad Company came up this afternoon in the House as a special order of the day. Immediately a discussion was launched forth which continued until 2 o'clock, when there was an adjournment, and was taken up at a special session tonight. The measure was discussed upon its merits in the House itself, for the bill has some features about it recognized by many people as good, and the majority of those favoring it do so believing that it is the most feasible plan yet presented for a solution of the many intricate questions which have arisen in the tangle of the canal problem.

**AN ORGANIZED LOBBY**

Too impatient or too fearful as to the result, the projectors of the bill have been unwilling to have it pursue its tranquil course along the channels of legislation, to have it pushed upon its merits or to be opposed on its defects, and they have brought to bear upon it the powerful influence of an organized lobby. It is not once suggested that there is any "boodle" in the bill, for a most notorious lobbyist has said: "There is not a cigar or its price in the scheme, and if there was, I would go for the side with the money every time." Nor, on the other hand, is it claimed that the visible projectors of the road are urging the passage of the bill by any other than fair means, and in fact, not one of the gentlemen most largely interested in the concern, as far as the outside world can see, had been to Annapolis this entire session to say a word in favor of it, and hence they cannot be classed as lobbyists, for the members of this calling must ply their avocation on the scene, but it is urged with a show of reason that men high in the councils of the democratic party are pushing the bill; that they are using for their purposes the power bestowed upon them by their party or self-assumed, and that they are manipulating for all it is worth that unfair but

ever effective argument, party fealty, thus bringing into line many honest democrats who, as partisans, approve of measures they would denounce as private citizens. It is not for the good of the party at large that this influence is used, and certain results are attained in this particular case, but for the enrichment of a limited class of the party, a mere handful of individuals, and the men who have trafficked in this party influence are no less lobbyists than those who undertake to traffic in the votes of Senators and Representatives to have measures, good or bad, enacted.

**OFFICIOUS ADVISERS.**

During the entire session of the House today and tonight these party men have been upon the floor, flitting about here and there, advising members how to vote, suggesting amendments to the bill and otherwise influencing the action of the House. Others have remained in the background, and messengers have flitted between them and their active lieutenants inside the rails. No member of the House objects to citizens coming to Annapolis and fairly urging the passage of bills affecting their interests, but an objection has been raised and loudly proclaimed against the presence of men without a calling or trade, without visible means of support, who are ostensibly interested not in one measure, but in many; who are always hovering around when any bill is upon it passage which cannot stand upon its merits.

**A FLOCK OF RINGSTERS.**

It was on Friday last that the canal lease bill first became burdened with the suspension that a flock of democratic ring politicians were more than ordinarily interested in the bill. On that day came forth a motion to reconsider the vote by which Mr. Rich's order had been carried on Thursday that the attorney-general be requested to furnish the House with information if any provisions of the canal lease bill are in conflict with the constitution of the State; if any of its provisions are onerous to the State or impossible of performance, and if the State's interests are protected. The order was passed by a vote of 58 to 23.

**WHO ORDERED AND WHO UNDID IT.**

But what a change of sentiment on Friday! Then there was a complete somersault in the House. Mr. Rich's order was reconsidered, and it was decided that the attorney-general's opinion was not wanted on the most intricate legal points of any question which has been before the Legislature. Coincident with this revolution of sentiment in the House was the presence of the most prominent party managers of the State – Messrs. I. Freeman Rasin, the recognized head of the democratic politicians in Baltimore; State Comptroller L. Victor Baughman, Michael Bannon, the Anne Arundel county politician; John Bannon, his son, who is now school examiner of Anne Arundel; Eugene Higgins, who has been a prominent figure in the State House lobbies for several sessions; Morris Thomas, who is equally well known as Mr. Eugene Higgins, J. F. C. Talbott, of Baltimore county, insurance commissioner; Mr. Mahon, the democratic politician of the ninth ward of Baltimore, and one of Mr. Rasin's ablest lieutenants, and Mr. Menges, of the Drum Point Railroad Company, for which Mr. Bannon is counsel. Champagne was served liberally at the Maryland Hotel, members were buttonholed and importuned in undertones, and one democratic politician announced from the steps of the stairway leading from the main lobby of the State House to the library, executive department and room of the Court of Appeals that the vote on Mr. Rich's order had to be reconsidered, as Mr. Gorman had so ordered it.

**ON THE FLOOR OF THE HOUSE ITSELF**

When the House met, Mr. Philbin, of Baltimore city, moved to reconsider the vote on Mr. Rich's order. This motion was seconded by Mr. McMaster, of Worcester, and Mr. Walsh, of Carroll. Then one by one, and through separate doors, the gentlemen who had come to Annapolis in the morning entered the House chamber and, in a body, suddenly displayed to any observant eye an interest in the proceedings total foreign to men unless bound together by a common tie. Mr. Rasin was content to remain without the rail. Mr. Michael Bannon stood near one of the north windows and permitted

both eyes to wander over the assemblage. Col. Baughman was near the Frederick county delegation. Mr. Eugene Higgins was at the door leading to the Speaker's room. John Bannon was in earnest consultation with the Anne Arundel county delegation. Morris Thomas occupied the seat of an absent member of the city delegation, and a prominent ex-Senator sat with the Talbott county Delegates. All of these gentlemen shifted their positions during the debate and dropped a word of advice here and there, presumably about the pending motion to reconsider. Other gentlemen did not put in an appearance in the House, but remained in the lobby, and one politician who acted as messenger rushed through the door into the lobby as soon as Mr. Shaw called for the previous question, thus announcing the close of the debate, and told a prominent city leader, who was parading up and down, that the House was ready to vote. He was rebuked for his audacity, and then the city leader quietly entered the House. Whether these gentlemen exercised any influence or not, it is nevertheless a fact that the motion to reconsider was carried by a vote of 47 to 21.

**THE SPEAKER'S EXPLANATION.**

Speaker Hubner, in explaining his change of vote, said today that he had done so because he thought it ill-advised to refer the bill to the attorney-general at this stage of proceedings, and as amendments would likely be offered on the second reading, he thought that the bill should then go to the attorney-general. He voted with Mr. Rich today to have the measure deferred a week. Others who changed their vote said that the attorney-general already had his opinion; that he would oppose the bill and that its passage would then be delayed.

**DRUM POINT COMPLICATIONS.**

The Southern Maryland republican members changed their vote as a body. President Menges, of the Drum Point Road, was on the scene, and their change was pointed out as coincident with his presence, as his road affects the interests of their counties. Mr. Menges has a bill pending extending the time for the completion of his road, and he is leaving no stone unturned to effect a connection with the Washington and Cumberland Road when completed. It was stated that those actively pushing the canal lease bill promised to help him with his bill, if he would reciprocate in aiding them. The statement is also made that he was promised a connection between his road and the Washington and Cumberland, which he got tonight. He was very much concerned this afternoon, and told Mr. Rich that he wished to speak to him. Mr. Rich replied that he would have nothing to do with him. Mr. Menges said in an undertone: "That is all right." and then disappeared into the lobby, vigorously pulling his moustache.

**THE POLITICAL QUID PRO QUO.**

A high officeholder used an argument on one member of the House unavoidably. He told him that the party managers had used their influence to have him made chairman of a committee and that he should return the favor by supporting the motion to reconsider the vote on Mr. Rich's order. The committee chairman peremptorily refused to change. Then he was told by the official that he had a letter in his pocket from Senator Gorman insisting that the vote in Mr. Rich's order be reconsidered. The committee chairman was then assured that if he would change his vote he would be materially aided in his future political career. Still there was a refusal to change.

**MORE COINCIDENCES.**

The trains today brought large delegations of democratic politicians. Their coming and the consideration of the canal lease bill were again strange coincident events. Among those here today were Mr. Rasin, Mr. Higgins, Mr. Thomas M. Lanahan, Mr. John J. Mahon, Colonel L. Victor Baughman, Treasurer Stevenson Archer, who came from Washington; Stephen Gambrill, Michael Bannon, John Bannon and Mr. Menges. These gentlemen were at times in the rotunda, at other times in the House, and were frequently parceled off into groups eagerly discussing in undertones some important measure. Mr. Menges sat or stood directly behind Mr. Gantt during the entire evening. Mr. Bannon was

also on the floor, and his son, John, stood near the reading clerk's desk.

Some of these gentlemen being officeholders and privileged to the floor of the Legislature, are frequently there on proper business of course. They were present, too, on the exciting occasions mentioned in this report. All who seemed to be interested in helping the House or individual members in the proceedings are mentioned because it is made necessary by the course the counsel for the company has thought proper to take in denying the statements, notorious to everybody here, that an active political lobby was behind the canal lease scheme and exerting a pressure on the delegates, particularly in the surprising reversal of the vote on the order submitting the canal proposition to the attorney-general.

Tonight, the managers announced that they have fifty-five votes certain for the passage of the canal lease bill.

---

*Ibid*, p. Suppl. 2. **LOCAL JOTTINGS** A number of Chesapeake and Ohio Canal bonds held in Alexandria and heretofore held to be valueless, have recently been sold at 27½ cents to the dollar to residents of Baltimore.

SR, Fri. 2/21/90, p. 3. If the politicians of Maryland do kill the Chesapeake & Ohio Canal, it will not be because they are not trying. We do not recall a more barefaced example of disregard of common honesty and fairness than is now being shown by the Maryland Legislature nor a more complete and disgraceful subserviency to wealthy corporations than its members exhibit. The State of Maryland has no cause to be proud of its present Legislature, which has sold itself body and breeches to the highest bidder.

*Sun*, Fri. 2/21/90. p. 1. **STATE CAPITAL AFFAIRS** – Annapolis, Feb. 20. – **ACTION OF THE HOUSE** – The canal railroad lease bill came up in the House for the completion of its second reading. The amendment of section 3 so as to include the Drum Point Railroad Company with the Western Maryland and the Frederick and Pennsylvania Railroads in the connecting and pro rating lines with the Washington and Cumberland Railroad was advocated by Southern Maryland members. This was the point of contention when the Baltimore city delegates, on Tuesday night, demanded and secured the postponement of the further consideration of the bill until today. One amendment had been inserted in the section to include the Drum Point among the roads which the canal railroad is authorized to connect. But when it was proposed to further amend the section by authorizing the Drum Point Road to pro rate with the canal railroad the Baltimore members walked up to a belief that this Drum Point alliance would be a disadvantage to the city. The row they raised demoralized the leaders for the bill and they reluctantly conceded a postponement. By a yea and nay vote today the House voted down further Drum Point amendments to section 3. Therefore, that road (and any other railroad) may connect with the Washington and Cumberland, but it is not authorized to pro rate with it.

Amendments offered by Dr. Shaw were adopted, but one put in by Mr. Rich was last by 39 to 46. It was in the line of further securing the State. Mr. Laird offered an amendment to the bill, providing that if the lessees fail to comply with the terms of the lease the canal shall be sold and the purchasers be incorporated to build a railroad. Mr. carter and Dr. Shaw made the objection to this amendment that it came in late and had not been presented to the committee for consideration.

**THE READING COMPLETED**

The House tonight completed the second reading of the canal-railroad lease bill. The chamber was again thronged with spectators. The Laird amendment was debated and defeated. In the debate during the day session a member said to the House that he hoped the majority would only vote for amendments that were offered by the chairman of the ways and means committee. Tonight, when an amendment was offered outside of the official channel, Mr. Meloy brought out a shout of

laughter by suggesting that the mover must surely be at fault – his amendment had not emanated from the authorized source. When the reading was through, Mr. Laird moved that the bill be engrossed for a third reading. On motion of Mr. Carter it was made the order for 2 P. M. tomorrow, when it will be finally passed. The bill was first introduced last Thursday.

**DR. SHAW'S EXPLANATION.**

Dr. Shaw took occasion in the House to contradict a statement in this correspondence that he had reported the railroad canal lease bill without its being read in the ways and means committee. He said he read the bill through in committee, and that it was then decided to report it to the House so that it could get into the newspapers and be printed.

Mr. Goslin, a member of the ways and means committee, says: "I do not wish to have any reflections cast upon the ways and means committee or its chairman, therefore, a statement of the incidents connected with the treatment of the canal railroad lease bill in that committee should be made. The bill was presented by the chairman to eight out of the nine members about 11:30 o'clock. The chairman read it to us, finishing at five minutes to twelve. He asked us to report it to the House, so that the bill would get into the newspapers and be printed for the members of the House. Five of the eight objected to making a favorable report on the ground that time had not been given to consider its provisions and a favorable report would give the bill a prestige which, in the absence of the proper inquiry into it, we were not willing to confer. That is the shape in which the bill was reported to the House, and I was not alone in the expectation that the bill would come back to the committee. It did not have a favorable report, and for the reasons which I here state. Mr. Rich confirms the statement of Mr. Goslin.

**FOR THE WATERWAY**

A large delegation from Allegany county, consisting of mine operators, mine owners an miners, who are interested in the maintenance of the Chesapeake and Ohio Canal Company, appeared before the Senate committee on finance this morning to urge the acceptance by the State of the proposition made by the Allegany and Tidewater Canal Company. After an argument in favor of the maintenance of the canal, Senator Pearre presented Messrs. John Chamber and Park Agnew, who showed the advantages of the canal from the standpoint of the miner and operator, respectively. Mr. Pearre took the position that the extension of the West Virginia Central Railroad down the tow-path would bring into dangerous and destructive competition with the Maryland miner the underpaid miner of West Virginia, and the high-priced coal lands of Maryland into competition with the cheap coal lands of West Virginia. It will also make the city of Cumberland a way station on a through line instead of being a terminal point of a great entry of commerce. It would divert coal trade from Baltimore to Alexandria, and turn over valuable Maryland property to foreign interests, which have not the interests of Maryland at heart. In the afternoon, the committee held an open meeting in the Senate chamber to hear delegations in reference to the Chesapeake and Ohio canal restoration proposal. Mr. Park Agnew said he is a practical business man and has interests in the canal. He, with other men who have similar interests, is prepared to furnish the means to restore it as a water highway. They believe that six hundred thousand tons of coal can be carried by the canal, which will revenue enough to pay fixed charges and good profit to the investors. It will take two years to build a railroad, and we believe we can have the canal in running condition in ninety days. The canal would employ an army of employees who are our own people, and be a consumer of the products of that section. He said a better bid is offered than that of the railroad party. It is proposed to give one million dollars for the State's interest and to guarantee to pay that amount in a reasonable time, within a week or ten days. The revenues will meet all promises that are made and return a good surplus besides. If the privilege is given to repair the canal, the company will agree to

surrender it if at any time it is not operated for a period of twelve months.

Mr. Patrick Carroll, a miner, said that since the breaking of the canal, times have been very bad. He stated in homely phases the case in favor of the canal. If the canal is repaired in a few months, it is better to have it done than to wait several years for a railroad. He spoke for the miners. The operators can take care of themselves. If this is a bona fide bid, and the men put up their money for and give bond to do their work, there is no reason why they should not get it.

Mr. Benjamin Diffenbaugh, miner, said that the miners of George's Creek are deeply interested in having the canal continued as a waterway. He represented a class of two thousand or three thousand men and their wishes are entitled to some weight.

Mr. John Conlon, miner in the Cumberland region for twenty years, said it is the belief in the George's Creek region that the canal is of more advantage to them than a railroad would be.

Mr. E. P. Cahill, a farmer of Hancock, spoke in favor of a railroad.

Mr. Little, of Clear Spring, an ex-boat owner, said he would not take the canal as a gift unless he could sell it to the business men. Ninety percent of the people in his district are favorable to a railroad.

They will keep at work upon this bill, and will probably be ready to report next week. The committee having heard both sides of the canal controversy, expect to make up their report tomorrow. The canal railroad lease bill, it is said, will get a favorable report. Its discussion in the Legislature has delayed other measures, and the proposed caucus conference upon revenue and election bills has been dropped until next week.

---

**FROM WASHINGTON**

**The Government's Interests in the Canal.**

Congress will be asked to stick its finger into the Chesapeake and Ohio canal pie. Today Representative Lee, of Virginia, introduced a resolution calling upon the Attorney-General of the United States to inform the House if the federal government has any interests in said canal, and if so, what steps have been taken to protect those interests. A representative of *The Sun* saw Gen. Lee with reference to his resolution this afternoon, and he stated that he was individually responsible for the inquiry. He has not been able to make a very careful examination of the subject, but he has been informed that the cities Washington, Georgetown, D. C., and Alexandria, Va., subscribed for some stock in the canal when it was originally built, and subsequently the United States government assumed the responsibility for said stock, which amounts to something in the neighborhood of $1,500,000. He thinks that while the canal question is being considered at Annapolis, it is but proper that the government's interests should be looked after. He says he simply desires the Attorney-General to give Congress the necessary information on the subject, so that the government's status may be understood.

He made an effort to have his resolution taken up for intermediate consideration, but a unanimous consent was necessary, an objection carried it over. He proposes to make another attempt tomorrow, as he does not care to have it take its weary course through the District committee.

---

*Ibid,* p. Suppl. 2. **MARYLAND LEGISLATURE** – Annapolis, Feb. 20. –

**THE LOCK AND DOCK LEASE**

Mr. Collins offered the following order, which was adopted: "That the president of the Chesapeake and Ohio Canal Company be requested to furnish the House at the earliest day possible with a copy of the contract or lease between the said canal company and indorsed by the State of Maryland and the Potomac Lock and Dock Company, and to inform the House whether or not the State will be required to pay the $15,000 per annum offered to it by the bid of the Washington and Cumberland Railroad Company to the said Lock and Dock Company under the terms of the said lease or contract."

**CANAL LEASE BILL**

The consideration of the canal lease bill was resumed at one o'clock. Mr. Gantt offered an amendment to the third section to put the Drum Point Railroad and its branches on the same footing with the Western Maryland Railroad in the matter of rates on the Washington and Cumberland. Mr. Shaw said that with that amendment the Drum Point enjoyed more than it would give in return, because no provision was made by the Drum Point to prorate with the Washington and Cumberland on traffic received from the latter road. Mr. Meloy hoped that the House would see the Drum Point was fairly treated. He quoted from a resolution passed by the Baltimore city council on May 27, 1882, setting forth the advantages that the city would derive from the building of the Drum Point. The amendment was lost by a vote of – yeas 30, nays 65.

Mr. Shaw offered an amendment to follow at the end of section 6: "And in case at such sale the said Washington and Cumberland Railroad Company shall become the purchaser of said canal and its works and such sale shall be finally ratified, the said annuity of $15,000, redeemable, as hereinbefore provided, shall not cease, but shall continue to be payable and redeemable by said company as fully to all interests and purposes as if said sale had not been made."

Mr. Rich offered as a substitute the following to be affixed to the clause making it lawful for the Washington and Cumberland Railroad Company to sell the property of the canal company under the mortgage of 1844.

"Provided, however, that none of the terms, provisions and conditions of the lease by this act authorized to be made shall be avoided or destroyed by the said sale, but all of the said terms, provisions and conditions shall be binding upon any purchaser at or under said sale."

Mr. Rich said the sixth section was the most important part of the bill, and it was to that he referred yesterday when he told the House that under the bill the Baltimore and Ohio could get control of the canal more easily than in any other way. So far as the annuity of $15,000 which Mr. Shaw's amendment covered, he was willing to let that go, he believed the State would never get a cent of it anyway. It goes to the dock company. But don't let us wipe out the stipulations and the terms of the lease requiring that the Washington and Cumberland Road be built. Mr. Rich went on to show that the mortgage now held by the State on the canal property will be assigned to the railroad company, which is clearly set forth in the bill. These mortgages, he said, made to the State in 1838 and in 1844, and since then are all prior to this lease to the Washington and Cumberland, which authorizes the sale to be made. The lease is subject to these mortgages, and you cannot prevent the mortgagees from selling the canal in fee simple. And selling under these mortgages means the wiping out of all the stipulations in the lease. He claimed that Mr. Shaw knew that this was a weak point in the bill. Under his (Mr. Rich's) amendment there was no doubt that the only party prohibited from buying out the Washington and Cumberland would be a competing line. But as the bill now stands, or with Mr. Shaw's amendment added, there is nothing to prevent the new company from selling to the Baltimore and Ohio in twelve months. The question for the House to consider was this: The State is giving away $25,000,000 of stock in this canal and she is not getting a single cent for it, nor any part of the $15,000 a year for her own use; the only thing that she does get are these stipulations and terms. That is the only consideration she expects to get, and under this bill, without this amendment that is offered as a substitute for Mr. Shaw's, we don't even secure these to her.

Mr. Colton – "The gentleman from Baltimore county must admit that the incorporators of the new company were not myths. They were business men, and the Delegates knew they intended to carry out the contract. The House had before it, the measure recommended by the Governor, which the gentleman desired to hamper and destroy with amendments. The proposition had been before

the ways and means committee, and the House wanted to carry it on. He stood there to say to the friends of the bill that if they desired to do justice to the State, they must stand firm by the chairman of the ways and means and vote down every amendment except those offered by him."

Mr. Shaw argued that under section 20, article 66, of the constitution, Mr. Rich's amendment would be void. That section provided that no lease made after the mortgage was made should be valid as against the mortgage. That was the defect he saw in the bill, that if the mortgages of 1844 were foreclosed and the Washington and Cumberland became the purchaser, then the annuity of $15,000 would be wiped out. His amendment would remedy the defect. He did not agree with Mr. Rich as to the wiping out of the other terms and stipulations in the lease, but maintained that any law enacted by the Legislature to carry into effect the provisions of the lease would be binding on the Washington and Cumberland. The amendment he offered was the only way to fully protect the State's interest in the premises. He was not there in the interest of the new company alone. He was there to protect the interests of the State of Maryland.

Mr. Laird said it seemed to him in the debate one essential fact had been left out, and that was the operations of the bill did not commence until all the assignments had been made by the State to the Washington and Cumberland Railroad Company. The railroad company was not obligated to do a single thing – to grade a foot of road or to lay a rail until the State had performed all the stipulations in transferring the liens and mortgages of every description to it. And the new company was to obtain the stock of the State in the canal; therefore, it became the canal company itself. The only parties, therefore, to the proceedings when undertaken for foreclosure proceedings under the mortgage of 1835 are the canal company and the railroad company, which are one and the same thing. The amendment of the gentleman from Baltimore county he thought perfectly feasible. When the question came up every conceivable party at interest would be the Washington and Cumberland Railroad Company, and it was right that the Legislature impose conditions upon it in order to preserve the new company as a competing railroad.

The substitute of Mr. Rich was then defeated by a vote of 39 yeas to 46 nays.

Mr. Shaw offered the following to be known as section 8, which was adopted: "And be it further enacted that upon the execution of the lease authorized by this act the said Washington and Cumberland Railroad Company shall execute and deliver to the treasurer a bond to this State in the penalty of $1,500,000, conditioned for the faithful performance of the conditions and stipulations of said lease, with sureties to be approved by the board of public works."

Section 8 of the old bill was then, on motion of Mr. Shaw, made section 9.

All the sections having been considered, Mr. Laird then offered an amendment to the bill in the shape of several sections, as follows:

Sec. 10. *And be it further enacted,* That if the said Washington and Cumberland Railroad Company shall fail to perform the covenants and agreements in said lease contained at the time and in the manner therein specified and set forth, and as provided in this act, said lease shall at once expire, and all the liens of the State upon the property and franchises of said Chesapeake and Ohio Canal Company, and all the capital stock thereof which may have been assigned and transferred by the board of public works or any officer of this State to the said Washington and Cumberland Railroad Company, shall immediately revert to the State of Maryland, and all the rights of the State thereunder shall be restored as completely in all respects as if said assignments and transfers had not been made and such lease had not been executed.

Sec. 11. *And be it further enacted,* That if said lease shall expire and the State's interest in said Chesapeake and Ohio canal shall revert and be restored as provided in the last preceding section, then the attorney-general of

this State shall, and he is hereby directed to forthwith institute such legal proceedings as he shall deem appropriate in the Supreme Court of the District of Columbia, and in the Circuit Court of any one of the counties of this State in which the Chesapeake and Ohio canal is located, in the name of the State of Maryland, as plaintiff, against all parties properly entitled to be made defendants in said cause, to procure a decree or decrees for the sale of the said canal, its works and property rights, under the several mortgages and liens heretofore executed by the Chesapeake and Ohio Canal Company in favor of this State, and upon which the said Chesapeake and Ohio Canal Company has long made default.

Sec. 12. *And be it further enacted*, That no sale that shall be made under any such decree or decrees shall pass a complete and valid title to the purchaser or purchasers of said Chesapeake and Ohio canal, its works, property, franchises and property rights, until, in an addition to an order or orders of final ratification of such sale passed by the court or courts decreeing the same, the said sale shall be ratified and confirmed by the General Assembly next succeeding the date of such sale.

Sec. 13. *And be it further enacted,* That the purchaser at such sale be, and he is hereby authorized and required to operate said canal, either as a waterway, as heretofore, or by constructing a railroad, over and upon the towpath or bed of said canal, or both, to operate it as a railroad throughout its entire length, or as a waterway throughout a part of its length, and as a railroad for the remainder, and to make such use as may be practicable of the water power of said canal, to the end that facilities for transportation shall continue to be furnished throughout the entire length of said canal from Cumberland to Georgetown, and in order that this provision may be made effective the said purchaser, upon compliance with the terms of sale, is hereby declared to be invested with all the powers, rights and franchises conferred upon said Chesapeake and Ohio Canal Company by the original charter and supplements thereto, so far as the same may be needful, and said purchaser if hereby further authorized to organize a railroad corporation, by compliance with the provisions of the Code of Public General Laws of this State in such case made and provided, with full power to construct, maintain and operate its railroad, and to issue bonds or other evidences of debt, and to secure the same by a mortgage or mortgages of its property and franchises in the discretion of the president and directors, and to connect with any existing railroad or any railroad that may hereafter be constructed, upon such terms as the president and directors of said several railroads shall respectively agree upon, and to make such traffic contracts with such other railroad companies as shall be mutually satisfactory, or to lease its said railroads to any other railroad company other than a railroad company owning or operating a competing or parallel or nearly parallel railroad, upon such terms and stipulations as may be mutually agreed on; provided, however, that in case said railroad shall come under the control of, or be managed by or in the interest of any competing or parallel or nearly parallel railroads, then its rights and powers under its certificate of incorporation shall thereupon cease and determine, and said corporation itself shall be dissolved.

Sec. 14. *And be it further enacted*, That in case the said purchaser shall fail to comply with the provisions of the preceding section, then the said sale or sales and all the rights acquired thereunder shall be null and void, and the State shall be reinstated in its rights as fully as if said sale had not been made; provided, however, that interruption of navigation on said canal or any cessation of transportation upon it during the construction of any railroad over and upon any part of the bed of said canal or its towpath shall not be constructed as a failure to comply with the provisions of the preceding section.

**DR. SHAW'S PRIVILEGE**

Mr. Shaw arose to a question of privilege. He said that the Annapolis correspondent of the Baltimore *Sun* stated in an article that Mr. Rich

had not been given a chance to read the canal-lease bill, and that he (Mr. Shaw) admitted that he himself had not read the bill. The article further said: "Dr. Shaw is chairman of the ways and means committee. Therefore, the spectacle is presented to the people of Maryland of its representatives in the House of Delegates passing a bill of the prime importance of this one, which disposes of the interests of the State in the canal without its provisions having been read in the committee which reported the measure." "Now, I don't believe," continued Mr. Shaw, "that this misrepresentation was maliciously done, but it does ne the same amount of harm as if it had been done with malice aforethought. I believe that every member of the committee was present, and they will bear me out when I say that I read the bill section by section, from beginning to end; and after some objection they all agreed to report it so that it might go abroad through the newspapers. Now I think it unjust on the part of any correspondent to make an assertion like that about any member who is making an honest effort to di his duty. It is the first time in 20 years that I have ever had occasion to correct a newspaper correspondent. I always treat them courteously and they have done likewise by me, and I trust that the correspondent of the Baltimore *Sun*, who was doubtless misinformed by somebody, will make the only reparation that he can, and that is in tomorrow morning's paper contradict his statement. Should he do so I will be entirely satisfied." Mr. Rich indorsed Mr. Shaw's statement as to the reading of the bill in committee.

The House took a recess until 5 P. M.

Consideration of the canal lease bill was resumed in the evening, the matter pending being the amendments offered by Mr. Laird this afternoon.

Mr. carter said that after giving the matter his careful consideration he was fully convinced that these amendments were not necessary, and would only be an incumbrance to the bill; for the amendment of Mr. Shaw that had been adopted, requiring the Washington and Cumberland Road to give bond in the sum of $1,500,000 was all the security that was needed. Had Mr. Shaw's amendment not been adopted, he should have favored these amendments. Mr. Laird said that he would vote for the bill whether his amendment was adopted or not, and it was only because he wanted to see the road built as speedily as possible that he pressed the amendments; that the bond of $1,500,000 was only security for the performance of the covenants of the lease, but if the Washington and Cumberland were to go into court to sue, how could they estimate the damage? I merely want to perfect the title to the canal, for if the title is not perfect, do you think the shrewd business men of Baltimore city that are interested in the leasing of the canal will put $3,000,000 into it? These are the reasons why I press these amendments with all the fervor and earnestness that I possess. Mr. Shaw said that he would vote against the amendment, as he did not think it would facilitate the building of the railroad. The amendment was rejected by a vote of 30 to 40.

Mr. Meloy offered an amendment striking out the word "deem" in regard to the Washington and Georgetown level being kept in repair, which was rejected, and on motion of Mr. Laird the bill was ordered engrossed for a third reading, and on motion of Mr. Carter, its third reading was made the special order of the day for tomorrow at one P. M.

*Sun*, Sat. 2/22/90, p. Suppl. 2. **Legislative Acts – Other Business** – House bill to lease the Chesapeake and Ohio canal to the Washington and Cumberland Railroad Company was read the first time and referred to the finance committee.

---

**House of Delegates**

The canal lease bill was taken up in the House of Delegates on its third reading and final passage.

Mr. Rich said: "I rise more for the purpose of explaining my vote than to address any argument to the House on the bill itself. So far as disposing of the State's interest in the

canal for the purpose of establishing a railroad thereon, I am favorable to such a proposition, but that railroad should be preserved as a competing line. The provisions of this bill do not protect the State in this respect, however. They don't secure the construction and maintenance of a competing line from the coal region. They don't protect the State from the evil of some competing line purchasing the new road. I think that on these points the State should be amply protected, and I regret that such protection is not afforded by this bill. I must, therefore, refuse to vote for it."

Mr. Craig – "I have all along voted to throw as much light on this question as it was possible to have. But we have reached a period when we must cast our votes one way of the other, and while I am not sure that the bill is all we want, yet I shall plunge in and vote aye."

Mr. Drach – "Then I want time to read the journal, and I therefore move to postpone the bill until next Wednesday."

The motion was lost.

Mr. Dryden – "I have voted for all the amendments offered, even those emanating from other sources than the chairman of the committee on ways and means, but I did so believing them not to be dilatory, but safeguards. I have been from the first, and am now, in favor of the railroad scheme, and while not satisfied with the phraseology of the bill entirely, but believing the possible benefits from it will be greater that the disadvantages, I will vote aye."

Mr. Whitson – "I have done all that I could to have the canal restored as a waterway, but I do not how see the remotest chance to effect that, and with the question before me whether it be better to have a railroad or to wait two years longer without anything, I will vote for the bill."

Mr. Keedy said that in view of the legal proceedings now pending, the canal could in no way be controlled by any action of this Legislature.

The bill was then put to a vote, and passed by a vote of 65 yeas to 15 nays.

Mr. Carter moved to reconsider the vote by which the bill was passed, and Mr. Dryden moved to lay the motion on the table. The motion to lay on the table was carried, thus precluding the possibility of a reconsideration of the bill.

*Sun*, Mon. 2/24/90, p. 1. **CANAL RECEIVERS** – **Judge Alvey Decides in Favor of the Bondholders.** – Hagerstown, Md., Feb. 23. – Chief Judge Alvey will on Monday morning file the following opinion in the Chesapeake and Ohio canal cases, in which he decides to appoint receivers for the canal:
**Geo. S. Brown et al vs. The Chesapeake and Ohio Canal Company**. No. 4191 Equity. – In the Circuit Court for Washington County, sitting as a Court of Equity.
**James Sloan, Jr. et al, Trustees, vs. The Chesapeake and Ohio Canal Company and Others**. No. 4198 Equity. – In the Circuit Court for Washington County, sitting as a Court of Equity.

There have been two bills filed against the Chesapeake and Ohio Canal Company and others, both seeking the enforcement of large lien claims against the property of the company and the appointment of receivers. And as both bills relate to the same subject matter, and, to a large extent, seek to effect the same objects as means of relief, the two cases will be consolidated without prejudice, of course, to any conflict of claims that may arise.

The first of these bills is that by the trustees acting under the mortgage executed by the canal company in pursuance of the provisions of the act of the General Assembly of Maryland of 1884, chapter 281, to secure the bonds authorized to be issued by that act, now amounting, with the arrearage of interest, to about the sum of $4,250,000, and the second bill is filed by the trustees to whom the mortgage authorized by the act of 1878, chapter 58, was executed by the company to secure the bonds issued under this latter act, which bonds with the arrearage of interest thereon, now amount to nearly $600,000. In both of these bills, it is charged that the canal is in a broken

and waste condition, and that the company is, and has been for a long time past, in default in paying overdue interest and meetings its obligations; that it is hopelessly insolvent, and that it is no longer able to maintain and operate its work, and that it has, to all intent and purposes, abandoned the canal with no prospect whatever of being able to resume operation.

The relief prayed for by the first bill is that there be a receiver appointed to take charge of the property and works of the company, and to repair and operate the canal for the purpose of raising revenue with which to pay off the debts of the company, and for general relief. And by the second bill the relief prayed is that the mortgage of 1878 be foreclosed, and that a sale of all the property embraced in the mortgage, including the canal itself and the franchises of the company, be sold under a decree of the court, and, until such sale can be made, that a receiver be appointed to take charge of the property and to repair and operate the work. The first bill is filed against the canal company and the trustees named in the mortgage of 1878, and the second bill is against the canal company and the trustees acting under the mortgage made to secure the bonds issued under the act of 1844. The defendants have all answered except the trustees for the bondholders under the act of 1844

**THE COMPANY AND THE STATE.**

The canal company, by its answers, and also by its counsel in argument, strongly resists the appointment of receivers under either bill. It admits its insolvency as charged by the complainants, and its utter inability to repair and operate the canal; but it insists that there should be an immediate sale of the entire work, and that the appointment of receivers could result in no good, but would in fact be seriously prejudicial to the interests of the State and other creditors of the company.

The attorney-general of the State, acting under the authority of a joint resolution of the two houses of the present General Assembly, has made the State a party defendant in both cases, and as the largest creditor, as well as the largest stockholder of canal company, the State has answered both bills, and the State, like the canal company, strongly opposes the appointment of receivers, and insists, if it be possible, that an immediate sale should be effected, and for very much the same reasons as those put forth from the canal company. Certain of the bondholders, both of the bonds under the act of 1844 and under the act of 1878, have obtained leave to be made parties defendants, and have answered, and they also resist the appointment of receivers and insist upon immediate sale.

It was on this state of case that the motions made for the appointment of receivers in both cases were heard. The motions were heard together, and they were most fully and ably argued by counsel representing all the parties to the two cases. The cases are of great importance, not only to the immediate parties concerned, but to the public at large, and several of the questions that have been presented and argued are of the deepest interest, considered simply in a judicial point of view. Some of these questions, while it may become necessary to decide them in the further progress of litigation, it will not be necessary for me to decide in passing upon the present preliminary application for the appointment of receivers. I shall, however, refer to them in the course of my opinion.

Now, supposing the allegations of the complainants, with the exhibits and affidavits filed, to be sufficient to show grounds for the appointment of receivers in respect to the provisions of the acts of 1844 and 1878, and the mortgage made under those acts respectively, the questions presented, and which are required to be decided on these preliminary motions, are: First, Has the canal company, as the debtor of the complainants, any right or standing in court to resist the appointment of receivers, of to insist upon the immediate sale of all its property and franchises, for the reasons stated in its answer. Second, Has the State of Maryland, as a deferred or subordinate lienholder, in view of the provisions of the acts of Assembly referred to, any right to resist the appointment of

receivers and to insist upon an immediate sale of the work? Third, Have the intervening bondholders, either those under the act of 1844 or those under the act of 1878, any right, under the circumstances of the case, to resist the appointment of receivers and insist upon the sale of the canal, notwithstanding the trustees representing the bondholders ask for receivers, and not for an immediate sale? I shall consider these questions in the order I have stated them.

**HOW THE CANAL ORIGINATED**

1. And first with respect to the position of the canal company: That company, as we all know, was organized under a charter first granted by an act of the Legislature of the State of Virginia, and which act was subsequently accepted, assented to and confirmed by an act of the Legislature of this State, and shortly thereafter, by an act of Congress of the United States, the Virginia act for incorporating the canal company was ratified and confirmed, so far as might be necessary for the purpose of *enabling* the company when formed, "to carry into effect the provisions thereof (the act of incorporation in the District of Columbia, within the exclusive jurisdiction of the United States, *and no further*." The company was projected for great commercial purposes; the canal was designed to become a great interstate waterway, by which the waters of the Chesapeake were to be connected with the waters of the Ohio. Powers and franchises of the most ample character were conferred. The donation of the charter was declared to be perpetual, and "that the said canal and the works to be erected thereon in virtue of this act, when completed, *shall forever thereafter* be esteemed and taken to be navigable as a public highway, free for the transportation of all goods, commodities and produce whatever, on payment of the tolls to be imposed, as provided by this act." The company was also clothed with the right to exercise the power of eminent domain, by which it could acquire land for the construction of its works, of which land, it was declared, the company should be *seized as of an absolute estate in perpetuity*. These provisions clearly show that it was the intention of the Legislature from which the charter emanated that the canal when made was to be and forever remain a great water highway.

**BONDHOLDER OF 1844.**

But few years elapsed after the organization of the company, and the work of construction was commenced, before financial troubles and embarrassments were experienced. And it was during the early periods of the embarrassment of the company that this State, by large subscriptions to the stock and the loan of its credit, became creditor to the extent of several millions of dollars. As security for these loans and the guaranty given on the subscriptions to stock, the State exacted liens and mortgages upon the entire works and property of the company, and of the tolls and revenues that might be received. This aid, however, proved quite insufficient, and after the canal had been constructed to dam No. 6, all further work ceased for the want of money. It was in this state of affairs that, in 1844, another appeal was made to the State for aid. This appeal was yielded to, not by the loan of money, but by the waiver of all priority of liens in favor of bonds that might be issued by the company to the extent of $1,700,000 – that being the amount supposed to be necessary to complete the canal to Cumberland. This waiver on the part of the State, and authority to the canal company to issue preferred bonds, was effected by the act of 1844, chapter 281, passed on the 10th of March, 1845. By the first section of that act the company was authorized to issue the preferred bonds, and by the second section it is declared that "the bonds so issued as aforesaid shall appear on the face of the same to be preferred liens on the revenues of said company, according to the provisions of this act, and with the assent of the said company, as hereinafter provided; the said bonds, without any preference or priority over each other on account of date, *shall be preferred liens on the revenues and tolls that may accrue to the said company from the entire and every part of the canal, and its works between Georgetown and Cumberland, which are hereby pledged and appropriated in the payment of the same, and*

*the interest to accrue therein*, in the manner hereinafter mentioned." To this second section there is a proviso "that the president and directors of the 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 opinion may be necessary to put *and keep* the said canal in good condition and repair for transportation, provide the requisite supply of water, and pay the salaries of officers and agents, and the current expenses of said company." In the fourth section of the act it is further declared that the State's rights and liens upon the revenues of the company shall be waived, deferred and postponed in favor of the bonds authorized to be issued, so as to make such bonds, and the interest to accrue thereon, preferred and absolute liens on said revenues, "until said bonds and interest shall be fully paid."

By the fourth section of this act of 1844 it is made the duty of the canal company to pay the interest on the preferred bonds semi-annually, and as soon as the net revenues of the company, arising from the canal and its works, should be more than sufficient to pay such interest, and such further sum, not exceeding $5,000 annually, as might be necessary to pay the interest on the bonds or certificates of debt that had been issued by the canal company to the creditors of the Potomac Company, it was then declared to be its duty to pay over annually to the treasurer of the State a sum not exceeding $25,000, to raise the sinking fund to pay the principal of the bonds. And it was further provided that the canal company should be authorized to execute any deed, mortgage or other instrument of writing that might be deemed necessary or expedient to give the fullest effect to the provisions of the act.

The act was accepted by the canal company, the bonds were issued in pursuance of the act, and a mortgage was executed by the company to five trustees, as means of security to the bondholders, that the revenues and tolls of the company should be applied as contemplated by the terms of the act. Of these preferred bonds, the State of Virginia became grantor of $300,000, but that State is not a party to these proceedings, except as it may be represented by the trustees acting under the mortgage.

**RIGHT TO MAINTAIN THE CANAL.**

It is too plain for question, that the provisions of the act that I have quoted constituted a solemn tripartite contract between the State, the canal company and the purchasers and holders of the bonds. And that being so, every reasonable implication, derivable from the nature and circumstances of the contract is part thereof, and is just as binding upon the parties as are the express terms of the contract. As has been observed, the only security for the payment of either principal or interest of the bonds was the pledge of the revenues and tolls of the company. It is manifest that it was contemplated by the parties and formed the moving inducement to the making of the contract, that the canal was not only to be complete to Cumberland, but was to be maintained and kept in operation as a waterway. Without this, the entire security for the loan might become mere worthless paper. Indeed, it would not be consistent with good faith on the part of the State, or those who directed the affairs of the canal company, to suppose that they contemplated, at the time of issuing the bonds, the contingency of abandoning or disposing of the canal while it was possible to maintain the work and make it earn revenue for the payment of the debts that were dependent alone upon the revenue for satisfaction. If, therefore, it can be shown that it is reasonably feasible to restore the canal to navigable condition, and to make it earn revenue that will be applied to the payment of the preferred liens created under the act of 1844, after the payment of prior liens, then it will be the absolute right of the bondholders that the canal be maintained, unless the power of sale of the corpus of the work has been legally conferred as security for the payment of debts of paramount right. And even though there may be a valid power of sale, which may be executed at the instance and for the benefit

of a class of bondholders having a superior lien, still, as both the canal company and the State, by their answers, deny any and all right of the bondholders claiming under the act of 1844, in the *corpus* of the work, if the canal, by proper repair ant reasonable cost, can be made available to pay both classes of bondholders, according to the terms of their respective contracts, the plainest principles of justice and good faith require that it shall be done. This, I think, is too clear to be successfully controverted by any one, and especially should it not be by the canal company.

**ENTITLED TO ASK FOR RECEIVERS.**

But it is insisted, both by the canal company and the State, that the trustees representing the bondholders under the act of 1844 are not entitled to ask for the appointment of receivers, because, they say, there has been no such default or breach of the condition in the mortgage, by the company, as would entitle the trustees to enter and take possession of the work, and operate it, and appropriate the tolls and revenues to the payment of the bonds. It is true, it is stipulated in the mortgage, that so long as the company should comply with the conditions of the contract it should retain possession and management of the work, and collect and receive the revenues and tolls. But, in the language of the condition, "If they failed to comply with those conditions *from any cause,* except a deficiency of revenue arising from a *failure of business* without fault on the part of the company, such defaults to be made to appear by the grantees" in the mortgage, the latter were to be entitled to take possession.

Now, what was contemplated by the parties when thy made this stipulation? It is manifest they contemplated the continuous operation of the canal, and as long as it was managed faithfully and the revenues were properly applied the company would have the right to retain possession, *operate* the work and collect and apply the tolls and revenues. But how should it be when the canal ceased to be operated, and the company is no longer able to operate it, or to prevent it going to utter ruin? Such state of things was never contemplated; and it is not reasonable to suppose that the trustees looking to the rights and interest of the bondholders, could ever have agreed that the company should retain the exclusive control and management of the work, after it had ceased to be able to operate the work or to prevent it going to destruction. It is not a failure of business so much as it is an incapacity of the canal to do business, and the company is without the power or means of restoring the capacity of the work no matter how much business might be brought to it, if it were in good working condition. I cannot, therefore, accede to the proposition urged by both the canal company and the State, that the trustees would have no right to take possession under the mortgage.

But whether the trustees would have the right of personal possession and control of the canal or not is a question that I do not deem of essential importance in this case. It is certainly not a controlling question; for this is not an application by the trustees to be placed in possession of the canal by virtue of the stipulation in the mortgage, but it is an application to a court of equity for the exercise of its ordinary jurisdiction for the protection of creditors and the enforcement of a trust created for their benefit.

**BONDHOLDERS OF 1878.**

Suppose, however, it were conceded that there is no sufficient ground shown on behalf of the bondholders under the act of 1844 for the appointment of receivers, it does not follow that there is not sufficient ground shown on behalf of the bondholders under the act of 1878.

In 1878, the canal having been seriously injured by freshet, it became necessary for the State to extend further aid to the company, and this was done by a further waiver of the State's liens and the giving authority to issue preferred bonds to the extent of $300,000. These bonds are known as repair bonds, issued under the act of 1878, chapter 8, and are secured by mortgage of the tolls and revenue, and also of *all the property and franchises* of the company. This act of 1878, in its preamble, recites the

provisions of the act of 1844, chapter 281, and professes to be passed to carry into effect the reserved power of the company, under the act of 1844, to use and apply such portion of the revenues and tolls of the company as might be necessary to put and keep the canal in good condition and repair. By the first section of the act, the bonds are authorized to be issued, and they are declared to be preferred and absolute liens on the revenues, tolls and property of the company, "to be paid and discharged in preference to any other claims or liens upon the company or its works and property, and in preference to any bonds which may be subsequently issued by the company, for the purpose of putting and keeping the said canal and its works in good condition and repair," &c. And by the second section, it is provided that a mortgage shall be executed by the company, to three trustees named, of the tolls and revenues and other property, land, water rights and franchises of the company to accrue the payment of the principal and interest of the bonds. It is further provided that the trustees, or a majority of them, shall have power, "in case of a default in the payment of three successive coupons upon said bonds, to proceed, upon application to them in writing of the holders of a majority in amount of the bonds issued and then outstanding secured by said mortgage, to obtain from any court of equity in the State of Maryland, having jurisdiction, by regular proceedings, according to the course of courts of equity in this State, a decree for the sale of said canal and other mortgaged property and franchises, *and for the appointment of a receiver, or both*, as may be found necessary, to the end that the security hereby authorized for the payment of the said bonds and coupons may be full, ample and effectual."

**THE COMPANY'S CLAIMS UNTENABLE**

Now, it is shown that there has been default made in the payment of six successive coupons, and the trustees in the mortgage have been required by the holders of a majority in amount of the bonds to take proceedings as authorized by the act. This act of 1878 is certainly binding upon the canal company, and it has been held by the Court of Appeals that it was competent to the company to anticipate the receipt of tolls and revenues authorized to be applied to keeping the canal in repair by issuing bonds to bind as preferred liens the future revenues of the company. (Com. of Virginia vs. Canal Co., at Md. 501.) That being so, it is difficult to perceive upon what principle the canal company, in the face of its express agreement, can be heard to resist the appointment of receivers. And in view of the express provisions of its charter to which I have referred, and the contract with the bondholders under the act of 1844, I am at a loss to understand upon what principle the canal company can insist upon a sale of the property and franchises, and consequently upon its own destruction, rather than a receiver to preserve its existence. I am very decidedly of the opinion that such a contention as the company makes in this case cannot be maintained.

**THE STATE'S STATUS IN THE CASE**

2. Then as to the position of the State in this litigation. Like the canal company, the State, in its answer, has become *an active* party in resisting the appointment of receivers and in insisting upon a decree for a sale of the canal.

In the first place, a subordinate lienholder, to be entitled to insist upon a sale of the subject of the liens, as against superior lienholders, should be able to show with some reasonable degree of certainty that he has a substantial interest in the proceeds of sale after paramount liens are discharged. Here, if the sale of the canal were decreed, it is doubtful whether a sufficient sum could be realized to pay all prior liens to those held by the State. For if we assume that the bonds issued under the act of 1844, with all the accrued interest thereon are to be paid out of the proceeds of sale of the canal, as well as the bonds issued under the act of 1878, with interest, to say nothing of the large arrearage of interest on the bonds or certificates of debt issued to the creditors of the Potomac Company, the canal would have to sell for a sum exceeding $5,000,000 in order to entitle the State to any

distribution to its large lien claims, now amounting to more than $20,000,000. Of course, I intimate no opinion as to how a court of equity would distribute the proceeds in case of sale.

**POWER TO CONTRACT FOR A SALE**

In the answer of the State to the bill filed by the trustees for the bondholders under the act of 1878, a question is submitted for the decision of the court whether, under the constitution, article 12, section 3, the State's interest, whether it may be, either as stockholder or creditor, in the Chesapeake and Ohio Canal Company could be disposed of, as has been done by the act of 1878, chapter 58, without the ratification of the General Assembly of 1880. The constitution declares that no sale or contract of sale of the State's interest in the Chesapeake and Ohio Canal Company "shall go into effect until the same shall be ratified by the ensuing General Assembly." Whether the act of 1878 and the mortgage, with power of sale, *of all the property and franchises of the company*, made in pursuance of the act, constitute a sale or contract of sale of the State's interest as stockholder and creditor is a question for more than ordinary consideration. That the act and the mortgage made under it, so far as they seek to bind and pledge the tolls and revenue of the company, are valid, I think is clear. To that extent the company had power reserved by the act of 1844, chapter 281, as construed by the Court of Appeals in the case of Com. of Virginia vs. Canal Co. *supra.* But as to the property and franchise of the company attempted to be disposed of, quite a different question is presented, and one that I do not propose to determine on this preliminary application.

**HAS THE STATE VIOLATED ITS CONTRACT?**

But supposing it to be determined that the constitutional provision does not apply to the act of 1878 and the mortgage thereunder, there is another question arising on that set that will have to be decided before a sale is decreed, and that is whether it was competent of the Legislature and the canal company, without the consent of the bondholders under the act of 1844, to confer the power of sale, as is done by the act of 1878, so as to transfer the *corpus* of the work free and discharged of the lien and pledge of the revenues and tolls for the payment of the bonds, and thus destroy the only security furnished by the contract. That contract was founded upon a plain implication that the canal should be kept and maintained as a waterway if by the use of any reasonable means it could or might be done. The State can exercise no sovereign power to violate its contract, nor can it authorize others to do so. Without the assent of the bondholders themselves, it is a grave question whether the State could confer power to bring about a sale of the canal, regardless of the previous pledges of the tolls and revenues, by the simple act of the canal company in making default in the payment of three interest coupons. This question may arise in the further progress of the cause, but I shall not now, because it is not necessary, express any opinion in regard to it.

Both the State and the canal company have agreed with the bondholders under the act of 1878 that upon default of the canal company in the payment of interest, it should be competent to the trustees in the mortgage, upon request of the holders of a majority in amount of the bonds, to apply to a court of equity for a decree for the sale of the canal and the appointment of a receiver, or both. The default has been made by the company, and the application is now presented for both the appointment of a receiver and ultimately for the sale of the canal. Can the State resist the appointment of receivers? I am clearly of opinion it cannot. The State may desire a sale, and it may be conceded that the interest of the public would be better served by a sale and a conversion of the canal into a roadway than by keeping and maintaining it as a waterway, but that fact in no manner affects the question presented in these proceedings. The rights set up here by the complainants are contractual rights of creditors, and they are paramount to any mere State policy or general interest of the public, and are superior, by expressed

agreement, to any rights of the State as creditor. They are to ne enforced as other contractual rights are enforced; at least they are to be enforced so far as practical means can be reasonably employed to that end.

**The minority bondholders**

3. Next, as to the right of the bondholders who have intervened and become defendants to resist the appointment of receivers and to insist upon a sale of the canal.

It is certainly a well-established general rule that trustees of a railroad or canal mortgage represent the bondholders *in all legal proceedings* carried on by them affecting the trust to which the bondholders are not actual parties, and whatever binds the trustees, if they act in good faith, binds the *cestui que trusts*. It is said by the Supreme Court that the trustees in such case "represent the mortgage, and in executing his trust may exercise his own discretion within the scope of his powers. If there are differences of opinion among the bondholders as to what their interests require, it is not improper that he should be governed by the voice of the majority, acting in good faith and without collusion, if what they ask is not inconsistent with the provisions of his trust." (Shaw vs. Railroad Co., 100 U. S., 605, 612.) Here it is alleged, and the allegation is not controverted, that the trustees for the bondholders under the act of 1844, in taking these proceedings are acting with the approbation and at the request of holders of a large amount of the bonds; and in the case of the trustees for the bondholders under the act of 1878, that they are acting for the holders of a majority of the bonds in amount. There is no charge that the trustees are not acting in good faith; and in the absence of such charge and proof of the fact, the court must assume that their conduct is *bona fide*. And that being so, it follows that a minority of the bondholders would have no right to intervene to control the proceedings, or to interpose any obstruction to the relief prayed by the trustees, that relief being consistent with the trust.

4. As I have before stated, there is no controversy in regard to the facts as to the broken condition of the canal, and the utter insolvency of the company. In their answers, both the canal company and the State expressly admit that the company is insolvent, and that it has not paid any interest on the bonds issued under the act of 1844 since the coupons that fell due to July, 1843, and that the principal of said bonds is also overdue and unpaid. It is also admitted that the company is without credit, and that it is unable to borrow any money for repairs to put the canal in condition for business. In fact, the canal is going to utter waste and ruin, and the company is wholly unable either to repair or to use the work in any manner whatever.

There can be no doubt, I think, that these facts are amply sufficient, both upon principle and authority, and especially in view of the express stipulations for possession in the event of defaults by the company, to entitle the complainants to the appointment of receivers.

In the case of the American Bridge Company vs. Heidelbach, 94 United States. 798, the bill was filed by trustees upon a mortgage not unlike in several particulars the mortgage in this case made under the act of 1844. There, besides the bridge of the company, the mortgage included "the rents, issues and profits of said bridge, as far as the same are not required to pay the necessary expenses of keeping in repair and operation said bridge, which rents, issues and profits," it was declared "are hereby pledged to the payment of said interest as it matures and to the establishment of a sinking fund for the redemption and payment of the principal of said bonds," &c. It was further provided that if the interest were in default for six months, the trustee, upon the written request of the holders of one-half of the outstanding bonds, might take possession of the mortgaged premises, manage and operate the bridge, and receive and collect all rents and claims due and to become due to the company. The interest on the bonds being in default, the trustees filed their bill; and the Supreme Court, in declaring the rights of the trustees under the mortgage, said: "In this case, upon the default which occurred, the

mortgagees had the option to take personal possession of the mortgaged premises, or to file a bill, have a receiver appointed and possession delivered to him. In either case, the income would thereafter have been theirs."

And in the case of the canal company vs. Vallette, (21 How, 414,) bonds had been issued by the canal company, pledging the real and personal property of the company for the payment of the debt and interest, and on the face of the bonds it was stipulated that the principal sum was the first and only loan created by the company under its charter for the completion of the canal; that the faith of the company and their effects, real and personal, were pledged for the payment of the debt and interest; that the bonds should have a preference over all debts to be thereafter contracted; that in default of the payment of interest, the holders of the bonds might enter into possession of the tolls, water rights and other income of the company, and might apply to any court in the State (Federal or State) for the appointment of a receiver, and that the company would not appeal to any other court. There was a default made in the payment of the interest on the bonds, and the bondholders filed their bill in the Circuit Court of the Untied States to enforce the stipulations in the bonds as being in the nature of a mortgage, and for the appointment of a receiver. They alleged that the company was insolvent; that its stock had no value, and that the canal was exposed to dilapidation and ruin, and they had no ability to remedy such disaster. The Circuit Court entered a decree for the enforcement of the covenants in the bonds, and appointed a receiver; and the decree was affirmed by the Supreme Court of the United States.

Other cases in support of the same proposition might be referred to; but I deem it sufficient to refer only to High on Receivers (2nd.,) sections 379, 380 and 381, where the cases will be found collected.

**RECEIVERS TO BE APPOINTED**

Upon the whole I cannot doubt as to the right of the complainants to have receivers placed in charge of the canal and all the property and effects of the company within the limits of this State. I shall, therefore, appoint receivers. But it is not to be understood that because receivers are appointed it is to follow as matter of course that power is to be conferred on them to issue certificates to constitute additional liens or charges on the property. That will depend upon what may be shown to be the actual condition of the work, the amount required to put it in good repair, the feasibility of restoring to the operation of the canal a sufficient number of boats and boatmen, with a reasonably certain prospect of such an amount of tonnage as will pay not only ordinary expenses, but yield a revenue applicable to the payment of the interest on the preferred debt. Without this, it would be simply an experiment of doubtful success, and which might prove disastrous to the bondholders having the preferred liens. Assuming the power of sale to be available, the bondholders of the act of 1878 would be entirely secure in the salable value of the canal, provided there be no superior liens created. But the situation of those standing behind them is very different, and the rights of the deferred lien holders must not be sacrificed or impaired by experiments of doubtful propriety.

**PRACTICAL MEN TO BE CHOSEN**

In the selection of receivers, I shall aim to get men of practical knowledge and experience in the operation of the canal, and of reliable judgment as to the future prospects of the work. They must, of course, be impartial as between all parties concerned and the conflicting interests involved, and as they will be the officers and representatives of the court, I shall require that they be residents of the State, and subject at all times to the immediate control and jurisdiction of the court. And if, after being furnished with such information as the receivers may be able to furnish as to the condition of the canal and the probable cost of repairs and the feasibility of operating the work, it shall be determined that it is not practical or wise consistently with the rights and interests of those concerned that any attempt should be made to restore and operate the work by the creation of additional preferred

liens, then it will become necessary to consider and determine the question of sale. Until than that question will not be decided.
February 21, 1890. R. H. ALVEY

**RECOMMENDED FOR RECEIVERS**

On Saturday, February 22, Bradley S. Johnson, on behalf of the 1844 bondholders, filed with Judge Alvey a paper recommending the appointment of Bradley S. Johnson and John S. Gittings as receivers for the canal.

---

**COMMENTS ON THE OPINION**

The Hon. Wm. Pickney Whyte, who read Chief Judge Alvey's opinion carefully, says: "The Judge seem to have given the matter the fullest consideration, and the result is a very clear judicial opinion. After reviewing all the legislation and the condition of the pleadings he comes to the conclusion that both the bondholders of 1844 and of 1878 are entitled to judicial protection. He evidently considers the act of 1844 and the mortgage under it was a tripartite contract between the bondholders, the canal company and the State, which the State can hardly repair by legislation authorizing the sale of the canal, so long as it is capable of earning tolls and revenue to pay the interest on the construction and repair bonds. The appointment of receivers to take possession of the canal property, books and accounts was not unlooked for, yet the court has not committed itself as yet to the matter of repairing the canal and running it by receivers, but holds that under advertisement to await a report from the receivers as to the cost of repairs and the probability of a sufficiency of business to justify such proceeding. The question as to the validity of the legislation giving the bondholders of 1878 the right to a sale of the canal, in view of the previous contract of 1844 pledging the tolls of the canal, is also reserved. It looks as if, after pledging the earnings of the canal to pay the bondholders of 1844, the state could not by the act of 1878 destroy the things out of which the revenues were to come. In other words, you can't pledge the golden eggs and then kill the goose that lays them."

Mr. John P. Poe said he had only had time to glance at the decision of Chief Justice Alvey. He expects that, because of the magnitude of the interests involved, and appeal will be taken. That appeal will come up at the April term of the Court of Appeals, and it will be May 1 before that court will render its decision. The Senate will take up the canal railroad lease bill, which was passed by the House, and it is the belief of Mr. Poe that the bill will go through the Senate. He expects that there will be plenty of litigation yet about the canal.

*Sun*, Tue. 2/25/90, p. 1. **STATE CAPITAL AFFAIRS** – Annapolis, March 24 – Senator Poe's bill to provide for the taking of testimony in the canal cases now pending in the Circuit Court for Washington County, in equity, and to authorize appeals from any order or orders that may be passed in said cases, or either of them, by said Circuit Court, has been amended by the author. As amended, the sections of the bill which relate to the right of appeal now read as follows: "In addition to the right of appeal now given by the Code of Public General Laws of Maryland, any of the parties to said cases, including the State of Maryland, shall have the right of appeal to the Court of Appeals from any interlocutory order or orders that may be passed by the said Circuit Court in said cases, or either of them, either directing the repair and restoration of said canal and the issue of receivers' certificates for the purpose of raising the money necessary to pay for such restoration and repair, or refusing to direct such restoration and repair and the issue of receivers' certificates , provided that said appeal or appeals shall be taken within thirty days from the date of any such order or orders as to such as shall be passed after the passage of this act and within sixty days as to such as shall be passed before the passage of this act; and provided further that the operation of such order or orders shall not be suspended or stayed by the taking of such appeal or appeals unless the party or parties praying the same or someone on their behalf shall files a good and

sufficient appeal bond according to law. Upon any appeal they may be prayed from the order of said Circuit Court appointing receivers, or from any order or orders that may be passed by said Circuit Court before the passage of this act in relation to the repair and restoration of said canal as a waterway, the Court of Appeals are hereby authorized and directed to consider any testimony that may be taken under the provisions of this act, and the clerk of the said Circuit Court is hereby directed to have sent to the Circuit Court a full copy of all said testimony, which it is hereby declared shall form a part of the record as fully to all intents and purposes as if the same had been taken before the passage of any such order or orders, and said appeal shall be heard by the Court of Appeals as soon after the transmission of the record as practicable."

---

*Ibid.* p. 2. **The Canal Lease Bill in the Courts** – The bill providing for the lease of the Chesapeake and Ohio canal to the so-called Washington and Cumberland Railroad Company is not yet in the courts for the simple reason that, having passed the House, it is now pending in the Senate, and must needs be signed by the Governor before becoming a law. It may be safely predicted that "it will get there all the same" – that is, into the courts. While the bill was still pending in the House, *The Sun* counseled deliberation. When it was being urged with hot and unseemly haste through the House, *The Sun* lifted up a voice of warning and protest. *The Sun* distinctly called attention to the legal and practical difficulties which the question of leasing the canal to a railroad company involved, and counseled delay and careful consideration before any action. We accordingly were of the opinion that the bill should be referred to the attorney-general for his official opinion. When, as our leaders are aware, the original vote of the House referring the bill to the attorney-general was reversed, we reiterated our protest and our warning. We especially pointed out the embarrassment that might ensue and the ridiculous position in which the State itself might be placed if the Legislature undertook to make any disposition of its interests, rights and liens in the canal while the property was in the hands of the courts, or might at any moment be placed in judicial custody and under judicial control by the appointment of receivers by the court. The court, dealing with the cases before it and with the contractual rights and obligations of parties, including the canal company and the State itself, has decided to appoint receivers. How does this affect the pending bill? In the first place, the bill, which is entitled "A bill to authorize the Chesapeake and Ohio Canal Company to lease its canal and all its works to the Washington and Cumberland Railroad Company," &c., in its first section authorizes said railroad company "to enter upon and take possession of said canal and its adjacent land, works, dams, water rights, wharves and other property *immediately upon the execution of said lease*." The railroad company, its officers and agents would have a fine time in attempting to take possession of property which Judge Alvey says, the *will* place in the charge of receivers appointed by himself, or of property which Judge Cox, of the Supreme Court of the District of Columbia, has already placed in the hands of receivers, Judge Alvey's jurisdiction covers every foot and mile of canal property in the State of Maryland. Judge Cox's cover the outlet to the canal, its docks and wharves, and property of every description in the District of Columbia. Any attempt to interfere with the possession already vested in the court's officers would simply result in the imprisonment of the persons making the attempt, no matter who they might be or with what semblances of authority clothed. The courts have abundant power to protect themselves and to enforce their orders and jurisdiction, and the Legislature of Maryland might find itself simply powerless in the premises and its "bill" a worthless piece of paper. This is exactly as it should be, and is a grand illustration of the saving virtue that there is in our institutions, the power of the law and the ability of the courts to make their authority in support of the law respected and obeyed. It

is a fortunate circumstance for every man, woman and child that this is so, and that no man's rights are held subject to the disposition and control of a "lobby." But that is not all. Not simply will the bill, if passed, be a nullity so far as it is intended or attempts to affect private rights of property or take the custody of the canal itself out of the hands of the court's officers; other grave difficulties and complications will arise. The receivership will not be gotten rid of simply by appealing from Judge Alvey's order appointing receivers. Such an appeal may have the effect of staying the operation of Judge Alvey's order until the case can be heard by the Court of Appeals. Such an appeal from Judge Alvey's decision will have no effect whatever in staying the operation of Judge Cox's order or disturbing the possession of the receivers appointed by him. The bill further undertakes to dispose of, in the most arbitrary and cavalier fashion, the rights of the holders of the bonds issued under the act of 1844, long since overdue and amounting, with interest, to between four and five million of dollars. Section 1 of the bill requires the supposed railroad company to pay to the treasurer of the State "a sum equal to 25 percent of the principal of the bonds issued by the company under the act of 1844, chapter 281, such principal amounting to $1,699,500, which said sum said treasurer shall proceed to distribute pro rata among the holders of said preferred construction bonds." Section 6 of the bill provides "that, in case any of the holders of the bonds issued under the act of 1844, chapter 281, shall fail or refuse to accept their pro rata of the sum" provided for the redemption of said bonds – twenty-five cents in the dollar – then the company may sell the canal and all its property, works, &c., under the various mortgages and liens recited in the bill at public sale, upon ninety days' notice of time, place and terms of sale, to the highest bidder. In other words, the State proposes, by act of Assembly, to compel the holders of the bonds of 1844, who accepted those bonds upon the faith of the State's honor, to submit to a confiscation of three-fourths of the value of their property for the benefit of the newly-fledged railroad company and its promoters, or else take the chances of getting nothing. The lien which the holders of these bonds have is, the Court of Appeals has heretofore had occasion to decide, a lien upon tolls and revenues of the canal only. The bill makes provision for the sale of the canal itself and its conversion into a railroad, thus destroying and wiping out altogether all tolls and revenues of the canal. It offers the holders of the bonds twenty-five cents in the dollar of the principal of the bonds. If they do not submit to this robbery to the extent of seventy-five cents to the dollar of the face value of the obligation of the company which they hold, then the canal is to be sold. Chief Judge Alvey plainly decides that this cannot be done. Of course, he makes no allusion in his opinion to the pending bill or the terms of the proposed lease. He considers merely the rights of the bondholders of 1844 and of 1878, the two classes of creditors who are applying for receivers for the canal. But the Judge's reasoning with regard to the rights of the bondholders of 1844, the effect of the tripartite agreement entered into at that time between the State, the company and the bondholders, and the want of power in the Legislature to rob the latter of their express contractual rights to the tolls and revenues of the canal and their implied right to have the canal kept up and maintained as a waterway out of said tolls and revenues, if sufficient for the purpose, applies with equal, if not greater, force to the case of said bondholders threatened with a destruction and extinction of the canal itself, which yield said tolls and revenues, which are said bondholders' sole security. Judge Alvey emphatically says that it is not within the State's sovereign power thus to override the contractual rights of parties – thus to violate and trample upon the State's plighted faith. It is a question of law as well as of morals, and both in law and morals the bondholders of 1844 have rights which not even for the benefit of the public the State can disregard.

Substantially the view of the court is there can be no sale of the canal, its property and

franchises to a railroad company or for the purposes of a railroad company without the consent of the bondholders, whose security is the revenue of the canal. We say this appears to be the opinion of the court, because Judge Alvey carefully reserves all questions, except such as relate to the appointment of receivers, for further consideration. To sum up the practical results of the opinion of the court, it seems that so long as the canal is in the hands of receivers the Legislature is powerless to give possession of the canal to anybody. Secondly, without the consent of the bondholders of 1844, there can be no sale of the canal by legislative authority to anybody. What becomes of the lease – what of the proposed power of sale under these circumstances? We appealed to the Legislature to "go slowly" in this important matter, and if it would not take the opinion of the attorney-general, at least to await the decision of Judge Alvey before rushing the lease bill through. The House of Delegates might have saved its dignity by heeding our advice. We trust that the lesson and the warning will not be thrown away upon the Senate, which is now called upon to act upon the bill. The appeal, if it should be taken from Judge Alvey's decision, cannot even be heard, much less decided, before the Legislature adjourns. If that decision should be in favor of the bondholders, the possession of the court's receivers will be sustained and confirmed. Should Judge Alvey's decision be reversed by the Appellate Court and against the bondholders then the latter may carry the case to the Supreme Court of the United States for final decision. In view of the clause of the constitution prohibiting any State from passing any law impairing the obligation of contracts, the canal-lease bill raises a federal question which only the Supreme Court can decide. The passage of the canal-lease bill at the present juncture only invites litigation for an indefinite period of time.

---

*Ibid*, p. 3. **Comment on Judge Alvey's Decision** – The Hagerstown (Md.) Daily News (dem.,) commenting on Judge Alvey's decision in the Chesapeake and Ohio canal case, says: "The opinion of Judge Alvey will be found entirely clear and comprehensible, and takes a preliminary step in the intricate legal problems which the case suggests. Judge Alvey is clearly of the opinion that neither the canal company, the State nor the bondholders of 1844, all of whom appeared in court as parties defendant, had any legal right to so appear, and he goes on to show by a process of reasoning which seems to us to be the very essence of logic that the complainants have under the terms of their several contracts a clear right to a receiver. He intimates that it cannot at once be settled as to whether the receivers will be permitted to restore and operate the canal as a waterway, because such restoration might entail a great amount of expenditure, to the prejudice of existing creditors; nor does he settle any question which it is intimated is a grave one – whether the mortgagees can sell the canal in view of certain provisions of the constitution which he quotes. Whether there will be an appeal from this decision we cannot say, but we think it will have the effect at least of arresting the efforts of the Legislature to pass the bill to which they have devoted so much time, attention and oratory for a lease of the canal to the Washington and Cumberland Railroad Company.

---

*Ibid*, p. Suppl. 2. LEGISLATURE OF MARYLAND – **Senate – Petition** – Mr. Pearre presented the petition of Hon. Geo. L. Wellington and one hundred and fifty other citizens of Allegany county praying that the Chesapeake and Ohio canal be maintained as a waterway.

Mr. Getty presented the petition of Geo. W. Wilson and forty-three other citizens to Garrett county for a railroad along the towpath of the Chesapeake and Ohio canal.

---

**LOCK AND DOCK**

Mr. S, Gambrill, president of the Chesapeake and Ohio canal, sent the following communication to the House: "In compliance with your order of February 20, I herewith

enclose a copy of the lease of the Potomac Lock and Dock Company to the State of Maryland. You will see by the terms of the lease that the State of Maryland is only bound in the sum of one dollar per annum.

*Sun*, Wed. 2/26/90, p. 1. **THE CANAL CASE** Annapolis, Feb. 25. – The Senate finance committee did not make a report today upon the canal measures. Senator Urner, one of the committee, went away to be present at a wedding, and the canal railroad bill will not come in until Thursday. An impression prevails that the legislators, in view of the decision of Judge Alvey, do not consider it necessary to press canal legislation, and are inclined to allow it to take its regular course along with other bills that cannot be neglected. Outside advocates of the canal railroad bill and the bill for restoring the waterway were here today. Hon. John L. Thomas said he was on hand in behalf of the maintenance of the waterway, and he wanted it understood that he was not in a lobby. Mr. R. H. Gordon, Mr. Mertens and others were also representatives on that side. Canal President Gambrill was in the State House, but he and other friends of the canal railroad measure were not active in its behalf.

**EFFECT OF A NEW LAW.**

The question has been raised whether when an appeal is taken from the decision of Chief Judge Alvey the receivers will be stopped from taking possession. Here is a statement upon that point: "The belief that appeal, which bond approved, from the decree of Chief Judge Alvey in the Chesapeake and Ohio canal suit will necessarily stay the receivers from taking possession of the corpus of the canal is in error. This was the law up to February 12, 1890. On that day the law was changed, and it becomes a question in the sound dictation of the court whether or not any order or decree can be stayed in part or in whole by appeal with bond. Early in the present session, Mr. Carter, of Baltimore, introduced a bill to amend section 27 of article 8 of the Code of Public General Laws, relating to appeals and errors, which was passed by both houses. This act was approved by the Governor on February 18, 1890. This act is in effect the same as the old law with the exception of the proviso, which reads: "Provided, however, that if in its discretion the court in which such proceedings are pending shall decide that the case is not a proper one for such a stay, such court may pass an order upon such terms (as to duration, keeping an account, giving security, &c.,) as to it may seem fit, directing that the decree or order appealed from shall not be stayed by such appeal, or only so far or on such terms as the court shall therein direct." It will be seen, therefore, that if Chief Judge Alvey thinks proper he can place the receivers he appoints immediately in charge of the Chesapeake and Ohio canal, notwithstanding appeal taken and bond filed and approved.

**STATE RECEIVERS**

The board of public works have asked Attorney-General Whyte to present to Judge Alvey the names of Messrs. James H. Henderson, of Rockville; Joseph D. Baker, of Frederick; and Mr. Wm. E. Weber, of Cumberland, from whom to select a receiver for the canal on behalf of the State.

*Sun*, Thu. 2/27/90, p. 3. **THE PEOPLE AND THE CANAL** – *Messrs. A. S. Abell & Co.*: As a Marylander, and feeling deep interest in the Chesapeake and Ohio canal, I ask in your columns a place for some views as to the proposed virtual sale of the canal to the Cumberland and Washington Railroad. Ask any competent disinterested engineer to which, in the matter of transportation for heavy freight not requiring speed, for facility and cheapness, he will give the preference, canal or railroad, and he will unhesitatingly answer, the canal. The railroad, on the one hand, is a system of high rates and close monopoly. It opens the line to approach only at appointed times and remotely detached points. It closes it against access in all the intermediate spaces, and it makes *the company itself the only carrier*, without any restraint upon its power to establish its tariff of freight except the

maximum limit in the character and the *competition* of other works. It is to have this protection, the *competition* of the Erie canal against her two great railroads, the Erie and the New York Central, that New York has made the Erie canal a free highway. Those New York farmers, merchants and millers had suffered for years under the grinding tyranny and extortion of those railroads, compared to which the servitude of the Hebrews in Egypt was glorious liberty. It is to such domination the virtual sale that the lease for 99 years of the canal involves would consign the farmers, millers and miners of Western Maryland.

The canal, on the other hand, is an open highway to *all classes* to transport in their own boats, and even in the rudest floats, upon the payment of tolls, the company merely making and maintaining the way. The line itself is thrown open and is accessible on either side and at every point day and night, and business of carriage is conducted and the price thereof kept down by the competition of a numerous class of carriers, every one starting when he pleases, stopping when he chooses and going whatever distance he thinks proper on the line. The farmers in the counties that have access to the canal could better afford to give one-tenth of their produce to the State to keep up the canal rather than have it given to be filled up and used as a roadbed for a grinding and extortionate railroad, charging probably more on a bushel of wheat or a barrel of flour from Point of Rocks to Georgetown than from Cincinnati to the same point. The franchises of the canal are very valuable, and Maryland should not be in hot haste to give it away. The Virginians gave their great canal away to a railroad, *not one dollar of the capital stock of which ever went into the road!* No man would have the hardihood to propose to New York to sell the Erie canal to a railroad. We should move slowly and only on the fullest and most cautious investigation. J. Johns
Washington, D. C., Feb. 25, 1890.

---

**C. and O. Canal Receivers Report to the Court**

Washington, Feb. 27. – Another document was placed today upon the files of the District courts in the case of Brown vs. the Chesapeake and Ohio Canal Company. This is the first report of receivers Winship and Cushwa, and was made to Judge Cox, who appointed them. It is as follows: The receivers appointed in this case respectfully report: Upon their appointment they gave bond as required by the order, and proceeded to take possession of the property of the Chesapeake and Ohio Canal Company in the District of Columbia. They visited the office of the company, and found that all the books, papers, deeds, conveyances, records and documents relating to the company had been removed on the 24th of January, 1890, by the president and secretary, this being the day preceding the argument of the motion in this case for the appointment of receivers.

As a bill had been filed by the plaintiffs in the Circuit Court of the County of Washington of the State of Maryland, praying till the same relief as prayed in this case and asking the appointment of receivers till petitioners have awaited the action of that court before bringing to your honors' attention the removal of the books, documents, conveyances, &c., of the Chesapeake and Ohio Canal Company from the District of Columbia to the State of Maryland by the officers of the company.

The receivers not having possession of the books, have not been able to ascertain precisely what property of the Chesapeake and Ohio Canal Company is owned in the District of Columbia, as they have not felt justified in going to the expense of having the records of the District examined for that purpose, nor have they been able to get access to the leases which the canal company has made of its property to ascertain either the date of the same or the terms thereof.

Your petitioners respectfully report that the Circuit Court of Washington County, Md., has determined to appoint receivers for the State of Maryland, and when this appointment is made, your receivers will endeavor to obtain from the receivers appointed in the State of

Maryland, the requisite information with regard to property of the Chesapeake and Ohio canal in the District of Columbia, so as to enable them to ascertain precisely what it is, whether there is any lease thereon, and what persons are occupying the same without right.

Your receivers have placed in possession of the office of the company a janitor, Mr. Francis Meade, at $30 per month and have retained the office re-rented by the canal company at $25 per month, and your receivers have likewise retained Mr. Henry C. Burgans, superintendent of the Georgetown level, who is now in charge of the same, at $75 per month.

Respectfully submitted, Henry C. Winship
Victor Cushwa

SR, Fri. 2/28/90, p. 4. At Hagerstown last Saturday, Chief Judge Alvey filed his opinion in the Chesapeake & Ohio Canal case. He decided to appoint two receivers, who are to report to him the feasibility of restoring the canal as a waterway. He has not yet named the receivers, but will do so shortly.

Sat. 3/1/90, p. 2.[3] **Not Named** – In the proposed purchase of the Chesapeake and Ohio canal by the incipient Cumberland and Washington railroad company, many many valuable pieces of property would have been lost to the owners of the canal, and given to a few men, that the general public is not aware of. Some of them are listed, as derived by the *Journal* from authentic source:

1, At Oldtown – Several acres of bottom land, improved with buildings.

2, Above dam No. 6 – Quite a large tract of land. Improved also.

3, Above and below Hancock – Several tracts with valuable buildings.

4, At Cherry Run – "Four Locks," berm side. Quite a little village on canal property.

5, Above and below Williamsport, on the level – Good land and dwellings, all under cultivation.

6, At dams No.'s 4 and 5 – Land and houses on both sides of the canal on canal property.

7, Near Shepherdstown – Houses and stores on canal property. (There are stores at every lock on the canal.)

8, Above Harper's Ferry, along 4-mile level – Quite a group of houses and lands.

9, Near Harper's Ferry, Sandy Hook and Weverton – Several houses on canal lands, put up by private parties.

10, All along the line of the canal through Montgomery county there are strips of land improved with dwellings.

Altogether there are 75 stores with necessary outbuildings along the line.

All the above lands and improvements go into the canal-railroad lease without any consideration.

The Round Top Cement Works above Hancock, owned by Bridges & Henderson; also a sumac mill at Hancock, and a large grist mill – all on canal property.

Through the town of Hancock quite a large number of houses are on canal lands; also, one grist-mill, below Four Locks, known as "Charles Mill," and another below Dam No. 5 – also "Charles Mill" – both owned by brothers.

At Williamsport the coal wharves of Steffey & Findlay, and Cushwa's coal yard, and a large chair factory are on canal grounds.

And Judge Alvey says all this property is to be held by the canal company *forever* to carry out the distinct and unchangeable purposes of a great public highway.

*Sun*, Tue. 3/4/90, p. Suppl. 1. **THE CANAL RECEIVERS** – Hagerstown, Md., March 3. Chief Judge Alvey has appointed Messrs. Robert Bridges, of Hancock, Washington county; Richard D. Johnson, of Cumberland; and Joseph D. Baker, of Frederick, as receivers of the Chesapeake and Ohio canal. In the order appointing these gentlemen, Judge Alvey says that the two cases brought into court will be considered as one, and the proceedings therein

[3] *Frostburg Mining Journal*, Frostburg, Md.

and considered as one case in respect to all matters involved, and that all orders and decrees that may be passed in said proceedings shall be taken and considered as applicable to both cases except where otherwise provided.

Messrs. Bridges, Johnson and Baker under the order are made joint receivers of all and singular the property, estate and franchises of the canal, specified and described in the bills of complaint, and in the mortgages referred to and property and franchises of every description of the company in the State of Maryland. The receivers are required to take an oath to faithfully perform their duties and enter each into the sum of $30,000 for the faithful performance of their duties. Upon filing their bonds, the receivers are directed to take possession of all the premises; to manage and operate the property of the canal company which shall be susceptible of operation; to prosecute and defend all existing actions by or against the company, or which may hereafter be brought against themselves by permission of this court, and pay the expenses of such prosecution and defense, with power to use the name of said company, and generally do whatever may be needful and proper to maintain and preserve the corporate organization of the company until the further order of the court. They are also authorized to employ such agents as may be necessary to enable them to discharge the duties required of them, and are required to make a full and true inventory of all the real and personal proper of the company and file the same with the clerk of the court, and submit a full and accurate account of all their doings in the premises. They are to receive all moneys and deposit same in a bank or banks in this State to be approved by the court, and each receiver shall be responsible for his own acts.

The court further orders that all applications for interlocutory orders or relief in this action shall be made on notice by the moving party or parties to the other parties of at least ten days, exclusive of the day of service. It is also decreed that the Chesapeake and Ohio Canal Company and its officers, directors and agents are strictly commanded and enjoined to peacefully deliver up and surrender to the said receivers all the premises and property, especially all the books, deed, plats, maps and records of the said Chesapeake and Ohio canal, whose officers, agents and attorneys are enjoined and restrained from disposing of or parting with any of said property, and from collecting any debts of remands due or owing said company, and from paying out any moneys or interfering with or disturbing the property rights, credits and effects ordered to be taken into the possession of the receivers.

The receivers are directed to proceed at the earliest moment at which the same can be properly and advantageously done to make full and thorough examination, and collect all such information as they may be able to collect as to the condition of the canal, the needful repairs thereof and the probable cost of repairing it and the feasibility of operating it when repaired and shall report the same with the results of their own observation and their own judgment and opinion in the premises, with the reasons thereof to the court for its information, and such further actions as it may deem necessary.

**THE RECEIVERS BUSINESS MEN**

Robert Bridges, the receiver from Washington county, lives in the town of Hancock, where for a number of years he has been engaged in merchandising and in the manufacture of hydraulic cement. He is about fifty-six years old, and is looked upon as one of the most successful business in the county. He is at present a member of the Washington county school board, was several times a candidate for the Legislature on the democratic ticket, and was ex-Gov. Hamilton's choice for president of the canal in 1880. At that time, ex-Gov. Hamilton cast his vote for Mr. Bridges for president. His appointment gives general satisfaction in Hagerstown. It is not known here whether he has been in favor of the restoration of the canal as a waterway. Mr. Johnson, of Cumberland, is a well-known democrat and a leading business man of that city. Ex-Gov. Hamilton also unavailingly presented his name to the board of public

works while he was Governor for the canal presidency.

---

Frederick, Md., March 3. – Mr. Joseph D. Baker, the State's representative in the canal receivership, is the son of the late Daniel Baker, for many years a prominent and wealthy resident of Buckeystown, Frederick county. He is about 36 years of age, was engaged in the leather business in Frederick for some years and in 1888 was elected president of the Citizens' National Bank of Frederick. Subsequently he was chosen president of the Montgomery County National Bank and of the People's Bank of Leesburg, Virginia, all three of which positions he now holds. He is also president of the Loudoun County (Virginia) and Frederick County Bridge Company, and was the promoter of the enterprise which resulted in a fine new iron bridge over the Potomac river at Point of Rocks. In addition to his connection with other large financial transactions Mr. Baker was instrumental also a short time ago in successfully funding the bonded indebtedness of Frederick, amounting to over half a million dollars, from five to four percent. In regard to the future of the canal, Mr. Baker states that he is not prepared to express an opinion as to whether it should be continued as a waterway or leased for railroad purposes. His appointment as one of the receivers of the canal gives much satisfaction to his many friends in this city and county, and the opinion is very generally expressed that its best interests will be fully and carefully protected by him.

---

Cumberland, Md., March 3. – Col. R. D. Johnson, who has been appointed a receiver, is one of the most prominent business men in this city, having resided here for the last fifty years, and is about seventy years of age. When Nr. Johnson first came to this city, he engaged in the drug business. Afterwards he went into the lumber business, in which he continued for fifteen or twenty years, furnishing a large amount of lumber for bridges and dams for the canal, but for a number of years past has been in the milling business in this city, and is at present the president of R. D. Johnson Milling Company, one of the largest mills in Western Maryland. Mr. Johnson is a cousin of Gen. Bradley T. Johnson, of Baltimore, and a grandson of the late Major Johnson, who was a brother of Thomas Johnson, the first Governor of Maryland. Mr. Johnson has always been an active democrat and has been identified with the anti-canaling, or Hamilton wing of the party, in Western Maryland. He has never held any political office, always declining the proffers of his party. In an interview with Mr. Johnson this evening, he said if he accepted, he would favor the continuance of the canal as a waterway and insist upon its being conducted on business principles, and if properly managed he thought it would be self-supporting.

*Sun*, Wed. 3/5/90, p. Suppl. 2. **Another Chapter of C. and O. Canal Litigation** – Washington, March 4. – Another movement was made this morning at the City Hall in the Chesapeake and Ohio canal lease. Messrs. Brown, Mathews, et. al., trustees under the mortgage deed of trust of 1844, (the original trustees having died,) filed an amended bill against Brown, Lowndes, Sloan and the C. and O. Canal asking for the appointment of receivers on behalf of the holders of the bonds issued under that mortgage, on the ground that the bonds of 1878 constitute no lien on the property, and that the canal company is hopelessly insolvent. Judge Cox issued an order to the defendants to show cause by March 25 why receivers should not be appointed.

*Sun,* Thu. 3/6/90, p. 1. **MARYLAND COAL MINES** – Mr. R. T. Browning, inspector of mines of Allegany and Garrett counties, has submitted to Governor Jackson his report to December 31, 1889. He says: "The output of coal for the year is 2,637,839 tons. This total required an expenditure in the State of Maryland of $5,252,598 for labor, supplies and transportation. The output of coal for the year is 488,831 tons less than that of last year. This great falling off in our output was not due to a

decline in the demand for our coal, but to the want of necessary transportation to get it to market. The practical destruction of the Chesapeake and Ohio canal by the floods of May last contributed more than any other cause to this unfortunate result. The canal had grown to be almost indispensable as a competing outlet to the coal region, having its eastern terminus at tide. It afforded water transportation from Cumberland to the remotest Atlantic coast markets. Its sudden disappearance, therefore, from our list of carriers, demoralized the trade accustomed to getting its supplies of our coal by water, and has entailed a loss to this State approximating the enormous sum of $932,986.

---

*Ibid.* p. Suppl. 1. **C. and O. Canal Receivers Qualify.** – Hagerstown, Md., March 3. – Messrs. Bridges and Baker, two of the recently appointed receivers in the Chesapeake and Ohio canal cases, were in town today and qualified before Judge Alvey as receivers, each giving bond in the sum of $30,000. Mr. Baker's bondsmen are Daniel Baker and Wm. G. Baker, of Frederick. Mr. Bridges' bondsmen are Dr. N. B. Scott and Alex. Armstrong. Mr. Johnson, of Cumberland, the third receiver, came to town tonight, and will file his bond tomorrow. General Bradley T. Johnson was also in town today, and says that the amended bill filed in Washington yesterday is a copy of one of the bills filed in this court upon which Judge Alvey passed his opinion and decree.

---

*Ibid*, p. Suppl. 2. **CANAL LEASE** Mr. Poe, from the finance committee, reported favorably, with amendments, the House bill to lease the Chesapeake and Ohio canal, and it was put on its second reading.

Mr. Wootton offered an amendment to strike out that part of the sixth section which pledged the faith of the State to the ratification of the sale by the next Legislature. Mr. Wootton said the Senate has no right to attempt to bind the next Legislature; no power to do so. Further, it is an attempt to pervert the constitution, which plainly provides that this canal shall not be disposed of except by two Legislatures.

Mr. Poe said that if a sale is made, it will be a public one, which is intended to be for the benefit of all. He could see no reason why the Senate should not express its desire to the next Legislature. It would enable us to get a better price.

Mr. Stake said the constitution clearly means that this public work shall not be disposed of except by the deliberate, free and unimpassioned judgment and discretion of two Legislatures. The attempt to thus bind the next Legislature is an invasion of the rights of the people and an insult to the next Legislature.

Mr. Pearre said he understood that it had been agreed to let this bill have its second reading without opposition, the opposition and amendments to be made on its third reading.

Mr. Wootton said he did not know of the arrangement, and would not withdraw his amendment. The bill was then read through.

The amendments made by the committee are: To provide that if any of the bondholders of 1844 refuse to accept settlement and it is decided that they are not entitled, then the State shall get this money; reducing the bond required of the Washington and Cumberland Railroad from $1,500,000 to $600,000, and an amendment to prevent gobbling up of the Washington and Cumberland Railroad by any other railroad.

SR, Fri. 3/7/90, p. 4. **The Canal Receivers.** Chief Judge Alvey has appointed Messrs. Robert Bridges, of Hancock, Washington county; Richard D. Johnson, of Cumberland; and Joseph D. Baker, of Frederick, as receivers of the Chesapeake and Ohio canal. In the order appointing these gentlemen, Judge Alvey says that the two cases brought into court will be considered as one case in respect to all matters involved, and that all orders and decrees that may be passed in said proceedings shall be taken and considered as applicable to both cases except where otherwise provided.

Messrs. Bridges, Johnson and Baker under the order are made joint receivers of all and singular the property, estate and franchises of the canal, specified and described in the bills of complaint, and in the mortgages referred to, and property and franchises of every description of the company in the State of Maryland. The receivers are required to take an oath to faithfully perform their duties and enter each into the sum of $30,000 for the faithful performance of their duties. Upon filing their bonds, the receivers are directed to take possession of all the premises; to manage and operate the property of the canal company which shall be susceptible of operation; to prosecute and defend all existing actions by or against the company, or which may hereafter be brought against themselves by permission of this court, and pay the expenses of such prosecution and defense with power to use the name of said company, and generally do whatever maybe needful and proper to maintain and preserve the corporate organization of the company until the further order of the court. They are also authorized to employ such agents as may be necessary to enable them to discharge the duties required of them, and are required to make a full and true inventory of all the real and personal property of the company and file the same with the clerk of the court, and submit a full and accurate account of all their doings in the premises. They are to receive all moneys and deposit same in a bank or banks in this State to be approved by the court, and each receiver shall be responsible for his own acts.

The court further orders that all applications for interlocutory orders or relief in this action shall be made on notice by the moving party or parties to the other parties of at least ten days exclusive of the day of service. It is also decreed that the Chesapeake and Ohio Canal Company and its officers, directors and agents are strictly commanded and enjoined to peacefully deliver up and surrender to the said receivers all the premises and property, and especially all the books, deeds, plats, maps and records of said Chesapeake and Ohio Canal, whose officers, agents and attorneys are enjoined and restrained from disposing of or parting with any of said property, and from collecting any debts or demands due or owing said company, and from paying out any moneys or interfering with or disturbing the property rights, credits and effects ordered to be taken into the possession of the receivers.

The receivers are directed to proceed at the earliest moment at which the same can be properly and advantageously done to make full and thorough examination, and collect all such information as they may be able to collect as to the condition of the canal, the needful repairs thereof and the probable cost of repairing it and the feasibility of operating it when repaired, and shall report the same with the results of their own observation and their own judgment and opinion in the premises, with the reasons thereof, to the court for its information, and such further action as it may deem necessary.

*Sun*, Sat. 3/8/90, p. 1. The books and archives of the Chesapeake and Ohio canal have been turned over to the receivers.

*Sun*, Thu. 3/13/90, p. 1. It is rumored at Annapolis that the Chesapeake and Ohio Canal receivers will be offered the amount necessary to restore the canal as a waterway.

SR, Fri. 3/14/90, p. 4. **The Canal Receivers** Messrs. Bridges, Henderson and Johnson, the three receivers for the Chesapeake & Ohio Canal, have obtained possession of all the books and papers of the canal, and have rented an office in Hagerstown. The receivers have engaged Mr. Thomas L. Patterson, of Cumberland, to act as their engineer. They will direct him to make a thorough examination of the canal, ascertain the extent of damage done by the flood, estimate the cost of repairing the canal so as to make it navigable, and make all measurements that they will need to present an intelligent report to the court of the present condition of the canal. The receivers themselves will make a personal inspection of the entire length of the canal, either with their

engineer or after he has made the measurements, and they propose to do this work as soon as the weather will permit, so that they can report to the court by April 1st if possible.

*Sun*, Fri. 3/14/90, p. Suppl. 2. The hour of 1 P. M. having arrived, the Senate took up its third reading House bill to lease the Chesapeake and Ohio Canal Company to the Washington and Cumberland Railroad Company. Mr. Wootton offered an amendment to strike out all after the word bill, and to substitute therefor a bill to authorize the attorney-general to institute proceedings to foreclose the State's mortgages on the canal in case the Circuit Court for Washington County shall not decree a sale of the canal.

Mr. Wootton addressed the Senate on his amendment. He referred to the wrecked condition of the canal and the fruitless efforts which had been made by the canal company to raise money to repair it. He had advocated application to the courts for receivers at a meeting of business men in Hagerstown, but had to withdraw because of the opposition to it, particularly on the part of the laborers, who said they wanted a paying-out man and not a receiver. "I went before the people of Montgomery county and fully stated my position and won on it. After the meeting of this Legislature and this railroad proposition was made, my people wanted me to support this bill. I have no question that a railroad would be more advantageous to my people than a canal, however well run. Judge Alvey's opinion clearly decides that if the canal can be maintained as a waterway, it must be done because of contracts, and while I am not a lawyer, I say that when Judge Alvey decides a thing he makes it very plain, and if his decisions are not law they go for law. This bill provides that the Washington and Cumberland Railroad shall take immediate possession. How can it do so while this canal is in the hands of the court? The canal is confessedly insolvent. This bill will lead to endless litigation, and will keep this canal in the hands of these people. I was in hopes they were gone at last. I want to provide for an absolute and unequivocal elimination of this question from politics. This bill will keep it in politics. I was the first man in the State to propose a sale of this canal, and I did so when I found that laborers were unpaid for twelve months while the officers were paid up to date. It was a shame and a disgrace. If you pass this bill these people are not going to pay until you deliver the property. Suppose they make other arrangements while the litigation is pending; then they will not sign the lease. Let the courts decide this question. If put up at a public sale where a title can be had, it will attract bidders. What does any Senator here know about the value of this property? Gov. Jackson recommends the acceptance of this proposition. I say he would not sell a piece of timber land unless he knew more about the value of it than he does about the value of the canal. I am not hostile to the Washington and Cumberland Railroad. I have voted for every amendment to their charter which they have asked for, so as to give them every facility to bid for the canal. Let us settle this question in a business way. Let there be fair, open competition for the canal."

Mr. Wirt said that he had already been asked by the Senator from Montgomery to say something on this bill. "I cannot vote for this bill," continued Mr. Wirt, "because it is right in the teeth of the constitution. It is called a lease, when the proposition is in reality for a sale; it provides that the State's interests, which are mortgage liens and stock, shall be assigned to the railroad company – absolutely assigned. Is not this a sale? If this bill goes into effect, is not the State divested of all its rights? The bill is in effect to sell the canal. The constitution says that no sale or contract to sell the canal shall go into effect until ratified by a succeeding Legislature. The attempt is made to do away with and evade this plain provision of the constitution by contracting it away by undertaking to bind the next Legislature. This construction of the constitution is the one that the Governor and this Legislature have placed upon it, the Governor by recommending and

the Legislature by passing a bill to repeal it. Judge Alvey has decided that the bondholders of 1844 are entitled, as a matter of contract, absolute contract, to have this canal maintained as a waterway if possible. The constitution of the United States will protect them.

"It is true that there was an advertisement for bids for this canal. I do not think it was done in the right way. The short notice, the fact that the title was in litigation, deterred bidders. The proposition of the Senator from Montgomery excludes the Baltimore and Ohio as a bidder. It will leave the matter to the courts where it should be. The people of Western Maryland are deluding themselves with the idea that they will have a railroad in a short time if this bill is passed. It will only tie up the matter, and probably make the Washington and Cumberland Railroad the only bidder. Mr. Wootton's proposition is a fair and conservative one, and, I believe, the people of Western Maryland will get fuller and more speedy relief under it then under this bill."

Mr. Urner then began to address the Senate but, it being nearly three o'clock, gave way for a motion to take a recess until eight P. M.

At the evening session, Mr. Urner, continuing the debate on the canal bill, said that this bill had given him more thought than any other measure of the session, and he had to put himself in antagonism to his political brethren. "I am influenced solely by business considerations. The republican party has deplored for many years the position of the canal in politics. I see in this bill an opportunity to get this canal out of politics. I am in favor of the displacement of the canal and the building of a railroad in its place. I am influenced somewhat by local considerations, as I believe the Washington and Cumberland Railroad will make connections with the Western Maryland and Frederick and Pennsylvania Line Railroad, which will give to Frederick city and county better railroad facilities than they have ever had. I don't understand that a lease means a sale. This bill only proposed to give the rights of a lessee to this railroad company. But suppose it does mean a sale, we are only going to do a thing which will have to be sanctioned by the people of the State when they elect another Legislature two years hence. I think it would be a wise act to sell. The day for inland canals has passed." He then sketched the history of the canal, and said that the vast majority of the people of the State have long since discovered that the canal is a thing of the past. "The bonds of 1844 were worth last summer and winter from six to ten cents on the dollar. Since the railroad project has been broached, the Baltimore and Ohio has been buying up these bonds with a view to preventing a competing railroad on the bed of the canal, and in consequence of this the bonds are now worth twenty-seven cents on the dollar. The Baltimore and Ohio don't want a rival. The West Virginia Central wants an outlet, wants a road to carry its coal to market. It has been intimated that this is a scheme to get possession of the canal for speculative purposes. I don't believe the West Virginia Central will give us competition. There are other outlets for the West Virginia Central, and if it does not get this outlet it will get another, and then this canal, if resuscitated, will have two live railroads to compete with. If we quarrel over this shadow of the State's interests, we may have a worthless ditch on our hands. It has been a dead investment, entailing nothing but expense on the State. The canal has been a blight and mildew on the counties throughout which it runs. The State has sunk twenty-seven million dollars on this canal. Judge Alvey, in his opinion, says the canal will have to sell for five million before the State can get anything. Does any Senator believe that this canal will sell for such a figure? The State's interest is worth nothing. In addition to paying off bondholders of 1878, paying twenty-five cents on the dollar to the bondholders of 1844, whose title to any of this money is very precarious, this railroad company agrees to pay the State fifteen thousand a year forever. Add to this the amount of money the State will get from gross receipts on this new railroad. Add

to this the increased [illegible] basis which will necessarily take place in Frederick, Montgomery, Washington and Allegany counties when this new railroad is built. This railroad will be built unless the Baltimore and Ohio, a [illegible] of the State, can stand in the way of the prosperity of the people of the State. I have no doubt that the West Virginia Central is behind the Washington and Cumberland Railroad. It is eminently a respectable corporation. Enoch Pratt and David Bartlett are in it. I mention them for the benefit of my republican friends. Do not let the visionary interests of the State prevent us from passing this bill. Col. Marshall two years ago said that it was not unconstitutional to lease the canal. While I believe that Judge Alvey is the peer of any lawyer and judge in the country, he is human and fallible." Mr. Urner instanced the Cookerly farm case, in which Judge Alvey was reversed. He characterized the efforts to prevent the Piedmont and Cumberland Railroad from reaching Cumberland as the most disgraceful that ever occurred in this State.

Mr. Stake said that the discussion had taken a very remarkable range. Mr. Urner, indulging in a tirade against the Baltimore and Ohio: "I am no partisan of the Baltimore and Ohio," said he, "and my only interest in the canal is that it is and has been the great source of prosperity and progress to the State. To return, the question is, shall we give this canal to the Washington and Cumberland Railroad at its own figures, or shall we put it up for sale in the open market? There are 180 miles of this canal roadway, which are now in condition for the laying of a railroad track, which cost $51,000 per mile, and a tunnel which cost over a million dollars. This it is proposed to give to this railroad at its own price. The question is, shall we have competition for this canal, or shall we, under the guise of a bid, pass it over to these people at less than its value? We are referred to Mr. Enoch Pratt and Mr. David Bartlett. They are honorable gentlemen. They want to get the canal at one million, four hundred thousand dollars, put a track on it to cost a million and a half, and then they want authority to raise eight million on bonds to be secured by this canal. They will thus put five hundred thousand dollars in their pockets. They can also issue eight million of stock, every bit of which they will own. This bill is not a fair bill. The advertisement was for a lease of the canal, and there was no intimation that it was to be leased for anything else but a waterway. The advertisement was only inserted in four newspapers in Baltimore. It never seemed to occur to any one that there might be capital in New York or elsewhere which might want to bid. Who knows what bids we might have had if the advertisement had been such as to invite bids for a lease or sale of this canal for a railroad or for any purpose? I yet have hopes that this canal can and will be maintained as a waterway. But if its days as a waterway are over, then let us put it up for sale to the highest bidder."

Mr. Stake then went for the present mismanagement of the canal as he called the management since the time of James A. Clarke, and insisted that it was their miserable political management which has killed the canal. "If resuscitated and properly managed," he continues, "I believe that it would pay six-fold more than its running expenses.

Mr. Pearre said he and his democratic friend had promised the voters of Allegany to do what they could to rehabilitate the canal as a waterway. "And you may look over the petitions from Allegany county in favor of this railroad in vain for my competitor's name." He reviewed the history of the canal, and said that an attempt is now being made to wipe out the security of those upon whose money the canal was built. It is proposed to barter away the honor of the State. The question is whether we shall give away or sell for a song this property or whether we shall leave the matter to the courts of the State. The courts would not permit the sale of the smallest piece of real estate upon such advertisement as was given in this matter. Mr. Pearre said this notion of competition between railroads is a farce. They don't compete. He was very strong in his appeal to the Senate not to crush out the

Maryland miner, whom he eulogized most highly, for the benefit of West Virginia miners. This, he contended, would be the result of a sale to the West Virginia Central. The West Virginia mines cost less than the Maryland mines. They have cheaper labor, pay lower wage and further, there is no law in West Virginia for the weighing of coal. The miners mine more coal than they are paid for. Thus, it will be seen that West Virginia coal can be sold cheaper than Maryland coal. He closed with an appeal to the Baltimore city Senators to be careful, lest by this bill they injured their own city. He was himself in favor of maintaining the canal as a waterway.

Mr. Poe then took the floor, but yielded to a motion to adjourn.

The Senate adjourned at 10:40 until 11 o'clock tomorrow.

*Sun,* Sat. 3/15/90, p. Suppl. 2. The Senate resumed consideration of the canal bill at the night session.

Mr. Wirt addressed the Senate: "What is the State's interest in the canal? The State does not own the canal. The State's interest consists of mortgages and stock. This bill provides for an absolute assignment of the mortgages and a transfer of the stock, and it undoubtedly amounts to a sale. This legal point in this controversy has been evaded from the beginning. When the matter came up in the House of Delegates an order was adopted to refer this legal point to the attorney-general. This order was reversed the next day. The inference from this action is that the people who are urging this bill are afraid to refer this point to the law officer of the State. All the advocates of this bill in this Senate have evaded the question." He read from Judge Alvey's opinion and urged that this opinion justified the position taken by the Senators who oppose the bill. "I put it to this Senate whether we had not better follow the opinion of the chief justice of this State. The safe, conservative course is to leave this question to the courts, which are far away from the influences which surround this General Assembly." He contended that the clause in the Wootton amendment, which Mr. Poe had said would allow the Baltimore and Ohio to get possession of the canal, was identical in terms with the fourth section of the lease bill. This bill means that the Washington and Cumberland Railroad is not willing to purchase this property at public auction. They are not willing to enter into competition. This debate has developed the fact that everybody is tired of this Chesapeake and Ohio Canal Company, which has been for so long a stench in the nostrils of the people. The proper course is to leave this whole matter to the courts, where it will be more quickly settled than in any other way. Then all the Legislature will have to do is to sanction the action of the courts. Let us get rid of this canal with decency and honor. If this lease bill passes, I predict that the youngest of us will not see the end of the litigation. I trust that wise counsels will prevail and that the Wootton amendment will be adopted.

Mr. Poe said that he had not intended to say anything further, but he thought he had better reply to some things which had been said. He referred to his brief in the case for the appointment of receivers ten years ago, when he, as counsel, had alleged political mismanagement, "but," said he, "the courts did not sustain my brief. In this very case Mr. Winship, who has recently been appointed a receiver, testified that it would be a bad day for the canal if Mr. Gorman were removed from its presidency. As a matter of fact, during Mr. Gorman's first year, the net revenues exceeded those under Mr. Clarke. The freshet of 1877 ruined the canal, and it has never recovered from it. The simple question is whether we shall continue this attempt to keep up a thing which has proved itself a failure for forty years, and which continues to go from bad to worse, or shall we get rid of the thing and put good money in the treasury. The facts are against the continuance of the canal, and it is time to get rid of this troublesome question. As to the Wootton amendment, no provision is made for a purchaser in case Judge Alvey decrees a sale. The receivers appointed by Judge Alvey will

not be able to make their report to the court before the close of this Legislature. Suppose they report that $200,000 or $300,000 will put the canal in repair. Suppose they go on and the experiment proves a failure. Suppose then Judge Alvey orders a sale. I assert the Wootton amendment makes no provision for a purchaser. Suppose Judge Alvey should refuse to allow the canal to be repaired and orders a sale now. There is no provision in this amendment. Under these circumstances the Baltimore and Ohio, which has been striving to extinguish its competitors for eighteen years, will be in a position to affect its object. The Senator from Cecil is right when he says the fourth section of the bill is identical with the clause in the Wootton amendment to which I adverted this morning, but we have amended this section in committee, and the amendment has been adopted. This amendment makes the purchase of the canal by a rival competing railroad absolutely void, but does not extinguish the charter of the canal. The simple question is whether we shall turn a deaf ear to the almost unanimous appeal of the people of these canal counties for a live railroad in place of a dead canal, and also put cash money into the State treasury and large receipts from taxes hereafter. The other proposition – that of the so-called Allegany and Tidewater Canal Company – is unsubstantial. We desire the passage of this bill to prevent the Baltimore and Ohio from strangling, suffocating and stifling the canal, and thus effecting a corporate monopoly in the carrying of coal. The argument which is made against a railroad on the bed of the canal is the argument that the stage coaches made against steamboats and railroads and by the sewing women against sewing machines, and is always made against all inventions and improvements. The Senator from Allegany county has made an eloquent appeal for the Maryland miners. I say to him, his miners will not be hurt. This bill is a disposition of the canal by the parties who own it. It is in the nature of an amendment to the charter of the canal company authorizing the company to lease it. It is an inchoate settlement of the question, the final disposition of which will have to be made by the sext Legislature. Is there anything morally or legally wrong in this? Does any one contend that there is anything unconstitutional in allowing the Washington and Cumberland Railroad to take charge of this property at its own risk and take the chances of ratification of the next Legislature? I say to this Senate that if we let this opportunity slip, we may never have it again. We have this offer and this offer alone.

Mr. Wirt submitted an amendment to Mr. Wootton's amendment to make void any purchase of the canal or any acquisition of its stock by a competing railroad so as to meet Mr. Poe's objections. This was accepted by Mr. Wootton, and he then said that if no other Senator desired to speak, he was willing to take a vote on his amendment. The vote resulted as follows: Yeas – 12; Nays – 14.

Mr. Poe offered amendments cutting down the bond from $1,500,000 to $600,000, and providing that bond shall cease upon the payment of $800,000 to the State. Adopted.

Mr. Stake offered the following amendment: Strike out after "lease" in line 21, section 1, and down to the word "the," in line28, section 1, and insert the following: "In case the Washington and Cumberland Railroad Company is stopped in the work of constructing its tracks from Cumberland to Williamsport by injunction proceedings instituted in good faith, and without its connivance against it, or by legal proceedings instituted by it in good faith for the condemnation or requisition of land necessary for a continuous track, then the time consumed in the determination of such legal proceedings shall be added to the year above set forth for the completion of said railroad from Cumberland to Williamsport, and in case said Washington and Cumberland Railroad Company is stopped in the work of constructing its tracks from Williamsport to Washington by injunction proceedings instituted in good faith and without its connivance against it, or by legal proceedings

instituted by it in good faith for the condemnation or acquisition of land necessary for a continuous track, then the time consumed in the determination of such legal proceedings shall be added to the time above set forth for the completion of such railroad from Williamsport to Washington." Rejected.

Mr. Pearre submitted an amendment requiring the Washington and Cumberland Railroad to forever maintain in good repair the dam across the Potomac river at Cumberland, and failure to do so will forfeit its charter. Mr. Pearre explained that it was offered in the interest of Cumberland's water supply and the health of the city of Cumberland. The amendment was rejected by a vote of 11 to 15. Mr. Pearre also submitted an amendment that the Washington and Cumberland Railroad shall deposit $50,000 with the State treasurer to pay for canal boats. Rejected by a vote of 11 to 14. Mr. Stake offered an amendment to strike out the section pledging the faith of the State to the ratification of the lease by the next Legislature. Adopted by a vote of 14 to 12. Mr. Pearre submitted an amendment providing that any failure on the part of the Washington and Cumberland Railroad to perform any of its obligations as contained in the bill, shall work a forfeiture of its charter. Lost by a vote of 12 to 13.

Mr. Pearre submitted an amendment to provide that the railroad company shall not take possession of the canal until the ratification of the lease by the next Legislature. Lost by a vote of 11 to 15.

Mr. Pearre submitted an amendment providing that within thirty days after the passage of this act, the attorney-general shall file a petition in the suits now pending at Hagerstown to secure a judicial construction of this act in respect to its constitutionality, and that the Washington and Cumberland Railroad shall not take possession of the canal until such construction is had. Lost by a vote of 7 to 18.

Mr. Stake submitted an amendment that if the Washington and Cumberland Railroad shall receive any money from the United States or any other parties for use or occupation of property or from sale of property, then one-half of all such money shall be paid to the State treasurer. Lost by a vote of 11 to 15.

Mr. Stake submitted an amendment that all the property of the Washington and Cumberland Railroad of every kind shall be subject to taxation. Adopted.

Mr. Randall submitted an amendment that in no case shall the State be liable for any costs or counsel fees incurred in litigation growing out of this act. Adopted.

The bill was then passed 15 to 11.

*Sun*, Mon. 3/17/90, p. 4. The Chesapeake and Ohio Canal question is now practically out of the Legislature, at least for the session of 1890. When the House concurs in the amendments to the bill as passed by the Senate last Friday night, it will be sent to the Governor. As the matter stands, the Legislature has put the Washington and Cumberland Railroad Company in a position for dealing for the canal. But the statement, as made by Senator Wirt in a speech upon the bill, that the bondholders of 1844 and the minority stockholders can go into a Untied States court and enjoin the execution of the lease under the act passed by the Legislature, suggests an apparently important complication. It may turn out that the canal, which has figured in the Legislature and the courts, will get into the Supreme Court of the United States. There are well-informed lawyers who believe the next Legislature will have to deal with the canal as a yet unsettled question. Senator Randall had an amendment put into the bill to the effect that the State shall not be responsible for the expense of ensuing litigation. Both the Washington and Cumberland Railroad party and the opposition are evidently preparing for a legal contest. Meanwhile, the canal is in the custody of Chief Justice Alvey and the temporary receivers.

*Sun*, Tue. 3/18/90, p. Suppl. 2. **CANAL LEASE BILL** – The House bill for the lease of the Chesapeake and Ohio Canal to the Washington and Cumberland Railroad came back to the House with the Senate amendments,

which were read and adopted until the amendments reducing the bond of the railroad from $1,500,000 to $600,000, and providing for the release of the bond when the $300,000 required to be paid to the State has been paid, were reached. Mr. Rich said he hoped that these amendments would not be adopted, for if the bond was released after the payment of the $300,000 to the State, there would be nothing to prevent the road being leased by a parallel or nearly parallel road, and the very thing that the bill has sought to guard against would be defeated.

Mr. Carter said: "I would remind the gentleman form Baltimore county that we have just adopted an amendment making it unlawful for any such road to acquire the bonds of the Washington and Cumberland Railroad."

Mr. Rich said it was not necessary to acquire the bonds of the road in order to lease it.

Mr. Shaw said he had thought when the bill was on its passage through the House that the bond was too large, and without the amendments there was no limit as to the time when the bonds should cease, and the road would encounter great difficulty in giving such a bond. Before the vote was put Messrs. Meloy and Richardson endeavored to have the consideration of the amendments postponed until tomorrow at 2 P. M., in order to have the bill and amendments printed. This motion was voted down, and then the amendments were rejected by a vote of 48 to 25. The friends of the bill then endeavored to secure a postponement of the bill, all of which were voted down. The other Senate amendments were then concurred in, and on motion of Dr. Shaw, a committee of conference was asked for in the disagreeing votes, and the bill laid over informally.

*Sun,* Wed. 3/19/90, p. 1. **THE CANAL CASE** Annapolis, March 18. – Mr. Poe in the Senate, and Mr. Preston, of Baltimore city, in the House, have introduced another bill relating to the Chesapeake and Ohio Canal case that will prove of interest. The bill provides: That it shall be competent for any of the parties to the cases now pending in the Circuit Court for Washington County, in equity, instituted by the trustees of the holders of bonds issued under the acts of 1878, chapter 58 and 1844, chapter 281, against the Chesapeake and Ohio Canal Company and others, to apply to the court for leave to take testimony according to the usual course by the court, relating to the expediency of repairing and restoring the Chesapeake and Ohio Canal as a waterway, the cost of making such repairs, the length of time which it will take to make the same, the amount of tonnage which can reasonably be expected to be obtained should said canal be restored, the probable revenues that may reasonably be expected to be earned, and the practicability of enabling the said canal company to receive sufficient revenue to pay its operating expenses, the cost of such repairs and the interest on its bonded indebtedness, and touching any other matters relating to the restoration of said canal as a waterway, or any question involved in the said proceedings; that upon the filing of any petition in said court by any of the parties to said cause, including the State of Maryland, which, by direction of this General Assembly, has appeared to said cases and then made a party therein, the court shall grant leave to take such testimony upon such reasonable terms as to the return thereof as the court shall prescribe; not less, however, than sixty days to be allowed for the return of said testimony; and that until the return of such testimony the court shall defer passing any order upon the report of the receivers heretofore appointed in reference to the restoration of said canal.

That in addition to the right of appeal now given by the Code of Public General Laws of Maryland, any of the parties to said cases, including the State of Maryland, shall have the right of appeal to the Court of Appeals from any interlocutory order or orders that may be passed by said Circuit Court in said cases, or either of them, provided that said appeal or appeals shall be taken within thirty days from the date of any such order or orders as to such

as shall be passed after the passage of this act, and within sixty days as to such as shall be passed before the passage of this act; and provide, further, that the operation of such order or orders shall not be suspended or stayed by the taking of such appeal or appeals unless the party or parties praying the same, or some one on their behalf, shall file a good and sufficient appeal bond according to law.

That upon any appeal that may be prayed from the order of the said Circuit Court appointing receivers, or from any order or orders rant may be passed by said Circuit Court before the passage of this act, in relation to the repair and restoration of said canal as a waterway, the Court of Appeals are hereby authorized and directed to consider any testimony that may be taken under the provisions of this act, and the clerk of the said Circuit Court is hereby directed to have sent to the Court of Appeals a full copy of all of said testimony, which it is hereby declared shall form a part of the record as fully to all intents and purposes as if the same had been taken before the passage of any such order or orders.

**CONFERENCE COMMITTEE**

The joint conference committee on the disagreement between the two houses upon amendments to the canal lease bill met today. The House had refused to agree to amendments put into the bill by the Senate reducing the bond of the lessees from a million and a half to six hundred thousand dollars, and providing that when three hundred thousand dollars are paid to the State, the bond shall be canceled. The conference committee could not agree today, but individual efforts at compromise were made later and apparently with success. It is said there is the probability of an agreement upon the basis of the adoption of an amendment that if the Washington and Cumberland Railroad Company shall fail to comply with the terms of the lease the canal shall revert again to the State. With this amendment accepted the House will probably concur in the Senate's amendment and pass the bill in that shape.

*Sun,* Wed. 3/19/90, p. Suppl. 2. **OTHER BUSINESS** – The Speaker appointed Messrs. Shaw, Rich and Harp to confer with a similar committee on the amendments to the bill providing for a lease of the Chesapeake and Ohio Canal.

The Senate bill was passed amending the charter of the Washington and Cumberland Railroad Company.

*Sun*, Thu. 3/20/90, p. Suppl. 2. **C. AND O. CANAL SUITS AGAIN** – Two Chesapeake and Ohio Canal suits are now pending here: One brought on the 30th of December, 1889, and the other on the 15th of January, 1890. An answer to the amended bill in the former suit, heretofore briefed in *The Sun*, has been filed by Messrs. Morris & Hamilton, of this city. The answer does not differ much from the former answer filed in the suit. It alleges that the act of 1878 was passed at the earnest request and solicitation of the Chesapeake and Ohio Canal Company and with the privity and assent of the trustees under the act of 1844, who united with the canal company in urging its passage. The answer further recites the history of the recent suits against the canal company, both in this District and in Washington county, Md., the appointment of receivers, &c., and concludes: "Wherefore these respondents submit that the said complainants have already had, and will have full relief in the premises, in competent proceedings to which they are parties and in which all these rights and equities can be asserted and protected, and they are not entitled to any further relief in this case unless it be the consolidation of the present proceedings with that of these respondents on which the court has already acted." The answer is signed S. T. Wallis and Morris & Hamilton.

SR, Fri. 3/21/90, p. 4. **The Canal.**
The receivers for the Chesapeake & Ohio Canal have divided the canal into three divisions. The Cumberland Division will extend to Dam No. 6; the Hancock Division from Dam No. 6 to Dam No. 4; and the lower division from Dam No. 4 to the District of Columbia.

Superintendents for each of these divisions will be appointed. Mr. Bridges has already selected for the middle division Mr. John W. Burgess, of Hancock, who is now actively engaged in making an inventory of the personal property, &c., in his division.

Mr. T. L. Patterson, the engineer elected by the receivers, has begun his inspection from Harper's Ferry to Log Wall Level. It is more than likely the receivers will not go over the line until the engineer has gone over it and made his estimates, after which it is thought the receivers will be better able to form an opinion as to the actual cost of repairs.

*Sun,* Sat. 3/22/90, p. Suppl. 2. **Meeting of the Canal Receivers.** – Hagerstown, Md., March 21. – The Chesapeake and Ohio Canal receivers held a meeting in Hagerstown today, but the work done was of a general character. They have several men at work in their office putting the books and papers into their proper places. Messrs. Winship and Cushwa, the District receivers, were in consultation with the Maryland receivers this afternoon and have arranged to get access to papers and books pertaining to the District. This is done under the instruction of the court.

*Sun*, Wed. 3/26/90, p. Suppl. 2. **CANAL CASES CONSOLIDATED** – The suits of the bondholders of 1844 and the bondholders of 1878 against the Chesapeake and Ohio Canal Company have heretofore occupied two separate places on the court docket as 12,216, brought in December, 1889, and 12,240, brought in January, 1890. Hereafter these cases will be considered as one, for when the Equity Court opened this morning, an order was presented, and, being consented to by all the attorneys, was entered, combining the cases and making them practically one. The relief prayed in both instances is substantially the same, and in each the same questions will arise.

*Sun*, Thu. 3/27/90, p. 1. **THE CANAL CASE** House bill providing for the taking of testimony in cases now pending against the Chesapeake and Ohio Canal, and giving all parties the right of appeal from interlocutory orders passed, was taken up at 8:50 as the special order of the evening for third reading and final passage, and brought on a debate equal to the debate on the canal lease bill. Mr. Laird opposed the bill, saying: "I wish to call attention to the fact that this bill proposes to establish an entirely different rule from that now in practice in our courts. Upon general grounds, it ought to be sufficient to say that no special rules should be enacted for special cases in our courts of law. It seems to me that this bill is directly in the teeth of the constitution, for that instrument provides that the Legislature shall pass no special law where provisions are made under the general law, and I cannot see why these cases should have a special act passed for their benefit. Can any one say that the existing general law is not applicable to these cases?"

Mr. Norwood agreed with all that Mr. Laird had said, and did not believe that any lawyer in the House would seriously question the position taken by that gentlemen, and he did not think the passage of the bill should be seriously entertained. Mr. Shaw favored the bill, saying that this legislation was needed in order to determine the exact condition of the canal. Judge Alvey's decision was eminently just, but the appointment of receivers placed in the hands of three men too much power, and this bill merely gives all sides an opportunity to show the exact conditions of the canal, and whether it would be better to operate it as a waterway of lease as a canal, and then provides for an appeal to the whole Court of Appeals. Now it seems to me that it would do no harm to get the opinion of that learned body on this great question as to the taking of testimony. We want to be in position to lay the whole state of the lease before the court on appeal, which we cannot do now under the general law.

Mr. Keedy said that the passage of this act means delay for two or more years so as to allow the canal to go into ruin, and then, when it is impossible to operate it as a waterway, the Washington and Cumberland will take possession. This was giving to a corporation

greater privileges than are enjoyed by an individual. "As a representative of Washington county," he continued, "I want to say that the whole matter had better be left to the honest judgment of Richard H. Alvey, and no act should be passed interfering with him."

Mr. Rich said in the passage of this bill the Legislature would be establishing a most dangerous precedent. This Legislature attempts to stop the court from exercising its time-honored rights, and is a gross interference of one branch of the government with another. The court now has the right to take all the testimony that it needs, and if this bill is passed it will give all parties interested the right to delay matters as much as they see fit, as an appeal can be taken from the expenditure of $10 for the repair of the canal. I warn the members not to go away from the time-honored moorings of our judicial system. It is special legislation for the benefit of the Washington and Cumberland Railroad.

Mr. Preston, of Hartford, said that as chairman of the committee on judiciary he wanted to say that after a careful consideration the committee determined to report this bill favorably. If these cases are to go to the Court of Appeals, that court is entitled to have all the facts before them.

Mr. Dryden said it was an attempt to set aside the constitution for the benefit of a corporation and should not be done.

Mr. Carter, of Baltimore city, said that the same members who fought the canal lease bill were fighting this bill. I will not impugn the motives of the chief judge. I know that he is one of the ablest jurists of the land, but no man is infallible, and we merely want to provide for a decision by the Court of Appeals by giving them all necessary data to base a decision on. This bill is being fought by the B. and O. because they do not want any competing line. This is a fair bill, and should be passed.

Mr. Linn said that the Legislature would not go astray in passing this bill, as it was merely to enable it to get at the facts of the cases now pending.

Mr. Preston, of Baltimore city, said that the State had more than an ordinary interest in this bill. The demand for this bill is so great that we would be justified in setting aside some of the well-established principles of the common law. The friends of the Baltimore and Ohio Railroad are again fighting this bill. Now I have the highest regard for the opinion of Mr. Laird on legal questions, but I say that there is no provision in the law for such a case, and special legislation is needed.

Mr. Laird begged the House to leave this matter in the hands of Judge Alvey. The bill was then passed by a vote of 46 to 33.

The House adjourned until 10 A. M. Thursday.

*Sun*, Thu. 3/27/90, p. 1. **STATE CAPITAL AFFAIRS** – Annapolis, March 26. – **HOTLY CONTESTED** – The House had another hot debate tonight about the affairs of the Chesapeake and Ohio Canal. The bill authorizing appeals from any order or orders that may be passed in the canal causes before Judge Alvey in the Circuit Court of Washington County was up for a third reading. The bill was earnestly contested on both sides, the opposition taking the ground that it is intended to delay and hamper the action of the court in relation to the canal. This the friends of the bill denied. When the vote was called there was difficulty in securing 46 years to give the required constitutional majority. After some minutes of active campaigning that number of votes was secured, and the bill was passed by 46 to 33. The bill will also have sharp opposition in the Senate.

A good deal of discussion went on tonight because of the action employed during the vote upon the canal appeal case bill. Speaker Hubner had been sent for by the Governor and Mr. Keplinger was in the chair. The minority charge that when the full roll had been called there were but 39 yeas for the bill. The announcement was suspended, as they say, until absent members could be brought in and others induced to change from the nay to yea

side, and in that way the necessary 46 yeas were secured.

---

*Ibid*, p. 2. **Senator Poe and the Judiciary** – Senator Poe has only himself to thank if the general public have already come to view with the profoundest distrust whatever he says or does in his capacity as a legislator in connection with matters in which he is known to be employed as counsel. He ought not to be surprised if this distrust should be particularly manifested in regard to the bill which he has recently introduced for the purpose of regulating proceedings and providing for the taking of testimony, appeals, &c., in the equity suit against the Chesapeake and Ohio Canal Company now pending in the Circuit Court for Washington County. Senator Poe is counsel of record in that case for the defendant company. As such counsel, he appeared, along with the attorney-general, who represented the State, and Mr. Bernard Carter, who represented certain bondholders, to resist the application of the trustees under the mortgage of 1878 for the appointment of receivers to take charge of the canal. He appeared before Judge Alvey, at Hagerstown, just as he had previously appeared in behalf of the company to resist a similar application in the Equity Court of the District of Columbia. Counsellor Poe's professional connection with and interest in the case is open, undisguised and above-board, and is not a matter for criticism. But when *Senator* Poe introduces a bill in the Legislature in the interest of his client, for the purpose of affecting and controlling, by an act of special and unusual legislation, the course of judicial proceedings already begun and now pending in one of the courts of this State, we think the whole public is entitled to protest.

But the smallest objection to Senator Poe's bill is that based upon his own personal interest and professional employment in the very case the proceedings in which the bill is intended to regulate. It would be a most improper and objectionable bill if it had been prepared and introduced by any one else. It is open to the very gravest objections upon constitutional grounds. It is special legislation intended to prescribe a particular mode of procedure in a particular case, the mode of procedure in all other cases of foreclosure under mortgages and for the appointment of receivers being already regulated by law, by rule of court and by established practice. It is a direct blow to the independence of the judiciary and an unconstitutional interference with the functions and authority of the courts.

In the case to which the bill applies, and the *only* case to which it is intended to apply, Chief Judge Alvey has already appointed receivers, who, by the court's order of appointment, are expressly required "to make full and thorough examination, and to collect all such information as they may be able to collect as to the condition of the canal. the needful repairs thereof and the probable cost of repairing it, and the feasibility of operating it when repaired, and report the same, with the results of their own observations and their own judgment and opinion, with the reasons therefor, to the court." *Counsellor* Poe was heard by Judge Alvey before this order was passed. Now, the order being passed, *Senator* Poe proposes, by special act, to provide for the taking of testimony in the usual manner, that is, before an examiner, upon the application of any party to the case, upon the identical points referred by Judge Alvey to the receivers whom he has appointed, and *forbidding Judge Alvey to pass any order upon the report of the receivers until after said testimony shall have been taken and returned.* Further, Senator Poe's bill provides that upon any appeal taken from any order of Judge Alvey's *including the order appointing receivers*, or any other court, "*before the passage of this act,*" the Court of Appeals is "directed" to consider as part of the record the testimony authorized to be taken under the act, that is to say, *taken after the passage of the order appealed from!* A more audacious and impudent attempt to control by legislation the action of the courts in a pending suit it would be difficult to imagine. By another provision of the bill, it is proposed, apparently, also to take this particular case out

of the operation of the general law passed at the present session in regard to the effect of an appeal and of an appeal bond upon the operation of an order appointing receivers.

We cannot too urgently call the attention of the Legislature, and especially of the Senate, to the vicious character of such attempted legislation. Says Mr. Sedgwick, and eminent authority, on page 144 of his valuable work on "Statutory and Constitutional Construction," speaking of laws which are objectionable or involving a usurpation of judicial functions, or an encroachment on the judicial power, they may be ranged generally under three heads: *"First*, where the Legislature, by a special act, has sought to dispense with a general law in favor of an individual; *second*, where the act is one of legislation for a particular case; *third*, where the act is in its nature judicial; *i.e.*, seeks to influence, directly or indirectly, the determination of private controversies." To all these objections Senator Poe's bill is clearly open. And on page 151 the same writer gives as the result of all the authorities "that a statute which dispenses in favor of some particular individual" (or, by parity of reasoning, some particular corporation) "with the general rules governing similar cases, does not come within the rightful attributes of legislative power, and is not to be regarded as law."

And such has been the uniform tenor of judicial decisions in this State. In the case of Miller vs. the State, reported in 8th Gill's Reports, p. 145, the Court of Appeals, speaking by Chief Justice Dorsey, declared an act of the Legislature, which required (a singular coincidence) the same court – Washington County Court – to grant an appeal in a particular case, and to set out and embody in the record certain exceptions and points of law, unconstitutional and void, as an improper interference with the judicial power. So, in the case of the Mayor and City Council vs. Horn, in 26th Maryland Reports, p. 194, certain acts of the Legislature relative to assessments for grading North avenue were set aside by the court as involving an assumption of judicial powers, and an attempt to reverse by legislation a decision of the courts upon the same subject. And in Dorsey vs. Dorsey, 37th Maryland Reports, p. 64, an act of the Legislature simply *authorizing* the Court of Appeals to reinstate and rehear certain cases which it had already decided, without any offensive *mandatory* words such as are contained in Mr. Poe's bill, was declared an unwarrantable interference with the court, and contrary to the eighth section of the declaration of rights, which affirms the entire separation of the Legislature, judicial and executive departments of the government.

The Senate has already once this session been called upon, and not in vain, to defend the rights of the people against the assaults of monopoly. It is called upon now to defend another right of the people, guaranteed by the eighth article of the declaration of rights – the independence of the judiciary against the assault made upon it by Senator Poe's bill. We speak not merely of the want of respect shown in the introduction and in the terms of such a bill to the distinguished chief judge of the State, the presiding judge of Washington County Court. It is the people's rights which are assailed when an attempt is made to pervert and alter the ordinary course of judicial procedure by an act of special legislation introduced for the benefit of private clients. It is useless to say that the State is interested in the litigation at Hagerstown. That is no excuse for legislative interference. The State is a party, not in its sovereign capacity, but only as a stockholder and a creditor of the company. As such, the State has no tights higher or more sacred than those of the humblest bondholder before the court. If *Counsellor* Poe find his duties clash with those of *Senator* Poe, he can relieve himself of all embarrassment by resigning one position or the other. The character of a Pooh-Bah ceases to be amusing when it becomes obstructive.

*Sun*, Fri. 3/28/90, p. 1. **The Supplementary Canal Job** – The people of the city and State are indebted to *The Sun* for many able,

vigorous and successful efforts made in their behalf during the present session of the General Assembly in resistance to corrupt and improper legislation. Perhaps for none are they under greater obligations than for its manly and timely assault in its editorial of yesterday upon the movement of the counsel of the Chesapeake and Ohio Canal Company in the Senate to control and coerce judicial action in the suit now pending at Hagerstown. It had been supposed that the counsel of the Canal, who, in that regard, is practically the counsel of the Board of Public Works, would have been contented with the success of his job thus far in the Legislature without the audacity of asserting the control of the legislative over the judicial department of the government. The trick by which the bill now pending was passed through the House on Wednesday night is but in keeping with the whole proceedings of the party managers in the matter. The effort of Mr. Poe to have the bill, when it came late at night to the Senate, referred to the committee on finance, (which had about as much to do with it, as the committee on oysters, if there be such a one,) instead of the committee on the judiciary, was equally characteristic. The people of the State will recognize their obligations to Senator Wirt and the Senators who aided him in having the mater referred to the judiciary committee, where, of course, it belongs.

*The Sun* has already dealt with the bill so conclusively as a scandalous invasion of the judicial province that little remains to be said on that part of the subject. To the fair-minded and intelligent members of the legal profession the unconstitutionality and gross impropriety of the measure in that regard require no explanation. The same will be equally obvious to every other right-minded citizen who can read and think, when he comes to consider what it substantially amounts to. After a deliberate hearing of arguments for two days Chief Judge Alvey appointed receivers, and directed them, after a careful examination of the canal and a consideration of its condition and possibilities, to make their report to him for his information. What action he may take upon that report is for him and no one else, under the constitution, to determine. By the bill of Mr. Poe, the Legislature is required to command that Judge Alvey shall grant leave to take testimony whenever applied to by any of the parties to the suit, whether he adjudges the taking of such testimony to be proper or improper; and it further directs that until the return of such testimony he shall defer his action upon the report of the receivers, whether he thinks that such action ought to be deferred or not. The bill then directs such testimony to be sent up to the Court of Appeals, in case appeal be taken, and not only authorizes, but in words directs, the highest judicial tribunal of the State to consider such testimony, whether that tribunal, in the exercise of the functions conferred upon it by the constitution, shall think that such testimony ought to be considered or not. To make this still more heinous, the bill directs that such testimony shall be considered by the Court of Appeals, not only on appeals from orders which may have been passed after the testimony was taken, but even: from orders which may have been passed before leave to take testimony was asked. The order of Judge Alvey appointing receivers was passed on the 3rd day of March, and is now a recorded judgment of the court. If appeal shall be taken from that order, Mr. Poe's bill expressly directs that the Court of Appeals, in determining whether it was well passed or not, shall consider testimony which was not before the court at the time of its passage, but was only taken months afterwards. If there is any axion, common to legal procedure and ordinary intelligence and right, it is that the validity of any judicial action can only be tested, on appeal, by the state of the record at the time when such action was taken. To ask – nay direct – a court to reverse a judgement because of something that did not happen until after the judgment was rendered, is something equally repugnant to law, justice and common sense. The attempt to do it in this case is not only a violation of the constitution, but an

insult of the grossest character to the courts and people of the State.

But there is an equally conclusive objection to the bill which was not fully developed in *The Sun's* article of yesterday. We allude to its impudent violation of the plain provisions of the 33rd section of the 3rd article of the constitution, where it is expressly commanded that "the General Assembly shall pass *no special law for any case* for which provision has been made by an existing general law. The object and intention of that provision have been more than once defined by the Court of Appeals. In 46 Md., 644, the court has said that "the object of this law was to prevent special legislation in special cases." Again, in 47 Md., 520, the court decided that "the special laws contemplated by the constitution are those that provide for individual cases." Again, on page 512 of the case last cited, the court announced that "the object of the provision of the constitution was to prevent the abuses that occur in the great multiplicity of legislation for particular and individual cases." In no case has any decision of the court for a moment trenched upon the strict rule thus emphatically established. Beyond ruling that local laws and laws applicable to classes of cases that are not special, the court has never gone or been asked to go.

If the Canal case is not a "particular" case, what is it? If it is not an "individual" case, what is it? Does anybody dispute that there are "existing laws" which cover the Canal case as they cover every other case instituted for the foreclosure of mortgages, the granting of injunctions and the appointment of receivers? If Mr. Poe's bill should not pass, will not those existing laws control the case, and is it not for the very reason that they will control the case that this special law is introduced to prevent their doing so? To suggest to the contrary is to trifle with the public intelligence. There are existing laws and rules by which the taking of testimony and the granting and hearing of appeals in cases of the sort are fully provided for. To these general laws and rules, all citizens of Maryland alike are bound to submit, and by them all legal proceedings are governed, no matter who may be the litigants. Under a law passed at this very session the courts of equity are clothed with the discretion to determine, in the interest of suitors, whether an appeal from their orders shall suspend the operation of such orders or not. The bill of Mr. Poe proposes to elevate the Canal Company above all the citizens and corporations of the State, and to take away from the courts in its behalf the statutory discretion which they are bound to exercise where private citizens and corporate bodies are concerned. And the case in which this is to be done is a suit instituted by long-suffering bondholders to enforce, like all other mortgages, the remedy which the law gives to every holder of bonds and mortgages. If any citizen who holds a mortgage, and is proceeding to enforce it in the usual course of law, will but imagine the sense of outrage he would feel if the Legislature were to pass a law requiring the courts then and there to suspend or alter the operation of existing laws for the special and particular benefit of his debtors he will be very apt to realize, we think, what a special law means in this case.

It only occurs to us to add our hope that if the bill should come before the Senate some Senator may feel it due to that body and to the public to object to Mr. Poe's being allowed to vote upon it. It is the common law and the common morality of all legislative bodies, and the peremptory rule of the most of them, that no member shall vote upon any measure in which he is interested personally or as counsel for those who are. Public Rights.

*Sun*, Sat, 3/29/90, p. Suppl. 2.

**UNFAVORABLE REPORT.**

Mr. Brown, from the judiciary committee, reported unfavorably the two bills, the Senate bill introduced by Mr. Poe and the House bill introduced by Mr. Preston, to provide for the taking of testimony and for an appeal in the cases now pending in the Circuit Court for Washington County against the Chesapeake and Ohio Canal.

Mr. Poe moved to substitute the House bill for the unfavorable report. He said that the nature of the work in which he had been engaged today had prevented him from making and preparations for the remarks he desired to make to the Senate. The judiciary committee of the Senate had been considering this matter since March 11. He had hoped that an earlier report would have been made, so that a more deliberate consideration could have been given to the subject. This bill simply provides for the taking of testimony in the two cases now pending in the Circuit Court for Washington County against the canal, and for appeal from the order which Judge Alvey may pass after the report from the receivers. There is nothing unusual, nothing extraordinary about this. The expedience and propriety of the measure are simply to be passed on by the Senate. There is nothing unconstitutional about it, and I challenge any member of the judiciary committee or any of the gentlemen who oppose this bill to show me anu clause of the constitution which it violates. I will refer the gentlemen to precedents. The act of 1870, chapter 59, making the State a party in the case of the State of Virginia against the canal company, is one. The act of 1880, chapter 91, to protect the State in the case of D. K. Stewart against the Chesapeake and Ohio Canal Company and others is another. and the case of the State vs. The Northern Central Railway Company, 18 Md., page 193. The substantial order in the cases now pending in Washington County Court will be the order passed by Judge Alvey when the receivers make their report. This bill provides for the taking of sworn testimony by the parties to the suit for the enlightenment of the conscience and judgement of the court; that the court may find its order on sworn testimony and not on the *ex parte* statements of the receivers, who will not be likely to report against the continuance of their office. This provision of the bill is legitimate and proper and nobody should have objected to it. It jealously protects the rights of all parties. Under existing law no appeal will lie from this order of Judge Alvey. This bill provides that an appeal may be taken. Suppose that Judge Alvey should decide to authorize the repair of the canal and the expenditure of a large amount of money, and suppose this should turn out to be a useless, reckless and improvident expenditure, is it not apparent that the State and all other holders of liens would suffer thereby?

I appeal too the judgment of Senators to say whether Judge Alvey's opinion should not be reviewed by the Court of Appeals before this expenditure is made. Suppose Judge Alvey should decide the other way, then this bill provides that the bondholders of 1878 may appeal. Is there anything unfair or outrageous in this? As to any disrespect to Judge Alvey, Mr. Poe said that he could not see that there was any. and he was certain that Judge Alvey did not so consider it. After paying a fine tribute to Judge Alvey, he said that the Judge was but human; and might be mistaken. Mr. Poe concluded by saying that some writer in the newspapers whom he had been informed, had an interest on the other side of the case, had attacked him. He would not say anything harsh, particularly at this time. Possibly some occasion might arise in the future when he would have the opportunity and the inclination to reply to this writer. He would only say now that vituperation was a low quality at best. I cannot, said Mr. Poe, claim the sole authorship of this bill, though I would gladly do so. I am authorized by Mr. Bernard Carter, who sits here in the Senate chamber now, to say that ha and I prepared this bill, and that he agrees with me and stands by the bill. I believe in my conscience and judgment that this bill is for the State's advantage, and that the bill ought to commend itself to the best judgment of the Senate.

Mr. Wirt said that the bill was not only an unusual one, but an iniquitous one, and that he used the language advisedly. The bill, according to the argument of the Senator, is intended to stay the hand of the court, and is in violation of article 8 of the bill of rights, which declares that the legislative and judicial departments must not interfere with each other. This bill is also a violation of section 38 of

article 3 of the constitution, in that it provides special legislation where there is existing general law. I do not think the State's interest in this matter amount to much. Whatever her interests, she has undertaken to lease them to the Washington and Cumberland Railroad Company, and the lessee is the party who is unwilling to submit to Judge Alvey's decision.

Mr. Urner, in explaining his vote, said he voted to substitute the bill so as it might have further consideration; that when the bill was first presented, he was opposed to it, and that he did not think he would vote for it in its present shape.

The yeas were 12 the nays were 13.

The unfavorable report was then adopted by a vote of 15 to 9. The Senate, at 10:15, adjourned to 11 o'clock Saturday.

*Sun*, Tue. 4/1/90, p. Suppl. 2.

**REPORT ON TREASURARY OPERATIONS**

Mr. Poe submitted the following:

*"To the Honorable the Senate and House of Delegates*. – Report of the committee on finance and on the ways and means under the provisions of section 23 of article 95 of the Code:

"In performance of the duty imposed upon the two committees, a sub-committee of each of these committees went between three and four weeks ago to the office of the treasurer, and at his request carefully counted the sterling bonds issued by the State under the act of 1838, chapter 388, for the benefit of the Baltimore and Ohio Railroad Company and the Chesapeake and Ohio Canal Company, and redeemed inn pursuance of the provisions of the act of 1888. They found 26 bonds of £1,000 each, issued for the use of the Baltimore and Ohio Railroad Company; 248 bonds of £500 each, issued for the use of the same company, and 151 bonds of £250 each, issued for the use of the same company. They found 108 bonds of £1,000 each, issued for the use of the Chesapeake and Ohio Canal Company; 491 bonds of £500 each, issued for the use of the Chesapeake and Ohio Canal Company, and 199 bonds of £250 each, issued for the use of the same company. They also found four bonds of £1,000 each, issued for the deaf and dumb loan, numbered respectively, 66, 67, 45 and 104. All of these bonds, the sterling bonds under the act of 1838, chapter 388, and the four Deaf and Dumb loan bonds were duly canceled. They found in the office of the treasurer no State bonds or certificates for stock of the State purchased or obtained for the use of the sinking fund and canceled, and before they had completed their examination and prepared their report, and indeed pending an appointment with him to go on with the work, the special message of the Governor in relation to the accounts of the treasurer, Stephenson Archer, was transmitted to the Senate.

SR, Fri. 4/11/90, p. 4. **The Canal.**

The receivers of the Chesapeake & Ohio Canal at their session in Hagerstown, latter part of last week, elected Mr. A. J. Lowndes, of Baltimore, as secretary, who at once took charge of the office and its contents. Mr. Patterson, the engineer, who was directed some time ago to go over the route of the canal and gain a general idea of its condition, reported that the three worst breaks in the canal were at Log Wall, ten miles west of Georgetown, at Dam No. 4, and at Harper's Ferry. He was under the impression that the lower portion of the canal cannot be used for a railroad bed. The receivers determined to make this week a personal inspection of the entire line of the canal, accompanied by their engineer. They will travel on foot and horseback, and will spend a week at the work.

*Sun*, Sat. 4/12/90, p 4. **THE C. AND O. CANAL LEGISLATION** – So much was said during the session about the Chesapeake and Ohio Canal bills that the questions involved in that legislation should be fairly understood by the people, and further comment may seem to be unnecessary. And yet for some reasons further explanation may be useful, especially as this subject will, in all probability, come before the next Legislature.

Much has been said about the influence of the lobby at Annapolis this winter. Its political influence was marked. It was under the skillful leadership of the naval officer of the port of Baltimore, who was appointed by Mr. Cleveland, whom the national democracy elected upon the platform that "public office is a public trust." The active lieutenants were the men who represent the democratic machine in the State and Baltimore city.

All of the political and personal influence of the machine united to pass the bill leasing the canal. Upon many of its measures it was beaten, but this legislature was a partial triumph of machine methods, though the vote was uncomfortably close. Of course, there were members of the highest character who voted in favor of the bill, who believed this legislation was the best to be had upon this much vexed question. To the votes of these gentlemen the lobby by persistent and continuous effort, and by every influence which it uses, added a sufficient number of votes to carry the bill through.

The proposition contained in the bill as originally presented was that the canal company should be authorized to lease its property to the Washington and Cumberland Railroad Company, to whom authority was given to build a railroad upon the canal bed. The railroad company agrees to pay the principal and interest of the bonds of 1878 and 25 percent of the principal of the bonds of 1844, and then pay the State $15,000 a year. The board of public works are required to execute and deliver to the Washington and Cumberland Railroad Company an absolute assignment of the mortgages held by the State, and also to transfer to said railroad company for a period of ninety-nine years, renewable forever, 50,000 shares of the capital stock of the Chesapeake and Ohio Canal belonging to the State. The bill also requires the full delivery of the property to be made to the lessee, it is a misnomer to call this a lease of the State's interest. It is clearly a sale of the State's interest in the canal, and it was earnestly contended by those opposed to the bill that it was in violation of section 3, article 12, of the constitution, which requires the independent judgment of two Legislatures to sell the State's interest in this internal improvement. This point was not successfully controverted, and was attempted to be met by the following provision, viz: "That the faith of this State is hereby pledged to the ratification by the General Assembly of 1892 of the lease authorized by this act, to the end that all doubts as to the validity of the title of said Washington and Cumberland Railroad Company to the said canal and all its property described in said lease may be forever removed."

In the Senate the provisions of the act pledging the faith of the State to a ratification by the General Assembly of 1892 were stricken out, so that as the matter now stands the next Legislature may confirm or repeal the present act as it shall deem the interests of the State best demand.

Before the final passage of the bill in the Senate Judge Alvey's opinion in the case pending before him was announced. A careful examination of that opinion seemed to show that it was the duty of the Legislature not to attempt to interfere with the courts in the disposition of the State's interests in the Chesapeake and Ohio Canal. The proposition contained in the amendment to the bill offered by Senator Wootton recognized the fact that the question was then before the courts, and that the Legislature should not attempt to interfere with it. There were two ideas in the proposed amendment – first, to secure the interests of the State, and second, to secure to the people of Western Maryland either a railroad or a canal, whichever should prove to be the most feasible. It provided that in the event that Judge Alvey should not restore the canal, and should not enter a decree for the sale thereof, that then proceedings should be instituted by the attorney-general, whereby a decree might be obtained for the sale of a clear title to the canal, which would be open to the capitalists of the world, with the exception of those owning a parallel and competing road. The proposition was eminently fair, and was offered with the

intention of securing a speedy and secure settlement of the canal question. In the act of 1890, the Washington and Cumberland Railroad are given an advance over any other bidders if the canal should be put up for sale. This is manifest; being the owners of the State's mortgages the Washington and Cumberland Company will only have to bid a sufficient sum to pay off those claims which have precedence of the State's mortgages. When it is considered that the State's mortgages, principal and interest amount to twenty-odd millions of dollars, it will be seen that the railroad company can bid the full amount of the State's liens, thus absolutely excluding competition, because they will not have to pay anything on account of the State's liens which they hold except the sum of $300,000, while all other bidders would have to pay the full amount of the purchase money.

The railroad company could then buy the canal at its own price.

If upon the report of the receivers in the pending proceedings the court should order the issuing of receivers' certificates for a sufficient amount to restore the canal the act of 1890 will be inoperative, as the lessees cannot take the property out of the possession of the court.

The only contingency in which the law will be operative, it seems to me, is if the canal shall not be repaired by order of the court, and the court shall decree a sale before the session of 1892; certainly if the matter is held in abeyance until 1892 the law of 1890, which sacrifices the public interest to the private interests of the politicians and capitalists interested in the Washington and Cumberland Railroad Company, should be repealed.

*The Sun* a few days ago, in a forcible article upon the necessity of a reorganization of the democratic party in Maryland, commented upon the notorious and disreputable alliance of certain managers of the democratic party with the lobby. To a careful observer at Annapolis this winter, this alliance was nowhere more conspicuous than in the canal legislation.

The idea of this so-called lease is suggested in the platform of the party. The resolutions for receiving bids and directing the Attorney-General to appear for the State and resist the appointment of a receiver are all parts of a concerted scheme to get possession of the canal for the purpose of enriching a few persons interested in the West Virginia Central Railroad at the expense of the State. They all emanated from one source. The hand of the master is in it all.

The law as passed was not sufficient for the men who are eager to capture what is left of the wreck which their own mismanagement has largely made. The pending proceedings in the court blocked the way to the prompt accomplishment of their designs.

Accordingly, there appeared in both houses about the 11th of March an innocent-looking bill, "Entitled an act to provide for the taking of testimony in the cases now pending in the Circuit Court for Washington County in equity," in the Chesapeake and Ohio Canal case, and "to authorize appeals from any order or orders that may be passed in said cases." The bill introduced in the Senate slumbered peacefully in the judiciary committee until the House bill was passed and was sent over to the Senate. A slight examination sufficed to show that the bill contained a "snake" of huge proportions. The debate upon it disclosed the fact, which its authors admitted, that it was intended to stay the hand of the court. It was a special law for a particular case for which provision had been made by general law, and hence contrary to the constitution. Yet it was earnestly pressed upon our consideration. The object of the law was to compel the court to allow any of the parties to take testimony as to the expediency of restoring the canal as a waterway, the expense of making repairs, the time within which it could be done, and in fact upon almost any subject any of the parties to the suit might wish to inquire into in order to delay the court. Until the return of the testimony, the court was prohibited from passing any order upon the report of the receivers. An appeal was granted from any interlocutory order to the Court of Appeals, and the operation of said orders suspended by such

appeal upon filing an appeal bond. Not only the lower court but the Court of Appeals was bound and hampered by the provisions of this remarkable bill. Its manifest object was to create so much delay in the legal proceedings that the court could not, if it would, restore the canal. The partial wreck of the canal would become a total one. The boats would rot along its shores. The defeat of this bill by the decisive vote of 15 to 9 in the Senate was one of encouraging events of the session. Taken in connection with the defeat of the gas bill, it was some clear evidence that the reign of Boodle and the Machine is not entirely absolute in Maryland.

The question of necessary canal legislation was much clouded by the false notion that in order to secure a railroad in the place of the canal it was necessary to pass the lease bill. This was not at all true. The amendment of the Senator from Montgomery would have secured a railroad, provided that the court should not have decided that the canal must be restored. If the court decides that the canal can and must be restored, then the lease to the Washington and Cumberland Railroad Company will amount to nothing, as far as providing a railroad is concerned. But in other respects, the Wootton amendment was far preferable. It was in compliance with the constitution. It offered the property at public sale so that a fair price could be obtained for it. No member of the Maryland Legislature has sufficient knowledge of the property to give an intelligent judgment as to whether the price named in the bill passed was a fair and sufficient one. On the contrary, there was some evidence to show that the consideration was grossly inadequate. The amendment proposed to relegate the whole matter to the courts, where it properly belongs, involving as it does the disposition of valuable rights and the decision of complicated questions of law. It would have secured to the people of Montgomery and the other counties of Western Maryland the means of transportation they so much needed as promptly as possible, and with a due regard to the rights of the State and other parties in interest.

Above all, it would have taken the canal out of politics. When we consider its long history of political jobbery and mismanagement, surely this was a "consummation devoutly to be wished."

John S. Wirt

*Sun*, Wed. 4/16/90, p. 4.

**CANAL RECEIVERS ON THE GO.**

Paw Paw, W. Va., April 15. – Robert Bridges, Col. R. D. Johnson and Joseph D. Baker, the receivers appointed for the Chesapeake and Ohio Canal, left Cumberland this morning at 10 o'clock on the inspection trip over the canal line. The receivers were accompanied by Messrs. A. J. Lowndes, T. L. Patterson, G. G. McKay, Fred. Mertens and T.P. Kingsley, of Syracuse, N. Y. The party embarked aboard a canal boat, on which they traveled from Cumberland to Okonoko, a distance of 23 miles. The receivers made several stops on the trip to examine the condition of the banks and locks, both of which so far were found to be in good condition. All the repairs necessary, it is thought, can be made by the force of hands employed regularly by the company for that purpose. The property belonging to the company, such as lock-houses, were in fair order, and the statement was made that there is nothing to prevent the free use of the canal for transportation from Cumberland to Okonoko, as several boats drawing five feet of water have been passing over the route daily.

After reaching Okonoko, the party left the boat and proceeded to Paw Paw on horseback. There are several minor washouts and as many places where the canal bed has been filled in by gravel which has been washed in the bed. It was estimated that the repairs needed so far can be made with a small outlay.

The party will leave at 8 o'clock tomorrow morning and will probably reach some of the points where the canal was damaged by the flood. All along the route traveled today the party was received with evidences of joy by the people, all of whom

were earnest in expressing a desire that the canal should be again put into operation. It is rumored about Cumberland that there are several parties who are anxious to make contracts to do the repair work that is necessary at figures which, it is said, are far under the amount which has been estimated to be necessary. The receivers will not give an estimate of the cost of repairs until they have examined the entire canal. They will probably reach Georgetown by the last of next week.

*Sun*, Fri. 4/18/90, p. 1. The Chesapeake and Ohio Canal receivers examined the damage to the waterway between Orleans and Hancock.

*Sun,* Thu. 4/24/90, p. 1. In their report to the court in Washington, the District receivers for the Chesapeake and Ohio Canal say they are unable to make a full return of the canal property, owing to the mutilated condition of the company's records.

---

*Ibid*, p. 4. *Another Move in the C. and O. Canal Case.* – The board of public works held a meeting in this city yesterday and passed the following order for the direction of the attorney-general in the Chesapeake and Ohio Canal suits at Hagerstown: "Ordered, that instructions be given to the attorney-general to pray an appeal in behalf of the State from the order passed by the Circuit Court for Washington County in each of the two cases therein pending of Brown and others, trustees, against the Chesapeake and Ohio Canal and others, appointing receivers and prescribing their duties." The object of the order is to have the action of Chief Justice Alvey appointing the receivers reviewed by the Court of Appeals and to have the order reversed, whereby the canal may be either sold at public auction or leased to the Cumberland and Washington Railroad Company under the laws passed at the last session of the Legislature. Governor Jackson and Comptroller Baughman were present at the meeting of the board.

---

*Ibid.* p. Suppl. 2. **District Canal Receivers Make Their Second Report.** – Washington, April 23. – The second report of the District receivers of the Chesapeake and Ohio Canal Company in the consolidated cases of Brown et.al. vs. the Chesapeake and Ohio Canal, reported in *The Sun* as having been filed and withdrawn last week, was submitted to Judge Cox today by Mr. Hamilton, counsel for the receivers. It is a document of twenty-six typewritten pages.

After stating that they have been allowed by the Maryland receivers to inspect the books, &c., and that they are incomplete and fragmentary, as far as any accurate account of the property is concerned, the receivers give a summary of the property of the Chesapeake and Ohio Canal Company in the District of Columbia. This, they say, consists in Washington of the bed of the canal and certain rights along the shore of the river appertaining to the same with accretions in Rock Creek and the Potomac river, and then of lands in Georgetown and the county at the intersection of Rock Creek and the Potomac and along Thirtieth street west, comprising what is known as the "mole wharf," with various squares, lots and parts of lots, including part of old Heedwood street, &c. The water-power renters are W. H. Tennay & Co., 550 inches, $1,675; Transparent Ice Co., 125 inches, $425; A. Herr & Co., 800 inches, $2,400; G. W. Cissell & Co., 500 inches, $1,500. The receivers ask for instructions relative to the contracts by which the water-takers are to be repaid for the $20,000 advanced to repair the Georgetown level, and say that H. H. Dodge has a claim for water right which practically yields no revenue, and they ask instructions thereon. They say that the Georgetown level is in a fair condition; that Rock Creek level can be put into order for about $15,000, and it is proposed to allow the mill-owners to advance money for this purpose and take a lien on the rents. On this matter, too, they ask instructions. They allege that the rents of the Washington gaslight Company, Biser & Gambrill and Winship, Meredith & Co., are too low, and ask whether a rental of

$3,776 is sufficient or whether notice to leave should be given these tenants. The receivers state that, in their opinion, the whole of the rent estate which belongs to the company has not been enumerated in the lots which they give. They say that in consequence of their inability to obtain the full records of the company, which are now mutilated and defective, they cannot report all the real property and rights of the company. For the purpose of enabling them to do this, further proceedings will be necessary, and they ask a decree which will authorize them to make an exhaustive search for the company's property, which may now be in private hands by tenancy, of any kind of lease for years, sufferance, &c., whether of lands, water rights or other privileges, powers, rights or easements of the company. After having acted on such a decree they think they will be able to make a fuller and more comprehensive report of the affairs of the company. No action has yet been taken by the court.

---

**DAMAGED BANKS AND LOCKS**

Harper's Ferry, W. Va., April 23. – The canal receivers had hard work today. The start was made at 7:30 this morning from Mercerville, where the night had been spent. The first stop was made about one mile east of the starting point, where the canal bank has been washed out. The engineers spent some time in taking measurements. The party next passed down the bank to a break which is on the thirty-ninth level below the "Shades of Death." The name of this place is said to have originated from a strike on the canal, during which a number of persons were killed. The washout here is a small one. Lock 39 was in good condition. The house occupied by the lock-tender was damaged.

A ride of two miles took the party to lock 38, which is opposite Shepherdstown, W. Va. At this lock the flood played havoc. After making an examination, the party crossed the river and took dinner at Shepherdstown. This is the second place visited, so far, where the people are in favor of a railroad instead of a canal. Leaving the town at 1 P. M., the party re-crossed the Potomac and headed for Harper's Ferry, below Shepherdstown. The travelers found that the Antietam aqueduct had not been damaged. This is a very expensive piece of work. Just above the mountain lock, a large culvert was found completely washed out, leaving a space 60 feet long and 18 feet deep.

There was nothing to take especial attention until Harper's Ferry dam No. 3 was reached. Here the party found that the locks were not so badly damaged. The greatest damage sustained was to the guard banks, which were built to protect the canal below from freshets. As this break will require a great deal of figuring the party passed on to Harper's Ferry, where it stopped for the night. The receivers will return to the dam tomorrow morning. At this place the party was joined by State Senator Edward Wootton, Dr. C. F. Russell and J. K. P. Biser. These gentlemen will accompany the directors to Georgetown.

SR, Fri. 4/25/90, p. 4. **Inspecting the Canal.** The receivers of the Chesapeake & Ohio Canal, since our last report, have made a thorough examination of the canal between the tunnel and Harper's Ferry. The tunnel was found to be all right, and down as far as Hancock the damage to the canal was not great. There were some land-slides, a few small breaks, and at several places the tow-path was washed more of less. Dam No. 6 was found to have been washed some, but the stonework was all right. Between Hancock and Williamsport there was a rather large break, and the tow-path was pretty badly washed. At Dam No. 5, the stones were washed from the combing of the dam and the earth-work on the canal side was in bad condition. From Williamsport to Harper's Ferry, the canal is just about in the average condition as reported of the upper portion, the main damage being at Big Slackwater and Dam No. 4. The receivers stopped at Shepherdstown Wednesday for dinner at the Entler Hotel and a number of our citizens called to see them while they were here. They report that the damage was not as great at they had been led to believe,

although there is plenty of work to do if the canal is to be repaired.

A party of engineers, said to be in the employ of the West Virginia Central Railroad Company, is following the receivers, taking notes and making estimates on their own account.

*Sun*, Sat. 4/26/90, p. 1. The Chesapeake and Ohio Canal receivers completed their inspection of the waterway.

*Sun*, Tue. 4/29/90, p. 1. The District receivers of the Chesapeake and Ohio Canal are still researching the records for titles to property and rights.

*Sun*, Tue. 4/29/90, p. Suppl. 2. **CANAL CASE** The District receivers of the Chesapeake and Ohio Canal Company, having made full examination of all the property of the company in this District to which reference is made on the books of the corporation, are now engaged in preparing, by the hands of their counsel, for further action relative to search not only for property of the Chesapeake and Ohio Canal whose title is on record here, but also to such "as is recorded in several counties of the State of Maryland." The receivers are informed that several of the leases of property and rights are not to be found among the records of the District of Columbia, but have been recorded in Maryland. The decree authorizing action by the receivers in the matter has not yet been formulated for presentation to the court, but will come up for the action of Judge Cox in a short time.

*Sun*, Wed. 4/30/90, p. Suppl. 2. **Going Over the Canal** – Hagerstown, Md., April 28. – An engineering party, consisting of Geo. H. Coryell and Chas. Phillips, of Washington, and J. S. Long, of Cumberland, are going over the Chesapeake and Ohio Canal, it is supposed in the interest of some railroad company. They started for Georgetown yesterday. Mr. Edward Mulvaney and S. B. Young, of Cumberland, are also going over the canal. They left Williamsport yesterday morning for Hancock. They were accompanied over part of the canal below Williamsport by Mr. Stephen Gambrill.

SR, Fri. 5/2/90, p. 4. **The Poor Old Canal.** It would take a Philadelphia lawyer to keep track of the various movements legal and otherwise, in connection with the Chesapeake & Ohio Canal. Within the past week, the receivers have finished their inspection of the canal, but have not yet made a report. As stated last week, the receivers were followed by a party of engineers, supposed to be in the interest of the West Virginia Central Railroad. On Friday, President Gambrill, Superintendent Edward Mulvaney and Mr. S. D. Young stopped at Shepherdstown, and they too were making an inspection of the entire line. The receivers appointed for the District of Columbia have made a report to the court in Washington, giving a list of property in their possession, its condition, and asking further instructions. The Board of Public Works of Maryland has made a new move. At a meeting in Baltimore last week, they passed the following order for the direction of the Attorney-General in the Chesapeake and Ohio Canal suits at Hagerstown: "Ordered, that instructions be given to the Attorney-General to pray an appeal in behalf of the State from the order passed by the Circuit Court for Washington County in each of the two cases therein pending of Brown and others, trustees, against the Chesapeake and Ohio Canal and others, appointing their duties." The object of the order is to have the action of Chief Justice Alvey appointing the receivers reviewed by the Court of Appeals and to have the order reversed, whereby the canal may be either sold at public auction or leased to the Cumberland and Washington Railroad Company under the laws passed at the last session of the Legislature. Governor Jackson and Comptroller Baughman were present at the meeting of the board.

Wednesday another engineering party, composed of George H. Coryell and James Phillips, of Washington, and J. S. Long, of

Cumberland, stopped over at Shepherdstown. They too were making an examination of the canal, but did not divulge any information as to who was employing them.

*Sun*, Fri. 5/2/90, p. Suppl. 2. **Canal Receivers to Make a Searching Scrutiny – A Sweeping Decree** – Washington, May 1. – Judge Cox made today a decree in the consolidated cases of Brown et al. vs. the Chesapeake and Ohio Canal Company giving Receivers H. C. Winship and Victor Cushwa the plenary authority for investigating the financial affairs of the canal company asked for in their report, filed last month. The receivers are authorized to cause proper examination to be made of the land records of the District, and, if necessary, also the land records of the State of Maryland, in order to obtain information and accurate descriptions of all the real estate belonging to the canal company or to which it is in any manner entitled. They are also instructed to make all necessary inquiries and investigations to ascertain what existing leases, contracts and agreements there are relating to the real estate or to the water rights, privileges, canal and other property of the company or in any manner affecting it. The receivers are also instructed to ascertain and report to the court what property, if any, of the canal company is held or occupied by other persons, the names of such holders or occupants, and by what lease, authority or agreement the property is held or occupied. The receivers are also instructed to demand and empowered to receive from the canal company, its officers or agents any and all maps, plans, plats, tracings or surveys of any and all the property of the company to which it is in any manner entitled, or to which it has any claim of right, situated either in whole or part in this District, and to have full, complete and accurate plats and tracings made of any and all such property. The court further instructs the receivers to investigate and report to the court what agreements, if any, there are between the canal company and mill owners or occupants of mills along the line of the canal, with reference especially to the matter of the repair and maintenance of what is known as the "Georgetown level" of the canal, and what repairs were or are necessary to be made upon that level, and what sums of money agreed to be paid for the repairs were reasonable and proper. The court also instructs them to fully investigate what water rights and privileges belonging to the canal company have been leased or granted to other persons or have been used and occupied by other parties without leave or authority. They are required to demand from the canal company and its officers a full, true and accurate statement of all moneys received by the company or its officers or agents and from any and all property, rights and privileges pertaining to the company within this District and collected here by them. They are required also to demand of the canal company a true and correct statement of the accounts of the company and its receipts and disbursements, and of all receipts and disbursements of money belonging to the company since the year 1888, and where and in what hands the amounts have been kept, and in what name. The Chesapeake and Ohio Canal Company, its officers and agents and any of them are enjoined and directed to deliver to the receivers the statement of accounts, &c., the books wherein the accounts have been kept, and to disclose to them the name and place of business of any and all banks and banking houses where all accounts have been kept and deposits made. The court also directs the receivers to report the result of their proceedings in the premises.

*Sun*, Mon. 5/12/90, p. 4.

**To Consult Presidents of Coal Companies** Frederick, May 11. – Mr. Joseph D. Baker, of this city, one of the receivers of the Chesapeake and Ohio Canal, states that no arrangements have yet been made by the receivers to visit New York and consult the presidents of the coal companies in regard to their future shipment of coal over the canal in the event of its being maintained as a waterway, but it has been decided to hold a consultation with some of the coal shippers in Baltimore and

Cumberland this week, to see what opinions are entertained by them on the subject of future coal shipments over the canal. Work on the receivers' report is progressing as rapidly as possible, and it is hoped that it will not be long before it can be handed in.

*Sun*, Tue. 5/13/90, p. 2. **ELECTION NOTICE** – Annapolis, Md., May 9, 1890. The regular annual meeting of the Stockholders of the Chesapeake and Ohio Canal Company will be held in the Executive Chamber, Annapolis, Md., Monday, the 2nd day of June, 1890, at 11 A. M., for the election of President and Board of Directors. S. GAMBRILL, Pres.

---

*Ibid,* p. 4. ***The Chesapeake and Ohio Canal Receivers***. – Robert Bridges, Col. R. D. Johnson and Joseph Baker, the receivers appointed for the Chesapeake and Ohio Canal, were registered at the Hotel Rennert last night. They will visit the coal companies which have shipped coal via the canal, and if possible, form some estimate of the amount of revenue the canal would derive from that source if Judge Alvey should order a restoration.

---

*Ibid,* p. Suppl. 2. Hagerstown, May 12. – The May term of court began in Hagerstown today with Judge Alvey on the bench. Mr. John J. Koontz, of Hancock, was appointed foreman of the grand jury. On the docket for this court were 28 cases against the Chesapeake and Ohio Canal Company, brought by laborers and others. Judgment was rendered against the company in 23 of the cases. The term of court will be a short one.

SR, Fri. 5/23/90, p. 4. The receivers of the Chesapeake & Ohio Canal made a preliminary report last week. It only showed a list of the real estate and personal property owned by the canal company, and the rentals from the same.

*Sun*, Mon. 5/26/90, p. 4. **Canal Receivers' Report** – Hagerstown, May 23., - The receivers of the Chesapeake and Ohio Canal have been at work on their second report during the past week in Hagerstown and expect to finish it in a short time. They desire some additional information from the coal companies as to the amount of coal that will be shipped over the canal if repaired, and they will go to Baltimore on Monday to hold a second conference with the coal companies.

*Sun*, Tue. 5/27/90, p. 4. ***The Chesapeake and Ohio Canal Receivers*** – Messrs. Joseph D. Baker and Robert Bridges, two of the Chesapeake and Ohio Canal receivers, were in the city yesterday for the purpose of conferring with the coal shippers in reference to canal repairs. Mr. Johnson, the remaining member of the board, did not appear, and the conference was postponed to a date that will be fixed upon later.

*Sun*, Tue. 6/3/90, p. Suppl. 2. **No Meeting of C. and O. Canal Directors –** The annual meeting of the stockholders of the Chesapeake and Ohio Canal, called to take place at the executive chamber today for the election of president and directors, did not come off. President Stephen Gambrill was the only official present, and at his suggestion Secretary of State Le Compte adjourned the meeting until Thursday, when it is thought it will be further postponed. The president of the canal is required, under the charter, to call the annual meeting of the board, and at least one stockholder must be present to adjourn it to a future date. Secretary Le Compte, in postponing the meeting today, acted as proxy for the board of public works, which holds a controlling interest in the canal stockholders' board. In the present condition of the canal, it is not thought that there will be any new applicants for president or for the board of directors should there be a meeting, which is not likely for the present.

*Sun*, Tue. 6/10/90, p. 2. **The Canal Receivers' Report** – The report of Messrs. Bridges, Johnson and Baker, receivers of the Chesapeake and Ohio Canal, is a document which dashes the hopes of those who looked

forward to the rehabilitation and continuation of the canal as a waterway. In the outset, the receivers marshal all the facts that have come to their knowledge favorable to continuance, and then bring forward the conditions necessary to practical resumption, but which, being absent, lead them to unfavorable conclusions. They say that the canal company owns real estate in the District of Columbia and elsewhere not necessary to its operations as a canal, which could be sold for an amount sufficient to pay in full the bonds of the canal company, issued under the act of 1878, as well as the wages now due to its laborers and the cost of repairs now necessary and the wharf debt. After doing this, they say the net revenues of the canal would be solely applicable to the payment of interest on the bonds of 1844. So far, it is all favorable to continuation, and the receivers bring forward the additional consideration that the State has all along designed in fostering the canal not so much to earn dividends as to promote the prosperity of the people and the healthful operation of material interests. These considerations operated powerfully with them in causing them to desire the restoration of the canal and to be able to make recommendation to that end, but the practical difficulties in the way have brought them reluctantly to the conclusion that such a recommendation would be unwise and ill-advised. These obstacles are the railway competition with which the canal cannot successfully cope; the impossibility of securing adequate guarantees from the coal companies; the insufficiency of future revenues to be counted upon for a period longer than four years; and the cost of repairs. The sum of $263,690 would be necessary to restore the canal, and the receivers will not take the responsibility of making recommendation to this end. They therefore say: "The unavoidable conclusion has forced itself upon us that with the revenues we may reasonably expect, the prospect of paying anything to the holders of the bonds of 1844, after paying the interest and principal upon receivers' certificates which would have to be issued to raise the necessary money for restoration would be remote indeed, too remote for any serious consideration."

---

*Ibid*, p. Suppl. 1. **THE CANAL RECEIVERS** – Messrs. Robert Bridges, Col. R. D. Johnson and Joseph D. Baker, the receivers appointed by Judge Alvey for the Chesapeake and Ohio Canal, filed their final report at Hagerstown yesterday. The receivers have been engaged in gathering data for the report since April, and they are of the opinion that the canal cannot be run as a waterway and pay. There was a rumor at Hagerstown last night that a syndicate might be formed to take the canal and repair it. The following is the report: **THE REPORT IN FULL**

"The second report of Robert Bridges, Richard D. Johnson and Joseph D. Baker, receivers, respectfully shows that by the terms of the order passed in this cause, March 3, 1890, it is made their duty to collect the books, papers, maps, belonging to the canal company; to collect its personal property and assets; to make schedules of its real and personal property, and to make full and thorough examination, and collect all such information as they may be able as to the condition of the canal, the needful repairs thereof, and the probable cost of repairing it, and the feasibility of operating it when repaired, and report the same with the results of their judgment and opinion in the premises, and the reasons therefore, to the court for its information, and such further action as it may deem necessary.

"We have in our first report filed schedules of the personal property of the canal and of the real estate as far as we were able to specify and describe the same, and have brought to our office in Hagerstown all the books, papers and maps which were found in the offices of the company at Annapolis and elsewhere. We have made a full and thorough examination of the canal and its property, by personal inspection, from Cumberland to Georgetown, and have collected all information possible of the condition of the canal, the cost of its repairs, and the prospects of business and revenue, and the cost of operating it, if it is

repaired, before submitting to the court the result of our investigations and the conclusions we have reached therefrom.

**THE CANAL'S PROPERTY**

"We, having examined the entire line of the canal, have found that there is a great deal of very valuable property belonging to the canal company and not absolutely essential for the uses of the canal as a transportation line. Much of this property is leased at a nominal rent, at a rent far below the true value of the property. From the books and maps which have been turned over to the receivers by the officers of the canal company, it has been impossible to ascertain exactly what property the canal owns, what leases it has made, and what rent it is entitled to receive.

"In case there should be a sale of the canal, the receivers deem it absolutely essential that before such sale should be made, they be empowered to ascertain and report to the court exactly the property which the company owns, both in Maryland and the District of Columbia, and also to ascertain and report what leases have been made and on what terms, and whether any leases have been made since the issue of bonds secured by the several mortgages, and if the same are valid.

"An intending purchaser of the canal cannot make an intelligent bid for it until he knows exactly what the valuable property is which the company owns both in Maryland and the District of Columbia, and what, if any, burdens are imposed upon it by way of leases which may or may not be cut off by a decree of foreclosure and sale. To this end, we respectfully ask the court to give the necessary authority to employ competent surveyors to make the requisite plats of the property both in Maryland and the District of Columbia, and to make examination of the company's title to said property. Upon such a report made to the court, there will be a proper basis for any parties who may desire to buy the canal and its valuable property to estimate its value. We file herewith the report of the receivers appointed by the Supreme Court of the District of Columbia and order of said court in reference to said property, marked exhibits, report, and decree.

"It turns out that the company owns real estate in the District of Columbia and elsewhere not necessary to its operation as a canal, and that could be sold for an amount sufficient to pay in full the bonds of the canal company issued under the act of 1878, wages now due laborers, the cost of repairs now necessary, and wharf debt, then the net revenues of the canal would be solely applicable to the payment of interest on the bonds of 1844, and we could not well arrive at a different conclusion from that we have reached, based upon conditions as they now exist.

**FEASIBILITY OF OPERATING AS A WATERWAY**

"In considering the question of the feasibility of operating the canal, we have not failed to remember that the State of Maryland owns a majority of the $3,851,503.67 capital stock of the company; that it was the holder of two mortgages for $4,375,000 and $2,000,000 respectively, with accrued interest; that the State was thus substantially the owner of the canal, and that by an act of the General Assembly of the Sate, passed in 1844, all the liens of the State were waived in favor of $1,700,000 of the bonds to be secured by the pledge of the net tolls and revenues of the canal company; that it was essential to raise that sum on money in order to complete the canal to Cumberland, and that $1,699,000 was borrowed by the canal for that purpose, under and by virtue of said act of 1844, and the mortgage and pledge of tolls and revenues thereby authorized. We consider that the faith of the State was pledged to the holders of the so-called bonds of 1844; that the canal should continue to be operated as a waterway, and revenues earned so long as the same could successfully be done. We have also borne in mind that there are in the canal about 160 canal boats, the value of which will be entirely destroyed if the canal is not restored, and that large sums of money have been expended in

building them upon the implied obligation that the canal would be maintained as a waterway.

"The design of the State in fostering this work was not, we apprehend, so much for the purpose of earning interest or dividends upon the great sums of money embarked in it, as to develop the resources of the State, to promote the prosperity and well-being of the people, and to furnish transportation to market from the coal mines of Allegany county and to regulate the price for transportation by competition with the railroad lines. The canal in the past has not only done this and so added greatly to the wealth of the State and its taxable property, but it has been a public highway open to all. It has given occupation to great numbers of people, and has itself been an excellent market for the products of farming country through which it passes, most of which is remote from any other market.

"The objection which has been made to the restoration of the work upon the absence of any adequate number of boats to conduct the traffic, we have not considered. There are already 160 boats which could be put in repair in a short time, and we have assurances that as many more as would be necessary to transport as much as 600,000 tons of coal from Cumberland to Georgetown would be built within a short time.

"The consideration of all these facts has operated powerfully with us in desiring the restoration of the canal and in inducing us to make a recommendation to the court in accordance with this strong desire.

**OBSTACLES TO NAVIGATION**

"But certain obstacles force us, however reluctantly, to the conclusion that such a recommendation would be unwise and ill-advised.

"The first and most important obstacle in the way of canal navigation is the manifest disadvantage or inequality in competition with railroad transportation. During the past few years facilities for cheap transportation upon the railroads have so multiplied by the improvement in roadbed and rolling stock that any competition with it by means of canal navigation paying reasonable tolls, and at the same time such freightage to the boatmen as would justify them in embarking their capital and labor in it seems to us well-nigh hopeless.

"Upon inquiry, the receivers have been informed and have ascertained that the present rate of transportation by rail from the mines to tidewater at Baltimore and the northern ports is so law as to preclude the hope that the canal would receive any part of the tonnage in natural business competition.

"Recognizing, in spite of this fact, what in our judgment was the manifest interest of the Allegany coal companies in maintaining the canal as a regulator of freight rates and a reliable competitor of the railroads, and a sure obstacle in the way of a combination between the competing railroad lines to effect such advance in freight rates as they might demand, we represented to the officials of all the coal companies the situation and asked them for assurances of business for the canal at such rates of freightage and tolls as would give a living to the boatmen and at the same time afford the canal such revenues as would maintain it and leave a reasonable amount of net revenue. It has been the earnest and persistent effort to obtain these assurances which has so long delayed this report. Of the large number of coal companies to which we applied, but four made any satisfactory response, and the others ignored the request or refused to give the assurances.

**AN ESTIMATE OF REVENUE**

"The four who responded with the required assurances promised the shipment over the canal of 430,000 tons of coal each season for the period of four canal seasons. This amount included through freight and local freight, and it was provided that in the event of any interruption to navigation during the season, the companies giving the assurance reserved the privilege of reducing their shipments in such proportion as the term of interruption to navigation should bear to the season of canal shipments.

"The companies could not specify how much of said amount of tonnage would be

through freight to Georgetown, how much local along the canal, or how much would be shipped coastwise from Georgetown. It was therefore impossible to calculate exactly what amount of revenue would accrue to the canal from that amount of traffic at the rate of tolls proposed to be paid. We have, however, carefully calculated the revenue arising from the assured tonnage based upon the tolls proposed in the proportion of shipments local and through of former years, and find it to be $184,360.

"We have added to that amount the revenue which may be reasonably expected from all other sources and find that the total amount of revenue, including said tolls, would be $189,902.89, as will appear by the following tabulated statement of estimated revenue and working expenses and cost of annual ordinary and extraordinary repairs:

**CHESAPEAKE AND OHIO CANAL CO.**
**JUNE, 1890**

Receiver's estimate of revenue on coal, &c.

| | Dr. | Cr. |
|---|---|---|
| By toll on 274,000 tons from Cumberland to Georgetown, thence coastwise, 30 cents | | $82,200.00 |
| By toll on 100,000 tons to Georgetown and Washington, 40 cents | | 40,000.00 |
| By toll on 76,000 tons local, 16 cents | | 12,160.00 |
| By 3,340 waybills to Washington and Georgetown, $2.04 | | 6,813.60 |
| By 3,340 waybills to Cumberland, $2.04 | | 6,813.60 |
| By 670 waybills to Cumberland, $1.06 | | 710.20 |
| By 670 waybills to local, $1.06 | | 710.20 |
| By trimming 3,340 cargoes coal at $1.30 | | 4,342.00 |
| By trimming 670 cargoes coal at $1.30 | | 871.00 |
| By water rents, per company's report for 1888 | | 9,357.03 |
| By house and land rents, per company's report for 1888 | | 3,983.26 |
| By miscellaneous revenue from tolls, estimated | | 10,000.00 |
| By wharfage on 250,000 tons coal, 4 cents | | 10,000.00 |
| | | 189,962.89 |
| *Estimated Expenditures* | | |
| To operating expenses per schedule herewith | $100,000.00 | |
| To wharf expenses at Cumberland on 250,000 tons coal, 2 cents | 5,000.00 | |
| To trimming 4,010 cargoes coal, 65 cents | 2,606.50 | |
| | 107, 606.50 | |
| To cost of rent of Georgetown outlet lock or operating Rock creek | 7,500.00 | |
| To estimated extraordinary repairs to canal | 20,000.00 | |
| | 135,106.50 | |
| *Interest and Coupon Acct.* | | |
| To receiver's repair interest bonds. $268,698.00 | | |
| To floating debt due superintendents, lock-keepers, laborers and others. 61,121.93 | | |
| To repair (interest) bonds, act 1878 500,000.00 | | |
| To coupons overdue and due July 1, 1890 105,000.00 | | |
| To Georgetown millers' bonds 20,000.00 | | |
| To wharf debt, Cumberland 21,745.84 | | |
| $976,565.77 | | |
| Interest at 6 percent on $976,565.77 | 58,593.95 | 189,962.89 |
| By excess of expenditures over receipts | | 3,737.56 |
| | $193,700.45 | $193,700.45 |

"The amount of revenue shown in this table is all that can reasonably be relied upon. This is the outside limit, for we have no reason whatever to believe that the canal would receive any greater amount of tonnage or at any higher rate of toll than those given in the informal promises of the companies, because it is natural and reasonable to conclude that all traffic will seek the cheapest channel.

"We have treated this as an assurance of a settled revenue for a period of four years, and have not taken into consideration the probability of the occurrence of damages to the canal which would result in suspension of traffic, or any other adverse contingencies or occurrences.

"After the expiration of the four years, we are unable to see that there is a reasonable expectation for a remunerative traffic for the canal.

"It will be observed that in our estimate of annual expenses we have allowed the sum of $50,000 for extraordinary repairs. In order that it may appear how conservative and hopeful these figures are, we call your attention to the statements made for the last twenty-three years. Former administrations of the canal claim that they expended in extraordinary repairs on an average each year $72,650, and they also claim that their operating expenses and ordinary repairs during the same period have been $161,728 per annum, making a total average of the cost for conducting and maintaining the work, including repairs of damages caused by floods, about $235,000. We herewith file an itemized statement of our estimate of the cost of estimating the canal, marked 'Exhibit Estimate.'

"We also file herewith a statement called a 'balance sheet of the Chesapeake and Ohio Canal Company,' taken from the books of the canal company, marked 'Exhibit Balance Sheet,' which shows that the money expended in the construction of the canal, which arose from the Capital stock, the two loans made by the State and the proceeds of the sale of the bonds of 1884,exclusive of all other money expended in the work, amounts to $11,928,093.67.

"For an account of the present physical condition of the canal we refer the court to the report of Messrs. T. L. Patterson and T. P. Kinsley, civil engineers, herewith filed, marked 'Exhibit A.'

"In addition to the examination of the canal by these competent and highly skillful engineers, the receivers made a personal and very careful inspection of the canal from the basin at Cumberland to the line of the District of Columbia. Whilst noting the breaches and ruin occasioned by the great floods of June, 1889, we could not but be deeply impressed by the durable and massive character of this great and historic work. Its tunnel, its aqueducts, dams and embankments are marvels of engineering skill and elaborate construction, and the durability is amply proved by their resistance to the freshets of the Potomac river for near a half century.

"The grave question which your receivers have had to decide is whether they would be justified, in view of all the facts we have already stated, in recommending the expenditure of so large a sum of money as $268,698 in this restoration. It would, indeed, be assuming a responsibility which, in the event of failure to earn revenues or in the event of another freshet which might destroy all the work as soon as completed, would weigh heavily upon those who induced people to embark their funds in the enterprise. The unavoidable conclusion has forced itself upon us that, with the revenues we may reasonably expect, the prospect of paying anything to the holders of the bonds of 1844, after paying the interest and principal upon the receiver's certificates, which would have to be issued to raise the necessary money for restoration, would be very remote indeed – too remote for any serious consideration."

(Signed,) Robert Bridges, R. D. Johnson, Joseph D. Baker, Receivers.

**ESTIMATES OF COSTS OF REPAIRS**

The following tabulated statement shows in detail the estimated cost of repairing the canal as given in "Exhibit A," to which reference has already been made:

| | |
|---|---|
| From Cumberland to dam No. 6. | $10,988.00 |
| Repair of dam No. 6 | 10,850.00 |
| From dam No. 6 to lock No. 44, (Williamsport) | 6,140.00 |
| From lock No. 44 to dam No. 4 | 2,668.00 |
| From dam No. 4 to lock 36, dam No. 3 | 37,116.00 |
| From lock No. 36 to lock No. 32, (Harper's Ferry) | 22,503.00 |
| From lock No. 32 to lock 20, (Great Falls) | 9,511.00 |
| From lock No. 20 to lock 13, inclusive | 8,694.00 |
| Log Wall Level to lock No. 14 | 37,657.00 |
| Lock No. 14 to District line | 4,638.00 |
| | $150,165.00 |
| Add 20 percent for contingencies | 30,033.00 |
| Amount of "Exhibit A" | $180,198.00 |
| To this must be added, for cost of lumber, carpenters' work, lock-houses, repairing locks, flumes, waste weirs, lock-gates and other wooden structures | 45,000.00 |

| | |
|---|---|
| For necessary repairs to canal in the District of Columbia, as per statement of District receivers | 15,000.00 |
| For repairs of wharf at Cumberland | 1,000.00 |
| For repairs of telephone line | 7,500.00 |
| For contingencies and incidental expenses which have and would be incurred before completing work. | 20,000.00 |
| | $268,698.00 |

*Sun,* Thu. 6/12/90, p. 2. **The Wreck of the Chesapeake and Ohio Canal**. – No one can read the report of the receivers of the Chesapeake and Ohio Canal, published in Tuesday's *Sun*, without being impressed by the careful and conscientious manner in which the receivers have performed the duty imposed upon them by Judge Alvey's order, of investigating thoroughly the condition and prospects of the canal with reference to the feasibility of repairing it and operating it successfully as a waterway. Apart from the main question, however, of the cost of repairs and prospects for future revenue, in regard to which the conclusions of the receivers will be read with interest by all persons interested in the canal, and especially in the counties liable to be affected by its discontinuance as a waterway, there are certain other facts developed by the report which ought to receive the thoughtful consideration of every citizen of the State. We refer particularly to that portion of the report where the receivers say:

"We, having examined the entire line of the canal, have found that there is a great deal of very valuable property belonging to the canal company and not absolutely essential for the uses of the canal as a transportation line. Much of this property is leased at a nominal rent; at a rent far below the true value of the property. *From the books and maps which have been turned over to the receivers by the officers of the canal company, it has been impossible to ascertain exactly what property the canal owns, what leases it has made, and what rent it is entitled to receive.*

"In case there should be a sale of the canal, the receivers deem it absolutely essential that before such sale should be made they be empowered to ascertain and report to the court exactly the property which the company owns, both in Maryland and the District of Columbia, and also to ascertain and report what leases have been made and on what terms, and whether any leases have been made, since the issue of bonds secured by the several mortgages, and if the same are valid."

In this single statement there is abundant justification for the position taken by *The Sun* in opposition to the notorious canal lease bill, which, with such indecent haste and by the use of questionable means and tactics, was forced through the Legislature at its last session. It is a complete vindication, in fact, of all who opposed the transfer of the canal and of all the State's right and interest therein to the so-called Washington and Cumberland Railroad Company, without consideration, examination or investigation, at a price fixed by the would-be purchaser or lessee itself. It is fortunate that the consummation of the plans of the canal-grabbers has been delayed by the proceedings taken by the bondholders of 1878 for their protection in the courts. But for the action of Judge Alvey in appointing receivers and ordering an examination into the condition of the canal, the facts developed in the portion of the receiver's report we have quoted would never come to light. It was the object, as it was the interest, of the authors and promoters of the canal-lease bill not only to get possession of the canal and to require sale to the State's property for a totally inadequate consideration, but at the same time to smother and suppress all investigation and inquiry as to the real value of the property acquired and into their own past administration of the canal. The receivers very properly recommend that steps be taken before any sale, by order of the court, to ascertain the character and value of the property to be sold, and the people of the State when they understand the facts will be very apt to demand an investigation into past administrations.

It must be remembered that though nominally owned by a private corporation the canal is a State work, practically owned by the State, and its entire administration controlled

by the board of public works, consisting of the Governor, comptroller and treasurer. The management of the canal has been just as completely in the hands of these State officers as the management of the sinking funds provided for the redemption of the public debt. The finances of the canal have been controlled by the same men who have controlled the finances of the State and determined who should administer them. It is striking, but not surprising, perhaps, to find the same evidences of mismanagement and the same sort of mismanagement characterizing the action of the board of public works in both directions.

We are not speaking now with reference particularly to the present Governor and comptroller or the late treasurer. Just as the evidence before the Archer committee shows neglect of duty and disregard of law going on for years, the mismanagement of the canal extends probably over a much greater period of time – and mismanagement of precisely the same sort. In the case of purchases for the State sinking fund, presumably made by the authority and under the direction of the board of public works, as the law requires, no proper record was kept of the securities purchased – a piece of neglect which facilitated the treasurer's misuse of the State securities and threw additional difficulties in the way of the committee's investigations. In the case of the canal company, the receivers report that from the books and papers turned over by the officers of the company (the appointees of the board of public works) "*it has been impossible to ascertain exactly what property the canal owns, what leases it has made and what rent it is entitled to receive.*" The Archer investigation has disclosed purchases for the sinking fund which ought never to have been made at prices which ought never to have been paid. The canal receivers report "a great deal of valuable property belonging to the canal company not absolutely essential for the uses of the company as a transportation line." Why was it bought then? Why retained? *For whose* private profit? Much of this same property, the receivers further report, "*is leased at a nominal rent, at a rent far below the true value of the property.*" What wonder that the canal has been a sink-hole for the State's money in the hands of the people who have managed it – if these are specimens of their management. Everywhere crop out evidences of the same laxity, the same neglect of duty, the same betrayal of the public interests and of a public trust, the same indications of favoritism, corruption and jobbery. And the responsibility for it all rests upon the same men – the same party managers who have dominated and elected Governors and comptrollers and appointed treasurers at their will – and have run the canal as a political machine for their own private and personal advantage. It is impossible, in contemplating the final wreck and ruin of the canal, not to see that scandalous mismanagement has had its share in producing that ruin quite as much as the elements and forces of nature. The receivers, with full knowledge of the force and frequency of Potomac freshets, in their estimate of the annual expenses of operating the canal, include $20,000 for "extraordinary repairs." They significantly state that "*former administrations* of the canal claim that they expended in extraordinary repairs, *on an average for each year, $72,850*," and this for a period of twenty-three years!

*Sun*, Fri. 6/13/90, p. Suppl. 1. **MR. GAMBRILL AND THE CANAL** – Annapolis, Md., June 12. – Gov. Jackson, Comptroller Baughman and Treasurer Brown, representing the State board of public works, which holds a controlling vote in the stockholders' meeting of the Chesapeake and Ohio Canal, met today and received the report of President Gambrill, which was accepted. The report gives a detailed statement of the condition of the canal, with its cost of repairs, together with a report of operations for 1889. The stockholders re-elected President Gambrill, and elected Mr. James B. Henderson director in place of James A. L. McClure, deceased. The other members of the directors' board were continued in office.

The most important part of President Gambrill's report is that referring to the repair of the canal. In compliance with the instructions of the board of public works, Mr. Gambrill says that with the assistance of Messrs. Edward Mulvaney and S. D. Young, two experienced employees of the canal, he made a thorough inspection of the entire route. He says that the cost of putting the canal in fair navigable condition with a depth of six feet of water, including the $20,000 allowed to Georgetown millers for the restoration of that level, will be $17,953, which, with ten percent for contingencies, will be increased to $19,748. There are 120 coal boats, 9 grain boats and 11 lime and stone boats, nearly all of which must be repaired.

"If 120 boats," continued Mr. Gambrill, "could be put in good condition, the average load of each would be 110 tons. The average number of round trips per month would be two and a-half. The average boating season is eight months. The total capacity of the canal with the present equipment for a season would be 264,000 tons. The charge by rail for transporting coal to Baltimore from the mines is $1.14 per ton; for transferring to vessels, 5 cents per ton; total, $1.19. The average cost of transporting by rail a ton of coal from the mines to canal wharf in Cumberland is 27 cents per ton; for transferring to boat, 8 cents; transfer from canal-boat at Georgetown, 10 cents; total 40 cents, which , if on the basis of a charge of $1.19 per ton by rail, would leave the boatmen for freight and the canal company for tolls 79 cents. It is impossible with a full tonnage for boatmen to carry a ton of coal 184 miles with any profit for 75 cents. I put it at 9 cents."

Mr. Gambrill here shows the receipts from local traffic, and shows that the total possible gross revenues would be $73,934.84 during a season, from which take $6,150, a yearly installment for three years, with interest to the millers for repairing the Georgetown level, and the total income would be $67,784.84. Against this would be set the wages of 75 lock-keepers at $360, amounting to $27,000, and for labor, superintendent, &c., $92,000. While the canal may be maintained a single year for $119,000, yet experience has shown that the sum of $235,000 is necessary. In addition to the above, there will be $30,000 as interest on the bonds of 1878, and $15,000 interest on the $300,000 necessary to repair the canal. There are overdue and unpaid coupons on repair bonds amounting to $103,000 on July 1 next."

The report concludes with a detailed statement showing the cost of repairing the several sections of the canal.

*Sun*, Tue. 6/17/90, p. 3. **CANAL RESTORATION** – "Pro Bono Publico" writes to *The Sun* from Hagerstown, Md., as follows: "The second report of the Maryland receivers of the Chesapeake and Ohio Canal, filed in the Washington County Court on Monday last, the 9th inst., stating that they had been reluctantly forced by the result of their careful investigation to report adversely upon the restoration of this great and now damaged work, was a great surprise and shock to the many who fully believed that its repair and operation was practicable and feasible. And it was the well-known integrity of the gentlemen receivers (Messrs. Bridges, Johnson and Baker) that tempered and modified the expressions of the great disappointment heard on all sides, particularly along the canal border of Washington county. Whilst there is no question as to the zeal, integrity and caution and desire of these receivers to acquire the facts and such knowledge as was possible to obtain from the said-to-be defective records at their disposal, yet there are many whose practical experience with the past management of the canal, fully warrants the belief, commonly accepted, that the canal can be repaired and operated to pay on its equitable value when repaired and operated economically as much revenue as any other transportation company with corresponding competition and freight rates. It may be that in the exceedingly great caution of the receivers and the absence of any criterion of what practical business management, free from political influence and

intrigues, could do for the canal, together with the lack of this practical knowledge of their own, will be found the prevailing causes of their adverse report. The practical and more thoroughly experienced on the canal, past, present and what may be its future, reason thus: The repair of the canal is absolutely equitable and necessary; first, the labor claims, the bonds of 1844, the boatmen, business interests, our markets and property are all without security or protection. The breaches in the canal continue to increase, and aside from these we know, that should definite action be delayed, the additional damage by next spring may be double or more what it now is, as the breaches in many places are on or below the level of ordinary water in the river. If repaired now this additional damage, it is natural, will be prevented and saved. This saving would likely be as much or more than the present estimate of cost of repairs. The damage since last March has been great, and with ice freshets to expect next winter, there is no estimating the damage to dams No. 4 and 6 and other damaged parts, should the worst fears be realized the fortunate holders of the liens upon the corpus, with the continued legal and other expenses will be safe, as there is sufficient, even if the canal channel should be obliterated by the elements, to cover their claims. But how different with those having no security except in the appreciation of the work by repair? Repair is necessary for whatever use may be made of the canal, when final disposition forces itself in the perhaps distant future. Repair the canal. Operate it. Let the 160 or more boats at least enjoy their expectation of their remaining few years of service. If the experiment does not encourage more the appreciation of the canal itself, of business, lands and products, will fully warrant the work. The estimate of repairs as per the receivers' report is:

| | | |
|---|---|---|
| To the canal and locks | $150,165.00 | |
| Add to this 20 percent for contingencies | 30,033.00 | |
| | | $180,198.00 |
| Add cost of lumber, carpenter work, repairing lock-houses, locks, flumes, waste | | 45,000.00 |
| weirs, lock-gates and other wooden structures | | |
| For necessary repairs to canal in the District, as per report of the District receivers | | 15,000.00 |
| For contingencies | | 20,000.00 |
| For repairs to wharf at Cumberland | | 1,000.00 |
| For repairs to telephone line | | 7,500.00 |
| Total | | $268,698.00 |

"This estimate of the competent and skillful engineers is of course for complete repair. But all practical men know that much of the strengthening of banks, &c., can be and is done by the ordinary repair hands which are necessary in case of restoration. Thus, it may be safe to cut off or eliminate the contingent percentage of $50,000, leaving say $218,000. There are two large items of expense which are excessive to those who look forward to thorough practical management.

First. The ordinary operating expenses $100,000.00
Second. The estimated extraordinary expenses 20,000.00

From the estimates made in detail by several, it is claimed that ordinary operating expenses, with full complement of officers and men, ranges from $63,000 to $75,000. In regard to the extraordinary repairs it is a very uncertain and indefinite estimate, as it depends upon the security of the work to prevent damage. As the dams are all built of stone, except dam No. 6, and are therefore permanent, and dam No. 6 being included in their estimate of repairs, the item of extraordinary expenses may be reasonably expected to range on an average of $10,000 to $12,000 per year. The basis of their average of $20,000 per year is taken from careful observation, no doubt, as the reference to the ordinary and extraordinary repairs or the average of the same, furnished by former administrations, are over $72,000 for the former and over $161,000 for the latter per year, taking the same from the reports of the last twenty-three years. This is perhaps a very unsafe criterion, as who knows what these immense figures represent? Perhaps dams, extension of locks, &c. These being now permanent, the extraordinary repairs decrease with each successive year. The ordinary as well as the extraordinary repairs vary in the

years of the past materially. The ordinary operating expenses for the year 1850 were less than $52,000. In the year 1878, (succeeding the freshet of November, 1877,) during which year over 680,000 tons of coal were shipped, the ordinary expenses were $47,480.98
For superintendents, collectors and lock-keepers $35,166.81
For officers $12,199.92
Total $94,847.71
For extraordinary expenses of same year (see report) $24,408.29
Total $119,256.00

"Taking the report of the Maryland receivers, the credits at a low minimum and the debts at a maximum for practical and economical management, and we think a margin of $50,000 can be shown over and above all debits or charges without claiming any credit for the appreciation of the canal itself, all claims, property, business and produce in Western Maryland, where the losses are already enormous, and which must continue until the canal is repaired and operated or other means of transportation are supplied."

SR, Fri. 6/20/90, p. 3. Mr. Gambrill, the president of the Chesapeake & Ohio Canal, has just made a report in which he thinks the canal can never be able to pay. We fully agree with him – especially if it should happen to remain in the hands of the officials who have been so unfit for their places during the last years of its existence.

---

*Ibid,* p. 4. A gentleman from Baltimore who was in Shepherdstown the other day said that Hon. Henry G. Davis had expressed the opinion that there would be a double-track railroad running along the Chesapeake & Ohio Canal from Cumberland to Washington within the next eighteen months. Let it come, say we.

*Sun*, Wed. 6/25/90, p. Suppl. 2. **Third Report of Chesapeake and Ohio Canal Receivers.** Washington, June 24. – The receivers of the Chesapeake and Ohio Canal Company have just filed their third report. They announce that they have delayed making an examination of the land records of the District in the hope that they might avoid the expense and obtain information from the officers of the Chesapeake and Ohio Canal Company, but in this they have been disappointed, and after an exchange of various letters, they report their conclusion that the president and treasurer of the Chesapeake and Ohio Canal Company cannot or will not give the receivers any real information as to the real estate of the Chesapeake and Ohio Canal Company or yield up the missing plans, etc., made by the engineers of the canal company at the expense of the canal company or disclose into whose hands they delivered them, and hence the receivers have been compelled to seek other sources of information. They say: "The only leased of landed estate of the Chesapeake and Ohio Canal Company which the receivers have been able to discover are in the hands of the Maryland receivers, and these, the Mole wharf, &c., are set out in the report. The receivers think that it may be necessary to resort to legal measures to reobtain possession of the landed estate of the Chesapeake and Ohio Canal Company in the District, and after the title has been fully investigated the receivers will make application to this court for authority to enter suit on the subject. They report the water rights of G. W. Cissell, W. H. Tenny & Son, Austin, Herr & Co. and the Transparent Ice Co. as all the live water privileges on the Georgetown level. These water renters claim that the rents have been set aside for bonds issued for the repair of the Georgetown level, and the proceedings on which this claim is based is set forth in the report at length. The receivers think that the millers and their friends who subscribed the funds for the repair at Georgetown level and feeder did so in good faith, and that the money was paid out by them for repairs on reports of the superintendent of the C. and O. Canal Company, Mr. J. P. Biser, and others. But the question whether the president of the C. and O. Canal Company had power to create for the benefit of the water-takers a preferred form of indebtedness, to the

exclusion of all previous or subsequent obligations of the canal company, &c., your receivers leave to your judicial judgment. The court will have to determine, as is well known to your receivers, that navigation as required by the agreement, was never restored to the Georgetown level of the canal for floating of loaded canal boats to the coal wharves or for other purposes of navigation, as required in the contract, nut only repairs sufficient to permit the Georgetown mills to resume work. We leave, therefore, the question of the validity of the so-called Georgetown level repair script bonds to the court."

After discussing the rights claimed by Mr. H. H. Dodge to the surplus water of the Georgetown level, the receivers say they will not recognize the obligation of the Chesapeake and Ohio Canal Company to furnish any water under contracts with Mr. Dodge with the past management of the Chesapeake and Ohio Canal Company until the same shall have been declared binding by the order of this court or other judicial authority. An agreement between the Potomac Lock and Dock Company of Montgomery County, Maryland, H. H. Dodge and the State of Maryland is also discussed as to its validity and effect. They say they have received of S. Watkins a check of $59.38, purporting to be a balance in his hands belonging to the Chesapeake and Ohio Canal Company; also, certain books of account. These books show that President Gambrill's disbursements on canal accounts in 1889 were $3,667.22, for stationery $225, making in all $3,892.22. The receivers report $154.12 spent in care of canal and repairs for May. The District receivers file the report of the Maryland receivers, but say they "do not desire to adopt their estimate of the repairs of the canal or to approve of their conclusions as to the feasibility of the repairs and operation of the Chesapeake and Ohio Canal, as your receivers hold other views and have arrived at other conclusions." The report is signed Victor Cushwa and Henry C. Winship, receivers. The report and exhibits cover some hundreds of typewritten pages.

SR, Fri. 6/27/90, p. 4. **Another Report.** The District receivers of the Chesapeake and Ohio Company have just filed their third report. They announce that they have delayed making an examination of the land records of the District in the hope that they might avoid the expense and obtain information from the officers of the Chesapeake and Ohio Canal Company, but in this they have been disappointed, and after an exchange of various letters, they report their conclusion that the president and treasurer of the Chesapeake and Ohio Canal Company cannot or will not give the receivers any real information as to the real estate of the Chesapeake and Ohio Canal Company or yield up the missing plans, etc., made by the engineers of the canal company at the expense of the canal company or disclose into whose hands they delivered them, and hence the receivers have been compelled to seek other sources of information. The District receivers fie the report of the Maryland receivers, but say they "do not desire to adopt their estimate of the repairs of the canal or to approve of their conclusions as to the feasibility of the repairs and operation of the Chesapeake and Ohio Canal, as your receivers hold other views and have arrived at other conclusions."

Sat. 6/28/90, p. 2.[4] Messrs. Cushwa and Winship, the District receivers of the canal, have filed another report, in which complaint is made that they have been unable to get exact information in regard to real estate and other property owned by the canal company.

*Sun*, Wed. 7/2/90, p. 4. *The Board of Public Works in Town* – It was expected that the board would meet and take some action in reference to the State's interest in the Chesapeake and Ohio canal, which has again assumed some importance in State affairs since the report of

[4] *The Williamsport Leader*, Williamsport, Md.

the receivers was submitted to the court at Hagerstown. The subject, however, was not discussed. It is understood, that Attorney-General Whyte will be instructed to appear before the Circuit Court for Washington County and take some step looking to a protection of the State's interest. Gov. Whyte is in favor of the sale of the canal waterway at auction, the sale to be independent of other property belonging to the canal, and which the receivers in their report recommend should be surveyed and properly located.

Mr. Whyte says that only the canal, and not any separate property, is required as a bed of a railroad, and therefore the canal only should be sold at present if the exact location of the other property is not known, as stated by the receivers. The survey of this property, it is stated, would cause another delay in any proceeding for the sale of the property. Messrs. Bridges, Johnson and Baker, the receivers, held a meeting in Hagerstown yesterday, and passed orders urging the canal superintendents to exercise great care and watchfulness in looking after and protecting the property of the canal. The superintendents are instructed to go over the respective divisions at frequent intervals so as to keep track of all the property under their care.

*Sun*, Thu. 7/3/90, p. Suppl. 1. **Orders by the Board of Public Works – The C. and O. Canal.** – Annapolis, July 2. – The board of public works, Gov. Jackson and Treasurer Brown present, met here today. The board at its session today passed an order instructing Attorney-General Whyte to take steps for a final settlement in the case of Brown and others, trustees, vs. the Chesapeake and Ohio Canal Company. The order in relation to the canal, a copy of which was sent to the attorney-general is as follows: "Ordered, that the attorney-general be instructed to apply to the Circuit Court for Washington County in equity to pass an order in the case of Brown and others, trustees, vs. the Chesapeake and Ohio Canal Company and others, setting down for hearing at an early day the case for such action, in view of the report of the receivers, as shall be proper, and to take such further or other proceedings therein as may be necessary to bring said case to a final settlement and conclusion."

Thu. 7/10/90, p. 3.[5] ***The Canal Case to be Pushed*** – Last week at a meeting of the Board of Public Works an order was passed instructing the Attorney General "to apply to the Circuit Court for Washington county in equity to pass an order in the case of Brown and others, trustees, vs. the Chesapeake and Ohio Canal Company and others, setting down for a hearing at an early day the case for such action, in view of the report of the receivers, as shall be proper, and to take such further or such other proceedings thereon as may be necessary to bring said suit to a final settlement and conclusion."

The same day a meeting of citizens of Montgomery county, resident along the canal, held a meeting at Rockville and passed a set of resolutions setting forth the unfortunate condition of affairs in the vicinity of the canal, the depreciations in value of property and the injury being done to agriculturists. The resolutions also declare that it has been found to be impracticable to restore the canal as a waterway. A further resolution was adopted that "as the State of Maryland is a party to the suits now pending in the Circuit Court for Washington county, as a court of equity, and as the people residing and doing business contiguous to the canal are those who are primarily interested in the settlement of the subject, the Board of Public Works is called upon to give instructions to the Attorney general to take proceedings to terminate the litigations and place the canal in a position for practical results.

It is said that the sentiment in favor of a railroad predominates largely in Montgomery county.

[5] *The Herald and Torch Light*, Hagerstown, Md.

*News*, Thu. 7/10/90, p. 3. **IN FAVOR OF A RAILROAD** – A Hancock special July 9 says: Last evening the citizens of Hancock and vicinity met at the Barton House to give expression to their sentiments on the question of the disposition of the C. & O. Canal. The meeting was organized by the appointment of a chairman and secretary, and the chair appointed the following gentlemen a committee on resolutions: E. P. Cohill, Wm. A. Bowles, P. T. Little, John McLaughlin and Peter E. Dawson. After a consultation they reported the following resolutions, which were unanimously adopted:

*Whereas*, Notwithstanding the House of Delegates, in accordance with the recommendation of the Governor, had passed a bill to dispose of the State's interest in the canal and provide a speedy relief for our depressed trade interests and stay the tide of depression so universal along the line of the C. & O. Canal by giving our people a modern and continuous means of travel and transportation, his Honor Judge Alvey decided on February 21, 1890, to appoint receivers to take charge of this work, thus, as far as the powers of the court could, staying any progress towards the consummation of this greatly desired relief, so earnestly asked by our people; and

*Whereas*, As a law-abiding people we accepted said decision in good faith and believed, as stated in said decision, that the receivers would report speedily and the Honorable Judge act, as stated in said decision – the relief sought would still be had. But for three months, delay after delay, and no report. When, however, a report was made, though a forced conclusion, by reason of the fact with which everyone who has given the matter the slightest consideration from any impartial standpoint knew, must be admitted was reached, yet no action is taken looking to relief in the premises; and

*Whereas*, The Honorable Judge says that "If it should be determined that it is not practical or wise, consistently with the rights and interests of those concerned, that any attempt should be made to restore and operate the work by the creation of additional preferred liens, then it will become necessary to consider and determine the question of sale. Until then that question will not be decided." and

*Whereas*, Said receivers did so report, and said report clearly shows, that the canal can not only not pay interest on preferred liens, as was required by the court, but could not be made to pay independent of such obligations. Therefore, be it

*Resolved*, That the court be respectfully requested to give this matter its speedy consideration and determination, as its decision states, necessary in view of above recited facts.

*Resolved*, That any further delay is prejudicial to all interests at stake; that the corpus of the canal has been, and is still being, greatly damaged by the rains and high waters during the months of delay already had.

*Resolved*, That we deem it an act of great justice to the laborers, and those who furnished supplies for said canal, to continue a course that furnishes big salaries for useless officers, and thus deprive them of their hard-earned money, which under the Lease bill would be speedily paid them.

*Resolved*, That it is the sense of this meeting that a railroad on the canal will afford us the relief we so greatly need, and that we favor a speedy consummation of the Lease bill passed by the late legislature.

*Sun*, Fri. 7/11/90, p. Suppl. 2. **Another Step Taken in the Case of the C. and O. Canal** – Annapolis, Md., July 10. – Another step was taken in the Chesapeake and Ohio Canal cases in the Washington County Court today. Yesterday the canal company, through Messrs. Poe and Lanahan, its attorneys, filed with Judge Alvey a petition asking him to set a day for a final hearing in these cases at an early day, and Judge Alvey accordingly issued an order today setting the 12th day of August next as the day for such final hearing. The petition as filed includes the last annual report of the president and directors of the canal to the stockholders, made last month, also the report of the engineers employed by the canal company to

examine the canal and give estimates as to the cost of repairing it. The petition also states that these reports fully sustain and confirm the report of the canal receivers, and says that it is impracticable to repair and operate the canal with any expectation that it can in the future earn revenue enough to keep itself a living concern, and demonstrate that the interests of the creditors demand that further proceeding shall be had looking to a disposition under the most favorable conditions of the canal and all its works under the final decree of the court.

The same counsel has also filed an order directing the clerk to dismiss the appeal heretofore prayed by the canal company.

A public meeting was held Tuesday night in Hancock at which resolutions favoring the construction of a railroad on the bed of the canal were adopted. The resolutions also favored the consummation of the lease passed by the last Legislature.

*Sun*, Wed. 7/16/90, p. 4. MONETARY AND COMMERCIAL – The incorporators of the Washington and Cumberland Railroad Company have issued notice that books will be opened on August 21 at the National Farmers and Planters Bank of Baltimore for receiving subscriptions to the capital stock. In installment of $3 in cash per share is to be paid at the time of subscription. The incorporators are Enoch Pratt, E. Kurtz Johnson, David L. Bartlett, Asahel Willison, Martin N. Rohrback and Hattersly W. Talbott. This company, as is widely known, was incorporated to build a railroad on the line of the Chesapeake and Ohio Canal under an act passed by the last Maryland Legislature. The opening of books for subscriptions to the capital stock is a step in the direction of organizing the company and electing its president. Chief Alvey has set the time for next month to have a final hearing in the canal cases. The Washington and Cumberland Railroad Company is moving to get into organized shape to deal with the question of the lease of the canal property.

*Sun*, Sat. 7/19/90, p. Suppl. 2. The Cumberland *Times* is circulating a petition to Judge Alvey "to take such prompt action as he consistently can to hasten the disposition of the litigation before him concerning the sale of the Chesapeake and Ohio canal, it being the sense of the subscriber that the prompt construction of a railroad along the canal bank is a necessity."

*Sun,* Tue. 8/5/90, p. Suppl. 2. **TITLE TO CANAL PROPERTY** – In the third report of Messrs. Winship and Cushwa, the District receivers in the Chesapeake and Ohio Canal case of Brown et al vs. the Canal Company, the receivers stated that they thought it might be necessary to resort to legal measures to reobtain possession of the landed estate of the Chesapeake and Ohio Canal Company in this District, and after the title had been fully investigated they would make application to the court for authority to enter suits upon the subject. The investigations into the title have been in progress, but as yet no application for leave to bring suit has been made. The matters connected with the canal have all been quiet here, and the case will not come before the court again until Judge Cox returns from his summer vacation.

*Sun*, Sat. 8/9/90, p. Suppl. 2. **Railroads Applying for Rights of Way in the District.** – Washington, Aug. 8. – There has been heretofore reported to *The Sun* in the order in which the various steps were made the progress of an annex railway of the Baltimore and Ohio system, which will cross the Potomac near the Chain Bridge. It has the consent of the leading citizens of Georgetown and of the District commissioners to come into Georgetown from the west south of Prospect street, between the college grounds and the river, and then, taking the canal bank to a point near the market, crossing Bridge or M street, and by a semi-circular path, first curving out towards P street and then in towards M street to reach a terminus on Rock Creek, near the M street bridge.

The Washington and Cumberland Railroad Company, which proposes to make a railway bed of the Chesapeake and Ohio Canal, is now also an applicant for leave to enter the District by the doorway of the canal. The District commissioners will shortly be called on to consider the propriety of advising Congress on the subject or authorizing the Washington and Cumberland Railroad Company, chartered at the last session of the Legislature of Maryland, to come into the District of Columbia via the Chesapeake and Ohio Canal bed or adjacent thereto, and across Rock creek by a bridge, and then to a point north of the intersection of Seventeenth street with the Potomac river, the route and the terminus to be approved by the commissioners of the District. The route proposed on the Washington side of Rock creek will, it is supposed, be not far from the line of Virginia avenue to the line of the old canal, once a connection of the C. and O. canal, then a sickening ditch and now the handsome tree-lined B street north; but a more northern route may be taken. The new company will, under its proposed District charter, have the "right to acquire within the District of Columbia the title held by the Chesapeake and Ohio Canal Company to all its water rights and other property in manner and form as provided by the charter." As the Chesapeake and Ohio Canal Company claims all riparian on rights on the river front adjacent to the Kirkwell meadows, this alleged right, if established, may give an opening for a railroad right-of-way on the edge of the flats. The route is, however, to be subject to the approval of the District commissioners and the terminus to be "north of the intersection of Seventeenth street and the Potomac river," whatever that may mean.

*Sun*, Mon. 8/11/90, p. Suppl. 2. **CAN THE CANAL BE MADE TO PAY?** – Another canal report was filed at the City Hall Saturday afternoon. It is the fourth report of Henry C. Winship and Victor Cushwa, receivers in the case of Brown et al vs. the C. and O. Canal Company, appointed by a decree of the court, made January 28, 1890. In accordance with the instruction given the receivers on the 8th of July, 1890, "they submit that a civil engineer familiar with the canal business has been employed to go over the entire length of the canal and make measurements and estimates. He reports that the cost of repairs will be $165,955, which when added to $39,095 required for certain lock gates, &c., needed for the effective operation of the canal will make about $200,000 which will be the total cost of putting the canal in full navigable order from the Potomac at Cumberland to Rock creek at Georgetown. They advise that in case this work is undertaken and completed the canal shall be apportioned into nine sections, each section to be under the control of a section boss at $900 per annum, with carpenters, lock-keepers, inspectors, harbor masters, collectors, clerks, trimmers, laborers, &c., in all 180 employees, at salaries from $200 to $900 per annum, all under a general superintendent at $3,000 per annum; the whole salaries being $58,740.99. To this is to be added the cost of material needed to keep the canal in running order, extra work in annual repairs and contingencies, making the total annual cost of operating the canal $80,000." The receivers exclude from their estimate of the cost of running the canal the cost of operating the Cumberland coal wharf and the outlet lock of the Potomac Lock and Dock Company above Georgetown. They do not think the canal should pay the charges for telephone service. They say that if the telephone service is needed, it should be kept up by private shippers, but suggest that the Western Union telegraph lines afford all the facilities which are absolutely necessary. On the basis of repairing the canal for $200,000 and operating it for $80,000 per annum, they claim that the canal would be profitable; for the presidents of the coal companies have assured the Maryland receivers that 450,000 tons of coal will be sent over the canal each year. The receivers think that with this output of coal and other certain business an annual income of $200,000 can be realized by the canal.

The following is the estimate of gross revenue submitted: Williamsport, 75,000 tons at 16 cents toll, $12,000; Washington and vicinity, 100,000, at 40 cents toll, $40,000; coastwise shipments, 275,000 tons at 30 cents toll, $82,500; wharfage, Cumberland, 450,000 tons of coal, at 4 cents, $18,000; trimming 4,090 cargoes at $1.30 per cargo, $5,318; Cumberland way-bills on 4,090 cargoes coal, $2.04 each, $8,343.60; Georgetown way-bills on 3,410 light boats, $2.04 each, $6,956.40; water rents, as per Gambrill's report, $9,357.09; land rents as per Gambrill's report, 1888, $5,988.26; estimated revenues from miscellaneous trade, $11,537.11, making in all $200,000; operating expenses $80,000; net earnings $120,000.

"With the surplus earnings of $120,000 per annum over the operating expenses," continues the report, "your receivers believe that with wise and proper business management the C. and O. canal can be relieved of its present floating indebtedness, its bonded indebtedness of 1878, together with the interest and the indebtedness to be incurred in the repair of the canal for business operations and other known indebtedness subsequent to the bonded indebtedness of 1844, in about ten years, and that then the claims of the other bondholders could be liquidated."

They add that if the courts should determine to sell the canal, the bondholders could, if they desired, agree upon a plan for the purchase and reorganization, and a plan of funding the present indebtedness might expedite the settlement of the debt outstanding against the canal. They conclude as follows:

"In conclusion of this report your receivers are constrained to state that they have been for over 30 years directly interested in the business of transportation over the Chesapeake and Ohio canal as coal shippers, boatowners, wharf owners and merchants. Our conclusions are the result of experience and business operations on the canal." The receivers further report that since the filing of their third report they have disbursed to August 1, 1890, $448.09, and have collected $1,100 from the Washington Gaslight Company for rent of wharf.

*Sun,* Tue. 8/12/90, p. Suppl. 2. **Final Hearing in Canal Cases at Hagerstown Today. –** Hagerstown, Md., Aug. 11. – The consolidated cases of Geo. S. Brown, &c., trustees, and James Sloan, Jr., &c., trustees, representing the bondholders of 1844 and 1878, against the Chesapeake and Ohio Canal Company, will be up before Chief Justice Alvey at Hagerstown again tomorrow. This date was set by Chief Judge Alvey in accordance with a petition filed on July 10 for a final hearing in the cases. This petition included the last annual report of the president and directors of the canal to the stockholders, made last June, also the report of the engineers employed by the canal company to examine the canal and give estimates as to the cost of repairing it. The petition also stated that these reports fully sustain and confirm the report of the canal receivers, and said that it is impracticable to repair and operate the canal with any expectation that it can in the future earn revenue enough to keep itself a living concern, and demonstrated that the interests of the creditors demand that further proceedings shall be had looking to a disposition under the most favorable conditions of the canal and all its works under the decree of the court. The final hearing tomorrow will be with a view to a decree for a sale and winding up of the corporation. At the hearing in January last the attorney-general, on behalf of the State, insisted upon a sale of the whole canal property under the several mortgages, but the court desired more information as to the probability of the canal ever being again an earning concern. Now that this information is furnished, the State and the canal company and the minority, if not all of the bondholders of both classes will urge the sale. Attorney-General Whyte will represent the State, Bernard Carter the minority bondholders and John P. Poe the canal company. They will arrive tomorrow morning from the Blue Mountain House, where they will spend tonight, having left Baltimore yesterday afternoon. Messrs. Wallis and

Cowen, counsel for the bondholders of 1878, and Gen. B. T. Johnson for those of 1844, will also be present, and the case will be fully argued.

*Sun*, Wed. 8/13/90, p. Suppl. 2. **Judge Alvey Hears the Last Arguments in the Canal Case** Hagerstown, Aug. 12. – A final hearing was held in the canal cases before Judge Alvey today in accordance with an order of the court passed July 10. A number of prominent citizens from along the line of the canal who are interested in the final disposition of the case were in attendance. Attorney-General Whyte represented the State, Bernard Carter the minority bondholders, John P. Poe and T. M. Lanahan the canal company, S. T. Wallis, John K. Cowen and H. L. Bond the bondholders of 1878, and General B. T. Johnson and H. H. Keedy the bondholders of 1844.

Mr. Wallis raised the point that all the property belonging to the canal company ought to be ascertained before a decree is passed.

Gen. B. T. Johnson filed a petition alluding to the death of George S. Brown, one of the trustees of the bondholders of 1844, and requesting that the case be delayed until Geo. Brown's successor be chosen and brought into court. The petition also asked that the bondholders of 1844 be allowed to take charge of the canal and repair and run it, stating that a sufficient amount of money could be raised for the purpose. It also recited that a sale now would be equivalent to turning the canal over to the Cumberland and Washington Railroad.

Mr. Poe suggested that the court had jurisdiction over the portion of the canal in the District of Columbia. Attorney-General Whyte submitted a copy of a decree for sale such as he thought ought to be passed.

Mr. Cowen filed copies of the District of Columbia receivers' report, and, thought the proper way to proceed in the case was to have the auditor of the court or the receivers, report the indebtedness and liens on the canal and all the encumbered property in the District of Columbia. The persons holding leases on the property and the water rights of the canal, he added, should be made parties of the suit, so that their titles to the property could be disposed of in the decree for a sale, and the canal sold in its entirety. Judge Alvey interposed that he had no jurisdiction over the corpus of the canal in the District of Columbia, and if a decree were passed, he could only order a sale of the franchise of the canal in the District. Mr. Cowan then argued that the only persons formally asking for a sale were the bondholders of 1878. A decree of sale should be passed, he said, in the court before which he spoke. The bondholders of 1844 assented to the bonds of 1878 and surrendered their lien on the canal. The bondholders having a lien on the tolls and revenues had a lien on the corpus itself, the property producing the income, and had a right to a foreclosure and sale. The bondholders of 1844 cannot object to the sale, and their debt must be paid out of the proceeds after the claims of the bondholders of 1878 are settled. The bondholders had a right to take possession of the canal to get their revenues and to foreclose.

General Johnson followed. "I agree with Mr. Cowen," he said, "and if the court agrees with us a decree can be determined upon in less than five minutes. We are the only persons in court who represent substantial interests in the canal. We think its property should be ascertained, a decree for sale passed in this court and another decree passed in the District of Columbia. The proceeds of sale should be distributed according to priority of liens."

"We all agree," said Mr. Poe, "that it is not practicable to repair the canal, and, if repaired, it would not be self-sustaining. What, then, is to be done? The only way to dispose of these cases is to decree a sale and distribute the proceeds. It is said that the priorities should first be ascertained. There should be no such delay. The canal becomes less valuable every day, and there is no telling how many years it would take to determine these priorities. Sell the canal and let the priorities be transferred from the corpus to the proceeds of the sale and determine after the sale. The canal was put into

the hands of the receivers and they can do nothing with it. If the bill filed by the bondholders of 1844 does not ask for a sale, it can be amended. The lien of the bondholders of 1878 is a prior lien to the bonds of 1844. They are absolutely the first lien on the canal, and it is so stated in the mortgage. A mortgage on the tolls and revenues, the rents and profits of real estate, is not a lien on the real estate itself when the lien on the corpus is reserved, as it is by the State in this case. The State waived its lien on the corpus of the canal in the act of 1878. The question now is, can the bondholders of 1844, who never had a lien on the corpus, object to the sale by the bondholders of 1878, in whose favor the State waived its lien on the corpus? All the pleadings in this cause are in proper shape for a sale. This is a final hearing; there is no testimony in the case, and the only thing that can be done now is to decree a sale. The court cannot give to the bondholders of 1844 a mortgage which they never got."

"We now come to the constitutional question concerning the assent by two Legislatures to the sale before it can be made valid. The section of the constitution referring to this matter is under the head, Board of "Public Works," and means that that board cannot make a valid sale unless its act is ratified by the Legislature. It is not to be understood that a court of chancery or the General Assembly itself cannot make a valid sale. This is the rational view of this section of the constitution. If the interpretation that the sale must be ratified by a succeeding Legislature to be made valid is to be adopted, there could be no better way of sacrificing the property. No purchaser would want to take the risk involved. It was meant by the act providing for the bonds of 1878 that the State should surrender its lien on the corpus of the canal. The bondholders of 1844 were content with a lien on the tolls and revenues only. If the court were to decide that the bondholders of 1878 have no lien on the corpus of the canal, I believe the next Legislature would pass a bill appropriating money enough to repay them for what was used in its preservation."

Attorney-General Whyte said: "If the canal is decreed to be sold, I take for granted that a similar decree can be passed in the District of Columbia and the property there conveyed to the purchasers. If a decree of sale is passed, the State will not object."

Mr. Carter was the next speaker, and his remarks were as follows: "If there was in the act of 1844 an implied right to sell the canal then the constitution of 1867 could not affect that right. I agree with Mr. Poe in his interpretation of the clause of the constitution concerning the ratification of sales of the State's property by a succeeding Legislature. This clause unquestionably has reference to the board of public works only, and unless such construction is put upon it no advantageous sale of the property can ever be made. There would be too much delay and uncertainty. This is not the time for the court to consider priorities; that can be done after the sale. The court has power to decree a sale under the mortgage of 1878. Your honor's decree, if passed, should deal with the whole canal from Cumberland to Georgetown. The termini are really at Rock creek and Kidwell flats, in Washington and the riparian rights of people living along the canal in the District are outside of the canal property and could be disposed of by a future order of the court. The distribution of the proceeds of sale and the sale itself should be made by one court. Unless the whole franchise is sold, no one would want to buy it. The canal is virtually a Maryland institution, and by reason of courtesy the District court would submit to the decree for the sale of the whole canal. If a writ were necessary to enforce the sale, the District court would, upon application, ger out such writ. In the advertisements for sale all the property not properly belonging to the canal could be described and the purchasers could examine the property."

Mr. Wallis concluded the arguments in these words: "Nothing has brought the canal company into court except its desire to sell. It has no interest whatever in the proceeds of sale.

The reports of the receivers of this court and the receivers appointed by the District court are diametrically opposite. Both sets of receivers say that there is much property lying outside of the canal, and the District court has ordered its receivers to ascertain what property belongs to the canal company. In reply to Mr. Carter's theory of the comity between courts I might say this works both ways. Now I submit while the District court if making investigation as to the property of the canal, would it be in the line of comity for this court to pass a decree of sale and to appoint trustees to make it? When a work extends into two jurisdictions, the judges in the different districts should act together. There can be no delay in determining priority of liens. That question could be submitted to the court on the arguments already made. To sell the property to an advantage, everyone should know what his rights are. If this court decides upon the priority of liens, there may be appeals, but the court is not sitting to prevent appeals. If the bondholders of 1844 propose to repair the canal, they are no doubt in earnest, and their interests should be considered. If the liens are determined beforehand, the price of the canal will be increased one-half.

"The canal company can have nothing to say on the power of sale. It accepted the mortgages, spent the money and brings nothing into court except its post-mortem enthusiasm to sell the canal. I agree with Mr. Poe and Mr. Carter as to their interpretation of the clause in the constitution being only a restraint on the State's officers, and it does not mean that the Legislature cannot effect a sale. If their interpretation is not correct, even then can it be said that a court of chancery could not decree a sale of the State's property? We contend that there should be an inventory of the property before the sale is made and the property not properly belonging to the canal could be sold separately. I cannot see haw a decree can be passed to the interest of all parties unless the courts of both territories concur. It would not do to sell the work by piecemeal."

*Sun*, Thu. 8/21/90, p. 4. *Washington and Cumberland Railroad* – Senator Gorman came over from Washington yesterday afternoon and secured a room at the Hotel Rennert, where he met a party of gentlemen who are interested in the organization of the Washington and Cumberland Railroad. Those who were in conference with the Senator were President Henry G. Davis, of the West Virginia Central and Pittsburg Railway; R. C. Kerens, of Missouri, a director of the same road, who came over from New York to be present at the conference; E. Kurtz Johnson, president of the Citizen's National Bank of Washington; David L. Bartlett, Hattersley W. Talbott, incorporators of the Washington and Cumberland Road; Stephen B. Gambrill, president of the Chesapeake and Ohio Canal; and Mr. Thomas M. Lanahan. The conference lasted several hours and was stated to be for the purpose of arranging the details of the organization of the Washington and Cumberland Road, which is expected to occur today. The books for subscription to the stock of the new company will be opened today at the Farmers and Planters' Bank, and it is believed that all the stock will be taken at once and the organization soon effected. As is generally known, the Washington and Cumberland Railroad, by an act passed by the last Legislature, secured the sole right to use the bed of the C. and O. Canal for railroad purposes, the act specifying the amounts to be paid annually to the present creditors and bondholders for the privileges it granted. The lease on the road will begin as soon as the organization of the railroad company is completed. Mr. Gambrill, who was one of the conferees at the meeting last night, said that the impression prevails that the sale of the canal will be ordered by Judge Alvey, before whom litigation in the matter is now pending. It that event, the Washington and Cumberland possessing the sole right to the bed for railroad purposes, will become the purchaser. The meeting was significant in that it contained representatives of the canal, the W. and C. Company and the West Virginia Central and Pittsburg Railway, in whose interest the

new road will be operated. This road now extends from Elkins, W. Va., to Cumberland, Md., and traverses a rich coal country. By the road from Cumberland to Washington down the Chesapeake and Ohio Canal it will secure a tidewater outlet for the product which other roads now carry to market.

*Sun*, Sat. 8/23/90, p. Suppl. 2. The commissioners, without a formal meeting, Commissioner Hine and Commissioner Hebert each signing for himself, approved today Senate bill giving charter in this District and right-of-way, &c., to the Cumberland and Washington Railroad Company, which is designed to buy out the Chesapeake and Ohio Canal and use its bed for railway tracks. Commissioner Hine left this afternoon for Baltimore.

*Sun,* Wed. 8/27/90, p. Suppl. 2. **CANAL RAILROAD BILL REPORTED** – The Senate committee on the District of Columbia, has submitted a favorable report on the bill introduced by Senator Barbour authorizing the Washington and Cumberland Railroad Company to extend its road into the District of Columbia. The company is authorized to construct its railroad under the provisions of its charter and certain acts of the General Assembly of the State of Maryland from the point where the road of said company reaches the boundary line of the District of Columbia, along ort adjacent to the Chesapeake and Ohio Canal, to and across Rock creek, and thence by such route as shall be approved by the commissioners of the said District to a point to be approved by the said commissioners north of the intersection of Seventeenth street west with the Potomac river, and shall have the right to acquire within the said District the title held and enjoyed by the Chesapeake and Ohio Canal Company in and to all its properties and water and other rights lying and being in said District of Columbia, in manner and form as is provided by said charter and acts of the General Assembly of the State of Maryland for the acquisition of the property and water and other rights of the said canal company lying and being in the State of Maryland. "And said corporation is also hereby empowered to acquire within the District of Columbia such other lands, rights and tight-of-way as may be necessary for the construction and operation of said road by purchase, lease or condemnation." This is the company which was recently organized in Baltimore, and which is supposed to be a connection of the West Virginia Central. Its stock is to be listed in a few days.

*Sun*, Tue. 9/2/90, p. 1. **CANAL RAILROAD BILL REPORTED** – Senator Barbour, of Virginia, today submitted a favorable report on the bill "to authorize the Washington and Cumberland Railroad Company to extend its lines into the city of Washington." The report says: "This company was organized under the provisions of the laws of Maryland, etc. By the terms of its charter, it is authorized to build a railroad from Cumberland, in the State of Maryland, to the city of Washington. By an act of the General Assembly of Maryland, passed February, 1890, this corporation, in addition to the powers possessed by it under its charter, was authorized to construct a road along the towpath or bed of the Chesapeake and Ohio Canal, or upon land acquired for that purpose from the terminus of said canal to the city of Washington, as the corporation may select. It is well-known that the canal company was created by the State of Maryland as one of the great public works in which the State invested a large amount of money. It is also a well-known fact that by the freshet of 1889 the canal was so injured that it was practically impossible ever to restore it to use as a waterway for transportation. The State of Maryland has recognized this fact by the enactment of the statutes amending the charter of this railroad company and authorizing the railroad company to purchase the canal, its works, property, water rights and franchises of every description at any sale that may be made by the board of public works, or under any decree of any court in the State of Maryland or the District. It is contemplated by the State of Maryland to

substitute the railway for the canal. By this action of the State, the railway will be enabled to construct the road to the District line. The object of the present bill is to enable said road to extend its lines through certain portions of the city of Washington over a route to be approved by the District commissioners."

The bill now goes upon the Senate calendar, and although it may pass one branch of Congress, it is hardly probable that it will become a law this session.

*Sun*, Wed. 9/3/90, p. Suppl. 1. **THE CANAL TO BE SOLD** – Hagerstown, Sept. 2. – Judge Alvey filed the following opinion in the canal cases today:

**REPORT OF THE RECEIVERS**

By the order of this court, passed on the 3rd of March last, the receivers thereby appointed were charged with the special duty of making full and thorough examination into the condition of the Chesapeake and Ohio Canal and the extent of the breaks therein, and to ascertain, as far as possible, the cost of restoration, the number of boats fit for use, and the prospect of restoring a trade to the work in the event of its being repaired that would yield a revenue more than merely sufficient to pay the ordinary expenses of operation.

The receivers have performed their work and have made their report; and I am sure their work has been executed carefully and conscientiously and with a strong desire to be able to recommend the restoration of the work, if, upon full ascertainment of its condition and future prospects, they could be justified in so doing.

They, however, upon personal inspection and accurate measurements and calculations made by competent engineers, and upon all the data objectionable, (to which they refer in their report,) have been forced to the conclusion that the canal cannot be restored, with any reasonable prospect of being made to produce revenue applicable to the payment of its large bonded indebtedness – certainly not the bonded indebtedness incurred under the act of 1844, Ch. 281. In this conclusion I entirely concur, and my opinion is based not exclusively upon the report of the receivers, but, in part, upon other data supplied in these cases. Whatever can or may be done by others, under different conditions, I am decidedly of opinion that, as these cases are now presented, and in view of the present condition of the work, this court would not be justified in attempting the experiment of restoring the canal by the agency of receivers, at a large cost to be fixed upon the work and its income as a first or superior lien. To say nothing of the opposition to such an undertaking, interposed by the State, and the minority bondholders under the act of 1878, on the facts as now disclosed, there would seem to be no warrant for such an undertaking.

At the final hearing of these cases, the counsel for the complainants filed among the proceedings a report of the receivers in the District of Columbia, recently made to the court there, in which views are advanced somewhat variant from the views and conclusions of the receivers of this court as to the feasibility of restoring the canal. But I am far from being convinced by the reasons stated in that report, however much I may respect the opinions of those receivers. At best their opinions are only conditional.

There was also filed at the hearing by counsel of the bondholders under the act of 1844 a suggestion, signed by counsel, to the effect that if the court would displace the present receivers and appoint in their stead receivers nominated or selected by the trustees, sufficient money would be raised *on receivers' certificates* to repair and successfully operate the canal so as to make it earn revenue with which to pay the repair bonds. But this suggestion in no manner changes the aspect of the case. No one can fail to perceive, in view of the facts of the case, that such an undertaking would be nothing more than a mere experiment, with the chances greatly against its success; and in the event of a failure, the expense of the experiment would remain a charge of the work to the prejudice of the other lien-holders. It is true, protection to the

greatest reasonable extent should be furnished the holders of the bonds under the act of 1844; but the rights and interests of other parties need not be sacrificed in a vain effort to furnish such protection. If these bondholders have been unfortunate in their investments, and have had their reasonable expectation disappointed, it must be borne in mind that there are other parties, creditors and lien holders of this company, who have suffered from the same causes as the bondholders themselves, and that those parties are now in court protesting against the creation of further superior liens upon the property of the company. If a sale of the work is to be made, and the holders of the bonds issued under the act of 1844 are at all sanguine that it is feasible to restore the canal to practical operation and make it earn revenue that would be applicable to their bonds, they will have an opportunity, and it will be their right to become purchasers of the work, and then to restore it and operate it under such conditions as may be made to produce the best results.

However, notwithstanding the suggestion just referred to, I did not understand from the arguments at the bar it was seriously contended that the canal would not ultimately have to be sold, but that certain preliminary proceedings should be had before the final decree for sale was passed. But all must concede that if the canal is to be sold no possible good can result from delay. The condition of the work is constantly growing worse, and there is no reasonable prospect of an enhanced price being obtained by any delay that may occur. On the contrary, any considerable delay will most certainly depreciate the saleable value of the work.

**THE QUESTIONS INVOLVED**

In order to a clear understanding of the questions that are presented for decision, it may be proper, before proceeding to examine the questions separately, that I should state briefly the state of the pleadings and the positions and claims of their respective parties, as they are set forth on the record.

The two bills of complaint, the first by the trustees for the bondholders under the act of 1844, and the second by the trustees for the bondholders under the act of 1878, have been consolidated and the proceedings thereon have been conducted together as one case. The objects and prayers of the first bill were simply for the appointment of receivers to take charge of and repair and operate the canal, to the end that revenue might be earned that would be applicable to the bonds that were issued under the act of 1844 and for general relief. The objects and prayers of the second bill were for the appointment of receivers, the foreclosure of the mortgage executed under the act of 1878, and the sale of the canal and for general relief. Both bills allege the broken and ruinous condition of the canal, the default of the company in the payment of its overdue debts, and its utter insolvency and inability to pay any of its creditors whatever. To these bills of complaint answers were filed by the defendants therein, and the canal company, by its answer, admitted all the material facts alleged, but opposed the appointment of receivers, and asked and insisted that there should be a decree at once for a sale of the canal and all the property and franchises of the company. The State of Maryland, by the direction of the Legislature, through its attorney-general, asked and obtained leave to be made a party defendant to both bills, and becoming defendant it answered the bills separately, set forth the mortgages or lien claims held by the State, and resisted the appointment of receivers, and submitted the question of immediate sale to the court. At the final hearing, the State obtained leave and amended its answer by inserting therein a clause praying specifically for an immediate sale, thus doing by way of pleading upon the record what was done orally in argument by the attorney-general at the hearing for the appointment of receivers. Treating the amended answer of the State to the first bill as being in the nature of a cross-bill for foreclosure of its mortgages, the trustees for the bondholders under the act of 1844 replied that the State, having waived its prior lien upon the canal and revenues to be derived therefrom, to allow said bondholders to obtain, as they did

under the act of 1844, a first and preferred lien upon the tolls and revenues of the company, it is estopped to ask for a sale of the work and thus destroy the security of the bondholders for the payment of the debts due them, and they deny that the canal cannot be restored so as to be made to earn revenue to pay their bonds. Such are the positions and claims of the parties on the record.

**THE BONDS OF 1844.**

On behalf of the trustees for the bondholders under the act of 1844 it is contended:

1st That before any decree for sale is entered, the question of the *status* and relative rights of these bondholders should be determined; and the bonds issued under the act of 1844 are a charge upon all the property and franchises of the canal company, as well as upon the tolls and revenues.

2nd That as the receivers of this court, and also the receivers of the court in the District of Columbia, have reported that there are many parcels of real estate, particularly in the District of Columbia, supposed to belong to the canal company, which have not been used for or needed in the operation of the canal, but the title to and extent of which are not definitely known, it is insisted by the complainants in both bills, that no decree for sale should pass until the right to all such parcels of property as may be the subject of adverse claim, shall be definitely ascertained, in order that there may be certainty as to the property that will pass under the decree.

3rd Whether, in the present state of the proceedings, looking to the rights and interests of the several parties as represented in the pleadings, a proper case is made for an immediate sale of all the property and franchises of the canal company, and in respect to what rights a decree for sale should be made.

4th Whether this court has jurisdiction to decree a sale, and to execute the same, in respect to that portion of the canal which lies within the District of Columbia, or, in other words, whether there is jurisdiction in this court to make an effective decree of sale of the entire work from one terminus to the other, though a portion of the work lies beyond the territorial jurisdiction of this court.

**A LIMITED LIEN**

1. I agree with counsel that there is reason and propriety in having settled the question as to the right and position of the bondholders under the act of 1844 before decree for sale. But the question now for the first time raised as to the extent of that right, I think, is free of all doubt or difficulty, and that the lien created by the act as security for the bonds is a limited and restricted one. Indeed, it has been so understood and regarded by all parties concerned from the time of the passage of the act to the time of the contentions made in this case, and the Legislature and the Court of Appeals of the State have so understood and constructed the act.

Before the passage of the act of 1844, Ch. 281, the State, for large loans made to the canal company, had accepted of the company mortgages upon all its property, franchises and future tolls and revenues. By the act of 1844 the State authorized the company to borrow or raise upon its own bonds, *with preferred liens on its revenues*, a sum not to exceed $1,700,000. To this extent the State waived and postponed its prior rights and liens upon the revenues of the company in favor of and as security for the payment of the bonds that might be issued under the act. The act provided not only for the appropriation of the net tolls and revenues to the payment of the interest as it should accrue due, but to the creation of a sinking fund with which to pay off the principal of the bonds. By section 2 of the act, it is provided "that the bonds so issued as aforesaid shall appear on their face *to be preferred liens on the revenues* of said company, according to the provisions of this act, &c., and the said bonds, &c., shall be *preferred liens on the revenues and tolls* that may accrue to the said company from the entire and every part of the canal and its works between Georgetown and Cumberland, *which are hereby pledged and appropriated* to the payment of the same and the interest to accrue thereon, in the manner hereinafter mentioned,

&c., and 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 revenue and tolls as in their opinion may be necessary to put and keep the said canal in good condition and repair for transportation, provide the requisite supply of water, and pay the salaries of officers and agents, and the current expenses of said company." And by section 4, it is provided "that the rights and liens of this State, *upon the revenues* of the canal company, shall be held and considered as waived, deferred and postponed in favor of the bonds that may be issued under the foregoing sections, so as to make the said bonds and the interest to accrue thereon, *preferred and absolute liens on said revenues*, according to the provisions of the second section of this act, *until said bonds and interest shall be fully paid.*" The sixth section then provided that the canal company shall be authorized to execute any deed, mortgage or other instrument of writing that may be deemed necessary to give full effect to the provisions of the preceding sections of the act. And following this, it is provided that the canal company shall execute to the State "a further mortgage on said canal, its lands, tolls and revenues, subject to the liens and pledges by the foregoing provisions of this act made, created or authorized, an additional security for the payments of the loan made by the State to the said company, &c. This mortgage authorized to be made to the State was executed prior to the mortgage executed as security for the bonds, but the mortgage to the State is made expressly subject to the preference or priority of lien created by the statue as security for the bonds.

In the mortgage to the trustees for the bondholders the recital is that the lien is preferred on the revenues and tolls that may accrue to the company; and the grant is of "the revenues and tolls of the entire and every part of the canal and its works between Cumberland and Georgetown, in fee and in mortgage to secure the payments," &c.; but nothing is said of any grant of the canal itself or of a lien thereon.

Now, however, notwithstanding that neither the statute, not the mortgage thereunder, by any express terms, creates a charge or lien upon the *corpus* of the work, as distinguished from the tolls and revenues to arise therefrom, it is contended on the part of the bondholders that the terms employed, creating a lien or charge upon the tolls and revenues, do, *ex vitermini*, and by necessary implication, operate a charge or lien upon the *corpus* of the work as well as upon the tolls and revenues thereof; and that, therefore, the trustees for the bondholders had the right to foreclose the lien and have the canal sold for the payment of the bonds upon the default by the company. That if the bondholders under the act of 1878, Ch. 58, are given a valid and superior lien under that act, both upon the real property and revenues of the company, and a sale is decreed for their benefit, then the bondholders under the act of 1844 will be entitled to receive payment of their bonds out of the proceeds of sale, as being second in the order of priority. This is the contention on the part of the bondholders under the act of 1844, and in support of this contention I have been referred to Co. Ott 46; S. W. R. vs. O. Ho L. Cas, 425; Ketchum vs. St. Louis, 101 U. S. 306; and several other authorities, all of which I have carefully examined.

Of the correctness of the general principle maintained by the authorities cited, I make no question. But I do not think that the principle of these authorities has any application here. We must bear in mind that the lien in question is the creature of the statute of 1844, and it cannot be made larger or more comprehensive that the Legislature intended it to be. That the Legislature intended to restrict the lien to the net tolls and revenues I think is manifest, upon the plain reading of the several provisions of the statute. If the intention had been to fix the lien upon the *corpus* of the work as well as upon the net tolls and revenues, why should the Legislature have used the restrictive terms employed throughout the statute in regard to this lien? Why should it have been

careful to declare in express terms, as the limit of the authority, and the extent to what the State was willing to waive its prior rights and lien, that the money too be borrowed by the company should be "with preferred liens on its revenues, as thereinafter mentioned," if it was understood and intended that the lien should embrace the canal and all the property and franchises of the company, as well? The distinction was clearly in the minds of the Legislature; for, in directing a further mortgage to be made to the State by the company, it expressly provided that it should be of "the said canal, its lands, toll sand revenues."

That the waiver of the State's prior lien was confined by the act of 1844 to the net tolls and revenues of the company has been certainly so understood by subsequent Legislatures. In the act of 1878, chapter 58, authorizing the issue of the $500,000 preferred bonds, it is expressly declared that, while the lien of the State was upon the lands, tolls and revenues of the company, the liens of the bonds under the act of 1844 are "upon the net tolls and revenues of said company." And so it was understood by the Legislature of the State of Virginia. For by the act of that State of the 8th of March, 1847, authorizing the guarantee of $300,000 of the bonds issued under the act of 1844, after reciting the fact that the bonds were issued with preferred liens on the revenues, it was made the duty of the board of public works of that State, as a condition precedent to the guarantee, that it should be satisfied, "that *the revenues of said company*, pledged by the act of Maryland to the payment of the principal and interest of the bonds issued in pursuance thereof, will, when the said canal shall be completed, be sufficient for that purpose." It is clear, therefore, I think, beyond all reasonable doubt, that neither the Legislature of this State, not that of Virginia, ever supposed for a moment that there was any such lien or charge created by the act of 1844, as would bind the *corpus* of the work or authorize its sale.

**PRECEDENTS CITED**

But apart from all this, I think the construction of the act of 1844 has been judicially settled by the Court of Appeals of this State. And that being so, I can have no alternative but to follow that construction.

In Brady vs. the State, 26, Md. 290, the case required the court should examine into the rights of lien holders of the canal company, and especially those of the State, as against a judgment and execution creditor of the company. And it was clearly assumed by the court, with no contention to the contrary, that the lien authorized or created in favor of the bondholders, under the act of 1844, was confined to the net tolls and revenues of the company, and did not, to any extent, bind the corpus of the work, and that the State held the only charge or lien on the property of the company at the time. And in the case of Virginia vs. Canal Company and others, 32 Md. 501, where the object of the suit was to have definitely adjudicated the relative rights and priorities of the several lien-holding creditors of the company, the construction of the act of 1844 was prominent both in the argument at bar and in the opinion of the court. In that suit the trustees for the bondholders, under the act of 1844, were parties, and that interest was represented by able counsel, the late Mr. Fred Brune and Mr. Steele, who were entirely familiar with the history of the canal company and all the legislation in regard to it. But those gentlemen did not, in their argument to the court, contend for anything more than a lien upon the tolls and revenues of the company. They said, in argument, that the "State agreed, by the act of 1844, chapter281, as a last alternative, to waive its liens to a *limited extent*, and upon certain conditions, for the purpose, if possible, of enabling the company itself to finish its work to Cumberland, by a pledge of its unencumbered revenues. And in a carefully prepared opinion of the court, in discussing and deciding the position of the holders of the bonds under the act of 1844, it is said: "No doubt all parties, at the time the law of 1844 was passed, supposed the revenues of the canal, under the contract, which that act required to be made, would be sufficient to subserve all the ends that the law

professed to accomplish, and that all regarded the security as ample; but here, as in a thousand other instances where investments have been made in enterprises of like character, the most confident expectations have been frustrated and the best-founded hopes disappointed. All that in reason can be said is that those who loaned their money on these bonds relied upon a security which they thought was sufficient, which they were willing to accept, but which has hitherto failed them. They took security only upon expected tolls and revenues, and only on so much of them as might remain after repairs and other expenses were first provided for." So that we see, in the opinion of both counsel and court, in that case, the line of the bondholders of 1844 was restricted to the net tolls and revenues of the company. Indeed, in this very case, no more extended or comprehensive lien is set up or claimed in the pleadings. In the bill of the trustees for the bonds of 1844, and also in their answer to the bill of the trustees of the bonds of 1878,it is expressly alleged that their only security for the payment of the bonds and interest, now amounting to more than $4,200,000, is the lien upon the prospective tolls and revenues of the company.

But it is urges that this is a question of contract, such as may rest finally with the Supreme Court of the United States for decision, and that that court, in the case of Ketchum vs. St. Louis, 101, U. S. 806, has made a decision on a state of case so exactly analogous to the present as to be conclusive of what the decision ought to be here.

With all due respect to the learned counsel who so contend, I must say I do not so read that case. While many of the facts in that case bear analogy to those of the present, the decision of the court proceeded upon a principle wholly different from that involved in the question here presented.

In that case, the lien was raised by an equitable construction of the facts under which the loan was obtained; the court by the application of the principles of equity declaring an equitable mortgage to exist. Neither the statute authorizing the loan, nor the contract of the parties, nor the bonds that issue, declared or made any reference to any specific lien as security, as was provided and declared in the act of 1844. An embarrassed railroad company having created a prior mortgage line on its works in favor of the State of Missouri, negotiated a subsequent loan of the county of St. Louis, of $700,000, with which to complete and repair its road, which loan was authorized to be made by an act of the Legislature of the State. By the act of the Legislature, the county was authorized to issue the bonds for the amount of the loan, and to loan the same to the Pacific Railroad Company for the completion of its road; "said bonds to be issued under such conditions as should be agreed upon between said county court and the board of directors of the railroad company, and such condition to be binding on the parties, but should not impair or affect the validity of the bonds after they are issued." And it was then provided that the commissioner of funds, an officer of the State, having the custody of the funds of the railroad company, should every month pay into the county treasury of St. Louis county, *out of the earnings* of the said railroad, certain sums "to meet the interest on said seven hundred bonds, said payments to continue until said bonds are paid off by the Pacific Railroad."

After this loan from the county was effected and the specific appropriation of the earnings of the road for its payment made, the company negotiated three other loans for large amounts and executed mortgages therefor on its property and franchises, and upon foreclosure and decree for sale under the last mortgage, it was provided that the sale should be made subject to all prior liens, and be without prejudice to the claim of St. Louis county, 101 U. S. 294.

The railroad was sold, but it continued to be a going, living concern, earning revenues, and the county of St. Louis claimed that the purchaser took the railroad subject to the specific appropriation of *its earnings* until the debt was paid; and in this claim the county was sustained. The court declared that the

Legislature, by the act authorizing the loan, intended to make a *specific appropriation* of the earnings of the road for the purpose of payment; that the proper lien of the State was to that extent waived in favor of the county, and that such appropriation and waiver were, by agreement of all the parties then interested in the property and the disposition of its income, to continue until the bonds themselves were paid or the county discharged from liability thereon. That the act, having been accepted by the parties, operated as an equitable assignment of a fixed portion of the fund – an assignment which became effectual without any further intervention upon the part of the debtor, and which the party holding the funds of the company was bound to respect. That it was an arrangement, based upon a valuable consideration, which neither the Stare nor the company, nor both, nor parties claiming under either, with notice, could disregard without the assent of the county expressed by those who had authority to bind it. It was, say the court, an engagement to pay out a specially designated fund, accompanied by express authority to its custodian to apply a specific part thereof to a definite object, in the accomplishment of which all the parties to the arrangement were directly interested.

In that decision, which seems to be well fortified both by reason and authority, I am unable to find any doctrine that justifies the contention made by counsel, that the lien in this case binds both the *corpus* of the work, and its tolls and revenues. And I am clearly of opinion, after considering all the arguments to the contrary, that the lien given by the act of 1844, as security for the bonds issued thereunder, is limited to the net tolls and revenues of the company; and, upon failure of that security, the bondholders can only occupy the position of ordinary non-lien creditors of the company.

**DETACHED LANDS**

2. As to the position taken, that there should be no decree for sale until all the detached or separate parcels of land that may belong to the canal company shall be ascertained and defined, and the right thereto settled, I think, under the facts of this case, there is no sufficient reason for tis adoption. Such delay would be indefinite and would most certainly be productive of injurious consequences. The canal is shown to be in a very dilapidated condition, and is daily growing more so. If the work is to be sold, it can only be sold under these proceedings, as a canal, with all the property and franchises of the company, just as it has been mortgaged. I cannot assume that the company acquired or held land that was not necessary to the construction or operation of its works; indeed, it could not purchase and hold real estate indefinitely, without regard to the uses to be made of it. Case vs. Kelly, 133 U. S. 21. If there be any adverse claims of title to any of the parcels of land supposed to belong to the company, this is not the court in which such adverse claims of title can be tried and settled; the resort must be to a court of law in the jurisdiction where the land may be located. No title, however, has been or can be acquired as against the canal company, by mere length of possession, whether with or without the permission of the company, "so as to deprive the said company of its rights in or to the said lands." Act 1844, chapter 287, section 10, approved and adopted by act of Congress of Sept. 20, 1850. It will be, of course, the duty of trustees, before sale, to ascertain with as much certainty as possible, the extent and character of the property to be sold, and to give fair description thereof, and all the right and title of the parties to these proceedings in such property will pass by the sale. And if it should be ascertained that there are parcels of land that can be severed from the canal, and sold separately, to a much greater advantage than if sold with the canal, and that the sale of the main work will not be depreciated thereby, upon report and application of the trustees, a supplemental decree may be passed to authorize such separate sale. This may depend, however, upon considerations not now necessary to be discussed.

It has been suggested that these separate parcels of land, especially those in the District

of Columbia, if sold off at once, would produce a price nearly, if not quite, sufficient to restore the canal to working order. But if it be true that the canal, if restored to working order, could not obtain trade and be operated so as to produce net revenue that would be applicable to the payment of the bonds that issued under the act of 1844, it would be unjustifiable use, and, indeed, a misapplication of the assets of the company, so to expend them to the prejudice of the State, to say nothing of the other creditors interested. Such assets, whatever they may be worth, can be better applied to the payment of the debts of the company than to the very doubtful experiment of restoring the canal.

**POWER OF THE COURT IS AMPLE**

3. With respect to the right and power of the court on the present proceedings to decree a sale of the canal and all the property and franchises of the company for the payment of its mortgage debts now binding on the *corpus* of the work, I entertain no doubt. (The court here enforces this position.)

By the act of 1844, chapter 281, the canal company was allowed the privilege and given the authority to use and apply such portion of the revenue as, in the opinion of the president and directors, might be necessary to put and keep the canal in good condition and repair for transportation, provide a supply of water and pay the salaries of officers and the current expenses. (32 Md. 501 is here cited to show the company had power to anticipate future earnings for this purpose.)

But it is objected that the act of 1878 goes further than the mere pledge of the future tolls and revenues of the company, and puts in pledge and subjects to mortgage the canal, and all the property and franchises of the company, coupled with a power of sale. To this then are two objections taken. First, that the Legislature had no constitutional power to waive the State's lien upon the *corpus* of the work. * * * and second, if such power was possessed by the Legislature, the State was estopped and precluded from the exercise of that power by force of the contract embodied in the act of 1844, chapter 281, with the bondholders under that act.

The first objection raised to the act of 1878 depends upon the proper construction of the terms of section 3, of article 12, of the Constitution of this State. Article 12 has relation exclusively to the powers and duties of the board of public works. It does not profess in any of its provisions to limit the power of the Legislature. By section 8, after authorizing the board of public works to exchange the State's interest in the Baltimore and Ohio Railroad Company, it is then declared that "the said board is authorized, subject to such regulations and conditions as the General Assembly may from time to time prescribe." to sell the State's interest in the other works of internal improvement, whether as a stockholder or a creditor, and also the State's interest in any banking corporation, &c., provided that no sale or contract of sale of the State's interest in the Chesapeake and Ohio Canal, the Chesapeake and Delaware Canal and the Susquehanna and Tide-Water Canal Companies, shall go into effect until the same shall be ratified by the ensuing General Assembly." It is clear, if the power of sale is to be exercised by the board of public works, it must be under such regulations and conditions as the Legislature shall prescribe, and in the case of sale of the State's interest by the board of public works in any of the canal companies mentioned, such sale can have no effect until ratified by the ensuing Legislature. (The court goes on the decide that the constitutional restriction only applies to the board of public works and leaves the Legislature free.)

And I am of the opinion that the Legislature of 1878, so far as the State's interest in the canal company was concerned, possessed the same power over the subject that was possessed by the Legislature that passed the act of 1844, chapter 281.

Then with respect to the second objection raised to the act of 1878, that of an estopped upon the State, that would have been a question of serious moment and of more then ordinary importance but for the unfortunate

condition of the canal. The security, and only security furnished the bondholders under the act of 1844 having failed and become valueless, there is nothing upon which the contract between the State and the bondholders can operate. This question therefore, as matters now stand, is of no practical importance. * * *

I can see no difficulty therefore in decreeing a sale of all the property and franchises of the company on the bill filed in behalf of the bondholders under the act of 1878, chapter 58.

But in these proceedings, there is another foundation for a sale, and that is the answer to the State by its attorney-general.

(The joint resolution of the Legislature, the opinion goes on to set forth, imparts to the answer of the attorney-general the nature of a cross bill and furnishes the foundation for a decree of the mortgaged premises.)

There can, therefore, be no question of the right or power of this court, on the present proceedings, to decree a sale of the canal and all the property and franchises of the company, discharged of all liens and encumbrances thereon.

**TO BE SOLD ENTIRE**

4. The next and last question is that as to the right and power of this court to decree the sale of the canal as an entity, as well that part lying within the District of Columbia as the part located within the limits of this State.

It would certainly be a matter of extreme regret to have to limit the sale of the work to the boundary of the State. Such sale would most likely produce confusion in dealing with the rights of creditors to the proceeds of sale, and seriously affect the salable value of the work. But as all parties holding title are before this court and will be bound by and subject to this decree, I am of opinion that the decree can be made to embrace and authorize the sale of the canal and all the property and franchises of the canal company from one terminus to the other.

(The court cites authorities to sustain this position.)

It would seem to be settled, both in England and in this country, that where a court of equity acquires authority and jurisdiction to act upon the person it may indirectly act upon real estate situate in another State or jurisdiction by means and through the instrumentality of this authority over the person, and that it may compel such person to give effect to its decree respecting such property, whether it goes to the entire disposition of it or only to affect it with liens or burthens. Sto. Conf. of Laws, sec. 544. This general principle has, in the more recent cases, been somewhat expanded and given special application in a class of cases to which this belongs. In cases calling for the exercise of judicial authority over extended works of interstate commerce, running through two or more States, the application of the principle is not only matter of convenience, but of practical necessity. This is well stated and illustrated in the case of Muller vs. Dows, 94 U. S. 444. In that caser a decree was entered by the Circuit Court of the United States, sitting in the district of Iowa, foreclosing a mortgage executed by a railroad company of its entire road and franchises, and ordering a sale thereof – a part of the road so ordered to be sold being located in the State of Missouri. The court passing the decree had jurisdiction of the mortgagor and the trustees in the mortgage as parties to the suit, and on appeal it was held by the Supreme Court of the United States, affirming the decree below, that there was no error because a part of the property ordered to be sold was situate in the State of Missouri; that a good title could be made by sale under such decree by requiring the trustees in the mortgage to convey. The Supreme Court, in its opinion, Mr. Justice Strong, said: “A pert of a railroad may be of title value when its ownership is severed from the ownership of another part. And the franchise of the company is not capable of division. In view of this, before we can set aside the decree which was made, it ought to be made clearly to appear beyond the power of the court. Without reference to the English chancery decisions, where this objection to the

decree would be quite untenable, we think the power of courts of chancery in this country is sufficient to authorize such a decree as was here made. It is here undoubted a recognized doctrine that a court of equity, sitting in a State and having jurisdiction of the person, may decree a conveyance by him of land in another State, and may enforce the decree by process against the defendant. True, it cannot send its process into that other State, nor can it deliver possession of land in another jurisdiction, but it can command and enforce a transfer of the title. And there seems to be no reason why it cannot, in a proper case, effect the transfer by the agency of the trustees when they are complainants." To the same effect is the decision in the case of Wilmer vs. Atl. & Rich. R. Co. 2 Wood, 447.

It appears, however, that before the institution of the proceedings in this court, similar proceedings to the present had been instituted by the complainants in the Supreme Court of the District of Columbia, sitting in equity, but to which the State of Maryland is not a party, and that before receivers had been appointed here receivers had been appointed by the court in the District to take charge of all that portion of the canal and the company's property within the District of Columbia, and those receivers are still in possession. Of course, no trustees appointed by this court to make sale of the property could disturb or interfere with the possession of the receivers of the District of Columbia. The possession of those receivers is the possession of the court that appointed them; and, therefore, before any sale can be attempted to be made of the canal under a decree of this court, there must be a concurring or ancillary decree obtained from the court in the District of Columbia. Wiswall vs. Sampson, 14 How. 52, 65, and cases there cited, and opinion of Mr. Justice Bradley in Wilmer vs. Atl. and Rich. R. Co., 2 Woods, 423, 427. Such decree, I assume, can be obtained on the proceedings now pending in that court.

Upon the whole case, I am of opinion that the canal should be sold, and that the present proceedings furnish a proper foundation for a decree for sale, and I shall therefore pass a decree for the sale of the entire work, with all the property and franchises of the company, from one terminus of the canal to the other. The decree must provide for payment, out of the proceeds of sale, of all expenses incurred by the receivers of this court while in charge of the property, and which may remain unpaid, and for just compensation to them for their services performed.

Sept. 1, 1890 R. H. Alvey

*Sun*, Thu. 9/4/90, p. 2. **The Decision in the Canal Case. –** Since the report of the receivers appointed by Judge Alvey in the bondholders' foreclosure suit against the Chesapeake and Ohio Canal Company there has been little room for doubt as to the final action of the court. The report was evidently the result of a careful and personal examination of the affairs and prospects of the company and of the actual condition and requirements of the canal itself, conducted in a spirit of perfect fairness and without the least taint or suspicion of any unfriendly or partisan bias. The receivers started out, as they showed in their report, thoroughly impressed with the idea that if the canal could be repaired at reasonable cost and be operated with a fair prospect of doing business and earning revenues sufficient to justify the expense of repairing it, its maintenance as a waterway was due to the bondholders, whose only security, as in the case of the bondholders under the act of 1844, was the tolls and revenues, and also to the people of the State who might desire to avail themselves of the facilities for transportation which the canal might afford. It was with obvious reluctance that the receivers, upon a careful survey and consideration of all the facts, came to the conclusion that the canal could not be repaired and successfully operated as a canal, and so reported to the court. In this conclusion Judge Alvey himself, not without knowledge and opportunities for observation in the premises, acting upon the report of the

receivers and other facts and data before the court, fully concurs.

Past the possibility of rehabilitation and repair, swamped by mismanagement and debt, and overburdened by liens, there was nothing left to the court but to respond to the application of the bondholders under the act of 1878, whose lien embraces *all* the property and rights of the company and the *corpus* of the canal and decree a sale. The application for a sale was assented to by the State and by the company. It had only been resisted by the bondholders under the act of 1844, when denied the right of the bondholders of 1878 to have a sale, and who claimed for themselves an *implied* lien upon the *corpus* of the canal upon the ground that the State's waiver of its lien and the pledge of the tolls and revenues were inconsistent with a grant by the State of a right to sell the thing which alone could yield tolls and revenues to a subsequent incumbrancer. These and all the other legal questions in the case Judge Alvey, in the course of his long and carefully prepared opinion, successfully considers and passes upon. For the benefit of those readers of *The Sun* who may not be able to follow the course of the Judge's learned reasoning and may prefer to have the conclusions arrived at succinctly stated, we will briefly summarize them:

There are *four* questions in the proceedings, says the Judge, the *first* being as to the lien of the bondholders under the act of 1844, who ask to have their rights and *status* determined before any decree for a sale should be passed. Upon the express language of the act of 1844 and of the mortgage of the trustees to secure the bonds issued thereunder, and upon the contemporary and the subsequent construction given to the act by the State of Virginia in 1847, and by our own Court of Appeals, especially in the leading case of Virginia vs. the Canal Company, reported in 32 Maryland Reports, p. 503, Judge Alvey finds no difficulty and has no hesitation in deciding that the holders of the bonds under the act of 1844 have not and never had any lien except upon the tolls and revenues of the canal after payment of salaries and necessary expenses, and that when the canal ceased to yield revenues there was nothing for the lien of these bondholders to operate upon, and they were reduced to the ranks of ordinary creditors, non-lienors of the company.

2. The *second* question to be determined is in regard to the detached and separate pieces of property reported by the receivers as belonging to the company, not necessary to the operation of the canal and the title to which is either in litigation or in doubt. To the contention that there should be no sale until the title to this property can be cleared up and established, Judge Alvey answers that such delay would be indefinite and productive of injury. The canal is dilapidated and becoming daily more so. While the courts cannot assume that the company acquired or hold any land not necessary to the construction or operation of the canal – if it can be shown that there are detached pieces of property which could be sold to greater advantage is severed and sold separately than if sold with the canal, a case might be presented for a supplemental decree upon a full consideration of the facts.

3. *Thirdly*, as to the jurisdiction of the court and its power to decree a sale in the pending proceedings, Judge Alvey entertains no doubt whatever. He disposes of the constitutional objection raised to the act of 1878, that it provides for a sale in a manner not contemplated by section 3 of article 12 of the constitution, by showing that the restrictions in that article apply to the board of public works and not to the Legislature. Independently of the right of the court to act upon the application of the bondholders under the act of 1878, the Judge also relies upon the answer of the State of Maryland, filed in the cause by the attorney-general by direction of the Legislature, which is in the nature of a cross bill, and also asks for a sale.

4. The *fourth* and last question is as to the power of the court to decree a sale of the canal in its entirety, from terminus to terminus, including that part which is within the limits of the District of Columbia, and at present in the

possession and under the control of receivers appointed by the Equity Court of the District. All parties having title, including, of course, the company itself, being parties to the proceedings in the Circuit Court for Washington County, Judge Alvey holds, upon principle and authority, that that court has power to decree a sale of the entire property, and to enforce its decree as against the parties *personally*. It cannot, of course, oust the Equity Court of the District of its jurisdiction or take the property within the District out of the hands of the officers appointed by that court. For that purpose, a concurring or ancillary decree must be obtained from the court in the District of Columbia; but concludes Judge Alvey, "such a decree, I assume, can be obtained in the proceedings pending in that court."

No decree for a sale accompanies the opinion. According to the usual practice, the court will expect to have a decree, in proper form, prepared and submitted by counsel. Consequently, no time or place, or terms or conditions of sale are specified. But thus, in the regular and orderly course of judicial proceedings, the end is reached, which, during the last session of the Legislature, a few politicians and speculators sought, for their own purposes, to accomplish by irregular methods and by a legislative short-cut. *The Sun* opposed the attempt in the Legislature to capture the canal by a *coup-de-main*, not because it did not think that the canal ought to be sold, but because it considered that the interests of all parties, and especially of the State of Maryland, and the principles of law and justice required that the sale should be open and under judicial supervision, and not a legislative sale to a favored clique or ring to the exclusion of all competition. There is no allusion whatever in Judge Alvey's opinion to any legislation of 1890, either to the act authorizing a lease of the canal and a sale of all the State's interest to the Washington and Cumberland Railroad Company or the acts amendatory of the charter of that improvised corporation, so as to enable it to become a purchaser of the canal and operate it as a railroad. The Judge evidently considered any allusion unnecessary and superfluous.

SR, Fri. 9/5/90, p. 3. **Chief Judge Alvey**, of Maryland, has filed his opinion in the Chesapeake & Ohio Canal case, and has decreed that all the canal property and franchises shall be sold. He thinks it could never be revived as a waterway with any reasonable hope that it would pay.

*Sun*, Fri. 9/5/90, p. Suppl. 2. **CHESAPEAKE AND OHIO CANAL CASE** – The Chesapeake and Ohio Canal case, pending in the District courts, has not been taken up since the decision of Judge Alvey, of Maryland, in favor of a sale. Judge Cox, who sat in the case, is not in the city, and Judge Bradley, who holds pro tempore the Equity Court, where the case is pending, will take no action whatever. The case will therefore remain as now, until Judge Cox shall take it up on his return. He is expected to return on Monday next, and it may be that some action in reference to Judge Alvey's decision, which anticipates a concurrent decree, will be made in his court before the close of the second week of September.

*Sun,* Mon. 9/8/90, p. Suppl. 2. **WASHINGTON AND CUMBERLAND RAILROAD** – The decision of Judge Alvey, which, it is thought, will be followed this week by a decision of Judge Cox concurring in the necessity for the sale of the Chesapeake and Ohio Canal Company, renders the materialization of the plans of the Washington and Cumberland Railroad Company among the probabilities. It was proposed, in case the company is able to avail itself of the permission of the Maryland Legislature and purchase the Chesapeake and Ohio Canal, to bring the railroad into the District on the line of the canal, and, crossing Rock creek, to find a depot on the river front near Seventeenth and B streets. As there has been some objection to this route as involving the cutting off of the city from the proposed river park by railway tracks,

it is now proposed to change the route, and, after crossing Rock creek, to enter a tunnel and go under ground to such point west of Twentieth street and north of New York avenue as the District commissioners shall determine. A bill for the purpose has been introduced into Congress by Mr. Mudd. Before the routs is fixed, a map must be submitted to the District board.

*Sun,* Wed. 9/10/90, p. 2. ***The Sun's* Position Upon the Canal Question** – Our esteemed contemporary, the Westminster *Advocate*, is displeased with the course of *The Sun* in reference to the Chesapeake and Ohio Canal question. Unfortunately, it betrays a profound ignorance, or at least forgetfulness of whet the course of this paper has actually been in reference to that subject, for we should be loath to impute to our esteemed contemporary anything like willful misrepresentation. It says that "every reader of *The Sun* well knows that that journal was opposed to *a sale of any kind* last winter. It contended that the canal should be repaired and operated at a profit, and it published a number of articles to show that canals were not out of date, and the prove how advantageous they were to commerce and how remunerative. One article went to show that somewhere in Europe a series of canals were being projected." &c. Now, every intelligent reader of *The Sun* ought to know that it was *not* opposed last winter to a sale of the canal upon proper terms and in a lawful manner. What it sis oppose was the attempt to sell the canal in the guise of a political lease to a favored political clique or ring under their terms, without inquiry into the feasibility and cost of repairing the canal, and without any ascertainment of the actual value of the assets of the company or statement of what those assets consisted. We opposed the canal lease bill because it was a political job, and because we believed that the canal should be sold in open market to the highest bidder, with every opportunity to intending purchasers to become acquainted with the value of the property upon which they proposed to bid.

As to the question whether the canal could be repaired and operated successfully as a waterway, that is a point upon which *The Sun* did not assume to pass, and it was equally clear that the Legislature had no right to assume without investigation, what the *Advocate* assumes, that "everybody knew;" viz. that as a waterway the canal was worthless. In view of the claims of the bondholders under the act of 1844, that was a question for judicial, not legislative, determination. As Judge Alvey has decided, the only lien which those bondholders had for their money expended in the construction and completion of the canal itself was upon the tolls and revenues of the canal. For the Legislature to assume that the canal was incapable of earning any further tolls and revenues, and that it should, therefore, be leased for a term of ninety-nine years, renewable forever, to a railroad company, was simply tantamount to an act of legislative confiscation, the injustice and illegality of which were not less apparent because it was one of the conditions of the lease that the bondholders of 1844 were to be paid twenty-five percent of the principal of their claims. The Legislature had no right to arbitrarily appraise the rights of the bondholders of 1844 at that or any other figure. If the canal *could* be repaired and operated successfully as a waterway, the bondholders of 1844 had a right, which a court of equity would recognize and enforce, to have it so repaired and operated, and the Legislature had no power to prejudge the facts, and deny to the bondholders the right to have the whole question judicially determined.

*The Sun*, therefore, did not hesitate to express its gratification when the schemers who were endeavoring to force the canal lease bill through the Legislature as a party measure, and who, by the aid of their political friends and allies in that body , succeeded in securing its passage, had their plans to capture the canal without competition and without opposition temporarily checked by the litigation instituted in the Circuit Court for Washington County by the bondholders of 1878 and by the

appointment of receivers. And subsequently, when the same parties attempted to oust the court of the jurisdiction and to control Judge Alvey's action by legislative enactment, *The Sun* was prompt to expose and denounce the attempt as in violation not only of every rudimental principle of justice, but as in palpable violation of the constitution and the declaration of rights – as a piece of special legislation of the most odious character, and as an encroachment of the legislative upon the judicial authority. And *The Sun* has the satisfaction of knowing that its exposure of the object and character of the bill contributed not a little to its defeat in the Senate. *The Sun* is, therefore, neither "paralyzed," as our Westminster contemporary fondly [illegible], or even disappointed at the final result of the litigation in Judge Alvey's court. "If the canal cannot be repaired, it should be sold, and if sold, sold in a judicial proceeding, where the rights and interests of *all* parties, the State of Maryland included, can be properly protected. That is the whole to *The Sun's* position in the matter, and it has no regrets to express for the part it has taken in exposing and combatting the schemes of the political speculators for whom the Westminster *Advocate* seems to have so much sympathy.

As to the general question of the usefulness of canals when "not in politics" and managed upon business principles, we could refer the *Advocate* to various sources for the information of which it seems to stand in need. It will find that it is perfectly true that canals are 100% out of date. and that [illegible] today in Great Britain and in various parts of Europe in the construction of canals. It was the mismanagement of the Chesapeake and Ohio Canal that, which began as a business enterprise, it had for years been operated as a "political machine," and the fact that it is a hopeless wreck today is something for which political mismanagement is largely, if not principally, responsible.

*Sun*, Fri. 9/12/90, p. Suppl. 2. **The Chesapeake and Ohio Canal Case** – Oakland, Md., Sept. 11. – The next step in the proceedings for the sale of the Chesapeake and Ohio Canal, under the decision of Judge Alvey, will be the selection of the trustees to make the sale. It is usual in sales of such magnitude for the court to include among the trustees persons representing the various interests involved in the litigation. It is reported that Governor Jackson and Comptroller Baughman have recommended the selection of Mr. Thomas M. Lanahan, of Baltimore, as the trustee on the part of the State.

---

**Litigation Over the Title to the Potomac Flats**

Washington, Sept. 11. – For four years past there has been pending in the Supreme Court of the District of Columbia a suit of the United States against the claimants to the whole portions of the river flats in front of Washington harbor, which are now in process of reclamation and improvement by the United States, more than 600 acres having been reclaimed from the river at an expense of over $2,000,000. The suit was instituted on the 26th of November, 1886, by District Attorney Worthington, and by an order of Justice James, made that day, that all persons and corporations interested in "the land or water" included in the bounds of the improvement from shore to shore of the Potomac, which extends from the end of Giesboro wharf to Easby's wharf, at the foot of twenty-seventh street, were required to put their claim of title in court before the 3rd of January, 1887, or be forever barred from setting up or maintaining any right, title or claim in the premises. Under this order the Chesapeake and Ohio Canal Company and M. F. Morris and forty-nine other filed claims. Of these J. I. Boyle, Mary E. Boyle, Nathaniel S. Watts and Cornelia Watts were Baltimoreans, and Geo. Peter and the Hoban heirs reside in Maryland outside of Baltimore. For three years all these parties have been busy accumulating evidence as to their title. Old deeds have been searched up, and depositions have been taken in this District and in various parts of Maryland and Virginia in reference to the claims. The

Kidwell-Morris claim for the Kidwell meadows, some 47 acres, under the old Observatory Hill; the Chesapeake and Ohio Canal claim of riparian rights from Tiber mouth along the side of the old canal ground and the Marshall claim of all the flats in the river under the grant of the King of Great Britain to Lord Culpeper, or what is known in Virginia as "the Lord Fairfax grant," are the chief claims. In the work pf building up the title, lines of descent are being made out and assignment proved, and when the question comes up it will probably be the *cause celebre* among modern land suits, and will involve the whole question of land title by natural right, political sovereignty, grants from the king, patents from the United States, international and municipal law as to confiscation of lands, &c., and will embrace a history of land titles in this section of the country from the time of the Necostine and the Doegg Indian tribes until now – from the Indian chiefs Powhatan and Jopszaws to President Harrison and Commissioner Douglass, the present representatives of executive authority.

The case will come up for a hearing during the coming fall and winter before all the judges in general term, the Equity Court having last May transferred it to the tribunal. The record on the docket cover ten great pages and the papers already filed would fill ten baskets, and yet the work of accumulation goes on from day to day, and engages, it is said, over fifty lawyers. The value of the land involved is said by some to amount to millions of dollars, but other are more moderate in their estimates.

*Sun*, Sat. 9/13/90, p. 1. Messrs. John P. Poe, S. Teackle Wallis and John K. Cowen will meet Judge Alvey at Hagerstown on Wednesday nest in reference to the appointment of a trustee in the Chesapeake and Ohio Canal case.

---

*Ibid*, p. Suppl. 2. **Interest in the Canal Case** – Oakland, Md., Sept. 12. – Much interest is felt here in the next step to be taken in the proceedings for the sale of the Chesapeake and Ohio canal under Judge Alvey's recent decision. Judge Alvey said today that he had received a telegram yesterday from Mr. S. Teackle Wallis, asking when he would return to Hagerstown. The Judge also received a message from John P. Poe, asking he and Mr. Cowen would be at Hagerstown on Wednesday next. The Judge supposes all this has a reference to the appointment of trustee. The Judge said the bondholders of 1878 are secure, no matter whether the canal sells for little or much, and that the State is the party which is interested in making the canal sell for as large a price as possible.

*Sun*, Tue. 9/16/90, p. 4. *Senator Gorman Comes to Town*. – Senator Gorman came over from Washington by a late train yesterday afternoon and took a parlor at the Hotel Rennert. Soon after his arrival, Messrs. Bernard Carter, Thomas M. Lanahan, John P. Poe and I. Freeman Rasin dropped in and were shown to the Senator's room. They remained in consultation about an hour and a-half. Senator Gorman and Mr. Rasin got in a cab together shortly before 9 o'clock and were driven to the Union Depot, where the Senator took the 9:20 train for Washington. The suit of the creditors of the Chesapeake and Ohio Canal will be argued before Judge Alvey in Hagerstown this week, and a friend of Senator Gorman said that the conference had a bearing on the canal question.

*Sun*, Wed. 9/17/90, p. Suppl. 2. **Opposition to Mr. Lanahan as Trustee.** – The Hagerstown *Daily Mail* of yesterday says: "Judge Alvey has been notified that Messrs. S. Teackle Wallis, John K. Cowen, John P. Poe and Bernard Carter will be in Hagerstown on Saturday to lay before him the matter of signing the decree for the sale of the canal. It is hoped that the decree will be so shaped with regard to the bondholders of 1844 reserving their rights, so that any appeal may take place after the sale, when it will appear whether the purchase money will amount to a sufficient sum to justify litigation. There should be nothing in the way of this arrangement. We understand

that the appointment of Mr. Lanahan as trustee to sell the canal will be strongly resisted by the other parties to the suit, upon the ground that Mr. Lanahan is one of the company which will probably purchase the work, and that it will be to his interest to have it sell for as little as possible,, instead of to the best advantage."

As heretofore stated in *The Sun*, the Maryland Board of Public Works recently adopted an order directing the Attorney-General to suggest to Chief Judge Alvey, on behalf of the State, the appointment of Mr. Thomas M. Lanahan, of Baltimore, as one of the trustees for the sale of the canal. The board of public works is composed of the Governor, Comptroller Baughman and State Treasurer Brown, all of whom were present at the meeting at which it was decided to recommend Mr. Lanahan.

*Sun*, Thu. 9/18/90, p. 1. **THE CANAL RAILROAD BILL** – Washington, Sept. 17. – Senator Ingalls, chairman of the Senate committee on the District of Columbia, today notified the citizens of Georgetown who are opposed to the passage of the bill giving the Washington and Cumberland Railway the right to enter the District that a meeting of the committee will be held at 10 o'clock Friday morning to consider this bill, at which time their arguments will be heard. The opponents of the bill hope that they will be able to defeat its passage in the present shape, or at least prevent its consideration before the sale of the Chesapeake and Ohio Canal under the recent decree of Judge Alvey. They will argue before the committee that the real reason why the immediate passage of the bill is so strongly urged is that it would prevent any other company that might buy the canal from entering the District of Columbia, and would, therefore, make the canal valueless to any other company as a right-of-way and compel its sale to the Washington and Cumberland Company at its own terms. It will be argued that the effect of this would be to rob the State of Maryland, as it is claimed that the State's losses in the canal can be largely recouped if the property is sold for its intrinsic value. The amount of valuable real estate in the District of Columbia and Virginia owned by the canal company is not generally known, but a map compiled from official records has been drawn up and will be exhibited to the committee, showing that the canal company's property is much more extensive and valuable than is generally supposed.

SR, Fri. 9/19/90, p. 4. **BRIEFS.**
It is said that the next step in the proceedings in the Chesapeake & Ohio Canal case will be the selection of trustees to make the sale.

*Sun*, Fri. 9/19/90, p. 3. The Chesapeake and Ohio Canal bondholders of 1844 have made application to the Maryland and Washington courts for such action as would enable them to operate the canal as a waterway.

---

*Ibid*, p. 2. **The Canal Dies Hard** – The Chesapeake and Ohio Canal has been at the point of death for a long time, and it was supposed that it had at last received the final blow to its continuance as a waterway in the decision of Judge Alvey in favor of a sale. The trustees of the bondholders of 1844, however, have applied to the courts at Washington and Hagerstown for decrees permitting them to take possession of the canal and operate it as a waterway, provided they first pay principal and interest to the bondholders or 1878 and other liens subsequent to their own. The motive for continuing the canal as a waterway is found in the fact that the only security the bondholders of 1844 have is a lien on the revenues of the canal, and if it ceased to exist as such, they would have no means of recovering any part of their investment. The trustees assert that the canal can be made to pay as a waterway, and apparently are prepared to prove their faith by expending a large sum of money in the experiment.

---

**The District of Columbia and the Canal**
In yesterday's Washington correspondence of *The Sun* it was stated that a special meeting of

the Senate committee, to which the bill giving the Washington and Cumberland Railway Company the right to enter the District had been referred, would be held today for the purpose of hearing the protest of the citizens of Georgetown and others who are opposed to the passage of the bill. And it was further stated that one ground of opposition to the bill would be the effect it would have in depreciating the value of the State of Maryland's interest in the Chesapeake and Ohio Canal through the undue advantage it would give to the Washington and Cumberland Railroad Company over all other bidders at the forthcoming sale of the canal under Judge Alvey's decree, virtually enabling that corporation to buy the canal upon its own terms. Whatever other differences of opinion may have existed or do exist in regard to the past, present or future of the canal, its value, management or prospects, there is one point upon which there can be do difference of opinion among fair-minded and disinterested people. It having been settled by the concurrent action of the Legislature and the judiciary that the canal cannot be successfully operated any longer as a waterway, and that it, along with all the other assets and property of the canal company, must be sold to satisfy the claims of creditors, all honest men will agree that the sale should be so conducted as to command the best possible price. The largest creditor of all is the State of Maryland. Of the large sums of money which have been sunk in the canal the taxpayers of Maryland have been by far the largest contributors. That, if possible, the sale of the canal should be made to yield something to the State – return to the State treasury some title or pittance of the vast sum which has flowed out of the treasury and through the fingers of those who have had the management and control of the canal – is what every honest man would be glad to see and every representative of the State should labor to bring about. That there is a direct and logical connection between the bill now pending in the Senate of the United States and the scheme in last winter's Legislature to throw the canal and all the assets of the canal company into the lap of the Washington and Cumberland Railroad Company, a corporation formed for the express purpose of buying or leasing the canal is plain. What are the representatives of Maryland in Congress going to say and do about it? In particular, what are the Maryland Senators going to say to their colleagues in the Senate and to the Senate committee upon the subject? Their words will naturally have more weight than the words of any other Senator when the rights and the pecuniary interests of the State of Maryland are concerned. Especially, what will the senior Senator from Maryland, Mr. Gorman, who, having long been president of the canal company, presumably knows as much, if not more, about the value of its property, its assets, &c., than any man in Maryland, what will he say upon the subject? The promoters of the Washington and Cumberland Railroad Company are playing for big stakes, big money. They played their game at Annapolis boldly and persistently, and but for the fact that the constitution and the laws are greater than the Legislature, they might have played it successfully. Apparently, the scene of their operations is temporarily and partially transferred from Annapolis and from the court-rooms at Hagerstown to the Senate of the United States. If the State is to be dealt with fairly, all well, if not the Senate should know the fact. On which side will Senator Gorman cast his influence and his vote, that of the State and people of Maryland interested in the sale of the canal to the best advantage, or that of the speculators interested in buying it upon the lowest of terms?

---

*Ibid*, p. Suppl. 1.**TO SAVE THE CANAL** Washington, Sept. 13. – A petition filed here today in the consolidated suits of Brown and others vs. the Chesapeake and Ohio Canal Company makes a new phase in the case. In this petition the surviving trustees under the mortgage of 1844, executed in accordance with the Maryland act of 1844, who have a lien on the revenues of the canal, hold themselves ready to pay the canal bonds of 1878, principal and interest, and all other liens prior to their

own, and ask that the canal be delivered to them to repair and operate as a waterway. The petition is, in part, as follows: "The petition of Bradley S. Johnson, John S. Gittings, Charles M. Matthew and Frederick M. Colston, respectfully shows that they are surviving trustees un der the C. and O. Canal mortgage of June 1848, and that their rights will appear in the bill of complaint first filed in this cause; that the petitioners, by virtue of this mortgage and of the act of Maryland of 1844, chapter 201, now claim the right to redeem the bonds issued by the C. and O. Canal Company under the act of 1878, and thereupon to become subrogated to all the rights of said bondholders under the act of 1878. The petitioners further claim the right to take possession of the said C. and O. Canal and repair and operate the same as a waterway, and appropriate the tolls and revenues to the payment of expenses of operation and repair, and of principal and interest of said bonds of 1844 until fully paid. The petitioners believe that they can restore the C. and O. Canal as a waterway and operate the same so as to derive revenue sufficient to make all the payments aforesaid." For a statement of some of the grounds of their belief they refer to the last report of the District receivers, heretofore published in *The Sun*.

They add that they are advised that only the holders of liens prior to their own can object to the right they claim to take possession and operate the canal. The petitioners thereupon tender themselves as able, ready and willing to pay to the trustees or into this court, such times as the court may fix, all sums necessary to pay the principal and interest of the bonds of 1878, and all other liens created since the issue of the bonds represented by the petitioners, which the court may hold to be liens having preference thereto, and also to raise and provide all funds necessary to repair and restore said canal and its works and put it in good order as a waterway for transportation. Wherefor they pray a decree putting then in possession of the canal on the terms outlined by them, and also ask that any decree that may be passed for the sale of the property of the canal company under the mortgage of 1878 shall provide expressly that such sale be stayed or postponed at the request of the petitioners whenever they shall have paid the amount of the principal and interest due on the bonds of 1878, in accordance with the order prayed, and that any such order or decree of sale for the foreclosure of the lien or liens held by the State of Maryland shall expressly provide that such sale be made subject to the rights of the petitioners and their successors, to hold, repair and operate the said property and to take and apply the tolls and revenues. The petition is signed "Johnson & Johnson." and is certified by R. A. Thursby, a justice of the peace, to have been sworn to before him in the city of Baltimore, the 16th of September, 1890, by Bradley S. Johnson. The court made an order for a hearing on the first day of October next.

Hagerstown, Md., Sept. 18. – A petition has been filed in the canal case in Hagerstown by Johnson & Johnson, of Baltimore, in behalf of the bondholders of 1844, asking the court to suspend the decree for sale and to allow the bondholders of 1844 to pay off the bonds of 1878 and to take charge of the canal and run it and devote the tolls and revenues to the payment of the bonds under the act of 1844. Judge Alvey has passed an order requiring the attorneys for the other parties to the suit, to show cause on or before the 25th of September why the petition should not be granted as prayed.

---

**District Courts.**

Washington, Sept. 18. – Equity Court, Judge Cox – Brown vs. Chesapeake and Ohio Canal Company: order for hearing on October 1, 1890.

*Sun*, Sat. 9/20/90, p. 4. ***The Columbia Central Railroad Co.*** – The bill recently introduced in the United States Senate by Senator Wilson, to incorporate the Columbia Central Railroad Company is similar to a bill introduced in the House several months ago. The road is to be a part of the Drum Point system projected by Mr. M. C. Menges. It is to connect with the Drum

Point Road at Conway Station, in Anne Arundel county. The route describes a loop before entering the District of Columbia at its southeast corner. Inside the District, it will run westerly to the east bank of Anacostia creek, to a point near Benning's bridge, and crossing Anacostia creek, will pass north of the Deaf-and-Dumb Asylum to a point near New York and Florida avenues. The incorporators are John P. Poe and Thomas M. Lanahan, counsel of the projected road; Frank Brown, Morris C. Menges, James R. Brewer, Daniel E. Conklin, W. T. Biedler, J. A. Baker, A. E. Booth, J. T. Perkins and J. W. Bell. Men connected with the enterprise say the road is in no way an ally of the road projected along the banks of the Chesapeake and Ohio Canal. When the lease of the canal to the Washington and Cumberland Railroad was pending in the Legislature, last winter, Mr. Menges tried to have the bill so amended as to permit a connection between the canal road and the Washington Branch of the Drum Point Road, but the point was not carried.

---

**The Board of Public Works**

A special dispatch to *The Sun* last night from Hagerstown stated that Attorney-General Whyte was there with an order passed by the board of public works in Baltimore recommending the appointment by Judge Alvey of the canal receivers as trustees to conduct its sale. The Attorney-General also said that the order is with no prejudice to the board's further recommendation of Mr. Thomas M. Lanahan. The Attorney-General himself was unable to serve as trustee. John P. Poe, Bernard carter, S. T. Wallis, Gen. R. T. Johnson and Keedy and Lane, attorneys in the canal case, are also in Hagerstown, and another step will be taken in the case today. The Attorney-General says in regard to the petition filed yesterday in behalf of the bondholders of 1844 asking the court to allow them to take charge of the canal and run it and pay off the bondholders of 1878, that it is not believed that the new petition will change the condition of things, as the same state of facts was brought before the court at the hearing in August.

Judge Alvey fixed September 23 as the day for the hearing on the new petition, but by agreement of counsel, the argument will in all probability take place today.

*Sun,* Mon. 9/22/90, p. 2. **The Latest Phase of the Canal Litigation** – Last Saturday's proceedings in the court at Hagerstown have added a new phase to the Chesapeake and Ohio Canal litigation. It has been announced that on that day the counsel for the various parties to the suit would meet Judge Alvey for the purpose of settling the terms of the decree for the sale of the canal in accordance with the Judge's opinion recently given in the case, and appointing trustees to make the sale. Before the day fixed, however, the bondholders under the act of 1844 filed a petition for a stay of proceedings, offering to pay the claims, principal and interest, of the bondholders under the act of 1878, at whose instance receivers had been appointed for the canal, and who previously asked for a decree of foreclosure and sale, and asking that they be allowed to repair and operate the canal as a waterway, and apply the tolls and revenues as provided by the act of 1844. They further asked that upon payment of the mortgage indebtedness secured by the act of 1878, they may be "subrogated" in legal phrase; that is, admitted to stand in the shoes of the present holders of that indebtedness, and enjoy the lien and priority given by the act of 1878. This petition had been set down for a hearing on the 25th, but it appearing on Saturday that all parties interested were represented in court, the questions presented by the petition were taken up and argued by counsel, the consideration of the decree for a sale and appointment of trustees being deferred until after the court shall have passed upon these questions. A similar application on the part of the bondholders of 1844 has been filed in Judge Cox's court in the city of Washington, where receivers have also been appointed for the portion of the canal and

all property of the company at Georgetown and within the District of Columbia.

Judge Alvey's decision upon the new question presented will be looked for with interest, and in the meantime the correctness of the position originally taken by *The Sun* during the session of the Legislature, viz., that the canal problem was one for solution by the court and not by the Legislature, has been further vindicated. So many and various are the rights and interests involved and equities to be considered and protected that it was simply impossible to make any legislative disposition of the matter which would do justice to all parties and dispense with future legislation. The Legislature could dispose of the State's own interests in the canal. It could not deprive any class of creditors or lienors of their legal rights or remedies. With the inevitable conflict which would arise between these whenever the corpus of the canal came to be sold, its use as a waterway abandoned and all possibility of tolls and revenues from such use annihilated, the Legislature was simply powerless to deal, and it was a relief, therefore, as *The Sun* argued all the time, to have the whole controversy over the disposition of the canal transferred from the arena of politics and the lobby into the courts.

In the course of the discussion before Judge Alvey on Saturday, it appeared that the bondholders of 1878 had no opposition to offer to the proposition of the bondholders of 1844. All the former could get out of a sale of the canal at any time would be the principal and interest of their bonds. If the bondholders of 1844 were willing to pay this, the lienors of 1878 had naturally nothing more to ask, and no interest as such lienors, in the future fate of the canal. The attorney-general appears to have objected that the proposed arrangement left the State unprotected, or rather unprovided for – the largest creditor and lienor of all, with a claim against the canal, principal and interest, (chiefly interest,) amounting to $27,000,000. It may be observed, however, that the State will retain all the protection it has had since the act of 1878, postponing the State's lien upon the body of the canal to that od the lienors under that act, and since the act of 1844 postponing the State's lien upon tolls and revenue to that of the bonds thereby authorized to be issued. If the expectations of the bondholders of 1844 should be realized and the canal be repaired and operated successfully as a waterway, the State's security cannot suffer, inasmuch as a live canal is better than a dead ditch. Who knows but in that event the State may find a purchaser for its entire interest in the canal upon better terms than the Washington and Cumberland Railroad Company offered at the last session of the Legislature?

Without presuming to intimate any opinion upon any of the legal questions involved, and which Judge Alvey has reserved for consideration, it must be confessed that as against the State treating the question as between two lienors – the bondholders of 1844 have a strong equity. The State's original contribution to the canal was a loan of $2,000,000 in 1834, secured by a first mortgage upon all the property of the canal, tolls and revenues. Subsequently, the State subscribed three or four millions more to the company's capital stock, and this was the aggregate of the State's investment in 1841, when the canal was completed from Georgetown to Dam No. 6, about fifty miles this side of Cumberland, its proposed terminus. Here the company's money and credit both gave out and the work stopped, and the canal remained unfinished until after 1843. The State refused to contribute any further aid, but if anybody else would furnish the money to complete the work, the State was willing to waive its own priority and give a preferred lien upon tolls and revenues to whoever would advance the money. This was given in the act of 1844 authorizing the issue of $1,700,000 of bonds for this purpose. The bonds were subscribed, and the canal was finished with the money of the bondholders of 1844, advanced upon the faith of this pledge. By the act of 1878 the State gave a prior lien to its own upon the body of the canal to the holders of the $800,000 of repair bonds then authorized to be issued. It is for the enforcement of that lien that the canal is now

liable to be sold, thus extinguishing the sole security possessed by the bondholders of 1844 for the principal and interest of their bonds, now aggregating, according to the statement of their counsel, about $4,000,000.

The hardship of the case of these bondholders is apparent. Whether they have an equity entitling them to the relief which they ask for is for the court to determine. They might plead as against the State another equity, of which it would be more difficult for the court to take cognizance. The canal has been practically under the control and management of the State through its board of public works. It has not been managed, according to common belief, for many years in the interest of its stockholders or its creditors or as a business corporation, but primarily as a political machine. If political mismanagement has contributed to the ruin of the canal, the waste of its revenues and the decay of its business, the State of Maryland is morally responsible for the injury thereby inflicted upon private individuals and corporations who have invested their money in the bonds of the canal upon the faith of the State's invitation to do so and upon the security afforded by the State's legislation. This is a consideration which, while it cannot enter into judicial determination of the case, must yet affect the public judgment in regard to the State's attitude in the litigation.

---

Ibid, p. Suppl. 2. **Argument at Hagerstown in the Chesapeake and Ohio Canal Case. -** Hagerstown, Sept. 21. – On Saturday Gen Bradley T. Johnson, Attorney-General Whyte, John K. Cowen, S. Teackle Wallis, John P. Poe, Bernard Carter, Hugh L. Bond of Baltimore, and Keedy and Lane, of Hagerstown, appeared before Chief Judge Alvey for the purpose of presenting to the court a form of decree of sale of the Chesapeake and Ohio canal, such as they desire to have passed by the court in the case, and to recommend persons as trustees.

By an agreement of counsel, the hearing on the petition filed a few days ago and set down for argument on the 25th of September was also held. The petition was filed in behalf of the bondholders of 1844, and asks the court to suspend the sale of the canal to allow the bondholders of 1844 to take charge of the canal and to repair it and operate it as a waterway, and to appropriate the tolls and revenues to the payment of the bonds of 1844. The petitioners also ask the privilege of buying the bonds of 1878, that they may be subrogated to all the rights of the bondholders of 1878. They also ask that the receivers surrender to them all the canal property so that they may operate it.

Nearly the whole day was spent in the argument of this question. The attorneys for the bondholders of 1844 and for the majority bondholders of 1878 asked that the petition be granted, while the counsel for the State, the canal company and the minority bondholders of 1878 oppose the granting of the petition.

The majority bondholders of 1878 answered the petition and said that they were willing to take the principal and interest on the bonds of 1878, and would transfer their bonds to them with the rights as prayed for in the petition, but the attorney-general objected to this agreement in behalf of the State and said that by such an arrangement the State's interests would suffer. As the case presents itself now, the bondholders of 1878 have the first lien, and after this lien is paid the State comes in next. The bondholders of 1844 having a lien on tolls and revenues only will, in case of sale, be cut out entirely from the proceeds of such sale. They now want the court to put them in the shoes of the bondholders of 1878, so that they may have the first lien on the canal.

Mr. Cowen and Attorney-General Whyte submitted to the court a decree for sale. The bondholders of 1844 recommended General Johnson as a trustee, and the majority bondholders of 1878 H. H. Keedy. The board of public works has recommended the canal receivers and Mr. Thomas M. Lanahan.

The court will not consider the decrees until it passes upon the petition.

---

**THE STATE'S BENEFIT FROM THE CANAL**

Mr. Otho Z. Muncaster, of Georgetown, who has had since 1834 full knowledge of the Chesapeake and Ohio Canal from Georgetown, D. C., to Cumberland, having been born in 1814 in Maryland, eighteen miles north of Georgetown, and within one mile of the Chesapeake and Ohio Canal, and having a large acquaintance on each side of the Potomac, says of the canal in its relation to the State: "The State of Maryland has not contributed more than six million dollars, all told, for which she has been receiving large revenues in the shape of increased taxes by reason of the canal drainage of the unhealthy low lands along the entire length of the canal. Land before the canal was offered to me and others at $2 per acre. By reason of the canal drainage it will now sell from $25 to $50 per acre. Maryland could with profit *give* her interest to any parties who would continue to operate it as a canal or waterway, continuing it for drainage, with increased taxation, without virtually giving it to the Washington and Cumberland Railroad, viz: by legislative act, lease of 99 years for fifteen thousand dollars per year, or interest of one and one-half percent on one million dollars, while she claims twenty-seven millions.

*Sun,* Tue. 9/30/90, p. Suppl. 2. **Asking to be made Parties to the Canal Case. –** Washington, Sept. 29. – The Georgetown millers, N. S. Moore, George W. Cissell, Robert B. Tenney, J. M. Waters, J. G. Waters, Wm. Laird, Jr., W. H. Burr, George W. Dunlop, John H. Smoot, Wolf Nordlinger, W. J. Adler, Charles Becker and J. A. Blundon, filed a petition today in the Chesapeake and Ohio Canal case of Brown, et al vs. the Chesapeake and Ohio Canal Company, asking to be admitted as parties complainant in the suit and that the parties to the suit be required to show cause why the relief asked should not be granted. They set up that they are holders of certificates issued to them by the canal company for money or its equivalent in labor and material furnished by them and accepted by the company in repair and restoration of that section of the canal known as the Georgetown level. They say also that under this contract they are lessees of the water power from the canal company, which the company contracted to furnish from the Georgetown level, and upon the faith of their leases they expended large sums of money in the purchase of lands and buildings, and invested also in business property, manufacturing plants and other property, both in Georgetown and Washington, whereby the canal company has been greatly benefited not only in the pay received for the use of its surplus water, but also in the increase from tolls and traffic. They say that on the 1st of June, 1889, the canal was damaged by a freshet which entirely destroyed the water power, and they then agreed to furnish money to repair the Georgetown level on condition that the money should be returned to them out of the water leases. They add that $18,000 was furnished by the millers of Georgetown under a contract, as above stated; that the canal company took control of the repairs and afterwards received other sums from the petitioners until $22,951.50 had been paid and used in making repairs to the canal. For the first $16,000 repair scrip was issued to those who had advanced their money, and for the residue of the account a series of 26 certificates were delivered to those entitled to receive them. Under the provisions of this scrip Stephen Gambrill, president of the canal company, and George W. Cissell, one of the petitioners, became trustees for the purpose of collecting and distributing the water rents under the authority of the canal directors. They collected $1,500 and deposited it in a bank to their joint credit, and by checks a dividend of six percent was paid to the scrip holders on the 24th of January last. In addition to the balance on hand, there will be on October 1 $4,500 as accrued water rents, which has not been collected because of the pendency of the canal suits and the appointment of receivers, they say they have been advised that the court has power to protect them in their rights; that the advances made by them to save a portion of the property of the canal company from wreck entitles them in equity to be reimbursed, with interest, from

the money of the company first available, and that they are certainly entitled to have their rents from the water leases collected and distributed to them without delay or hindrance on the part of the canal company.

In addition to being made parties, they ask for a decree pf the court authorizing Messrs. Gambrill and Cissell, as trustees, or someone in their stead, to receive the rents and distribute the same, and in case the court shall make a decree for the sale of the canal or for its restoration and continued operation that some provision be made therein for the protection and reimbursement of the petitioners and for the protection of their rights under the water leases.

The petition will be considered when the canal case comes up for a hearing later in the week.

*Sun*, Thu. 10/2/90, p. 4. **C. and O. Canal Case Postponed** – The hearing in the Chesapeake and Ohio Canal case had been fixed for today, but on the call of the case, Mr. George E. Hamilton, for the receivers, announced to the court that all the parties had agreed that the case should be postponed, notice to be given whenever it is determined to call up the case.

That branch of the case which was initiated a few days ago by the petition of the Georgetown millers asking the repayment of their advances for the repair of the Georgetown level in order to save the water power was, however, called up and an order made that the canal company, the receivers and the trustees of the canal be notified to make answer and show cause why the petition should not be granted, the hearing being set for October 11.

SR, Fri. 10/3/90, p. 3. We think the litigation over the Chesapeake & Ohio Canal will end in 1915.

*Sun*, Fri. 10/3/90, p. Suppl. 2. **Judge Alvey's Decree in the C. and O. Canal Case.** – Hagerstown, Md., Oct. 2. – Chief Judge Alvey today passed a conditional decree for the sale of the Chesapeake and Ohio canal. Jos. D. Baker, Robert Bridges and Richard D. Johnson, the receivers heretofore appointed by the court, are named as trustees to sell, but the bondholders of 1844 are granted permission, in accordance with their petition, to pay off the bonds of 1878, and to take charge of, repair and run the canal as a waterway at their own cost, provided the canal be so repaired by the first of May, 1891, and a deposit of ten thousand dollars is made to defray expenses of litigation up to this time. The bondholders of 1844 must give a bond within sixty days in the penalty of six hundred thousand dollars that they will fulfill their obligations. The decree for sale will go into effect, provided the bondholders of 1844 fail to repair and run the canal.

**RIGHTS OF THE BONDHOLDERS**

In his opinion, Judge Alvey, after reciting the points contained in the petition of the bondholders of 1844, and the legal proceedings heretofore reported in *The Sun*, says: "There can be no dispute or question as to the merits of the debt due the bondholders under the act of 1844. The creation of that debt furnished the means of completing the canal, and without the loan obtained under that act, it is doubtful whether the canal could ever have been finished. The State, the previous lienholder to a large amount, was unwilling, indeed unable to supply further pecuniary aid to the prosecution of the work, and it was only by the pledges and security offered by the special terms and conditions of the act of 1844 that the necessary funds were obtained to complete the canal to Cumberland. The State waived its prior lien to the extent, and only to the extent, of allowing the prospective net tolls and revenue of the work to be dedicated to the payment of the principal and interest of the bonds issued under the act, and it was upon the reliance of that security that the money was loaned. This was the security expressed upon the face of the bonds, and it was the *only* preference given by the statute. This preference was given with the reservation to the company, of the right and authority, at all times thereafter, to use and apply such portion of the tolls and revenues as might be necessary to put and keep the canal in

good condition and repair for transportation, provide a supply of water and pay the current expenses of the company. To this extent the company retained a prior or superior right to the bondholders under the act, of date the 5th of June, 1848, to secure the bondholders, provides, that upon failure of the company to fulfill its engagement, according to the terms of the mortgages, the trustees, or their successors, should have power and authority to enter into possession, subject to a condition, no longer operative, and execute the provisions of the act, by collecting and applying the tolls and revenues of the work. This express power to enter for default has never been exercised; and the right to exercise it, though default in payment had been made, has been suspended by the operation of the act of 1878, chapter 58, and the issue of the bonds thereunder. But while the right to take possession, and apply the tolls and revenues, has been thus suspended, in order to make effectual the security for the bonds issued under the act of 1878, the right itself has not been finally destroyed. If the bonds issued under the act of 1878 were taken up and paid clearly the right to enter under the mortgage of 1848 would exist, and so if that entire mortgage debt be redeemed and taken up by the trustees for the bondholders under the act of 1844, and subrogation be allowed them, their right to enter and collect and apply the revenues, under the mortgage of 1848, would be available for the bonds under the act of 1844, as would be all the rights and remedies provided by the act of 1878, as security for the bonds issued under this latter act. The first question therefore upon the present application is whether the right of redemption and subrogation exists in the trustees for the bondholders under the act of 1844, on the facts as they appear in these proceedings."

**RELIEF CANNOT BE DENIED**

"As has been shown, the only security for the payment of the bonds issued under the act of 1844 depends upon the working condition of the canal to earn tolls and revenue. That security has been subordinated to the security given to a junior class of bonds issued under the act of 1878, the lien given as security for these latter bonds embracing both the corpus of the canal and all the revenue derivable therefrom. The canal in its present broken condition cannot be operated, and this court has concluded that it is not feasible to restore the work to an operative condition, and to have it operated by the agency of its own receivers, and the alternative is presented of a sale of the entire work. It is not possible to sell the canal, subject to the continued existence of the preferred lien on the tolls and revenues thereof in favor of the bonds under the act of 1844. To make such sale, if sale could be made at all, encumbered with such condition, would simply result in a sacrifice of the rights of all the creditors concerned. The lien of the bondholders under the act of 1878, on both works and revenue, being paramount, the trustees for those bondholders are entitled of right to have all the property of the canal company sold, free and clear of all liens inferior to their own. To prevent this sale, and to preserve the only security to which the bondholders under the act of 1844 are entitled, their trustees under the mortgage come in and pray to be allowed to take possession of the canal and to repair and operate it at their own cost, depending alone for reimbursement of the outlay upon such revenues as they may be able to realize from the operation of the work; and to that end they pray that they may be allowed to redeem the bonds issued under the act of 1878 and be subrogated to the rights of the holders thereof, under that act. Can they be denied this right? I think not."

Judge Alvey says the trusteed for the bondholders under the act of 1844 are in such position and have such relation to the property and to the superior lienholders as entitles them to redeem the bonds of 1878. "The authorities seem too clear to admit of a doubt upon the subject."

**PROTECTING THE STATE'S INTEREST**

Continuing, Judge Alvey adds: "The rights of the State, the largest lienholder, must be protected so as to make sure of the sale of the canal, if it be not repaired and put in operation

within such reasonable time as mat be prescribed, and, even if it be repaired and put in operation, that it be kept in repair and operation so as to insure the earning of revenue more than sufficient to defray ordinary expenses. The expenses incurred by the receivers now in charge of the work and their claim for just compensation constitute charges upon the property, and must be provided for in the decree. (Kneeland vs. Am. Loan Co., 136 U. S. 89.) And it is represented by petitions filed that there are many claims due from the canal company, amounting in the aggregate to a considerable sum, for labor and supplies furnished the company before the great freshet of 1889 to keep the canal in repair and operation, such as were payable out of the tolls and revenues, if they had been sufficient, under the authority reserved to the company by the proviso to section 2 of the act of 1844, ch. 281. If such claims are established, and they be adjudged to be charges or liens upon the canal or tis revenues superior to the lien of the bonds issued under the act of 1844, they must also be provided for. These claims, however, are not now before the court, and therefore no definite determination can be made in regard to them.

"I shall enter a decree for sale, in accordance with the opinion heretofore filed; but I shall insert a clause to stay or suspension of its execution, upon compliance by the trustees acting under the mortgage of the 5th of June, 1848, with the requirements, terms and conditions prescribed and set forth in the decree. But before that clause in the decree can be made available to effect a subrogation to the rights of the bondholders under the act of 1878, or to authorize the trustees under the mortgage of 1848 to take possession of the canal to repair it, it will be necessary that they obtain a concurrent decree from the Supreme Court of the District of Columbia, siting in equity, in the proceedings now pending in that court, or that such proceedings be dismissed. No possession of the canal can be given by this court while an important part of it remains in charge of receivers appointed by a court of another jurisdiction."

**WHAT THE BONDHOLDER MUST DO**

The text of the decree expresses in formal language the decision of the court as given above. The trustees of the bondholders of 1844 are required to "have put in good repair and condition the entire canal from one terminus thereof to the other, so that it be fit for and capable of safe transportation thereon," and "upon so restoring said canal to a state of good repair and condition, the said trustees shall proceed to operate the same as a public waterway, with all the rights and subject to all the conditions and limitations granted and prescribed by the charter of the said company; and the said trustees shall keep said canal in good repair and condition and continue to operate the same, save and except when such operation may be suspended by the action of causes against the effect of which prudence and due care in management will not provide. And the tolls and revenues received or derived from the use and operations of said canal as a public waterway and from the property and rights of the canal company shall be applied by the said trustees as follows:

"First. To pay all current and ordinary expenses incurred in operating the said canal and for keeping the same in good working repair.

"Second. To pay and reimburse the said trustees the amount of money brought in by them with which to pay the expenses incurred by the receivers and their compensation, with interest thereon.

"Third. To pay and reimburse to said trustees the amount expended by them in restoring said canal to good working order from its present waste and broken condition, with interest thereon.

"Fourth. To pay and reimburse said trustees any amount that they may be required to pay, as constituting a superior lien on the tolls and revenues of said canal company to that of the bonds issued under said act of 1844, ch. 281, for labor and supplies furnished to the said canal company, while said canal was operated and controlled by said company, with interest on the amount so paid.

"Fifth. To pay the interest that has accrued and may accrue due on the bonds issued under the act of 1878, ch. 58, and then the principal of said bonds.

"And sixth, to pay the interest that has accrued, and that may accrue, due on the bonds issued under the act of 1844, ch. 286, and then the principal of said bonds.

"And upon the full payment of these last-mentioned bonds, the possession and control of said trustees shall cease and terminate."

**CANAL OFFICES AT HAGERSTOWN**

The court also decrees "That the said trustees shall open an office in Hagerstown to be known as the canal office, where all books, maps and papers relating to said canal and the affairs thereof shall be kept and preserved, and which said office shall be open and accessible to all persons having dealings and transactions with the said trustees, their agents and managers; and the said trustees shall keep or cause to be kept regular and proper books of account, showing fully and accurately all receipts and expenditures and disbursements, and shall, at the end of each boating or transportation season, make full and accurate reports to the court, under oath, of all receipts and expenditures, and of the real condition of the canal and the amount of tonnage thereon during the preceding year. And said office and all books and accounts therein shall be open and accessible to the auditor of this court whenever he may be required to examine and state accounts of and concerning the affairs of said trustees and their accountability under this decree.

**FOUR YEARS' TRIAL AS A WATERWAY**

In another clause, the decree provides "that if an the end of four years from the first day of May next there shall not have been tolls and revenue derived from the said canal, and the property and rights appurtenant thereto over and above the amount necessary to pay current operative expenses and to keep the canal in repair, to liquidate and discharge the amount of the cost of repairing and restoring the canal to a working condition, from its present broken condition, and the amount of money required to pay expenses and compensation to the receivers and to pay any amount that may be determined to be a preferred lien on such tolls and revenues for labor and supplies furnished to the canal company, such failure in the tolls and revenues shall be regarded as evidence conclusive, unless the time be extended by the court for good and sufficient cause shown, that the said canal cannot be operated so as to produce revenue with which to pay the bonded indebtedness of the said canal company; and further, whenever it shall clearly appear that the said canal cannot be operated by the said trustees so as to produce revenue with which to pay the bonded indebtedness of said company, the right and power is hereby reserved to this court to order and direct the execution of the foregoing decree of sale."

**AN APPEAL TAKEN**

Mr. Thomas M. Lanahan has telegraphed Mr. George B. Oswald, the clerk of the court, to prepare a record of the case and send it to the Court of Appeals by 10 o'clock on next Monday morning. The appeal is taken in behalf of the canal company.

*Sun*, Mon. 10/6/90, p. Suppl. 2. **THE MILLERS AND THE CANAL** – Under the order of Judge Cox, made October 1, on the petition of the Georgetown millers in the Chesapeake and Ohio Canal case, for repayment out of the water rents of the advances made by them for the repair of the Georgetown level of the canal, it was provided that a rule to show cause on Saturday, the 11th instant, should be issued and served upon the canal company, the trustees and receivers.

A return of the service of the rule was filed yesterday afternoon at the clerk's office, as follows: "Service of the within order accepted this 3rd day of October, 1890. Fillmore Beall, for canal company, G. E. Hamilton, for complainant trustees and receivers." An entry of this return was made in the record of the case, and the petition is now ready for a hearing on next Saturday.

---

**THE CANAL SITUATION**

The Hagerstown *Mail* says: Messrs. Thomas M. Lanahan and John P. Poe have ordered an appeal in the name of the canal company from Judge Alvey's decision in the canal case.

The appeal cannot come up for hearing this term of court, as in order to do so, the record will have to be in Annapolis by Monday. As the record will make about two thousand pages, this will be clearly impossible, and the case cannot therefore come up before April. But the appeal will not necessarily create any delay in the beginning of the work of restoration. It seems that at the last session of the Legislature, Mr. Bernard Carter made an invention which has at this early date curiously returned to plague the inventor. Expecting to be hampered by appeals in getting possession of the canal for railroad purposes, a bill was enacted, (Ch. 32, acts 1890,) which provides that an appeal from an order or decree shall not stay the execution of the order unless the appellant shall give bond of indemnity, and not even then unless so ordered by the court. Judge Alvey can therefore order the work to go on regardless of the appeal.

The decision has put new life and hope in our people. It is believed generally that there is no chance for a railroad, and this proposed restoration is the only chance for saving the canal from utter demolition. The bondholders of 1844 will never surrender as long as there is a court to appeal to.

It is now hoped and expected that the restoration of the canal will begin at once. H. H. Keedy, Esq., has been elected a trustee for the bondholders of 1844, to supply the vacancy caused by the death of George S. Brown. Mr. Keedy has not yet accepted, but it is hoped that he will, for with the canal office in Hagerstown, as required by Judge Alvey, it is important to have a resident trustee who understands the needs of our canal people and their relation to the canal. We have every assurance that the bondholders are in serious earnest, and intend to restore the canal and operate it. We are led to expect almost immediate beginning of the work, for if it is to be completed by May 1 next, there is no time to be lost.

If there was any intention of making merely pretense of a restoration in order to destroy competition with the Baltimore and Ohio Road, such an intention would be seriously interfered with by the conditions and requirements with which the court has hedged the petitioners in granting their petition. A bond of $500,000 is required to guarantee the payment of prior liens within sixty days, and a mere lifeless existence for ulterior purposes is provided against by the terms of the decree in limiting the time to four years. If it is apparent at that time that the work cannot be made to produce a reasonable amount of revenue, then the sale will go on and the money put into repairs will be sunk. It therefore would appear that it is to the interest of the bondholders not only to repair the canal, but to operate it vigorously, so as to make it pay. The canal outlook we now regard as brighter than at any time since June, 1889.

*Sun*, Wed. 10/8/90, p. 4. ***The Canal Company Has Not Appealed*** – Mr. Thomas M. Lanahan, counsel of the Chesapeake and Ohio Canal, said yesterday that when "I saw the brief telegraphic report of the decision of Judge Alvey in the canal case I supposed that if, after examining the full text of the decree and opinion the canal company desire to appeal to the present term of the Court of Appeals it would be important to have the clerk at once notified, and to ascertain from him if the record could be got to the court by the following Monday. Upon examining the opinion and decree I concluded that as far as the canal company was concerned there was possibly nothing for the company to appeal from. I accordingly did not send to the clerk the usual prayer for appeal. Of course, I know nothing of the purposes of any other parties to the suit. The canal company certainly has not appealed. Whether the plaintiffs of any of the defendants will, I have no knowledge."

Mr. H. H. Keedy, of Hagerstown, who was recently requested to become a trustee to

represent the C. and O. Canal bondholders of 1844 in place of the late General George S. Brown, was in Baltimore yesterday. He said that while he had not determined to accept the position, he thought it probable he would do so. He is sanguine the bondholders of 1844 will furnish sufficient money to take up the bonds of 1878, which with accrued interest, now amount to about $600,000, and besides to place the canal in navigable condition.

SR, Fri. 10/10/90, p. 4. **The Canal Will Be Restored, Maybe.** – Judge Alvey filed a further decree in the Chesapeake & Ohio Canal case last week at Hagerstown. Messrs. R. D. Johnson, Robert Bridges and Joseph D. Baker, heretofore receivers, are appointed trustees to sell the canal and all of its property and franchises. The bondholders of 1844 are given sixty days to bring into court the bonds of 1878 with interest, or to deposit money sufficient to meet the same. The trustees of 1844 bondholders are given till May first, 1891, to restore the canal and to enter into bond on penalty of $600,000 for compliance with terms of decree. Upon failure of canal to pay running expenses and costs of repairs of same within four years from May first, 1891, the decree of sale is to be then operative.

It will thus be seen that if the bondholders of 1844 mean business, they have a chance to restore the canal as a waterway. If they accept their opportunity, they must give bond and repair the canal by next May. If they fail to comply with these terms, the canal will be sold. If they do restore it, they may run it four years on trial. If it pays expenses, they can continue it indefinitely. If they cannot make it pay, then the canal is to be sold under the decree just rendered. It will be necessary for the court of the District of Columbia to concur in the above decree before it is operative. There is every reason to believe that the work of restoring the canal will be commenced very soon.

Gen. Bradley T. Johnson, counsel for the trustees of the bondholders of 1844 of the Chesapeake and Ohio Canal, say arrangements are being made to carry out the recent order of Judge Alvey. It is expected that the required bond of $600,000 will be given within the specified time of sixty days from October 2, and the work of repairing the canal will be commenced as soon thereafter as practicable.

*Sun,* Mon. 10/13/90, p. 1. The Hagerstown *Mail* says the work of restoring the Chesapeake and Ohio canal as a waterway will begin in a few days.

SR, Fri. 10/17/90, p. 4. It is announced that the bondholders of 1844 will begin at once the work of restoration of the Chesapeake and Ohio Canal. It is proposed to give out the work in contract, and it is expected that the portion between Williamsport and Cumberland will be finished yet this year. It is said there will be no lack of coal for transportation and that there will be increased demands for transportation by the canal. From the fact that the B. & O. R. R. will control this corporation and will run this and their own road, there will be no cut rates.

*Sun*, Wed. 10/22/90, p. 4. A quiet wedding was celebrated at 1 P. M. at the Cathedral residence. The bride was Miss Susie Fechtig, daughter of the late Dr. George Fechtig, of Hagerstown, and the groom was Victor M. Cushwa, a young business man of Hagerstown, son of Victor Cushwa, of Williamsport, on of the receivers of the Chesapeake and Ohio Canal. They arrived by the train from Hagerstown and went at once to the Cathedral residence. Rev. Wm. A. Reardon, an old friend of the parties, one of the Cathedral clergy performed the marriage ceremony. The bride and groom left on a trip to the Northern cities.

*Sun*, Fri. 10/24/90, p. Suppl. 2. **A Virginia Claim on the Chesapeake and Ohio Canal** – Washington, Oct. 23. – Mr. William H. Marbury, of Alexandria, Va., filed a petition in the Chesapeake and Ohio Canal case of Brown et al vs. the Canal Company this afternoon. The petition is based upon certain assets of the old Potomac Company, which was organized in

1784 and was merged into the C. and O. Canal Company. He sets out that he is the owner of a certain obligation of indebtedness of the C. and O. Canal Company for $7,986.83, with interest from the 1st day of July, 1840; that the original indebtedness grew out of the obligations of the Potomac Company which were assumed by the C. and O. Canal Company under such terms as to make it a prior lien and give it priority over all mortgage creditors of the Chesapeake and Ohio Canal Company, and he alleges that it should be paid out of any assets belonging to the company before any of the mortgages are satisfied.

He files a history of said indebtedness, the manner in which it was assumed by the Chesapeake and Ohio Canal Company, how it became the property of the Bank of Potomac and afterwards of the Farmers' bank of Virginia, and in due cause of assignment the property of the petitioner. He distinctly asserts that his lien for this indebtedness has priority over the claims of all other lienors of the Chesapeake and Ohio Canal Company. He prays that he may be made a party complainant to the bill filed in this cause, and that the parties thereto shall show cause why his claim should not be paid. He further prays that the court shall enter such decrees as may be proper directing the payment of this indebtedness out of any assets of the Chesapeake and Ohio Canal Company within the jurisdiction of the court. The bill is sworn to in this city before Charles P. Lee, notary public.

From the history of this claim, filed as an exhibit to the petition, it appears that the Bank of Alexandria was one of the stockholders of the old Potomac Company, organized by Gen. Washington, Col. John Fitzgerald and others. The Chesapeake and Ohio Canal Company took possession of the locks, works, &c., of the Potomac Company and assumed its indebtedness, and it was provided by the 12th section of the act incorporating the canal company that "as long as there should be any creditor of the Potomac Company who shall not have vested his demand against the same in C. and O. Canal stock, the canal company shall be obliged to pay to such creditor such dividend or portions of net amount of the revenues of the Potomac Company on an average of the last five years of its existence, as the demands of the creditors at this time may bear to the whole debt of $175,800, but which are supposed to have been about 3 percent on $175,800 if the interest on the debts of the company be not included." In April, 1834, the directors of the Chesapeake and Ohio Canal Company, in carrying out this law, resolved to provide for the payment of these dividends to such creditors as should before the 1st of July, 1835, accept the terms which the canal company then proposed. This payment was to be made out of the tolls accruing or which had accrued to the canal company, which should not be indispensable for the completion of the canal below dam No. 5.

Meanwhile the Bank of Alexandria had failed, and this claim against the Potomac Company had been transferred to the Bank of Potomac, at Alexandria, and that bank, by Phineas Janney, its president, accepted the terms offered by the C. and O. Canal Company, and the canal company executed its bond to the Bank of Potomac for $7,986.83, with interest from January 1, 1836. Interest was paid on this bond up to July 1, 1840. After the retrocession of Alexandria to Virginia, the Potomac bank was merged into the Farmers' Bank of Virginia, and this canal bond went in as part of its assets. Nothing further has ever been paid upon it, and when the Farmers' Bank of Virginia was wound up by a receiver, the bond was sold to L. R. Spillman, and in 1880 Spillman assigned the debt to Marbury.

*Sun*, Sat. 10/25/90, p. Suppl. 2. **OUTLOOK IN THE CANAL CASE.** – Hon. George E. Hamilton, counsel for Messrs. Winship and Cushwa, the receivers of the Chesapeake and Ohio Canal Company, under the decree of Judge Cox in this District, and the other counsel here in the case of Brown et al vs. the Canal Company, have not yet completed their arrangements for a further hearing of the case

here. It now stands continued indefinitely on the court record, subject to be called up at any time upon notice to all the parties to the suit. It is thought that in a few days the case will be set for a hearing at an early day in November. It seems to be expected that the decree of Judge Cox on the subject will be concurrent with that of Judge Alvey, of Hagerstown, reported to *The Sun* some time ago, and that if the bondholders of 1844 offer the courts sufficient security, they will be permitted to pay off the mortgage of 1878, take the Chesapeake and Ohio canal, put it in order, and try for four years the experiment of endeavoring to make it pay for some part of the outlay upon it.

*Sun*, Tue. 10/28/90, p. Suppl. 1. **The Virginia Claim on the Canal** – The Hagerstown *Daily Mail*, referring to the claim of Mr. W.H. Marbury, of Virginia, asserted to a preferred lien over all others on the Chesapeake and Ohio Canal and recently filed in the Washington courts, as heretofore mentioned in *The Sun*, says: "This is one of the claims which have been hanging over the canal company since the day it was incorporated. It grew out of the assumption by the company of the debts of the old Potomac Navigation Company in consideration of a deed of all its property and franchises to the canal company. The creditors of the Potomac Company to the amount of $56,896.48 came in and accepted the terms of the Chesapeake and Ohio, and received bonds. These bonds were set up as a first lien upon the canal in case of the Commonwealth of Virginia vs. Chesapeake and Ohio Canal Company et al, reported in Thirty-second Maryland Reports.

In the exhaustive opinion of the court delivered by Judge Miller in that case the rights and priorities of these claimants are fully set forth. It is there decided that they, by accepting the terms offered by the canal company waived their lien and priority except as given in sec. 5, acts of 1844, ch. 281. This section provides that when the revenues of the canal company shall be more than sufficient to pay the interest on the bonds of 1844, the sum of $5,000 shall be annually appropriated by the canal company to pay the interest of the bonds of the Potomac Company claimants.

*Sun*, Mon. 11/3/90, p. Suppl. 2. **Bondholders of 1848 Given Control of the Canal**. – Washington, Nov. 2. – Judge Cox heard Saturday the Chesapeake and Ohio canal cases of Brown et al vs. the Chesapeake and Ohio Canal Company. George E. Hamilton, Esq., and Gen. Bradley T. Johnson appeared for the bondholders of 1848 and 1878. and Job Barnard on behalf of the claims of the Georgetown millers for their advances. Mr. Hamilton submitted a decree coinciding in purport with the decree made on the 2nd of October last by Judge Alvey, of Maryland, at Hagerstown. Mr. Job Barnard urged that action be taken to secure the rights of the millers who had made advances to the canal. Judge Cox passed a decree that the trustees representing the bondholders of 1848 "shall within thirty days from the date of this order" deposit in the Farmers and Merchants' National Bank, Baltimore, State of Maryland, to the order of the surviving trustees under the mortgage of 1878, a sum of money equal to the principal and interest due upon all the bonds secured by that mortgage. Also, the further sum of $20,000, to be applied as far as may be necessary to the payment of the court costs and other expenses incident to the receivership.

Upon doing this, the trustees "shall be and they are hereby subrogated to, and shall stand in the place of" the trustees of the bondholders of 1878. The trustees are also empowered to enter and take possession of the Chesapeake and Ohio canal and its works and have full control and management of the same. The decree further provides that the trustees shall by the first of May next put the canal in operation, and, in effect, supplements the order of Judge Alvey, thereby giving the bondholders of 1848 full control of the canal. The Washington decree was necessary to give effect to the decree of Judge Alvey, and as it has now been rendered, it is supposed that the trustees for the bondholders will proceed to restore the canal and begin the experiment of operating it

once more as a waterway. A clause was inserted in Judge Cox's decree retaining the case in his court in order that the rights of the Georgetown millers might be adjudicated.

*Sun*, Tue. 11/4/90, p. Suppl. 2. **District Canal Receivers – Another Report from Them** – Washington, Nov. 2. – The fifth report of Messrs. Winship and Cushwa, the District receivers of the Chesapeake and Ohio Canal Company, in the suit of Brown vs. the C. and O. Canal Co., has been filed at the District clerk's office, and makes 200 typewritten pages, and weighs about three pounds. It is made up almost entirely of a transcript from the land records of this District describing the various lots of real estate which have come into the possession of the old Potomac Company or the Chesapeake and Ohio Canal Company since 1786, as well as all the leases ever granted thereon by the C. and O. Canal Company, with the encumbrances, &c. To this mass of matter the receivers invite the attention of the court. They suggest that these leases should all be carefully scrutinized, and their validity and the rights of parties claiming under them should be investigated and determined. They present accounts of expenditures for three months, aggregating $461.05.

SR, Fri. 11/7/90, p. 5. **Decree in the Canal Case.** – At Washington last Saturday, Judge Cox heard the Chesapeake and Ohio Canal cases of Brown et. al. vs. the Chesapeake and Ohio Canal Company. Judge Cox passed a decree that the trustees representing the bondholders of 1848 "shall within thirty days from the date of this order" deposit in the Farmers' and Merchants' National Bank, Baltimore, State of Maryland, to the order of the surviving trustees under the mortgage of 1878 a sum of money equal to the principal and interest due upon all the bonds secured by that mortgage. Also, the further sum of $20,000 to be applied as far as may be necessary to the payment of the court costs and other expenses incident to the receivership.

Upon doing this, the trustees "shall be and they are hereby subrogated to, and shall stand in the place of" the trustees of the bondholders of 1878. The trustees are also empowered to enter and take possession of the Chesapeake and Ohio Canal and its works and have full control and management of the same. The decree further provides that the trustees shall, by the first of May next, put the canal in operation, and, in effect, supplements the order of Judge Alvey, thereby giving the bondholders of 1848 full control of the canal. The Washington decree was necessary to give effect to the decree of Judge Alvey, and as it now has been rendered, it is supposed that the trustees for the bondholders will proceed to restore the canal and begin the experiment of operating it once more as a waterway.

*Sun*, Thu. 11/20/90, p. 4. ***The Canal and the B. and O. Railroad*** – It is said that the bond for $600,000 required of the Chesapeake and Ohio Canal bondholders of 1844 for the repair and maintenance of the canal as a waterway will be signed by the trustees today, with John H. McDonald, the well-known railroad builder, and Miss Mary Garrett as sureties. Under the terms of the order upon which the bond is given, the canal is required to be put in running order by May 1, 1891. It is said that several of the trustees declined to assume the responsibility of signing the bond under the terms specified, and that this fact is one cause of the delay in the execution of the paper. Mr. Matthews, a trustee from the District of Columbia, and Mr. Colston have resigned their trusteeship, and their places have been supplied by Mr. Martin F. Morris, of Washington, and Mr. Shaw, of Baltimore. It is understood that the Baltimore and Ohio Railroad Company is instrumental in the effort to repair the canal and keep it as a waterway. A gentleman who is familiar with the status of the canal case from the time it entered court, said yesterday "that it was the Baltimore and Ohio people who could be benefited by the move about to be made. Some of the bondholders of 1844,' he said, "had refused to participate in the legal

proceedings by which the canal has been placed in the hands of the trustees of these holdings. The executors of the Stewart holdings in Richmond, representing about $300,000 of bonds, were not a party to the suit, and smaller holders in Baltimore and elsewhere had not pooled their issues in the matter. The Baltimore and Ohio supported the proceedings," he said, "and pushed them to a conclusion." The Baltimore and Ohio Company hold about $350,000 of the bonds of 1844.

SR, Fri. 11/21/90, p. 4. It is reported from Hagerstown, that the 1844 bondholders will in a few days file their bond and take charge of the Chesapeake & Ohio Canal. It has been suggested that the power that goes to waste through the flumes of the locks be utilized to provide electricity for running the canal boats.

*Sun,* Fri. 11/21/90, p. 4. Arrangements for signing the bond of $600,000 required under the order of the trustees for the bondholders of 1844 of the Chesapeake and Ohio canal, were not completed yesterday, and the matter has been deferred a few days.

*Sun*, Sat. 11/22/90, p. 4. ***The Canal and the Bondholders of 1844*** – All the preliminaries have been arranged for the signing of the bond of $600,000 to be given by the trustees of the Chesapeake and Ohio Canal bondholders of 1844, and the paper will be executed today by the trustees, with John B. McDonald and Miss Mary Garrett as sureties. The trustees who are to sign the bond are Bradley S. Johnson, Alexander Shaw, Joseph Packard, Jr., of Baltimore, Martin Morris, of Washington, and H. H. Keedy, of Hagerstown. It is understood that the bond will be taken to Hagerstown on Monday to be approved and filed, after which the canal will be turned over to the trustees for the bondholders, who will proceed to carry out the terms of the agreement.

*Sun*, Tue. 11/25/90, p. 1. Mr. John B. McDonald signed the $600,000 bond of the trustees of the bondholders of 1844 of the Chesapeake and Ohio Canal.

*Sun*, Thu.11/27/90, p. Suppl. 2. **An Appeal by the State in the C. and O. Canal Case.** – Annapolis, Nov. 26. – The State board of public works, Governor Jackson, Comptroller Baughman and Treasurer Brown present, signed an order today directing Attorney-General Whyte to appeal from the recent decision of the Washington County Circuit Court in the Chesapeake and Ohio Canal case.

In this letter to the attorney-general the board say: " We do hereby instruct you, as attorney-general, to take an appeal from the recent decree of the Circuit Court for Washington County in the consolidated cases of Brown and others, trustees, and Sloan and others, trustees, against the Chesapeake and Ohio Canal Company and others, as we deem it important to the interest of the State that such action should be taken in order that the full and final determination of the matter involved be had by the highest judicial tribunal of the State."

SR, Fri. 11/28/90, p. 4. **The Canal.**
Mr. John B. McDonald, as one of the sureties for the trustees for the bondholders of 1844 of the Chesapeake and Ohio Canal, on Monday signed the bond for $600,000 required of the trustees by order of court. Miss Mary Garrett is the other surety on the bond. Several more signatures of trustees and others are required before the bond will be ready for filing in the Circuit Court at Hagerstown, after which the canal will be turned over to the trustees for the bondholders, who will proceed to carry out the terms of the agreement. It is understood that the repairs of the canal will be commenced at once, the work to be given out in sections by contract, the entire work to be done under the supervision of a competent engineer, so that the repairs will be conducted along the entire line at the same time.

*Sun*, Fri. 11/28/90, p. Suppl. 2. **Canal Conference at Hagerstown** – Hagerstown,

Md., Nov. 27. – Gen. Bradley T. Johnson, of Baltimore, has been in Hagerstown for the last few days on business connected with the Chesapeake and Ohio Canal question. General Johnson was joined tonight by Messrs. Hugh L. Bond, John K. Cowen and Bradley S. Johnson. The gentlemen expect to reach a conclusion in regard to the disposition of the waterway tomorrow. Mr. Joseph Bryan, of Richmond, is expected to be present at the conference tomorrow.

*Sun*, Sat. 11/29/90, p. Suppl. 2. **Trusteed of 1844 Bondholders in Control of the Canal.** Hagerstown, Md., Nov. 28. – The trustees of the Chesapeake and Ohio Canal bondholders of 1844, Bradley S. Johnson, Joseph Bryan, Henry H. Keedy, Hugh L. Bons, Jr., and John K. Cowen, today filed their bond in the penalty of $600,000, with Miss Mary E. Garrett and John B. McDonald as sureties. They have paid into court in cash $10,000 for costs, and produced $302,000 of the bonds of 1878 and $247,500 in legal tender currency to pay for the rest of the bonds of 1878. The trustees have thus complied with the decree of the court, the clerk has issued his certificate to them to that effect, which, under the decree, entitles them to possession of the canal property.

The canal company, as well as the State, will take an appeal from Judge Alvey's decision. This will not interfere with the operations of the trustees, who will proceed at once to put the canal in navigable order from Williamsport to Cumberland, and repair the dams which are now in danger.

The record of the case will be sent to the January term of the Court of Appeals, and, as it is a State case, it is expected it will be heard at once and a decision had without delay.

The trustees of the bondholders of 1844 appointed H. H. Keedy trustee in place of Geo. S. Brown, deceased; Hugh L. Bond, Jr., trustee, to take the place of John S. Gittinger, resigned; Joseph Bryan, of Richmond, trustee, to fill the position resigned by F.M. Colston, and Charles M. Matthew, having refused to file bond, was to be removed from trusteeship, and John K. Cowen was appointed in his place. The new trustees were on petition made parties plaintiff in the cause along with the remaining trustees.

Judge Alvey has signed an order declaring that the trustees had filed their bond in the penalty of $600,000, which was approved by the court, and had produced a certified copy of the auxiliary decree of the Supreme Court of the District of Columbia promising that the trustees should take possession of the District portion of the canal, and had complied with all the requirements of the decree of October 2, 1890. He therefore ordered Robert Bridges, Richard D. Johnson and Joseph D. Baker forthwith to deliver possession of the canal and all its property held by them as receivers to the trustees of the bonds of 1844.

The court also directed the sum od $249,311.70 to be deposited to the credit of the cause in the Farmers and Merchants' Bank of Baltimore, and directed the cashier of the bank to pay all bonds of 1878 presented for payment, with interest on the bonds and interest on coupons up to December 1, 1890. The court also required bonds produced in court to be indorsed by the clerk with the words, "Produced in court, subject to the decree of October 2, 1890," and all bonds paid by the bank to be indorsed in the same words by the cashier and signed by the clerk of court or cashier of the bank, respectively.

No appeal has been taken in the canal case as yet – at least the order for the appeal has not reached the clerk.

---

**COSTS IN THE CANAL CASE**

The justice who has jurisdiction in the cases of Brown vs. the Chesapeake and Ohio Canal Company et al, having been shown that $20,000 would not be required for the costs and compensation of the receivers and trustees in the case, made in equity today and order reducing the amount to $5,000, "the surviving and substituted trustees under the mortgage of June 5, 1848, to pay into this court such further sum or sums as may be necessary to pay such costs and expenses in the event said sum of

$5,000 be insufficient, as this court may by future orders direct."

*Sun,* Tue. 12/290, p. 4. ***A Step Toward Restoring the Canal*** – The trustees for the bondholders of 1844 of the Chesapeake and Ohio canal seem to be in earnest in their intention to repair the waterway. To this end there was deposited at the Farmers and Merchants' National Bank, on South street, yesterday, upwards of $200,000 to pay the bondholders of 1878 in full, with accrued interest. This was required of the trustees by order of the court before the surrender of the corpus of the canal to the trustees. The whole issue of the repair bonds of 1878 was $500,000. Under the order of the court, this was required to be settled before the creditors of 1884 could come in for a claim to the canal. Of these bonds upward of $300,000 were purchased and controlled by the persons interested in the repair of the canal, who are understood to be identified with the Baltimore and Ohio Railroad Company. In the provision made for the settlement of this indebtedness yesterday, this amount was not considered, but only the remainder, about $198,000, with accrued interest, was to be paid. The bank commenced the payment of this amount and the settlement of a considerable portion of it was effected. The depositing of such a large sum for this purpose would show that the intention of the trustees for the creditors of 1844 is to carry out the orders of the court in giving them possession. Gen. Bradley T. Johnson, who represents these trustees, was in Hagerstown yesterday attending to some legal matters connected with the transfer. As soon as these are finally settled, the work of repair will be begun. It is stated that by May 1, the time specified by the court for the completion of the repairs, the canal will be in full operation.

---

**EXTENSION IN THE CANAL CASE**

The Chesapeake and Ohio Canal case came up again at the City Hall today before Judge Cox. The first of December had, by order of the court, been fixed as the day on which the certificate of compliance with the terms of Judge Alvey's order at Hagerstown should be filed in the court here, but on a hearing, three days more were given. The new trustees approved by the Washington County Court were accepted by the District Court.

*Sun*, Wed. 12/3/90, p. Suppl. 2. **CANAL TRANSFER COMPLETED** – The trustees of the Chesapeake and Ohio Canal bondholders of 1844 today deposited in the registry of the Supreme Court of this District, $5,000, pursuant to an order of court, to stand for both caused of Brown et al vs. the Chesapeake and Ohio Canal Company, and intended to cover costs, fees, &c. The deposit was made by Mr. Geo. E. Hamilton, the representative of the bondholders, after which action Messrs. H. C. Winship and Victor Cushwa, the receivers appointed by Judge Cox, transferred the Chesapeake and Ohio Canal property in this District to Messrs. Johnson, Bond, Keedy, Bryan and Cowen, the trustees for the bondholders of 1844. These trustees are now in possession of the office of the Chesapeake and Ohio Canal Company at Georgetown, and have full authority over all the Chesapeake and Ohio Canal rights in this District. They will at once do what is necessary at the District end of the line to forward the work of restoration of the canal. The work in the District is, however, very much forwarded by means of the fund raised some time ago by the Georgetown millers to make repairs, in order that the water supply which feed the mills might be restored and continued. As the trustees already had control of the Maryland portion, they are now in possession of the entire line of the canal.

*Sun*, Thu. 12/4/90, p. Suppl 2. **CANAL RESTORATION A GREAT BOON**

Washington, Dec. 3. – There is a general feeling of satisfaction here that the affairs of the Chesapeake and Ohio Canal have been so adjusted as to insure a reopening of the canal and a renewal of the commercial relations of the District cities with Western Maryland. This is considered the more gratifying here because

assurances have been made that, even with the canal in order, the plan of the Washington and Cumberland Railroad will not be abandoned. The statement of Mr. David L. Bartlett, of Baltimore, that 10 percent of the subscriptions to the Washington and Cumberland Railroad Company had been paid, and "that there is too much capital behind the Washington and Cumberland and the future of the proposed line is too promising to allow it to rest on account of the present failure to secure the canal," gave great pleasure here.

With this probability for the railroad, and with the statement made to Judge Cox by the trustees of the canal bondholders under the act of 1844, now in possession of the canal, that they could, if put in possession, "restore the Chesapeake and Ohio Canal as a waterway and operate the same," the people of the District are abundantly content. The disheartening prospect presented to the western section of the District after the great flood, of mills without water for their turbines, coal docks and chutes without a ton of coal, has now, happily – thanks to the energy and enterprise of Maryland and the District – been replaced by a bright outlook.

**C. AND O. CANAL'S NEW MANAGER**

The trustees of the bondholders of 1844, who now control the Chesapeake and Ohio Canal, have, as heretofore stated in *The Sun*, appointed Capt. H. C. Winship, of Georgetown as the general manager of the canal. Capt. Winship was, during the late war, an officer of the provost marshal's office at Alexandria, under Gen. H. H. Wells. He afterwards engaged in the shipping business upon the Potomac, and was identified with the coal trade at Georgetown when the flood destroyed the canal. He was named by Judge Cox one of the receivers of the canal during the recent litigation over its property, and has probably as large an acquaintance with canal interests as any living man. The appointment is universally considered an excellent one. Major H. D. Whitcomb, of Richmond, has been selected as chief engineer of the work. The principal office of the general manager will be at Georgetown, but he will also keep an office at Hagerstown, Md. The work this winter will be confined to the prevention of injury to the canal property and to guarding it from deterioration, and making it ready for the work of repair as soon as the season opens next year.

---

**Maryland Items.**

The Hagerstown *Mail* of yesterday says: This morning a telegram addressed to Buchanan Schley came from Bernard Carter asking to enter an appearance for him as executor of C. H. Carter in the canal case, and to file order for appeal from decree of October 2, this being the last day. Accordingly, Clerk Oswald entered the appeal as ordered. This is an appeal of the minority bondholders in the consolidated cases of Nos. 4191 and 4198 equity, in the Circuit Court for Washington County. Represented by Bernard Carter and Buchanan Schley, solicitors.

Fri. 12/5/90, p. 4.[6] **The Canal Will Be Restored.** – In the Circuit Court at Hagerstown last Friday, the trustees of the Chesapeake & Ohio Canal bond-holders of 1844, Bradley S. Johnson, Joseph Bryan, Henry H. Keedy, Hugh L. Bond, Jr., and John K. Cowen, filed their bond in penalty of $600,000, with Miss Mary E. Garrett and John B. McDonald as sureties. They paid into court in cash $10,000 for costs, and produced $302,000 of the bonds of 1878 and $247,500 in legal tender currency to pay for the rest of the bonds of 1878. The trustees having thus complied with the decree of the court, the clerk issued his certificate to them to that effect, which, under the decree, entitle them to possession of the canal property.

Judge Alvey then signed an order declaring that the trustees had filed their bonds in the penalty of $600,000, which was approved by the court, and had produced a certified copy of the auxiliary decree of the Supreme Court of the District of Columbia, promising that the trustees should take

[6] *Shepherdstown Register*, Shepherdstown, WV.

possession of the District portion of the canal, and had complied with all the requirements of the decree of October 2, 1890. He therefore ordered Robert Bridges, Richard D. Johnson and Joseph D. Baker forthwith to deliver possession of the canal and all its property held by them as receives to the trustees of the bonds of 1844.

Last Monday, the trustees turned over $200,000 to a bank in Baltimore, which will be used to pay off the 1878 bonds in full with accrued interest. The trustees have appointed Mr. Bradley S. Johnson to have charge of the Hagerstown office; Mr. H. C. Winship, of Georgetown, to be general superintendent, and Mayor H. D. Whitcomb, of Richmond, Va., to be chief engineer. The canal will be repaired along its whole length by May 1st. The division from Cumberland to Williamsport will first receive attention, and it is hoped to have it in operation at an early day.

The Baltimore & Ohio Railroad has furnished the money necessary for operation, will repair the canal and will operate it when repaired. This arrangement ensures the success of the undertaking. The Baltimore & Ohio has the power to furnish the freight to repay the large sum that will be expended for repairs; to pay off the bonds of 1878, and to pay interest on the bonds of 1844. It will be obliged to do this, because if after a trial, the work does not earn net revenue towards paying the debts, the court will order it to be sold, and it will cost the Baltimore & Ohio much more to purchase the property at a public sale than to operate it so as to pay its debts.

The trade on the canal will gain from year to year. It will be used by the B. & O. as a double-tracked coal carrier and relieve its tracks from wear and tear and leave them open for general traffic. The prospects of the canal have never been as bright as at present, nor has its future prosperity been so well assured.

*Sun*, Fri. 12/12/90, p. Suppl. 2. **C. AND O. CANAL AFFAIRS** – Although the Chesapeake and Ohio Canal has been released by the courts from the custody of the receivers and turned over to the trustees of the bondholders, the suit of Brown vs. the C. and O. Canal Co. still remain in court, and several questions beside those involved in the final issue still are left unadjusted. The claims growing out of the advance made by the Georgetown mill-owners to repair the Georgetown level and secure the water power for their mills is one of these. On this subject the following order was made today by Judge Cox: "It is by this court, this 11th day of December, 1890, ordered that George W. Cropley, Arthur B. Cropley and Wm. H. Burr, parties to the consolidated cause by petition, be required to pay to this court forthwith any and all rents now due and payable by them under contracts or leases between them and the Chesapeake and Ohio Canal Company set forth in their petition." This order, which is signed by Judge Cox, is made by agreement of Morris & Hamilton, counsel for the canal trustees, and by Edward & Benard for the Georgetown millers.

The late receivers, Messrs. Winship and Cushwa, filed today their sixth and final report. They called attention to their reports already filed in the case showing their proceedings, and set out that they have disbursed since the 18th of November last various sums for the preservation of the Georgetown level and other property of the canal in their possession. While in office they have collected in all $2,250.88 and paid out $1,606.57, and have no on hand $644.31. They further report that they have, in obedience to an order of the court, turned over the canal property to the trustees of the bondholders of 1848, and beg leave to be discharged from further care or obligation for the same. They ask such compensation as the court shall think proper for their services, and also counsel fees to Mr. G. E. Hamilton, their counsel.

SR, Fri. 12/19/90, p. 4. **Working on the Canal.** – Chief Engineer Whitcomb, of the Chesapeake & Ohio Canal, was in Williamsport last week and started the work of repairing the canal. We understand that there

are now about fifty hands employed between Dam No. 4 and the level above Williamsport. Timber is being gotten out for the cribs necessary at Dam No. 4, and Henry Burgan is in charge of the work there. An extensive leak above Williamsport is also being repaired. It is stated that the orders are to actively push the repairing of the canal between Williamsport and Cumberland, so as to make it ready for navigation as soon as possible.

Mr. John W. Holliday has been awarded the contract for furnishing the logs for the cribbing at Dam No. 4. He has his men and teams at work and is busy getting the stuff in proper shape. The cribs are to be used on the Maryland side of the dam, where the water cut a channel trough the canal bank above the dam.

Mr. Fred Mertens estimates that there are 150 available boats now along the canal, and he is ready to build any number of new ones that may be required. It will take about 450 to transact the business that the canal is expected to do.

*Sun,* Mon. 12/22/90, p. Suppl. 2. **Maryland Items** – The Hagerstown *Daily Mail* says Major Whitcomb, the engineer in charge of the work of repair on the Chesapeake and Ohio Canal, visited Williamsport on Thursday and made the necessary arrangements for the vigorous prosecution of that work. A corps of assistant engineers will be at once put on, and on Monday work will be commenced with a gang of men, under Mr. Hughes, on the level between Williamsport and Dam No. 4. There are now fifty-five men on the level between Williamsport and Dam No. 5, and both these forces will be increased as the tools are supplied for the use of the men.

*Sun*, Tue. 12/30/90, p. 1. Judge Alvey declines to pass upon the Lloyd Lowndes claim in advance of the decision of the Court of Appeals in the Chesapeake and Ohio Canal cases.

---

**THE C. AND O. CANAL CASES**

Hagerstown, Md., Dec. 29. – On the 16th of August, 1890, B. A. Richmond and W. C. Devecmon, of the Cumberland bar, as attorneys for Lloyd Lowndes, filed in the canal cases in Hagerstown, as was noted in *The Sun* at the time, a petition that Lloyd Lowndes be made a party to these cases. On the 24th instant, they filed with Judge Alvey a petition in behalf of Lloyd Lowndes, the owner of a judgment obtained against the canal company by his father in Allegany county in 1868 for $31,915.52 and kept alive up to this time, alleging that this judgment was a lien on the corpus of the canal and a superior lien to that of the bondholders of 1844.

The petition asked the court to require the trustees of the bondholders of 1844, now in possession of the canal, to ay off this claim, with the interest thereon from its date, or secure its payment in some way. The original claim was for labor and materials.

Judge Alvey filed an opinion on this petition today, saying that the appeals taken from the canal cases would possibly be heard in a short time, and that the matters set forth in the petition should be held over until the Court of Appeals passed upon the questions taken up. If the Court of Appeals affirms the judgment below provision has been made for the coming in of all parties holding claims for labor and material while operating the work under the act of 1844, and upon such claims being property established and shown to be liens superior to the bonds of 1844 such claims are required to be paid out of the revenues of the canal.

If the judgment is reversed, different questions and considerations may arise, leading to different results in the proceedings. If this claim be allowed to its full extent, it would be given priority not only to the bonds of 1844, but also to the claims of the State and the bonds of 1878. Upon this matter the court said it would not even intimate an opinion, but await the action of the Court of Appeals.

The record in the three appeals in the canal cases, namely, the appeal taken by the canal company, the appeal of the State and the appeal taken by Bernard Carter as executor of his father's estate, was forwarded to the clerk of the Court of Appeals today. The record has

also been printed and makes a volume of 229 pages.