

Accompanied by the Past

By Karen Gray

1938–1945 – Selling the Canal and Closing the Canal Cases

History is the witness that testifies to the passing of time; it illumines reality, vitalizes memory, provides guidance in daily life, and brings us tidings of antiquity. **Marcus Tullius Cicero (106–43 BCE), *Pro Publio Sestio***

There are four important things to recognize at this point in the C&O Canal story.

1. The November 1936 study by the U.S. Attorney General's office on the complex legalities of the canal's status laid out a legal path by which its sale might come about.
2. Strictly speaking, the canal was owned by those who held its stock until possession of the canal was transferred to receivers who would sell it. Those receivers appointed in 1890 (not to be confused with the bond trustees), were set aside along with the order to sell the canal on October 2, 1890, when the trustees for the bonds of 1844 were given the authority to take over (but not own) the canal and operate it under court oversight. The canal debts were prioritized in 1890 with the 1878 bonds to be first paid from the sale of canal land.
3. In 1896 and 1900 acts passed by the Maryland legislature mandated that unpaid C&O Canal Company invoices for work and supplies provided between 1877 and 1890 must also be paid when the canal was sold. That put those individual claims held by people and small companies in the same category as the 1878 bondholders' claims. Those acts and later court rulings prescribed the ways that such invoices could be validated and registered. Over the years the B&O Railroad (B&O) had bought the majority of those invoices from the original owners, likely paying less than their face value but knowing they might be paid in full when the canal was sold.
4. The B&O, over the years, acquired or purchased (in terms of millions of dollars of investment funds) the majority of canal stock in addition to all the liens on the canal. However, in 1938 the B&O's own debts were such that it was avoiding bankruptcy only by obtaining Reconstruction Finance Corporation loans. All those canal company liens owned by the

B&O were being held in trust, as they would become monetary assets when the canal was sold and the sale money was available to pay off as many as possible.

Because of its C&O Canal holdings of canal stock, bonds, and other forms of indebtedness, the B&O was in a position to file a "Petition for the Appointment of Receivers" to sell the canal, which it did April 29, 1938 with the Circuit Court of Washington County, under which the primary canal company cases (consolidated cases 4191 and 4198) were adjudicated. The court was prepared for this action and on the same date appointed Edgar W. Young, R. S. B. Hartz and G. L. Nicholson as the new receivers who would sell the canal under court oversight. Nicholson was also the general manager of the canal under the trustees and now under the receivers.

Specifically the order declared them: "*Receivers of all and singular the rights, title and interest of the Chesapeake and Ohio Canal Company in and to its **entire line of canal** extending from the City of Cumberland, in Allegany County, Maryland, to and into the City of Washington, in the District of Columbia, and all and singular the lands, tenements, and estates owned or acquired by the said Chesapeake and Ohio Canal Company for its construction or repair, its works and appurtenances; and the site thereof, embracing the entire undertaking and every part thereof, and **the water rights and franchises** of the said Chesapeake and Ohio Canal Company, and all and singular the **books, papers and records thereof and all other property** of every kind and description of said Company wheresoever the same or any part thereof may be situated or held.*"

The receivers were required to put up \$30,000 in bond—an amount that increased as the assets they held increased (e.g., when they received the money from the buyers) or decreased as they paid expenses associated with the sale and began to distribute the sale money as the law and court orders required.

The powers and purposes of the receivers are specified in the appointment decree, including: (1) To **manage and operate** the canal company "*insofar as it is advisable in their judgment to operate the same*"; (2) To **prosecute and defend** actions by or against the canal company and pay associated expenses with doing so; (3) "*to do whatever may be needful and proper to **maintain and preserve the corporate organization and franchises** of the Company*"; and (4) "*to **continue the employment and services of the present General Manager and employees** of the said Canal Company and to **employ such other attorneys, agents and employees** as may be necessary to enable the said Receivers to discharge the duties hereby required of them.*"

Most importantly, the April 29, 1938 order and decree by Judge Frank G. Wagaman of the Circuit Court of Washington County, **“authorized and empowered” the receivers to contract for the sale of the canal** *“property, estate, rights and franchises...upon such terms as the said Receivers shall find expedient and proper for the best interests of the said Canal Company and its creditors.”* It also ordered the *“said sales to be reported to and to be subject to the ratification and approval of this court.”*

Between April 19 and August 13, 1938, the receivers were busy fulfilling their responsibilities, negotiating the sale, and documenting the specific assets involved and the condition of the canal. In terms of the latter, they identified all lease holders of canal property and active contracts, etc.

On August 13 the negotiations for the sale and the sale contracts were completed and the court ordered that the sale *“be ratified and confirmed, unless cause to the contrary be shown to the Court on or before the 9th day of September, next.”* The notice of this order was to be *“inserted in some newspaper published in the Counties of Washington, Allegany, Frederick and Montgomery, in the State of Maryland, and in the city of Washington, in the District of Columbia, at least once a week for three successive weeks before the said last mentioned day.”*

The notice stated the amount of the sales as \$2,100,000. The cost of having this notice published was one of the expenses that the receivers were authorized to incur and would pay out of the sale funds. The opportunity for opposition to the sale was almost certainly *pro forma* and one has to wonder if anyone associated with it had even a brief moment of concern about it. Unsurprisingly, no “cause to the contrary” (i.e., objection to the sale) was filed with the court.

On September 8th the receivers’ bond was increased to \$517,500 each in anticipation of their receiving the \$2,100,000 for the sale. On the same date the receivers were ordered to *“secure from all occupants of land covered by this contract a cancellation or surrender of any leases, licenses, or other instruments, or termination of their right to occupancy, which such occupants may have covering such property, provided, however, that this*

provision shall not extend to existing water leases.” The receivers were authorized to “remove” any of the “leases, licenses, or other instruments not surrendered voluntarily.

The order directed *“the Receivers in this cause to give to the tenants hereinbefore mentioned and referred to, such notice to quit the premises as is required by the terms of the aforesaid leases, licenses and permits, or as is required by the Laws of the State of Maryland applicable thereto.”* Lease numbers 163, 164 and 165 were excepted. They were the water leases with the D.C. Paper Mills Co. and the Wilson-Rogers Milling Company in Georgetown—the last of the Georgetown firms reliant on C&O Canal water to operate their equipment.

On September 10, 1938, the sale of the canal was **“finally ratified and confirmed.”** All leases, licenses and permits still in effect were passed to the new owners. The receivers were directed to evict anyone on the land sold to the U.S. Government who did not have a permit from the government to be there.

On September 22, 1938, the court “authorized and directed” the Receivers to transfer *“the property, estate, rights and franchises of the Chesapeake and Ohio Canal Company now vested in said Receivers, and as set forth and described in the agreement of sale”* upon the receipt of the \$2,000,000 from the U.S. Government and the \$100,000 from the B&O Railroad.

The “claims and liens” of the parties in the canal company cases—the vast majority of which were held by the B&O Railroad—were transferred in that September 22 order *“to the proceeds of said sales.”* A special situation with regard to the Potomac Light and Power Company was also disposed of in this order and the receivers were **“further ordered and directed to report to and bring into this Court the proceeds of said sales for the purpose of the distribution thereof to those entitled thereto in accordance with their respective claims and priorities.”**

At this point the court auditor validated the financial reports submitted by the receivers. They stated that the **receivers had spent \$8,485.03 on expenses** associated with their work thus far such as the cost for the printing of the sale notices. They also paid a refund due to the Potomac Light and



Above – Historic postcard of the Washington County court house.

Below – G. L. Nicholson in May 1924. Historic photo C&O Canal NHP, National Park Service.



Power Company and **retained \$200,000** “for further distribution to labor claims and judgments that may be properly filed and proven under the aforesaid Acts of 1896 and 1900 including interest thereon [see No. 3 at the beginning of this column] and further distribution to costs, commissions, counsel and auditors’ fees and for further distribution to claims properly proven in the order of their priorities.”

That left them with \$1,880,014.97 to begin to pay off the canal company debts. They started by paying the B&O \$308,726.75 on 1878 bond principal and interest. That actually **retired the 1878 bonds debt in totality**, because previous court-approved land sales by the trustees had been applied to it. The largest of those sales had brought in \$500,000 in 1905 from the Western Maryland Railroad (WMRR) for canal lands it required for its extension from Big Pool to Cumberland.

Next, they paid the B&O \$141,926.38 for those C&O Canal Company unpaid individual invoices from 1877–1890 that the B&O had bought from their original owners and that had been validated and registered by the court under the 1896 and 1900 Maryland acts that mandated their payment from the money received when the canal was sold (see No. 3 at the beginning of this column).

Under a court ruling, interest was due on those invoice debts and by September 30, 1938 date, it amounted to \$365,836.62, so the receivers next paid the B&O that amount. Finally, they reimbursed the B&O \$884.15 for court costs associated with these invoice debts. Consequently, **altogether, the B&O received \$508,647.15 for the 1877-1890 invoices** it had purchased from the original owners. As it is not known how much the B&O paid for each invoice, it can’t be determined what the B&O actually cleared on them—but it likely would have been around \$300,000.

On October 4, 1938, receiver R. S. B. Hartz sent a letter to National Park Service Director Arno B. Cammerer, concerning the “*minimum organization ... considered necessary for the proper administration, supervision and safeguarding of the Canal property.*” He enclosed a statement of the employees giving their name, position, rate of pay, and years with the canal. In the letter he writes:

“As the National Park Service will wish to safeguard the property which it has here purchased, at least to the extent maintained heretofore, the Receivers would like to urge upon you the propriety of continuing the employment of the present Canal organization, which we believe to be sufficient to safeguard the physical property on say a minimum basis.”

“The Receivers are hopeful that the National Park Service can arrange to continue the employment of all of the

Canal employees who were on the roll of the Receivers at September 30, 1938, which employees, their duties, and rates of pay are as is set out in the statement attached. These employees have all been paid by the Receivers to September 30th, 1938; and while the property has now been transferred to the United States, the Receivers have not discharged the employees, but have allowed them to continue at their present duties in the hope that the National Park Service would be able to arrange to continue their employment and assume the payroll beginning October 1, 1938.”

To determine the ultimate disposition of the canal employees’ situation from October 1, 1938, one would need to access the National Park Service archives for this time and I have not done so.

On October 18, 1938, the B&O Railroad filed a petition with the Circuit Court of Washington County concerning the land it purchased for \$100,000 (the only canal land not sold to the federal government). Those tracts of land were described in an “Exhibit A” attached to the sale agreement that was reported to and ratified by the court. This petition asks the court “*to pass an order directing said Receivers to convey [that land] to The Real Estate and Improvement Company of Baltimore City...as a substituted Purchaser for and as assignee of The Baltimore and Ohio Railroad Company.*”

There are subsequent court actions concerning this land that reveal some 15 of the parcels in the \$100K purchase were bought by the B&O on behalf of the WMRR for Western Maryland Right of Way. In 1941 the B&O notified the court that the WMRR did not ultimately accept some of those lands and the B&O relinquished them for distribution to the U.S. Government. Additionally, it was found that the survey for one of the B&O parcels in the District of Columbia (a Georgetown Branch parcel), had an error in it, and the resurvey and correction was processed in court actions.

Subsequent to the fall of 1938, through July of 1945, periodic interactions between the receivers and the court concerned various claims that petitioners believed should be paid from the sale monies not yet spent or distributed. Some of the claims were validated and paid, others were disallowed. Not until July 19, 1945, did the auditor submit his final report (No. 15) that stated:

“That all costs, commissions, expenses and fees in this cause have now been paid, and that all claims filed in these proceedings under the provisions of the Acts of 1896 and 1900 have now been either paid or disallowed, and the Auditor has therefore distributed the sum of \$7,399.11, being the balance of the funds in the hands of the Surviving Receivers to the claimant entitled thereto, The Baltimore and Ohio Railroad

Brunswick to Monocacy Paddling Trip

By Tony Laing

After a three-year hiatus due to the pandemic, the Association sponsored a 13-mile paddling trip on the Potomac River from the canal town of Brunswick to the Monocacy River. The trip was originally scheduled for the previous Saturday, July 9, but it rained and we rescheduled for the following Saturday.

Ten of us enjoyed a paddle – four canoes and two kayaks – on an overcast day with no beating sun. We encountered a small shower right after our lunch break but experienced no discomfort.

The temperature was mild and we enjoyed the sights and sounds of the river



Approaching the Monocacy Aqueduct. Photo by Tony Laing.

with its ripples and wildlife. We even spotted a groundhog watching us in a burrow almost at water level. No trip on the Potomac is a success without spotting a bald eagle. We saw two fledglings perched in trees high above the water. And some of us were treated to seeing an adult bald eagle fly near the Monocacy Aqueduct.

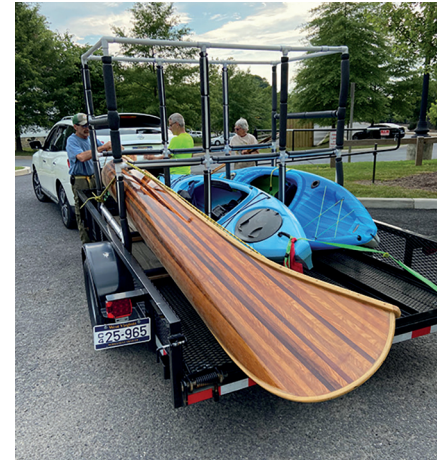
We headed downstream from Brunswick at 9:45 a.m., stopped at Point of Rocks for a leisurely lunch break at a picnic spot, and reached our destination of the Monocacy River boat ramp at 2:00 p.m. All of us were glad to have been out on the river and are looking forward to more paddling trips.



A river dweller observes the paddlers. Photo by Tony Laing.



The paddlers before the trek. Photo by Doug Zveare.



Grant Faller's beautiful hand-made canoe. Photo by Tony Laing.

Accompanied by the Past (Continued from previous page)

Company, Assignee, in part payment of balance due on principal, with legal interest thereon, of loan from the State of Maryland in the amount of \$2,000,000.00 secured by mortgage, dated April 23, 1835, by virtue of Chapter 241 of the Acts of 1834."

So, in the end, the receivers had worked their way down through the prioritized list of C&O Canal Company debts to payments on the 1835 loan by Maryland to the canal company. Thus that final \$7,399.11 left over from the canal sale went to the B&O due to the following actions: (1) The sale by the Maryland Board of Public Works of all Maryland's interests in the canal on January 4, 1905, to Fairfax S. Landstreet; (2) the sale by Landstreet on July 29, 1907 to the Continental Trust Company, trustee, and (3) the transfer to the Maryland

Trust Company, successor trustee; and now (4) the transfer to The Baltimore and Ohio Railroad Company.

On September 22, 1945, the Circuit Court of Washington County discharged the receivers from their duties and closed the consolidated equity cases Nos. 4191 and 4198 *GEORGE S. BROWN et al. vs. CHESAPEAKE AND OHIO CANAL COMPANY et al.*, begun in 1890. At the same time the D.C. court similarly released the receivers and closed their case No. 12,240.

Note:

This history is built on the legal documents for the consolidated cases 4191-4198 from December 31, 1889 to September 22, 1945. They are available in the Maryland State Archives ce464-000001 to ce464-000021.