No. 4198. Equity.

Geo. S. Brown, James Sloan, Jr.,
Lloyd Lowndes, Jr., Trustees,

vs.

The Ches. and Ohio Canal
Company, & others.

S. T. Wallis,

Filed Jany. 15th 1890.

No. 4198. Eq.

In the Circuit Court for Washington County - In Equity.

George T. Brown, James Sloan Jr. and Lloyd Lowndes Jr. Trustees.

vs.

The Chesapeake & Ohio Canal Co. et al.

Mr. Clerk; Please file the within Bill and Exhibits A, B. & C.

S. T. Wallis
Solicitor for Complts.

(3)

Filed Jany. 15. 1890.

3 copies made

~~In the Circuit Court for Washington County,~~

No. 4198. Equity.

GEORGE S. BROWN, JAMES SLOAN JUNIOR & LLOYD LOWNDES JUNIOR, TRUSTEES, CITIZENS OF THE STATE OF MARYLAND, Plaintiffs. versus THE CHESAPEAKE AND OHIO CANAL COMPANY, a corporation of the States of Maryland and Virginia, and a citizen of said States, and GEORGE S. BROWN, JOHN S. GITTINGS, FREDERICK M. COLSTON & BRADLEY S. JOHNSON, of Baltimore City, Maryland, and WILLIAM M. MATTHEWS of Washington City, District of Columbia, Trustees, Defendants.	In the CIRCUIT COURT FOR WASHINGTON COUNTY. Sitting in Equity.

BILL OF COMPLAINT.

(Filed January 15th 1890)

George S. Brown, James Sloan Junior, and Lloyd Lowndes Junior, citizens and residents of the State of Maryland, Trustees named in a certain Indenture of Mortgage dated the 15th day of May, A.D. 1878, executed and delivered by the Chesapeake and Ohio Canal Company, bring this their Bill of Complaint against The Chesapeake and Ohio Canal Company and George S. Brown, John S. Gittings, Frederick M. Colston, William M. Matthews and Bradley S. Johnson, Trustees substituted and appointed under a certain Indenture of Mortgage dated the fifth day of June, A.D. 1848, and executed and delivered by The Chesapeake and Ohio Canal Company.

And thereupon your Orators complain and say,

1. That the corporation defendant, The Chesapeake and Ohio Canal Company, is a corporation duly incorporated and

and existing under and by virtue of the act of the General Assembly of Virginia, passed January 27,1824, entitled "An Act Incorporating the Chesapeake and Ohio Canal Company", and under and by virtue of the Act of the General Assembly of Maryland, passed January 31st 1824, published as Chapter 79 of the Laws of 1824, and the Acts of Maryland supplementary thereto.

2. That in pursuance of the authority conferred by said acts of Maryland and Virginia, and by the acts of the Congress of the United States approved respectively March 3rd, 1825, and May 23, 1828, confirming the same,(all which acts will be found set forth in Appendix 1 to Vol.4,U.S.Statutes at Large, pages 792 to 803 and on page 805) the corporation defendant constructed and acquired a canal and its works extending from Georgetown in the District of Columbia through the said District and through the counties of Montgomery, Frederick, Washington and Allegany in the State of Maryland, to Cumberland in the State of Maryland, and also in connection therewith lands, wharves, wharf rights, water rights, works and other property in the District of Columbia and in the said Counties, and has operated the same as a canal and water-way, up to the first day of June 1889.

3. That on the tenth day of March 1845, the General Assembly of Maryland passed an Act entitled "An Act to provide for the completion of the Chesapeake and Ohio Canal to Cumberland, and for other purposes", being Chapter 231 of the Laws of 1844, which act authorized the said Canal Company to borrow a sum of money not exceeding one million seven hundred thousand dollars, with preferred liens on its revenues as in said act

provided. That section 2 of said act provides as follows: "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 is hereinafter provided for; the said bonds without any preference or priotity 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 to the payment of the same, and the interest to accrue thereon, in the manner hereinafter mentioned; provided however, that this State shall in no case be bound or held responsible for the payment of the said bonds or of the interest thereon; and provided further, that the president and directors of said company shall from time to time, and at all times hereafter, have the privilege and authority to use and apply such portion of said revenues and tolls as in their 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 ~~xx~~ officers and agents, and the current expenses of the said company."

Section 4 provides, "That the rights and liens of this State upon the revenues of the Chesapeake and Ohio Canal Company shall be held and considered as waived, deferred and postponed in favor of the bonds that may be issued under the aforegoing 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."

By Section 6 the Canal Company is authorized "to execute any deed, mortgage or other instrument of writing, that may hereafter be deemed necessary or expedient to give the fullest effect to the aforegoing provisions."

4. That in pursuance of the authority conferred by the above mentioned act of 1844, chap.281, the defendant corporation executed and delivered the indenture of mortgage dated the fifth day of June, A.D.1848, a copy of which is filed with this bill marked "Plaintiffs' Exhibit A." and is prayed to be taken as part hereof. By said Indenture the defendant corporation conveyed "to Phineas Janney of Alexandria, William W. Corcoran of Washington, Horatio Allen of New York, David Henshaw and George Morey of Boston, as Trustees for the holders of all the bonds that have been and may hereafter be issued by the President and Directors of said Company, under and pursuant to the provisions of the said act passed by the General Assembly of Maryland, on the tenth day of March 1845, without preference or priority of one over another on account of the date, and for the other purposes mentioned in said act, 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 after the payment of the debt now existing, and that may hereafter be contracted and in arrears for repairs on the canal and for officers' salaries. First, the payment of interest on said bonds semi-annually. Second, the payment of interest on the certificates of debt heretofore issued to

the creditors of the Potomac Company as before mentioned not exceeding five thousand dollars annually; and thirdly, to pay annually to the Treasurer of the Western Shore of Maryland out of the surplus nett revenues such sum not exceeding twenty-five thousand dollars a year on an average of years, dating from the first of January next after the completion of the canal to Cumberland, as may be necessary to create an adequate sinking-fund according to the provisions of said act to reimburse the principal of the bonds that may be issued under the said act, as it becomes due, with power and authority on the part of the grantees and their successors in case the said Company fails to fulfil its engagements in the premises to enter, subject to the conditions hereinafter mentioned, and execute the provisions of said act by collecting the tolls and revenues and after deducting and applying such portion thereof, as may be necessary from time to time, to put and keep the canal in good condition and repair, provide the requisite supply of water, and pay the salaries of officers and agents and the current expenses of the company, according to said act, and the expenses of this trust, if any, to appropriate so much of the remainder as may be necessary to satisfy and fulfil the objects and intents of this deed or instrument of writing, as above mentioned, in the manner provided in and by the said act, and the balance, if any, to pay over to said company." * * * * *

"And it is agreed and understood, by and between the parties hereto, and these presents are upon the condition that so long as the said canal company shall comply with their agreement by

paying all the interest upon said bonds as the same falls due, and by providing an adequate sinking fund in the manner specified, according to the provisions of the said act, for the final redemption of the said bonds, they shall retain the management of the canal and its works, and collect and receive the revenues and tolls, but if they fail to comply with these conditions from any cause, except a deficiency of revenue arising from a failure of business without fault on the part of said Company, said fault to be made to appear by the grantees aforesaid, then the grantees may demand and shall thereupon receive possession, and shall appropriate the said tolls and revenues in the manner hereinbefore provided, and shall upon that contingency, have the full benefit of the contracts for guaranty of tonnage aforesaid."

The original trustees named in said mortgage have all long since departed this life, and others have from time to time been substituted as trustees to fill the vacancies, in accordance with provisions of said mortgage. The said individual defendants are now the sole trustees thereunder.

5. That in the year 1877 the said canal and its works were so damaged by a freshet in the Potomac River as to be useless as a water-way, and the defendant corporation was in consequence forced to discontinue the operation of the same until the damage could be repaired. At this time the said defendant corporation had not the money necessary to pay for the repairs required in order to put the canal and its works into such repair as would restore its use as a water-way. Moreover, it had no means or credit by which it could raise

the necessary money. For more than ten years, on an average of years, prior to 1877, the gross revenues of the defendant company had been wholly consumed in the operation and repair of the canal and its works; so that the interest on the $1,699,000 of bonds issued under the above mentioned mortgage of 1848 was in arrears and unpaid for all the years from January 1st 1865, which interest calculated to January 1st,1877, amounted to $1,233,280. The defendant company was on January 1,1877, indebted also to the State of Maryland to the amount of $16,747,245, principal and interest, which indebtedness was a lien on all the property revenues and franchises of the company. The defendant company was, therefore, unable either to repair or to operate its canal and works, until the passage of the act next herein mentioned.

6. That for the purpose of enabling the defendant company to restore its canal and works to use as a water way and to maintain and operate the same, the General Assembly of Maryland at its next session passed the act of 1878, chapter 58, approved February 27,1878, and entitled "An Act to make effectual the provisions made by the act of December session, eighteen hundred and forty four, chapter two hundred and eighty one, entitled 'An Act to provide for the completion of the Chesapeake and Ohio canal to Cumberland, and for other purposes', in so far as said act relates to putting and keeping the said Chesapeake and Ohio Canal in good condition and repair, and to make the said canal an effective means of transportation", to which act contained in the volume of the Laws of Maryland, 1878, published by authority, your orators pray

leave to refer with the same effect as if the same were set out verbatim and at length herein.

7. That in pursuance of the authority conferred by said act of 1878, chapter 58, and of other lawful authority, the defendant, the Chesapeake and Ohio Canal Company, executed and delivered to your orators as Trustees the indenture of mortgage dated May 15th, A.D.1878, and duly recorded, to secure the payment of its bonds to the amount of five hundred thousand dollars, issued and to be issued for the purposes authorized by said act; a copy of which mortgage is filed as an Exhibit with this bill marked "Plaintiffs' Exhibit B." and is prayed to be taken and read as part hereof.

8. That the whole amount of the said bonds have been issued by the said defendant company, and are now outstanding in the hands of a large number of persons. That the said bonds were issued for a full and valuable consideration paid; and the proceeds thereof were applied to the purposes authorized and required by the said act of the General Assembly and to no other purposes. That when the said bonds were so issued coupons were attached thereto for the payment of interest thereon until maturity of the said bonds at the rate of six per centum per annum, in semi-annual installments, on the first day of January and July in each and every year.

9. That the said mortgage of May 15th,1878, is a first lien upon the premises therein described, to wit, all and singular the tolls, revenues and other property, land, water-rights and franchises of the defendant,The Chesapeake and Ohio Canal Company, held or enjoyed in the District of Columbia and

in the State of Maryland, or wheresoever the same or any part thereof, may be situated or held; and the holders of the bonds intended to be thereby secured are entitled to have paid and distributed to them, until they are paid in full, with all the arrears of interest, the whole of the proceeds of the said mortgaged premises.

10. That the defendant, The Chesapeake and Ohio Canal Company, has made default in the payment of the interest on all of said bonds so that six successive coupons on each and all of said bonds are now due and unpaid, the last coupon paid being that due the first day of January 1887.

11. That the holders of a majority in amount of the said bonds issued and now outstanding secured by said mortgage of May 15th,1878, have made application in writing to your orators to proceed to obtain by regular proceedings according to the course of Courts of Equity, a decree for the sale of the 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 authorized for the payment of the said bonds and coupons may be applied to pay the same, a duplicate original of which written application is filed with this bill marked "Plaintiffs' Exhibit C." and prayed to be taken as part hereof.

12. That on or about May 31,1889, another freshet in the Potomac River so damaged the canal and works of the defendant company that the same have since remained and are now entirely incapable of use as a water-way. That it will require the expenditure of a large sum of money to repair the

canal and restore its usefulness as a public work. That the defendant, The Chesapeake and Ohio Canal Company, is utterly insolvent, being indebted to the State of Maryland and to its several mortgage bondholders to the amount of more than $26,500,000, which is fully $14,000,000 more than the total cost of the canal and its works, and having no cash in hand and no revenues accruing from operation. That the said defendant company is now unable, by reason of its insolvency, not only to make the repairs necessary to restore the canal and its works to such a condition that it can earn revenue, but even to keep from deterioration the property of the company mortgaged as aforesaid. That by reason of the present wrecked condition of the canal and its works the public is deprived of the use of a great public work on which the people of Maryland have expended many millions of dollars; and moreover, the value of the canal and its works as the security of the bonds for which your orators are trustees is daily diminishing both by reason of the want of proper attention to its condition, and because the industries located along the canal which have depended on it for transportation or for water power are being forced to remove and seek permanent locations elsewhere.

And your orators further charge that in its present condition the said canal is already inadequate as security for the bonds which they represent, with the interest accrued and accruing thereon, and that it is deteriorating daily and must continue to deteriorate as such security unless this Honorable Court shall intervene as by your Orators prayed.

That it is essential for the protection of the interests of the holders of the bonds secured by the said mortgage to your orators as trustees, and of the public, that a receiver be appointed by your Honorable Court to take possession and control of all and singular the land, water-rights, tolls, revenues, franchises and other property of the defendant, The Chesapeake and Ohio Canal Company, included in the said mort-

gage, and other property of the said defendant, and to repair the said canal and its works, and to preserve maintain and operate the same, pending the proceedings for the foreclosure of the said mortgage and for the adjustment and arrangement of the several claims and liens made and existing against said Company; and these proceedings are instituted at the instance and request of the holders of a majority in amount of the bonds secured by said mortgage, and are deemed by them essential for their safety and protection.

Wherefore your Orators need equitable relief and pray:-

First. That the said mortgage made, executed and delivered to your orators as aforesaid, be decreed to be a lien upon the canal, works, land, water-rights, tolls, revenues, franchises and other property, real, personal and mixed, as therein mentioned and described, according to the true intent, meaning and effect thereof;

Second. That the amount due upon the bonds issued thereunder and secured thereby, be at such time and in such manner as the Court shall direct, ascertained and determined.

Third. That a decree be entered directing the defendant, The Chesapeake and Ohio Canal Company, to pay what shall appear to be due upon taking such account, by a short day to be named by the Court.

Fourth. That in default of such payment, it be decreed that the Chesapeake and Ohio Canal Company and all persons claiming under it, be absolutely barred and foreclosed of and from all rights of equity of redemption of, in and to the said premises, and that a decree of this Court be entered directing

the sale of the whole of the mortgaged premises in such manner, by your orators as trustees or by some other person or persons, and the purchase money to be paid or settled as the Court may direct, appoint or deem proper.

Fifth. That a receiver or receivers be appointed at once to take custody of the property, estate and franchises of The Chesapeake and Ohio Canal Company, with such power for the repair, preservation, operation and use of the same, as the Court shall deem best adapted to protect the interests of all persons having any interest therein.

Sixth. That the said Chesapeake and Ohio Canal Company, its president and directors, agents and attorneys, may by injunction be restrained from selling or disposing of, or retaining from the receiver, any property or effects of the said company, or collecting any debts due thereto, or contracting any debt whatsoever on account thereof, or intermeddling in any other manner with the business thereof.

Seventh. That your orators may have such other and further relief as the Court may deem proper.

Eighth. That the said Chesapeake and Ohio Canal Company and the defendant trustees shall be required to answer all and singular the matters hereinbefore stated.

May it please your Honors to grant unto your orators the writ of subpoena to be directed to the said Chesapeake and Ohio Canal Company and to the said George S. Brown, John S. Gittings Frederick M. Colston and Bradley S. Johnson of Baltimore City, Maryland, and William M. Matthews of Washington City in the District of Columbia, commanding them and each of them at a certain day, and under a certain pain therein to be limited,

to be and appear before your honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to and perform and abide such further order, directions and decrees therein, as to your Honors shall seem meet, and your orators will ever pray &c.

L. T. Wallis

Solicitor for Complainants

State of Maryland,

City of Baltimore, to wit.

Before me, the subscriber, a Justice of the Peace of the State of Maryland in and for Baltimore City aforesaid, this fourteenth day of January in the year 1890, personally appeared James Sloan, Junior, who being duly sworn according to law deposes and says, that he is one of the plaintiffs named in the foregoing bill of complaint, that he has read the said bill and is familiar with the facts therein stated, and that all the matters and things therein stated are true as he verily believes.

Jas W Sloan Jr

Subscribed and sworn to before me in my said city the day and year aforesaid.

Robert A Thursby

Justice of the Peace of the State of Maryland in and for Baltimore City.

State of Maryland, Baltimore City, to wit:

I HEREBY CERTIFY, That Robert A Thursby

Esquire, before whom the annexed ~~acknowledgment~~ and affidavit was made, and who has thereto subscribed his name, was, at the time of so doing, a Justice of the Peace of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments. I further certify that I am acquainted with the hand writing of the said Justice and verily believe the signature to be his genuine signature.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, this 14 day of January A. D. 1890.

Jas Bond

Clerk of the Superior Court of Baltimore City.

No. 4197 Eq

In the Circuit Court
for Washington County.

Geo. S. Brown, Jas. Brown Jr.
and Lloyd Lowndes Jr. Trustees
vs.
The Chesapeake & Ohio Canal Co.
et al.

Plaintiff's Exhibit #1.

Filed Jany. 15th
1890.

MORTGAGE

OF THE

CHESAPEAKE AND OHIO

CANAL COMPANY,

TO

GEORGE S. BROWN

AND

JAMES SLOAN, JR.

and

Lloyd Lowndes Jr.

Trustees.

EXECUTED MAY 15, 1878.

BALTIMORE:
THE AMERICAN JOB PRINTING OFFICE.
1890.

Exhibit B. with Bill of Complaint

THIS DEED, made this fifteenth day of May, in the year eighteen hundred and seventy-eight, between the Chesapeake and Ohio Canal Company of the first part, and George S. Brown and James Sloan, Junior, of Baltimore city in the State of Maryland, and Lloyd Lowndes, Junior, of Alleghany county in said State, Trustees as hereinafter mentioned, of the second part, Witnesseth:

Whereas, by chapter fifty-eight of the Acts of the General Assembly of Maryland, passed at the January Session of said General Assembly, in the year eighteen hundred and seventy-eight, entitled "An Act to make effectual the provisions made by the Act of December Session, eighteen hundred and forty-four, chapter two hundred and eighty-one, entitled 'An Act to provide for the completion of the Chesapeake and Ohio Canal to Cumberland and for other purposes,' in so far as said act relates to putting and keeping the said Chesapeake and Ohio Canal in good condition and repair and to make the said Canal an effective means of transportation," it was provided, among other matters in said Act contained, that the said Chesapeake and Ohio Canal Company should be authorized and empowered to issue the Bonds of the said company, under its corporate seal, and signed by the President and countersigned by the Treasurer thereof, to the total amount of five hundred thousand dollars, for the purpose of putting and keeping the said Chesapeake and Ohio Canal and its works in good condition and repair, for the payment of the current expenses of the said canal, and for the providing of such supply of water as might be necessary to make the said canal effective as a means of transportation;

And Whereas, it was further provided, by said Act, that said Bonds, so authorized to be issued as aforesaid by the said Chesapeake and Ohio Canal Company, should be

issued in sums of not less than one hundred dollars each, and that each of said Bonds should be payable twenty years after date to bearer, redeemable, however, at the pleasure of the said Chesapeake and Ohio Canal Company at any time after the expiration of ten years from their respective dates, and should bear interest, in the meantime, at the rate of six per centum per annum, in equal half-yearly instalments, on the first days of January and July, in each and every year, according to the tenor of the coupons for said interest to be attached to the said Bonds; and that the said Bonds should express upon their face that the same were issued under the provisions of the said Act, and without any preference, or priority, over each other, and were preferred and absolute liens on the revenues, tolls and property of the said Chesapeake and Ohio Canal Company, to be paid and discharged in preference to any other claims, or liens, upon the said Chesapeake and Ohio Canal Company, or its works, or property, and in preference to any Bonds, which might be subsequently issued by the said Chesapeake and Ohio Canal Company for the purpose of putting and keeping the said canal and its works in good condition and repair, for the payment of the current expenses of the said canal, and for the providing of such supply of water as might be necessary to make the said canal effective as a means of transportation;

And Whereas, it was further provided, by the said Act, that the said Chesapeake and Ohio Canal Company should be authorized to secure the payment of the principal and interest of the said Bonds to the amount of five hundred thousand dollars, so authorized to be issued, as aforesaid, by the mortgage of the tolls, revenues and other property, land, water-rights and franchises of the said Chesapeake and Ohio Canal Company, which said mortgage should be executed to George S. Brown, James Sloan, Junior, and Lloyd Lowndes, Junior, the parties of the second part in this deed, and the survivors and survivor of them, as Trustees for the holders of the said Bonds, with power to them, or a majority of them, or to their successors in the

said trust, or to a majority of them, in case of a default in the payment of three successive coupons upon said Bonds, to proceed, upon the 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 in the premises, by regular proceedings, according to the course of Courts of Equity in said State, a Decree for the sale of the said canal and other mortgaged property and franchises and for the appointment of a Receiver, or both, as might be found necessary, to the end that the security authorized by the said Act to be given for the payment of said Bonds and coupons might be full, ample and effectual;

And Whereas, it was further provided, by the said Act, that the said Bonds authorized to be issued as aforesaid, and that the said mortgage, authorized to be executed as aforesaid, should be, when the same were respectively made and executed, liens upon the property, tolls and revenues of the Chesapeake and Ohio Canal Company, to be held and enjoyed in preference to any rights or liens, which the State of Maryland should have in, or upon, the said property, tolls and revenues of the said Chesapeake and Ohio Canal Company, until the Bonds provided to be issued under the said Act, and the coupons attached thereto, according to the legal obligation thereof against said company, were wholly paid and satisfied; and were also to be held and enjoyed in preference to any Bonds which might be subsequently issued by the said Chesapeake and Ohio Canal Company for the purpose of putting and keeping the said canal and its works in good condition and repair, for the payment of the current expenses of the said canal, and for the providing of such supply of water, as might be necessary to make the said canal effective as a means of transportation, and for no other purpose whatsoever;

And Whereas, at a general meeting of the Stockholders of the said Chesapeake and Ohio Canal Company, duly called and held on the thirtieth day of April, in the year

eighteen hundred and seventy-eight, at the office of the said Chesapeake and Ohio Canal Company, in the city of Annapolis, in the State of Maryland, the said Act of the General Assembly of Maryland, hereinbefore mentioned and referred to as the Act of January Session, eighteen hundred and seventy-eight, Chapter fifty-eight, of the Acts of said General Assembly, and each and every provision thereof, were duly accepted by the said Stockholders of the said Chesapeake and Ohio Canal Company;

And Whereas, at said general meeting, hereinbefore last referred to, the President and Directors of the said Chesapeake and Ohio Canal Company were directed to issue the Bonds of the said Company, under its corporate seal, and signed by the President and countersigned by the Treasurer thereof, in manner following, that is to say, three hundred of said Bonds for the amount of one thousand dollars each, and four hundred of said Bonds for the amount of five hundred dollars each, amounting in the whole to five hundred thousand dollars,—each Bond to bear even date with the mortgage to be made and executed for the better securing of the same,—and each Bond to be made payable twenty years after the date thereof to bearer,—redeemable, however, at the pleasure of the Company, at any time after the expiration of ten years from their respective dates, and each Bond to bear interest in the meantime, at the rate of six per centum per annum, payable in equal half-yearly instalments on the first days of January and July, in each and every year, according to the tenor of the coupons for said interest to be attached to the said Bonds, and each Bond to express upon its face that the same was issued under the provisions of the Act of the General Assembly of Maryland, hereinbefore particularly mentioned; and that the said Bonds so issued under the authority of the said Act were without any preference or priority over each other, and were preferred and absolute liens on the revenues, tolls and property of the said Chesapeake and Ohio Canal Company, to be paid and discharged in preference to any other claims, or liens, upon the said Chesapeake and Ohio Canal Company, or its

works, or property, and in preference to any Bonds which might be subsequently issued by the said Chesapeake and Ohio Canal Company for the purpose of putting and keeping the said canal and its works in good condition and repair, for the payment of the current expenses of the said canal, and for the providing of such supply of water, as might be necessary to make the said canal effective as a means of transportation.

And Whereas, at said general meeting, hereinbefore referred to, the President and Directors of the said Chesapeake and Ohio Canal Company were directed, in the execution of the power conferred upon the said Chesapeake and Ohio Canal Company by said Act as aforesaid, to secure the payment of the principal and interest of the said Bonds, which the said President and Directors were authorized to issue in manner and form as aforesaid, to the total amount of five hundred thousand dollars as aforesaid, by a mortgage of the tolls and revenues and other property, land, water-rights and franchises of the said Chesapeake and Ohio Canal Company, executed to the said George S. Brown, James Sloan, Junior, and Lloyd Lowndes, Junior, and the survivors and survivor of them, as Trustees for the holders of said Bonds in the manner and form expressed in the Act of Assembly aforesaid, and upon the conditions therein recited;

And Whereas, the said Bonds, so as aforesaid authorized to be issued by the said Chesapeake and Ohio Canal Company to the total amount of five hundred thousand dollars, consisting of three hundred of said Bonds for the amount of one thousand dollars each, and four hundred of said Bonds to the amount of five hundred dollars each, all bearing even date with these presents, have been issued, each of which said bonds, omitting amounts and signatures, is in the general form following:

UNITED STATES OF AMERICA,

STATE OF MARYLAND,

No......

CHESAPEAKE AND OHIO CANAL COMPANY.

Know All Men by These Presents, That the CHESAPEAKE AND OHIO CANAL COMPANY is indebted unto the bearer in the sum of Dollars lawful money of the United States of America, payable on the presentation and delivery of this Bond, twenty years from the date hereof, at the office of the said Company in the city of Annapolis, with interest thereon, in the meantime, at the rate of six per centum per annum, payable at the same place, in equal half-yearly instalments, on the first day of January and July in each and every year, according to the tenor of the coupons hereto attached, on the presentation of the said coupons at their respective maturities. But this Bond is redeemable at the pleasure of the said Company at any time after the expiration of ten years from its date, upon payment of the principal thereof, and of all interest accrued thereon to the date of said redemption.

This Bond is one of the Bonds, all bearing the same date with this Bond, amounting in the aggregate to five hundred thousand dollars, issued by the Chesapeake and Ohio Canal Company under the provisions of an Act of the General Assembly of Maryland, known as the Act of 1878, chapter 58. The said respective Bonds, so issued by the said Company, under the said Act of 1878, chapter 58, of which this Bond is one, are without any preference, or priority, over each other. The principal and interest of said Bonds, to the said amount of five hundred thousand dollars, of which this Bond is one, are secured under the authority of the said Act of 1878, chapter 58, by a Mortgage, duly recorded, as required by said Act, of the tolls, revenues, lands, water-rights, franchises and other property of the said Chesapeake and Ohio Canal Company,

bearing even date with this Bond, made to George S. Brown, James Sloan, Junior, and Lloyd Lowndes, Junior, and the survivors and survivor of them, as Trustees for the holders of said respective Bonds, each of which said respective Bonds is identified by an endorsement thereon, signed by the said Trustees, as one of the Bonds secured by the Mortgage aforesaid. And this Bond, and the Mortgage aforesaid, executed as aforesaid for securing said Bond and the other Bonds issued for the purposes aforesaid, to the amount of five hundred thousand dollars, are declared, by the Act aforesaid, to be Preferred and Absolute liens upon the property, tolls and revenues of the said Chesapeake and Ohio Canal Company, to be held and enjoyed in preference to any rights or liens which the State of Maryland may have in or upon the said property, tolls and revenues of the said Chesapeake and Ohio Canal Company, until the said Bonds, provided to be issued under the said Act, and the coupons thereon, are wholly paid and satisfied, and are also to be held and enjoyed in preference to any other claims or liens upon the said Chesapeake and Ohio Canal Company, or its works or property, and in preference to any Bonds which may be subsequently issued by the said Chesapeake and Ohio Canal Company for the purpose of putting and keeping the said Canal, and its works, in good condition and repair, for the payment of the current expenses of the said Canal, and for the providing of such supply of water as may be necessary to make the said Canal effective as a means of transportation.

In Witness Whereof, this Bond is signed by the President of the Chesapeake and Ohio Canal Company, sealed with its Corporate Seal, and countersigned by the Treasurer of the said Company, on this fifteenth day of May, in the year eighteen hundred and seventy-eight.

C. & O. C. C.

President Chesapeake and Ohio Canal Company.

Countersigned:

Treasurer Chesapeake and Ohio Canal Company.

UNITED STATES OF AMERICA,

STATE OF MARYLAND,

No......

CHESAPEAKE AND OHIO CANAL COMPANY.

Know All Men by These Presents, That the CHESAPEAKE AND OHIO CANAL COMPANY is indebted unto the bearer in the sum of Dollars lawful money of the United States of America, payable on the presentation and delivery of this Bond, twenty years from the date hereof, at the office of the said Company in the city of Annapolis, with interest thereon, in the meantime, at the rate of six per centum per annum, payable at the same place, in equal half-yearly instalments, on the first day of January and July in each and every year, according to the tenor of the coupons hereto attached, on the presentation of the said coupons at their respective maturities. But this Bond is redeemable at the pleasure of the said Company at any time after the expiration of ten years from its date, upon payment of the principal thereof, and of all interest accrued thereon to the date of said redemption.

This Bond is one of the Bonds, all bearing the same date with this Bond, amounting in the aggregate to five hundred thousand dollars, issued by the Chesapeake and Ohio Canal Company under the provisions of an Act of the General Assembly of Maryland, known as the Act of 1878, chapter 58. The said respective Bonds, so issued by the said Company, under the said Act of 1878, chapter 58, of which this Bond is one, are without any preference, or priority, over each other. The principal and interest of said Bonds, to the said amount of five hundred thousand dollars, of which this Bond is one, are secured under the authority of the said Act of 1878, chapter 58, by a Mortgage, duly recorded, as required by said Act, of the tolls, revenues, lands, water-rights, franchises and other property of the said Chesapeake and Ohio Canal Company,

bearing even date with this Bond, made to George S. Brown, James Sloan, Junior, and Lloyd Lowndes, Junior, and the survivors and survivor of them, as Trustees for the holders of said respective Bonds, each of which said respective Bonds is identified by an endorsement thereon, signed by the said Trustees, as one of the Bonds secured by the Mortgage aforesaid. And this Bond, and the Mortgage aforesaid, executed as aforesaid for securing said Bond and the other Bonds issued for the purposes aforesaid, to the amount of five hundred thousand dollars, are declared, by the Act aforesaid, to be Preferred and Absolute liens upon the property, tolls and revenues of the said Chesapeake and Ohio Canal Company, to be held and enjoyed in preference to any rights or liens which the State of Maryland may have in or upon the said property, tolls and revenues of the said Chesapeake and Ohio Canal Company, until the said Bonds, provided to be issued under the said Act, and the coupons thereon, are wholly paid and satisfied, and are also to be held and enjoyed in preference to any other claims or liens upon the said Chesapeake and Ohio Canal Company, or its works or property, and in preference to any Bonds which may be subsequently issued by the said Chesapeake and Ohio Canal Company for the purpose of putting and keeping the said Canal, and its works, in good condition and repair, for the payment of the current expenses of the said Canal, and for the providing of such supply of water as may be necessary to make the said Canal effective as a means of transportation.

In Witness Whereof, this Bond is signed by the President of the Chesapeake and Ohio Canal Company, sealed with its Corporate Seal, and countersigned by the Treasurer of the said Company, on this fifteenth day of May, in the year eighteen hundred and seventy-eight.

C. & O. C. C.

President Chesapeake and Ohio Canal Company.

Countersigned:

Treasurer Chesapeake and Ohio Canal Company.

And Whereas, each of said Bonds bears interest, as provided for by said Act, and in said respective Bonds, according to the tenor of the coupons for said interest attached to each of said Bonds;

And Whereas, each of said Bonds, so issued, is identified as one of the Bonds issued under the provisions of the said Act of January Session, eighteen hundred and seventy-eight, chapter fifty-eight, of the General Assembly of Maryland, by an indorsement made thereon and signed by the parties of the second part hereto, to the tenor and effect following, that is to say: "The within Bond is one of the Bonds, amounting in the aggregate to five hundred thousand dollars, secured, as shown by said Bond, by a Mortgage made to us as Trustees by the said Chesapeake and Ohio Canal Company under the Maryland Act of 1878, chapter 58."

Now, therefore, This Deed Witnesseth, That the said Chesapeake and Ohio Canal Company, for and in consideration of the provisions made by the aforesaid Act of the General Assembly of Maryland, and in the execution of the powers conferred upon it by the said Act, and of the directions to it given by the general meeting of the stockholders of the said Chesapeake and Ohio Canal Company, hereinbefore referred to, and in further consideration of the sum of five dollars, current money, to the said Company in hand paid by the parties of the second part hereto, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, conveyed, assigned, transferred and pledged, and by these presents doth grant, bargain and sell, convey, assign, transfer and pledge unto the said George S. Brown, James Sloan, Junior, and Lloyd Lowndes, Junior, and the survivors ~~or~~ and survivor of them, and to their or his successors, ~~or~~ and successor, in this trust, all and singular, the tolls, revenues and other property, land, water-rights and franchises of the said Chesapeake and Ohio Canal Company, situated, held or enjoyed in the District of Columbia and in the State of Maryland,

or wheresoever the same, or any part thereof, may be situated or held;

To Have and to Hold the aforesaid real and personal property and premises, hereby conveyed, or intended to be conveyed, with the appurtenances thereunto belonging, or in anywise appertaining unto the said George S. Brown, James Sloan, Junior, and Lloyd Lowndes, Junior, and the survivors and survivor of them, and to their or his successors or successor, in this trust, in fee simple or otherwise, according to the nature of the estate hereby granted,

In Trust to secure the payment of the principal and interest of the said respective Bonds, to the aggregate amount of five hundred thousand dollars, issued as aforesaid by the said Chesapeake and Ohio Canal Company for the purposes expressed upon the face of said respective Bonds at the time or times when the principal and interest of said respective Bonds shall become due and payable, as expressed upon the face of said respective Bonds, or upon the face of the coupons attached thereto, and to and for no other use, intent or purpose whatsoever;

Provided, Always, that if the said Chesapeake and Ohio Canal Company, its successors and assigns, do and shall well and truly pay to the lawful holders of said respective Bonds the respective sums expressed in said respective Bonds to be due and payable at the time or times when said respective Bonds are so due and payable, unless the same are sooner paid by the said Chesapeake and Ohio Canal Company, and shall also well and truly pay the interest on said respective Bonds at the time when, and place where, such interest is payable, according to the tenor of the said respective Bonds, and of the coupons evidencing such interest attached to said respective Bonds, then, and from thenceforth, these presents and every matter and thing herein contained shall cease, determine and be utterly void, anything herein contained to the contarary thereof in any wise notwithstanding.

And it is herein and hereby expressly declared by the said Chesapeake and Ohio Canal Company, under and by virtue of the Act of the General Assembly of Mary-

land aforesaid, that the said Bonds, secured by this mortgage, and this mortgage are liens upon the property, tolls and revenues of the said Chesapeake and Ohio Canal Company, to be held and enjoyed in preference to any rights or liens which the State of Maryland may have in or upon the property, tolls and revenues of the said Chesapeake and Ohio Canal Company, conveyed as aforesaid by this mortgage, until the said Bonds and the coupons thereon, respectively secured by this mortgage, are, according to the legal effect and obligation of said respective Bonds and coupons, wholly paid and satisfied; and that said Bonds are liens upon the property, tolls and revenues of the said Chesapeake and Ohio Canal Company, to be held and enjoyed in preference to any other claims or liens upon the said Chesapeake and Ohio Canal Company, or upon its works or property; and in preference to any Bonds which may be subsequently issued by the said Chesapeake and Ohio Canal Company for the purpose of putting and keeping the said canal and its works in good condition and repair, for the payment of the current expenses of the said canal, and for the providing of such supply of water as may be necessary to make the said canal effective as a means of transportation.

And it is agreed, by and between the parties of the first and second parts to this deed, that in case of a continuing default by the said Chesapeake and Ohio Canal Company in the payment of three successive coupons of the coupons attached, when issued, to Bonds, secured by this mortgage, and then outstanding; the parties of the second part hereto, or a majority of them, or the survivors or survivor of them, as trustees for the holders of said Bonds, or their or his successor in the said office of trustees or trustee, shall have power, upon the application to them or him in writing, of the holders of a majority in amount of the Bonds issued as aforesaid and secured by this mortgage, and then outstanding, to obtain from any Court of Equity in the State of Maryland having jurisdiction in the premises, by regular proceedings, according to the course of Courts of Equity in said State, a decree for the sale of the

property and franchises hereby mortgaged, or for the appointment of a Receiver, or both, as may be found necessary to the end that the security hereby given for the payment of the Bonds and coupons secured by this mortgage, may be full, ample and effectual.

But it is further expressly understood and agreed by and between the parties of the first and second parts to this deed, that unless and until there shall be a continuing default, at one time, in the payment by the said Chesapeake and Ohio Canal Company, of three successive coupons, attached when issued to Bonds secured by this mortgage, and then outstanding, or of the principal of the said respective Bonds secured by this mortgage at the maturities of said respective Bonds, and unless and until the holders of a majority in amount of the Bonds, issued and secured by this mortgage, and then outstanding, shall request in writing, proceedings to be taken as aforesaid for the enforcement of this mortgage as aforesaid, it shall not be competent for the parties of the second part hereto, or a majority of them, or the survivors or survivor of them, as trustees for the holders of the said Bonds, or their or his successors or successor, in the said office of Trustees or Trustee, or for the holder or holders of any or all of the Bonds secured by this mortgage, to institute or cause to be instituted, any proceedings at law or in equity, under or because of this mortgage, or to proceed to sell any part of the said mortgaged property, or to apply for the appointment of a Receiver as aforesaid; it being the intent and meaning of this mortgage, that the said Chesapeake and Ohio Canal Company, its tolls, revenues and other property, land, water-rights and franchises, hereby mortgaged, shall not be sold, and that the President and Directors of the said Chesapeake and Ohio Canal Company, shall not be deprived of the management of the said canal and its works, and of the franchises belonging to the said Company, except upon the continuing default of the said Chesapeake and Ohio Canal Company, to pay at least three successive coupons of the coupons attached when issued to the Bonds secured by this mortgage, and then outstanding,

or except upon the failure of the said Chesapeake and Ohio Canal Company to pay the principal of said respective Bonds, at the respective maturities of said respective Bonds.

And this Deed further witnesseth, that the said Chesapeake and Ohio Canal Company hath constituted and appointed, and doth by these presents, constitute and appoint Benjamin Fawcett, of Montgomery County, in the State of Maryland, to be its Attorney, with full power and authority to acknowledge this Deed as the act and deed of the said Chesapeake and Ohio Canal Company, before any Court, Judge, Justice of the Peace, Commissioner or other person or persons having lawful authority to take such acknowledgment, in the District of Columbia and in the State of Maryland, in order that the said deed may be duly recorded in the proper offices for the recording of deeds in the cities and counties in the State of Maryland and in the District of Columbia, or elsewhere, in which any property of the said Chesapeake and Ohio Canal Company may be permanently located.

IN WITNESS WHEREOF, the said Chesapeake and Ohio Canal Company hath caused its corporate seal to be affixed unto this deed and hath caused this deed to be signed by its President, on the day and year hereinbefore first above written, and the said George S. Brown, James Sloan, Junior and Lloyd Lowndes, Junior, the parties of the second part hereto, have hereunto set their hands and seals on the day and year first above written.

o———o
| SEAL. |
o———o

ARTHUR P. GORMAN,

President Chesapeake and Ohio Canal Company.

Signed, sealed and delivered in the presence of

CHARLES J. M. GWINN,

STEPHEN GAMBRILL,

GEORGE S. BROWN, o———o | SEAL. | o———o

JAMES SLOAN, JR. o———o | SEAL. | o———o

LLOYD LOWNDES, JR. o———o | SEAL. | o———o

Trustees.

State of Maryland, Montgomery County, to wit:

I hereby certify that on this seventeenth day of May, in the year eighteen hundred and seventy-eight, before the subscriber, one of the Judges of the Circuit Court for Montgomery county in said State personally appeared in the said county and State Arthur P. Gorman, whose name is signed as President of the Chesapeake and Ohio Canal Company to the above writing, bearing date on the fifteenth day of May, in the year eighteen hundred and seventy-eight, and acknowledged the said writing to be the act and deed of the said Chesapeake and Ohio Canal Company. And the said Arthur P. Gorman, being by me duly sworn, did depose and say that the seal, affixed to said writing, is the corporate seal of the said Company, and was thereto affixed by authority of the said Company, and that he signed his name thereto by like authority; and, at the same time and place, also personally appeared before me Benjamin Fawcett, who is known to me to be the person named and described as the attorney of the Chesapeake and Ohio Canal Company in and by the foregoing instrument of writing, and acknowledged the same as and for the act and deed of the said Chesapeake and Ohio Canal Company. And at the same time also appeared Stephen Gambrill, one of the subscribing witnesses to said instrument of writing, and made oath that he was present at and witnessed the signing, sealing and delivery of said instrument by the said Chesapeake and Ohio Canal Company, as in the conclusion thereof is expressed.

SEAL.

WITNESS my hand and the seal of the said Court, by me ordered to be affixed hereto, on the day and year in this certificate first above written.

RICHARD I. BOWIE,

Chief Judge of the Sixth Judicial Circuit of Maryland.

State of Maryland, Montgomery County, to wit:

I, E. B. Prettyman, Clerk of the Circuit Court for Montgomery county, do hereby certify that the Honorable Richard I. Bowie, before whom the aforegoing acknowledgment and affidavit appear to have been made, and who

has hereunto subscribed his name, was, at the time of so doing and still is, one of the Judges of the Circuit Court for Montgomery County in the State aforesaid, duly commissioned and qualified, and that to his acts, as such, full faith and credit are, and ought to be, given as well in courts of justice as thereout.

o———o
| SEAL. |
o———o

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Circuit Court for Montgomery county, on this seventeenth day of May, in the year eighteen hundred and seventy-eight.

E. B. PRETTYMAN, *Clerk.*
Per GEO. R. BRADDOCK, *Deputy.*

State of Maryland, Montgomery County, to wit:

I hereby certify that on this seventeenth day of May, in the year eighteen hundred and seventy-eight, before the subscriber, a Justice of the Peace of the said State of Maryland, in and for Montgomery county in said State, personally appeared Benjamin Fawcett, known to me to be the attorney named in the above and foregoing deed or instrument of writing, and acknowledged the same to be the act and deed of the Chesapeake and Ohio Canal Company for the purposes therein mentioned.

DAVID H. BOWIE, *J. P.*

State of Maryland, Montgomery County, to wit:

I hereby certify that David H. Bowie, Esq., before whom the annexed acknowledgment was made, and who has thereto subscribed his name, was, at the time of so doing, a Justice of the Peace of the State of Maryland, duly commissioned and sworn, in and for Montgomery county in said State.

o———o
| SEAL. |
o———o

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said Circuit Court, for Montgomery County, whereof I am Clerk, on this seventeenth day of May, in the year eighteen hundred and seventy-eight.

E. B. PRETTYMAN, *Clerk,*
Per GEO. R. BRADDOCK, *Deputy.*

State of Maryland, Baltimore City, to wit:

I hereby certify, that on this fifteenth day of May, in the year eighteen hundred and seventy-eight, before the subscriber, a Justice of the Peace of the State of Maryland, in and for Baltimore City aforesaid, personally appeared James Sloan, Jr., one of the mortgagees named in the foregoing deed of mortgage, and made oath that the consideration, in said mortgage stated, is true and bona fide, as therein set forth. GEO. W. C. BELL, *J. P.*

State of Maryland, Baltimore City, to wit:

I hereby certify, that GEO. W. C. BELL, before whom the foregoing oath was made, and who has thereunto subscribed his name, was at the time of so doing, a Justice of the Peace of the State of Maryland in and for Baltimore City, in said State, duly commissioned and sworn.

o———o
| SEAL |
o———o

IN TESTIMONY WHEREOF, I hereunto set my hand, and affix the seal of the Superior Court of Baltimore City, whereof I am Clerk, on this sixteenth day of May, in the year eighteen hundred and seventy eight. F. A. PREVOST, *Clerk.*

United States of America, Dist. of Columbia, to wit:

I, George W. Bagg, a Notary Public, in and for the District aforesaid, duly appointed and commissioned, do hereby certify that Arthur P. Gorman, President of the Chesapeake and Ohio Canal Company, a body corporate in the District of Columbia, and a party to a certain deed, bearing date on the fifteenth day of May, in the year eighteen hundred and seventy-eight, and hereto annexed, personally appeared before me, in the District aforesaid, the said Arthur P. Gorman, being personally well known to me to be the President of said corporation, and acknowledged the said deed to be the act and deed of the said Chesapeake and Ohio Canal Company.

o———o
| SEAL. |
o———o

GIVEN under my hand and Notarial Seal of office this seventeenth day of May, in the year eighteen hundred and seventy-eight. GEORGE W. BAGG,
Notary Public.

United States of America, Dist. of Columbia, to wit:

I, George W. Bagg, a Notary Public, in and for the District aforesaid, do hereby certify that Benjamin Fawcett, named as Attorney in fact in and by a certain deed, bearing date on the fifteenth day of May, in the year eighteen hundred and seventy-eight, from the Chesapeake and Ohio Canal Company, and hereto annexed, personally appeared before me, in the District aforesaid, the said Benjamin Fawcett, being personally well known to me to be the person named as attorney in said deed, and by virtue of the authority contained in said deed, acknowledged the said deed to be the act and deed of the said Chesapeake and Ohio Canal Company.

GIVEN under my hand and Notarial Seal of office, this seventeenth day of May, in the year eighteen hundred and seventy-eight.

o——o
| SEAL. |
o——o

GEORGE W. BAGG,
Notary Public.

State of Maryland.
Washington County, to wit.

I Geo B. Oswald Clerk of the Circuit Court for Washington County, Do Hereby Certify that the aforegoing is a true Copy of Mortgage Recorded in Liber No 77. folios 1 &c. one of the Land Records of Washington County, and that the same was Recorded May 22nd. 1878, and filed as Exhibit B in No 4198 Equity

In Testimony whereof I hereunto subscribe my name and affix the seal of the Circuit Court for Washington County at Hagerstown this 15th day of January AD 1890,

Geo B. Oswald
Clerk

(Filed Jany. 15. 1890)

Nov. 4. 1898. C.J.

15 16

In the Circuit Court for
Washington County.

Geo. S. Brown, Jas. Sloan Jr.
and Lloyd Lowndes Jr. Trustees
vs.
The Chesapeake & Ohio Canal Co.
et al.

Plaintiff's Exhibit C.

Filed Jany. 15. 1890.

Exhibit C. with Bill of Complaint

To

George S. Brown, James Sloan, Junior, and Lloyd Lowndes, Junior, Trustees named in the Mortgage dated May 15th, A. D. 1878, executed and delivered by The Chesapeake and Ohio Canal Company.

Gentlemen:

We the undersigned holders, each of the amount set opposite his or its name, of the bonds of The Chesapeake and Ohio Canal Company, secured by the indenture of mortgage executed and delivered by said company to you as trustees, and dated May 15, 1878, as the holders of a majority in amount of the said bonds issued and now outstanding, do hereby apply to you as such trustees to proceed in pursuance of the provisions of the said mortgage, by regular proceedings according to the course of courts of equity, to obtain a decree for the sale of the 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 for the payment of the said bonds and the coupons thereto attached may be applied to the payment of the same.

Name.	Amount of Bonds held.
The Baltimore & Ohio Railroad Company By Chas F. Mayer President Attest: Andrew Anderson Secy.	Two Hundred and Sixty Thousand Dollars.
Robt. Garrett & Sons	Thirty Eight Thousand Dollars.
O. H. Williams	Five Thousand Dollars.
Witness Frances M. Shipley	

Wm H. Lyons — Eight thousand Dollars
E. Francis Riggs. — Nine thousand, five hundred Dollars
Geo. H. Johnston. — Ten thousand Dollars

(Filed Jany. 15. 1890)

Summons issued and Summoned

No. 4198

In the Circt. Ct. for
Washington County

Geo. S. Brown, Jas. Sloane Jr.
and Lloyd Lowndes Jr. Trustees.

vs.

The Chesapeake & Ohio Canal Co. et al

Plaintiff's Exhibit #1.

Filed Jany. 15, 1890

Same as Exhibit
C. on page 13.

MORTGAGE

CHESAPEAKE & OHIO CANAL

TO

PHINEAS JANNEY, WM. W. CORCORAN,

ET. AL.

JUNE 5th, 1848.

Whereas, by an act of the General Assembly of Maryland passed on the tenth day of March, in the year eighteen hundred and forty-five, entitled "an act to provide for the completion of the Chesapeake and Ohio Canal to Cumberland and for other purposes" which has been duly accepted by the Stockholders of said company and become a law, the President and Directors of said company are authorized and empowered to issue bonds of the said company to an extent not exceeding one million seven hundred thousand dollars, for the purposes and in the manner therein mentioned, payable in not less than thirty-five years, the payment whereof, with the semi-annual interest is secured under the provisions of said act by making the said bonds 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 the termini at Georgetown and Cumberland, as therein mentioned, provided, that the President and Directors of said company shall, from time to time and at all times, have the privilege and authority to use and apply, such portions of said revenues and tolls, as in their opinion may be necessary to put and keep the said canal and its works in good condition and repair for transportation, provide the requisite supply of water, pay the salaries of officers and agents, and the current expenses of said company.

And whereas, under the provisions of said act, the said canal company are required before issuing any of said bonds, to obtain a guaranty or guarantees to be approved by the Maryland State agents and the Governor, for an aggregate transportation on the entire length of the said canal, between Cumberland and the District of Columbia, of not less than one hundred and ninety-five thousand tons of tonnage per year in an average of years for five years, dating from the end of six months after the said canal shall have been

completed to Cumberland, and the navigation opened to that point, all of which has been satisfactorily done and performed and approved as aforesaid.

And whereas, under the provisions of said act, it is provided, that the said company after paying the interest in said bonds semi-annually, and such further sums not exceeding five thousand dollars annually, as may be required for the payment of the interest on the bonds or certificates of debt heretofore issued to the creditors of the Potomac Company, for claims adjusted under the 12th section of the charter of the Chesapeake and Ohio Canal Company, shall out of the surplus nett revenues, as therein mentioned, pay annually to the Treasurer of the Western Shore of Maryland, who is to receive the same under the responsibilities of his office, such sum not exceeding twenty-five thousand dollars per year, on an average of years, dating from the first of January next after the completion of the canal to Cumberland as may be adequate for a sinking fund to be invested, and accumulated by said Treasurer, for the payment of said bonds when they become due and to be applied by him solely to that purpose,

And whereas, in order to give effect to the provisions of said act, the State of Maryland has, by the fourth section thereof, waived, deferred and postponed its rights and liens upon the revenues of the said Chesapeake and Ohio Canal Company in favor of the bonds and the interest, to accrue thereon that may be issued under said act, so as to make the same preferred liens on said revenues according to the provisions of said act, providing nevertheless, by another section of said act, that nothing in said act contained shall prevent the said State from redeeming said bonds and the interest thereon, if at any time hereafter, the Legislature may deem it expedient, or best for the interest of the State to do so.

And whereas, by the sixth section of the same act, the President and Directors of the said company are authorized to execute any deed, mortgage or other instrument of writing that may be deemed necessary or expedient to give the fullest effect to the provisions of the said act, and a mortgage for said purpose, the sum having

been deemed necessary and expedient, was on the 27th day of October, 1847, executed and delivered to Phineas Janney, Wm. W. Corcoran, Horatio Allen, David Henshaw and George Morey, the same parties hereinafter mentioned, of the like tenor and effect as these presents, but the said parties having failed to take the necessary steps to have the same recorded and the time of recording thereof, according to the laws of the State of Maryland having expired, an application being made, the President and Directors of said company have agreed to execute these presents in lieu and substitution thereof in order that the same may be placed on record.

Now therefore, with a view and for the purpose of giving the fullest effect, to the provisions of the said act of the General Assembly of Maryland, entitled "an act to provide for the completion of the Chesapeake and Ohio Canal to Cumberland and for other pur. poses" passed on the tenth day of March, eighteen hundred and forty-five, be it known to all persons whom it may concern, that the Chesapeake and Ohio Canal Company by James M. Coale its President, and William A. Bradley, Henry Dangerfield, Wm. Cost Johnson, John Pickell, Samuel P. Smith and George Schley, Directors, constituting the entire board of President and Directors of said company, in consideration of the premises and of the sum of one dollar in hand paid by the grantees herein named, the receipt whereof is hereby acknowledged, doth give, grant, bargain, sell and convey to Phineas Janney of Alexandria, William W. Corcoran of Washington, Horatio Allen of New York, David Henshaw and George Morey of Boston as Trustees for the holders of all the bonds that have been and may hereafter be issued by the President and Directors of said company, under and pursuant to the provisions of the said act passed by the General Assembly of Maryland, on the tenth day of March, eighteen hundred and forty-five without preference or priority of one over another on account of date, and for the other purposes mentioned in said act 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 after the payment of the debt now existing, and that may hereafter be con-

tracted and in arrear for repairs on the canal and for officers' salaries. First, the payment of interest on said bonds semi-annually. Second, the payment of interest on the certificates of debt heretofore issued to the creditors of the Potomac Company as before mentioned not exceeding five thousand dollars annually, and thirdly, to pay annually to the Treasurer of the Western Shore of Maryland, out of the surplus nett revenues such sum not exceeding twenty-five thousand dollars a year on an average of years, dating from the first of January next, after the completion of the canal to Cumberland, as may be necessary to create an adequate sinking-fund according to the provisions of said act to re-imburse the principal of the bonds that may be issued under the said act, as it becomes due with power and authority on the part of the grantees and their successors in case the said company fails to fulfil its engagements in the premises to enter, subject to the conditions hereinafter mentioned, and execute the provisions of said act by collecting the tolls and revenues and after deducting and applying such portion thereof, as may be necessary from time to time, to put and keep the canal in good condition and repair, provide the requisite supply of water, and pay the salaries of officers and agents and the current expenses of the company, according to said act and the expenses of this trust, if any, to appropriate so much of the remainder as may be necessary to satisfy and fulfil the objects and intents of this deed or instrument of writing, as above mentioned, in the manner provided in and by the said act, and the balance, if any, to pay over to said company.

To have and To hold, the aforementioned tolls and revenues, with the privileges and appurtenances thereto belonging and the rights and powers above specified unto the said Phineas Janney, Wm. W. Corcoran, Horatio Allen, David Henshaw and George Morey in trust, as aforesaid, until the interest and principal upon the said bonds issued under the said act of the General Assembly of Maryland *and* shall be paid according to the true intent and meaning thereof.

And it is agreed and understood, by and between the parties hereto, and these presents are upon the condition that so long as the

said canal company shall comply with their agreement by paying all the interest upon said bonds as the same falls due, and by providing an adequate sinking fund in the manner specified, according to the provisions of the said act for the final redemption of the said bonds, they shall retain the management of the canal and its works, and collect and receive the revenues and tolls, but if they fail to comply with these conditions from any cause, except a deficiency of revenue arising from a failure of business without fault on the part of said company, said fault to be made to appear by the grantees aforesaid, then the grantees may demand and shall thereupon receive possession, and shall appropriate the said tolls and revenues in the manner hereinbefore provided, and shall upon that contingency, have the full benefit of the contracts for guaranty of tonnage aforesaid.

And it is further mutually agreed and understood between the parties that all reasonable expenses (if any) growing out of this trust shall, from time to time be paid, and that under the reservations in said act, no new feeders or other works for the supply or introduction of water, shall be undertaken or carried on in such way as to direct the income from the payment of the interest and from supplying the regular and required amount from the sinking fund unless the grantees, or a majority of them, assent to such division or the same is clearly necessary for the interest of all parties.

And it is further mutually agreed, between the parties hereto, that when any one of the Trustees herein named as a grantee shall resign or die, or whenever a vacancy in the trust shall occur from any cause, the remaining Trustees shall fill such vacancy by the appointment of some person from among the bondholders; and when they have made a certificate thereof, or have endorsed the fact upon this indenture, the appointee shall be a party thereto in the same manner, and shall hold the same powers and rights as if he had been named therein as a party thereto.

And it is further mutually agreed, that when the bonds issued under said act of the General Assembly of Maryland shall be paid and satisfied according to the tenor and meaning thereof, this deed

No. 4198 E

Petrandorf
Court

filed Jany 15 1890

Filed Janys 15. 1890.

In the Circuit Court of Washington County
— In Equity —

Geo. S. Brown et al
vs
The Chesapeake & Ohio
Canal Co et al

To the Hon Judge of said Circuit Court.

The Complainants respectfully ask leave of Court to withdraw the papers filed in this cause from the office of the Clerk of said Court, for the purpose of laying the same before the Chief Judge of said Court —

S. T. Wallis, Sol for Complts.
per W R Preston

Upon the foregoing petition. the Clerk of this Court is hereby authorized to allow the papers & pleadings filed herein withdrawn for the purpose mentioned in the petition: But it is further ordered, that the said papers be returned to the office of this Court ~~cast~~ immediately upon the day ~~for~~ the Judge may fix another or future day for the preliminary hearing

Geo R. Sprigg

11

(May it please your Honors to grant unto your orators the writ of subpoena to be directed to the said Chesapeake and Ohio Canal Company and to said George P. Brown, John S. Gittings, Frederick W. Colston, and Bradley T. Johnson of Baltimore City, Maryland, and William W. Matthews of Washington City, in the District of Columbia, commanding them and each of them at a certain day, and under a certain pain &c,

18 pp.
1
2 Plans
1 Recd

FALCON
WAYS BROS

George S. Brown,
James Sloan, Junior,
& Lloyd Lowndes, Junior,
Trustees, citizens of the
State of Maryland
Plaintiffs.
Versus
The Chesapeake and
Ohio Canal Company,
a corporation of the
State of Maryland and
Virginia, and a citizen
of said States, and
George S. Brown,
John S. Gittings,
Frederick M. Colston,
Bradley S. Johnson,
of Baltimore City,
Maryland, and
William M. Matthews
of Washington City,
District of Columbia,
Trustees,
Defendants

No. 4198. Equity.

In the Circuit
Court for Washington
County,
Sitting in Equity.

No. 4198 Equity.

Copy of order setting application down for hearing and directing notice to defendants.

Service acknowledged January 26 1890.
Geo. S. Brown - Geo. S. Gilling
F. M. Calstow - C. M. Matthews
Rad. B. Glenn for Hunter
under the mortgage of
1848 by Johnson & Johnson
Thos. Sothoron

W. M. Lunsford
Atty for Canal Co

Copy of the minutes of the Court - Hearing on Bradley & Johnson & Bradley & Johnson collection for Geo. A. Brown, John H. Gilling, William Wheeler & G. W. Matthews, defendants - on the 21st day of January 1890. Present & sitting the Court & within Order of Court passed on Thomas W. Lanahan, solicitor for the complainant & the Chesapeake & Ohio Canal Company defendant - on the 21st day of January 1890 Leave granted to file petition for Sec. 20

Geo. W. Wheeler Clerk

George S. Brown
James Sloan Jr
Lloyd Lowndes Jr
Trustees

vs

The Chesapeake & Ohio
Canal Company & others

No. 4198 Equity.
In the Circuit
Court of Washington
County.
In Equity.

January 18th 1890.

Ordered by the Court, upon the Motion of the Plaintiffs in the above entitled cause that the application for an injunction and the appointment of a Receiver made in the Bill of Complaint be and the same is hereby set for hearing on the 31st day of January 1890. Provided a copy of this order be served upon the defendants or their Solicitors on or before the 25th day of January instant.

R. H. Alvey.

True Copy Test:- Geo. E. Oswald, Clerk

No. 4198 Equity.

Trustees of Bondholders

vs

Chesapeake and Ohio Canal Company & others.

Order setting application down for hearing and directing notice to Defendants,

Copy f. a a.

To be served on the Defendants

Rec'd 21: Jany 1890.
+ D. W. H. Gale.
Jest
Spragg Howard

Served on
Stephen D. Gambrill, Pres. C&O
G. S. Arnold Short & Blo Mar

George S. Brown.
James Sloan Jr. &
Gloya Lowndes.
vs
The Chesapeake & Ohio Canal
Company & others.

No 4198 Equity
In the Circuit Court
of
Washington County
in Equity.

January 18th 1890

Ordered by the Court, upon the motion of the Plaintiffs in the above entitled cause, that the Application for an Injunction & the appointment of a Receiver made in the Bill of Complaint be & the same is hereby set for hearing on the 31st day of January, 1890. Provided a Copy of this order be served upon the Defendants, or their Solicitors on or before the 25th day of January, instant.

R. H. Alvey.

True Copy.
Test Geo B. Oswald.

No. 4198 Equity.

Trustees of Bondholders

vs.

Chesapeake and Ohio Canal Company & others.

Order setting application down for hearing and directing notice to Defendants.

Copy: J.A.
to be served on Defts.
Rec'd. Jany 21. 1890 & forthwith delivered the Sheff of Ro. Co.
Jno. W. Belt
Clk

I hereby depute B Franklin Roby to serve the order of Court
R W Beall
Sheff

Served with the same on the evening of 24th

Served on Stephen Gambrill on 24th day of Jany 1890.
R W Beall
Sheff

George S. Brown.
James Sloan, Jr. &
Lloyd Lowndes.
Trustees,
vs.
The Chesapeake & Ohio
Canal Company. & others.

No. 4198 Equity.

In the Circuit Court
of Washington County
in Equity.

January 18th 1890

Ordered by the Court upon the motion of the Plaintiffs in the above entitled Cause, that the application for an Injunction & the appointment of a Receiver made in the Bill of Complaint be & the same is hereby set for hearing on the 31st day of January 1890. Provided a Copy of this Order be served upon the Defendants or their Solicitors on or before the 25th day of January instant.

R. H. Alvey.

True Copy.

Test. Geo R. Orwald. Clk

Rec'd. January 20th 1890 and forthwith delivered to the Sheriff of Allegany Co.

Theo. Lunan
Clerk

No. 4,198 Equity

Geo. S. Brown, et al. Trustees,
vs. } Sum's,
The Ches. and Ohio Canal Company,

Summons the Deft,
(Wallis)

Summoned by Service on Daniel Annan Director

David Walker
Sheriff
Alleg. Co.

WASHINGTON COUNTY, to wit:

The State of Maryland to The Chesapeake and Ohio Canal Company

of Washington County, Greeting:

YOU ARE HEREBY COMMANDED, *That all excuses set apart, you personally appear before the Judges of the Circuit Court, for Washington County, sitting as a Court of Chancery, to be held at the Court House, in Hagerstown, in and for said County, on the* First *Monday of* February *next, to answer the bill and complaint of* George S. Brown, James Sloan, Jr., and Lloyd Lowndes, Jr., Trustees *against you* and others *in our said Court exhibited, and so forth. Hereof fail not, as you will answer the contrary at your peril. Witness the* Hon RICHARD H. ALVEY, *Esquire, Chief Judge of said Court, the* Sixth *day of* January 1890.

Issued the 15th *day of* January 1890

Jno. P. Oswald *Clerk.*

No. 4198. Equity.

Geo. S. Brown, et al.
Trustees,
vs. } Sum's,

George S. Brown,
John S. Gittings,
Frederick M. Colston,
Bradley S. Johnson,

Summons the Defts.—
(Wallis)

Rec'd January 18/1890
& forthwith delivered to
Sheriff.
James S. Bond
Clerk

Service is admitted
of summons for
Trustees Geo S. Brown
John S. Gittings and
Frederick M. Colston &
Bradley S. Johnson for
Trustees
Polk Frame & Johnson
January 20-90

Summoned (Omnes)
George M. Coffroth
Sheriff
Sh's Fee $1.80

WASHINGTON COUNTY, to wit:

The State of Maryland to George S. Brown, John S. Gitting, Frederick M. Colston and Bradley S. Johnson

of ~~Washington County~~ Baltimore City, Greeting:

YOU ARE HEREBY COMMANDED, *That all excuses set apart, you personally appear before the Judges of the Circuit Court, for Washington County, sitting as a Court of Chancery, to be held at the Court House, in Hagerstown, in and for said County, on the* Fifth *Monday of* February *next, to answer the bill and complaint of* George S. Brown, James Sloan, Jr., and Lloyd Lowndes, Jr., Trustees *against you* and others *in our said Court exhibited, and so forth. Hereof fail not, as you will answer the contrary at your peril. Witness the* Hon RICHARD H. ALVEY, *Esquire, Chief Judge of said Court, the* 6th *day of* January 1890

Issued the 15th *day of* January 1890.

Geo. R. Swaid *Clerk.*

No. 4198. Equity.

Rec'd of Sum's & Copies to Atty. Co.

Filed Jany. 22. 1890

(Transcript.)

In the Circuit Court for Washington County,

No. 4198 Equity to ~~Term, 188~~

Geo. S. Brown & al Trustees vs. The Ches. and Ohio Canal Co. & al

Summons ~~SUBPOENA~~

To the Sheriff of Allegany County, for The Ches. and Ohio Canal Company

to ~~testify for~~ answer Bill of Complaint

Returnable on the 1st Monday of Feby 1890 & 9 weeks

Issued the 15 day of January 1890

Test,

Geo. B. Oswald Clerk.

I HEREBY CERTIFY, That on the 20 day of January eighteen hundred and ~~eighty~~ Ninety. I recived under cover from the Clerk of the Circuit Court for Washington County, process as above, and forthwith delivered the same to the Sheriff of Allegany County.

IN TESTMONY WHEREOF, I hereunto set my hand and affix the seal of the Circuit Court for Allegany County on this 21 day of Jany eighteen hundred and ~~eighty~~ 90

Thos. Lunan

Clerk of the Circuit Court for Allegany County

No. 4198 Equity

Receipts for Process

In the Superior Court of Baltimore City.

Geo. S. Brown et al Trustees
vs
The Ches. & Ohio Canal Co. &c

Same
vs.
Geo. S. Brown, et al

Geo. S. Brown et al
vs
The Ches. & Ohio Canal Co

Summons for Defendants to answer &c

Summons for defendants to answer &c

Copy of order of Court to be served on defts

Returnable 1st Mon day of February 1890 & 25 January 1890

I HEREBY CERTIFY, That on the 18 & 21 day of January 1890 I received, under cover from the Clerk of the Circuit Court for Washington County, process as above, and forthwith delivered the same to the Sheriff of Baltimore City.

In Testimony Whereof, I hereunto set my hand and affix the Seal of the Superior Court of Baltimore City, on this 27 of January 1890

James Bond
Clerk of the Superior Court of Baltimore City.

No 4198 Equity

Trustees of Bondholders,

vs

Chesapeake & Ohio Canal Company & others —

Order settling application down for hearing, and directing notice to defendants

Filed Jany. 18. 1890.

"2 copies a.a. P.G. Baldwin esq
1 " S.T. Walker 205 S. Calvert
1 " The Hughes

~~No. 4198, Equity.~~

Order of Court.

George S. Brown James Sloan Jr. & Lloyd Lowndes Jr. Trustees v The Chesapeake & Ohio Canal Company & others	No. 4198. Equity In the Circuit Court of Washington County, In Equity

January 18th 1890

Ordered by the Court, upon the motion of the Plaintiffs in the above entitled cause, that the application for an injunction & the appointment of a Receiver, made in the Bill of Complaint, be & the same is hereby set for hearing on the 31st day of January, 1890.

Provided a copy of this order be served upon the defendants or their solicitors on or before the 25th day of January instant.

J. H. Alvey.

(Filed Jany 18th 1890.)

Copies of above order served on Defendants

No. 4198 Equity.

Trustees of Bondholders

vs.

Chesapeake and Ohio

Canal Company & others.

Order setting application

down for hearing and

directing notice to defendants

"Copy"

George S. Brown.
James Sloan, Jr. &
Lloyd Lowndes.
Trustees,
vs
The Chesapeake and Ohio
Canal Company. & others.

No. 4198 Equity.
In
the Circuit Court of
Washington County
in Equity.

January. 18th 1890

Ordered by the Court upon the motion of the Plaintiffs in the above entitled Cause, that the application for an Injunction & the Appointment of a Receiver made in the Bill of Complaint be and the same is hereby set for hearing on the 31st day of January. 1890. Provided a Copy of this Order be served upon the Defendants or their Solicitors on or before the 25th day of January instant.

R. H. Alvey.

True Copy.
Test. Geo. B. Oswald Clk

No. 4,198. Eqty

Rect. of Sum.s & Copies. —

Prince Georges Co.

Filed Jany. 21st 1890.

In the Circuit Court for Washington **County,**

Term, 188

No. 4198. Equity

Geo S. Brown et al

vs.

The Ches. & Ohio Canal Co et al

Subpæna to Sheriff of Prince George's County

~~for~~ Copy of order of Court to be served on the Ches. & Ohio Canal Co.

~~to testify for~~

Returnable Jany 25th ~~Monday of~~ 1890

Issued the 20th day of Jany 1890

TEST:

Geo. B. Oswald *Clerk.*

STATE OF MARYLAND---Prince George's County, Sct:

I HEREBY CERTIFY, That process as above described was this day received under cover, from the Clerk of Washington County, and forthwith delivered to the Sheriff of Prince George's county.

In Testimony Whereof, I hereunto subscribe my name and affix the Seal of the Circuit Court for Prince George's county, this 21st day of January A. D. 1890

Jno. W. Belt *Clerk*

of the Circuit Court for Prince George's County.

No 4,198. Eq. Circuit.

In the ~~Supreme~~ Ct.
~~of the Dist. of Columbia~~
~~for Washington County~~
in Equity

Geo. D. Brown, James
Sloan Jr. & Lloyd
Lowndes, Trustees

vs.

The Chesapeake & Ohio
Canal Co., Geo. D.
Brown, et al

Mr. Clerk:

Please file this
affidavit.

S. T. Wallis
Sol. for Complainants

Filed Jany. 27th 1890.

Affidavit of James Sloan, Jr.

GEORGE S.BROWN,JAMES SLOAN JR.	)	No. 4,198.
and LLOYD LOWNDES, TRUSTEES,	)	In the
vs.	)	Circuit
THE CHESAPEAKE AND OHIO CANAL	)	COURT
COMPANY,GEORGE S.BROWN,JOHN S.GITTINGS,ET. AL.,	)	for the
TRUSTEES.	)	Washington County.
	)	

State of Maryland ,
City of Baltimore,to wit:

I hereby certify that on this twenty-seventh day of January,in the year 189o,before the subscriber,a Notary Public of the State of Maryland duly appointed and commissioned in and for the City of Baltimore aforesaid, personally appeared James Sloan Jr.,who being duly sworn according to law,makes oath,deposes and says as follows:That he is one of the Trustees of the Mortgage referred to in said proceedings, from the said Chesapeake and Ohio Canal Company to George S.Brown,Lloyd Lowndes and himself,as Trustees thereunder, of date May 15,1878;that said Mortgage was duly executed and acknowledged by said Chesapeake and Ohio Canal Company,and that the same was recorded in conformity with law,in the District of Columbis and the various Counties in the State of Maryland through which said Canal passed,to wit, Montgomery,Frederick, Washington and Allegany. That the entire amount of the Bonds provided to be issued under said Mortgage,to wit,the sum of Five hundred thousand dollars were duly issued thereunder; and that the same have been sold and the proceeds thereof received by the said Chesapeake and Ohio Canal Company. That

certain of said Bonds, to wit, those amounting to two hundred and sixty thousand dollars are held by the Baltimore and Ohio Railroad Company; and certain others, to wit, those amounting to thirty eight thousand dollars are held by Robert Garrett and Sons of Baltimore City; those amounting to five thousand dollars are held by O.H. Williams; those amounting to eight thousand dollars are held by William F. Lucas; and those amounting to nine thousand five hundred dollars are held by E. Francis Riggs; and that the signatures of said parties holders thereof, unto the request filed in this cause unto this affiant and his co-trustees, George S. Brown and Lloyd Lowndes, to institute the proceedings in this cause, are the genuine signatures of the holders of said Bonds; that default has been made by said Chesapeake and Ohio Canal Company in the payment of three successive coupons maturing on said Bonds, the same having been past due and unpaid prior to the institution of the proceedings in this Honorable Court, and prior to the request from the holders thereof, hereinbefore mentioned, made to this affiant and the said George S. Brown and Lloyd Lowndes his co-Trustees.

James Sloan Jr

Sworn to and subscribed before me at Baltimore City, Maryland this 27th day of January 1890

Murray Hanson
Notary Public

Filed Jany. 27, 1890

No 41 98 Circuit

In the ~~Supreme~~ Ct.

~~of the Dist of Columbia~~

for Washington County

in Equity

Geo. S. Brown, James Sloan Jr. & Lloyd Lowndes, Trustees

vs.

The Chesapeake & Ohio Canal Co. Geo. S. Brown et al.

Mr. Oswald:

Please file this affidavit.

S. T. Walling

for Plaintiffs

Copy

GEORGE S.BROWN,JAMES SLOAN JR.)
and LLOYD LOWNDES, TRUSTEES,) In the
vs.) Circuit ~~SUPREME~~ Court
THE CHESAPEAKE AND OHIO CANAL)
COMPANY,GEORGE S.BROWN,JOHN S.GITTINGS,ET. AL.,) for the ~~COURT~~
TRUSTEES.) Washington County.
)

State of Maryland ,
City of Baltimore,to wit:

I hereby certify that on this 27 day of January,in the year 189o,before the subscriber,a Notary Public of the State of Maryland duly appointed and commissioned in and for the City of Baltimore aforesaid, personally appeared James Sloan Jr.,who being duly sworn according to law,makes oath,deposes and says as follows:That he is one of the Trustees of the Mortgage referred to in said proceedings, from the said Chesapeake and Ohio Canal Company to George S.Brown,Lloyd Lowndes and himself,as Trustees thereunder, of date May 15,1878;that said Mortgage was duly executed and acknowledged by said Chesapeake and Ohio Canal Company,and that the same was recorded in conformity with law,in the District of Columbis and the various Counties in the State of Maryland through which said Canal passed,to wit, Montgomery,Frederick, Washington and Allegany. That the entire amount of the Bonds provided to be issued under said Mortgage,to wit,the sum of Five hundred thousand dollars were duly issued thereunder; and that the same have been sold and the proceeds thereof received by the said Chesapeake and Ohio Canal Company. That

certain of said Bonds,to wit, those amounting to two hundred and sixty thousand dollars are held by the Baltimore and Ohio Railroad Company;and certain others,to wit,those amounting to thirty eight thousand dollars are held by Robert garrett and Sons of Baltimore City;those amounting to five thousand dollars are held by O.H.Williams;those amounting to eight thousand dollars are held by William F.Lucas;and those amounting to nine thousand five hundred dollars are held by E.Francis Riggs;and that the signatures of said parties holders thereof,unto the request filed in this cause unto this affiant and his co-trustees,George S.Brown and Lloyd Lowndes,to institute the proceedings in this cause, are the genuine signatures of the holders of said Bonds;that default has been made by said Chesapeake and Ohio Canal Company in the payment of three successive coupons maturing on said Bonds,the same having been past due and unpaid prior to the institution of the proceedings in this Honorable Court, and prior to the request from the holders thereof,hereinbefore mentioned,made to this affiant and the said George S.Brown and Lloyd Lowndes his co-Trustees.

No. 4198. Equity. 29

Circuit Court for Washington County

In Equity

Charles M. Mathews Etc

vs.

The Ulen Opera House Co.

Petition of Bernard Carter, Executor & Trustee of Ch. Carter to be made a Party Deft.

Mr. Clerk: Please file

B. C.

Filed Jany. 31. 1890.

Petitioner, and he is hereby made a party to said cause, as thereon prays, with leave to file his Answer to the Bill of Complaint hereafter

M. L. Clark

Filed Jany. 31. 1890.

Petition of Bernard Carter, Executor and Trustee,

Charles M. McMahon, et al	In the Circuit Court for Washington County In Equity.
The Chesapeake & Ohio Canal Co. Etc.	

The Petition of Bernard Carter of Baltimore City, Executor of the Last Will and Testament of his father Charles H. Carter, late of Prince Georges County, deceased, and Trustee under the said Will respectfully shows unto Your Honor.

1 — That said Charles H. Carter, was in his life time, and at the time of his death, the owner and holder of Ten thousand ($10.000.) dollars, of the Bonds of the Chesapeake and Ohio Canal Company, commonly called Construction Bonds, issued, under the Act of Assembly of Maryland of 1844, Chapter which said Bonds were purchased by him, soon after their issue.

2 - That said Charles H. Carter died in July 1872, leaving a last will and Testament, duly executed, which was after his death, duly admitted to probate, by the Orphans Court of Prince Georges County, Maryland, and letters

Testamentary thereon were Granted to Your Petitioner, the Executor named in said Will who duly qualified as such, and has not yet passed his Final Account as such Executor.

3- That under the said Will, Your Petitioner was constituted Trustee of all the Estate of the said Testator, for the benefit of the Sisters of Your Petitioner.

4- That ever since the death of the said Testator, the said Bonds together with all the unpaid ~~interest~~ Coupons thereon have remained and still remain in the possession of Your Petitioner as Executor as aforesaid, and as soon as he passes his final account, will pass to him as Trustee under said Will as aforesaid.

5- That for the proper protection of the interests thus committed to his Charge, it is necessary, and proper that he should be made a party Defendant. And he accordingly prays that Your

Honor will pass the requisite Order for this purpose,

And as in duty, etc.,
Bernard Carter
Executor & Trustee under the Will of Charles H. Carter.

State of Maryland,
Washington County, sct.;

Upon this 31st day of January 1890, ~~bef~~ personally appeared in open Court Bernard Carter abovementioned and made oath in due form of law that the matters and things stated in the foregoing Petition are true to the best of his knowledge, information and belief.

Jas. P. Croswell
Clerk

Order of Court

Chas. M. Matthews et al.
vs.
The Ches. and Ohio Canal Co. and others.

In the Circuit Court for Washington Co. In Equity.

Upon the foregoing Petition it is this 31st. day of January 1890, ordered that the said

No. 4198 Equity

12

George P. Brown
James Sloan Jr &
Lloyd Saunders Jr
Trustees

v

The Ches. & Ohio Canal
Co.

=

Answer of the Ches. &
Ohio Canal Co

=

Ptf Clerk

File this answer.

John A. Poe
Thos M. Lanahan
Solrs for C & O. Canal Co

(Copy made for Kirby)

Filed Jany. 31. 1890

Answer of the Ches. and Ohio Canal Co.

George S. Brown,	)	No. 4198.
James Sloane, Jr. &	)	
Lloyd Lowndes Jr.,	)	In the
trustees	)	Circuit
Plaintiffs.	)	Court for
vs:	)	Washington
The Chesapeake & Ohio Canal Co:	)	County
George S. Brown, John S. Gittings,	)	
Frederick M. Colston, Bradley S. Johnson &	)	In Equity.
Charles M. Mathews, trustees	)	
Defendants	)	

To the Honorable, the Judges of said Court.

The answer of the Chesapeake and Ohio Canal Company to the Bill of Complaint of George S. Brown, James Sloane Jr. and Lloyd Lowndes Jr. trustees against it and others in this Honorable Court exhibited respectfully shows -

1 - 5. It admits the several matters and things alleged in the first four paragraphs of the Bill, except that part of the fourth paragraph which avers that the Co-defendants of this respondent are now the sole trustees under the mort--gage referred to therein - As to this allegation it has no knowledge, but if the same be deemed material, it calls for full proof thereof, as the plaintiffs may be advised is com--petent and proper.

5 - 8. It also admits the several matters and things alleged in the fifth, sixth, seventh and eighth paragraphs of the Bill.

9. It admits that the said mortgage of May 15th 1878, was intended and believed to be a first lien upon the pro--perty therein described, but whether the passage of an Act of Assembly of Maryland at the session of 1880 was necessa-

-ry to make said mortgage such first lien, under the terms and provisions of the Constitution of Maryland Article 12, section 3. which provides that no sale or ~~agreement~~ Contract of sale of the State's interest in the Chesapeake and Ohio Canal Company shall ~~be valid unless~~ go into effect until the same shall be ratified by the ~~Act of two Successive Legislatures~~ Ensuing General Assembly, it submits to this Court to determin.

10 - It admits the facts mentioned in the tenth paragraph of the Bill.

11 - It has no reason to doubt the averments of the eleventh paragraph of the Bill, but as it has no knowledge thereof it cannot admit the same but calls for full proof thereof.

12 - It admits that in May and June 1889 another freshet so damaged the Canal of this respondent, that the same and its works have been ever since, and now are, incapable of use as a water way and that it will require the expenditure of a large sum of money to repair and restore it - It also admits that it is insolvent and that it has no cash in hand, and no revenues accruing, and no credit with which it can repair and restore its said Canal so as to enable it to resume business -

But it denies that the appointment of a Receiver is essential for the protection of the plaintiffs in the premises - or that in the present wrecked condition of the Canal and with its business gone - that such an appointment is desirable in view of the obligations of this respondent to the State of Maryland, which holds the large prior liens and claims mentioned in the Bill. -

The appointment of a Receiver is not necessary for the protection of the Canal from deterioration and damage - If ap-

-pointed he can do nothing towards its preservation; for it has no business and has had none since the disastrous freshet in May and June 1889.

This respondent since said freshet, has exhausted in every quarter, every effort to raise money to put the Canal in re--pair for transportation, but without success.

No Receiver can offer any security other or different, greater or better, than this respondent has repeatedly offered in every shape and form in vain.

For the last twelve years this respondent has earnestly struggled to keep itself a living, going concern and has put forth its best efforts to procure business at sufficient rates of toll and transportation to meet its current annual expenses and leave some net revenue for its creditors; but its reports will show, and the fact is, that its current ex--penses have exceeded its earnings during said period of twelve years, by an average of about fifty six thousand dollars per annum, so that now the heavy debt held by the plain--tiffs and the bondholders whom they represent, shows that this respondent has during all this time only kept itself alive by the use of the bonds issued under said Act of 1878, Chapter 58 - and by means of repairs made by workmen and la--borers, still unpaid for, amounting to seventy thousand dollars or thereabouts.

And this respondent prays leave to file herewith as ex--hibits a copy of each of its annual reports since 1879.

And so this respondent says that if this Honorable Court upon the application of the plaintiffs were to appoint a Re--ceiver and were to engage authorize such Receiver to do what this respondent has failed to accomplish, viz: to borrow sufficient money to restore the Canal, and were to authorize

and empower the Receiver for such purpose to issue Receiver's Certificates and were to declare that such Receiver's Certi--ficates would be the first lien upon the revenues of this respondent,prior even to the liens represented by the plain--tiffs as trustees for the bondholders under the Act of 1878, Chapter 58 and prior also to the liens of the State of Mary--land; and even if such Receiver should be able,(which this respondent cannot believe will prove to be the case) to bor--row sufficient money to repair and restore the Canal and put it in condition for transportation,its history for the last twelve years demonstrates that such expenditure would be a needless waste of money to the great prejudice of the State of Maryland and also to the bondholders under the Act of 1878 Chapter 58,if the fact be as alleged in the Bill that the Canal is already inadequate as security for their bonds.

It is clear that the revenues of the Canal even when re--stored and repaired cannot under the most favorable circum--stances be sufficient to meet the current expenses of this respondent and the heavy interest charges to which it is sub--ject and of the principal and interest on such Receiver's Cirtificates and hence the appointment of a Receiver would be both useless and injurious -

This respondent is forced to admit that under no condi--tions at all likely to arise,can it obtain towage enough to enable it to compete with the Baltimore and Ohio Rail Road Company in such a way as to pay its ordinary current expenses and it submits that it is its duty to its mortgagees and es--pecially to the State of Maryland to earnestly resist the appointment of a Receiver and the scheme of issuing Receivers Certificates and of disposing of the same at the heavy dis--count at which alone,if at all,can they be used as a means

or raising money for the purpose of restoring and repairing the Canal, in view of the melancholy fact now thoroughly es--tablished by the experience of many years, that even if re--paired it cannot procure business enough to enable it to live.

This respondent respectfully shows further that the plain tiffs do not even suggest to the Court that if a Receiver should be appointed, he can obtain in any way the necessary funds to repair the Canal and put it in condition for busi--ness or that when so repaired, it can obtain a remunerative traffic.

Further answering, this respondent shows that the Canal and its works in their present condition are an ample secu--rity for the payment of the bonds and coupons thereon, is-sued under said Act of 1878, Chapter 58 - that the said pro-perty if exposed to sale, will undoubtedly bring a price suf--ficient to extinguish and satisfy the principal and interest of said Bonds - that the appointment of a Receiver as pray--ed, is not demanded to preserve the said Canal from deterior-ation - that there is no danger of any ~~dimunition~~ diminution in value of said Canal and its works until such time as a sale under decree of this Court can be had and that the Company is not now receiving any revenues whatever; its business having been wholly suspended by the freshets of May and June 1889.

As to the prayer for a sale of the Canal and its works, described in said mortgage, this respondent submits the same to the Court upon the proper construction of the provision of the Constitution of Maryland herein before referred to -

And prays to be hence dismissed.

Stephen Gambrill
Pres't C & O Canal Co

John A. Poe
Thos M. Donahan
Solrs for Ches & Ohio Canal Co.

State of Maryland

Anne Arundel County Town.

I hereby certify that on this 30th day of January, 1890, before me the subscriber, a Justice of the Peace of the State of Maryland, in and for said County, personally appeared Stephen Gambrill, President of the Chesapeake and Ohio Canal Company, and on his behalf make oath in due form of law, that the matters and things set forth in the foregoing answer, are true to the best of his knowledge and belief.

W. H. G. Gassaway J.P.

State of Maryland,

Anne Arundel County, Sct:

I HEREBY CERTIFY, That Wm. H. Gassaway, Esquire, before whom the annexed ~~acknowledgment and~~ affidavit was made, and who has thereto subscribed his name, was, at the time of so doing, a Justice of the Peace of the State of Maryland, in and for the County of Anne Arundel, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments. I further certify, that I am acquainted with the handwriting of the said Justice and verily believe the signature to be his genuine signature.

IN TESTIMONY WHEREOF, I have herewith subscribed my name and affixed the seal of the County of Anne Arundel, at Annapolis, this 30th day of January, A. D. 1890.

Philip Harwood
Clerk of the Circuit Court for Anne Arundel County.

Filed Jany. 31. 1890.

No. 4198 Equity. 21

Answer of
Charles M. Matthews
to Bill of Complaint
under Mortgage
of 1848.

Filed July 21st 1890

Answer of Charles M. Mathews and others, Trustees,

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY.

George S. Brown,	)
Lloyd Lowndes, Jr., and	)
James ~~Shaw~~ Sloan, Jr., Trustees,	)
against	)
The Chesapeake & Ohio Canal	)
Company and others.	)

The Answer of Charles M. Mathews, John S. Gittings, Frederick M. Colston, Bradley S. Johnson and George S. Brown, Trustees under the Mortgage executed by the Chesapeake and Ohio Canal Company to Phineas Janney and others on the 8th day of June, 1848, as Trustees, to which Trustees these respondents are the duly appointed and legally constituted successors, respectfully shows:

1st. That they admit the matters and things charged in the Bill of Complainants, except their claim that the Mortgage of 1878, creates a valid lien on the property, franchises and rights of the Chesapeake and Ohio Canal Company, which claim they deny and contest.

2nd. They agree to unite in the prayers of the Bill to appoint Receivers of the property, rights and franchises of the Chesapeake and Ohio Canal Company, and they show that the bonds and debt represented by the Complainants amount to $590,000 while the bonds and debt represented by these defendants consist of $1,699,500 of bonds with interest from January 1st, 1865 secured by a first lien on the ~~title~~ Tolls and revenues of the Canal Company. annuity made to $4,250,000

That the security of these bonds and their ultimate payment depends entirely upon the Canal being operated so as to yield net revenue to pay off first the entire debt of complainants cestui que trust and then to pay off the debt of these respondents' cestui que trust.

That your respondents therefore are ~~totally~~ vitally interested in the proper administration of the Canal. The debt represented by them is more than seven times as great as that represented by ~~Respondents~~ Complainants. They therefore ask that two of these Trustee John S. Gittings and Bradley S. Johnson be appointed ~~Trustees~~ Receivers and if your Honor is unwilling to appoint two, but to appoint one, that you will appoint John S. Gittings, Esq., and if not him, then that you will appoint Bradley S. Johnson, Esq., and as &c.,

Johnson & Johnson
Keedy & Lane
Solicitors for Respondents.

Filed Jany. 31. 1890

18 No. 4198. Equity

George S. Brown
James Sloan Jr
&c &c
vs
The Chesapeake & Ohio
Canal Company
&c &c

Petition of State
of Maryland to be
made party deft.

Order Jan 1890.

Filed Jany. 31. 1890

Petition of the State of Maryland

George S. Brown,	)	
James W. Sloan, Jr.,	)	In the
Lloyd Lowndes, Jr.	)	Circuit Court
and others, Plaintiffs	)	for
vs.	)	Washington County.
The Chesapeake and Ohio Canal	)	January, 1890.
Company, and others. Defts.	)	

------oOo------

To The Honorable,

The Judges of the Circuit Court

for Washington County, sitting in Equity.

The Petition of the State of Maryland, by William Pinkney Whyte, its Attorney General, respectfully shows :

That by a joint resolution, passed by the General Assembly of Maryland, on the 30th day of January, 1890, the Attorney General of this State was authorized and directed to cause the State of Maryland, by proper proceedings, to be made a party defendant in certain causes therein named, and on behalf of this State, to appear and defend the interests of the State, and to have the State made a party to such causes in relation to the Chesapeake and Ohio Canal Company, as will appear by an authenticated copy of the said joint resolution herewith filed as part of this petition marked, "State of Maryland, No. 1."

In accordance with the provisions of the said joint resolution, the said State, by its Attorney General, hereby prays to be made a party defendant to the above entitled suit, and that it may appear, by its said Attorney General in this Court, in said cause, to answer the Bill filed therein and

defend the same.

The State of Maryland
by Wm Pinkney Whyte
its Attorney General.

Order of Court

In the Circuit Court ~~of~~ for Washington County, January, 1890.

Upon the foregoing Petition, it is hereby ordered, that the State of Maryland be and is hereby made a defendant in the said cause, and is hereby authorized to appear therein, to answer and defend the same, according to the provisions of the joint resolution in said Petition mentioned.

Dated this 31st day of Jany 1890.

N. B. Alvey.

(Filed Jany. 31. 1890)

No. 4198. Equity.

19

George S. Brown
James Sloan Jr &
Lloyd Lowndes Jr
Trustees

v

The Chesapeake &
Ohio Canal Company
&c &c

Answer of State of
Maryland

Mr. Clerk
Please file this &c
Wm. Pinkney Whyte
Attorney Genl.

Filed Jany. 31. 1890

(Copy under for Reply)

Answer of the State of Maryland

George S. Brown,	)	
James Sloan, Jr., and	)	In the
Lloyd Lowndes, Jr.,	)	Circuit Court
Trustees,	)	
Plaintiffs,	)	for
versus	)	Washington County.
The Chesapeake and Ohio Canal	)	Sitting in Equity.
Company and others, defendants.	)	

-----0000-----

To The Honorable,

The Judges of the Circuit Court

for Washington County, sitting in Equity.

The answer of the State of Maryland, defendant in the above cause to the Bill of Complaint of the said George S. Brown and others, exhibited against it and others therein.

This Defendant appearing in the said cause, by its Attorney General, according to the authority and direction of the joint resolution of the General Assembly of the State of Maryland, passed on the 30th day of January, 1890, which joint resolution is herewith filed, in this cause, answering the said bill of complaint says :

1 - 5. It admits the several matters and things alleged in the first four paragraphs of the Bill, except that part of the fourth paragraph which avers that the Co-defendants of this respondent are now the sole trustees under the mortgage referred to therein - As to this allegation it has no knowledge, but if the same be deemed material, it calls for full

proof thereof, as the plaintiffs may be advised in competent and proper.

5 - 8. It also admits the several matters and things alleged in the fifth, sixth, seventh and eighth paragraphs of the Bill.

9. It admits that the said mortgage of May 15th, 1878, was intended and believed to be a first lien upon the property therein described, but whether the passage of an Act of Assembly of Maryland at the session of 1880 was necessary to make said mortgate such first lien, under the terms and provisions of the Constitution of Maryland, Article 12, Section 3, which provides 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, it submits to this Court to determine.

10 - It admits the facts mentioned in the tenth paragraph of the Bill.

11 - It has no reason to doubt the averments of the eleventh paragraph of the Bill, but as it has no knowledge thereof it cannot admit the same but calls for full proof thereof.

12 - It admits that in May and June, 1889, another freshet so damaged the Canal, that the same and its works have been ever since, and now are, incapable of use as a water way and that it will require the expenditure of a large sum of money to repair and restore it - It also admits upon information that the Canal Company is insolvent and that it has no cash in hand, and no revenues accruing, and no credit with

which it can repair and restore its said Canal so as to anable it to resume business -

But it denies that the appointment of a receiver is essential for the protection of the plaintiffs in the premises - or that in the present wrecked condition of the Canal and with its business gone - that such an appointment is desirable in view of the obligations of the Canal Company to the State of Maryland, which holds the large prior liens and claims mentioned in the Bill -

The appointment of a receiver is not necessary for the protection of the Canal from deterioration and damage- If appointed he can do nothing towards its preservation; for, as the State is informed, the Canal Company has no business and has had none since the disastrous freshet in May and June, 1889.

And for further reasons, why a receiver to take charge of the Canal should not be appointed, this respondent refers to the answer of the Canal Company.

This respondent respectfully shows, further, that the plaintiffs do not even suggest to the Court, that if a Receiver should be appointed, he can obtain, in any way, the necessary funds to repair the Canal and put it in condition for business, or that when so repaired, it can obtain a remunerative traffic.

Further answering, this respondent shows, that the Canal and its works in their present condition are an ample security for the payment of the bonds and coupons thereon, issued under said Act of 1878, Chapter 58:- if a lien thereon that the said property if exposed to sale, will undoubtedly bring a price sufficient

to extinguish and satisfy the principal and interest of said Bonds - that the appointment of a Receiver as prayed, is not demanded to preserve the said Canal from deterioration - that there is no danger of any diminution in value of said Canal and its works until such time as a sale under the decree of this Court can be had and that the Company is not now receiving any revenue whatever; its business having been wholly suspended by the freshets of May and June, 1889.

As to the prayer for a sale of the Canal and its works, described in said mortgage, this respondent submits the same to the Court upon the proper construction of the provision of the Constitution of Maryland herein before referred to -

And it prays to be hence dismissed. &c

(Paragraph added by leave of Court)

The State, now by its Attorney General, prays the Court to pass a Decree in this Case for the sale of the Canal, and all the franchises & property of the Canal Company, as described in the 3 Mortgages from the Chesapeake & Ohio Canal Company to the State of Maryland: the first, bearing date on the 23rd day of April 1835: the second, dated the 15th day of May 1839: and the third, dated the 8th day of January 1846.

(Filed Jany. 31, 1890)

to extinguish and satisfy the principal and interest of said Bonds - that the appointment of a Receiver as prayed, is not demanded to preserve the said Canal from deterioration - that there is no danger of any diminution in value of said Canal and its works until such time as a sale under the decree of this Court can be had and that the Company is not now receiving any revenue whatever; its business having been wholly suspended by the freshets of May and June, 1889.

As to the prayer for a sale of the Canal and its works, described in said mortgage, this respondent submits the same to the Court upon the proper construction of the provision of the Constitution of Maryland herein before referred to -

And it prays to be hence dismissed &c

The State of Maryland
by Wm Pinkney Whyte
its Attorney General.

STATE OF MARYLAND, WASHINGTON COUNTY, Sct :

I hereby certify, That, before me the subscriber, a Justice of the Peace of the State of Maryland, in and for Washington County, personally appeared William Pinkney Whyte, Attorney General of the State of Maryland, and made oath in due form of law, that the matters and things stated in the foregoing answer are true to the best of his knowledge, information and belief.

Dated this 31st day of January 1890.

J. A. Cuzzens J.P.

(Filed Jany. 31. 1890)

No. 4,298. Equity

Circuit Court for Washington County

25

George S. Brown, et al.
Trustees,

vs

Chesapeake and Ohio
Canal Company, et al.

Petition of John A. Hambleton & Co, and Order of Court thereon.

Mr. Clerk:
Please file
Bernard Carter
Solr for Petitioners.

Filed Jany. 3 1890

Petition of John A. Hambleton & Co.

George S.Brown, and others; "

Trustees; "

vs. "

The Chesapeake and Ohio Canal Company, "

and others "

In the Circuit Court for Washington County In Equity

To the Honorable the Judge;

The Petition of John A.Hambleto, T.Edward Hambleton, Frank S.Hambleton and John M.Nelson, Co-Partners, doing business in the City of Baltimore in the State of Maryland, under the name and style of John A.Hambleton and Company and Citizens of the State of Maryland, respectfully represents unto your Honor

1. That they are the bona-fide Owners and Holders of Twenty Four Thousand Dollars of the Bonds of the Defendant, the Chesapeake and Ohio Canal Company secured by the Mortgage of the Fifteenth day of May 1878, mentioned in the Bill of Complaint in this case, which they purchased for full value, anterior to the institution of this suit.

2. As appears by the Bill in this case , it has been filed and the relief therin asked for, because of the request of certain of The said Bond Holders , claiming to own a Majority of the said Mortgage Bonds; and your Petitioners believe, that the best interests of the holders of the said Mortgage Bonds will be sacrificed, instead of being protected by the line of action contemplated to be taken by the said Trustees, at the instance and dictation of, said Majority Bond Holders; and they therefore aver that for the proper protection of the interests of your Petitioners, as owners of said Bonds, it is necessary that they should be made Parties Defendant to this cause, and they desire, and are entitled, to be made such

Parties; and they accordingly pray that your Honor will pass the requisite Order for this purpose; and they herewith tender their Answer to said Bill of Complaint, which they pray they may , by said Order, be allowed to file.

And as in duty, etc.,

Bernard Carter

Solicitor for Petitioners

State of Maryland, Baltimore City, set.;

I hereby certify that on this 29th day of January 1890, before the Subscriber, a Justice of the Peace of the State of Maryland, in and for Baltimore City aforesaid personally

State of Maryland, Baltimore City, Sct:

I HEREBY CERTIFY, That Henry M. Fitzhugh *Esquire, before whom the annexed* ~~acknowledgment~~ *and affidavit* was *made, and who has thereto subscribed his name, was, at the time of so doing, a Justice of the Peace of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments. I further certify that I am acquainted with the hand writing of the said Justice and verily believe the signature to be his genuine signature.*

IN TESTIMONY WHEREOF, *I hereto set my hand and affix the seal of the Superior Court of Baltimore City, this* 30th *day of* January *A. D.* 1890.

Jas Bond

Clerk of the Superior Court of Baltimore City.

The Chesapeake and Ohio Canal Company, et al.)

In Equity.

Upon the foregoing Petition, it is this 31st day of January 1890, Ordered that the said Petitioners be, and they are hereby , made Parties to said cause, as therein prayed, with leave to file their Answer to the Bill of Complaint forthwith.

A. H. Alvey

(Filed Jany 31. 1890)

Parties; and they accordingly pray that your Honor will pass the requisite Order for this purpose; and they herewith tender their Answer to said Bill of Complaint, which they pray they may , by said Order, be allowed to file.

And as in duty, etc.,

Bernard Carter

Solicitor for Petitioners

State of Maryland, Baltimore City, set.;

I hereby certify that on this 29th day of January 1890, before the Subscriber, a Justice of the Peace of the State of Maryland, in and for Baltimore City aforesaid personally appeared, J. Edward Hambleton and made oath in due form of law that the matters and things in the aforegoing Petition contained are true to the best of his knowledge, information and belief.

Henry M. Fitzhugh J.P.

George S. Brown, and others, Trustees,	In The Circuit Court for Washington County.
vs.	
The Chesapeake and Ohio Canal Company, et al.	In Equity.

Upon the foregoing Petition, it is this 31st day of January 1890, Ordered that the said Petitioners be, and they are hereby , made Parties to said cause, as therein prayed, with leave to file their Answer to the Bill of Complaint forthwith.

A. H. Alex

(Filed Jany 31. 1890)

No. 4195. Equity

Circuit Court for Washington County — In Equity

George V. Brown, et al.,
Trustees,

vs. 26

Chesapeake & Ohio
Canal Company et al.

Answer of John A.
Hambleton & Company

Mr. Clerk,
Please file.
Berman Carter
Sol. for Defts.
above named.

Filed Jany. 31. 1890.

Answer of John A. Hambleton & Co.

Geoge S. Brown, et al., trustees,	In The
vs.	Circuit Court for Washington County
The Chesapeake and Ohio Canal Company, et al.;	In Equity

To the Honorable, the Judge;

The Answer of John A. Hambleton, and T. Edward Hamb-leton, Frank S. Hambleton and John M. Nelson, Citizens of the State of Maryland, and residents of the City of Baltimore and Co-partners doing business in said City under the name and style of John A. Hambleton and Company, to the Bill of Complaint in the above entitled cause.

1----The respondents admit the allegations, as set forth, in Paragraphs one to ten, both inclusive, of the said Bill of Complaint to be true.

2----The Respondents answering the eleventh Paragraph of said Bill say that they have no knowledge of the matters therein set-forth, and neither admit or deny the allegations therein to be true and call on the Plaintiffs to make proper proof of the same.

3----Answering the twelfth Paragraph of the said Bill the Respondents admit the occurrence in 1879 of the freshet therein men-tioned and that the effect thereof has been to render the canal incapable of use as a water way in its present condition, and that it would ~~xxxxxx~~ require very large expenditures of money to repair said canal so as to allow its use as a water-way for the transpor-tation of boats; and they also admit the insolvency of of the said Canal Company, but these Respondents deny that in its pres-

-ent condition the property and franchises of said Canal Company embraced in the said Deed of Mortgage of May 15th., 1878, are an inadequate Security for the ~~interest~~ Principal and unpaid interest of said Mortgage Bonds; and on the contrary they say that the said Canal if sold in its present condition, without the expenditure of any money upon it, will realize much more than the Principal and unpaid interest on said Bonds; and they deny that so far from its being essential to the protection of the interest of the Holders of the said Bonds that a Receiver or Receivers should be appointed to re--pair the said Canal and its works, or to maintain or operate the same, that such a course is not for the best interests of the Hol--ders of said Bonds; but that the true interests of the Holders of said Bonds require that the said Canal with its rights and franchi-ses should be sold, without the expenditure of any more money there--on for repairs or restoration, and that a Decree should be forth--with passed by this Court for a sale by Trustees appointed for that purpose; and they insist upon their right that such Decree shall be passed; and they deny that any such further material deterioration will take place in the said Canal in the interval between the present time, and the time at which said sale should take place, as would justify the expenditure of any money therean; and for a further setting forth of the past history and present condition and prospects of the said Canal, these Respondents refer to the Answer of the said Canal Company already filed in this case.

And as in duty, etc.

Herman Cole

H. M. Respass

State of Maryland, Baltimore City, Sct.:

I hereby certify that on this 29' day of January 1890, before the subscriber, a Justice of the Peace of the State of Mary-land, in and for Baltimore City, aforesaid, personally appeared J. Lallard Hambleton

and made oath in due form of law that the matters and things in the aforegoing Answer contained are true to the best of his knowledge information and belief.

Henry M. Fitzhugh JP

State of Maryland, Baltimore City, Sct:

I HEREBY CERTIFY, That Henry M Fitzhugh *Esquire, before whom the annexed* ~~acknowledgment~~ *and affidavit* was *made, and who has thereto subscribed his name, was, at the time of so doing, a Justice of the Peace of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments. I further certify that I am acquainted with the hand writing of the said Justice and verily believe the signature to be his genuine signature.*

IN TESTIMONY WHEREOF, *I hereto set my hand and affix the seal of the Superior Court of Baltimore City, this* 30' *day of* January *A. D.* 1890.

Jas Bond

Clerk of the Superior Court of Baltimore City.

Filed Jany. 31. 1890

No. 4198. Equity

Circuit Court for Washington County, In Equity

27

George S. Brown, et al.,
Trustees,

vs

Chesapeake & Ohio Canal Company, et al.,

Petition of H. G. Davis & Bro. and the Davis National Bank of Piedmont & Order of Court thereon.

Mr. Clerk:
Please file

Solr for Petitioners

Filed Janry. 31. 1890.

Petition of Henry G. Davis and Thomas B. Davis and the Davis National Bank of Piedmont,

George S. Brown, and others, Trustees;	)	In THE
vs.	)	
The Chesapeake and Ohio Canal Company, and others,	)	Circuit Court for Wash-ington County, In Equity.

To the Honorable the judge:

The Petition of Henry G. Davis, and Thomas B.Davis, citi-zens of the State of West Virginia, co-partners doing business un-der the name of H. G. Davis and Brother ; and of the Davis Nation-al Bank of Piedmont, a corporation duly incorporated, respectfully shows unto your Honor.

1----That your Petitioners, Henry G. Davis and Brother, are the bona-fide owners and holders of fifty two thousand, five hundred dollars, and your Petitioner the Davis National Bank of Piedmont is the bona-fide owner and holder of Ten thousand dollars, of the Bonds of the Defendant, the Chesapeake and Ohio Canal Company, se-cured by the Mortgage of 1878, mentioned in the Bill of Complaint in this case, which they purchased for full value, anterior to the institution of this suit.

2----That as appears by the Bill in this case, it has been filed and the relief thereon asked for, because of the request of certain of said Bonds Holders, claiming to own a majority of said Mortgage Bonds; and your Petitioners believe that the best interests of the holders of the said Mortgage Bonds will be sacrificed in-stead of being protected, by the line of action contemplated to be taken by the said Trustees, at the instance and dictation of the

said Majority Bond-Holders; and they therefore aver that for the proper protection of the interests of your Petitioners as owners of the said Bonds it is necessary that they should be made parties Defendant to this cause, and they desire and are entitled to be m made such parties; and they accordingly pray that your Honor will pass the requisite Order for this purpose; and they herewith ten--der their Answer to said Bill of Complaint, which they pray they may by said Order be allowed to file.

And as in duty, etc.;

Berman Butler
Solicitor for Petitioners

District of Columbia, Sct.;

I hereby certify that on this Twenty ninth day of January 1890, before the subscriber, a Notary Public, duly Commissioned and qualified, and residing in the City of Washington, in the District of Columbia aforesaid, personally appeared Henry G. Davis, as well as a member of the firm of H. G. Davis & Bro. above mentioned, and also as the President of the Davis National Bank of Piedmont above-mentioned, and made oath in due form of law, that the matters and things in the aforegoing Petition contained are true to the best of his knowledge information and belief.

B. Lewis Blackford
Notary Public

Sworn to and subscribed before me this 29th day of Jany 1890
B. Lewis Blackford
Notary Public

H. G. Davis

Order of Court

George S. Brown, et al., Trustees;	)	In the
	)	
vs.	)	Circuit Court for
	)	
The Chesapeake and Ohio Canal Company, et al.	)	Washington County.
		In Equity.

Upon the aforegoing Petition it is this 31st day of January 1890, Ordered that the said Petitioners be, amd they are hereby, made parties to said cause, as therein prayed, with leave to file their Answer to the Bill of Complaint forthwith.

A. H. Alvey

(Filed Jany. 31. 1890)

No. 4,198. E.

Circuit Court for Washington County – In Equity

28

George J. Brown, et al.
Trustees,

vs

Chesapeake & Ohio Canal Company et al.

Answer of H. G. Davis & Bro. and the Davis National Bank of Piedmont.

Mr. Clerk:
Please file
B. & C.
Solrs for Respnts

Filed Jany. 31. 1890.

George S. Brown, and others, Trustees,	)	In The
vs.	)	Circuit Court for Washington County.
Chesapeake and Ohio Canal Company, and others;	)	In Equity.

To the Honorable, the judge;

The Answer of Henry G. Davis, and Thomas B. Davis, citizens of the State of West Virginia, and co-partners in business under the name of H.G.Davis & Brother, and the Davis National Bank of Piedmont, a corporation duly incorporated to the Bill of Complaint in the above entitled cause.

1---The Respondents admit the allegations, as set forth, in Paragraphs One to Ten, both inclusive, of the said Bill of Complaint to be true.

2---The Respondents answering the Eleventh Paragraph of said Bill say that they have no knowledge of the matters therein set forth and neither admit or deny the allegations therein to be true and call on the Plaintiffs to make proper proof of the same.

3---The Respondents answering the Twelfth Paragraph of the said Bill admit the occurrence in 1879 of the freshet therein mentioned and that the effect thereof has been to render the canal incapable of use as a water way in its present condition, and that it would require very large expenditures of money to repair said Canal so as to allow its use as a water-way for the transportation of boats; and they also admit the insolvency of the said Canal Company, but these Respondents deny that in its present condition the property and franchises of said Canal Company embraced in the

said Deed of Mortgage of May 15th., 1878, are an inadequate security for the ~~[illegible]~~ principal and unpaid interest of said Mortgage Bonds; and on the contrary they say that the said Canal if sold in its present condition, without the expenditure of any money upon it, will realize much more than the Principal and interest unpaid on said Bonds; and they deny that so far from its being essential to the protection of the interest of the holders of the said Bonds that a Receiver or Receivers should be appointed to repair the said Canal and its works, or to maintain or operate the same, that such a course is not for the best interests of the holders of said Bonds; but that the true interests of the holders of said Bonds require that the said Canal with its rights and franchises should be sold, without the expendi--ture of any more money thereon for repairs or restoration, and that a Decree should be forthwith passed by this Court for a sale by Trustees appointed for that purpose; and they insist upon their right that such Decree shall be passed; and they deny that any such further material deterioration will take place in the said Canal in the interval between the present time, and the time at which said sale should take place, as would justify the expenditure of any money thereon; and for a further setting forth of the past history and present condition and prospects of the said Canal, these respondents refer to the Answer of the said Canal Company already filed in this case.

And as in duty, etc.;

Benar Cater

Solicitor for Respondents.

LEWIS BLACKFORD LIBRARY PUBLIC BRITISH COLUMBIA

District of Columbia, Sct.;

I hereby Certify that on this 29th day of January 1890, before the subscriber, a Notary Public, duly commissioned and qualified, and residing in the City of Washington, in the District of Columbia aforesaid, personally appeared Henry G. Davis as well as a member of the firm of H. G. Davis & Bro. above mentioned, and also as President of the Davis National Bank of Piedmont abovementioned, and made oath in due form of law, that the matters and things in the aforegoing Answer contained are true to the best of his knowledge, information and belief.

Witness, my hand & notarial seal this 29th day of Jany 1890

B. Lewis Blackford
Notary Public

B. LEWIS BLACKFORD, NOTARY PUBLIC DISTRICT OF COLUMBIA

H G Davis

Subscribed & sworn to before me this 29th Jany 1890
B. Lewis Blackford

B. LEWIS BLACKFORD, NOTARY PUBLIC DISTRICT OF COLUMBIA

Filed Jany. 31. 1890

No. 4198. Equity

30

George S. Brown et al

vs

The Chesapeake and Ohio Canal Company.

Mr. Oswald, Clerk.
Please file
& present to Court for order.
Thos. Hughes

Filed Jany. 31st 1890

Petition of Anna M. Hughes and Thomas Hughes, Trustees,

George S. Brown etc et al
vs
The Chesapeake and Ohio Canal Company.

In the Circuit Court of Washington County. In Equity.

To the Honorable the Judge of the Circuit Court of Washington County.

The Petition of Anna M. Hughes and Thomas Hughes, Trustees respectfully shows unto your Honor that they hold as Trustees a thousand dollars in Bonds of the Chesapeake and Ohio Canal Company issued in pursuance of the act of the General Assembly of Maryland of the year 1878, Chapter 58. That your Petitioners made demand upon the Trustees under that act and upon the holder of the majority of the Bonds aforesaid to exercise the power set forth in that act for effecting a sale of the said Canal its property rights and franchises, and that in said demand your Petitioners asked for a response thereto within a reasonable time, namely five days after the date of their demand, and that although this time expired they heard nothing from two of said Trustees, your Petitioners however show that proceedings have been taken by said Trustees apparently for the purpose of accomplishing said sale and for the appointment of a Receiver. Your Petitioners show that if a Receiver is appointed to engage in conducting the operations of said Canal such Receiver for the purpose of, putting the canal in condition to be operated and in conducting the same will incur obligations under the authority of the Court which will ultimately result in impairing if not entirely destroying the rights of your Petitioners arising under their said Bonds, which at the present time are amply secured by the said Canal in its present condition. Your Petitioners are further informed and therefore charge and aver that the holder of the majority of the said Bonds namely the Baltimore and Ohio Rail-

road Company by reason of its other interests are desiring in reality to further only the appointment of a Receiver to operate said Canal, and your Petitioners further show that one of said Trustees is one of the original Plaintiffs to the Bill of Complaint heretofore filed in this Court and now pending for the appointment of a Receiver and that another of said Trustees is a director of the said Baltimore and Ohio Railroad Company, and your Petitioners therefore show that it is absolutely necessary for their interests that they be made parties defendant to this cause and allowed to answer said Bill of Complaint and be heard in reference thereto.

Wherefore they pray that they may be made parties Defendant in this cause with leave to answer said Bill and take such other proceedings as they may be advised as necessary to protect their rights in the premises.

And as in duty bound etc.

Anna M Hughes
Stephen Hughes

State of Maryland, Baltimore City. to wit:-

I hereby certify that on this Thirtieth day of January in the year eighteen hundred and ninety before the subscriber a Justice of the Peace of the State of Maryland in and for Baltimore City

State of Maryland, Baltimore City, Sct:

I HEREBY CERTIFY, That S. Magruder Tubman *Esquire, before whom the annexed* ~~*acknowledgment*~~ *and affidavit* were *made, and who has thereto subscribed his name, was, at the time of so doing, a Justice of the Peace of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments. I further certify that I am acquainted with the hand writing of the said Justice and verily believe the signature to be his genuine signature.*

IN TESTIMONY WHEREOF, *I hereto set my hand and affix the seal of the Superior Court of Baltimore City, this* 30th *day of* January *A. D.* 1890.

Jas Bond

THE SUPERIOR COURT OF BALTIMORE CITY

road Company by reason of its other interests are desiring in reality to further only the appointment of a Receiver to operate said Canal, and your Petitioners further show that one of said Trustees is one of the original Plaintiffs to the Bill of Complaint heretofore filed in this Court and now pending for the appointment of a Receiver and that another of said Trustees is a director of the said Baltimore and Ohio Railroad Company, and your Petitioners therefore show that it is absolutely necessary for their interests that they be made parties defendant to this cause and allowed to answer said Bill of Complaint and be heard in reference thereto.

Wherefore they pray that they may be made parties Defendant in this cause with leave to answer said Bill and take such other proceedings as they may be advised as necessary to protect their rights in the premises.

And as in duty bound etc.

Anna M Hughes
Thos Hughes Trustees

State of Maryland, Baltimore City. to wit:-

I hereby certify that on this Thirtieth day of January in the year eighteen hundred and ninety before the subscriber a Justice of the Peace of the State of Maryland in and for Baltimore City aforesaid personally appeared Anna M. Hughes and Thomas Hughes, Trustees and made oath in due form of law that the matters and facts set forth in the aforegoing Petition are true.

S. Magruder Tubman J.P.

Order of Court.

It is ordered by the Circuit Court of Washington County this 31st day of January, in the year eighteen hundred and ninety, that Anna M. Hughes and Thomas Hughes, Trustees be and they are hereby made parties defendant to this cause with leave to answer the Bill of Complaint herein and to take such other proceedings as they may be advised as proper for their protection.

W. H. Alves

Filed Jany. 31. 1890

No. 4,198. Equity 20

George S. Brown
James Sloan Jr &
Alexa Lawrence Jr
trustees

v

Ches. & Ohio Canal
Co et al

=

Affidavit of
Stephen Gambrill.

=

Mr Clerk
File it
John H. Poe
for C & O. Canal Co

Filed February 1st 1890.

Affidavit of Stephen Gambrill

George S. Brown
James Sloan Jr &
Lloyd Lowndes Jr
Trustees
vs
The Chesapeake &
Ohio Canal Co
et al

State of Maryland
Washington County } set:

Hereby certify that on this first day of January 1890 before the Subscriber a Justice of the Peace of said State in and for said County personally appeared Stephen Gambrill and made oath in due form of law that he is President of the Chesapeake & Ohio Canal Co, that all the moneys received by the Canal Company for wharfage are only received when said Canal Co is in operation and transporting Coal; and that therefore the said Company has not received any money from any source

since the destruction of the Canal on June 1889; that the only water rents paid since the said destruction of the Canal are paid by the millers using water on the Georgetown level and that immediately after the freshets of 1889 all the water rents paid by them were set off and applied to the restoration of that part out of which they issue for about three years from 1889; that with the exception of the rent paid by the Washington Gas Light Co all the rents paid for the use of lands are paid for property for stone and other business purposes 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 in May & June 1889, nor are any be again paid while the Canal is in its present condition

that in July 1890. there will be due by the Washington City Gas Light Company ~~there~~ sum of eleven hundred dollars of rent and that with the exception of this rental there are no sums whatever that are collectable or that will come or can come into the hands of the Company.

Stephen Gambrill
Pres't C & O Canal Co

Subscribed and sworn to before me this 1st day of February 1890

Thos. Duggan N.P.

(Filed Feby. 1. 1890.)

No. 4191. Equity and
No. 4198. Equity.

Geo. S. Brown et al.
Trustees

vs.

The Ches. and Ohio
Canal Company

Jas. Sloan Jr. et al.
Trustees

vs.

The Ches. and Ohio
Canal Company et al.

Opinion of Court

(Opinion made for Ref.)

Filed February 22, 1887

Opinion of Court.

Geo. S. Brown, et al. Trustees, vs. The Chesapeake and Ohio Canal Company,	No. 4,191. 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 1844, ch. 287, to secure the bonds authorised to be issued by that act, now amounting, with the arrearage of interest, to about the sum of $4,260,000; and the second bill is filed by the trustees to whom the mortgage authorised by the act of 1878, ch. 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 about $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 over due interest and meeting 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 intents 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 1898; 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 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 interest

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 the 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 by 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 juridical point of view. Some of these questions, while it may become necessary to decide them in the further progress of the litigation, it will not be necessary for me to decide them 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 of the provisions of the acts of 1844 and 1878, and the mortgages 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, or 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 defeated or subordinate lien holder, 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.

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 duration 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.

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 embarrassments of the Company that this State, by large subscriptions to the stock, and the loans 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 affected by the act of 1844, Ch. 281, passed on the 10th of March, 1845. By the first section of that act, the Company was authorised 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 to the payment of the same, and the interest to accrue thereon, 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 authorised 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 a sinking fund to pay the principal of the bonds. And it was further provided that the Canal Company should be authorised 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 guarantor 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.

It is too plain for question, that the provisions of the act that I have quoted constituted a solemn tri-partite 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 completed 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 debt that were dependent alone upon the revenue for satisfaction. If therefore it can be shewn that it is reasonably feasible to restore the canal to navigable condition, and to make it earn revenue that will be applicable 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 at reasonable cost, can be made available to pay both classes of bond-holders, 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 con-troverted by any one, and especially should it not be by the Canal Company.

But it is insisted, both by the Canal Company and the State, that the trustees representing the bond-holders 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 revenue 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 ~~operate~~ 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 default 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 they 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 trustee, 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 trustee 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.

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 lien, and the giving authority to issue preferred bonds, to the extent of $500,000. These bonds are known as Repair Bonds, issued under the act of 1878, ch. 58, and are secured by mortgage of the tolls and revenues, 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, ch. 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 authorised 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, waterrights and franchises of the Company, to secure 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 authorised for the payment of the said bonds and coupons may be full, ample and effectual."

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 authorised by the act. The 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 authorised 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. 32 Md. 501. That being so, it is difficult to perceive upon what principles 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 its property and franchises, and consequently upon its own destruction, rather than a receiver to preserve its existence. I am very decidedly of opinion that such a contention as the Company makes in this case cannot be maintained.

2. Then, as to the position of the State in this litigation. Like the Canal Company, the State, by 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 lien holder, to be entitled to insist upon a sale of the subject of the lien, as against superior lien holders, should be able to show with some reasonable degree of

certainly, that he has a substantial interest in the proceeds of sale, after paramount liens are discharged. Here, if a 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.

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, Art. 12, sec 3, the State's interest, whatever it may be, either as stock-holder or creditor, in the Chesapeake and Ohio Canal Company, could be disposed of, as ~~was~~ has been done ~~under the act~~ by the act of 1878, Ch. 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 Ches. & 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, ch 287, as construed by the Court of Appeals, in the case of Com. of Virginia v. Canal Co. supra. But as to the property and franchises 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. ~~I do not propose now to consider and decide any the questions that may be supposing the constitutional question just that to be settled in favor of act of 1878, decided, before a sale can be decreed, and that is whether it was competent supposing the question to be resolved in support of the validity of the act of 1878 competency of the legislature~~

But supposing it to be determined that the constitutional provision does not apply to the act of 1878, and the mortgage therunder, there is another question arising on that act, that will have to be decided before a sale is decreed, and that is, whether it was competent to 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 ~~may~~ might be done. The State can exercise no sovereign power to violate its contract, nor can it authorise 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 express agreement, to any rights of the State as creditor. They are to be 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.

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 trustee in such case "represents 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 boardholders would have no right to intervene to control the proceedings, or to interpose any obstruction to the relief prayed by the trustee, 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 ~~of 1844~~ issued under the act of 1844 since the coupons that fell due in July 1864, and that the principal of said bonds is also over-due 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 Co. vs Heidelbach, 94 U.S. 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 trustees, 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 mortgagee 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 Co. 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 bond 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 rents, and other income of the Company; and might apply to any Court of 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 United 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 that 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, (2d ed.) secs 379, 380 and 381, where the cases will be found collected.

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 under the act of 1878 would be entirely secure

in the saleable value of the canal, provided there be no superior lien 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.

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 the 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 then that question will not be decided.

Feb. 21st, 1890. A. H. Alvey.

(Filed Febry. 22. 1890.)

Filed Sept. 20. 1890.

Resolved - By the Board of Public Works this 19th day of September 1890, that the Attorney General be and he is hereby requested to name to the Circuit Court for Washington County in Equity as Trustees to represent the State in the sale of the Canal and its property the Receivers heretofore appointed by said Court; and that this request be presented to said Court, with the suggestion heretofore made by this Board, for its action without prejudice.

Elihu E. Jackson
Governor
Edwin H. Brown

Hon Wm P. White

Dear Sir: Above is a copy of an order this day passed by this Board, and a formal copy will be sent you if necessary

Yours truly Edwin H. Brown

No. 4191 & 4198. Equity.

Recommendation for
Appointment of Trustee

Filed Sept. 13. 1890

At a meeting of the Board of Public Works of Maryland held on Thursday morning September 4th. 1890 –

The following order was adopted:

Ordered by the Board of Public Works of the State of Maryland that the Attorney General of said State be and he is hereby requested to present and name to the Circuit Court for Washington County, sitting as a Court of Equity, as and for a trustee in the pending suit for the sale of the Chesapeake and Ohio Canal, suggested by virtue of the interest of said State therein, Thomas M. Lanahan of Baltimore city, Maryland.

True copy:
Test,

E. W. LeCompte, Secretary
of Board of Public Works
of Maryland –

September 5th. 1890 –

Nos. 4191
& 4198 Equity

Exhibit B.

Filed Sept. 25th 1890.

Lloyd Lowndes, Admr of Lloyd Lowndes surviving partner of L. and R. T. Lowndes vs The Chesapeake and Ohio Canal Company	No. 160 Trials January Term 1881 In the Circuit Court for Allegany County Maryland

1880 Aug. 12"	Scifa for debt	$31.915.52
	Int. from Oct 5" 1868 -	
	and Costs	7.85
	Rule Plea.	
1881 Jan. 3"	Fiat -	Costs $8.60

State of Maryland
Allegany County to wit:

I hereby certify the above to be truly taken from the Record and Proceedings of the Circuit Court for Allegany County in the above entitled case.

In Testimony Whereof I hereunto set my hand and affix the seal of the Circuit Court for Allegany County this 20" day of Sept A.D. 1890 -

Theo. Lauman

Clerk Circuit Court for Allegany County Md.

Lloyd Lowndes surv'g ptnr of L. and R. T. Lowndes vs Ches & Ohio Canal Co.	No. 204 Trials October Term 1868 – In the Circuit Court for Allegany County Md

1868 Oct. 29th Order for assessment of damages – Damages assessed $31.915,52 with int. from date of Judg't

1880 Augt 12th Suggestion of the death of Lloyd Lowndes, Certf'e of Letters and Order to issue Writ of Scire Facias – Scire Facias to O.C. 1880 No. 36 Org'ls

State of Maryland

Allegany County to wit:

I hereby certify the above to be truly taken from the Record and Proceedings of the Circuit Court for Allegany County in the above entitled case

In Testimony Whereof I hereunto set my hand and affix the seal of the Circuit Court for Allegany County this 20th day of Sept A.D. 1890.

Theo. Lerman

Clerk Circuit Court for Allegany County Md.

4191
4198 } Equity

Brown et al.
Trustees
Sloan et al
Trustees
v
Ches. & Ohio Canal Co
Et al.

Petition of Lloyd Lowndes
admr., and Exhibit

Filed Dec. 24th 1890.

W. C. DEVECMON,
Attorney & Counselor,
CUMBERLAND, MD.

J. Y. JOHNSTON & CO., 23 MURRAY ST., NEW YORK.

George S. Brown, et al.
Trustees
vs
The Chesapeake and Ohio Canal Co.
et al.
James Sloan, et al.
Trustees
vs
The Ches. & Ohio Canal Co. et al.

No. 4191 Equity

No. 4198 Equity
In the Circuit
Court for Wash-
ington County.

To the Honorable, the Judges of said Court:

The petition of Lloyd Lowndes, administrator of Lloyd Lowndes, deceased, respectfully shows:

That on or about the 16th day of August 1890 he filed a petition among these proceedings alleging that he was the owner of a judgment recovered against the Chesapeake and Ohio Canal Company in Allegany County, Maryland in 1868, and he was on the 16th day of August, at his own request, made a party to these proceedings.

Your petitioner further shows that his intestate did on the 29th day of October, 1868, recover a judgment against the Chesapeake and Ohio Canal Company in the Circuit Court for said Allegany County for the sum of $31,915.52 with interest from date and costs, that said judgment has been revived from time to time, and kept alive by writs of *scire facias* regularly issued from said Court, and that the legal title thereof is now in your petitioner: all of which will clearly appear from the certified copy of said judgment, together with the docket entries thereof, as well as of all revivals

of the same down to the present time, which is herewith filed marked "Exhibit Founder's Judgment" and prayed to be taken as part of this petition. That no part of said judgment and no interest thereon has ever been paid, and that the same is now a valid and subsisting judgment on the docket of said Circuit Court for Allegany County.

That the said Chesapeake and Ohio Canal Company at the time said judgment was rendered owned, and does now own very valuable real and leasehold estate in said Allegany County. And your petitioner charges that his said judgment from the time of its original rendition became and has continued to be down to the present time a lien on the Corpus of the Chesapeake and Ohio Canal in Allegany County, and on all the real and leasehold estate owned by the Chesapeake and Ohio Canal Company in said County; that said lien was and is a lien on said Corpus, real and leasehold estate superior to the rights of the bondholders under the Act of 1844 Ch. 281, and to their rights and the rights of their trustees under the mortgage of June 5th 1848, given to secure their bonds.

That said judgment was based upon claims against the said Chesapeake and Ohio Canal Company for labor and supplies furnished to said Company to keep the said Chesapeake and Ohio Canal in repair and operation, and for necessary betterments thereon, and as such your petitioner's claim is of a higher and superior nature to the claims rights, ~~and~~ equities and powers of said bondholders and their said trustees.

That on the 2d day of October 1890 this

of the same down to the present time, which is herewith filed marked "Exhibit Fowler's Judgment" and prayed to be taken as part of this petition. That no part of said judgment and no interest thereon has ever been paid, and that the same is now a valid and subsisting judgment on the docket of said Circuit Court for Allegany County.

That the said Chesapeake and Ohio Canal Company at the time said judgment was rendered owned, and does now own very valuable real and leasehold estate in said Allegany County. And your petitioner charges that his said judgment from the time of its original rendition became and has continued to be down to the present time a lien on the Corpus of the Chesapeake and Ohio Canal in Allegany County, and on all the real and leasehold estate owned by the Chesapeake and Ohio Canal Company in said County; that said lien was and is a lien on said Corpus, real and leasehold estate superior to the rights of the bondholders under the Act of 1844 Ch. 281, and to their rights and the rights of their trustees under the mortgage of June 5th 1848, given to secure their bonds.

That said judgment was based upon claims against the said Chesapeake and Ohio Canal Company for labor and supplies furnished to said Company to keep the said Chesapeake and Ohio Canal in repair and operation, and for necessary betterments thereon, and as such your petitioner's claim is of a higher and superior nature to the claims rights, ~~and~~ equities and powers of said bondholders and their said trustees.

That on the 2d day of October 1890 this

done by the 5th section of said decree, whereby, your petitioner avers, the rights of the said bondholders under the act of 1878, and the rights of the receivers in this case, and the extent and efficacy of their liens and equities were finally adjudicated and determined; but no adjudication was made in said decree, defining, settling or in any way finally determining your petitioner's rights or priorities under his judgment or claim aforesaid, or in any way determining his relation to the said trustees for the bondholders of 1844 who were put into possession of said Canal, and no payment, bond or other security was required of them by said decree conditioned to satisfy your petitioner's claim should it, in the further progress of the cause be determined by this Court to be a superior lien or claim to the bondholders of 1844, and entitled to be paid or secured as a condition precedent to the continued possession and control of said Canal property by said trustees.

But your petitioner avers and charges that while his rights under his judgment and claim aforesaid were not determined or passed upon by said decree, he is advised and now charges that under the opinion of this Court upon which said decree is based, the same were expressly reserved to be finally adjudicated and determined in a further or supplemental order or decree of this Court, under that portion of said opinion wherein it is stated that: "It is represented by petitions filed that there are many claims due from the Canal Company, amounting in the aggregate to a con-

siderable 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 its 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."

Your petitioner is now advised that said opinion and decree contemplated and provided for a further or supplemental order or decree of this Court finally passing upon the claim of your petitioner, and the claims of others similarly situated, and if found to be superior in Equity to the lien of the bondholders of 1844, then that "they must also be provided for" by some payment or security to be required of said trustees as a condition precedent to their continued holding and possession of said canal property, and that said claim of your petitioner was also covered and contemplated by the fourth clause of the third paragraph of section 5 of said decree wherein provision is made for reimbursement to said trustees for all claims for labor and supplies that they might be required to pay as constituting a superior lien on the tolls and revenues of said Canal Company etc.

Your petitioner relying upon his lien and claim, which he is advised is superior in Equity to that of the bondholders under the Act of 1844, now avers that his rights can only be asserted and protected in this Court by proceedings in this case based upon due and legal notice to the trustees for the holders of the bonds issued under the Act of 1844, and the other parties ~~to this Co~~ in interest, with full opportunity to them to contest the same, but that a speedy adjudication of his claim, in advance of the further or long-continued possession of the property of the Canal Company by said trustees is absolutely essential to the assertion of his rights at all, inasmuch, as he is advised that the possession and holding of the corpus of the canal and the Company's other property, and the right to receive the revenues of the same by said trustees, while ~~your petitioner's~~ the adjudication of your petitioner's claim is held in abeyance is in derogation of his rights, which should be secured to him in advance of such possession and control of the canal, as the rights of the bondholders under the Act of 1878 were secured, and as your petitioner is advised it was contemplated by the Court's opinion, his claim and the claims of others were to be secured by a further or supplemental order to be passed herein.

Your petitioner is now advised and charges that your Honorable Court has the right and the power, and that it is the duty of your Honorable Court, to pass an order requiring the said trustees under the mortgage

to pay and satisfy or secure your petitioner's said judgment and claim together with interest and costs as a condition of their continued holding of the property of the said Chesapeake and Ohio Canal Company.

Your petitioner is advised that the trustees for the holders of the bonds issued under the Act of 1844, as well as of those issued under the Act of 1878, The Chesapeake and Ohio Canal Company and the State of Maryland are entitled to notice of this petition and are proper parties to this proceeding and that they should be required to answer the same.

To the end therefore that your petitioner's rights in the premises may be considered and adjudicated, and that his claim may be directed to be paid or secured by the trustees for the bondholders under the Act of 1844, or other adequate relief afforded him, as his case may merit or require,

May it please your Honorable Court to pass an order requiring Bradly S. Johnson, Henry H. Keep, Hugh L. Bond, Joseph Bryan and John K. Cowan trustees under the mortgage of June 5th 1848, George S. Brown, James Sloan, Jr., and Lloyd Lowndes, trustees under the mortgage of 1878, the Chesapeake and Ohio Canal Company and the State of Maryland to appear in this Court, and answer this petition and show cause, if any they have, why an order or decree ought not to be passed herein requiring the said Bradly S. Johnson, Henry H. Keep, Hugh L. Bond, Joseph Bryan and John K. Cowen, trustees under the mortgage of 1848 as aforesaid to pay and satisfy or secure your

petitioner's judgment and claim, together with interest and costs as a condition of their further holding and retaining possession of the Chesapeake and Ohio Canal Company's property.

And may it please your Honorable Court to grant your petitioner such other and further relief as his case may require.

And as in duty etc,

Benj. A. Richmond
W. L. Dorsey
Sol's for petitioner

Lloyd Lowndes Surty &c
vs
C & O. C Co

Copy of Judgment

No 204 Trials Oct Term 1868

Lloyd Lowndes surv'g Ptnr of Land R. J. Lowndes
vs
Ches and Ohio C. Co

No 204 Inals October Term 1868.
In the Circuit Court for Allegany County Md
Action Rule Nar.
Nar Rule Plea

1868 Oct 5 " Judgment on Rule
" 29 " Petn of Ches and Ohio Canal Co.
List of Notes + Order for the removal.
Order for the assessment of damages. Oct 29 Damages assessed $31.915 ^{52} with int from date of Judgt.
Plaintiffs Costs $7.85
1880 Augt 12 " Suggestion of the death of Lloyd Lowndes
Certf of letters and Order to issue writ of Scieri Facias.
Scieri Facias to O. C. 1880 No 36 Orgls
State of Maryland. Allegany County to wit:
I Theo Lunan Clerk of the Circuit Court for Allegany County and State aforesaid do hereby certify that the aforegoing is a true Copy taken from Court Docket October Term 1868 one of the records for Allegany County Md.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Circuit Court this 11 day of December A. D. 1890

Theo Lunan
Clerk

Exhibit
Lowndes Judgment

Exhibit
Lowndes
Judgment.

Lloyd Lowndes adm'r &c
vs
C & O. R. Co

Copy of Judgment

No 160 Trials Jany Term 1881

Lloyd Lowndes admr of Lloyd Lowndes Survg partner of L. and R. J. Lowndes	No 1 Cc Trials January Term 1881	
vs	Scifa for debt	$31.915 52/100
	Int from Oct 5th 1868	
The Chesapeake and Ohio Canal Company	and Costs	7.85
	Rule Plea	
	1881 Jan 3rd Fiat.	

State of Maryland

Allegany County to wit:

I, Theo Luman Clerk of the Circuit Court for Allegany County and State aforesaid do hereby certify that the aforegoing is a true Copy taken from Court Docket January Term 1881 one of the records of Allegany County Md.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Circuit Court this 13 day of December A. D. 1890

Theo Luman

Clerk

No 4191 Equity
Brown et al
vs
Canal Company
& others.

Opinion & order
of Court on
petition of Floyd
Lowndes, admr.

Filed Dec. 29th 1890.

Copy made
for Richmond

Brown & others, Trustees
vs
Chesapeake & Ohio Canal Co.
& others.

In the Circuit Court
for Washington County.
No 4191, Equity.

On reading the petition of Lloyd Lowndes, administrator of Lloyd Lowndes, dec'd, filed in this case on the 24th of Dec. 1890, and considering the matter therein, the most that I can now do, or that would be proper for me to do, in the present condition of the proceedings, is to order that it stand over for future consideration. The decree passed in the case on the 2d of October last has been appealed from, and I suppose the appeal or appeals will be heard and decided at the approaching January Term of the Court of Appeals. And if the decree should be affirmed, that decree has made provision for the coming in of parties holding claims for labor and supplies furnished the Canal Company while operating its work under the Act of 1844, ch. 281; and upon such claims being properly established, and shown to be liens superior to the bonds issued under the Act of 1844, then such claims are required to be paid from the revenues of the Canal. But if the decree of Oct. 2d should be reversed by the Court of Appeals, different questions and considerations may arise, leading to very different results, on these proceedings.

As I understand the scope and object of the petition, it is to assert and enforce a lien for the claim made, being a judgment recovered against the Canal Company, in

the Circuit Court for Allegany County, in 1868, "upon the corpus of the Chesapeake and Ohio Canal in Allegany County, and on the real and leasehold estate owned by the Company in said County", upon the allegation "that said lien was and is a lien on said corpus, real and leasehold estate, superior to the rights of the bondholders under the act of 1844, Ch. 281, and to their rights and the rights of their trustees under the mortgage of June 5th, 1848, given to secure their bonds." If this lien, thus asserted, be allowed to its full extent, it would be given priority not only to the lien of the bondholders under the act of 1844, but to the rights and liens of both the State and the bondholders under the act of 1878; for it is insisted that, as a condition precedent to the right of the trustees for the bondholders under the act of 1844 to take possession of and operate the Canal, (though they hold by virtue of a lien superior to that of the State, and also hold, under the decree, all the rights and liens of the bondholders under the act of 1878,) such trustees should be required to bring into Court to be paid to the claimant the amount of his judgment. Whether this claim can be substantiated to the extent asserted, remains to be shown and determined. At present I intimate no opinion in regard to it. But I shall direct the subject matter of the petition to stand over for future consideration, when, after the pending appeals have been disposed of,

and all parties concerned are heard, this Court may be ~~the~~ better advised ~~informed~~ upon the subject; and I so order and direct, this 27th day of December, 1890.

A. H. Alvey.

No. 4191 & No. 4198
Equity

Petition of John P. Edwards and order of Court thereon

Filed Feby. 26th 1892

LAW OFFICES OF
JASPER N. WILLISON,
CUMBERLAND, MD.

Cumberland, Feb. 24, 1892.

Mr. Geo. B. Oswald, Clerk,

Dear Sir:

Please file the inclosed petition in the consolidated canal cases. I will submit it at some other time to Judge Alvey for the proper order.

Respectfully,

J. N. Willison

In the Circuit Court for Washington County, in Equity.

George S. Brownell, trustee,
vs.
The Chesapeake and Ohio Canal Company et al.
} No. 4191 Equity

James Sloan, Jr. et al., trustees,
vs.
The Chesapeake and Ohio Canal Company et al.
} No. 4198 Equity

To the Honorable the Judges of said Court:

The petition of John T. Edwards respectfully shows:

1. That the Chesapeake and Ohio Canal Company is indebted to him in the sum of $1927.05 for work done for said Company from May, 1888, to June, 1889, in keeping the Canal in operation and repair.

2. That the trustees for the holders of the bonds issued under the Act of Assembly of Maryland of 1844, Ch. 281, and under the mortgage of June 3, 1848, executed in pursuance of said Act, have complied with certain preliminary requirements of the decree of this Court, passed October 2, 1890, and by virtue thereof, by the provisions of said decree, have become subrogated to the rights and remedies and stand in the place of the trustees for the holders of the bonds issued under the Act of 1878, Ch. 58, and to all the rights and remedies

of the then holders of the bonds issued under said Act, and had delivered to them possession of the canal and its works, with power to use and exercise the franchises of said Company.

3. That under the provisions of section 1 and the second proviso of section 2 of said Act of 1844, Ch. 281, and the terms of the mortgage of June 5, 1848, executed in pursuance of said Act, the tolls and revenues of the Canal Company are pledged as security for the payment of said bonds only after payment of the debts then existing and that should thereafter be contracted for repairs on the canal and officers' salaries. Your petitioner is advised that by virtue of said provisions of said Act, and the terms of said mortgage, his said claim for work done for the Canal Company constitutes a lien on the tolls and revenues of the Company superior to the lien of the bonds issued under said Act, and that by ~~reason~~ reason of such priority he is entitled to have said debt paid by the trustees for the bondholders of said as a condition to their being permitted to continue to retain possession and control of the canal and to collect and appropriate said tolls and revenues.

4. Your petitioner further shows that from the year 1883 to 1887, inclusive, the

Canal Company regularly appropriated a large part of its tolls and revenues to the payment of interest coupons of the bonds issued under said Act of 1878, Ch. 58, leaving each year during said period a large sum due and unpaid for labor and supplies furnished to said Company to keep its Canal in operation and repair during said years, and that since 1887, the said Company has used its tolls and revenues accruing to it each year in the payment of the debts so as aforesaid left unpaid, whereby the fund applicable to the payment of the current expenses of the Company for the years 1887, 1888 and 1889, including the claim of your petitioner, has been diverted and rendered insufficient, to the manifest injury of your petitioner, and he is advised that by reason of such diversion he is entitled to be subrogated to the extent of his claim to the rights of the present holders of the bonds issued under said Act of 1878, Ch. 58, and to have said claim paid by the trustees of the holders of the bonds issued under said Act of 1844, Ch. 281, who, as hereinbefore set forth, have been subrogated to the rights and stand in the place of the former holders of the bonds issued under said Act of 1878, Ch. 58.

Your petitioner therefore prays your Honorable Court to pass an order
1. Admitting him as a party to these Consolidated Causes, and
2. Requiring the trustees for the holders of the bonds issued under the Act of 1844, Ch. 281, to pay his said claim as a superior lien on the Canal and on its tolls and revenues.

J. R. Wilson,
Solicitor for Petitioner.

The aforegoing petition having been read and considered, it is thereupon, this day of December, 189, ordered by the Circuit Court for Washington County, as a Court of Equity, that the petitioner, John T. Edwards, be and he is hereby admitted as a party to this Cause. And it is further ordered that the State of Maryland, the Chesapeake and Ohio Canal Company, and Bradley S. Johnson Henry H. Kirby, Hugh L. Bond, Joseph Bryan, John H. Cowen trustees for the holders of the bonds issued under the Act of 1844, Ch. 281, show cause, if any they have, on or before the day of 189 , why the said trustees should not be required to pay the claim of said petitioner as prayed in said petition; provided a copy of said petition and this order be served on the solicitors of the respective parties on or before the day

W. 4191 & 4198. Equity.

Petitions of Mulvaney and Barnard

—

Filed Mar. 7. 1892.

LAW OFFICES OF
JASPER N. WILLISON,
CUMBERLAND, MD.

Cumberland, March 5 1892.

Geo. R. Dwoad, Esq., Clerk,

My dear Sir:

I inclose ~~a~~ petitions which you will please file, and I will at some future time submit them to Judge Alvey for the proper orders thereon.

Respectfully,

J. N. Willison

No. 4191 } Equity.
No. 4198 }

Petition of Edward Mulvany.

Order of Court.

Filed Mar. 7, 1892.

George S. Brown et al. Trustees vs. The Chesapeake and Ohio Canal Company et al. } In the Circuit Court for Washington County, in Equity. No. 4191 Equity.

James Sloan Jr., et al vs. The Chesapeake and Ohio Canal Company et al. } In the Circuit Court for Washington County, in Equity. No. 4198 Equity.

To the Honorable the Judges of the Circuit Court for Washington County, sitting as a Court of Equity:

The petition of Edward Mulvany respectfully represents:

1. That The Chesapeake and Ohio Canal Company is indebted to him in the sum of $1773.32 for work done for it by him from January 1, 1889, to April 1, 1890, and for supplies furnished to said Company by him.

2. That by the decree of this Court passed on the 2nd of October, 1890, the trustees for the bondholders under the Act of 1844, Ch. 281, and the mortgage of June 5, 1890, executed in pursuance thereof, were authorized to take possession of the said Canal and all its property, with power and authority to use and exercise the franchises of said Company, and were to be subrogated to and to stand in the place of the trustees

for the holders of the bonds issued under the Act of 1878, Ch. 58, and to all the rights and remedies of the holders of the bonds issued under the said Act, upon compliance by said trustees under the mortgage of June 5, 1848, acting for the bondholders under the said Act of 1844, Ch. 281, with certain requirements, terms and conditions of said decree. That said trustees have complied with the requirements of said decree, and have obtained possession and control of said canal, and now stand subrogated to the rights and remedies of the former holders of the bonds issued under said Act of 1878, Ch. 58.

3. That under the provisions of section 1 and the last proviso of section 2 of the said Act of Assembly of Maryland of 1844, Ch. 281, and of the mortgage of June 5, 1848, executed in pursuance of said Act, the tolls and revenues of the Canal Company are pledged to the payment of said bonds only after payment of all debts then existing and that thereafter to be contracted and in arrear for repairs on the canal and officers salaries. And your petitioner avers that his said claim for work done for the Canal Company in keeping said canal in repair, which is now due and unpaid, constitutes, therefore, a lien on the tolls and revenues of the Canal Company

superior to the lien of the bonds issued under the provisions of said Act of 1844, Ch. 281, and by reason of said priority said petitioner is entitled to have said claim paid by the trustees of the bondholders aforesaid as a condition to their being entitled to continue to retain possession and control of the canal and to collect said tolls and revenues.

4. And said petitioner further shows that ~~since~~ the year 1883 to 1887 the said Canal Company has regularly appropriated a large part of its tolls and revenues to the payment of the interest coupons of the bonds issued under said Act of 1878, Ch. 58, leaving each year during said period a large sum due and unpaid for labor and repairs on said canal, whereby the fund applicable to the payment of the current expenses of the Company, including the claim of your petitioner has been diverted and rendered insufficient to the manifest injury of your petitioner, and he is now advised and so avers that by reason of said diversion he is entitled to be subrogated to the extent of his said claim to the rights of the present holders of the said bonds issued under said Act of 1878, Ch. 58, and to have his said claim paid by the trustees for

the holders of the bonds issued under the Act of 1844, Ch. 281.

Your petitioner therefore prays this Honorable Court to pass an order

1. Admitting him as a party to these consolidated causes, and

2. Requiring the said trustees to pay the said claim as a superior lien on the property and on the tolls and revenues of said Canal Company.

J. P. Wilson,
Solicitor for petitioner.

Upon the foregoing petition, it is ordered this day of December, 1890, by the Circuit Court for Washington County, as a Court of Equity, that the petitioner, Edward McIlvaney, be and he is hereby admitted as a party to this cause. And it is further ordered that the State of Maryland, the Chesapeake and Ohio Canal Company and Bradley T. Johnson, Hugh L. Bond, T. H. Keedy, Joseph Bryan and John K. Cowen trustees, show cause, if any they have, on or before the day of why the said trustees should not be required to pay the claim of said petitioner as prayed for in said petition; provided a copy of said petition and this order be served on the solicitors of the respective parties on or before the day of

No. 4191 & 4148
Equity

Petition of Wm.
R. Barnard

Filed Mar. 7. 1892.

In the Circuit Court for Washington County, sit in Equity.

George S. Brown et al. trustees
v.
The Chesapeake and Ohio Canal Company et al

No. 4191 Equity

James Sloan, Jr. et al. trustees
v.
The Chesapeake and Ohio Canal Company et al.

No. 4198 Eq.

To the Honorable the Judges of the Circuit Court for Washington County, sitting as a Court of Equity:

The petition of William R. Barnard respectfully shows:

1. That the Chesapeake and Ohio Canal Company is indebted to him in the sum of $500.00 with interest thereon, for work done for said Company from January 1889 to February 1890, in keeping its Canal in operation and repair.

2. That the trustees for the holders of the bonds issued under the Act of Assembly of Maryland of 1844, Ch. 251, and under the mortgage of June 5, 1848, executed in pursuance of said Act, have complied with certain preliminary requirements of the decree of this Court passed October 2, 1890, and thereupon by virtue of the provisions of said decree have become subrogated to the rights and remedies

and stand in the place of the trustees of the holders of the bonds issued under the Act of Assembly of Maryland of 1878 Ch. 58, and to all the rights of the then holders of the bonds issued under said Act and have had delivered to them possession of the Canal and its works, with power to use and exercise the franchises of said Company.

3. That under the provision of section 1 ~~of the~~ the second proviso of section 2 of the said Act of 1844, Ch. 281, and by the terms of the mortgage of June 5, 1848, executed in pursuance of said Act, the tolls and revenue of the Canal Company are pledged as security for the payment of said bonds only after payment of the debts then existing and that should thereafter be contracted for repairs on the canal and officers' salaries. Your petitioner is advised that by virtue of said provisions of said Act and the terms of the said mortgage, his said claim for work done for the Canal Company constitutes a lien on the tolls and revenues of the Company superior to the lien of the bonds issued under said Act, and that by reason of such priority he is entitled to have said debt paid by the trustees for the bondholders aforesaid as a prerequisite to their being permitted

to continue to retain control and possession of the Canal and to collect and appropriate said tolls and revenues.

4. Your petitioner further shows that from 1883 to 1887, inclusive the Canal Company paid the interest coupons of the bonds issued under said Act of 1878, Ch. 58, becoming due during said time, out of the tolls and revenues, leaving each year during said period a large sum due and unpaid for labor and supplies furnished to said Company to keep its Canal in operation and repair during said years, and that since 1887, the said Company has used its tolls and revenues accruing to it each year in the payment of the debts so as aforesaid left unpaid, whereby the fund applicable to the payment of the current expenses of the Company for the years 1887, 1888 and 1889, including the claim of your petitioner has been diverted and rendered insufficient for that purpose, to the manifest injury of your petitioner. He is advised that by reason of such diversion he is entitled to be subrogated to the extent of his said claim to the rights of the present holders of the bonds issued under said Act of 1878, Ch. 58, and to have said claim paid as a first lien

under the Act of 1844, Ch. 281, Show cause, if any they have, on or before the day of 189 why the said trustees ... should not be required to pay the claim of said petitioner as prayed for in said petition; provided a copy of said petition and this order be served on the said parties or their solicitors on or before the day of 189

No. 4.191 Equity

Petition & Order of Court
Granting Leave to Lillie
M. Kretzer to bring suit
at law against Trustees

Filed June 30th 1892.

George S. Brown et al vs. The Chesapeake and Ohio Canal Company	No. 4,191 Equity In Circuit Court for Washington County —

To the Honorable the Judges thereof —

This petition of Lillie M. Kretzer respectfully shows that she is desirous of entering suit in the Circuit Court for Washington County against Henry H. Keedy, Bradley S. Johnson, Hugh L. Bond Jr. John K. Cowen and Joseph Bryan, trustees in cause No. 4,191 in Circuit Court for Washington County in Equity for and on account of certain damages to her accruing through the negligence of the persons above-mentioned, their agents and employees, but being advised that it is necessary for her to secure leave of your Honorable Court before said suit may be brought, your petitioner therefore prays your Honors to pass an order granting leave to your petitioner to bring suit as above described.

And, as etc.,

J. A. Mason
Wm. Kretzenbacher
Sol's for Petitioner

The above petition having been read and considered, it is thereupon, this 30th day of June, 1892 ordered by the Circuit Court for Washington County sitting as a Court of Equity that leave be and the same is hereby granted to Lillie M. Kretzer to bring suit against the said Henry H. Reedy, Bradley S. Johnson, Hugh L. Bond, Jr., John K. Curran and Joseph Bryan, Trustees in cause No. 4191 in Circuit Court for Washington County in Equity, in the Circuit Court for Washington County to the end and for the purpose set forth in the aforegoing petition.

A. W. Alvey.