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Odd Notes.

The Carlisle Fair is on the cards for to-day.

Horse talk and the hunting season are upon us.

Frederick is wrestling with her new boom.

Waynesboro has a new bank. It is styled the People's National Bank.

South Prospect street is graded, and ready for the first bed of stone.

Mr. Spielman has resigned from the management of the ice factory.

Avalon street is being pushed along steadily, and the rocks are coming out.

Mr. Harrison Warner who passed this town some time ago in company with hi wheel.barrow, is dead.

A large force of men are busily engaged laying and ballasting tracks in the B. & O. yard.

Mr. Ankeny has a new bay-window on his residence on Washington street.

The Noble farm near Carlisle has just been sold to a land boom for $22,000.

The McKinley bill and the weather signs indicate a hard winter and high prices.

Mrs. James Bishop, nee Miss Kurtz, who has visited in this town, is on a visit to her father from Minneapolis.

It is said that the business failures in Baltimore are far in advance of any calculated percent age.

The street at Mulberry and Church is in a delapidated anddangerous condition.

Mr. John Richard mentioned below was held by squire Bitner in $1.000 to await the action of the Grand Jury.

The Misses Moore of Potomac street are increasing their facilities far dressmaking to meet their increasing business.

Mr. Middlekauff's fine double brick house on Concord street is ready for the roof, which is being constructed. The back building is completed.

Mr. Baker's new brick house is a very handsome affair. Men are engaged in putting the finishing touches on the painting.

The Weddell peach orcha[illegible] near Edgemont has been purcha[illegible]ed by Geo. W. Smith, jr., at $98 p[illegible] acre. There are 30 acres in the trac[illegible].

When the Judge pronounc[illegible]d the sentence of the Court upon Birchell, one constable broke down and cried, and two reporters fainted.

Mr. Ashby Conner is putting down stone cobbling at his residence on Washington street. Dr. Ragan has finished his cobbled-work. These are great benefits to the street.

Mr. Geo. Hudson's new brick house on Washington street is up two stories. It is just this side of Winter street. Vacant lot are becoming scarce in this locality.

Two young men called around at the Jail last week and enquired after the prisoners. They were both feeling the gentle influence of rum, and insisted on seeing the prisoners. The Sheriff finally accomodated them and they are still looking at the prisoners.

Mr. Collins arrived last night at 11.40. He got out of the train and into a carriage without assistance. He showed no visible effects of his rough experience.

Several of the streets through the Surrey addition are to have the names, Reynolds street, Surrey Avenue, Summit Auenue and Hood street.

A project is mooted for the extension of the Cumberland Valley R. R. The new line is proposed to run from Chambersburg to Fort Loudon, and thence west to Bedford County.

Yesterday a colored lad appeared before 'Squire Bitner in a great state of trepidation for a hearing upon the charge of incorrigibility. The principal witnesses being out of town, he was committed until next Saturday.

Mr. Myers house has improved 100 per cent. since the scaffolding is down. A fine pavement has been laid, and everything looks like occupancy. The house is handsomely furnished beside. The mantels are handsome, and the rooms well shaped. When it is fiinished, it will present a still more cheerful appearanc.

James Richard, who was arrested on the charge of larceny, was given a hearing on a writ of habeas corpus before Judge Stewart. He was released from custody, under bail to appear Monday at which time it should be learned whether e[illegible] dition papers would be forth[illegible]ng. He subsequently agreed t[illegible] [illegible]gerstown for a hearing a[illegible] [illegible]n-

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THE CANAL.

JUDGE ALVEY'S DECISION.

DECREE FOR SALE SIGNED, BUT SUSPENDED TO GIVE THE BONDHOLDERS OF '44 A CHANCE. THE CANAL WILL PROBABLY BE RESTORED.

THE OPINION OF THE COURT.

In the opinion recently delivered in these cases, upon the final hearing after the coming in of the receivers' report, in referring to the report and adopting the conclusion of the receivers, this Court said:—"Whatever can or may be done by others, under different conditions, I am decidedly of opinion that, as these cases are now presented, and in view of the present condition of the work, this Court would not be justified in attempting the experiment of restoring the canal by the agency of receivers, at a large cost, to be fixed upon the work and its income, as a first or superior lien." That was my best judgment at the time, and I have heard nothing since that has shaken me in that conviction.

But since the filing of that opinion, and before the time fixed for settling and signing the final decree for the sale of the canal, the trustees of the bondholders under the Act of 1844, ch. 281, acting under the mortgage of the 5th of June, 1848, made under and in pursuance of the Act of 1844, ch. 281, have filed in the cause a petition, under oath of one of the trustees, alleging that the trustees are able and ready to furnish the money required to repair the canal, and that the canal can be operated so as to produce revenue with which to pay its bonded indebtedness, over and above the ordinary expenses of operation and keeping the same in repair; and praying that they may be allowed to redeem the bonds issued by the canal company under the Act of 1878, ch. 58, and be subrogated to the rights and priorities of the holders thereof, and that they be put in possession of the canal, with right and power to repair and operate the same. They offer to account to the Court for all receipts and expenditures while in the possession of the canal, and to make due reports thereof, and of their management; and they proffer such security as this Court may deem necessary for the faithful performance of the duties that may be imposed upon them, by any order of the Court.

The State, by its Attorney-General, has answered this petition, and it denies the right of the trustees acting under the mortgage authorised to be executed by the Act of 1844, to redeem the bonds, and be subrogated to the rights of the bondholders, under the Act of 1878; it denies the right of such trustees to take possession of the canal to repair and operate it; and it denies that the canal can be restored and be operated to produce revenue with which to pay its bonded debt.

The trustees for the bondholders under the Act of 1878, ch. 58, have answered the petition, and they admit the allegations of the petitioners, and offer ready to accept the amount due on the bonds issued under the Act of 1878, principal and interest; and agree that the trustees for the bondholders under the Act of 1844 shall be subrogated to all the rights and priorities of the bondholders under the Act of 1878, and the mortgage executed thereunder.

Arguments have been heard on the petition and answers; and I shall now proceed to state the reasons for the conclusion to which I have arrived on the question presented, after careful consideration.

The questions presented by the petition are quite different and distinct from any previously presented in this cause. They relate to the right of redemption, the right of subrogation, the right of mortgagees to enter upon the mortgaged premises, and to receive and apply the issues and profits thereof to the extinguishment of liens upon the mortgaged property.

There can be no dispute or question as to the merits of the debt due the bondholders under the act of 1844. The creation of that debt furnished the means of completing the canal; and without the loan obtained under that act, it is doubtful whether the canal could ever have been finished. The State, the previous lien holder to a large amount, was unwilling, indeed unable, to supply further pecuniary aid to the prosecution of the work; and it was only by the pledges and security offered by the special terms and conditions of the act of 1844 that the necessary funds were obtained to complete the canal to Cumberland. The State waived its prior lien to the extent, and only to the extent, of allowing the prospective net tolls and revenues of the work to be dedicated to the payment of the principal and interest of the bonds issued under the act; and it was upon the reliance of that security that the money was loaned. This was the security expressed upon the face of the bonds, and it was the *only* preference given by the statute. This preference was given with the reservation to the company, of the right and authority, at all times thereafter, to use and apply such portion of the tolls and revenues as might be necessary to put and keep the canal in good condition and repair for transportation, provide a supply of water, and pay the current expenses of the company. To this extent the company retained a prior or superior right to the bondholders under the act. The mortgage executed under the act, of date the 5th of June, 1848, to secure the bondholders, provides, that upon failure of the company to fulfil its engagements, according to the terms of the mortgage, the trustees, or their successors, should have power and authority to enter into possession, subject to a condition, no longer operative, and execute the provisions of the act, by collecting and applying the tolls and revenues of the work. This express power to enter for default has never been exercised; and the right to exercise it, though default in payment had been made, has been suspended by the operation of the act of 1878, ch. 58, and the issue of the bonds thereunder. But while the right to take possession, and apply the tolls and revenues, has been thus suspended, in order to make effectual the security for the bonds issued under the act of 1878, the right itself has not been finally destroyed. If the bonds issued under the act of 1878 were taken up and paid, clearly the right to enter under the mortgage of 1848 would exist, and so if that entire mortgage debt be redeemed and taken up by the trustees for the bondholders under the act of 1844, and subrogation be allowed them, their right to enter and collect and apply the revenues, under the mortgage of 1848, would be available for the bonds under the act of 1844, as would be all the rights and remedies provided by the act of 1878, as security for the bonds issued under this latter act. The first question therefore, upon the present application is, whether the right of redemption and subrogation exists in the trustees for the bondholders under the act of 1844, on the facts as they appear in these proceedings.

As has been shown, the only security for the payment of the bonds issued under the act of 1844, depends upon the working condition of the canal to earn tolls and revenue. That security has been subordinated to the security given to a junior class of bonds issued under the act of 1878,—the lien given as security for these latter bonds embracing both the *corpus* of the canal and all the revenue derivable therefrom. The canal, in its present broken condition, cannot be operated; and this court has concluded that it is not feasible to restore the work to an operative condition, and to have it operated, by the agency of its own receivers; and the alternative is presented of a sale of the entire work. It is not possible to sell the canal, subject to the continued existence of the preferred lien on the tolls and revenues thereof, in favor of the bonds under the act of 1844. To make such sale, if sale could be made at all, encumbered with such condition, would simply result in a sacrifice of the rights of all the creditors concerned. The lien of the bondholders under the act of 1878, on both works and revenue, being paramount, the trustees for those bondholders are entitled of right to have all the property of the canal company sold, free and clear of all liens inferior to their own. To prevent this sale, and to preserve the only security to which the bondholders under the act of 1844 are entitled, their trustees under the mortgage come in and pray to be allowed to take possession of the canal, and to repair and operate it, at their own cost, depending alone for reimbursement of the outlay upon such revenues as they may be able to realise from the operation of the work; and to that end they pray that they may be allowed to redeem the bonds issued under the act of 1878, and be subrogated to the rights of the holders thereof, under that act. Can they be denied this right? I think not.

That the trustees for the bondhold[illegible] under the Act of 1844 are in such [illegible]sition, and have such relation to [illegible]e property and to the superior lienholders, as will entitle them to redeem the bonds of 1878, I think is unquestionable. The authorities seem too clear to admit of a doubt upon the subject. In vol. 2 of Story's Eq. Juris., sec. 1023, the learned author lays down the doctrine clearly and broadly, as one of equitable protection, intended to promote the great purposes of justice. In speaking of the question as to the parties who may have the right to redeem, he says it is not confined to the heirs, devisees, assignees, or representatives of the mortgagor; but it belongs also to all other persons, who have acquired any interest in the lands mortgaged by operation of law, or otherwise, in privity of title. Such persons, says the author, "have a clear right to disingage the property from all incumbrances, in order to make their own claims beneficial or available. Hence a tenant for life, a tenant by the courtesy, a jointress, a tenant in dower in some cases, a reversioner, a remainder-man, a judgment creditor, a tenant by elegit, the lord of a manor holding by escheat, and, indeed, every other person, being an incumbrancer, or having legal or equitable title, or lien thereon, may insist upon a redemption of the mortgage, in order to the due enforcement of their claims and interests respectively in the land. When any such person does so redeem, he or she becomes substituted to the rights and interests of the original mortgagee in the land, exactly as in the civil law." And the same broad, comprehensive doctrine, is laid down by Chancellor Kent, (4 Kent, Comm. 162, 163,) and that great jurist says that "the principle of equity in these cases is clear and luminous, and it is deeply engrafted in general jurisprudence."

In 2 Washb. on Real Property, (3d ed.) bk 1, ch. 16, sec. 5, p. 163, the author has largely reviewed the cases and lays down the same general doctrine as that stated by Story and Kent. At page 164, he says: "The owner of any interest or fractional part, however small, of the mortgaged premises, may redeem. But in order to do so, he is obliged to pay the whole debt, since the mortgagee cannot be compelled to take his debt by instalments. And by such payment, as will be seen, the one who makes it becomes substituted in equity in place of the mortgagee, in respect to his lien upon the other parts of the estate. Such would be the case if a widow have a right of [illegible]tead, subject to a mortgage, [illegible]d she redeems by paying the whole [illegible]bt." And again, at page 167, it is [illegible]ted that "Where a second mort[illegible]ge was made to three persons, and [illegible] order to protect their estate it be[illegible]me necessary to redeem the prior [illegible]ortgage, and two only of the three [illegible]ere willing to do so, it was held, [illegible]at by so doing they became equit[illegible]ble assignees of such mortgage [illegible]gainst their co-mortgagee, and by a [illegible]ill in equity they might compel him [illegible]ither to contribute towards redeem[illegible]ng the same, or convey his interest [illegible] the first mortage to them." To [illegible] effect is the case of Saunders vs. Frost, 5 Pick., 259. And so where a mortgagor neglects to keep down the taxes on the mortgaged premises, the mortgagee, although there is no provision therefor in the mortgage, may pay them, and may redeem from a tax sale the mortgaged premises, and add the amount to the mortgage debt. Si[illegible]enberg vs. Ely, 90 N. Y. 257.

These instances fully illustrate the comprehensive nature and scope of the doctrine, and to what variety of cases it will be applied, in order to afford equitable protection, and to promote the ends of justice.

And such being the well established doctrine in respect to the right of redemption and subrogation, the principle is equally clear that a mortgagee, unless restrained by covenant, is entitled to possession, (4 Kent. Comm. 164,) and though there be no special authority for so doing, is entitled to have the issues and profits of the estate applied, in the first place, to reimburse him for taxes and necessary repairs made upon the premises; and, in the next place, to reimburse him for sums paid by him upon prior incumbrances upon the estate, in order to preserve his security, and for costs in defending the title. Hubbell vs. Muolson, 53 N. Y. 225; Eagle Ins. Co. vs. Pell, 2 Edw. Ch. 631; Silver Lake Bank vs. North, 4 John. Ch. 370.

These well established principles would seem clearly to embrace the case presented by the petition of the trustees for the bondholders under the act of 1844, and entitle the trustees to the relief prayed for by them.

But though such be the right of the trustees for the bondholders, they invoke the powers of the court to aid them in making their right effectual, and they proffer to accept the aid that may be extended to them upon such reasonable terms as may be prescribed by the court. This is essentially proper, for it is the duty of the court to protect the rights of all the parties concerned, as far as possible. The rights of the State, the largest lienholder, must be protected so as to make sure of the sale of the canal, if it be not repaired and put in operation within such reasonable time as may be prescribed; and even if it be repaired and put in operation, that it be kept in repair and operation, so as to insure the earning of revenue more than sufficient to defray ordinary expenses. The expenses incurred by the receivers now in charge of the work, and their claim for just compensation, constitute charges upon the property, and must be provided for in the decree. Kneeland vs. Am. Loan Co., 136 U. S. 89. And it is represented by petitions filed that there are many claims due from the canal company, amounting in the aggregate to a considerable sum, for labor and supplies furnished the company before the great freshet of 1889, to keep the canal in repair and operation, such as were payable out of the tolls and revenues if they had been sufficient, under the authority reserved to the company by the *proviso* to section 2 of the act of 1844, ch. 281. If such claims are established, and they be adjudged to be charges or liens upon the canal or its revenues, superior to the lien of the bonds issued under the act of 1844, they must also be p[illegible]ovided for. These claims, however, [illegible]re not now before the court, and [illegible]refore no definite determina[illegible] [illegible] be made in regard to them.

I [illegible]all enter a decree for sale, in acco[illegible]dance with the opinion heretofore filed; but I shall insert a clause for stay or suspension of its execution, upon compliance by the trustees acting under the mortgage of the 5th of June, 1848, with the requirements, terms and conditions prescribed and set forth in the decree. But before that clause in the decree can be made available to effect a subrogation to the rights of the bondholders under the Act of 1878, or to authorize the trustees under the mortgage of 1848 to take possession of the canal to repair it, it will be necessary that they obtain a concurrent decree from the Supreme Court of the District of Columbia, sitting in equity, in the proceedings now pending in that Court, or that such proceedings be dismissed. No possession of the canal can be given by this Court while an important part of it remains in charge of receivers appointed by a Court of another jurisdiction.

Oct. 2d, 1890. R. H. ALVEY.

THE DECREE OF THE COURT.

George S. Brown, et. al., Trustee, vs. The Chesapeake & Ohio Canal Company, et. al.	In the Circuit Court for Washington County In Equity. No. 4191 Equity.
James Sloan, Jr., et. al., Trustee, vs. The Chesapeake & Ohio Canal Company, et. al.	In the Circuit Court for Washington County In Equity. No. 4198 Equity.

DECREE:

These cases heretofore consolidated coming on to be heard, on final hearing, were argued by counsel for the respective parties, and being submitted for decree, the bills, answers and other proceedings were read and considered, and it appearing to the Court from the report of the Receivers filed on the ninth day of June, 1890, and from the other proceedings in the causes, that it is impracticable and inexpedient to direct that the said canal shall be attempted to be repaired and put in condition for transportation, by the agency of receivers of this Court, and by the creation of an additional lien upon the corpus of the work for that purpose, and it further appearing to the Court that the said Chesapeake and Ohio Canal Company is largely in default, and is insolvent and wholly unable to earn any tolls and revenues and to pay any part of the principal or interest due to its bonded creditors, and that a sale of the said Chesapeake and Ohio Canal and all its works, property and franchises is required for the payment of the Repair Bonds issued under the Act of 1878, ch. 58 and to the State of Maryland under the several mortgages held by said state, as shown in these proceedings, and that upon the pleadings and proof the mortgagees and lien holders are entitled to a decree for such sale, subject to section 5 of the following decree:

SECTION 1. It is thereupon this second day of October, 1890, by the Circuit Court for Washington County, sitting as a Court of Equity, in said two cases consolidated, adjudged, ordered and decreed, that all the rights, title and interest of the Chesapeake and Ohio Canal Company in and to its entire line of canal extending from the City of Cu[illegible]berland in Allegany County to and into the C[illegible] of Georgetown in the District of Columbia [illegible] all and singular the lands, tenements [illegible], owned or acquired by the said Chesapeake and Ohio Canal Company, for its construction or repair, its works and appurtenances, and the site thereof, embracing the entire undertaking and every part thereof, and all tools, implements and boats, built or purchased by the said Company for the use of said Canal; and the water rights and franchises of the said Chesapeake and Ohio Canal Company, wheresoever the same or any part thereof may be situated or held—be sold as hereinafter prescribed.

SECTION 2. And it is further adjudged, ordered and decreed that Joseph D. Baker, Robert Bridges and Richard D. Johnson, be and they are hereby appointed Trustees to make said sale, and that the course and manner of their proceedings shall be as follows: They shall first file with the Clerk of this Court, a Bond to the State of Maryland, executed by themselves, and sureties to be approved by this Court, or by the Clerk thereof, in the penalty of one million of dollars, conditioned for the faithful performance of the trus[illegible] in them by this decree, or to b[illegible] [illegible]osed in them by any future decree or [illegible]order in the premises: They shall then proceed to make the said sale in front of the Court House, in Hagerstown, having given at least three months notice by advertisement, inserted in such daily newspaper or newspapers published in the cities of Baltimore, Washington, Richmond, Pittsburg and New York, as they shall think proper, of the time, place, manner and terms of sale, which shall be one-third [illegible]ns [illegible]ts of one and tw[illegible] [illegible]n [illegible]y of sale, (or all cash as [illegible] [illegible]na[illegible],) and the credit payments to bear [illegible] est [illegible] the day of sale, and to be secured by the note or notes of the purchaser or purchasers, endorsed to the satisfaction of the said Trustees; and as soon as may be convenient after any such sale the said Trustees shall return to this Court a full and particular account of their proceedings relative to such sale; with an affidavit annexed of the truth thereof, and of the fairness of said sale; and on obtaining the Court's ratification of the sale, and on the payment of the whole purchase money, (and not before,) the said Trustees shall by a good and sufficient deed, to be executed, acknowledged and recorded, according to law, convey to the purchaser or purehasers, his, her or their heirs, personal representatives and assigns the property and estate to him, her or them sold, free, clear and discharged from all claim of the parties hereto, Plaintiffs and Defendants, and those claiming by, from or under them, or either of them: And the said Trustees shall bring into this Court the money arising from said sale, and the bonds or notes that may be taken for the deferred payments to be distributed under the direction of this Court, and as the rights of the parties may be made to appear, and then to be finally decreed, after deducting the costs of this suit, and such commission to the said trustees as this Court shall think proper to allow if consideration of the skill, attention and fidelity wherewith they shall appear to have discharged their trust.

SECTION 3. And it is further adjudged, ordered and decreed that out of the proceeds of the aforesaid sale, the expenses incurred by the Receivers while in charge of the property (which may remain unpaid) shall be paid; the amount whereof to be ascertained by the Auditor upon the production of the proper vouchers, and the said Receivers shall be allowed by the Auditor such sums as this Court shall determine to be fair and just as compensation to them for their services performed under the orders of this Court.

SEC. 4. And it is further adjudged, ordered and decreed, that before said trustees above named shall proceed to the execution of this decree by advertising the said canal property for sale under this decree, the parties to these proceedings, or some of them interested therein, shall procure to be passed, by the Supreme Court of the District of Columbia, sitting in equity, on the proceedings now pending therein, a concurrent or ancillary decree, whereby the receivers heretofore appointed by that Court shall be discharged, and the canal, and all the property of the canal company, situate and being within the District of Columbia, shall become subject to this decree, and the sale hereby authorized to be made.

SEC. 5. And it is hereby further adjudged, ordered and decreed, upon the petition of the trustees for the bondholders under the act of 1844, ch. 281, that the foregoing decree of sale shall be stayed and suspended, upon the compliance with and performonce of certain requirements, terms and conditions, by the trustees under the mortgage of the 5th of June, 1848, or the survivors or survivor of them, or their successors in office, acting for and in behalf of the holders of the bonds issued under the act of the General Assembly of 1844, ch. 281, that is to say:

First. That said trustees shall within sixty days from the date of this decree, take up and bring into this Court all the bonds issued, and now outstanding under the act of the General Assembly of 1878, ch. 58, or such portion of them as may be taken up, and the amount due upon the residue thereof, in legal tender currency, principal with all interest thereon up to and inclusive of the day of bringing the money into Court, to be paid over to said bondholders under this decree; and shall also bring into this Court, within the time aforesaid, the further sum of ten thousand dollars with which, or such portion thereof as may be required, to pay the expenses incurred by the receivers while in charge of the canal under previous order, and such compensation to said receivers as may be fixed by this Court. And upon the bringing in of said money due on the bonds as aforesaid, the said trustees so bringing in the money shall forthwith give ten days notice, in one or more daily newspapers, published in the city of Baltimore, of the fact that the money is on deposit in Court to be paid over to the parties entitled thereto, upon presentation and surrender of the bonds held by them.

Second. That upon bringing in the bonds, or the bonds and money as aforesaid, within the time aforesaid and the giving the bonds hereinafter prescribed, and the procuring of a concurrent or ancillary decree from the Supreme Court of the District of Columbia, setting in equity, on the proceedings now pending in said Court, or procuring the said proceedings to be dismiss[illegible]d, so that this decree may be operative ov[illegible] [illegible]e entire canal, and all the work and propert[illegible] [illegible]ranchises of the Canal Company, the s[illegible] [illegible] under the mortgage of the 5th of June [illegible] the bonds issued [illegible] shall be subroga[illegible] [illegible]tand in the place of the trustees for the [illegible] of the said bonds issued under the act of 1878, [illegible] 58, with all the rights and remedies belongin[illegible] or pertaining to said trustees under the [illegible]aid act and the mortgage executed in pursuance of the said last mentionedact and to all the rights and remedies of the holders of the bonds issued under the said act, to the same full extent as if the said bonds were duly assigned to the said trustees acting under the mortgage of the 5th of June, 1848; and thereupon the receivers appointed by this Court shall surrender to the said trustees, acting under the mortgage of the 5th of June, 1848, possession of the said canal, and all the proper erty of the canal company of which they are now in charge and the said trustees shall become entitled to the full possession and control of the entire canal from the City of Cumberland to its terminus in Georgetown, in the District of Columbia, together with all the rights and property of the canal company, with power and authority to use and exercise the franchises of said company, in its proper corporate name, to the same extent and to like purposes, and none other, that said company could or might do, acting by authority of and under the control of a board of directors, as provided by its charter.

Third. That the said trustees, acting under the said mortgage of the 5th of June, 1848, shall by the first day of May next, (1891,) at their own cost and expense, to be reimbursed to them as hereinafter directed, have put in good repair and condition the entire canal from one terminus to the other [illegible] that it be fit for and capable of safe transport[illegible] thereon; and that upon so restoring said ca[illegible] to a state of good repair and condition, the said trustees shall proceed to operate the the same as a public waterway, with all the rights, and subject to all the conditions and limitations, granted and prescribed by the charter of the said company; and the said trustees shall keep said canal in good repair and condition, and continue to operate the same, sav[illegible] [illegible]nd except when such operation may be suspended by the action of causes against the effect of which prudence and due care in management will not provide. And the tolls and revenues received or derived from the use and operation of said canal as a public waterway, and from the property and rights of the Canal Company, shall be applied by the said trustees as follows:

First, to pay all current and ordinary expenses incurred in operating the said canal, and for keeping the same in good working repair; Second, to pay and reimburse the said trustees the amount of money brought in by them with which to pay the expenses incurred by the receivers, and their compensation with interest thereon: Third, to pay and reimburse to said trustees the amount expended by them in restoring the said canal to good working order from its present waste and broken condition with interest thereon: Fourth, to pay and reimburse said trustees any amount that they may be required to pay, as constituting a superior lien on the tolls and revenues of siad Canal Company to that of the bonds issued under said act of 1844, ch. 281, for labor and supplies furnished to the said Canal Company while said canal was operated and controlled by said company with interest on amounts paid: Fifth, to pay the interest that has accrued and may accrue due on the bonds issued under the act of 1878, ch. 58, and then the principal of said bonds: And Sixth, to pay the interest that has accrued and thot may accrue due on the bonds issued under the act of 1844, ch. 281, and then the principal of said bonds. And upon the full payment of these last mentioned bonds, the possession and control of said trustees shall cease and terminate.

FOURTH. That the said trustees shall open an office in Hagerstown, to be known as the Canal office, where all books, maps and papers relating to said canal and the affairs thereof, shall be kept and preserved; and which said office shall be open and accessible to all persons having dealings and transac[illegible]ions with the said trustees, their agents an[illegible] [illegible]ers, and the said trust[illegible] shall kee[illegible] [illegible] regular [illegible] of account, s[illegible]ing fully and accurate [illegible] receipts and expenditures and disbursements; and shall, at the end of each boating or transportation season, make full and accurate reports to the Court, under oath, of all receipts and expenditures, and of the real condition of the canal; and the amount of tonnage thereof, during the preceding year, And said office and all books and accounts therein, shall be open accessible to the auditor of this Court, whenever he may be required to examine and state accounts of and concerning the affairs of said trustees and their accountability under this decree.

Fifth, That the said trustees shall, within sixty days from the date of this decree, make and execute a bond to the State of Maryland, in the penal sum of six hundred thousand dollars, ($600,000), conditioned that the said trustees will well and faithfully do and perform the several th[illegible] [illegible] them to be done and comply [illegible] the terms and conditions in this 5th section of this decree prescribed; which bond shall be with good and sufficient sureties, to be approved by this Court, and shall be filed among the proceedings in this cause, as security for the due performance of the duties and obligations assumed by the said trustees under this decree. And if the said trustees shall fail or neglect to take up and bring in the bonds, or the money due thereon, and also the money to pay receivers expenses and compensation, within the time and as required by the first clause of the 5th section of this decree, and to give the bond as hereby required, the several clauses and conditions contained in this 5th section of this decree shall have no effect or operation whatever, and shall in no way operate to suspend or delay the execution of the decree for sale.

Sixth. That if at the end of four years from the first day of May next, there shall not have been tolls and revenues derived from the said canal, and the property and rights appurtenant thereto, over and above the amount necessary to pay current opera ive expenses, and to keep the canal in repair, to liquidate and discharge the amount of the cost of repairing and restoring the canal to a working condition from its present broken condition; and the amoun[illegible] of money required to pay expenses and compen[illegible]ation to the receivers; and to pay any amount t[illegible]at may be determined to be a preferred lien on [illegible]ch tolls and revenues, for labor and supplies [illegible] to the Canal Company; such failure in the tolls and revenues shall be regarded as evidence conclusive, (unless the time be extended by the Court for good and sufficient cause shown,) that the said canal cannot be operated so as to produce revenue with which to pay the bonded indebtedness of the said Canal Company; and further, whenever it shall clearly appear that the said canal cannot be operated by the said trustees so as to produce revenue with which to pay the bonded indebtedness of said company, the right and power is hereby reserved to this Court to order and direct the execution of the foregoing decree of sale.

SEC. 6. That in the event of sale of the said canal, the costs of these proceedings, to be taxed by the clerk, shall be paid out of the proceeds of sale; but if the said canal shall pass into the possession of the trustees under the mortgage of the 5th of June, 1848, by virtue of the 5th section of the foregoing decree, the costs shall then be paid by the complainants in this cause.

R. H. ALVEY.

Dangerous Nuisances.

A few years ago new grades were established on many of our principal streets. Pavements were required to be conformed to the grades so fixed. At many places some pavements were raised a half foot or more and left at either end a very sudden and unsightly descent to the old pavements that were allowed to remain on the old grade. In the dense shade of trees, where the electric light does not penetrate, a stranger or a citizen not familiar, by daily use with these excrescences, is at night in constant danger of a serious fall from the unexpected obstructions. Drivers and riders are warned against pitfalls in the streets by the presence of guard lanterns. Why should pedestrians, confiding in the reasonable evenness of pavements, be invited into abrupt and serious collision with a half foot or more perpendicular rise in the pavement, or have his whole body roughly jarred by a sudden drop from the horizontal to a foot or so below.

Any one sustaining injury from these dangerous nuisances would have a clear right of recovery against the town, and it should be the immediate determination of the Council to compel all persons to make their pavements according to the grade fixed by their engineer. One of the most dangerous places for the traveler after dark unacquainted with the place, is the abrupt ending of the pavement at the alley along the Presbyterian parsonage. Persons more than once have had painful experience of this dark and dangerous place, provided only with narrow stepping stones. It should be properly fixed or a guard fence erected where the pavement ends. There is no light there and one unaccustomed to pass there can not be expected to know intuitively that to preserve life or limb he must cross to the west side in [illegible]der to pursue his way out of [illegible]

If the town is [illegible] grow as we now hope and expect, the very first thin to do is to impr[illegible]e the side walk[illegible]. Let the Council l[illegible]k to them.

A Plucky Plum Tree.

Mr. Joseph A. Wishard the genial host of the Wishard Hotel in Smithsburg, has in his yard the pluckiest and most go-ahead plum tree in Washington County. This enterprising tree bloomed out like the other flowers in the spring but the fruitage did not come. The leaves fell during the summer and the tree was bare. But it put out another set of leaves and blossoms and about fifty young plums was the result of the second offort. This was not entirely satisfactory, so a third crop of blossoms appeared, a full crop, and now the tree is white with blossoms and interspersed with the blossoms are the half grown plums. Dr. Baldwin of Smithsburg, also has a tree covered with blossoms, but Mr. Wishard's tree is the only one outside of the tropics we ever heard of to bear three crops of blossoms in a season, and fruit and blossoms at once.

Building Notes.

Mr. Albert Hile[illegible] Jr., is erecting for Mr. Samuel Mentzer, a two-story double dwelling of brick, on Wayside Avenue, which is a handsome improvement to that section. He has also placed in the dwelling of Mr. Ankeny on West Washington street a very fine and costly bay window, greatly to the improvement of that dwelling house. After the fair he will put another story on the dwelling house of Mrs. Logan, West Franklin street. He is at present at work upon the completion of the addition to the building adjoining, formerly occupied as the Postoffice.

Governor Jackson will appoint Col. Woolford's successor next week. Applicants are not scarce.

DIED.

HENNESSY.—On Saturday morning, September 27, at Ernstville, Mrs. Margaret Hennessy, in the 29th year of her age.

MAGALIS.—On Thursday, September 25, at her residence, in Martinsburg, Mrs. Annie Magalis, daughter of the late Chas. N. Harper, aged 31 years, 6 months and 15 days.

GROCERY FIXTURES FOR SALE.

Counter, Shelving, Bins, Rack and everything necessary to carry on the grocery business for sale at half price. Call on

FRANK W. MISH, Attorney,
(oct 3 6t.) 103 West Washington street.

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ONE NIGHT ONLY.

Tuesday, October 7th.

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Reserved seats now on sale at Kelley's Book Store. oct2

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1 do. do. 3 days	1 20	1 do.	do.	1 month 6 00

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CANAL RECEIVERS.

Judge Alvey Decides in Favor of the Bondholders.

EFUSAL TO ORDER IMMEDIATE SALE.

ractical Men to Be Appointed to Ascertain the Canal's Condition—Its Restoration as a Waterway Dependent on the Cost and Prospect of Successful Operation.

[Special Dispatch to the Baltimore Sun.]

HAGERSTOWN, MD., Feb. 23.—Chief Judge Alvey will on Monday morning file the following opinion in the Chesapeake and Ohio canal cases, in which he decides to appoint receivers for the canal:

GEO. S. BROWN ET AL. VS. THE CHESAPEAKE AND OHIO CANAL COMPANY. No. 4191 Equity.—In the Circuit Court for Washington County, sitting as a Court of Equity.

MES SLOAN, JR., ET AL., TRUSTEES, VS. THE HESAPEAKE AND OHIO CANAL COMPANY ND OTHERS. No. 4198 Equity.—In the Circuit Court for Washington County, sitting a Court of Equity.

nere have been two bills filed against the esapeake and Ohio Canal Company and hers, 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, f course, to any conflict of claims that may rise.

The first of these bills is that by the trustees acting under the mortgage executed by [illegible] pursuance of the provisions of the act of the General Assembly of Maryland of 1884, chapter 281, to secure the bonds authorized to be issued by that act, now amounting, with the arrearage of interest, to about the sum of $4,260,000, and the second bill is filed by the trustees to whom the mortgage authorized by the act of 1878, chapter 58, was executed by the company to secure the bonds issued under this latter act, which bonds, with the arrearage of interest thereon, now amount to nearly $600,000. In both of these bills it is charged that the canal is in a broken and waste condition, and that the company is, and has been for a long time past, in default in paying overdue interest and 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 intent and purposes, abandoned the canal with no prospect whatever of being able to resume operation.

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

THE COMPANY AND THE STATE.

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

The attorney-general of the State, acting under the authority of a joint resolution of the two houses of the present General Assembly, has made the State a party defendant in both cases, and as the largest creditor, as well as the largest stockholder of canal company, the State has answered both bills, and the State, like the canal company, strongly opposes the appointment of receivers, and insists, if it be possible, that an immediate sale should be effected, and for very much the same reasons as those put forth 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 judicial point of view. Some of these questions, while it may become necessary to decide them in the further progress of litigation, it will not be necessary for me to decide in passing upon the present preliminary application for the appointment of receivers. I shall, however, refer to them in the course of my opinion.

Now, supposing the allegations of the complainants, with the exhibits and affidavits filed, to be sufficient to show grounds for the appointment of receivers in respect to the provisions of the acts of 1844 and 1878, and the 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 deferred or subordinate lienholder, in view of the provisions of the acts of Assembly referred to, any right to resist the appointment of receivers and to insist upon an immediate sale of the work? Third. Have the intervening bondholders, either those under the act of 1844 or those under the act of 1878, any right, under the circumstances of the case, to resist the appointment of receivers and insist upon the sale of the canal, notwithstanding the trustees representing the bondholders ask for receivers, and not for an immediate sale? I shall consider these questions in the order I have stated them.

HOW THE CANAL ORIGINATED.

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

BONDHOLDERS OF 1844.

But few years elapsed after the organization of the company, and the work of construction was commenced, before financial troubles and embarrassments were experienced. And it was during the early periods of the embarrassment of the company that this State, by large subscriptions to the stock and the loan of its credit, became creditor to the extent of several millions of dollars. As security for these loans and the guaranty given on the subscriptions to stock, the State exacted liens and mortgages upon the entire works and property of the company, and of the tolls and revenues that might be received. This aid, however, proved quite insufficient, and after the canal had been constructed to dam No. 6 all further work ceased for the want of money. It was in this state of affairs that, in 1844, another appeal was made to the State for aid. This appeal was yielded to, not by the loan of money, but by the waiver of all priority of liens in favor of bonds that might be issued by the company to the extent of $1,700,000—that being the amount supposed to be necessary to complete the canal to Cumberland. This waiver on the part of the State, and authority to the canal company to issue preferred bonds, was effected by the act of 1844, chapter 281, passed on the 10th of March, 1845. By the first section of that act the company was authorized to issue the preferred bonds, and by the second section it is declared that "the bonds so issued as aforesaid shall appear on the face of the same to be preferred liens on the revenues of said company, according to the provisions of this act, and with the assent of the said company, as hereinafter provided; the said bonds, without any preference or priority over each other on account of date, *shall be preferred liens on the revenues and tolls that may accrue to the said company from the entire and every part of the canal and its works between Georgetown and Cumberland, which are hereby pledged and appropriated to the payment of the same, and the interest to accrue therein*, in the manner hereinafter mentioned." To this second section there is a proviso "that the president and directors of the company shall from time to time, and at all times hereafter, have the privilege and authority to use and apply such portion of said revenues and tolls as in their opinion may be necessary to put *and keep* the said canal in good condition and repair for transportation, provide the requisite supply of water, and pay the salaries of officers and agents, and the current expenses of said company." In the fourth section of the act it is further declared that the State's rights and liens upon the revenues of the company shall be waived, deferred and postponed in favor of the bonds authorized to be issued, so as to make such bonds, and the interest to accrue thereon, preferred and absolute liens on said revenues, "until said bonds and interest shall be fully paid."

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

The act was accepted by the canal company, the bonds were issued in pursuance of the act, and a mortgage was executed by the company to five trustees, as means of security to the bondholders that the revenues and tolls of the company should be applied as contemplated by the terms of the act. Of these preferred bonds, the State of Virginia became 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.

RIGHT TO MAINTAIN THE CANAL.

It is too plain for question, that the provisions of the act that I have quoted constituted a solemn tripartite contract between the State, the canal company and the purchasers and holders of the bonds. And that being so, every reasonable implication, derivable from the nature and circumstances of the contract is part thereof, and is just as binding upon the parties as are the express terms of the contract. As has been observed, the only security for the payment of either principal or interest of the bonds was the pledge of the revenues and tolls of the company. It is manifest that it was contemplated by the parties, and formed the moving inducement to the 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 debts that were dependent alone upon the revenue for satisfaction. If, therefore, it can be shown that it is reasonably feasible to restore the canal to navigable condition, and to make it earn revenue that will be 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 bondholders, according to the terms of their respective contracts, the plainest principles of justice and good faith require that it shall be done. This, I think, is too clear to be successfully controverted by any one, and especially should it not be by the canal company.

ENTITLED TO ASK FOR RECEIVERS.

But it is insisted, both by the canal company and the State, that the trustees representing the bondholders under the act of 1844 are not entitled to ask for the appointment of receivers, because, they say, there has been no such default or breach of the condition in the mortgage, by the company, as would entitle the trustees to enter and take possession of the work, and operate it, and appropriate the tolls and revenues to the payment of the bonds. It is true, it is stipulated in the mortgage, that so long as the company should comply with the conditions of the contract it should retain possession and management of the work, and collect and receive the revenues and tolls. But, in the language of the condition, "if they failed to comply with those conditions *from any cause*, except a deficiency of revenue arising from a *failure of business* without fault on the part of the company, such 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 trustees, looking to the rights and interest of the bondholders, could ever have agreed that the company should retain the exclusive control and management of the work, after it had ceased to be able to operate the work, or to prevent it going to destruction. It is not a failure of business so much as it is an incapacity of the canal to do business; and the company is without the power or means of restoring the capacity of the work no matter how much business might be brought to it, if it were in good working condition. I cannot, therefore, accede to the proposition, urged by both the canal company and the State, that the trustees would have no right to take possession under the mortgage.

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

BONDHOLDERS OF 1878.

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

In 1878, the canal having been seriously injured by freshet, it became necessary for the State to extend further aid to the company, and this was done by a further waiver of the State's liens and the giving authority to issue preferred bonds to the extent of $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 authorized to be issued, and they are declared to be preferred and absolute liens on the revenues, tolls and property of the company, "to be paid and discharged in preference to any other claims or liens upon the company or its works and property, and in preference to any bonds which may be subsequently issued by the company, for the purpose of putting and keeping the said canal and its works in good condition and repair," &c. And by the second section it is provided that a mortgage shall be executed by the company, to three trustees named, of the tolls and revenues and other property, land, water rights and franchises of the company to 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 authorized for the payment of the said bonds and coupons may be full, ample and effectual."

THE COMPANY'S CLAIMS UNTENABLE.

Now, it is shown that there has been default made in the payment of six successive coupons, and the trustees in the mortgage have been required by the holders of a majority in amount of the bonds to take proceedings as authorized by the act. This act of 1878 is certainly binding upon the canal company, and it has been held by the Court of Appeals that it was competent to the company to anticipate the receipt of tolls and revenues authorized to be applied to keeping the canal in repair by issuing bonds to bind as preferred liens the future revenues of the company. (Com. of Virginia vs. Canal Co., 32 Md., 501.) That being so, it is difficult to perceive upon what principle the canal company, in the face of its express agreement, can be heard to resist the appointment of receivers. And in view of the express provisions of its charter to which I have referred, and the contract with the bondholders under the act of 1844, I am at a loss to understand upon what principle the canal company can insist upon a sale of its property and franchises, and consequently upon its own destruction, rather than a receiver to preserve its existence. I am very decidedly of the opinion that such a contention as the company makes in this case cannot be maintained.

THE STATE'S STATUS IN THE CASE.

2. Then as to the position of the State in this litigation. Like the canal company, the State, 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 lienholder, to be entitled to insist upon a sale of the subject of the liens, as against superior lienholders, should be able to show with some reasonable degree of certainty that he has a substantial interest in the proceeds of sale after paramount liens are discharged. Here, if 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.

THE POWER TO CONTRACT FOR A SALE.

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

HAS THE STATE VIOLATED ITS CONTRACT?

But supposing it to be determined that the constitutional provision does not apply to the act of 1878 and the mortgage thereunder, there is another question arising on that 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 might be done. The State can exercise no sovereign power to violate its contract, nor can it authorize others to do so. Without the assent of the bondholders themselves it is a grave question whether the State could confer power to bring about a sale of the canal, regardless of the previous pledges of the tolls and revenues, by the simple act of the canal company in making default in the payment of three interest coupons. This question may arise in the further progress of the cause, but I shall not now, because it is not necessary, express any opinion in regard to it.

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

THE MINORITY BONDHOLDERS.

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

It is certainly a well-established general rule that trustees of a railroad or canal mortgage represent the bondholders *in all legal proceedings* carried on by them affecting the trust to which the bondholders are not actual parties, and whatever binds the trustees, if they act in good faith, binds the *cestui que trusts*. It is said by the Supreme Court that the 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 bondholders would have no right to intervene to control the proceedings, or to interpose any obstruction to the relief prayed by the trustees, that relief being consistent with the trust.

4. As I have before stated, there is no controversy in regard to the facts as to the broken condition of the canal, and the utter insolvency of the company. In their answers, both the canal company and the State expressly admit that the company is insolvent, and that it has not paid any interest on the bonds issued under the act of 1844 since the coupons that fell due 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 expres stipulations for possession in the event of defaults by the company, to entitle the complainants to the appointment of receivers.

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

And in the case of the canal company vs. Vallette, (21 How. 414,) bonds had been issued by the canal company, pledging the real and personal property of the company for the payment of the debt and interest, and on the face of the bonds it was stipulated that the principal sum was the first and only loan created by the company under its charter for the completion of the canal; that the faith of the company and their effects, real and personal, were pledged for the payment of the debt and interest; that the bonds should have a preference over all debts to be thereafter contracted; that in default of the payment of interest, the holders of the bonds might enter into possession of the tolls, water 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.,) sections 379, 380 and 381, where the cases will be found collected.

RECEIVERS TO BE APPOINTED.

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

PRACTICAL MEN TO BE CHOSEN.

In the selection of receivers I shall aim to get men of practical knowledge and experience in the operation of the canal, and of reliable judgment as to the future prospects of the work. They must, of course, be impartial as between all 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.

R. H. ALVEY.

February 21, 1890.

RECOMMENDED FOR RECEIVERS.

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

COMMENTS ON THE OPINION.

Daily Herald and Torch Light.

THURSDAY, JUNE 21, 1894

Herald Book COUPON.

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One of these coupons presented at the HERALD office. entitles the holder to any of the following Cloth Bound Books at the prices indicated.

Hawthorn Series,	10 titles,	15c.
Arundel "	15 "	19c.
Talmage,	2 "	20c.
Shakespeare's Complete Works,		69c.
Ben. Butler's Book,		99c.
Works of Josephus,		99c.
DeFontenoy's Revelations of High Life,		$1.19
Mark Twain's Library		1.49
Bugle Echoes,		49c.
Life of Blaine,		95c.

NATIONAL GAMES.

They Quit Even.

(Special to the HERALD.)

New York, June 20, 9.40 p. m.—The National base ball games played today, the first named club indicating the place where the game was played, resulted as follows:

Boston, 14; Baltimore, 12.

New York, 6; Philadelphia, 4. First game.

New York, 14; Philadelphia, 6. Second game.

Pittsburg, 7; Louisville, 6.

Cleveland, 7; Chicago. 3.

Washington, 16; Brooklin, 12.

St. Louis, 4, Cincinnati, 2.

NEWS AND COMMENTS.

Erastus Wiman, the one-time railway magnate was sentenced to Sing-Sing for five years and six months, yesterday, for forgery.

COURT OF APPEALS CASES.

Judgment Reversed in One—More Evidence Wanted in Another.

The judges of the Court of Appeals met at Annapolis on Tuesday and handed down opinions in a number of cases.

In the case of the Norfolk and Western Railroad Company vs. William Hoover Judge McSherry delivered the opinion. He stated that this was an action for personal injuries received by Hoover as the result of alleged negligence on the part of his fellow-workmen. Hoover was an engineer, and had warned the brakeman not to let him down a grade he was about to descend, as fast as he had done the other. Immediately afterward he found that, in descending the grade, the brakes were not applied by the brakeman, and, after signals to brakemen to down brakes, and efforts to stop the train himself, he seeing a collision unavoidable on an approaching trestle, jumped from the train, and was injured. For these injuries he brings suit. On trial, he proved that the reputations of the two brakemen were those of drinking men. This, the Court of Appeals says, it was no error to allow as evidence. The proper way to fix responsibility was to show that the company had not used due care in selecting the men, and their general reputation of drunkenness was proper evidence. The court decides there was error in not ruling that the company was not responsible unless it was proved that it was negligent in employing Shull, the train despatcher who employed the trainmen, was only a fellow employe. The court said it was an error to require general reputation of the drunkenness of an employe to be brought home to the knowledge of the defendant before the accident to make him liable. Judgment reversed, with costs, above and below, and new trial awarded.

The accident occurred in May, 1891, on a freight train from Shenandoah, Va., to Hagerstown. M. L. Keedy and W. C. Griffith were counsel for Hoover; Douglas for the railroad company.

MORE EVIDENCE WANTED.

By Judge Fowler—The burgess and commissioners of Williamsport, &c., vs. Frank H. Darby. By the act of 1890, chapter 613, the boundaries of the town of Williamsport were extended, and it is not contended that the property here in question is not within the new limits. The act of 1890 said the new property was to be taxed by the town at the valuation the county placed upon it. Mr. Darby refused to pay the new town tax bills, alleging he was assessed without notice. The court considered the act of the legislature notice enough if the counsel had proved below that the levy was made on the county assessment. The court remands the case further evidence.

A Fire, But no Damage.

Smoke seen issuing from the cooper shop of Emmert Bros'. flouring mill, East Antietam street, at 10 o'clock, last night, raised an alarm that brought a prompt response from all four fire companies. Shavings in the shop had caught fire, but the flames were quenched before any damage was wrought and before any of the companies arrived. The ever-promptness of the firemen plaes Hagerstown's volunteer service on a footing with any in the country.

City Band Excursion.

There will be many amusements at Island Park on Saturday, such as dancing, fishing, boat racing, swinging and athletic sports. The City Band will furnish choice music. Special train leaves at 7.30 a. m. returning leaves park at 6.30 p. m. Round trip, 50 cents. Tickets good on regular noon trains.

PITHY AND PERTINENT.

Small Items of General Interest in Town, County and Elsewhere.

Those who think too little are sure to talk too much.

The strawberry season is rapidly drawing to a close.

B. A. Garlinger shipped ten fine horses to Washington yesterday.

The insidious mosquito has arrived and will be one of the summer annoyances.

Joseph Stouffer, a farmer along the Smithsburg pike, will commence harvesting Saturday.

We still insist that Washington county has the best summer resorts of any county in the state.

There is talk of organizing a drum corps of eighteen or twenty pieces for the First Hose Uniformed Rank.

H. W. Hurley shipped 20 head of cattle and 60 shoats to a firm in Reading by the W.M. R. R., yesterday.

Cranks may come and cranks may go, but the euphonious name of Hagerstown will ever remain the same.

Martin Hess's barn, at Four Locks, this county, was completely destroyed by the storm Monday afternoon.

Justice James B. Warner, this city, has his third set of teeth. He has a child that was born with two teeth.

C, E. Mentzer will shortly commence the erection of his residence on the corner of North and Locust streets.

Urias Gross has been chosen elder and D. Frank Bussard deacon of Holy Trinity Memorial Lutheran church, Sharpsburg.

Governor Brown was much impressed with the efficiency and faithfulness of the militia at Frostburg upon visiting there.

The corner stone of the Colored Christian church, West Antietam street, will be laid Sunday July 1, at 3 o'clock p. m.

The carpet caught fire from a gasoline stove at Mrs. Rudolph Beck's residence, Salem avenue. Prompt detection saved a damaging fire.

C. C. Walts & Co., druggists, South Potomac street, have put out a very pretty new sign in black and gold. M. R. Hawken was the artist.

D. G. Pentz, Greencastle, C. V. operator at Harrisburg, had his hand badly burned on Sunday by lightning, while working at his instrument.

The College commencement at St. James took place yesterday. A fashionable dance was held last night. A few persons from this city were present.

Franklin and Marshall College trustees, Lancaster, elected George F. Baer, L, L. D., of Reading, president, and Attorney General W. U. Hensel, vice president.

Miss Emma M. Marine, of Baltimore, who took poison by mistake while visiting her sister in Montgomery county, died Tuesday. She was known in Hagerstown.

George Anders, a merchant of New Windsor, gave a banquet to the graduates of New Windsor College, in honor of his guests, Mrs. Harry B. Irvin and Miss Belle Cadden of this city.

Messrs. J. S. Emmert and Son have received an imported registered Scotch shepherd dog. Mr. J. S. is very proud of his canine pet and will send him out to his Forge farm to herd sheep in his peach orchard.

Dallas Smith left his horse and buggy stand on the railroad track at Cushwa's warehouse, Williamsport, whiled he walked away a short distance to talk to a friend. A Western Maryland freight train came along and completely demolished the buggy. The horse escaped with slight injuries.

A Driving Accident.

Mr. Josiah Williams and an invalid sister, Miss Ella, of Funkstown, were out driving in a stick wagon on Tuesday evening and just as they were passing the Hartle farm below Rose's mill, the horse tread on a piece of tin which caused him to scare and run up an embankment. Mr. Williams was thrown out and dragged several feet but still held to the lines. The wagon soon upset and Miss Ella fell on a pile of stones, suffering an ugly gash in her forehead and sustaining internal injuries. Mr. Williams received slight bruises. The horse ran a few yards down the road dragging the overturned vehicle, which was completely demolished, before the animal broke the harness and galloped off.

Messrs. Thrush and Stough had just manufactured the stick wagon to order and it was a fine machine.

Not Too Old to Celebrate.

On Monday, July 9, the pleasant little town along the Potomac—Sharpsburg—will reach the age of one hundred and thirty-one years. It was laid out in 1763, by Col, Joseph Charline, and named in honor of Governor Horatio Sharpe, who was at that time governor of the province of Maryland. The muster roll of Col. Chapline, who was a colonel in the French and Indian war and stationed at Fort Frederick, is now the property of J. P. Smith. It is the intention of the residents to appropriately celebrate the anniversary.

Cumberland Firemen Pleased.

At a meeting of the Hose Fire Company, of Cumberland, resolutions were passed extending to the people of Hagerstown in general and the Western Enterprise Fire Company, of this place, in particular, their thanks for courtesies extended the company during the recent firemen's parade here. They also extend their thanks to Chas. W. Porter and Mr. Peterman for a handsome wreath of flowers donated on that occasion. The fire department of Cumberland will have a parade in the near future, led by the Concert Band.

THE MULE TO STAY

Judge Stake's Opinion in the Canal Case.

GRANTS EXTENSION OF TIME

Transportation Company's Contract Approved.

TO BE KEPT UP AS A WATERWAY

The Cost of Restoring the Canal After Flood of 1889 Takes Precedence Over the Labor Claims.

Judge Stake filed his opinion in the greatly agitated canal case Tuesday afternoon shortly before 2 o'clock. It was the case of Brown et. al., Trustees vs. The Chesapeake and Ohio Canal Company. On February 15, last, John K. Cowen and Hugh L. Bond, Jr., argued the case for the trustees, and Attorney General John P. Poe for the state, in favor of a sale. Bernard Carter, Gen. Bradley T. Johnson, of Baltimore; J. Clarence Lane, this city, and the late S. Teackle Wallis, of Baltimore, and Henry H. Keedy, of this city, have also figured as attornies in the litigation over the canal at various times. The trustees asked for an extension of time for the continuance of the canal as a waterway, which Judge Stake grants.

The opinion in full is as follows:

Brown, et al trustees, vs. the Chesapeake and Ohio Canal Company.

Nos. 4191 and 4198 Equity In the Circuit Court for Washington County, sitting as a Court of Equity.

The report of the surviving trustees under the mortgage of 1848, has been filed in the cases, showing their proceedings under the decrees and orders of this Court by which they were put in possession of the Chesapeake and Ohio Canal.

The report shows that by reason of the great length of time during which the canal was allowed to remain unrepaired after the flood of 1889, the work of restoration and its cost were greatly increased. The time for the completion of the work of repair had been extended from the first of May to the first of August, 1891, and it was not until the latter month that the water was turned into the canal through its entire length. The report further shows that the amount expended in making the repairs was $430.764 43· that the net amount received from tolls, rents and other sources to December 1st, 1893, was $270.970 73, and running expenses, $250,327 17. The report also shows that in 1892 the number of boats on the canal increased to 182, and that some new boats have been built since then to replace some old ones. It also shows that in 1891 the tonnage of coal on the canal was 50,533 14 tons; in 1892, 265,799 08 tons, and in 1893, 336,295.11 tons.

It sets forth that the provisions of section 5, sub section 6, of the decree of this Court passed October 2nd, 1890, have greatly interfered with the more complete and advantageous restoration of the traffic of the canal. It then states that the trustees have entered into a contract with The Chesapeake and Ohio Transportation Company of Washington County, a corporation under the laws of this State, whereby the latter company agrees to furnish all the boats needed to transport traffic offering for transportation on the canal, and further agrees to guarantee to the trustees a fixed net revenue of $100,000 00 per annum. A copy of this contract is filed with the report, the contract being upon the express condition that the same shall not be affective unless or until this Court shall approve the execution of it. The performance of this contract on the part of The Chesapeake and Ohio Transportation Company is to be secured by a good and sufficient bond. The contract provides that the Transportation Company may at its own cost and expense, use or furnish electricity as a motive power for the propulsion of boats, but so as not to interfere with the operation of boats by animal or steam power as now used. But it is also provided that nothing in the contract shall be taken to give to the Transportation Company any exclu ive rights whatever on the canal, or to prevent the trustees from making with any other person or corporation a contract or contracts similar to it in whole or in part. On the other hand the Transportation Company is required when it undertakes to furnish electrical power for any boats to furnish to all boats without preference of one over another.

Upon this the trustees ask:

1. That an order may be entered ratifying and approving the execution by these trustees of the agreement with the said Transportation Company. and authorizing the trustees to deliver the same,

2. That the period of four years from the first of May, 1891, mentioned in subsection 6, of section 5 of the decree of October 2nd, 1890, be extended until the end of ten years from the date of the entry of said order.

Copies of the report and petition were served on the solicitors of record for the State of Maryland, the Attorney-General of the State and solicitor of record of the Chesapeake and Ohio Canal Co. An answer was filed by the Attorney General on behalf of State of Maryland. The answer objects to the granting of the prayer of the petition:

Because the requirement of the decree that reports should be made by the trustees at the close of the boating seasons has not been observed and obeyed; because, by the 6th paragraph of section 5 of the decree it is provided that four years from May 1st, 1891 should be allowed to the trustees to make the trial whether, after repairing the canal, they could operate it so as to produce revenue with which to pay the bonded debt of the company, and if at the end of such four years there shall not have been tolls and revenues derived from the said canal and the property and rights appurtenant thereto, (over and above the amount necessary to pay current operative expenses and to keep the canal in repair) sufficient to liquidate and discharge the amount of the costs of repairing and restoring the canal to a working condition from its present broken condition and the amount of money required to pay expenses and compensation to the receivers and to pay any amount that may be determined to be a preferred lien on such tolls and revenues for labor and supplies furnished to the canal company, such failure in the tolls and revenues shall be regarded as evidence conclusive (unless the time be extended for good and sufficient cause shown), that the canal can not be operated so as to produce revenue with which to pay the bonded indebtedness of said canal company, and in such event the sale decreed was to take place, that as the said four years do not expire until the first of May, 1895, the petition of the trustees is premature and the Court has no power to grant the same; because even if the Court possesses the power no case is made by the petition which calls for its exercise; that no money has been earned to pay any part of the bonded indebtedness or the cost of repair.

The case was argued on the part of the petitioners and the State of Maryland. Two questions are involved in the determination of the matter presented to the Court.

1. Is the application for the extension of time premature?

2. If not, is there good and sufficient cause shown for the exercise of the power of the Court reserved in the decree of 1890 for the extension of the time asked for by the trustees?

As to the first I can not have any difficulty. The right given to the trustees of the bond holders under the mortgage of 1848 to take possession of the canal and restore it to a working condition was based necessarily upon the uncertainties of an experiment any not upon any accurate knowledge of ensuing results. It was not in the power of the Court to foresee whether the undertaking of the trustees in the attempted work of restoration and rehabilitation of the destroyed and dismantled canal, would eventuate in utter failure or in any practical measure of success. The time allowed was therefore made short in order that if it should be demonstrated that no reasonable hope of success could be looked for in that time, the sale would be consummated. But there is nothing in the letter or the spirit of the provisions of the decree that would prevent the court from acting upon the application for an extension of time upon good and sufficient cause shown if, before the expiration of the four years, it should appear that the physical condition of the canal has been so restored as to make it a useful artery of trade, and the progress towards the recovery of its traffic such as to indicate an increasing and prosperous volume of business. There does not appear to me to be any good reason for postponing such action provided the required cause be shown for present action. While it is true that the trustees have failed to observe the order of the Court in making annual reports of their proceedings such delinquency while not to be excused, cannot deprive those for whom the trustees were appointed to act of any substantial rights guaranteed to them under the decree.

Does it then appear to the Court that there is good and sufficient cause shown for the extension of the time allowed to the trustees for the operation of the canal? In considering this question the position of the petitioners or rather that of the bondholders for whom they act must be remembered. The great project of building the Chesapeake and Ohio Canal, conceived by the bold and broad minds of a century ago, and put into execution by the persistent energy of succeeding generations, had in 1844 reached a point where humiliating failure appeared to be the end of so much struggle and the expenditure of so many millions of dollars. Under the act of 1844 the bond-holders who advanced their money for the completion of the canal were given under the mortgage of 1848 a lien on the tolls and revenues of the canal for the repayment of their money. When in 1889 the flood left the canal a wreck and the company bankrupt, the bondholders of 1848 applied to the Court for leave to rebuild the canal and make an effort on their own behalf to render the work, if possible, the means of repaying some of the money expended by them for its construction. The leave was granted and upon the faith that a reasonable opportunity would be given them to work out the experiment, a large sum of money was expended in the restoration of this great artificial water way. That this sum was larger than was expected would be necessary, is no reason for limiting the time in which to realize the probable wisdom of the effort.

It is shown that within the short time since the canal has been reopened for business the tonnage has greatly increased and the number of boats has been greatly enlarged. The canal is in excellent condition and its usefulness as an instrument of transportation is growing. In spite of the uncertain tenure of the trustees and the doubts as to the permanence of the canal as a water way there has been a reasonable measure of successful growth in its business. To suddenly suspend its operation while in a condition of active life before the opportunity is fairly given to show the result of the experiment, would not be good faith to those who have undertaken so great a work under the sanction and protection of the Court. I think there is good and sufficient cause shown for the exercise of the power of the Court reserved in the decree of October 2, 1890, and I will grant the extension asked for by the trustees. It is only by allowing a period of time sufficient to induce boat builders and boat owners to embark in the business of canal traffic that the highest development of the business can be secured.

The Court is asked to sanction the contract proposed to be concluded with the Chesapeake and Ohio Transportation Company of Washington county.

By this it is agreed that the trustees will maintain and operate the canal as a waterway during the continuance of the agreement, unless it be destroyed by flood or other casualty beyond the ability of the trustees to rebuild or repair; that the Transportation Company will place in service as many boats as may be necessary to transport coal and other traffic offering during the continuance of the agreement; that the said company guarantees net revenue to the trustees from the trust estate over and above the expenses of ordinary operation and repair, and agree to make good any deficiency in any year so as to equal said amount, and will furnish bond or other security to insure the prompt and faithful performance of its guaranty; that the charges for tolls and other dues shall not be changed without the consent of the Transportation Company. It is provided that nothing in the agreement shall in any way affect the rights or powers of the trustees under the present or any future orders of the Court, to manage, lease, sell, or otherwise dispose of any property not actually needed in the operation or maintenance of said canal as a navigable highway.

Of course, this contract can in no manner affect the general rights of the public to the use of the canal as guaranteed by the charter creating it as a navigable highway. And the contract itself provides that nothing therein shall be taken to give the Transportation Company any exclusive rights whatever on said canal, or to prevent the trustees from making with any other person or corporation a contract or contracts similar thereto in whole or in part, or that the use of electrical power, if it be found practical, shall interfere with the use of animals or steam by individual boat owners.

I see no reason for not allowing said contract to be entered into by the trustees, as it provides a certain fixed net revenue and does not prevent the earning of more if possible.

I will therefore sign an order ratifying and approving the execution of said contract by the trustees with the Transportation Company and authorizing the delivery of the same, and also extending the period of four years from May 1, 1891, mentioned in the subsection 6 of section 5 of the decree of October 2, 1890, until the end of ten year from that time.

While this opinion was in course of preparation, application was made for a hearing on the part of certain creditors of the Chesapeake and Ohio Canal Company. A petition was filed in the proceedings by F. T. Goddard on behalf of himself and other creditors. These claims for the payment of which the Court is asked to make provision are for labor and materials furnished to the Canal Company as a part of its operating expenses prior to the flood of 1889 and remaining unpaid up to and at the time the trustees for the holders of the bonds of 1844 were authorized to take charge of the canal for the purpose of restoring and operating it as a navigable highway. At this hearing it was suggested in the argument of counsel that the Court had power to provide for the payment of these claims by the application of the principle laid down in the cases of *Fortic vs. Schall*, 99, U. S., 235; *Miltenberger vs. Logansport R. R Co.*, 106. U. S., 117; and *Union Trust Co. vs. Souther*, 107, U. S., 489. These were cases in which railroad companies were indebted by way of mortgage, where, after default had been made and to prevent a foreclosure sale, the holders of the mortgage invoked the intervention of a Court of Chancery for the appointment of a receiver and the continuance of the business of the railroad with the view of maintaining the earning power of revenue and income for the benefit of the holders of the mortgages. In such cases, say the Court, it is clearly within the power of Chancery as a condition of issuing the necessary order to impose such terms in reference to the payment from the income earned during the receivership, of outstanding debts for labor and supplies as may under the particular circumstances of the case appear to be reasonable. This doctrine is based upon the plainest principles of justice. If the corporation is to be maintained in its working condition for the benefit and advantage of the holders of a mortgage upon it, such mortgage creditor cannot complain of the appropriation of the income in payment of the labor and supplies which have protected and maintained the security to its money-earning standard. If the holder or holders of a lien upon the canal were before me asking for the appointment of a receiver to take charge of a corporation earning an income through the agency of the labor and supplies furnished by these claimants, the imposition of terms looking to the appropriation of such income to their payment—would be within the power and discretion of the Court recognized in the aboved cited cases.

The application of the trustees of the holders of the bonds of 1844 in this case was to take charge of the canal when it was so completely disabled as to preclude the idea of earning an income and by the expenditure of their own money restore it to a working condition whereby it might be enabled to repay to them the amount so expended as well as its prior indebtedness to them for money advanced in its construction. This expenditure, amounting to $430,764.43, they were not only required to make or restore the canal to a working condition, but were also required to pay off the lien of $500,000, and interest thereon, created by the Act of 1878. Conceding for the sake of the argument that the contention made at the hearing, that these labor and material claims stand in the position of salvage and as such are entitled to the consideration of the Court, they cannot take precedence of the claim for the expenditure of $430,764.43 for the restoration of the canal, to say nothing of the legislative lien of 1878 created for a similar purpose. It is to be observed also that there is nothing in the case from which the Court can determine the character and amounts of these claims. With a view of enabling the Court to ascertain such facts and the rights of these holders to any relief that the situation of affairs may hereafter warrant, I will upon their application make such order as will accomplish it.

EDWARD STAKE.

New Men Signed.

In the game with Martinsburg on Friday two new faces will be seen on the home team: Gray a pitcher, who comes well recommended, and Barney Mulhall, a catcher, who is a first-class back stop, batter, base runner and a great coacher. One of the features of the game will be Mulhall's coaching. He will without a doubt make a hit with the base ball cranks.

Martinsburg's team will be the same as it was three weeks ago when Hagerstown was beaten in the first game of the season. Rider, the left-hander, will pitch and will be ably supported by Pitzer, the favorite all round player. Game will be called promptly at 3.30 as the Martinsburg club leaves for home at 6.30 p. m.

A Boy's Arms Broken.

Yesterday morning Clinton Miner. a 16 year-old son of Dallas Miner, Salem avenue, met with a very painful accident at the Pin Factory in the West End, where he was employed. He was standing on a box adjusting a belt when the belt caught him and with great violence threw him forward heavily to the ground. Both arms were broken at several places, one arm sustaining three fractures between the wrist and elbow. He was removed to his home where Dr. E. A. Wareham successfully dressed the wounds and he is resting very comfortably.

PERSONAL MENTION.

About the Movements of People Who Come and Go.

Miss Lou Shaffer, of Frostburg, is the guest of Miss Evelyn Stefty, Williamsport.

Miss Katharine Price, who was visiting the family of Mr. S. D. Martin, has returned to her home in Frederick.

Mr. Frank Richardson, the shrewd correspondent of the Baltimore Sun, is at the Hotel Hamilton.

Mr. Walter Davidge, Sr., and Mr. Walter Davidge, Jr., both prominent lawyers, of Washington, were in this city yesterday.

Miss Anna Zeigler, of Gettysburg, is visiting Miss Alta Garver, West Franklin street.

Miss Nettie Wolfe, this city, attended the Hays-Spielman wedding, in Greencastle yesterday.

Mr. Edward W. Miller, barber, West Washington street, has returned home from attending the funeral of his grandmother, Mrs. Catharine Salzgiver, near Gettysburg.

Miss Bertha Funk of this city, has gone to Washington, where she will be the guest of Miss Perkins for several days.

Mr. John H. Earhart, of this city, left for Westminster, yesterday afternoon to attend the commencement exercises of the Western Maryland College. His daughter, Miss Edith, is one of the graduates.

Mr. Clarke Kieffer is on a several days visit to Lancaster, Pa.

Misses Nellie, Sallie and Ella Bell, who were the guests of Miss Emma Kreps, have returned home.

Mr. Harvey S. Seiss has accepted a position with the Metropolitan Life Insurance Company, of New York.

Mr. Charles F. Manning left yesterday for his future home at Portland, Me. His brother, of the United States Army, who was very ill at Hot Springs, Arkansas, is much improved.

Messrs. Thos. P. Gilleece, Frank K. Little, John M. Smith, Thomas J. Wiener and John McAvoy, of Hancock, who recently joined the Hagerstown Catholic Benevolent Legion, were entertained at banquet at Moore's Cafe by that organization, last night.

Mr. C. King Keedy was attracted to Chewsville by the magnetism of beauty of several young ladies last evening.

Mr. R. W. Curtis and son William, of Harrisburg, formerly of this city, are visiting Mr. D. F. Newcomer, this city.

Mrs. J. E. Schindel, this city, is visiting her father, Mr. A. J. White, Chambersburg.

Masters Frank Delamarter and Austin Garver left this morning on the 6 30 train for Cleveland, Ohio.

Mr. Charles Hull, son of D. Frank Hull, is very sick.

Prof. Frederick Metzger, principal of the High School, at Frostburg, Md., arrived home yesterday.

THE SCHOOL BOARD.

Radical Changes Contemplated in the City's School System.

The school commissioners held a session yesterday afternoon. Secretary Pearson was not present, having gone to Lancaster to attend the commencement at Franklin and Marshall College. Miss Mollie E. Grimm appeared before the board and asked permission to continue the use of the Rohrersville schoolhouse for the meetings of the Women's Christian Temperance Union which has been holding sessions in the building for the past seven years. The board decided to grant the use of the building, provided the district trustees concurred. The board passed upon a number of estimates from district trustees for minor repairs to their respective school buildings. A number of requests for appropriations were ordered to be sent back to their sources for definite revision.

The board expects to meet daily, except Tuesdays and Saturdays, for the next ten days to clear up accumulated business. The subject of new schoolhouses may be discussed at today's session. No appointments of county teachers will be made during this series of meetings, or until sometime after the examinations for teachers, which will be held, July 6 and 7. Appointments may be made for the city schools, however, during the last days of continuous session.

It is understood that the board has in contemplation a number of radical changes in the school system in this city. The changes will hinge upon the transfer of the Male High school from the Academy to the spacious third floor of the Winter street building. The Winter street structure is one of the finest schoolbouses in the state and the third floor affords an admirable recitation room.

In the event of this change a corps of professors to teach specific branches would be employed. They would alternate daily between the two schools. One would teach the dead languages, another mathematics, another history and literature and so on. This turn, it is believed would result in material benefit to the two departments.

As a result of this departure changes would be made in the boundary of the city school districts, so as to equalize the attendance at the vatious schools. Just what the changes bewould have not yet been determined.

Repairs to the possible extent of $500 each will be made on the Academy and Antietam buildings.

The board would prefer that the appointments of city teachers be made by a board of trustees, as throughout the county. It is compelled by law, however, to make the selections.

Attention Resolute Council.

All members of Resolute Council Jr. O. U. A. M. are requested to meet in the lodge room this evening at 8 o'clock. Business of importance.

By order of Council.

Today is Your Opportunity.

Never in your life could you buy so many pounds of brown sugar for $1.00 as H. E. Snavely offers today at his Cash Grocery on the square. 5t.

[Additional Local on First Page.

The Power That Rules.

The mayor of Hagerstown is a Republican. The council is Democratic. Result: Row, wrangle and contention over the appointments. In Cumberland the mayor is a Democrat and the council is Republican, but so far harmony and good feeling has prevailed.—Cumberland News.

A Good Appetite.

Always accompanies gold health. and an absence of appetite is an indication of something wrong. The universal testimony given by those who have used Hood's Sarsaparilla, as to its merits in restoring the appetite, and as a purifier of the blood, constitutes the strongest recommendation that can be urged for any medicine.

Hood's Pills cure all liver ills, biliousness, jaundice, indigestion, sick headache. 25c.

A Populist Club.

The Central Populist club, of Hagerstown, was organized in Adam Garis' law office with W. H. Lewis. president; L. A. Rowe. vice-president; John W, Biershing, secretary; A. S. Garis, reading secretary. Mr. Biershing has refused the secretaryship.

STATE OF OHIO, CITY OF TOLEDO, } ss
LUCAS COUNTY.

FRANK J. CHENEY makes oath that he is the senior partner of the firm of of F. J. CHENEY & Co., doing business in the City of Toledo, County and State aforesaid, and that said firm will pay the sum of ONE HUNDRED DOLLARS for each and every case of Catarrh that cannot be cured by the use of HALL'S CATARRH CURE.

FRANK J. CHENEY.

Sworn to before me and suscribed in my presence, this 6th day of December, A. D. 1886.

{SEAL.} A. W. GLEASON
Notary Public

Hall's Catarrh Cure is taken internally and acts directly on the blood and mucous surfaces of the system. Send for testimonials, free.

F. J. CHENEY & CO., Toledo, O.
Sold by Druggists, 75c.

Fined for Swearing.

Lulu Scott, a white woman residing on West Church street, was found guilty of disturbing the peace by swearing, before Squire Middlekauff, yesterday afternoon. The fine, including costs, amounted to $6.89. Mrs. Lizzie Secord preferred the charges.

THE LADIES.

The pleasant effect and perfect safety with which ladies may use the California liquid laxative, Syrup of Figs, under all conditions, makes it their favorite remedy. To get the true and genuine article, look for the name of the California Fig Syrup Co., printed near the botton of the package.

Stop at Washington.

The Brotherhood of Railroad Trainmen's excursion to Bay Ridge Sunday over the B. & O. R. R. will stop at Washington going and coming, giving persons desiring, an opportunity of stopping off there. It is expected many will go.

"Many of the citizens of Rainsville, Indiana are never without a bottle of Chamberlain's Cough Remedy in the house," says Jacob Brown, the leading merchant of the place. This Remedy has proven of so much value for colds, croup and whooping cough in children that few mothers who know its worth are willing to be without it. For sale by C. C. Walts & Co. Druggists.

No Bass Fishing.

Owing to the very muddy condition of the Potomac river there will be no bass fishing for at least two weeks. This is discouraging for the fishermen.

Sometime ago I was troubled with an attack of rheumatism. I used Chamberlain's Pain Balm and was completely cured, I have since advised many of my friends and customers to try the remedy and all speak highly of it. SIMON GOLDBAUM, San Luis Rey, Cal. For sale by C. C Walts & Co. Druggists.

Norman Council Jr. O. U. A. M.

The officers and members of Norman Council, No. 31, Jr. O. U. A. M., are requested to all be present at the meeting of the council on Friday evening, June 22nd at 8 p. m. Business in which you are personaely interested will be transacted.

By Order of Councilor,
C. L. DUSANG.
W. E. KITZMILLER, R. S.

Excursion to New York.

The B. & O. R. R. Co., well sell excursion tickets from Hagerstown to New York and return at one fare for the round trip for all trains June 22nd, 23rd and 24th, valid for return passage until June 30th inclusive.

6-21-5t.

Special Clothing Sale.

We have made sweeping reductions in the prices of our entire stock of Ready Made Clothing. Look at the following prices. You can save money.

Childrens Knee Pants	22c	R. P.	25c
" " "	40c	"	50c
Boys Working "	65c	"	90c
Mens " "	65c	"	90c
Childrens Suits	90c	"	$1 25
Mens Dress Pants	$1 25	"	2 00
Childrens Suits	2 25	"	$3&3 50
Boys Suits	3 00	"	4&4 50
Young Mens Suits	3 50	"	4&5 00
" " "	4 50	"	6&6 50
Mens Casmett Suits	3 00	"	4 50
" " "	5 00	"	7 50&8 00
" Dress "	7 00	"	10 00
" Cheviott "	8 00	"	11&12
" Clay Worsted Suits	10 00	"	14 00
" Working Shirts	20c	"	25c
" " "	40c	"	50c
" Dress "	40c	"	50c

We want to reduce our stock of Ready Made Clothing, and will give you the benefit of our profits, come "look" and get our prices.

McCARDELL BROS.
The Leaders of Low Prices.

Joint Resolution.

Authorizing the Attorney General to intervene in pending suit to protect the State's interest in the Chesapeake and Ohio Canal.

Whereas the proceedings now pending in the Circuit Court for Washington County, and in the Supreme Court of the District of Columbia for the appointment of a Receiver of the Chesapeake and Ohio Canal Company, and for a decree of foreclosure of the mortgage executed by the Canal Company under the Act of 1878, Chapter 58 affect most vitally the interests of this State, and Whereas if a Receiver should be appointed and receivers certificates should be issued for the purpose of raising funds to restore the Canal, a heavy additional debt must necessarily be created which will take priority over the liens now held by this State to the great prejudice of her claims, and Whereas it is necessary that the rights and interests of the State should be represented in said proceedings, Therefore, Be it resolved that the Attorney General be and he is hereby instructed to intervene in said proceedings in the name of the State of Maryland, and take such steps, after consultation with the Board of Public Works, as may be necessary to resist the application for a Receiver, and the creation of any additional debt to take precedence over the claims and liens of this State.

Signed Jany 30 1890

Elihu E Jackson
Governor

R. J. Gatton
President of the Senate

John Walsh
Speaker of the House of Delegates

No. 2.

Examined No. 4198. Eqy.

W. B. Post

Presented to the Presiding Officers of the Two Houses for their signatures this 30th Day of January 1890

W. G. Laird
Secretary

Jany 31. 1890

State of Maryland
No 1

Filed Jany. 31. 1890.