

such bonds and certificates in connection with the Act of 1844, chapter 281. The Court of Appeals in *Brady vs. The State*, 26, Md. Reps. 308, construing the Act of 1844, ch. 281, said "The State waived its priority only in favor of the liens created and authorized by that Act." The net tolls were relied on to pay the interest coupons, and the principal of the bonds so authorized.

The State stipulated that "in no case should it be bound or held responsible for the payment of the bonds or interest thereon," issued under the Act. Those who took the bonds relied upon the accruing net tolls to pay the semi-annual interest. If no net tolls are in hand to meet the coupons when due, the holders are entitled to be paid whenever afterwards net tolls shall be in hand. But if, instead of retaining the original security, with its specific lien issued under 1844, chapter 281, they give up the coupons to the Company and accept in lieu thereof new bonds, bearing semi-annual interest, I am of opinion that such bonds are not within the waiver of the State of Maryland; that they create but a general indebtedness, and are postponed to the holders of the original bonds and interest coupons; and also to the debt due to the State on its mortgages. The Company was incompetent, without the assent of the original lien bondholders, and of the State, to enter into the new contract and give it priority over such original bondholders, and over the debt due to the State of Maryland. The effects of allowing these new bonds for interest, bearing interest payable semi-annually, to retain the lien of the surrendered coupons, is to give compound interest to the holders, to the prejudice, immediately, of the holders of the original bonds, and remotely, to the rights of the State as mortgagee.

I am, therefore, of opinion, that to the extent of any payment to Virginia of interest upon these new bonds, the Company misapplied its net revenues. I have been informed, however, by one of the present counsel of the Company, that an agreement has been entered into with the Virginia authorities, whereby the money received shall be applied according to the ultimate decision of the Courts in the pending case.

From the foregoing, the Senate will perceive the reason of the Court's decision, that the State of Maryland has such an interest in the subject matter of the pending suit, that it was indispensable to justice that it should have the opportunity of becoming a defendant therein, and that this could be done only by an Act of the General Assembly authorizing it.

Accordingly, on the 3rd instant, I received a copy of the Act recently passed, directing the Attorney General to cause the State to be made a defendant in the said suit, and in any other suit now pending, or hereafter to be instituted, the ob-