

LETTER TO THE COMPTROLLER.

STATE OF MARYLAND,
ATTORNEY GENERAL'S OFFICE,
Baltimore, 23d Feb., 1870.

Hon. L. Woolford, Comptroller :

DEAR SIR:—In reply to the inquiries in your letter of 19th inst., I have the honor to state, first, as to the power of the Chesapeake and Ohio Canal Company to fund the unpaid coupons of the preferred and repair bonds so as to make them bear interest, and give such funded debt priority over the debt due by the Company to the State of Maryland, I am clearly of opinion that the Company has no such power. Admitting for the sake of the argument, that the repair bonds as well as the preferred bonds, were authorized by the Act of 1844, to take priority of the State's debt, the extent of the State's waiver was to the *net revenue and tolls* to pay the interest and provide a fund to redeem the principal, with an express proviso that the "State shall, *in no case*, be bound or held responsible for the payment of the said bonds or of the interest thereon." Those who took the bonds knew well that until there accrued net revenues and tolls they could get nothing. When such tolls are in hand they are applicable to pay the interest in arrear. But there is no authority to compound the interest to the prejudice of the State. The bondholders got passed chapter 359, of 1867, which required the Company to issue certificates for such funded debt, bearing interest. But the Board of Public Works refused to execute it, and on appeal to the Constitutional Convention, after full debate upon this very point, the Convention declared the Act to be *null and void*. So unanimous was the vote that not even a division was called for. See memorials of bondholders, proceedings of Convention, 1867, page 317 to 324. Report of Com. on Public Works, page 391, &c., &c.; votes &c., thereon, page 688 to 703. In the case of *Brady vs. The State*, 26 Md. Reps., 300, will be found an exposition of the Act of 1844, chapter 281, by the Court of Appeals. It will be seen, page 300, that at the instance of the Board of Public Works, the State got an injunction *vs. Brady*, an attaching creditor, and the Company, restraining the Company from paying any debts from net revenues to any creditors not entitled to claim payment in priority of the State. And on page 308, the Court say: "The State waived its priority only in favor of the liens created and authorized by that Act," viz.: 1844.

2d. As to the case now pending in this city, State of Virginia *vs. The Canal Company* and others, if prosecuted by