

tioned ; that they can issue their bonds for the same ; and farther, that they can pledge the revenues of the company for the payment of the bonds, with the interest.

In the original charter of the company no specific power to borrow money is given, but by the third section of the act of 1843, ch. 124, it is provided, that “ the president and directors of the Chesapeake and Ohio Canal Company, or a majority of them assembled, shall have full power and authority to borrow money from time to time, to carry into effect the objects authorised by the charter of said company, to issue bonds, or other evidences of such loans, and to pledge the property and revenues of the said company for the payment of the same, and the interest to accrue thereon, in such form, and to such extent as they may deem expedient.” It is understood that this act has been assented to by all the necessary parties. Here then are full power and authority given to borrow money, issue bonds, pledge property, &c., “ to carry into effect the objects authorised by the charter of the company.” One of the objects mentioned in the fourth section of the original charter is *to repair and keep in order* the said canal. There can then be no doubt, independent of the considerations hereafter mentioned, that the right to borrow and pledge for the purpose named exists. The difficulty is, however, supposed to be found in the adverse rights of the State of Maryland arising from liens and mortgages in her favor, on all the work and its profits, to secure her against large loans, and subscriptions to the capital stock of the company. The most important of these liens was given under the 7th section of the act of 1835, ch. 395 ; and by the contract under that section, the company stipulated with the State to pay her out of the profits of the work, six per cent semi-annually, on the whole amount of money which should be paid to the company under and by virtue of the act. The contract is to pay out of the *profits*, and whatever might have been said to the meaning of that word, and whether there could properly be *any profits*, until all necessary repairs were made, and therefore whether even after the contract, the right to *borrow* and *pledge* for *repair* did not exist, it has received a judicial construction and is not now an open question ; for the court of appeals in the case of the State vs. the Baltimore and Ohio Rail Road Company has decided that the pledge of the rail road to the State under the 9th section of the same act (of which the language is identical with that of the 7th section,) of the *profits* of the road to indemnify the State ; meant (to use the language of the court,) “ the *gross profits*.” The receipts of the canal company are therefore pledged to the State, and the president and directors have no right to divert them from her use without her consent ; and accordingly it will be found that in a proviso to the third section of the act of 1843, ch. 124, when the power to issue bonds, to borrow money, pledge property, &c., is given, the Legislature say, “ that nothing herein contained shall be construed to impair the prior rights or liens of the State of Maryland under the mortgages