

independent 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 on her from 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 seventh section of the act of 1835 Chapter 395; and by the contract under that section, the Company stipulated with the State to pay her out of the profits of the work, ten 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 as 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 ninth section of the same act (of which the language is identical with that of the seventh 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 1844 Chapter 124, where the power to borrow, issue bonds, 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 heretofore made and executed by the Chesapeake and Ohio Canal Company to said State, but the same shall be held binding and be accordingly respected, except so far as the same may hereafter be waived, deferred or postponed by the Legislature of said State".

The only question is whether the State has, as against repair, waived, deferred or postponed her lien. If she has, it would seem to me to follow as a necessary consequence, that all the rights given under the preceding part of the section for the purpose of accomplishing that object, necessarily arise.

Adopting the rule of construing all acts upon the same subject matter together, it is the same as if, against repair, no lien had ever existed.

Has the State then for the purpose of repair, waived her lien upon the receipts of the Company? This is too clear to doubt. The act of 1844 Chapter 124, which authorises the Company to issue bonds to the amount of seven hundred thousand dollars on the completion of the Canal, and repays the lien of the State for their payments and the interest thereon, provides that even as to these, the Company shall not pledge the entire resources of the work, but makes in the second proviso to the second section "that the President and directors of said Company shall from time to time and at all times hereafter, have the privilege and authority to use and apply such portion of said revenues and tolls as in their opinion may be necessary to put and keep the said Canal in good condition and repair for transportation". Here there is not only a waiver of her own lien to the extent of putting and keeping the Canal in good condition and repair, but in effect a prohibition against the Company, whenever they shall endeavor to favor by pledging the revenues of the work, to too great an extent for the benefit of the bonds they were about to issue.

Upon the whole, it appears clear, by the construction of the various acts of Assembly referred to, that the President and directors of the Canal Company have the right to issue their bonds and pledge the tolls of the work for the purpose of raising money to put and keep "the Canal