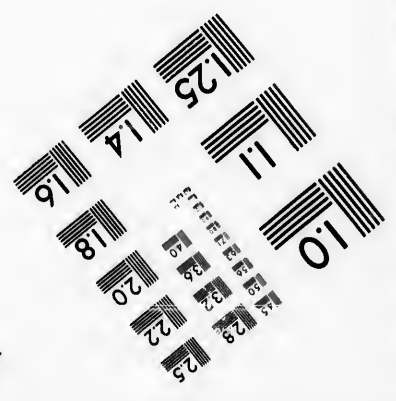
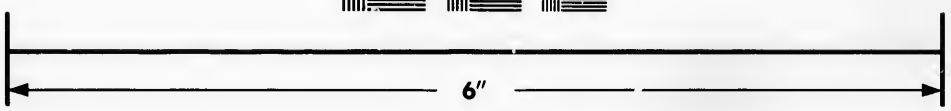
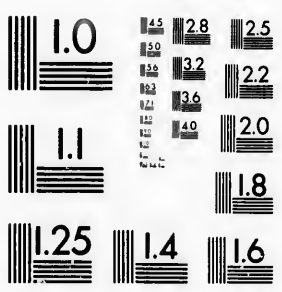


**IMAGE EVALUATION
TEST TARGET (MT-3)**



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503



**CIHM
Microfiche
Series
(Monographs)**

**ICMH
Collection de
microfiches
(monographies)**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques



© 1992

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers/
Couverture de couleur
- Covers damaged/
Couverture endommagée
- Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée
- Cover title missing/
Le titre de couverture manque
- Coloured maps/
Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur
- Bound with other material/
Relié avec d'autres documents
- Tight binding may cause shadows or distortion
along interior margin/
La reliure serrée peut causer de l'ombre ou de la
distorsion le long de la marge intérieure
- Blank leaves added during restoration may appear
within the text. Whenever possible, these have
been omitted from filming/
Il se peut que certaines pages blanches ajoutées
lors d'une restauration apparaissent dans le texte,
mais, lorsque cela était possible, ces pages n'ont
pas été filmées.

- Coloured page/s/
Pages de couleur
 - Pages damaged/
Pages endommagées
 - Pages restored and/or laminated/
Pages restaurées et/ou pelliculées
 - Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées
 - Pages detached/
Pages détachées
 - Showthrough/
Transparence
 - Quality of print varies/
Qualité inégale de l'impression
 - Continuous pagination/
Pagination continue
 - Includes index(es)/
Comprend un (des) index
- Title on header taken from: /
Le titre de l'en-tête provient:
- Title page of issue/
Page de titre de la livraison
 - Caption of issue/
Titre de départ de la livraison
 - Masthead/
Générique (périodiques) de la livraison

Additional comments: / There are some creases in the middle of the pages.
Commentaires supplémentaires:

This item is filmed at the reduction ratio checked below /
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	14X	18X	22X	26X	30X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12X	16X	20X	24X	28X	32X

The copy filmed here has been reproduced thanks to the generosity of:

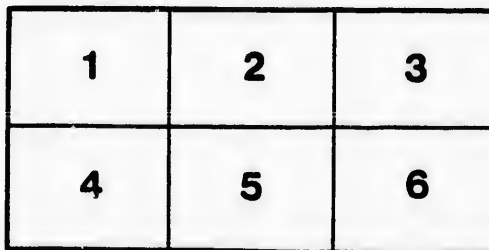
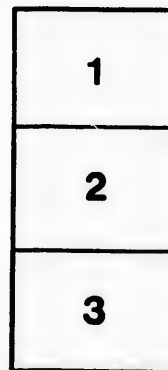
Manuscript Division,
National Archives of Canada

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol \rightarrow (meaning "CONTINUED"), or the symbol ∇ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Division des manuscrits,
Archives nationales du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole \rightarrow signifie "A SUIVRE", le symbole ∇ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

e qu'il
le cet
nt de vue
age
cation
qués

MEMORANDUM

Upon Mr. Merrit's application on the part of the late private Shareholders in the Welland canal.

7 Vic. Cap. 31.

THE Private Shareholders represented by Mr. Merritt in their Memorial contend, that under the Act of 1843, they are entitled to claim six per cent per annum, upon the amount of their paid up Stock, from the time the same was paid in until the year 1852, when the revenue of the Canal reached Forty-five thousand pounds, notwithstanding that the principal was paid off, by Debentures bearing 6 per cent interest, dated the first day of January, one thousand eight hundred and forty-three, they also submit the legal opinions of several eminent professional gentlemen both of England and the United States proving their claim.

It appears from a statement made by the Deputy Inspector General that the sum of £107,373 4s. 1d. being the back interest at six per cent on £117,800 (the paid up stock) to the first of January 1843, has been paid to the Private Shareholders in full and the amount they yet claim is £65,113 3s. 4d. being interest at six per cent on the same amount from the first of January 1843 the date from which the Debentures issued to pay off the principal bear interest. This claim if admitted would entitle the Shareholders to receive *twelve per cent* during that period, the *legal rate* of interest during the whole period having been six per cent per annum and no more.

4 & 5 Vict. Ch. 48.

The preamble of the Act of 1843, recites at unusual length the provisions of the Act of 1841, which sets forth, that the object of that Act was to place the Canal under the exclusive control of the Government, and for that purpose to purchase the Stock of the Private Shareholders, amounting to one hundred and seventeen thousand eight hundred pounds, on account of the Province, by the issue of twenty years Debentures to the Private Shareholders for the amount required, bearing interest at two per cent for the first two years, three per cent for the third year, four per cent for the fourth year, five per cent for the fifth year and six per cent for the sixth and following years; and that whenever the Tolls collected on the Canal should annually amount to thirty thousand pounds, other Debentures bearing six per cent to issue to the Stockholders, for such sums *as would make up six per cent interest*, upon the amount of Stock paid in by them from the time the same had been actually paid.

Under the repealed Act of 1841, Debentures were to be issued to the Stockholders to the amount of the principal monies paid on their respective stocks bearing the lower rates of interest until the sixth year

when the legal rate of six per cent commenced, and so soon as the Tolls reached *thirty thousand pounds* then other Debentures would be issued to them, for an amount equal to *six per cent interest* on such principal monies from the time the same was paid in.

The Private Stockholders state in their Memorial, that the Debentures issued under the Act of 1841, having proved unsaleable by reason of bearing a less rate of interest than six per cent, the Act of 1843 was passed to obviate the difficulty, by the issue of marketable Debentures bearing "full interest," and to use the words of the Memorial, "inasmuch as it did not increase the amount of interest to be paid from the Provincial Revenue, at the same time it secured for the Shareholders the value of their capital." There is nothing in the Acts of 1841, or 1843, indicating that the Legislature intended to allow the Shareholders more than six per cent simple interest. If it was intended to give the Shareholders *twelve per cent* for a definite or indefinite period, or compound interest by making a rest, or compensation, or any amount beyond six per cent simple interest, the Legislature would have, either by recital or express words, defined such an important and extraordinary concession or right. In the memorial and other documents accompanying the same, much stress is laid upon the sixth clause of the Act of 1843, and it is contended: That in effect, it authorises twelve per cent to be paid on the amount of the private stock from and after the first day of January, 1843, so soon as the revenues of the canal amounted to £45,000. That the words "*amount* equal to six per centum per annum," should be construed to mean, not a rate of interest, but an indemnification or compensation to the Shareholders, and that the period to which the six per cent should be calculated upon the amount of principal stock, is the year in which the tolls amounted to £45,000, (1852,) although such principal stock was paid off on the first January, 1843.

7 Vict. Ch. 34.

Upon reference to the Statute, it will be seen that the *second* clause charges the amount of the private stock £117,800 upon the consolidated fund, with interest from the first of January 1843 for the benefit of the Shareholders; the *third* clause authorises debentures to issue to them bearing interest from that date, the *sixth* clause enacts that after the tolls shall reach £45,000, the consolidated fund shall again be charged "with an amount equal to six per centum per annum on the private stock subscribed from the time the same has been paid in."

If the *sixth* clause stood alone and nothing in the act shewed that the principal was to be paid off in January 1843, it might be contended that six per cent was payable to the year 1852, but when we find by the third and

seventh clauses, that provision was made for the payment of the principal in 1813, and which in pursuance of the act was paid—it is an unreasonable and forced construction of the provisions of the Statute to suppose interest chargeable on an amount already paid or bearing interest; on the other hand it is reasonable to assume that the Legislature intended the sixth clause to read “from the time the same has been paid in” to the time of the payment of the principal, viz: the first of January 1843.

The seventh clause authorises debentures to issue for the amount of the private Stockholders’ “claims,” and in using this term the framer of the Act evidently had in view the *back interest* and that the stockholders had debentures issued to them under the act of 1811 bearing the low rates of interest as stated in the fifth clause of the act of 1813, and who had only received two per cent for these years. The eighth clause refers to the *back interest*.

It has been decided by some of the ablest Judges in England, that the intent of the Legislature is not to be collected from any particular expression, or clause, or section, but from a general view of the *whole* of an Act of Parliament; and if the words are ambiguous, the whole context must be looked to, for their explanation—and it is no less a rule of law “that the words of a Statute are to be taken in their ordinary and familiar signification and import, and regard is to be had to their general and popular use.” If upon examination of the whole statute of 1843, it is still contended an ambiguity exists, the following doctrine will be generally admitted as correct. That when a statute is passed for the benefit of a Canal, Railway or other Company, it is a bargain between a Company of adventurers and the public, the terms of which are expressed and set forth in the statute, and the rule of construction in all such cases is fully established to be, that any ambiguity in the Laws of the contract would operate against the adventurers and in favor of the public, the former being entitled to claim nothing which is not clearly given by the Act. It has also been judicially held that the whole system of Legislation upon the same subject matter may be taken into consideration in order to aid in the construction of a Statute, and that it is the duty of Judges in order to discover the true meaning of an act to consider other Statutes in *pari materia* whether they are repealed or unrepealed—An able commentator says that every obscure or doubtful passage is to be explained according to the intention of the parties, and this we must endeavor to ascertain from the words, the usage of language, and also from the respective circumstances and relation of the parties to the transaction.

On reference to the antecedent legislation on the subject, it appears that in March 1839, the Private

Appendix to U.C. Journals
1839 & 1840, Vol. 1, pt. 23,
page 13.

Appendix C. page 47

See post page 47 Appendix A

Appendix D. to Journals
1841, Letter I.

Shareholders petitioned the Legislature of Upper Canada to purchase their Stock in the Canal; in the month of May following the two houses of Parliament passed a Bill authorizing for the purchase of the Stock, twenty year debentures to issue to the amount of the principal £117,800 bearing two per cent for two years, and three, four and five per cent respectively for the following years, and six per cent for the remainder, and with regard to the back interest, the second clause enacted, "That whenever the Tolls collected on the said Canal shall annually amount to the sum of £30,000, it shall be lawful for the Lieutenant Governor to authorize and direct the Receiver General of the Province to issue other Debentures to the original Stockholders or their legal representatives for such sum as will make up six per cent interest upon the amount of stock by him subscribed and paid for from the time the same shall have been actually paid in *up to the time of the issuing of the Debentures in the first clause of this act mentioned*, which Debentures shall be made payable in twenty years from the date thereof and bear interest at the rate of six per cent payable half yearly out of the Public Revenue of the Province." Mr. Merritt appended to the Annual Report on the Canal for the year 1841, his and Mr. Keefer's opinion on this clause in these words: "There appears also an ambiguity in the wording of the second Clause of the Act, 16th May, 1839, by which the interests of the private Shareholders may be effected, to avoid all mis-apprehension on this subject in future, the undersigned will present a memorial to the next Legislature, on behalf of the private Shareholders, praying the Act to be amended in such manner as to insure to them the full amount of *interest on their investment from the period when paid in, down to the time the transfer shall be made*, by which the true intent and meaning of this Act will be carried into effect." This Bill clearly shews that the intention of the Legislature was to carry into effect the principle and spirit of Mr. Merritt's proposal hereinafter mentioned.

The effect of the words in italics in the clause as above quoted was such that the back interest being merely computable to the time of the issue of these Debentures, the Shareholders would lose the difference between the lower rates of interest and six per cent for the first five years on the Debentures issued for the principal £117,800. Consequently, in the Act of 1841, as it was undoubtedly the intention of the parties to make up the interest to six per cent per annum, for those years when the back interest should be paid, the words above quoted in italics were omitted in that Act. It is probable this was done at Mr. Merritt's suggestion as intimated in the annual report above quoted from.

The Debentures issued under the Sixth Section of this latter Act (1811,) being found unsaleable, the Shareholders brought the subject of its amendment before the Government, not for the purpose of making a new demand, but solely to enable them to sell their Debentures. Mr. Secretary Rawson drew up a memorandum for the information of the Executive Government, under date of the twenty first September, 1812, and he suggested a doubt as to whether the omission of the words "annual," or "per annum," as applied to interest in the sixth clause, did not nullify its provisions. This suggestion no doubt was considered by the framer of the Act of 1843, and the word "interest," omitted, and "per annum," inserted, to avoid the difficulty suggested in that Section of the Act of 1811.

See post Appendix P. 12

The circumstances above detailed under which these three Bills were introduced from time to time, and passed, clearly shew, that the original proposition of Mr. Merritt was the basis of all the legislation, and the different amendments made were introduced to carry out his views, and to set at rest all doubts as to the intention of the Government and the Legislature. The last proceeding of the Assembly, on the twentieth November, 1843, previous to the presentation of the Bill to the House, for its first reading, was the necessary resolution of a Committee of the whole House who resolved on that day relative to the back interest, "And further to provide that so soon after the completion of the Canal as the toll shall amount in any one year to £45,000 currency, other Debentures shall be issued to the private Stockholders for the interest on their stock for the time the said had been paid in." Upon this resolution the Bill of 1843 was introduced, passed its various stages without amendment, and received the Royal Assent.

Journals of Assembly for 1843, page 112. Appendix J. P. 32

As the Statute itself is a mere agreement between the Province and the Shareholders, relative to the purchase of their Stock, it will not be violating any rule of justice or equity to enquire further into and examine the circumstances and grounds upon which the bargain was arranged, for the purpose of ascertaining whether that, which the Shareholders now demand, formed part of the arrangement. Upon reference to the records of the Assembly, it will appear, that a Committee was appointed to consider a Message from the Governor General on the subject of the Act authorizing the purchase of the Private Stock, and appended to the report of that Committee are several documents (*inter alia*) a memorial of the President of the Company (Mr. Merritt) and the Directors intimating their desire to dispose of the private Stock, also, a report of a former Committee of the House on the subject of the memorial, who "having applied themselves to the consideration of such proposition to be made

Appendix to Journals of U. C. Assembly 1839 & 1840, Vol. 1, pt. 2, page 13.

“ to the Stockholders, as would combine the principle of “ ultimate indemnification to them with a due regard to the “ interest and convenience of the public”—recommending, if the Stockholders would agree to transfer their Stock, that twenty years debentures should issue to them for the purchase thereof, bearing interest at the rates of three, four and five per cent for the first three years respectively, and six per cent afterwards until redeemed, and that so soon as the annual receipts of the Canal reached twenty-five thousand pounds, three per cent per annum upon the amount invested should be paid to the Shareholders, and when the annual revenues of the Canal reached £50,000, six per cent per annum upon their former stock should be paid until the legal rate of interest upon the Capital invested by them from the time it shall have been actually paid in, shall be fully paid.

Journals of U. C. 1833 &
1840, Vol. 1, pt. 2, pages
14, 15, &c.

See post Appendix C. post 17

The President (Mr. Merritt,) was examined by the Committee and in his evidence appended to the report, in reply to the question.—“ In the event of the Stock being purchased, from what time would the interest commence.” He answered, he computed the interest to the best of his recollection to that date at £55,008, setting out his *data*, and computing at the rate of six per cent simple interest. And in reply to the question: “ Do “ you think the terms proposed by the Committee (viz “ the proposition above,) equitable towards the Stockholders.”—He answered,—he did not, and made a proposition in lieu thereof which he stated he should much prefer as being more advantageous to the Stockholders, viz. twenty year six per cent debentures to the amount of one half of the whole private Stock (£58,900) to be issued at once, to the Shareholders.—Three years after, like debentures to issue for one fourth (£29,450) and six years thereafter the remaining one fourth to issue, in all £117,800, total amount of principal. That after the annual revenue of the canal reached £25,000, like debentures to issue to the Shareholders to the amount of one half of the interest due on the Stock since it was paid in to the time of the issue of the first debentures on account of the principal, and computed by him as above at £27,501. And after the income amounted annually to £50,000, like debentures to issue for the remaining half due on the then “ *back interest* ” £27,504.—So that the Stockholders would ultimately be paid the principal and interest of their investments without burdening the revenue of the Province.”—And in order to convince the Committee of the equity of the proposition, and that no loss would fall on the province, and to avoid any doubt or ambiguity, Mr. Merritt set out elaborately, his then supposed prospective financial position of the Canal for a period of thirteen years, shewing the working of his proposition, and that the first instalment of back interest would become payable in 1845, the last in 1849.

To put it more clearly, his proposal was as follows, viz :

Amount of principal	£117,800
1810—Amount of interest then due by Mr. Merritt's calculation.	55,008
Total amount to be paid.	<u>£182,808</u>

MODE OF PAYMENT.

1810—Debentures to issue for half of principal.	£ 58,900
1813—Debentures to issue being one fourth of principal.	29,450
1815—Tolls supposed to reach £25,000. Deben- tures for half of computed interest to issue.—(N. B. <i>five years have elapsed, and no additional interest or back interest included or claimed</i>).	27,504
1846—Debentures to issue for remaining one fourth of principal.	29,450
1849—Tolls supposed to reach £50,000, De- bentures to issue for remaining half of interest.—N.B. (<i>nine years elapsed and no interest or back interest or claimed</i>	27,504
Claim and interest as above in full.	<u>£182,808</u>

In this proposition which Mr. Merritt on the part of the Shareholders no doubt well considered, no demand is made for interest on the back interest or interest on the principal after it was paid off, or for other compensation, but interest is merely computed to the time of the transfer of the Stock, and the then ascertained amount, viz : £55,008, without any addition is to be paid, when the Tolls on the Canal reach the respective amounts at which it is payable.

At the time the application was made to dispose of the private Stock, the Company was much embarrassed, and the Stock consequently unsaleable; under such circumstances after payment in full of the principal invested, the only claim the Stockholders had, was upon the generosity of the Legislature, on account of the benefits the Province would reap eventually from the Canal, and it was very wisely considered that the least objectionable mode of preferring any claim, beyond that of the amount paid up, would be in the shape of back interest upon the amount of investments from the time of actual payment until the principal was paid off, payable, when the revenues of the Canal reached a certain amount,—such, was the proposition of Mr. Merritt on the part of the Shareholders. These matters are noticed because they clearly shew that no indemnification, or compensation was demanded by the Shareholders when the matter was before the Legislature, other than the principal

See Journals of T. C. As-
sembly 1839 & 1840, Vol. 1,
Page 11. Post Page. 17

monies and back interest, and that the only point for consideration was the period when the amount of the back interest should become payable. The records of the Executive Council Office, contain evidence to the like effect. Mr. Merritt's letter of the First of September, 1842, relating to this subject, speak of *waiting for the back interest* until the revenues reach certain amounts.— A draft of a Bill in Mr. Merritt's hand writing sent for the information of the Government amending the Act of 1841, provides in its fourth clause that the debentures mentioned in the second clause of the Act of 1841 were to issue without any alteration as to terms except being issued payable in London at five per cent if desired, consequently the amount to be issued *was to make up six per cent interest* upon the amount of Stock from the time the same was paid in the minute or memorandum of Council of Twentieth of May 1843, says after stating at length the case, and the desire of the Shareholders for a repeal of the Act of 1841, "It is therefore not thought expedient to move in the amendment of the Law as proposed by Mr. Merritt, unless the issue of Debentures for the payment of *back interest* shall be postponed until after the completion of the Canal, and until the tolls of one year shall amount to £45,000 Cy." Mr. Merritt in his letter of Twenty-second September 1843, transmits the memorial of the Stockholders dated Twenty-second July, of the same year, accepting the proposal, contained in the memorandum and thereupon the Act of 1843 was founded.

It is urged on behalf of the Shareholders that a liberal construction should be given to the act so as to favor their claim inasmuch as the improvement undertaken by them, has been of vast service to the country and therefore on equitable grounds they should be meet with the most favorable consideration. In that point of view a reference to the contents of a Despatch dated 9th July, 1842, from His Excellency the late Sir Charles Bagot, to the then Colonial Secretary Lord Stanley, is sufficient to shew the then opinion of the Government—that no claim can be founded upon such grounds,—and nothing has occurred, since the date of that Despatch, to place their claims on a more favourable footing.

With regard to the opinions of several eminent Professional men obtained by Mr. Merritt, it is remarkable that while some of these Gentlemen strain the sixth clause of the Statute of 1843, to shew that the words "six per centum per annum" may be construed to mean not *interest* but a mode of computing part of the purchase money of the Stock, and in order to arrive at such a conclusion travel out of the Statute and assume the intention of the Legislature to have been the very contrary of what in fact it was—yet Mr. Merritt and the Shareholders on every occasion speak of the six per cent as

See post page 20 Appendix D.

See post page 22 Appendix G.

See post page 30 Appendix I.

See post page 21 Appendix F.

Post page 23 Appendix H.

back interest—the opinions of the other Gentlemen are apparently predicated solely on the words of the sixth clause itself; it is not denied that the Shareholders were entitled to six per cent (interest which they now receive) from the time the Stock was paid in to the time the tolls reached £45,000.

The whole circumstances of the claim—the inability of the Shareholders to complete the Canal—the depreciation of the Stock—its proposed sale to the Government—the proposition relative to the mode and period of payment of the back interest—the various Bills introduced in and passed by the Legislature, and the reason of their introduction—the documents, letters, memorials, and other papers relating to the subject,—the Statute of 1843, itself, all conclusively and most satisfactorily shew, that at no time did the private Shareholders, expect, ask or stipulate for, the claims they now make, and that neither in Law or Equity are they entitled to them.

Since the foregoing Memorandum was prepared, Mr. Herriott has requested that the rights of the Stockholders may be considered in relation to the Statute, and not as regards the equitable grounds put forth in his former Memorials: And in the event of the Council being of opinion that the Stockholders are not entitled to the amount claimed by them, that the question should be referred to some legal tribunal, either in this Country, or in England, for decision.

The observations already made will apply to the legal consideration of the subject, and it is submitted, that there is nothing in the nature of the claim to justify a departure from the ordinary rules prescribed by the Government in this Country, when demands of a like nature are presented.

APPENDIX A.

ACT OF 1839.

Whereas it is desirable to place under the exclusive controul of the Government of this Province the Welland Canal, and for that purpose to provide for the purchase from the Private Stockholders in that work the Stock by them held and which amounts to the sum of One hundred and seventeen thousand eight hundred pounds. Be it therefore enacted, &c. That from and after the passing of this Act, it shall and may be lawful for Her Majesty's Receiver General upon an order to that effect from the Lieutenant Governor of this Province to issue such number of Debentures as may be required to the several Stockholders in the Welland Canal for the amount equal to the Stock held by him or them, which Debentures shall be made redeemable in twenty years from their date and shall bear an interest of two per cent. per annum on the amount for which they may be issued, for the first two years, three per cent. for the third year, four per cent. for the fourth year, five per cent. for the fifth year, and six per cent. for the sixth and following years, and which interest as well as the principal sum shall be chargeable upon and payable out of the public revenues of the Province.

2. *And be it, &c.*—That whenever the tolls collected on the said Canal shall annually amount to the sum of Thirty thousand pounds it shall be lawful for the Lieutenant Governor to authorize and direct the Receiver General of the Province to issue other Debentures to the original Stockholders or their legal representatives for such sum as will make up six per cent. interest upon the amount of Stock by him subscribed and paid for from the time the same shall have been actually paid in up to the time of the issuing of the Debentures in the first clause of this Act mentioned, which Debentures shall be made payable in twenty years from the date thereof, and bear interest at the rate of six per cent. payable half-yearly out of the Public Revenues of the Province.

3. *Provided always, And be it, &c.*—That nothing herein contained shall be construed to compel any Stockholder to accept Debentures for the Stock by him held as aforesaid or in case of refusal to take the same to deprive him from being paid from the tolls and revenues of the said Canal according to the laws now existing having relation to the said Canal.

4. *And be it, &c.*—That so soon as the Stockholders owning two thirds of the Stock in the said Canal shall have signified their acceptance of Debentures in lieu of Stock as hereinbefore provided, and so much of the eighth clause of an Act passed in the 7th year of the reign of His late Majesty King William IV., intituled, "An Act for the permanent completion of the Welland Canal and for other purposes therein mentioned," as authorizes the

annual election of two Directors by the Private Stockholders of the said Welland Canal Company, and as requires the election or appointment of more than three Directors for the management of the said Stock Property affairs and concerns the said Welland Canal Company be, and the same is hereby repealed, and that a majority, of the three Directors shall be a Quorum for the transaction of business, *Provided always*, That the Lieutenant Governor shall have power and authority to appoint such Directors or any of them annually at his discretion.

ALLAN N. MACNAB,

Speaker.

COMMONS HOUSE OF ASSEMBLY, }
16th day of May, 1839.

JONAS JONES,

Speaker.

LEGISLATIVE COUNCIL CHAMBER, }
9th day of May, 1839

APPENDIX B.

Memorandum of 21st September, 1852, upon Mr. Merritt's application on the part of the private Shareholders in the Welland Canal.

Mr. Merritt, in his letter of the 20th August, solicits that the Government will consent to the introduction of a Bill to annul the first section of the Act of last Session relating to the Welland Canal stock held by private parties, under which the Debentures to be given in lieu of that stock are to bear interest, for the first two years at 2 per cent, for the third at 3 per cent, for the fourth at 4, for the fifth at 5, and for all subsequent years at 6 per cent, until the expiration and redemption of the Debentures in 20 years.

He proposes to substitute for these Debentures others bearing immediately 6 per cent interest, justifying the request on the ground that as by the second section of the same Act, the Shareholders will be entitled to interest at that rate, for the past as well as the future, when the Tolls collected on the Canal shall amount to £30,000, which sum, he asserts they will be sure to reach next year, the Province will lose a mere trifle by the arrangement, as will be presently shown, and the Shareholders will be greatly benefitted by their Debentures becoming saleable, which he states they are not at present.

His position is that the interest for one year at two per cent becomes due in November, 1842, that a similar payment at the same rate will become due in November 1843, making together 4 per cent up to the latter date.

In 1844 he asserts that the rate, instead of being 3 per cent under the first section, will be 6 per cent under the second: if therefore the Province were to pay 6 per cent in 1813, it would only lose the difference between that amount and 4 per cent due in November, with the small amount accruing at 3 per cent during the rest of the year.

In return for this he offers, on the part of the Shareholders, to forego a claim which they have put forward for arrears of interest under an Act of 1837, which, at the rate of 6 per cent, to which they consider themselves entitled, would amount to 36 per cent on the capital; or if that claim be rejected, to an arrear of 25 per cent under the same enactment.

It will be necessary to enter into a little detail to show the position in which the parties and the Province stand under this Act.

By the 1st section the Shareholders are entitled to Debentures for £117,800, redeemable in 20 years. The cost of this to the Province will be:

Interest—1st year at 2 per cent.....£	2,346
2d " 2 "	2,346
3d " 3 "	3,531
4th " 4 "	4,692
5th " 5 "	5,880
6th " 6 "	7,068
14 subsequent years at ditto.....	98,952
Capital.....	117,800
Total.....	£242,618

If the capital were raised at 5 per cent, and the parties paid off, the interest would amount in 20 years only to £117,800, instead of £124,818, a saving of £7,000, and the capital might be repaid sooner and the interest saved.

But by the 2nd section when the "Tolls collected on the Canal shall annually amount to the sum of £30,000," other Debentures are to be issued "for such sums as will make up 6 per centum interest upon the amount of stock subscribed and paid for, from the time the same shall have been actually paid in" which Debentures are to bear interest at 6 per cent for 20 years.

Upon this it must be observed—First, that this new debt is to be created when the *Tolls collected* amount to £30,000, without any reference to the *net income*:—i. e. the Shareholders are to be paid out of the Tolls, and the Government is to defray the charges of maintenance.

Secondly—The Debentures are to be issued "whenever" the Tolls "shall annually amount" to £30,000; no provision therefore is made for the case of the annual receipt falling below that sum, after it has once reached

it. If by any accident the Canal were to be stopped, or the trade be diverted from it, after the Tolls had once reached the above amount, the Government will still be liable to the charge, although receiving no benefit from the Canal.

Thirdly—There is an important verbal omission in the section, although it may not invalidate its intended effect. It is enacted that the Debentures shall be issued “for such sums as will make up 6 per cent interest upon the stock, from the time the same shall have been actually paid in.” The word “annual” or “per annum applied to interest,” are omitted; and the doubt may arise whether, although the intention of the framer is obvious, the omission does not nullify the clause.

Passing over, however, these objections, and supposing, as Mr. Merritt states, that the Tolls to be collected next year will amount to £30,000, the parties will receive under this clause as follows:

The precise time at which they paid the money can only be stated after reference to the original stock Books, but Mr. Merritt believes it to have been thus paid:

£30,000	in	1825.
45,000	“	1828.
42,800	“	1830.

Hence, the sum to which the parties will be entitled at 6 per cent annually, will amount on,

£30,000, for 17 years,	30,600
45,000, “ 14 “	37,000
42,800, “ 12 “	30,816

Total £109,216

For this sum of £109,216, Debentures are to be issued to the parties, upon which they will be entitled to 6 per cent for 20 years, amounting to £131,040, besides the new capital, making together £240,256, in addition to the £242,618 payable under the first section.

This may be shown in abstract.

Original Debentures, Capital	£117,800
Interest	124,818

£242,618

New Debentures, Capital	£109,216
Interest	131,040

240,256

Total £482,874

Thus, nearly half a million of money will be expended to get rid of this stock, amounting to £117,800!

The parties however are not satisfied with this. They claim, under the 17th section of 7th Will. 4, cap. 92, a still further sum. The clause runs thus: Be it enacted, &c., "that the Tolls received upon the canal after deducting the amount required for the charges now made thereon by law, or so much thereof as shall be necessary, shall be first annually applied to discharge the interest which will accrue upon the said sum of £215,000" (to be advanced for the works under this Act) "and the remainder of the *income* received by the said Company shall be divided among the private Stockholders until it shall equal 6 per cent on the amount of their investments."

Upon this, they first ground a claim for the full arrears of interest at 6 per cent per annum. This for 6 years to 1842 would amount to £42,408.

If this be disallowed, they claim a less amount of arrears, equal to 25 per cent for the whole period of 6 years. This would amount to £29,450.

The foundation for these claims rests upon the assumption that the *income* referred to in the clause last cited was *gross* income, excluding in the first case a deduction even for the cost of administration, and admitting it in the second. This interpretation has been repudiated by the Government; Mr. Attorney General Hagerman gave an opinion against it, but the Company obtained the opinions of five lawyers in favor of it. To concede it would be to admit that these parties in a *private speculation* would be reaping a large profit or rate of interest, while the Canal did not pay its expenses, and that the maintenance of the works was to be thrown on the Government.

Without, however, determining this question, it is clear that when the parties under the second section of the Act of last Session, get arrears of interest at the rate of 6 per cent, for these very years, they are not entitled to another 6 or 5 per cent, which would raise the interest for this period to 11 or 12 per cent, and Mr. Merritt himself admits that such "was not the intention of the law" of last Session.

If therefore this claim falls to the ground, there is no reason why the Legislature should shew them any further favor, and upon the chance, however probable, of the tolls amounting next year to the required sum, subject the Province, to the additional payment of 2 per cent for one year, with 3 per cent in the following year, and further payments, if the tolls do not increase as is expected.

But it would seem, further, that Mr. Merritt misinterprets the operation of the second section of the Act of last Session, in relation to the first.

The first section grants debentures bearing a sliding scale of interest in future years. The second enacts that at a certain time further debentures shall be given for arrears of interest accrued up to the time at which such debentures are issued. It does not provide for anticipating the payments in future years under the first section, and adding to the new Debentures the difference between 6 per cent, and the lower rates fixed by that section.

If this interpretation be correct, Mr. Merritt's other ground for his application would be removed.

A few words, before concluding, as to the position and claims of the Province with respect to the Welland Canal. It has already expended more than £380,000 upon this work, of which sum a large portion has been borrowed, upon debentures bearing 5 or 6 per cent, for which interest it still remains liable, a further sum of £450,000 is now to be expended. The annual interest upon this and the portion of the previous expenditure remaining unredeemed, say £550,000, will be at 5 per cent, £40,000. This alone will absorb the probable amount of Tolls, for some years to come, *making no allowance for* :

- 1st. The expenses of maintenance, cost of repairs, &c.
- 2nd. The payment of the sum of £482,874 to the Private Shareholders.
- 3rd. The repayment of the principal £800,000, which will be obligatory as regards a great part of that sum within twenty years.

The parties urge their claim upon the gratitude of the Province for having commenced this work, and having thereby conferred the most important benefits upon the country. The well known circumstances under which the works have been provided for and carried on, tend very much to diminish the force of their appeal, as it may well be doubted whether, if the Canal had not been commenced by private individuals, the obvious utility and need of such a communication between the Lakes, would not have soon attracted the attention of the Legislature and the Government, by whom it is probable that the work would have been completed with much more expedition and economy, and with a greater regard to public interest than could possibly be the case in a private speculation of this nature.

In a subsequent note of 10th September, Mr. Merritt states that his "object at present is to ascertain on what principle the parties are to be remunerated," and also "that they would accept either Debentures or money" for the amount to which they are entitled under the second section.

21st September, 1842.

APPENDIX C.

MR. MERRITT'S EVIDENCE.

At what time was the investment made by the private stockholders, and in the event of their stock being purchased by the Province, from what time will the interest commence ?

I cannot state the precise time when each person subscribed without reference to the original stock books, but from recollection believe the interest may be computed as follows :

See Appendix to Journals of U. C. Sess. of 1838-40, Vol. 1, Part 2, 14 * Rep. Sel. Com. Welland Canal.

1825	10 years 6 per cent on	£30,000 a 1800	£18,000
1828	8 " "	45,000 a 2700	21,600
1830	6 " "	42,800 a 2568	15,408
			£55,008

Do you think the terms proposed by the Committee equitable towards the Stockholders ?

ANSWER.—I do not.—Many of them have been paying interest at the rate of 7 per cent. per year on the amount of their investment ; to their judgment, energy and confidence, are the public indebted for the undertaking, they have sustained at their hazard and have derived no benefit whatever when the public have derived far greater benefits than the entire cost of the Work. At the same time I feel so confident the income from the Canal will repay them in a short time, that I should much prefer the following arrangement to enable the Stockholders to realize a part of the outlay at once, and not create so large and apparent debt as the first measure shows.

PROPOSITION.

To issue Debentures payable in 20 years for 50 per cent. on the par value of the Stock held by individuals which will amount to.....	£ 58,900
In three years hence to issue Debentures as above for 25 per cent.....	29,450.
In six years same as above.....	29,450
	£117,800

After the Revenue on the Canal amounts to the yearly income of £25,000 to advance the Debentures to the amount of one half of the interest due on the Shares since the Stock was paid in, payable out of the proceeds of the Canal after the income amounts annually to the sum of £50,000, to issue Debentures as above for the remaining half due on the back interest payable out of the proceeds of the Canal, so that the Stockholders will ultimately be paid the principal and interest of their investment without burdening the revenue of the Province.

Should the private Stock be surrendered as proposed, will the public be called upon to pay the interest ?

ANSWER.—I do not think the Revenues of the Province will be burdened with one farthing by extending their credit in supporting that work with judicious management.

For instance, if the Government should issue Debentures payable in 20 years for 50 per cent. on the amount of the Private Stock.

In 1837, £58,900 a 6 per cent. the Interest....	£ 3,534
£41,100 a 6 per cent. for payment of debts, repairs and commencement of Stone Locks..	2,466
	<hr/>
	£ 6,000

The Tolls of this year will pay the interest.

In 1838, Interest on £100,000.....	£ 6,000
£25,000 advanced on Locks.....	1,500
	<hr/>
	£ 7,500

Will amount to.....£ 7,500

The Tolls of this year will also meet the interest.

In 1839, Interest on Stock and Loan, £125,000..	£ 7,500
Advance on Locks, £25,000.....	1,500
	<hr/>
	£ 9,000

The increase Toll will also meet this amount.

In 1840, Interest on Stock and Loan £150,000..	£ 9,000
Advance on Stone Locks £25,000.....	1,500
Interest on 50 per cent. to be then paid on pri- vate Stock £58,900.....	3,534
	<hr/>
	£14,034

The increase Revenue will meet the amount.

In 1841, Interest on £223,900.....	£14,034
Advance on Locks £25,000.....	1,500
	<hr/>
	£15,534

The Toll will again meet this amount.

In 1842, Loan will amount to £248,900. Interest £15,534

This year the Toll will enable the Work to sustain itself without further advances and a gradual redemption may be expected as follows :

In 1843 Loan continues at £258,900.

Interest.....	£15,534
Toll amounting to.....	20,000
	<hr/>
	£ 4,466

Leaving an Increase of.....£ 4,466

In 1844, the Loan will be reduced to £224,434.

Interest.....	£14,666
The amount of Toll.....	25,000
	<hr/>
	£10,334

Increase.....£10,334

In 1845 the Loan reduced to £*241,100.
 Interest.....£14,016
 This year advanced half the interest on Stock.
 Interest..... 1,650

£234,100
 * 27,504
 £261,604

The Toll this year..... 13,250
 Increase.....£15,554

In 1846 the Loan reduced to £216,050.
 Interest.....£14,763
 The Toll this year..... 39,063

Increase.....£24,300

In 1847, the Loan reduced to £221,750.
 Interest.....£13,305
 Toll this year..... 48,827

Increase.....£35,522

In 1848, the Loan reduced to £186,228.
 Interest.....£11,173
 The Toll this year..... 61,033

Increase.....£49,860

In 1849, the Loan reduced to £136,338.
 Interest.....£ 8,182
 This year advance half Interest on Stock.
 £ 27,504. 1,650

£163,872 £ 9,832
 The Toll this year..... 76,291

Increase.....£66,459

In 1850, the Loan reduced to £97,413.
 Interest.....£ 5,844
 Toll this year..... 100,000

£94,156

Which liquidates the principal and therefore will yield a Revenue to the Province of £125,000 per year to assist in other Improvements.

Province
 their
 manage-
 Deben-
 amount
 3,534
 2,466
 6,000
 6,000
 1,500
 7,500
 7,500
 1,500
 9,000
 9,000
 1,500
 3,534
 ,034
 ,034
 ,500
 ,534
 534
 tain
 tion
 534
 000
 466
 666
 000
 334

APPENDIX D.

ST. CATHARINES, 1st. SEPT. 1842.

SIR,

I have the honor to acknowledge the receipt of your communication of the 30th ultimo, requesting my opinion on the part of the Shareholders, as to the amount in Debentures, or money which they would demand in full acquittance of their claim and their interest in the Canal in reply thereto, I beg to state that I have been instructed by the Shareholders to say that they will accept of Debentures payable in London, in 20 years at an Interest of six per cent. for the amount of the Capital invested, *and wait for the amount of Interest due thereon, until the Income from the Canal reaches £30,000 per year*, when they will receive Debentures on the same terms; they also would prefer that the Revenues of the Canal should be first appropriated for the payment of those Debentures or the Interest thereon.

I have the honor to be,

Sir,

Your Obedient Servant,

(Signed,) WM. HAMILTON MERRITT.

R. W. RAWSON, ESQUIRE.

APPENDIX E.

TORONTO, 22d MAY, 3.

SIR,

I have the honor to acknowledge the receipt of a Copy of a Memorandum or Minute of Council passed on Saturday last, in which I observe an omission of the former Shareholders, also the rate at which Debentures are to be issued in Canada.

I mentioned this both to the President of the Council and Mr. Secretary Harrison, who are of the opinion it will be of no consequence, as the intention of the Council is well understood.

I have therefore assured the private Shaerholders that if the proposition be acceded to by them the Debentures for the £117,800 may bear interest from the first January, 1823*, and be issued by the Receiver General in the ordinary manner, six per cent payable in Canada, and five per cent if payable in England, which is at the option of the Shareholder, on returning the Debentures now issued.

* This should be 1843.

I will take it for granted if no answer is returned by you that I have fairly represented the intention of the Council, if not, on placing this communication before them you will have the goodness to apprise me, that I may give the Shareholders timely notice thereof.

I have the honor to be,

Sir,

Your Obedient Servant,

WM. HAMILTON MERRITT

To Chief Clerk of the Ex. Council.

—
APPENDIX F.

ST. CATHARINES, 22d SEPTEMBER, 1843.

SIR,

I have the honor to present you with the enclosed Memorial from the Private Shareholders in the Welland Canal Company, which I am happy to say accedes to the terms proposed by His Excellency in Council, for his information.

I have the honor to be,

Sir,

Your Obedient Servant,

WM. HAMILTON MERRITT.

Hon. S. B. Harrison, &c., &c., &c.

To His Excellency Sir CHARLES METCALF, Governor
General of British North America, &c., &c., &c.

May it please Your Excellency,

The undersigned Memorialists, Shareholders in the Welland Canal Company, beg leave to represent:

That since the control and management of that undertaking was assumed by the Legislature of Canada under the Act of 1837, your Memorialists have confided wholly on the good faith of the Provincial Government.

They readily complied with the terms proposed under the Act of 1841, by transferring their Stock and placing the management of that Canal immediately under the Board of Works, which appeared to be the desire of

the Government, and have at all times afforded every facility in their power to sustain the undertaking.

The Minute of Council of the 20th May last, proposing an amendment of the existing law, by issuing debentures payable in England at five, or in Canada at six per cent interest, from the first of January 1843, (in the usual manner), at the option of the holder, for amount of Capital held; and a further issue of debentures for payment of interest due since the same was paid in, as soon as the tolls in any one year reach £45,000, has been submitted for their approval. Your Memorialists were led to believe from the terms of the Law of 1837, that an early remuneration was secured to them, as well as from the guarantee of the British Government in payment of the Provincial debt in 1841—in which, from the interpretation placed on the first, and withholding the Royal Assent to the last, they have been disappointed. They also from the favorable view taken of their claims by the Treasury and Colonial Minister in May 1842, had indulged a hope they would be placed on a more favorable position; and they still feel that on a reconsideration of their present situation, if Your Excellency can consistently with the public interest recommend the second issue of debentures, as soon as contemplated by the existing Act, that it will be granted. If not, their confidence in the income from this Canal meeting their early anticipations, and that when realized full compensation will be made them, remains unimpaired.

Your Memorialists therefore adhering to the principle by which they have been governed, will accept of the terms offered in the Minute of Council alluded to. All of which is respectfully submitted.

Henry Yates, and others.

Albany, July 22nd, 1843.

A P P E N D I X G.

DRAFT OF AN ACT

IN MR. MERRITT'S HANDWRITING.

WHEREAS it appears conducive to the interests of the Private Shareholders in the Welland Canal Company, without proving injurious to the Public, that the 4th & 5th Victoria cap. 48, should be amended:

Be it therefore enacted, That it shall and may be lawful for Her Majesty's Receiver General, upon an Order to that effect from the Governor, Lt.-Governor, or Person administering the Government of this Province, to receive from any individual possessing the same, all De-

Debentures heretofore issued to the Private Shareholders in the Welland Canal Company under the Provisions of the above recited Act, and to cancel or destroy the same, Providing application be made within Twelve Months from the day of the date of this Act.

II. And be it enacted, That it shall and may be lawful for the Governor, Lt.-Governor, or Person administering the Government of this Province, to authorize the Receiver General to issue, for every One Hundred Pounds of Stock so returned, an equal amount of Debentures payable at six per centum per annum, payable half-yearly, in such sums or amounts as the party requiring the same may find most convenient; or for every Hundred Pounds currency the sum of *Ninety* Pounds sterling, payable at the Banking House of Glyn, Halifax & Co., in London, at five per cent. interest, payable half-yearly.

III. Be it enacted, That if the Shareholders who have already transferred their Shares under the above recited Act, do not accept the Debentures hereby granted, it shall and may be lawful for the Receiver General of this Province to re-transfer the amount of Stock so held by each Individual, and place him in the same position in which he stood before the transfer of his Stock to the Government of this Province.

IV. Be it enacted, That the Governor General may authorize the Receiver General of this Province to issue the Debentures to which the private shareholders are hereafter to be entitled under the Second Clause of 4th & 5th Vic. cap. 48, on the terms as heretofore described in the Second Clause of this Act.

V. Be it enacted, That the Principal and Interest to be due and payable on account of the Debentures authorized by this Act shall be borne out and paid from the Tolls arising from the Welland Canal Company, and in default thereof out of the Public Revenues of this Province.

APPENDIX H.

No. 148.—9th July, 1842.

MY LORD,

I have the honor to acknowledge the receipt of Your Lordship's Despatch of the 18th May last, No. 150, enclosing a correspondence between the Colonial Office and the Treasury on the one side, and Mr. Hamilton Merritt and Messrs. Bosanquet on the other, relative to the claim of the Shareholders in the Welland Canal Company, to be indemnified on account of the recent

proceedings of the Legislature and Government in regard to that work. In this correspondence, the validity of the claim is unreservedly admitted by Her Majesty's Government, and I am directed to bring it under the notice of the Legislature with a view to its satisfaction.

On referring to the Memorial of the Stockholders, forwarded by the Messrs. Bosanquet, I find the grounds for compensation stated to be: First, That "by the Provincial Act of 1837, the Shareholders have been deprived of the management of their property." Second, That "by the neglect of the Government to execute whatever provisions of that Act were favorable to the Stockholders, they have been deprived of 36 per cent on their subscriptions." Third, That "by the neglect of the Provincial Government to publish and carry into execution the Provincial Act of 1839 before the Imperial Act of reunion was proclaimed, the Stockholders have been deprived of that priority of claim which they would otherwise have had upon the Consolidated Fund." And fourth, That "by the late Provincial Act for the loan of £1,500,000, the principal and interest of that loan is further interposed and preferred before the claim of the Stockholders. No specific pledge or appropriation of any funds is made for the payment of the Debentures to be given, or of the interest thereon, only both are declared to be chargeable upon and payable out of the Public Revenues of the Province. The security will, of course, be almost worthless, and the Debentures quite unsaleable in this Country."

The first observation which arises on this claim is that if it be founded on the assumption by the Government of the management of the Canal, it ought to have been brought forward at an earlier date. Between the passing of the Act 7. Will. 4. c. 92, and the application of Mr. Hamilton Merritt to your Lordship, five years have elapsed, during which I am not aware that any steps have been taken by the Shareholders to obtain compensation for the alleged injury inflicted upon them. The Act of the last Session evidently gives them no claim which they did not possess before, inasmuch as their action under it is by the third Clause made entirely optional.

But waiving this objection, there are other and more conclusive grounds on which, as it appears to me, the claims now put forward by the Shareholders must be rejected.

The Company, as your Lordship is aware, was originally incorporated by the Act 4. Geo. 4. c. 17, for the making of a Boat Canal, at which time the amount necessary for that work was estimated by its projectors at £10,000. In 1825 the dimensions of the Canal were

increased, so as to admit the passage of larger Vessels, and the Stock was raised to £200,000. In the following year, £25,000 was advanced by the Government to the Company, under a Bond for its repayment with interest at six per cent. In the same year an equal amount of £25,000 was voted by the Legislature of Lower Canada. In 1827 two Acts were passed, the first granting £16,360, which was estimated as one ninth of the whole expense, for the free use of the Canal by the Government; the second, taking Shares on the part of the Province to the amount of £50,000, under a Bond from the Company for £20,000 for the half yearly payment of the interest at six per cent. In 1829, the Imperial Government advanced £50,000 taking as a security for its repayment a Mortgage upon the Canal itself, a condition which by the Provincial Statute, 10 Geo. 4. c. 9, the Directors were enabled to carry into effect. In 1830 a further sum of £25,000 was advanced at six per cent, the Company giving a bond for the payment of the principal and interest. In 1831 a further sum of £50,000 was advanced on the security of the Canal, and it was provided, that if the Company should fail to pay the interest and principal of this advance, the Receiver General should take possession of the Canal in the name of the Crown, "and appoint such Agents, Collectors, and other Officers as may be requisite to manage the same, and deposit and apply the proceeds thereof to the payment of the interest and principal aforesaid." And rendered suspicious by the repeated demands upon them and by the constant falsification of all previous estimates, the Legislature further provided "That no part of the said sum of £50,000 shall be advanced to the said Company until personal security shall have been given to the satisfaction of His Excellency the Lieutenant Governor, to the amount of £25,000, that the said Canal shall be completed for ship navigation from the said River Welland to some point in Lake Erie to be fixed upon by the Directors of the said Company for a Harbour and that the said Harbour shall likewise be completed without any further grant for that purpose."

Notwithstanding this precaution the Company, in 1833, again applied to the Legislature, when the sum of £7,500 was granted to them; and in 1834, a further sum of £50,000 was subscribed for as Public Stock. These sums, however, having proved inadequate, the Act 7, W. IV, c. 92, was passed for the "permanent completion" of the Canal. By the preamble of this Act, it is recited that £107,500 had been subscribed as Public Stock, and £102,000 had been loaned to the Company under the provisions of several Acts. The Act then proceeds to provide that the £102,000 advanced by way of loan should be converted into Public Stock; that the Governor should be authorized to subscribe for £245,000

additional Stock; that the whole capital Stock of the Company should be £597,300 in shares of £12 10s. each, of which the Government of Upper Canada should hold 36,360, the Government of Lower Canada 2,000, and private Stockholders 9124; that the management of the affairs of the Company should be entrusted to five Directors, of whom three should be appointed by the Crown and two by the Stockholders; and "That the Tolls received upon the Canal, after deducting the amount required for the charges now made thereon by law, or so much thereof as shall be necessary, shall be first annually applied to discharge the interest which will accrue upon the said sum of £245,000 to be advanced for the purposes aforesaid, and the remainder of the income received by the said Company shall be divided among the private Stockholders, until it shall equal 6 per cent on the amount of their investments." In the last Session, the Act for the purchase of the private Stock was passed, and in the Public Works Act, a vote of £150,000 was taken for the Canal.

The recapitulation of these proceedings shews two things which are very important. First, That the estimates prepared by the projectors of the Canal and upon which the Legislature was called upon first to incorporate the Company, and afterwards to grant assistance from the public revenue, were, whether intentionally or not, most extravagantly incorrect. And secondly, That the Canal had, previously to 1837, been twice mortgaged to the Government, and that under the Act of the 1st W. IV. c. 18, it might, at any time, have been seized by the Receiver General and the whole of the Officers appointed by him without any further legislation on the subject.

But it moreover appears that of the whole amount of £491,777 expended upon the Canal, only £117,800, or less than one fourth has been subscribed by private individuals, while a further expenditure nearly equal to all that has preceded is still required the whole of which is to be provided by the Province. Under such circumstances, can it be maintained, even putting the government on an equality with private Stockholders, that they have secured to themselves an unfair share in the direction, or in so doing have inflicted on the Shareholders, an injury which would entitle them to compensation. Must it not rather be admitted, that they would have been grossly negligent of their duty as Trustees for the public if, when applied to for assistance, towards a work which had been so notoriously miscalculated, and mismanaged, they had omitted to take the necessary precautions for securing the due administration by responsible parties of the Funds which they granted from the public Purse. On this ground at least I cannot think that the Shareholders have any claim.

But they next complain that the 17th Clause of the Statute 7 Will. 4, c. 92, has been so interpreted as to withhold all benefit from them, and that there is now due to them, if that Clause were fairly construed, 36 per cent upon their Shares. The terms of this Clause I have already quoted, and your Lordship will observe that it provides that "the remainder of the income," after paying the legal charges and the government interest, shall be divided among the Stockholders until it shall equal six per cent, on their investments. It has been contended by Mr. Merritt on behalf of the Shareholders, that the word "income," means the gross receipts without deduction of the expenses of the Canal, and if this interpretation be correct, the Shareholders are no doubt entitled to the sum stated in their memorial. But it appears to me altogether extravagant and irrational to adopt such an interpretation. If the expenses of the management and repair of the Canal are not to be defrayed from its gross receipts, they must be defrayed from the Public Revenue, and thus the Canal would be kept up at the expense of the Province for the Sole advantage of the private Shareholders, and the anomaly be presented of a concern actually incurring an annual loss and yet making an annual division of profits. Under such an arrangement the party who would suffer by the mismanagement which has taken place, would be, not those who entered upon the undertaking as a monetary speculation, but the Province which came in to assist them in their difficulties, and to rescue them from the embarrassment in which their own miscalculations had involved them. This appears to me altogether preposterous, and I cannot therefore admit that upon this ground the Shareholders have made out their claim to compensation.

In respect to the injury which they incurred by the delay in proclaiming the Act of 1839, and by the priority on the public Revenue of other claims before the Debentures to be issued for their Stock, it is only necessary to say a very few words. The security upon which the Shareholders advanced their money were the Tolls of the Canal. That security still remains to them, and it is at their option to retain it or to accept the Government Debentures in place of their Shares. It can scarcely be said, looking to the proceedings of the Company, that the security is now less than when they loaned their money, or that it has become less marketable by the transfer of the Work, from an irresponsible Direction by whom it had been almost ruined, to responsible and scientific Directors under whom it will be completed and perfected. I have myself no doubt that now that the Works are to be conducted under Government control, the Canal will soon become prosperous and thriving, but whether this be so or not, the Shareholders have no right to claim now at the expense of the public, a better security than they originally bargained for.

For these reasons I would submit to Your Lordship to reconsider the instructions which you have issued to me to bring this matter before the Legislature. Without at all undervaluing the importance of the Welland Canal or depreciating the energy of Mr. Hamilton Merritt and others by whom it was originally commenced and has been carried on, I entertain very strong doubts whether the public would not have been much benefitted had the Company never been formed, or had it expired with its first failure. The Work would then have fallen into the hands of the Government, and been conducted with regularity and science, and much of the expense which has been incurred would have been saved.

That the House of Assembly would take the same view with myself in regard to the present claim, I have not the least doubt, nor do I doubt that Mr. Hamilton Merritt is aware that it would do so. He knows that they would not listen to an individual Member who should bring forward such a demand, but he hopes that by the influence of the Government, it might be forced through the House. In this hope he would, I believe, be disappointed; and even if the claim had more foundation than it has, I think it would be extremely impolitic to bring forward a money question on which the Government would almost certainly be defeated. Among the Lower Canadian Members, who already complain of the unfair share of the debt of Upper Canada imposed upon them, it would meet with unqualified and probably angry opposition, while the Upper Canada Members who for years have been misled and wearied by the never ending miscalculations and demands of the Company, would to a great extent join with them. The proposal would be rejected and the Government be left with the discredit of having been defeated on what would be described as a "job" for the benefit of parties residing in England.

Under these circumstances I would recommend that the Government should not in any way move in the matter. If there is any justice in the claims of the Shareholders, there is no doubt they will be brought forward with sufficient zeal by Mr. Merritt; if there is not, it is not fitting that the Government should be the means of pressing them on the Legislature.

I have, &c.

APPENDIX I.
MEMORANDUM OR MINUTE
OF 20TH MAY, 1843.

It is looked upon that the fixing the period at which Debentures shall be issued for the payment of the back interest on the investment of the private Stockholders, namely, when the tolls to be received at the Canal shall annually amount to £30,000, was intended to give the said back interest when the tolls on the Canal shall be sufficient to pay the interest on the sum expected to be expended in the construction of the work, the costs of management and repairs, the interest on the Debentures issued for the principal sum invested by the private Stockholders and the interest on the Debentures for the back interest.

The calculation appears not to be far wrong under the estimate of expenditure in the year 1839, but subsequently and before the passage of the late Act, a much larger expenditure was found to be necessary, and consequently if Debentures were to issue when the tolls on the Canal annually amounted to only £30,000, the interest on the Debentures to be issued for the back interest would be borne upon the Provincial revenue, contrary to the intention of the Legislature.

Mr. Merritt now proposes an alteration in the Law for the benefit of the private Stockholders, which would make the £117,000 of Debentures which were intended as a repayment of the principal investment of the private Stockholders payable in England, instead of in this Province, the rate of interest payable in England to be 5 per cent per annum.

To this proposal the Government do not think it just to the public interests to accede, unless upon the principle that the interest on the Debentures for back interest shall be no burden upon the public revenue.—To enable them to be borne, on the revenues of the Canal it is now calculated will require an annual amount of tolls of £45,000, Provincial currency, leaving the income from real estate and hydraulic privileges to meet the estimated cost of management and repairs after the completion of the Canal.

It is therefore not thought expedient to move in the amendment of the Law as proposed by Mr. Merritt, unless the issue of the Debentures for the payment of the back interest shall be postponed until after the completion of the Canal, and until the tolls of one year shall amount to forty-five thousand pounds currency.

With respect to the claim of the Private Stockholders to receive dividends under the Act of one thousand eight hundred and thirty-seven, it is not considered that the Stockholders refusing to accept the present law are entitled to such dividend in any event until the tolls received upon the Canal, after deducting the amount required for the charges now made thereon by law, which charges are conceived to include the expense of management and repairs, are sufficient to discharge the amount of interest on the sum borrowed under the Act; and moreover it seems doubtful (the sum of two hundred and forty-five thousand pounds contemplated to be borrowed under the Act not being raised, and the small portion which was raised not being applied to the construction of the Canal,) whether the contingency in which the Stockholders are to receive dividends can arise under the Act. If there be doubts on these subjects, they can be set at rest by a declaratory law.

If this proposition be acceded to by the Private Stockholders, the Debentures for the one hundred and seventeen thousand pounds, may bear interest from the first January, one thousand eight hundred and forty-three.

APPENDIX J.

Mr. *Durand* from the Committee of the whole House, to consider the expediency of amending a certain Act of the Parliament of *Upper Canada*, passed in the seventh year of the Reign of His late Majesty, *William IV*, intituled, "An Act to provide for the permanent completion of the *Welland* Canal, and for other purposes therein mentioned;" and also a certain other Act of the Parliament of *Upper Canada*, passed in the fourth and fifth years of the Reign of Her present Majesty, intituled, "An Act to authorize the stock held by Private Parties in the *Welland* Canal, to be purchased on behalf of the Province;" reported, according to order, the Resolutions of the said Committee, which Resolutions were again read at the Clerk's table, and agreed to by the House, and are as followeth:—

Resolved, That it is expedient to repeal so much of an Act of the Parliament of *Upper Canada*, passed in the seventh year of the Reign of His late Majesty, *William IV*, intituled, "An Act to provide for the permanent completion of the *Welland* Canal, and for other purposes therein mentioned," as provides for the income of the said Canal or any part thereof, being divided amongst the Private Stockholders.

Resolved, That it is expedient to repeal a certain Act of the Parliament of this Province, passed in the 4th & 5th years of the Reign of Her present Majesty,

intituled, " An Act to authorize the Stock held by Private Parties, in the *Welland* Canal, to be purchased on behalf of the Province," and to provide for the immediate issue of Debentures to the private Shareholders, redeemable in twenty years from this date, and bearing interest from the first day of January, 1843, which interest may, at the option of the Shareholders, be payable in *London*, at the rate of five per cent, per annum ; or in this Province at the rate of six per cent per annum ; and further to provide, that so soon after the completion of the Canal, as the toll shall amount, in any one year to £15,000 Currency, other Debentures shall be issued to the private Stockholders, *for the interest on their Stock, for the time that the same had been paid in*, such Debentures to be payable either in *London*, at the rate of five per cent, per annum, interest, or in *Canada*, at six per cent, at the option of the Shareholders.

Ordered, That the Honourable Mr. *Hincks* have leave to bring in a Bill, to repeal a certain Act therein mentioned, and to make further provision for enabling the Provincial Government, to purchase the Stock held by private Parties, in the *Welland* Canal.

He accordingly presented the said Bill to the House, and the same was received and read for the first time, and ordered to be read a second time, on Thursday next

