GOVERNOR HATFIELD'S

SPECIAL MESSAGE

—ON—

VIRGINIA DEBT

—AND—

MASTER LITTLEFIELD'S REPORT

WEST VIRGINIA LEGISLATURE

FEBRUARY. 5. 1915

CHARLESTON
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APPENDIX C.

SPECIAL MESSAGE

Transmitted to the Senate and House of Delegates of West Virginia by His Excellency, Henry D. Hatfield, Governor, February, 5, 1915.

SPECIAL MESSAGE

To the Members of the Senate and the House of Delegates:

GENTLEMEN: In keeping with the promise made in my biennial message, I am presenting for your consideration a special message dealing with the Virginia debt case, and with it I am submitting to you the report of the Virginia debt commission for West Virginia, raised under Conference Committee's Substitute for House Substitute for Senate Joint Resolution No. 5, adopted February 21, 1913, by the legislature, which authorized the appointment by the governor of a commission, composed of eleven members, to be known as the Virginia debt commission for West Virginia.

I appointed upon that commission the following gentlemen: Honorables John W. Mason, William D. Ord, W. E. Wells, Joseph Miller, John M. Hamilton, R. J. A. Boreman, Henry Zilliken, J. A. Lenhart, W. T. Ice, Jr., Joseph E. Chilton and U. G. Young. The commission organized June 10, 1913, by electing Judge John W. Mason, of Fairmont, as chairman, and John T. Harris, of Parkersburg, as secretary. The West Virginia commission, by appointment, met the Virginia commission in the city of Washington, July 25, 1913, for the purpose of discussing ways and means of bringing to a final settlement the Virginia debt, in keeping with the suggestion made by Mr. Justice Holmes in his decision of March 6, 1911.

Serious consideration has been given by public men of our state in the past, looking towards a settlement of the Virginia debt, in keeping with the provisions of the constitution of 1862, for the purpose of determining what part of the debt, if any, West Virginia was equitably and justly entitled to assume. At the opening of the joint meeting of

the two commissions in Washington, the West Virginia commission was informed by the spokesman of the Virginia commission, Honorable Randolph Harrison, through and by a resolution which had been previously prepared and adopted by the Virginia commission, that as the supreme court had fixed the principal of the debt that West Virginia was to pay, viz: $7,182,507.46, that the only question remaining open for discussion was the amount of the interest to be borne by West Virginia.

A rejoinder to this resolution, issued by the West Virginia commission, stated frankly that it was not its understanding of the decision rendered by the supreme court on March 6, 1911, that it justified such a conclusion and the West Virginia commission attempted to point out this fact to the Virginia commission, but without avail. The two commissions adjourned by agreement to meet again in the city of Washington on August 12, 1913, and a continuation to a later date was asked for by the West Virginia commission, the reason being assigned that the position taken by the Virginia commission, viz: that there remained nothing for consideration other than the question of interest—made it necessary for the West Virginia commission to investigate thoroughly and fully the equity of the subject matter contained in Virginia's resolution submitted to the West Virginia commission.

This request upon the part of the West Virginia commission for a postponement of the joint meeting from August 12 to some other date in the future was justified for the reason that neither the state administration which had taken charge on March 4, nor the members of the commission raised by the resolution passed by the legislature, were familiar with the past litigation of the Virginia debt controversy, and further to enable the members of the West Virginia commission, as well as the administration to inform themselves so that these questions, so vitally involving West Virginia could be discussed intelligently. It seems to me that it was eminently proper for the West Virginia commission to ask the Virginia commission this consideration.

On August 3, 1913, I arranged with Honorable R. L. Gregory, an attorney, of Parkersburg, to abstract the acts of the Virginia legislatures, bearing upon any debt by Virginia, beginning with the foundation of the state and coming down to the present time. Between the 12th and 15th of August, I employed Honorable E. A. Dover, chief accountant for the state, to make a search of the old records in the Virginia debt litigation, and to determine whether or not there had

been any assets taken into consideration. This was in keeping with that paragraph of Mr. Justice Holmes' decision rendered March 6, 1911, wherein he said that "there seem to be no stocks or bonds on hand of value." I received Mr. Dover's report—following my instructions given him—to the effect that there had been no credit considerations of the properties that had been developed from the moneys invested for internal improvements and which had been borrowed for this purpose in the name of the whole state. This investigation, coupled with that paragraph of the decision of Mr. Justice Holmes heretofore referred to, which I quote in full at this point:

> "It was argued, to be sure, that the debt of Virginia was incurred for local improvements and that in such a case, even apart from the ordinance, it should be divided according to the territory in which the money was expended. We see no sufficient reason for the application of such a principle to this case. In form the aid was an investment. It generally took the shape of a subscription for stock in a corporation. To make the investment a safe one the precaution was taken to require as a condition precedent that two or three-fifths of the stock should have been subscribed for by solvent persons fully able to pay, and that one-fourth of the subscriptions should have been paid up into the hands of the treasurer. From this point of view the venture was on behalf of the whole state. The parties interested in the investment were the same, wherever the sphere of corporate action might be. The whole state would have got the gain and the whole state must bear the loss, as it does not appear that there are any stocks of value on hand,"

together with Mr. Gregory's investigation and abstraction of all acts of Virginia dealing with any debt incurred and the disposition of the assets growing out of these investments, resulted in an investigation of the auditors' and other reports by Mr. Dover and his associates, which developed, in the limited time given by the supreme court, assets to the amount of $20,810,357.98. The court, on the 13th day of October, 1913, declined without prejudice the motion made by the Virginia commission to speed the cause. This step was taken by the Virginia commission in the interest of granting to the West Virginia commission the request made for a postponement to some date in the future, so that the West Virginia authorities might properly inform themselves, looking towards the submission of a proposition, which it was hoped would terminate further litigation in this matter. The supreme court gave West Virginia until April 13, 1914—a very limited time—to investigate a period of transactions extending over ninety

years. This enabled the West Virginia commission to proceed in an investigation in keeping with its suggestion to the Virginia commission when it asked for a postponement of further joint meetings to a future date for this purpose, which it did, and on March 4, 1914, in keeping with the previous arrangement made with the Virginia commission, a joint meeting was held in the city of Washington. At that time a preamble and resolution was submitted to the Virginia commisison as to the discovery of credits to the amount of $20,810,-357.98 that had been made by the West Virginia commission, through its accountants, in the short period of time that was alloted to traverse the records. It was pointed out in this resolution that 23½ per cent of this amount, together with the sum of $225,078.06 would result in a reduction of the principal of the amount found by the supreme court in the opinion wherein the court expressly said that no assets had been taken into consideration. This 23½ per cent, of $20,810, 357.98 applied to the findings as to the principal that West Virginia was liable for, viz: $7,842,507.46, would leave a balance of $2,327,195.28. This amount the West Virginia commission, as a compromise adjustment, offered to recommend for favorable consideration to the governor and to the legislature in full settlement of West Virginia's part of the Virginia debt liability.

The Virginia commission refused to give any consideration whatever to the tender made, and adjourned without further negotiations with the West Virginia commission. The Virginia commission refused to discuss the subject matter contained in West Virginia's preamble and resolution, whereupon the counsel for West Virginia gave notice to the Virginia representatives that they would submit a motion to the supreme court on March 23, for leave to file a supplemental answer, on or before April 13, the date set by the court to take up the Virginia debt case, in keeping with Chief Justice White's opinion handed down November 10, 1913.

The supplemental answer alleged, in brief, that the very debt—to the payment of which West Virginia was asked to contribute—had been created in the purchase of bank stocks, railroad securities and stocks in navigation and other transportation companies, and that, if, as had been held by the supreme court, West Virginia was compelled to pay 23½ per cent of this debt, she was entitled to receive 23½ per cent of the value of the stocks and securities purchased with the proceeds of the bonds creating the debt.

The motion of West Virginia for leave to file the answer and of Virginia that the cause be proceeded with to final decree were argued

together before the court on the thirteenth day of April, 1914. West Virginia was represented by Attorney General A. A. Lilly, and his associate counsel, Charles E. Hogg, V. B. Archer and John H. Holt. On the eighth day of June, 1914, the court entered a decree filing West Virginia's supplemental answer, and referring the cause once again to the Honorable Charles E. Littlefied, Special Master, with direction to hear any evidence that might be offered by either state upon the subject.

During the month of July, 1914, the Master, after a conference in New York city with representatives of both states, fixed the 10th day of August, 1914, as the time, and the city of Richmond, Virginia, as the place, when and where he would begin his sittings in the execution of the decree of reference; and immediately, by and with the advice and consent of our board of public works, I employed Mr. C. W. Hillman, an expert accountant of wide reputation, with direction to go to Richmond with his assistants for the purpose of examining the archives, records and official documents of the state of Virginia relating to her public debt, and covering the period from 1823 down to the present time, and with further direction to digest and tabulate the same, and prepare schedules thereof under the advice of counsel, in proper form to be introduced as evidence upon the hearing, and this he did.

The hearings began at the time and place fixed, and continued for many weeks. The state of West Virginia offered testimony tending to show the ownership of Virginia on the first day of January, 1861, of many millions of stocks and other securities, and the value thereof as of that date. Virginia, upon the other hand, admitted the ownership of the stocks, but contended that they should be valued as of June 20, 1863, and offered evidence to show that upon that date, in consequence of the ravages of the civil war, the value of many of these stocks had been entirely destroyed, while that of others had been greatly depreciated, and that West Virginia's equity, in consequence, was of little value. Virginia's theory was based upon the fact that West Virginia did not become a state until June 20, 1863; but West Virginia replied that the debts had been fixed against her as of January 1, 1861, and that her credits should be given as of the same date.

The hearings before the Master lasted until the twenty-first day of October, 1914, and, after they had been completed, the cause was argued before the Master in the city of New York on the twelfth day of December, 1914, by the Honorable A. A. Lilly, attorney general of West Virginia, and his associate counsel, Charles E. Hogg, of Pt.

Pleasant, and John H. Holt, of Huntington, West Virginia, and, on the twenty-second day of January, 1915, the Master made and filed his report, wherein he ascertained:

First. That the assets or investments held by the commonwealth of Virginia January 1, 1861, were not submitted to him or considered by him in the former hearing for the purpose of determining their value and applying the value as a set-off to reduce the gross debt of the commonwealth of Virginia January 1, 1861.

Second. That under West Virginia's agreement, as evidenced by the provisions of article 8, section 8, constitution of West Virginia "an equitable proportion of the public debt of the commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this state" required Virginia to apply the assets or investments on hand January 1, 1861, at their fair value on January 1, 1861, toward the liquidation of the debt January 1, 1861, so that West Virginia could know when the assets were so applied the amount of the real debt remaining to which West Virginia would be obliged to contribute.

Third. That the liability of West Virginia for interest on her part of the net debt begins January 1, 1861, and runs at the rate provided for in the bonds that evidence the debt.

Fourth. That he does not have "power under this reference to determine the balance, if any, that may be due from West Virginia * * * * * * * * * *,' as interest can only accrue on that 'proportion' which is ultimately found to be the balance due from West Virginia to Virginia, there is no sum upon which interest can be computed, and I therefore make in this case no computation of interest."

Fifth. That the value of assets owned and held by the commonwealth of Virginia January 1, 1861, was $14,511,945.74 and if 23½ per cent of $14,511,945.74, or $3,410,307.25, is to be credited to West Virginia in reduction of her liability upon her proportion of the "public debt," then there should be deducted from $3,410,307.25 the sum of $541,467.76 representing money and stocks received by West Virginia from the restored government of Virginia, leaving a net credit to West Virginia of $2,868,839.49.

Applying the findings of Master Littlefield to the amount of the gross debt apportioned to West Virginia by the supreme court of the United States under opinion dated March 6, 1911, and calculating interest from January 1, 1861, to the date the original bonds were redeemable and treating bonds redeemable at the pleasure of the general assembly as bearing interest until finally paid, is the method

of computing interest according to the terms of bonds as contended for by Virginia. About one-half of the interest is on bonds redeemable at the pleasure of the general assembly.

The result is as follows:

Amount of principal of the gross debt of Virginia January 1, 1861, apportioned to West Virginia by the supreme court of the United States under opinion dated March 6, 1911	$ 7,182,507.46
Less amount of assets of Virginia January 1, 1861, apportioned to West Virginia by Special Master Littlefield in report dated January 21, 1915	3,410,307.25
Net amount	$ 3,772,200.21
Plus interest calculated to October 1, 1914, according to terms of original bonds, by the method contended for by Virginia	7,440,236.44
Total amount	$11,212,436.65
Plus amount of cash and value of assets received by West Virginia from the restored government of Virginia, as found by Master Littlefield in report dated January 21, 1915	541,467.76
Grand total, apportioned to West Virginia	$11,753,904.41

Even if West Virginia is liable for interest according to the terms of bonds it seems to me a certainty that a bond issued prior to 1861 and payable at the pleasure of the general assembly of Virginia would not bear interest against West Virginia when West Virginia had no "pleasure of retiring the bonds," or that a bond payable at a fixed date would not bear interest against West Virginia. All the bonds being under the absolute control of Virginia, and West Virginia having no means of knowing whether she owed "nothing" or "millions," West Virginia could not pay an unknown amount and stop the interest.

Under the former hearing of the case the amount apportioned to West Virginia by the supreme court of the United States under opinion dated March 6, 1911, was	$ 7,182,507.46
The amount of interest was left open to be determined. Calculating interest by the same method as used above in the present finding the interest would aggregate	14,174,425.64
Total	$21,356,933.10

Plus amount received by West Virginia from Virginia, or the restored government of Virginia, as found by Master in former hearing in report dated March 17, 1910 ..... 671,599.46

Grand total apportioned to West Virginia...$22,028,532.56

From the foregoing statement of facts it is readily seen that under the present finding of the Master, reducing the gross debt by applying the assets as an off-set and calculating interest by the same method in both instances the amount due from West Virginia has been reduced from $22,028,532.56 to $11,753,904.41, or $10,274,628.15.

Does not this one comparison prove conclusively that the claims of Virginia as to the amount due from West Virginia have been unfair and inaccurate, and West Virginia has been unable, at all times, to make settlement, the amount due, if any, being indefinite and unknown?

Under the present reasoning of the Master as to West Virginia's liability for interest the only way for West Virginia to have stopped interest would have been to pay to Virginia a lump sum and then bring suit to determine if she owed anything and to recover the excessive amount paid. If Virginia had stated the account fairly by asking West Virginia to pay her proportion of the net debt January 1, 1861, instead of asking payment of an excessive proportion of the gross debt and not mentioning or crediting West Virginia with assets which had a par value in excess of the gross debt but for the lapse of time an actual value could be proven, almost if not equal to the gross debt. Then, it would be equity for West Virginia to pay interest if she refused to pay the actual amount due from her.

We feel confident that it can be shown to the supreme court of the United States that West Virginia has not received in the Master's present findings full credit for the value of the assets January 1, 1861, and that interest can not in equity be charged against West Virginia until the actual amount due is determined.

The view of West Virginia upon the subject of interest is that she is not responsible therefor, for the following reasons:

1. Because a sovereign state is not chargeable with interest in the absence of an express promise to pay the same;

2. Because interest is not chargeable upon unliquidated or unascertained amounts;

3. Because Virginia, in addition to all the stocks and other securities hereinbefore described, and by the Master's report now apportioned for the first time between the two states, succeeded to practic-

ally all the public buildings that had been constructed and equipped prior to the separation of the two states;

4. Because, although West Virginia has been given her credits as of the first day of January, 1861, Virginia has been enjoying the usufruct thereof during the whole period from then until now, or from that date until the time when they were disposed of by Virginia without the knowledge or consent of the state of West Virginia; and,

5. Because it has not been West Virginia's fault that this controversy has not been sooner settled.

The case will come on now finally to be heard before the supreme court upon the report of the Master, and, while I deem the ascertainment and allowance by the Master of the foregoing credits a great victory for the state of West Virginia, yet there is much work still to be done in connection with this litigation, and there should be some person, commission or body vested with full power under the law to properly carry it on, and sufficient funds should be appropriated for that purpose.

The Master sustained the contentions made by West Virginia as to the assets, as well as to the date of January 1, 1861, for which West Virginia should have credit for her proportionate part of the assets developed out of the money borrowed in the name o fthe whole state.

The constitution of 1862 served the supreme court in fixing the contract between Virginia and West Virginia, and the court determined the liability of West Virginia for any part of the debt of Virginia as of January 1, 1861. The Master seems to have adopted this date, following the same reasons. The assets on hand January 1, 1861, according to our accountants' statement, prepared by C. W. Hillman, one of the most widely and favorably known experts throughout the country, in connection with Mr. Dover, out state accountant, and all of the audits made of these different assets were approved by Virginia's accountants and attorneys as being correct as to figures, and as to the facts shown by the records. The total assets on hand as of January 1, 1861, that had been developed out of the principal borrowed in the name of the whole state was $26,063,000.00. There was no reason for any deterioration at that time, there being no war or other cause for destruction or deterioration, as was the case from April 12, 1861 to April 9, 1865.

The Master's finding has reduced the principal of the debt to $4,314,000.00, but West Virginia is entitled to a much larger credit than this amount for the reason that the joint assets were worth par, at least, as is shown by the record as of January 1, 1861, the date

fixed by the Master as to the time the value of these credits should be taken. The suggestion has been made by the Master that West Virginia's equitable part of the debt is inseparable from the interest, going upon the theory that interest follows the principal as the shadow follows the substance, but according to my understanding as a layman, this rule has no application to a sovereign state. I do not think that it is a fair conclusion in this case for the reasons:

First, That West Virginia has never been able to have her part of this debt determined, notwithstanding effort after effort has been made in the past by committees raised by the legislature to have West Virginia's part of the debt, if any, determined, and,

Second, West Virginia's constitution does not specifically agree to pay interest.

Third, Virginia has always retained both money and assets and has enjoyed the benefits which have accrued therefrom, amounting to many millions of dollars in dividends, and many of these valuable properties are still on hand at the present time and from which she is receiving yearly dividends.

It is not the case usually, as I understand, that an unliquadated debt bears interest. This condition, so far as West Virginia is concerned, is aplicable to her interest in the Virginia debt. Not only has West Virginia been refused a statement of her share of the assets, as well as any part of the debt for which she is responsible, but it is a fact that those who have represented the state of Virginia have attempted in every conceivable way to conceal the facts which West Virginia has sought to determine from 1871 up until a short period before the suit was entered by Virginia against West Virginia. The existence of any credit whatsoever was denied by Virginia's counsel in their argument before the court, and the declaration was made by them before the supreme court in resisting the filing of the supplemental answer by our state praying the court for hearing as to the question of assets, that there were no assets of value on hand and that the contentions of West Virginia's representatives were childish and without foundation in fact, and that it was an attempt upon our part to shirk a responsibility that the founders of the state had assumed in the adoption of its first constitution.

This misrepresentation has been heralded throughout the land and we have been pointed out as a state that repudiated an equitable debt. What must be said in justice about those who have attempted by sheer deception and the denial of facts to cover up credits in the way of assets, which Virginia should admit in equity and good conscience If West Virginia is entitled to assume an equitable part of the Vir-

ginia debt she is likewise entitled to an equitable part of the credit that grew out of the money that was borrowed for the purpose of developing the assets jointly owned by the whole state. If West Virginia owes anything in equity and good conscience, her citizens want to redeem any obligation assumed by the founders of the commonwealth, but they will insist upon being given their just share of the credits before they pay any part of the debt. It is just as much an act of perfidy and dishonor to pay an unjust debt as it is to repudiate an honest one, and I believe that when we are given the equity we are entitled to receive, we will owe no part of the Virginia debt, and if any, indeed it will be infinitesimal as compared with the enormous figures made by those who have been trading and trafficking in these stocks, both in and out of the United States, and paying on the market anywhere from two to ten cents on the one hundred. If West Virginia must pay interest she must have 23½ per cent of the dividends that accrued from these properties after 1861. She also is entitled to 23½ per cent of $4,500,000.00, which was paid by the whole people in the investment of state buildings and state lands and other necessary equipment for the development as well as the existence of the commonwealth.

Notwithstanding the fact that Virginia receives practically nothing from this litigation—the entire holdings by Virginia being less than $249,000.00—I find to my surprise many of Virginia's most leading citizens under the impression that the state would get the larger part of any judgment that might be found against West Virginia, and when informed as to the real conditions they seem astounded. Some of our most distinguished citizens argue that we should look to the federal government to assume any part of any liability that may be fixed by our state. As to the practicability of such procedure, I am uninformed. It is a fact, however, that the federal government has not heretofore assumed obligations of states. If there are meritorious reasons as to why this should be done in case of a final liability being adjudged against West Virginia, to be sure this would be a most happy conclusion for the state.

I am further impressed that West Virginia, along with the other thirteen original states, is entitled to a consideration from the federal government for the northwestern territory, and it is my opinion that if a co-operation might be had between the states, that there is every reason to conclude that the final results would be that West Virginia and the other states would realize a considerable sum of money, which is equitably due then from the federal government. But whatever may develop in the future in these matters, we cannot mistake the fact

that West Virginia has a suit pending against her in the supreme court brought by the mother state, not for the reason that she had a claim against West Virginia of a material nature (covering very few, if any, of the bonds), but out of the fact that she conspired with her creditors and agreed to assume and pay certain parts of obligations made by her after she had refunded and repudiated both principal and interest on these obligations and with the understanding that she would not be held responsible for one-third of her debt. This was agreed to by the creditors of Virginia, with the understanding that her name might be used to sue West Virginia, which was done. Hence the litigation which is now pending; and whatever may occur in the future it must be seen that West Virginia is properly protected against this effort on the part of others to wrong her, as has been so clearly demonstrated in the Master's decision that the contentions made by West Virginia, which Virginia's representatives had denied on all occasions, were proper as to assets being an hand of value. West Virginia has for the past fifty years—in keeping with her constitution of 1862—sought to secure a statement of the account, but in every instance she was refused this consideration by the representatives of Virginia, and historians of Virginia do not hesitate to state the reason for not wishing to give West Virginia a statement of her account. This is attributed to the fact that those who were in charge of the state's affairs were interested in the "gobbling up," bartering, trading and giving away of the assets which have been developed out of the money borrowed in the name of the whole state. The records of Virginia reveal this regrettable fact. This being true, West Virginia and her citizens should not be made to suffer for the wrong doing of the officials of the mother state.

The Master has recognized January 1, 1861, as the proper date for the fixing of West Virginia's credits, and it must be borne in mind that the assets on hand at that time were unimpaired. Some of these assets were paying dividends upon a basis of par value, and there will be found recorded upon the public records of Virginia where these properties were bartered and traded away, and later the fact is revealed that they were practically lost to the state altogether. But this was in the 'seventies and 'eighties, long after the division of the state, when West Virginia could in no way be held responsible for the deterioration or depreciation or loss of these properties. It is revealed that in every instance legislative enactment was passed authorizing these transfers of state holdings by the board of public works, the auditor's report evidencing the fact by an entry of whatever money was received by the sale of these properties, and notwithstanding all

the recorded acts, Virginia's representatives deny the fact that there were any assets on hand of value and that was the decision of the supreme court upon the former hearing, and justly so, for the reason that the record as it then stood did not disclose the fact that there were any assets on hand of value.

As the contentions made by West Virginia have been substantiated by the Master as to assets being on hand of value, and these items not having heretofore been given consideration in this litigation, I feel that I can say without fear of contradiction that a great victory has been won and that the door is now open so that West Virginia can present her case to the supreme court with many advantages that were not hers when she asked leave to file the supplemental answer. This important case is not near an end as yet, and it behooves West Virginia's representatives to look well to the future interests of the people in the defense of the state in this important litigation. I feel that greater and more substantial victories will crown our efforts if properly presented to the courts in the future, because our contentions are based upon equity and fairness. I earnestly recommend that some action be taken by the legislature dealing with this important question and looking toward the fixing of responsibility and furnishing sufficient funds to carry on West Virginia's defense. If results are to be obtained in any proposition where great principles or great questions are involved, responsibility must be fixed. A divided responsibility means failure of purpose and is often the cause of neglect in the devotion to duty that is necessary to accomplish the greatest results.

It will be borne in mind that the present commission was only created with the power and authority to negotiate and make recommendations. It was not authorized to conduct this litigation in the past, or given any authority so to do in the future, although its individual members continually acted as an advisory board. They had no money with which to pay counsel and meet the expense of the litigation, and I was practically driven to take the matter into my own hands and devote my contingent fund—so far as it would go—to that purpose. I therefore recommend that the present commission be relieved, and that a new one be substituted, consisting of fewer members, authorized to do whatever may be necessary in the premises, and that sufficient funds be appropriated for the purpose of meeting their expenses, properly compensating them for their services, and to carry on the litigation from this time to a successful and final conclusion, as well as to cover the present deficit heretofore occasioned in the necessary prosecution of West Virginia's defense.

Twenty thousand dollars for the biennial period was appropriated by the last legislature for the purpose of defraying the expenses and certain contingencies of the Virginia Debt Commission. No appropriation was made for defending West Virginia's interest in this cause, and of the twenty-five thousand dollars appropriated for 1912, when I took charge as Governor on March 4th, 1913, $12,923.41 remained on hand. It was therefore necessary to secure funds to pay accountants, attorneys and other expenses to prepare the defense of West Virginia in this litigation. I therefore expended approximately $25,800.00 out of my contingent fund for attorney, clerical and accountant expenses. The total amount of money expended in the Virginia Debt litigation by my administration is $38,728.41.

The West Virginia commission expended approximately $13,000.00 of the $20,000.00 appropriated. There is an outstanding indebtedness amounting to $18,500.00 for attorneys' fees, which represents the sum total of expenses incurred up to the present time. The larger part of the attorney fees paid up to this time have been paid out of my contingent fund.

Honorable V. B. Archer was employed at a salary of $5,000 per year; Honorable Charles E. Hogg was continued at the salary of $5,000 per year; the Honorable John H. Holt was employed, and for his services up to the present time he has been paid $10,000.

Honorable R. L. Gregory was paid for his services $1,600. He rendered valuable service and much of his time was spent in abstracting the acts of the Virginia legislature which dealt with the Virginia debt. These abstracts have proved invaluable in the case, and showed the authorization of the sale of property, and after this work was finished Mr. Gregory was almost constantly in assistance upon the accounting work.

The state tax commissioner's fund should be reimbursed $2,700 for the expenses incurred in paying expenses of accountants from that department for services rendered in the Virginia debt litigation.

I transmit herewith a detailed report made to me by the present commission, covering an account of its negotiations, as hereinbefore outlined, with the Virginia commission, and giving what I deem to be not only a clear, but an accurate and complete history of the Virginia debt, constituting a valuable paper for the archives of West Virginia; and, in transmitting it, I beg to say that its authors, one and all, embracing not only the Honorable John W. Mason, chairman of the commission, and W. D. Ord, chairman of the sub-committee, but each and every member thereof, deserve the thanks of the entire state for

the patriotic, intelligent and unselfish manner in which they have performed their duties under your resolution and my appointment.

Great praise should be given to the honored chairman, the Honorable John W. Mason, who is well versed and whose experience dates back to the beginning of our state. His support has been of great service.

To the chairman of the sub-committee, the Honorable W. D. Ord, is due great credit for his untiring efforts in this cause. The state of West Virginia owes him a debt of gratitude for his devotion and for the sacrifice made to promote the interests of West Virginia. To him is due more credit than possibly any other man for the many points which appealed to him from a business viewpoint in developing West Virginia's credits in such a clear manner, and which has given us the great victroy thus far obtained.

I likewise transmit herewith a copy of the Master's report, reminding you, however, that it subject to the final action of the supreme court of the United States.

It may be added that the benefits to be derived from the negotiations of the present commission and from the establishment of West Virginia's credits, as hereinbefore given, will not stop there, but will result in much good in point of reputation to the state and her citizens. It is a notorious fact that a great many people, not understanding the real situation, have looked upon us as repudiationists, unwilling to pay out debts, and subject to the oppobrium that has been cast upon us by the misrepresentations of those to whose interest it was to misrepresent us. Not only the policy but the virtue of West Virginia's course has now been demonstrated; and, while the state should pay her just debts, her citizens should remember that it is just as much a perfidy and dishonor to pay an unjust debt as it is to repudiate an honest one.

Neither should I omit to say before concluding this message that your attorney general, the Honorable A. A. Lilly, as well as his associate counsel, Dr Charles E. Hogg, V. B. Archer and John H. Holt, has each performed well his part. The attorney general has been attentive and effective; and, while Mr. Archer's connection with the case was only of short duration, still while he was so engaged he was always strong and useful. Dr. Hogg made good his reputation for industry and learning.

Much credit is due to the Honorable John H. Holt, whose great ability was of invaluable assistance in this litigation, in the analyzing and presenting in a concrete and lucid way of the legal facts as to West Virginia's contentions. Judge Holt's efforts are largely re-

sponsible for our state being enabled to receive those credits that in equity and good conscience she is entitled to receive, which she has heretofore been denied, and which Virginia has at all times declared, through her representatives, did not exist. His efforts were indeed a great stimulus to all who were anxiously waiting, watching and aiding in any way possible, with the hope for better things, to the end that we would accomplish for our people that which we felt they were entitled to receive.

It likewise gives me pleasure to make favorable mention of the Honorable Septimus Hall in this connection; for it was through him that the history of some of these assets was uncovered and their existence and value disclosed.

Splendid service was rendered to the state by Honorable John T. Harris, the secretary of the commission, who assisted in much of the important detail work at Richmond.

The most important part of this litigation is to come in the future and the constitution makes your honorable body responsible in dealing with this matter. I shall be glad to confer with your committees, or any of those connected with the case will be glad to do likewise at any time. Judge Mason can be had at any time by notifying him in advance, as can Mr. Ord, chairman of the sub-committee, and I shall look forward to your advice and direction in this matter in the future, to the end that our state and its people may be best served.

I can give as an appendix in this message, an itemized statement showing the moneys expended during my administration on account of this suit, how disbursed, and the present status of the account.

Respectfully submitted,

HENRY D. HATFIELD,
Governor.

AMOUNT PAID OUT OF CIVIL CONTINGENT FUND ACCOUNT VIRGINIA DEBT MATTER.

DATE	TO WHOM PAID	ON WHAT ACCOUNT	AMOUNT
1913.			
Nov. 5	V. B. Archer	Srvice in Va. debt matter	$ 472.50
14	Virginia Hill	Stenographer Va. debt matter	75.00
25	Virginia Hill	Stenographer Va. debt matter	36.00
Dec. 8	Kanawha Hotel	Exp. V. B. Archer Va. debt matter	32.35
	R. L. Gregory	Exp. in Va. debt matter	218.30
1914.			
Feb. 4	R. L. Gregory	Exp. reporting Va. debt records	38.15
11	R. L. Gregory	Exp. to Richmond-Wash'ton debt	100.00
	Overton Howard	In matter Va. debt case	25.00
	Amer. Audit Co	Services Va. debt case	25.00
	John C. Bond	Exp. to Washington Va. debt case	58.00
	J. D. W. Melvin	Exp. in Va. debt matter	200.00

Apr.	3—Standard Ptg. and Lithograph Co.	Printing briefs Va. debt case	199.00
	Ohio Val. Pub. Co.	Printing briefs Va. debt case	145.04
	20—Kanawha Hotel Co.	Exp. V. B. Archer Va. debt case	24.10
	22—H. D. Hatfield	Two trips Washington and hotel, J. H. Holt and Joseph Miller	266.20
May	5—R. L. Gregory	Exp. Washington Va. debt case	80.25
	22—R. L. Gregory	Services Va. debt case	600.00
	30—R. L. Gregory	Exp. Richmond in Va. debt case	300.00
	Septimus Hall	Exp. Richmond in Va. debt case	150.00
July	24—H. D. Hatfield	Exp. Washington and New York	99.15
	H. D. Hatfield	Exp. Richmond July	66.65
	28—Septimus Hall	Exp. investigation Richmond	150.00
Aug.	12—Septimus Hall	Exp. investigation Richmond	100.00
	R. L. Gregory	Exp. investigation Richmond	200.00
	H. D. Hatfield	Exp. Richmond debt case	50.80
	25—R. L. Gregory	Exp. investigation Richmond	200.00
	R. L. Gregory	Services Va. debt case	500.00
	29—John H. Holt	Legal services Va. debt case	2,000.00
	31—H. D. Hatfield	Exp. Richmond Aug. 16	69.98
Sept.	9—H. D. Hatfield	Exp. Richmond Sept. 2-7	70.75
	John H. Holt	Services as counsel	2,000.00
	12—Overton Howard	Services as counsel	336.50
	Septimus Hall	Exp. investigation Richmond	100.00
	H. D. Hatfield	Exp. Richmond, Sept. 9-12	59.40
	J. K. Anderson	Part. exp. Richmond	39.43
	18—R. L. Gregory	Personal exp. stenog. binding	350.00
	23—Mutual Audit Co.	Services C. W. Hillman et al	1,460.00
	Amer. Audit Co.	Services Va. debt case	440.00
	24—J. D. W. Melvin	Exp. New York Va. debt case	78.02
	C. D. Bray	21 days' service, exp., etc	269.25
	R. L. Gregory	Exp. Richmond Va. debt case	172.34
Oct.	1—E. A. Dover	Exp. Richmond Va. debt case	110.15
	Amer. Audit Co.	Bal due on services	25.00
	Wymouth, Meister & Smith	Binding exhibits	3.50
	I. B. Weller	Stenographer Va. debt case	21.00
	5—Septimus Hall	Services investigation	250.00
	27—E. A. Dover	Exp. N. Y. to hearing	102.21
	Mutual Audit Co.	Services C. W. Hillman et al	1,045.00
	31—John H. Holt	Services as counsel	3,000.00
	Wm. Byrd Press	Insurance premium on records	8.75
	R. L. Gregory	Services Va. debt case	500.00
Nov.	11—A. Horn & Co.	1,000 maps	20.00
	Mutual Audit Co.	Services C. W. Hillman et al	685.86
	Standard Ptg. Co.	Printing briefs	67.50
	Chas. E. Hogg	Services and expenses	2,476.95
Nov.	11—Clarence Bonyage	Stenographer	2,451.80
Dec.	2—C. C. Pearson	Expert services	89.80
	3—O. Raym'nd Brown	Stenographic service	31.20
	5—Mutual Audit Co.	Services C. W. Hillman et al	478.35
	11—J. K. Anderson	Exp. Richmond	41.90
	19—Underwood Tp. Co.	Typewriter R. L. Gregory	83.03
	21—John H. Holt	Services as counsel	2,000.00
	John T. Harris	Services and exp. indexing	451.64
			$25.800.80

AMOUNT PAID OUT OF APPROPRIATION OF 1911 FOR DEFENSE OF VIRGINIA DEBT SUIT.

DATE 1914.	TO WHOM PAID.	ON WHAT ACCOUNT	AMOUNT
June 1	V. B. Archer	Legal services for February, March and April at $416.66 per mo. and expenses	$ 1,435.24
June 1	Chas. E. Hogg	Legal services and expenses	2,296.15
June 1	Union Pub. Co.	Printing record	379.12
June 4	Griffith L. Johnson.	Reporting and furnishing transcript of argument	250.00
June 29	V B. Archer	Legal services in full	833.32
June 24	C. W. Hillman	Services of C. W. Hillman and other accountants	1,436.90
July 29	C. D. Bray	Services and expenses as accountant	299.25
Aug. 8	E. A. Dover	Expenses at Richmond	179.67
Aug. 8	C. W Hillman	Services of C. W. Hillman and other accountants	1,809.09
Aug. 14	Overton Howard	Services as accountant	300.00
Aug. 24	J. K. Anderson	Expenses at Richmond	143.04
Aug. 24	C. W. Hillman	Services of C. W. Hillman and other accountants	1,847.90
Aug. 26	Amr. Audit Co.	Services as accountant in Va. debt suit	1,065.00
Aug. 29	C. D. Bray	Services and expenses as accountant	346.75
Aug. 29	Standard Ptg. & Publishing Co.	Printing	105.00
Sept. 9	J. K. Anderson	Balance on expense account at Richmond	38.17
Sept. 9	E. A. Dover	Expenses at Richmond, Aug. 1-31.	122.65
Sept. 15	J. K. Anderson	Exp. at Richmond in debt case	30.21
		Total	$12,923.41

Transmitted to the Senate and House of Delegates of West Virginia by His Excellency, Henry D. Hatfield, Governor, February 5, 1915.

REPORT OF THE
VIRGINIA DEBT COMMISSION
—TO—
HIS EXCELLENCY, HENRY D. HATFIELD, GOVERNOR OF WEST VIRGINIA,
PURSUANT TO THE REQUIREMENTS
—OF—
A JOINT RESOLUTION OF THE LEGISLATURE OF WEST VIRGINIA ADOPTED ON THE 21st DAY OF FEBRUARY, 1913.

MEMBERS OF THE COMMISSION:

JOHN W. MASON, *Chairman,* Fairmont.
R. J. A. BOREMAN, Parkersburg.
J. M. HAMILTON, Grantsville.
W. E. WELLS, Newell.
HENRY ZILLIKEN, Wellsburg.
W. D. ORD, Landgraff.
JOSEPH E. CHILTON, Charleston.
J. A. LENHART, Kingwood.
W. T. ICE, Philippi.
U. G. YOUNG, Buckhannon.
JOSEPH S. MILLER, Kenova.
JOHN T. HARRIS, *Secretary.*

REPORT.

To His Excellency,
HON. HENRY D. HATFIELD, *Governor,*
Charleston, West Virginia.

In the case of the *Commonwealth of Virginia* vs. *The State of West Virginia,* reported in 220 U. S. Reports, page 1, the Supreme Court of the United States, on the 6th day of March, 1911, through Mr. Justice Holmes delivered the following opinion:

> "This is a bill brought by the Comonwealth of Virginia to have the State of West Virginia's proportion of the public debt of Virginia as it stood before 1861 ascertained and satisfied. The bill was set forth when the case was before this Court on demurrer. 206 U. S. 290. Nothing turns on the form or contents of it. The object has been stated. The bill alleges the existence of a debt contracted between 1820 and 1861 in connection with internal improvements intended to develop the whole State, but with especial

view to West Virginia, and carried through by the votes of the representatives of the West Virginia counties. It then sets forth the proceedings for the formation of a separate State and the material provisions of the ordinance adopted for that purpose at Wheeling on August 20, 1861, the passage of an act of Congress for the admission of the new State under a consitution that had been adopted, and the admission of West Virginia into the Union, all of which, we shall show more fully a little further on. Then follows an averment of the transfer in 1863 to West Virginia of the property within her boundaries belonging to West Virginia, to be accounted for in the settlement thereafter to be made with the last named State. As West Virginia gets the benefit of this property, without an accounting, on the principles of this decision, it needs not to be mentioned in more detail. A further appropriation to West Virginia is alleged of $150,000, together with unappropriated balances, subject to accounting for the surplus on hand received from counties outside of the new State. Then follows an argumentative averment of a contract in the Constitution of West Virginia to assume an equitable proportion of the above-mentioned public debt, as hereafter will be explained. Attempts between 1865 and 1872 to ascertain the two States' proportion of the debt and their failure are averred, and the subsequent legislation and action of Virginia in arranging with the bondholders, that will be explained hereafter so far as needs. Substantially all the bonds outstanding in 1861 have been taken up. It is stated that both in area of territory and in population West Virginia was equal to about one-third of Virginia, that being the proportion that Virginia asserts to be the proper one for the division of the debt, and this claim is based upon the division of the State, upon the above-mentioned Wheeling ordinance and the Constitution of the new State, upon the recognition of the liability by statute and resolution, and upon the receipt of property as has been stated above. After stating further efforts to bring about an adjustment and their failure, the bill prays for an accounting to ascertain the balance due to Virginia in her own rights and as trustee for bondholders and an adjudication in accord with this result.

The answer admits a debt of about $33,000,000, but avers that the main object of the internal improvements in connection with which it was contracted was to afford outlets to the Ohio river on the west and to the seaboard on the east for the products of the eastern part of the State, and to develop the resources of that part, not those of what is now West Virginia. In aid of this conclusion it goes into some elaboration of details. It admits the proceedings for the separation of the State and refers to an act of May,

1862, consenting to the same, to which we also shall refer. It denies that it received property of more than a little value from Virginia or that West Virginia received more than belonged to her in the way of surplus revenue on hand when she was admitted to the Union, and denies that any liability for these items was assumed by her Constitution. It sets forth in detail the proceedings looking to a settlement, but as they have no bearing upon our decision we do not dwell upon them. It admits the transaction of Virginia with the bondholders and sets up that they discharge the Commonwealth from one-third of its debt and that what may have been done as to the two-thirds does not concern the defendant, since Virginia admits that her share was not less than that. If the bonds outstanding in 1861 have been taken up it is only by the issue of new bonds for two-thirds and certificates to be paid by West Virginia alone for the other third. Liability for any payments by Virginia is denied and accountability, if any, is averred to be only on the principle of Sec. 9 of the Wheeling ordinance, to be stated. It is set up further that under the Constitution of West Virginia her equitable proportion can be established by her Legislature alone, that the liquidation can be only in the way provided by that instrument, and hence that this suit cannot be maintained. The settlement by Virginia with her creditors also is pleaded as a bar, and that she brings this suit solely as trustee for them.

The grounds of the claim are matters of public history. After the Virginia ordinance of secession citizens of the State who dissenteod from that ordinance organized a government that was recognized as the State of Virginia by the Government of the United States. Forthwith a convention of the restored State, as it was called, held at Wheeling, proceeded to carry out a long entertained wish of many West Virginians by adopting an ordinance for the formation of a new State out of the western part of the old Commonwealth. A part of section 9 of the ordinance was as follows: "The new State shall take upon itself a just proportion of the public debt of the Comomnwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period." Having previously provided for a popular vote, a constitutional convention, &c., the ordinance in Sec. 10 ordained that when the General Assembly should give its consent to the formation of such new State, it should forward to the

Congress of the United States such consent, together with an official copy of such constitution, with the request that the new State might be admited into the Union of States.

A constitution was formed for the new State by a constitional convention, as provided in the ordinance on November 26, 1861, and was adopted. By Article 8, Sec. 8, "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years." An act of the Legislature of the restored State of Virginia, passed May 13, 1862, gave the consent of that Legislature to the erection of the new State "under the provisions set forth in the constitution for the said State of West Virginia." Finally Congress gave its sanction by an act of December 31, 1862, c. 6, 12 Stat-633, which recited the framing and adoption of the West Virginia constitution and the consent given by the Legislature of Virginia through the last mentioned act, as well as the request of the West Virginia convention and of the Virginia Legislature, as the grounds for its consent. There was a provision for the adoption of an emancipation clause before the act of Congress should take effect, and for a proclamation by the President, stating the fact, when the desired amendment was made. Accordingly, after the amendment and a proclamation by President Lincoln, West Virginia became a State on June 20, 1863.

It was held in 1870 that the foregoing constituted an agreement between the old State and the new, *Virginia* v. *West Virginia,* 11 Wall, 30, and so much may be taken practically to have been decided again upon the demurrer in this case, although the demurrer was overruled without prejudice to any question. Indeed, so much is almost if not quite admitted in the answer. After the answer had been filed the cause was referred to a master by a decree made on May 4, 1908, 209 U. S., 514, 534, which provided for the ascertainment of the facts made the basis of apportionment by the original Wheeling ordinance, and also of other facts that would furnish an alternative method if that prescribed in the Wheeling ordinance should be followed; this again without prejudice to any question in the cause. The master has reported, the case has been heard upon the merits, and now is submitted to the decision of the Court.

The case is to be considered in the untechnical spirit

proper for dealing with a quasi-international controversy, remembering that there is no municipal code governing the matter, and that this Court may be called on to adjust differences that cannot be dealt with by Congress or disposed of by the Legislature of either State alone. *Missouri* v. *Illinois,* 200 U. S. 496, 519, 520. *Kansas* v. *Colorado.* 206 U. S. 46, 82-84. Therefore, we shall spend no time on objections as to multifariousness, laches and the like, except so far as they affect the merits with which we proceed to deal. See *Rhode Island* v. *Massachusetts* 14 Peters, 210, 257. *United States* v. *Beebe,* 127 U. S. 338.

The amount of the debt, January 1, 1861, that we have to apportion no longer is in dispute. The master's finding was accepted by West Virginia and at the argument we understood Virginia not to press her exception that it should be enlarged by a disputed item. It was $33,897,073.82, the sum being represented mainly by interest-bearing bonds. The first thing to be decided is what the final agreement was that was made between the two States. Here again we are not bound by technical form. A State is superior to the forms that it may require of its citizens. But there should be no technical difficulty in making a contract by a constitutive ordinance if followed by the creation of the contemplated State. *Wedding* v. *Mayler,* 192 U. S. 573, 583. And, on the other hand, there is equally little difficulty in making a contract by the constitution of the new State, if it be apparent that the instrument is not addressed solely to those who are to be subject to its provisions, but is intended to be understood by the parent State and by Congress as embodying a just term which conditions the parent's consent. There can be no question that such was the case with West Virginia. As has been shown, the consent of the Legislature of the restored State was a consent to the admission of West Virginia under the provisions set forth in the Constitution for the would-be State, and Congress gave its sanction only on the footing of the same Constitution and the consent of Virginia in the last-mentioned act. These three documents would establish a contract without more. We may add, with reference to an argument to which we attach little weight, that they establish a contract of West Virginia with Virginia. There is no reference to the form of the debt or to its holders, and it is obvious that Virginia had an interest that it was most important that she should be able to protect. Therefore West Virginia must be taken to have promised to Virginia to pay her share, whosoever might be the persons to whom ultimately the payment was to be made.

We are of the opinion that the contract established us

we have said is not modified or affected in any practical way by the preliminary suggestions of the Wheeling ordinance. Neither the ordinance nor the special mode of ascertaining a just proportion of the debt that it puts forward is mentioned in the Constitution of West Virginia, or in the act of Virginia giving her consent, or in the act of Congress by which West Virginia became a State. The ordinance required that a copy of the new constitution should be laid before Congress, but said nothing about the ordinance itself. It is enough to refer to the circumstances in which the separation took place to show that Virginia is entitled to the benefit of any doubt so far as the construction of the contract is concerned. See opinion of Attorney-General Bates to President Lincoln, 10 Op. Att. Gen. 426. The mode of the Wheeling ordinance would not throw on West Virginia a proportion of the debt that would be just, as the ordinance requires, or equitable, according to the promise of the Constitution, unless upon the assumption that interest on the public debt should be considered as a part of the ordinary expenses referred to in its terms. That we believe would put upon West Virginia a larger obligation than the mode that we adopt, but we are of opinion that her share should be ascertained in a different way. All the modes, however, consistent with the plain coutract of West Virginia, whether under the Wheeling ordinance or the Constitution of that State, come out with surprisingly similar results.

It was argued, to be sure, that the debt of Virginia was incurred for local improvements and that in such a case, even apart from the ordinance, it should be divided according to the territory in which the money was expended We see no sufficient reason for the application of such a principle to this case. In form the aid was an investment. It generally took the shape of a subscription for stock in a corporation. To make the investment a safe one the precaution was taken to require as a condition precedent that two or three-fifths of the stock should have been subscribed for by solvent persons fully able to pay, and that one-fourth of the subscriptions should have been paid up into the hands of the treasurer. From this point of view the venture was on behalf of the whole State. The parties interested in the investment were the same, wherever the sphere of corporate action might be. The whole State would have got the gain and the whole State must bear the loss, as it does not apear that there are any stocks of value on hand. If we should attempt to look farther, many of the corporations concerned were engaged in improvements that had West Virginia for their objective point, and we should be lost in futile detail if we should try to unravel in each in-

stance the ultimate scope of the scheme. It would be unjust, however, to stop with the place where the first steps were taken and not to consider the purpose with which the enterprise was begun All the expenditures had the ultimate good of the whole State in view. Therefore we adhere to our conclusion that West Virginia's share of the debt must be ascertained in a different way. In coming to it we do but apply against West Virginia the argument pressed on her behalf to exclude her liability unde rthe Wheeling ordinance in like cases. By the ordinance West Virginia was to be charged with all State expenditures within the limits thereof. But she vigorously protested against being charged with any sum expended in the form of a purchase of stocks.

But again, it was argued that if the contract should be found to be what we have said then the determination of a just proportion was left by the Constitution to the Legislature of West Virginia, and that irrespectively of the words of the instrument it was only by legislation that a just proportion could be fixed. These arguments do not impress us. The provision in the Constitution of the State of West Virginia that the Legislature shall ascertain the proportion as soon as may be practicable was not intended to undo the contract in the preceding words by making the representative and mouthpiece of one of the parties the sole tribunal for its enforcement. It was simply an exhortation and command from supreme to subordinate authority to perform the promise as soon as might be and an indication of the way. Apart from the language used, what is just and equitable is a judicial question similar to many that arise in private litigation, and in nowise beyond the competence of a tribunal to decide.

The ground now is clear, so far as the original contract between the two States is concerned. The effect of that is that West Virginia must bear her just and equitable proportion of the public debt as it was intimated in *Hartman* v. *Greenhow,* 102 U. S. 672, so long ago as 1880, that she should. It rmains for us to consider such subsequent acts as may have affected the original liability or as may bear on the determination of the amount to be paid. On March 30, 1871, Virginia, assumlng that the equitable share of West Virginia was about one-third, passed an act authorizing an exchange of the outstanding bonds, &c., and providing for the funding of two-thirds of the debt with interest accrued to July 1, 1871, by the issue of new bonds bearong the same rate of interest as the old, six per cent. There were to be issued at the same time, for the other one-third, certificates of same date, setting forth the amount of the

old bond that was not funded, that payment thereof with interest at the rate prescribed in the old bond would be provided for in accordance with such settlement as should be had between Virginia and West Virginia in regard to the public debt, and that Virginia held the old bonds in trust for the holder or his assignees. There were further details that need not be mentioned. The coupons of the new bonds were receivable for all taxes and demands due to the State. *Hartman* v. *Greenhow,* 102 U. S., 672. *McCahey* v. *Virginia,* 135 U. S. 662. The ceretificates issued to the public under this statute and outstanding amount to $12,703,-451.79.

The burden under the statute of 1871 still being greater than Virginia felt able to bear, a new refunding act was passed on March 28, 1879, reducing the interest and providing that Virginia would negotiate or aid in negotiating with West Virginia for the settlement of the claims of certificate holders and that the acceptance of certificates 'for West Virginia's one-third' under this act should be an absolute release of Virginia from all liability on account of the same. Few of these certificates were accepted. On February 14, 1882, another attempt was made, but without sufficient success to make it necessary to set forth the contents of the statute. The certificates for balances not represented by bonds, 'constituting West Virginia's share of the old debt," stated that the balance was "to be occounted for by the State of West Virginia without recourse upon this Commonwealth."

On February 20, 1892, a statute was passed which led to a settlement, described in the bill so final and satisfactory. This provided for the issue of bonds for nineteen million dollars in exchange for twenty-eight millions outstanding, not funded, the new bonds bearing interest at two per cent for the first ten years and three per cent for ninety years; and certificates in form similar to that just stated, in the act of 1882. On March 6, 1894, a joint resolution of the Senate and House of Delegates was passed, reciting the pasasge of the four above mentioned statutes, the provisions for certificates, and the satisfactory adjustment of the liabilities assumed by Virginia on account of two-thirds of the debt, and appointing a committee to negotiate with West Virginia, when satisfied that a majority of the certificate holders desired it and would accept the amount to be paid by West Virginia in full settlement of the one-third that Virginia had not assumed. The State was to be subjected to no expense. Finally an act of March 6, 1900, authorized the commission to receive and take on deposit the certificates, upon a contract that the certificate hold-

ers would acccpt the amount realized from West Virginia in full settlement of all their claims under the same. It also authorized a suit if certain proportions of the certificates should be so deposited, as since they have been—the State, as before, to be subjected to no expense.

On January 9, 1906, the commission reported that apart from certificates held by the State and not entering into this account, there were outstanding of the certificates of 1871 in the hands of the public $12,703,451.79, as we have said, of which the commission held $10,851,294.09, and of other certificates there were in the hands of the public $2,778,239.80, of which the commission held $2,322,141.32.

On the foregoing facts a technical argument is pressed that Virginia had discharged herself of all liability as to one-third of the debt; that, therefore, she is without interest in this suit, and cannot maintain it as trustee for the certificate holders, *New Hampshire* v. *Louisiana,* 108 U. S. 76; and that the bill is multifarious in attempting to unite claims made by the plaintiff as such trustee with some others set up under the Wheeling ordinance, &c., which, in the view we take, it has not been necessary to mention or discuss.

We shall assume it to be true for the purposes of our decision, although it may be open to debate, *Greenhow* v. *Vashon,* 81 Va. 336, 342, 343, that the certificate holders who have turned in their certificates, being much the greater number, as has been seen, by doing so, if not before, surrendered all claims under the original bonds or otherwise against Virginia to the extent of one-third of the debt. But even on that concession the argument seems to us unsound.

The liability of West Virginia is a deep seated equity, not discharged by changes in the form of the debt, nor split up by the unliteral attempt of Virginia to apportion specific parts to the two States. If one-third of the debt were discharged in fact, to all intents, we perceive no reason, in what has happened, why West Virginia should not contribute her proportion of the remaining two-thirds. But we are of the opinion that no part of the debt is extinguished, and further, that nothing has happened to bring the rule of *New Hampshire* v. *Louisiana* into play. For even if Virginia is not liable she has the contract of West Virginia to bear an equitable share of the whole debt, a contract in the performance of which the honor and credit of Virginia is concerned, and which she does not lose her right to insist upon by her creditors accepting from necessity the

performance of her estimated duty as confining their claims for the residue to the party equitably bound. Her creditors never could have sued her if the supposed discharge had not been granted, and the discharge does not diminish her interest and right to have the whole debt paid by the help of the defendant. The suit is in Virginia's own interest, none the less that she is to turn over the proceeds. See *United States* v. *Beebe,* 127 U. S. 338, 342. *United States v. Nashville, Chattanooga & St. Louis Ry. Co.,* 118 U. S. 120, 125, 126. Moreover, even in private litigation it has been held that a trustee may recover to the extent of the interest of his *cestui que trust. Loyd's* v. *Harper,* 16 Ch. D. 290, 315. *Lamb* v. *Vico,* 6 M. & W., 467, 472. We may add that in all its aspects it is a suit on the contract, and it is most proper that the whole matter should be disposed of at once.

It remains true, then, notwithstanding all the transactions between the old Commonwealth and her bondholders, that West Virginia must bear her equitable proportion of the whole debt. With a qualification which we shall mention in a moment, we are of opinion that the nearest approach to justice that we can make is to adopt a ratio determined by the master's estimated valuation of the real and personal property of the two States on the date of the separation, June 20, 1863. A ratio determined by population or land area would throw a larger share on West Virginia, but the relative resources of the debtor populations are generally recognized, we think, as affording a proper measure. It seems to us plain that slaves should be excluded from the valuation. The master's figures without them are, for Virginia $300,887,367.74, and for West Virginia $92,416,021.65. These figures are criticised by Virginia, but we see no sufficient reason for going behind them, or ground for thinking that we can get nearer to justice in any other way. It seems to us that Virginia cannot complain of the result. They would give the proportion in which the $33,897,073.82 was to be divided, but for a correction which Virginia has made necessary. Virginia with the consent of her creditors has cut down her liability to not more than two-thirds of the debt, whereas, at the ratio shown by the figures her share, subject to mathematical correction, is about .7651. If our figures are correct, the difference between Virginia's share, say $25,931,261.47 and the amount that the creditors were content to accept from her, say $22,598,049.21 is $3,333,212.26; subtracting the last sum from the debt leaves $30,563,861.56 as the sum to be apportioned. Taking .235 as representing the proportion of West Virginia we have $7,182,507.46 as her share of the principal debt.

We have given our decision with respect to the basis of

liability and the share of the principal of the debt of Virginia that West Virginia assumed. In any event, before we could put our judgment in the form of a final decree there would be figures to be agreed upon or to be ascertained by reference to a master. Among other things, there still remains the question of interest. Whether any interest is due, and if due from what time it should be allowed, and at what rate it should be computed, are matters as to which there is a serious controversy in the record, and concerning which there is room for a wide divergence of opinion. There are many elements to be taken into account on the one side and on the other. The circumstances of the asserted default and the conditions surrounding the failure earlier to procure a determination of the principal sum payable including the question of laches as to either party, would require to be considered. A long time has elapsed. Wherever the responsibility of the delay might ultimately be placed, or however it might be shared, it would be a severe result to capitalize charges for half a century—such a thing hardly could happen in a private case analogous to this. Statutes of limitation, if nothing else, would be likely to interpose a bar. As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this Court in reliance upon the honor and constitutional obligations of the States concerned, rather than upon ordinary remedies, we think it best at this stage to go no farther, but to await the effect of a conference between the parties, which, whatever the outcome, must take place. If the cause should be pressed contentiously to the end, it would be referred to a master to go over the figures that we have given provisionally, and to make such calculations as might become necessary. But this case is one that calls for forbearance upon both sides. Great States have a temper superior to that of private litigants, and it is to be hoped that enough has been decided for patriotism, the fraternity of the Union, and mutual consideration to bring it to an end."

Pursuant to the suggestion in the above opinion, the Legislature of West Virginia, at its first session thereafter, namely, on the 21st day of February, 1913, adopted the following joint resolution:

"Creating a commission, known as the Virginia debt commission, to provide for arranging and settling with the Commonwealth of Virginia the proper proportion of the public debt of the original Commonwealth of Virginia, if any should be borne by West Virginia; to take into consideration all matters arising between the Commonwealth of Virginia and the State of West Virginia in reference to

said original public debt, and to report its proceedings to the Governor of the State.

WHEREAS, The Comomnwealth of Virginia instituted a suit in the Supreme Court of the United States against the State of West Virginia, to have the State of West Virginia's proper proportion of the public debt of Virginia as it stood before one thousand eight hundred and sixty-one, ascertained and satisfied; and

WHEREAS. At the Ocstober term, one thousand nine hundred and ten, the Supreme Court of the United States made a finding that the share of the principal debt of the original Commonwealth of Virginia to be borne by the State of West Virginia, was seven million one hundred and eighty-two thousand six hundred and seven dollars and forty-six cents; and

WHEREAS. Said Court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had beetwen the Stats upon all the questions involved in said litigation, as might lead to a settlement of the same; therefore, be it

Resolved by the Senate of West Virginia, the House of Delegates concurring therein:

That a commission of eleven members, known as the *Virginia Debt Commission*, is hereby created. The members of said commission shall be appointed by the Governor, two of whom shall be chosen from each Congressional District of the State, and one at lorge, not more than six of whom shall belong to any one political party, and all resignations or vancancies in the said commission as they occur shall be filled by the appointment of the Governor.

Said Commission is authorized and directed to negotiate with the Commonwealth of Virginia, or with any person or committee owning or holding any part of the said indebtedness for a settlement of West Virgisia's proportion of the debt of the original Commonwealth of Virginia, proper to be borne by the State of West Virginia.

The Commission is hereby directed to ascertain and report upon and give the utmost publicity to all the facts in relation to the pending suit institutd against the State of West Virginia by the Commonwealth of Virginia and to ascertain and report upon and give like publicity to all of the facts and conditions under which the West Virginia certificates are held or owned, together with the names and residences of the persons having the legal or equitable right

to receive from West Virginia whatever may be ascertained to be payable thereon.

To ascertain and report as to any part of the Virginia debt claimed against the State of West Virginia, which is owner or held or claimed to be due, at law or in equity, by the Commonwealth of Virginia in her own right; and having made the investigation required hereby, said Commission is authorized and directed to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of this debt of the original Commonwealth of Virginia, proper to be borne by the State of West Virginia.

A majority of said Commission shall have authority to act. The Commission shall choose its chairman and appoint its secretary and other necessary officers.

The expenses properly incurred by the Commission and its individual members, including compensation of said members at the rate of ten dollars per day for the time actually employed, shall be paid by the State out of the moneys appropriated for said purpose.

The Commission shall make a report to the Governor as soon as practicable, and upon receipt of said report, the Governor shall convene the Legislature for the consideration of the same.

The Commission is hereby authorized to sit within or without the State and to send for papers and records and to examine witnesses under oath."

By authority vested in you under the above resolution, the undersigned were appointed by you members of the *Virginia Debt Commission,* and now have the honor to report as follows:

On the 10th day of June, 1913, the Commission met in the City of Charleston and organized by the election of *John W. Mason* as *Chairman,* and *John T. Harris* as *Secretary.*

A brief history of the Virginia public debt created prior to January 1, 1861, and the liability of the State of West Virginia for a part thereof will better enable us to understand the duties required of this Commission and the work done by it.

HISTORY OF THE VIRGINIA STATE DEBT.

As early as 1823 the Comonwealth of Virginia entered upon the habardous and, in this instance, disastrous experiment of creating a

large public debt. The proceeds of this debt were for the most part expended in subscriptions to the capital stock of public or quasi-public corporations, in the purchase of bonds, or in loans to such corporations. These expenditures, secured and unsecured, were generally made for the purpose of aiding local improvements; but in form, as well as in legal effect, they were investments, and were so treated by the Commonwealth. They increased from year to year until 1838 th amount thereof had become so large that it was thought wise by the general assembly to secure more effectually the payment of the bonds and other evidences of indebtedness issued by the Commonwealth, and to provide for the payment of the proincipal and interest thereon; hence an act was passed April 9th, 1838, sections 1, 2 and 3 of which are as follows:

> "1. That all loans hereafter authorized by law for the payment of subscriptions on behalf of the Commonwealth to the capital of joint stock companies incorporated for purposes of internal improvement, or for defraying the expense of any work of internal improvement in which the State is or may be interested, as well as all such loans heretofore autohrized, shall be negotiated according to the provisions of this act, except so far as may be otherwise specifically provided by the acts authorizing the loans.
>
> "2. The board of public works, in effecting such loans, shall borrow upon the credit of the Commonwealth, at the lowest rate of interest at which the necessary amount can be obtained, not exceeding in any case five per centum per annum. Upon the payment of the money so borrowed into the treasury, which shall be done upon the warrant of the second auditor, the treasurer shall issue a certificate or certificates of loan for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators and assigns, the principal sum so borrowed, together with the interest at the rate agreed on, that the interest is payable semi-annually at the treasury of the Commonwealth, and that such certificate or certificates were issued under authority of the special act autharizing such loans. Each certificate shall be signed by the treasurer, and countersigned by the second auditor, and be registered in a book to be kept for that purpose by the second auditor, and shall be transferrable on the books of his office in person or by attoyner. The semi-annual interest on such certificate shall be paid on his warrant, and upon the transfer of the whole or any part thereof, shall be delivered up and canceled, and a new certificate or certificates equal to its whole amount, shall be issued and registered in manner a foresaid. All loans negotiated in con-

formity to this act shall be irredeemable for twenty years, ut shall afterwards be redeemed at the pleasure of the general assembly.

"3. For the payment of the interest, and the final redemption of the principal of any sum to be borrowed in conformity to this act, the stock of any joint stock company subscribed for or purchased with the money so borrowed, together with the dividends and other net income which may accrue therefrom to the Commonwealth, or to the fund for internal improvement, shall be, and the same are hereby appropriated and pledged; and in like manner the net income and other profits which may so accrue from works in which the State is interested, other than those of joint stock companies, and on which the money borrowed is to be expended, shall be and the same are likewise hereby appropriated and pledged for the payment of the interest and redemption of the principal of the money so borrowed; and if the stock aforesaid and the said dividends, net profits and other income shall be inadequate to the payment of the said semi-annual interest, and the final redemption of the principal of the respective loans, the general assembly pledges itself to provide other and sufficient funds, and for that purpose to levy, if necessary, an adequate tax upon any or all subjects liable to taxation under the constitution. Until such other sufficient funds shall be provided, so much of the income of the funds for internal improvement, not otherwise specifically appropriated, as may be necessary to supply the deficiency, is hereby pledged for such purpose; and if at any time the divi dends and other income arising from the stock or work as aforesaid, together with the income of the fund for internal improvement, shall be insufficient to pay the interest due upon the loan when demanded, the auditor of public accounts shall, upon the application of the board of public works, issue his warrant upon the treasury, directing the payment of such interest out of any moneys therein not otherwise appropriated. And in case of inability of the treasury at any time to discharge such warrants, the board of public works shall be and they are herby authorized to borrow the necessary amount from the banks of this State, at a rate of interest not exceeding six per centum per annum, on the credit of the Commonwealth, to be repaid in such manner as the general assembly may by law direct."

It will be seen that by this act the stocks of any joint stock company, subscribed for or purchased with money so borrowed, together with the dividends and other net income which might accrue therefrom to the Commonwealth, or to the fund for internal improvement, are appropriated and pledged to the payment of the inter-

est and the final redemption of the principal of the sum so borrowed, and a like disposition by way of apropriation and pledge is made of the net income and other profits accruing from works in which the Commonwealth was then or might become interested, other than joint stock companies. This statute is incorporated in substance into the Code of Virginia of 1849, sections 9 and 10, chapter 67.

Virginia adopted a new constitution in 1851. Article 4, Section 29 of said constituion is as follows:

> "29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent of the State debt existing on the first day of January in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the Sinking Fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contrascted by the commonwealth, there shall be set apart in like manner annually, for thirty-four years, a sum exceeding by one per cent, the aggregate amount of the annual interest agreed to be paid theron at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The general assembly shall not otehrwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion."

By this constitutional provision a sinking fund is authorized by setting apart annually from the accruing revenues of the State a sum equal to seven per cent of the public debt existing on the first day of January, 1852, to be a pplied to the payment of the interest on the debt, and on the principal sum when redeemable. (Article 4, Section 28.) And, as more clearly expressing the policy of the State toward internal improvement and other companies, Section 30 of Article 4 provides that:

> "The general assembly may at any time direct the sale of the stocks held by the Commonwealth in internal improvement and other companies; but the proceeds of such

sales, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be a pplied in like manner."

Provision was made by an act of the assembly of March 26, 1853, carrying these constitutional provisions into effect, Sections 1, 2 and 3 of which are as follows:

"1. That there shall be and is hereby appropriated annually from the public treasury, commnecing with the year one thousand eight hundred and fifty-three, not of the accruing revenues of the Commonwealth, the sum of eight hundred and thirty-eight thousand and twenty-eight dollars and sixty-eight cents, that sum being seven per centum on eleven million nine hundred and seventy-one thousand eight hundred and thirty-eight dollars and thirty cents, the ascertained debt of the Commonwealth on the first day of January, one thousand eight hundred and fifty-two. The sum so set apart shall be called the "Sinking Fund," and shall be applied to the payment of the interest on the State debt, and the principal of such part as may be redeemable; and if no part of said debt be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of the Commonwealth, or of the United States, or of some of the States of the Union, and applied to the payment of the said debt as it shall become redeemable.

"2. Whenever after the said first day of January, eighteen hundred and fifty-two, a debt shall be contracted by the Commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent, the aggregate amount of the annual interest agred to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed.

"3. If at any time the legislature shall direct a sale of the stocks held by the Commonwealth in internal improvement and other companies, the proceeds of such sale, if made before the payment of the public debt, shall constitute in like manner. The sinking fund, and its accruing interest, shall not be otherwise appropriated than is herein directed, except in time of war, insurrection and invasion."

So that when this State assumed the payment of an equitable proportion of the public debt of the Commonwealth of Virginia prior to aJnuary 1st, 1861, it was well settled—both by the Constitution

of Virginia and by her statutes,—that these securities should be held for the payment of the public debt, and that although sales might be made of them in the manner prescribed by law, "the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund and shall be applied in like manner." (Const. Va., Article 4, Section 30.)

Sections 1, 2 and 3 of the Act of March 26, 1853, were substantially incorporated in the Code of Virginia of 1860 as Sections 1, 2 and 3, Chapter 44.

It was the theory of the Assembly of Virginia in thus setting apart one per cent annually on the amount of the outstanding indebtedness, that the result of compound interest would be the creation of a fund sufficient to discharge the principal in thirty-four years.

To recapitulate: It will thus be seen that the Commonwealth of Virginia by the act of the Assembly of 1838, the Constitution of 1851, the act of the Assembly of March 26, 1853, the Codes of 1849 and 1860, had so firmly established her intention to use these stocks above referred to for the payment of her public debt, that the State of West Virginia, as well as all other persons negotiating with the Commonwealth of Virginia, was fully justified in believing that these securities would not be diverted from the purpose to which they had been dedicated. By the term "public debt" as used at this time and in this connection, was meant the amount of the outstanding obligations of the Commonwealth, less the value of the securities held by her and pledged for the payment of those obligations. This was the understanding of the people of West Virginia when they assumed the payment of an equitable proportion of this debt.

That the people of Virginia also so understood it is made plain by the following resolution of Virginia, adopted February 28, 1866:

> "No. 7.—Joint Resolution on the restoration of the State and the adjustment of the public debt.
>
> "1. *Resolved by the General Asembly of Virginia:* That the people of Virginia deeply lament the dismemberment of the 'Old State' and are sincerely desirous to establish and appropriate the reunion of the States of Virginia and West Virginia; and that they do confidently appeal to their brethren of West Virginia to concur with them in the adoption of suitable measures of co-operation in the restoration of the ancient Commonwealth of Virginia, with all her people, and up to her former boundaries.

"2. That three Commissioners, resident citizens of this State, shall be appointed by the joint vote of the two houses of the General Assembly, to proceed forthwith to the seat of government of West Virginia, for the purpose of communicating to the Governor and General Assembly of that State a copy of the foregoing resolution, and the report of the committee accompanying the same, with authority to treat on the subject of the restoration of the State of Virginia to its ancient jurisdiction and boundaries provided, that the result of such negotiation, if favorable to such restoration on any terms, shall be subject to the approval or disapproval of the Legislatures or conventions of the respective States, as may be hereafter mutually agreed upon.

"3. The commissioners appointed under the foregoing resolution, are also empowered and directed to treat with the authorities of West Virginia, upon the subjects of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, *and of a fair division of the public property;* subject, however, to the approval or disapproval of this General Assembly.

"4. The said Commissioners are hereby authorized to treat upon either or both of the subjects mentioned in the two preceding resolutions, as circumstances may demand, *with instructions to suspend or forbear any action on the subject of adjusting the debt of the State, or a division of the public property,* if in their opinion, the probable restoration of the State of Virginia to its ancient boundaries may render an effort at such adjustment unnecessary. The action of said Commissioners to be subject to the approval or disapproval of this General Assembly."

The people of West Virginia had the right to rely upon, and in fact did rely upon, the utmost good faith of Virginia, and that "a fair division of the public property" would be made. To have even intimated at that time that some day the representatives of Virginia might so disregard the promises of the Commonwealth as expressed in its statute law an the Constitution, as to seize these securities and dispose of them at will, or appropriate them to the general use of the State, and still require West Virginia to pay a portion of the whole debt without regard to these assets, would have been deemed an unwarranted reflection upon the honor of Virginia. But this is just what happeend. We now realize, with deep regret, that many of those securities have been sold, given away or squandered, contrary to law and the oft-repeated and most solemn pledges of Virginia. Certain persons, purporting to represent the people of Virginia, de-

mand that West Virginia shall pay a portion of the entire debt without an accounting from Virginia for any of the securities so disposed of or still held by her. If these assets—stocks and other securities,—amounting to many millions of dollars, held by Virginia on the first day of aJnuary, 1861, as pledges for the payment of her public debt had been applied as required by law and good faith, there would have been a very small, if any, deficit.

WEST VIRGINIA'S PROMISES AND LIABILITY.

Much controversy has arisen between the representatives of the two States out of a misunderstanding or misconception of the premises and primary liability of West Virginia respecting the public debt of Virginia existing prior to the first day of January, 1861. A brief review of this controversy and the contention of the two States may be appropriate.

On the 20th day of August, 1861, the Commonwealth of Virginia, by an ordinance of her State Convention, then in session, provided for the formation of the State of West Virginia; which ordinance, among other things, says that the new State should take upon itself a just proportion of the public debt of the old Commonwealth, existing prior to the first day of January, 1861. Section 9 of these ordinances reads as follows:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State Government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the ommonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the propsed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."

The Constitution of West Virginia was prepared and proposed by the Convention which met at Wheeling on the 26 day of November, 1861, and was submitted to the people of the counties of which it was proposed to form the new State, and was ratified by the voters thereof, under which West Virginia became a state June 20th, 1863. Section 8 of Art. 8, of this Constitution provides:

"An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State; and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a sinking fund suffisient to pay the accruing interest and redeem the principal thereof within thirty-four years."

It will be observed that Section 8 of Article 8 of the Constitution of West Virginia provides for the assumption by this State of an equitable proportion of the public debt of Virginia existing prior to the first day of January, 1861, and that Section 9 of the ordinance of August 20, 1861, differs only in substance by prescribing the method of determining the portion of the debt to be paid by West Virginia. The ordinance says: "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day if January, 1861;" and the constitutional provision is that "an equitable proportion of the public debt of the commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State." There is no difference in substance between the obligation imposed by the ordinace and the promise made by the Constitution. The ordinance expressed the will of the people of Virginia, speaking through their Convention. It required the new State to take upin itself a "just proportion" of this public debt *prior to the first day of January, 1861,* and it also provides the method of ascretaining it. The people of the proposed new State afterward adopted a Constitution wherein it was provided that an "equitable proportion" of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State." Reading the ordinance adopted by the Virginia Convention and this Section of the Constitution of West Virginia together, there is no conflict or room for misunderstanding. In addition to this, it should be noted that, after this ordinance was adopted and the Constitution prepared for ratification, the General Assembly of Virginia, by an act passed May 13, 1862, gave consent to the formation and erection of the State of West Virginia under the provisions set forth in the Constitution of the State of West Virginia.

Prior to the decision of the Supreme Court of the United States, hereinbefore quoted, the contention of West Virginia had always been that the just and equitable proportion of this debt should be ascertained in the manner provided by the ordinance of August 20, 1861, commonly known as the "Wheeling ordinance;" but Virginia sought to depart from this method. In direct disregard of internal improve-

ments and relative wealth, she assumed that, inasmuch as the new State embraced about one-third of the territory and about one-third of the population, the equitable proportion of the debt whichWest Virginia should pay would be one-third. The Court was of the opinion that, conceding the fact that West Virginia must bear an equitable proportion of the debt, the nearest approach to justice that the Court could make was to adopt a ratio determined by the valuation of the real and personal property of the two States on the date of the separation, June 20, 1863, excluding slaves from the valuation. The valuation thus ascertained showed the value of the real and personal property of Virginia to be $300,887,367.74, and of West Virginia $92,416,021; the ratio of liability being .7651 for Virginia and .2349 for West Virginia, (*Virginia* v. *West Virginia,* 220 U. S. 1,) and Justice Holmes speaking for the Court, in syllabus 8 of the opinion, says:

> "The valuation of the real and personal property of the two State of Virginia and West Virginia on the date of their separation, excluding slaves, is the proper basis for determining the equitable proportion of the public debt of the original State of Virginia which was assumed bye the State of West Virginia at the time of its creation as a state, subject to the qualification that the difference between Virginia's share on this ratio and the amount which her creditors were content to accept from her should be deducted from the sum to be apportioned."

With this difference of opinion as to the method of ascertaining the proportion of the debt which West Virginia had assumed, it is not strange that there shoul be difficulty in concluding a settlement. It was a proper subject for negotiation.

ATTEMPTS TO SETTLE.

Section 8 of Article 8 of the Constitution of West Virginia of 1863, before referred to, in addition to pledging the State of West Virginia to assume an equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, also made it the duty of the Legislature to ascertain the same as soon might be practicable.

The representatives of Virginia with a view, doubtless, of creating a sentiment prejudicial to West Virginia have persisted in the claim that West Virginia has always sought to evade a settlement. These charges are not sustained by the records. On the contrary, the only fair and practicable methods of settlement have been the propositions

coming from West Virginia. The propositions coming from Virginia have never been in a fair or practicable form. They were always submitted at a time when no settlement could be made, or after she had placed herself in a position where she was disqualified from settling in her own interest, or coupled with conditions that West Virginia could not accept. As this is a question affecting the honor of the State, we beg to call attention to the facts and circumstances which have caused this delay of half a century.

In the first place, it must be borne in mind that the Civil War had existed in Virginia for two years before the formation of West Virainia, and continued until the Spring or Summer of 1865; that during that time, the books, papers and reports essential to a settlement were at Richmond, and beyond the reach of West Virginia, and that for many months after the Confederate Government (with which a large portion of Virginia was associated) had lost control of Richmond, the necessary data,—owing to the unsettled conditions of the State—could not be secured. It is very evident, as a matter of public history, that for many months after Richmond passed into the hands of the Federal Government and the Civil War was practically closed, the conditions there existing precluded any settlement of a case of this magnitude, presenting so many questions of public interest

-Vir- with a view to a settlement, was the resolution of the Assembly of ginia, adopted February 28, 1866, hereinbefore quoted.

It was not until February, 1866, that either State took any action looking to a settlement. The first official action taken by either State

The Legislature of West Virginia was not in session when this resolution was adopted, and before its next session, the Commonwealth of Virginia instituted a suit in the Supreme Court of the United States against the State of West Virginia, claiming that the counties of Berkeley and Jefferson were never legally parts of the State of West Virginia, and asked that the boundary lines between the two States be so established as to include these counties within the boundaries of Virginia. This suit was not finally determined until March 6, 1871. (11 Wallace, 39).

As a matter of course, with area, population, relative wealth, and expenditure for internal improvements dependent upon the outcome of this issue, no settlement between the two States could be consummated during the pendency of this suit, but the West Virginia Legislature, with a view of expressing a desire to settle at the earliest possible moment, at its first session after receiving notice of the Virginia resolution, adopted the following resolution on February 28th, 1867:

"SENATE JOINT RESOLUTION No. 19.—"To provide Cimmissioners to treat with the authorities of Virginia in regard to the public debt of that State."

"WHEREAS, the General Assembly of Virginia, on the twenty-eighth day of February, 1866, adopted a series of resolutions deeply lamenting the dismemberment of the 'Old State,' and declaring a sincere desire to establish and perpetuate the reunion of the States of Virginia and West Virginia, and appealing to their brethren of West Virginia, to concur with them in the adoption of suitable measures of co-operation in restoration of the ancient Commonwealth of Virginia, with all her people and up to her former boundaries, and further providing for the appointment of three Commissioners with authority to treat on the subject of the restoration of the State of Virginia to it sancient jurisdiction and boundaries, and further empowering said Commissioners to treat with the authorities of the State of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State; and,

"WUEREAS, Commissioners have been appointed on the part of the State of Virginia pursuant to, and for the purpose named in the resolutions aforesaid; and,

"WHEREAS, the citizens of West Virginia deeply regret the civil strife, (for which they are in no way repsonsible), in the midst of which they secured their State organization, yet they regard their separate State existence of the most vital importance to them, and have no purpose or intention whatever, of reuniting with the State of Virginia; and

"WHEREAS, the citizens of the State are not only willing but deeply anxious that a prompt and equitable settlement Virginia, and they greatly regret that the State of Virginia should be made between the States of Virginia and West has interposed a difficulay by the institution of a suit against this State, to recover jurisdiction over the counties of Berkeley and Jefferson, which they fear will delay such a settlement; therefore,—

"Resolved by the Legislature of West Virginia:

"1. That the people of this State are unalterably opposed to a reunion of this State with the State of Virginia, and will not entertain any proposition looking to that end.

"2. That so soon as the suit of Virginia against this State, now pending in the Supreme Court of the United

States, to recover jurisdiction over the counties of Berkeley and Jefferson has been fully disposed of, the Governor of this State appoint three Commissioners on the part of this State to treat with the Commissioners appointed by the State of Virginia upon the adjustment of the public debt of said State as provided in Section IX, of 'An Ordinance to provide for the formation of a new State,' adopted by a convention of the people of Virginia on the 20th day of August, 1861, and in Section VIII of Article VIII of the Constitution of West Virginia, and report their action to the Governor, to be by him communicated to the Legislature of this State for their approval or disapproval."

On the 18th day of February, 1870, the General Assembly of Virginia passed the following act:

"Chap. 6. An Act for the adjustment of the public debt with the State of West Virginia.

"1. Be it enacted by the General Assembly, That three Commissioners, resident citizens of this State, be appointed by the Governor to treat with the authorities of West Virginia upon the subject of the proper adjustment of the public debt of the State of Virginia, due or icurred previous to the dismemberment of the State, *and of a fair division of the public property, provided, however,* that the action of said Commissioners shall be subject to the approval or disapproval of the General Assembly.

"2. The said Commissioners shall enter upon their duties without delay, and shall receive the same pay and mileage as members of the General Assembly while actually engaged in the discharge of them; and they shall within the next sixty days after their appointment, make a full report of their proceedings to this General Assembly.

"3. This act shall be in force from and after the passage thereof."

This act would seem to meet the requirements of the West Virginia resolution of February 28th, 1867, but the suit in the Supreme Court of the United States was still pending, and no action by either State could be taken at that time. The Assembly of Virginia on the 11th day of February, 1871, (while the suit was still pending) adopted the following joint resolution:

"Tendering to West Virginia an arbitration for the apportionment of the public debt.

"WHEREAS, the constitution of both Virginia and West Virginia impose upon the respective legislatures of said States the duty to provide by law, for the adjusting between them the proportion of the public debt, contracted prior to the first of January, 1861, proper to be borne by each of said States; and

"WHEREAS, it is essential to the financial interests of Virginia that said settlement should be obtained as soon as practicable; therefore,

"Be it Resolved by the General Assembly of Virginia:

"That the Governor of this Commonwealth be, and he is hereby, authorized to tender to the State of West Virginia an arbitration of all matters touching a full and fair apportionment between said States of the public debt, and in the event of the acceptance of such offer of arbitration by West Virginia, then the Governor, Lieutenant Governor, President of the Court of Appeals, Auditor of Public Accounts and the Secretary of the Commonwealth shall appoint two arbitrators on the part of this State, who shall not be citizens of this State, to meet any two arbitrators selected by West Virginia, not citizens of said State.

"The arbitrators so appointed shall, if they deem it advisable, appoint an umpire. Said arbitrators and umpire shall, as soon as practicable, proceed to adjust, award and decide upon fair, just and equitable principles what proportion of said public debt shall be paid by West Virginia, and what part thereof shall be paid by this State. Said apportionment, when ascertained and made, to be reported by said arbitrators to the Legislature of said States, to enable them to carry out such award or apportionment by appropriate legislation.

"Each State may be represented by counsel and the board hereby directed to appoint the arbitrators for Virginia shall be, and are hereby authorized to draw on the Treasury of the State of Virginia, out of any money not otherwise appropriated, a sum sufficient to defray the necessary expenses of this arbitration on the part of Virginia."

The effect of this resolution was to supersede the act of February 18, 1870.

On the 15th day of February, 1871, the Legislature of West Virginia adopted the following:

"Joint resolution authorizing the appointment of Com-

missioners to treat with the State of Virginia on the subject of the State debt.

Resolved by the Legislatiure of West Virginia:

"1. That the Givernor, on or after the fifteenth day of March, 1871, appoint three disinterested citizens of this State to treat with the authorities of the State of Virginia on the subject of a proposed adjustment of the public debt of that State prior to the first day of January, 1861, and make report thereof to the Governor, to be printed and communicated by him to the Legislature at the commencement of its next session, for approval or disapproval.

"2. The Commissioners so to be appointed are further directed to ascertain and report the amount of said debt then held by persons other than the State of Virginia, and what said debt was incurred for, and what amount of the State debt was then held by the commissioners of the sinking fund and by the board of the library fund; that they ascertain and report the amount of all investments then held by the State, their respective amounts and character, and what portions thereof were then productive, and the dividends therefrom, and whether any of such investments then so held by said State have since been donated, changed, converted or disposed of by the authorities of said State, and if so, the amount and how disposed of; that they ascertain and report the revenue derived for the fiscal year ending on the thirtieth of September, 1860, from all sources, by the State of Virginia, within the present territory of Virginia, and the amount derived from all sources from the territory now composing the State of West Virginia; and that they report any other relevant matter deemed proper by them.

"3. The commissioners so to be appointed shall proceed without delay in the execution of their duties, and as a compensation for their services shall each receive six dollars per day for the time that they or any one or more of them may be actually employed therein, and the same mileage as that allowed to members of the legislature, and may employ such accountant or clerk, at a reasonable compensation, as they may deem necessary; and the governor shall have the power to remove any one or more of the commissioners, and fill any vacancy that may occur from removal, death or failure to act.

"4. Nothing herein contained shall be construed as waiving or impairing in any way the rights of this State to jurisdiction over the counties of Berkeley and Jefferson.

"5. That the foregoing resolution be communicated by the governor to the governor of Virginia."

And on the 24th day of February, 1871, the West Virginia Legislature adopted another resolution replying to the Virginia resolution of February 11, 1871, declining to appoint arbitrators who were not citizens, and inviting Virginia to appoint three disinterested citizens as Commissioners to treat with a like Commission of West Virginia heretofore authorized on the part of this State, which joint resolution was in the following words:

SENATE JOINT RESOLUTION—No 21.—"Providing for the settlement of the debt between Virginia and West Virginia."

"WHEREAS, The Legislature of West Virginia in discharge of the duty imposed by the Constitution of the State, to 'ascertain as soon as may be practicable' the equitable proportion of the public debt of the Commonwealth of Virginia to be assumed and liquidated by this State, has authorized and directed by joint resolution passed on the fifteenth day of February, 1871, the appointment by the Governor of three disinterested citizens of this State to treat with the authorities of the State of Virginia on the subject of a proper adjustment of the public debt of that State, prior to the first day of January, 1861; and

"WHEREAS, the Governor of the Commonwealth of Virginia, by authority conferred by a joint resolution of the General Assembly of said Commonwealth, passed February 11th, 1871, has tendered on behalf of said Commonwealth to the State of West Virginia, 'an arbitration of all matters touching a full and fair apportionment between said States, of the said public debt' by arbitrators, not citizens of either of said States, and not subject to the ratification of the legislative departments of said States; and

"WHEREAS, any adjustment of the said debt should be subject to such ratification; and

"WHEREAS, Citizen commissioners would of necessity be more familiar with the circumstances attending the creation of said debt, and the many intricate questions connected therewith, and upon the proper comprehension of which must depend the equitable apportionment and adjustment of the same between said States; therefore,
"Resolved by the Legislature of West Virginia:

"1. That the tender of an arbitration made by the Gov-

ernor of the Commonwealth of Virginia to this State for the adjustment of the public debt of said Commonwealth, having been anticipated by the action of the Legislature of this State, authorizing the appointment of Commissioners to treat upon said subject, the said tender is respectfully declined, and the Commonwealth of Virginia is invited to appoint three disinterested citizens as Commissioners with authority to treat with like Commissioners heretofore authorized on the part of this State. And said Commissioners on behalf of this State in addition to the powers heretofore conferred, are hereby further empowered to proceed, as soon as practicable, to adjust, award and determine, upon fair, just and equitable principles, what proportion of said public debt of Virginia should, in their opinion, be paid by West Virginia, and what part thereof should be paid by Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia, and the General Assembly of Virginia.

"2. The Governor of this State is hereby directed to communicate to the Governor of the Commonwealth of Virginia, without delay, certified copies of this preamble and joint resolution."

It will be observed that this resolution was adopted about ten days before the suit was decided in the Supreme Court of the United States.

By the authority of this resolution, Hon. John J. Jacobs, Governor of West Virginia, appointed a Commission consisting of Jonathan M. Bennett, John J. Jackson and A. W. Campbell, to treat with the authorities of Virginia upon the subject of the public debt. This Commission met at the City of Richmond in November, 1871, but the authorities of Virginia declined to treat with them. A copy of their report to the Governor of West Virginia reads as follows:

REPORT OF THE VIRGINIA DEBT COMMISION OF 1871.

To his Excellency, J. J. Jacob, Governor of West Virginia:

Sir: Under the joint resolutions passed by the West Virginia Legislature on the 15th and 24th days of February last, the undersigned were appointed Commissioners by you "to treat with the authorities of Virginia on the subject of a proposed adjustment of the public debt of that State prior to the first day of January, 1861," and were directed by the Legislature "to make report thereof to the Governor," which we have the honor to do as follows:

On the 9th day of August last the Commissioners met in Parkersburg to confer together upon the subject matter of their appointment and to organize a programme of procedure in respect thereof. They addressed a letter to your Excellency notifying you of their meeting and organization,

and also the following letter to Governor Walker, of Virginia:

Parkersburg, W. Va., August 9, 1871.

To His Excellency, the Governor of Virginia:

Sir: The undersigned have the honor to inform you that under the joint resolutions passed by the Legislature of West Virginia on the 15th and 24th days of February last, they have been appointed Commissioners by the Governor of West Virginia to treat with Virginia in regard to the debt as it stood on the first day of January, 1861.

Also, that they met in this city today for the purpose of entering upon the discharge of their duties, and to this end have designated General John J. Jackson as their chairman, through whom they propose to receive such communications as your Excellency may be pleased to submit.

Will your Excellency be pleased to indicate at your earliest convenience what action, if any, has been or is likely to be taken by Virginia in the matter of appointing commissioners, or, in the event of no such appointments, what channel of communication will be open to us.

We have the honor to be,

Your Excellency's most obedient servants,

JOHN J. JACKSON,
J. H. BENNETT,
A. W. CAMPBELL.

After forwarding this letter, together with the one to your Excellency, the Commissioners adjourned to meet in Richmond, on a day to be agreed upon later in the season, there to confer with the authorities of Virginia, and to make such examination of public documents as might enable them to carry out the objects of their appointment.

Meanwhile they received from the Governor of Virginia in answer to their letter of August 9th, a letter dated September 7th, the same purporting to be a copy of a letter addressed to your Excellency, and which is as follows:

Executive Chambers,
Richmond, Sept. 7, 1871.

His Excellency, J. J. Jacobs,
Governor of West Virginia.

Sir: I have the honor to acknowledge the receipt of your communication of the 17th ulto., notifying be of the appointment of Messrs. Bennett, Jackson, and Campbell as Commissioners on behalf of the State of West Virfiinia to treat with the authorities of this State upon the subject of the State debt. I have also received a certified copy of the joint resolutions empowering you to make these appointments. Absence from the capital has prevented an earlier response to these several communications.

On the 18th of February, 1870, an act was passed by the Legislature of this State, and approved by me, authorizing

the Governor to appoint three Commissioners on behalf of this State to treat with the authorities of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and a fair division of the public property.

Commissioners were promptly appointed under this act, and notice of their appointment, together with an authenticated copy of the act, were at once forwarded to the Governor of West Virginia. No response whatever to my communication was made by the Governor of West Virginia, but I learned through other sources that the matter was promptly submitted to the Legislature then in session, by which, either by act or resolution, the Governor was authorized to appoint Commissioners to meet and confer with these appointed from Virginia I have never been informed, however,, of the appointment of any Commissioners under the authority thus conferred.

A history of these proceedings, together with a statement of my own views upon the subject, was submitted to our Legislature in my annual message of December last, a copy of which I herewith enclose. The Legislature, acting upon the suggestion of the message, on the 11th day of February last, a joint resolution, authorized the Governor to tender to the State of West Virginia "an arbitration of all matters touching a full and fair apportionment between said States of the said public debt," an authenticated copy of which joint resolution, together with the tender of an arbitration as therein authorized, was promptly forwarded to the Governor of West Virginia.

This joint resolution, while it does not in terms repeal the act of February 18, 1870, was intended to supersede it, and therefore I do not feel authorized to appoint Commissioners. Our tender of an arbitration has not been withdrawn, and I regret exceedingly that the authorities of West Virginia declined to accept it. I cannot understand what reasonable objection can be raised to this fair and equitable mode of adjustment so frequently resorted to by individuals and nations, and I trust that West Virginia will re-consider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia, to the end that prompt justice may be done to the creditors of the old State, and that harmony and good feeling may prevail between the people of the two States.

Very respectfully,
Your Excellency's Ob't servant,
G. C. WALKER, *Governor of Virginia.*

(P. S. Accompanying the above.) "The foregoing is a copy of the original letter mailed to Governor Jacobs."

From this letter we at once understood that so far as a conference with Commissioners or other persons authorized to represent Virginia in that capacity was concerned, our mission was at an end. But the joint resolution under which we were acting, copies of which you had forwarded for our guidance, directed that we should "ascertain and report the amount of the debt of Virginia on the first day of January, 1861, and what said debt was incurred for, and what amount of this State debt was then held by the Commissioners of the Sinking Fund, and by the Board of the Library Fund." Also that we should "ascertain and report the amount of all investments then held by the State, their respective amounts and character, and what portion thereof were then productive, and the dividends therefrom, and whether any of such investments then held by said State have since been donated, changed, converted or disposed of by the authorities of said State, and, if so, the amount and how disposed of." Also that we should "ascertain and report the revenue derived from the fiscal year ending on the 30th of September, 1860, from all sources by the State of Virginia within the present territory of Virginia and the amount derived from all sources from the territory now comprising the State of West Virginia;" and also that we "report any other relevant matter deemed proper" by us

In addition to the foregoing duties thus devolved upon us by the terms of the joint resolution passed on the 15th day of February, we "were further empwered," in the language of the additional joint resolution passed on the 24th of the same month, "to proceed as soon as practicable to adjust, award and determine upon fair, just and equitable principles what proportion of said public debt of Virginia should in their opinion be paid by West Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia."

Under this authority and direction thus minutely specified to us, we felt called upon to take substantially the same steps after the receipt of Governor Walker's letter of September 7th as we would have taken had we expected to meet Cimmissioners representing Virginia, viz: to go to Richmond and endeavor to gather the information expected and required under the terms of our appointment.

Acordingly we met in that city on the 9th of November last and after spending several days in the examination of such public documents as were available to us at the Capitol, and realizing the necessity for further and more explicit and official information than we could gather of ourselves unassisted from said documents, we addressed the following note to the Second Auditor of Virginia:

Richmond, November 14, 1871.

To the Second Auditor of Virginia:

Sir: I am directed by the Commissioners representing West Virginia in the matter of the public debt of Virginia prior to the first of January, 1861, to procure from your office such information as can be furnished upon the following points, viz:

1. The actual amount of the public debt of Virginia on the first of January, 1861. And under this head the amounts of said debt owned by the Sinking Fund, the amount owned by the Literary Fund, and the amount owned by the Library Fund.

2. What portion of the bonded debt was invested, and how invested on the first of January, 1861. Also what portion of the investment was productive, what were the dividends or profits arising therefrom for the year 1860, and whether any such investments have since been donated, changed, converted or otherwise disposed of.

3. What portion of the appropriations expended in West Virginia for public improvements came from the sales of State bonds and what portion from the revenues of taxes of Virginia.

4. A copy of the advertisement for the redemption of a portion of the public debt on the first of January, 1861.

5. A statement of the amount of public debt actually redeemed on the first of January, 1861, pursuant to said advertisement.

Upon these points the Commissioners desire to hear from you at your earliest convenience.

Very respectfully, your obedient servant,

A. W. CAMPBELL, *Secretary.*

In reply to the foregoing communication we received the following note at 5 o'clock on the evening of the 16th of November, after a lapse of two and a half days, and after we had abandoned all hope of assistance asked for in our letter, and after, in fact, we were on the eve of our departure for hime:

SECOND AUDITOR'S OFFICE

Richmonr, Nov. 16, 1871.

A. W. CAMPBELL, Esq., *Secretary,* &c.:

Dear Sir: Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood, of course, you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,

Most respectfully yours,

ASA ROGERS.

With the reception of this note the Commissioners closed their labors in Richmond, finding that a further stay was not likely to add to the scant information already gleaned by them from the public documents.

It is proper to say in connection with the Second Auditor's communication that we, in delivering our own communication to him, caused it to be verbally understood that we were ready and willing to pay for the services of an expert, competent to obtain for us the information requested and that we did not desire or intend to trench upon the services of any one with whose duties the labor required might seriously conflict.

After this termination of their visit to Richmond, the Commissioners agreed to meet again on the 12th of December following, at Parkersburg, there to prepare and transmit to your Excellency such information as they had been able to obtain, and such as they might still further obtain, and along with it such an expression of opinion as is called for in the joint resolution of February 24th.

Accordingly we met in Parkersburg at the date named, and after nearly two weeks of examination and comparison of all the sources of information accessible to us, agreed upon and drew up the facts and statements hereinafter presented.

Previous to this meeting we had just received copies of the Richmond papers of December 7th, containing Governor Walker's message to the General Assembly of Virginia at its meeting on the 6th, in which we observed that among other allusions to the debt question pending between the two, States, and after reference to our correspondence with him of August last and his answer thereto, as already quoted, he proceeds to arraign the good faith of the authorities of this State as follows:

"Now, if the authorities of West Virginia entertained an earnest desire to make a speedy and final settlement of this matter, why did they not accept our tender of arbitration?—a mode of settlement of such controversies universally recognized by both nations and individuals as right and ap-

propriate. Suppose an equal number of Commissioners appointed by each State, and that they should meet and disagree upon any or all points involved, who is to decide between them? And yet, beyond a doubt, they would radically disagree upon the first or chief point to be settled, viz: the basis or principle upon which the settlement should be made. But suppose that the Commissioners should finally agree, does any one suppose that their finding would be ratified by the legislatures of the two States, disagreeing as the people do radically upon the merits of the question at issue. Of course not."

This question from Governor Walker's message fairly exhibits the spirit in which he has seemed to view not only our own efforts to carry out the objects of our appointment but likewise the sincerity and good faith of the Legislature of West Virginia in providing for the appointment of such a commission by your Excellency.

And yet while this is the case it is not to be forgotten that Virginia herself initiated this method of attempting to adjust the debt question. And the language of the Governor would seem to be all the more gratuitous in such a connection from the fact that in his annual message of December 7, 1870, he considered it worth while to allude to the political change that had taken place in this State at the preceding October election, and bespoke in so many words for the "new administration" and "opportunity of manifesting its intentions and its appreciation of honesty and fair dealing." And yet notwithstanding this language by himself thus voluntarily employed on our behalf, and notwithstanding also the fact that one of the early acts of the "new administration" was to respond to the policy that Virginia herself had initiated, and before it was known in this State that she had changed that policy, and while the appointees under the response were in Richmond seeking in vain from the proper authority of Virginia for such information as every debtor is entitled in law to receive from his creditor, saying nothing of that spirit of "fair dealing" that was so conspicuously spoken on our behalf, Governor Walker proceeds in his later message to asperse the good faith of the State of West Virginia after the manner and in the words that we have quoted.

The authorities of West Virginia have never assumed to themselves any right of precedence in the matter of a policy for adjusting the difficulties surrounding the debt question. But in the joint resolution passed on the 24th of February last, they did assume the modest right of adhering to the policy already inaugerated by the State of Virginia, and by her so freely tendered heretofore for their acceptance, and therefore they respectfully declined to adopt a new and different

proposition from her until they could test the merits of the one already adopted.

Apparently the present Executive of Virginia from an enforced familiarity with the workings of "personal government" which he so much deplores, has acquired ideas as to the right of initiative between equal contracting parties that are scarcely consistent with the delicacy of the issue pending between this State and his own. For instance, in his letter of September the 7th, he tells us that the legislature of Virginia upon his suggestion, has tendered an arbitration to this State, and he trusts "that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia." And again in his last message, he says that "the better course to be pursued is for the two States to submit the whole question to arbithation," and West Virginia is arraigned, as heretofore shown, for not concurring in his opinions. Apparently it did not occur to the Governor that since Virginia had proposed both modes of setttlement to this State, the latter might make her choice between them without subjecting her motives to imputation. And yet all that she had assumed to do is simply to choose between two policies initiated by Virginia. Unless, therefore, it can be shown that it is the prerogative of that State to prescribe the terms upon which the debt shall be adjusted, the question should hereafter be discussed in a spirit better calculated to allay all sectional irritation.

But we pass from this incidental reference to Governor Walker's strictures upon the attitude of this State towards the debt question to the action of the Virginia legislature upon the same question as embodied in the act approved on the 30th of March last, and known as the Funding Bill. This act is in keeping with the initiatory legislation in regard to the debt to which we have just referred. It assumes to apportion the debt of that State arbitrarily, notwithstanding her authorities had six weeks before the passage of the act received notice of the joint resolution of the West Virginia Legislature, providing for the appointment of Commissioners. It assumes, also, to apportion the debt, not as it stood on the first day of January, 1861, but as it would stand on the first day of July, 1871, after the interest had been twice compounded, once in 1866, and again at the date last named; and to apportion it, too, upon the basis of territory and population, and without any reference to the equities that should always govern an assignment of debt between sections that were so notorious in our own case. In other words it assumes to apportion to West Virginia one-third of the debt as it now stands, simply on the ground that she has one-third of the territory and population formerly be-

longing to Virginia, and without reference at all to the question of resources and values. This is apparently the practical result which Governor Walker hoped to reach when he urged upon us the "more speedy and satisfactory mode of settlement proposed by Virginia," inasmuch as he tells us in his late message that this is the "plan for a reorganization of the State debt," which he "had recommended twelve months before."

But without reference to the authorship of this or any other "plan" for adjusting the debt question, we propose to consider as briefly as possible the real cause now pending between Virginia and West Virginia as we understand it.

The tables or statements which we annex as a part of our report show, among other things, the following facts:

That the funded debt of Virginia on the first day of January, 1861, was $31,778,867.32, after all reductions.

That all or nearly all, of this debt was incurred for and actually expended in works of public improvements; such as canals, railroads, turnpikes, plank roads and bridges.

That this vast sum, upwards of $30,000,000 was expended for improvements in the present State of Virginia, and only about two and a half millions in the present State of West Virginia.

That the present State of Virginia contains 41,352 square miles and West Virginia only 20,000 square miles or less than one-third.

That the counties composing what is now Virginia contained by the census of 1860 a population of 1,220,829, and those composing West Virginia only a population of 374,985, or less than one-fourth.

To these exhibits we append others, under our instructions from the Legislature, but they are such as do not enter into our argument here, which is to show that no just apportionment of the debt can be made upon the basis of population and territory alone, which is the basis upon which the Virginia Funding Bill is confessedly predicated.

This theory of apportionment is apparently quite current among the people of that State, and is defended with ability by Judge Meredith, of Richmond, in a carefully prepared paper on the subject. His position is that West Virginia should pay one-third of the debt, because, as he says, it is a princial of international law governing the division of

nations that "the obligations which had accrued to the whole before the division or, unless they are the subject of special agreement, ratably binding upon the different parts." This he gives as a quotation from Phillimore. Two inquiries present themselves in connection with it; First, was Virginia a nation in the sense intended by Phillimore? and, Second, what are we to understand by a ratable part of a debt. We presume that it will not be contended that the general rights and obligations of a nation, as defined by international law, belonged to Virginia prior to the division of the State, and therefore we cannot admit the applicability of the quotation in that particular. Neither can we admit Judge Meredith's construction of the word "ratable." He applies it exclusively to territory and population and excludes everything in the shape of resources and value, such as public works, buildings and institutions, which, as we all know, vitally affect the equity of a division of territory.

Jurge Meredith next adduces the following quotation from Chancellor Kent to sustain his position:

"If a state should be divided in respect to territory, its rights and obligations are not impaired and if they have not been apportioned by special agreement those rights are to be enjoyed and those obligations fulfilled by all the parts in common."

This quotation is much more intelligible and just, and we think will tend to sustain the conclusions we have reached, as hereinafter stated.

In addition to the two quotations already given, Judge Meredith cites other authorities to sustain his position that West Virginia is chargeable with one-third of the debt, but we do not regard them as applicable to the case under consideration. First, because Virginia is not a nation. Second, because in all the cases referred to in the authorities quoted, treaty stipulations had more or less to do with the question. Third, because the debts were war debts, the benefis of which, if any, accrued to each individual, and the obligations of which therefore rested upon each. In no instance was the debt created for internal improvements which necessarily confer partial and local benefits that in most cases exceed the general benefit to the State at large. We therefore, fail to see the proper analogy that should exist to make these citations precedents for the case of Virginia and west Virginia.

Judge Meredith winds up these references to various authorities by two general deductions of his own, as follows:

1. "That the public debt of a State is not affected by a change in the form of its government, nor by the partition of its territory into two States, but remains in full force and must be discharged."

2. "That if a State be divided into two or more States, the debts which had been contracted by the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts in proportion to territory and population."

The first deduction is not necessary to consider, as West Virginia, in her ordinance of separation from Virginia, as also in her constitution, agreed to pay an equitable proportion of the public debt. What that equitable proportion is we are now considering.

In reference to the second deduction we have to remark that Judge Meredith draws a conclusion from his authorities which they do not sustain. Phillimore, for instance, says that "if a nation be divided into various distinct societies, the obligations which had accrued to the whole before the division are ratably binding upon the different parts." Here Phillimore and the authorities stop. But this does not suffice for the Virginia side of the question and Judge Meredith adds after the word "parts" the words "in proportion to territory and population." These words are not found in any of the authorities, so far as we are advised, and certainly not in any of the quotations adduced by the Judge.

A moment's consideration will show that a division of debt according to population and territory would not only be impracticable but would conflict with common sense. It would be impracticable because it does not determine the relative value of each one of the two elements of population and territory. Suppose the population to be twice as much as the territory, or suppose the territory to be three times as great as the population, which element has the greater value in determining the result?

Without pursuing this thought further it is manifest that nothing is settled by such a rule. You must fix the relative value of the two elements before you can reach a conclusion. It is, therefore, plain why the books do not give the rule as stated by Judge Meredith, because of its indefiniteness, but mainly because of its injustice. Would any sane man lay down a rule for the division of a State which would ignore the great cities, public improvements, public

works, institutions of all kinds, great commercial advantages, such as rivers and harbors and the great advantage of fertility of soil; all of which and many other elements of wealth, property and power, might be found in one division and be whlly absent in the other? Hence we say that such a rule is repugnant to common sense.

A public debt is mainly a charge upon the wealth and resources of a people. It is represented by taxes, and taxes are imposed not on number of square miles but on resources and values. How much stronger is the case when the very debt under consideration was created in developing and enriching one portion of the State almost exclusively. Nay, more, when that division of the State is in possession of and enjoying, giving away and selling at auction and otherwise disposing of the very subjects for which the debt was created.

These considerations afford abundant reason why no authority would say, in the absence of a compact (unless there was perfect homogenity) that it would be just to divide a "nation" any more than an individual estate by population and territory. We doubt not that Judge Meredith himself would scout the idea of dividing an estate on such a basis and without reference to the quality of the land and the improvements made. Why then would he ignore such considerations in apportioning a public debt between two divisions of a State? Chancellor Kent, whom he has quoted, does not sustain him in so doing. The quotation already given from that author says that "if a State should be divided in respect to territory its rights and obligations are not impaired; and if they have not been apportioned by agreement, those rights are to be enjoyed by agreement, those rights are to be enjoyed and those obligations fulfilled by all the parts in common." Not a word in this quotation about a division ratably according to population and territory. According to this authority the State of Virginia was only a tenant in common with West Virginia in all the public works, improvements and property of the original undivided State, and had no authority to alienate, sell, give away, or dispose of any of the public works, and being in possession and holding them for her own exclusive use and benefit, by ousting West Virginia, she would be bound to account to the latter for her share. This would seem to be the legitimate conclusion from the authorities relied on by Judge Meredith, even admitting their applicability to the case under consideration, which we do not concede by any means; and, therefore, with this reference we pass them by.

We think we take a more practicable view of the subject,

and one which will attain all the ends of justice. The table accompanying this report shows that the bonded debt of Virginia on the first day of January, 1861, represented money borrowed and expended in improving the State by canals, penditures conferred a local and special benefit, were expended, not only by the outlay of the money in creating a railroads, turnpikes, plank roads and bridges. All these exmarket and stimulating enterprise and trade, but in otherwise developing the resources of particular localities to an extent quite equal to the general benefit of the State at large. And this local and general development is the sum of the value of the improvements to the section where located, and gives them an inestimable and abiding value to that section. This value is progressive and not susceptible of being fixed. So certainly is this the case that it is probable, if it were practicable to utterly extinguish those improvements, and thereby extinguish the debt, that the State where they are located would not listen to such a proposition.

It may be assumed then that the public works for which the debt was created are worth what they cost. Virginia, by selling, donating, and disposing of those works as her own property, without regard to the rule laid down by Chancellor Kent, and without consulting West Virginia, must be taken to have accepted them on that basis, and is therefore chargeable with them on that basis.

When the tables are consulted they will show an expenditure of over thirty millions in Virginia and about two and a half millions in West Virginia. Much of this latter was expended at comparatively recent dates, whereas the expenditures in Virginia range through a period of fifty years, with benefits accruing more or less throughout that period. In the light of such facts, we submit that no intelligent mind, wishing only to do justice, can doubt for a moment that the benefits conferred, and not the territory and population, should be the principal, if not the only basis of an adjustment of the debt. The Governor of Virginia, in his message of 1870, and again in 1871, and the Legislature of that State, by its funding bill, seem, however, to have entirely overlooked the foregoing considerations, and to have jumped to the conclusion that West Virginia should pay one-third of the debt.

We see the case differently. On the one hand, for instance, we see rich cities, commercial marts of all kinds, navigable rivers, fine harbors, a highly improved productive territory, wealthy capitalists and a well to do people, public institutions, such as a State Capitol, and extensive pub-

lic grounds, an Executive Mansion, a Penitentiary, Armory, University, two lunatic Asylums, a Military Institute, a Blind Asylum, a valuable miscellaneous and law library, a large literary fund and the United States deposit of surplus revenue, all these resources in addition to the vast millions invested in canals and railroads and other avenues of inland commerce.

On the other hand we set in the balance against these rich resources the territory of West Virginia, less than one-third of the old State, much of it broken into barren mountains and hills, no navigable streams penetrating it in every direction, no railroad but the Baltimore & Ohio, no pubilc works or institutions, her lands mostly covered with unbroken forests and rewarding industry but grudgingly, no outlets in the interior for the little surplus existing, the people poor and subsisting by rough work in the woods and fields, possessed of no capital wherewith either to develop their localities or ameliorate their own condition in life, in fact, their only wealth being for the most part their poor soil, their untiring preserverence and their indomitable love of liberty.

And yet, notwithstanding this great discrepancy between the condition and resources of the two States, Virginia assigns one-third of her funded and com-pounded debt to West Virginia to pay, simply because the latter has one-third of the territory and one-fourth of the population formerly belonging to the whole State. And, this, too, notwithstanding her papers have often proclaimed that West Virginia was a foster child of the old State, and as such dependent upon her bounty. This opinion we shall not stop to discuss, and we only refer to it as showing the inconsistency between the theory and practice of our Virginia friends. Supposing it to be correct, the explanation as to how it came about can never be made creditable to those who lavished all their favors on one section of the State, and withheld them from the other, and the vindication of the step taken by West Virginia during the war in separating from the old State consists largely of this traditional discrimination against her. And in this connection it may not be out of place to notice that the increase of population in West Virginia during the decade from 1860 to 1870 was of a character to still further vindicate the step taken, it being about thirty per cent. This large increase illustrates her onward march since her separation from her former foster parent, and tends to suggest how far in advance of her present position she really might have been had she received in past anything more than "the crumbs that fell from the rich man's table."

We come now to the conclusion of our report. Having given our reason why we dissent entirely from the position of Virginia in reference to the debt, we proceed to state our own conclusions in regard to it as follows:

Statement A, as annexed to our report shows that the bonded debt of Virginia, on the first of January, 1861, after all deductions, was, ... $31,779,067.32.

The same statement also shows that all of said debt was expended within the present State of Virginia, with the exception of, ... $ 2,784,229.29.

Statement E, shows that $328,706.22 was collected from counties in West Virginia after January 1, 1861.

Statement F, shows that the amount of expenditures for all purposes in West Virginia was, ... $3,343,929.29.

We are not able to say certainly what part of this expenditure was from the proceeds of State bonds (and, therefore, a part of the State debt) and what part was appropriated from the regular receipts of the treasury. We have had access to no data that could determine the question. Our letter to the Second Auditor at Richmond sought information on this point in vain. But we have given Virginia the benefit of it all as a credit on her side of the account, although the resolutions under which we are acting contemplate nothing on the part of West Virginia but an assumption of her proportion of the bonded debt, inasmuch as both sections and particularly Virginia, received appropriations out of the ordinary receipts of the treasury.

We have charged West Virginia with all that we have funded debt created for improvements within her territory, found expended within her limits, viz: The amount of the the amount invested in her banks, the amount expended on the Lunatic Asylum at Weston, and the estimated value of the property known as the Lewisburg Law Library.

On the other hand we have credited her with her share of the estimated value of the public property and assets of Virginia, other than the property represented in the bonded indebtedness. This latter equalizes itself, and therefore does not enter into the account. Virginia has the property and owes the debt which it represents. We refer only to the public buildings, institutions, and other assets as given in statement G. As to West Virginia's share in these we can only venture an approximate estimate. The public buildings, the common property of the two States, paid for out

of the general revenue, we have estimated at $3,875,000 as per *statement G,* and it would be reasonable we think to estimate West Virginia's interest in them at one-fourth on the basis of population.

The same statement shows that the surplus revenue of the United States deposited with the State under the act of Congress, June 23, 1836, gave Virginia $2,937,237.34, of which sum she appears to have received at least $1,932,809.33. This act assigned to each State its share of deposits on the basis of its representation in Congress, and Virginia having in 1860, thirteen representatives, three of whom were from West Virginia, it would seem that three-thirteenths of that fund belonged to the latter.

To this share of the deposits, and her interest in the public property, we add, as per statement, her proportion of the literary fund. This fund at the date quoted in statement G, amounted to $1,509,583.16. As it was apportioned throughout the State, on the basis of the white population, we follow that rule in assigning to West Virginia three-sevenths of it, that being her ratio of white population in 1860.

Upon the data thus ascertained and explained, we summarize the account between the two States as follows:

WEST VIRGINIA TO THE STATE OF VIRGINIA

Dr. For the amounts expended and invested in her territory as set forth in Statement "F," ..		$ 3,343,929.29
Cr. By one-fourth of the estimated value of the public buildings and other assets, as given in statement "C", ...	$ 968,750.00	
Cr. By three-thirteenths of the United States surplus fund as per statement, ...	446,032.92	
Cr. By three-sevenths of the Literary fund as per same, ...	647,079.92	
Cr. By the amount collected in West Virginia after January 1, 1861, as per statement "E,"	328,706.22	2,390,569.06
Balance due Virginia, ...		$ 953,360.23

This is the balance as we find it after a protracted examination of such sources of information as were available to us. And the ascertainment of it naturally brings our labors to a conclusion. We commend our investigations to

Your Excellency's favorable consideration. From the beginning we realized that the results arrived at must necessarily be only proximate in their character, inasmuch as our sources of information were limited. Subsequent inquiry, under more favorable circumstances, may change the general result a few thousands for or against either State, but such a contingency is of course unimportant. The principle upon which the debt should be adjusted is the important point to settle. And it is to this point as set forth in these pages, that we beg leave, through your Excellency, to call the attention of the Legislature.

Very respectfully,
Your Excellency's most obedient servants,
J. J. JACKSON,
J. M. BENNETT,
A. W. CAMPBELL.

We beg to call special attention to the fact that Virginia instead of appointing a Commission to treat with West Virginia, ignored her joint resolutions of February 15th, 1871, and February 24th, 1871, above quoted; and on the 30th day of March, 1871, less than three weeks after the decision of the Supreme Court, passed the first of her so called "funding acts," in the following words:

"Chap. 282. An act to provide for the funding and payment of the public debt.

WHEREAS, in the formation of the State of West Virginia there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas, in the ordinance authorizing the organization of said state, it was provided that the said state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state, and will ocntinue to be made as long as may be necessary; and whereas, the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and whereas it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof and not to this state, as the constitution of this state provides; now, therefore, to enable the state of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be inter posed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for

the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

"1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act, no bond, certificate, or other evidence of indebtedness shall be issued for any portion of the debt of this State; nor shall any interest be paid upon any part or portion of said debt, except as hereinafter provided.

"2. The owners of any of the bonds, stocks or interest certificates heretofore issued by this state, which are recognized by its constitution and laws as legal except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the Old James River Company, and the bonds of the James River and the Kanawha Company guaranteed by this state, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon, to the first day of July, eighteen hundred seventy-one, in sux per centum coupon or registered bonds of this state of the denominations of one hundred, and the multiples thereof, dated that day and to become due and payable in thirty-four years after that date, but redeemable at the pleasure of the state, after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order or bearer and the coupons to bearer, at the treasury of the state, and bonds payable to order may be exchangable for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa,* at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts, dues and demands due the state, which shall be so expressed on their face; and the bonds shall bear on their face a declaration to the effect that the redemption thereof is secured by a sinking fund provided for by law under which they are issued. The holders of the five per centum dollar bonds may in like manner fund the same in like bonds, bearing, however, five instead of six per centum interest. In the funding herein authorized, for any fractional sums less than one hundred dollars, certificates shall be issued bearing the same date and rate of interest, and payable at the same time as the bonds issued under this section; which certificates, in sums of one hundred dollars, or any multiple thereof, shall be exchangable for bonds of the character herein authorized to be issued for any fractional sum less than one hundred dollars, which may remain in making such exchange.

"3. Upon the surrender of the old and the acceptance of

the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock or certificate of indebtedness so surdered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as here provided in the last preceding section, and that payment of the said amount with interest thereon at the rate prescribed in the bond surrendered will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and that the state of Virginia hold said bonds, as fas as unfunded, in trust for the holder or his assignees, and provided further, that until such final settlement with West Virginia there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one; and for the interest accrued to said date, certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia.

"4. The treasurer is hereby authorized and directed to forthwith cause to be prepared, engraved or lithographed, registered bonds and bonds with coupons and certificates of the character mentioned in the second and third sections of this act; and when prepared shall commence the issuance of same as herein provided. The bonds and certificates shall be signed by the treasurer, and countersigned by the second auditor; the coupons shall be signed by the treasurer, or a *fac simile* of his signature shall be stamped or engraved thereon. Each denomination of bonds herein authorized to be issued, both registered and coupon, shall constitute a series, and as they are issued; and the coupons in addition to the number of the bonds to which they or attached, shall be numbered from one to sixty-seven. Each class of certificates authorized to be issued by this act shall be numbered, respectively, from one upwards, and in addition thereto, each certificate shall contain the number and date of the bond or certificate on account of which it is issued. Each bond, certificate of stock, and interest certificate, to be funded as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, under the second and third

sections of this act; which calculation shall be indorsed, dated and signed, by him on the back of such bond, certificate of stock or interest certificate, and he shall cause a proper registry thereof, together with the date and number of the bond, certificate of stock or interest certificate, to be made and kept in his office. After such indorsement and registration, the second auditor shall deliver the bond, certificate of stock, or interest certificate, to the treasurer, who shall thereupon deliver to him a bond or bonds and certificates of the character named in the second and third sections of this act, duly signed and numbered, for the several amounts, respectively, according to said endorsement. The second auditor after making a proper registry of said bonds or bonds, and certificate to be kept in his office, shall deliver the same to the person entitled to them. The treasurer, shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest certificate so surrendered and delivered to him, cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law. The treasurer shall also have made and preserved in his office a proper registry of every bond and certificate delivered by him to the second auditor, and when ever a coupon bond shall be issued payable to the order of any person or firm, he shall secure and preserve the signature of such person or firm as a part of such registry whenever practicable.

"5. Whatever sum may be realized from the claims of this State against Seldon, Withers & Company, and the Chesapeake and Ohio Canal Company, and from the sale or disposition of the stocks and bonds, and debts owned by the state in and against any and all railway or other improvement companies, and all sums which may be realized from the claims of this State against the United States, and from any sales of any real estate now belonging to the commonwealth, shall be paid into the treasury of the state to the credit of the sinking fund hereby authorized and created. In the year eighteen hundred and eighty, and annually thereafter, until all the bonds issued under and by authority of this act shall have been paid, there shall be levied and collected, the same as other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sink-

ing fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund, to the purchase and redemption of bonds issued by authority of this act.

"6. All necessary expenses incurred in the execution of this act shall be paid out of any moneys in the treasury not otherwise appropriated, on the certificate of the correctness of the same, signed by the treasurer and scond auditor and approved by the Governor.

"7. This act shall be in force from and after its passage."

It will be noted that, by this act of the Assembly, the Commonwealth of Virginia not only ignored West Virginia's offer to treat upon the subject, but assumed to settle the controversy herself without consulting the State of West Virginia, and arbitrarily apportioned to West Virginia one-third of the debt. This apportionment was made upon the assumption that inasmuch as there was included in the boundaries of West Virginia about one-third of the territory as well as about one-third of the population of Virginia, the State of West Virginia should pay one-third of the debt. This is the first of a number of statutes passed by the Assembly of Virginia known as the funding acts" whereby Virginia compromised with her creditors. Under this act, Virginia undertook to provide for what she assumed to be her proportion of the debt, to-wit: two-thirds. By the terms of this act, upon the surrender of the old and the acceptance of the new bonds for two-thirds of the amount due thereon, as provided in section 2 of this act, there should be issued to the owner, for the other one-third of the amount due upon the old bond, stock or certificate of indebtedness so surrendered, a certificate setting forth the amount of the bond which was not funded and that payment of the said amount with interest would be provided for in accordance with such settlement as should thereafter be had beteween the Commonwealth of Virginia and the State of West Virginia in regard to the public debt of Virginia. Under this act, a large number of certificates were issued and placed on the market. The circulation of these under the name of "West Virginia Certificates" did great injustice to West Virginia.

The Commonwealth of Virginia, having made this compromise with

its creditors, whereby it relieved itself of the duty of paying one-third of its debt until a final settlement should be had with West Virginia, was in no hurry about the settlement; so long as it could be deferred, Virginia could not be called upon to pay its creditors any part of its debt set aside as West Virginia's share. But, to make certain that Virginia should never be required to pay more than two-thirds of the amount due its creditors, an act was passed by the General Assembly on March 28th, 1879, in which it was expressly provided that "by the acceptance of said certificates of West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability on account of said certificates. (See Section 7 of said Act.)

When the West Virginia Legislature adopted the joint resolution of February 24th, 1871, authorizing the appointment of three Commissioners to treat with Virginia upon the subject of an adjustment of the public debt and inviting Virginia to appoint a like Commission, the Commonwealth of Virginia found it more convenient for her purpose to ignore this invitation and make a settlement with her creditors. From this action on the part of Virginia, it is apparent that the men in control of her affairs did not intend to make a fair and just settlemen with West Virginia. If they had sincerely desired to settle, here was the opportune moment. This was, perhaps, the only time in the history of the controversy when a settlement which would have been just to both sides could have been made. The suit which had been pending in the Supreme Court for more than four years was ended a few days after the adoption of this resolution, removing this impediment. Sufficient time had elapsed since the close of the civil war to allay much of the bitter feeling between the citizens of the two states engendered from 1861 to 1865. Business had been revived to a very large extent and the machinery of the state governments restored to its normal condition; and moreover, the history of the various transactions out of which the debt arose and the equities of the two states were fresh in the memories of men who have since died. The personnel of the Commission appointed by the Governor of West Virginia under this resolution was such as should have readily commended it to the Legislature of Virginia. The reputation of these Commissioners was well known to every publim man in Virginia at that time. A. W. Campbell had been for nearly twenty years the editor of the leading daily newspaper of the State. He was a man of education, great ability, eminently just and fair, and was recognized by all as one of the best informed men in the State on all public questions. General John J. Jackson

was well and favorably known in both states. He was about seventy years of age and had a wide experience in public affairs. He served several terms in the Legislature of Virginia, was a member of the Constitutional Convention of 1861, and was conceded to be one of the most active and independent public men of Virginia for half a century. Any honest interest was safe in his hands. Jonathan M. Bennett, the other Commissioner, was also eminently qualified for the place. He was a man of splendid intellect, well informed, public spirited and peculiarly suited for this position by reason of his thorough knowledge of all the facts, having served as Auditor of Virginia from 1857 to 1865, and thus had unusual opportunities to become acquainted with all the details of the debt. He, perhaps, better than any other living man was qualified to state this account and adjust the equities between the two States. For a settlement of this kind, West Virginia at the first practical moment made an appeal and was denied. Virginia's reply to this appeal was to place herself in a position where she could not settle. Under these circumstances, it does not become the representatives of Virginia to charge West Virginia with an effort to delay settlement.

The representatives of Virginia having refused to treat with West Virginia, no further action could be taken by this State, and the Commonwealth of Virginia was content to let this matter rest for twenty-three years. On the 6th day of March, 1894, Virginia revived consideration of the question by the appointment of a Commission to make settlement, but limited the powers of the Commission by providing that "said Commission shall in no event enter into any negotiations hereunder except upon the basis that Virginia is bound only for two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof." (See Joint Resolution, Acts General Assembly of Virginia, 1893-4, p. 867.)

Of course, West Virginia could not enter into any negotiations for a settlement under such conditions; therefore she declined said offer to negotiate by a joint resolution o fher legislatture adopted February 7th, 1896, reading as follows:

> *"Resolved by the Legislature of West Virginia:*
> "That this Legislature hereby declines to enter into any negotiations with the debt commissioners or commission, appointed under a joint resolution adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution."

Virginia's resolution of 1894 and West Virginia's reply of 1895, closed the efforts for the time to make settlement.

VIRGINIA'S SUIT AGAINST WEST VIRGINIA.

Nothing further was done until the 26th day of February, 1906, when an original bill in equity was filed by the Commonwealth of Virginia against the State of West Virginia in the Supreme Court of the United States, seeking an adjudication of the amount due Virginia from this State.

The bill charges that among other grounds the liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia rested on an ordinance adopted by the Convention at the city of Wheeling on the 20th day of August, 1861, known as the "Wheeling Ordinance," which provided the method of ascertaining the liability of West Virginia on account of the said debt, and that the State of West Virginia had by enactments and resolutions of her Legislature recognized her liability for a just proportion of the public debt of Virginia.

At the October term, 1906, the State of West Virginia interposed her written demurrer to the bill of complaint of the Commonwealth of Virginia, assigning several grounds of demurrer; and later—to-wit, on the 25h day of February, 1907,—the State of West Virginia filed an amended demurrer to the said bill of complaint. The questions raised by the demurrer of the State of West Virginia were argued before the Court on the 11th and 12th days of March, 1907, by counsel representing West Virginia and counsel appearing for the Commonwealth of Virginia, and printed briefs were filed by counsel for the respective States. On the 27th day of May, 1907, Mr. Chief Justice Fuller delivered the opinion of the Court in respect to the questions raised by the demurrer, which opinion is as follows:

> "The State of West Virginia was admitted into the Union June 20, 1863, under the proclamation of the President of the United States of April 20, 1863, in pursuance of the act of Congress approved December 31, 1862, upon the terms and conditions prescribed by the Commonwealth of Virginia in ordinances adopted in convention, and in acts passed by the General Assembly of the Restored Government of the Commonwealth, giving her consent to the formation of a new State out of her territory, with a constitution adopted for the new State by the people thereof. The ninth section of the ordinance, adopted by the people of the Restored State of Virginia in convention assempled in the city of Wheeling, Virginia on August 20, 1861, en-

titled "An ordinance to provied for the formation of a new State out of a portion of the territory of this State," provided as follows:

"9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State Government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia. . . . . "

The consent of the Commonwealth of Virginia was given to the formation of a new State on this condition. February 3, and 4, 1863, the General Assembly of the Restored State of Virginia enacted two statutes in pursuance of the provisions of which money and property amounting to and of the value of several millions of dollars were, after the admission of the new State, paid over and transferred to West Virginia. The Constitution of the State of West Virginia when admitted contained these provisions, being sections 5, 7 and 8 of Article VIII thereof, as follows:

"5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to supress insurrection, repel invasion, or defend the State in time of war.

"7. The legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt and hereafter the State shall not become a stockholder in any bank."

"8. An equitable proportion of the Public debt of the Commonwealth of Virginia prior to the first day of January, in the year one thousand eight hundred and sixty-one shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable; and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

The "public debt" and the "previous liability" manifestly referred to a portion of the original debt of the original State of Virginia and liability for the money and property of the original State which had been received by West Virginia under the acts of the General Assembly above cited, enacted while the territory and people afterwards forming the State of West Virginia constituted a part of the Commonwealth of Virginia, though one may be involved in the other; while the provisions of sections 7 and 8 were obviously framed in compliance with the conditions on which the consent of Virginia was given to the creation of the State of West Virginia, and the money and property were transferred. From 1865 to 1905 various efforts were made by Virginia through its constituted authorities to effect an adjustment and settlement with West Virginia for an equitable proportion of the public debt of the undivided State, proper to be borne and paid by West Virginia, but all these efforts proved unavailing, and it is charged that West Virginia refused or failed to take any action or do anything for the purpose of bringing about a settlement or adjustment with Virginia.

The original jurisdiction of this court was, therefore invoked by Virginia to procure a decree for an accounting as between the two States, and in order to a full and correct adjustment of the accounts, the adjudication and determination of the amount due Virginia by West Virginia in the premises.

But it is objected that this court has no jurisdiction because the matters set forth in the bill do not constitute such controversies as can be heard and determind in this court, and because the court has no power to enforce and therefore none to render any final judgment or decree herein. We think these objections are disposed of by many decisions of this court. *Cohens* v. *Virginia,* 6 Wheat, 264, 378,406; *Kansas* v. *Colorado,* 185 U. S. 125; *Kansas* v. *Colorado,* 185 U. S. 125; *Kansas* v. *Colorado,* May 13, 1907, 206 U. S. p. *Missouri* v. *Illinois,* 180 U. S. 208; *Same Case,* 200 U. S. 496; *Georgia* v. *Copper Company,* May 13, 1907, 206 U. S. p. 621; *United States* v. *Texas* 143 U. S. 621; *United States* v. *North Carolina,* 136 U. S. 211; *United States* v. *Michigan,* 190 U. S. 379.

In *Cohens* v. *Virginia,* the Chief Justice said: "In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more States, between a State and the citizens of another State," 'and between a State and foreign States, citizens of subjects." If these be the parties, it is entirely

unimportant what may be the subject of the controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

And, referring to the Eleventh Amendment, it was further said:

"It is a part of our history, that at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the Federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State Legilatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases, and in these a State may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding the cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment were persons who might probably be its creditors. There was not much reason to fear that foreign or sister States would be creditors to any considerable amount, and there was no reason to retain the jurisdiction of the Court in those cases, because it might be assential to the preservation of peace. The amendment, therefore, extended to suits commenced or prosecuted by individuals, but not to those brought by States."

By the cases cited and there are many more, it is established that, in the exercise of original jurisdiction as between States, this court necessarily in such a case as this has jurisdiction.

United States v. *North Carolina* and *United States* v. *Michigan,* supra, were controversies arising upon pecuniary demands, and jurisdiction was exercised in those cases just as in those for the prevention of the flow of polluted water from one State along the borders of another State, or of the diminution in the natural flow of rivers by the State in which they have their sources through and across

another State or States, or of the discharge of noxious gases from works in one State over the territory of another.

The object of the suit is a settlement with West Virginia, and to that end a determination and adjudication of the amount due by that State to Virginia, and when this court has ascertained and adjudged the proportion of the debt of the original State which it would be equitable for West Virginia to pay, it is not to be presumed on demurrer that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted we can then consider by what means the decree may be enforced. Consent to be sued was given when West Virginia was admitted into the Union, and it must be assumed that the Legislature of West Virginia would in the natural course make provision for the satisfaction of any decree that may be rendered.

It is, however, further insisted that this court cannot proceed to judgment because of an alleged compact entered into between Virginia and West Virginia, with the consent of Congress, by which the question of the liability of Virginia to West Virginia was submitted to the arbitrament and award of the Legislature of West Virginia as the sole tribunal which could pass upon it. As we have seen, the Constitution of West Virginia when admitted into the Union contained the provisions: "An equitable proportion of the public debt of the Commonmonwealth of Virginia prior to the first day of January, one thousand eight hundred and sixty-one, shall be assumed by the State, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation of the same by a sinking fund and redeem the principal within thirty-four years." And it is said that, on May 13, 1862, the Legislature of Virginia passed an act entitled "An act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State," by which consent was given to the creation of the proposed new State, "according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861;" and that by the act of Congress the consent of that body was given to all those provisions which thus became a constitutional and legal compact between the two States. Th act of May 13, 1862, was not made a part of the case stated in the bill, and its validity is denied by counsel for Virginia, but it is unnecessary to go into that, for when Virginia on August 20, 1861, by ordinance pro-

vided "for the formation of a new State out of the territory of this State," and declared therein that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its Legislature should "ascertain the same as soon as practicable," it referred to the method of ascertainment prescribed by the Virginia convention. Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia,* it follows that what was meant by the expression that the "Legislature shall ascertain" was that the Legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed, and provide for the liquidation of the amount so ascertained. And it may well be inquired why, in the forty-three years that have elapsed since the alleged compact was entered into, West iVrginia has never indicated that she stood upon such a compact, and if so, why no step has ever been taken by West Virginia to enter upon the performance of the duty which such "compact" imposed, and to notify Virginia that she was ready and willing to discharge such duty.

It is also urged that Virginia had no interest in the subject-matter of the controversy because she had been released from all liability on account of the public debt of the old Commonwealth, evidenced by her bonds outstanding on the first day of January, 1861. This relates to the acts of the General Assembly of Virginia of March 30, 1871, March 28, 1879, February 14, 1882, February 20, 1892, March 6, 1894, and March 6, 1900. According to the bill, Virginia by the act of March 30, 1871, and subsequent acts, in an attempt to provide for the funding and payment of the public debt, having estimated that the liability of West Virginia was for one-third of the amount of the old bonds, provided for the issue of new bonds to the amount of two-thirds of he total, and for the issue of certificates for the other third, which showed that Virginia held the old bonds, so far as unfunded, in trust for the holders or their assignees to be paid by the funds expected to be obtained from West Virginia as her "just and euqitable proportion of the public debt." The legislation resulted in the surrender of most of the old bonds of Virginia, satisfied as two-thirds, and held as security for the creditors as to one-third. We do not care to take up and discuss this legislation. We are satisfied that as we have jurisdiction, these questions ought not to be passed upon on demurrer. *Kansas* v. *Colorado,*

185 U. S., 125, 144, 145. And this also furnishes sufficient ground for not considering at length the objection of multifariousness. The observations of Lord Cottenham, in *Campbell* v. *Mackey*, 1 Mylne & Craig, 603, and that it is impracticable to lay down any rule as to what constitutes multifariousness, as an abstract proposition; that each case must depend upon its own circumstances; and much must be left where the authorities leave it, to the sound discretion of the court, have been oftn affirmed in this court. *Oliver* v. *Piatt*, 3 How., 333, 411; *Gaines* v. *Relf*, 2 How., 619, 642. But we do not mean to rule that the bill is mutifarious. It is true that the prayer contains, among other things, the request "that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix in her own right and as trustee aforesaid," but it also prays that the court "will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises." And we understand the reference to holding in trust to be in the interest of mere convenience, and that the bill cannot properly be regarded as seeking in chief anything more than a decree for "an equitable proportion of the public detb of the Commonwealth of Virginia on the first day of January, 1861." The objections of misjoinder of parties and misjoinder of causes of action may be treated as resting on matter of surplusage merely, and at all events further consideration thereof may wisely be postponed to final hearing. *Florida* v. *Georgia*, 17 How.. 491, 492; *California* v. *Southern Pacific Company*, 157 U. S., 249.

The order will be—

Demurrer overruled without prejudice to any question, and leave to answer by the first Monday of next term."

The state of West Virginia at the October term, 1907, filed its answer to the bill of complaint exhibited against it by the Commonwealth of Virginia, setting up sevral defenses, and denying liability on the part of West Virginia for the amount claimed to be due by the complainant. A decree referring this cause to a Special Master was entered on the 4th day of May, 1908, which is as follows:

"This cause having been heard upon the pleadings and accompapnying exhibits, it is, on consideration, ordered that it be referred to a special master, to be hereinafter designated, to ascertain and report to the court:

1. The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purpose the same was created, and the dates and nature of the bonds or other evidence of said indebtedness.

2. The extent and valuation of the territory of Virginia and of West Virginia, June 20, 1863, and the population thereof, with and without slaves, separately.

3. All expenditures made by the Commonwealth of Virginia with the territory now constituting the State of West Virginia since any report of the debt was contracted.

4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was proppeprly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.

5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties of the state of Virginia.

6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union.

7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia not embraced in any of the preceding items and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, together with the nature and description thereof.

The answers to these inquriies to be without prejudice to any questions in the cause.

It is further ordered that the Commonwealth of Virginia and the State of West Virginia shall each, when required, produce before the master, upon oath, all such records, books, papers and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts, or any of them.

And the master is authorized to make or cause to be made,

sluch examination as he may deem desirable of the books of account, vouchers, documents and public records of either State relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid, which in the judgment of the master may be relevant, and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the mascter, but all such evidence shall be subjected to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

The master is authorized and empowered, subject to the approval of the Chief Justice, to employ such stenographers and other clerical assistants, as he may find it desirable to employ in order to the prompt and efficient execution of this order of reference, and to agree with such stenographers and typewriters and clerical assistance upon such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

The complainant shall cause the sum of five thousand dollars to be deposited with the marshal of this court to the credit of this cause, and such further sums as from time to time may be required on account of the costs and expenses of executing this decree; and the master is authorized from time to time to draw upon the fund so deposited by Virgina for the compensation of the stenographers, typewriters and other clerical assistants whom he may emloy, and for any other costs and expenses, including sationery and printing, which may in his judgment be necessary to be incurred in executing this order of reference.

The said marshal shall receive such commission for his services in receiving and disbursing the funds so deposited with him as may be allowed by the court, and he will make a report of his transactions, receipts and disbursements in the premises.

Any notices to be given in connection with the execution of of this decree may be given by and to the Attorney General of the respective Stats.

The master will make his report with all convenient speed and transmit therewith the evidence on which he proceeds, and is to be at liberty to state any special circumstances he considers of importance, and to state such alternative accounts as may be desired by either of the parties, subject to the direction of the court.

And the court reserves the consideration of the allowance of interest; of the costs of this suit; and all further directions until after the master has made his report; either of the parties to be at liberty to apply to the court as they shall be advised."

This decree of reference was amended by an order entered on the first day of June, 1908, so far as to make the first line of paragraph 2 rad: "the extent and assessed valuation;" and on the same date Mr. Charles E. Littlefield was—by an order of the court—designated and appointd as Special Master to ascertain and report in respect to all matters required by the decree of reference. Sessions were held by the special master at Richmond, Virginia, for the purpose of taking evidence concerning the matters mentioned in the decree of reference, beginning on the 16th day of November, 1908, and ending on the 2nd day of July, 1909. After all the evidence had been taken before the Special Master, arguments of counsel were heard by him in the city of New York, and on the 17th day of March, 1910, the Special Master filed his report. To this report exceptions were filed by the Commonwealth of Virginia and the State of West Virginia, and arguments were heard and printed briefs filed by counsel for the respective States in respect to said exceptions. Later—on the 6th day of March, 1911,—the opinion of the Supreme Court was delivered by Mr. Justice Holmes, which opinion has already been set out in full in this report.

After the above opinion had been rendered, no further action was had in the case until the Commonwealth of Virginia gave notice to the State of West Virginia that it would move the court to proceed to determine all questions left open by the decision of March 6th, 1911.

To this motion the State of West Virginia filed its answer, and on the 30th day of October, 1911, Mr. Justice Holmes delivered the opinion of the court, overruling the motion, which motion is as follows:

"This is a motion on behalf of the Commonwealth of Virginia that the Court proceed to determine all questions left open by the decision of March 6, 1911. 220 U. S. 1. The grounds of the motion are these: On April 20, 1911, the Virginia Debt Commission wrote to the Governor of West Virginia, referring to the suggestion of a conference between the parties in the decision, and requested that he would take steps that would lead to such a conference at an early date At that time the Governor of West Virginia had called an extra session of the Legislature upon another matter. The Constitution forbade the Legislature, when so convened, entering upon any business except that stated in the call, but as there were twenty-six days between the call and the session that followed it there was time for the Governor to issue a further proclamation on the subject of the debt The Governor in his message to the Legislature referred to the matter, and put, as questions to be considered, whether the appointment of the Virginia Debt Commission was enough to require West Virginia now 'to take the initiative,' and whether a Commission should be appointed to meet the Virginia Commission. He also stated that if, without formal action of three-fifths of the body under the Constitution, a majority should express to him the opinion that the Legislature ought to be called into extraordinary session to consider the matter, he should deem it sufficient reason for a call. But it seems that he did not use his power of his own motion, or receive such an expression as induced him to use it, and the Legislature does not meet in regular session until January, 1913. The Commonwealth of Virginia concludes from these facts that there is no likelihood of a conference with any satisfactory results.

"The Attorney General of West Virginia answered that members of the Legislature convened in May, 1911, were elected before this cause had been argued and under conditions that left them uncertain as to the wishes of their constituents; that the Governor was of opinion that he could not constitutionally amend his proclamation so as to embody consideration of the debt, and that there is no one in West Virginia except the Legislature that has power to deal with the matter. He then suggested a doubt whether the Virginia Debt Commission was empowered to deal with the case in its present phase, in view of the provisions in the Resolution creating it that it should not negotiate except upon the basis that Virginia is bound only for the two-

thirds of the debt that she had provided for, and concluded that this Court ought not to act before the West Virginia Legislature at its next regular session can consider the case in the spirit anticipated by the opinion of the Court.

"With regard to the doubt implied by the Governor of West Virginia whether it now is incumbent upon that State to take the initiative, and that suggestion by its Attorney General whether the Virginia Debt Commission has the necessary power, we are of opinion that neither of them furnishes a just ground for delay. The conference suggested by the Court is a conference in the cause. The body that directed the institution of the suit has taken the proper step on behalf of the plaintiff, and it is for the defendant to say whether it will leave the Court to enter a decree irrespective of its assent or will try to reach a result that the Court will accept. The conference is not for an independent compromise out of Court, but an attempt to settle a decree. The provision as to negotiations, in the Virginia Resolution preceding the Statute authorizing this suit, refers, we presume, to a settlement out of Court, and has nothing to do with the conduct of the cause. If the parties in charge of the suit consent, this Court is not likely to inquire very curiously into questions of power, if, on its part, it is satisfied that they have consented to a proper decree.

"A question like the present should be disposed of without undue delay. But a State cannot be expected to move with the celerity of a private business man; it is enough if it proceeds, in the language of the English Chancery, with all deliberate speed. Assuming, as we do, that the Attorney General is correct in saying that only the Legislature of the defendant State can act, we are of opinion that the time has not come for granting the present motion. If the authorities of West Virginia see fit to await the regular session of the Legislature, that fact is not sufficient to prove that when the voice of the State is heard it will proclaim unwillingness to make a rational effort for peace.

Motion overruled without prejudice.

When the foregoing opinion was delivered, the legislature of West Virginia was not in session, and the legislature of this State did not convene in regular session until in January, 1913.

Acting upon the suggestion of the Court in the opinion delivered by Mr. Justice Holmes on the 6th of March, 1911, and being desirous of effecting a settlement of the controversy by a conference between the representatives of the two States, this legislature on the 21st day of February, 1913, adopted a joint resolution providing for

the appointment by the Governor of the State of West Virginia of a Commission of eleven members to negotiate a settlement of West Virginia's proportion of the public debt of the Commonwealth of Virginia proper to be borne by the State of West Virginia, which joint resolution has heretofore appeared in this report.

On the 25th day of July, 1913, a joint meeting of the Commissions of the two States was held in the city of Washington, D. C., but no compromise of the controversy resulted at this conference.

Following this conference ,and while the West Virginia Commission was investigating and informing itself as to rights of West Virginia, the Attorney General of the Commonwealth of Virginia gave notice to the Attorney General of West Virginia that on the 13th day of Octo ber, 1913, he would move the Supreme Court of the United States for a final hearing of said cause. To this motion the State of West Virginia, by its counsel, appeared and answered, and on the 10th day of November, 1913, Mr. Chief Justice White delivered the opinion of the Court and overruled said motion, which opinion is as follows:

> "In March, 1911 (Virginia v. West Virginia, 220 U. S. 1, 55 L. Ed. 353, 31 Sup. Ct. Rep. 330), our decision was given "with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed." In view, however, of the nature of the controversy, of the consideration due the respective States, and the hope that by agreement between them further judicial action might be unnecessary, we postponed proceeding to a final decree, and left open the question of what, if any, interest was due, and the rate thereof, as well as the right to suggest any mere clerical error which it was deemed might have been committed in fixing the sum found to be due upon the basis of liability which was settled. In October, 1911, we overruled without prejudice a motion made by Virginia to proceed at once to a final determination of the cause on the ground that there was no reasonable hope of an amicable adjustment. Virginia v. West Virginia, 222 U. S. 17, 56 L. Ed. 71, 32 Sup. Ct. Rep. 4.
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> "The motion on behalf of the State of Virginia now before us is virtually a reiteration of the former motion to proceed, and is based upon the ground that certain negotions which have taken place between the Virginia Debt Commission representing Virginia, and a commission representing West Virginia, appointed in virtue of a joint resolution of the

legislature of that State, adopted in 1913, make it undubitably certain that no hope of an adjustment exists. But without reviewing the course of the negotiations relied upon, we think it suffices to say that, in resisting the motion, the Attorney General of West Virginia, on behalf of that State, insists that the view taken by Virginia of the negotiations is a misapprehension of the purposes of West Virginia, as that State, since the appointment of the commission on its behalf, has been relying upon that commission "to consummate such an adjustment and settlement of said controversy as to commend the result of its negotiations to the favorable consideration of the Governor and the legislative branch of its government, and thus terminate said controversy, to the satisfaction of her people and the commonwealth of Virginia, and upon the principles of honor and justice to both states, and in fairness to the bondholders of the debt for whose benefit this controversy is still pending." The Attorney General further stating that, in order to accomplish the results just mentioned, a subcommittee of the Commission of West Virginia has been and is engaged in investigating the whole subject with the purpose of preparing a proposition to be submitted to the Virginia Debt Commission to finally settle the whole matter, and that a period of six months' time is necessary to enable the committee to complete its labors.

"Having regard to these representations, we think we ought not to grant the motion to proceed at once to consider and determine the cause, but should, as near as we can do so consistently with justice, comply with the request made for further time to enable the commissioners of West Virginia to complete the work which we are assured they are now engaged in performing, for the purpose of effecting a settlement of the controversy. As, however, the granting of six months' delay would necessitate carrying the case possibly over to the next term, and therefore be in all probability an extension of time of more than a year, we shall reduce somewhat the time asked, and direct that the case be assigned for final hearing on the 13th day of April next, at the head of the call for that day."

Later—on the 4th day of March, 1914—a conference of the Commissions of the two States was held in the city of Washington, and at this meeting the West Virginia Commission submitted to the Virginia Commission a proposition for the settlement of the matters involved in the suit. The Virginia Commission refused to consider this proposition and made no counter proposition; thereupon, the Attorney General of West Virginia, on the 10th day of March, 1914, gave notice to

the Attorney General of the Commonwealth of Virginia, that on Monday, the 23rd day of March, 1914, West Virginia, by her counsel, would move the Supreme Court for leave to file, on or before the 13th day of April, 1914, a supplemental answer to the original bill of complaint of the Commonwealth of Virginia. To the filing of this answer the Commonwealth of Virginia, by her counsel, objected. This motion was argued before the Court by counsel for both States on April the 16th and 17th, 1914, and on June 8th, 1914, Mr. Chief Justice White delivered the opinion of the Court, sustained the motion of West Virginia, allowed her supplmental answer to be filed and re-committed the cause to the Special Master, Mr. Charles E. Littlefield. The opinion and decree of the Court are as follows:

> "This case, which was begun in 1906, was elaborately argued in 1907, on a demurrer, which was overruled. 206 U. S. 290, 51 L. Ed. 1068, 27 Sup. Ct. Rep. 702. It was again argued in 1908 on a motion to appoint a master. 209 U. S. 514, 52 L. E d.914, 28 Sup. Ct. Rep. 614. Before that officer there was an extended hearing, and a full report of all the matters involved was filed in March 1910. It was then argued on a motion to take further testimony, and was ultimately heard in an argument which extended many days, every party in interest being represented, in the month of January, 1911.
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> "Notwithstanding these facts, when in March, 1911, the court came to decide the controversy, although it fully reviewed and passed upon the fundamental issues, as its obvious duty required it to do, and fixed the principal sum due by the state of West Virginia to the state of Virginia, in view of the consideration due to the parties as states, and that the cause was, as then said, "no ordinary commercial suit, but * * a quasi-international difference referred to this court in reliance upon the honor and constitutional obligations of the states concerned rather than upon ordinary remedies," the controversy was not completely and irrevocably disposed of, but was left open for a time not specified, to the end that any clerical errors that might have crept into the calculation of the sums due could be corrected, and to give the states time to consider the subject of liability for interest in the light of what had been decided, and to agree as to the rate and period of the interest to be paid on the principal sum which was determined. 220 U. S. 1, 55 L. Ed. 353, 31 Sup. Ct. Rep. 330.
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> "On the convening of the court in the following October, 1911, a motion was made on behalf of the state of Virginia to proceed at once to a final decree. Listening to the suggestion of the state of West Virginia to the effect that it

desired further time to consider the subject, and in view of the public considerations which had prevailed when the decree was entered the motion of Virginia was overruled. 222 U. S. 17, 56 L. Ed. 71, 32 Sup. Ct. Rep. 4.

"Yet further, when, in November, 1913, another motion on the part of Virginia was made to set the case down to be finally disposed of at once upon the statement that no agreement between the parties was possible, again giving heed to the request of West Virginia, through its constituted officers, for a postponement for a stated time, and to the statement that they were engaged in an honest endeavor to deal with the controversy, and, if possible, to come to an agreement as to the subjects left open, the motion of Virginia was again refused, (131 U. S. 89, ante, 29, 34 Sup. Ct. Rep. 29) and as it was possible to give to the state of West Virginia all the time which that state, in resisting the motion, asked, and yet secure against the possibility of the hearing being carried over to another term, the case was assigned for hearing on the 13th day of April, of this year. When that day was reached, the State of West Virginia, in accord with a motion filed some days before, prayed leave to be permitted to file a supplemental answer asserting the existence of credits which, if properly considered, would materially reduce the sum fixed as due to the State of Virginia, the said answer in addition asserting various grounds why interest should not be allowed in favor of Virginia and against West Virginia on the sum due. Resisting this request, the State of Virginia insists that the items embraced in the supplemental answer asked to be filed had in effect already entered into the consideration by which the principal sum due was fixed, and that, if not, the case should not be postponed for the purpose of permitting the rights urged in the answer to be availed of because every item concerning such alleged rights was proved in the case before the master, was mentioned in his report and was known or could have been known by the use of ordinary diligence by those representing West Virginia. And it is this controversy we now come to dispose of.

"Without intimating any opinion whatever as to whether the items with which the proposed supplemental answer deals entered in the processes of calculation or reasoning by which the answer could serve as credits upon the sum previously found due, and thereforeto that extent reduce the amount, we think it is obvious that most of the items embraced in the answer were contained in the master's report and in any event all were available then for every defense now based upon

them if their consideration had been pressed in the aspect and with the assertions of right now made.

"The question then is, under these conditions ought the permission to file the supplemental answer be granted We think it must be conceded that in a case between ordinary litigants the application of the ordinary rules of legal procedure would render it impossible, under the circumstances which we have stated, to grant the request. We are of the opinion, however, that such concession ought not to be here controlling. As we have pointed out, in acting in this case from first to last the fact that the suit was not an ordinary one concerning a difference ebtween individuals, but was a controversy between states, involving grave questions of public law, determinable by this court under the exceptional grant of the power conferred upon it by the Constitution, has been the guide by which every step and every conclusion hitherto expressed has been controlled. And we are of the opinion that this guiding principle should not now be lost sight of, to the end that when the case comes ultimately to be finally and irrevocably disposed of, as come ultimately it must, in the absence of agreement between the parties, there may be no room for the slightest inference that the more restricted rules applicable to individuals have been applied to a great public controversy, or that anything but the largest justice after the amplest opportunity to be heard, has in any degree entered into the disposition of the case. This conclusion, which we think is required by the duty owed to the moving State, also in our opinion operates no injustice to the opposing State, since it but affords an additional opportunity to guard against the possibility of error, and thus reach the result most consonant with the honor and dignity of obth parties to the controversy.

"Because of these convictions, we therefore make the folfolwing order:

"That the motion on the part of the State of West Virginia to file the supplemental answer be and the same is hereby granted; and that the averments in such answer be and the same shall be considered as traversed by the State of Virginia; that the subject-matter of the supplemental answer as traversed be at once referred for consideration and report to Charles E. iLttlefield, Esq., the master before whom the previous hearings were had, with directions to hear and consider such evidence and testimony as to the matters set forth in the supplemental answer as the State of West Virginia may deem advisable to proffer, and such counter showing on the part of the State of Virginia as that state may deem advisable to make. The report on the subject to embrace the

testimony so taken and the conclusions deduced therefrom, as well as the views of the master concerning the operation and effect of the proof thus offered, if any, upon the principal sum found to be due by the previous decree of this court. Nothing in this order to vacate or change in any manner or in any particular the previous decree, and the same to stand wholly unaffected by the order now made or any action taken thereunder until the examination and report herein provided for is made and this court acts upon the same. It is further directed that the proceedings before the master be so conducted as to secure a report on or before the 2nd Monday of October, 1914."

The hearings before the Special Master have been completed, but he has not yet filed his report.

WORK OF THE PRESENT COMMISSION. DISCOVERY OF ASSETS, ETC.

Immediately after its organization, the Commission proceeded to a critical and careful study of the record and papers bearing upon the important matters referred to it, and particularly of the matters and things briefly set out in the foregoing pages, with a view of properly informing itself before undertaking negotiations with the Virginia Commission.

The opinion of the Supreme Court announced on the 6th day of March, 1911, and heretofore set out in full, had charged to the State of West Virginia $7,182,507.46, being 23½% of the total outstanding debt of the State of Virginia on January 1st, 1861.

It will be noted, on reading the above referred to opinion, that no provision is made and no consideration is given in these figures to the distribution of the public property—acquired either from the proceeds of the debt under consideration or from excess of revenue raised by taxation or otherwise from the entire and undivided State—though occasional references are to be noted in the records of the case to various investments held by Virginia; but little, if any, attempt had been made to determine the value or worth of these investments upon the date established by contract for the division of the public debt. This contract was finally held by the Supreme Court of the United States to consist of the Constitution of West Virginia of 1863, the Act of the General Assembly of Virginia, May 13th, 1862, and the Act of Congress of the United States of December 31st, 1862. The Commission, therefore, proceeded forthwith to the work of ascertaining and making an inventory of these investments, and securing such informa-

tion as would enable it to appraise their value as of January 1st, 1861. In order to expedite this investigation, it appointed a sub-committee to conduct the search. That this investigation was eminently proper and necessary is apparent from the following facts:

(1) The joint resolution of the General Assembly of Virginia of February 28th, 1866, and various subsequent acts heretofore set out, clearly show the intent on the part of Virginia to distribute the public property.

(2) The Act of the General Assembly of Virginia of 1838, and numerous subsequent acts herein heretofore set out, pledge and appropriate these investments to the payment of the accruing interest and the ultimate liquidation of the principal of the debt.

(3) In the opinion of March 6th, 1911, referring to these investments, the Court says: "The whole State would have gotten the gain, and the whole State must bear the loss, as it does not appear that there are any stocks of value on hand." As the case stood at the time this opinion was delivered, it is no doubt true that it did not appear in legal form that there were any of these "stocks of value on hand," and the record discloses no formal proof of this, and perhaps no pleading in the case to justify such proof.

The desired information could only be found in the public records of Virginia at Richmond, or possibly in the offices of the corporations in which Virginia owned stock on January 1st, 1861, and the appropriation at the disposal of the Commission was totally insufficient to pay the expense of such an investigation.

This situation was laid before your Excellency and the Board of Public Works. After becoming satisfied of the importance, in fact, necessity, for this investigation, the Board of Public Works agreed to furnish the necessary clerical and legal assistance, without which this information never could have been secured. The Commission was much hurried by repeated requests from the Virginia Commission for a joint meeting to open negotiations and by motions by Virginia in the Supreme Court seeking to speed the cause. It was not until February 26, 1914, that the sub-committee felt that it had secured sufficient information upon which to base a proposition for settlement, and on that date it reported to the Commission the following facts:

That on January 1st, 1861, the public property of Virginia, distributable between the two States by its joint resolution of February 28th, 1866, and others, and pledged to the liquidation of the debt by the Act of April 9th, 1838, embraced the following items:

A. Cash in Treasuray $1,104,927.06
"In the $30,563,861.56 fixed by the court as the amount of the principal debt, January 1st, 1861, is included $977,-209.89of current accrued interest, which was paid in the early days of January, 1861, out of the above cash item."

B. Stocks purchased by the State of Virginia out of the common funds of the two States prior to January 1st, 1861, and still upon this date owned by the State of Virginia, 2,752 shares of the capital stock of the Richmond, Fredericksburg & Potomac Railroad, valued at least at $275,200.00.

C. Securities purchased with common funds and sold by the State of Virginia without the knowledge or consent of West Virginia, subsequent to June 20th, 1863, and without any accounting therefor: Eighteen items consisting of railroad and navigation company stocks, claim against the United States Government, claim against the Selden Withers Company, and various loans amounting to $6,313,532.47.

D. Interest on loans and dividends on stock upon common investments listed in Item *B.* and *C.* above, which interest had accrued prior to January 1st, 1861, and which was subsequently collected and never accounted for, amounting to $1,835,409.28.

E. Stock in six banks purchased with joint funds prior to January 1st, 1861, to the value of at least $3,710,020.00.

F. Stock and loans to he following railroads:

Virginia & Tennessee Railroad Company,
South Side Railroad Companay,
Virginia & Kentucky Railroad Company,
Norfolk & Petersburg Railroad Company,

aggregating at least $5,168,548.46, which on the 20th day of December, 1870, she sold to the Atlantic, Mississippi & Ohio Railroad Company for $4,000,000.00, taking a second mortgage in payment.

C. Securities purchased with joint funds and given away subsequent to January 1st, 1861, without the knowledge or consent of West Virginia, aggregating $14,285,076.68.

On account of the limited time at the disposal of the sub-committee, and because the facts in respect to the actual value of these items had become so obscured by the lapse of time as to prevent a satisfactory appraisement thereof, the sub-committee, in a spirit of compromise, and upon due consideration of the evidence then in its possession, placed a value upon these items of 25% of their par value, or $3,571,-269.17.

In addition to the forgoing items, the state of Virginia collected after June 20th, 1863, large sums of money from several counties, then and now located in the state of West Virginia, amounting to $225,078.06.

West Virginia had received from Virginia its interest in the Fairmont Bank and in the Northwestern Bank, except the branch of the latter at Jeffersonville, Va., the whole of which was retained by Virginia, and no information with respect to the value of this particular branch could be found by the sub-committee. Virginia's total interest in the two banks amounted to $260,200.00. It will be seen that this amount should be reduced by whatever Virginia's interest in the branch bank at Jeffersonville may be determined to be.

RECAPITULATION.

Class A	$ 1,104,927.06
Class B	275,200.00
Class C	6,313,532.47
Class D	1,835,409.28
Class E	3,710,020.00
Class F	4,000,000.00
Class G	3.571,269.17
Total	$20,810,357.17
West Virginia's equity .235	4,890,434.12
Less Northwestern Bank Stock $210,200	
Faairmont Banak Stock 50,000	260,200.00
Balance	$ 4,630.234.12
Collected from West Virginia Counties	225,078.06
Total net equity	$ 4,855,312.18

RESULT

West Virginia's share of debt	$ 7,182,507.46
Less net equities, as above	4,855,312.18
Balance	$2,327,195.29

Taking these figures as a basis, the commission submitted to the Virginia commission on March 4th, 1914, a formal proposition suggesting that the Commonwealth of Virginia accept from West Virginia the sum of $2,327,195.28 in full settlement of both principal and interest of West Virginia's proportion of the Virginia debt.

It will be noted from the foregoing figures that no specific allowance is included in the above amount to cover interest accrued during

any period after January 1st, 1861. The Commission felt justified in omitting this item for the following reasons:

First: With the exception of the two bank stocks above mentioned, Virginia held, enjoyed, disposed of or still owns all of the foregoing securities, etc., has collected all of the income therefrom since January 1st, 1861, amounting to $5,782,240.00, to which must be added any revenue received by her from re-investment of the proceeds of the sales of the foregoing securities.

Second: With the exception of about $25,000.00, represented in the partially constructed building of the Insane Asylum at Weston, West Virginia, Virginia retained and still retains all of the public buildings amongst which may be mentioned the capitol and surrounding grounds, the University of Virginia, the penitentiary, and various eleomosynary institutions, the value of which amounted to several millions of dollars.

Third: We are advised by counsel that a sovereign State owes no interest unless by special contract, and that interest does not run upon an unliquidated debt. This debt is unliquidated or undetermined, and will so remain until an agreement is reached, or until the Supreme Court enters a final decree.

On the same day (March 4th, 1914), the Virginia Debt Commission declined to entertain or discuss the proposition submitted by the West Virginia Commission.

For more detailed information than can be given in the foregoing synopsis, we add herein a complete record of the transactions of the Commission, including in detail the proposition made to Virginia.

OWNERSHIP OF WEST VIRGINIA DEBT CERTIFICATES.

Our Commission was further required by the resolution under which you appointed it, to ascertain and report as to any part of the Virginia debt claimed against the State of West Virginia which is owned, or held, or claimed to be due at law or in equity by the Commonwealth of Virginia in her own right; and further to ascertain and report upon all the facts and conditions under which the West Virginia certificates are held or owned, together with the names and residences of the persons having legal or equitable right to receive from West Virginia whatever may be ascertained to be payable thereon.

For the purpose of determining the facts here required, the Commission on July 22nd, 1913, appointed a sub-committee, and the report of that committee—which was adopted by the Commission—is as follows:

> "Your sum-committee appointed on July 22nd, 1913, for the purpose of discovering, if possible, the ownership of the

Virginia debt certificates and to report the same to the Virginia Debt Commission at a subsequent meeting, begs to report as follows:

We find that the State of Virginia owns so-called West Virginia certificates of the face value of $2,745,482.11. Of this amount a large part was acquired as a result of the refunding of the bonds held by her sinking and literary fund of January 1, 1861, which bonds were excluded by the court from the amount of the outstanding indebtedness. Another large part of the so-called West Virginia certificates was acquired by the sale of some of the securities for which West Virginia is now claiming credit, and a small part was acquired by purchase or in settlement with State officers. Virginia left one-third of the outstanding debt to be assumed by West Virginia. The court reduced this figure to 23-1/2%. From the foregoing, it is apparent that Virginia's present interest in the debt, if any, is indeterminate.

Further than this, your sub-committee has been unable to secure any information in addition to that published in Volume 5, of the record, pages 462 to 639, inclusive."

The following is a copy of the proceedings of the joint conference at Washington, D. C.

PROCEEDINGS OF A JOINT CONFERENCE OF THE VIRGINIA AND WEST VIRGINIA DEBT COMMISSIONS, AT WASHINGTON, D. C., JULY 25TH, 1913.

The Virginia and West Virginia Debt Commissions met in joint conference in the "Gridiron Room" of the New Willard Hotel at 11 o'clock a. m., July 25th, 1913, pursuant to
27—APPENDIX C.
call of their respective Chairman and there were present:

On the Part of Virginia: Messrs. Moon, (Chairman), Harrison, Rhea, Wickham, Flood, Brown, Downing, and Joseph Button, Secretary.

On the Part of West Virginia: Messrs. Mason, (Chairman), Wells, Zilliken, Lonhart, Ice, Young, Chilton, Boreman, Hamilton, Ord, Miller, and John T. Harris, Secretary.

The chairman of the two Commissions presided jointly over the conference meeting.

CHAIRMAN MOON: On behalf of the Virginia Commission we have prepared some preliminary resolutions to see if we can get at an adjustment of this matter and try to reach an agreement. The first resolution we passed is this:

"*Resolved,* That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

CHAIRMAN MOON: The second resolution adopted by our Commission is as follows:

"This Commission desiring to carry out in good faith the suggestions made by the Supreme Court as to securing an amicable adjustment of the amount of interest which should be paid by West Virginia upon the principal of the debt as ascertained and decided by the court, and realizing that it is not the desire of Virginia nor was it the intention of the Supreme Court that Virginia should ask or demand the full or legal amount of interest upon the principal debt as ascertained in the decision of the court, but that there should be concessions made upon both sides, such as comport with justice and the honor and dignity of the two States; and

Whereas, The joint conference to be held to-day between the Commissions of Virginia and West Virginia was invited by the authorities of West Virginia, presumably for the purpose of carrying out in good faith the decision and suggestion of the Supreme Court of the United States; therefore, be it

Resolved, That this resolution together with all other resolutions adopted by this Commission at its present session, which may be pertinent, be presented by the Chairman of this Commission, to the Commission of West Virginia at the joint conference to be held to-day, and that the Commission of West Virginia be respectfully requested to communicate to this Commission, what, in their judgment, would be a fair and just settlement of the interest to be paid by West Virginia upon the principal amount as ascertained in the opinion and decision of the Supreme Court of the United States."

CHAIRMAN MOON: These two resolutions we lay before you, gentlemen, and ask your consideration of them. I will state that our Commissioner has designated Hon. Radolph Harrison, one of our members, to be spokesman for us and to give such advice as may be desirable to present to you. He has a great deal of information on the subject, and has had a great deal of experience in connection with the case, and is well qualified to submit it.

CHAIRMAN MASON: Under these resolutions you have presented, gentlemen, the only question for the West Vir-

ginia Commission to consider would be the question of interest. From our standpoint, and our reading of the opinion of the Supreme Court, other things are to be considered besides that question of interest.

This Commission has only been in existence about sixty days—or not quite that long; it was appointed on the 10th day of June—and we haven't had time on our part to go over this matter as fully as you gentlemen have who have been familiar with the case for many, many years. We have a general idea of the subject matter but have not studied it as we should study it and as we are endeavoring to study it.

We meet you with a great deal of pleasure, gentlemen, and with the sincere idea and desire that this long unsettled, vexed question between the two states may be settled. We think it ought to be settled in some way, but we have had the idea, and have it now, that the opinion of the Supreme Court leaves open more than the question of interest, or whether we should pay any interest whatever.

In the first place, it is not a final judgment; and in the second place the court indicates very clearly in its opinion that there may be adjustments to be made by the different parties; so that if you limit the discussion and the investigation simply to the question of interest, gentlemen, we will probably have some trouble right at the start if more than that is not to be discussed and considered in attempting to make a settlement of this matter.

CHALRMAN *MOON*: Mr. Chairman, do you think you will be ready to make any reply to these resolutions any time today, or would you want more time to consider them?

CHAIRMAN MASON: I think I can say for our Commission now, that we would want to consider, in this attempted settlement, more than the question of interest, or whether there is to be any interest, and, if so, the amount of it.

At their own request certain persons representing the certificate holders and bondholders were here admitted and were present at the meeting.

MR. FLOOD: As Mr. Harrison has been selected by our Commission as its spokesman, I think it would be well to hear from him.

Mr. Harrison then addressed the joint conference at considerable length upon the text of the resolutions adopted by the Virginia Commission as heretofore read by Chairman Moon and submitted to the West Virginia Commission.

After which the joint conference took a recess to reconvene at the call of the respective chairman, and the West Virginia Commission took time to consider the resolution submitted by the Virginia Commission and recessed until 2 o'clock, p. m.

AFTERNOON SESSION—WEST VIRGINIA COMMISSION.

The West Virginia Commission re-assembled in the "Cabinet Room" of the New Hotel Willard at 2 o'clock, p. m., and after a full and free discussion of the resolutions submitted this morning by the Virginia Commission adopted the following:

REPLY OF THE WEST VIRGINIA COMMISSION TO THE VIRGINIA COMMISSION'S RESOLUTION No. 1.

"The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Debt Commission on the part of the State of Virginia:

'Resolved, That it is the sense of this Commission that in the conference to be held this day with the West Virfiinia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt.'

In reply thereto says: that in its judgment the interest, if any, which should be paaid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider."

WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it,

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the rights of either party."

Mr. Young offered the following, which was adopted:

Resolved, That the Chairman of this Commission be di-

rected to communicate these two resolutions to the Chaiman of the Virginia Commission with the request that the Virginia Commission indicate, at as early an hour as possible, their acceptance or rejection of the second resolution we have adopted.

Subsequently, the Chairman reported to the Commission that he had performed the duty assigned him.

At the hour of 5:30 p. m. Mr. Moon, Chairman of the Virginia Commission, appeared and made the folowing statement:

"I am directed by the Virginia Commission to acknowledge the receipt of your communication, through the chairman, anad to say that we are now engaged in formulating a reply to it. We make the suggestion that we assamble in joint session at a quarter to eight o'clock, if agreeable to your Commission,"

Whereupon,

On motion of Mr. Chilton, the Commission then took a recess until 7:45 p. m. to again go into joint session with the Virginia Commission.

JOINT CONFERENCE—EVENING SESSION.

The two Commissions re-convened in joint session in the "Cabinet Room" of the New Willard Hotel at 7:45 o'clock p. m., all the members being present and the Chairman of the two Commissions jointly presiding.

CHAIRMAN MOON: Gentlemen of the West Virginia Commission: Our Commission has made the following reply to your resolutions, in writing, received by us this afternoon:

The Virginia Commission, having received the following communications from the West Virginia Commission, numbered for convenience 1 and 2:

(1) The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Detb Commission on the part of the State of Virginia:

Resolved, That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question as in-

dicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider.

(2) WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective Commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the right of either party.'

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only quesion" which the joint conference should consider.

The court said: 'Among other things there still remains the question of interest.' The Virginia Commission understands this language to mean that there were 'other things' to be considered by the court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia Commission, being of opinion that there is no ambiguity in the opinion of the matter than the question of interest is called for ebtween the Commissions, respectfully adheres to the interpretation of the opinion and decision of the court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two Commissions.

It regrets, however, that the West Virginia Commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia Commission further regrets that the West Virginia Commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia Commission specifically declared, through Mr. Harrison, that

such proposal would receive most careful and respectful consideration if the West Virginia Commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia Commission that a sub-committee of three should be formed for each Commission, with instructions to consider all matters involved, and so forth, the Virginia Commission respectfully says that it is agreeable to the appointment of such sub-committees provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Profided, further, that said sub-commitee be directed to meet on the ..... day of ....., 1913, and report to an adjourned meeting of this joint conference to be held on the ..... day of....., 1913."

CHAIRMAN MASON: I take it, gentlemen, that that is only a qualified acceptance of the proposition made and that we would want to discuss it further as to whether or not we will want to eliminate from the report to be made by the sub-committee all questions except the payment of interest; and, further, that the proposition to pay a part shall come from West Virginia. That, I say, we will want to consider.

I hope, gentlemen, you will feel free to simply leave the question open so that the sub-committee when it meets may discuss it, and make such report as it shall deem proper, without your insisting upon your notion about it; but whether we want to appoint a sub-committee under those restrictions as you have them there, I will say that we shall have to have time to think about it. I regret very much that you limit it in that way.

CHAIRMAN MOON: We would suggest a separate session of the Commissions to give you an opportunity to consider that question.

CHAIRMAN MASON: Yes, it will take a few minutes.

CHAIRMAN MOON: We will give you an opportunity to go into executive session to determine upon that point Our Commission is up in Room 601, if you should want us.

Whereupon, the Virginia Commission then retired, and after some time spent in discussion the West Virginia Commission formulated the following in response to the last foregoing communication.

"The West Virginia Commission has received the following statement from the Virginia Debt Commission:

"The Virginia Commission, having received the following communications from the West Virginia Commission, numbered for convenience 1 and 2:

"(1) The Debt Commission, having received the following resolution adopted by the Debt Commission on the part of the State of Virginia:

"*Resolved,* That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

"In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider.

(2) WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therfore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-commission of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees; but nothing herein contained shall prejudice the rights of either party."

Respectfully replies that in its judgment the language of

the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only question," which the joint conference should consider.

The Court said: "Among other things there still remains the question of interest." The Virginia Commission understands this language to mean that there were "other things" to be considered by the Court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia Commission, being of opinion that there is no ambiguity in the opinion of the Court, and that no conference as to any other matter than the question of interest is called for between the two Commissions, respectfully adheres to the interpretation of the opinion and decision of the Court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two Commissions.

It regrets, however, that the West Virginia Commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

"The Virginia Commission further regrets that the West Virginia Commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia Commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration, if the West Virginia Commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia Commission that a sub-committee of three should be formed from each Commission, with instructions to consider all matters involved, and so forth, the Virginia Commission respectfully says that it is agreeable to the appointment of such sub-committee, provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise ettlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committee be directed to meet on the .... day of ....., 1913, and report

to an adjourned meeting of this joint conference to be held on the ———— day of ....., 1913."

And in reply to the last communication of the Virginia debt Commission the West Virginia Debt Commission says that it is anxious to proceed with the negotiations but cannot consent to agree in advance that only the question of interest shall be considered, or that the West Virginia sub-committee shall be required to first submit a proposition looking to a set tlement. This Commission is willing and anxious to approach a settlement upon equal terms, leaving, in the first instance, all questions of procedure to the said sub-committee.

This Committee did not understand the remarks made by Mr. Harrison to-day as a proposition. We considered only the written resolutions presented to us.

In reply to the remarks made by Mr. Harrison at the joint meeting to-day, and referred to in your communication, we would say that this Commission does not feel sufficiently acquainted with the questions involved—for reasons heretofore stated—to submit a propopsition at this time, and asks that the whole subject matter be submitted to the sub-commite hereinbefore referred to, with the understanding that the said sub-committee be required to report their action for approval to their respective Commissions at a time in the near future to be now agreed upon."

On motion of Mr. Chilton the foregoing reply was made and the Chairman was directed to communicate it to the Virginia Debt Commission.

Spbsequently, the Chairman reported that he had performed the mission assigned him.

Within a reasonable time after the delivery of the communication to the Virginia Commission the following reply was received through its Chairman, Mr. Moon:

"The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two Commissions must embrace a consideration *de novo* of the entire case, both as to principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated, feel constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed."

On receipt of this reply the West Virginia Commission took the following action:

"Washington, D. C., July 25, 1913.

"The following communication was received from the Virginia Commission after 11 o'clock p. m.:

"The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two

Commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed."

Pending a consideration of the communication Mr. Miller moved that owing to the lateness of the hour at which the communication was received, the further consideration of the same be postponed until to-morrow morning, July 26th, 1913, at 10 o'clock, and that the West Virginia Commission adjourn until that hour.

Which motion was put by the Chair and carried by unanimous vote of the Commission at 12 o'clock midnight, and the Chairman of the Virginia Commission was notified of the adjournment by the Chairman of the West Virginia Commission.

JOHN W. MASON, *Chairman.*

JOHN T. HARRIS, *Secretary.*

Washington, D. C., July 26, 1913.

The West Virginia Commission met at 10 o'clock a. m. in the "Cabinet Room" of the New Willard Hotel, pursuant to adjournment, and the Chairman and all the members of the Commission were present.

The following reply was made, through the Chairman, to the last communication received from the Virginia Commission last night:

Washington, D. C., July 26, 1913.

"The Virginia Debt Commission on the part of the State of West Virginia received at 11:15 last night the following communicotion from the Virginia Commission:

"The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed."

In reply to the foregoing communication the West Virginia Commission regrets the Virginia Commission has declined to submit the matters in question to a sub-committee, as heretofore proposed by the West Virginia Commission, and the West Virginia Commission now suggests that the two Commissions have a joint meeting on the ..... day of .....at .....for the purpose of

further considering a settlement of West Virginia's proportion, if any, of the Virginia debt, proper to be borne by the State of West Virginia, and to arrive if possible at some adjustment thereof"

To which communication the following reply was received from the Virginia Commission, through Chairman Moon:

"The Virginia Commission have considered the suggestion the West Virginia Commission for an adjournment of the confernce between the two Commissions.

If it is the purpose of the West Virginia Commission to insist that the joint conference shall embrace a consideration *de novo* of the entire case, both as to principal and interest involved, then the Virginia Commission can perceive no advantage to result from further negotiations. The Virginia Commission cannot recede from their views as heretofore announced to the West Virginia Commission in respect to the matters to be embraced in the conference between the two Commissions.

With this understanding it consents to the adjournment of the conference to Tuesday, August 12, 1913, at 10 o'clock a. m. at the New Willard Hotel, Washington."

"The West Virginia Commission made the following reply to the above communication:

"Washington, D. C., July 26, 1913.

"The West Virginia Commission acknowledges receipt of the communication from the Virginia Commission concurring in the suggested adjournment upon certain terms and conditions, which terms and conditions the West Virginia Commission declines to be bound by. We, however, agree to tehe time and place of adjournment suggested by you and insist that this adjournment shall be and is without terms or conditions and without prejudice to the rights of either party.

The Chairman was directed to deliver the foregoing communication to the Chairman of the Virginia Commission, and subsequently reported to this Commission that he had performed the duty assigned to him by delivering the same to the Hon. John W. Moon, Chairman of the Virginia Commission, the Virginia Commission not being in session, they having separated before this time, as Chairman Mason was informed.

No reply being received, after waiting a reasonable time, on motion the Commission adjourned to meet at the New Willard Hotel, in the city of Washington, on the 12th day of August, 1913, at 10 o'clock a. m.

JOHN W. MASON, *Chairman.*

JOHN T. HARRIS, *Secretary.*

PROPOSITION SUBMITTED TO VIRGINIA.

Washington, D. C., March 4, 1914.

The West Virginia Debt Commission met at 11 o'clock A. M., in the "Gridiron Room" at the New Willard Hotel, pursuant to the last Charleston adjournment, and there were present:

Messrs. Mason, (Chairman), Boreman, Hamilton, Zilliken, Ord, Lenhart, Ice, Young, and Miller. Also, Attorney General A. A. Lilly, associate counsel, Hogg, Holt and Archer, and the secretary.

Absent: Messrs. Chilton and Wells.

At the same time the members of the Debt Commission of Virginia were in session in Parlor 128, at the New Willard Hotel.

And, thereupon, the following correspondence was had between the two Commissions:

PROPOSITION.

Commonwealth of Virginia,
vs.
The State of West Virginia.

Washington, D. C., March 4, 1914.

Hon. John B. Moon,
Chairman Virginia Debt Commission,
Washington, D. C.

Dear Sir:—

The West Virginia Commission has adopted preambles and resolutions embodying a proposition to the Virginia Commission for the settlement of West Virginia's equitable proportion of the Virginia debt, and has requested me to transmit the same to you ,and, through you, to the Virginia Commission, in the hope that it may receive early attention and a favorable reply.

Your attention is called to the fact that a list and history of the credits referred to in the resoluions are attached to the copy thereof now presented you.

With great respect, I remain,.

Very truly yours,

(Signed) JOHN W. MASON,
Chairman West Virginia Commission.

PREAMBLES AND RESOLUTIONS OF THE WEST VIRGINIA DEBT COMMISSION, ADOPTED AT A MEETING THEREOF HELD IN CHARLESTON, WEST VIRGINIA, ON THE 27th DAY OF FEBRUARY, 1914.

WHEREAS, The Supreme Court of the United States, by its opinion rendered on the sixth day of March, 1911, in the case of *The Commonwealth of Virginia* vs. *State of West Virginia* ascertain the gross indebtedness of the Common-

wealth of Virginia, to the payment of which the State of West Virginia should contribute an equitable proportion, to be $30,563,861.56 (220 U. S. page 1); and;

WHEREAS, in consequence of the relative resources of the two debtor populations, Virginia's portion of said debt was fixed at .7651 and West Virginia's at .235; and,

WHEREAS, as the records of the case then stood, there appeared to be *no stocks of value on hand* that could be treated as assets, and a proper proportion thereof applied to the reduction of the claim against West Virginia, its equitable proportion of the principal of said debt s(ubject to the correction of clerical errors) was fixed at $7,182,507.46; and,

WHEREAS, since the announcement of the opinion aforesaid, and since the joint conference of the Virginia and West Virginia Debt Commissions, held at Washington on the 25th day of July, 1913, this Commission has discovered that, prior to the establishment of the State of West Virginia out of the territory of the Commonwealth of Virginia on the 20th day of June, 1863, the Commonwealth of Virginia, purchased and became the owner of certain stocks, bonds, securities and other property, which were paid for out of the common funds of the two states,—in fact were purchased mainly, if not altogether, out of the proceeds of the bonds that constitute the debt of the old Commonwealth of Virginia in question here—and was the owner and holder of said stocks, bonds, securities and other property on the 1st day of January, 1861, and after the 20th day of June, 1863, sold and disposed of many of said stocks, bonds, and securities, and realized in cash therefor, and appropriated to its own exclusive use many millions of dollars and gave away without the consent or knowledge of the State of West Virginia other portions of said assets and property which were of great value not only on the first day of January, 1861, but at the time they were so given away, and has retained and still retains other portions of said assets and property which not only have a present value, but were of great value on the first day of January, 1861, that is to say, of the aggregate value as of the first day of January, 1861, of $20,810,357.98; and,

WHEREAS, according to the apportionment of the debt made by the Supreme Court between the two states, West Virginia is entitled in equity, as a credit upon the part of said debt allotted to it, .235 of the aggregate value as of January 1, 1861, of said stocks, bonds, securities and other property whether the same had been sold, retained or given away by the State of Virginia; that is to say, to the sum of $4,855,312.18, including cash on hand as of that date, and

the additional sum of $225,078.06 collected by the Commonwealth of Virginia from West Virginia counties after June 20, 1863, which, if deducted from its allotment of $7,182,507.46, would leave a balance of $2,327,195.28 principal, to be paid by the State of West Virginia; and,

WHEREAS, in consequence of the great lapse of time and the long delay on the part of Virginia to have its rights and the liability of West Virginia in the premises judicially determined; also in consequence of the fact that Virginia has received from time to time, in addition to the amounts heretofore set out, dividends upon the bonds, stocks and securities hereinbefore described to an amount equal to $5,782,240.09, and in consequence of the further fact that a part of said bonds has been mislaid, lost or destroyed and will never be presented for payment; and many or the remaining bonds were purchased by the present holders thereof at nominal prices, and in consequence of the fact that Virginia at the time of the separation of the two states retained, without an accounting unto the state of West Virginia for any part thereof, all of the public buildings including the capitol at Richmond, the penitentiary in that city, the State asylum at Staunton, the university at Charlottesville, and various other public buildings and institutions that had been constructed and equipped out of the joint funds of the two states, as well as much personal property consisting of libraries, arms and munitions of war, etc., and in consequence of the further fact that Virginia has largely scaled her debts without West Virginia receiving her full proportionate benefit of such scaling, to say nothing of the legal reason that might be presented to such a charge, no interest should be charged upon West Virginia's allotted proportion of the principal of said debt; now, therefore, be it

Resolved, as follows: 1. That this Commission proposes, and it does here now propose to the Virginia Commission that .235 o f$20,810,367.98, or the sum of $4,890,434.12 of the value of the stocks, bonds, securities and other properties hereinbefore recited, and described in the list hereto appended, be allowed by the Commonwealth of Virginia as a credit upon, and that the same be deducted from the sum of $7,182,507.46 ascertained as aforesaid, to be the equitable proportion of the principal of the debt of Virginia assumed by the State of West Virginia, and that the balance so ascertained, that is to say, the sum of $2,327,195.28 be accepted by the Comonwealth of Virginia in full settlement, both principal and interest of West Virginia's proportion of the Virginia debt.

II. That in the event the Virginia Commonwealth con-

sent to the foregoing proposition, then this Commission will at once make a report of the fact to the Governor of the State of West Virginia, accompanied with the recommendation that the State of West Virginia pay unto the Commonwealth of Virginia the sum of $2,327,195.28, in full settlement of the present controversy; and the Governor of West Virginia will at once, pursuant to the terms of the joint resolution of the Houses of the West Virginia Legislature establishing this commission, adopted on the 21st day of February, 1913, convene the legislature of the State of West Virginia, for the purpose of adopting or rejecting the foregoing proposition of this Commission, and for the purpose, in the event of its adoption, of providing the funds without delay for the payment of the amounts so agreed upon.

III. That this proposition is made by way of settlement of the present suit and shall in no way affect the right, or influence the action of the State of West Virginia, in the event of its rejection and future ensuing litigation. Be it further

Resolved. IV. That the Chairman of this Commission at once transmit to the Virginia Commission a copy of this resolution, with the appendix thereto, with the request that the same be at once considered and acted upon at an early day.

(Signed) JOHN W. MASON,
WILLIAM D. ORD,
J. A. LENHART,
R. J. A. BOREMAN,
HENRY ZILLIKEN,
JOS. S. MILLER,
U. G. YOUNG,
JNO. M. HAMILTON,
W. T. ICE, JR.,
West Virginia Debt Commission.

Analysis of Report of Accountants, Classifying the Credits to Which the West Viirginia Debt Commission Believes the State of West Virginia is Entitled, Dividing the Same into Classes Marked from A to G Inclusive.

Class A.

Cash.

The credit assigned to Class A consists of cash on hand in the treasury of the State of Virginia on the first day of January, 1861, amounting to $1,104,927.06, which sum was allotted to the folowing funds in the following amounts; that is to say:

In the Commonwealth Fund	$ 252,842.67
In the Literary Fund	26,876.08
In the Board of Public Works Fund	5,958.28
In the Sinking Fund	819,250.02
Total.....	$1,104,927.06

Class B.

Stocks purchased by the State of Virginia with the common funds of the two states prior to January 1, 1861, unsold, stil onwned and unaccounted for by the States of Virginia.

The assets assigned to this class consists of 2,752 shares of stock in the Richmond, Fredericksburg and Potomac Railroad Company, of the par value of $100 each. This stock was bought by the State of Virginia, under Acts of January 23, 1835, page 87 of Accountant's Report, and March 23, 1836, page 95 of said report, for the cash price of $275,200.00, and has never been disposed of by her, but is still owned by the State of Virginia, and had a valuation as of the first day of January, 1861, of at least $275,200.00.

Total, $275,200.00.

Class C.

Proceeds of sales of securities purchased with common funds of the two states by the State of Virginia prior to the first day of January, 1861, and sold by the State of Virginia without the knowledge or consent of West Virginia, and without accounting therefor:

1. Orange & Alexandria Railroad Co. stock and loan	$1,156,210.98
2. Richmond & Danville Railroad Co. stock and loan	1,653,423.04
3. Richmond & Petersburg Railroad Co. stock	578,404.13
4. Virginia Central Railroad Co. stock and loan	321,458.1[illegible]
5. Blue Ridge Railroad, built by State of Virginia	705,280.
6. Alexandria, Loudoun & Hampshire Railroad Co. stock	68,044.51
7. Winchester & Potomac Railroad Co. loan reduced by annuity	83,333.33
8. Virginia & Tennessee Railroad Co loan.....	992,030.32
9. Southside Railroad Co. loan	91,897.66
10. Norfolk & Petersburg Railroad Co. loan.....	165,024.49
11. Roanoke Navigation Co. stock	3,832.00

12. Alexandria Canal Co. stock	816.00
13. Upper Appomattox Co. stock	16,144.26
14. Dismal Swamp Canal Co. stock ...	24,839.98
15. Loan to Washington College	2,000.00
16. Richmond Academy Bonds	400.00
17. Caim against United States Gov...	298,369.74
18. Claim against Selden-Withers Co...	152,023.04
Total.....	$6,313,532.47

Class B

Interest on loans and dividends on stock accrued prior to January 1, 1861, upon common investments, and collected by the State of Virginia after January 1, 1861, and still unaccounted for:

1. Orange & Alexandria Railroad Co.	$ 18,144.29
2. Richmond & Danville Railroad Co..	8,516.80
3. Richmond & Petersburg Railroad Co.	43,048.00
4. Virginia Central Railroad Co. ...	182,436.36
5. Winchester & Potomac Railroad Co.	833.33
6. Richmond, Fredericksburg & Potomac Railroad Co.	157,662.07
7. Virginia & Tennessee Railroad Co.	211,891.82
8. Southside Railroad Co.	204,602.34
9. Norfolk & Petersburg Railroad Co.	45,900.00
10. James River & Kanawha Company	250.00
11. Loan to Washington College	60.00
12. Richmond Academy bond	12.00
13. Claim against United States Gov..	832,451.57
14. The Farmers Bank of Virginia...	33,691.00
15. Bank of Virginia	33,726.70
16. Bank of the Valley.....	16,936.50
17. Exchange Bank	30,642.50
18. Northwestern Bank	13,104.00
19. Fairmont Bank	1,500.00
Total.....	$1,835,409.28

Class E.

Bank stock purchased by Virginia with joint funds prior to January 1, 1861, and in her possession on that date:

1. Farmers Bank of Virginia	$962,600.00
2. Bank of Virginia	963,620.00
3. Bank of the Valley	483,900.00
4. Exchange Bank	875,500.00
5. Northwestern Bank	374,400.00

6. Fairmont Bank	50,000.00
Total.....	$3,710,020.00

Class F.

Railroad stock purchased by the State of Virginia out of the common funds of the two states in various railroads, prior to the first day of January, 1861, and sold by her subsequent to the 20th day of June, 1863, without the knowledge or consent of West Virginia, and for which she has never accounted:

Prior to January 1, 1861, the State of Virginia, with common funds, bought stocks of and made loans to each of the folowing railroad companies:

Virginia & Tennessee Railroad Co.,
Southside Railroad Co.,
Virginia & Kentucky Railroad Co.,
Norfolk & Petersburg Railroad Co.,

and from time to time sold portions of said stock until she had left on hand stock therein and residue of loans that cost her:

Virginia & Tennessee Railroad Co., Stock.....	$2,300,000.00
Southside Railroad Co., Stock	803,500.00
Loan.....	708,102.34
Virginia & Keutucky Railroad Co. stock.....	82,000.61
Norfolk & Petersburg Railroad Co., stock.....	1,139,970.00
loan.....	134,975.51
Total.....	$5,168,548.46

which residuary stocks she subsequently, that is to say, on the 20th day of December, 1870, sold to the Atlantic, Mississiipi & Ohio Railroad Co., for the sum of $4,000,000.00, the purchase price to be paid in installments, and took a second mortgage upon the property of the said railroad company to secure the payment of the same. This sale was made and this security taken without the knowledge and consent of the State of West Virginia; and finally after the lapse of many years, the first mortgage upon said railroad company was foreclosed and the property covered thereby sold, but did not bring enough to satisfy the second mortgage and pay the $4,000,000.00 purchase price agreed to be paid to Virginia for these stocks. After this foreclosure sale, that is to say, on the 1st day of March, 1882, the reorganization of the Atlantic, Mississippi & Ohio Railroad Company paid

unto the State of Virginia the sum of $500,000.00 for her second mortgage rights, whatever they may have been. Virginia has never accounted to West Virginia, either for a proportionate part of the $4,000,000.00 original purchase price, or the $500,000.00 subsequently received.

It will be seen that the value placed upon these stocks, both by the State of Virginia and by the railway company purchasing them was $4,000,000.00; and this can be taken as their reasonable value as of January 1, 1861.

Total, $4,000,000.00.

Class G.

Securities purchased with joint funds by the State of Virginia prior to January 1, 1861, and subsequently given away without the knowledge or consent of West Virginia, together with certain other railroad and canal securities appropriated by her in one way and another, but not hereinbefore recapitulated:

1. *James River and Kanawha Co.*	
104,000 shares	$10,400,000.00
2. *Residue of Securities:*	
Manassas Gap Railroad	2,105,000.00
Roanoke Valley Railroad	307,402.00
Fredericksburg & Gordonsville Railroad	132,399.00
Richmond and York River Railroad	490,999.52
Rappahannock Company	179,500.00
Rivanna River Navigation Co.	227,133.00
Smiths River Navigation Co.	4,083.12
Slate River Company	21,000.00
Kempsville Canal Company	13,650.00
Hazel River Navigation Company	63,079.58
Goose Creek & Little River Co.	58,255.35
Dragon Swamp Navigation Co.	1,464.00
Chesapeake & Ohio Canal Company	281,111.11
Total	$14,285,076.68

The foregoing $10,400.00 attributed to the James River and Kanawha Company was the par value of its stock, and, although the State of Virginia by an act of its General Assembly passed on the 23rd day of March, 1860, something less than ten months before January 1st, 1861, placed a

value of par thereon and made purchase thereof at such valuation, yet so much time has elapsed and the evidence of the actual value of this stock of that date has become so obscure, that it has been thought best, out of a spirit of compromise, to place a value thereon of twenty-five per cent. of its par value, or the sum of $2,600,000.00.

The other securities embraced in this class (amounting to $3,885,076.68), have been treated in the same way for the same reason and their value placed herein at twenty-five per cent of their par value, or the sum of $971,269.17.

Total, $3,571,269.17.

In addition to the foregoing the State of Virginia, after the division of the old Commonwealth into two states, June 20, 1863, collected large amounts of money from several counties then and now located in the State of West Virginia, aggregating the sum of $225,078.06.

Recapitulation.

Class A		$1,104,927.06
Class B		275,200.00
Class C		6,313,532.47
Class D		1,835,409.28
Class E		3,710,020.00
Class F		4,000,000.00
Class G		3,571,269.17
Total		$20,810,357.98
West Virginia's equity, 235		$4,890,434.12
Less Northwestern Bank Stock	$210,200.00	
Fairmont Bank Stock	50,000.00	260,200.00
Balance		$4,630,234.12
Collected from West Virginia Counties.		225,078.06
Total net equity		$4,855,312.18

Result.

West Virginia's share of debt	$7,182,507.46
Less net equities, as above	4,855,312.18
	$2,327,195.28

NOTE.

Subsepuent to the first day of January, 1861, the Commonwealth of Virginia received as dividends and interest upon the securities and loans hereinbefore listed the sum of $5,782,240.09, as follows:

Interest and Dividends Received by Virginia in Cash After January 1, 1861, from Assets Held January 1, 1861, and Exclusive of any Dividends or Interest Up to January 1, 1861.

	Interest.		Dividends.	
	Cash.	Va. Bonds.	Cash.	Total
Orange & Alexandria Railroad	$ 113,459.00	$ 81,311.34	$ 66,516.09	$ 261,286.43
Richmond & Danville Roalroad	380,497.65	281,322.35	249,605.67	911,425.68
Virginia Central Railroad	86,385.03	72,174.40	387,404.65	545,964.08
Richmond & York River Railroad	.....	.....	54,009.94	54,009.94
Richmond, Fredericksburg & Potomac Railroad	24,012.71	.....	1,282,198,74	1,306,211.45
Virginia & Tennessee Railroad	137,762.86	.....	138,000.00	275,762.86
Norfolk & Petersburg Railroad	69,561.41	.....	82,800.00	152,361.41
Roanoke Navigation Company	.....	.....	2,800.00	2,800.00
Upper Appomatox Company	.....	.....	6,150.00	6,150.00
Richmond & Petersburg Railroad	1,703.81	.....	227,504.00	229,207.81
Winchester & Potomac Railroad	4,166.67	35,184.79	.....	39,351.46
Southside Railroad	192,000.00	.....	.....	192,000.00
Washington College	4,140.00	.....	.....	4,140.00
Richmond Academy	816.00	.....	.....	816.00
United States Government	.....	575,837.52	.....	575,837.52
Farmers Bank of Virginia	.....	.....	373,007.50	373,007.50
Bank of Virginia	.....	.....	370,993.70	370,993.70
Bank of the Valley	.....	.....	94,360.50	94,360.50
Exchange Bank	.....	.....	343,633.75	343,633.75
Northwestern Bank	.....	.....	42,920.00	42,920.00
Total	$1,014,505.15	$1,045,830.40	$3,721,904.54	$5,782,240.09

REPLY OF VIRGINIA.

Washington, D. C., March 4, 1914.

Virginia

vs.

West Virginia.

HON. JOHN W. MASON,

Chairman, West Virginia Commission,

Washington, D. C.

DEAR SIRS: I beg to hand you, herewith, the resolutions adopted by the Virginia Debt Commission in response to the proposition submitted to them this day by the West Virginia Commission.

With great respect, I am,

Very truly yours,

JOHN B. MOON,

Chairman, Virginia Debt Commission.

Virginia

vs.

West Virginia.

Resolutions of the Virginia Debt Commission, adopted at

a meeting held in Washington, D. C., at the New Willard Hotel, Wednesday, March 4, 1914.

The Virginia Debt Commission having received the proposition submitted this day by the West Virginia Commission, which contains statements and conclusions to which the commission cannot assent and concerning which it is unwilling to engage in any discussion, adopted the following resolutions:

WHEREAS, The Supreme Court of the United States, in its opinion delivered at the October term, 1913 (November 10, 1913), in the suit of *Virginia* vs. *West Virginia,* on motion of Virginia to proceed to a final hearing, said:

> "In March, 1911 *(Virginia* vs. *West Virginia,* 220 U. S. 1) our decision was given 'with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed.' In view, however, of the nature of the controversy, of the consideration due the respective states, and the hope that by agreement between them further judicial action might be unnecessary, we postponed proceeding to a final decree and left open the question of what, if any, interest was due and the rate thereof, as well as the right to suggest any mere clerical error which it was deemed might have been committed in fixing the sum found to be due upon the basis of liability which was settled," and

WHEREAS, The matters left open and referred by the Court to the respective States for consideration and adjustment, "in the hope that by agreement between them further judicial action might be unnecessary" were specifically stated to be (1) "what, if any, interest was due and the rate thereof," and (2) "the right to suggest any clerical error which it was deemed might have been committed in fixing the sum found to be due upon the basis of liability which was settled," and

WHEREAS, The proposition now submitted by the West Virginia Commission does not embrace either of said matters left open by the Court and referred to the parties litigant for adjustment between them; it is therefore

Resolved, That the Virginia Debt Commission is unwilling to, and respectfully declines to consider the said proposition; and it is further

Resolved, That the Virginia Debt Commission hereby expresses its regret that the West Virginia Commission has

not seen its way to respond to the opinion of the Court and submit a proposition to adjust the question of interest.

(Signed) JOHN B. MOON, *Chairman.*
(Signed): J. B. BUTTON, *Secretary.*
Approved:
(Signed) JNO. GARLAND POLLARD,
Attorney General of Virginia.

REJOINDER OF WEST VIRGINIA.

Washington, D. C., March 4, 1914.

Hon. JOHN B. MOON,
Chairman, Virginia Debt Commission,
Washington, D.C.

DEAR SIRS: In response to your communication of this date declining the proposition of the West Virginia Commission made this day looking to a settlement of the Virginia debt, we regret to be under the necessity of calling your attention to the fact that, although you deem the question of interest still open, yet you have offered nothing in reply to the reasons advanced in our proposition why no interest should be charged, and thus close the discussion upon the only point considered by you still to be open. And, so far as the credits advanced by us are concerned, you express an unwillingness even to discuss them, thus leaving us, in the absence of errors therein pointed out by you, with the conviction that they are equitable, and under the necessity of adhering to the terms of a proposition made in an effort to do justice to all.

We deem it unnecessary to indulge in any interpretation or construction of the opinion of the Supreme Court at this time further than to say that, in our opinion, the Curt ascertained West Virginia's proportion of the principal of Virginia's debt to be $7,182,507.46, only because, as the record then stood, there appeared to be *"no stocks of value on hand,"* to be applied to the reduction of the same. These stocks are now discovered and disclosed, and a portion of them, at least, were set forth in the proposition you have declined.

You have, therefore, closed the door to further negotiations, and it is with regret that we cease further effort along that line.

Respectfully submitted,
JOHN W. MASON,
WILLIAM D. ORD,
J. A. LENHART,
R. J. A. BOREMAN,
HENRY ZILLIKEN,

JOS. S. MILLER,
U. G. YOUNG,
JNO M. HAMILTON,
W. T. ICE, JR.,
West Virginia Debt Commission.

There was no quetsion as to the existence of these assets on the first day of January, 1861, or of Virginia having taken possession and disposed of them, nor was it pretended that Virginia had ever accounted to West Virginia for any of them, and whatever contention there might have been as to the value of some of these stocks, it could not be said that they were of no value, and all must admit that West Virginia was entitled to credit for the value of these assets and yet the proposition was summarily declined, and emphasis given it by refusing to even consider the proposition, for no other reason, than according to their view the principal sum to be paid by West Virginia has been irrevocably fixed. This immense sum of $4,890,434.12, asserted by West Virginia as the value of these assets, omitted at the time this decree was entered, did not impress itself upon the Virginia Commission as worthy of any consideration, no matter what merit there might be in it. They could not avoid knowing that these assets had some value, and that West Virginia was entiled to some credit, not allowed at the time the decree was enteerd. The Supreme Court has said that "the liability of West Virginia is a deep seated equity." Can less be said of her interest in these assets?

These Commissioners seem to have overlooked the maxim that "he that seeks equity must do equity." They deem it proper to invoke a technical rule of law applicable to private litigants, who have had a day in court, disregarding that the court had said that this "case is to be considered in the untechnical spirit proper for dealing with a quasi-international controversy," and that "this is no ordinary commercial suit, but * * * a quasi-international difference referred to this court in reliance upon the honor and constituional ooligations of the States concerned rather than upon ordinary remedies." The case was then pending in the Supreme Court and had not passed beyond the reach of the court to correct any injustice which had been done West Virginia by omission. And certainly it was not too late for Virginia to have corrected any wrong done West Virginia by the omission. The Virginia Commission having refused to consider their propositions without regard to their merit, we were compelled to abandon all further efforts to negotiate a settlement.

PUBLICITY OF PROCEEDINGS.

Under the joint resolution creating this Commission, we were "directed to ascertain and report upon and give the utmost publicity to all the facts in relation to the pending suit instituted against the State of West Virginia by the Commonwealth of Virginia."

On the 22nd of September, following the dissolution of the joint conference at Washington on July 25th, 1913, the Attorney General of Virginia served notice on the Attorney General of West Virigia that on the 13th day of October he would move the Supreme Court "to proceed with a further hearing and determination of said case, and to settle and determine all questions left open and undetermined by its decision rendered on the 6th day of March, 1911." The case was submitted on October 13th, as heerinbefore stated, after which the Attorney General of West Virginia, assisted by the Secretary of this Commission, published a complete record of the case form the time of the adoption of the joint resolution creating this Commission down to and incluuding the opinion of the Supreme Court delivered by Mr. Justice White on November 10th, 1913, on the motion to proceed to a final hearing. This publication was entitled "Proceedings in the Virginia Debt Case," and covered two hundred and fifty pages. In it are embodied the record of the joint conference of the two Commissions on the 25th day of July, 1913, at Washington, and all the proceedings of this Commission up to the date the book was issued. Fifteen hundred copies of this publication were printed, and they were mailed to all judges, to all county officers, to all newspapers, to members of the legal profession and to many others throughout the State.

Immediately after the close of the conference with the Virginia Commission at Washington, March 4th, 1914, the Chairman and Secretary of this Commission were appointed a Committee on Publicity, and shortly afterwards caused to be printed twenty thousand copies of a pamphlet containing "A Statement of the Negotiations between the Virginia and West Virginia Debt Commissions, at the New Willard Hotel, Washington, D. C., March 4th, 1914, Embracing the Proposition Submited by West Virginia, the Reply of Virginia Thereto, and the Rejoinder of West Virginia."

Liberal supplies of this pamphlet (accompanied by a letter requesting the widest distribution of the same), were furnished or mailed to all members of the Commission, heads of departments, members of the legislature, judges, clerks of the courts, sheriffs, prosecuting attorneys and superintendents of schools; to the libra-

ries of all State institutions and denominational colleges; to the principals of all high schols; to all boards of trade and chambers of commerce; to he reading rooms of all Young Men's Christian Associations, and other fraternal societies and clubs; to all banks; to all mine superintendents; and to the newspapers not only of West Virginia, but of Virginia as well. A great many copies of the pamphlet were also mailed, upon request, and ot individual lists.

During the hearings before the Master at Richmond in September and October, 1914, the Secretary of this Commission—who had been asigned to superintend the printing of the record there—prepared each day a synopsis of West Virginia's evidence-in-chief, and furnished it to the daily newspapers throughout the State.

IN CONCLUSION.

The Commission extends to Your Excellency its grateful thanks and appreciation of your unflagging interest and untiring efforts in aiding it to uncover and bring to light, West Virginia's rights, that she might be fully protected in the adjustment of this most vexatious litigation. Honorable mention, the Commission feels, is due to E. A. Dover, the very competent accountant of the Tax Commissioner's office, who so successfully and expeditiously discovered and disclosed the equities of West Virginia in the various assets and investments, stocks, bonds, etc., held by the Commonwealth of Virginia on January 1st, 1861.

The Commission likewise extends its thanks to Attorney-General A. A. Lilly and Tax Commissioner Fred O. Blue, and to the Board of Public Works for the valuable assistance rendered and hearty cooperation in the work of this Commission.

The Commission also extends its thanks to all of the Counsel for the State for their aid to it, and especially to Hon. John H. Holt, of Huntington, for his valuable advice and assistance in preparing our propositions submitted to the Virginia Commission and in making up our records.

All of which is respectfully submitted.

JOHN W. MASON, *Chairman.*
R. J. A. BOREMAN.
J. M. HAMILTON.
W. E. WELLS.
HENRY ZILLIKEN,
W. D. ORD.
JOSEPH E. CHILTON,

J. A. LENHART.
W. T. ICE.
U. G. YOUNG.
JOSEPH S. MILLER,
Members of the Commission.

JOHN T. HARRIS, *Secretary.*

APPENDIX C.

THE VIRGINIA DEBT.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

NO. 2, ORIGINAL.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

I, CHARLES E. LITTLEFIELD, Special Master appointed under an order made in the foregoing case, respectfully submit the following report:

FIRST. Attention should be called at the outset, before any statement of the facts and conclusions predicated thereupon in this present reference, to what might otherwise result in some misunderstandig or confusion. It is referred to by Mr. Chief Justice White in the last opinion in this case as follows: "We think it is obvious that most of the items emraced in the answer were contained in the Master's report.' An examination of the seven findings in answer to the seven requests originally submitted to the Master for his finding will disclose the fact that the issue of these assets, or "investments", as they are called in the opinion of the Court, and their value as elements of set-off in favor of West Virginia was not submitted in any of the proposed findings. These are the "inquiries" that the Master was by the Court "directed to make". Whether the statement that the Master "is to be at liberty to state any special cir-

cumstances he considers of importance," was broad enough to justify him in entering upon the extensive investigation involved in the present hearing, and ascertaining the existence and value of the investments claimed, or whether it fairly opened that issue up to the defendant in the former hearing, is perhaps now an academic question; as, if open then to the defendant it is certain, and it was so agreed at the argument of this case, by the counsel on both sides, that the defendant did not engage in that investigation. Such investigation is therefore now prosecuted for the first time. So far as the various items were referred to they were referred to for an entirely different purpose in the main; and so far as there are any exceptions to this suggestion these exceptions will be noted in the proper connection.

Second. The rights of the parties litigant depend entirely upon the proper construction to be placed upon "The contract established, * * * the plain contract of West Virginia," as evidenced by the provisions of Article VIII., Section 8 of the Constitution of West Virginia, which reads as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand, eight hundred and six-ty-one, shall be assumed by this state; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principle within thirty-four years."

This is the whole section, and unless there appears to be some controlling reason to the contrary it should all be read together.

It is contended that the contract ends with the word "state." Before the Court it was argued that if Section 8 was the contract, "the determination of a just proportion was left by the Constitution to the Legislature of West Virginia, and that irrespectively of the words of the instrument, it was only by legislation that a just proportion could be fixed." As to this the Court said, "These arguments do not impress us;" and held that the provision referred to was "not intended to undo the contract in the preceding words by making the representative, the mouthpiece of one of the parties, the sole tribunal for its enforcement," and West Virginia was not therefore made a judge in her own cause. The fact that the Court has held that the provision requiring the Legislature of West Virginia to "ascertain the same as may be practicable" did not make West Virginia a judge in her own cause, does not eliminate that clause from the contract evi-

dence by the whole of Section 8, and the clause still remains a part of the constitutional contract. It held that this cause "was simply an exhortation and command from supreme to subordinate authority to perform the promise as soon as might be, and an indication of the way." This obligation still remains upon West Virginia and is as binding now as when first enacted. I do not understand that the Court held that this cause and the language following it constituted "no part of the contract or promise." I understand them to hold that it was a part of the contract, and as such binding upon West Virginia, although they declined to adopt the construction contended for. They held it be an "exortation and command," and an "exortation and command" it still remains. The fact that the Court referred to the portion of the section preceding the clause relating to ascertaining, as follows, was not intended to undo the contract in the preceding words," does not justify the inference that "the preceding words" embraced all of the provisions of the contract included in Section 8. They did embrace the fundamental idea, "an equitable proportion of the public debt," which fully covered the point then being made by the Court. The Court was not giving a construction of the whole section, and certainly did not say, and in my judgment did not intend to be understood, that the latter half of this section, a legitimate and proper corrollary of the first, was no part of the contract. The whole section, with this "exhortation and command" embedded therein, is to be construed as a whole on the basis of what "is just and equitable" and it "is a judicial question similar to many that arise in private litigation, and in no wise beyond the competence of a tribunal to decide." A correct construction of this contract requires to be borne in mind the circumstances under which it was made and the purpose or end sought to be accomplished.

The Court has decided that the basis upon which the rights of the two states are to be determined is that of the "estimated valuation of the real and personal property of the two states on the date of separation, June 20, 1863," and this I shall refer to in the discussion of the meaning of the contract, as a matter of convenience, as their respective resources. The Court held that the comparative resources were 76½ per cent. for Virginia and 23½ per cent. for West Virginia. At the time of separation, ascertained as of January 1, 1861, or prior to the first day of January, 1961," the state of Virginia was indebted in the sum of $33,897, 073.82, made up as follows:

Accrued interest, Jan. 1, 1861, ...	$ 977,209.89
Bonds, drawing interest, redeemable at the pleasure of the General Assembly, ...	9,219,271.03

Bonds, drawing interest, redeemable at various definite periods 23,699,592.90

(pp. 386-392-E.)

On that date Virginia had on hand $819,250.03 in her sinking fund, and stocks in banks, railroads, and improvement companies, with some loans to the same companies. The sinking fund was required by the Constitution of Virginia to "be applied to the payment of the interest of the state debt, and the principal of such part as may be redeemable." (p. 651.) These stocks were all paid for by the proceeds of the debt in question. "The stock of any joint company * * * * together with the dividends," etc., were by the act of the Assembly of Virginia, of April 9, 1838, "appropriated and pledged" for the payment of the interest, and the final redemption of the principal, of any sum borrowed for the purpose of purchasing the stocks referred to. (pp. 661-664.) This Act was contained in the Code of 1849, and was the law of Virginia up to January 1, 1861. The Constitution of Virginia of 1851, article X., Section 30, provided:

> "The General Assembly may, at any time, direct a sale of the stocks, held by the Commonwealth in internal improvement and other companies; but the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the Sinking Fund, and be applied in like manner."

And in 1853 the General Assembly provided as follows:

> "If at any time the Legislature shall direct a sale of the stocks held by the Commonwealth in internal improvement and other companies, the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and shall be applied in like manner. The Sinking Fund and its accruing interest, shall not be otherwise appropriated than as herein directed, except in time of war, insurrection and invasion." (Chap. 17, Sec. 3.) (652).

This was the condition of the constitutional and statutory provisions of Virginia with reference to these stocks and the debt January 1, 1861. There were other assets such as loans, etc. The existence of all these assets or investments is conceded, but the values claimed are denied. So that we have, as the circumstances under which this contract was made, a large interest bearing debt, and investment purchased with its proceeds, together with certain cash, all of which were

specifically dedicated to the payment of the debt and interest. These facts were unquestionably all well known, to all the parties interested and participated, in the separation of West Virginia from Virginia. With these facts in view they provided that "an equitable proportion of the public debt of the Commonwealth of Virginia, prior to the 1st day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this state," etc. Clearly the rights of the parties are to be determined upon equitable principles. What was the purpose of this contract? It was to do equal and exact justice between the parties. They were to be left, after the separation, precisely as they were before, as to their respective rights, obligations and dutis, in hearing in and resting upon their respective resources. It was not intended to deprive either the 76½ per cent of the resources or the 23½ per cent. of the same resources of any rights that they might have had before the separation, nor was it intended to add to, or take from, the liabilities or obligations of either. It was intended to leave them with reference to all of these factors precisely as they were before the separation took place. If before the separation 23½ per cent. of the resources, in order to make an adjustment between it and 76½ per cent. of the resource, would be entitled to have assets or investments, purchased by the proceeds of the debt and specifically dedicated to its payment, appropriated toward its payment, before the 23½ per cent. of resources could be required to pay its *pro rata* share, then those resources, after the separation, would be still entitled to have such appropriation made before it could be required to contribute to the payment of the real debt. Upon the other hand, if the 23½ per cent. was, before the separation, liable to pay that proportion of the whole debt with the interest accruing thereon, that liability remained upon the same resources after the separation, with dimunition or change. The concluding clause of the contract, given its natural meaning under the conditions in which it was used, clearly reinforces the idea that the purpose was to maintain so far as possible the *status quo,* as to the debt and the interest which was clearly by contract a part thereof. Virginia had a Sinking Fund as well as assets or investments, both of which were specifically dedicated to the payment of this debt, with which to pay the interest and principal of the debt. Setting off 23½ percent. of her resoruces by the separation would impair her ability to pay the principal and the "accruing interest" to that extent. The assuming by West Virginia of 23½ per cent. of the debt, with the interest which was a part thereof, would take care of the debt and of the inseparable interest, so far as the element of resources was concerned. But in-

asmuch as Virginia had a Sinking Fund (in addition to her 76½ per cent of the resources as well as the investments specifically dedicated to the payment of the debt), an important factor of security for the bondholders, as well as for Virginia herself, if the Constitution had stopped there the aquilibrium between the two parties or two resources jointly liable for this loan, principal and interest, as to security would have been destroyed. Therefore the following provision was added:

> And the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay 'accruing interest' and redeem the principal within thirty-four years."

With this provision thus construed the bondheolders and Virginia would have practically the same security and guarantee as to the 23½ per cent. of the resources after the separation, that they were in possession of, before the separation. Some of the bonds ran nearly thirty-four years, others for a shorter time, and some were redeemable at the pleasure of Virginia. That is a detail, however, that could not well be provided for in a constitutional provision, and was therefore left for the parties to settle, and in default of an agreement, for adjustment by the Court, a detail which could not practically be provided for in a constitutional provision.

I believe the provision for the sinking fund was intended to make, for the security of the bondholders and Virginia, the same wise provision that applied thereto before the separation, and that the "accruing interest" for which West Virginia was bound to provide, and which she was required to assume by the contract, was the "accruing interest" on the existing debt, evidenced by the terms of its bonds, making the amount not only definite and certain, but an inseparable part of the debt itself. If this construction is correct, West Virginia would be liable for 23½ per cent. of the "accruing interest" of such portion of the debt as she ultimately turns out to be liable to pay. Upon the contention of West Virginia there is no liability for interest until the decree of the Court hereafter to be entered shall be made, finally determining the principal sum due. I understand it to be conceded by her that upon her construction the Constitution placed her in a position where she can compel Virginia to accept her bonds, secured by the sinking fund described, in extinguishment of her liability to Virginia for the sum that may be ultimately found due.

One difficulty with this theory is that, while the time that the bonds

may run may be said to be indicated, the rate of interest is not specified. If that was the intention it seems to me it was absolutely necessary that that factor should not have been omitted. In the absence of knowing the rate of interest, the amount of the sinking fund could not be determinerd. The amount of the "accruing interest" on the debt of Virginia was an ascertained sum. If the "accruing interest" and the sinking fund provisions related only to a debt which West Virginia might create, for the purpose of raising the amount necessary to pay her "equitable proportion of the public debt," no reason is perceived why such "accruing interest" and such a sinking fund should be specifically provided for in the section which defined the obligations of West Virginia to Virginia with reference to Virginia's public debt. If the provision is entitled to the construction contended for, it would more properly have been provided for in a general provision that would have applied to all of West Virginia's indebtedness, as upon that construction there appears to be no reason why this particular debt, as against all others, should thus be provided for.

The construction suggested seems to me unnatural and artificial, and I do not see how it can be successfully contended that it is not inequitable and unjust to Virginia. Under it, by the mere act of separation, 23-½ per cent. of the resources would be relieved of all of its pre-existing liability for the payment of that proportion of the "accruing interest" which was an inseparable part of the debt, and Virginia would be obliged to pay West Virginia's proportion as well as her own. If the date fixed for the ascertainment of the "equitable proportion of the public debt" had not been set back to "prior to" January 1st, 1861, and the provision had simply been that an equitable proportion of the public debt should be assumed, I understand all parties to agree that equity would require the ascertainment of the debt and the value of the investments, and their application towards the extinguishment of the debt, to be made as of the same date. If the equities are to be maintained I am unable to see why the same rules do not apply, although the date was set back more than two years.

It was clearly within the power of the parties to agree upon an arbitrary date, as to which all the factors involved would relate, and on which they would be detemrined, and which would be governed by the same equitable rules and principles as would apply to the settlement made as of the date of the separation. Practically, their rights

could be determined as well upon one date as upon another. The presumption is, that by agreeing upon a date prior to separation, they did not intend to invade or impair the rights of either party. Unless something appears in the contract, or in the proceedings, or in the concurrent history, to indicate the contrary, and I am unable to find anything of that character, that result must necessarily follow. The fact that their rights are to be determined upon equitable principles negatives any such intent. If assets and liabilities are to be adjusted aquitably, that they should both be considered as of the same date, would seem to be axiomatic. It may be said that this conclusion results in an incongruity, as West Virginia did not become a state until June 20th, 1863, and could not therefore acquire any title to the assets or investments on January 1st, 1861, as she was then non-existent. The answer to that suggestion is that the assumption is without foundation. West Virginia never at any time acquired any title to these assets, even after the separation. They were originally the assets of Virginia, and they remained her assets throughout, until disposed of by her, if disposed of. The only right that West Virginia acquired as to these assets or investments, as against Virginia, was the right to require Virginia, on the date agreed upon, to apply the assets or investments, at their full value at the time agreed upon, toward the liquidation of her own debt; so that West Virginia could know, when the assets were so applied, the amount of the real debt remaining to which she would be obliged to contribute. It was perfectly competent for the two states to agree upon any date upon which the debt and the value of the assets and the investments, and the difference between the two, could be ascertained. West Virginia's rights do not depend upon any title that she acquired to assets solely owned by Virginia, as to which she did not and could not acquire any title, but they do depend upon the agreement of Virginia to account for these assets or investments, at their fair value upon the date, when the amount of the debt is to be ascertained. This is an absolute protection to West Virginia, as Virginia cannot recover any portion of the debt of West Virginia until these assets are thus accounted for and applied. This construction is in my judgment plain, clear, simple, equitable, just, and completely and adequately protects every legal and equitable right of both of the parties thereto.

It is my conclusion, therefore, that the assets are to be valued as of January 1st, 1861, and that the liability of West Virgina for interest

begins on that date, by virtue of the contract between her and Virginia, and runs at the rate provided for in the bonds that evidence the debt, and make the interest an inseparable part thereof.

I do not understand that I have any power under this reference to determine the balance, if any, that may be due from West Virginia, in other words her "proportion of the public debt" for which she is liable, as the opinion of the Court specifically reserves to itself the determination of the effect of any of the conclusions that I may reach in connection with the assets of investments upon the principal sum already found due from West Virginia to Virginia. As interest can only accrue on that "proportion" which is ultimately found to be the balance due from West Virginia to Virginia, there is no sum upon which interest can be computed, and I therefore make in this case no computation of interest.

Third—The important question to be determined is the rules by which, under the record, the value of the various investments is to be ascertained. Substantially four factors only appear in the record as bearing upon the question of value; market quotations, par value and amount paid for stock, book values predicated upon assets and liabilities, and dividends or earning capacity.

A.

It seems to be well settled that, in order to make market reports of quotations admissible, quotations must come from such newspapers as the commercial world rely upon in ordinary business transactions. And some of the cases go farther and require that in addition to that the verity of the reports shall be established by extrinsic evidence; although the weight of authority does not perhaps require this additional qualification.

"The principle which supports these cases will allow the market reports of such newspapers as the commercial world rely upon, to be given in as evidence. As a matter of fact, such reports, which are based upon a general survey of the whole market, and are constantly received and and acted upon by dealers, are far more satisfactory and reliable than individual entries, or individual sales or inquiries; and courts would justly be the subject of ridicule, if they should deliberately shut their eyes to the sources of information which the rest of the world relies upon, and demand evidence of a less certain and satisfactory character."

Sisson vs. *Cleveland & Toledo Ry. Co.*, 14 Mich., 489.
Cleveland & Toledo Ry. Co. vs. *Perkins*, 17 Mich., 296.

Tully vs. *W. U. Tel Co.*, 141 111. App., 312.
Jones vs. *Ortel* (*Md.*), 78 Atl., 1030.
Wilber vs. *Buckingham* (Ia), 132 N. W., 960.
St. L. & S. F. Ry. vs. *Pearce* (Ark.), 101. S. S., 760.
Moseley vs. *Johnson* (N. C.), 56 S. E., 922.
Bullard vs. *Stewart* (Tex.), 102 S. W., 174.
Meriweather vs. *Quincy, &c., Ry.* (Mo.), 107 S. W., 434.
Mt. Vernon Brewing Co., vs. *Teachner* (Md.), 69 Atl., 702.
Ray vs. *M., T. & T. Ry.* (Kan.), 133 Pac., 847.
Kibler vs. *Caplis* (Mich.), 103 N. W., 531.
C., B. & Q., vs. *Todd* (Neb., 105 N. W., 83.
Nash vs. *Classen*, 163 111. 409, 45 N. E., 276.
Auls vs. *Young* (Mich.), 57 N. W., 119.
Vogt vs. *Cope*, 66 Cal., 31.
Willard vs. *Mellor*, 19 Col., 534.
Fairly vs. *Smith*, 87 N. C., 367, 42 Am. Rep., 522.
Chaffee vs. *U. S.*, 18 Wall., 516, 21 L. Ed., 913.
Harrison vs. *Glover*, 72 N. Y., 451.
Prout vs. *Chisolm*, 47 N. Y. Sup., 376.
Whelan vs. *Lynch*, 60 N. Y., 469.

B.

The schedules of quotations contain three columns "Bid," "Asked" and "Quoted." Nothing appears to indicate the significance of the term "Quoted," whether it is a bid or the sum asked.

The question of offers for property, as competent evidence of value, has been the subject of considerable judicial discussion. Offers for real estate and property of a similar character have been uiformly held inadmissible. In condemnation proceedings evidence offered to prove offers for various purposes for the land in controversy was excluded, and in the discussion of the question the Court said:

> "Evidence of this character is entirely different from evidence as to the price offered and accepted or rejected for articles which have a known and ready sale in the market. The price at the Stock Exchange of shares of stock incorporations which are offered for sale or dealt in is some evidence of the value of such shares. So evidence of prices current among dealers in these commodities which are the subject of frequent sales by them would also be proper to show value. This evidence is unlike that of offers to purchase real estate, and affords no ground for the admissibility of the latter."

Sharp vs. *U. S.*, 191 U. S., 349, 48 L. Ed., 214.
Wood vs. *Fireman's Ins. Co.*, 126 Mass., 316, 319.
Hine vs. *Manhattan R. Co.*, 15 L. R. A. 591.

Parks vs. *Seattle,* 8 Wash., 78.
Santa Ana vs. *Harlin,* 99 Cal., 538.
St. Joseph, etc., vs. *Orr,* 8 Kan., 419.
Louisville, N. O. & T. Co., vs. *Ryan,* 64 Miss., 399.
Minnesota Belt-Line Ry. Transfer Co. vs. *Cluek,* 45 Minn., 463.
Young vs. *Atwood,* 5 Hun.. 234.
Lawrence vs. *Metropolitan Elevated Ry. Co.,* 15 Daly, 502.
Waldo vs. *Gray,* 14 Ill., 184.

C.

The circumstances under which offers for stock would be admissible are well stated by the Court in Massachusetts, where it is said:

> "An unaccepted offer, as an insolated transaction, is not competent evidence upon the question of value. Bnt in a market regularly attended by buyers and sellers, an offer as well as a sale of an article of recognized uniform character, constantly bought and sold in that market so as to have a place upon the daily price current lists, may serve to show that the market value of that article did not then exceed the price at which it was offered. It is admissible because of its publicity, and the presumption of the presence of dealers ready to purchase, and who would have done so if the offer had been below the market value."
>
> *Whitney* vs. *Thacher,* 117 Mass., 523, 527.
> *Wilde* vs. *Robinson,* 50 App. Div. (N. Y.), 192, 193.
> *Republic Newspaper Co.* vs. *Northwestern Associated Press* 51 Fed. Rep., 377.
> *Lawrence* vs. *Metropolitan Street Railway Co.,* 15 Doly. 502.
> *Whelan* vs. *Lynch,* 60 N. Y., 469.
> *Prout* vs. *Chisolm,* 7 N. Y., Supp., 376, 381.
> *Chamberlayne on Evidence,* Section 2, 175 G.
> *Morril* vs. *Bentley,* 150 Iowa, 677, 684.

There seems to be very little controversy in the authorities over the proposition that where no market value is proved the value of the assets and of the dividends can be relied upon for the purpose of ascertaining the value.

> "The plaintiff is entitled to recvover what would have been the market value of such preferred stock if it had been issued. If there be no market value, then the question is as to what would have been its actual value. The question therefore for the Jury to determine here was what would have

been the real or intrinsic value of this stock, in view of the proved assets of the corporation."

Crichfield vs. *Julia*, 147 Fed. Rep., 73.

Redding vs. *Godwin*, 44 Minn., 355.

Reed vs. *Metropolitan St. R. Co.*, 180 N. Y., 315.

Moffit vs. *Hereford*, 132 Mo., 513.

Henry vs. *North American Ry. Const. Co.*, 158 Fed. Rep., 70.

Butler vs. *Wright*, 103 App. Div. (N. Y.), 463.

Laurey vs. *Bank Baton Rouge*, 58 S. R., 1022.

McDonald vs. *Dansby*, 196 Ill., 133.

White vs. *Jouett*, 197 Ky., 214.

Goodwin vs. *Wilbur*, 104 Ill., App., 45.

There are numerous cases also that hold that the market value is not the only criterion of value, that it is competent to prove that the actual value is either greater or less than the market value.

"But the damages are not necessarily limited to the market value of the stock; its actual value may be recovered, and that may be shown by proof of the value of the property and business of the corporation, its good will and dividend earning capacity."

State vs. *Carpenter*, 51 Ohio State, 83.

Felker vs. *Hyman*, 135 S. W., 1128, 1130.

State vs. *Sattely*, 131 Mo., 464, 489.

Nelson vs. *First Nat. Bank of Killingley*, 69 Fed. Rep., 789.

"In such cases what is called the market price, or the quotations of the articles for a given day, is not the only evidence of value; the true value may be drawn from other sources." (*Citing Pape* vs. *Fergguson*, 28 Ind., App., 298.)

3 *Sutherland on Damages* (3d Ed.), 1894-5.

"The market price being only evidence of value, the law adopts it as a natural inference of fact, and not as a conclusive legal presumption."

Pape vs. *Ferguson*, 28 Ind. App. 298, 306.

"The market price of an article is only a means of arriving at compensation; it is not itself the value of the article, but is the evidence of value. The law adopts it as the natural inference of fact, but not as a conclusive legal presumption. . . . . The true value may be drawn from other sources, when it is shown that the price for the particular day had been unnaturally inflated."

Kountz vs. *Kirkpatrick*, 72 Tenn. State, 376.

Lovejoy vs. *Michels*, 88 Mich., 15, 24.

Walker vs. *People*, 192 Ill., 106, 110.

Chicago vs. *State Board of Equalization,* 1112 Fed. Rep., 607, 612.

Under a statute which required the stock of a corporation to be "assessed at its actual value," the Court said:

> "They may take into account the business of the corporation, its property, the value of its assets, the amount and nature of its present and contingent liabilities, the amount of its dividends, and the market value of its shares of stock in the hands of individuals. They may resort to any or all of these as to them seems best, and they are not confined to any of them. They may take that test which they think will be most likely to give them the actual value of the stock, and they may disregard all the others. . . . . One mode of arriving at the actual value of capital stock of a corporation is to take what is sometimes called the book value, which is reached by estimating all the assets as they appear upon the corporate books, and deducting all the liabilities and other matters required to be deducted by law, and taking the balance as the measure of value for assessment. This seems to be a proper method for arriving at the value of the capital stock in the case of a corporation which is about to discontinue business, wind up its affairs and distribute its assets among its shareholders . . . . Hence it would not be just for assessors, always or even generally, to take the book value of the capital stock of going corporations as the measure of value for the purpose of assessment."

People vs. *Coleman,* 107 N. Y., 541, 544.

In *People ex rel Union Trust Company* vs. *Coleman,* 126 N. Y. 433, the case last cited was discussed, and the distinction between the capital stock stock of the Company and the shareholders' capital stock was clearly made by the Court, the Court saying:

> "And thus the two things—the Company's capital stock and the shareholder's capital stock are essentially and in every material respect different. They differ in their character, in their elements, in their ownership and in their values."

And again:

> "When the actual value of capital and surplus was known

> and established in this case (107 N. Y.) by the party's own books no reference to the value of the shares could be permitted to lessen the valuation."

And they stated the general rule applicable to the facts in that case as follows:

> "And so I think the authorities either fairly permit or fully justify the conclusions which I have reached and which may be stated with reasonable accuracy thus: "First, the subject of valuation and assessment is never the share stock but always the company's capital and surplus. Second, such capital and surplus must be assessed at its own value, and when that is correctly known as ascertained, no other value can be substituted for it."

Third, where that is unknown, the assessor may resort to the market value of the share stock; and fourth, or where the amount is disclosed, and they have sufficient reason to disbelieve the statement, they may resort to market value also.

In *Cabell* vs. *Cabell,* 111 App. Div. (N. Y.) 426, 429, the Court said:

> "I think that we cannot conclude that the inventory of the property of a going concern, made by the officers thereof, is a safe indication of the prices that would be realized from a present sale thereof and a distribution thereunder. What property may, in the opinion of its owners, be worth, regarded as in use by a going concern, for inventory purposes, and what it would fetch if the concern were wound up upon sale in open market, may naturally present a great variance."

In that case the value was held to be the probable market value of liquidation, and the case recognizes the rule in *People* vs. *Coleman,* 107 N. Y., as applicable to the values of stock generally.

In *Von Au* vs. *Magenheimer,* 126 App. Div. (N. Y.), 257, 269, balance sheets at different periods were held admissible for the purposes of comparison in fixing the value of the assets, where it was contended that they were not appraised at their full value.

E.

The rule that would apply, where the State was the owner of a large

majority of the stock in many of these corporations, in fixing its cash value upon the assumption that the stocks were to be liquidated as of January 1st, 1861, has been the subject of some discussion.

In *Shaw* vs. *Holland,* 1900, 2 Ch. Div., 305, the question was as to the price for which the directors should account for a large number of shares allotted to themselves at an under-valuation. The rule that they should account at the highest price which the shares attained while the stock was in their hands was invoked.

Upon the general question the judges participating in that case said:

Webster, M. R.:

"But I think that must be the amount which could have been obtained for the whole and not merely for a portion of the property so taken . . . . . I adopt the view of North, J., that it would not be right to apply to large batches of shares the price which might have been obtainable for a small lot on a particular day."

Rigby, L. J.:

"But we must not erect that rule into an absolute principle of law, and say, 'if evidence is given of the sale of some shares at such a price during the period in question, it must be assumed that all of the shares of the Company, including those held wrongfuly by the directors, might have been sold at that price.' That would be going too far. You must consider the circumstances of the particular case, and I am not disposed to differ from the fiding of the learned Judge that it had not been shown that the Company ever could have obtained in respect to all of the shares wrongfully held by the defendants the full price which was obtained in the market for some shares on a particular day. The number of shares held by the defendants was very large, and the throwing upon the market at any one time of all those shares might have influenced very greatly the price and brought it down considerably."

Collins, L. J.:

"When there is a real market, in which the things in question can to any amount be exchanged and sold for money, then it is a short cut to value to take the market price. But when these conditions do not exist, it is not a short cut to the value to take the price at which isolated lots could on given dates be sold. You would be practically applying to the shares a value which did not exist,—a market value when in

truth and in fact there was not a real market at all. The learned Judge has found in effect that the value claimed was not the market value, because he said that if these shares had been put into the market in any quantity they could not have been sold at all. Under the circumstances, it would be very unfair to take what is an artificial and fictitious standard of values as the true value of the shares. I think the time at which the damages are to be ascertained may be fairly taken as the time at which the wrong was done."

A similar question was raised in the matter of the fixing of the transfer tax in the Gould Estate, under a statute that required stocks that were "customarily bought and sold upon markets in New York to be appraised by ascertaining the range of the market and the average of the prices running through a reasonable period of time." An appraisal based upon "reports of public sales of securities at the Exchange" was sustained, and upon the general question of the effect of placing the whole amount of stock upon the market, the Court said in that case:

"It is claimed, however, that the rule should be so construed that, when the value of large blocks of stock is involved, only the purchase and sale in markets of correspondingly large blocks of stock should be considered, upon the theory that such large blocks would necessarily sell at lower rates than small quantities of stock sold separately, and that throwing large blocks of stock upon the market all at once would have a tendency to produce a break in the market, and perhaps a total inability to get more than the mere nominal price offered for that stock. Whatever the rule may be as to the ascertainment of value in other cases than those covered by the Statute of 1891, we think no such construction can be given to that Statute as is contended for. The Statute, properly applied, will prevent the injustice suggested by this attempted constructon. Under the construction contended for, the securities involved in this proceeding might have been shown to be of little or no value, by considering that forcing them upon the market in large blocks at one time would break the market, and make them practically unsalable at all."

In re Gould's Estate, 46 N. Y. Supp., 506, 512.

The authentic character of the quotations, the fact that so far as they go, they state the facts as they existed, taking into account the time which has elapsed since the transactions occurred, and all the other conditions, involved, seems to be reasonably well sustained.

This would be true if the deposition of Mr. Williams was excluded. Defendant insists that it should be excluded because it appears that the answer of the witnesses on the direct examination was written by a third person, and the answer thus written out was read by the witness as his answer, and was therefore the result of prompting and not the unaided statement of the witness. If the cross-examination had stopped when that fact was developed, it would have presented a case that would have justified, and perhaps required, the exclusion of the deposition. The cross-examination was, however, continued until it clearly appeared that the witness had a clear and intelligent appreciation of the facts as to which he was testifying, and was not at all dependent upon suggestions from other parties, as to how he should testify, and substantially removed any such impression that might have been created, by the irregular and unusual manner in which his direct examination had been conducted. There was no question as to the honesty of the witness, and he appeared to be able, without prompting, to state intelligently the facts as to which inquiries were being made. The weight to be given to these quotations, in ascertaining values, presents a much more difficult and doubtful question. The State was a large stockholder in all of the corporations. In many it held much more than a majority of the stock, and it may be fairly assumed that it dominated and controlled the policy of all of them. None of the stock held by the State was the subject of any quotations, which were all based upon minority stock.

It is a well known fact that there may be a wide difference in the market value of stock that controls and that which is controlled. The stocks were all inactive and not the subject of continuous daily sales in the open market. So far as appears, the sales were made by three firms of brokers, and private in their character, not in the open public market in the presence of competing buyers and sellers. The admissibility of quotations of "Bid" and "Asked," when it does not appear that the "Bid and "Asked" were in the presence of competing buyers, is extremely doubful is not sustained by the weight of authority, and in any event is of slight value. "Last sales," which frequently occur, in the absence of any evidence as to when the "Last sales" occurred, is so uncertain and indefinite as to be of little value. In no instance is the amount of the sale, or the circumstances and conditions under which it was made, given. The infirmity of these quotations, as reliable standards of value, is evidently fully appreciated by the plaintiff, as appears by the brief filed in its behalf, in which in discussing the value of the James River and Kanawha Company stock, and

having reached the conclusion that its stock "had scarcely more than a nominal value in January, 1861," the brief refers to the stock quotations introduced by the plaintiffs to establish the value of the same stock, showing a value o 18-1-2 and 18 in January, 1861, (E-355) as follows: "Considering its (James River and Kanawha Company) condition, the market quotations of its stock in 1861 and 1863 were exceedingly high." The necessary inference being that the condition of the property, rather than the quotation, may be the more reliable standard of value.

PAR VALUE.

It is said that the par value of the stock involved is to be taken as presumptive evidence of its actual value; and my attention is called to some authorities that would seem to so hold. None of these authorities, however, give any reason for the suggested rule, and the rule seems to have been stated without any consideration whatever, so far as reasons or authorities are concerned. It had its origin in the Appeal of Harris, 12 Atl. Rep., 743, where, without giving the slightest reason therefor or citing any authority to sustain its conclusion, the Court said: "*Prima facie,* they (stock) must be charged at par, $100. per share." In that case it was claimed that they were worth only $30. a share, on the basis of their real or market value. On a rehearing in that case the value was reduced to $30. a share, the Court saying, "We have but little evidence of the value of this stock. It was conceded by appellants, however, that it was worth $30. per share."

In *Alexander* vs. *Relfe,* 74 Mo., 495, the Court said: "The proper measure of damages is an amount equal to the face of the draft with interest." The distanction between a draft and a share of stock as an evidence of value is obvious. A draft or a bond is a specific promise to pay; a share of stock, from the standpoint of a promise, is in no sense a specific promise to pay the par value o the share; at the very outside it can only be said to be a promise to pay the proportion that the stock is entitled to, of whatever residuum there may be, after the assets have been used in the liquidation of the indebtedness and liabilities of the corporation.

These two cases are cited in *Brinkerhoff-Farr Trust and Savings Company* vs. *Home Lumber Company,* 118 Mo., 447, 462, as authority for the proposition that "the plaintiff was entitled to the presumption that the stock was worth par in the absence of a market value, it being fully paid up, and *as its capacity to earn dividends was shown to be large,* and the burden was on defendant to show the market

value was lower than par." It will be noticed that this involves a very important factor in addition to the mere naked par value.

In *Moffit* vs. *Hereford*, 132 Mo., 514, the Court said, citing *Brinkerhoff-Farris Trust and Savings Company* vs. *Home Lumber Company*, 118 Mo., 447:

> "The par value was prima facie the actual value of the stock.
>
> *In Tveis* vs. *Ryan*, 108 Pac., 465, the Court said:
>
> "In the absence of any other evidence of value, the par value is presumptively the value of the stock."

Citing Appeal of Harris, 12 Atl. Rep., 743, and *Brinkerhoff-Farris Trust and Savings Company* vs. *Home Lumber Company*, 118 Mo., 448.

> And in *Walker* vs. *Bement*, 94 N. E., 342, the Court said:
>
> "The par value of a share of stock in a corporation is prima facie its actual value."

And in *Walker* vs. *Bement*, 94 N. E., 342, the Court said:
Also citing Appeal of Harris, 12 Atl. Rep., 743, *Brinkerhoff-Farris Trust and Savings Company* vs. *Home Lumber Company*, 118 Mo., 447, and *Moffit* vs. *Hereford*, 132 Mo., 513.

In *Critchfield* vs *Julia*, 147 Fed. Rep., 73, the Court cited *Brinkerhoff-Farris Trust and Savings Company* vs. *Home Lumber Company*, 118 Mo., 447. But that rule was not acted upon in that case, and therefore the remarks of the Court in relation thereto are dicta.

My attention is called, as sustaining this rule, to 2 Machen's Modern Law of Corporations, Section 1618, and to Metcalfe's case, 13 Chan. Div., 169. Machen in discussing the case of wrongdoing directors who had appropriated stock to their own use, said:

> "The shares will be taken as against the misconducting director to have been worth par. That is their prima facie value, and the burden of showing a less value rests on the wrong-doer."

Citing the Metcalfe case. In that case it appeared that "the public were giving the full nominal value for the shares," and the Court held that the obligation was on the director to show, that he was not chargeable with their full value, when it appeared that the shares had been allotted to the director as fully paid up, in payment of the purchase money for the property of the corporation; that is to say,

the director had received in payment for the property of the corporation the shares of the company as fully paid up stock. The distinction between that case and the rule suggested is too obvious for comment.

Clark and Marshall on Corporations, Volume 2, page 1170, states the rule to be:

> "In the absence of any evidence as to the actual value it will be presumed that the par value was the actual value."

Citing Appeal of Harris, 12 Atl. Rep., 743, *Moffit* vs. *Hereford,* 132 Mo., 513, and Sedgwick on Damages, Sec. 257. Sedgwick on Damages states the rule, citing Appeal of Harris, 12 Alt. Rep., 743, *Moffit* vs. *Hereford,* 132 Mo., 514, *Tevis* vs. *Ryan,* 198 Pac., 461, and *Walker* vs. *Bement,* 94 N. E., 339. None of these cases, as I have stated, give any reason for the rule; and the whole doctrine stands upon Appeal of Harris, 12 Atl. Rep., 743, which likewise gives no reason for the rule, but assumes arbitrarily its existence. On the other hand, the rule was denied in *Beaty* vs. *Johnston,* 66 Ark, 529, the Court saying:

> "The contention of appellees that this value is, prima facie, the face value of the stock, ... 12 Atl. Rep. 743. But the question was not discussed in that case, and the weight of authorities seems to be the other way."

It ought to be said that the Court in this case cites no authority for its last assertion.

As to the general proposition involved, in *Fogg* vs. *Blair,* 139 U. S. 118, 35 L. Ed., 104, the head note says:

> "The Court in the absence of averment or proof to the contrary will not assume that it was worth par or had substantial value."

In *Griggs* vs. *Day,* 158 N. Y., 1, the Court, in an action for conversion of stock, in determining the value ignored the presumption of par value, and said:

> "We are thus left without any evidence upon which the value of the stock can properly be determined within a reasonable time after its conversion. The rule in such cases is that nominal damages only can be awarded."

This case is cited with approval in *Warren* vs. *Stikeman,* 84 App. Div. (N. Y.), 610, where the Court said:

"This (par value) cannot be said to afford any such evidence of value as will support a judgment such as the one in this case for its conversion; the most that could be recovered under the state of proof is nominal damages."

The true value and not the nominal value is the rule. *Bull* vs. *Douglass*, 4 Munford, 303.

It is certainly a matter of common knowledge that stock is repeatedly issued on a basis that has very little connection with its intrinsic or actual value. The over-issue of stock under such circumstances is well understood by all to be one of the most disturbing factors, in existing industrial, commercial and economic conditions, and any assumption to the contrary, in my judgment, is wholly without foundation in fact.

The authority of this rule is at least extremely doubtful, but under the circumstances of this case it is hardly necessary to determine that question, as the defendant concedes that it is inapplicable to one of the largest items involved. The State had stock in the James River and Kanawha Canal Company, of the par value of $10,400,000, and it was paid for in cash, a fact that is certainly much stronger as an indication of value than the mere par value of the stock. The defendant concedes that the presumption of actual value arising from the par value of the stock or the payment in cash at par could not reasonably apply to this item, as "so much time has elapsed, and the evidence of the actual value of this stock has become so obscure;" and it voluntarily and arbitrarily reduced the par 75 per cent., and only claimed 25 per cent. of the nominal par value, thus conceding that there are circumstances at bar to which this rule, if it is a rule, can have no proper application.

It is objected that the returns or reports relied upon by defendant as showing the facts upon which it predicates the book value and the assets, liabilities and earnings of the various corporations are not competent for that purpose, and my attention is called by both parties to the authorities relating thereto. In the case of railroads and canal and navigation companies, the returns were made on oath, pursuant to a statute of Virginia (Act March 15, 1856) p. 646), which required a statement "of its condition," supplemented by a great mass of detail, to be made; and the Board of Public Works were required to print the reports as a "document;" in the case of banks, the returns were made pursuant to a statute which required a return on oath, showing "a statement of the condition of the bank," to be supplemented by the details involved. (Code of Virginia 1849 (712).

These returns were also to be published in two newspapers in the City of Richmond. The State was a stockholder in all of these corporations. By her statute she required the returns to be made on oath for the information of the public. She published them for public information as true, and the publications are now a part of her public records. She is a party to this litigation. I think that her statements, thus carefully and publicly made, are admissible not only as public records, but as her admissions against her, not as conclusive, but, in the absence of any evidence to the contrary, sufficient as against her to establish the facts thus asserted by her to be true. The weight to be given to the book value as shown by the defendant requires careful consideration. As claimed, it is the result of an exact mathematical calculation, based upon the figures found in the reports made to the State. It assumes that the specific sums mentioned can be realized from all of the assets, without loss, and that the corporation could be liquidated without expense. When Virginia is charged with these stocks, she is in effect required to liquidate them at the prices fixed, and under the peculiar circumstances of this case, I think the book value should be treated as the liquidating value. It is morally certain that no one would purchase these stocks on the basis of book value without making a reasonable allowance for the expense of liquidation, to say nothing of any loss that might be sustained in realizing upon various items making up the assets, as to the value and character of which, outside of the return, there is no evidence. That substantial loss on that account would undoubtedly occur, in any method of liquidation, is reasonably certain. The amount of this loss it is impossible to ascertain or estimate. Mr. Hillman, defendant's expert, admitted that it would cost at least 5 per cent. to liquidate any of these corporations (622), and that to that extent at least the book value upon which he relied did not represent the "actual cash market value." (623).

For these reasons it seems to me when values are fixed upon these various stocks which, in a sense, is upon the basis of compulsory liquidation on the part of Virginia, that from the book values computed as a mathematical result there should be deducted at least the 5 per cent., the conceded cost of liquidation, and as to which the computations show an excess of the actual cash market value. For these reasons, in making my computations and in reaching my valuations on so-called book value only, I deduct in each instance the 5 per cent, as the cost of liquidation. In my judgment, this deduction does not by any means cover what would be represented by the actual loss in liquidation, especially in connection with the railroad corporations. So that it seems to me that this deduction is conservative and reasonable.

While it may be regarded as settled that there are circumstances under which all of the various factors are to be considered in reaching the fair value, I have not found any case that states how these factors are to be treated in such case, or what weight is to be given to either or any of them in reaching a result. The facts disclosed by the record which are essential for the purpose of reaching a satisfactory conclusion as to values January 1, 1861, are meagre and inadequate. If it had become necessary to find the values June 20, 1863, these difficulties would have been greatly increased, as the facts are so indefinite and uncertain as to make it well nigh impossible to reach a satisfactory conclusion.

Fourth. Attention is called to the fact that all of the statistics and computations that appear in the various schedules are conceded to be correctly and accurately stated, so that no question arises in their application as to their accuracy.

CLASS A.

The defendant claims to be allowed under this class the sum of $1,102,036.16. (-E). This sum is made up of:

Balance of State funds.....	$ 23,985.18	
Board of Public Works.....	5,958.28	
Commonwealth fund.....	252,842.67	
These three aggregating.....		$ 282,786.13
Sinking fund.....		819,250.03
		$ 1,102,036.16

Approximately the average ordinary expenses of the Government of Virginia for the decade preceding December 31st, 1860, were $2,038,163.31 per annum.

How much of the ordinary expenses, if any, for the year ending December 31st, 1860, were unpaid does not appear. If any were unpaid, the only fund on hand available for their payment in the treasury of the State of Virginia was the aggregate of $282,786.13. This sum was not accumulated for and dedicated to the payment of the debt, and I think some allowance should be made for liabilities and contingencies outside of the public debt; otherwise Virginia would be required to pay every dollar in her treasury to the reduction of the public debt, and leave other contingencies and liabilities involved in her ordinary expenses unprovided for.

I therefore disallow the sum of $282,786.13, and allow the sinking

fund of $819,250.03 as proper credit for the State of West Virginia, as that sum was accumulated for and dedicated to the payment of the public debt.

I allow $819,250.03.

SUMMARY—CLASS A.

Sinking fund $819,250.03

CLASS B.

RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY.

2,752 shares of the capital stock, of the par value of $275,200.

Amount claimed in answer, "at least $275,200."

The defendant claims $150 a share or $412,800.

(2-E, 66-E.)

Stock Quotations.

1860			
Nov.	2	80	Sales
Nov.	9	80	Sales
Dec.	14	76½	Last Sales
1861			
Jan.	4	76½	Last Sales
Jan.	11	77	Last Sales
Jan.	18	77	Last Sales
Jan.	25	77	Last Sales
Feb.	1	77	Last Sales
Feb.	8	77	Last Sales
Feb.	15	77	Last Sales
Feb.	22	77	Last Sales
March	1	78	Last Sales

The amount of stock involved in all of these quotations not being given. (334-E.)

$150 claimed to be the book value, predicated upon a surplus of $505,403.22 on March 31, 1860; and a surplus of $562,819.05 on March 31, 1861, the average showing practically $150 as of January 1, 1861.

This road was incorporated in 1835. (O. R. 965)

It has paid in dividends since the commencement of the work to March 31, 1861, $1,099,280.64. (9-E)

Divdends for eleven years ending 1860, averaging per year 5.09 per cent., part of which were paid in bonds. (2-E)

This capitalized would show a value of 84.83 per share.

Increased in book value from 144.2 on March 31, 1859, to 150.4 on March 31, 1861.

Extending over the years 1848, 1849, 1852, 1853, 1854, 1855, 1858, 1859, 1860 and 1861, expenditures aggregating $132,843.93, largely in the nature of improvements, were charged to operating expenses (p. 753), indicating a conservative policy as to depreciation.

Hillman admits that the book value is of more or less doubtful value in determining the actual value. (p. 455). No effort was made to show the physical condition of this road.

The dividend for 1860 was 7 per cent. No dividends were paid upon this stock in 1856, 1857 and 1858, and one-half of the dividend in 1854 and the whole of the dividend in 1855 were paid in bonds. Estimated at 7 per cent, this would increase the surplus $315,000 and would result in a corresponding increase in the book value. I do not think the stock quotations as reliable an indication of value as the actual "conditions." The book value and the earning value are so far apart that I do not take the mathematical book value as the standard, but combine the two, 150.04 plus 84.83 equals 234.87, one-half of which is 117.43. 2,752 shares at 117.43 is 323,167.36.

I do not deduct 5 per cent. to reach the "Cash market value," as I do not use the book value as the standard of value.

I allow $323,167.36.

SUMMARY—CLASS B.

Richmond, Fredericksburg & Potomac Railroad Company $323,167.36

CLASS C.

1. ORANGE & ALEXANDRIA RAILROAD COMPANY.

STOCK.

17,490 shares, at $50, par value.....	$ 874,500.00	
Loan.....	398,670.60	(13-E.)
Amount claimed in answer.....	$1,156,210.98	

The defendant claims that this stock had a value of $53.32 per share, in the aggregate $932,566.80; and that the loan was worth par. The value of the stock was based entirely upon its book value.

There were no quotations on this stock in 1860 or 1861.

No trial balance for this road is shown since 1856.

The book value in 1856 was 50.27; in 1860, 53.32. (14-E.)

The profits were:

In 1856	$ 7,571.28
In 1857	61,441.15
In 1858	34,016.74
In 1859	19,035.67
In 1860	28,242.34
In 1861	263,909.85

The surplus increased from $63,057.80 in 1857 (14-E.) to $135,515.49 in 1860.

It appears that this road paid in dividends upon its preferred stock:

In 1857	$ 5,954.63
In 1858	2,138.71
In 1859	6,658.35

and made an average profit for five years ending 1860 of $30,061.45.

Nothing appears in the record to show how much preferred stock it had or at what rate these dividends were declared.

No dividends appear to have been declared in either 1860 or 1861. (15-E.)

$31,604.09 appears to have accrued in dividends on the State's holdings prior to January 1, 1861. (46-E) These dividends were evidenced by dividend bonds. (370-E) It does not appear when they were made or upon what they accrued, or whether they were upon preferred stock or upon common stock.

There is no mention made in the record of any dividends except the four items above referred to, and there is nothing to show that any dividends except those four were paid at any time during the history of the road.

Bonds having been isued for the $31,604.09 indicates that at the time those dividends accrued the road was not in a position to pay them in cash.

This road was incorporated about 1848. (O. R. 964)

In a settlement made in 1872 Virginia appears to have received par for this stock and the balance due on the loan. (18-E)

A large portion of the amount that was paid in the settlement appears to have been State bonds, and interest on the same. (18-E)

The report of the president showed that "the net earnings of the road, over its working expenses proper, for the half year amount to the sum of $138,822.22" preceding September 30, 1856. (347)

The average profits for five years ending and including 1860, were

$30,061.45. It does not appear that anything is allowed for depreciation in any of the railroad stock estimates. This capitalized at 6 per cent. would show a value of $501,024.16, or 24.57 per cent. of $2,039,603.73, the total capital stock in 1860.

There is such a wide difference between the mathematical book value and the value on an earning basis, that I do not feel justified in taking the book value as the standard of value, and I reach the value by combining the book and the earning value of 24.57 per cent. of $50. a share, which is $12.28. Add to this the book value of $53.32, we have 65.60, one-half of which is $32.80. 17,490 shares at $32.80 is $573,672.

I allow $573,672.

I do not deduct 5 per cent. from the book value in this computation to get the actual cash market value, as I do not use the book value as the standard of value.

If there is any basis for the contention vigorously insisted upon by the plaintiff that the value of all of these corporations was practically destroyed by the end of the war in 1865, their subsequent financial history can give me aid in determining their value January 1, 1861. The road was being operated at a profit. Its loan must have been good.

I allow $398.670.60.

2 RICHMOND & DANVILLE RAILROAD COMPANY

12,000 shares, par value $100., cost...$1,188,598.50
Loan 565,803.34 (13-E.)
Amount claimed in answer 1,653,423.04
Amount claimed in Exhibit, ... 1,632,777.76 (13-E.)
Quotations for this stock in 1860 and 1861 are:..... (339-E.)

1860		
Nov. 2.....	60	Sales
Nov. 9.....	60	Last sales.
Nov. 16.....	60	Last sales.
Dec. 14.....	58	Last sales.
1861		
Jan. 18.....	57	Sales
Jan. 25.....	57	Last sales.
Feb. 1.....	57	Last sales.
Feb. 8.....	57	Last sales.
Feb. 15.....	57	Last sales.
Feb. 22.....	57	Last sales.

Mar. 1..... ..... 55 Last sales.

No balance sheet is shown.

Computations are based on balance sheet, not introduced, of 1856.

Exhibit shows profit.

In 1856.....	$ 197.518.90	
In 1857.....	139,489.12	
In 1858.....	154,305.76	
In 1859.....	182,527.84	
In 1860.....	225,068.98	(19-E.)
Average...	179,782.12	
Capitalized.....	2,996,368.67	

In 1859 a dividend of $79,239.90, and in 1860 of $79,247.90, 4 per cent, in each instance, appears to have been paid or allowed for in computation. (19-E.)

> The president's report for 1859-1860 stated:
>
> "Both the financial condition of the country and of the Company in the opinion of the Board make it unwise to declare a dividend at this time, but they trust at no distant date to declare semi-annual dividends of two per cent." (376)

The Board of Public Works in 1859, with reference to this road, stated:

> "And the generally prosperous condition of its affairs in the opinion of the Board justifies the declaring of a dividend of four per cent. upon the capital stock of the Company. This dividend in the aggregate amounts to nearly $80,000."
>
> Report made November 29, 1859. (378)
>
> This road was incorporated in 1847. (O. R. 965)

It cost up to September 30, 1864, $5,906,566.93. (271-E.) It paid in dividends up to January 1, 1864, $495,046.61. How much of this accrued after January 1, 1861, does not appear. (273-E.)

Capital stock 1860, $1,981,197.50. (19-E.)

It had an indebtedness September 30, 1865, of $2,378,222.74. (270-E.)

The average profit of this road for the five years ending and including 1860 was $179,782.12. This capitalized would give $2,996,368.67. The profits increased from 1856 to 1860 $27,550.08, and the profit for 1860 was $45, 286.86 in excess of the average, showing a marked increase in the earning value, and that the road was prosperous.

For a stock which on the average for six years earned 9 per cent. profit, a profit of about 11 per cent, in 1860, and increased its profits from $139,489.12 in 1857 to $225,068.98 in 1860, or $85,579.86, it seems that a quotation of 57 or 60 is "exceedingly" low.

I do not think the stock quotations furnish as reliable an indication of value as the financial condition of the company disclosed by the record.

I think the "cash market value," 137.37, minus 5, 132.37, is the best estimate I can make of the value of this stock.

I allow $1,588,440.00

This road was being operated at a profit. Its loan must have been good.

I allow ..... $ 565,803.34

3. RICHMOND & PETERSBURG RAILROAD COMPANY.

3,856 shares at $100	$ 385,600.00	
Dividend bonds	33,408.00	(13-E.)
Amount claimed in answer.....	578,404.13	
Defendant claims a value in 1860 of $121.86 per share	469,892.16	

STOCK QUOTATIONS.

1860.		
Nov. 2	64	Last sales.
Nov. 9	64	Last sales.
Nov. 16	64	Last sales.
Dec. 14	64	Last sales.
1861.		
Jan. 4	64	Last sales.
Jan. 25	64	Last sales.
Feb. 1	60	Last sales.
Feb. 8	60	Last sales.
Feb. 15	60	Last sales.
Feb. 22	60	Last sales.
Mar. 1	57½	Last sales

No balance sheet is produced.

Computation is based upon trial balance of 1856, which is not produced. (22-E.)

Profits.

In 1856	$ 162,881.32
In 1857	28,601.86
In 1858	52,312.61
In 1859	64,508.33

In 1860 ..... 69,087.87 (22-E.)

Dividends were declared.

In 1857 .....$ 48,205.00

(This dividend exceeded the profits for that year by the sum of $19,603.14).

In 1858 .....$ 48,730.00

In 1859 ..... 48,880.00

In 1860 ..... 48,880.00 (22-E.)

Dividend bond of $33,408 was paid November 7, 1861. (23-E).

The dividends for four years averaged nearly six per cent.

This road was incorporated 1836 (O. R. 966).

There is nothing in the record to show that any dividends were paid other than those above referred to.

The exhibit shows (22-E) book value.

For 1856 ..... $127.20

For 1857 ..... 117.17

For 1858 ..... 117.58

For 1859 ..... 119.44

For 1860 ..... 121.86

This road earned an annual profit on an average for four years, ending and including 1860, of $53,627.66. I have excluded the larger profit of $162,881.32 for 1856 on a capital of $786,100, or more than 20 per cent, as it seems to have been very unusual and is unexplained. The profit for 1860 was $69,087.87, on a capital of $835,750, or more than 8 per cent. $53,627.66, capitalized, is $893,794, or 106.95 per cent of the capital for 1860. All of the quotations for this stock are "Last sales." without any information as to when the "Last sales" took place, and at from 64 to 57½. I do not feel at liberty to take these "last sales" as against the condition disclosed in the record. As the value as shown by the earnings is less than the book value, I have combined the two, and the result is a value of $114.40.

I allow $441,126.40

The dividend bonds were worth par.

I allow ..... $ 33,408.00

4. VARGINIA CENTRAL RAILROAD COMPANY.

Stock $1,891,670.68

Loan 90,032.82

Dividend bonds 143,508.00

Amount claimed in answer 321,458.17

Amount claimed in exhibit 2,481,115.26 (13-E.)

$131.16 per share.

The cost to the state of stock owned by her

Was, at Sept. 30, 1860 ..... $1,891,670.68

Was, at Dec. 30, 1860 ..... 1,927,382.57

the state having paid between those two dates to the company on account of her subscription, the sum of $35,711.89, and it so appears on the books of Virginia. (12a-E.) (see Record, p. 386-387, Hillman's testimony).

1860.

Nov. 2	50	Sales.
Nov. 9	50	Sales.
Nov. 16	50	Last sales.
Dec. 14	50	Last sales.

1861.

Jan. 4	50	Last sales.
Jan. 11	47½	Last sales.
Jan. 18	47½	Last sales.
Jan. 25	47½	Last sales.
Feb. 8	47½	Last sales.
Feb. 15	47½	Last sales.
Feb. 22	47½	Last sales.
Mar. 1	45	Asked

(336-E.)

Exhibit shows profits.

In 1856	$ 381,176.68
In 1857	178,632.72
In 1858	158,030.15
In 1859	280,591.86
In 1860	267,681.51

Dividends appear to have been paid.

In 1859	$ 127,246.07
In 1860	153,304.46 (24-E.)

Interest on dividend bond of $5,959.80 appears to have been paid January 19 ,1861. (46-E, 370-E, 26-E.)

There is nothing in the record to show that any other dividends were ever paid.

This road was incorporated under the name of the Louisa Railroad in 1837.

The average net earnings of the road, annually, for four years, to and including 1860, were $221,234.06. I have excluded the net earning for 1856 of $381,176.68, or over 12 per cent on the capital, as that appears to have been unusual. The net earnings for 1860

were nearly 9 per cent of the then capital; $221,234.06, capitalized, is $3,687,234, or 116.95 per cent of the capital for 1860. I disregard the stock quotation and the financial history subsequent to 1860, for the reasons already given. The value on the net earning basis is less than the book value. I do not deduct 5 per cent from the book value of this stock for its "cash market value," as I do not use the book value as the only standard of value; I reach the value by combining the book and the earning value. 131.16 plus 116.95, equals 248.11; one-half is 124.05. $1,927,382.57 at 124.05 is $2,390,918.08.

I allow $2,390,918.08

The road was being operated at a profit. Its loan and divedend bonds were good.

I allow, for loan ..... $ 90,032.82

I allow, for dividend bonds 143,508.00

5. BLUE RIDGE RAILROAD COMPANY.

It is unnecessary to analyze the details involved in this item. It is conceded that the sum of $625,348.08 was paid for this road in bonds in April, 1870, being the amount agreed upon by Commissioners representing both states. In the brief filed by West Virginia, it is said "and we are inclined to the opinion that West Virginia's conduct in this behalf confines us to 23½ per cent of the $625,348.08, so ascertained by the commission," which I understand to be an admission to be an admission that that value shall be fixed. The plaintiff contends that as the bonds were then selling at 69½ to 70¼ this item, which in effect is a credit to West Virginia, should be reduced to that extent. These bonds were taken at par in making up the aggregate with which West Virginia is charged, and when she is to receive a credit represented by the same bonds I think they should be taken at the same rate. They should be credited on the same basis that they are charged. The payment was made in 1870, and the value should be fixed at such sum as, at January 1, 1861, would amount in April, 1870, to the sum for which the road sold, viz., $402,153.10, at which sum I value the road.

I allow ..... $ 402,153.10

6. ALEXANDRIA, LOUDOUN & HAMPSHIRE RAILROAD COMPANY.

Stock ..... $ 993,248.00

Amount claimed in answer 68,044.51

There are no stock quotations.

There is nothing to show that any dividends were paid that any profits were earned, or anything about the physical character of the road tending to indicate its value.

It was incorporated in 1853. (O. R. 959).

The only fact tending towards showing value of this stock January 1, 1861, is its cost and the sale of the stock in November, 1867, by the state for $50,862.40 (28-E.)

97.64 per cent of this value, or $49,662.05, is testified to by the witness Hillman, as the value as of January 1, 1861. (150).

> "Mr. Holt: The sixth item on the main exhibit, Defendant's Exhibit No. 3, is Alexandria, Loudoun & Hampshire Railroad stock, $993,248, with a value indicated thereon as of January 1, 1861, of $49,662.05; and in support thereof we file the supporting or underlying exhibit marked on the right hand corner Hillman Exhibit No. 3, Asset C-6, and mark the same as Defendant's Exhibit No. 3, Asset C-6."

The counsel for West Virginia, after it had been developed upon cross-examination that a value of $1,017,248., being the total expenditure up to June 20, 1863, was stated as the value in the schedule for 1863, and without any additional or other testimony tending to show the value, changed the claim in this instance from $49,662.05 to $993,248. (416)

The value of this stock was stated in the answer to be $68,044.51, evidently predicated upon the amount that the road brought, $48,622.-05, entirely ignoring the cost of the stock at January 1, 1861, $993,248.

This change in claim appears to have been made purely for the purpose of making the schedule of 1861 consistent with the schedule of 1863, without any suggestion that there was any fact that was not taken into account when the value was placed upon this stock in the original exhibit and by the testimony of the witness Hillman. Under these circumstances I find the value of this stock to be such sum of January 1, 1861, as would produce $49,662.05 November 25, 1867, viz., $35,096.85.

I allow $35,096.85.

7. WESTCHESTER & POTOMAC RAILROAD COMPANY.

Loan $83,333.33.

Amount claimed in answer $83,333.33.

This loan appears to have been paid in full with interest in September, 1873. (29-E.) (Master's Original Report, p. 64.)

Plaintiff claims that this sum was paid in bonds and should be reduced to the market value of the bonds. For reasons hereafter given in connection with the claims against the United States Gov-

ernment, (Claim 17, Class C) this claim of market value is disallowed.

I allow $83,333.33.

8. VIRGINIA & TENNESSEE RAILROAD COMPANY.

Loan $1,000,000.

Amount claimed in answer $992,030.32.

Amount claimed in Defendant's Exhibit $886,685. (31-E.)

This loan was secured by a mortage upon the railroad. (421)

There is nothing in the record to show whether or not the Virginia & Tennessee Railroad Company was responsible and able to pay this loan. All that appears in that regard is the fast that the stock of this Company was paid in, and, as well as this $1,000,000 loan, was transferred to the Atlantic, Mississippi & Ohio Railroad Company, along with other items, which are treated under a subsequent loan; (164-E.) and that one dividend of about ½ of 1 per cent. paid in 1864, the only dividend for nearly thirty years. 422 E.)

It appears that, beginning with June 19, 1863, and ending September 11, 1863, five items aggregating $886,685. purport to have been paid on account of this loan; (31-E.) and these payments were subsequently repudiated by the State of Virginia, upon the ground that the Second Auditor was alleged not to have any authority to receive the payments, payments evidently having been made in Confederate money. So far as the legal right of the Second Auditor to receive payments under such circumstances is concerned, his authority would seen to be as full and complete as that of the Auditor.

The Act of Virginia of 1860, Chapter 45, page 266, Section 2, after providing for the payment of money into the public treasury says:

> "A Warrant shall be obtained from the Auditor of Public Accounts or the Second Auditor, as the case may be," etc.

And then follow provisions as to the manner in which the funds shall be given to the treasurer. The power of the Auditor and of the Second Auditor seem to be equal.

In my view of the case, however, it is not necessary to determine whether or not these were valid payments. They still remain, so far as the record shows, in the treasury of Virginia. Payments that were made upon this loan have some tendency to show that it was at least of the value at that time of the amounts paid. While defendant claims, by its exhibit No. 3, (31-E.) that $886,685. was paid on account of this loan, by its exhibit A A (264-E.), it also

shows that the $1,000,000 was still in existence as a special debt, September 30, 1873.

This even is treated in the sale to the Atlantic, Mississippi & Ohio Railroad Company as of "no monetary value."

The only evidence relied upon by the defendant for the purpose of establishing the value of the loan is that these sums aggregating $886.685. were paid thereon. In order to determine the extent to which they demonstrate that value they should be reduced to a gold basis, as they were paid in Confederate money when it was largely depreciated.

Bringing the items to their fair value on a gold basis and as of January 1, 1861. they are as follows:

		Value at Jan. 1, 1861.
June 19, 1863, $200,000, Confederate money 7½, (O. R. 647).....	$ 26,666.66	$ 23,289.66
June 30, 1863, $300,000, Confederate money 7½, (O. R. 647).....	40,000.00	34,782.61
Aug. 6, 1863, $100,000, Confederate money 12½, (O. R. 647).....	8,000.00	6,926.40
Aug. 7, 1863, $100,000, Confederate money 12½, (O. R. 647.).....	8,000.00	6,926.40
Sept. 11, 1863, $186,685, Confederate money 12½, (O. R. 647.).....	14,934.80	12,874.83
	$ 97,601.46	$ 84,799.90

I allow.....$ 84,799.90

9. SOUTH SIDE RAILROAD COMPANY.

Loan.....$800,000.00

Amount claimed in answer..... 91,897.66

Nothing appears in the record to show the value of the South Side Railroad Company's stock, excepting as it may be inferred from the fact that it was one of the items included in the sale to the Atlantic Mississippi & Ohio Railroad Company, (164-E.) reference to which is made hereafter. This loan never was paid. (430.) It does not appear that there was paid on this loan any interest that accrued after January 1, 1861.

In the original schedule filed for 1861, under the heading "Statement of Par and Value on opening of Business January 1, 1861, on

stock and loans as per Schedule 'C,'" the defendant entered this loan, but entered it as of no value. (13-E.)

"By Mr. Harrison:

"Q. Now, I come to the next item, No. 9, Defendant's Exhibit No. 3, page 13, of the printed record, as follows: South Side Railroad Company, $800,000. What value do you you put upon that loan in your schedule under date of January 1st, 1861?

A. I have entered no value opposite it.

Q. Then, according to your schedule it had no value on that date; that is correct, is it not?

A. Yes, sir." (428)

It appeared then that the schedule for June 20, 1863, placed the par value upon this loan, and for that reason the defendant changed the schedule of 1861 from nothing to $800,000; although the witness Hillman, testifying in chief, gave it no value.

This loan of $800,000 makes a part of the items claimed in defendant's exhibit No. 6A. (57-E.) Under the heading of value, however, no sum is carried out; and the following entry is made: "No claim—too indeterminate." In defendant's exhibit No. 3 it is stated, "the loan itself, Asset C 9, was never paid." In defendant's exhibit AA, (260-E.) it appears under date of September 30, 1873, as a special debt of the South Side Division, $708,102.34.

The only thing in the record that tends to indicate value, other than the sale of the Atlantic, Mississippi & Ohio Railroad Company, in which it is referred to and given no monetary value, is the payment of certain items beginning November 10, 1862, and ending September 16, 1863, aggregating $264,500. (32-E.) According to the exhibits these were paid on account of interest, and they are the only payments that appear ever to have been made on account of this loan. These items of interest are all treated under Schedule D. It is clear that a debtor may struggle along and pay the interest on a loan, and at the same time he is entirely unable to pay the principal. In this case no interest was paid after January 1, 1861. At that time there was a balance of interest due of $264,500, which was paid in a currency that was worth only $43,988.88. So that the ability of this road to pay even interest seems to have been considerably impaired at that time. there is nothing to show whether the South Side Railroad was able to pay the principal January 1, 1861. So far as the facts in the record go, the indications are all to the contrary.

The loan was treated as worthless in the sale to the Atlantic Mis-

issippi & Ohio Railroad Company, and was finally wiped out, without any payment, by the foreclosure of the mortgage given by that Company.

Taking into account all the facts disclosed in the record, I find that the loan was of no value January 1, 1861.

10. NORFOLK & PETERSBURG RAILROAD COMPANY.

Loan $300,000. (13-E, 33-E.)
Amount claimed in answer $165,024.49.
Amount claimed in exhibit first filed $137,000. (13-E.)
Amount claimed in revised exhibit $300,000 (12 a-E.)

There is nothing to show the financial responsibility of the Norfolk & Petersburg Railroad Company or the value of its stock, other than that it paid three years of dividends on preferred stock (in 1863, 1864 and 1865) of $82,500. (227-E.) and what appears from the fact that it was included in the sale to the Atlantic, Mississippi & Ohio Railroad Company. (56-E, 164-E.)

> "Mr. Holt: Coming now to No. 10, upon the main Defendant's Exhibit No. 3, we have Norfolk & Petersburg Railroad loan, indicated there as $300,000, and likewise indicated thereon as of the value of January 1, 1861, of $137,000; and file in support thereof the underlying exhibit marked in the right-hand corner, Hillman Exhibit No. 3, Asset C-10 and Asset D-9, and in the left hand corner, Class C and Class D., and mark the same Exhibit No. 3, Asset No. 10." (151, 152.)

The method by which this sum is reached is by ascertaining that $163,000 is stated to be the unpaid balance of the principal, in the sale to the Atlantic, Mississippi & Ohio Railroad Company. (56-E, 164-E.) The difference between that and $300,000, being $137,000, is fixed as the value of the loan. (33-E, 146-E.)

This loan of $300,000 is one of the items in Defendant's Exihibit No. 6-A, (57-E.) and under the column of value nothing is carried out, and this statement is made, "No claim—too indeterminate." In Defendant's Exhibit AA, (256-E.) under date of September 30, 1873, this item of $163,000, in the sale of the Atlantic, Mississippi & Ohio Railroad appears as a special debt of $136,591.64.

In answer to the injury as to how the $137,000 was paid, Mr. Hillman says:

> "I do not know. There is nothing in the books showing that payment; it is only an inference from the fact that when this loan was turned over to the Atlantic, Mississippi & Ohio it was turned over as balance of the loan, $163,-

000. The inference is unavoidable therefore that $137,000 of it must have been paid in the interim. There is no entry that I can find showing in any way that payment." (437)

This is the only element of value relied upon that appears in the record with reference to this loan. This railroad appears to have been organized in 1853. (O. R. 963)

It appears, however, that a report to the Senate which the witness referred to in his schedule (34-E), and which he had seen and the contents of which he knew, shows how and when the $137,000 was paid in bonds.

"Q. As a matter of fact, his report applied strictly to that loan of $300,000. This portion of it, this portion of the loan of $300,000, and upon this loan his report shows that the company paid as follows: 1867, now registered stock, $65,436.90; 1968, old registered stock, $60,500; now coupon bonds cancelled, $7,500; 1860, old registered stock, $8,000, fraction new, $87.59, new registered stock, $10,000, footing up $151,524.49, as shown in your notation, with this accompanying note found in Steger's report, the coupon bonds paid by the company, $7,500, were cancelled; the balance due on the loan was merged in the contract between the State and the Atlantic, Mississippi & Ohio Railroad Companay for $1,000,000 which is still due and unpaid. So it appears then that the $137,000 was paid in the bonds of the company."

A. Do I understand you to say bonds of the company or bonds of Virginia?

"Q. I mean to say bonds of Virginia, of course.

A. I am perfectly willing to accept as a fact that the payment was made in bonds." 439)

This was paid, approximately $68,500, in 1867, and $68,500 in 1868.

The present value of $68,500 in 1867, as fo January 1, 1861, is ..... $ 50,367.65

The present value of $68,500 in 1867, as of January 1, 1861, is 48,239.44

$ 98,607.09

In the absence of a single fact or circumstance that was not known and specifically referred to when the witness made his original schedule claiming a value of $137,000, (13-E.) and the exhibit proving the sum was produced in evidence, this claim was raised to $300,000,

(12-a-E.) under the same conditions, apparently for the sole purpose of making 1861 consistent with 1863.

> "Q. Do you charge Virginia with any value for stock held here in the Norfolk & Petersburg Railroad Company on January 1st, 1861?
>
> A. No, sir; I have made no charge against the Norfolk & Petersburg Railroad for stock held by the State of Virginia.
>
> "The Master: You mean you have made no charge against Virginia?
>
> "The Witness: Against Virginia for stock held by Virginia in the Norfolk & Petersburg Railroad.
>
> "Q. Did you make any charge against Virginia for stock of the Norfolk & Petersburg Railroad Company, June 20, 1863?
>
> "A. Yes, sir, I did.
>
> "Q. To what extent?
>
> A. 1,199,970.
>
> Q. Why did you charge Virginia with that valuation of stock in this road June 20, 1863, and make no charge against her on the same account January 1, 1861?
>
> A. That was in error. There should have been a charge made against her for the par of that stock on January 1, 1861." (439)

If there was a read expectation that such a charge or claim would be seriously entertained, this was a serious "error." I am not able to find that the claim of West Virginia was actually increased by the sum of $1,199,970. (33-E) It seems that one item of $94,500, of interest was paid January 11, 1864, and it is claiamed that the proportion of that on January 1, 1861, would be $36,000. (33-E.)

Confederate money at that time was worth only 20 to 1, and an indicating value of $36,000 payment should be divided by twenty, making $1,800 instead of $36,000. Reduced to January 1, 1861, this would be $1,525.42.

The aggregate of the items in the sale to the Atlantic, Mississippi & Ohio Railroad Company is $4,689,436.41 (538) $500,000 is 10-2/3 per cent of that sum. 10-2/3 per cent of $13,271.41, the amount of note for interest on this loan, (56-E.) and of $163,000 the balance due on the $300,000, both of which are included in the sale, is $18,-802.28. Calculated back to January 1, 1861, the present value is $8,282.94.

I allow on account of loan ..... $ 98,607.09
I allow on account of interest payment.... 1,525.42
I allow on account of note for interest and
baance of loan 8,282.94

$108,415.45

11. ROANOKE NAVIGATION COMPANY.

Stock $80,000.

Amount claimed in answer, $3,832.

Amount claimed in exhibits first filed (13-E.) (35-E.), $3,832.

Value shown on direct-examination of Mr. Hillman, as follows:

"Mr. Holt: No. 11, upon the main Exhibit No. 3, is Roanoke Navigation Company stock, indicated as $80,000, and likewise indicated thereon as of the value on January 1, 1861, of $3,832; and we file the underlying exhibit in support thereof, marked in the upper right hand corner Exhibit Hillman No. 3, Asset C, No. 11, and mark the same as Defendant's Exhibit 3, Asset 11." (151)

Mr. Hillman now claims, (after having had his attention called to the fact, that he claimed $80,000 in 1863) on the cross-examination, the full sum of $80,000 (441), without suggesting any fact or circumstance that justified the increase, and the claim is so increased. (12a-E.) There is no evidence of any kind in the record claimed as tending to establish the value of this stock, except the fact of its par value and that it was paid for at that rate.

It appears that there was received from the Roanoke Navigation Compny on decree of court September 30, 1882, $3,832. (35-E.) This sum was evidently relied upon by the defendant in its answer, in its first exhibit, and by the testimony of its witness on the direct-examination, as the only basis to show the value of this stock.

My attention has not been called to the date of its organization.

No dividends appear to have been paid; and nothing appears to show what its physical condition was at any time during its history.

Calculated back to January 1, 1861, the present value of $3,832 is $1,662.47.

I allow ..... $1,662.47.

12. ALEXANDRIA CANAL COMPANY.

Stock $272,000.

Amount claimed in answer, $816.

Amount claimed as its value in the first exhibit filed was $764.47. (13-E.) (36-E.)

The direct-examination of the witness Hillman showed the following:

> "Mr. Holt: No. 12, upon the Defendant's main Exhibit No. 3 is Alexandria Canal Company stock, indicated thereon at $252,000, and as having a value on January 1, 1861, of $764.47; and we file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-12, and ask that it be marked Defendant's Exhibit No. 3, Asset 12." (151)

As to this item the witness Hillman testified on the cross-examination as follows:

> "What did you place on that exhibit as the value of that stock January 1, 1861?
>
> A. On page 13, of the printed record I have carried opposite that, under the value column, $764.47, marked with a double star, which means the sales value.
>
> "Q. And that was realized for it in what year?
>
> A. July 1, 1887, as shown upon page 36 of the printed record." (441)

This amount the witness changes on cross-examination, for the reasons before given, and under similar conditions, to $272,000. (442). The supporting exhibit for this item simply proves as the value the amount that the State received on July 1, 1887, the net sum of $764.47. (36-E.) The amended schedule now claims $272,000. (12b-E.)

This company was incorporated in 1847. (O. R. 952) There is no evidence of its character or condition. It does not appear whether it at any time paid dividends. Except the fact that the par value of the stock appears to have been paid by the State, the only evidence of its value is the amount that was received therefor in 1887, proved by defendant.

Calculated back to January 1, 1861, the present value of $764.47 is $295.16.

I allow $295.16

13. UPPER APPOMATTOX COMPANY.

Stock $56,500.

Amount claimed in answer, $16,144.26.

The amount claiamed in the original schedule filed by West Virginia was $16,144.26. (13-R.)

Amount now claimed $56,500. (12b-E.)

The direct-examination of the witness Hillman showed the following:

> "Mr. Holt: No. 13, on the main Defendant's Exhibit No. 3, is Upper Appomattox Companay stock, shown as $56,500, and with an indicated value theeron of $16,144.26 on January 1, 1861; and we file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-13, and in the left hand corner at the top, Class C, and ask that the same be marked Defendant's Exhibit No. 3, Asset 13." (152)

On the cross-examination the claim, for the usual reason and under the same conditions, is changed to the par value of $56,500. (442-3.)

My attention is not called to the date of the organization of this company. There is no evidence of its character or condition, as to whether or not it ever paid any dividends, what the character and extent of its business was, or any fact tending to show its value, except that which appears upon Defendant's Exhibit (37-E.), showing that $16,144.26 was received for the stock between February 24, 1875, and July 8, 1884; the only other facts in the case being the par value and the fact that it was paid in.

Plaintiff's Exhibit No. 3 shows how and when this $16,144.26 was paid, viz:

February 4, 1875, cash	$ 3,000.00	(369-E)
March 29, 1881, cash	2,280.00	(369-E)
July 8, 1884, bonds	10,864.26	(367-E)
	$16,144.26	

Calculated back to January 1, 1861, the present value of these sums is $7,163.36.

I allow $7,163.36

14. DISMAL SWAMP CANAL COMPANY.

Stock $190,000.

Amount claimed in answer $24,839.98.

In the exhibit filed by the defendant the amount claimed is $9,935,99 (13-E.); in the revised exhibit the amount claimed is $190,000 12a-E.)

The evidence on this point on the cross-examination of Mr. Hillman shows:

> "Mr. Holt: No. 14, upon the Defendant's main Exhibit No. 3, is Dismal Swamp Canal Company stock, indicated thereon at $190,000, and we having a value on January 1, 1861 of $9,935.99; and we file in support thereof, the under-

lying exhibit marked in the upper right hand corner, Hillman Exhibit 3, Asset C-14, and ask that it be marked Defendant's Exhibit 3, Asset 14." (152) (38-E.)

On the cross-examination, for the same reason and under the same conditions, this claim was changed from $9,935.99 to $190,000. (443).

This company appears to have been incorporated in 1821. There is no evidence in the record as to its quality, condition, earning power or physical character; and it does not appear that it ever paid a dividend. The only fact in the record, outside of its par and the fact that it was paid for at par by the State, that tends to indicate its value is the fact that the stock was sold September 30, 1868, for $9,935.99 (369-E.) calculated back to January 1, 1861, the present value of $9,935.99 is $6,782.25.

I allow $6,782.25

15. LOAN TO WASHINGTON COLLEGE.

$2,000.

Amount claimed in answer $2,000.

Amount shown on defendant's original exhibit, $2,000. (13-E.)

This was a balance of $2,000 on an original loan of $4,000.

No question seems to be made as to the responsibility of Washington College, and the loan appears to have been paid in full January 1, 1896. (39-E.)

The parties agree upon the value of $2,000.

I allow $2,000

16. RICHMOND ACADEMY BONDS.

$400.00.

Amount claimed in answer, $400.

Amount claimed in original exhibit filed by defendant, $400. (13-E.)

No question is raised about the responsibility of the Richmond Academy, and the loan appears to have been paid in full February 5, 1896. (40-E.)

The parties agree upon the value of $400.

I allow .....$400.

17. CLAIM AGAINST UNITED STATES GOVERNMENT.

$298,369.74.

Amount claimed in answer, $298,369.74.

Amount claimed in original exhibit filed by defendant, $298,-369.74. (13-E.)

This claim seems to be predicated upon the fact of advance originally made by the State of Virginia to the United States in aid of the war of 1812. (426-E.) All of these advancements were refunded during and at the close of the War of 1812. (427-E.) "And in 1825 interest" upon the advancements "was allowed and paid to the extent of $178,500, which settlement was then and afterwards regarded by the United States Government as a finality." (427-E.)

The State of Virginia contended that the interest should have been computed upon a different basis, and that if so computed, there would be a balance of interest due of $298,369.74.

Virgina made a claim against the United States for this balance of interest, as of July 1, 1814, $298,369.74, and for interest upon that balance up to February 11, 1894, 79 years, 7 months and 10 days, at 6 per cent, $1,425,212.79, a total of $1,723,582.53. (41-E.)

Under an Act of Congress dated May 27, 1902, (426-E.) this claim was adjusted as of February 11, 1894, apparently because the bonds and claims that the United States held against Virginia, which were to be used as an offset against Virginia's claim, would on that day with interest approximately equal the claim of Virginia with interest.

The United States held the bonds of Virginia, amounting to	$ 581,800.00
Chesapeake & Ohio guaranteed bonds, amounting to	13,000.00
Interest on $594,800, from January 1, 1861, to February 11, 1894,	1,181,669.33
Aggregating	$1,776,469.33
Deducting from this the interest paid in 1867 and 1870, at 4 per cent, on $581,800	69,816.00
	$1,706,653.33
And adding the amount paid the restored State of Virginia	16,923.70
Left the balance as due from Virginia to the United States as	$1,723.577.03
And this, with	5.50
In cash, just equaled the amount of Virginia's claim.	
West Virginia claims the balance of interest thus claimed to be due by Virginia	$ 298,369.74

And interest upon this balance of interest from July 1, 1814, to January 1, 1861 ..... 832.451.57

Making a total of claim for West Virginia of $1,130,821.31

The amount claimed under this schedule is the sum of $298,369.74, the amount alleged to be due for interest July 1, 1814. (41-E.)

It appears that the bonds owned by the United States, $581,800, make a part of the aggregate of the indebtedness of $33,897,073.82 and are taken in that aggregate at par as a charge against West Virginia.

The claim of West Virginia against Virginia upon this item is based upon the assumption that the settlement between Virginia and the United States resulted in effect in the payment in cash to Virginia of the sum of $1,723,582.53, and that this establishes the cash value of the claim of Virginia January 1, 1861, principal and interest, at $1,130,821.31.

It is too evident for discussion that the adjustment between the United States and Virginia was purely arbitrary and not necessarily dependent upon the cash values of the claims upon either side. They were adjusted as of February 11, 1894, because with the principal sums involved and the interest computed upon either side, upon that date they practically balanced each other. It is a well known fact that almost universally the Government of the United States never pays interest on any claims against it. It is incredible with its well known policy and practice that the United States would ever have appropriated cash out of its treasury for the settlement of this claim of Virginia for interest, predicated upon a balance of interest in the first instance, interest upon a balance of $1,425,212.79, thus aggregating $1,723,582.53; and it would seem to be clear that this claim never would have been adjusted upon the basis that appears to have been adopted, had it not been for the conflicting claims of the United States and Virginia. The adjustment involved the payment in cash of only the small sum of $5.50, and it was evidently a mere balancing of one claim against the other for the purpose of setting at rest the controversy.

It is difficult to tell, upon any basis that will stand the test of a logical analysis, what should be allowed in the adjustment in connection with this item. Virginia admits that she should be charged with the bonds, but claims that they should be reduced to 30 per cent of their value, as that was their market value when they were used in the settlement by the United States. Virginia, however, has been

allowed for their full face value in the aggregate of the debt, with its proportion of which West Virginia is to be charged; and it does not seem that she should be allowed to charge the bonds at their face value, and at the same time credit them in effect to West Virginia at 30 per cent of their value.

As to this item I think that Virginia should be charged with the full face value of her own bonds only, $581,800; and, as the interest received thereon is excluded in this conclusion in determining their value, that West Virginia should not be charged with any portion of the interest on those bonds that have accrued, as Virginia, except in the matter of this settlement, has never been called upon to pay any part of the interest.

This conclusion disallows the claim of West Virginia made later for interest of $832,451.57. (46-E.)

$581,800 plus $5.50 equals $581,805.50, received in 1903. Calculated back to January 1, 1861, the present value of $581,805.50 is $164,584.30.

I allow ..... $ 164,584.30

18. CLAIM AGAINST SELDEN WITHERS COMPANY.

Amount claimed in answer, $152,023.04.

In the exhibits filed by the defendant the amount claimed is $132,842.74. (13-E., 42-E., 43-E.) This amount is agreed to. (363-369-E.)

Between the dates of April 26, 1866, and August 20, 1891, the aggregate sum of $132,842.74 appears to have been paid upon this claim.

The various payments calculated back to January 1, 1861, for their present value as of that date are, respectively:

		Value at Jan. 1, 1861.
April 26, 1866	$ 500.00	$ 378.79
June 23, 1866	4,674.60	3,514.74
July 11, 1866	1,189.48	894,35
December 7, 1866	2,212.00	1,632.47
November 5, 1868	5,522.00	3,756.46
July 17, 1869	5,150.00	3,399.34
April 27, 1871	5,000.00	3,086.42
June 3, 1871	8,036.49	4,945.53
July 6, 1871	4,395.19	2,698.44
September 13, 1871	11,871.30	7,238.60
November 9, 1871.....	5,089.29	3,084.42
November 18, 1871	8,211.91	4,961.88

December 23, 1871	10,000.00	6.024.10
March 6, 1872	13,692.98	8,199.39
May 4, 1872	3,000.00	1,785.71
June 10, 1872	10,000.00	5,934.72
December 4, 1872	1,600.00	932.94
December 21, 1872	10,000.00	5,813.95
June 23, 1873	9,500.00	5,428.57
September 24, 1873	7,500.00	4,249.29
February 20, 1875	1,600.00	864.86
May 13, 1887	1,286.00	498.45
November 26, 1889	2,504.00	915.54
August 20, 1891	307.50	108.28
August 20, 1891	307.50	108.28
	$132,842.74	$80,345.24

I allow $80,345.24

19. RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY.

Loan, $149,984.

This was a dividend bond. (44-E.)

This item does not appear in the answer.

The amount that appears on the exhibit filed by the defendant is $149,984 (12b-E) and it was finally paid.

The Richmond, Fredericksburg & Potomac Railroad Company was operated at a profit, and was able to pay on Jonuary 1, 1861.

July 11, 1866	1,189.48	894.35

I allow $149,984

SUMMARY—CLASS C.

1. Orange & Alexandria Railroad Company—		
Stock	$ 573,672.00	
Loan	398,670.60	$ 972,342.60
2. Richmond & Danville Railroad Company—		
Stock	$1,588,440.00	
Loan	565,803.34	$2,154,243.34
3. Richmond & Petersburg Railroad Company—		
Stock	$ 441,126.40	
Divided bonds	33,408.00	474,534.40

4. Virginia Central Railroad Company—		
Stock	$2,390,918.08	
Loan	90,032.82	
Dividend bonds	143,508.00	$2,624,458.90
5. Blue Ridge Railroad Company		402,153.10
6. Alexandria, Loudoun & Hampshire Railroad Company		15,096.85
7. Winchester & Potomac Railroad Company		83,333.33
8. Virginia & Tennessee Railroad Company		84,799.90
9. South Side Railroad Company		
10. Norfolk & Petersburg Railroad Company—		
Loan	98,607.09	
Interest payment	1,525.42	
Note for interest and balance of loan	8,282.94	108,415.45
11. Roanoke Navigation Company		1,662.47
12. Alexandria Canal Company		295.16
13. Upper Appomattox Company		7,163.36
14. Dismal Swamp Canal Company		6,782.25
15. Loan to Washington College		2,000.00
16. Richmond Academy bonds		400.00
17. Claim against United States Government		164,584.30
18. Claim against Selden Withers Company		80,345.24
19. Richmond, Fredericksburg & Potomac Railroad Company		149,984.00
		$7,352,594.65

CLASS D.

Interest on loans and dividends on stock accrued prior to January 1, 1861, upon common investments, and collected by the State of Virginia after January 1, 1861, and still unaccounted for.

1 ORANGE & ALEXANDRIA RAILROAD COMPANY

Dividend Bonds and Interest on Loan.

Amount claimed in defendant's Exhibit No. 4, $51,942.09. (46-E.)

Of this, $31,694.09 was paid March 26, 1864, and $20,336.98 October 20 and 25, 1862. Reduced to a gold basis these sums produce $9,466.52. (Plaintiff's Exhibit No. 4, 370-E.)

Calculated back to January 1, 1861, the present value of $9,466.52 is $8,443.23.

I allow.....$8,443.23

2 RICHMOND & DANVILLE RAILROAD COMPANY.

Interest on Loan.

Amount claimed (Defendant's Exhibit No. 4, 46-E.) $10,500.

This loan was paid in full February 28, 1861. (370-E.)

I allow.....$10,500.

3 RICHMOND & PETERSBURG RAILROAD COMPANY

Dividend on Stock.

Amount claimed (Defendant's Exhibit No. 4, 56-E) $9,640.

This was paid to the State February 28, 1861. (370-E.)

I allow.....$9,640.00

4 VIRGINIA CENTRAL RAILROAD COMPANY.

Interest on Loan and on Dividend Bond.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $7,119.14

The first item was interest on loan paid January 2, 1861, $1,159.34; and the interest on the dividend bond was paid January 19, 1861, $5,959.80. (370-E.)

I allow.....$7,119.14

5. WINCHESTER & POTOMAC RAILROAD COMPANY.

Annuity Payment.

Amount claimed (Defendant's Exhibit No. 4, 46-E.) $833.33.

This was paid in November, 1861. (370-E.)

I allow.....$833.33

6 RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY.

Interest on Dividend Bonds.

Amount claimed (Defendant's Exhibit No. 4, 46-E.) $4,467.41.

This interest was paid January 16, 1861. (370-E.)

I allow $4,467.41

7 VIRGINIA & TENNESSEE RAILROAD COMPANY.

Payments Claimed on Account of Interest.

Amount claimed in Defendant's Exhibit No. 4, $280,00. (46.E.)

Between 1861 and August, 1863, the aggregate sum of $280,000 appears to have been paid. (370-E.)

The various payments, reduced to gold, and calculated back to January 1, 1861, for their present value as of that date, are respectively:

		Value at Jan. 1, 1861.
1861, $35,605.57 at face	$35,605.57	$35,605.57
January, 1862, $14,394.43, Confederate money, 1-1/4, (O. R. 647).....	11,515.54	10,863.72
February, 1863, $90,000., Confederate money 4, (O. R. 647)	22,500.00	20,000.00
March, 1863, $50,000., Confederate money 5,, (O. R. 647)	10,000.00	8,849.56
May, 1863, $55,000., Confederate money 5-3/4, (O. R. 647)	9,565.22	8,390.54
August, 1863, $35,000., Confederate money 12-1/2, (O. R. 647)	2,800.00	2,424.24
	$91,986.33	$86,133.63

I allow..... $86,133.63

8 SOUTH SIDE RAILROAD COMPANY.

Payments Claimed on Account of Interest.

Amount claimed in Defendant's Exhibit No 4, $264,500. (46-E.)

Between July, 1862, and July, 1863, the aggregate sum of $264,500 appears to have been paid. (371-E.)

The various payments, reduced to gold, and calculated back to January 1, 1861, for their present value as of that date are, respectively:

		Value at Jan. 1, 1861
July, 1862, $28,000., Confederate money 1-1/2, (O. R. 647).....	$18,666.67	$17,125.39
September, 1862, $56,000., Confederate money 2-1/2, (O. R. 647).....	22,400.00	20,363.46
October, 1862, $56,00., Confederate money 2-1/2, (O. R. 647).....	22,400.00	20,271.49
November, 1862, $12,500., Confederate money 3, (O. R. 647).....	4,166.67	3,753.76
January, 1863, $28,000., Confederate money 3, (O. R. 647).....	9,333.33	8,333.33
July, 1863, $28,000., Confederate money 9, (O. R. 647).....	3,111.11	2,705.31
July, 1863, $56,000., Confederate money		

9, (O. R. 647).....	6,222.22	5,410.63
	$86,300.00	$77,963.55

I allow $77,963.55

9 NORFOLK & PETERSBURG RAILROAD COMPANY.

Interest on Stock and on Loan.

Amount claimed in Defendant's Exhibit No. 4, interest on stock $9,900, and interest on loan $36,000. (46-E.)

$9,900, was paid in January, 1862, which on a gold basis amounts to $7,920. $36,000. was paid in January, 1864, which on a gold basis amounts to $1,800. (371-E.)

Calculated back to January 1, 1861, the present value of those sums is $8,997.12.

I allow.....$8,997.12

10 JAMES RIVER AND KANAWHA COMPANY.

Dividend on Stock.

Amount claimed in Defendant's Exhibit No. 4, $250. (46-E.)

This amount appears to have been paid sometime in 1861. (371-E.)

I allow $250

11 LOAN TO WASHINGTON COLLEGE.

Interest on Loan.

Amount claimed (Defendant's Exhibit No. 4, 64-E) $60.

This was paid. (371-E.)

I allow .....$60.

12 RICHMOND ACADEMY BONDS.

Interest on Bonds.

Amount claimed (Defendant's Exhibit No. 4, 46-E) 12.

This was paid. (371-E.)

I allow $12

13 CLAIM AGAINST UNITED STATES GOVERNMENT.

Amount claimed (Defendant's Exhibit No. 4, 64-E.) $832,451.57.

This has been disposed of in my finding on claim 17 under Class C. I therefore disallow this claim.

14 THE FARMERS' BANK OF VIRGINIA.

Dividend on Stock.

Amount claimed (Defendant's Exhibit No. 4, 1861. (46-E.) $33,691.

This was all paid January and February, 1861 (371-E.)

I allow $33,691

15 BANK OF VIRGINIA.

Dividend on Stock.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $33,726.70.
This was all paid during January, 1861. (371-E)

I allow $33,726.70

16 BANK OF THE VALLEY

Dividend on Stock.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $16,936.50.
This was all paid in January, 1861. (372-E.)

I allow $16,936.50

17 EXCHANGE BANK

Dividend on Stock.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $30,642.50.
This amount was all paid in January, 1861. (372-E.)

I allow $30,642.50

18 NORTHWESTERN BANK.

Dividend on Stock.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $13,104.

I allow $13,104

19 FAIRMONT BANK

Dividend on Stock.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $1,500.
This was paid in January, 1861. (372-E.)

I allow $1,500

20. BLUE RIDGE RAILROAD COMPANY.

Tolls.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $1,534.69
This was paid in January, 1861. (372-E.)

I allow ..... $ 1,534.69

SUMMARY—CLASS D.

1.	Grange & Alexandria Railroad Company.....	$ 8,443.23
2.	Richmond & Danville Railroad Company.....	10,500.00
3.	Richmond & Petersburg Railroad Company.....	9,640.00
4.	Virginia Central Railroad Company.....	7,119.14
5.	Winchester & Potomac Railroad Company.....	833.33
6.	Richmond, Fredericksburg & Potomac Railroad Co..	4,467.41
7.	Virginia & Tennessee Railroad Company.....	86,133.63
8.	South Side Railroad Company.....	77,963.55
9.	Norfolk & Petersburg Railroad Company.....	8,997.12
10.	James River & Kanawha Company.....	250.00
11.	Loan to Washington College.....	60.00
12.	Richmond Academy Bonds.....	12.00

13.	Claim against United States Government	.....
14.	The Farmers' Bank of Virginia	33,691.00
15.	Bank of Virginia	33,726.70
16.	Bank of the Valley	16,936.50
17.	Exchange Bank	30,642.50
18.	Northwestern Bank	13,104.00
19.	Fairmont Bank	1,500.00
20.	Blue Ridge Railroad Company	1,534.69
		$345,554.80

CLASS E.

1. FARMERS' BANK OF VIRGINIA.

Amount claimed (48-E.) $1,073,972.82.

The State held 9,626 shares, of the par value of $962,600, in this bank. (48-E.) A book value of 111.57 is claimed.

Stock quotations from November 2, 1860, to January 25, 1861. (340-E.)

Nov. 2, 1860	102	Quoted
" 9, "	102	Asked
" 16, "	100	Last sales
" 23, "	100	Asked
" 30, "	99	Sales
Dec. 7, "	99	Sales
" 14, "	100	Last sales
Jan. 4, 1861	100	Last sales
" 18, "	99	Sales
" 25, "	99	Sales

The average dividends per year paid by this bank, for five years to and including 1860, were 7.65 per cent. (48-E.) This capitalized, would be $127.50. The dividend in 1865 was 8 per cent., in 1860 7¼ per cent. This book value is figured on the basis of profits of $475,168.23. (48-E.) In this sum is included bad debts, January 1, 1861, $70,773.96, and doubtful debts, $45,437.34, in all $116,211.30. (4,751,583.) This sum, deducted from the profits, would leave as profits $358,956.93, or, on the same basis, a book value of 111.39. Deducting from this the dividend allowed for in reaching the calculation of book value, 3½ per cent., we have 107.89.

It appears that the bank declared a dividend of 7¼ per cent. in 1861 which was not earned by the sum of $90,339.07. (478)

There seems to have been some difficulty in ascertaining what the facts were. The defendant's accountant, on an assumption put to him

by the cross-examining counsel, the accuracy of which the accountant did not concede, asserted that the bank was in a worse condition in 1861 than on January 1, 1860. (481)

It is conceded by the defendant's accountant that the book value of these stocks is not equivalent to their cash value at least 5 per cent., the cost of liquidation. I deduct 5 per cent, from 107.89 and take as the value of this stock 102.89; and on that basis the State's stock would be worth $990,419.14.

I allow $990,419.14.

2. BANK OF VIRGINIA.

Amount claimed (49-E.) $1,050,343.80.

The State had in this bank 13,766 shares, of the par value of $70, $963,620. (49-E.)

The stock quotations were:

1860,	Nov. 2	72	Asked
	Nov. 9	70	Last sales
	Nov. 16	70	Sales
	Nov. 23	70	Asked
	Nov. 30	70	Sales
	Dec. 7	70	Sales
	Dec. 14	70	Sales
1861,	Jan. 4	70	Last sales
	Jan. 18	68	Asked
	Jan. 25	68	Last sales
	Feb. 1	70	Asked
	Feb. 8	70	Asked
	Feb. 16	68	Sales
	Feb. 22	68	Last sales
	Mar. 1	68	Sales

(342-E.)

The average dividends per year paid by this bank, for five years to and including 1860, were 7.45 per cent. This capitalized, would give 124.16, on the basis of $100 par value; on the same basis of $70 par value, 86.91.

There were, on January 1, 1861, bad debts $6,412, and doubtful debts $43,973.57, in all $50,385.57. (1582.)

Defendant claims book value of $76.30 per share, based on a surplus of $332,235.32. (50-E.) The doubtful and bad debts, $50,385.57, taken from this surplus, leaves $281,849.75. This would give a book value on $70 par basis of 77.44. Deducting from this a dividend of 2.45, as used in defendant's computation, (49-E.) we would have

74.99. Deducting 5 per cent., $3.50 for "actual cash market value," we have 71.49; 13,766 shares at $71.49 is $984,131.34.

As to this bank the following examination occurred: (496)

"Q. Now, I ask you whether in view of the analysis of this statement upon which your figures are based and which we have just gone over, the condition of the bank, in your judgment as an expert, was good, bad or indifferent?

A. Based on the figures which had been quoted only, it would show a bad state of affairs; based on the entire trial balance it is not a bad showing.

"By the Master:

"Q. Does it indicate a prosperous condition or otherwise on the part of the bank?

A. "Prosperous, when I take the entire trial balance into account. If I am confined only to the items mentioned it will show a very bad state of affairs."

I allow $984,131.34.

3. BANK OF THE VALLEY.

Amount claimed (51-E.) $538,096.80.

The State held in this bank 4,839 shares, par value $100, $483,900.

There were no stock quotations.

Profit and surplus, January 1, 1861, were $178,520.10. (51-E.)

The book value claimed is 111.2. The average dividends per year, for five years to and including 1860, were 8.50 per cent. This capitalized, would show a value of 141.6.

The statement of this bank shows a claim against the deceased teller of $13,522.12. (51-E.) The following statement appeared in the notation made by the directors of the bank:

> In addition to the amount of ascertained liabilities as stated, it is proper to add, that there may probably be due at the mother bank, to banks and depositors, about $30,000 for omissions on the part of the late teller to enter credits for remittances and deposits—the precise amount not yet accurately ascertained. No ultimate loss, however, to the bank by his credits is apprehended." (407-E.)

These, however, are two doubtful items, the responsibility for which should not be assumed by the State of Virginia; and I therefore deduct the aggregate, $43,522.12 from the profit and surplus of $178,520.10, leaving $134,997.98. This sum would show a book value of 111.1. Deducting the 3½ per cent. allowed in the defendant's computation

(51-E.), we would have a book value of 107.6. Deducting 5 per cent. for "actual cash market value," we have 102.6; 4,839 shares at 102.6 is $496,481.40.

I allow $496,481.40.

4. EXCHANGE BANK.

Amount claimed (52-E.) $940,287.

The State held 8,755 shares of stock in this bank, par value $100, $875,500.

The stock quotations were as follows:

1860,	Nov. 2	105½	Sales
	Nov. 9	104½	Sales
	Nov. 16	104½	Last sales
	Nov. 23	100	Asked
	Dec. 14	101	Bid
1861,	Jan. 4	101	Bid
	Jan. 11	100	Sales
	Jan. 18	100	Sales
	Jan. 25	100	Sales
	Feb. 1	100	Last sales
	Feb. 8	99½	Sales
	Feb. 15	99½	Sales
	Feb. 22	100	Sales
	Mar. 1	100	Sales

(343-d-E.)

The defendant claims, after deducting a dividend of 3-1/2 per cent, a value of 107.4, predicated upon profits of $343,170.29. (52-E.)

The average dividends per year, for five years to and including 1860, were 8.7 per cent. This, capitalized, would show a value of 145. The dividend for 1860, at 7-1/2 per cent, was $235,282.50. The sum carried as profits for that year, in addition to a contingent fund of $191,584.24, was $150,586.05. (52-E.) The dividend paid in excess of the sum mentioned in the profits was the sum of $84.-696.45.

There were doubtful debts, January 1, 1861, of $4,800. (1583) This, deducted from the surplus of $342,170.29, leaves $337,370.29. On this basis the book value, with the deduction of 3-1/2 per cent dividend, would be 107.2. Deduct per cent for "actual cash market value" and we have 102.2. 8,755 shares at 102.2 is $894,761.00.

I allow ..... $894,761.

5. NORTHWESTERN BANK.

Amount claimed (53-E.) $405,549.60.

The State held 3,744 shares, par value $100, $374,400.

The book value, after deducting 3-1/2 per cent dividend of 108.4 is predicated upon contingent fund and profits aggregating $103,-849.37. (54-E.)

The average dividends per year, for five years to and including 1860, were 7.6 per cent. This, capitalized, would give 126.66.

In my first report, on the basis of its dividend paying capacity, and a comparison based upon the Fairmount Bank stock, the value of which was conceded, I found this stock to be of the value of $427,250. On the basis now adopted, the book value of 111.9 less 3-1/2 per cent for dividend, as per defendant's Exhibit No. 5 (53-E.) and 5 per cent for reaching the liquidating book value, or 103.4, results in a value of $387,129.60.

I allow .....$387,129,60.

West Virginia is chargable with all of this stock in the final adjustment except so much as the State held in the Jeffersonville branch, afterwards the Graziers Bank, although Virginia is to be charged in the first instance with the full amount. The total capital stock of this branch October 1, 1861, was $164,200. (1554) In 1862 and 1863 Virginia received dividends on $146,400, and it is claimed that that sum represented her original stock holdings therein, for which she is to be charged. This does not, however, follow. Under the Act of March 13, 1862, it was provided that "any loyal holder of stock in the Northwestern Bank of Virginia whose stock in said bank was purchased through said branch" might return his stock and exchange it "for a like number of shares of stock in the said Graziers Bank of Virginia." (884, 958) And it was further provided that there should be issued to the State stock "for an amount equal to the balance of the capital stock of the said branch not exchanged under the previous section." There is nothing to show to what extent the State's orignal holding in this branch was added to by reason of the failure on the part of "loyal stockholders" to exchange under this statute. The number of shares not exchanged July 23, 1863, is stated by the cashier to be 1,364 shares, or $136,400 par, a large portion of the whole capital. The necessary inference from the statement of the cashier is that there was stock that would have been the subject of such exchange, but how much is not stated. (1601) In 1857 the Northwestern Bank bought one-third of the State's stock, and the portion of that purchase which fell to this

branch was 250 shares. (Letter of Kelly, cashier, July 23, 1863, 1601.)

"This statement shows that the number of shares actually sold by the State was 1082 shares and if 250 of this 1082 was the number of shares apportionable to the Jeffersonville Branch, then 832 shares was apportionable to the Wheeling Branch with the two branches in the new State. The percentage therefore is as follows:

250 shares 23.105%
832 shares.....76,895%

(Potter's letter, 1608)

This is the only definite place of evidence tending to show the proportion of the stock of the Northwestern Bank held by the State in the Jeffersonville branch.

I find that West Virginia is to be charged, for that reason, in the final adjustment, with 76.895 per cent. of the whole, $387,129.60, namely, $297,683.30, this being the percentage in the other two branches that was held by the State and taken by West Virginia.

6 FAIRMOUNT BANK.

Amount claimed (55-E.) $51,935.

There are no stock quotations.

The State held 500 shares, par value $100, $50,000.

In my first report I held that this was worth $50,000, as it was so conceded by the defendant, to whom it was to be charged.

> "The defendant concedes that the Fairmont Bank that was paying only a 4 per cent. dividend was worth par June 20, 1863. (Rec. p. 820-A)."

(Master's report, 191)

The surplus for the year ending 1861 was $7,418.46. On this the defendant claims a book value of 106.87 (51-E.), giving, after deducting 3 per cent on account of dividends, net book value of 103.87. (55-E.) The exhibit shows a dividend of 4-1/2 per cent for 1860. Deducting 5 per cent for the actual cash market, we have 98.87. 500 shares at 98.87 is $49,435.

I allow .....$49,435.

This is to be charged ultimately to West Virginia.

SUMMARY—CLASS E.

1. Farmers' Bank of Virginia .....$ 990,419.14
2. Bank of Virginia 984,131.34

3.	Bank of the Valley	496,481.40
4.	Exchange Bank	894,761.00
5.	Northwestern Bank	387,129.60
6.	Fairmount Bank	49,435.00
		$3,802,357.48

CLASS F.

The allegation in the answer that the items included in this Class have a reasonable value of $4,000,000 because that value was placed upon them "both by the State of Virginia and by the railway company purchasing them." seems to be lacking in foundation. The answer and the facts proved by the defendant show that the consideration for these items was not cash or its equivalent, but a second mortgage. The distinction between a second mortgage for $4,000,000 and cash of that amount, as a measure of real value, is too clear for argument. Especially when the first mortgage was for "not more than $15,000,000," and the $4,000,000 was payable in Virginia bonds or money at the option of the railroad company in annual installments of $500,000 each, the first payment being postponed to 1885, fifteen years from the date of the sale. (377 E., 420-E.) While it is true that West Virginia claims that the items in Defendant's Exhibit 6-A (57-E.) were worth $4,276,044.39, it seems to me clear that, if she had intended to rely upon that value instead of the sum that appears to have been received therefor, she would have so alleged in her answer and followed the allegations by that proof. In that case I can see no reason why they should not have been included in Claim C, and so alleged and so proved, without any reference to their subsequent sale, leaving these facts, if available to minimize the value claimed, to be proved by the plaintiff. On the contrary, negativing the claim she now makes, she alleges and proves the sale as a part of her case. In her answer she practically rests her case upon the value evidenced by the second mortgage of $4,000,000.

The Virginia & Tennessee Railroad Company under the name of the Lynchburg & Tennessee Railroad Company was incorporated in 1836, (O. R. 936) and changed to Virginia & Tennessee Railroad Company in 1849. (O. R. 963.)

The South Side Railroad was incorporated in 1851, (O. R. 966.)

The Virginia & Kentucky Railroad was incorporated in 1853. (O.

R. 967.)

The Norfolk & Petersburg Railroad was incorporated 1853. (C. R. 963.)

The Virginia & Kentucky Railroad, for which 820,000.61 is claimed, had never been operated at that time, and that sum was "simply the construction value." (546) There is no evidence of the physical condition of any of these roads. The Virginia & Tennessee Railroad paid a dividend of 6 per cent in 1864, which in gold was about 1/2 of 1 per cent and the Norfolk & Petersburg Railroad paid, on its guaranteed stock of $82,500, dividends of 3 per cent in 1863 in gold 1/4 of 1 per cent; 3 per cent in 1864, in gold 1/9 of 1 per cent, and 6 per cent in 1865, in gold 1/10 of 1 per cent. (227-E.) There is no evidence that any other dividends were ever paid on any of these stocks.

The plantiff proves a quotation of the Virginia & Tennessee Railroad Company stock, July 24, 1863, of 115, and September 3, 1863, of 135, (335-E.) and shows by her exhibit a value on that date of Virginia's stock, based on the stock quotations, of $348,147.16. (385-E.) I have not taken the stock quotations as the standard of value in any other instance, and do not feel at liberty to do so as to this stock. The fact that this road for nearly thirty years paid but one dividend, and that trifling in amount, under the unusual war condition, is not strongly indicative of value. Its loan of $1,000,000 is treated as of no value in the omnibus sale to the Atlantic, Mississippi & Ohio Railroad Company, and is described as follows: "VI. All caims, rights and privileges which belong to the State of Virginia on account of loan of $1,000,000." (56-E.)

Whether the State was still repudiating the validity of the transactions which the defendant claims resulted in the payment of $886,-685 (31-E.) on this loan, or was affirming the validity of the sale and claiming the balance due with interest, or whether the failure to place any value upon it was occasioned by the lack of financial responsibility of the Railroad Company does not appear. If the loan had no value it necessarily follows that the stock would be worthless.

It is not open to West Virginia to contend that the sale to the Atlantic, Mississippi & Ohio Railroad is not competent evidence tending to show the value of these securities, as she both alleges and proves it. The circumstances under which the sale was made, the grouping together of fourteen items of property, two of which, of a nominal value of $1,800,000, are treated as of no value; all of the other twelve items being given a value exceeding by $689,436.41 the

$4,000,000 secured by the second mortgage; the fact that the payment of this $4,000,000 was subject to a first mortgage of "not more than $15,000,000;" (421-E) that as a part of the consideration of the sale the State was to be "absolved from all and whatever liability for and by reason of her unsatisfied subscriptions to the Virginia & Kentucky Railroad Company," (420-E.) (subscription rights did not appear to have had much value); and the Atlantic, Mississippi & Ohio Railroad was to construct "the road to Cumberland Gap" (a link in the system of about 100 miles of difficult construction) and take care of "repairs and improvements of the whole line;" (421-E.) and the $4,000,000 second mortgage of Virginia was to secure the payment of $4,000,000 of Virginia bonds, or money, at the option of the company, "payable by annual installments of $500,000 each, the first payment to be made during the year 1885," thus postponing the first payment some fifteen years; are strongly indicative of an abortive, profitless enterprise. The further fact that after the lapse of ten years, and the expenditure of approximately $5,000,000 of new money, (256, 260, 266-E.) the enterprise again met with shipwreck, and the State was able to save as salvage from the wreckage, and that apparently through the grace of the first mortgages, only the sum of $500,000 in 1882, (543) (165-E.) sheds a significant light on the inherent vice of this enterprise as a destructive absorbent of capital. Under these circumstances and with this history I do not feel justified in adopting the value of these stocks now claimed by the defendant, practically equivalent to their full original cost. The amount received at this sale is the only other criterion.

The values stated in the sale to the Atlantic, Mississippi & Ohio Railroad Company of the various properties are in the aggregate $4,689,436.41. For those properties $500,000 was received. In a proper distribution of the price received, each item of property would be entitled to its proportion. $500,000 is 10 2-3 per cent of $4,689,436.41, and in distributing this price among the properties transferred each property would be entitled to 10 2-3 per cent of the value stated in the sale.

Virginia & Tennessee Railroad Company, $2,270,525, 10 2-3 per cent.....	$242,189.33
South Side Railroad Company, $803,500, 10 2-3 per cent	85,706.66
Virginia & Kentucky Railroad Company $82,000.61, 10 2-3 per cent.....	8,746.73

Norfolk & Petersburg Railroad Company, $1,-200,000, 10 2-3 per cent..... 128,000.00

Total $464,642.72

Calculated back to January 1, 1861, the present value of these sums is $204,688.42.

I allow $204,688.42

SUMMARY—CLASS F.

$204,688.42.

CLASS G.

JAMES RIVER & KANAWHA COMPANY.

This item was considered in my former report.

On the question of value the record then showed: Amount of stock held by the State, $10,400,000, total cost of same $9,547,582.21, a dividend in 1836 of $10,092. (O. R. 820-L. and 820-M.) On these facts I found that the stock was of no value. (568)

In the present record there are 172 pages devoted to a detailed and exhaustive statement of the business, prospects and financial condition of this company.

Because of the fact that "so much time has elapsed and the evidence of the actual value of this stock as of that date (January 1, 1861) has become so obscure," (59-60) the defendant in her answer claimed only 25 per cent of the par value of $10,400,000, or $2,600,000. This valuation was purely arbitrary, the result of conjecture, and was abandoned in their exhibits. In making out their case they claimed $5,410,429.54 as the value, (60-E.) on the ground that the property was capitalized at that sum in 1882 by the Richmond & Allegheny Railroad Company. (66-E., 66a-E.) This capitalization, as showing the value of the State's stock in the James River and Kanawha Company, is effectively negatived by several considerations. The State owned only 91.77 per cent. (1467) of the stock; and if $5,410,429.54 was the value of the property, only 91.77 per cent should be charged as the value of the State's interest, whereas the whole is claimed.

The property was subject to an indebtedness of $1,877,912.83, as proved by Defendant's Exhibit No. 7; (218-9-E) and if $5,410,429.54 was the fair value of the property acquired from the James River & Kanawha Company, this indebtedness should be deducted, to show the net value of the assets of the James River & Kanawha Company,

as on that basis only would Virginia be charged. This important fact is proved by the defendant; but in proving the value claimed, it is ignored. In a proper exhibit, purporting to show the value on this basis, the fact of the indebtedness should have been noted, as otherwise, if that basis had been adopted, this indebtedness of nearly $2,000,000, might have been overlooked.

The Richmond & Allegheny Railroad made this purchase March 4, 1880. (280-E.) It proceeded to place upon the property for the purpose of improving it two mortgages, one of $4,925,000 and one of $729,000. (981) Its efforts were unfortunately attended with such a degree of failure that on June 23, 1883, the trustees in mortgages dated April 27, 1881, May 24, 1881, and October, 1883, and the trustees in a mortgage dated March 5, 1880, brought foreclocure suits. Such proceedings were had that the whole property was sold at auction April 16, 1889, for $5,000,000, thus wiping out the capitalization of $5,410,429.54, and showing that the assets thus capitalized were of only nominal value. In the sale of March 4, 1880, by the James River & Kanawha Company to the Richmond & Allegheny Company, the stock of the State was treated as worthless. The State never received anything therefor. The consideration of the sale was "the maintenance of the canal as a line of commerce * * * * * and the construction and equipment of the railroad hereinafter described," (Richmond to the Jochua dam, near the tow-path to Clifton Forge, and a branch to Lexington) and "the assumption and payment of all the debts and obligations of the James River and Kanawha Company." (209-E.) $29,672.30 was to be paid for salaries and wages of officers and employes, etc. (220-E.) The debts to be assumed were $1,577,912.83. (219-E.) The details of the Richmond & Allegheny transaction negative, rather than prove, any value to this stock. The James River Company was organized in 1785, with George Washington as its first President. (1477) It continued under this name until 1835, when it was merged in the James River & Kanawha Company, at a price of $1,350,000. (1480) the tonnage handled by the canal had gradually increased from 122,695 in 1844 to 231,032 in 1853 and 244,273 in 1860, dropping meanwhile to 183,363 in 1857. (1130)

The receipts for tolls were:

In 1844	$178,448.63
In 1849	238,494.40
In 1852	269,210.81
In 1853	283,998.60

In 1859 .... 174,975.02
In 1860 .... 229,256.54 (1134)

The net revenues were:

In 1843 ....$101,014.87
In 1849 .... 175,639.49
In 1852 .... 182,190.47
In 1853 .... 170,368.81
In 1856 .... 106,376.40
In 1857 .... 9,499.64
In 1858 .... 6,356.34
In 1859 .... 61,228.64
In 1860 .... 105,928.42 (1130, No. 11)

During the year 1860 the increase in receipts was more than $60,000, (1079) and there was an increase of 30 per cent in the boats locked above Richmond. (1094) The great irregularity in business and results is unexplained. There was a substantial increase in volume, in 1860 over prior years, of many of the staple articles transported, though in some cases the volume was less. In 1855 it carried 4,863,383 feet of lumber, and in 1860, 25,600,576 feet, though that was nearly 2,000,000 less than the amount in 1859; in 1855, 2,029,338 shingles; in 1860, 3,116,600; in 1855, 149,391 bushels of wheat, and in 1860, 360,918; though it carried in 1858, 483,404 bushels. In outward trade, in 1855, 57,520 bushels of wheat; in 1856, 185,288; in 1860, 143,000; while of tobacco, in 1855, 78,600 packages, 23,857 hogsheads, 387 tierces, and in 1860, 56,367 packages, 20,434 hogsheads, 1,177 tierces. (1110)

The total expenditures up to September 30, 1860, were $17,253,492.75. (1190)

The plaintiff proves a stock quotation December 14, 1860, 18½ "last sales." 335-E.) This quotation could not have been on the preferred stock of the State, as none of it was paid. It must have been on the common stock, which, with $7,400,000 of 6 per cent preferred ahead of it, must have been worth very much less than the State's preferred stock. If the quotation was to govern, the preferred was at that time worth considerably more than 18½. Plaintiff claims that this quotation is "exceedingly high."

In 1860 it owed to the State of Virginia $7,560,214.44 (1147) Under an Act of March 23, 1860, (67-E.) the State was authorized to subscribe for 74,000 shares of the stock of the company, which stock was to be 6 per cent preferred. 2,000 shares were to be used to extinguish the floating debt of the company, and upon the receipt

of the balance of 72,000 shares a receipt in full, for the several debts due to the State and for any claims against the company on account of the debts for which the State was responsible as surety, was to be given. (67-E.) This transaction appears to have been consummated. Instead of the company being indebted to the State in, say, $7,400,000, the debts were extinguished and the State became the holder of $7,400,000 6 per cent preferred stock.

The effect of this was that, instead of paying interest on the indebtedness, whatever might be available from an excess of receipts over disbursements would be applicable to a dividend on this preferred stock. Whether the completion of this transaction left any direct indebtedness is not clear. It appears that bonds of the North River Navigation Company of $199,000, (1107) on which the company was liable, were left outstanding; and that there was an interest charge in 1861 of $14,356.45, in 1862 of $11,449.25, and in 1863 of $13,981.30. (1193) What these items were based upon does not appear. Assuming that the debt to the State had been transformed into capital, so that the interest charge was practically eliminated, the net earnings, (deducting from disbursements construction items) would have been in 1860, $151,000.14. (1436) On the same assumption, the average annual net earnings for seven years, including 1860 would have been $115,554.21, (1428) and for 25 years would have been $111,800. (1440) Interest for one year on $199,000 is $11,940, and this would undoubtedly be a charge upon the surplus revenue.

It will be noticed that the computations make no allowance for any charge for depreciation, and there is nothing in the record to show what that charge should be. On the other hand the loss from operation, prior to the capitalization of its indebtedness, was $1,302,955.75.

It paid a dividend of $10,092 in 1836 and $250 on registered stock in 1860. (46-E., 371-E.) After the capitalization there was a deficit from operation of $69,809.54 in 1861; $46,809.86 in 1862, and $129,036.25 in 1863; and at the time the stock of the State was treated as valueless the company had accumulated an indebtedness of $1,877,912.83. No explanation is made as to the reason for these deficits of 1861, 1862 and 1863, though it is suggested they were caused by the war. There is nothing to show how the war conditions affected the business of the canal, except as the deficit itself may show it.

My attention is called to the fact that the president of this company, in connection with a proposed reorganization, valued the "works and property of the company at $10,000,000, (1528) and propose

that the present stockholders shall contribute them at that valuation" in carrying out the "scheme" contemplated. The State then held $10,400,000 of stock in this same "works and property," the operation of which had been productive of about 1 per cent upon the stock (assuming the capitalization of its indetbedness) and a very much less return upon the cost, with no allowance for depreciation. This effort to recapitalize the holdings of the stockholders, without the receipt of a dollar in cash, in a new attempt to make a success of an enterprise whose prospects were at least doubtful, is in my judgment entitled to very little weight in determining the actual cash value of the State's holdings, especially as the "scheme" was stillborn and abortive.

The average net returns for 25 years, $111,800, less the interest on $199,000, $11,940, is $99,860. I think it reasonable to assume that, if it had not been for the disturbing conditions caused by the war, this average might have been realized from the operations of the company. This sum makes no allowance for depreciation; and there is nothing in the record, and I have not been able to find any data, which enables me to determine what allowance should be made therefor. I feel certain, however that this property would require a substantial sum to take care of depreciation. In the absence of information I do not feel at liberty to conjecture; and while I capitalize $99,860, as the only basis upon which I can predicate a conclusion, in doing so I feel that I reach an excessive valuation, particularly in view of its subsequently history. Capitalized at 6 per cent, we have a value of $1,664,333.

As the amount of the net earnings would not equal the 6 per cent dividend on the $7,400,000 preferred stock of the State, the whole capitalization properly applies to the State's stock.

I allow $1,664,333

MANASSAS GAP

This road was incorporated in 1851. (O. R. 936) It had cost, up to 1860, $3,322,164.67. "The road was not operated at that time and no other value than the above is obtainable." (61-E.) The state had $2,105,000.00 of its stock. It had taken 250,000 of perferred stock in 1858 and $350,000 of six per cent. perferred stock in 1860. (O. R. 936) In the answer the total amount of stock is alleged, and its value reduced to 25 per cent. of its face, as "so much time has elapsed and the evidence of the actual value of this stock as of that date has become so obscure." (59-60) In harmony with Defendant's Exhibit No. 7-A, (61-E.) not claiming any value for the stock, as subsequently

explained by Mr. Hillman, Defendant's Exhibit No. 11, (66a-E.) "Summary of claims," made no claim for the stock, and Defendant's Exhibit No. 3 (13-E.) under Class C, made no claim therefor, although in Defendant's Revised Exhibit No. 3 (12a-E,) it is claimed as item 20, and in the Revised Exhibit No. 11 (66-E.) marked "Corrected copy, superseding page 66-A following,) it appears claimed as a separate item, Class G, Exhibit 8, $2,105,000.00 (66-E.) Deducting $2,105,000.00 from the total of Defendant's Revised Exhibit No. 3 $14,816,175.78, (12b-E.) leaves $12,711,175.78, which is carried into the corrected summary as Class C, Exhibit No. 3, $12,711,175.78. (66-E.) This explanation is made as this item in the corrected summary does not agree with the total in either Defendant's Exhibit No. 3 or Revised Exhibit No. 3.

Mr. Hillman testified as to this road:

> "Q. You have not extended these in your summary of charges against Virginia the amount which she expended for stock in that road?
>
> A. No, sir, I have not.
>
> "Q. Why did you not do it?
>
> A. For the reason that the road was not sold for anything, and was given away simply on the condition that the stockholders outside of the State should be taken care of, and therefore I did not put it on.
>
> "Q. Then you pursued a different method—
>
> Mr. Lilly: I first want to make one statement, that we will have other data and evidence in reference to the value of this road as of the dates relied on." (574)

I have not been able to find anything that adds any element of value. Mr. Anderson is the only witness that testifies as to this road, and he simply give some details of the construction, such as its length, 112 miles, 42-1/2completed and 69-3/4 under construction in 1854 (973); not a word as to its prospects, expectations, earnings actual or anticipater, or as to the resourses or population that it was to serve and develop. It appears that in 1860 a report showed that "The whole length of the first track laid on main line and branches, measuring the road, exclusive of second tracks and sidings, 86.73 miles." (726) This cost shows a cost of between $35,000, and $40,000, a mile, as compared with a cost of $14,000. or $15,000. a mile for the Orange and Alexandria. This fact would hardly tend to improve its value as an investment.

Mr. Hillman further states:

"Q. Then you pursued a different method with respect to this road from other items that you have testified to, did you not?

A. Yes, sir, I did.

"Q. Why did you do that?

A. For the reason that I have first stated.

"Q. Was there any other reason than that this interest was given away that you did not charge it to Virginia?

A. Yes, sir.

"Q. Well, what was it?

A. I will state that in Class C, in the supplemental answer, pages 58, 59 and 60, these were classed as you might say as a special lot of securities of doubtful value as is shown by the assumption that they were only worth 25 per cent. of their face, and for that reason I did not put in any value for this road, or any of the other ones there excepting the James River and Kanawha." (575)

"Q. Why did you not show on that exhibit (61-E) the amount expended by the State, to-wit, $2,105,000, for the stock of that road? (573)

A. For the reason expressed in the foot note there, and that no claim was made by us for the consideration of this item in our final exhibit." (574)

"Q. You know what the cost of the State's expenditures in the Manassas Gap Railroad Company was, did you not?

A. Yes, sir. (575)

"Q. It was shown on the books, was it not?

A. Yes, sir.

"Q. And you did not charge that to Virginia as its value in 1861 or 1863?

A. No, sir, I did not." (576)

No charge appears to have been made in either the exhibits of 1861 (61-E.) or of 1863, (221-E.) Defendant's Exhibit 3, Class C (13-E.) testified to on direct-examination of Hillman, did not include the Manassas Gap Railroad Company item. The Revised Exhibit 3, Class C, included it. (12a-E.) It is claimed in the Summary Exhibit No. 11. (66-E.) The real reason why the claim is now made is no doubt to be inferred from Hillman's statement:

"Q. You say that it was proper to have charged the cost to the State of her interest in the Manassas Gap as its value in January, 1861, and June 1863?

A. Yes, sir, to present that matter for consideration as I have said before." (577)

I do not understand the witness to express any different opinion as to its value from that which he had already given, or that there is any purpose to modify his testimony, which as a whole shows that there was no value either proved or claimed for this stock. He simply placed it in the schedule so that it might have "consideration," in view of all the facts and admissions in the case. The stock quotations, so far as they may be entitled to weight, show auction sales of its bonds at 14.50 April 7, 1863, and later at 10, both reduced to a gold basis. (Photos. 1 and 5. 1251-1255-1270.) This would seem to indicate that at that time the value of the stock had been wiped out. Counsel for West Virginia evidently concede that the only thing in the record they rely upon to support the claim of $2,105,000, is their Exhibit 61-E; and that exhibit does not claim any value, as in their memorandum filed at my request, giving the "classification and statement of credits relied upon by West Virginia with citations of portions and pages of record in support thereof," under the head "Manassas Gap Railroad" the only citation "in support thereof" is, "See Defendant's Exhibit No. 7-A, New Record, Volume 2, page 61." There is nothing in the record as to facts relating to value, to show that the defendant did not have the same knowledge when she filed her answer, proved the exhibits showing new value, and put in her case on the direct-examination, that she now has; and no substantial reason is given for changing the claim. They abandoned the cost as a standard of value, except, as it was afterwards asserted, for "considertion," and made an arbitrary deduction of 75 per cent from the face; and they proved that the road was given away in 1869. I have no right to conjecture or guess; and there is no basis that would justify me in taking their conjecture of 25 per cent. They abandon the only standard of value shown in the record, cost, and prove facts that tend to show no value.

I find, under these conditions, that the stock was of no value.

The defendant at the hearing waived all claim on account of the following items specified in Class G.

Roanoke Valley Railroad	$307,402.00
Fredericksburg & Gordonsville R. R.	132,399.00
Richmond & York River R. R.	490,999.52
Rappahannock Company	179,500.00

Rivanna River Navigation Co.	227,133.00
Smithe River Navigation Co.	4,083.12
Slate River Co.	21,000.00
Kempeville Canal Company	13,650.00
Hazel River Navigation Co.	63,079.58
Goose Creek & Little River Co.	58,255.35
Dragon Swamp Navigation Co.	1,464.00
Chesapeake & Ohio Canal Company	281,111.11

SUMMARY—CLASS G.

James River and Kanawha Company	$1,664,333
Manassas Gap Railroad Company	0
	$1,664,333

Amount of Taxes, Fines, Etc., Paid by West Virginia Counties to the State of West Virginia After June 20, 1863.

Defendant claims under this classification $224,799.63, (65-E., 224-E) all claimed to have been paid after January 20, 1863.

It developed that $180,264.45 of this amount was probably assessed after June 20, 1863. (608) As to the difference between the two, $44,535.18, no question is raised as to the legality of its assessment prior to June 20, 1863. These taxes ($44,535.18) were a legal liability of the taxpayers, their proper and legitimate contribution to the payment of the public charges. The fact that this legal liability was not discharged by these taxpayers until after the territory in which they lived and become a part of the new State, creates no legal or equitable reason why the sums paid in discharge of said legal liability should be returned to them; much less does it create any equitable or legal liability therefor to the State of Virginia, which never paid either directly or indirectly any part of them.

The circumstances and conditions under which the $180,264.45 was assessed were involved in a great deal of doubt and uncertainty. (592, 593, 594.) It is conceded that in balancing the accounts between Virginia and these counties the amount "spent in maintaining the government of these counties" would have to be known to balance it "agaianst the contributions that they made in taxes to her treasury." (596) The amount, however, was not known. It may have been more, it may have been less, than the amount paid in taxes. No effort appears to have been made to ascertain the facts. Under these circumstances the defendant rests her case up the mere fact of payment after June 20, 1863, stating upon this point:

"Mr. Holt: It don't make any difference what the date of it was, just so you can fix the fact that it was collected by Virginia after June 20th, 1863; and according to our theory it makes no difference when it was assessed." (640)

No part of this sum of $180,264.45 was paid by West Virginia, directly or indirectly. Payment of this sum in taxes by individual taxpayers creates no right in West Virginia to recover the amount of Virginia, especially when the amount paid in taxes may have been less than the expense of maintaining the government in those counties; and that element is left in doubt and uncertainty.

I disallow the item.

GENERALLY ASSEMBLY.

Class A	$819,250.03
Class B	323,167.36
Class C	7,352,594.65
Class D	345,554.80
Class E	3,802,357.48
Class F	204,688.42
Class G	1,664,333.00
	$14,511,945.74

If 23-1/2 per cent. of $14,511,945.74, $3,410,307.25, is to be credited to West Virginia in reduction of her liability upon her preportion of the "public debt," attention should be called to the fact that between July 2, 1863, and February 1, 1864, the State of West Virginia received from the restored government of Virginia (Master's report, 181) $170,771.46.

I understand that the restored government was the political predecessor of the existing government of Virginia. Under the provisions of the Act passed February 23, 1863, by the restored government of Virginia, Virginia received stock as follows:

Sweet and Salt Sulphur Springs stock	7,578.00
White and Salt Sulphur Springs stock	4,000.00
Fairmount and Falatine Bridge Company stock	12,000.00
Northwestern Bank of Virginia stock	297,683.30
Fairmount Bank Bank stock	49,435.00
(Master's report, 193)	541,467.76
From	3,410,307.25

should be deducted the amount received by West Virginia from the restored government of Virginia.. 541,467.76

Making a net credit to West Virginia of..... $2,868,639.49

Dated, New York, January 21,1915.