The Original Indiana Territory

It was in West Virginia.

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The Eleventh Amendment to the Federal Constitution.

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A Paper Read by

Virgil A. Lewis,

Before the Fifth Annual Meeting of the West Virginia Historical and Antiquarian Society, January 17, 1895.

Official Directory.

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INTRODUCTION.

It is very common to hear West Virginia spoken of as a *new* State, when in reality it is one of the *old* States. Two hundred and twenty-five years since, John Lederer, Sir William Berkeley's authorized explorer, was on the Mountains of Hampshire and in the Valley of Cheat river; it is one hundred and seventy-nine years since Alexander Spottswood, with the "Knights of the Golden Horse Shoe," drank the health to King George on one of the loftiest peaks of the Alleghenies, in what is now Pendleton County; and one hundred and sixty-nine years since Morgan Morgan reared the first cabin home within the present limits of West Virginia. That was not a long time ago, but it was six years before George Washington was born; seven years before a white man found a home in Georgia; twenty-five years before the founding of Pittsburgh; forty-nine years before the first settlement in Kentucky; forty-three years before a civilized man reared a cabin in Tennessee, and sixty-two years before the founding of Marietta, the oldest town in Ohio.

Fifty years intervened between the first settlement of white men in West Virginia, and the beginning of the Revolution, and in those years cabin homes appeared here and there in all the country between the Alleghenies and the Ohio, together with a considerable population in the Eastern Panhandle. At the beginning of that war, there were at least 25,000 people residing within the present limits of West Virginia. These people were actively engaged in the Indian wars, and numbers of them were at Braddock's defeat at the battle of Monongahela.

When the storm of Revolution came these West Virginia pioneers were ready, and the news from Lexington and Concord speedily brought them together. More than a hundred with rifles in hand, collected at Morgan's Spring, two miles south of Shepherdstown, now in Jefferson County, and from there, on the 17th day of July, 1775, they took up the line of march for Boston, six hundred miles away. The 10th of August ensuing—twenty-four days after starting—they arrived within sight of the American camp. Washington was in the saddle, and when he saw the Virginians he gallopped away to meet them. Rounds of cheers were heard on the plains of

Boston, and great tears coursed the cheeks of the Commander-in-Chief. These were the first troops from the south side of the Potomac that joined Washington at Boston.

Some days since when the Board of Directors of this Society, by resolution, requested me to prepare a paper for this occasion, it occurred to me to write of West Virginia's record prior to the Revolutionary War. Then I remembered that, to do justice to that period, would be to write volumes, and so I determined to take but one topic from the long list of most interesting ones from that part of our anti-Revolutionary history as a State. That topic is as follows:

The Original Indiana Territory.

It was within the Present Limits of West Virginia and not in the State which now Bears that Name.

The Origin of the Eleventh Amendment to the Constitution of the United States.

A PAPER READ BY HON. VIRGIL A. LEWIS, AT THE FIFTH ANNUAL MEETING OF THE WEST VIRGINIA HISTORICAL AND ANTIQUARIAN SOCIETY, JANUARY 17, 1895.

Mr. Chairman, Ladies and Gentlemen :

West Virginia has a history as interesting and valuable as any other American Commonwealth. An hundred and sixty-eight years have passed away since Morgan Morgan reared the first cabin home in what is now West Virginia.

Then all of West Virginia west of the mountains, was French territory and within the jurisdiction of the Court of Versailes. But England, from Virginia, attempted to take possession of the Ohio Valley. France protested and determined not to yield before the threatening attitude of her powerful rival. Both nations prepared for war. France buried leaden plates at the mouths of the principal tributaries of the Ohio, the inscriptions on which were a declaration of the rights of France on the Ohio and even to the sources of its tributaries. England disregarded

these claims and the Ohio Land Company began the erection of a fort at the forks of the Ohio, but before its completion the French and Indians from Canada, came down the Allegheny and, driving the Virginians out, they finished the fortification and named it Fort du Quesne.

The war for territorial supremacy in America was at hand. In midwinter, 1755, General Edward Braddock, with the 44th and 48th Royal Infantry regiments, landed at Alexandria, Virginia, and in the spring, advanced to the west, having been largely re-enforced by Virginia troops. The 9th day of July, 1755, witnessed the greatest slaughter that ever occurred on the frontier. On that day Braddock's army when within ten miles of Fort du Quesne—now Pittsburgh—was attacked by a force of French and Indians and when 714 officers and men were dead upon the field, Washington covered the retreat back to Will's Creek, now Cumberland, Md., whence Colonel Dunbar marched it to Philadelphia,

Varied were the fortunes of war on the Border and elsewhere until November, 1762, when the Treaty of Fontainbleau put an end to the war. By its terms, the English became masters of the Ohio Valley. Thus the dominion and power of France ceased on this continent and no traces of her lost sovereignty exist, save in the few names—like *Gauley* and the *Ronceverte*—now the Greenbrier river, which she has left on the prominent streams and land-marks of the country, and in the leaden plates, which, inscribed in her language and asserting her claims, still lie buried on the banks of the Ohio. Her temporary occupation of the country, the voyages of her navigators and the discoveries of her discoverers, live only on the pages of history and in her archives, where she has so carefully preserved them.

ENGLISH OCCUPATION.

The French were gone from the Valley of the Ohio, but the Indian Tribes that had been divided as allies between the contending nations were still present in all the territory included in the English Conquest. Away to the north dwelt the powerful confederation known as the Six Nations; in what is now West Virginia were the Shawnees with towns in Greenbrier; at the mouth of the Great Kanawha and at other points, while beyond the Ohio were the Mingos and numerous other tribes, which together with the Shawnees, were tributaries to the Six Nations. This was the most powerful Confederacy existing in America since its discovery. Fierce and warlike, they triumphed over the Eries, Susquehannas and other eastern nations. Then turning southward, they carried their victorious arms to the Tennessee and westward to the distant shores of Lake Superior, and in 1675, compelled allegiance on the part of the Delawares, living on the Monongahela, Shawnees and other tribes residing in the Ohio Valley. Thus by conquest they established their title to all the country lying between the Allegheny mountains and the Great Lakes.

In this, what is now West Virginia, was of course, included, and was, therefore, claimed by the Six Nations.

Trafic with the Indians was among the most remunerative businesses in which men could engage, and immediately after the close of the French and Indian wars, an Association was formed in Philadelphia, the object of which was to monopolize the Indian trade in the Ohio Valley. The proprietors or stockholders were William Trent, Robert Calendar, David Franks, Joseph Simons, Levy Andrews Levy, Thomas Smallman, George Crogan,

John Boynton, Philip Boyle, Samuel Wharton, George Morgan, Joseph Spear, Samuel Wharton, John Welch, Edmond Moran, Evan Shelby, Samuel Postlethwaite, John Gibson, Richard Wonston, Dennis Crogan, William Thompson, Abraham Mitchell, James Dundas, Thomas Dundas and John Ormsby.

These people invested a large sum of money in European goods for this trade, and in the care of agents, large quantities of them were sent to the Ohio Valley to exchange for furs, peltries and other products of the chase. This was in the summer of 1763, and in the autumn of the same year, some Indians of the Shawnee and other tribes tributary to the Six Nations, overpowered the traders on the Ohio River below the present site of Wheeling and seized and carried off property to the value of £85,916 10s. 8d. New York currency. The Association in Philadelphia, when intelligence of this loss reached it, made complaint to the Chiefs of the Six Nations. These forest Statesmen admitted the justice of the claim, but how was it to be adjusted? Existing conditions brought the opportunity.

No definite boundary lines existed, and this was now sought by both English and Indians. The Governor of Virginia, John Blair, in his message to the House of Burgesses, May 31, 1768, urged the necessity of the establishment of such boundary line, and the agents of both Virginia and Pennsylvania in London urged upon the British Secretary of State the pressing demand for the determination of the line. Their prayer was heard with favor, and instructions from over-sea were sent to Sir William Johnson, the King's Indian Agent, to secure a meeting of the Chiefs of the Six Nations of the one part, and Commissioners on the part of the Colonies of Virginia, Pennsylvania and New Jersey on the other part. Sir William Johnson im-

mediately arranged for a Congress to be held for the purpose of carrying the King's orders into execution, at Fort Stanwix, now Rome, New York. The conference was opened on the 24th day of October, 1768, Sir William Johnson, presiding. The boundary was agreed upon, it extending from the mouth of the Tennessee River to Kitanning, above Pittsburgh, by which all of the present State of West Virginia was ceded by the Six Nations to the King of England with reservation, however, for the payment in land within this cession for the losses sustained by the Association of Philadelphia merchants in 1763. This was secured to them by the deed to the said merchants for all the land included in the following boundaries, viz: "Beginning at the southerly side of the mouth of the Little Kanawha River where it empties itself into the Ohio, and running from thence southeast to the Laurel Hill; thence along the Laurel Hill until it strikes the River Monongahela, ascending to the several courses thereof, to the southern boundary line of the Province of Pennsylvania; thence westerly along the course of the said Province boundary line, as far as the same shall extend, and from the same course to the River Ohio; thence down the said River Ohio, according to the several courses thereof, to the place of beginning, together with all and singular the trees, woods, underwoods, mines, minerals, ores, waters, water-courses, fishings, fowlings, huntings, profits, commodities, advantages, rights, liberties, privileges, hereditaments and appertenances whatsoever, and also all the estate, right title, interest, property and all claims whether native, legal or equitable of the said Indians."

This deed of cession was signed by Tyahanesera, Chief of the Mohawks; Sengois, Chief of the Oneidas; Sequieifera,

Chief of the Tuscaroras; Chenangheaten, Chief of the Onondagoes; Tagadia, Chief of the Caugas; and Gaustarax, Chief of the Senecas, each for his own nation. Among those who witnessed this deed of cession were William Franklin, Governor of New Jersey; Frederick Smith, Chief Justice of New Jersey; Thomas Walker, Commissioner for Virginia; Richard Peters and James Tilghman, of the Council of Pennsylvania; Joseph Chew and E. Fitch, of Connecticut; John Weatherhead, of New York; John Walker and Thomas Walker, of Virginia, and John Butler, Interpreter for the English Crown.

Now let us look at a map of the State of West Virginia and see what was the extent of this grant. As before stated, the boundary began at the mouth of the Little Kanawha river, and ran with that stream to its source, and then southeastwardly until it reached the Laurel Hill; and thence with said Laurel Hill until it reached the Monongahela river; thence with that river to the southern Pennsylvania line; thence westerly to the Ohio river, and thence with that stream to the beginning at the mouth of the Little Kanawha. Within these boundaries, there is now included one-half of Wood county, two-fifths of Wirt, one-third of Calhoun, one-half of Gilmer, one-tenth of Braxton, one-sixth of Randolph, and all of the counties of Pleasants, Ritchie, Lewis, Upshur, Barbour, Doddridge, Harrison, Taylor, Monongalia, Wetzel, and Tyler. The total area of all of which is 4,951 square miles, or 3,168,640 acres. Residing within these bounds are 240,940 inhabitants, which is nearly one-third of the total population of the State, and the assessed value of property, real and personal, owned by them is $47,342,130.13, and on the floor of the present Legislature are no less than twenty-five members of the two branches,

who have a part or a whole of their constituency within these bounds.

After obtaining this Deed in 1768, eight years elapsed before a meeting of the Stockholders was held. That meeting took place on the 21st of September, 1775. At this meeting, it appeared from statements before it that several persons had settled within the territory of Indiana, and an order was made authorizing the agent to sell lands to them on the same terms as the General Land Office, but a change occurred in the alleged ownership, for on the 19th day of January, 1776, the title to the entire Indiana Territory was transferred in fee simple, to Richard Bache, Owen Jones, Jr., and Isaac Whorton, all merchants of Philadelphia. On the next day—January 20th—the new proprietors organized as a body. March 20th, 1776, a general meeting was held at the Indian Queen Tavern, Philadelphia, when among other business transacted, it was resolved to open a Land Office for the sale of these lands, and that all persons who had settled upon them, prior to January 1st, 1776, should receive titles for their "improvements," on the same conditions as the old Association had offered to them, viz.: fifty dollars, or the value thereof, in current money of any of the neighboring colonies, for one hundred acres, including an allowance of six per cent. for roads and highways. At this meeting, George Morgan was appointed Secretary and Receiver General of the said Land Office. The Agent, George Morgan, appears to have been a real estate agent imbued with all the energy and industry of his successors of a late date, and on April 1st, 1776, he issued the following circular:

"The Grantees and Proprietors of the retribution lands, now called Indiana, hereinafter described, having by certain deeds

and articles of agreements, settled and ascertained their several and respective shares in the said tract of land and premises, and agreed upon certain rules and regulations for the sale thereof; and having for that purpose appointed the subscriber, George Morgan, Secretary and Receiver-General of their Land Office, and impowered him to issue warrants for the taking up of lands, to receive the price or consideration money, and to grant patents or deeds of confirmation of the same. This, therefore, is to give notice that the said Proprietors' Land Office will be opened on or before the first day of next May, on the premises, for all persons who made settlements and improvements before the first day of January last past, within any part of that tract of country, beginning at the sourtherly side of the mouth of Little Kanawha Creek where it empties itself into the River Ohio; and running from thence southeast to the Laurel Hill; thence along the Laurel Hill until it strikes the river Monongahela; thence down the stream of the said River Monongahela, according to the several courses thereof, to the southern boundary line of the Province of Pennsylvania; thence westerly along the course of the said Province boundary line as far as the same shall extend; and from thence by the same course to the River Ohio; thence down the said River Ohio, according to the several courses thereof, to the place of beginning. And the said office will continue open until the first day of January next, within which time all such settlers may, on application to the Land Office, have warrants for any quanity of land not exceeding four hundred acres, with the allowance of six per cent. for roads and highways, at the rate of fifty Spanish Milled Dollars, weighing seventeen Pennyweights and six Grains each, or the value thereof in current money of any of the neighboring colonies, for every hundred acres, and the allowance without reserving any quit rent to them, the said Proprietors. The purchase money to be paid immediately after the return of the survey, or a bond and mortgage on the premises to be given to the proprietors for securing the payment thereof, with interest at five per cent.

"The actual settlers being the first secured in their possessions,

the unsettled lands will all be surveyed into lots of four hundred acres each for the proprietors, and the terms on which they will be sold made public.

GEORGE MORGAN."

"April 1st, 1876."

The settlers of Indiana, and others, may, on application to Mr. Morgan, view and examine the title deeds of the Proprietors, and be furnished with attested copies of the Indian grants to them.

Some two weeks later George Morgan proceeded to the Ohio River for the purpose of opening the proposed Land Office, but before he could dispose of any lands the Virginia Convention then in session, passed the following resolution, a copy of which was put into the hands of the agent of the Indiana Territory.

"WHEREAS, Divers petitions from the Inhabitants of the Western Frontiers have been presented to this Convention, complaining of exorbitant demands made on them for lands claimed by persons pretending to derive titles from Indian deeds and purchases,

"*Resolved*, That all persons actually settled on any of the said lands ought to hold the same without paying any pecuniary or other consideration whatever to any private person or persons, until the said petitions as well as the validity of the title under such Indian deeds or purchases shall have been considered and determined on by the Legislature of this country; and that all persons who are now actually settled on any unlocated or unappropriated lands in Virginia, to which there is no other just claim, shall have the pre-emption or preference in the grants of such lands.

"*Resolved*, That no purchases of lands within the chartered limits of Virginia shall be made under any pretence whatever,

from any Indian tribe or nation, without the approbation of the Legislature.

"(Signed,) EDMOND PENDLETON,
President."

This was a great surprise to Morgan, but the surprise was increased by the receipt of the following, a few weeks later:

"TO GEORGE MORGAN, ESQ:

"SIR:—We are appointed by a resolution of Virginia Commissioners to collect and take the evidence on behalf of this Government, against the several persons pretending to claim lands within the limits thereof, under deeds and purchases from the Indians, and are empowered to call before us any witness or witnesses, at such times and places as we shall appoint giving the claimers under such Indian deeds and purchases respectively, his or their agent or agents, at least twenty days' notice thereof in writing; and also to attend the examination of such witnesses as shall be produced in support of such claims. And being informed that you are one of the proprietors of the grant made to the suffering traders by the Six Nations of Indians, and agent for the grantees, we do, in pursuance of the above mentioned resolution, hereby give you notice that we shall proceed to take the examination of sundry witnesses at Pittsburgh, on the second day of September next, relative to the aforesaid grant.

"[Signed.] JOHN HARVIE,
CHARLES SIMMS.
JAMES WOOD,
ABRAHAM HITE."

In September following the stockholders met in Philadelphia, and prepared a lengthy memorial "To the Representatives of the Freemen of the State of Virginia in Assembly Met," in which they renewed the alleged claims connected with Indiana Territory, and closed by saying that:

"Under these circumstances your memorialists confide that the Legislature of the Colony of Virginia will not, by any act or proceeding whatever, impeach, or in any respect prejudice the title of your memorialists so well established on the principles of reason, equity and sound policy.

"Signed by order and on behalf of the proprietors of Indiana.

THOMAS WHARTON, Vice President."

"PHILADELPHIA, Oct. 1, 1776."

Meanwhile Virginia continued to investigate the claims to the Indiana Territory, and her Commissioners February 26, 1776, sent the following notice to Morgan:

"To COL. GEORGE MORGAN, Agent for the Indiana Company, } February 26, 1776. }

"SIR:—Please take notice, that we shall, pursuant to a resolution of the Convention of the Commonwealth of Virginia, on the 10th day of next month, at the house of Mr. John Ormsby, in Pittsburgh, proceed to take the depositions of sundry evidences in behalf of the Commonwealth of Virginia, relative to the Traders' claims to lands on the waters of the Ohio, within the territory and limits of Virginia, which they derive from Indians. We are Sir, Your humble servants,

JAMES WOOD,
CHARLES SIMMS,
Commissioners."

The Virginia Commissioners took numerous depositions, and a notice was issued by the State to all persons who claimed lands under Indian grants within the dominion or chartered limits of Virginia to appear before the Legislature at Williamsburg, on the third Monday in May, 1779. On that date, William Trent, who had been one of the Indiana owners, and had again become interested, went to Williamsburg, and by counsel, was heard at the bar of the House of Delegates. All the

evidence, pro and con, was heard, after which it was among other things:

"*Resolved*, That every purchase of lands heretofore made to the King of Great Britain from any Indian Nation or Nations within the chartered limits of Virginia doth and ought to enure forever to and for the use and benefit of this commonwealth, and to and for no other use or purpose whatever."

The Senate concurred in this resolution, and on the 17th day of May, 1779, an Act was passed by the Legislature by which the State was declared to be the rightful owner of all the lands embraced in Indiana Territory. Other Acts speedily followed by which these lands were described as being parts of Monongalia, Hampshire and Augusta counties in which justices were appointed, taxes levied and full possession taken, thus ignoring entirely the claims of the alleged owners of Indiana.

The proprietors now discouraged by the action of the Virginia authorities, sought relief from Congress, and accordingly on the 11th of September, 1779, "the memorial of the proprietors of a tract of land called Indiana" was presented in that honorable body. In that memorial the proprietors expressed the hope that "the wisdom, justice and policy of those States will never suffer such a spectacle to be exhibited to the world as a heathen people seeking to do a deliberate and solemn act of injustice, while a Christian State strove to permit them."

The memorial was an earnest plea that Congress might make an order to stay Virginia from making sale of the lands in Indiana Territory, they being a part of the proposed province of Vandalia, of which, Point Pleasant was to be the Capital, until the Memorialists be fully heard in such manner as may tend to support the Sovereignty of the United States, and the just rights of individuals therein.

The Memorial with others of like import, was placed in the

hands of a Committee which made its report May 1st, 1782, after stating that great care had been exercised in examining the Deed of Cession, the report declared that:

"On the whole, your committee are of the opinion that the purchase of Colonel Croghan and the Indiana Company were made *bona fide* for a valuable consideration, according to the then usage and custom of purchasing lands from the Indians, with the knowledge, consent and approbation of the Crown of Great Britain, the then Government of New York and Virginia, and therefore do recommend that it be:

"*Resolved*, That if the said lands are finally ceded or adjudged to the United States in point of jurisdiction, that Congress will confirm to such of said purchasers who are, and shall be, citizens of the United States, or either of them, the respective proportions and shares of said lands, making a reasonable deduction for the value of the quit-rents reserved by the Crown of England."

But Virginia was obstinate, and when on November 23, 1790, the proprietors again memorialized the Legislature to the effect that if the State insisted upon taking possession of the lands of Indiana Territory, it should recompense the owners. This proposition was warmly debated, and in the vote a tie resulted which was decided by a vote of the Speaker against the proprietors, who nevertheless, showed that in addition to the more than £85,000 destroyed by the Indians, the proprietors had expended more than $18,000 in an effort to perfect their title to Indiana.

Another effort was made, this time by William Lewis and William Ralle. It was another Memorial to the Virginia Assembly, and dated November 10th, 1791. It asserted that the Complainants were deprived of their rights by the interference

of a powerful Commonwealth; that they had been imploring that Commonwealth to do justice and beseeching Congress to examine into the controversy and decide upon the right, but still they were prevented from taking possession of the Indiana Lands and selling the nearly 3,000,000 acres which, after deducting land not arable or reserved for public purposes, would bring to them at least one million, one hundred and twenty-eight thousand Mexican dollars.

The Proprietors, weary of the long years of hope deferred, employed Benjamin H. Morgan, a distinguished lawyer of Philadelphia and entered suit in 1792 in the United States Supreme Court, the title being *William Grayson and others vs. the Commonwealth of Virginia—A Bill in Equity.*

The brief of the Complainants contained a historical summary of the Indiana Company and of its alleged claims, and the case is one of National importance, for it led directly to the Eleventh Amendment to the Constitution.

On the 11th day of August, 1792, David Meade Randolph, United States Marshall for the District of Virginia, served a subpoena upon James Innes, the Attorney-General of the Commonwealth of Virginia, requiring him to appear on behalf of the Commonwealth of Virginia before the Supreme Court of the United States, on the 4th day of February, 1793, to answer to Complaint of the Indiana Company.

The Federal Judiciary was just then being formed, and the best minds of a new-born Nation were being concentrated upon it. Individuals were entering suits against the newly organized States, one of the most noted being that of "Chisholm vs. the State of Georgia." The action of the Indiana Company attracted the attention of legal minds to it for the reason that it seemed

that the Court would be overrun with a class of cases which were to be innumerable, and Mr. Innes writing to Governor Henry Lee, under date of November 10, 1792, said "Whether this State can be involuntarily dragged into the Supreme Court of the Union as a defendant for transactions even posterior to the adoption of the General Government, has been denied by some and deemed very questionable by others." This he prefaced by stating that he had paid no attention to the subpoena, and then closed with a request to be directed as to his future action in the matter.

January 23, 1793, the Attorney-General again wrote Governor Lee, expressing his regrets that the Legislature had not been more definite in its resolutions. He feared that if the State did not recognize the subpoena, judgment would be entered against her, and if she did recognize it, such action would be interpreted into an acknowledgment of the power of the Federal Court to cite a State before its tribunal. He suggested that the Governor should appoint some one who, after advising with the State's representatives in Congress, should proceed to Philadelphia, there to take such steps at the ensuing term of the Court as might be deemed to the best interest of the State.

It appears that Governor Lee went to Philadelphia himself, for on the 3d of March, 1793, he wrote Lieutenant-Governor James Wood from Alexandria, Virginia, saying, "I left Philadelphia quickly after the Court had given judgment in the Georgia case. I contented myself with collecting all information within my reach and with suggesting to the Senators from this State in Congress, the propriety of introducing an amendment to the Constitution of the United States explanatory of the right of the Federal Judiciary.

November 28, 1793, the General Assembly of Virginia pass-

ed a joint resolution requesting the State's representatives to use every effort to secure such amendments to the Federal Constitution as to prevent a State from being brought to answer in any suit by an individual or individuals in any Court of the United States.

On the 10th of December, 1793, Virginia took final action in the matter of the Indiana Company, so far as she herself, was concerned, by the adoption by her Legislature, of the following:

"*Resolved*, That the decision of the Legislature of this Commonwealth in the year 1779, upon the claims of the Indiana Company, was definative, and that this Commonwealth is not bound and ought not to appear before the Supreme Federal Court to answer any suit whatever relative to that subject."

Virginia continued to refuse to appear as defendant in United States Court, and at the time concentrated her efforts to obtain an Amendment to the Federal Constitution—and at last she was successful. January 15, 1794, the House of Representatives passed an act providing for the Eleventh Amendment to the Federal Coustitution, as follows:

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign States."

This was passed by the Senate March 4th, 1794, and submitted to the action of the several States. On the 12th day of August, 1796, the case of Grayson and others respecting the Indiana Company vs. the Commonwealth of Virginia, was called in the United States Court at Philadelphia, Judge John Jay presiding, but Virginia did not respond and before the case was again called, three-fourths of the States had ratified the eleventh

amendment to the United States Constitution, and it was a law under which the case of the Indiana Company vs. Virginia disappeared from the docket of the highest court in the world. It was the most noted land case which occurred during the English occupation of the Ohio Valley.

AUTHORITIES EXAMINED AND CITED.

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The West Virginia
Historical and Antiquarian Society.

An Appeal.

A PLEA OF THE WEST VIRGINIA HISTORICAL AND ANTIQTARIAN SOCIETY FOR AID IN CARRYING FORWORD THE WORK UNDERTAKEN BY IT.

A love of history is inseparable from human nature because it is inseparable from a regard for ourselves. The same principle carries us backward or forward to past or future ages, and we imagine that the things which affect us, must affect humanity in all its varied conditions. This sentiment runs through all mankind from the king upon the throne, to the barbarian, and you and we are fond of preserving as far as we can the memory of our own adventures or those of our own time and of those who preceded it.

> "He that careth not whence he came,
> Careth little whither he goeth."

Rude heaps of stone have been reared and ruder hymns composed for this purpose by nations without letters or the arts of civilization. Not only these, but all savage and barbarous nations have customs of this character, and long historical ballads, commemorative of their hunting and their wars, are sung at their festivals and on other occasions.

Then, if savage tribes without letters would thus preserve by song, legend and tradition the memory of the past, how much

more should be expected of civilized and enlightened commonwealths? Certainly they should rescue from oblivion their history of the past and preserve beyond the possibility of loss or destruction, the records of the present. This is being done by the leading Nations and States of the world, and to-day, the antiquarians of Europe and our own country have changed the field of exploration from the West to the Orient, where they search among the monumental ruins of a remote antiquity to find if possible, a record or a stone that will shed, if but a ray of light upon the early and benighted annals of our race. To such an extent has this work been prosecuted that Egyptology—research among the ruins of Egypt—has risen to the dignity of a science.

But the history, the records, the annals of the New World must be preserved; and almost every American State, aided by its learned societies, is now bestowing money upon the work.

THE WORK TO BE DONE IN WEST VIRGINIA.

The State of West Virginia has within it much valuable and rapidly wasting historical matter that should be preserved. Among the many duties which government casts upon a people is the preservation of the annals, memoirs and records which spring from the operations of government and the habits of life of the people. All men who properly appreciate their relations to other contemporary societies, to the members of their own society and to the after coming societies of life, recognize the force of the demand and agree that the State should make permanent provisions for matters of this kind. A State Historical Society, supported by the State is the logical outcome of the argument.

Such a society will, in the near future, gather up a large quantity of material, out of which the future historian shall be able to construct a true history of the progress of the people, the causes of their successes and defeats, and the results of their investigations, examinations, observations, experiences and operations. This material would be a source of facts from which alone authentic history can be written. The uncertainty of tradition would give place to the certainty of fact; and the truth of history would be firmly maintained. The legacy of regrets which the sons aud daughters of the older States have inherited from their negligent sires ought to stimulate us to provide for our children a legacy of delight, and to remove from West Virginia history the grounds of doubt which cluster around the history of the older States, and around almost every branch of human knowledge. The annals of historical literature, and the arena of polemic discussion, abound in facts which make it possible to maintain truth and to remove doubt.

THE WORK AMONG THE NATIONS.

England after many losses, went to work in earnest upon this matter. She began in 1871, to erect a public record office, which another generation will live to see completed. The perils of water, fire and official neglect are to be overcome by the construction of a building of the most massive stones, interlined with thick iron gratings on slate shelves, and in which the beauties of architectural design have been subordinated to the one thought, "security above all other considerations."

The illustrious Guizot has succeeded in accumulating and printing, under the sanction of government, the sources of

French history from the earliest times. This is the grandest as well as the crowning act of his career.

This is not all. Every civilized Nation in the world is actively engaged in the work of rescue and preservation.

THE WORK OF AMERICAN STATES.

Nor has America wholly neglected its duty in this regard. In 1814, DeWitt Clinton, President of the New York Historical Society, made an eloquent and successful appeal to the Legislature of that State for funds to assist the society, "in drawing from their dark abodes documents that would illumine the obscure, explain the doubtful and embalm the memories of the good and great." The result is the imposing array of folio volumes upon the shelves of all our State liabraries (except that of West Virginia) entitled "Documentary History of New York."

The burning of the State House at Boston, the destruction of part of old Cambridge College, and of certain private residences involved the people of Massachusetts in the loss of so many valuable papers as to convince them that no depositary of that State was at that time free from danger. They very wisely determined to multiply copies of the records of that ancient colony and have perpetuated them in several series of books, each series consisting of several volumes.

The Legislature of Pennsylvania in 1851, began this work of rescue and preservation, and to-day we have a dozen folio volumes, beginning with the year 1664 and coming down to the present time. New Jersey has been equally active; Maryland, Georgia, and Louisiana have not been idle, Wisconsin, Michigan and Iowa have been careful from the beginning to take care of all these varied interests.

In 1831, Virginia chartered her Historical Society, and through it has been given to the world the volumes of her colonial annals gathered from the four quarters of the globe, and in its archives are treasured the works of her authors from the settlement of Jamestown to the present. Her legislature in 1875, began the work of tardy justice and has already issued eight folio volumes of matter intimately connected, not only with the rise and growth of that great commonwealth, but also with the growth and development of Pennsylvania, Maryland, North and South Carolina, Tennessee, Kentucky, and the States carved out of the great Northwest Territory—Ohio, Indiana, Illinois, Michigan and Wisconsin.

Ohio is earnestly engaged in the work and, recently she purchased 1,200 copies of "Howe's Ohio Historical Collections" to exchange for works pertaining to her own annals and those of her sister commonwealth.

The perils of water, fire and official neglect are constantly reminding us that we are not doing that which reason, justice and prudence demand of a thinking people. Every year adds to these perils. *The time to act is now.*

WHAT IS WEST VIRGINIA DOING?

But what is West Virginia doing in this work? Heretofore but very little. Her resources are boundless, her people progressive, her school system equal to that of her sister commonwealths. On her soil were enacted many of the scenes of pioneer history—scenes which can never more be reproduced because there now remains no theatre on which to reproduce them. Within her confines was fought and decided much of the struggle between civilization and barbarism and her pioneers who

engaged in that contest were as hardy and honored a race as ever braved the perils of the wilderness, but the State has no record of them.

Our Pioneer History, our church history, the records of our soldiers—yea the annals of our State are passing rapidly out of mind. The great Roman lyric poet tells us that the memory of the heroes who flourished before the days of Agamemnon, perished for want of a recording pen. Our history is passing rapidly to oblivion, not for the want of a recording pen, but for want of *preservation*. This, then is a duty which we owe to the present generation and to posterity, but the work cannot be done by individual effort, and therefore the aid of the State is invoked.

Long ago, the New England and western states entered actively upon the work, and to-day there is not a new state or territory in the west that does not have a flourishing historical society, in the archives of which are the relics, records and history of the people, together with portraits of prominent men, and other matter relative to the settlement, progress and intellectual and material development of the State.

The Southern States—every one of them—from Delaware to Texas and from West Virginia to Florida, are moving in the all important work, and, aided by the State, their historical societies are gathering and preserving in the several capital cities the material which of itself makes a State University.

AMERICAN STATES AIDING IN THE WORK.

From Maine to Alaska, the work of collecting and preserving the history and records of the people goes on but it can not be done by individual effort. This is known to the authorities

of the states and appropriations in large sums are being made to insure a performance of the work. The appeals of help have come from the societies engaged in the work, and these appeals have met with liberal appropriations in the states east, west, south and north. This we might show from the reports of many of these societies, but the following will suffice:

The Historical Society of Maryland, our adjoining sister-commonwealth, has an income from a fund of $25,000, an endownment made by the generous George Peabody, and an additional appropriation of $2,000. The work achieved by that society is evidenced by the massive volumes of "Maryland State Papers" on our shelves.

The Historical Society of Illinois receives from the state the sum of $3,000 per year, $500 of which is paid to the librarian, and the remaining $2,500 being expended for books and to defray the incidental expenses of the society.

The Minnesota Historical Society receives $6,000 per year from the state and has all its printing done free of cost by the state printer. The secretary receives $1,800, and the assistant secretary $900 a year.

The Kansas Historical Society receives $5,000 annually from the state, and its printing done by the state printer. The secretary receives a salary of $1,500 a year and has five assistants in the library, ranging from $15 to $60 per month.

The Historical Society of Wisconsin receives an annual appropriation of $9,800. The secretary receives a salary of $2,000; the librarian $1,600; assistant librarian $1,200. There are three clerks receiving respectively $750, $500 and $225 per year, besides two janitors, each having an annual salary of $750.

North Carolina has for years been spending large sums of

money in the collection and publication of her annals and the West Virginia Historical Society has on its shelves 10 volumes of "The Colonial Records of North Carolina," for which it paid $50.

South Carolina is busy with her history and her agents are now compiling it in the libraries of England and France.

So it is everywhere, and our society begs that West Virginia shall not be left behind in the work that is now being done on every hand. With her population of nearly a million, her vast material resouces, a well equipped university, six normal schools, a dozen secular institutions of learning, her 5,400 public schools, she must not fall behind in the onward march of progress.

THE WEST VIRGINIA HISTORICAL AND ANTIQUARIAN SOCIETY.

West Virginia has a Historical and Antiquarian Society, the membership of which is composed of those who, to preserve the history of the Trans-Allegheny commonwealth, are giving of their time and limited means, but they are unable to accomplish properly the work to be done without that aid which can come only from the State. With that extended, to but a limited extent, the work will be done and the duty discharged.

The members of the Society have done all that individual effort can do. They have given of their means, sacrificed valuable time and some have impoverished their private libraries and archæological collections to enrich ours, and now if the work is to be carried on, if the records of the past and present of our people are to be gathered at the seat of government, it it must be done with State aid.

The Society is chartered under the laws of the State, and has as the object of its creation the collection of books, portraits,

maps, charts, drawings, relics and everything pertaining to our people, and is depositing the same in the State Capitol there to be free to the public.

How well it is accomplishing the work with the limited means at its command, let those say, who have visited its room, and viewed its collection.