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MOTION OF THE STATE OF WEST VIRGINIA
FOR LEAVE TO FILE A SUPPLEMENTAL
ANSWER TO THE BILL OF COM-
PLAINT OF THE COMMON-
WEALTH OF VIRGINIA.

NOTICE.

Charleston, W. Va., March 10, 1914.

TO THE HONORABLE JNO. GARLAND POLLARD,
Attorney General of Virginia,
Richmond, Virginia :

Please take notice that, in the suit of the Commonwealth of Virginia against the State of West Virginia, No. 2 Original, pending in the Supreme Court of the United States at Washington, D. C., the State of West Virginia will, on Monday, the 23rd day of March, 1914, move the said Court for leave to file, on or before the thirteenth day of April, 1914, a supplemental answer to the original bill of complaint filed in said Court by the Commonwealth of Virginia against said State.

A copy of said motion, as well as of the grounds therefor, and of the proposed supplemental answer, are hereto appended for your information.

Respectfully,

STATE OF WEST VIRGINIA,

By A. A. LILLY,
Attorney General for West Virginia.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 2 ORIGINAL.

COMMONWEALTH OF VIRGINIA)	
vs.	)	In Equity.
STATE OF WEST VIRGINIA.)	

MOTION FOR LEAVE TO FILE A SUPPLEMEN-
TAL ANSWER.

TO THE HONORABLE CHIEF JUSTICE
AND ASSOCIATE JUSTICES OF THE SU-
PREME COURT OF THE UNITED STATES:

Now, comes the defendant, the State of West Virginia, by A. A. Lilly, her Attorney General, and moves the Court for leave to file, on or before the thirteenth day of April, 1914, a supplemental answer to the bill of complaint of the Commonwealth of Virginia filed herein against her.

The notice of this motion, together with the service thereof and the grounds of said motion, as well as a copy of the proposed supplemental answer, are presented herewith.

STATEMENT OF FACTS.

By its opinion of March 6, 1911, in this cause, this Court held that the State of West Virginia, in consequence of Section 8 of her Constitution of 1861, the Act of the Legislature of the restored State of Virginia passed May 13, 1862, consenting to the erection of the new State under the provisions of said Constitution, and the Act of Congress of December 31, 1862, giving sanction to its creation, became obligated to pay an equitable proportion of the public debt of Virginia existing prior to the first day of January, 1861, and by said opinion ascertained the total indebtedness as of that date to be apportioned between the two States to be \$30,563,861.56.

Virginia v. West Virginia, 220 U. S., 1.

It was also there held that, in consequence of the relative resources of the two debtor populations, exclusive of slaves, $76\frac{1}{2}\%$ of said debt should be apportioned to Virginia, and $23\frac{1}{2}\%$ thereof to West Virginia, and, upon this basis, West Virginia's proportion of the principal of the debt was fixed at \$7,182,507.46. No decree, however, was entered against her for that amount, but a conference was suggested between the two States looking to an amicable settlement of the matters in difference.

In the same opinion, and while discussing a division of the assets of the old Commonwealth in the purchase of which her debt had been incurred, it was stated that "*it does not appear that there are any stocks of value on hand*", and, as a necessary

consequence, as the record then stood, there were no credits applicable to the reduction of West Virginia's ascertained proportion of the principal of the debt, and it remained as fixed.

Subsequently, however, and in willing obedience to the suggestion of this Honorable Court, the Governor of West Virginia, after the passage of a joint resolution by the Legislature of the State authorizing him so to do, appointed a Commission to treat with the State of Virginia, and this Commission, during the course of its labors, after the filing of the original answer herein, and after the delivery of the opinion aforesaid of March 6, 1911, discovered the live assets set forth in the accompanying proposed supplemental answer, which had been purchased with the common funds of the two States prior to the first day of January, 1861, and retained, sold or given away by the Commonwealth of Virginia after the twentieth day of June, 1863, without accounting to West Virginia for any part thereof, and amounting, in the aggregate, as it is alleged, to \$20,810,357.98.

West Virginia, feeling that she was entitled to a just proportion of these assets, and believing that, if they had been presented by the record at the time of the opinion of March 6, 1911, this Court would have given her credit for $23\frac{1}{2}\%$ thereof, proposed to the State of Virginia at a joint conference held at Washington on the fourth day of March, 1914, that she allow $23\frac{1}{2}\%$ of the value of said assets as of the first day of January, 1861, as a credit upon West Virginia's portion of the principal of said debt as fixed by this Court, and that she would cause to be

paid unto Virginia the balance, after making said deduction, or the sum of \$2,327,195.27, in full settlement of principal and interest of West Virginia's equitable proportion of said debt.

Interest was to be omitted for the reasons given and the facts enumerated in the proposition, and now more in detail alleged in the proposed supplemental answer.

Virginia declined the proposition, expressing an unwillingness even to discuss the question of principal, because the same, according to her view, had been irrevocably fixed by this Court, and, upon the question of interest, although she considered that still open, contented herself with ignoring the reason given by West Virginia why no interest should be charged.

Here the negotiations ended, and the present motion follows.

OBJECTS OF THE MOTION.

One of the objects of the motion is to obtain leave to file a supplemental answer, presenting assets purchased with the common funds prior to January 1, 1861, and appropriated thereafter by the State of Virginia to her exclusive use, and to 23½% of which West Virginia, according to the basis of liability fixed by this Court, is entitled as a credit upon her equitable proportion of the principal of the Virginia debt; and the other is by said supplemental answer to present certain facts why West Virginia should not be charged with interest upon whatever proportion of the principal of said debt may be decreed against her.

GROUNDS OF MOTION.

It is respectfully submitted that said supplemental answer should be permitted to be filed for the following reasons and upon the following grounds:

I. Because the value and disposition of the assets set up in the supplemental answer, purchased with common funds prior to January 1, 1861, disposed of after June 20, 1863, and appropriated by Virginia to her exclusive use, were discovered mostly by the defendant, if not wholly, since the last continuance;

II. Because the evidence of the existence, value and disposition of said assets was in the possession of the State of Virginia, and she did not volunteer the disclosure thereof, although the object of this suit, instituted by her, was the ascertainment of West Virginia's *equitable* proportion of the Virginia debt;

III. Because, while greater diligence might be required of individuals to ascertain the evidence governing their rights, when in controversy, yet, in the case of a State, no such requirement can obtain, for the reason that it is represented by officials whose tenures of office are frequently of short duration, and whose chief executive may not, under its Constitution, as in the case of the defendant, succeed himself, thereby breaking the chain of knowledge of public affairs, especially when it relates to the records of other States, and destroying the continuity

of information that must be passed from one administration to another;

IV. Because the decree of reference executed in this case did not specifically, if at all, call for the discovery of the assets now disclosed and presented for the first time (see decree, *Virginia v. West Virginia*, 209 U. S., 514) ;

V. Because the right of West Virginia to be credited with $23\frac{1}{2}\%$ of the value of the assets by the purchase of which the debt was created constitutes an equity just as "*deep seated*" as the obligation to pay $23\frac{1}{2}\%$ of the debt so created. The one is the exact measure of the other ;

VI. Because an examination of the said supplemental answer discloses a large amount of bonds, stocks and other securities applicable to the discharge of the entire debt created by the Commonwealth of Virginia prior to January 1, 1861, and were designed to be so applied by the Constitution of Virginia, adopted in 1851, and which Constitution was the organic law of Virginia at the time West Virginia adopted her first Constitution in 1861, and when the Commonwealth of Virginia passed the Act of legislation in May, 1862, giving her consent to the formation of West Virginia as one of the States of the Union, and the law of Virginia became the law of West Virginia, and so remained the law of said last named State, not altered or repealed by West Virginia after her admission into the Union; and the provisions of the Constitution of Virginia making the said stocks, bonds and other securities avail-

able for the payment of the said debt governed and controlled their application to the payment of this debt before and at the time of the admission of West Virginia into the Union as one of the States thereof, and,

VII. Because, in addition to the grounds already stated, the proposed supplemental answer alleges new facts and presents new reasons why interest should not be charged against West Virginia. These are money received by Virginia derived from the common investment and common assets appropriated by her, which are not embraced in those assets out of which credits are claimed upon the principal of the debt. They are set off against interest alone, and amount to many millions of dollars. Such is the item of \$5,782,240.09, representing dividends upon stocks not otherwise accounted for, and such are the public buildings constructed and equipped out of the common funds, and retained by Virginia, as well as much personal property, consisting of libraries, arms and munitions of war.

A. A. LILLY,

Attorney General
for West Virginia.

V. B. ARCHER,

CHAS. E. HOGG,
and

JOHN H. HOLT,

Associate Counsel
for West Virginia.

ANSWER

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 2 ORIGINAL.

COMMONWEALTH OF VIRGINIA

vs.

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In Equity.

STATE OF WEST VIRGINIA.

THE SUPPLEMENTAL ANSWER OF THE
 STATE OF WEST VIRGINIA TO THE BILL OF
 COMPLAINT EXHIBITED AGAINST HER
 HEREIN BY THE COMMONWEALTH OF VIR-
 GINIA:

Now comes the defendant, the State of West Vir-
 ginia, by A. A. Lilly, her Attorney General, and, by
 leave of Court first had and obtained, files this her

supplemental answer to the bill of complaint of the plaintiff filed herein against her, and alleges:

FIRST: That, prior to the establishment of the State of West Virginia out of the territory of the Commonwealth of Virginia on the twentieth day of June, 1863, and prior to the first day of January, 1861 (West Virginia, by her Constitution, having assumed an equitable proportion of the public debt of the Commonwealth of Virginia existing prior to the latter date), the Commonwealth of Virginia purchased with the bonds that evidenced her public debt existing prior to the first day of January, 1861, or out of the proceeds of the sale thereof, certain stocks, bonds, securities and other properties, and made loans to various persons and companies, and was the owner and holder of said stocks, bonds, securities and other properties on the first day of January, 1861, as well as upon the twentieth day of June, 1863, and, after said last named date, has continued until the present time to hold, own and enjoy the fruits of a portion of said securities and properties; has sold certain other portions thereof for many millions of dollars; collected said loans, and given away the residue of said securities, without the knowledge or consent of this defendant, except as hereinafter stated;

That that portion of said securities so retained by the Commonwealth of Virginia consisted of stock in the Richmond, Fredericksburg & Potomac Railroad Company, amounting to \$275,200.00, and certain bank stocks owned by the State of Virginia, amounting to \$3,710,020.00, and had, as this defendant is now informed, an actual commercial and market val-

ue, both on the first day of January, 1861, and the twentieth day of June, 1863, of at least \$3,985,220.00 ;

That the securities aforesaid sold by her after the twentieth day of June, 1863, except as hereinafter set out, consisted of stock owned in various railroad companies, which was subsequently sold by her to the Atlantic, Mississippi & Ohio Railroad Company at the price of \$4,000,000.00, and stocks in and loans to various other railroad and canal companies, including a loan to the Government of the United States and a claim against Selden-Withers Company, which stock she sold and loans collected, and received therefor the sum of \$6,313,532.47, which securities and loans had, as this defendant is now informed, an actual value, both upon the first day of January, 1861, and the twentieth day of June, 1863, of \$10,313,532.47 ;

That the residue of the securities so sold by her consisted of stock in the Manassas Gap Railroad Company, Roanoke Valley Railroad Company, and certain other railroad companies hereinafter described, and stock in certain navigation and canal companies, likewise hereinafter described, with an aggregate par value of \$3,885,076.68, which said stocks, as this defendant is now informed and believes, had an actual value, both on the first day of January, 1861, and the twentieth day of June, 1863, of twenty-five per cent. of their par, or \$971,269.17 ;

That the securities and property so given away by her subsequent to the twentieth day of June, 1863, consisted of 104,000 shares of stock in the James River and Kanawha Company, with a par value of \$10,400,000.00, which stock, as this defendant is now

informed and believes, had an actual value, both on the first day of January, 1861, and the twentieth day of June, 1863, of twenty-five per cent. of its par, or \$2,600,000.00;

That, after the foregoing securities had been purchased and loans made, there accrued dividends upon the one and interest upon the other prior to January 1, 1861, which were collected by the Commonwealth of Virginia after that date, and mostly after the twentieth day of June, 1863, amounting in the aggregate to \$1,835,409.28;

That, as this defendant is now informed, 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;

That, in addition to the foregoing securities and properties so retained or disposed of as aforesaid, and the collections made as aforesaid, by the Commonwealth of Virginia, she had in her treasury on the first day of January, 1861, cash amounting to \$1,104,927.06;

That the total of said assets on the first day of January, 1861, and the twentieth day of June, 1863, excluding the sum of \$225,078.06, collected from West Virginia Counties as aforesaid, had a reasonable value of \$20,810,357.98;

That these assets were available for the discharge of the debt of the Commonwealth of Virginia existing prior to the first day of January, 1861, and, if they had been so applied, would have greatly diminished the same; but that, instead of so applying them, the plaintiff, the Commonwealth of Virginia,

has, as aforesaid, retained a portion thereof, and devoted the same to her own exclusive use, without the knowledge or consent of this defendant; sold other portions thereof without the knowledge or consent of this defendant, and appropriated the proceeds thereof to her individual use, and, without such knowledge or consent, has made certain collections as aforesaid, and given away the residue of said assets, except as hereinafter stated, and has neither reported to this defendant any of said transactions nor has accounted unto her, either in whole or in part, for the value of the assets so retained or given away, or for the proceeds of such as were sold or collected by her;

That this defendant was interested in said assets to the extent of her just proportion of the value thereof as of the first day of January, 1861, and was the equitable owner of, and entitled to receive out of the proceeds thereof, according to the basis of liability fixed by this Honorable Court, $23\frac{1}{2}\%$ of the sum of \$20,810,357.98, and the whole of \$225,078.06, collected by Virginia from West Virginia Counties, as aforesaid, making an aggregate of \$5,115,512.19;

That out of the assets neither sold nor given away, but retained by the Commonwealth of Virginia, as aforesaid, she did turn over to the State of West Virginia a part of her stock in the Northwestern Bank, amounting to \$210,200.00, and the whole of her stock in the Fairmont Bank, amounting to \$50,000.00, making an aggregate of \$260,200.00, which, when deducted from the aforesaid sum of \$5,115,512.19, would leave a balance of \$4,855,312.19, representing West Virginia's equitable proportion of

said assets so retained, sold, collected or given away by the Commonwealth of Virginia, which said sum should be applied as a credit upon and deducted from the sum of \$7,182,507.46, allotted by this Honorable Court as West Virginia's equitable proportion of the principal of the Virginia debt, which would reduce said principal to the sum of \$2,327,195.27.

The names and descriptions of said stocks, bonds, securities and other properties, as well as the time and manner of their acquisition by the Commonwealth of Virginia, the time and manner of their disposition by said State, and the amounts of money received therefor and appropriated by the Commonwealth of Virginia are hereinafter set out in detail in paragraph six of this supplemental answer.

7 SECOND: That this defendant, both at the time of the filing of its original answer herein and at the date of the fixing by this Honorable Court of the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed, was ignorant of the value of the stocks, bonds, securities and property aforesaid, and did not then know that the same had been sold by the Commonwealth of Virginia, and large, or any, sums of money derived therefrom; that the knowledge of these facts was peculiarly within the possession of the plaintiff, the State of Virginia, and that said State never at any time informed this defendant of the value of said properties, or any of them, or reported to her that moneys had been derived therefrom and appropriated, either wholly or in part, to the exclusive use of the State of Virginia.

She further says that she did not discover the

value and disposition of these securities until after the appointment of a Commission by her Governor on the 19th day of April, 1913, pursuant to a joint resolution passed by the two Houses of her Legislature on the 21st day of February, 1913, for the purpose of attempting, in accordance with the suggestion of this Honorable Court, an amicable adjustment of the matters here in controversy with a like Commission from the State of Virginia, and that her said Commission has, since the filing of the original answer herein and the opinion of the Court hereinbefore referred to of March 6, 1911, discovered the matters hereinbefore and hereinafter set out in this her supplemental answer;

THIRD: That, after the Commissions of the two States had met in joint conference in the City of Washington on the 25th day of July, 1913, and had adjourned to meet at a later day, the West Virginia Commission met at Charleston on the 12th day of August, 1913, and appointed a sub-committee out of its own membership, for the purpose of making a complete examination into all the matters involved in this controversy, with the view of submitting a proposition to the Virginia Commission, which said sub-committee entered promptly upon its work, and diligently pursued its investigations until on or about the 27th day of February, 1914, at which time it completed its labors and reported the result thereof to the full West Virginia Commission;

That, during the investigations made by the sub-committee aforesaid, it discovered the matters and things hereinbefore and hereinafter alleged with respect to the value and disposition of the stocks,

bonds and other securities and property owned by the Commonwealth of Virginia on the first day of January, 1861, and retained or disposed of by her after the twentieth day of June, 1863, and embodied the same in its report on the 27th day of February, 1914, to the West Virginia Commission, and, at the same time, formulated and reported a proposition of settlement based thereon, with the recommendation that the same be made by the West Virginia to the Virginia Commission.

The substance of the proposition so formulated was that, if the Virginia Commission would allow to the State of West Virginia $23\frac{1}{2}\%$ of the value as of the first day of January, 1861, of the stocks, bonds, securities and other properties owned by her on that day, and subsequently disposed of by her, hereinbefore referred to and hereinafter described in detail, as well as the whole amount of moneys (\$225,078.06) collected by Virginia from West Virginia Counties after the separation of the two States, after deducting the amount of bank stocks (\$260,200.00) theretofore turned over by Virginia to West Virginia; that is to say, the sum of \$4,855,312.19, as a credit upon the sum of \$7,182,507.46, ascertained, as aforesaid, by this Honorable Court to be the part of the principal of the Virginia debt assumed by the State of West Virginia, and accept the balance so ascertained in full settlement, both principal and interest, of West Virginia's equitable proportion of the Virginia debt, then, and in that event, the West Virginia Commission would at once report that fact to the Governor of the State of West Virginia, with the request and recommendation that he immediately convene in

extraordinary session the Legislature of that State, for the purpose of adopting or rejecting the recommendation of the West Virginia Commission, and for the further purpose, in the event of its adoption, of providing the means, without further delay, of paying unto the State of Virginia, as Trustee for her bondholders, the sum of \$2,327,195.27, in full settlement of that portion of the Virginia debt assumed by the State of West Virginia.

The West Virginia Commission, upon receiving the report of said sub-committee, and after an examination and discussion thereof, approved and adopted the same; and, thereupon, a joint conference of the Virginia and West Virginia Debt Commissions was called to meet at the City of Washington on the fourth day of March, 1914. The two Commissions convened at the time and place designated, and the West Virginia Commission made, in writing, to the Virginia Commission its proposition of settlement aforesaid, and accompanied the same, as a part thereof, with a tabulated statement of the stocks, bonds, securities and other properties 23½% of the value of which she claimed as a credit upon her ascertained proportion of the principal of the Virginia debt assumed by her. This proposition, however, was rejected by the Virginia Commission, and, thereupon, the conference ended, as well as the negotiations between the two Commissions. A true copy of said proposition, together with a true copy of the tabulated statement of the stocks, bonds, securities and other property therein referred to and thereto appended, as well as a copy of the letter of the Chairman of the West Virginia Commission transmitting

the same to the Virginia Commission, are herewith filed as a part of this supplemental answer, and marked "Exhibit A". A true copy of the reply of the Virginia Commission thereto, as well as a copy of the letter of the Chairman of said Commission transmitting the same, are likewise exhibited herewith as a part hereof, and marked "Exhibit B". A true copy of the rejoinder of the West Virginia Commission to the reply of the Virginia Commission is also exhibited herewith as a part hereof, and marked "Exhibit C".

FOURTH: This defendant further alleges that, under the provisions of Sections 28, 29 and 30 of the Constitution of Virginia of 1851, in force January 1, 1861 (Code of Virginia, 1860, page 47), she became, and was, entitled, under her Constitution adopted and in force on June 20, 1863, to an equitable proportion of and interest in the stocks, bonds and other securities, credit and settlement for which she now seeks to obtain by her supplemental answer;

That, under the provisions of Section 29 of said Constitution, a sinking fund was created; that, under the provisions of Section 30 of said Constitution, it was provided that 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, should constitute a part of the sinking fund, and be applied in like manner.

This defendant claims that, under these provisions of the Constitution, the Commonwealth of Virginia held, owned and was entitled to possess and sell the securities which she had acquired by the

issue and sale of the bonds constituting the common debt, and that West Virginia, by her contract (Sec. 8, Art. VIII. of her Constitution), while assuming an equitable proportion of the Virginia debt, nevertheless acquired a proportional interest in these securities belonging to the sinking fund, measured by her equitable proportion of the debt, and that she had a vested interest in these securities which could not be divested by any subsequent constitutional provision adopted by the Commonwealth of Virginia, or by any legislative enactment other than authorized by the said sections of the Constitution of 1851.

FIFTH: This defendant, further answering, says that, as will appear from the Acts of the Legislatures of the two States, both States contemplated a fair division of the property belonging to Virginia upon the settlement of the controversy between the two States with reference to the said debt and the proportion thereof assumed by West Virginia in which West Virginia was interested before she became an independent State, and that both States declared for a fair division of the property, always, however, in connection with the ascertainment and adjustment of the equitable proportion of the debt assumed by West Virginia under her Constitution. And this defendant avers that she is advised and believes, and, upon such advice and belief, avers, that the property referred to evidently meant the stocks, bonds and other securities in the possession of Virginia possessing a commercial value, and available as assets for the discharge of the said debt, and that too without any impediment to or interference with the ordinary operations of the State government; and

the defendant avers that it has always been the policy of Virginia to apply these assets to the payment of the said debt, and, in support thereof, this defendant avers that, in the Constitution of Virginia adopted in 1864, as shown by the "Acts of the General Assembly of Virginia, 1861-1865", on pages 15 and 16 thereof, the following provision with reference to the public debt appears:

"The General Assembly may at any time direct the sale of the stocks held by the Commonwealth in internal improvement and other companies located within the limits of this Commonwealth, but the proceeds of such sale, if made before the payment of the public debt, shall be appropriated to the payment thereof."

On the twenty-eighth day of February, 1866, a joint resolution bearing upon the adjustment of the debt between the two States, appearing in the Acts of Assembly of Virginia of 1865-6, at page 453, was adopted, the third paragraph of which reads as follows:

"The commissioners appointed under the foregoing resolution are also empowered and directed to treat with the authorities of West Virginia upon the subject of the proper adjustment of the public debt 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."

This resolution was adopted within less than three years after the State of West Virginia was admitted to the Union, and is expressive of the attitude of Virginia relating to the equities of West Virginia in the assets of the former State applicable to the discharge of the public debt.

On February 18, 1870, an Act of the General Assembly of Virginia was passed, appearing on page 8 of the Acts of the General Assembly of Virginia for 1869-1870, with reference to the adjustment of the public debt, the first section of which is as follows:

“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 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; provided, however, that the action of the said commissioners shall be subject to the approval or disapproval of this General Assembly.”

SIXTH: This defendant, further answering, says that the history of the purchase, ownership, value and final disposition by the State of Virginia of the stocks, bonds and other securities and properties hereinbefore referred to in the first paragraph of this supplemental answer is as follows:

SECURITIES RETAINED BY VIRGINIA.

1. Under and by virtue of two Acts of the General Assembly of Virginia, the one passed on Jan-

uary 23, 1835, and the other on March 23, 1836, the Commonwealth of Virginia purchased 2,752 shares of stock, of the par value of \$100 each, in the Richmond, Fredericksburg & Potomac Railroad Company, and paid therefor the sum of \$275,200.00, which purchase money was derived either from taxation or from the proceeds of the sales of a portion of the bonds that evidenced the debt in controversy here, and constituted a common fund, $23\frac{1}{2}\%$ of which was owned by this defendant, and $76\frac{1}{2}\%$ thereof by the State of Virginia. The stock so purchased was never disposed of by the Commonwealth of Virginia, and was owned by her on the first day of January, 1861, and is still so owned and held. Said stock, this defendant is now informed, and, upon such information, alleges, was dividend paying on the first day of January, 1861, and on that date, as well as on the twentieth day of June, 1863, was worth in the market, at the very least, the sum of \$275,200.00.

This defendant is further informed, and, upon such information, alleges, that said stock has continued to pay dividends from January 1, 1861, to the present time, and that, during that period, has not only paid to the State of Virginia in cash dividends the sum of \$1,282,198.74, but that she has received, in addition thereto, on account of said stock, and in the form of stock dividends, the sum of \$319,615, which dividend stock bears the same rate of dividend as the original stock.

2. Prior to the first day of January, 1861, the Commonwealth of Virginia purchased, and paid for out of the common funds of the plaintiff and the

defendant, stock in the following banks, of the par value as herein set out; that is to say :

Farmers' Bank of Virginia.....	\$962,600.00
Bank of Virginia.....	963,620.00
Bank of the Valley.....	483,900.00
Exchange Bank	875,500.00
Northwestern Bank	374,400.00
Fairmont Bank	50,000.00
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Total.....	\$3,710,020.00

This defendant is informed, and upon such information alleges, that the foregoing bank stocks were, at the least, worth par on the first day of January, 1861, and continued to be worth par, or more, from that date until long after this defendant was separated from the Commonwealth of Virginia on June 20, 1863. It further says, upon information and belief, that said bank stocks, both upon the first day of January, 1861, and upon the twentieth day of June, 1863, and for sometime thereafter, were regularly paying dividends of from seven to eight per cent. per annum.

This defendant further says that the Commonwealth of Virginia appropriated the whole of said stock unto her own exclusive use, except \$210,200 of the stock held and owned by her in the Northwestern Bank, and her stock in the Fairmont Bank, amounting to \$50,000.00, which stocks were turned over by her to this defendant.

SECURITIES PURCHASED BY VIRGINIA
PRIOR TO JANUARY 1, 1861, AND SOLD
AFTER JUNE 20, 1863.

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

Virginia and Tennessee Railroad Company,
Southside Railroad Company,
Virginia & Kentucky Railroad Company,
Norfolk & Petersburg Railroad Company,

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

Virginia & Tennessee Railroad Company,	
Stock	\$2,300,000.00
Southside Railroad Company,	
Stock	803,500.00
Loans	708,102.34
Virginia and Kentucky Railroad Company,	
Stock	82,000.61
Norfolk & Petersburg Railroad Company,	
Stock	1,139,970.00
Loans	134,975.51
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Total.....	\$5,168,548.46,

which residuary stocks and loans she subsequently; that is to say, on the twentieth day of December, 1870, sold to the Atlantic, Mississippi & Ohio Rail-

road Company for the sum of \$4,000,000.00. The purchase price was to be paid in instalments, and a second mortgage was taken upon the property of the Atlantic, Mississippi & Ohio Railroad Company to secure the payment of the same. This sale was made and this security taken without the knowledge or consent of this defendant; and finally, after the lapse of many years, the first mortgage on the property of the Railroad Company was foreclosed, and the property embraced therein sold, but did not bring enough to satisfy the second mortgage and pay the \$4,000,000.00 debt to the State of Virginia. Notwithstanding that fact, the Atlantic, Mississippi & Ohio Railroad Company was subsequently reorganized, and, on the first day of March, 1882, paid into the treasury of the State of Virginia the sum of \$500,000.00 for her interest in said second mortgage.

This defendant further says that she is informed, and upon such information charges, that the stocks so purchased in said railroads, as aforesaid, and the loans so made to them, were of the market value of \$4,000,000.00, or more, not only as of the first day of January, 1861, but as of the twentieth day of June, 1863.

2. Virginia also, prior to the first day of January, 1861, purchased with the common funds of the two States shares of stock in the following railroad companies, and out of said funds made loans to said railroads, and subsequently collected the principal of said loans and sold said stocks, and likewise collected a claim against the Government of the United States, and another against Selden-Withers Company, and realized therefrom the amounts hereinaf-

ter next set out, and has never accounted unto this defendant for its proportionate part thereof; that is to say:

Orange & Alexandria Railroad Company,	
Stock and loan.....	\$1,156,210.98
Richmond & Danville Railroad Company,	
Stock and loan.....	1,653,423.04
Richmond & Petersburg Railroad Company,	
Stock	578,404.13
Virginia Central Railroad Company,	
Stock and loan.....	321,458.17
Blue Ridge Railroad Company,	
(Built by State of Virginia)	705,280.82
Alexandria, Loudoun & Hampshire R. R. Co.,	
Stock	68,044.51
Winchester & Potomac Railroad Company,	
Loan reduced by annuity.....	83,333.33
Virginia & Tennessee Railroad Company,	
Loan	992,030.32
Southside Railroad Company,	
Loan	91,897.66
Norfolk & Petersburg Railroad Company,	
Loan	165,024.49
Roanoke Navigation Company,	
Stock	3,832.00
Alexandria Canal Company,	
Stock	816.00
Upper Appomattox Company,	
Stock	16,144.26
Dismal Swamp Canal Company,	
Stock	24,839.98
Loan to Washington College.....	2,000.00
Richmond Academy,	
Bonds	400.00
Claim against United States Gov'tment	298,369.74
Claim against Selden-Withers Company	152,023.04
Total.....	\$6,313,532.47

**RESIDUE OF SECURITIES PURCHASED BY
VIRGINIA PRIOR TO JANUARY 1, 1861,
AND SOLD AFTER JUNE 23, 1863.**

The residue of the securities purchased by the State of Virginia with common funds prior to January 1, 1861, and disposed of by her subsequent to that time in one way and another, and not hereinbefore recapitulated, consisted of stocks in the following railroad, navigation and canal companies, the actual value of which, as of the first day of January, 1861, and of the 20th day of June, 1863, in consequence of the lapse of time and the consequent obscurity of the evidence relating to such value, is unknown to this defendant, but the par value of which is set opposite the name of each company as follows, to-wit:

Manassas Gap Railroad	\$2,105,000.00
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
Smith's River Navigation Co.	4,083.12
Slate River Co.	21,000.00
Kempsville 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 Co.	281,111.11
<hr/>	
Total	\$3,885,076.68

And this defendant says that she believes, and charges upon such belief, that these securities last above enumerated had an actual value, both on the 1st day of January, 1861, and the 20th day of June, 1863, of 25% of their par, or \$971,269.17.

INTEREST ON LOANS AND DIVIDENDS ON STOCK.

This defendant is also informed, and upon such information alleges, that, after the Commonwealth of Virginia had, as hereinbefore set out, purchased with the common funds of this defendant and of the plaintiff the bank and railroad stocks hereinbefore described, and had made unto the various railroad companies and persons hereinbefore set out the various loans herein set forth, she, prior to the first day of January, 1861, became entitled to dividends upon said stocks and to interest upon said loans in the aggregate sum of \$1,835,409.28, and, after the first day of January, 1861, collected the same, but did not apply the same to the discharge of her indebtedness existing prior to the first day of January, 1861, and has never paid or accounted unto this defendant for any part thereof.

The names of the various Companies and the amounts received from each, as aforesaid, whether as dividends upon stock or as interest upon loans, are as follows:

Orange & Alexandria Railroad Company	\$18,144.29
Richmond & Danville Railroad Company	8,516.80
Richmond & Petersburg Railroad Co.....	43,048.00

Virginia Central Railroad Company....	182,436.36
Winchester & Potomac Railroad Company	833.33
Richmond, Fredericksburg & Potomac R. R. Company.....	157,662.07
Virginia & Tennessee Railroad Company	211,891.82
Southside Railroad Company.....	204,602.34
Norfolk & Petersburg Railroad Company	45,900.00
James River & Kanawha Company.....	250.00
Loan to Washington College.....	60.00
Richmond Academy Bond.....	12.00
Claim against United States Government	832,451.57
The Farmers' Bank of Virginia.....	33,691.00
Bank of Virginia	33,726.70
Bank of the Valley.....	16,936.50
Exchange Bank	30,642.50
Northwestern Bank	13,104.00
Fairmont Bank	1,500.00
<hr/>	
Total.....	\$1,835,409.28

SECURITIES AND PROPERTY GIVEN AWAY BY VIRGINIA.

This defendant, further answering by way of supplement to her original answer, says that the Commonwealth of Virginia, pursuant to the terms and provisions of certain Acts of her General Assembly, the first passed upon the 16th day of March, 1832, the second upon the 14th day of February, 1834, the third upon the 24th day of January, 1835, and the fourth upon the 23rd day of March, 1860, purchased, and from time to time became the owner of, certain shares of stock in the James River & Kanawha Company, until the aggregate number of shares

owned by her in said Company prior to the first day of January, 1861, amounted to 104,000 shares, with an aggregate par value of \$10,400,000.00;

That, prior to the 23rd day of March, 1860, she had purchased and owned shares of this stock amounting in the aggregate, at par, to \$3,000,000.00, and, under the provisions of an Act of her General Assembly passed on March 23, 1860, she purchased, prior to the first day of January, 1861, \$7,400,000.00 more of this stock, paying therefor par, partly in cash, partly by the assumption of certain debts due from the Company to others, and the residue by the exchange of a debt owed by the Company to the Commonwealth of Virginia for an equal amount of the Company's stock at par;

That the State of Virginia, by her said Act of March 23, 1860; that is to say, only a period of about nine months prior to the first day of January, 1861, valued said stock at par, and, between said date and the first day of January, 1861, purchased a large amount thereof for cash at that valuation; and this defendant is informed that nothing happened to depreciate the value of the same between the time of the valuation so placed thereon and the purchases thereof made by the State of Virginia at par and the first day of January, 1861; but that, making every allowance for mistakes in the valuation so made by the State of Virginia, and every allowance for depreciation in the value of said stock, this defendant believes that said stock and the property represented by it was reasonably worth on the first day of January, 1861, as well as upon the 20th day of June,

1863, twenty-five per cent. of its par, or the sum of \$2,600,000.00 ;

That the State of Virginia, notwithstanding the fact that the stock in this Company had been purchased with the common funds of the two States, and notwithstanding its value as aforesaid, pursuant to and by virtue of two Acts of its General Assembly, the one passed on February 27, 1879, and the other upon March 4, 1880, donated, without consideration so far as the State of West Virginia was concerned, all of the property of said Company, and authorized and caused said Company to convey the same to the Richmond & Alleghany Railroad Company, upon consideration that the latter would pay certain named debts of the James River & Kanawha Company, and agree to construct and operate a railroad along the tow-path of the canal of the James River & Kanawha Company from Clifton Forge, in the State of Virginia, to the City of Richmond, in said State, within a given time, and would guarantee the performance of its said contract by the deposit of \$500,000.00 in United States Government bonds.

The road was built by the Richmond & Alleghany Company along the old tow-path of the James River & Kanawha Company, the bonds deposited by the Richmond & Alleghany Company as a guarantee for the performance of its contract withdrawn, and a deed executed by the James River & Kanawha Company to the Richmond & Alleghany Railroad Company on March 4, 1880, conveying the whole of the property of the James River & Kanawha Company described in the Act of February 27, 1879.

This defendant was entitled to $23\frac{1}{2}\%$ of the

value of said property so given away as of the first day of January, 1861; but the State of Virginia has never paid the same, or any part thereof, unto her, nor accounted to her therefor, in whole or in part.)

MONEYS COLLECTED BY VIRGINIA FROM
WEST VIRGINIA COUNTIES AFTER THE
SEPARATION OF THE TWO STATES.

This defendant is further informed and believes, and upon such information and belief charges, that the State of Virginia, after the division of the old Commonwealth into two States (June 20, 1863), collected large sums of money from several Counties then and now located within the State of West Virginia, aggregating the sum of \$225,078.06, the whole of which she avers should be allowed her as a credit upon her just proportion of the Virginia debt.)

CASH ON HAND JANUARY 1, 1861.

In addition to the foregoing assets, the Commonwealth of Virginia, on the first day of January, 1861, had cash on hand in her treasury in the sum of \$1,104,927.06, which sum of money was derived from assessments and levies upon the subjects of taxation situate both in that portion of the old Commonwealth of Virginia which is now the State of West Virginia and that portion of said Commonwealth that constitutes the State of Virginia.

The amount aforesaid was standing in the treasury of Virginia to the credit of the following funds:

Commonwealth fund	\$252,842.67
Literary fund	26,876.08
Board of Public Works fund.....	5,958.28
Sinking fund	819,250.03

Total\$1,104,927.06

These moneys (or, at least, the portion thereof that was in the sinking fund) this defendant says were applicable by the Commonwealth of Virginia to the discharge of her bonded indebtedness existing prior to the 1st day of January, 1861, or to the accrued interest thereon, and, as this defendant is informed, were in part so applied; that is to say, the Commonwealth of Virginia discharged out of these moneys during the month of January, 1861, or shortly thereafter, the sum of \$977,209.88 of unpaid interest that had accrued on her public debt from the first day of July, 1860, to the 31st day of December, 1860, but that, notwithstanding this fact, the interest so accrued and paid has been added to and embraced in the public debt of Virginia existing prior to the 1st day of January, 1861, and this defendant charged with her equitable proportion thereof, although the same had been paid, as aforesaid.

The foregoing assets set forth in detail in this paragraph, excluding the moneys collected from West Virginia Counties by Virginia (\$225,078.06), aggregate, as alleged in the first paragraph of this supplemental answer, the sum of \$20,810,357.98,

twenty-three and one-half per cent. of which is \$4,890,434.13, from which that portion of the bank stocks turned over by Virginia to West Virginia, and amounting to \$260,200.00, should be deducted, leaving a balance of \$4,630,234.13, to which should be added the whole of the moneys collected by Virginia from West Virginia Counties after the separation of the two States, amounting to the sum of \$225,078.06, making a total of \$4,855,312.19, to be credited to West Virginia on account of said assets; and this last named sum, when deducted from the sum of \$7,182,507.46, ascertained, as aforesaid, to be this defendant's equitable proportion of the Virginia debt, leaves a balance of \$2,327,195.27, or the amount offered in compromise by the West Virginia Commission to the Virginia Commission, as hereinbefore set out.

SEVENTH: As another evidence of the value on or about the first day of January, 1861, of the stocks, bonds and other securities and property hereinbefore described, and as a part of the information upon which this defendant has based her allegations hereinbefore made with respect to the value thereof, the defendant respectfully calls the attention of the Court to a statement contained in the message of John Letcher, Esquire, Governor of the Commonwealth of Virginia, submitted to the Legislature of Virginia on September 7, 1863, relating to the debt of Virginia, which had been prepared with great care, as stated by the Governor in said message, and after consultation with the State Auditors of Virginia, and was believed by the then executive of said

State to be accurate and reliable. In this message, the Governor says:

“We have available stocks belonging to the literary fund, railroad and other stocks belonging to the internal improvement fund, worth in the market, and from which may be realized at any time the State may direct, the sum of. . . . \$16,543,055.35.”

In this message, the Governor adds:

“In addition, the Commonwealth owns \$2,340,600.00 worth of bank stock, which will readily command in the market the sum of \$3,019,125.00.”

The part of Governor Letcher’s message dealing with the public debt of Virginia will be filed herewith, marked “Exhibit D”, and made a part of this supplemental answer.

EIGHTH: This defendant, further answering, says that she ought not to pay any interest upon any part of the said debt assumed by her until the amount thereof has been definitely ascertained, upon the following grounds:

By Section 8 of Article 8 of her Constitution adopted in 1861, it is 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, 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."

And this respondent avers that, under this provision of the Constitution, to which the plaintiff assented as the condition of the defendant's admission into the union, there is no promise or obligation upon the part of this defendant to pay any interest already accrued upon the said debt. The obligation is simply to ascertain the equitable proportion thereof, and provide for its payment, and the accruing interest, which means the interest accruing upon that proportion of the debt which West Virginia assumes; nor has there been any contract or agreement upon the part of this defendant, by any of her officers, agents or representatives, obligating her to pay interest upon the said debt.

This defendant further says that, after her formation as a State, she had no opportunity for ascertaining the amount for which she was liable, because of the existence of war between the States, in which the State of Virginia was an active participant; and, shortly after its close, and before the rehabilitation of the State of Virginia as one of the United States, she instituted suit in the Supreme Court of the United States, claiming a part of the territory of West Virginia, to-wit, the Counties of Jefferson and Berkeley, to which suit this defendant was a party, and no decision was rendered therein until the sixth day of March, 1871;

That, in the same month, to-wit, on the thirtieth day thereof, the State of Virginia undertook, without the consent and advice of the State of West Virginia,

to ascertain the per cent. and proportion of said debt herself which West Virginia assumed, and fixed it at one-third of the whole debt, the said State of Virginia declaring that she was only liable for two-thirds;

That thereafter the State of Virginia would not negotiate a settlement so as to determine the amount which West Virginia assumed of the said debt, except upon the sole condition that Virginia was only liable for two-thirds thereof, thus necessarily leaving to this defendant the payment of the other one-third thereof to the State of Virginia.

This defendant further says that she had no power or authority to settle with the creditors of Virginia, because Virginia had full control of the debt, and, had West Virginia attempted a settlement with the creditors of Virginia, whatever she might have done in the premises would not have been binding upon the State of Virginia; and all that was done by Virginia in fixing the one-third of the said debt as the part assumed by West Virginia was with the consent and co-operation of her creditors.

This defendant also says that whatever sum is obtained in this suit is not payable to Virginia for her use and benefit, but is to be turned over to the holders of the unfunded portion of the said debt, and that these holders are private persons; and for this defendant to assume the payment of any interest which has heretofore accrued upon the said debt would be to impose upon her the burden of paying interest to private persons without any act of her own imposing such liability, either by legislation or

by contract entered into by any of her officers or representatives.

In addition to the foregoing matters and things, this defendant further says that no interest should be charged upon West Virginia's portion of the Virginia debt in consequence of the following matters and things, which she now alleges upon information and belief to be true:

I. She is advised, and upon such advice avers, that a large amount of the bonds evidencing the debt of Virginia created prior to the first day of January, 1861, has been lost or destroyed, so that they will never be presented for liquidation, and, to that extent, there is a further reduction of the debt appearing to have been in existence on the first day of January, 1861. This defendant is not advised as to the exact amount of the bonds so lost or destroyed, but avers that they reach a very considerable sum, largely in excess of one million dollars. This appears from the report of the Debt Commission of Virginia submitted on January 14, 1892, wherein, referring to the funding of the debt of \$28,000,000.00 by the issuance of new bonds for \$19,000,000.00 under the Act of February 20, 1892, the Commission says:

"There is good reason to believe too that a considerable amount of the old securities of the State have been lost or destroyed, so that the maximum of \$19,000,000.00 will probably never be reached."

This defendant avers that she believes that a very large part of the \$5,000,000.00 referred to in the

said Act of February 20, 1892, have been lost or destroyed, so that there is no longer any probability whatever that this sum will ever be presented for payment, and any liability predicated thereon.

II. She says that the State of Virginia, as this defendant is informed, has received from time to time, in addition to the amounts hereinbefore set out in paragraph six of this supplemental answer, dividends upon the bonds, stocks and securities hereinbefore described to an amount equal to \$5,782,240.09, and did likewise, at the time of the separation of the two States, retain, without accounting unto the State of West Virginia for any part thereof, all of the public buildings, including the Capitol at Richmond, the University at Charlottesville, the penitentiary at Richmond, the State Asylum at Staunton, and various other public buildings and institutions that had been constructed and equipped out of the joint funds of the two States, and worth in the aggregate many millions of dollars, as well as much personal property, consisting of libraries, arms and munitions of war. She also says that Virginia has largely scaled her debt, without West Virginia receiving her full proportionate benefit of such scaling.

And now, having fully answered, this defendant prays that the amount and value of the assets as of January 1, 1861, and as of June 20, 1863, hereinbefore set out, that were acquired prior to said first named date by the Commonwealth of Virginia with the common funds of the two States, and were owned by her on said date, and subsequently appropriated

to her own use in kind, or sold, and the proceeds of such sales so appropriated, or were given away by her, and for which the State of Virginia has not accounted unto the State of West Virginia, in whole or in part, may be ascertained; that twenty-three and one-half per cent. ($23\frac{1}{2}\%$) of the value of said assets as of the one date or of the other be likewise ascertained, and that the same be applied as a credit upon that portion of the principal of the Virginia debt assumed by this defendant, as heretofore determined by this Honorable Court, and that the balance thus found due and payable by this defendant, if any, be decreed without interest.

A. A. LILLY,
Attorney General for West Virginia.

V. B. ARCHER,
CHARLES E. HOGG,
and
JOHN H. HOLT,
Associate Counsel
for West Virginia.

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, s.s.:

This day personally appeared before me, the undersigned Notary Public in and for the County and State aforesaid, Henry D. Hatfield, Governor of the State of West Virginia, and, being by me first duly sworn, says that he has read the foregoing answer, and is familiar with the contents thereof, and that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that, so far as they are therein stated to be upon information, he believes them to be true.

HENRY D. HATFIELD,
Governor of West Virginia.

Taken, sworn to and subscribed before me this eleventh day of March, 1914.

My commission expires on the 26th day of April, 1923.

FRANK LIVELY,
Notary Public.

EXHIBITS.

EXHIBIT

"EXHIBIT A".

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 a preamble and resolution 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 resolution are attached to the copy thereof now presented you.

With great respect, I remain,

Very truly yours,

JOHN W. MASON,

Chairman West
Virginia Commission.

Enc.

PREAMBLE AND RESOLUTION OF THE WEST
VIRGINIA DEBT COMMISSION, ADOPTED
AT A MEETING THEREOF, HELD IN CHAR-
LESTON, WEST VIRGINIA, ON THE
27TH DAY OF FEBRUARY, 1914.

WHEREAS, The Supreme Court of the United States, by its opinion rendered on the 6th day of March, 1911, in the case of the Commonwealth of Virginia vs. State of West Virginia, ascertained the gross indebtedness of the old Commonwealth of Virginia, to the payment of which the State of West Virginia should contribute an equitable proportion, to be \$30,563,861.58 (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 claims against West Virginia, its equitable proportion of the principal of said debt (subject 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 1st 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 1st day of January, 1861, that is to say, of the aggregate value as of the 1st 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, to .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 of 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 building 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 debt without West Virginia receiving her full proportionate benefit of such scaling, to say noth-

ing of the legal reasons that might be presented in opposition 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:

I. That this Commission propose, and it does here now propose, to the Virginia Commission that .235 of \$20,810,357.98, or the sum of \$4,890,434.12 of the value of the stocks, bonds, securities and other property 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 Commonwealth 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 Commission consent 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 Vir-

ginia 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 amount so agreed upon.

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

IV. BE IT FURTHER RESOLVED, 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.

JOHN W. MASON,
WILLIAM D. ORD,
J. A. LENHART,
R. J. A. BOREMAN,
HENRY ZILLIKEN,
JOSEPH S. MILLER,
U. G. YOUNG,
JOHN M. HAMILTON,
W. T. ICE, Jr.,

West Virginia Debt Commission.

Analysis of report of Accountants, classifying the Credits to which the West Virginia 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 1st day of January, 1861, amounting to \$1,104,927.06, which sum was allotted to the following 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.....	819,250.03
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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, still owned and unaccounted for by the State of Virginia.

The asset 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 1st 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 1st 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	321,458.17
5. Blue Ridge Railroad Co.,	
built by State of Virginia.....	705,280.82
6. Alexandria, Loudoun & Hampshire	
R. R. 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.	Claim against U. S. Government	298,369.74
18.	Claim against Selden-Withers Co.	152,023.04
Total.....		\$6,313,532.47

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 Co.	\$18,144.29
2.	Richmond & Danville Railroad Co.	8,516.80
3.	Richmond & Petersburg Railroad Company	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 Co.....	250.00

11.	Loan to Washington College.....	60.00
12.	Richmond Academy Bonds.....	12.00
13.	Claim against United States Government	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 following railroad companies:

Virginia & Tennessee Railroad Co.
 Southside Railroad Co.
 Virginia & Kentucky Railroad Co.
 Norfolk and 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 & Kentucky Railroad Co.	
stock	82,000.61
Norfolk & Petersburg Railroad Co.,	
stock	1,139,970.00
loan	134,975.51
	<hr/>
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, Mississippi & Ohio Railroad Co., for the sum of \$4,000,000.00, the purchase price to be paid in

instalments, 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 the foreclosure sale, that is to say, on the 1st day of March, 1882, the re-organization 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:

James River & Kanawha Co.,	
104,000 shares	\$10,400,000.00
Residue of Securities,	
Manassas Gap Railroad	2,105,000.00
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
Smiths River Navigation Co.....	4,083.12
Slate River Co.....	21,000.00
Kempsville 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
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Total.....	\$14,285,076.68

The foregoing \$10,400,000.00 attributed to the James River & Kanawha Company was the par value of its stock, and, although the State of Virginia by an act of the General Assembly passed on the 23d day of March, 1860, something less than nine months before January 1st, 1861, placed a value of par thereon and made purchases thereof at such valuation, yet so much time has elapsed and the evidence of the actual value of this stock as 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 Equity .235	\$4,890,434.12
Less Northwestern Bank	
Stock	\$210,200
Fairmont Bank Stock.....	50,000 260,200.00
Balance	4,630,234.12

Collected from West Virginia Counties	225,078.06
Total Net Equity.....	<u>\$4,855,312.18</u>

RESULT.

West Virginia's Share of Debt.....	\$7,182,507.46
Less Net Equities as above.....	4,855,312.18
Balance.....	<u>\$2,327,195.28</u>

NOTE.

Subsequent to the 1st day of January, 1861, the Commonwealth of Virginia has 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 DIVIDEND OR INTEREST UP TO JANUARY 1, 1861.

Interest		Dividends	Total
Cash	Va. Bonds	Cash	
Orange and Alexandria R. R.			
\$113,459.00	\$81,311.34	\$66,516.09	\$261,286.43
Richmond & Danville R. R.			
380,497.66	281,322.35	249,605.67	911,425.68
Virginia Central R. R.			
86,385.03	72,174.40	387,404.65	545,964.08
Richmond & York River R. R.			
		54,009.94	54,009.94

Richmond, Fredericksburg & Potomac R. R.			
24,012.71	.....	1,282,198.74	1,306,211.45
Virginia & Tennessee R. R.			
137,762.86	.....	138,000.00	275,762.86
Norfolk & Petersburg R. R.			
69,561.41	.....	82,800.00	152,361.41
Roanoke Navigation Co.		2,800.00	2,800.00
Upper Appomattox Co.		6,150.00	6,150.00
Richmond & Petersburg R. R.			
1,703.81	.....	227,504.00	229,207.81
Winchester & Potomac R. R.			
4,166.67	35,184.79	.....	39,351.46
Southside R. R.			
192,000.00	.....	.....	192,000.00
Washington College			
4,140.00	.....	.....	4,140.00
Richmond Academy			
816.00	.....	.....	816.00
U. S. 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
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Total			
1,014,505.15	1,045.830.40	3,721,904.54	5,782,240.09

"EXHIBIT B".

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

HON. JOHN W. MASON, Chairman,
West Virginia Commission,
Washington, D. C.

Dear Sir:

VIRGINIA vs. WEST VIRGINIA.

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 this 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 re-

ferred 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;

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.

JOHN B. MOON,
Chairman.

J. B. BUTTON,
Secretary.

Approved:

JNO. GARLAND POLLARD,
Attorney General of Virginia.

"EXHIBIT C".

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

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

Dear Sir:

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 deemed 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 Court 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,
JOSEPH S. MILLER,
U. G. YOUNG,
JOHN M. HAMILTON,
W. T. ICE, Jr.,

West Virginia Debt Commission.

