

# MILITARY CLAIM AGAINST THE UNITED STATES.

WASHINGTON, D. C., *March 26, 1868.*

SIR:—From a statement furnished me by the Third Auditor, showing a final settlement of the War Claim of the State of West Virginia against the United States, reported on by Commissioners appointed under act of Congress, approved June 21, 1866, it appears that there is due the State \$456,658 03; and that, after deducting the direct tax due from the State as ascertained in accordance with the basis fixed by the Resolutions of Congress, approved February 25, 1867, there is a balance in favor of the State of about \$304,000; I say *about* this amount, for I have not the *precise amount of the direct tax*, so as to enable me to strike the exact balance.

On personal application to you for the amount thus appearing due the State, you informed me that you had received a letter from the Secretary of the Interior, stating that there is held by that Department, in trust for certain Indian tribes, \$796,000 of Virginia State bonds, upon which but about \$23,000 of interest, has been paid since January 1, 1861, and requesting that you withhold the payment of the sum found due the State of West Virginia until, through her authorities, she makes a settlement with the Department of her just proportion of the liabilities incurred by the issue of said bonds; and you were pleased to have me supplied with a copy of such letter for my convenience and more definite information, and the same is now before me. You stated at the same time, that it had been suggested that about one third of the interest due (the principal not being yet due) would be a just proportion to be paid by West Virginia. This suggestion, as I understood, originated in mere conjecture, and was not based on any facts or data admitted to be true, or furnished or vouched for, by any one. If this estimate was intended to be based on the proportion of taxable property in the old State, and what is now the State of West Virginia, it will be found that the revenue of Virginia, for a number of years before the rebellion, amounted,

annually, to over four millions of dollars, (\$4,000,000,) of which the counties composing West Virginia paid less than seven hundred thousand dollars, (or not more than one sixth; so that if the claim were allowable at all, the proportion of West Virginia, as stated by you, is more than twice what it should be.

But I most respectfully, yet earnestly, object to the request of the Secretary of the Interior being entertained, and to any portion of the amount found due West Virginia being withheld for the purpose indicated; and I controvert the right to do so on the following grounds:

1. The bonds held by the Interior Department are the bonds of the State of Virginia, and not of the State of West Virginia, nor is the latter named or known in them; nor are they or any of them a debt against West Virginia.

2. At the time of the passage of the act of Congress, admitting West Virginia as a State into the Union, December, 1862, the Government, by the Interior Department, was the custodian of the bonds mentioned, precisely as she is now; yet there is no condition in the act that West Virginia should assume payment of any portion thereof, or of the interest, although, be it remembered, that nearly two years of the interest was due at that time. Nor is there anything in the act in regard to the public debt of Virginia, except that it may be implied that Congress accepted and sanctioned the provisions on this subject contained in the ordinance adopted by the convention of the *State of Virginia*, August 20, 1861, authorizing the creation of the new State and calling a convention to form a Constitution for the same; in the Constitution of West Virginia itself, and in the act of General Assembly of *Virginia*, passed May 13, 1862, again giving her consent to the formation of the new State, after the Constitution was made, and referring to the same; all of which were before Congress, I apprehend, at the time the act of admission was passed; and

3. Now, what are these provisions thus passed upon and sanctioned by Congress?

Section 9, of the original ordinance of the *convention of the State of Virginia*, above referred to, authorizing the formation of the "New State" says:

"The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State Government, since any part of said debt was created; and deducting therefrom the moneys paid into the Treasury of Commonwealth from the counties included within the said new State during the same period."

Now, the truth is, that nearly the whole of the money for which the

debt of Virginia—amounting to over forty millions before the rebellion—was created, was expended east of the Allegheny Mountains, and *without* the territory of the State of West Virginia. A large portion of it was expended in building the net work of railroads which is found within Virginia; and the James River Canal has cost the State over twelve millions of dollars. Besides, Virginia has two Asylums for the insane, and Asylums for the deaf, the dumb and the blind; the Military Institute with its annuity, and the University with its annuity of from fifteen to twenty thousand dollars, which has been paid for by Virginia; and the improvements and institutions mentioned are within the present boundaries of that State. And inasmuch as Virginia possesses and holds all the improvements and institutions in which the money was invested for which she owes this debt, she has all the benefits of them, and they are a source to which she can and should look for its payment; while at the same time they are a security for the payment of the bonds in the hands of third parties; while within the limits of West Virginia, no public improvements were made, except the grading of a small portion of the Covington and Ohio railroad, not a foot of which has ever been completed, a small expenditure in improving the Great Kanawha River, some mud turnpikes, and a foundation only of an Asylum for the insane. All of which expenditure within West Virginia as well as her just proportion of the “ordinary expenses of the (Virginia) State Government since any part of the public debt was contracted” has been, I feel very certain, re-imbursed to the Treasury of that State by the taxes collected from the counties now composing the State of West Virginia.

Section 8, of Article 8, of the Constitution of West Virginia provides “That an equitable proportion of the public debt of the Commonwealth of Virginia, prior to the 1st day of January, 1861, shall be assumed by this State; (West Virginia) 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 the Act of Assembly of Virginia of May 13, 1862, above referred to gives the consent of the Legislature of that State to the formation and erection of the State of West Virginia “according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia.”

Thus we have the State of Virginia, both by her Convention and her Legislature, bound to the terms of settlement set forth in the provisions quoted; and Congress having admitted the State of West Virginia into the Union upon the Ordinance, Act of Assembly, and Constitution referred to, without requiring anything further, the presumption is that it consented to the terms therein contained, and did not intend to claim

or enforce any other, and especially anything in contravention of these terms.

Now, in view of the provisions herein quoted, and of the facts stated, what, in the language and meaning of Article 8, Section 8, of the Constitution of West Virginia, is "equitable"?

I submit that it results, irresistably, that West Virginia is not liable for, or bound to pay, any portion of the public debt of the State of Virginia; and I further submit that Congress has sanctioned and consented to this view and arrangement, and that no part of the money due West Virginia can be withheld for the purpose claimed by the Secretary of the Interior.

4. If West Virginia were liable for any portion of the debt of the State of Virginia in the hands of third parties, would she not be liable for all of it?—or would she be liable for a certain portion of each bond, or for the whole of the bonds held by some parties to the exclusion of others?—who, except Virginia, is to say what portion, or to whom, West Virginia shall pay? If she should pay a certain portion of each bond, or the whole of some bonds to the exclusion of others, who is to give her an acquittance for the residue so that she may be rid of this vexation at the hands of third parties? How can the authorities of West Virginia know what debts set up against the State of Virginia are just and should be paid or not? Suppose West Virginia undertakes to, and does, pay a portion of what is claimed as a debt against the State of Virginia, and the latter should refuse to consent to such payment, and set up that the bonds so paid had been heretofore paid, or were unjust, or for some cause were not binding on her, she would not certainly be bound by the adjustment and payment thus made by West Virginia to third parties in derogation of her rights; and West Virginia in a settlement between the two States might lose all she had so paid, or such part thereof as the State of Virginia would not allow.

5. The Legislature of West Virginia has by resolutions, adopted February, 1867, provided for a settlement with the State of Virginia on the basis of the ordinance and constitutional provision above quoted, and it is no fault of the former that the settlement has not been made, and the state of the accounts between them ascertained; but it is known to all that the disorganized condition of Virginia has been such that there has been no responsible authorities in that State with whom a settlement could be made, and therefore, and for this reason alone, none has been made, or actually entered upon. Just as soon as there are authorities in the State of Virginia with whom West Virginia can safely settle, it will be done, and if it shall fall upon the latter to pay any portion of the public debt of the former, the same will be adjusted without delay; for West

Virginia has contracted no debt since her organization as a State, and it is the determination of her people to preserve her credit unsullied before the country.

I Have the Honor to be,  
 Very Respectfully,  
 Your Obedient Servant,  
 A. I. BOREMAN,  
*Governor West Virginia.*

HON. HUGH McCULLOCH,  
*Secretary of Treasury,*  
 Washington, D. C.

DEPARTMENT OF THE INTERIOR,  
 WASHINGTON, D. C., March 24, 1868.

SIR:—Understanding that your Department is about to settle the claim of West Virginia against the Government for military expenses incurred during the rebellion, I have the honor to request that in view of the fact that the Department holds \$796,000 of Virginia State bonds in trust for various Indian tribes, upon which but about \$23,000 of interest has been paid since January 1st, 1861, that you withhold the payment of the sum found due the State until through her authorities, she makes a settlement with Department of her just proportion of the liabilities incurred by the issue of said bonds.

Of your action in this matter I will thank you to advise me, in order that I may open a correspondence with the authorities of the State.

I am, Sir,  
 Very Respectfully,  
 Your Obedient Servant,  
 O. H. BROWNING,  
*Secretary.*

HON. HUGH McCULLOCH,  
*Secretary of the Treasury.*

TREASURY DEPARTMENT,  
 THIRD AUDITOR'S OFFICE,  
 MARCH 28, 1868.

Sir:—The State of West Virginia, through commissioners, appointed under the provisions of the Act of Congress, approved June 21st, 1866,

filed in this office, a claim for reimbursement of "money expended for the United States in enrolling, equipping and paying military forces to aid in suppressing rebellion."

This claim amounting to \$456,879 03, was examined in this office and reported to the Second Comptroller and by him certified with a balance in favor of said State amounting to \$456,658 03.

The above balance stands to the credit of West Virginia on the books of this office; and Governor Boreman has made personal application for the payment of the same less the quota of Direct Tax, assessed against said State under the provisions of Act of Congress, approved August 5, 1861.

In the meantime the Secretary of the Interior, by letter under date of March 24th inst., informs the Secretary of the Treasury, that the Department (of Interior), holds \$796,000 of Virginia State bonds, in trust for various Indian tribes, upon which, but about \$23,000 of interest has been paid since January 1st, 1861, and requests the Secretary of the Treasury to withhold the payment of the sum found to be due the State (of West Virginia), until, through her authorities, she makes a settlement with this Department, of her just proportion of the liabilities incurred by the issue of said bonds."

In answer to the request of the Secretary of the Interior, to withhold this balance from the State, I have to submit the following:—

Section 9 of the original ordinance of the *convention* of the State of Virginia, authorizing the formation of the "New State" (West Virginia) says:—

"The New State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State Government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period."

By an Act of the General Assembly of Virginia, passed May 13, 1862, consent was given to the formation and erection of the State of West Virginia according to the boundaries, *and under the provisions set forth in the constitution for said State of West Virginia* and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling, on the twenty-sixth day of November, 1861."

Section 8 of Article 8, of the Constitution of West Virginia above referred to, is as follows:

"An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year 1861, shall be assumed by this State, (West Virginia) and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund, &c."

Governor Boreman denies the right (the justice) and the ability of the Treasury Department to determine the question whether West Virginia is obligated for the assumption of any of the debt of Virginia referred to in the letter of the Secretary of the Interior, and even if she is hereafter declared to be liable—then he respectfully represents that this (Treasury) Department is not qualified to make the distribution of the debts in dispute—that any action by this (Treasury) Department, looking to such arrangements would materially prejudice the interests of West Virginia—that the settlement of the debts of Virginia and the proper distribution of the same are arranged constitutionally; and it is for the States interested and not the Treasury Department to finally adjudicate them.

After a full and careful examination of the whole subject I am of the opinion;—

That in settling the responsibility of the State of West Virginia, for a just proportion of the liabilities of the State of Virginia at the time of separation, the two States are bound by the principles laid down in Section 9, of the original ordinance of the convention of the State of Virginia, authorizing the formation of the New State of West Virginia, and by Section 8, of Article 8, of the constitution of West Virginia, founded on the 9th Section above mentioned.

Those sections provide, that the just proportion of the debt of Virginia devolving on the State of West Virginia shall “be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State Government, since any part of said debt was contracted; and deducting therefrom the monies paid into the Treasury of the Commonwealth, from the counties included within the said new State during the same period.”

From this it is apparent, that the adjustment of this question is a matter purely and entirely between the States, and depending upon debits and credits of which the accounting officers of the Government know nothing, and which are entirely beyond their reach.

We have no charges against the State of West Virginia on account of this Indian Trust Fund, and, of course, no cause of action against her on that account. The Bonds referred to by the Secretary of the Interior as held by that Department as Indian Trust Funds, are those of the State of Virginia—and as that State took no measures to devolve the payment of any part of those Bonds upon the State of West Virginia, and as the State of West Virginia entirely ignores all liability for them, on grounds not only legal, but entirely equitable, I am clearly of opinion, that the Department has its remedy only against the State of Virginia and that

the State of West Virginia, is entitled to receive the amount found due her, without any offsets or drawbacks, on account of any of the debts or liabilities of the State of Virginia,

I am, Very Respectfully  
Your Obedient Servant,

JOHN WILSON,

Hon. HUGH McCULLOCH,  
*Sec'y of Treasury.*

*Auditor.*

TREASURY DEPARTMENT,

SECOND COMPTROLLER'S OFFICE,

MARCH 30, 1868.

*Sir*:—On settlement of the account of the State of West Virginia with the United States under the Act of June 21, 1866, a balance of about \$340,000 was found to be due the State. The payment of this balance the Secretary of the Interior requests may be withheld until the State shall have settled with that Department for her just proportion of \$796,000 of unmatured Virginia State Bonds which that Department holds in trust for certain Indian Tribes, and on which only about \$23,000 of interest has been paid since January 1, 1861.

This request the Governor of the State resists on the ground;

First: That the Bonds are the Bonds of Virginia and not of West Virginia and that the latter is not known in them, nor are they or any part of them a debt against her.

Second: That by the several acts of Virginia, West Virginia and the National Government by which West Virginia became first a separate State and then one of the States of the Union, an arrangement was impliedly agreed upon under which she ceased to be liable for any part of these bonds.

These are Section 9 of an ordinance of the Legislature of Virginia dated August 20, 1861, authorizing the formation of a new State which says: "The new State shall take upon itself a just proportion of the "Public Debt of the Commonwealth of Virginia prior to the first day of "January 1861, to be ascertained by charging to it all State expenditures "within the limits thereof, and a just proportion of the ordinary expenses "of the State Government, since any part of the said debt was created; "and deducting therefrom the money paid into the Treasury of the Com- "monwealth from the counties included within the said new State during "the same period."



“Next: Is Section 8, Art 8, Constitution of West Virginia, “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 sum 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.”

Act of the Legislature of Virginia, May 13, 1862, giving its consent to the separation “according to the boundaries and under the provisions set forth in the Constitution of the said State of West Virginia.”

Act of Congress December 1862, admitting the State as constituted into the Union.

A very inconsiderable portion of the money which gave rise to the Public Debt of the Commonwealth, “having been disbursed in the improvement of the counties now composing the State of West Virginia,” the Governor maintains that the “equitable proportion” agreed upon in the State Constitution is nothing.

I am clearly of opinion that both positions taken by the Governor are untenable. “Maine was separated from Massachusetts and a sum of money that became due the Commonwealth, known as the disputed territory fund, was paid by the United States—not to the latter alone—but to each its respective portion (see Treaty of Washington 8 Stat. 575, also 10 Stat. 97,) Mr. Wheaton (International Law, page 53,) in speaking of the Public Debt of a State as affected by revolution in its government says, (“The debt being contracted in the name of the State by its authorized agents for the public use the Nation continues liable for them notwithstanding the change in its internal constitution.) The new Government succeeds to the fiscal rights and is bound to fulfill the fiscal obligations of the former Government.”

“It becomes entitled to the public domain and other property of the State and is bound to pay its debts previously contracted.”

On the acquisition of Texas, President Tyler said, (message Dec. 1844) “We could not with honor take the lands without assuming the full payment of all incumbrances on them.”

If twenty counties may be separated from a State without carrying with them any liability for the debt or any part of the debt of the State, so may twenty more, and this may be repeated until the creditors whole security be gone.

It so happens in this case that the creditors assent is necessary to the separation, but that does not affect the principle of law involved. The creditors might as well have been a fourth party.

If the old State had divided itself into two, and each part taken a new name it could not thereby have escaped all liability for these bonds. It certainly is not the law of Nations that a State may avoid its debt by division and subsequent re-union.

Let us reverse the case without affecting the principle involved at all, and suppose that \$796,000 had been due *to* instead of *from* Virginia. Would West Virginia have claimed no part of it? If these States had agreed that one of them alone should pay the whole debt and the creditors consented to that modification of the security, it would have been a new contract, but such consent is not to be implied from a formal Act of Congress admitting the State. That Act no more modified the contract between the State and the United States, than between the State and its other creditors.

The Counties composing West Virginia were then part of a State that expressed its consent through the majority, and that majority sold these bonds and disbursed the proceeds, and bound the real property of all the State as security for the payment of the bonds when due.

To all this these Counties are presumed to have given their consent, and if with such incumbrance resting on their property they choose to forego all right in the Asylums and other institutions, to the building of which the money was applied, it was their own voluntary act.

That property is the bounden security for the debt and the debt follows it into whatever Government it may go.

The holder of these bonds was allowed no control over the disbursement of the proceeds; nor was it conditional that if any county failed to raise its proportion of the money it should cease to be liable for any portion of the bonds. With any unfairness towards these Counties on the part of the mother State the General Government has nothing to do. It is not their umpire.

Counties in our new States are often organized after such States have contracted large debts, but the property of the counties is nevertheless liable for such debts the same as that of more favored counties.

In the apportionment the Government must now make, it can only look to the property by which the bonds are secured. It should withhold such a proportion of the amount due as the real property of West Virginia sustains to the property of both States.

This is the basis upon which Congress required the direct tax to be apportioned, (see joint resolution, February 25, 1867) \$208,479 65 of which are allotted to West Virginia, and \$729,071 02 to Virginia. (See letter of Commissioner of Internal Revenue to the Secretary of the Treasury, February 24, 1868). That the people of West Virginia recognized their liability for an "equitable proportion" of the old State debt in the Constitution, is, of itself, a sufficient answer to the Governor's

first position, and that they took so long a time as thirty-four years in which to pay it, indicates that they did not regard that "equitable proportion" as a very trifling amount.

At least it is not stipulated that the one party should have the sole right to determine what that "equitable proportion" was, and until Virginia can be heard in the matter, I do not think it should be decided that West Virginia is not liable in proportion to her property.

If then any injustice be done, it may be rectified in accordance with the settlement that may hereafter be had between the two States.

The papers are herewith returned.

Very Respectfully,

J. M. BRODHEAD,

*Comptroller.*

HON. H. McCULLOCH,

*Secretary of the Treasury.*

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#### MEMORANDUM OF BONDS

In the office of the Secretary of the Interior, issued or guaranteed by the State of Virginia, and held in trust by the Secretary for certain Indian tribes.

Bonds of the City of Wheeling, on account of the Baltimore and Ohio Railroad Company:

168 Bonds of \$1,000 each, dated July 1, 1852, due July 1, 1872. Interest at 6 per cent, payable semi-annually. Guaranteed under act of General Assembly, March 20, 1848. Numbered respectively from 1 to 168, both inclusive.

Certificate of stock issued to the Secretary of the Interior, for benefit of James River and Kanawha Company, for \$28,200. Dated at Richmond, Virginia, July 9, 1860. Principal irredeemable in 34 years from Jan. 1, 1860. Interest at 6 per cent, payable semi-annually. No. 117. (In trust for Creek Orphans.)

Certificate of stock issued to the Secretary of the Interior for \$100, dated March 1, 1852. Principal irredeemable in 25 years from January 1, 1852. Interest at 6 per cent, payable semi-annually. No. 1141.

Certificate of stock issued to Secretary of the Interior for \$10,000, dated 14th of February, 1852. Payable in 25 years from April 10, 1850. Interest at 6 per cent, payable semi-annually. No. 1115.

Certificate of Stock issued to the Secretary of the Interior for \$2,000, dated March 1, 1852, payable in 20 years from Nov. 27, 1838, interest at 6 per cent, payable semi-annually. No. 17.

Certificate of Stock issued to the Secretary of the Interior for \$200, payable in 20 years from May 29, 1839, interest at 6 per cent, payable semi-annually. No. 861.

Certificate of Stock issued to the Secretary of the Interior for \$1,300, dated February 14, 1852, payable in 20 years from May 29, 1839, interest at 6 per cent, payable semi-annually. No. 860.

Bond of Richmond & Danville Railroad Co. issued to the Secretary of the Interior for \$3,500, payable in 25 years from May 13, 1851, interest at 6 per cent, payable semi-annually.—Guaranteed by Commonwealth of Virginia. No. 88.

Bond of Chesapeake & Ohio Canal Co. for \$500, dated May 1, 1849, payable in 35 years from date, interest at 6 per cent, payable semi-annually. No. 873. Issued under act of General Assembly of Maryland, passed December session, 1844, Chap. 281. Guaranteed by State of Virginia under act of General Assembly, passed 1847.

Like Bond for \$500—same date—issued and guaranteed under same laws. No. 872.

8 Bonds of Chesapeake & Ohio Canal Co. of \$1,000 each, issued under act of General Assembly of Maryland, passed December session 1844. Guaranteed by State of Virginia under act of General Assembly, passed 1847. Payable 35 years from date, interest at 6 per cent, payable semi-annually. The dates and numbers of each, respectively, as follows: No. 1,419, Oct. 1, 1849; No. 1,420, Oct. 1, 1849; No. 1,040, Aug. 1, 1849; No. 1,048, July 2, 1849; No. 857, May 1, 1849; No. 488, Nov. 1, 1848; No. 487, Nov. 1, 1848; No. 482, Nov. 1, 1848.

10 Bonds issued by Chesapeake & Ohio Canal Co. of \$1,000 each, payable July 1, 1869, interest at 6 per cent, payable semi-annually. Guaranteed by State of Virginia under act of General Assembly, March 15, 1849. Numbered respectively 229, 230, 231, 232, 233, 234, 235, 238, 239, 240.

19 Bonds issued by same Company of \$500 each, issued and guaranteed under same laws, interest at 6 per cent, payable semi-annually. Numbered respectively from 241 to 259, both inclusive.

Certificate of Registered Stock of Commonwealth of Virginia for \$90,000, irredeemable in 34 years from the 1st January, 1860, interest at 6 per cent, payable semi-annually. No. 115.

10 Bonds of Chesapeake & Ohio Canal Co., guaranteed by Commonwealth of Virginia under act of General Assembly, March 15, 1849, of \$1,000 each, payable July 1, 1869, interest at 6 per cent, payable semi-

annually. Numbered respectively 114, 157, 115, 158, 159, 160, 165, 226, 227, 228.

2 Bonds of \$500 each, issued and guaranteed under same laws, principal and interest payable at same time and in like manner. Numbered respectively 65 and 68.

1 Bond of same Company for \$1,000, dated Nov. 13, 1847, payable in 35 years, issued under act of General Assembly of Maryland, December session, 1844, Chap. 281. Guaranteed by State of Virginia under act of General Assembly, 1847. No. 10.

3 Bonds of same Company of \$1,000 each, dated Nov. 1, 1849, issued under same laws, payable at same time and in like manner. Nos. 1,490, 1,492, 1,493.

Certificate of Registered Stock to the Secretary of the Interior for \$450,000, issued by Commonwealth of Virginia, under act of March 23, 1860, irredeemable in 34 years from January 1, 1860, interest at 6 per cent, payable semi-annually. Dated July 9, 1860, and numbered 116.

