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IN RE WEST VIRGINIA'S

DEMAND UPON THE

TREASURER OF THE UNITED STATES

For the Payment of the Amount due

UNDER THE RECENT ACT OF CONGRESS

FOR REFUNDING THE

DIRECT WAR TAX OF 1861.

1833-50 A. M. C. W. 1013

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Under the act of Congress, approved March 2, 1891, entitled "An act to credit and pay to the several States and Territories, and the District of Columbia, all moneys collected under the direct tax levied by the act of Congress approved August fifth, eighteen hundred and sixty-one," there is now due the State of West Virginia \$181,306.93

This sum represents \$153,978.75 cash money paid by West Virginia after its organization as a State for arming and equipping the soldiers of West Virginia in the Federal army during the late war, and \$27,328.18 collected from citizens of Jefferson and Berkeley counties for war purposes, which was retained by the United States on account, and as West Virginia's part of the direct tax levied against the State of Virginia under said act of 1861, and amendatory acts thereto.

The United States, by the Secretary of the Interior, as trustee for the Indian tribes, holds Virginia stocks and bonds to the extent of \$541,000.00.

It is claimed that this sum in part constitutes a set-off against West Virginia, on the theory that West Virginia is indebted to Virginia on account of Virginia's liabilities created prior to 1861; and that the United States being Virginia's creditor is entitled to retain West Virginia's money. West Virginia denies both propositions—the one of fact and the other of law.

Whether West Virginia is debtor or creditor of Virginia, is a matter wholly separate and distinct, and with no bearing upon or connection with the indebtedness of the United States to West Virginia. Nevertheless, as this question has been raised, we propose to give it some attention.

Upon the adoption of the ordinance of secession, by the Virginia Convention, in April, 1861, the Wheeling Convention which, June 11, 1861, had assembled for the reorganization of the government of Virginia, after adopting an ordinance for such reorganization, proceeded to, and did, August 20, 1861, adopt "An ordinance to provide for the formation of a new "State out of a portion of the territory of this State."

Section 3 of said ordinance provided for changing the boundaries of the proposed new State, so as to include other counties therein named, among which were Jefferson and Berkeley, upon a favorable majority vote by the people of said counties, respectively.

Section 9 of said ordinance is as follows:

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

From this proposition West Virginia has never receded. She proposed to be, was taken, received and admitted as a State of the Union, by the Congress of the United States, with this provision as of the basis of settlement with the State of Virginia. The Government of the United States is the creator of the new State, and is therefore, precluded, absolutely, and under any possible contingency from avoiding the provisions of this ordinance, in order to retain West Virginia's money. The Supreme Court of the United States has decided this ordinance to be binding as between Virginia, West Virginia, and the United States.

Virginia vs. West Virginia, 11 Wall 39.

The constitutional and legislative history of West Virginia, from its creation down to the year 1871 (when Virginia, released under her funding act from one-third of her liabilities, no longer indicated a desire for settlement), will demonstrate the constant and earnest effort of West Virginia to carry into effect the ordinance of 1861. Failing in securing the co-operation of Virginia to that end, she undertook, on her own behalf, to make a statement of the account between the two States. Under joint resolutions passed by the West Virginia Legislature, February 15th and 24th, 1871, the Governor appointed three commissioners "to treat with the authorities of Virginia on "the subject of a proposed adjustment of the public debt of

"that State prior to the first day of January, 1861." These commissioners were General John J. Jackson, who had then been prominent in public affairs for nearly two generations, Hon. J. M. Bennett, for eight years auditor of Virginia, and Hon. A. W. Campbell, distinguished as one of the ablest journalists in the State. They proceeded to Richmond, and after spending some days in the examination of available documents, realizing the necessity for further and more explicit and official information than they could gather, unassisted, from said documents, addressed a note to the second auditor of Virginia, asking specifically the necessary information. This information was promptly refused, but with this, personally, kind response: "I trust that in failing to respond to your inquiries you will not regard me as in anywise wanting in official courtesy to you or your associates. None certainly is intended."

The failure of Virginia's co-operation placed the commissioners at great disadvantage in the examination of the records at Richmond; but they brought to light facts and figures enough to silence the preposterous claim that West Virginia was liable for one-third of Virginia's debt.

A copy of the commissioners' report appears in the appendix.

The public debt of Virginia, Jan. 1, 1861, was incurred almost exclusively in works of public improvement, railroads, turnpikes, canals, bridges, etc., and amounted to \$31,779,067.32.

Of this sum there was incurred for public improvements in West Virginia, \$2,784,329.29; for all other expenditures in West Virginia \$559,600.00, making a total of \$3,343,929.29.

The commission, summarizing from the various tabulated statements, strike the following account between the two states:

"West Virginia to the State of Virginia,"	Dr.
For the amounts expended	
and invested in her territory,	
as set forth in statement F.	\$3,343,929.29

By one-fourth of the estimated	Cr.
value of the public buildings	
and other assets, as given in	
statement G.	\$968,750.00
By three-thirteenths of the	
United States surplus fund, as	
per statement,	446,032.92
By three-sevenths of the lit-	
erary fund, as per same,	647,079.92

By the amount collected in West Virginia after January 1, 1861, as per statement E.	328,706.22	\$2,390,569.06
Balance,		<u>\$953,360.23"</u>

Under the resolutions creating and defining the duties of this commission, its report was made subject to the approval and ratification of the Legislatures of West Virginia and Virginia.

Under resolutions introduced into the Senate of West Virginia, the finance committee thereof made further examination of the matter, in 1873, and reported to the Senate the result of its labors. Hon. J. M. Bennett, a member of the commission heretofore mentioned, was Chairman of this Senate committee. Its report appears in the appendix. We quote the following:

"The report of the debt commissioners hereinbefore referred to, shows that all State expenditures within this State, prior to January, 1861, amounted to \$3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued, nevertheless the expenditures would seem to import an obligation upon our people to return every dollar which has been so contributed to the development of the territory of our State.

"The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions, as upon the receipts from Virginia.

"The committee have therefore assumed the foregoing sum of \$3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the debt commissioners aforesaid.

"From the amount of the foregoing expenditures must be deducted the moneys paid into the treasury of the Commonwealth of Virginia from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia not the whole contribution, but the surplus after deducting a just proportion of the ordinary expenses by the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to \$63,000; and in that year, the total of the expenses of the State government chargeable to us was \$47,000, leaving an excess of \$16,000, which would go to the liquidation of the debt, created for the expenditures within our midst.

"This small surplus in 1822, by the process of an increased rate of taxation and the increased value of the subjects to be

"taxed, the rate rising from 8 to 40 cents on every one hundred dollars in value,, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to \$512,-000, rejecting fractions.

"Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to \$647,079.96. "In the same year our proportions of the ordinary expenses of government amounted to \$135,000, which left the surplus aforesaid \$512,079.96.

"It will be observed that the committee have referred only to the surplus in 1822 and in 1860. The surplus for the intermediate periods swell the aggregate of our contributions to \$3,892,000, which is in excess of expenditures within our limits by \$525,000.00.

"It will thus be seen that our State is not indebted, and the committee confidently advanced this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts, by conditions precedent prescribed by Virginia under the restored government, which government has been approved as aforesaid by Congress, by the Executive and by the Supreme Court of the United States."

It is necessary to consider both of these reports in order to cover the grounds of settlement under the ordinance of 1861.

In the light of these facts, upon what theory of law or conscience can West Virginia be asked to assume any portion of Virginia's debt?

Of this vast sum of more than \$31,000,000 of bonded indebtedness, nearly \$30,000,000 were expended in the State of Virginia for the building of railroads, turnpike, canals, bridges, etc., while West Virginians were inviolately secured in the inalienable and patriotic privilege of paying State taxes, and contemplating the beauties of "nature unadorned."

In view of what was said by Mr. Justice Field in delivering the opinion of the Supreme Court of the United States in *Hartman vs. Greenhow*, 102 U. S. 678, it may be well to give a brief history of the efforts made by West Virginia to obtain a settlement with Virginia, in relation to the public debt of the last named State.

The learned Judge was evidently not fully informed as to the efforts made by West Virginia to settle the question of her liability for the payment of any such debt.

No counsel representing West Virginia had appeared or could appear in the case he was deciding, and all that was before him were the *ex parte* statements of counsel representing Virginia or contained in acts passed by her Legislature, state-

ments that were unjustified by the facts and which could have been readily disproved.

As has been heretofore stated, the organic convention of the State of Virginia, which in June, 1861, re-organized the State on loyal principles (such new organization being acknowledged by the Federal government, as the true State government of Virginia) on August 20, 1861, passed an ordinance authorizing the formation of a new State out of certain territory then within the boundary of Virginia.

Section nine of said ordinance has been heretore quoted.

Such ordinance provided *inter alia* for a convention to frame a Constitution for the proposed new State, which convention assembled at the city of Wheeling, November 26, 1861, and duly framed a Constitution for the new State of West Virginia, known as the Constitution of West Virginia of 1863.

The re-organized and only valid Legislature of Virginia, subsequent to the framing of this Constitution, passed an act on the 13th of March, 1862, and thereby gave consent to the formation of the new State, "according to the boundaries and under the provisions set forth in the Constitution, for the State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled on the 26th November, 1861."

One of the provisions set forth in the said Constitution of West Virginia 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 one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within the period of thirty-four years."

(Constitution of West Virginia, 1863, Article 8, section 8.)

Congress by an act passed on the 31st day of December, 1862, which in its preamble recites the framing of the Constitution, its adoption by the voters of the proposed State, the consent by the Legislature of Virginia, by the act passed the 13th of May, 1862, to the formation of the new State, admitted West Virginia to be one of the United States of America, and due proclamation was made of the fact by the President, pursuant to the provisions of the Act, on the 20th of April, 1863.

The ordinance of the organic convention of Virginia of 1861, contained a proposition from Virginia in relation to the adjustment of the new State's liability in relation to the Virginia State debt, which was accepted by the adoption of the Consti-

tution of West Virginia, thereby forming a compact between the old State of Virginia and the new State of West Virginia, which, in pursuance of the third clause of the tenth section of the first article of the Constitution of the United States was ratified and consented to by Congress.

Virginia vs. West Virginia, supra.

The compact or agreement between the two States effectually establishes that the new State took upon herself only a just and equitable proportion of the debt of Virginia prior to the first of January, 1861, and settles the manner in which such just proportion is to be ascertained.

It would seem to require no argument to show, in the light of the circumstances surrounding the parties to the compact, that its true intent and meaning is, that, whatever this just and equitable proportion might be, if any liability should be found to rest upon West Virginia, the amount is to be paid to the State of Virginia and not to her creditors. Such was the interpretation of the State of Virginia and of the authorities of West Virginia, and the same interpretation was assented to by the Congress of the United States, as will be hereafter shown.

Prior to December, 1866, the State of Virginia, instituted a suit in equity against the State of West Virginia in the Supreme Court of the United States, to settle the boundary between the States, and especially for the decision of the question whether the counties of Berkeley and Jefferson had become part of the State of West Virginia. The case was argued at the December term, 1866, but the Court was equally divided upon the questions submitted. Two new justices having been added to the Court, the case was re-argued at the December term, 1870, and decided in favor of West Virginia.

Virginia vs. West Virginia, supra.

The effect of this litigation, pending for over four years, was to absolutely prevent an adjustment of the question of West Virginia's relation to the payment of the public debt of Virginia; inasmuch as the fact that West Virginia's boundaries, area and taxable property would all be affected by the decision of the questions involved in the litigation, the termination of that litigation was absolutely required before any adjustment could be made between the two States in relation to the debt.

In his message to the Legislature in January, 1866, Governor Boreman recommended that Commissioners be appointed to settle with the State of Virginia respecting the public debt, but no action was taken by the Legislature of West Virginia

of 1866, inasmuch as the authorities of Virginia had made no provision for a settlement, so far as was known to the authorities of West Virginia. In his message to the Legislature of 1867, Governor Boreman, again called the attention of the Legislature to the subject of the adjustment of the public debt, stating that he had been informed by the Hon. Alexander H. H. Stuart, of Virginia, that he, together with two others, had been appointed under resolutions adopted by the Legislature of Virginia; first for the purpose of securing a re-union of the two States; and, second, for adjusting the public debt and a fair division of the public property.

On the 28th day of February, 1867, the Legislature of West Virginia by resolutions declared the people of West Virginia unalterably opposed to re-union with the State of Virginia, and expressed the willingness of the citizens of West Virginia for a prompt and equitable settlement between the States, and directed the Governor, as soon as the said suit in the Supreme Court of the United States relating to Berkeley and Jefferson counties had been disposed of, to appoint three commissioners on the part of West Virginia to treat with the commissioners of Virginia upon the adjustment of the public debt of that State, as provided in the ordinance of 1861, and the Constitution of West Virginia as aforesaid, requiring a report of their action to the Governor in order that the same might be communicated to the Legislature of West Virginia for approval or disapproval.

In January, 1868, Governor Boreman stated to the Legislature in his annual message that he had not appointed commissioners under the said resolution, inasmuch as the suit in relation to Berkeley and Jefferson counties had not been disposed of; but on the 24th of February, 1868, the committee of claims and grievances of the House of Delegates, upon petition of Hon. James H. Brown (then one of the Judges of the Supreme Court of West Virginia), asking that the State of West Virginia provide for the payment of certain bonds of Virginia, of which he was the *bona fide* holder, reported that the settlement of West Virginia should be with the State of Virginia and not with the creditors of Virginia.

In his annual message to the Legislature in January, 1869, Governor Boreman mentions the settlement of the public debt of Virginia, and states that commissioners had not been appointed by him owing to the fact that the suit between the States was still pending.

The State of Virginia having, by an act approved February 18th, 1870, provided for the appointment of three commissioners to treat with the authorities of the State of West Vir-

ginia, the Governor of West Virginia, by a communication dated February 24th, 1870, notified the Legislature of West Virginia of the passage of the Virginia act.

The Legislature of West Virginia, on the first day of March, 1870, appointed a Joint Committee of the two Houses to confer with the Virginia Commissioners and report to the Legislature.

Subsequently, at the same session, on the third of March, 1870, the Governor of West Virginia was authorized to appoint three resident citizens of the State to treat with the authorities of Virginia on the subject of the proper adjustment of the public debt of that State, but nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson.

Inasmuch as no appropriation was made to pay the expenses of West Virginia's Commissioners, the resolution authorizing them having been passed the last day of the session, the Governor of West Virginia, in his message to the Legislature of eighteen hundred and seventy-one, stated that no appointment of commissioners had been made owing to the lack of funds to pay the expenses of the commission. On the 20th of February, 1871, the Legislature of Virginia, through the Governor of that State, tendered to West Virginia an arbitration relating to the public debt, the arbitrators not to be citizens of either State, each State to appoint two arbitrators, and the arbitrators to appoint an umpire if deemed necessary. This proposition was submitted to the Legislature of West Virginia on the 17th day of February, 1871. Two days prior to the communication of the action of the Virginia Legislature, the Legislature of West Virginia had passed a joint resolution authorizing the Governor to appoint three disinterested citizens of the State to treat with the authorities of Virginia on the subject of the adjustment of the public debt of that State prior to the 1st of January, 1861, to report on sundry matters relating to the incurring of the debt, investments held by the State, etc., and providing *inter alia* compensation to the commissioners and for the employment of an accountant or clerk by them. The proposal of Virginia relating to the arbitration was referred by the West Virginia Legislature to a joint special committee, consisting of the Hon. James M. Jackson, James H. Ferguson, George C. Sturgiss, Henry G. Davis and George Koonce, who reported a preamble and resolution rejecting the tender of the arbitration made by the Governor of Virginia, because the adjustment of the debt should be subject to the ratification of the Legislatures of the States, and because citizen commissioners would be of neces-

sity more familiar with the circumstances attending the creation of said debt, and the many intricate questions connected therewith, and upon the proper comprehension of which must depend the equitable apportionment and adjustment of the same between the States.

The resolution invited the Commonwealth of Virginia to appoint three disinterested citizens as commissioners, with authority to treat with like commissioners theretofore authorized on the part of West Virginia. Said commissioners on behalf of West Virginia, in addition to the powers theretofore conferred, were empowered to proceed as soon as practicable to adjust, award and determine upon fair, just and equitable principles what proportion of said public debt of Virginia should be paid by each State in their opinion, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia.

The Governor of West Virginia was directed to communicate to the Governor of Virginia without delay certified copies of the preamble and resolution.

Pursuant to the resolutions of the Legislature of West Virginia of 1871, the Governor appointed as commissioners three distinguished citizens, the Hon. John J. Jackson, Hon. J. M. Bennett (for a long time Auditor of the State of Virginia), and the Hon. A. W. Campbell, as hereinbefore stated.

The treatment of these commissioners by the authorities of the State of Virginia, and their failure to obtain proper recognition, aid and assistance from them, and the result of their labors, have been heretofore detailed.

In 1873, despairing of being able to obtain an adjustment and settlement with Virginia of the questions relating to the public debt, the Senate of West Virginia proceeded to investigate the subject through its finance committee, of which the Hon. J. M. Bennett was chairman. A copy of the report of that committee is appended hereto, and conclusively shows that upon an adjustment between the States, in accordance with the compact between them, assented to by Congress as aforesaid, the State of West Virginia is not liable for a single cent of the Virginia debt, but on the contrary, that the State of Virginia is in justice and right indebted to West Virginia over five hundred thousand dollars of principal money.

The Constitution of Virginia, ratified by her people July 6th, 1869, subsequently approved by Congress, and by reason of the adoption whereof, the State was admitted to representation in Congress and restored to its rights as a State of the Union, in section 19 of article 10, provides as follows:

‘The General Assembly shall provide by law for adjusting,

with the State of West Virginia, the proportion of the public debt of Virginia, proper to be borne by the State of Virginia and West Virginia, and shall provide that such sum as shall be received from West Virginia, shall be applied to the payment of the public debt of the State."

This Constitution of Virginia, containing the provision quoted, was approved by Congress. The Federal Government as well as Virginia understood and claimed that the debt was Virginia's, and any settlement must be between the States, and whatever might be found due from West Virginia paid over to Virginia, to be by that State disbursed.

In the preamble to the celebrated Funding Act of Virginia it is stated that "it has been suggested that the authorities of West Virginia may prefer to pay that State's portion of the debt to the holders thereof, and not to this State, as the Constitution of this State provides."

This language of the Sinking Fund Act shows the Legislative interpretation in Virginia of the provision quoted from Virginia's Constitution.

The Supreme Court of Appeals of Virginia, in 1874, in *Higgenbotham's Exec. vs. Commonwealth*, 25 Grat. 627, held that the present State of Virginia is bound to the creditors of the State for debts due before the division, for the whole of their debt, stating in the opinion that this liability was recognized both in the State Constitution and by repeated acts of legislation. It is true that Judge Bouldin, in the opinion, with as little right and authority as the General Assembly of Virginia had to arbitrarily issue the so-called West Virginia certificates, delivered an *obiter dictum* that West Virginia is equally bound for said debt. The learned Judge is eloquently silent as to the terms of the compact relative to such debt between the two States when West Virginia was created, assented to by the United States.

The passage by the General Assembly of Virginia of the Funding Act in 1871, whereby one-third of the debt of Virginia was arbitrarily assigned to West Virginia without the semblance of right or authority, and regardless of her own Constitution, furnishes the reason for the treatment of the West Virginia Debt Commissioners and their utter inability to make an adjustment with the Virginia authorities. Since 1871 Virginia has made no effort towards a settlement with West Virginia, contenting herself with assigning the payment, without right or reason, of one-third of her indebtedness existing at the breaking out of the war, to the State of West Virginia, whose debtor she would be shown to be upon an adjustment between them.

Whether or not, in the absence of any agreement for the payment of the public debt of Virginia, the State of West Virginia, taken as she was from the territory of Virginia, would be in the same position in respect to the debt of the old Commonwealth that a new county, city or town, formed of territory taken from an older county or municipality, would occupy in respect to the debts of the older county or municipality where no provision was made for the payment by the new one of any part of the indebtedness, is unimportant. Inasmuch as express provision was made at the time of the creation of West Virginia in respect to the Virginia debt, that provision must govern and control in determining the existence and extent of West Virginia's responsibility.

There can be no doubt as to the law applicable, if West Virginia occupies the position of a new county, city or town in respect to the debts of the old one contracted before separation, when the act creating the new one fails to make provision in relation to the payment thereof.

The courts of the United States, West Virginia and Virginia have all held that in such case there is no liability upon the new county, city or town.

Laramie County vs. Albany County, 92 U. S. 307; *Board of Education vs. Board of Education*, 30 W. Va. 424; *Wade vs. Richmond*, 18 Gratt. 583.

But if we consider West Virginia as occupying the position of a sovereign State or country formed out of the territory of another sovereign State or country, West Virginia's liability in relation to the debts of the parent State, contracted before the division, is still fixed and governed by the special agreement and compact entered into with the assent of the United States at the time of her creation.

"A State neither loses any of its rights, nor is discharged from any of its duties by a change in the form of its civil government. The body politic is still the same, though it may have a different organ of communication. So, if a State should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, those rights are to be enjoyed, and those obligations fulfilled, by all the parts in common."

1 Kent's Com. 25.

"Section 26. The dismemberment of a State, by a loss of a portion of its subjects and territory, does not affect its identity, whether such loss be caused by foreign conquest, or by the revolt or separation of a province. Such a change no more affects its rights and duties than a change of its internal or-

ganization, or in the person of its rulers. This doctrine applies to debts due to, as well as from the State, and to its rights of property and its treaty obligations, except so far as such obligations may have particular reference to the revolted or dismembered territory or province.

Section 27. The case is slightly different where one State is divided into two or more distinct and independent sovereignties. In that case the obligations which had accrued to the whole, before the division, are (unless they have been the subject of a special agreement) ratably binding upon the different parts. This principle is established by the concurrent opinions of text-writers, the decisions of courts, and the practice of nations."

1 Halleck's International Law, pp. 76 and 77.

It will be observed that both Halleck and Chancellor Kent expressly limit the effect of what they say in respect to the liability of a new State by the proviso that the obligations which have accrued to the whole before the division are not ratably binding upon the different parts, when they have been the subject of a special agreement, as they have been in our case.

We contend that for four different reasons the \$153,978.75 paid by West Virginia for the direct tax out of the money due her from the National Government for war expenditures, should not be retained by the Treasury Department as a set off against the bonds of the State of Virginia held by the Department of the Interior as trustee for certain Indian tribes.

1. The question involved has been heretofore fully considered and passed upon by the officers of the government adversely to the claim of set-off.

2. The United States by consenting to the present Constitution of Virginia, and to the admission of West Virginia into the Union with her Constitution of 1863, cannot insist upon the right to make the set-off.

3. Congress having authorized the refund of the direct tax money to the State of West Virginia, no executive officer can set-off against such money a debt alleged to be due to the United States from West Virginia, no action having been brought or judgment obtained upon such debt and its entire validity being disputed and denied by the State.

4. Because there is nothing in section 3481 of the Revised Statutes of the United States to justify the retention of any money due West Virginia.

1. Under the act of Congress of June 21, 1866, the commis-

sioners appointed to adjust the claim of West Virginia against the United States for moneys expended in paying and supplying military forces organized and employed for the suppression of the rebellion, reported to the Secretary of the Treasury a claim in favor of West Virginia against the United States amounting to considerably over \$450,000. In 1868, Governor Boreman, of West Virginia, made application to the Secretary of the Treasury for the sum thus appearing due, but the Secretary declined paying on the ground that he had received a communication from the Secretary of the Interior, informing him that the latter department held a large amount of Virginia state bonds in trust for certain Indian tribes, on which only a small part of the interest had been paid since January 1st, 1861, and requesting that payment of the sum found due to the State of West Virginia be withheld until through her authorities, she should make a settlement with the Department of the just proportion of the liabilities incurred by the issue of said bonds. The bonds involved in the matter under consideration are part of those held by the Interior Department in trust as aforesaid in 1868. At the request of the Secretary of the Treasury, the Third Auditor and Second Comptroller each prepared a written opinion on the subject of the Treasury Department's right to withhold the money due West Virginia on account of the trust bonds. The Third Auditor, in an able opinion, denied the right to retain the money, while the Second Comptroller contended that the United States should withhold such proportion of the amount due as the real property of West Virginia sustains to the property of both States. In the appendix will be found the letter of the Secretary of the Treasury to the Secretary of the Interior and the opinion delivered by the Third Auditor. About the first of July, 1868, the Secretary of the Treasury paid on account of the amount found by the commissioners in favor of the State of West Virginia, to the State, through its governor, the sum of \$175,000, which was deposited in the State treasury July 9, 1868, leaving the sum of \$127,692.75, still unpaid and due the State of West Virginia.

The following is a statement of the account in regard to this claim of the State against the United States :

Amount allowed by accounting officers of Treasury Department, being \$221 less than the sum reported by Commissioners, under act of Congress of June 21, 1866..

\$456.658 03

Deduct West Virginia's proportion of direct tax under act of Congress of August 5, 1861.....	\$208,464	80
Less am't collected by United States in the counties of Berkeley and Jefferson.....	27,329	18
	<u>\$181,135</u>	62
But deduct 15 per cent. allowed for paying into United States Treasury without expense of collecting	27,170	34
Net amount of direct tax to be deducted from State's claim.....	\$153,965	28
	<u>\$153,965</u>	28
Amount actually due State on settlement.....	\$302,692	75
Deduct amount of draft received from Secretary of Treasury....	175,000	00
Amount still due State.....	<u>\$127,692</u>	75

(See message of Governor Boreman to the Legislature of West Virginia, January 19th, 1869.)

Journal of the Senate of West Virginia for 1869, pp. 10 and 11.

This balance of \$127,692.75, under the claim made by and request of the Secretary of the Interior, was retained by the Treasury Department from the State of West Virginia for over one year, but in the latter part of July, 1869, said balance was paid by the Treasurer of the United States to the State of West Virginia, through the Governor of the State, the Hon. Wm. E. Stevenson. This balance was settled by the United States after a full and thorough consideration of the question raised by the letter of the Secretary of the Interior, and the claim of the right to retain money of West Virginia in the Treasury of the United States by reason of the fact that Virginia bonds were held by the Interior Department in trust for certain Indian tribes, which is precisely the same question now under consideration, was abandoned by the officers of the Government. Their action at that time upon the question, we respectfully submit, should be conclusive as to the course to be pursued in the present instance. You are respectfully referred to the very forcible presentation of West Virginia's right made by Governor Boreman in his communication to the

Hon. Hugh McCulloch, Secretary of the Treasury, March 26th, 1868.

2. The Constitution of Virginia, under which she was admitted to representation in Congress and to her rights as a State in the Union after the war, as has been stated, expressly provided for the payment by West Virginia to Virginia of any moneys which might be found due from West Virginia upon an adjustment and settlement between the States in relation to the public debt of the parent Commonwealth.

This provision of the Virginia Constitution was assented to when Congress by its act approved that Constitution and admitted the representatives of Virginia into the National Legislature. The Federal Government by its act assenting to the dismemberment of the State of Virginia and the creation of West Virginia, with the provision in its Constitution respecting the Virginia debt, bound itself to respect the compact between the old State and the new, and cannot insist upon the right of set-off claimed.

3. West Virginia denies any liability whatever to pay any part of the State debt of Virginia. That being the case, Congress having authorized the refund of the direct tax, the General Government having neither brought suit nor obtained judgment upon the Virginia bonds against West Virginia, no set-off can be permitted on account of said Virginia bonds against money appropriated by Congress in favor of the State of West Virginia.

"When Congress has authorized a certain sum of money to be paid to an individual in satisfaction of a debt, the Secretary of the Treasury, or any other executive officer, cannot set off against such sum a debt alleged to be due to the United States from the claimant, no action having been brought or judgment obtained on such debt, and its validity being denied by the claimant." *Claim of Reside*, 9 Op., Att'y-Gen'l. 197.

4. The right to retain West Virginia's money is based upon § 3481 of the Revised Statutes of the United States, which reads as follows:

"Whenever any State is in default in the payment of interest or principal on investments in stocks or bonds issued or guaranteed by such State and held by the United States in trust, the Secretary of the Treasury shall retain the whole, or so much thereof as may be necessary, of any money due on any account from the United States to such State, and apply the same to the payment of such principal and interest, or either, or to the reimbursement, with interest thereon, of moneys advanced by the United States on account of interest due on such stocks or bonds."

The right of set-off did not exist at common law and is everywhere founded upon statutory regulation. *United States vs. Eckford*, 6 Wall. 484.

Watterman on Set-off, 11.

It has been held that whenever the relation of debtor and creditor exists in the settlement of the accounts of the same person, the accounting officer may set-off in adjustment, such amount as may be due from the claimant to the Government.

4 Op. Atty. Gen. 380.

It will be observed that the section quoted from the Revised Statutes is explicit in declaring that the State whose money is to be retained is one in default in the payment of interest or principal of stocks or bonds issued or guaranteed by said State and held by the United States in trust. West Virginia never issued or guaranteed a bond. The United States holds no bonds of West Virginia in trust.

Whatever may be the duty of the Secretary of the Treasury in relation to moneys due a State, whose bonds are held by the United States, he can not settle the account and adjust the liabilities between Virginia and West Virginia, and under this section apply West Virginia's money to the extinguishment of Virginia's debt.

By the formation of West Virginia, Virginia was not destroyed. She still remained with practically all her assets unimpaired; and it is to Virginia that the Government must look for the payment of the bonds.

The appendix contains a statement of the amount and character of the investments held by the State of Virginia, on the first of January, 1861, together with those that have been since donated or otherwise changed, as per Gov. Walker's message to the Virginia Legislature, of March the 8th, 1870. The amounts of such investments aggregate \$33,131,090 and to this amount should be added, according to Gov. Walker's message, for amounts lost, abandoned, surrendered or released, \$9,739,092.88, making a grand total of the enormous sum of \$42,870,182.88. With but few and comparatively unimportant exceptions, this money was expended in the portion of Virginia that now constitutes the old State, east of the Alleghany mountains and without the territory of West Virginia.

This debt was incurred in building a net work of railroads now found within Virginia, and the James River Canal, which has cost the State over \$10,000,000. Virginia had all the public institutions within her boundaries, with the exception of an uncompleted lunatic asylum, which has been completed by West Virginia at an enormous expense to her people.

Inasmuch as Virginia has received the benefit of the

money represented by her indebtedness, the people of West Virginia are perfectly justified in insisting upon their rights secured them by the ordinance of 1861, the Constitution of 1863, the Act of the General Assembly of Virginia of 1862, and the Act of Congress ratifying these measures and admitting her into the Union.

Although denying any liability to pay any portion of the State debt and insisting that Virginia would be found indebted to her upon a settlement as provided for in the ordinance of 1861, confident of the correctness of their position, the people of West Virginia, when they adopted the present Constitution, in the year 1872, while omitting any specific mention in that instrument of the public debt of Virginia, in the 4th section of the 10th Article, provided: "No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State," etc., and in the 5th section of the same Article it was further provided: "The power of taxation of the Legislature shall extend to provisions for the payment of the State debt, and interest thereon, the support of free schools," etc.

These provisions in the organic law were placed in a Constitution which prohibited the contracting of a debt by the State, and the previous liability of the State and State debt alluded to, could only be any possible amount which might be found due from West Virginia on account of the Virginia public debt. Subsequent to the adoption of this Constitution, the Legislature of West Virginia, through its Finance Committee, investigated the subject of its liability as we have stated.

Respectfully submitted,

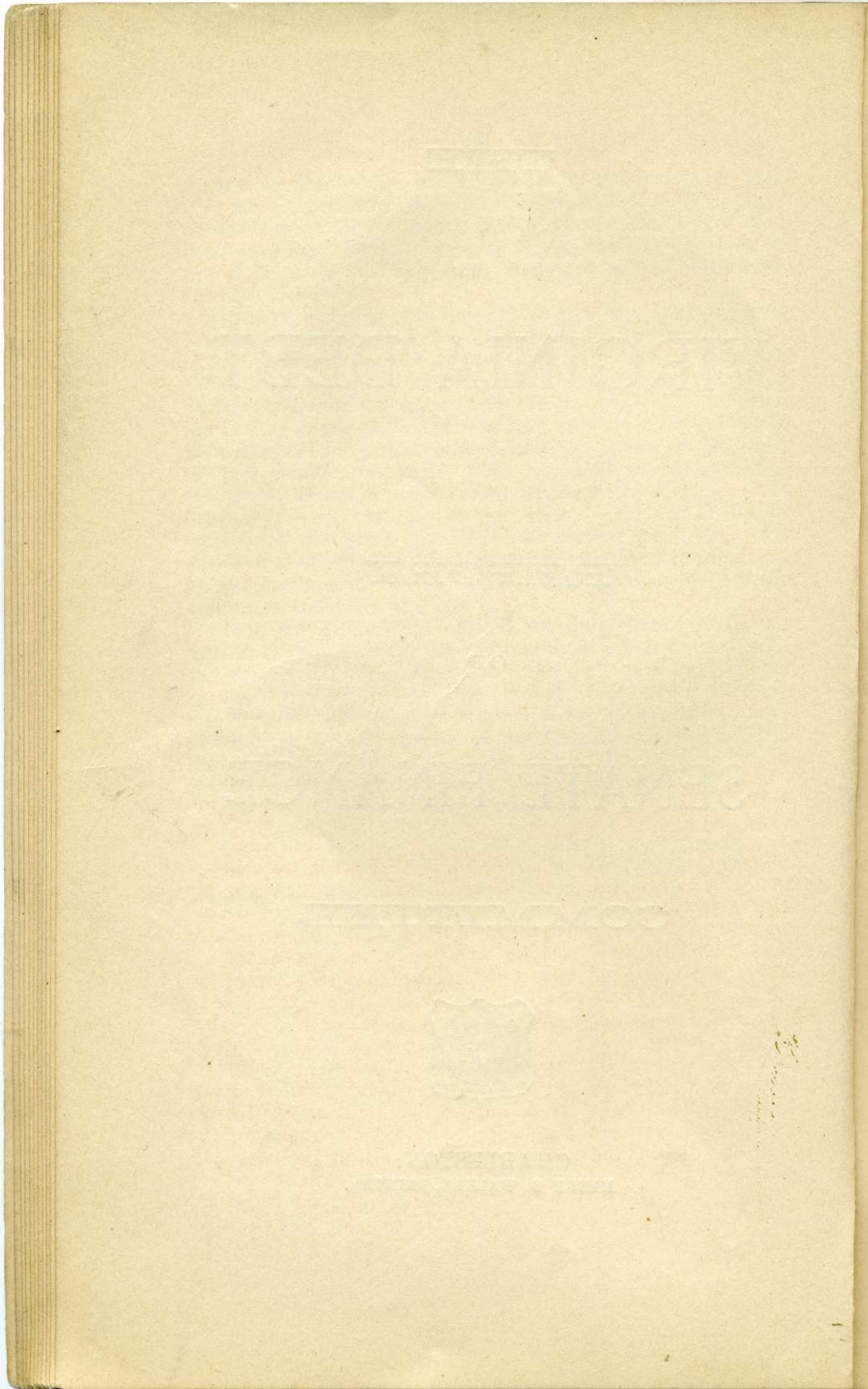
ALFRED CALDWELL,
E. W. WILSON.

To the Hon. Attorney-General of the United States,

THE
VIRGINIA DEBT
REPORT
OF
SENATE FINANCE
COMMITTEE.



CHARLESTON:
HENRY S. WALKER, PRINTER.



REPORT OF THE COMMITTEE.

STATE OF WEST VIRGINIA,
CHARLESTON, December 22, 1873.

The attention of the Committee on Finance has been repeatedly called by resolutions introduced in the Senate and otherwise, to the subject of Virginia's public debt and the share which it is equitable for West Virginia to bear and pay. The committee under these frequent promptings have been constrained to give the subject their most earnest and careful attention as a matter fraught with more than ordinary consequence to the State, and have come to a conclusion satisfactory to themselves, and it is believed that the conclusion of the committee will be approved by the judgment of the people interested, and will receive the sanction of any tribunal before whom it may be brought for adjudication.

It is necessary to a full understanding of this subject that reference be had to the treaty stipulations or fundamental conditions, by whatsoever name they may be called, between the representatives of the people of Virginia and the people desiring separation, by the creation of a new State, which led to the formation of a constitution, its adoption by the people and its approval by Congress, and the establishment of the State of West Virginia.

The ninth section of "an ordinance to provide for the formation of a new State out of a portion of the territory of this State," [Virginia] passed August 20, 1861, provided, that "the new State shall take upon itself a just proportion of the public debt of the commonwealth of Virginia *prior to*

the first day of January, 1861, to be ascertained 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 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."

Upon compliance with the conditions contained in the ninth section and here quoted the people within the counties now constituting West Virginia, were authorized to form a constitution to be presented to Congress for its approval and for the admission of the new State into the Union.

Accordingly, a Constitution was adopted by a convention of the people from the several counties now constituting the State of West Virginia; and to carefully guard and secure the rights prescribed by Virginia as a condition precedent to the formation of the new State, a provision was incorporated into it to secure the exact fulfillment of the treaty stipulations aforesaid.

By article eight, section eight of the Constitution, it was provided that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State; and that 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.

This subject has received a careful consideration by commissioners appointed by authority of this State, and while this committee see much to approve in the Report of the Debt Commissioners of West Virginia on this subject for their great research and the ability with which they handled the subject, considering the peculiar difficulties under which they labored, as shown in their report, and in the illustration of the many problems that may arise in the discussion of this subject, yet this committee think the controlling question has not been discussed by the Commissioners by reason of the embarrassment surrounding their action; and the Committee beg leave to refer to the report which is appended hereto and marked No. 1.

In construing the legal principles involved in this matter, it may be assumed that a private creditor of Virginia cannot sue West Virginia for contribution; for that is prohibited by the Constitution of the United States; see article eleven of amendments to United States Constitution which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens or subjects of any foreign State." But notwithstanding this prohibition the third article extends the judicial power of the Supreme Court to controversies between two or more States. Under this provision of the Constitution it is within the power of Virginia to institute and prosecute any suit against West Virginia, touching the controversies respecting the public debt.

If the conditions precedent to our admission as a State, prescribed by Virginia herself, be accepted as a true basis of adjustment and final settlement, Virginia's claim for expenditures can very properly be offset by our contributions.

Upon this basis the whole subject is one of easy solution, containing no other items than that of creditor or debtor with balances to be struck upon agreed principles. The legislative history of Virginia establishes beyond a doubt that the first act of assembly to create a debt or issue a bond was passed in the year 1821, and the executive records show that the first bond issued by the commonwealth of Virginia was in the year 1822.

From this latter period we date the commencement of our liability under the fundamental stipulations prescribed by Virginia for our separation, which were accepted by the people of this State, approved by Congress, and the President of the United States, as the head of the executive department, and subsequently affirmed by the Supreme Court of the United States, and may at this day be accepted by the public as firmly engrafted into obligations and rights as if the same were constitutional provisions emanating from the supreme power.

The concurrent approval, binding alike upon the people of Virginia and West Virginia, lead us to the following conclusions, which are the results of a mathematical demonstration, founded upon public and official records, appropriate to determine how much of the bonded debt of Virginia existing

prior to January, 1861, was expended within the limits of this State, and how much was contributed by the counties forming the same.

The report of the Debt Commissioners hereinbefore referred to shows that all State expenditures within this State prior to January, 1861, amounted to \$3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued, nevertheless the expenditures would seem to import an obligation upon our people to return every dollar which has been so contributed to the development of the territory of our State.

The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions to as upon the receipts of Virginia.

The committee have therefore assumed the foregoing sum of \$3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the Debt Commissioner aforesaid.

From the amount of the foregoing expenditures must be deducted the moneys paid into the treasury of the Commonwealth of Virginia, from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia, not the whole contribution, but the surplus after deducting a just proportion of the ordinary expenses of the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to \$63,000; and in that year the total of the expenses of the State government chargeable to us was \$47,000, leaving an excess of \$16,000, which would go to the liquidation of the debt created for expenditures within our midst.

This small surplus in 1822, by the process of an increased rate of taxation, and the increased value of the subjects to be taxed, the rate rising from 8 cents to 40 cents on every one hundred dollars in value, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to \$512,000, rejecting fractions.

Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to \$647,079.96.

In the same year our proportions of the ordinary expenses of government amounted to \$135,000, which left the surplus aforesaid of \$512,079 96. It will be observed that the committee have referred only to the surplus in 1822 and in 1860. The surplus for the intermediate periods swell the aggregate of our contributions to \$3,892,000 which is in excess of expenditures within our limits by \$525,000.

It will thus be seen that our State is not indebted and the Committee confidently advance this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts, by conditions precedent prescribed by Virginia under the restored government; which government has been approved as aforesaid by Congress, by the Executive and by the Supreme Court of the United States.

BANKERS AND BROKERS.

Notwithstanding the satisfactory condition of our finances and our material resources, the attention of the committee has been called to the fact that "West Virginia certificates" and "West Virginia bonds" are quoted at the marketable value of from five to fifteen cents on the dollar, in money of the stock exchanges and markets of the United States. This of course has a tendency to depreciate the just credit to which this State is entitled. For it is acknowledged that the credit of a State depends upon the value of its taxable property, the amount of its indebtedness and above all upon its punctuality in meeting its engagements. These quotations imply two things: first, that we owe a debt; second, that we are either unable or unwilling to pay the debt; which beget a want of confidence in the minds of the public who are uninformed with respect to the true condition of West Virginia; and operate unjustly and injuriously upon us. It would seem to be enough for us to say, and we make the assertion without the fear of contradiction, that we owe no debt, that we have issued no bonds and our Constitution forbids the creation of a liability in the nature of a public debt; and with this assurance we cannot demand more nor expect less of all honorable stock brokers and bankers, than the withdrawal from the list of indebted states the name of West Virginia.

"West Virginia certificates" and "West Virginia bonds" do not exist. No bonds have ever at any time been issued

by West Virginia; and we are prohibited from issuing at any time hereafter any bonds on the faith of this State. The bonds or certificates referred to were issued by Virginia, and West Virginia had no agency or participation therein.

In respect to the credit which our conduct and property would imply, we might be indifferent, but we have higher aims and more ennobling ambition. We desire to invite immigration, to cultivate our forests and to develop our mineral resources; this cannot be done with success, when men of thrift and capital are deterred from immigrating to and within our borders by reason of the persistent and unjustifiable misquotations of our credit. No one could be expected to invest capital within a State which had so far absorbed the substance of the people thereof that its good faith and obligations were only worth five cents on the dollar. West Virginia owes no debt, has no bonds for sale and asks no credit.

J. M. BENNETT,
Chairman.
JOHN W. GRANTHAM,
A. E. SUMMERS,
J. T. McCLASKEY,
R. B. SHERRARD,
ELLIOTT VAWTER.

REPORT NO. 1.

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To His Excellency,

J. J. JACOB,

Governor of West Virginia.

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

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

PARKERSBURG, WEST VA. }
August 9th, 1871. }

To His Excellency, the Governor of Virginia:

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

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

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

We have the honor to be

Your Excellency's most ob't servant,

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

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

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

EXECUTIVE CHAMBERS, }
RICHMOND, Sept. 7th, 1871. }

His Excellency,

J. J. JACOB,

Governor of West Virginia.

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

On the 18th of February, 1870, an act was passed by the Legislature of this State, and approved by me, authorizing the Governor to appoint three Commissioners on behalf of this State to treat with the authorities of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and a fair division of the public property.

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

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

This joint resolution, while it does not in terms repeal the act of February 18th, 1870, was intended to supercede it, and therefore I do not feel authorized to appoint Commissioners. Our tender of an arbitration has not been withdrawn, and I regret exceedingly that the authorities of West Virginia declined to accept it. I cannot understand what reasonable objection can be raised to this fair and equitable mode of adjustment so frequently resorted to by individuals and nations, and I trust that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia, to the end that

prompt justice may be done to the creditors of the old State, and that harmony and good feeling may prevail between the people of the two States.

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

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

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

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

approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia."

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

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

RICHMOND, November 14th, 1871.

To the Second Auditor of Virginia:

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

1. The actual amount of the public debt of Virginia on the first of January, 1861. And under this head the amounts of said debt owned by the Sinking Fund, the amount owned by the Literary Fund, and the amount owned by the Library Fund.
2. What portion of the bonded debt was invested, and how invested on the first of January, 1861. Also what portion of the investment was productive, what were the dividends or profits arising therefrom for the year 1860, and whether any such investments have since been donated, changed, converted or otherwise disposed of.
3. What portion of the appropriations expended in West Virginia for public improvements came from the sales of State bonds and what portion from the revenues or taxes of Virginia.
4. A copy of the advertisement for the redemption of a portion of the public debt on the first of January, 1861.

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

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

Very respectfully, your obedient servant.

A. W. CAMPBELL,
Secretary.

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

SECOND AUDITOR'S OFFICE, }
RICHMOND, Nov. 16, 1871. }

A. W. Campbell, Esq., Secretary, &c.:

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

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

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

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

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

I have the honor to be,

Most respectfully yours,

ASA ROGERS.

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

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

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

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

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

"Now, if the authorities of West Virginia entertained an earnest desire to make a speedy and final settlement of this matter, why did they not accept our tender of arbitration? a mode of settlement of such controversies universally recognized by both nations and individuals as right and appropriate. Suppose an equal number of Commissioners appointed by each State, and that they should meet and disagree upon any or all points involved, who is to decide

between them? And yet, beyond a doubt they would radically disagree upon the first or chief point to be settled, viz: the basis or principle upon which the settlement should be made. But suppose that the Commissioners should finally agree, does any one suppose that their finding would be ratified by the legislatures of the two States, disagreeing as the people do radically upon the merits of the question at issue? Of course not."

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

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

therefore they respectfully declined to adopt a new and different proposition from her until they could test the merits of the one already adopted.

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

But we pass from this incidental reference to Governor Walker's strictures upon the attitude of this State towards the debt question to the action of the Virginia legislature upon the same question as embodied in the act approved on the 30th of March last, and known as the Funding bill. This act is in keeping with the initiatory legislation in regard to the debt to which we have just referred. It assumes to apportion the debt of that State arbitrarily, notwithstanding her authorities had six weeks before the passage of the act received notice of the joint resolution of the West Virginia Legislature providing for the appointment of Commissioners. It assumes, also, to apportion the debt not as it stood on the first day of January, 1861, but as it would stand on the first day of July, 1871, after the interest had been twice compounded, once in 1866, and again at the date last named; and to apportion it, too, upon the basis of territory and pop-

ulation, and without any reference to the equities that should always govern an assignment of debt between sections that were so notorious in our own case. In other words it assumes to apportion to West Virginia one-third of the debt as it now stands, simply on the ground that she has one-third of the territory and population formerly belonging to Virginia, and without reference at all to the question of resources and values. This is apparently the practical result which Governor Walker hoped to reach when he urged upon us the "more speedy and satisfactory mode of settlement proposed by Virginia," inasmuch as he tells us in his late message that this is the "plan for a reorganization of the State debt," which he "had recommended twelve months before."

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

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

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

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

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

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

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

To these exhibits we append others, under our instructions from the legislature, but they are such as do not enter into

our argument here, which is to show that no just apportionment of the debt can be made upon the basis of population and territory alone, which is the basis upon which the Virginia Funding bill is confessedly predicated.

This theory of apportionment is apparently quite current among the people of that State, and is defended with ability by Judge Merideth, of Richmond, in a carefully prepared paper on the subject. His position is that West Virginia should pay one third of the debt because, as he says, it is a principle of international law governing the division of nations that "the obligations which had accrued to the whole before the division are, unless they are the subject of a special agreement, ratably binding upon the different parts." This he gives as a quotation from Phillimore. Two inquiries present themselves in connection with it. First, was Virginia a nation in the sense intended by Phillimore? and, second, what are we to understand by a rat-ble part of a debt? We presume that it will not be contended that the general rights and obligations of a nation, as defined by international law, belonged to Virginia prior to the division of the State, and therefore we cannot admit the applicability of the quotation in that particular. Neither can we admit Judge Meredith's construction of the word ratable. He applies it exclusively to territory and population and excludes everything in the shape of resources and value, such as public works, buildings and institutions, which, as we all know, vitally affect the equity of a division of territory.

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

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

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

In addition to the two quotations already given, Judge Meredith cites other authorities to sustain his position that West Virginia is chargeable with one-third of the debt, but we do not regard them as applicable to the case under con-

sideration. First, because Virginia is not a nation. Second, because in all the cases referred to in the authorities quoted, treaty stipulations had more or less to do with the question. Third, because the debts, were war debts, the benefits of which, if any, accrued to each individual, and the obligations of which therefore rested upon each. In no instance was the debt created for internal improvements which necessarily confer partial and local benefits that in most cases exceed the general benefit to the State at large. We therefore fail to see the proper analogy that should exist to make these citations precedents for the case of Virginia and West Virginia.

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

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

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

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

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

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

Without pursuing this thought further it is manifest that nothing is settled by such a rule. You must fix the relative value of the two elements before you can reach a conclusion. It is, therefore, plain why the books do not give the rule as stated by Judge Meredith. Because of its indefiniteness, but mainly because of its injustice. Would any sane man lay down a rule for the division of a State which would ignore the great cities, public improvements, public works, institutions of all kinds, great commercial advantages, such as rivers and harbors and the great advantages of fertility of soil; all of which, and many other elements of wealth, property and power, might be found in one division and be wholly absent in the other. Hence we say that such a rule is repugnant to common sense.

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

These considerations afford abundant reason why no authority would say, in the absence of a compact (unless there was perfect homogeneity) that it would be just to divide a "nation" any more than an individual estate by population and territory. We doubt not that Judge Meredith himself would scout the idea of dividing an estate on such a basis and without reference to the quality of the land and the improvements made. Why then would he ignore such considerations in apportioning a public debt between two divisions of a State? Chancellor Kent, whom he has quoted,

does not sustain him in so doing. The quotation already given from that author says that "if a State should be divided in respect to territory its rights and obligations are not impaired; and if they have not been apportioned by agreement, those rights are to be enjoyed and those obligations fulfilled by all the parts in common." Not a word in this quotation about a division ratably according to population and territory. According to this authority the State of Virginia was only a tenant in common with West Virginia in all the public works, improvements and property of the original undivided State, and had no authority to alienate, sell, give away, or dispose of any of the public works, and being in possession and holding them for her own exclusive use and benefit, by ousting West Virginia, she would be bound to account to the latter for her share. This would seem to be the legitimate conclusion from the authorities relied on by Judge Meredith, even admitting their applicability to the case under consideration, which we do not concede by any means, and, therefore, with this reference we pass them by.

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

It may be assumed then that the public works for which the debt was created are worth what they cost. Virginia, by selling, donating, and disposing of these works as her own property, without regard to the rule laid down by Chancellor Kent, and without consulting West Virginia, must be

taken to have accepted them on that basis, and is therefore chargeable with them on that basis.

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

We see the case differently. On the one hand, for instance, we see rich cities, commercial marts of all kinds, navigable rivers, fine harbors, a highly improved and productive territory, wealthy capitalists and a well-to-do people, public institutions such a State Capitol, and extensive public grounds, an Executive Mansion, a Penitentiary, Armory, University, two Lunatic Asylums, a Military Institute, a Blind Asylum, a valuable miscellaneous and law library, a large literary fund and the United States deposit of surplus revenue. All these resources in addition to the vast millions invested in canals and railroads and other avenues of inland commerce.

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

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

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

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

The same statement also shows that all of said debt was expended within the present State of Virginia, with the exception of \$2,784,329.29.

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

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

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

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

On the other hand we have credited her with her share of the estimated value of the public property and assets of Virginia, other than the property represented in the bonded indebtedness. This latter equalizes itself, and therefore does not enter into the account. Virginia has the property and owes the debt which it represents. We refer only to the public buildings, institutions, and other assets as given in statement G. As to West Virginia's share in these we can only venture an approximate estimate. The public buildings, the common property of the two States, paid for out of the general revenue, we have estimated at \$3,875,000, as per statement G, and it would be reasonable we think to estimate West Virginia's interest in them at one-fourth on the basis of population.

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

To this share of the deposits, and her interest in the public property, we add, as per statement, her proportion of the Literary Fund. This fund at the date quoted in statement G, amounted to \$1,509,853.16. As it was apportioned throughout the State on the basis of the white population, we follow that rule in assigning to West Virginia three-seventh of it, that being her ratio of white population in 1860.

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

WEST VIRGINIA TO THE STATE OF VIRGINIA.

<i>Dr.</i> For the amounts expended and invested in her territory as set forth in statement F.....		\$3,343,929.29
<i>Cr.</i> By one fourth of the estimated value of the public buildings and other assets, as given in statement G.....	\$968,750.00	
“ By three thirteenths of the United States surplus fund as per same statement.....	446,032.92	
“ By three-sevenths of the Literary fund as per same	647,079.92	
“ By the amount collected in West Virginia after January 1, 1861, as per statement E.....	328,706.22	\$2,390,569.06
Balance due Virginia.....		\$953,560.23

This is the balance as we find it after a protracted examination of such sources of information as were available to us. And the ascertainment of it naturally brings our labors to a conclusion. We commend our investigations to your Excellency's favorable consideration. From the beginning we realized that the results arrived at must necessarily be only proximate in their character, inasmuch as our sources of information were limited. Subsequent inquiry, under more favorable circumstances, may change the general result a few thousands for or against either state, but such a contingency is of course unimportant. The principle upon

which the debt should be adjusted is the important point to settle. And it is to this point, as set forth in these pages, that we beg leave, through your Excellency, to call the attention of the Legislature.

Very respectfully,

Your Excellency's most obedient servants,

J. J. JACKSON,

J. M. BENNETT,

A. W. CAMPBELL.

STATEMENT A.

Showing the amount of the public debt of Virginia on the first day of January, 1861, and the amounts thereof held by that State. Also the amount thereof incurred for public improvements in West Virginia.

The debt of Virginia on the first day of January, 1861, as per the Auditor's report to the extra session of the Legislature on the 10th of December preceding was as follows

Debt of January 1, 1852	\$10,708,845 30
" " created since that time	23,879,946 33
Total	\$33,888,791 63

Less the amount redeemed on 31st December, 1860

" " in the Sinking Fund	\$ 237,731 31
" " Literary	1,462,993 00
" " Library	248,000 00
" Bonds lost on steamship Arctic	16,000 00
	145,000 00
	\$ 2,109,724 31

Net amount of the debt January 1, 1861..... \$31,779,067 32
This debt as will be seen by Statement B, was mainly incurred for works of public improvement.....
*Statement F shows that only \$2,784,829 29 of it was incurred for improvements in West Virginia. Said
improvements are as follows:

Joint Stock Turnpikes	\$ 906,196 32
Roads on State Account	1,145,619 07
Bridge Companies	76,612 50
Navigation Companies	207,840 00
Railroads	500,000 00
Lunatic Asylum at Weston	125,000 00
	\$ 2,961,267 89
	176,938 60
	\$ 2,784,829 29

Deduct Virginia's pro-rata for improvements lying in both States.....

*The statement shows a total expenditure in West Virginia of \$3,313,929 29, but only the above amount for public improvements.

STATEMENT B.

Showing the amount and character of the investments held by the State of Virginia on the first of January, 1861, together with those that have since been donated or otherwise changed, as per Governor Walker's message to the Virginia Legislature of March 8, 1870.

Alexandria, Loudon and Hampshire Railroad.....	\$ 50,862 00	
Blue Ridge Railroad.....	1,744,723 00	
Chesapeake & Ohio Railroad.....	2,484,134 00	
Norfolk and Petersburg Railroad.....	1,341,341 00	
Orange and Alexandria Railroad.....	1,151,207 00	
Richmond and Danville Railroad.....	1,847,585 00	
Richmond and Petersburg Railroad.....	385,600 00	
Richmond and York River Railroad.....	490,999 00	
South Side Railroad.....	1,883,500 00	
Virginia and Kentucky Railroad.....	103,348 00	
Virginia and Tennessee Railroad.....	3,755,000 00	
Marietta and Cincinnati Railroad.....	202,611 00	
James River and Kanawha Canal.....	10,400,000 00	
Other Navigation Companies.....	1,192,616 00	
Plank Roads, Turnpikes and Bridges.....	4,761,564 00	
Chesapeake and Ohio Canal.....	900,000 00	
Selden, Withers & Co.....	436,000 00	
Total.....		\$33,131,090 00
To this amount add, as per Governor Walker's message of March 8, 1870, for amounts "lost, abandoned, or surrendered and released," the following sums, viz.:		
Subscription paid to Covington & Ohio Railroad Co....	\$ 3,206,461 83	
Subscription paid to Fredericksburg & Gordonsville Railroad Company.....	163,299 00	
Subscription paid to City Point Railroad Company.....	110,000 00	
Subscription paid to Blue Ridge Railroad Company.....	1,100,000 00	
Subscription paid to Manassas Gap Railroad Company.....	2,280,000 90	
Subscription paid to Portsmouth & Roanoke Railroad Company.....	406,650 00	
Subscription paid to Roanoke Valley Railroad Co.....	307,402 00	
Subscription paid to Winchester & Potomac Railroad Company.....	270,000 00	
Subscription paid to Alexandria, Hampshire & Loudon Railroad Company.....	1,017,248 00	
Subscription paid to Navigation and other companies	298,032 05	
Loss by Selden, Withers & Co., and Chesapeake & Ohio Canal Company.....	580,000 00	
*Total.....		9,739,092 88
Grand total.....		\$42,870,182 88

*We add these amounts simply because we find them given by the Governor as addenda to the \$33,131,090.00, and not because we find them in any official record to which we have had access.

STATEMENT C.

Showing the amount of revenue contributed by the counties composing the State of West Virginia to the Treasury of Virginia for the fiscal year ending September 30, 1860, together with the amount in the aggregate contributed by the present State of Virginia.

COUNTIES.		COUNTIES.	
Barbour.....	\$ 11,402 86	Monongalia	22,116 00
Berkeley	31,819 72	Morgan.....	6,111 98
B Boone	4,481 95	Nichols.....	6,156 59
Braxton.....	6,968 90	Ohio.....	48,710 29
Brooke.....	9,112 34	Pleasants.....	3,981 46
Cabell.....	14,353 52	Preston.....	15,081 36
Calhoun.....	2,105 50	Pocahontas	8,380 89
Clay.....	1,820 82	Putnam.....	8,465 10
Doddridge.....	5,765 72	Pendleton.....	8,588 99
Fayette.....	6,642 01	Randolph.....	8,587 30
Gilmer.....	4,875 78	Ritchie.....	8,778 51
Greenbrier.....	30,863 02	Raleigh.....	3,979 31
Hancock.....	6,068 57	Roane.....	4,930 46
Harrison.....	27,117 22	Taylor.....	10,530 33
Hampshire.....	26,856 45	Tyler.....	7,213 93
Hardy.....	19,986 40	Tucker.....	2,237 74
Jackson.....	11,357 91	Upshur.....	9,661 71
Jefferson.....	47,263 59	Wayne.....	8,156 39
Kanawha.....	26,922 46	Webster.....	534 35
Lewis.....	12,004 97	Wetzel.....	6,450 94
Logan.....	4,444 96	Wirt.....	3,913 52
Marion.....	19,985 80	Wood.....	22,114 67
Marshall.....	15,657 33	Wyoming.....	2,304 99
Mason.....	20,257 22		
Mercer.....	5,936 80	Total.....	\$ 626,351 97
Monroe.....	25,343 32		

Add for taxes on bank dividends.....\$ 10,214 99
 Bank dividends themselves.....10,513 00

Total revenue of Virginia for the fiscal year ending September 30,
 1860.....\$4,182,510 27
 Less the amount borrowed that year.....245,636 71

Revenue proper.....3,936,873 56
 Deducting amount paid by West Virginia.....647,079 96

Leaves the amount paid by Virginia as.....\$ 3,289,793 60
 By this Virginia would pay of the public debt.....\$26,547,582 22
 West Virginia would pay of same.....5,231,485 10

*The taxation on dividends of branches of Virginia banks in West Virginia is not included, because not ascertained.

STATEMENT D.

Showing the population of West Virginia, by counties, in 1860. Also, the area in square miles as given by Boye's map of the counties existing at date of its publication. Also, the years in which said counties were formed.

NOTE.—There is a discrepancy of several thousand square miles between Boye's map and Mitchell's. The former gives the area of Virginia at 65,624 and the latter at 61,852.*

COUNTIES.	Population.	Square Miles.	Formation of County.	COUNTIES	Population.	Square Miles.	Formation of County.
Barbour.....	8,959	308	1772	Monroe.....	10,759	614	1790
Berkeley.....	12,525	202	1797	Morgan.....	3,731	271	1820
Boone.....	4,840	1,033	1809	Nicholas.....	4,626	1,431	1813
Braxton.....	4,992			Ohio.....	22,422	375	1776
Brooke.....	5,494			Pendleton.....	6,165	999	1788
Cabell.....	8,020			Pleasants.....	2,945		
Calhoun.....	2,502			Pocahontas.....	3,958	794	1821
Doddridge.....	5,203			Preston.....	13,312	601	1815
Fayette.....	5,997			Putnam.....	6,301		
Gilmer.....	3,759			Raleigh.....	3,367		
Greenbrier.....	12,210	1,409	1778	Randolph.....	4,890	2,061	1787
Hampshire.....	13,913	989	1754	Ritchie.....	6,847		
Hancock.....	4,445			Roane.....	5,382		
Hardy.....	9,864	1,156	1786	Taylor.....	7,463		
Harrison.....	13,790	1,095	1784	Tucker.....	1,428		
Jackson.....	8,306			Tyler.....	6,517	855	1814
Jefferson.....	14,575	225	1801	Upshur.....	7,292		
Kanawha.....	16,159	2,090	1789	Wayne.....	6,747		
Lewis.....	8,029	1,754	1816	Webster.....	1,553		
Logan.....	4,938	2,930	1824	Wetzel.....	6,703		
Marion.....	12,721			Wirt.....	3,751		
Marshall.....	13,001			Wood.....	11,046	1,223	1799
Mason.....	9,185	904	1804	Wyoming.....	2,861		
McDowell.....	1,535						
Mercer.....	6,818			Total.....	374,987	24,040	
Monongalia.....	13,048	721	1776				

NOTE.—On a debt of \$31,779,967.32 divided equally between a population of 1,594,291, (which was the whole population of Virginia in 1800) would be nearly \$19.03 3.7-100 mills each, and would impose a debt on the above population of 374,087, amounting to \$7,474,642.46.

*No complete survey of the State has ever been made, and in consequence of the irregular exterior lines no reliable estimate of the State's area appears to have been attained. By Herman Boye's map, made in 1825, the area is as above. By L. Von Bucholtz's map made by authority of Virginia in 1860, the mean length of the State is given at 360 miles, and the mean breadth at 200 miles, giving a horizontal area of 61,352 miles, which is the same as given in Mitchell's map.

STATEMENT D.—CONTINUED.

A Table Showing the Appropriate Number of Square Miles in Virginia and West Virginia.

By Boye's map, the number of square miles in Virginia prior to the division, was 65,624, or 41,999,360 acres.

By the Auditor's report for 1861, the number of square miles in the State was reported at 81,549, or 52,191,360 acres.

There appears to be not only a wide discrepancy in these respective authorities, but likewise an error in reducing the square miles to acres. These errors are no doubt to be accounted for by the notorious fact, that under the Virginia system of patening lands the same lands are on the Commissioner's books several times.

By Mitchell's General Atlas for 1868, the area of Virginia is given at 41,352 square miles, and that of West Virginia at 20,000, which would give to West Virginia something less than one-third of the joint territory.

There being no map that gives the area of the counties of West Virginia separately, we have assumed that the statement given by Mitchell is approximately correct.

STATEMENT E.

Showing the revenue paid into the Treasury of Virginia since the first day of January, 1861, from counties now included within West Virginia.

Amounts marked with a † were collected by judgments or executions in the year named, but for what particular year is uncertain.

Where it was plain that any collections were arrears for 1860, they have not been brought into this statement.†

COUNTIES.	1861.	1862.	1863.	1864.	1865.	Total.
Barbour.....	\$ 726 14					\$ 726 14
Braxton.....	797 50			†\$1,000 00		1,797 50
Boone.....	331 02	†\$ 2 00				333 02
Cabell.....	739 08					739 08
Calhoun.....				† 2,307 82		2,307 82
Fayette.....	391 35					391 35
Gilmer.....				† 84 57		84 57
Greenbrier.....	26,945 81	44,084 83	†79,227 26			150,257 90
Hardy.....	16,508 10					16,508 10
Jackson.....	800 00					800 00
Jefferson.....	32,269 06					32,269 06
Kanawha.....	1,590 76	†1,694 33	† 2,738 00	† 3,467 00		9,490 09
Lewis.....	946 10					946 10
Logan.....	472 52		† 25 63	† 1,410 08		1,908 23
Marshall.....	107 95					107 95
Mason.....	675 66					675 66
Mercer.....			† 1,111 91			1,111 91
McDowell.....			1,200 00			1,200 00
Monroe.....	22,415 34	33,470 48				55,885 82
Morgan.....	615 00					615 00
Nicholas.....			5,000 00			5,000 00
Pleasants.....	365 00					365 00
Pendleton.....	8,006 61	6,000 00	16,900 00			30,906 61
Pocahontas.....	7,714 00					7,714 00
Putnam.....	746 10					746 10
Raleigh.....			† 600 00			600 00
Ritchie.....	21 12					21 12
Roane.....			† 3,487 81			3,487 81
Upshur.....	660 75					660 75
Wayne.....	354 74					354 74
Webster.....	20 00					20 00
Wyoming.....					†\$ 624 97	624 97
						\$ 328,706 22

†On the exclusion from this statement of taxes levied in 1860 and collected in 1861, the Commissioners were not unanimous. For it was maintained that the taxes of 1860, were levied and collected chiefly to pay interest falling due January 1st and July 1st, 1861. One-fourth of the taxes especially designed to pay the July interest was not payable into the treasury until about the fifteenth of February, 1861. The taxes were collected off of the people who had assumed the burden of the debt and ought to be applied to their relief.

STATEMENT F.—WEST VIRGINIA'S INDEBTEDNESS TO THE STATE OF VIRGINIA.

Showing (approximately) the amount of the public debt of Virginia that was incurred for works of improvement in the territory now included within the State of West Virginia, and such other sums as West Virginia is chargeable with.

These improvements consist of works in which Virginia was a joint stockholder with private companies, and of works constructed wholly on her own account, and certain miscellaneous expenditures. Date of the several acts authorizing these expenditures is given as far as ascertained. These expenditures are classified as follows: (1.) Joint Stock Companies (2.) Roads Constructed on State account. (3.) Bridge Companies. (4.) Navigation Turnpikes. (5.) Railroads. (6.) Miscellaneous.

Date of Act.	Class 1.—Joint Stock Turnpikes.	Amount of the appropriations	Amount Expended.	Amount Unexpended.	Miles length.
1849, March 15	Back Creek Valley Turnpike.....	1,500 00	1,140 00	\$ 360 00	.....
1849, March 15	Berkeley and Hampshire Turnpike.....	21,600 00	16,750 00	4,850 00	.....
1849, March 15	Buckhannon and Little Kanawha.....	7,773 00	7,773 00	.....	24
1848, Feb'y 9	Brandonville, Kingwood and Evansville.....	6,000 00	3,193 46	2,806 54	.....
1849, March 13	Clarksburg and Buckhannon.....	32,000 00	28,514 45	3,485 55	27½
1850, March 13	do do do Phillippi.....	6,000 00	5,446 25	553 75	22
1850, Feb'y 10	Cranberry Summit and Brandonville.....	4,815 00	4,120 11	694 89	18½
1850, Feb'y 2	Clarksburg and Wheeling.....	10,200 00	4,195 35	6,004 65	18
1858, April 3	Cacapon and North Branch.....	12,000 00	12,000 00	.....	45
1855, Jan. 22	Charleston and Point Pleasant.....	31,260 00	31,260 00	.....	56
1860, March 9	Charleston, Ripley and Ravenswood.....	30,000 00	27,519 41	2,480 59	.....
.....	Dunkard Creek.....	6,000 00	6,000 00	.....	.....
.....	Elk River.....	37,100 00	116 00	36,984 00	.....
.....	Franklin and Circleville.....	2,400 00	2,175 09	225 00	.....
1853, March 30	Fish Creek Road.....	6,000 00	6,000 00	.....	25
.....	Gnatly Creek and West Union.....	10,800 00	5,700 55	5,099 45	.....

STATEMENT F.—CONTINUED.

Date of Act.	Class I.—Joint Stock Turnpike.	Am't of the Appropriation	Amount Expended.	Amount Unexpended.	Miles Length.
1850, March 21	Grave Creek and Pennsylvania State Line	\$ 4,500 00	\$ 1,800 00	\$ 3,000 00	4 $\frac{3}{4}$
1853, " 29	Gilmer and Braxton	7,200 00	6,699 80	500 20	26 $\frac{1}{4}$
1857, " 13	Gilmer, Ripley and Ohio	30,000 00	29,974 80	25 20	61
1857, " 1	Giles, Fayette and Kanawha	45,000 00	44,991 60	8 40	70
1848, " 15	Hardy and Winchester	23,400 00	23,400 00	.....	18
1849, " 15	Hampshire and Morgan	6,600 00	6,510 00	90 00	18
1848, March 26	Hardy and Randolph	18,000 00	7,184 78	10,865 22	20 $\frac{1}{4}$
1850, Feb'y 9	Harrisville	8,100 00	6,000 00	2,100 00	20 $\frac{1}{4}$
1850, Feb'y 9	Hedgesville and Potomac	6,000 00	6,000 00	.....	8
1838, March 3	Hillsborough and Harper's Ferry	16,000 00	16,650 00	.....	26 $\frac{1}{4}$
1838, " 2	Holiday's Cove	6,000 00	6,159 24	4,200 00	8
1838, " 20	Huntersville and Warm Springs	10,359 24	2,400 00	4,350 00	5 $\frac{1}{4}$
1837, " 23	Holiday's Cove and New Cumberland	2,400 00	1,358 00	.....	31
1837, Feb'y 2	Ice's Ferry Road	1,358 00	5,000 00	5,916 87	15 $\frac{1}{4}$
1847, " 30	Kanawha and Logan	5,000 00	84,083 13	18,050 00	.....
1848, March 25	Kingwood and West Union	40,000 00	2,950 00	.....	.....
.....	Leart's Falls and New Columbia	21,000 00	3,950 00	.....	.....
.....	Lewisburg and Blue Sulphur	9,600 00	5,478 84	8,732 16	.....
.....	Leading Creek and Buffalo	9,600 00	7,321 24	20,278 76	.....
.....	Logan, Raleigh and Monroe	27,000 00	11,943 75	56 25	9 $\frac{1}{4}$
1848, Feb'y 11	Marshall and Ohio	12,400 00	15,280 00	2,710 00	12 $\frac{3}{4}$
1849, March 17	Martinsburg and Potomac	18,000 00	.....	.....	22 $\frac{1}{4}$
1849, Jan'y 20	Martinsburg and Winchester	27,100 00	27,000 00	.....	.....

STATEMENT F.—CONTINUED.

Date of Act.	Class 1.—Joint Stock Turnpikes.	Am't of the Appropriation.	Amount Expended.	Amount Unexpended.	Miles Length.
1854, Feb'y 18	Middleway and Gerardstown	12,000 00	\$ 11,943 75	\$ 56 25	12
1848, March 24	Millwood and Be-ryville	9,000 00	9,000 00	.....	6½
1849, " 15	Moorefield and North Branch	39,300 00	28,137 75	11,162 25	27½
1849, " 15	Moorefield and Allegany	10,200 00	8,779 78	1,420 22	36
1849, " 15	Morgantown and Bridgeport	27,600 00	10,687 40	16,912 60	20
1851, Feb'y 25	Morgantown and Beverley	7,990 97	2,999 97	5,000 00	10
1851, March 25	Morgan and Frederick	9,000 00	8,005 00	995 00	20½
1850, Feb'y 25	Newark	3,600 00	3,000 00	600 00	8
1850, Feb'y 25	New Creek and Hardy	2,000 00	5,431 24	568 76	20½
1848, April 4	New Manchester	2,000 00	2,000 00	.....	6
1850, March 11	Patterson's Creek Valley	9,900 00	9,900 00	.....	37¾
1851, Feb'y 17	North River	5,400 00	5,400 00	.....	24¼
1850, March 11	Parkersburg and Elizabethtown	4,800 00	4,800 00	.....	21½
1853, " 30	Pleasant Valley and Tunnelton	6,000 00	4,078 45	1,921 55	28
1851, " 4	Potomac	2,700 00	2,489 70	210 30	9½
1850, Feb'y 18	Ravenswood and Reedy Creek	9,000 00	9,000 00	.....	23
1851, March 21	Reedy and Harrisville	7,200 00	1,751 87	5,448 13	44¾
1836, Jan'y 13	Red and Blue Sulphur Springs	8,856 66	8,856 66	.....	32¾
1851, March 12	Ritchie and Gilmer	9,000 00	8,891 18	108 82	57
1851, Feb'y 28	Raleigh and Boone	1,800 00	1,800 00	.....	39
1851, " 10	Raleigh and Wythe Line	4,800 00	2,800 00	2,000 00	39
1851, " 31	Salem and Harrisville	2,200 00	3,817 92	3,882 08	24
1851, " 31	Sandy	2,400 00	3,000 00	.....	39

STATEMENT F.—CONTINUED.

Date of Act.	Class I.—Joint Stock Turnpikes.	Amount of the Appropriations.	Amount Expended	Amount Unexpended.	Miles Length
1851, March 24.	St. Mary's	\$ 6,000 00	6,000 00	.....	24
1856, Jan'y 31.	Shepherdstown and Smithfield	18,575 00	18,575 00	.....	13 $\frac{3}{4}$
1849, March 15.	Sweet and Salt Sulphur Springs	10,200 00	10,104 00	96 00	29
1847, Feb'y 1.	Sistersville and Salem	20,000 00	20,000 00	.....	26 $\frac{1}{2}$
1850, " 7.	Shinston	13,302 28	13,302 28	.....	33 $\frac{1}{2}$
1850, " 18.	Smithfield, Charlestown and Harper's Ferry	14,000 00	14,000 00	.....	14
1848, March 9.	Walnut Gap Road	1,800 00	1,805 37	454 68	.....
1848, " 25.	Weston and Farmont	98,000 00	97,962 50	37 50	40 $\frac{3}{4}$
1850, " 25.	Weston and Gauley Bridge	66,000 00	64,098 81	1,901 69	106
1850, " 29.	West Milford and New Salem	13,800 00	10,528 82	3,273 68	29 $\frac{1}{4}$
1847, " 2.	Wheeling, West Liberty and Bethany	21,000 00	21,000 00	.....	15 $\frac{1}{4}$
1822, " 2.	Wellburg and Washington	7,071 01	7,071 01	.....	6
1849, " 15.	Wellburg and Bethany	16,200 00	12,590 22	3,609 78	.....
.....	West Union	8,400 00	5,538 21	2,861 79	.....
.....	West Union	3,200 00	3,054 00	146 00	.....
1849, March 15.	Williamsport	6,000 00	5,130 65	869 35	15 $\frac{3}{4}$
1831, Jan'y 8.	White and Salt Sulphur	4,000 00	4,000 00	.....	20 $\frac{1}{2}$
Total		\$ 1,108,620 14	\$ 906,196 82	\$ 202,423 82	

STATEMENT F.—CONTINUED.

Date of Act.	Roads Constructed Wholly on State Account.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
.....	Allegheny and Huntersville	\$ 11,000 00	\$ 11,402 67	\$ 137 33	.....
.....	Abbs, Valley and Tug Road	5,000 00	4,450 00	550 00	.....
.....	Beverly and Fairmont	77,000 00	75,884 65	1,615 35	.....
.....	Cove Spring and White House Road	2,500 00	2,500 00	.....	.....
.....	Clear Fork Road	3,000 00	600 00	2,400 00	.....
.....	Franklin and Monterey	14,000 00	14,000 00	.....	.....
.....	Farmont and Wheeling	31,848 85	31,848 85	.....	.....
.....	Huntersville and Huntersville	23,168 72	23,168 72	.....	.....
.....	Huntersville and Lewisburg	20,000 00	19,976 47	23 53	.....
.....	Hunters Bottom and Lewisburg	12,615 09	12,615 09	.....	.....
.....	Maine Bottom and Lewisburg	15,000 00	14,467 34	532 66	.....
.....	Middlefork	452,579 87	452,579 87	.....	.....
.....	North Western Turnpike	95,934 37	95,934 37	.....	.....
.....	Ohio River and Maryland road	4,200 00	4,200 00	.....	.....
.....	Princeton and Red Sulphur Springs	384,277 51	353,864 30	12,413 21	.....
.....	Stanton and Parkersburg	37,000 00	16,372 08	20,627 92	.....
.....	Slavin Cabin and Summersville	3,000 00	1,894 66	1,105 34	.....
.....	Wyoming Court, House and Bluffs	900 00	900 00	.....	.....
.....	Road from South Branch to Petersburg	1,400 00	1,400 00	.....	.....
.....	Road from South Branch to Brocks Gap	6,000 00	6,000 00	.....	.....
.....	Berryville and Charlestown .....	.....	.....	.....	.....
1831, March 19.	.....	\$ 1,185,024 41	\$ 1,115,619 07	\$ 39,405 34	234

STATEMENT F.—CONTINUED.

Date of Act.	Class 3.—Bridge Companies	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
.....	Chest River	\$ 6,000 00	4,612 50	\$ 1,387 50
.....	Coal River	3,000 00	3,000 00	.....
.....	Fairmont and Palatine	12,000 00	12,000 00	.....
.....	Guyandotte	12,000 00	12,000 00	.....
.....	Morgantown	24,800 00	24,800 00	.....
.....	South Branch	4,200 00	4,200 00	.....
.....	Virginia and Maryland	10,000 00	10,000 00	.....
.....	Elk River	6,000 00	6,000 00	.....
.....	Total	\$78,000 00	\$76,612 50	\$1,387 50

Date of Act.	Class 4.—Navigation Companies.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
.....	Coal River Company	\$ 96,000 00	96,000 00	.....
.....	Guyandotte River Company	120,000 00	106,800 00	13,200
.....	Tug Fork	5,040 00	5,040 00	.....
.....	Total Navigation Companies	\$221,040 00	\$207,840 00	\$13,200

STATEMENT F.—CONTINUED.

Class 5.—Railroads.	
There is but one item of expenditure under this head, viz: the appropriation for the Covington & Ohio Railroad, say.....	\$ 500,000 00

Class 6.—Miscellaneous.	
Stock of Virginia in West Virginia Banks	\$ 539,600 00
The Lunatic Asylum at Weston	125,000 00
The Lewisburg Law Library	20,000 00
	\$684,600 00

Table 1.

Showing the pro-rata expenditures in Virginia on account of certain of the foregoing improvements that lie in both States.

Hardy and Winchester	\$ 11,700 00
Hillsborough and Harper's Ferry	4,800 00
Martinsburg and Winchester	13,500 00
Millwood and Berryville	4,500 00
Franklin and Monterey	7,000 00
Northwestern Turnpike	98,192 40
Staunton and Parkersburg	91,246 20
*Berryville and Charlestown	6,000 00
	\$176,898 60

*It is understood that this road has been sold by the State of Virginia.

RECAPITULATION.

	Amount of the Approp- riations.	Amount Expended.	Amount Unexpended.
Total expenditures on account of Joint Stock Turnpikes.....	\$ 1,108,620 14	\$ 906,196 32	\$ 202,423 82
Roads constructed on State account.....	1,185,024 41	1,145,619 07	39,405 34
Bridge companies.....	78,000 00	76,612 50	1,387 50
Navigation Companies.....	221,040 00	207,840 00	13,200 00
Railroads.....	500,000 00	500,000 00	
Miscellaneous.....	684,600 00	684,600 00	
Total.....	\$ 3,777,284 55	\$ 3,520,867 89	\$ 256,416 66
From these deduct on account of Virginia's pro-rata for certain expendi- tures as given in Table 1—Statement F.....		176,938 60	
Leaving a total expenditure in West Virginia of.....		3,343,929 29	
Deducting from this total the stock of Virginia in West Virginia Banks, and the value of the Lewisburg Law Library, as given in Class 6, viz		559,600 00	
And we have left as the total expenditure in West Virginia on account of Public Improvements.....	\$ 2,784,329 29		

NOTE.—It does not appear from any documents examined what exact proportion of this \$3,343,929 29 enters into the bonded debt of Virginia, and what proportion was paid out of the current revenue. That matter is left open for settlement hereafter.

STATEMENT G.

Showing the property and other assets of the State of Virginia on the first day of January, 1861, not included in any of the foregoing tables:

Lunatic Asylum at Williamsburg	
" " Staunton	
Deaf, Dumb and Blind Asylum at Staunton	
Virginia Military Institute at Lexington	
University of Virginia at Charlottesville	
Penitentiary " Richmond	
Armory "	
Capitol and public grounds "	
Governor's house "	
Public miscellaneous library "	
" law "	
Total	\$ 3,875,000 00

OTHER ASSETS.

By a provision of an act of Congress of June 23, 1836, there was directed to be deposited with the State of Virginia, of the surplus revenue of United States, \$2,937,237.34.

And it appears by document number 52 of the session of 1839-40, that of this amount there was actually received by Virginia and subscribed to the stock of certain banks of the State, the following amount, say, \$1,932,809.33.

Whether the residue of this sum was ever paid to Virginia, the Commissioners have not ascertained.

The Literary Fund, as given in document No. 4, Second Auditor's report of September, 1844, is \$1,509,853.16.

This fund is given as it stood many years ago. By the 1st of January, 1861, it had probably increased, from fines, forfeitures and amercements, one or two hundred thousand dollars.

STATEMENT H—BANKS.

Settlement showing the amount of stock owned by the State of Virginia in the several banks in the year 1840, and how that stock was paid for.

In What Banks.	In What Name Held.			Total number of Shares.	Par Value of Shares.
	Common-wealth of Va.	Board of Public Works.	Literary Fund.		
(A) Bank of Virginia.....	\$ 3,250	\$ 8,365	\$ 2,121	13,736	\$1,373,600
(B) Farmers' Bank of Virginia.....	5,050	3,442	1,054	9,546	954,600
(C) Bank of the Valley of Virginia.....	3,700	1,000	52	4,792	579,200
(D) Northwestern Bank of Virginia.....	4,000	271	500	4,771	477,100
(E) Exchange Bank of Virginia.....	9,000	59	.....	9,059	905,900
(F) Merchants' & Mechanic' Bank of Wheeling.....	.....	125	.....	125	12,500
	\$ 25,000	\$ 13,262	\$ 3,727	42,029	\$4,302,900

NOTES—(A) Bank of Virginia—Subscribed by the Commonwealth per act of 30th January, 1804, payable in ten annual installments, to meet which the tax on merchants's licenses and dividends on the stock itself was pledged. The dividends during the time amounted to.....\$ 300,000 00
 Bonus and profit on sale of new stock of the bank, under act 20th, January, 1814.....494,700 00
 Purchased out of the disposable funds of the Board of Public Works.....41,800 00
 Purchased out of the permanent capital of the Literary Fund.....205,600 00
 Out of undrawn school quotas in treasury.....6,500 00
 Subscribed and paid for out of the United States surplus revenue on deposit in the treasury.....325,000 00

(B)—Farmers' Bank of Virginia.

Bonus under act 13th February, 1812.....333,400 00
 Purchased out of permanent fund of the Board of Public Works.....4,700 00
 Out of the disposable funds of same.....6,100 00
 Out of the permanent capital of the Literary Fund.....105,400 00
 Subscribed and paid for out of the United States surplus revenue on deposit.....505,000 00
 \$954,600 00

(C)—Bank of the Valley.

Bonus under act of 5th February, 1817.....90,000 00
 Purchased out of disposable funds of Board of Public Works.....100,000 00
 Purchased out of permanent capital of Literary Fund.....9,200 00
 Paid out of United States surplus revenue.....370,000 00

(D)—Northwestern Bank.

Bonus under act 5th February, 1817.....23,100 00
 Bonus under act 25th March, 1837.....4,000 00
 Paid out of United States surplus revenue.....282,893 33
 Paid for dividends on stock itself.....24,908 67
 Paid for State's 6 per cent scrip.....92,282 00
 Paid for out of permanent capital of the Literary Fund.....50,000 00
 \$ 477,100 00

STATEMENT H—CONTINUED.

(E)—Exchange Bank of Virginia.

Bonus under act 25th March, 1837.....	5,900 00
Paid for out of United States revenue.....	450,000 00
Paid for in State's 6 per cent. scrip.....	295,000 00
Due on subscription of \$900,000 by Commonwealth, \$155,000, which was subsequently paid.....	155,000 00
	<u>\$ 905,900 00</u>

(F)—Merchants' and Mechanics' Bank of Wheeling.

Bonus under act of 7th March, 1834	12,500 00
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DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., March 24, 1867.

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 instant, informs the Secretary of the Treasury, that the Department (of Interior), holds \$796,000 of the 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 periods.

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 drawbecks, on account of any of the debts or liabilities of the State of Virginia.

I am, Very Respectfully

Your Obedient Servant,

JOHN WILSON,

Auditor.

HON. HUGH McCULLOCH,

Sec'y of Treasury.

DIRECT TAX.

West Virginia in Account with the United States.

<i>Dr.</i>	To amount set-off from quota of Virginia,	\$208,479.65
	15% credited,	27,172.72
		<hr/>
		\$181,306.93
 <i>Cr.</i>	 By set-off of war claims per 3rd Auditor's report No. 6957 of 1868,	 \$153,978.75
	Collected from citizens of the counties of Berkeley and Jefferson by District Tax Commissioners of Virginia,	 \$27,328.18
		<hr/>
		\$181,306.93

COPY.

DEPARTMENT OF THE INTERIOR, }
WASHINGTON, April 8, 1891. }

*Hon. A. C. Matthews, First Comptroller Treasury Department,
Washington, D. C.*

DEAR SIR: Replying to your telegram of the 7th instant asking whether or not the State of West Virginia stands indebted to the United States on the books of any of the

Bureaus of the Department of the Interior, I have to state that there are held by the Secretary of the Interior, as trustee for Indian Tribes, the following Virginia bonds:

\$ 1,000 with interest due from July 1, 1861.

90,000 with interest due from January 1, 1861, to January 1, 1867, and from January 1, 1870, at two per cent.

450,000 from January 1, 1867, to January 1, 1870.

\$541,000

The above bonds bear interest at the rate of 6 %. The above statement shows that interest was paid on \$540,000 from January 1, 1867, to January 1, 1870, by the State of Virginia at 4 %, the State claiming that West Virginia should pay the remaining 2 %.

No bonds of the State of West Virginia are held for Indian tribes; nor do I find any other indebtedness standing on the books of any of the Bureaus of this Department.

Very respectfully,

CYRUS BUSSEY,

Assistant Secretary.

