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1898

VIRGINIA DEFERRED CERTIFICATES.

THE WEST VIRGINIA DEBT.

COMMITTEE:

JOHN CROSBY BROWN, CHAIRMAN.
J. KENNEDY TOD, GEORGE COPPELL,
CLARENCE CARY.

ADVISORY BOARD:

THOMAS F. BAYARD, EDWARD J. PHELPS,
W. PINKNEY WHYTE, GEORGE G. WILLIAMS.

DEPOSITORY:

BROWN BROTHERS & COMPANY.

SECRETARY,
ROBERT L. HARRISON,
59 WALL STREET.

COUNSEL,
CARY & WHITRIDGE,
59 WALL STREET.

“And I now say to you, what I have frequently said to the people of West Virginia, that but for that clause (assuming part of the debt) the State would never have been admitted. I say further that, in my opinion, no honest party or honest man in West Virginia, or out of it, will deny the obligation of this State to pay ‘an equitable proportion of the public debt of Virginia.’”

Extract from the letter by Hon. Whitman T. Willy, of Morgantown, West Virginia, to Senator John Sherman, printed in the *Congressional Record*. 47th Congress, Vol. 12, page 450.

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DEPOSITORY:

BROWN BROTHERS & COMPANY.

Carroll, Conn. & Whitehead,
25 Wall Street.

Small, New York, N. Y.,
25 Wall Street.

The following is a list of the names of the persons who have been appointed to the position of depository of the certificates of the West Virginia Debt, and of the names of the persons who have been appointed to the position of members of the advisory board of the same. The names of the persons who have been appointed to the position of depository of the certificates of the West Virginia Debt are: John Edney Brown, Chairman; J. Kennedy Forbes, George Coppel, Clarence Cary. The names of the persons who have been appointed to the position of members of the advisory board of the same are: Thomas W. Bayne, Edward T. Bridges, W. Kennedy Wyatt, George C. Williams.

STATEMENT.

THE present endeavor to obtain a settlement of what is known as the Virginia Deferred Certificates, which is the portion of the debt of Virginia belonging to West Virginia, has been undertaken by a committee consisting of Mr. John Crosby Brown, George Coppell, J. Kennedy Tod and Clarence Cary, at the request of leading citizens of both States, and among others, of Ex-Governor McKinney, Hon. Eppa Hunton, Messrs. Holmes Conrad, Marshall McCormack, Virginius Newton, S. L. Flournoy, and Col. R. P. Chew. The previous endeavors to obtain a settlement appear to have been complicated with personal questions, and, in order to avoid all such questions in the present case, the task is undertaken by persons who have not been associated with any movement for this purpose.

The Committee have received assurances on which they feel they have a right to depend, that if the certificates are collected under the agreement proposed by them, there is a reasonable certainty of obtaining a compromise of the debt by the action of the State of West Virginia. If, however, that endeavor should fail, the Committee are further assured that the settlement can be had through the instrumentality of an action brought by the State of Virginia. The time appears to the Committee and to those citizens in West Virginia and Virginia who have asked them to act, to be exceedingly propitious for the settlement of all questions of this sort, and the Committee venture to think that their endeavors are likely to be successful. It should also be said that they are informed that if the certificate holders do not act now, and assemble their securities so that those securities can be delivered to the State authorities, hope of ever securing a settlement of the debt may as well be abandoned.

The Committee invited the Advisory Board to act, and the following correspondence was had :

NEW YORK CITY, July 20, 1898.

To the Honorable THOMAS F. BAYARD, EDWARD J. PHELPS, W. PINKNEY WHYTE
and Mr. GEORGE G. WILLIAMS:—

DEAR SIR:—Owing, as we are informed, to events largely beyond the control of either State, it will require investigation to ascertain the amount which is justly due from the State of West Virginia and which the creditors of West Virginia might properly, under the circumstances, be willing to accept in settlement of the Certificates issued by Virginia to represent the one-third of the debt, incurred by the original State, which was set aside to await an adjustment between Virginia and West Virginia.

It is evident that the amount which West Virginia owes should be ascertained before the Legislature attempts to make provision for its adjustment. It is also evident that any questions which may arise should be arranged by a conference between a Committee, acting for the Creditors, and Commissioners appointed by the two States to represent them.

In view of the exceptional features of this case we do not think that either State should be requested to act until the creditors have co-operated to insure the prompt surrender of the certificates to carry out such a compromise as may be agreed to by holders and accepted by the Legislature. It is, therefore, proposed to duplicate for the creditors of West Virginia the undertaking which brought about the recent compromise between the State of Virginia and the holders of her bonds. To accomplish this object the undersigned have consented to act as the Committee in behalf of holders, and request you to act as the Advisory Board required by the enclosed agreement, under which the Certificates will be deposited with Messrs. Brown Brothers & Company, of New York City. Your acceptance will be an assurance that the questions to be submitted for your consideration will receive the impartial and intelligent investigation which should be had in a matter of this importance, and you will render to both the States involved, as well as to the creditors, a service of great value.

By the terms of the agreement, your province and function will be to examine such plan of adjustment as may be formulated by the Committee and submitted to you in accordance therewith, and to express your recommendation thereof or the contrary.

We have the honor to be your obedient servants,

JOHN CROSBY BROWN,
GEO. COPPELL,
J. KENNEDY TOD,
CLARENCE CARY.

JULY 27, 1898.

To Messrs. JOHN CROSBY BROWN, GEORGE COPPELL, J. KENNEDY TOD and CLARENCE CARY:

GENTLEMEN,—We have received and duly considered your letter of the 20th instant, and the agreement, a copy of which was enclosed therein.

In common with all other friends of the States of Virginia and West Virginia, we sincerely desire to see an adjustment of the inter-State debt to which you refer.

To promote this object we are willing to act as the Board proposed in your letter, with the mutual understanding that our duties and functions are "to examine such plan of adjustment as may be formulated by the Committee and submitted to us in accordance with the terms of the agreement, and to state our recommendation thereof, or the contrary."

We are, gentlemen, your obedient servants,

T. F. BAYARD,
WILLIAM PINKNEY WHYTE,
GEORGE G. WILLIAMS,
E. J. PHELPS.

THE ORIGIN OF THE DEBT.

The original State of Virginia issued bonds to construct internal improvements, many of which are in that part of the old State, now West Virginia. After the bonds had been issued the old State was divided to form West Virginia. The ordinance under which Virginia was divided reads:

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 moneys paid into the treasury of the Commonwealth from the Counties included within the said new State during the same period.

Owing to events, immaterial here, the State of Virginia passed a law, in 1871, providing for the exchange of all the bonds of the original State for new bonds for two-thirds of each old bond and interest, and certificates for the other one-third. The certificate reads as follows:

No. Treasurer's Office, \$
RICHMOND, VIRGINIA, July 1st, 1871.

This is to certify that there is due unto, heirs, executors, administrators, or assigns,dollars, being one-third of bond surrendered under the provisions of an Act approved March 30th, 1871, entitled "An Act to provide for the funding and payment of the public debt" (viz., Bond No., with interest amounting todollars), payment of said one-third with interest thereon, at the rate of 6 per centum per annum, will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds, so far as unfunded, in trust for the holder hereof or his assigns.

In testimony whereof this Certificate has been signed by the Treasurer and countersigned by the Second Auditor as provided by law.

Seal of the
Commonwealth. Second Auditor. Treasurer.

Subsequently, and after about three-fourths of the old bonds had been surrendered, the State of Virginia passed other laws calling in the balance of the original bonds. All these laws required a Certificate to reissue for one-third of the principal of each old bond, and a separate Certificate for the interest. The Certificates, for principal, issued under these laws, subsequent to 1871, read:

The Commonwealth of Virginia has this day discharged her equitable share of the bond for \$, dated, and numbered, leaving a balance of \$, with interest from, to be accounted for to the holder of this Certificate by West Virginia, without recourse on this Commonwealth.*

* No matter under which Act a Certificate was issued, it equally represents one-third of an original bond. Hence, so far as any Certificate represents the principal of an old bond, it is as meritorious as any other Certificate. And this is so, although the language of the Certificates under the Acts of 1882 and 1892 differ from that under the Act of 1871.

VIRGINIA COMPROMISED HER TWO-THIRDS.

By the Act of 1871 the State of Virginia proposed to pay 6 per cent. on the two-thirds assumed by it. This required an interest charge of nearly \$1,800,000, and was thought to be beyond the ability of the State to pay. The Act was therefore repealed. Thereupon followed a long litigation between the "Council of Bondholders" in London, representing the creditors, on the one side, and Virginia on the other side. In 1891 the bonds were assembled under an agreement whereby a plan of adjustment was submitted to an Advisory Board consisting of Messrs. Cleveland, Phelps, Bayard, Williams and the late Mr. George S. Coe. Thereupon all questions were promptly and happily compromised.

VIRGINIA'S POSITION.

The State of Virginia having finally settled two-thirds of the debt and having adjusted its finances to the theory that it will never pay anything on account of the one-third for which creditors accepted Certificates, it is not to be presumed that Virginia will re-open the questions which have thus been disposed of. Nor is it to be presumed that Virginia will take any action, in respect to this one-third, except on the understanding that no demand will ever be made on it for more than the amount it may receive from West Virginia.

WEST VIRGINIA'S POSITION.

It will be remembered that the Certificates were issued under an arrangement between the present State of Virginia and the holders of the original bonds. West Virginia was not a party to this arrangement, and her rights and duties are not affected by it. The position of West Virginia is assumed to be that the amount of its proportion of the debt of the original State shall be ascertained by stating the account required by the ordinance (printed above), under which the new State was created.

This account has never been officially stated, but sufficient investigation has been had to warrant the belief that the just indebtedness of West Virginia is less than the amount for which Certificates were issued. For example, and simply for illustration, it may be suggested that the Certificates call for \$15,500,000, with interest, since 1871; whereas the amount fixed on West Virginia by the ordinance may not exceed \$10,000,000.

In view of these facts, it would be unreasonable to ask the State of Virginia to make a settlement with West Virginia unless it had an undoubted guarantee that, substantially, all the Certificates would be promptly surrendered in exchange for such amount as it received in settlement. Very serious complications might result if any considerable body of holders refused to abide a settlement after it was concluded with West Virginia. It is evident that the guarantee here referred to cannot be given unless the Certificates are deposited under a proper contract or power of attorney providing for the surrender.

As stated above, the Certificates were issued by the State of Virginia, and were issued on the theory that West Virginia's proportion would amount to one-third of the common debt; whereas the proportion of that State (to be ascertained by stating the required account), is probably much less than the one-third. It results that the Certificates do not measure West Virginia's indebtedness. The amount of the debt of that State would be the same whether Virginia issued one million or twenty million of Certificates. So far as West Virginia is concerned, the Certificates have no function except to identify the persons who are now entitled to receive whatever it may pay.

About three-fourths of the Certificates were issued under the Act of 1871, which is so worded that West Virginia may make a settlement, either with Virginia, or directly with the Certificate holders. But it is evident that very serious complications might result if West Virginia

made a settlement which was binding on only a part of the holders, and left outstanding any considerable body of creditors who might hereafter clamor for a different adjustment. It would seem to be clear, therefore, that West Virginia ought not to commit itself to any proposition in this behalf unless it has an undoubted guarantee that substantially all the Certificates will be promptly surrendered to effect such compromise as may be agreed upon. And such a guarantee cannot be given unless the Certificates are deposited under a proper contract providing for this surrender.

Neither State ought to act, unless the Certificates are deposited. Either State, or both States, ought to act, if they are deposited.

FORMER EFFORTS FOR SETTLEMENT.

The contracts, under which some of the Certificates are lodged with certain trust companies, have expired. The contract of 1882 expired in 1887, and the contract of 1890 expired in 1895. Its seventh clause reads:

"The holder of any receipt of the Farmers' Loan and Trust Company may withdraw his Certificates at any time after June 15, 1895, without cost to him: provided he deliver up the receipt corresponding to his Certificate."

Respecting efforts under the expired contracts, it is sufficient to say that in 1894 the State of Virginia appointed a commission to bring about an adjustment with West Virginia. This Commission, we are informed, unanimously decided that no action could be taken unless the Certificates were assembled under a new contract. It is sufficient to say that the matter has been at a standstill ever since this decision by the Commission, and must continue at a standstill forever unless holders cooperate to place themselves in a position to justify legislative action. It is obviously to the interest of all persons who own Certificates to eliminate every question which delays a proper presentation to the legislature of the merits of their claims as creditors. The vital thing is that certificate holders should deposit their certificates under a contract such as has been proposed by the Committee which will enable either State to act with certainty and safety.

THE PRESENT UNDERTAKING

is a proposition to duplicate for the creditors of West Virginia the undertaking which brought about the recent adjustment between Virginia and its bondholders, to wit:

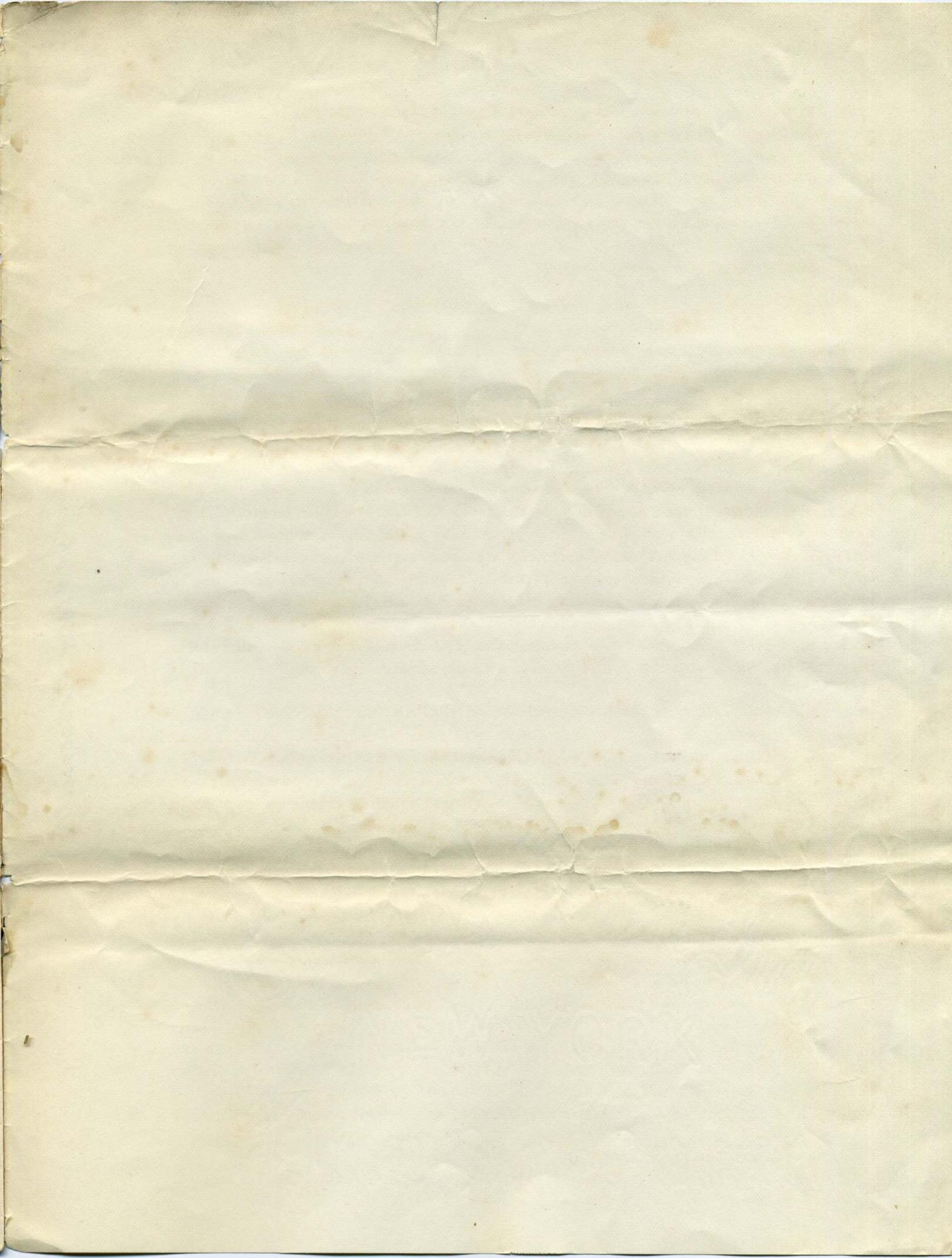
1st. As soon as a majority of the Certificates are assembled, the Committee will, in conjunction with the leading men of both States, have the account, required by the ordinance, stated by competent accountants. The just indebtedness of West Virginia, being thus ascertained, the Committee will formulate a plan of settlement whereby that indebtedness may be compromised by West Virginia in the same manner as Virginia compromised the two-thirds assumed by it.

2d. This plan of settlement will be submitted to the Advisory Board, and, if recommended by them, will be published and submitted to holders. If accepted by a majority in value, it will be presented to the Legislature of West Virginia next January.

3. In the event of West Virginia refusing to accept the terms of compromise recommended by the Advisory Board and accepted by holders, then the next Virginia Legislature will be asked to submit this "Controversy" between two States to the United States Supreme Court.

ROBERT L. HARRISON,

Secretary.



Brown Committee