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MEMORIAL
 TO THE
West Virginia Legislature
 PRESENTING A
PLAN OF SETTLEMENT
 FOR THE
WEST VIRGINIA DEBT
 REPRESENTED BY
Virginia Deferred Certificates

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Advisory Board.

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Committee.

JOHN CROSBY BROWN, *Chairman.* GEORGE COPPELL,
 J. KENNEDY TOD, CLARENCE CARY,
 VIRGINIUS NEWTON OF VIRGINIA,
 R. P. CHEW OF WEST VIRGINIA.

Depository.

BROWN BROTHERS & COMPANY.

ROBERT L. HARRISON,
Secretary.

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 1899.

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1881

WEST VIRGINIA UNIVERSITY
LIBRARY
MORGANTOWN, W. VA.

Memorial

to the

Legislature of West Virginia,

SUBMITTING A PROPOSITION WHEREBY WEST VIRGINIA'S PROPORTION OF THE DEBT, INCURRED BY THE ORIGINAL STATE OF VIRGINIA, MAY BE ADJUSTED.

Statement of Facts.

TO THE HONORABLE LEGISLATURE OF WEST VIRGINIA :

Your Memorialists respectfully represent :

That they are acting as a Committee to bring about such co-operation among holders of Virginia Deferred Certificates as will enable the Legislature of either West Virginia or Virginia to dispose of that part of the debt, incurred by the original State of Virginia, which now remains unsettled.

That the present State of Virginia issued Certificates to represent that part of the debt, incurred by the original State, which was set aside to await settlement by West Virginia. The Ordinance, under which Virginia was divided, provides :

That West Virginia shall assume such a part of the public debt, prior to January 1st, 1861, as shall be ascertained by charging her with all State expenditures within her limits, and with a just part 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, from the Counties included within the new State, during the same period.

We are informed that a statement of this account will prove that West Virginia's proportion of the debt of the original

State is much less than the amount for which Virginia has issued Certificates.

We are further informed that the "Debt Commission" appointed by West Virginia in 1871, reported that, if West Virginia's proportion was reckoned on the basis of population, the amount to be assumed by her would be \$7,474,642.46, with interest from 1861, and if reckoned on the basis of revenue, it would be \$5,231,485.10. We are informed that the Committee, of the Convention of 1861, who drafted the Ordinance in question, estimated that a statement of this account would assign to West Virginia between six and seven million dollars. We are further informed that the Virginia Debt Commission, employed an accountant to state said account, and that he estimated the amount for West Virginia at somewhat above \$11,000,000.

As the Certificates must be surrendered upon payment by West Virginia, any settlement between West Virginia and the holders will necessarily be a final and complete adjustment of this whole subject.

If your Honorable body will appoint a Committee, authorized to deal with this subject, we will use our best endeavors to induce the holders of Virginia Deferred Certificates to assent to the compromise mentioned in the annexed Plan of Settlement, which we most respectfully submit is the least which the State should offer and which, we think, will be at once accepted by the great majority of holders. Such holders as may unreasonably refuse their assent will be without any remedy, and will not be entitled to any sympathy.

We take leave to state that, at present, many holders are misinformed respecting their rights, and entirely misapprehend the obligation of West Virginia. These holders are under a mistaken impression that they are entitled to demand the entire \$15,500,000 represented by the face of the Certificates. In fact it has been, up to this time, laborious and costly to obtain for the annexed Plan of Settlement the co-operation of the 530 holders who own the \$5,000,000 of Certificates which have been deposited with Messrs. Brown Brothers & Company and of the holders of the \$1,500,000 who are pledged to deposit.

We are informed that many holders think that this matter should be submitted to the Supreme Court of the United States, but, it seems to us that litigation should be avoided, and that any question which may arise can be decided as well by a Committee, composed of citizens of West Virginia, as by any Court.

It will be observed that we are not authorized to bind any one until the Plan of Settlement has been accepted in the manner provided for in the contract under which the Certificates are to be deposited, and we shall not ask any action, by the Committee which you may appoint, until said Plan of Settlement has been accepted by a majority in value of the holders of Certificates.

Attention is respectfully called to the fact, that Virginia transferred to West Virginia all of the property owned by Virginia within West Virginia. The Act of February 3rd, 1863, may be condensed as follows :

Be it enacted by the General Assembly of Virginia, that all of the property owned by this Commonwealth, within the boundaries of West Virginia, shall pass to West Virginia. But the State of West Virginia shall account for the same in the settlement to be hereafter made with this Commonwealth.

The Constitution, under which West Virginia was admitted into the Union, provides :

Section 7, Article 8 : The Legislature may at any time direct a sale of the stocks owned by the State in Banks and other Corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt.

Section 8, Article 8 : An equitable proportion of the public debt of Virginia, prior to January 1st, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable.

Attention is invited to the further fact that, all of the legislation of West Virginia has carefully preserved, intact, the

principal of the proceeds of such of said property as has been sold; the interest and profits only, having been distributed among the Schools. The Acts of February the 25th, 1867, February 15th, 1889, and Section 73 of Chapter 45 of the Code of West Virginia, all prohibit any distribution of the principal of the State's interest in the property referred to. The report of the West Virginia Debt Commission of 1871, states that the stock owned by Virginia in the Banks, within the boundaries of West Virginia, amounted to \$539,600, but we have no trustworthy information as to the amount of the other property which West Virginia acquired from Virginia, and which the said Constitution contemplated, would be applied to the liquidation of her proportion of the debt incurred by the original State.

Attention is respectfully called to the fact that said West Virginia Debt Commission of 1871, did not attempt to state the account required by said Ordinance, and we are informed that their report was never adopted by the Legislature. Their report does, however, give a partial list of the roads and other internal improvements, within the boundaries of West Virginia, constructed by payments out of the Treasury of Virginia. The following is an extract from their report :

“ 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.”

Total expenditures on account of :

Joint Stock Turnpikes.....	\$906,196 32
Roads constructed on State account..	1,145,619 07
Bridge Companies.....	76,612 50
Navigation Companies.....	207,840 00
Railroads	500,000 00
Miscellaneous	684,600 00
	\$3,520,867 89

Deduct, on account of Virginia's <i>pro rata</i> for certain expenditures.....	176,938 60
	\$3,343,929 29

Total expenditures in West Virginia.....

We are informed that the Commissioners accidentally omitted a number of appropriations for internal improvements within West Virginia, which were made between 1785 and 1828, which ought to be included, and a list of them will be found among the documents printed by the Virginia Convention of 1850-51. We are informed that when these and other omitted appropriations are added, it will be found that the State expenditures for internal improvements, within West Virginia, amounted to approximately \$4,000,000.

It will be the earnest effort of the Committee to aid those appointed by West Virginia to act in this behalf, in making such an investigation respecting said “State expenditures” as will preclude any risk of charging West Virginia with any amount which is not represented by some public improvement

of which her people have had the benefit, and which was paid for out of the Treasury of the original State.

We respectfully submit for your consideration the following papers :

1. A copy of the contract dated July 28th, 1898, under which the Committee have invited the deposit of Certificates with Messrs. Brown Brothers & Company.
2. The statement of Messrs. Brown Brothers & Company that over \$5,000,000 of the Certificates have been already deposited with them under said contract and that 52 holders, owning \$1,500,000, have signed a paper agreeing to deposit.

The Committee ask leave to state that they were induced to act in this behalf because it seems to them that an adjustment of this, the only State debt which remains unsettled, is a matter of such public importance and private right, as to merit the earnest attention of all thoughtful men, and the aid of all who have at heart the best interests of West Virginia and Virginia, but it was evident, that under the peculiar circumstances of this case, neither State ought to be asked to make any commitments unless the Certificates were deposited under such a contract as would ensure a prompt and unconditional surrender of them in exchange for whatever amount West Virginia might pay in liquidation of her just share of the debt incurred by the original State of Virginia.

February 8, 1899.

JOHN CROSBY BROWN,	} Committee.
GEORGE COPPELL,	
J. KENNEDY TOD,	
CLARENCE CARY,	
VIRGINIUS NEWTON,	
R. P. CHEW.	

PREFACE TO A
PLAN OF SETTLEMENT.

Formulating a "Plan of Settlement" for the West Virginia debt involves the consideration of the following facts:

FIRST.—The original State of Virginia issued bonds to construct roads and other internal improvements, many of which are in that part of her territory subsequently formed into West Virginia. The old State was divided by an Ordinance reading:

The new State shall take upon itself a just proportion of the public debt of the Commonwealth prior to January 1st, 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 said new State during the same period.

REMARKS.

A statement of this account involves determining (1) What disbursements shall be included by the phrase "State expenditures;" (2) What were the "ordinary expenses" as distinguished from the extraordinary expenses of the State Government; (3) What proportion of the ordinary expenses was a "just" proportion for that part of old Virginia which is now West Virginia, and (4) At what time was "any part" of the debt existing January 1st, 1861, "contracted."

This account has never been stated, but sufficient investigation has been had to show that any correct statement of it will assign to West Virginia less than $1/3$ of the debt which existed January, 1861.

SECOND.—The present State of Virginia has called in all the bonds of the original State by assuming $2/3$ and issuing a Certificate for the other third which was set aside to await settlement by West Virginia.

REMARKS.

The circumstance that Virginia has issued Certificates for $\frac{1}{3}$ cannot affect the amount which will be assigned to West Virginia by stating the account above mentioned.

The Certificates represent the unsettled part of the debt incurred by the original State of Virginia, and simply identify the persons who are now entitled to receive whatever may be realized from a settlement by West Virginia. A Certificate holder stands as he would stand if he held an original bond marked, " $\frac{2}{3}$ has been paid by Virginia."

THIRD.—The Certificates were issued under several Acts,

A Certificate, under the Act of 1871, reads :

No. Treasurer's Office, §.

RICHMOND, VA., 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 to..... dollars): 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 thereof 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.

A Certificate, under the Act of 1879, reads the same as above down to the word "assigns;" it is then added :

"and will negotiate or aid the creditors holding all such Certificates issued under this Act, or previous Acts, in negotiating with the State of West Virginia for an amicable settlement of the claim of such creditors against the State of West Virginia.

The acceptance of this Certificate for West Virginia's $\frac{1}{3}$ issued under this Act shall be taken and held as a full and absolute release of the State of Virginia from all liability on account of such Certificates.

A Certificate, under the Acts of 1882 or 1892, read :

The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for \$....., dated....., and numbered....., leaving a balance of \$....., with interest from....., to be accounted for to the holder of this Certificate by the State of West Virginia without recourse on this Commonwealth.

REMARKS.

Whatever its language each Certificate equally represents a part of the unpaid debt, and is entitled to participate in any settlement.

The Certificates of 1871 and 1879, represent $\frac{1}{3}$ of the principal of a bond and also $\frac{1}{3}$ of any interest in default at the time of funding, but the Certificates of 1882 and 1892, represent only the principal of the bond which was funded; a separate Certificate being issued for any interest in default at the date of funding.

The condition of the Certificates may be illustrated as follows :

1st Illustration. A Certificate of 1871 for \$533.33 being :
 \$333.33 or $\frac{1}{3}$ of a bond, and
 200 or $\frac{1}{3}$ of the interest between 1861 and 1871.

2nd Illustration. A Certificate of 1871 for \$373.33 being :
 \$333.33 or $\frac{1}{3}$ of a bond, and
 40 or $\frac{1}{3}$ of the interest between 1869 and 1871; the
 interest between 1861 and 1869 having been
 funded, under the Act of 1866.

3rd Illustration. A Certificate of 1882 or 1892 for \$333.33;
 would be the $\frac{1}{3}$ of the principal of a bond.

4th Illustration. A Certificate (called "Interest Script"), for
 any interest in default on the bond funded under
 the Acts of 1882 or 1892, at the date of
 funding.

All Certificates, except Interest Script, bear interest.

It must be considered that this Interest Script is largely held by persons who do not now hold the corresponding Certificates for principal.

FOURTH.—It seems to be an accepted rule among financial men that, when a long defaulted public debt must be compromised, interest should be abated at a much larger percentage than principal.

REMARKS.

For the purpose of illustration it is roughly estimated that the \$15,500,000 of Certificates represent about \$9,000,000 of principal and \$6,500,000 of interest which had accrued up to *the time of funding*.

The Records at Richmond show the amount of principal in each Certificate.

FIFTH.—A settlement may be effected in either two ways:— Virginia may settle with West Virginia and deliver the proceeds to the Certificate holders, or, (if holders place themselves in a position to be dealt with as a body,) West Virginia may conclude a settlement directly with them. Any arrangement involving a surrender of all the Certificates, will necessarily exclude any further demand, because, if the Certificates are surrendered, no one can ever set up any claim.

SIXTH.—It may be assumed that the legislature will not undertake to determine the equities between the different issues of Certificates but will require them to be surrendered in a mass in exchange for the amount of bonds to be issued in settlement.

REMARKS.

In the Virginia settlement the legislature required the bonds to be surrendered in a block, and issued the new bonds as a block. A Tribunal, appointed by the Bondholders' Committee, then made an apportionment between the several classes of bonds. There was a small fragment which were not deposited with the Committee, and they realized somewhat less than those who did deposit.

PLAN OF SETTLEMENT.

1. The Committee will submit to West Virginia the following proposition of compromise :

- (A.) The Certificates to be surrendered for such an amount, in bonds, as shall be found by stating the account required by the Ordinance under which West Virginia was separated from Virginia, and then compromising that amount at the same percentage at which Virginia compromised the $\frac{2}{3}$ of the original bonds which were surrendered under the Act of February 20th, 1892; to wit, 60 per cent for principal and 30 $\frac{1}{4}$ per cent. for interest.
- (B.) The bonds may run 100 years and be of the same character as Virginia issued under said Act.
- (C.) Said account to be stated by such persons as West Virginia may appoint and by two persons, appointed by the Committee. Any question, arising during the statement of the account, to be decided by three persons:—one appointed by the Advisory Board, one by the persons acting for West Virginia, and the third by the two thus appointed.
- (D.) If requested by the persons, appointed by West Virginia to state the account, the Committee shall agree that it be so stated as to charge West Virginia only with the amount of "State expenditures within her limits" since January 1st, 1828, and then compromising the amount so found at 60 per cent. for principal and 30 $\frac{1}{4}$ per cent. for interest. The phrase "State expenditures" to include only the amount expended within the limits of West Virginia on account of the character of Internal Improvements and investments, by Virginia within West Virginia, as were enumerated by the West Virginia Debt Commissioners in their report of 1871.
- If the account be thus stated then the interest charge shall average not less than 3 per cent. during the life of the bonds, but the Committee may arrange the rate of interest during the first ten years to suit the convenience of West Virginia.
- (E.) If the settlement can be thus concluded with West Virginia before December 1st, 1899, then no demand shall be made on account of the proceeds of the property owned by Virginia within the limits of West Virginia, which was turned over to the latter State by the Act of Virginia, approved February 3rd, 1863.

2. If said account shall not have been stated, as aforesaid, before the next meeting of the Virginia Legislature, then the Committee may present a Memorial to the Virginia Legislature asking such proper legislation as will submit all questions involved to the Supreme Court of the United States.
3. When the amount of bonds to be issued in settlement has been ascertained, a Tribunal of three shall be appointed to determine the percentage in the new bonds to be assigned to each Certificate and interest "scrip". Said Tribunal shall be appointed as follows: One by the Advisory Board, one by the Committee and the third by the two so appointed.

Any vacancy happening in said Tribunal shall be filled by the remaining members.

