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VIRGINIA vs. WEST VIRGINIA

**A STATEMENT OF THE NEGOTIATIONS BETWEEN
THE VIRGINIA AND WEST VIRGINIA DEBT COM-
MISSIONS, AT THE NEW HOTEL WILLARD,
WASHINGTON, D. C., MARCH 4th, 1914, EM-
BRACING THE PROPOSITION SUBMIT-
TED BY WEST VIRGINIA, THE RE-
PLY OF VIRGINIA THERETO,
AND THE REJOINDER OF
WEST VIRGINIA.**

WEST VIRGINIA COMMISSION

JOHN W. MASON, Chairman, Fairmont, West Virginia

R. J. A. BOREMAN, Parkersburg

J. M. HAMILTON, Grantsville

W. E. WELLS, Newell

HENRY ZILLIKEN, Wellsburg

W. D. ORD, Landgraft

JOSEPH E. CHILTON, Charleston

J. A. LENHART, Kingwood

W. T. ICE, Jr., Phillippi

U. G. YOUNG, Buckhannon

JOSEPH S. MILLER, Kenova

JOHN T. HARRIS, Secretary, Charleston, West Virginia

Printed by Order of the Commission



VIRGINIA DEBT SUIT

STATEMENT OF NEGOTIATIONS BETWEEN THE DEBT
COMMISSIONS OF THE TWO
STATES.

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

RECORD OF PROCEEDINGS

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

The West Virginia Debt Commission met at 11 o'clock a. m., in the "Gridiron Room" at the New Willard Hotel, pursuant to the last Charleston adjournment, and there were present:

Messrs. Mason, (Chairman), Boreman, Hamilton, Zilliken, Ord, Lenhart, Ice, Young and Miller. Also, Attorney General A. A. Lilly, associate counsel, Hogg, Holt and Archer, and the secretary.

Absent: Messrs. Chilton and Wells.

At the same time the members of the Debt Commission of Virginia were in session in Parlor 128, at the New Willard Hotel.

And, thereupon, the following correspondence was had between the two Commissions:

PROPOSITION SUBMITTED BY WEST VIRGINIA

Commonwealth of Virginia,

vs.

The State of West Virginia.

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

Hon. John B. Moon,
Chairman Virginia Debt Commission,
Washington, D. C.

Dear Sir:

The West Virginia Commission has adopted preambles and resolutions embodying a proposition to the Virginia Commission for the settlement of West Virginia's equitable proportion of the Virginia debt, and has requested me to transmit the same to you, and, through you, to the Virginia Commission, in the hope that it may receive early attention and a favorable reply.

Your attention is called to the fact that a list and history of the credits referred to in the resolutions are attached to the copy thereof now presented you.

With great respect, I remain,

Very truly yours,

(Signed)

JOHN W. MASON,

Chairman West Virginia Commission.

**Preambles and Resolutions of the West Virginia Debt Commission,
Adopted at a Meeting Thereof Held in Charleston, West
Virginia, on the 27th Day of February, 1914.**

WHEREAS, the Supreme Court of the United States, by its opinion rendered on the sixth day of March, 1911, in the case of the Commonwealth of Virginia vs. State of West Virginia, ascertained the gross indebtedness of the old Commonwealth of Virginia, to the payment of which the State of West Virginia should contribute an equitable proportion, to be \$30,563,861.56 (220 U. S. page 1); and,

WHEREAS, in consequence of the relative resources of the two debtor populations, Virginia's portion of said debt was fixed at .7651 and West Virginia's at .235; and,

WHEREAS, as the records of the case then stood, there appeared to be *no stocks of value on hand* that could be treated as assets, and a proper proportion thereof applied to the reduction of the claim against West Virginia, its equitable proportion of the principal of said debt (subject to the correction of clerical errors) was fixed at \$7,182,507.46; and,

WHEREAS, since the announcement of the opinion aforesaid, and since the joint conference of the Virginia and West Virginia Debt Commissions, held at Washington on the 25th day of July, 1913, this Commission has discovered that, prior to the establishment of the State of West Virginia out of the territory of the Commonwealth of Virginia on the 20th day of June, 1863, the Commonwealth of Virginia purchased, and became the owner of certain stocks, bonds, securities and other property, which

were paid for out of the common funds of the two states,—in fact were purchased mainly, if not altogether, out of the proceeds of the bonds that constitute the debt of the old Commonwealth of Virginia in question here—and was the owner and holder of said stocks, bonds, securities and other property on the 1st day of January, 1861, and after the 20th day of June, 1863, sold and disposed of many of said stocks, bonds and securities, and realized in cash therefor, and appropriated to its own exclusive use many millions of dollars and gave away without the consent or knowledge of the State of West Virginia other portions of said assets and property which were of great value not only on the first day of January, 1861, but at the time they were so given away, and has retained and still retains other portions of said assets and property which not only have a present value, but were of great value on the first day of January, 1861, that is to say, of the aggregate value as of the first day of January, 1861, of \$20,810,357.98; and,

WHEREAS, according to the apportionment of the debt made by the Supreme Court between the two states, West Virginia is entitled in equity, as a credit upon the part of said debt allotted to it, .235 of the aggregate value as of January 1, 1861, of said stocks, bonds, securities and other property whether the same had been sold, retained or given away by the State of Virginia; that is to say, to the sum of \$4,855,312.18, including cash on hand as of that date, and the additional sum of \$225,078.06 collected by the Commonwealth of Virginia from West Virginia counties after June 20, 1863, which, if deducted from its allotment of \$7,182,507.46, would leave a balance of \$2,327,195.28 principal, to be paid by the State of West Virginia; and,

WHEREAS, in consequence of the great lapse of time and the long delay on the part of Virginia to have its rights and the liability of West Virginia in the premises judicially determined; also in consequence of the fact that Virginia has received from time to time, in addition to the amounts heretofore set out, dividends upon the bonds, stocks and securities hereinbefore described to an amount equal to

\$5,782,240.09, and in consequence of the further fact that a part of said bonds has been mislaid, lost or destroyed and will never be presented for payment; and many of the remaining bonds were purchased by the present holders thereof at nominal prices, and in consequence of the fact that Virginia at the time of the separation of the two states retained, without an accounting unto the State of West Virginia for any part thereof, all of the public buildings including the capitol at Richmond, the penitentiary in that city, the State asylum at Staunton, the university at Charlottesville, and various other public buildings and institutions that had been constructed and equipped out of the joint funds of the two states, as well as much personal property consisting of libraries, arms and munitions of war, etc., and in consequence of the further fact that Virginia has largely scaled her debt without West Virginia receiving her full proportionate benefit of such scaling, to say nothing of the legal reasons that might be presented in opposition to such a charge, no interest should be charged upon West Virginia's allotted proportion of the principal of said debt; now, therefore, be it

Resolved, as follows: 1. That this Commission propose, and it does here now propose to the Virginia Commission that .235 of \$20,810,357.98, or the sum of \$4,890,434.12 of the value of the stocks, bonds, securities and other property hereinbefore recited, and described in the list hereto appended, be allowed by the Commonwealth of Virginia as a credit upon, and that the same be deducted from the sum of \$7,182,507.46 ascertained as aforesaid, to be the equitable proportion of the principal of the debt of Virginia assumed by the State of West Virginia, and that the balance so ascertained, that is to say, the sum of \$2,327,195.28 be accepted by the Commonwealth of Virginia in full settlement, both principal and interest, of West Virginia's proportion of the Virginia debt.

II. That in the event the Virginia Commonwealth consent to the foregoing proposition, then this Commission will at once make a report of the fact to the Governor of

the State of West Virginia, accompanied with the recommendation that the State of West Virginia pay unto the Commonwealth of Virginia the sum of \$2,327,195.28, in full settlement of the present controversy; and the Governor of West Virginia will at once, pursuant to the terms of the joint resolution of the houses of the West Virginia Legislature establishing this Commission, adopted on the twenty-first day of February, 1913, convene the legislature of the State of West Virginia, for the purpose of adopting or rejecting the foregoing proposition of this Commission, and for the purpose, in the event of its adoption, of providing the funds without delay for the payment of the amount so agreed upon.

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

Resolved, IV. That the Chairman of this Commission at once transmit to the Virginia Commission a copy of this resolution, with the appendix thereto, with the request that the same be at once considered and acted upon at an early day.

(Signed) JOHN W. MASON,
WILLIAM D. ORD,
J. A. LENHART,
R. J. A. BOREMAN,
HENRY ZILLIKEN,
JOS. S. MILLER,
U. G. YOUNG,
JNO. M. HAMILTON,
W. T. ICE, JR.,

West Virginia Debt Commission.

Analysis of Report of Accountants, Classifying the Credits to which the West Virginia Debt Commission Believes the State of West Virginia is Entitled, Dividing the same into Classes Marked from A to G, Inclusive.

Class A.—CASH

The credit assigned to Class A consists of cash on hand in the treasury of the State of Virginia on the first day of January, 1861, amounting to \$1,104,927.06, which sum was allotted to the following funds in the following amounts; that is to say:

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

Total	\$1,104,927.06
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Class B.

Stocks purchased by the State of Virginia with the common funds of the two states prior to January 1, 1861, unsold, still owned and unaccounted for by the State of Virginia.

The asset assigned to this class consists of 2,752 shares of stock in the Richmond, Fredericksburg and Potomac Railroad Company, of the par value of \$100 each. This stock was bought by the State of Virginia, under Acts of January 23, 1835, page 87 of Accountant's Report, and March 23, 1836, page 95 of said report, for the cash price of \$275,200.00, and has never been disposed of by her, but is still owned by the State of Virginia, and had a valuation as of the first day of January, 1861, of at least \$275,200.00.

Total, \$275,200.00.

Class C.

Proceeds of sales of securities purchased with common funds of the two states by the State of Virginia prior to

the first day of January, 1861, and sold by the State of Virginia without the knowledge or consent of West Virginia, and without accounting therefor:

1.	Orange & Alexandria Railroad Co. stock and loan.....	\$1,156,210.98
2.	Richmond & Danville Railroad Co. stock and loan.....	1,653,423.04
3.	Richmond & Petersburg Rail- road Co. stock.....	578,404.13
4.	Virginia Central Railroad Co., stock and loan	321,458.17
5.	Blue Ridge Railroad, built by State of Virginia.....	705,280.82
6.	Alexandria, Loudoun & Hamp- shire Railroad Co., stock.....	68,044.51
7.	Winchester & Potomac Railroad Co., loan reduced by annuity..	83,333.33
8.	Virginia & Tennessee Railroad Co., loan	992,030.32
9.	Southside Railroad Co., loan....	91,897.66
10.	Norfolk & Petersburg Railroad Co., loan	165,024.49
11.	Roanoke Navigation Co., stock..	3,832.00
12.	Alexandria Canal Co., stock....	816.00
13.	Upper Appomattox Co., stock...	16,144.26
14.	Dismal Swamp Canal Co., stock	24,839.98
15.	Loan to Washington College....	2,000.00
16.	Richmond Academy Bonds.....	400.00
17.	Claim against United States Government	298,369.74
18.	Claim against Selden-Withers Co.	152,023.04
	Total	\$6,313,532.47

Class D.

Interest on loans and dividends on stock accrued prior to January 1, 1861, upon common investments, and collected by the State of Virginia after January 1, 1861, and still unaccounted for:

1.	Orange & Alexandria Railroad Co.	\$ 18,144.29
2.	Richmond & Danville Railroad Co.	8,516.80
3.	Richmond & Petersburg Railroad Co.	43,048.00
4.	Virginia Central Railroad Co...	182,436.36
5.	Winchester & Potomac Railroad Co.	833.33
6.	Richmond, Fredericksburg & Po- tomac Railroad Co.....	157,662.07
7.	Virginia & Tennessee Railroad Co.	211,891.82
8.	Southside Railroad Co.....	204,602.34
9.	Norfolk & Petersburg Railroad Co.	45,900.00
10.	James River & Kanawha Com- pany.	250.00
11.	Loan to Washington College....	60.00
12.	Richmond Academy bond.....	12.00
13.	Claim against United States Government	832,451.57
14.	The Farmers Bank of Virginia..	33,691.00
15.	Bank of Virginia	33,726.70
16.	Bank of the Valley.....	16,936.50
17.	Exchange Bank	30,642.50
18.	Northwestern Bank	13,104.00
19.	Fairmont Bank	1,500.00
	Total	\$1,835,409.28

Class E.

Bank stock purchased by Virginia with joint funds prior to January 1, 1861, and in her possession on that date:

1. Farmers Bank of Virginia.....	\$ 962,600.00
2. Bank of Virginia	963,620.00
3. Bank of the Valley	483,900.00
4. Exchange Bank	875,500.00
5. Northwestern Bank	374,400.00
6. Fairmont Bank	50,000.00

Total\$3,710,020.00

Class F.

Railroad stock purchased by the State of Virginia out of the common funds of the two states in various railroads, prior to the first day of January, 1861, and sold by her subsequent to the 20th day of June, 1863, without the knowledge or consent of West Virginia, and for which she has never accounted:

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

Virginia & Tennessee Railroad Co.,
 Southside Railroad Co.,
 Virginia & Kentucky Railroad Co.,
 Norfolk & Petersburg Railroad Co.,

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

Virginia & Tennessee Railroad Co., stock	\$2,300,000.00
Southside Railroad Co., stock.....	803,500.00
loan.....	708,102.34
Virginia & Kentucky Railroad Co., stock	82,000.61
Norfolk & Petersburg Railroad Co., stock	1,139,970.00
loan	134,975.51

Total\$5,168,548.46

which residuary stocks she subsequently, that is to say, on the 20th day of December, 1870, sold to the Atlantic, Mississippi & Ohio Railroad Co., for the sum of \$4,000,000.00, the purchase price to be paid in installments, and took a second mortgage upon the property of the said railroad company to secure the payment of the same. This sale was made and this security taken without the knowledge and consent of the State of West Virginia; and finally after the lapse of many years, the first mortgage upon said railroad company was foreclosed and the property covered thereby sold, but did not bring enough to satisfy the second mortgage and pay the \$4,000,000.00 purchase price agreed to be paid to Virginia for these stocks. After this foreclosure sale, that is to say, on the 1st day of March, 1882, the re-organization of the Atlantic, Mississippi & Ohio Railroad Company paid unto the State of Virginia the sum of \$500,000.00 for her second mortgage rights, whatever they may have been. Virginia has never accounted to West Virginia, either for a proportionate part of the \$4,000,000.00 original purchase price, or the \$500,000.00 subsequently received.

It will be seen that the value placed upon these stocks, both by the State of Virginia and by the railway company purchasing them, was \$4,000,000.00; and this can be taken as their reasonable value as of January 1, 1861.

Total, \$4,000,000.00.

Class G.

Securities purchased with joint funds by the State of Virginia prior to January 1, 1861, and subsequently given away without the knowledge or consent of West Virginia, together with certain other railroad and canal securities appropriated by her in one way and another, but not herebefore recapitulated:

1. James River and Kanawha Co.,
104,000 shares\$10,400,000.00
2. Residue of Securities:
Manassas Gap Railroad..... 2,105,000.00

Roanoke Valley Railroad.....	307,402.00
Fredericksburg & Gordonsville Railroad	132,399.00
Richmond and York River Railroad	490,999.52
Rappahannock Company.....	179,500.00
Rivanna River Navigation Company	227,133.00
Smiths River Navigation Company	4,083.12
Slate River Company	21,000.00
Kempsville Canal Company..	13,650.00
Hazel River Navigation Company	63,079.58
Goose Creek and Little River Company	58,255.35
Dragon Swamp Navigation Company	1,464.00
Chesapeake and Ohio Canal Company	281,111.11
Total	<u>\$14,285,076.68</u>

The foregoing \$10,400,000.00 attributed to the James River and Kanawha Company was the par value of its stock, and, although the State of Virginia by an act of its General Assembly passed on the 23rd day of March, 1860, something less than ten months before January 1st, 1861, placed a value of par thereon and made purchases thereof at such valuation, yet so much time has elapsed and the evidence of the actual value of this stock of that date has become so obscure, that it has been thought best, out of a spirit of compromise, to place a value thereon of twenty-five per cent of its par value, or the sum of \$2,600,000.00.

The other securities embraced in this class (amounting to \$3,885,076.68), have been treated in the same way for the same reason, and their value placed herein at twenty-five per cent of their par value, or the sum of \$971,269.17. Total, \$3,571,269.17.

In addition to the foregoing the State of Virginia, after the division of the old Commonwealth into two states, June 20, 1863, collected large amounts of money from several counties then and now located in the State of West Virginia, aggregating the sum of \$225,078.06.

Recapitulation

Class A.	\$1,104,927.06
Class B.	275,200.00
Class C.	6,313,532.47
Class D.	1,835,409.28
Class E.	3,710,020.00
Class F.	4,000,000.00
Class G.	3,571,269.17
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Total	\$20,810,357.98
West Virginia's equity .235	\$4,890,434.12
Less Northwestern Bank	
Stock	\$210,200
Fairmont Bank Stock....	50,000 260,200.00
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Balance	\$4,630,234.12
Collected from West Virginia coun-	
ties	225,078.06
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Total net equity	\$4,855,312.18

Result

West Virginia's share of debt.....	7,182,507.46
Less net equities, as above.....	4,855,312.18
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Balance	\$2,327,195.28

NOTE

Subsequent to the first day of January, 1861, the Commonwealth of Virginia received as dividends and interest upon the securities and loans hereinbefore listed the sum of \$5,782,240.09, as follows:

Interest and Dividends Received by Virginia in Cash After January 1, 1861, from Assets Held January 1, 1861, and Exclusive of any Dividends or Interest up to January 1, 1861.

	INTEREST		DIVIDENDS		Total.
	Cash.	Virginia Bonds.	Cash.		
Orange & Alexandria Railroad.....	\$ 113,459.00	\$ 81,311.34	\$ 66,516.09	\$	261,286.43
Richmond & Danville Railroad	380,497.66	281,322.35	249,605.67		911,425.68
Virginia Central Railroad	86,385.03	72,174.40	387,404.65		545,964.08
Richmond & York River Railroad....			54,009.94		54,009.94
Richmond, Fredericksburg & Potomac Railroad	24,012.71		1,282,198.74		1,306,211.45
Virginia & Tennessee Railroad.....	137,762.86		138,000.00		275,762.86
Norfolk & Petersburg Railroad.....	69,561.41		82,800.00		152,361.41
Roanoke Navigation Company.....			2,800.00		2,800.00
Upper Appomatox Company.....			6,150.00		6,150.00
Richmond & Petersburg Railroad...	1,703.81		227,504.00		229,207.81
Winchester & Potomac Railroad....	4,166.67	35,184.79			39,351.46

Southside Railroad	192,000.00			192,000.00
Washington College	4,140.00			4,140.00
Richmond Academy	816.00			816.00
United States Government		575,837.52		575,837.52
Farmers Bank of Virginia		373,007.50		373,007.50
Bank of Virginia		370,993.70		370,993.70
Bank of the Valley		94,360.50		94,360.50
Exchange Bank		343,633.75		343,633.75
Northwestern Bank		42,920.00		42,920.00
Total		<u>\$1,045,830.40</u>		<u>\$5,782,240.09</u>
			<u>\$1,014,505.15</u>	

REPLY OF VIRGINIA

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

Virginia

vs.

West Virginia.

Hon. John W. Mason,
Chairman West Virginia Commission,
Washington, D. C.

Dear Sir:

I beg to hand you, herewith, the resolutions adopted by the Virginia Debt Commission in response to the proposition submitted to them this day by the West Virginia Commission.

With great respect, I am,

Very truly yours,

(Signed)

JOHN B. MOON,

Chairman Virginia Debt Commission.

Virginia,

vs.

West Virginia.

Resolutions of the Virginia Debt Commission, adopted at a meeting held in Washington, D. C., at the New Willard Hotel, Wednesday, March 4, 1914.

The Virginia Debt Commission having received the proposition submitted this day by the West Virginia Commission, which contains statements and conclusions to which this Commission cannot assent and concerning which it is unwilling to engage in any discussion, adopted the following resolutions:

WHEREAS, the Supreme Court of the United States, in its opinion delivered at the October term, 1913, (November 10, 1913), in the suit of Virginia vs. West Virginia, on motion of Virginia to proceed to a final hearing, said:

“In March, 1911 (Virginia vs. West Virginia, 220 U. S. 1) our decision was given ‘with respect to the basis of liability and the share of the principal

of the debt of Virginia that West Virginia assumed.' In view, however, of the nature of the controversy, of the consideration due the respective States and the hope that by agreement between them further judicial action might be unnecessary, we postponed proceeding to a final decree and left open the question of what, if any, interest was due and the rate thereof, as well as the right to suggest any mere clerical error which it was deemed might have been committed in fixing the sum found to be due upon the basis of liability which was settled," and

WHEREAS, the matters left open and referred by the Court to the respective States for consideration and adjustment "in the hope that by agreement between them further judicial action might be unnecessary" were specifically stated to be (1) "what, if any, interest was due and the rate thereof," and (2), "the right to suggest any clerical error which it was deemed might have been committed in fixing the sum found to be due upon the basis of liability which was settled," and

WHEREAS, the proposition now submitted by the West Virginia Commission does not embrace either of said matters left open by the Court and referred to the parties litigant for adjustment between them; it is therefore

Resolved, that the Virginia Debt Commission is unwilling to, and respectfully declines to consider the said proposition; and it is further

Resolved, that the Virginia Debt Commission hereby expresses its regret that the West Virginia Commission has not seen its way to respond to the opinion of the Court and submit a proposition to adjust the question of interest.

(Signed) JOHN B. MOON,
Chairman.

(Signed) J. B. BUTTON,
Secretary.

Approved:

(Signed) JNO. GARLAND POLLARD,
Attorney General of Virginia.

REJOINDER OF WEST VIRGINIA

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

Hon. John B. Moon,
Chairman Virginia Debt Commission,
Washington, D. C.

Dear Sir:

In response to your communication of this date declining the proposition of the West Virginia Commission made this day looking to a settlement of the Virginia debt, we regret to be under the necessity of calling your attention to the fact that, although you deem the question of interest still open, yet you have offered nothing in reply to the reasons advanced in our proposition why no interest should be charged, and thus close the discussion upon the only point considered by you still to be open. And, so far as the credits advanced by us are concerned, you express an unwillingness even to discuss them, thus leaving us, in the absence of errors therein pointed out by you, with the conviction that they are equitable, and under the necessity of adhering to the terms of a proposition made in an effort to do justice to all.

We deem it unnecessary to indulge in any interpretation or construction of the opinion of the Supreme Court at this time further than to say that, in our opinion, the Court ascertained West Virginia's proportion of the principal of Virginia's debt to be \$7,182,507.46, only because, as the record then stood, there appeared to be "*no stocks of value on hand*" to be applied to the reduction of the same. These stocks are now discovered and disclosed, and a portion of them, at least, were set forth in the proposition you have declined.

You have, therefore, closed the door to further negotiations, and it is with regret that we cease further effort along that line.

Respectfully submitted,

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

West Virginia Debt Commission.

