

ANNUAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF VIRGINIA

FOR THE

YEAR 1913

RICHMOND:
DAVIS BOTTOM, SUPERINTENDENT PUBLIC PRINTING

1914

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ATTORNEYS GENERAL OF VIRGINIA

FROM 1775 TO 1914.

Edmund Randolph	1776-1786
James Innes	1786-1796
Robert Brooke	1796-1799
Philip Norborne Nicholas	1799-1819
John Robertson	1819-1834
Sidney S. Baxter	1834-1852
Willis P. Bocok	1852-1860
John Randolph Tucker	1860-1866
Thomas Russell Bowden	1866-1869
Charles Whittlesey (military appointee)	1869-1870
James C. Taylor	1870-1874
Raleigh T. Daniel	1874-1877
James G. Field	1877-1882
Frank S. Blair	1882-1886
Rufus A. Ayers	1886-1890
R. Taylor Scott	1890-1897
R. Carter Scott	1897-1898
A. J. Montague	1898-1902
William A. Anderson	1902-1910
Samuel W. Williams	1910-1914
Richard B. Davis, Assistant Attorney-General,	1910-1914
M. A. Powers, Clerk.	

REPORT.

OFFICE OF
ATTORNEY GENERAL OF VIRGINIA,
RICHMOND, *December 31, 1913,*

*To His Excellency, WM. HODGES MANN,
Governor of Virginia.*

SIR:

As required by law, I herewith submit my annual report embracing the work of this office for the year ending October 31, 1913, and for the period November 1, 1913, to December 31, 1913.

The cases in which the Attorney-General, or his assistant, have appeared, and which have been disposed of, are mentioned under the titles of the several courts in which these suits have been pending.

Cases in the Supreme Court of the United States.

1. *Virginia v. West Virginia.* Information was communicated to the Governor of Virginia, and to the Honorable John B. Moon, chairman of the Virginia Debt Commission, that a resolution had been passed by the legislature of West Virginia, at its session held in January, 1913, appointing a commission to treat with the State of Virginia in an effort to adjust and settle, if possible, the questions involved in the litigation now pending in the Supreme Court of the United States in this suit. Correspondence immediately ensued, which resulted in a joint meeting of the representatives of Virginia and the representatives of West Virginia, which was held at the New Willard Hotel, in the city of Washington, D. C., on the 25th and 26th of July, 1913. At this meeting, a conference was had between the representatives of the two States, but they failed to reach an agreement. The letter of Governor Hatfield, of West Virginia, to the Governor of Virginia is as follows:

STATE OF WEST VIRGINIA,
EXECUTIVE DEPARTMENT,
CHARLESTON, *June 10, 1913.*

*Honorable WILLIAM HODGES MANN,
Governor of Virginia.
Richmond, Va.*

DEAR SIR:

I have the honor to report to you that the regular session of the West Virginia Legislature of 1913 passed House Joint Bill No. 5, raising a commission of citizens of our State to be appointed by the Governor, to meet a like commission upon the part of the State of Virginia, to discuss and, if possible, arrive at some mutual agreement looking to the amicable settlement of the Virginia debt dispute now pending in the Supreme Court of the United States, said suit being styled and known on the docket as the *Commonwealth of Virginia v. The State of West Virginia.*

A copy of the resolution adopted by the West Virginia Legislature I herewith attach.

The resolution requires the commission to report their findings to a subsequent session of the legislature.

The commission is composed of the following citizens of our State:

Hon. Henry Zilliken, of Wellsburg, county of Brooke.

Hon. John W. Mason, of Fairmont, county of Marion.

Hon. J. A. Lenhart, of Kingwood, county of Preston.

Hon. William T. Ice, of Philippi, county of Barbour.

Hon. U. G. Young, of Buckhannon, county of Upshur.

Hon. Joseph E. Chilton, of Charleston, county of Kanawha.

Hon. R. J. A. Boreman, of Parkersburg, county of Wood.

Hon. John M. Hamilton, of Grantsville, county of Calhoun.

Hon. William D. Ord, of Landgraft, county of MacDowell.

Hon. Joseph S. Miller, of Kenova, county of Wayne.

Hon. W. E. Wells, of Newell, county of Hancock.

The commission met in the Governor's reception room on June 10, 1913, and organized by electing the Hon. John W. Mason, of the city of Fairmont, chairman, and the Hon. John T. Harris, of the city of Parkersburg, secretary.

I beg to advise that said commission now awaits the pleasure of the Virginia Commission.

The next regular meeting of the West Virginia Debt Commission will be held in the Governor's office on July 22, 1913.

The commission directs me to say to you, and through you to the proper representatives of the Virginia Commission, that they will be pleased to meet the Virginia Commission at any time after July 22, 1913, that the said Virginia Commission may indicate where it would be agreeable to hold a joint meeting of the commissions.

Any communications sent to this office, or to the president or secretary of the West Virginia Commission will receive prompt consideration.

Respectfully yours,

(Signed) H. D. HATFIELD,

Governor.

HDH:MP

The letter of Governor Mann, of Virginia, to the Honorable John B. Moon, chairman of the Virginia Debt Commission, is as follows:

COMMONWEALTH OF VIRGINIA,

GOVERNOR'S OFFICE,

RICHMOND, June 20, 1913.

Hon. JOHN B. MOON, *Chairman*

Virginia State Debt Commission,

Charlottesville, Va.

DEAR COLONEL:

I enclose a communication from the Governor of West Virginia, and a copy of the act of assembly of that State, adopted on the 21st day of February, 1913, which explain themselves. I trust it will be the pleasure of your commission to have an early meeting and to communicate with the commission of West Virginia, to the end that every possible effort may be made on our part to settle the matter in dispute between the two States

Very truly yours,

(Signed) WM. HODGES MANN,

Governor.

Encs.

A full copy of the proceedings which took place in the joint conference between the Virginia and West Virginia Commissions, held at the New Willard Hotel, in Washington, D. C., on the 25th and 26th of July, 1913, is as follows:

PROCEEDINGS OF A JOINT CONFERENCE BETWEEN THE VIRGINIA
DEBT COMMISSIONS OF THE STATES OF VIRGINIA
AND WEST VIRGINIA.

WASHINGTON, D. C., *July 25, 1913,*
New Willard Hotel.

The commissions of Virginia and West Virginia met at 11:30 o'clock A. M., pursuant to notice, Chairman Moon, of Virginia, and Chairman Mason, of West Virginia, presiding.

Chairman Moon: I have been instructed, gentlemen, to present to you, for your consideration, the following resolutions:

Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt.

2. This commission desiring to carry out in good faith the suggestions made by the Supreme Court as to securing an amicable adjustment of the amount of interest which should be paid by West Virginia upon the principal of the debt as ascertained and decided by the court, and realizing that it is not the desire of Virginia nor was it the intention of the Supreme Court that Virginia should ask or demand the full or legal amount of interest upon the principal debt as ascertained in the decision of the court, but that there should be concessions made upon both sides, such as comport with justice and the honor and dignity of the two States; and

Whereas, The joint conference to be held to-day between the commissions of Virginia and West Virginia was invited by the authorities of West Virginia, presumably for the purpose of carrying out in good faith the decision and suggestion of the Supreme Court of the United States.

Therefore, be it resolved, That this resolution, together with all other resolutions adopted by this commission at its present session, which may be pertinent, be presented by the chairman of this commission, to the commission of West Virginia at the joint conference to be held to-day, and that the commission of West Virginia be respectfully requested to communicate to this commission, what, in their judgment, would be a fair and just settlement of the interest to be paid by West Virginia upon the principal amount as ascertained in the opinion and decision of the Supreme Court of the United States.

Chairman Mason, of West Virginia: Referring to the resolutions which have just been presented to us on behalf of the commission of Virginia, I would say for the commission of West Virginia that it was not our expectation that this conference was to be confined to the consideration of only the question of interest. Our idea had been that the scope of the conference would be wider, and that we would confer together and take up the whole case, principal and interest. We thought that was what we were to meet here for.

It is my understanding that we, as commissioners, representing the two States, have the power to ascertain what is West Virginia's equitable proportion of the debt, if anything. I thought that was one of the things we were to get at, and try to reach a basis of settlement.

I do not feel that we should be confined solely to the consideration of the one question, namely, the question of interest.

Chairman Moon, of Virginia: I would say, gentlemen, that Mr. Randolph Harrison has been selected as spokesman for the Virginia Commission, to present the matter to you as we view it, and I will now call on Mr. Harrison.

Remarks of Mr. Randolph Harrison of the Virginia Commission.

Mr. Harrison: Mr. Chairman and gentlemen: The resolutions which have been presented to you for consideration by the chairman of the Virginia Commission, contain a statement of what the Virginia Commission conceives to be the question to be considered by the two commissions, and an expression of the spirit in which the Virginia Commission enters upon this joint conference.

The first resolution declares it to be the sense of the Virginia Commission that the subject before the two commissions for consideration and adjustment is, as indicated by the court in its decision, the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of the debt.

The second resolution assumes that the West Virginia Commission has invited this conference for the purpose, and with the expectation, if possible, of carrying out in good faith the suggestion of the court in respect to an adjustment of the question of interest, and at the same time states that it is not the purpose of Virginia to exact, nor does this commission believe it to be the intent of the court that Virginia should exact the full amount of interest shown by the record to be due on the share of the principal of the debt ascertained by the court to be West Virginia's.

The Virginia Commission enters upon this conference with you in a spirit of absolute frankness, and with the earnest desire to reach an adjustment of this unsettled question. To accomplish this result we recognize that there must be concessions made upon both sides, such as comport with justice and the honor and dignity of the two States. With that end in view we ask the West Virginia Commission to advise what, in their opinion, would be a fair amount for West Virginia to pay in compromise and settlement of the amount of interest due on her share of the principal of the debt.

The chairman of the West Virginia Commission has indicated that his commission did not expect this conference to be confined to the consideration of the question of interest alone; that a wider field of inquiry was in contemplation by that commission—a field which would involve a review of the merits of the case, and a determination of the amount of principal, as well as interest, which, in the judgment of the West Virginia Commission, should be paid by West Virginia.

I will, as briefly as I can, state what we conceive to be the object that the court had in view in suggesting this conference.

In its decision the court used this language: "We have given our decision with respect to the basis of liability, and the share of the principal of the debt of Virginia that West Virginia assumed."

It will be seen, therefore, that the basis of West Virginia's liability, and the share of the principal of the debt for which she is liable, are questions which have been removed from the realm of controversy, or of debate, or of further investigation; they have been judicially settled at the end of several years of litigation.

In this connection it is a pleasure for me to say that West Virginia has had the benefit in this case of able, industrious and zealous counsel, who have not lost an opportunity to present her side of it in the strongest aspect possible. One of these gentlemen I see here to-day, Mr. McClintic. I will venture to say that there is no man connected with this litigation more familiar with its details, and none of West Virginia's counsel has rendered more faithful or efficient service than he.

You must bear in mind, gentlemen, that when the ground has been covered, as it has been, by able counsel, and the case heard by the highest court in the land, the questions settled by the decision of that court no longer remain open for dispute or investigation.

Continuing, the court said: "In any event, before we could put our judgment in the form of a final decree, there would be figures to be agreed

upon, or to be ascertained by reference to a master. Among other things there still remains the question of interest."

We have seen that "the basis of liability and the share of the principal of the debt that West Virginia assumed," are decided questions, but there were "other things" to be considered and settled by the court before it could put its judgment "in form of a final decree," and among these other things is the question of interest, which question the court referred to the two States for adjustment, if an adjustment could be reached, the court stating that if the matter was pressed contentiously it would be referred to the master, to make such calculations as might be necessary.

It has never been suggested to us before that West Virginia entertained the idea that it would be competent or proper for us to ignore the decision of the court and take jurisdiction of the entire subject matter and enter upon an investigation of the merits of the case.

Two years ago, in advance of the meeting of the West Virginia legislature in extra session, the Virginia Commission laid before the Governor of West Virginia the decision of the court, and requested that he would ask the legislature to appoint representatives to confer with us in regard to the question of interest, which had been referred to the two States by the court. The matter, however, was not dealt with by the legislature, and at the ensuing term of the court, in October, 1911, Virginia moved the court to speed the cause, on the ground that West Virginia had not indicated any purpose, or intention, to carry out the suggestion of the court. West Virginia, through her counsel, filed an answer to this petition, in which it was not once suggested that there was any misapprehension on the part of Virginia in respect to the question to be considered by the two States. But the contention of West Virginia, through her counsel, was that no action should be taken by the court until the legislature of West Virginia had an opportunity in regular session to consider the matter. Therefore, this is the first time, as I have already stated, that the suggestion has been made to any one representing Virginia, that West Virginia contemplated a reopening of the case and a consideration of the whole matter upon its merits. For the reasons that I have stated, gentlemen, the Virginia Commission could not consent to this course. We cannot consent to go behind the decision of the court and take up and consider any question which has been decided by the court.

The resolutions which have been presented to you on the part of the Virginia Commission embody its views in respect to the scope of this conference, and invite you to communicate to us what, in your opinion, would be a fair basis of settlement of the question of interest. I trust it will be the pleasure of the West Virginia Commission to consider the matter in aspect.

We also recognize the fact that it is competent for the two commissions to consider the question of settlement of the entire controversy, precisely as we might do if there were no other question pending before us, and, if it is the pleasure of the West Virginia Commission to take up that question and communicate to the Virginia Commission at this conference a proposition looking to a compromise settlement of the whole controversy, we will be glad to receive it, and will give it respectful and fair consideration.

● Your chairman has indicated that the West Virginia Commission, perhaps a majority of them, are not familiar with the details of this litigation, or the grounds upon which it has proceeded. It may be well enough for me, therefore, to say something in regard to the general subject, inasmuch as you may be viewing it from an angle that you would not view it from, if you were more fully advised.

The questions of West Virginia's liability for a just proportion of this debt, and the amount of that just proportion, were the questions considered by the court. West Virginia denied all liability, and denied the court's right to take jurisdiction of the case, but the court, after elaborate argument, overruled all of her objections. I know it is customary for West

Virginians in referring to this case to say that the judgment of the court will amount to nothing, as there is no way of enforcing it. That question was urged before the court by West Virginia's counsel in the argument upon the demurrer, but the court, in referring to this subject in its opinion overruling the demurrer, said: "It is not to be presumed that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted, we can then consider by what means the decree may be enforced."

I think we may safely assume that the court will consider the means of enforcing its decree, if it should ever reach that question, but the court evidently does not consider that result a possibility, as is clearly indicated by the language of the opinion, to the effect that the court will not "presume that West Virginia will refuse to carry out the decree of this court."

It is proper for me to say that no man connected with this litigation on Virginia's side, anticipates that any such stage of the proceedings will ever be reached. There is a power oftentimes more effective than courts to constrain, not only communities, but individuals, to do what is right, namely, the power of public opinion. Speaking for myself I can say that I have never entertained the thought that the State of West Virginia would deliberately repudiate a finding of the Supreme Court of the United States, because I do not believe the sentiment of her people would countenance any such course. Therefore, gentlemen, considerations which involve the repudiation by West Virginia of her liability in this case, have not influenced, and should not influence us in the performing the duty now imposed upon us.

I do not think the people of West Virginia understand the nature of the obligation which rests upon them in respect to the liability of their State for a just proportion of this debt. They do not realize that this obligation was assumed in the first step taken towards the formation of the State of West Virginia, and was again assumed in her Constitution, adopted on the 26th of November, 1861, which not only bound the new State to bear a just proportion of the public debt of Virginia, but required her legislature to ascertain the same and provide for its payment. The State of Virginia (the restored State of Virginia) gave its consent by legislative enactment to the creation of the new State of West Virginia "under the provisions set forth in the Constitution for the State of West Virginia." Those two instruments were laid before Congress, and on the faith of them Congress gave its consent to the admission of the new State into the Union. The court rests its decision in this case on the ground that West Virginia is bound by a solemn contract to bear a just proportion of this debt—a contract contained in her fundamental law, and to which Virginia and the Congress of the United States assented. The court, in considering that question, and basing her liability upon her solemn constitutional promise, made as a condition to her Statehood, said: "West Virginia must therefore be taken to have *promised* to pay to Virginia her share."

You must understand, gentlemen, that no State can be carved out of an existing State without the consent of the parent State, and in this case the consent of Virginia was given to the division of her territory on condition that West Virginia would bear a just proportion of her debt; and the consent of Congress was based upon the same condition. An eminent citizen of your State, who has wielded there the sceptre of power, made an argument in this case before the master, in the course of which he took the ground that West Virginia made this promise because she knew she could not be admitted into the Union without it, and that it was made for the sole purpose of inducing Congress to admit her. In other words, that her promise was made to gain her political existence. The record in this case fully attests the accuracy of the statement that but for West Virginia's promise to assume a just proportion of the debt of Virginia, Congress would never have admitted her into the Union. Senator Sherman so stated in his correspondence with Senator Willey, and Senator Willey,

who was an actor in those scenes and participated in the steps which led up to the formation of the State of West Virginia, made the following statement in his correspondence with Senator Sherman (all of which appears in the record): "I say to you now what I have said to the people of West Virginia, that but for that clause in her Constitution the State would never have been admitted. I say further, that in my opinion, no honest man or honest party in West Virginia, or out of it, will deny the obligation of West Virginia to pay an equitable part of the debt of Virginia."

You will hear it said in your State, because it has so often been said to me, gentlemen, "We do not owe any part of the debt because we did not get any of its benefits; none of the money was expended in West Virginia." That question is beside the mark. I will not stop now to consider it. It was settled by the court, and disposed of in the opinion of the court. But when the assertion is made that West Virginia derived no benefit from her promise to pay a just proportion of this debt, it should be remembered that at least she gained her political existence by it; that it was the price paid for Statehood.

Immediately after the war Virginia communicated to West Virginia a resolution, appealing to her to forget the past and to come back and be again a re-united Commonwealth. West Virginia lost no time in replying; she promptly answered that appeal with an emphatic "No." She preferred to remain an independent State, and was satisfied with the price she had paid for that privilege.

Do you think that the people of your State would continue in the belief that they do not owe any part of this debt if they understood these facts? Would they not take a different view of it if they were informed in respect to the basis of the liability of their State? If they understood that West Virginia had passed her word to bear a just proportion of this debt; that Virginia had given her consent to the separation on the faith of that promise, and that Congress, in reliance upon it, had admitted her into the Union, and that she was so well satisfied with the bargain that she refused the mother State's invitation after the war to re-unite with her, can there be any doubt that they would realize the obligation resting upon them, and feel that it was not creditable to keep it in the air, but that it was their duty to meet it like men, and settle it?

I firmly believe, gentlemen, that if men of courage and patriotism would inform the people of West Virginia of the real status of this issue, and of the ground upon which the liability of their State rests, that the majority of them, to say the least of it, would no longer seek to evade, or ignore it as something that did not concern them, but on the contrary they would insist on its being disposed of fairly and honestly. I really believe that their present attitude to the subject is due to the fact that they do not understand that there is a binding obligation upon the conscience of the people of West Virginia to perform her promise.

The court has said that "The liability of West Virginia is a deep-seated equity." Can you go back to your people and encourage in their minds the idea that they are under no obligation to respond to this liability which the court has said is founded in a deep-seated equity? The founders of West Virginia knew it was only just and right that, in dividing the territory of the mother Commonwealth, they should assume a part of the burden of this debt; they knew that they could not in good conscience, deprive Virginia of a third of her territory and a third of her population and leave her to carry the burden of debt which they had helped to create. We have the authority of Senator Willey for the statement that the promise made by himself and his associates on behalf of West Virginia, to bear her share of that burden, was made in absolute good faith, and with the full intention of carrying it out. Can it be possible that your people, if they understood these facts, would tolerate any action that would ignore that liability, or temporize with it? Would they not meet the issue like honest men? I believe they would. I am a firm believer in the Jeffersonian faith

in the people. I believe that when the people are rightly directed they will do what is right. I believe a majority of them are moved by correct impulses, and that when they go wrong it is because they are ignorant, or misinformed.

I have expressed these general views about this case in the hope that your commission composed, as it is, of representative men of your State, will be the medium of influencing the people of West Virginia to do what is right in respect to this matter.

The position of West Virginia heretofore, as indicated by her public men, has been that she would not recognize any liability to Virginia for a share of this debt unless that liability was established by the court. Several years ago I had the pleasure of addressing the legislature of West Virginia on this question, with a view to bringing about a friendly adjustment and to avoid the necessity of taking the controversy into court. I urged upon your representatives at that time the propriety of taking action, and the importance of a friendly adjustment of the question. Numbers of your public men said to me at that time that while they recognized that it was important to settle the question, there was no use in talking to the people about it; that they had been educated to believe they did not owe anything, and that the only way to convince them was to let the court say what they owed. That has now been done. The highest court in the land has spoken, and in the light of the opinion of the court it is not open for any man to say that there is no obligation resting upon West Virginia; nor, in the light of that decision, is it open to any man to question the amount of the principal sum which she is obligated to pay.

The question of interest has been referred to us by the court for adjustment, if possible. We trust it will be your pleasure to take up that question with us and let us see whether it is possible to reach some conclusion that will be honorable to both States. We meet you in a hopeful spirit. No man can have any doubt about our earnest desire to reach a friendly adjustment of this controversy, and we are hopeful that such a body of men as we meet here to-day, will be the efficient instruments of bringing the people of their State to a just appreciation and recognition of her liability in this case.

We cannot consent to open up the whole controversy, gentlemen, but we are ready to consider the question of interest. At least we can make an effort to adjust it. If the West Virginia Commission desires to communicate to us a proposition to settle the whole controversy we will be glad to take up that question and consider it.

Chairman Mason, of West Virginia: What is the use of doing that, if you will not consider it?

Mr. Harrison: I say we will be glad to consider it.

Chairman Mason: But you say there is no authority to consider any question except that of interest. What is the use then of doing a vain thing?

Mr. Harrison: I hope it would not be a vain thing.

Chairman Mason: According to your statement it would, would it not?

Mr. Harrison: I cannot tell you in advance of a proposition. I say we will be glad to consider a proposition. If you see fit to submit a proposition as to a settlement of the whole controversy we will be glad to receive it. I stated that in the beginning.

I hope the West Virginia Commission do not understand me as indicating it to be the sense of the Virginia Commission, that we would not treat with you upon a settlement of the whole debt. We will be glad to do it. If the West Virginia Commission has in mind negotiations along that line we will be glad to receive them, and will deal with them in the utmost spirit of frankness.

If that cannot be done; if West Virginia is not prepared to take up that question, then the only question open for us to consider is the question of interest. That is the only question referred to us by the court, as preliminary to further action by the court.

So many years have elapsed since this controversy has been pending that I hope, at least, we will come to some conclusion to-day; that we will either blaze the way to reach some result ourselves, or else make it apparent and clear that cannot be done, so that the case may take its due course.

The master's report contains in detail all of the data relating to the obligations put out by the original State of Virginia, upon which West Virginia is bound, and these are shown in detail, with the interest calculated thereon, in a green-covered pamphlet which is filed as an exhibit before the court. This pamphlet contains a list of all of the bonds taken from the master's report, with the interest computed thereon, according to their tenor, upon the various bases of settlement that were then under consideration. The record furnishes complete data for the computation of the interest to be borne by West Virginia upon her share of the principal, as fixed by the court. It is not necessary, however, to go into any details about that at this time. The question before the West Virginia Commission is the consideration of the two resolutions that we have communicated to them.

Remarks of Mr. John W. Mason, Chairman, West Virginia Commission.

Mr. Mason: Gentlemen, I want to say just a single word. I regret that the distinguished gentleman has seen fit to discuss the question, which he has, as to what West Virginia would do in case of judgment against us which we thought was a judgment from a court of competent jurisdiction. As to that we may say, as the Supreme Court said, if that contingency ever arises we will meet it, in a spirit that comports with the dignity of a great, loyal and law abiding State. We are not to be forced by any remarks in advance as to what is the equitable proportion, into giving an opinion of what we would do in case there is an adjustment.

Let me say a word as to another matter, if you will indulge a personal allusion. I am one of the men who voted for that Constitution. I am one of the men who made that promise. It was my first vote. We made that promise. I, for one, have never had any inclination to, nor never thought of retracting it. But, for fifty years we have been asking, clamoring and demanding, trying in every way we knew how, to get at the question of what is our equitable proportion of that debt. Heretofore it has been newspaper correspondence and ex parte resolutions of legislatures, Virginia enacting such legislation as she saw proper, and West Virginia such legislation as she saw proper. After a while it got into the Supreme Court of the United States.

Now, gentlemen, I understood, and still understand, that it is to some extent at least before the commissioners representing the two States, who have the right and the power to ascertain and to answer the questions which I have been asking for fifty years, namely, what is West Virginia's equitable proportion of that debt, if anything?

I hope, gentlemen, you will not send us back to our constituents, saying we met a body with competent jurisdiction, authorized to answer that question, and you would not do it. Instead you simply said that you would not discuss a compromise or talk with us but along one line. And we would go back home still with nothing except the finding of a court which, in my judgment, is not conclusive at all upon any subject except possibly the question as to the basis of settlement.

Congressman Flood: I think you entirely misunderstood Mr. Harrison. He distinctly stated at the beginning that the Virginia Commission would be glad to receive a communication from you.

Mr. Mason: Yes, but that is as to the resolution, and the only question is the question of interest.

Mr. Harrison: As indicated by the court.

Congressman Flood: Mr. Harrison indicated that the Virginia Commission was prepared, in response to some resolution that you might adopt, to go further.

Mr. Mason: Let me say this. If you mean by that, that the West Virginia Commission, organized as it is, with only limited advisory power, recently appointed, without having opportunity to go over the question, is to formulate a proposition, not upon the principal, but upon the amounts, as to how the account stands between the two parties, whether we owe you anything or you owe us, and if so how much, of course we would not be prepared to do that at this time.

Chairman Moon, of Virginia: When would you be prepared to render a statement of that kind?

Mr. Mason: My idea, gentlemen, is that this is, to a very large extent, a matter of compromise between the two commissions. We want to meet in that light. We do not want to meet as if still carrying on a lawsuit. We can carry that on at any time we want to. But we are here representing the litigants on the two sides, and we can agree, if we can agree at all, on a basis of settlement. And, further, after we know what that is, we may agree upon amounts.

Simply to say now that we will not talk about or discuss anything except the question of interest, why gentlemen, you place us in a very embarrassing position. I am sure you do not want to do that.

Mr. Moon: That is our view of the situation, but we would be glad to receive your counter suggestions, and have you state your views.

Mr. Mason: If you mean by that, gentlemen, to get down to the concrete and say, "West Virginia will pay you so much money," or, "Virginia owes us so much money," as to that we already have had two statements of that account in West Virginia. One statement brings West Virginia out a little in debt. The gentleman who made that statement, the principal man who made that report, was the old Auditor of Virginia for eight years. Since that report there is another statement which says you owe us. So if you want to go into the concrete and say how the amount stands, gentlemen, we would ask you for further conference upon the matter. But if you want to insist simply that you are not going to talk about anything else, and consider nothing else but interest, the probabilities are that we could settle that question in a very short time. I hope that will not be the view of this commission.

Mr. Moon: Do you suppose that in thirty days you could formulate a suggestion?

Mr. Wells, (of West Virginia): I was about to make this suggestion, that we adjourn until 2 o'clock, for luncheon; that at that hour the West Virginia Commission to meet to formulate its reply to the resolutions offered by the Virginia Commission, and that the Virginia Commission remain subject to our call, until we are ready to submit our reply.

Mr. Mason: Maybe I ought not to do this; if I ought not, pardon me. Suppose you withdraw this resolution, gentlemen, and let us meet as friends; and see whether or not we can settle this question, whether or not, Mr. Harrison, you can answer the questions that I have been propounding, as you and some other people know, in the last forty years, as to what is West Virginia's equitable proportion of the debt.

Mr. Moon: Our view is that the court has answered that question as to principal.

Mr. Mason: I do not want to take up the technical question, that has been settled, especially in view of what the court said upon that subject.

Mr. Harrison: Our view is that the court has answered that vexed question as to the principal.

Mr. Mason: As to the principal?

Mr. Harrison: Yes, as to the principal.

Mr. Mason: The basis, you mean?

Mr. Harrison: Yes, and as to the amount, subject perhaps to any re-

vision of figures that may be necessary. The very tribunal has answered the question which the public men of your State desired should answer it, rather than to have that responsibility upon them.

Mr. Mason: We do not understand the Supreme Court decision or opinion in that light. We do not consider at all that the Supreme Court has settled the amount. It has indicated a basis. It took a different one from yours or ours, either one. You suggested it upon the basis of population, and ours was upon taking the Wheeling ordinance. They said both were wrong, and in their report took the taxable values.

Mr. Harrison: Of course alternative bases were presented to the court.

Mr. Mason: Yes.

Mr. Harrison: But they adopted a basis by which they thought the fairest results would be attained, and on that basis have expressed an opinion as to the amount.

Mr. Mason: Yes, I say that, too.

Mr. Harrison: Now do not misunderstand me, if you please, Mr. Chairman, to indicate that it is the sense of the Virginia Commission not to meet you gentlemen in the utmost spirit of frankness and consider the question of settling the whole controversy.

Mr. Mason: Suppose we just simply answer your first resolution no; there probably would be no answer to the second one, because nobody is going to say we want to put ourselves in opposition to the Supreme Court of the United States or any other court.

Mr. Moon: Which do you mean by the first one?

Mr. Mason: The one which says the only question is the matter of interest. That would be easily answered. As to the other, of course, gentlemen, you do not want to put us in that position and have us say we would place ourselves in opposition to the judgment or decree of the Supreme Court of the United States.

Mr. Harrison: Let me make this suggestion. I hope in the response your commission will make to the resolution, that if you think other questions than interest have been referred by the court to the two commissions for consideration, you gentlemen will kindly indicate what they are, in order that we may understand each other.

Mr. Mason: But, Mr. Harrison, we probably would not be ready now to go over and indicate the items which have been omitted. In order to make a settlement upon the basis suggested by the Supreme Court of course there are two things to be considered. One is the taxable value of the property of the two States. And they have omitted the slave property. The other is the actual amount of the debt.

Mr. Harrison: I suggest you put that in the form of a reply.

Mr. Mason: That may not be the only question, gentlemen.

Mr. Moon: I believe the suggestion has been made by Mr. Wells, which I think a wise suggestion, that we take an adjournment now until 2 o'clock and await the pleasure of the West Virginia Commission, so far as we are concerned. You can notify us when you are ready to continue the conference.

(Thereupon, at 12:30 o'clock P. M., the joint conference was adjourned, subject to the call of the West Virginia Commission.)

CONFERENCE ROOM OF THE VIRGINIA COMMISSION,
NEW WILLARD HOTEL,
Washington, D. C., 5 o'clock, P. M.

At 5 o'clock, P. M., Chairman Mason, of the West Virginia Commission, appeared before the Virginia Commission and presented the following resolutions, which had been adopted by the West Virginia Commission in reply to the resolutions presented to it in joint conference:

1. The debt commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the debt commission on the part of the State of Virginia:

Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: that in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the joint commission, now in session, should consider.

2. *Whereas*, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore, be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee, respectively, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the rights of either party.

After consideration of the above resolutions by the Virginia Commission, Chairman Moon and the members of the Virginia Commission proceeded to the conference room of the West Virginia Commission.

CONFERENCE ROOM, WEST VIRGINIA COMMISSION,

NEW WILLARD HOTEL,

Washington, D. C. 8 o'clock, P. M.

Chairman Moon, of Virginia: Gentlemen of the West Virginia Commission, the Virginia Commission has adopted the following resolutions in response to your resolutions of this afternoon:

The Virginia Commission, having received the following communications from the West Virginia Commission, numbered for convenience 1 and 2:

(1) The debt commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the debt commission on the part of the State of Virginia:

Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt.

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the joint commission, now in session should consider.

(2) *Whereas*, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore, be it

Resolved, That the Virginia and West Virginia Commissions shall appoint a sub-committee, respectively, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly dis-

cuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the rights of either party.

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only question" which the joint conference should consider.

The court said: "Among other things there still remains the question of interest." The Virginia Commission understands this language to mean that there were "other things" to be considered by the court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia Commission, being of opinion that there is no ambiguity in the opinion of the court, and that no conference as to any other matter than the question of interest is called for between the two commissions, respectfully adheres to the interpretation of the opinion and decision of the court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two commissions.

It regrets, however, that the West Virginia Commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia Commission further regrets that the West Virginia Commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia Commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration, if the West Virginia Commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia Commission that a sub-committee of three should be formed from each commission, with instructions to consider all matters involved, and so forth, the Virginia Commission respectfully says that it is agreeable to the appointment of such sub-committees, provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the day of 1913, and report to an adjourned meeting of this joint conference to be held on the day of 1913.

Chairman Moon, of Virginia: I presume it is intended that the meeting of the sub-committees referred to, be held at this place; I do not know.

Chairman Mason, of West Virginia: I take it, gentlemen, that is only a qualified acceptance of the proposition made by us, and that we would want to discuss it further. Whether or not we would want to eliminate from the report to be made by the sub-committees, all questions except the payment of interest, and further, that the proposal of a basis for payment shall come from West Virginia, are questions that we would wish to consider.

I had hoped, gentlemen, you would feel free simply to leave the question open, and that the sub-committee when it met might discuss matters and make such report as it thought proper, insisting, of course, upon your notion about it.

Whether or not we would want to appoint a committee under those restrictions is a matter we would have to think about. I regret very much that you limit it in that way.

Chairman Moon, of Virginia: Would you suggest a separate session of your commission to consider that point?

Chairman Mason, of West Virginia: Yes. I think it will take but a few moments' time.

Chairman Moon, of Virginia: So we will leave you in executive session until you determine what position you will take upon that point.

Chairman Mason, of West Virginia: Yes. I am sorry, gentlemen, you put it in that way.

CONFERENCE ROOM OF THE VIRGINIA COMMISSION,
NEW WILLARD HOTEL,
Washington, D. C., 9:30 o'clock, P. M.

Chairman Mason, of the West Virginia Commission, appeared before the Virginia Commission, and the following occurred:

Chairman Mason, of West Virginia: Gentlemen, the West Virginia Commission elects me to report the following—the West Virginia Commission has received the following statement from the Virginia Debt Commission:

The Virginia Commission, having received the following communications from the West Virginia Commission, numbered for convenience 1 and 2:

(1) The debt commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the debt commission on the part of the State of Virginia:

Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the joint commission, now in session, should consider.

(2) *Whereas*, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of matters involved, and adjusting a working programme; therefore, be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the rights of either party.

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only question," which the joint conference should consider.

The court said: "Among other things there still remains the question of interest." The Virginia Commission understands this language to mean that there were "other things" to be considered by the court before it

reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia Commission, being of opinion that there is no ambiguity in the opinion of the court, and that no conference as to any other matter than the question of interest is called for between the two commissions respectfully adheres to the interpretation of the opinion and decision of the court, as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two commissions

It regrets, however, that the West Virginia Commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia Commission further regrets that the West Virginia Commission has not seen fit to indicate or suggest an amount the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia Commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration, if the West Virginia Commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia Commission that a sub-committee of three should be formed from each commission, with instructions to consider all matters involved, and so forth, the Virginia Commission respectfully says that it is agreeable to the appointment of such sub-committees, provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the court in its decision to be West Virginia's share of the principal of the debt.

(2) Any further proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the day of, 1913, and report to an adjourned meeting of this joint conference to be held on the day of 1913.

And in reply to the last communication of the Virginia Debt Commission the West Virginia Debt Commission says that it is anxious to proceed with the negotiations, but cannot consent to agree in advance that only the question of interest shall be considered, or that the West Virginia sub-committee shall be required to first submit a proposition looking to a settlement. This commission is willing and anxious to approach a settlement upon equal terms, leaving, in the first instance, all questions of procedure to the said sub-committees.

This committee did not understand the remarks made by Mr. Harrison to-day as a proposition. We considered only the written resolutions presented to us.

In reply to the remarks made by Mr. Harrison at the joint meeting to-day, and referred to in your communication, we would say that this commission does not feel sufficiently acquainted with the questions involved—for reasons heretofore stated—to submit a proposition at this time, and asks that the whole subject matter be submitted to the sub-committees hereinbefore referred to, with the understanding that the said sub-committees be required to report their action for approval to their respective commissions at a time in the near future to be now agreed upon.

Chairman Moon, of Virginia: What do we understand by "the whole matter"?

Chairman Mason, of West Virginia: Interest and all; everything to go to the sub-committee; and let it thresh it out, and let it make its report.

Mr. Harrison, of Virginia: You mean to reopen the whole case and

consider the questions *de novo*? That is what you mean by "the whole matter," I suppose.

Chairman Mason, of West Virginia: That is our view. That is, we do not mean to go back to the courts, or to the commissioners: but we would consider among ourselves, that is, the sub-committee, and discuss the whole matter.

Mr. Flood, of Virginia: All other matters, as well as interest?

Chairman Mason, of West Virginia: All other matters, as well as interest; yes, sir. I do not mean, of course, to have this go back to the courts, or the commissioners, necessarily; but so far as we are concerned, in discussing and settling the matter, we want the whole question considered. We are not willing to say in advance that there is no question involved but interest.

Chairman Moon, of Virginia: Do not you misquote us in stating that we ask the proposition in advance? We do not ask it in advance, do we?

Chairman Mason, of West Virginia: No; I say it is not of very much interest who makes the first proposition of settlement, but you say that the sub-committee shall first make the proposition of settlement. Our idea is to leave that question of procedure to the sub-committees. It makes no difference which has the first say or which has the last say. We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure.

Chairman Moon, of Virginia: The impression made on my mind on hearing the resolution read, was that you intended to convey the idea that we required you first to make a proposition for compromise in settlement of the whole matter, to us. Is that what you intend to convey?

Chairman Mason, of West Virginia: Yes; that is the way we understood your second proposition.

Chairman Moon, of Virginia: The second proposition, not the first one.

Chairman Mason, of West Virginia: I say, your number two, in the last proposition.

Mr. Flood, of Virginia: Your objection to our second proposition is that we require first a suggestion of compromise to come from your sub-committee?

Chairman Mason, of West Virginia: Yes. We suggest now that that is a question of procedure and should be left open to the sub-committee; to leave it as a question of procedure.

Chairman Moon, of Virginia: To be entirely frank with you, it seems to me this morning this was made plain, that the court gave the principals, and that we presented the details upon which the interest might be computed, according to rules of interstate or international law, by which an accurate statement could be made up of the interest. That subject we do not expect to be considered, except as a whole. And we invited some proposition from you gentlemen as to a settlement of the matter, inasmuch as the Supreme Court has discussed the matter and left it open, to a certain extent.

Chairman Mason, of West Virginia: I understand your view is that the Supreme Court has settled the question of amount. We do not look at it alike.

Chairman Moon, of Virginia: No, the amount of the principal.

Chairman Mason, of West Virginia: I say, the amount of the principal. We do not look at it that way. We want the whole matter to be taken up by the sub-committees to see just what we ought to pay, if anything. Then it will come back to us in that shape. Our committee would not be willing to concede the fact that the only thing to be agreed upon was the question of interest.

Mr. Harrison, of Virginia: You mean, by "the whole subject matter," to reopen the whole case and consider the matters *de novo*?

Chairman Mason, of West Virginia: Yes, sir; that is as far as the commissions are concerned.

After careful consideration of the above resolutions, a resolution in reply was adopted, and Chairman Moon proceeded to the conference room of the West Virginia Commission, where the following occurred:

CONFERENCE ROOM OF THE WEST VIRGINIA COMMISSION,
NEW WILLARD HOTEL,
Washington, D. C., 11:15 o'clock P. M.

Chairman Moon, of Virginia: The Virginia Commission has instructed me to give you the following communication:

The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission stating in effect that the conference between the two commissions must embrace a consideration *de novo* of the entire case, both as to principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed.

Chairman Mason, of West Virginia: That being true, are we through?

Chairman Moon, of Virginia: I do not know. You gentlemen can consider that matter. I have no authority to speak for the Virginia Commission except to deliver that message. We give that to you for your consideration.

Chairman Mason: We made you a proposition.

Chairman Moon, of Virginia: Yes, I know; but I have no authority beyond that paper.

Chairman Mason, of West Virginia: If you have reached that conclusion, it is not necessary for us to continue our negotiations for the present.

Chairman Moon, of Virginia: That is for you to say.

Chairman Mason of West Virginia: No, that is not for us. We have said we could not do the other; you say you cannot do this.

Chairman Moon, of Virginia: We say that we feel constrained to decline to continue negotiations upon the basis which you propose.

Chairman Mason, of West Virginia: Yes.

Chairman Moon, of Virginia: Now, the question is, what the basis is.

Chairman Mason, of West Virginia: The basis is, as I understand it, that you will insist upon your contention that the only question to be considered is the question of interest.

Chairman Moon, of Virginia: Oh, no. It is all set forth at length in our communications. I am not undertaking to speak for the Virginia Commission in this respect.

Chairman Mason, of West Virginia: I do not understand just what shape that leaves us in. If it is simply to stop any further negotiations about it, we might as well do it at one time as another.

Chairman Moon, of Virginia: I did not write that resolution. It was drawn by the members of the Virginia Commission, and they have passed it. I have no authority except to deliver it to you for your consideration. We regret very much that negotiations cannot proceed on a different basis; that is all.

Chairman Mason, of West Virginia: So do we. But let us remain in session for a few minutes, and we will see whether we will quit, or not.

Chairman Moon, of Virginia: Certainly.

CONFERENCE ROOM OF THE VIRGINIA COMMISSION,
NEW WILLARD HOTEL,
Washington, D. C., 12:05 o'clock Midnight.

Chairman Mason, of the West Virginia Commission, appeared before the Virginia Commission, and presented the following resolution:

The following communication was received from the Virginia Commission after 11 o'clock P. M.

The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed.

Pending a consideration of the communication Mr. Miller moved that owing to the lateness of the hour at which the communication was received, the further consideration of the same be postponed until to-morrow morning, July 26, 1913, at 10 o'clock, and that the West Virginia Commission adjourn until that hour.

Which motion was put by the chair and carried by the unanimous vote of the commission, at 12 o'clock midnight.

(In pursuance of the above resolution, further proceedings were adjourned until to-morrow, Saturday, July 26, 1913, at 10 o'clock A. M.)

Saturday, July 26, 1913.

CONFERENCE ROOM OF THE VIRGINIA COMMISSION.

11:40 o'clock A. M.

Chairman Mason, of West Virginia, appeared before the Virginia Commission and presented the following resolution:

The Virginia Debt Commission on the part of the State of West Virginia received at 11:15 last night the following communication from the Virginia Commission:

The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed.

In reply to the foregoing communication the West Virginia Commission regrets that the Virginia Commission has declined to submit the matters in question to a sub-committee, as heretofore proposed by the West Virginia Commission, and the West Virginia Commission now suggests that the two commissions have a joint meeting on the day of, at, for the purpose of further considering a settlement of West Virginia's proportion, if any, of the Virginia debt proper to be borne by the State of West Virginia and to arrive, if possible, at some adjustment thereof.

(The above resolutions were considered by the Virginia Commission, a reply adopted, and Chairman Moon proceeded to the conference room of the West Virginia Commission to present the same.)

CONFERENCE ROOM OF THE WEST VIRGINIA COMMISSION,

NEW WILLARD HOTEL,

12:30 o'clock, P. M.

Chairman Moon, of Virginia: I am instructed by the Virginia Commission to present to you the following communication:

The Virginia Commission have considered the suggestion of the West Virginia Commission for an adjournment of the conference between the two commissions.

If it is the purpose of the West Virginia Commission to insist that the joint conference shall embrace a consideration *de novo* of the entire case, both as to principal and interest involved, then the Virginia Commission can perceive no advantage to result from further negotiations. The

Virginia Commission cannot recede from their views as heretofore announced to the West Virginia Commission in respect to the matters to be embraced in the conference between the two commissions.

With this understanding it consents to the adjournment of the conference to Tuesday, August 12, 1913, at 10 o'clock A. M., at the New Willard Hotel, Washington.

CONFERENCE ROOM OF THE VIRGINIA COMMISSION,
NEW WILLARD HOTEL,
3:00 o'clock, P. M.

Chairman Mason, of the West Virginia Commission, appeared before the Virginia Commission and presented the following resolution:

The West Virginia Commission acknowledge receipt of the communication from the Virginia Commission concurring in the suggested adjournment upon certain terms and conditions, which terms and conditions the West Virginia Commission declines to be bound by. We, however, agree to the time and place of adjournment suggested by you and insist that this adjournment shall be, and is, without terms or conditions and without prejudice to the rights of either party.

(After an informal discussion, the conference at 3:30 o'clock P. M., adjourned to meet on Tuesday, August 12, 1913, at 10 o'clock A. M., at the New Willard Hotel, Washington, D. C.)

Correct:

JOHN B. MOON,
Chairman Virginia Commission.

The adjourned meeting of the conference mentioned was not held. On the 22nd day of September, 1913, a meeting of the Virginia Debt Commission was held in the city of Richmond, and a resolution was adopted instructing me, as the Attorney General of Virginia, to give notice to West Virginia that a motion would be made, to the Supreme Court of the United States, on the 13th day of October, 1913, "to speed the cause." Accordingly said notice was given, and the grounds of the motion were duly prepared and printed in conformity with the rules of the court; and, on the date named in the notice, the motion was duly made. A copy of said notice and of the printed copy of the grounds of said motion are as follows:

RICHMOND, VA., September 22, 1913.

To the Honorable A. A. LILLY,
*Attorney General of West Virginia,
Charleston, West Virginia.*

Please take notice that in the suit of the *Commonwealth of Virginia v. The State of West Virginia*, No. 2 Original, pending in the Supreme Court of the United States at Washington, D. C., I shall on Monday, the 13th day of October, 1913, move the said court to proceed with a further hearing and determination of said case, and to settle and determine all questions left open and undetermined by its decision rendered on the 6th day of March, 1911, and will base said motion on the record of the case and the facts stated in the within statement in writing, and exhibits filed therewith.

Respectfully,

COMMONWEALTH OF VIRGINIA,
By SAMUEL W. WILLIAMS,
Attorney General of Virginia.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 2. ORIGINAL. OCTOBER TERM, 1913.

Commonwealth of Virginia v. State of West Virginia.

In Equity.

MOTION OF THE COMPLAINANT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Commonwealth of Virginia, through Samuel W. Williams, her Attorney General, respectfully shows to the court:

1. That in the opinion of this court, delivered on March 6, 1911, by Mr. Justice Holmes, having ascertained the amount of \$7,182,507.46 to be West Virginia's share of the principal debt, said:

"We think it best at this stage to go no further, but to await the effect of a conference between the parties, which, whatever the outcome, must take place."

2. That on February 21, 1913, the legislature of West Virginia, sitting in regular session, adopted a joint resolution, in words and figures as follows: viz.:

"Conference Committee's Substitute for House Substitute for Senate Joint Resolution No. 5.

(Adopted February 21, 1913)."

"Creating a commission, known as the Virginia Debt Commission, provide for arranging and settling with the Commonwealth of Virginia the proper proportion of the public debt of the original Commonwealth of Virginia, if any should be borne by West Virginia, to take into consideration all matters arising between the Commonwealth of Virginia and the State of West Virginia in reference to said original public debt, and to report its proceedings to the governor of the State.

"Whereas, The Commonwealth of Virginia instituted a suit in the Supreme Court of the United States against the State of West Virginia, to have the State of West Virginia's proportion of the public debt of Virginia as it stood before one thousand eight hundred and sixty-one, ascertained and satisfied; and,

"Whereas, At the October term, one thousand nine hundred and ten, the Supreme Court of the United States made a finding that the share of the principal debt of the original Commonwealth of Virginia to be borne by the State of West Virginia, was seven million one hundred and eighty-two thousand six hundred and seven dollars and forty-six cents; and,

"Whereas, Said court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had between the States upon all the questions involved in said litigation, as might lead to a settlement of the same; therefore, be it

Resolved by the Senate of West Virginia, the House of Delegates concurring therein:

"That a commission of eleven members, known as the Virginia Debt Commission is hereby created. The members of said commission shall be

appointed by the Governor, two of whom shall be chosen from each congressional district of the State, and one at large, not more than six of whom shall belong to any one political party, and all resignations or vacancies in the said commission as they occur shall be filled by the appointment of the Governor.

"Said commission is authorized and directed to negotiate with the Commonwealth of Virginia, or with any person or committee owning or holding any part of the said indebtedness for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia, proper to be borne by the State of West Virginia.

"The commission is hereby directed to ascertain and report upon and give the utmost publicity to all the facts in relation to the pending suit instituted against the State of West Virginia by the Commonwealth of Virginia and to ascertain and report upon and give like publicity of all the facts and conditions under which the West Virginia certificates are held or owned, together with the names and residences of the persons having the legal or equitable right to receive from West Virginia whatever may be ascertained to be payable thereon.

"To ascertain and report as to any part of the Virginia debt claimed against the State of West Virginia, which is owned or held or claimed to be due, at law or in equity, by the Commonwealth of Virginia in her own right; and having made the investigation required hereby, said commission is authorized and directed to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia.

"A majority of said commission shall have authority to act. The commission shall choose its chairman and appoint its secretary and other necessary officers.

"The expense properly incurred by the commission and its individual members, including compensation of said members at the rate of ten dollars per day for the time actually employed, shall be paid by the State out of the moneys appropriated for said purpose.

"The commission shall make a report to the Governor as soon as practicable and upon receipt of said report the Governor shall convene the legislature for the consideration of the same.

"The commission is hereby authorized to sit within or without the State and to send for papers and records and to examine witnesses under oath."

3. That pursuant to said joint resolution, the Governor of West Virginia did appoint the eleven members of the debt commission therein provided for, and that on a later day the Honorable John W. Mason, of Fairmont, West Virginia, was chosen as the chairman of such commission. That after correspondence between Governor Hatfield, of West Virginia, and Governor Mann, of Virginia, filed herewith as "Exhibit A," the chairmen of the commissions of the two States arranged that the proposed joint conference between the States through their respective commissions, should be held at the New Willard Hotel, in the city of Washington, on the 25th day of July, 1913.

4. That on the day appointed the two commissions did meet in joint conference and the proceedings of said joint conference, stenographically reported, were as shown in "Exhibit B" herewith filed as a part hereof, for the information of the court.

That said joint conference, after the foregoing proceedings were had, adjourned to meet at the same place on the 12th day of August, 1913. That on the 8th day of August, the Honorable John W. Mason, chairman of the West Virginia Commission, notified the Honorable John B. Moon, chairman of the Virginia Debt Commission, by telegraph as follows, viz.:

"FAIRMONT, W. VA., August 8, 1913.

JOHN B. MOON,

Charlottesville, Virginia.

Certain of our debt commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet at Charleston next Monday and would have to ask that time be extended to a day in the near future. Under these circumstances I suggest Washington meeting be now recalled.

(Signed) JOHN W. MASON.

The notice and agreement for the meeting to be held on the 12th of August was accordingly recalled.

The Commonwealth of Virginia, in view of the recitals and facts herein stated and contained, respectfully moves the court that the cause be speeded so that a final decree may be made therein and this controversy brought to a close.

COMMONWEALTH OF VIRGINIA,

By SAMUEL W. WILLIAMS,

Attorney-General of Virginia.

West Virginia, through her counsel, appeared on this motion, and filed answer thereto, which is as follows:

IN THE SUPREME COURT OF THE UNITED STATES.

No. 2. ORIGINAL. OCTOBER TERM, 1913.

Commonwealth of Virginia v. State of West Virginia.

In Equity.

RESPONSE OF THE DEFENDANT TO THE MOTION OF THE COMPLAINANT SUBMITTED
IN THE ABOVE ENTITLED CAUSE.

And now, on this, the 13th day of October, 1913, comes the respondent, the State of West Virginia, by A. A. Lilly, Esq., the Attorney-General of said State and, for answer to the motion submitted in the above cause to

"Proceed with a further hearing and determination of said case, and to settle and determine all questions left open and undetermined by its decision rendered on the sixth day of March, 1911,"

says that—

1. This Honorable Court, in its opinion in this cause rendered on the 6th day of March, 1911, after having established the basis for determining the equitable proportion of the public debt of the original State of Virginia which was assumed by the State of West Virginia at the time of its creation as a State, suggested a conference between the two litigating States, to the end that a final decree might be entered by agreement without further contention.

2. The State of West Virginia, in a sincere effort to follow this suggestion, at the first possible moment after it had been made, under its Constitution and laws, undertook, through its legislature, to establish a commission competent to deal with the question without further contention, and in the spirit and temper that this court indicated should characterize the situation.

Under the West Virginia Constitution, the sessions of the legislature of that State are held biennially, and not annually. The provision of the State Constitution governing this question reads as follows:

"The legislature shall assemble at the seat of government biennially, and not oftener, unless convened by the Governor."

W. Va. Constitution of 1872, Art. VI., Sec. 18.

And the regular biennial session thereof in the year 1911 had come to an end prior to the delivery of the opinion of this court in this cause on the 6th day of March, 1911, wherein the suggestion of a conference between the two States was made; so that a commission looking to the execution of this court's suggestion could not have been established by a joint resolution of the two legislative houses of the State during that session, and this was the only means, in the judgment of the officials of the State, by which the court's suggestion could be effectuated.

It is true that the Honorable William E. Glasscock, then Governor of the State of West Virginia, did, by proclamation of the 18th day of April, 1911, convene the legislature of said State in extraordinary session on the 16th day of May, 1911; but such proclamation did not embrace the consideration, or authorize the appointment, of a Virginia Debt Commission, and, in consequence, under the Constitution of the State, the legislature, when so convened, could not enter upon the business of appointing such commission. The constitutional provision referred to reads as follows:

"The Governor may, on extraordinary occasions, convene at his own instance the legislature; but, when so convened, it shall enter upon no business except that stated in the proclamation by which it was called together."

W. Va. Constitution of 1872, Art. VII., Sec. 7.

The facts and circumstances surrounding this extraordinary session of the legislature of West Virginia, and the reasons why the proclamation of the Governor convening it did not call for the appointment of a Virginia Debt Commission, were fully set forth and given in the response of the State of West Virginia to the like motion of the State of Virginia made and submitted in this cause on the 10th day of October, 1911, and were considered by this honorable court a sufficient justification for the State of West Virginia to postpone the appointment of a Virginia Debt Commission until the regular session of the legislature of that State, to be held in January, 1913.

3. At the time appointed by the Constitution of the State of West Virginia, its legislature next met in regular session on the 8th day of January, 1913, and, during that session, that is to say, on the 21st day of February, 1913, a joint resolution was passed creating a Virginia Debt Commission, to be composed of eleven members, to be appointed by the Governor, and with authority and direction, among other things, "to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper to be borne by the State of West Virginia." This joint resolution is correctly set forth in the second paragraph of the motion of the complainant filed herein, and a copy thereof was transmitted by the Governor of West Virginia to the Governor of Virginia on the 12th day of March, 1913, with the accompanying promise that the commission therein provided for would be appointed without unnecessary delay.

4. Within eleven days after the passage of the foregoing resolution, that is to say, upon the 4th day of March, 1913, the newly elected Governor of the State of West Virginia, the Honorable H. D. Hatfield, was inaugurated; and, notwithstanding the fact that he found martial law declared,

and in existence, in a large mining district in the State, requiring the services of nearly the entire National Guard of the State, and calling for the devotion of almost his entire time, to the end that blood and bankruptcy might be avoided, which trouble was speedily contributed to during the latter part of the month of March by disastrous floods in the Ohio Valley, necessitating State aid and State protection, he was not unmindful of the necessity for the settlement of the Virginia debt question, and, after due reflection, in an effort to find suitable men for the consummation of this honorable court's suggestion, on the 19th day of April, 1913, appointed the eleven commissioners required by the legislative resolution. Several of the commissioners so appointed, after some hesitation and delay, declined, and it became necessary to seek other competent and suitable men. This was done without unnecessary delay, and the commission was finally completed by the filling of vacancies on the 10th day of June, 1913, and, upon the same day, it was organized by the election of the Honorable John W. Mason as chairman, and of the Honorable John T. Harris as secretary.

Without the loss of any time, that is to say, upon the same day (June 10, 1913), the Governor of the State of West Virginia communicated by letter with the Governor of the State of Virginia, notifying him of the passage by the West Virginia Legislature of the foregoing resolution establishing the Virginia Debt Commission; that said commission had been organized, and would meet again on the 22d day of July, 1913, and would be pleased to meet the Virginia Commission at any time after that date, also requesting the Virginia Commission to state where it would be agreeable to hold a joint meeting of the two commissions. Said letter enclosed not only a copy of the joint resolution, but also a list of the names of the members of said commission. Said letter is truly set forth as "Exhibit A" to the motion of the complainant herein.

5. Pursuant to the adjournment of June 10, 1913, the West Virginia Commission again met at the city of Charleston, in the State of West Virginia, on the 22d day of July, 1913, and on the 23d day of that month, adjourned to meet in the city of Washington, D. C., on the 24th day of July, 1913. Pursuant to this last adjournment, it met at Washington on the 24th day of July, and adjourned until the next day, at which time it met in joint session with the Virginia Commission.

6. At the joint conference of the two commissions held at Washington on the 25th day of July, 1913, as aforesaid, the Virginia Commission took the position that, under the decision of this court, the sole matter left open and remaining for consideration and adjustment by the two commissions was "the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal" of Virginia's debt. This position is evidenced by the first paragraph of a resolution adopted by the Virginia Commission, and presented through its chairman to the West Virginia Commission. In response to this resolution, the West Virginia Commission, through its chairman, among other things, wrote the following statement:

"From our standpoint and our reading of the opinion of the Supreme Court, other things are to be considered besides the question of interest."

Following this response of the chairman of the West Virginia Commission, Mr. Randolph Harrison, selected as spokesman for the Virginia Commission, made a lengthy statement, wherein he elaborated the Virginia position that nothing but interest should be considered, giving his reasons therefor, and embracing therein the construction placed by the Virginia Commission upon the opinion of this court delivered upon the 6th day of March, 1911, in this cause; but proceeding, he further said:

"We also recognize the fact that it is competent for the two commissions to consider the question of settlement of the entire controversy, precisely as we might do if there were no other question pending before us, and, if it is the pleasure of the West Virginia Commission to take up that question, and communicate to the Virginia Commission at this conference a proposition looking to a compromise settlement of the whole controversy, we will be glad to receive it, and will give it respectful and fair consideration."

In further response to the Virginia position, the West Virginia Commission adopted and presented to the Virginia Commission a resolution, wherein, among other things, it was set forth that, in the view of the West Virginia Commission, the then conference had for its object "a preliminary discussion and exchange of views, and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working program;" and it was proposed that each commission should appoint a sub-committee consisting, respectively, of three of its own members, "with instructions to confer at the earliest convenient time and place, and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that should be submitted back to the two respective commissions for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two commissions."

To the foregoing resolution the Virginia Commission, by like resolution, replied by agreeing to the appointment of a sub-committee of three formed from each commission, provided the consideration of said committees should be confined to the following matters and things:

"(1) The amount of interest which West Virginia should pay upon the sum ascertained by the court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia."

To this the West Virginia Commission, through its chairman, replied that it was anxious to proceed with the negotiations, but could not consent to agree in advance that only the question of interest should be considered, or that the West Virginia sub-committee should be required to first submit a proposition looking to a settlement, adding that it was willing "and anxious to approach a settlement upon equal terms, leaving in the first instance, all questions of procedure to the said sub-committees." It further answered that it did not feel sufficiently acquainted with the questions involved—for reasons theretofore stated—to submit a proposition at that time, and asked that the whole subject-matter be submitted to the sub-committees, "with the understanding that the sub-committees be required to report their action for approval to their respective commissions at a time in the near future to be now agreed upon."

The Virginia Commission replied that it felt constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed."

As a consequence, the sub-committees were not appointed, and, after expressing regret, the West Virginia Commission suggested a future meeting of the joint commissions, to which the Virginia Commission, after reiterating its former position, and stating that it could not recede therefrom, agreed, and suggested an adjournment until August 12, 1913, at the New Willard Hotel, Washington, provided the future conference should not embrace a consideration *de novo* of the entire case, and the West Virginia Commission agreed to the time and place of adjournment, but insisted that

the adjournment should be "without terms and conditions, and without prejudice to the rights of either party." Thereupon, the conference was adjourned to meet on Tuesday, August 12, 1913, at ten o'clock, A. M., at the New Willard Hotel, Washington, D. C.

The matters and things hereinbefore in this paragraph alleged are set forth in detail in the record of the "Proceedings of a Joint Conference between the Virginia Debt Commissions of the States of Virginia and West Virginia," printed herewith as a part hereof, and marked "Exhibit A."

7. After the West Virginia Commission returned home, the chairman thereof, through correspondence with its various members, discovered that it would not be prepared, on account of shortness of time, for the adjourned joint conference of the two commissions to be held on August 12th, and, thereupon, on the 9th of August he telegraphed to the chairman of the Virginia Commission as follows:

"Hon. JOHN B. MOON,
Charlottesville, Va.

Certain our Debt Commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet Charleston Monday, and will have to ask that time be extended to a day in near future. Under these circumstances, I suggest Washington meeting be now recalled.

JOHN W. MASON."

8. The West Virginia Commission convened again at Charleston, West Virginia, on the 11th day of August, 1913, and the chairman reported his telegram to Mr. Moon, and, having received no reply thereto, was directed by the Commission to at once communicate with Mr. Moon by telephone. This he did, and Mr. Moon then informed him that he had notified the members of the Virginia Commission that the August 12th meeting had been recalled, and Mr. Mason suggested that a time be fixed for another meeting in the near future, to be arranged by the chairmen of the two commissions, to which Mr. Moon assented.

At this same meeting, the West Virginia Commission adopted the following resolution:

"*Resolved*, That a sub-committee, consisting of Messrs. Ord, Young and Ice, is hereby appointed to co-operate with the Attorney-General and the associate counsel in this case in drawing up the necessary data and statistics as a basis for propositions to be made to the Virginia Commission, and that either one, two or all of said sub-committee at their convenience, are authorized to perform the work assigned them in connection with this matter."

In pursuance of the foregoing resolution the said sub-committee entered upon its duties, and, after making careful investigation, met in the city of Charleston on the 18th day of September, 1913, and adopted the following resolution:

"WHEREAS, The sub-committee of the West Virginia Commission of the Virginia Debt Commission appointed to formulate a proposition of settlement to be submitted to the Virginia Commission find it necessary to ascertain certain facts and figures not in the record, and not available from the record, which will take some time, therefore, be it

Resolved, That the Honorable John W. Mason, chairman of the West Virginia Commission, be requested to inform the Virginia Commission, by a letter directed to its chairman, Mr. Moon, that we are diligently at work on a proposition to be submitted to the Virginia Commission, but that further time will be needed to complete it."

In obedience to the foregoing resolution, the chairman of the West Virginia Debt Commission, on the 22d day of September, 1913, addressed and mailed the following letter to the Hon. John B. Moon, chairman of the Virginia Debt Commission:

"FAIRMONT, WEST VIRGINIA, September 22, 1913.

Honorable J. B. MOON,
Chairman Virginia Debt Commission,
Charlottesville, Virginia.

MY DEAR SIR:

I am instructed by a sub-committee of the West Virginia Commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia, relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia Commission, that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your commission at the earliest moment; but that it will yet require some three or four months time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee, and hope it will be agreeable to your commission to consider the same favorably.

In the meantime, if your commission should desire to submit any suggestions or propositions to this commission looking to the same end, we would gladly, without unnecessary delay, consider the same.

With great respect I remain yours, etc.,

JOHN W. MASON,
Chairman Virginia Debt Commission."

To the foregoing letter, Chairman Moon, under date of the 24th of September, 1913, made reply, and, among other things, said:

"I am sure you will pardon my adverting to the fact that more than two years and a half ago (March 6, 1911), the court referred the interest question and any other matter of detailed computation to the two States for their possible agreement, and we sent a sub-committee to your State who returned without being able to accomplish any results.

Our commission, therefore, felt constrained to ask for some conclusion of the question of interest involved in the controversy, and requested our Attorney-General to act accordingly, though I do not know that this would preclude an agreement, if one could be arrived at in the premises."

9. It appears, therefore, from the foregoing facts and from the motion filed herein by the complainant, which is dated the 22d day of September, 1913, that, upon the very day that the chairman of the West Virginia Commission was mailing his letter aforesaid to the chairman of the Virginia Commission wherein he stated "that the West Virginia Commission has in course of preparation a proposition looking to a settlement to be presented to your commission at the earliest moment," but requesting a little more time, the Attorney-General of Virginia was preparing the present motion to be presented to this honorable court, for the purpose, presumably, of ending the negotiations, and renewing the controversy in court, contrary to the spirit of the suggestion of this honorable court as the same is construed and interpreted by this respondent. The motion was served herein upon the 26th day of September, 1913.

The respondent prints herewith a true copy of the proceedings of the

West Virginia Commission referred to in the foregoing paragraphs eight and nine as a part hereof, and marks the same "Exhibit B."

10. This respondent, further answering the motion, says that, at the time the letter aforesaid of the 22d of September, 1913, was written by the chairman of the West Virginia Commission to the chairman of the Virginia Commission, requesting further time, and stating that a proposition looking to a settlement was in course of preparation by the West Virginia Commission the sub-committee of the West Virginia Commission was diligently and faithfully at work gathering data upon which to base its proposition of settlement to the Virginia Commission, and is still at work thereon, notwithstanding the service of the notice of the motion herein.

It further says that said letter of the 22d of September, 1913, was prepared and sent to the chairman of the Virginia Commission in the utmost good faith, and did not seek unnecessary delay, in the judgment of the West Virginia Commission.

11. It is further respectfully submitted that the West Virginia Commission, as it now stands, was not appointed until the 10th day of June, 1913, a period of only four months ago; that it was not prior to its appointment connected in any way with the management or conduct of the litigation in this case, and was, and still is, to a certain extent, unfamiliar with the history and details of the controversy, including the litigation springing thereout; that it should not, in a matter of this importance, proceed with undue haste; that its full membership did not even receive printed copies of the opinions of this honorable court delivered in this cause upon the 6th day of March, 1911, and the 30th day of October, 1911, respectively, until about the 1st day of August, 1913, at which time this respondent printed for the benefit and information of its commission, a volume, consisting, among other things, of the opinions of this honorable court, and the report of the master in this cause; that, upon the other hand, the present Virginia Commission has been in existence for many years, and has been, as this respondent is informed, identified with and in charge of the present litigation between the two States, and naturally requires less time to properly prepare for the settlement of this controversy in accordance with the suggestion of this honorable court than does the commission of this respondent.

It is also true that the present Attorney-General of the State of West Virginia, who, under the Constitution and laws of that State, is its chief law officer, was not inducted into office until the 4th day of March in the present year, and during the early months of the present State administration was largely occupied on behalf of the State with the strike and flood difficulties set forth in the fourth paragraph hereof, thereby abbreviating the time that he might otherwise have devoted to assisting and advising the commission herein. He was never before his recent election to his present office connected in any way with the Virginia debt question or litigation, and, like the commission and other officers of this respondent, was under the necessity of informing himself in respect thereto. He has been, and is now, diligently at work with the commission of this respondent and has but one object in view, and that is the consummation of the suggestion of this honorable court made to the parties in its opinion of March 6, 1911.

12. This respondent further says that, while its commission and the sub-committee thereof, together with the Governor and Attorney General of the State, were diligently and conscientiously using every effort which they reasonably could use, and while they were exercising due diligence and were proceeding with all deliberate speed to carry into execution the requirements imposed upon them by the joint resolution of the legislature of the State of West Virginia of February 21, 1913, and while they were formulating a proposition to be made to the Virginia Commission, as requested by said commission at the Washington conference hereinbefore referred to, to the end that the matters in controversy between the two States might be settled in accordance with the suggestion of this honorable

court, made in its opinion rendered March 6, 1911, as interpreted by its opinion rendered October 30, 1911, the Commonwealth of Virginia served notice of the present motion.

13. Your respondent further says that unless the said controversy is amicably adjusted and settled through the agency of its commission, by negotiations with the Virginia Debt Commission, it will be powerless to do anything towards such adjustment and settlement, as its legislature is not now in session and there is no officer, agent or representative of West Virginia empowered to adjust and settle said controversy or to conduct negotiations to that end, except said commission provided for and appointed under and by virtue of said joint resolution; and it further represents that since the appointment of its said commission, it has been relying upon it so to conduct negotiations with the Commonwealth of Virginia as to consummate such an adjustment and settlement of said controversy as to commend the result of its negotiations to the favorable consideration of the Governor and the legislative branch of its government, and thus terminate said controversy to the satisfaction of her people and the Commonwealth of Virginia, and upon the principles of honor and justice to both States, and in fairness to the holders of the debt for whose benefit this controversy is still pending.

14. In view, therefore, of the foregoing considerations it is respectfully submitted that the motion of the complainant is premature and ought not to prevail; that no further action should be taken by this court until the West Virginia Commission has had a reasonable opportunity to present its intended proposition of settlement to the Virginia Commission.

All of which is respectfully submitted.

STATE OF WEST VIRGINIA,
By A. A. LILLY,
Attorney General.

The Supreme Court passed on this motion on the 10th day of November, 1913, and the following is a copy of the opinion of the court:

SUPREME COURT OF THE UNITED STATES.

No. 2. ORIGINAL. OCTOBER TERM, 1913.

Commonwealth of Virginia v. State of West Virginia.

ON MOTION OF THE STATE OF VIRGINIA TO PROCEED TO A FINAL HEARING.

(November 10, 1913.)

Mr. Chief Justice White delivered the opinion of the court.

In March, 1911, (*Virginia v. 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. In October, 1911, we overruled without prejudice a motion made by Virginia to proceed at once to a final determination of the cause on the ground that there was no reasonable hope of an amicable adjustment. *Virginia v. West Virginia*, 222 U. S., 17.

The motion on behalf of the State of Virginia now before us is virtually a reiteration of the former motion to proceed and is based upon the ground that certain negotiations which have taken place between the Virginia Debt Commission representing Virginia, and a commission representing West Virginia, appointed in virtue of a joint resolution of the legislature of that State, adopted in 1913, make it indubitably certain that no hope of an adjustment exists. But without reviewing the course of the negotiations relied upon, we think it suffices to say that in resisting the motion the Attorney General of West Virginia on behalf of that State insists that the view taken by Virginia of the negotiations is a misapprehension of the purposes of West Virginia, as that State since the appointment of the commission on its behalf has been relying upon that commission "to consummate such an adjustment and settlement of said controversy as to commend the result of its negotiations to the favorable consideration of the Governor and the legislative branch of its government, and thus terminate said controversy to the satisfaction of her people and the Commonwealth of Virginia, and upon the principles of honor and justice to both States, and in fairness to the holders of the debt for whose benefit this controversy is still pending." The Attorney General further stating that in order to accomplish the results just mentioned, a sub-committee of the commission of West Virginia has been and is engaged in investigating the whole subject with the purpose of preparing a proposition to be submitted to the Virginia Debt Commission, to finally settle the whole matter and that a period of six months' time is necessary to enable the committee to complete its labors.

Having regard to these representations, we think we ought not to grant the motion to proceed at once to consider and determine the cause, but should, as near as we can do so, consistently with justice comply with the request made for further time to enable the Commissioners of West Virginia to complete the work which we are assured they are now engaged in performing for the purpose of effecting a settlement of the controversy. As, however, the granting of six months' delay would necessitate carrying the case possibly over to the next term and therefore be in all probability an extension of time of more than a year, we shall reduce somewhat the time asked and direct that the case be assigned for final hearing on the 13th day of April next at the head of the call for that day."

From the foregoing it will be seen that the present attitude and status of this case seems to indicate that in the near future we will see the successful termination of this long drawn out and important litigation—"a consummation devoutly to be wished."

2. *Richmond, Fredericksburg and Potomac Railroad Company v. Commonwealth.* At the date of my last report, this case was pending, on appeal, in the Supreme Court of the United States; and attention was then called to the fact that an act had been passed by the General Assembly, creating a commission to deal with the matters involved in this litigation. Acting under the authority conferred by said statute, the commission thereby created, after the fullest investigation, in which I rendered to the commission the best services of which I am capable, a compromise of the matters in controversy was finally reached which was embodied in a contract executed on the 3d day of March, 1913, a copy of which is as follows:

COMPROMISE CONTRACT.

Of March 3, 1913, between Commonwealth of Virginia and The Richmond, Fredericksburg and Potomac Railroad Company.

Whereas, By act of the General Assembly of Virginia, approved March 14, 1912, entitled "An act to provide for a compromise and settlement of certain contentions and differences between the Commonwealth and its political subdivisions, upon the one part, and The Richmond, Fredericksburg and Potomac Railroad Company, on the other part," a special commission of five was provided for, with authority to negotiate, consummate and execute, on behalf of the State of Virginia and its political subdivisions, a contract for such compromise and settlement, as in said act of March 14, 1912, more fully set forth;

And, Whereas, On November 20, 1912, William Hodges Mann, Governor of Virginia, and as such a member and chairman of said commission, addressed to Messrs. William H. White, Alexander Hamilton and George W. Stevens (a committee appointed by the president and directors of the said railroad company to represent that company in the negotiations for such compromise and settlement), a communication submitting a definite proposition for such compromise and settlement which said communication is in the following words and figures, to-wit:

"COMMONWEALTH OF VIRGINIA,
GOVERNOR'S OFFICE,
RICHMOND, VA., November 20, 1912.

"WILLIAM H. WHITE, ESQ.,
HON. ALEXANDER HAMILTON,
GEORGE W. STEVENS, ESQ.,

*Committee of the Board of Directors of the Richmond, Fredericksburg
and Potomac Railroad Company.*

GENTLEMEN:

Without referring to what has passed between the commission representing the State and yourselves, of which you are fully aware, I submit for your consideration a definite proposition which is concurred in by every member of our commission.

We will receive in full compromise and settlement of all claims against the Richmond, Fredericksburg and Potomac Railroad Company for taxes due to the State, the sum of one hundred and sixty-five thousand, five hundred and forty-six dollars and eighty-three cents, (\$165,546.83), of which, one hundred and twelve thousand, one hundred and eight dollars and sixty cents (\$112,108.60) is franchise tax, and fifty-three thousand, four hundred and thirty dollars and twenty-three cents (\$53,430.23), is tax on property.

And we will receive for the localities, to be paid to the proper receiving officers of said localities, the sum of one hundred and seventy-three thousand, four hundred and twenty-two dollars and thirty-eight cents (\$173,422.38), to be paid to the proper receiving officers of the several localities as follows:

To Richmond city, fifty-seven thousand, five hundred and ninety-one dollars and sixty-seven cents (\$57,591.67).

To Brookland district, Henrico county, eleven thousand, four hundred and sixty-one dollars and nineteen cents (\$11,461.19).

To Tuckahoe district, Henrico county, one thousand and forty dollars and eighty-three cents (\$1,040.83).

To Ashland district, Hanover county, eight thousand and seventy-five dollars and eighty-nine cents (\$8,075.89).

To Beaver Dam district, Hanover county, six thousand, eight hundred and four dollars and seventy-one cents (\$6,804.71).

To the town of Ashland, Hanover county, three thousand, five hundred and forty-seven dollars and sixteen cents (\$3,547.16).

To Reedy Church district, Caroline county, thirteen thousand, six hundred and sixty-five dollars and thirty-one cents (\$13,665.31).

To Bowling Green district, Caroline county, nine thousand, eight hundred and fifteen dollars (\$9,815.00).

To Port Royal district, Caroline county, eight thousand, nine hundred and ninety-seven dollars and fifty-one cents (\$8,997.51).

To Courtland district, Spotsylvania county, twelve thousand, five hundred and forty-nine dollars and eighteen cents (\$12,549.18).

To town of Fredericksburg, two thousand, four hundred and fifty-nine dollars and eighty cents (\$2,459.80).

To Falmouth district, Stafford county, ten thousand, nine hundred and twenty-three dollars and ninety-five cents (\$10,923.95).

To Aquia district, Stafford county, twenty-five thousand, eight hundred and seventeen dollars and five cents (\$25,817.05).

To Prince William county, six hundred and seventy-three dollars and twelve cents (\$673.12).

In addition to the above amounts, which aggregate the sum of three hundred and thirty-eight thousand, nine hundred and sixty-nine dollars and twenty-one cents (\$338,969.21), the Richmond, Fredericksburg and Potomac Railroad Company must pay the taxed costs of the pending litigation in all the courts, and must agree to waive all of its exemptions from taxation.

If this proposition is accepted, a joint meeting of the commission representing the State, and your committee, will be called and the details agreed upon and reduced to writing.

With assurance of high respect, I beg to remain,

Very truly yours,

(Signed) WM. HODGES MANN,
Governor, and Chairman of Special Commission."

And, Whereas (the said communication having, in the meantime, been reported by said committee to the president and directors of the said railroad company), The said president and directors, at their meeting duly called and held on December 19, 1912, adopted the following resolutions, to-wit:

Resolved: First. That the said proposition of November 20, 1912 (provided the 'costs' therein referred to shall cover only the ordinary court costs and shall not include any special allowances to counsel or otherwise), be and the same is hereby accepted by this board, subject to the approval of the stockholders of this company—said proposition (in event of its approval by the stockholders) to be put into the form of a formal contract to be executed and delivered by the parties in the manner specified in Clause I of the act of the General Assembly of Virginia approved March 14, 1912, entitled 'An act to provide for a compromise and settlement of certain contentions and differences between the Commonwealth and its political subdivisions, upon the one part, and the Richmond, Fredericksburg and Potomac Railroad Company, on the other part'—and the said special commission is hereby authorized and directed to so advise the said committee representing the State of Virginia.

"Resolved: Second. That a special general meeting of the stockholders of the Richmond, Fredericksburg and Potomac Railroad Company is hereby called for the 5th day of February, 1913, at the company's office in the First National Bank Building, Richmond, Virginia, at eleven o'clock A. M., for the purpose of ratifying or rejecting the action of this board in so accepting the said proposition and also for the purpose of ratifying or rejecting the following resolution of this board looking to an amendment of the company's charter and the surrender of certain exemptions, as provided by an act of the General Assembly of Virginia approved March 9, 1912, entitled 'An act concerning railroad companies in which, or in the stock or securi-

ties of which, the Commonwealth owns, or is entitled to, any proprietary rights or interest'; and for the purpose of attending to such other matters as may be lawfully brought before that meeting; and the secretary of the company is hereby instructed to cause notice of said meeting to be given according to law.

"*Resolved*: Third. That (subject to the ratification of the stockholders of the company as provided by the act of the General Assembly of Virginia, approved March 9, 1912, above mentioned), the Richmond, Fredericksburg and Potomac Railroad Company hereby accepts all the terms, conditions and provisions of the act of the General Assembly of Virginia, approved March 9, 1912, entitled 'An act concerning railroad companies in which, or in the stock or securities of which, the Commonwealth owns, or is entitled to, any proprietary rights or interest'; and that the said Richmond, Fredericksburg and Potomac Railroad Company hereby surrenders every exemption from taxation, and every non-repealable feature of its charter, and of the amendments thereof, and also all exclusive rights or privileges heretofore granted to it by the General Assembly of Virginia and not enjoyed by corporations of a similar general character; and agrees to hereafter hold its charter and franchises, and all amendments thereof under the provisions and subject to all the requirements, terms and conditions of the present Constitution of Virginia and of any laws passed in pursuance thereof, so far as the same may be applicable to the said company.

"*Resolved*: Fourth. That a printed copy of resolution number three, just above set forth, looking to an amendment of the company's charter (accompanied with a statement to the effect that said resolution number three will be presented at said meeting of the stockholders on the 5th day of February, 1913, for their ratification or rejection) shall be duly mailed, at least thirty days prior to the said meeting, by the company's secretary, to each stockholder of record on the company's books, at his last postoffice address, so far as known.

"*Resolved*: Fifth. That the president be, and he is hereby, authorized and instructed to lay before the said meeting of stockholders, upon its assembling, a report in writing to said meeting, setting forth the said proposition of compromise of November 20, 1912, and the above named resolution number one of this board, accepting the same subject to the approval of the stockholders, and also setting forth the aforesaid resolution number three of this board looking to the amendment of this company's charter, all of which matters shall be presented to the said meeting of the stockholders for their ratification or rejection.

"*Resolved*: Further, That, for the purposes of the meeting above called for the 5th of February, 1913, the books for the transfer of stock of this company be closed on January 15, 1913, at 3:00 o'clock P. M., and re-opened on February 7, 1913, at 10:00 o'clock A. M."

And, Whereas, The said proposition and resolution having been duly referred to a special meeting of the stockholders of said company, duly called and held on February 5, 1913, to consider the same, the said stockholders at their special meeting adopted the following resolution, to-wit:

Resolved, That the action of the president and directors of this company at their meeting on December 19, 1912, in accepting the offer of compromise and settlement, dated November 20, 1912, submitted on behalf of the State of Virginia and its political subdivisions, set forth *in extenso* in the resolutions of the directors, adopted at their said meeting of December 19, 1912, and in the call for this meeting, be, and the same is hereby, ratified and approved, provided that the said compromise and settlement (before becoming binding upon this company) be embodied in a formal written contract to be executed by the parties thereto, as provided for in the act of the General Assembly of Virginia, approved March 14, 1912, and entitled 'An act to provide for a compromise and settlement of certain contentions and differences between the Commonwealth and its political subdivisions, upon the one part, and the Richmond, Fredericksburg and Poto-

mac Railroad Company, on the other part,' and containing such additional provisions, terms and conditions as the president and directors (or other representative of this company, acting for it in the premises) may deem desirable for the additional protection of the company, and the president and directors are hereby authorized to do any and all things necessary or desirable to give effect to and carry out, this resolution."

And, Whereas, The said action of said stockholders having been duly reported to the president and directors of said company, the said president and directors, at their meeting duly called and held on February 5, 1913, after the said special meeting of stockholders had adjourned, adopted the following resolution, to-wit:

"*Resolved*, Second, That William H. White, the president of this company, be, and he is hereby, authorized and instructed to cause a formal written contract embodying the terms and conditions of said compromise and settlement between this company, upon the one part, and the Commonwealth of Virginia and its political subdivisions, on the other part, (which contract was ratified and approved by a special general meeting of the stockholders of this company held at an earlier hour on this day, to-wit, February 5, 1913) to be prepared, (with such additional provisions, terms and conditions as he may deem desirable for the protection of the company's rights and interests in the premises) for execution in the manner prescribed by said act of March 14, 1912, entitled 'An act to provide for a compromise and settlement of certain contentions and differences between the Commonwealth and its political subdivisions, upon the one part,' and the Richmond, Fredericksburg and Potomac Railroad Company, on the other part,' and when said contract shall have been so prepared, the said president shall execute the same, in duplicate, for, on behalf, and in the name, of this company, and affix thereto the corporate seal of this company and cause the same to be duly attested by the secretary of this company; and when such contract shall have also been executed, in duplicate, by the other parties thereto, in the manner prescribed by the said act of March 14, 1912, the said president shall retain and preserve, for this company, one original of said contract so executed, and shall see that the other original is filed with the State Corporation Commission, as prescribed by said act of March 14, 1912."

Now, therefore, this contract. Made and executed in duplicate, this third day of March, nineteen hundred and thirteen, by and between the Commonwealth of Virginia (acting by and through the special commission of five provided for by the said act of March 14, 1912, which said commission consists of William Hodges Mann, Governor of Virginia, Robert R. Prentis, William F. Rhea and J. Richard Wingfield—the last three being the three members of the State Corporation Commission of Virginia—and Martin P. Burks) party of the first part, and the said The Richmond, Fredericksburg and Potomac Railroad Company (acting by and through its said duly authorized representative, William H. White, president of said company), party of the second part:

Witnesseth

That, pursuant to, and in accordance with, the authority and provisions of the said act of the General Assembly approved March 14, 1912, the said parties hereto, having negotiated and definitely agreed upon the compromise, adjustment and settlement hereinafter set forth, do now and hereby finally and irrevocably agree and contract as follows, to-wit:

That the said The Richmond, Fredericksburg and Potomac Railroad Company, on its part, in consideration of the acceptance of the same in full compromise, adjustment and settlement of any and all claims and demands by, or on the part of, or for the benefit of, the said Commonwealth of Virginia or any of its political subdivisions, as hereinafter more fully set forth, agrees that it, the said company, will pay, (a) into the Treasury of

the State of Virginia, in the manner prescribed by section 757 of the Code of 1904, the sum of one hundred and sixty-five thousand, five hundred and forty-six dollars and eighty-three cents (\$165,546.83)—which last mentioned sum includes (among other items) all franchise and property taxes assessable against said railroad company by the Commonwealth for the years 1911 and 1912, under the laws applicable to railroad companies generally for those years, and also includes all such taxes for the years 1908, 1909 and 1910, as more fully shown by Exhibit A, hereinafter referred to; (b) to the city treasurer of the city of Richmond, the sum of fifty-seven thousand, five hundred and ninety-one dollars and sixty-seven cents (\$57,591.67); (c) to the county treasurer of Henrico county, the sum of eleven thousand, four hundred and sixty-one dollars and nineteen cents (\$11,461.19); (d) to the county treasurer of Henrico county, the further sum of one thousand and forty dollars and eighty-three cents (\$1,040.83); (e) to the county treasurer of Hanover county, the sum of eight thousand and seventy-five dollars and eighty-nine cents (\$8,075.89); (f) to the county treasurer of Hanover county, the further sum of six thousand, eight hundred and four dollars and seventy-one cents (\$6,804.71); (g) to the treasurer of the town of Ashland, in Hanover county, the sum of three thousand, five hundred and forty-seven dollars and sixteen cents (\$3,547.16); (h) to the county treasurer of Caroline county, the sum of thirteen thousand, six hundred and sixty-five dollars and thirty-one cents (\$13,665.31); (i) to the county treasurer of Caroline county, the further sum of nine thousand, eight hundred and fifteen dollars (\$9,815.00); (j) to the county treasurer of Caroline county, the still further sum of eight thousand nine hundred and ninety-seven dollars and fifty-one cents (\$8,997.51); (k) to the county treasurer of Spotsylvania county, the sum of twelve thousand, five hundred and forty-nine dollars and eighteen cents (\$12,549.18); (l) to the city treasurer of the city of Fredericksburg, the sum of two thousand, four hundred and fifty-nine dollars and eighty cents (\$2,459.80); (m) to the county treasurer of Stafford county, the sum of ten thousand, nine hundred and twenty-three dollars and ninety-five cents (\$10,923.95); (n) to the county treasurer of Stafford county, the further sum of twenty-five thousand, eight hundred and seventeen dollars and five cents (\$25,817.05); (o) to the county treasurer of Prince William county, the sum of six hundred and seventy-three dollars and twelve cents (\$673.12)—making the total amounts to be paid by the said The Richmond, Fredericksburg and Potomac Railroad Company, as aforesaid, aggregate (as of the date of this contract) the sum of three hundred and thirty-eight thousand, nine hundred and sixty-nine dollars and twenty-one cents. The several sums hereinbefore agreed to be paid to the respective city, town and county treasurers are to be credited and hereafter disposed of, as prescribed by law, between the county and district in which the said road is located, in the same manner and in like proportion as if the money were the proceeds of local taxes levied and collected for the fiscal years ending June 30, 1908, 1909, 1910, 1911 and 1912 on the physical property of said railroad company located within the cities, town and magisterial districts through which said railroad runs in said counties respectively—the gross sums for each of said years being shown by a statement hereto annexed as a part hereof, marked "Exhibit A"; but it is expressly stipulated and agreed that the said railroad company shall not, in any wise, be responsible for, nor shall the validity of this contract, in any wise, depend upon either the correctness of any of the figures or statements in said Exhibit A, or the proper crediting or disposition of any of the said funds after they shall have once been paid over by the railroad company in the manner hereinbefore prescribed. And the said railroad company, for the consideration aforesaid, further agrees to pay the legally taxable costs (including attorney's fees provided for by section 3552 of the Code of 1904) of new pending litigation in all the courts (between itself on the one part and the Commonwealth of Virginia, or any of the officers thereof, on the other part, including the case now pending in the Supreme Court of the

United States), in regard to the matter of the assessment or collection of taxes, provided, however, that there shall be included in such costs only the ordinary legally taxable court costs, as above stated, and that there shall not be included therein any special allowances to counsel, or otherwise—all of said suits to be dismissed by the plaintiffs in each. And the said railroad company, also for the consideration aforesaid, further agrees that hereafter it will regularly pay all State and local taxes which shall be assessed against said company after the year 1912, in accordance with the valid laws (in force at that time), equally applicable to all railroad companies chartered under the general laws of this Commonwealth, since May 21, 1903; and, further, that the said railroad company will amend its present charter so as to be placed on a footing with railroad companies chartered under the general laws of this Commonwealth since May 21, 1903, by availing itself of the provisions of an act of the General Assembly of Virginia approved March 9, 1912, entitled "An act concerning railroad companies in which, or in the stock or securities of which, the Commonwealth owns or is entitled to, any proprietary rights or interests."

And the Commonwealth of Virginia (acting for itself and all of its political subdivisions), on its part, in consideration of the foregoing undertakings and agreements on the part of the said The Richmond, Fredericksburg and Potomac Railroad Company, agrees to accept, and does hereby accept, the same in full compromise, adjustment and settlement of all questions regarding the liability of said railroad company for State or local taxes or public dues or charges heretofore or hereafter assessed or assessable against said railroad company, or against or upon its franchises, business, property, income, or otherwise howsoever, as well as all questions regarding the liability of said railroad company for any interest, costs, forfeitures, or penalties because of any failure or neglect, heretofore, on the part of said company, in the payment of taxes, public dues or charges or in the making of reports in connection therewith, and also in full compromise, adjustment and settlement of all matters involved in or affected by, any of the suits or legal proceedings now pending between said company and the Commonwealth, or any of its officers or representatives, in the circuit court of the city of Richmond, or in the Supreme Court of the United States, and, particularly, in full compromise, adjustment, settlement and satisfaction of any and all claims which the Commonwealth, or any city, town, county, or magisterial district thereof, has, or may claim to have, for any taxes, assessments or public dues or charges, heretofore levied or assessed, or which may be claimed to have been heretofore leviable or assessable, or to be now or hereafter leviable or assessable, for any period prior to January 1, 1913, against the said railroad company, or against, or upon, or by reason of, its franchises, business, property, income, or otherwise howsoever, and also to be in full adjustment, compromise, settlement and satisfaction of any and all claims by, or on behalf of, the Commonwealth of Virginia, or of any city, town, county, or magisterial district thereof, for any interest, costs, forfeitures, fines, damages, or penalties which have accrued or become chargeable, or which (but for this compromise and adjustment) might hereafter accrue or become chargeable, or be levied, assessed, adjudged or decreed, against the said company, its franchises, business, property, income, or otherwise, howsoever, because of any failure or neglect, heretofore, on the part of said company, in the payment of taxes, public dues or charges, or in the making of reports in connection therewith; it being the understanding of the parties hereto, and the scope and purpose of this compromise and adjustment, that it shall cover any and all such claims which the Commonwealth, or any of its political subdivisions, may have up to and including December 31, 1912, against said company, its franchises, business, property, income, or otherwise howsoever, for anything done, or omitted the said railroad company, or otherwise occurring prior to January 1, 1913.

It is also mutually agreed between the parties hereto that the said aggregate sums of three hundred and thirty-eight thousand, nine hundred

and sixty-nine dollars and twenty-one cents (\$338,969.21) and costs, hereinafter required to be paid by the party of the second part, shall be paid within sixty (60) days from the date of this contract with interest at three per cent (3%) from the date of this contract until paid, and if not paid within sixty days from the date of this contract, then the said sums of money shall bear interest at three per cent (3%) for sixty days, as aforesaid, from the date of this contract, and after the expiration of said sixty (60) days shall bear interest at six per cent (6%) until paid; and, upon the expiration of said sixty days, each and every one of the provisions and requirements of this contract may be enforced by such legal procedure as may be now or hereafter authorized by law, but in no event shall the validity or effectiveness of the compromise and settlement hereinbefore specified be in any wise impaired or affected by a failure to make such payments within the said period of sixty (60) days.

All of the said payments hereinbefore provided for (aggregating \$338,969.21, and interest and costs) shall be made by said company with certified checks, in exchange for written receipts which shall be signed and delivered to it by the persons (in their respective official capacities and designations or titles) to whom the payments shall be made or tendered or delivered as hereinbefore provided for.

Witness, The Commonwealth of Virginia, by William Hodges Mann, Governor of Virginia, Robert R. Prentiss, Chairman of the State Corporation Commission of Virginia, William F. Rhea and J. Richard Wingfield, members of the State Corporation Commission of Virginia, and Martin P. Burks, constituting, and now acting as, Special Commissioners, as aforesaid; and

Witness, also, The Lesser Seal of the said Commonwealth of Virginia by William Hodges Mann, Governor of the Commonwealth of Virginia; and

Witness, also, The said The Richmond, Fredericksburg and Potomac Railroad Company, by its duly authorized representative, William H. White, president of the said company, and the corporate seal of said company (hereto attached), attested by Normal Call, secretary of said company.



COMMONWEALTH OF VIRGINIA,
By WILLIAM HODGES MANN,
ROBERT R. PRENTIS,
WM. F. RHEA,
J. RICHARD WINGFIELD,
MARTIN P. BURKS,

Special Commissioners.

JAS. M. HAYES, JR.,

Acting Secretary of the Commonwealth.

THE RICHMOND, FREDERICKSBURG AND
POTOMAC RAILROAD COMPANY,

By WILLIAM H. WHITE,
Its President.

{ R., F. & P. }
Corporate
Seal.

Attest:

NORMAN CALL,
Its Secretary.

STATE OF VIRGINIA,
CITY OF RICHMOND, TO-WIT:

I, Meade R. Sutherland, a notary public of the State of Virginia, in and for the city aforesaid, do certify that this day William Hodges Mann, Governor of Virginia, Robert R. Prentiss, Chairman of the State Corpora-

tion Commission of Virginia, and William F. Rhea and J. Richard Wingfield, members of the State Corporation Commission of Virginia, (they being to me personally known and constituting four of the members of the special commission of five provided for by the act of the General Assembly of Virginia, approved March 14, 1912, entitled "An act to provide for a compromise and settlement of certain contentions and differences between the Commonwealth and its political subdivisions, upon the one part, and The Richmond, Fredericksburg and Potomac Railroad Company, on the other part") personally appeared before me within my said city, and severally and respectively acknowledged that they, acting as such special commissioners, had (along with the fifth member of said special commission of five) duly executed and signed, in the name of the Commonwealth of Virginia, the foregoing contract between said Commonwealth and The Richmond, Fredericksburg and Potomac Railroad Company, bearing date the third day of March, 1913; and I further certify that this day William H. White (to me personally known) by whom, as president of The Richmond, Fredericksburg and Potomac Railroad Company, the name of that company has been signed to the foregoing contract between the Commonwealth of Virginia and the said company, personally appeared before me within my said city and acknowledged the said contract in the name and on behalf of the said company; and I further certify that Norman Call, (to me personally known) by whom, as secretary of the said railroad company, the corporate seal thereof has been affixed and attested to the above-named contract, this day personally appeared before me within my said city and acknowledged the said contract and the affixing of the said corporate seal thereto.

Given under my hand and notarial seal this third day of March, 1913.
My commission expires on the 22nd day of November, 1914.

MEADE R. SUTHERLAND,
Notary Public.

[Notarial Seal]

STATE OF VIRGINIA,
COUNTY OF ROCKBRIDGE, TO-WIT:

I, Frank Moore, a notary public of the State of Virginia, in and for the county aforesaid, do certify that this day Martin P. Burks (to me personally known and being one of the members of the special commission of five provided for by the act of the General Assembly of Virginia, approved March 14, 1912, entitled "An act to provide for a compromise and settlement of certain contentions and differences between the Commonwealth and its political subdivisions, upon the one part, and The Richmond, Fredericksburg and Potomac Railroad Company, on the other part") personally appeared before me within my said county and acknowledged that he, acting as such special commissioner, had (along with the four other members of said special commission of five) duly executed and signed, in the name of the Commonwealth of Virginia, the foregoing contract between the said Commonwealth and The Richmond, Fredericksburg and Potomac Railroad Company, bearing date the third day of March, 1913.

Given under my hand and notarial seal this fifth day of March, 1913.
My commission expires on the 9th day of February, 1914.

FRANK MOORE,
Notary Public.

[Notarial Seal]

This compromise contract was carried out in good faith by the railroad company, and the amounts due to the State, to the city of Richmond and to the several counties and districts named, together with all costs as provided for in said contract, were promptly paid, as I am informed.

The State realized on back taxes, on account of this contract, \$165,546.83, plus a small amount of interest, and the city of Richmond and the several counties and districts received, under said contract for back levies the aggregate sum of \$73,422.37.

A summary of the amounts paid to the city of Richmond and the several counties and districts is as follows:

SUMMARY.

	Amount of tax five years
Richmond, city of.....	\$ 57,591 67
Henrico, county of—Brookland district	11,461 19
Tuckahoe district	1,040 83
Hanover, county of—Ashland district	8,075 89
Beaver Dam	6,804 71
Ashland town	3,547 16
Caroline county of—Reedy Church District	13,665 31
Bowling Green district	9,815 00
Port Royal district	8,997 51
Spotsylvania, county of—Courtland district.....	12,549 18
Fredericksburg, town of	2,459 80
Stafford, county of—Falmouth district	10,923 95
Aquia district	25,817 05
Prince William, county of	673 12
	<hr/>
	\$ 173,422 37

RICHMOND CITY

Year	Assessed Value	Rate	Amount of Tax
1908	\$ 774,193	\$ 1.40	\$ 10,838 70
1909	771,382	1.40	10,799 34
1910	831,674	1.40	11,643 46
1911	833,973	1.40	11,675 62
1912	902,468	1.40	12,634 55
			<hr/>
			\$ 57,591 67

HANOVER COUNTY
Ashland District

1908	\$ 154 977	\$.75	\$ 1,162 32
1909	152,620	.90	1,373 58
1910	204 952	.90	1,844 57
1911	205,968	.90	1,853 71
1912	204,634	.90	1,841 71
			<hr/>
			\$ 8,075 89

HENRICO COUNTY
Brookland District

1908	\$ 255,460	\$.75	\$ 1,915 86
1909	251,436	.82	2,061 76
1910	339,547	.77	2,614 45
1911	359,692	.67	2,409 13
1912	367,164	.67	2,459 99
			<hr/>
			\$ 11,461 19

Beaver Dam District

1908	\$ 124,646	\$.80	\$ 997 17
1909	123,972	1.00	1 239 72
1910	164,170	.95	1 559 61
1911	165 151	.95	1 568 93
1912	159 921	.90	1 439 28
			<hr/>
			\$ 6 804 71

Tuckahoe District

1908	\$ 21,469	\$.69	\$ 148 14
1909	20,882	.69	144 09
1910	41,704	.64	266 90
1911	42,167	.55	231 91
1912	40,289	.62	249 79
			<hr/>
			\$ 1,040 83

ASHLAND TOWN

1908	\$ 38,151	\$ 1.58	\$ 602 78
1909	37,781	1.58	596 93
1910	48,518	1.58	766 58
1911	50,294	1.58	794 65
1912	49,761	1.58	786 22
			<hr/>
			\$ 3,547 16

CAROLINE COUNTY
Reedy Church District

Year	Assessed Value	Rate	Amount of Tax
1908	\$ 250,733	\$.80	\$ 2 005 86
1909	249,254	.90	2,243 28
1910	334,941	.90	3,014 46
1911	336,852	.90	3,031 66
1912	337,005	1.00	3,370 05
			\$ 13,665 31

Bowling Green District

Year	Assessed Value	Rate	Amount of Tax
1908	\$ 179,391	\$.80	\$ 1,435 12
1909	176,934	.90	1 592 40
1910	236,279	.90	2,126 69
1911	247,897	.90	2,231 07
1912	242,972	1.00	2,429 72
			\$ 9,815 00

Port Royal District

Year	Assessed Value	Rate	Amount of Tax
1908	\$ 157,535	\$.90	\$ 1,417 81
1909	157,473	.90	1,417 25
1910	212,195	.95	2,015 85
1911	212,983	.95	2,023 33
1912	212,327	1.00	2,123 27
			\$ 8,997 51

SPOTSYLVANIA COUNTY
Courtland District

Year	Assessed Value	Rate	Amount of Tax
1908	\$ 207,964	\$.65	\$ 1,351 76
1909	209,065	.85	1,777 05
1910	284,756	1.00	2,847 56
1911	285,491	1.15	3 283 14
1912	286,059	1.15	3,289 67
			\$ 12,549 18

FREDERICKSBURG TOWN

Year	Assessed Value	Rate	Amount of Tax
1908	\$ 27,010	\$ 1.40	\$ 378 14
1909	27,010	1.45	391 64
1910	32,850	1.45	476 32
1911	48,595	1.20	583 14
1912	52,547	1.20	630 56
			\$ 2 459 80

STAFFORD COUNTY
Falmouth District

Year	Assessed Value	Rate	Amount of Tax
1908	\$ 178,832	\$ 1.40	\$ 1,803 65
1909	128,891	1.45	1 868 91
1910	175,261	1.40	2,453 65
1911	175,409	1.40	2,455 72
1912	173,483	1.35	2,342 02
			\$ 10,923 95

Aquia District.

Year	Assessed Value	Rate	Amount of Tax
1908	\$ 272,994	\$ 1.45	\$ 3,958 41
1909	272,183	1.55	4,218 83
1910	369,845	1.55	5,732 60
1911	370,643	1.60	5,930 32
1912	373,556	1.60	5,976 89
			\$ 25,817 05

PRINCE WILLIAM COUNTY

Year	Assessed Value	Rate	Amount of Tax
1908	\$ 13,438	\$.80	\$ 107 50
1909	13,438	.80	107 50
1910	18,430	.82½	152 05
1911	18,430	.80	147 44
1912	18,130	.87½	158 63
			\$ 673 12

I am informed that the provision of the contract whereby the said railroad company agreed to obtain a new charter, and thereby waive all claims for exemption from State or local taxation, has been fully carried out, with the result that the immense properties belonging to said railroad company will in future bear the same burdens of taxation which, under the Constitution and laws of this State, are imposed upon other railroad corporations and properties in this State.

After the said compromise contract of March 3, 1913, had been entered into, it was suggested that the act of the legislature under which the said commission was created and acted was unconstitutional. This led to the institution of a suit by C. D. Langhorne, one of the stockholders in said Richmond, Fredericksburg and Potomac Railroad Company, in the

circuit court of the city of Richmond, in which the constitutionality of the said act was assailed and the validity and binding force of said compromise contract were attacked. The circuit court rendered its opinion refusing the injunction prayed for and fully sustaining the constitutionality of the said act of the legislature and the validity of said compromise contract of March 3, 1913. The complainant, C. D. Langhorne, by his counsel, appealed to the Supreme Court of Appeals of this State for an appeal from said decision of the circuit court of the city of Richmond. The Supreme Court in acting thereon refused the said appeal and thereby affirmed the said decision of the circuit court of the city of Richmond. After this action of the Supreme Court, the said Richmond, Fredericksburg and Potomac Railroad Company promptly proceeded to, and did, fully comply with said compromise contract, with the results above stated.

Several cases were pending in the circuit court of the city of Richmond, in which temporary injunctions had been granted the Richmond, Fredericksburg and Potomac Railroad Company, restraining the collection of the taxes assessed against said company. After the final termination of the matters above set forth, these cases were dismissed and stricken from the docket of said court, in accordance with the terms of said compromise contract.

I deem it proper to add that when my term of office began, on the 1st day of February, 1910, this case had been argued before the Supreme Court of Appeals of this State, the court consisting of four judges; that the court had directed a re-argument in the case before a full court, and had set the case for hearing on the first day of the November term, 1910. Having but this short time in which to prepare for the argument of this very important case, and realizing the fact that my predecessor, former Attorney-General Wm. A. Anderson, was thoroughly familiar with the case—had conducted it through the lower courts and prepared the case for appeal in the Supreme Court—and appreciating the vast importance of the case to the Commonwealth, I deemed it highly important to secure his services to assist in the re-argument of the case before the Supreme Court of Appeals; and, in co-operation with the Governor, Major Anderson's services were retained, with the understanding that he was to be paid a minimum fee of \$500.00, and in the event of recovery his compensation would be increased commensurate with the value of the services rendered the Commonwealth.

Major Anderson did take part in the re-argument of the case, and rendered able and valuable services; in fact, he bore the burden of the argument on behalf of the Commonwealth; and I take the liberty of suggesting that proper recommendation be made to the legislature to provide for the payment to Major Anderson of a reasonable fee for his services, and in no event to be less than \$1,000.

3. *Dalton Adding Machine Company v. State Corporation Commission of Virginia. In Equity.* This was an application made to the United States District Court for the Eastern District of Virginia on behalf of the complainant, asking for an injunction to enjoin the said Corporation Commission of Virginia from instituting proceedings against said company for alleged violations of the revenue laws of this Commonwealth, upon the

ground that the said company was not liable to comply with the Constitution and laws of Virginia, or to pay a license tax in Virginia, because its business was protected under the interstate commerce clause of the Constitution of the United States. The case was defended by this office, with the result that the court refused the injunction, whereupon the Dalton Adding Machine Company appealed the case to the Supreme Court of the United States, where the case is now pending, and where it will no doubt receive proper attention at the hands of the Attorney-General of Virginia.

4. *C. J. Rixey, An Insane Person, by C. J. Rixey, Jr., his son and next friend, v. Robert H. Cox, Sergeant of the City of Alexandria.* C. J. Rixey was indicted in the corporation court of the city of Alexandria for felony. before he could be tried, he was adjudged insane and committed to the Western State Hospital at Staunton. Subsequently he was, by order of the court, transferred to the Southwestern State Hospital at Marion and confined in the ward for the criminal insane. An appeal from the order of the court confining him to the ward for the criminal insane was taken to the Supreme Court of Appeals and refused,, whereupon a writ of habeas corpus was applied for in the United States Court for the Eastern District of Virginia, and the writ not having been granted, the case was appealed to the Supreme Court of the United States, where it is now pending.

Cases in the District Court of the United States.

1. *Oliver Durant v. C. H. Tinsley, Commissioner, and others.* This is a bill in chancery praying for an injunction to restrain the collection of certain taxes assessed against the complainant in the county of Culpeper. The case is an important one, both as to the amount and the principles involved, and will receive proper attention.

Cases Decided in the Supreme Court of Appeals of Virginia.

1. *Flint v. Commonwealth.* Misdemeanor. Appeal from the corporation court of the city of Buena Vista. Affirmed.

2. *Boyenton v. Commonwealth.* Felony. Appeal from the circuit court of Fauquier county. Reversed.

3. *Commownealth v. Wellford et als.* This case involved the proper construction of the collateral inheritance tax law of Virginia. Affirmed.

4. *Commonwealth et als. v. Schmelz, surviving partner.* From circuit court of Elizabeth City county. Reversed.

5. *Tisdale v. Commonwealth.* Misdemeanor. From the corporation court of the city of Norfolk. Affirmed.

6. *Wright v. Commonwealth.* Rape. From the circuit court of Appomattox county. Affirmed.

7. *Polglaise v. Commonwealth.* Misdemeanor. From the circuit court of Spotsylvania county. Affirmed.

8. *Looney v. Commonwealth.* Murder. From the circuit court of Craig county. Reversed.

9. *Saville, clerk, v. Virginia Railway and Power Company.* This case involved the proper construction of the law providing for a recordation tax

on deeds and other instruments. From the circuit court of the city of Richmond. Reversed.

10. *Premium Register Company v. Tresnon, Commissioner of Revenue.* Petition for mandamus. Refused.

11. *National Automatic Machine Company v. J. B. Pace, Treasurer of the City of Richmond.* Petition for mandamus. Refused.

12. *Cook v. Commonwealth.* Murder. From the circuit court of York county. Reversed.

13. *Shifflett v. Commonwealth.* Appeal from the circuit court of Greene county. Reversed in part.

14. *Shifflett v. Commonwealth.* Appeal from the circuit court of Greene county. Reversed.

15. *Patrick v. Commonwealth.* Murder. From the circuit court of Wise county. Reversed.

16. *Mullins v. Commonwealth.* Misdemeanor. From the circuit court of Dickenson county. Affirmed.

17. *Draper v. Commonwealth.* Misdemeanor. From the corporation court of the city of Roanoke. Affirmed.

18. *Stidham v. Commonwealth.* Murder, second degree. From the circuit court of Wise county. Error confessed.

19. *Wampler v. Commonwealth.* Murder, second degree. From the circuit court of Wise county. Error confessed.

20. *Elkins v. Commonwealth.* Murder, second degree. From the circuit court of Wise county. Error confessed.

21. *Jones v. Commonwealth.* Misdemeanor. From the circuit court of Pittsylvania county. Error confessed.

22. *Atkinson v. Commonwealth.* Murder, second degree. From the circuit court of Southampton county. Dismissed, prisoner being fugitive from justice.

23. *Bridgewater Manufacturing Company v. Funkhouser, Commissioner of the Revenue.* From the circuit court of Rockingham county. Relief from alleged erroneous assessment. Affirmed.

Cases Pending in the Supreme Court of Appeals of Virginia.

1. *Gayle and Eason v. Commonwealth.* Misdemeanor. From the circuit court of the city of Suffolk. Argued and submitted.

2. *Lewis v. Commonwealth.* Misdemeanor. From the circuit court of Norfolk county. Argued and submitted.

3. *Commonwealth v. City of Richmond.* The city of Richmond made application to the hustings court of said city to be relieved of taxes which had been assessed against certain public utilities owned by the city, to-wit: the gas plant, water works and certain properties of the city which it is claimed are liable to taxation; and the question as to whether this property is liable to taxation depends upon the true construction of sections 168 and 183 of the Constitution of Virginia. The hustings court held that said property was not liable to taxation. An appeal was taken on behalf of the Commonwealth to the Supreme Court of Appeals. The case has been argued and submitted, and it is now awaiting decision.

4. *Commonwealth v. Lynchburg Y. M. C. A.* This was a proceeding in the corporation court of the city of Lynchburg to secure relief from the assessment which had been made on the property of the association in the city of Lynchburg. The corporation court granted the relief. The case was appealed, and is now pending. It has been argued and is awaiting decision. This case also involves the true construction of sections 168 and 183 of the Virginia Constitution as applied to this class of property.

5. *Commonwealth v. City of Lynchburg.* This case involves the question whether or not the property of the city of Lynchburg, situate in the county of Amherst, and used in connection with its water works, is exempt from taxation. Pending on appeal.

6. *Commonwealth et als. v. Schmelz, surviving partner.* From the circuit court of Elizabeth City county. Petition for rehearing.

7. *Jackson v. Commonwealth.* Murder. From the circuit court of Sussex county. Pending.

8. *Garnett & Cosby v. Commonwealth.* Burglary. From the circuit court of King William county. Pending.

9. *Shenandoah Lime Company et als. v. Wm. Hodges Mann, Governor, etc.* From the circuit court of the city of Richmond. Argued and submitted.

10. *Rose v. Commonwealth.* Misdemeanor. From the circuit court of Dickenson county. Pending.

11. *Stanley v. Commonwealth.* Misdemeanor. From the circuit court of Dickenson county. Pending.

12. *Commonwealth v. Werth.* Correcting erroneous assessment. From the circuit court of Tazewell county. Pending.

13. *Buck v. Commonwealth.* Felony. From the circuit court of Craig county. Pending.

OTHER CASES.

There have been numerous other cases in the State during the past year, in addition to those mentioned, involving questions of alleged erroneous assessments in which the courts have granted the relief, and in which I am of the opinion appeals should be taken to settle the principles involved, and protect the interests of the Commonwealth.

Cases Decided in the Circuit Court of the City of Richmond.

At Law.

1. *Richmond, Fredericksburg and Potomac Railroad Company v. State Corporation Commission.*

2. *Richmond, Fredericksburg and Potomac Railroad Company v. State Corporation Commission.*

3. *Richmond, Fredericksburg and Potomac Railroad Company v. State Corporation Commission.*

4. *Richmond, Fredericksburg and Potomac Railroad Company v. State Corporation Commission.*

5. *Richmond, Fredericksburg and Potomac Railroad Company v. State Corporation Commission.*

6. *Richmond, Fredericksburg and Potomac Railroad Company v. State Corporation Commission.*

7. *Richmond, Fredericksburg and Potomac Railroad Company v. State Corporation Commission.*

8. *Richmond, Fredericksburg and Potomac Railroad Company v. State Corporation Commission.*

These eight cases were dismissed in pursuance of the compromise made with the Richmond, Fredericksburg and Potomac Railroad Company, which has been fully set forth and explained above.

9. *Virginia-Carolina Chemical Company v. Commonwealth.* Dismissed.

10. *J. F. Lawler, Sergt., v. C. Lee Moore, Auditor of Public Accounts.* Mandamus awarded.

11. *Commonwealth v. W. S. Paylor, Treasurer of Danville, and Surety.* Judgment for the Commonwealth which has been satisfied.

12. *Commonwealth v. National Auto Fire Alarm Company.* Judgment for the Commonwealth.

13. *Commonwealth v. H. L. Hudgins, Treasurer.* Settled by payment of amount claimed by the Commonwealth and costs.

In Chancery.

1. *Commonwealth v. Martha Goode, etc.* Settled through compromise.

2. *Commonwealth v. Spencer D. Ivey, etc.* Settled by payment of amount due Commonwealth

3. *Donohoe, Auditor, v. Thos. W. Robinson, Treasurer, and others.* Settled by payment of amount due Commonwealth

4. *Richmond, Fredericksburg and Potomac Railroad Company v. Marye, Auditor.* Withdrawn, as explained above.

5. *Richmond, Fredericksburg and Potomac Railroad Company v. Marye, Auditor.* Withdrawn, as explained above.

6. *Richmond, Fredericksburg and Potomac Railroad Company v. Marye, Auditor.* Withdrawn, as explained above.

7. *Richmond, Fredericksburg and Potomac Railroad Company v. Donohoe, Auditor.* Withdrawn, as explained above.

8. *Richmond, Fredericksburg and Potomac Railroad Company v. R. T. Wilson, Clerk.* Withdrawn, as explained above.

9. *Richmond, Fredericksburg and Potomac Railroad Company v. R. T. Wilson, Clerk.* Withdrawn, as explained above.

10. *City of Lynchburg v. E. B. McGinnis, Treasurer* This case was decided in favor of the city of Lynchburg. An appeal was taken to the Supreme Court of Appeals, where the case is now awaiting argument.

11. *Shenandoah Lime Company v. Wm. Hodges Mann, Governor, and others.* This case, referred to in my last report, was decided in favor of the defendants, and the validity of the law therein attacked was sustained by the circuit court. The complainants appealed to the Supreme Court of Appeals. It has been argued and submitted, and is awaiting decision.

12. *C. D. Langhorne v. Richmond, Fredericksburg and Potomac Railroad Company.* This is the case heretofore referred to in this report as the *Richmond, Fredericksburg and Potomac Railroad Company v. Commonwealth.*

Cases Pending in the Circuit Court of the City of Richmond.

At Law.

1. *Commonwealth v. O. B. Thomas, Treasurer Fluvanna county et als.*
2. *Commonwealth v. G. P. Barr, Treasurer Washington county et als.*
3. *Commonwealth v. W. M. Gray and J. J. Geisler, Washington county.*
4. *Commonwealth v. O. D. Foster, Administrator R. D. Adams.*
5. *Commonwealth v. A. D. Phillips et als., sureties of Adams.*
6. *Commonwealth v. D. Mott Robertson et als.*
7. *Commonwealth, ex rel., Auditor Public Accounts v. Gray National Tcclautograph Company.*
8. *Seaboard Air Line R. R. Co. v. State Corporation Commission.*
9. *Life Insurance Company of Virginia v. Commonwealth.*
10. *The Commonwealth, ex rel., Jos. Button, Com'r, v. Modern Workmen of the World.*
11. *The Ferries Company v. Commonwealth.*
12. *Modern Workmen of the World v. Jos. Button, Com'r.*

In Chancery.

1. *Commonwealth v. P. H. Huffman et als.*
2. *Commonwealth v. Walter Millan.*
3. *Commonwealth v. Jas. Hilton's Administrator.*
4. *Commonwealth v. J. T. Young.*
5. *Commonwealth v. A. A. Chapman.*
6. *Commonwealth v. B. Vandergrift et als.*
7. *Commonwealth v. Sarah E. French.*
8. *Blueridge Overalls Company v. Board of Directors State Penitentiary et als.* This is a suit involving the validity of an existing contract with the Star Clothing Company for working convicts in the State Penitentiary. The case is being properly defended.
9. *Jos. Button, Commissioner of Insurance, v. American Union Fire Insurance Company.*

Allen Cases.

The history of criminal jurisprudence in Virginia discloses that there have been a great many important criminal cases tried in this Commonwealth—some of which were of national importance; many of them of State-wide importance—but, it is fair to assume that no criminal trials have ever taken place in this Commonwealth that were of more real importance in the administration of the criminal laws, and in the vindication of the supremacy and power of the courts of the Commonwealth to administer the criminal laws of the State, than were the Allen cases.

On the 14th day of March, 1912, in the county of Carroll, the Honorable Thornton L. Massie, judge of the 21st Judicial Circuit of Virginia, was holding a term of his court in said county. Floyd Allen had been indicted and was on trial in said court. At an early hour in the morning, the jury came into court and returned a verdict finding the said Allen guilty of

felony as charged in the indictment on which he was tried, and fixing his punishment at one year in the penitentiary. A motion was made to set aside the verdict and grant a new trial, which motion the court took under advisement, and remanded the prisoner to jail pending the disposition of this motion by the court, whereupon Floyd Allen, his sons and brother and three of his nephews, in open court, opened fire with pistols concealed on their persons upon the judge on the bench, upon the officers of the court and upon the jury; and as a result of this pistol fusilade the judge of the court, the attorney for the Commonwealth, the sheriff of the county and one juror were killed, two other jurors and the clerk of the court wounded, and a woman (an innocent by-stander) was killed.

The information of this terrible tragedy was communicated at once by telegraph to the Governor and to this office. Immediately upon receipt of the information I went to the Governor's office and, upon consultation it was determined that prompt measures should be taken to restore law and order in the county of Carroll, as quickly as it was possible to do so. The Governor designated and commissioned the Honorable Waller R. Staples, judge of the corporation court of the city of Roanoke, Virginia, to go to Carroll and open the court; and, upon the Governor's suggestion, I went to Carroll C. H. as the immediate representative of the Governor, for the purpose of doing all in my power to restore law and order, and to reestablish the supremacy of the courts. We arrived there about noon the day after this dreadful tragedy, and, as might have been expected, found the people in a state of excitement, and that the perpetrators of said offences had escaped, with the exception of Floyd Allen and one son (who was afterwards acquitted) who were at once placed under arrest and immediately steps were taken looking to the arrest of the fugitives. The court was opened in due form; a grand jury impaneled and indictments found against the parties supposed to be guilty.

Finding that the attorney for the Commonwealth had been killed, and that all of the members of the bar then at the court house would probably be called upon to testify as witnesses in the case, except a young attorney by the name of S. Floyd Landreth, acting under the authority of the Governor, I secured his services to prepare the indictments and to take charge of the cases. He rendered this service promptly, efficiently and ably. The term of the court was adjourned to a subsequent day, and organized efforts, under the direction of the Governor, and with the full approval of the Attorney General, were set on foot to capture the fugitives charged with these offences.

Before the meeting of the adjourned term of the court, the Governor, with the advice and assistance of the Attorney General, on the 23rd day of March, 1912, employed the Honorable Jos. C. Wysor, of Pulaski, Mr. John S. Draper, of Pulaski, and Mr. Walter S. Poage, of Wytheville, as special counsel to prosecute all of said murder cases for the Commonwealth. For reasons satisfactory to the counsel in charge of the prosecution, new indictments were found against the parties charged with these several offences; and, on motion of the defendants, made in the circuit court of Carroll county, the trial of all the cases was removed to the circuit court of Wythe county. The records of the case show that the parties having elected to be

tried separately, seven separate and distinct trials for murder were had against the parties in the circuit court of Wythe county, Virginia. After the cases were removed to Wythe, Mr. Landreth was retained as counsel for the prosecution by the Governor, and with the consent and approval of this office.

Great public interest was manifested throughout the State in the trial of these cases. Floyd Allen and Claude S. Allen were convicted of murder in the first degree, and the other parties were convicted, some on pleas of guilty of murder in the second degree, and are now serving terms in the penitentiary of this State.

In the case of the *Commonwealth v. Floyd Allen* and in the case of the *Commonwealth v. Claude S. Allen*, petitions for writ of error were presented to the Supreme Court of Appeals of this State, and these petitions were refused. Subsequently, new or amended petitions were presented to the court, and were likewise refused; and in refusing the second application for writ of error, the Supreme Court of the State rendered an opinion holding that there was no error in the cases (see 114 Virginia, 826). After this decision had been rendered, application was made to the Supreme Court of the United States for a writ of error or appeal to that court, which was refused.

After the conviction of Floyd Allen and Claude S. Allen of murder in the first degree, and after petition for writ of error had been first refused, application was made to your Excellency, the Governor of Virginia, for pardon or commutation of the sentences of both Floyd Allen and Claude S. Allen. Your Excellency is, of course, familiar with the proceedings which took place before you, which resulted in the refusal on the part of the Governor to interfere, or to exercise Executive clemency in behalf of the prisoners, or either of them, either by way of pardon or commutation of sentence. The reasons of the Governor were given in writing. From time to time respites were granted by your Excellency postponing the date for the execution of the prisoners; and after final action on the part of the Governor, and, at a time when your Excellency was temporarily absent from the State, on the night of the 27th day of March, 1913, about the hour, or a few moments before midnight of that day, I was called to the 'phone at my home in the city of Richmond and asked to give an opinion as to whether the Lieutenant Governor of the State, in the temporary absence of the Governor, had any power or jurisdiction to deal with these cases, either by way of respite, pardon or otherwise. I declined to give any opinion in regard to it over the 'phone; but, being assured that the Lieutenant Governor desired my opinion as to his power in the premises, after coming to my office on the same night and examining the Constitution and authorities on the question, I went by invitation to the house of Mr. John P. Branch, in the city of Richmond, where I found the Lieutenant Governor, counsel for the prisoners and several other gentlemen assembled, discussing the matter as to the power of the Lieutenant Governor. I gave to the Lieutenant Governor, the Honorable J. Taylor Ellyson, my opinion that, under the Constitution and laws of this State, he had no power whatever in the premises. In the first place, if it was then conceded that the Governor was out of the State (a fact that did not officially

appear), yet it was known that his absence, if he were absent, was only temporary; and conceding his temporary absence, in my opinion, the Lieutenant Governor had no power or authority whatever to exercise any of the executive powers or functions of the Governor. I called attention to the Constitution of Virginia defining the powers of the Lieutenant Governor, section 78, which is as follows:

"Sec. 78. In case of the removal of the Governor from office, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor; and the General Assembly shall provide by law for the discharge of the executive functions in other necessary cases."

I held that, in my opinion, this constitutional provision provided only for the case where there was an actual vacancy in the office of Governor for any of the causes mentioned in the Constitution, and that when such vacancy occurred that *the office* "devolved upon the Lieutenant Governor"; and that the Constitution did not confer upon the Lieutenant Governor any right to exercise the powers of the Governor except in the cases named, when the office itself would devolve upon the Lieutenant Governor, that is, that the Constitution provided for the conferring of the powers of the Governor and of the office itself, upon the Lieutenant Governor in the cases named in the Constitution, but did not provide for, and does not authorize the Lieutenant Governor to exercise any of the executive functions of the Governor as long as the Governor retains the office. I held that, in my opinion, if the Governor is removed from office, or if the Governor dies, or fails to qualify, or resigns, or removes from the State, or if on account of inability to discharge the powers and duties of the office, in either event the office itself would devolve upon the Lieutenant Governor. I further held, and was of opinion, that the "removal from the State" contemplated by the Constitution was a permanent removal and not a mere temporary absence; and that the inability to discharge the powers and duties of the office of Governor meant permanent disability; and that was further of opinion that there should be some judicial, or other legal ascertainment of the fact that the Governor was permanently disabled to perform the duties and powers of the office before the Lieutenant Governor could assume the office; and that when the office of Governor did devolve upon the Lieutenant Governor, in any of the events named in the Constitution, then he became the Governor and would exercise the functions as Governor and not as Lieutenant Governor. The Lieutenant Governor himself expressed the opinion that he had no power to exercise the powers and functions of the Governor during the temporary absence of the Governor from the State. Before leaving my office that night, I caused the Governor to be notified, by wire, as to what was then transpiring in Richmond in regard to these cases.

I was asked to further consider the question. I agreed to do so, holding myself in readiness to change my opinion if any valid reason could be presented. It was agreed that counsel representing the prisoners should meet me on the next morning at my office, at eight o'clock. Before the

arrival of the hour, a telegram was received from the Governor stating that he was in the Commonwealth of Virginia at that time and would reach the city of Richmond at an early hour during the day. Being requested to rule on the point, I held, and so advised the Superintendent of the Penitentiary, that the judgment of the court having provided that the executions of the sentence of death should take place between the hours of sunrise and sunset of the day fixed for the executions that the Superintendent of the Penitentiary had the discretion to carry the sentences into execution at any time within the hours named on the day named for the executions.

Having implicit confidence in the ability, fidelity and skill of the counsel who had been employed to conduct the prosecution, this office did not assume to exercise any control over the prosecutions, but kept regularly in touch with the progress being made; and my observation at the time and the records warrant me in stating that never was a trust more faithfully executed than the trust reposed in the gentlemen who conducted the prosecution of these cases. Practically all of their time was taken up and given to the work of prosecuting these cases for a period covering nearly one year. Seven distinct murder cases were presented, which required uninterrupted vigilance and attention of the attorneys conducting the prosecution, they having to meet the many able attorneys who represented the defence.

I am informed that the compensation which will be asked for by these gentlemen, for their services rendered the Commonwealth in these cases, will be as follows:

Hon. J. C. Wysor	\$ 5,000 00
Mr. Jno. S. Draper	5,000 00
Mr. W. S. Poage	5,000 00
Mr. S. Floyd Landreth	2,500 00

From my intimate knowledge of the work performed and the services rendered by these gentlemen in the prosecution of the cases I am of the opinion that the fees and charges are reasonable, and I not only recommend that they be paid these fees, for their services, but I feel that they earned and are justly entitled to the plaudits and thanks of every man, woman and child in the Commonwealth of Virginia, who has a proper estimate of the necessity and supreme importance of maintaining the supremacy of the law, the authority, dignity and majesty of our courts, and the preservation of law and order throughout the Commonwealth.

I cannot conclude this report without paying a just tribute to the ability, learning, fidelity and impartiality with which the Honorable Waller R. Staples, the judge who presided at the trial of these cases, performed the delicate and important duties which devolved upon him in the repeated trials of these important cases; and it should be a source of congratulation to Judge Staples that his every ruling in the cases was approved by the unanimous judgment of the Supreme Court of this State, and finally upheld by the Supreme Court of the United States.

Opinions Given from November, 1912, to January, 1914.

The following are some of the more important opinions which have been given by this office during the year.

To the Governor.

RICHMOND, VIRGINIA, *January 23, 1913.*

*To His Excellency, WM. HODGES MANN,
Governor of Virginia,*

Richmond, Va.

DEAR SIR:

I beg to acknowledge receipt of your communication of January 17th, enclosing a letter from Hon. R. Gordon Finney, in relation to the right of non-resident owners of automobiles to use the public roads of this State as in your letter mentioned, and my attention is specially called to section 10 of the act approved March 17, 1910, and my opinion asked as to the true construction thereof.

In this, as in all other cases, the whole of the act must be construed together. Sections 1, 2, 3 and following make it unlawful for any person to operate an automobile over any of the public roads of this Commonwealth without a license. See section 1 of the act.

Section 2 requires that a license be obtained for the privilege of operating automobiles. Then follow specific provisions in regard to issuing licenses.

Section 10 contains provisions in regard to non-residents of the State; and this section being an exception or qualification of the law as laid down in the previous parts of the act, it must be construed strictly, and any non-resident owner who undertakes to operate his machine over the public highways of this State must comply strictly with this section, and my construction is that when such owner comes into the State and claims exemption for the seven consecutive days that he can only use this privilege in strict accordance with the act; that is, if he comes into the State and doesn't run his machine but for one hour, and then goes out of the State, he has exhausted thereby one of his two periods, and so on as to the next period.

As to the necessity for obtaining permits by the non-resident, I see no express provision requiring this, nor do I find in the act that there is any one authorized to grant such permit, as the statute gives a non-resident the right to travel over the highways in this State for the two consecutive periods of seven days in the year without complying with the provisions of sections 2, 3 and 3b, provided of course he has complied with, or comes within the meaning of, the provisions of section 10.

It seems, therefore, that a non-resident coming into the State acts at his peril, and if he fails to comply with the law, is liable to be arrested and tried, and at such trial can only defend himself by showing that he has complied with and not violated the law.

I am,

Very truly yours,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *February 11, 1913.*

*To His Excellency, WM. HODGES MANN,
Governor of Virginia, Richmond.*

SIR:

I beg leave to acknowledge receipt of your communication of the 10th instant, in which you enclose a letter from Hon. John H. Smith, of date February 7, 1913, in which communication you call my attention to your letters of January 23rd, and February 1, 1913, with enclosures accompanying said letters.

The subject referred to in this correspondence is the acquisition of lands and property in the State of Virginia by the Federal Government, and my opinion is asked as to the true construction of the act of the General Assembly of Virginia approved on the 14th day of March, 1912. (Acts 1912, p. 563, chapter 260.)

I have duly considered the whole correspondence submitted. I have carefully considered the legal questions involved and submitted, and am of opinion that the act referred to, approved March 14, 1912, embodies all of the statute law of the State now in force on the subject; that the enactment of this statute completely repeals and nullifies the act of April 2, 1902, (Acts of 1901-2, p. 565), which it amends, and re-enacts. That this is the effect of the amendatory statute which in constitutional form and manner amends and re-enacts the former statute, is clearly sustained by the Virginia authorities. See *Somer's case*, 97 Va., 760; *Fox v. Commonwealth*, 16 Grattt., 1; *McCready v. Commonwealth*, 27 Gratt., 982; *Brown v. Western State Hospital*, 110 Va., 321; and *Ex Parte McCardle*, 7 Wall., 514; 19 L. Ed. 264. See also Lewis-Sutherland Statutory Construction, section 237, and cases cited.

I deem it not improper to call the attention of your Excellency to the fact that the act of 1912 now in force makes no provision whatever for reserving to the State jurisdiction over the territory, the title to which is acquired by the United States Government, and I venture no opinion as to what the effect would be if the United States Government did obtain title to property in Virginia while this act in its present shape was in force, but beg leave to suggest that before this statute is acted upon, and before any property is acquired by the United States Government, it would be well that this act be amended so as to reserve to the State proper jurisdiction for the service of criminal and civil process in and over the territory acquired by the United States Government.

I beg also to call your Excellency's attention to the fact that in my opinion the act now in force, to-wit, the act approved March 14, 1912, makes no provision whatever for the acquisition of land by the United States Government for the specific and designated purposes mentioned in the seventeenth clause, eighth section of the first article of the Constitution of the United States, and that further legislation will be necessary to give the consent of the State of Virginia to the acquisition by the United States Government of property under this clause of the said United States Constitution.

It will be noted that the act approved April 2, 1902, not only provided for giving the consent of the State to the acquisition of property under

this constitutional provision, but made proper provision for the reservation of the jurisdiction of the State for the purposes of serving process in and over the property ceded, but this part of the act has become null and void by reason of the amendment of the act referred to above, and so far as I have been able to ascertain all former acts on this subject have reserved to the State jurisdiction for the purpose of serving process in civil and criminal cases, etc.

I return herewith the letters sent me.

I have the honor to be,

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, April 6, 1913.

To His Excellency, WM. HODGES MANN,
Governor of Virginia.

DEAR GOVERNOR:

Yours of this instant, with enclosure, to hand. I have duly considered the letter of Honorable James R. Caton referred to me by you. I have heretofore had occasion to give this matter very careful attention, and made a trip to Alexandria and to Washington to look into it when a feature of the case was pending before the Secretary of War. I do not think that either the Governor or the Attorney General has any authority whatever, under the existing law, to enter the appearance of the Commonwealth of Virginia as a party to the suit referred to, which is pending in the court in the District of Columbia, and if we had authority I think there are very strong and controlling reasons why this step should not be taken, which reasons I will be glad to discuss with you if you so desire.

I return Mr. Caton's letter.

I have the honor to be,

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, April 9, 1913.

To His Excellency, WM. HODGES MANN,
Governor of Virginia.

DEAR SIR:

Replying to the inquiries contained in your favor of April 3rd, I beg to say that I have examined the matter as fully as the time at my disposal permitted, and beg to submit herewith the following answers to the questions propounded:

With reference to the first question, to-wit, the power of the Governor to remove the members of the penitentiary board.

It seems to me that in the provisions of the Constitution and laws conferring power upon the Governor in the premises, a distinction is made between the *removal* of an officer of the government, and the *suspension* of an officer, and while it is not entirely clear that the Governor has the power to *remove* any officer, he is specifically given the power to

suspend any of the officers at the seat of government, except the Lieutenant Governor; and to appoint a person to act in the discharge of the duties of the office during such suspension, and until the meeting of the General Assembly next following such suspension and appointment.

Whatever power the Governor has must be conferred by the Constitution or statutes of the State; and in the interpretation of the language used therein, very little, if any information can be gotten from decided cases in other States, for the reason that in almost every case the decision arrived at is based upon the peculiar provisions of the law of that State, none of which are identical with the provisions contained in the laws of the State of Virginia; and so far as my examination has gone there is no decision of the Supreme Court of this State passing upon the powers of the Governor in the premises since the adoption of the Constitution in 1902.

Under the law as it stood prior to the adoption of the Code in 1887, the law with reference to the directors at the penitentiary was set out in chapter 17, sections 12 and 16 of the Code of 1873, and it was therein provided as follows

"Section 12. There shall be annually appointed by the Governor on the first Monday in January, or as soon thereafter as may be, three persons as directors of the penitentiary. * * * Vacancies occurring in either of said offices may be filled by the Governor from time to time."

"Section 16. The officers whose appointment is provided for in the four preceding sections may be removed by the persons having the power of appointment, for misbehavior, incapacity, or neglect of official duty; and when the power of appointment is in one person on the recommendation of others, the power of removing shall be exercised on like recommendation."

At this time, under section 13 of the same chapter the Governor was required to appoint a clerk of the penitentiary "on the recommendation of the board of directors, and seven assistant keepers, on the recommendation of the superintendent," and the power to remove was given to the Governor in these cases on like representation.

In the Code of 1887, chapter 17, section 232, provisions are made with reference to the appointment and *removal* of officers of the penitentiary, as follows:

"There shall be annually appointed by the Governor on the first Monday in January, or as soon thereafter as may be, three persons as directors of the penitentiary; and also a surgeon of the penitentiary and public guards * * * Their term of office shall be until the first Monday in January following, and afterwards until their successors shall be qualified. Vacancies occurring in either of said offices may be filled by the Governor from time to time."

And by section 235 of the same chapter it is provided as follows:

"The officers whose appointment is provided for in the four preceding sections may be removed by the persons having the power of appointment, for misbehavior, incapacity, or neglect of official duty; and when the power of appointment is in the one person on the recom-

mendation of others, the power of removing shall be exercised on like recommendation."

In this codification all of the officers at the penitentiary who are to be appointed by the Governor may be *removed* by him for the causes therein set out.

By the Constitution adopted in 1902 special provisions were made for the appointment by the Governor of a board of directors of the penitentiary; and also for the suspension by the Governor of certain officers.

Section 148 of the Constitution provides as follows:

"There shall be appointed by the Governor, subject to confirmation by the Senate, a board of five directors which, subject to such regulations and requirements as may be prescribed by law, shall have the government and control of the penitentiary, branch prisons, and prison farms, and shall appoint the superintendents and surgeons thereof."

By section 73 of the Constitution, the Governor's power, amongst other things, is prescribed as follows:

"And, during the recess of the General Assembly, shall have power to suspend from office for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law, all executive officers at the seat of government except the Lieutenant Governor; but, in any case in which this power is so exercised, the Governor shall report to the General Assembly, at the beginning of the next session thereof, the fact of such suspension and the cause therefor, whereupon the General Assembly shall determine whether such officer shall be restored or finally removed."

These provisions of the Constitution with reference to the appointment of the board, and also the power of suspension are repeated in the statutes that were passed by the General Assembly carrying these provisions into effect, and are to be found in Acts of Assembly 1902-3-4, p. 485, wherein certain sections of the Code are amended so as to conform to the constitutional provisions referred to, and are as follows:

"Sec. 232. The Governor shall, on the first day of February, nineteen hundred and three, or as soon thereafter as may be, appoint, subject to confirmation by the Senate, a board of five directors, which shall have the government and control of the penitentiary, branch prisons, and prison farms, subject to such regulations and requirements as may be prescribed by law."

By section 235 it is provided as follows:

"Sec. 235. The officers whose appointment by the Governor is provided for in section two hundred and thirty-one and two hundred and thirty-two, may be suspended, and the officers and clerks whose appointment is provided for in the three preceding sections, except those appointed by the Governor may be removed by the officer or board having the power of appointment, for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law. And when any of such officers are so suspended the office shall be filled in the same manner, and the Governor shall make the same report to the General

Assembly at the beginning of the next session, and the Assembly shall take the same action thereon as is prescribed in section two hundred and thirty of the Code of Virginia."

It will be observed that in the constitutional provision the power of the Governor over the directors at the penitentiary is a power of *suspension*, and not a technical power of *removal*, though since, upon such suspension, the Governor is authorized to substitute another person to discharge the duties of the office until the next session of the legislature, it does not seem that there is any practical difference between the *suspension* and the *removal*; the only difference being, so far as I can see, that in the case of suspension, the suspended officer has the privilege of appealing to the subsequent legislature, whereas in case of removal he would have no such appeal.

The provisions of section 235 are somewhat involved, but it seems to me that it is very clear that the provisions of the statute were intended to give the power of suspension or removal of officers to the person or board having the power of appointment. Some of the officers referred to in that section were originally appointed by the Governor, some by the directors of the penitentiary, and some also by the superintendent of the penitentiary, and provision is sought to be made in this one section for the removal of any of the officers so appointed; and it seems to be very clear that the purpose was to give the power of suspension or removal to the person or board who originally had the appointing power.

In the case of the Governor the power is for *suspension*, whereas in the case of the board of directors, or of the superintendent, the power is given to *remove*; and the words of the statute, when properly construed, with reference to the officers to be appointed or removed by the Governor, are about as follows:

"The officers whose appointment by the Governor is provided for in sections 231 and 232 may be suspended, and the officers and clerks whose appointment is provided for in the three preceding sections (except those appointed by the Governor) may be removed, by the officer or board having the power of appointment, for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law. And when any of said officers are so *suspended* the office shall be filled in the same manner, and the Governor shall make the same report, to the General Assembly at the beginning of the next session, and the General Assembly shall take the same action thereon as is prescribed by section 230 of the Code of Virginia."

It is evident from this that the Governor suspends the officers, subject to the action of the legislature following, whereas in the case of officers other than those suspended by the Governor, who are removed by the board of directors, or the superintendent of the penitentiary, the action is final, and there is no direction that it shall be reported to the legislature. The suspension so provided for seems to me to be equivalent to removal, though it is expressly made subject to ratification by the subsequent Legislature.

Whether or not these officers are entitled to notice before being suspended by the Governor, is a matter of some importance, and I take it that

it would be governed by the same rules that apply to cases where provision is made for the removal of an officer.

The general rule of law on this subject, as set out in sections 344 and 364 of Throop on Public Officers, is as follows:

"344. A constitutional provision, empowering the Governor to remove 'any officer whom he may appoint,' includes officers appointed by him by and with the advice and consent of the Senate, and extends to cases for which other specific remedies are provided. And where such a provision specifies the causes for which he may thus remove, but prescribes no mode of exercising the power, the Governor may determine that such cause exists, upon such evidence and in such mode as he deems proper. But he can exercise the power only for one of the causes specified, and upon charges specifying the particular act, omission, or other ground of removal; and the officer must have notice thereof, and a reasonable opportunity to be heard in his defence; and the Governor has judicial power to decide upon the proofs. But it is not necessary that the Governor should specify the causes."

"364. As already stated, this is the common law rule in all cases, except where an office is held, absolutely at pleasure. In this country, the rule is, that where an officer holds his office for a certain number of years, 'if he shall so long behave himself well,' he cannot be removed, even for misbehavior, without notice and a hearing. So where he is appointed for a fixed term, and removable only for cause, he can be removed only upon charges, notice, and an opportunity to be heard."

It would seem therefore that since the power of suspension is given to the Governor only for certain offences prescribed both in the Constitution and the statute, it would be incumbent upon the Governor to give notice of his intended action before proceeding to suspend him.

This construction of the statute seems to have been adopted by the circuit court of the city of Richmond in the recent case of Dr. Charles V. Carrington, whose removal by the board of directors of the penitentiary, was declared illegal upon the ground that the action had been taken by the board without giving any notice of the proposed action to Dr. Carrington.

Upon the whole, it seems to me that the laws of the State as herein set out, give to the Governor the power to suspend any one or more of the directors of the penitentiary upon any one or more of the grounds set forth in the Constitution and statutes for such suspension, but that it is probably necessary before exercising that power that notice should be given to the director proposed to be suspended, before the final action of the Governor is taken.

Having responded to the inquiry of your Excellency as to your power in the premises under the Constitution and statute laws of this State, I beg to state that in my opinion the second inquiry submitted, which refers to the action of the penitentiary board, as set forth in your letter, is a matter so entirely within the discretion of the Governor that I do not feel that the Attorney-General of the State would be warranted in expressing any official opinion in regard thereto, which at best could be nothing more than an expression of my personal opinion, as to the manner and way in which you should exercise that discretion, which by the Constitution and laws of the State is alone vested in the Governor.

I feel sure that upon reflection, your Excellency will agree with me that this is a matter so exclusively within the discretion of the Governor that it cannot be properly made the subject of an official opinion at my hands.

Respectfully,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, June 10, 1913.

*To His Excellency, WM. HODGES MANN,
Governor of Virginia, Richmond.*

SIR:

At the request of Judge Williams, who is absent attending the session of the Supreme Court of Appeals of Virginia at Wytheville, I am writing in response to your inquiry of June 3rd, asking for his opinion as to the power of the Governor to revoke the commission of a notary public for cause.

The powers of the Governor are defined in sections 73 and 74 of the Constitution, and among the powers there given for removal from office I find only the power "to suspend from office for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law, all executive officers at the seat of government except the Lieutenant Governor;" which, of course, does not cover the removal of a notary public.

In chapter 17 of the Code, sections 223-241, both inclusive, provision is made for the removal from office of certain elective officers at the seat of government, and also for the removal of the Penitentiary Board and officers that are appointed by the Governor, and as to all of these provision is made for their removal from office by the Governor, but I have not been able to find any special provision, either in the Constitution or in the Acts of Assembly, giving to the Governor specifically the power to remove from office a notary public; and the general rule of law, as far as I can get it, is that the Governor has no power of removal except so far as it is specifically given him by law.

In the case of *People v. Jewett*, 6 Cal., 291, the question was raised whether the Governor could remove an officer under the provision of the Constitution giving him authority to remove at pleasure all incumbents, the duration of whose office was not provided for by the Constitution, or declared by law, and in that case the officer sought to be removed was appointed for a specified term, and the court held that he could not be removed by the Governor, as the constitutional provision must be construed to deny the right of removal in this case where the term was defined.

In the case of notary public, the law requires that they be appointed for a definite term of four years, and the general rule, as far as I have been able to ascertain it, is that where a term is fixed, either by the Constitution or statute of the State, there is no power of removal lodged in the Governor, except by express provision contained in the law itself.

In the case of *W. L. Royall v. Thomas*, 28 Gratt., p. 130, the proceeding was by *quo warranto* to remove Mr. Royall as a notary public, and I have not been able to find anywhere an instance where a removal has been made

by the Governor of the State except in pursuance of express authority contained in the law.

In the Chapter on Notaries Public in the Code, sections 923 and following, the provisions are that a notary shall be appointed by the Governor for a term of four years, and there is no provision made for their removal. Under these circumstances, there being no special provision either in the Constitution or statute of the State authorizing the removal of a notary public by the Governor, it seems to me that the Governor has no such power, and that the only procedure for the removal of a notary public is that which applies to all other officers, namely, by *quo warranto*, as was used in the Royall case.

Yours truly,

RICHARD B. DAVIS,
Assistant Attorney General.

RICHMOND, VIRGINIA, August 9, 1913.

His Excellency, WILLIAM HODGES MANN,
Governor of virginia, Richmond, Virginia.

DEAR SIR:

In response to inquiries contained in your favor of August 8th, I have made some examinations at the request of the Attorney General, and beg to make the following report:

By sections 4174 and 4176 of the Code, it is made a felony punishable by imprisonment in the penitentiary from one to five years for a prisoner to escape from the penitentiary or from any officer or the guard having him in charge.

By section 4179, the circuit court of the city of Richmond is given jurisdiction in all criminal proceedings against convicts; and where the offence is committed by a convict while employed upon the public works, the circuit court of the county in which he is working is given concurrent jurisdiction for trying the offence.

By section 4177, it is provided that a person prosecuted for any offence under that chapter (which embraces the offense of escaping from the penitentiary) "shall not be discharged from the penitentiary while such prosecution is pending."

Under these provisions, it would appear that in the case you cite, that of a convict whose time expires on the 18th day of this month, who has escaped and is recaptured, the superintendent of the penitentiary should proceed at once to have him indicted for the felony either in the circuit court of the city of Richmond, or in any circuit court of the county where the escape was effected; and that while this prosecution for the escape is pending, the convict should be held by the superintendent in the penitentiary. It may be the safer course for the prisoner to be kept in the penitentiary building after the expiration of the present term for which he is sentenced, and until the prosecution now being commenced against him for his escape has been concluded.

Very truly yours,

RICHARD B. DAVIS,
Assistant Attorney General.

RICHMOND, VIRGINIA, *September 23, 1913.*

*His Excellency, Wm. HODGES MANN,
Governor of Virginia, Richmond.*

DEAR SIR:

In the absence of the Attorney General, I am writing in reply to your favor of September 22nd, and beg leave to say that I find nothing in the statutes preventing you from ordering a special election to fill a vacancy in the Senate to be held on the date set apart for the general election in the Senate in November.

By section 61 of Pollard's code, it is provided:

"When a vacancy occurs during the recess of the General Assembly by death or resignation of a member thereof * * * a writ of election to fill such vacancy shall be issued by the Governor * * "

"Such writ shall be directed to the * * * sheriffs and sergeants of the respective counties and corporations composing the election district, or districts, for the election of senators or delegates."

Section 110, with reference to special elections, provides as follows:

"Special elections shall be deemed to be such as are held in pursuance of a special law, and also such as are held to supply vacancies in any offices, whether the same be filled by the qualified voters of the State, or of any county, corporation, magisterial district or ward, and the same may be held at such time as may be designated by such special law or the proper officer duly authorized to order such elections."

Section 115 provides:

"Whenever a special election is ordered by the Governor * * * it shall be his duty to issue a writ of election designating the office to be filled at such election and the time such election is to be held, and transmit the same to the sheriff of the county and the sergeant of the corporation in which such election is to be held, to be by such sheriff or sergeant published by posting a copy thereof at each voting place in his county or corporation, at least, ten days before the election.

There is nothing in these statutes, which are all I find bearing directly on the subject, which prevents the Governor from specifying a general election day as the day on which the special election is to be held.

As bearing somewhat on the subject, however, section 100 provides as follows:

"In case the election to any public office, required to be filled by the qualified voters of any county, corporation, magisterial district or ward, shall not be specially provided for by law, an election to such office may be had at the general election next before the time provided for the term of such office to have commenced."

It would seem to follow, inferentially, from this that there is no objection to naming the general election day the time for holding a special election; as the statute expressly provides that if no other provision is made for the special election it may be held on the general election day;

and I find nothing in the statute preventing a special election ordered by the Governor from being held on the general election day.

Very respectfully,

RICHARD B. DAVIS,
Assistant Attorney General.

RICHMOND, VIRGINIA, October 21, 1913.

His Excellency, Wm. Hodges Mann,

Governor of Virginia, Richmond, Virginia.

DEAR GOVERNOR:

Your favor of the 20th, addressed to the Attorney General and making inquiry as to your power in cases of designating judges to hold court in other circuits than their own, is duly to hand; and, in the necessary absence of the Attorney General, I beg to submit the following reply:

By section 3049 of the Code, provision is made for the holding of courts by judges other than those regularly appointed to hold the same.

By the first clause of this statute, provision is made whereby if the judge of a court is absent, or unable to hold the term, he may himself request some other judge to hold the term in his place, upon the circumstances set forth in that paragraph.

By the second clause of the same statute, provision is made for a case in which the judge of the court has entered of record that, for some reason, it is improper for him to hear a designated cause, or to hold a designated term of the court; and the statute provides that, in such case, this shall be entered of record and certified to the Governor, "*Who shall designate the judge of some circuit court, or of some city court for a city of the first class, to preside at the trial of such cause, or hold such term.*"

It seems to me manifest that the statute intends to make a difference in the cases that are provided for by the first paragraph of the statute, and by the second paragraph. In the first case, the judge himself can request any judge of his own selection to perform his duties referred to in that paragraph; while in the cases provided for in the second paragraph, it is required that the judge of the court shall have it entered of record that it is improper for him to hold the court, and that fact shall be certified to the Governor, and that the Governor shall then make provision by the designation of some other judge.

It seems to me clearly that in this latter case, the duty of designating a judge to hold the court is devolved upon the Governor, and full discretion as to whom he shall designate is left with the Governor.

I find nothing in the statute indicating that, in such case, the discretion of the Governor, as to designating the judge, is controlled or affected in any way by the provisions of the statute.

Your letter contains this sentence: "What I wish to know is if I have any discretion in the premises." I do not know exactly what you mean by this; whether you mean to inquire if you have any discretion as to whether a designation shall be made or not; or whether you have any discretion in the matter of selecting the judge to hold the court.

It does not seem to me that any discretion is left with the Governor as to whether or not the designation shall be made, but that that duty is

imperative. On the other hand, I think that in the selection of the judge to be designated, the discretion of the Governor is absolute, and not affected by suggestions from any source whatever.

Very respectfully yours,

RICHARD B. DAVIS,
Assistant Attorney General.

To the Auditor of Public Accounts.

RICHMOND, VIRGINIA, December 2, 1912.

Hon. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR SIR:

Replying to your letter of the 27th ultimo., in which you ask my opinion as to the true construction of sections 3532 and 3533 of the Code. Section 3532, as amended, is to be found in Acts 1908, p. 362 (Pollard's Code, Volume 3, bottom page 462), and section 3533, as amended, is to be found in Acts 1912, p. 157 (Pollard's Code Biennial, 1912, bottom page 161). No material changes have been made by these amendments which affect the question submitted, which is as to whether the sergeant or a city or town is entitled to receive from the Commonwealth the fee of 50 cents for receiving a person in jail when first committed.

Whilst section 3532 provides for this fee, yet in section 3533 the provision is that no sergeant of a city or town "who receives a salary or allowance for general services out of the treasury of a city or corporation shall receive any fees for services in a criminal case from the State." It is very clear that receiving a person in jail within the meaning of the law quoted above is certainly services in a criminal case, for it is only in criminal cases that persons are received in jail or are committed to jail within the meaning of the statutes quoted above; and this being true, the sergeant is clearly not entitled to receive from the State any fees for said services if the sergeant receives a salary or allowance for general services out of the treasury of the city or corporation.

As the Auditor of Public Accounts has no means of ascertaining whether the sergeant does or does not receive a salary or allowance for general services out of the treasury of a city or corporation, I think it but fair and just to require that any sergeant of any city or town in this State who presents a claim for this service out of the public treasury, should accompany the claim with the certificate of the court that the sergeant presenting the claim does not in fact receive a salary or allowance for general services out of the treasury of his city or corporation.

Yours truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *December 17, 1912.*

Hon. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR SIR:

You have submitted to me correspondence between yourself and the Hon. George J. Hundley, judge of the circuit court of Prince Edward county, Hon. George S. Shackelford, judge of the circuit court of Orange county, and the Hon. J. Lawrence Campbell, judge of the circuit court of Bedford county, and also submitted to me circular letter which you propose to send to the judges of the different courts of the State, and asking my opinion in regard thereto. I note what you say in regard to section 3525 of the Code, and whilst it is true that this section appears under the general head of classification of payments to officers out of the treasury in civil cases, yet I do not think that section 3525 is necessarily restricted or controlled by this general heading or classification, for the words you quote, to-wit, payment of officers out of the public treasury in civil cases, cannot be called in any sense the title of the act, for the general title, as contained in chapter 172, in which section 3525 occurs, is as follows: "Of the fees of officers and allowance to them," and I do not think that section 3525 can be limited in its application in the manner indicated in your circular. To my mind the context, the statute itself, the language employed, and the evident intent of the legislature to confer upon the courts ample power to have sufficient officers to perform the necessary services incident to the conduct of a court, all concur in establishing the fact that the language of section 3525 clearly expressed the legislative intent and must be construed in accordance with the plain and evident meaning of the language used in the statute. This is strongly supported by the argument used in the letters of the judges submitted, namely, that the circuit courts as now constituted are not held exclusively for the trial of criminal cases, or for the trial of civil cases, but these courts are held for the trial of both classes of cases in the order in which the cases are matured, and heard under the law and the direction of the presiding judges of the courts. In other words, I do not think a construction of the statute which would only give to the judges the right to employ these deputies on the days of the term or parts of days of the term when a court was actually engaged in the trial of civil cases would be correct.

This view is strongly supported, if not settled, by the decision of the courts of appeals of Virginia in Litton's case, 101 Va., 846 and following.

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *December 26, 1912.*

Hon. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR SIR:

You have referred to me for my opinion letter addressed to you by C. C. Tate, clerk of Wythe county, Virginia, in which he asks the question

as to what costs should be taxed against the defendant in criminal cases in which judgments of conviction are rendered in favor of the Commonwealth, and in which he asks the specific question as to whether the cost for grand juries and witnesses before the grand jury shall be included.

In reply I beg to call your attention to the provisions of section 4087 of Pollard's Code, wherein it is provided that the clerk of the court in which the accused is convicted, shall, as soon as may be, make up a statement "of all the expenses incident to the prosecution," and issue execution therefor; and by section 3534 of the Code, as amended by Acts of 1908, p. 383, the expenses of witnesses before the grand jury are required to be paid by the Commonwealth; and it seems to be clear that the amounts paid witnesses before the grand jury are clearly embraced within the meaning of section 4087.

If in any given case any party desires to raise this question after the clerk has made up his statement of costs, why it can be done and the correctness of this opinion be settled and determined by the courts.

As to the cost of the grand jury itself, this cost is paid by the county (see Code, section 3987), and should not be included.

I apprehend, therefore, that the clerk would have little or no difficulty in taxing this cost if he will follow the plain and explicit directions of section 4087, and include in his statement all expenses incident to the trial, including allowances to witnesses before the grand jury as above stated. Of course the costs of witnesses on the trial are to be included. I do not deem it necessary to go into detail, as the law clearly points out what these expenses are. It means all expenses paid by the Commonwealth as shown by the record in the case.

Hoping that this reply will cover fully the point submitted, I am,

Yours truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *January 2, 1913.*

Hon. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR SIR:

At your request I have carefully considered the letter addressed to you by Hon. T. J. Barham, dated December 26, 1912, and after duly considering the suggestions made by him I am constrained to adhere to my opinion expressed in my letter heretofore addressed to you. I do not think that the provisions contained in the charter of the city of Newport News, and referred to in Judge Barham's letter, can be held to have the effect of either repealing or amending section 3533 of the Code. The Constitution itself provides the only manner in which a statute can be amended which is by re-enacting the section or part of the statute intended to be amended, and I do not think that the provision of the charter of the city of Newport News referred to and relied upon can have the effect of being either an amendment or proviso to section 3533 of the Code.

Section 186 of the Constitution expressly provides that no money shall be paid out of the public treasury except in pursuance of an appropriation made by law, and I do not think that the provisions of the charter of the city of Newport News referred to and relied on can be held to have the force and effect of a law appropriating money out of the public treasury in the face of the express provision of section 3533 of the Code.

The argument urged by his Honor, Judge Barham, that the effect of my construction of section 3533, as contained in my former opinion, if pushed a little, would prevent the payment to the sergeant of anything for keeping and supporting a prisoner in jail is neither logical nor convincing, for the simple reason that fees for services rendered in a criminal case is one thing, and compensation for keeping and supporting prisoners in jail is quite a different thing.

The manner in which the allowance to the sergeant for public services is made by the city, I do not think is important. The material point is this, does the city make an allowance to the sergeant for public services?

In this case it conclusively appears that such allowance was made which under the express provision of section 3533 of the Code, in my opinion, prohibits the payment out of the public treasury of any fees to the sergeant for services rendered in a criminal case.

After the most careful consideration that I can give to the matter I am constrained to adhere to my former opinion. I am,

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *February 7, 1913.*

Hon. C. LEE MOORE,

*Auditor of Public Accounts,
Richmond, Virginia.*

DEAR SIR:

Replying to your communication of the 6th instant, referring to me the letter of Mr. D. G. Smith, clerk of the corporation court of the city of Newport News, I am of opinion that on the facts stated in the letter of Mr. Smith, he is not justified in paying one-half or any other part of the fine collected to the member of the police force referred to in his letter. The letter says that this member of the police force claims to be the informer, and adds that as a matter of fact he believed that the police officer did make the arrest. These facts alone would not entitle the police officer to half the fine. See Code, section 715.

The point does not necessarily arise, and I, therefore, express no opinion as to whether a police officer can or cannot be an informer within the meaning of the law which allows one-half of fines to be paid to informers.

I am clearly of opinion that clause 4 of section 1017-a of the Code does not apply to the case stated in the letter.

Yours truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *February 20, 1913.*

Hon. C. LEE MOORE,

Auditor of Public Accounts,

Richmond, Virginia.

DEAR SIR:

On October 16, 1912, you addressed to me a general communication asking my opinion as to your duty in regard to the payment of claims presented by the several departments, to-wit, Agriculture, Dairy and Food Commissioner, Health, Insurance and Bank Examiner, and asked my opinion as to your duty in regard to expenses and other claims presented by these several departments.

I am informed that the matter which called for this communication were two claims presented from the Insurance Department.

The important and far reaching effect of the opinion rendered on all of the subjects submitted has caused me to pause to consider carefully the law bearing upon the subject before writing formally, and I now ask to be excused from giving a general answer covering all of these several departments as they are governed by distinct and different statutes.

Replying to the request for my opinion as to the claims presented by the Insurance Department I am of opinion as follows:

By section 766 of the Code it is provided that:

“Every claim authorized to be presented to the Auditor shall be examined by him, and he shall allow so much on account thereof as may appear to be due.”

The statute in regard to the payment of the expenses of the Insurance Department is to be found in section 5 of the act approved March 19, 1906, (see Compilation Insurance Laws of Virginia, p. 4), and is as follows:

“The salaries and expenses of the Bureau of Insurance, unless hereinafter otherwise provided, shall be paid out of the public treasury upon order of the State Corporation Commission.”

The question is therefore presented squarely as to whether the Auditor, under section 766, or the State Corporation Commission, under the statute last quoted, is to determine what are and what are not proper expenses of the Bureau of Insurance.

In my opinion the latter statute controls, and when the State Corporation Commission has made an order for the payment of said claims that the Auditor of Public Accounts is bound thereby.

This opinion does not disturb, and is not intended to disturb the usual construction put upon section 766 by the Auditor of Public Accounts, this opinion being based alone upon the express language and evident meaning of the statute referred to.

Yours very truly,

SAML. W. WILLIAMS,

Attorney General of Virginia.

RICHMOND, VIRGINIA, March 25, 1913.

Hon. C. LEE MOORE,

*Auditor of Public Accounts,
Richmond, Virginia.*

Hon. J. T. MASTIN,

*Secretary State Board of Charities and Corrections,
Richmond, Virginia.*

Hon. J. B. WOOD,

*Superintendent Virginia Penitentiary,
Richmond, Virginia.*

Hon. P. ST. J. WILSON,

*State Highway Commissioner,
Richmond, Virginia.*

GENTLEMEN:

Replying to your favor of March 24, 1913, I beg to submit answers to the inquiries submitted by you as follows:

Your first inquiry is as follows:

"Is it not mandatory upon the judge of every circuit, corporation or hustings court of this Commonwealth, upon demand of the superintendent of the penitentiary, to require the jailor of the county or city, to deliver to the superintendent of the penitentiary, upon his order, to work upon the State convict road force, all prisoners confined in his jail, for violation of State law, or for failure to pay any fine or penalty imposed upon such prisoner for violation of State law, except such of said prisoners who show to the judge good cause why they should not be delivered to the superintendent of the penitentiary, and except such prisoners under the age of sixteen (16) years, and except such prisoners over the age of sixteen (16) and under the age of twenty-one (21) years, it being discretionary with the court or judge to deliver the prisoners between these ages?"

In response to this inquiry we would state that by the provision of the statute, section 3 of chapter 84, Acts 1908, it is provided as follows:

"Upon the written request of the superintendent of the penitentiary, the judge of the circuit court of any county, or the judge of the corporation or hustings court of any city shall in term or vacation, unless such prisoner shows to said judge good cause to the contrary, order any male person convicted of a misdemeanor, or of any offence deemed infamous in law * * * * to be delivered by the jailor of such county or city, to or upon the order of the superintendent of the penitentiary, to work in the State convict road force."

In my opinion this law is mandatory, and the judge is required to deliver all of the prisoners referred to in said section to the superintendent of the penitentiary when he makes application therefor.

Your second inquiry is as follows:

"Has any city or town the right, after the superintendent of the penitentiary has made demand for the prisoners convicted of violation of State law, or prisoners imprisoned for failure to pay fine or penalty imposed for violation of State law, the right to use any such prisoners upon its chain gang?"

In reply to this inquiry I would say that in my opinion, no city or town has the right to work upon the local chain gang any person confined in the jail for a misdemeanor or other violation of a State law, where there has been a demand made by the superintendent of the penitentiary for the delivery of such person to the State convict road force.

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, April 4, 1913.

Hon. C. LEE MOORE,

Auditor of Public Accounts,

Richmond, Virginia.

DEAR SIR:

Replying to the question submitted to me as to whether the attorney for the Commonwealth of the city of Richmond is entitled to receive a fee of \$10.00 for the trial of convicts in the penitentiary before the circuit court of the city of Richmond, when such convicts are convicted in said court of a felony, and sentenced to serve a term in the penitentiary in addition to the terms for which such convicts were originally sent to the penitentiary, I beg to reply as follows:

By section 3527 of the Code of 1904, as amended, it is provided that "the fees of attorneys for the Commonwealth * * * in all cases in which the defendant is indicted for a felony, shall be paid out of the treasury of the State, when certified as prescribed by section four thousand and eighty-four of the Code of Virginia." And section 3879 of the Code defines what a felony is, and says that such offences as are punishable with death or confinement in the penitentiary are felonies.

Chapter 204 of the Code, beginning with section 4179, prescribes the method of procedure in criminal cases against convicts, and prescribes that all criminal proceedings against convicts in the penitentiary shall be in the circuit court of the city of Richmond, and prescribes for the filing of an information instead of an indictment where the prosecution is upon the ground that a convict has been previously convicted of felony in this State, and prescribes trial by jury where the convict remains silent or denies his identity, and prescribes that the court shall sentence the prisoner to such further confinement as is prescribed by law where the prisoner admits his identity or it is found by the jury.

I am of opinion that convictions of convicts of felonies in the circuit court of the city of Richmond under the statutes above referred to, is a trial of a felony case within the meaning of the law, and entitles the attorney for the Commonwealth of the city of Richmond to receive and collect his fees therefor, of \$10.00 in each case, out of the public treasury, the statutes making it the duty of such attorney for the Commonwealth to prepare the necessary pleadings and prosecute the cases referred to in said court.

It is to be remembered, however, that the fees collected by the attorney for the Commonwealth for this service is to be charged against him in

making up the amount of his salary, which is limited by law to \$2,200.00 annually.

Very truly yours,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *May 21, 1913.*

Hon. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR SIR:

In the matter referred to me, of the account of J. Coleman Priddy, sheriff of Charlotte county, for expenses incurred in summoning a venire from Richmond, Virginia, for the trial of F. C. Thornton, charged with a felony, I am of opinion that section 3531 providing compensation to the sheriff for serving a venire facias, which is as follows:

"For executing the first writ of venire facias at the term, five dollars" refers to the writ of venire facias which is directed by law to issue in all cases where felonies are to be tried at the term of the court, and does not apply to services rendered by a sheriff in executing the writ of venire facias under the order of a court for a venire out of the county. For this service he is entitled to reasonable compensation, which, if allowed under section 4083 of the Code, the Auditor is authorized to pay. I am, therefore, of opinion that the Auditor should pay the account of Mr. Priddy.

As to the item for expenses incurred in going for J. R. Johnson, charged with violating the revenue law, I am of opinion that this is not a proper charge upon the treasury, as the law provides that no fees can be paid out of the treasury to the Commonwealth's attorney, or any other officer, for services rendered in the prosecution of violations of the revenue laws.

I am,

Yours truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *June 27, 1913.*

Hon. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR SIR:

In the absence of the Attorney General, I am writing in response to your inquiry of June 26th, with reference to the imposition of a tax upon the seal of the court affixed to naturalization papers, and beg to state that in my opinion, no tax upon the seal of any court affixed to naturalization papers is subject to any tax.

The State court while acting in the matter of the naturalization of citizens is not proceeding strictly as a State court, or under any statute of the State; but is specifically acting in the execution of the powers vested in them by the statute of the United States; which statute prescribes the

only charges that are to be made against the applicant in the granting of such papers, and I take it that it is incompetent for any clerk of a State court to make any charge with reference to these naturalization papers except such as are specifically allowed by the statutes of the United States under which the proceedings are had.

In these statutes, as above stated, no provision is made for the payment of any tax on the seal of the court which is required to be affixed.

I am, therefore, of opinion that it would be well for you to instruct the clerks of the circuit courts throughout the State that no taxes are to be assessed upon the seal of the court when affixed to naturalization papers issued in pursuance of the United States statute.

Yours very truly,

RICHARD B. DAVIS,
Assistant Attorney General.

P. S.—I am returning herewith copy of the letter of Mr. Moore, Chief Naturalization Examiner, also pamphlet of the naturalization laws which you forwarded to me.

RICHMOND, VIRGINIA, November 14, 1913.

Hon. C. LEE MOORE,
*Auditor of Public Accounts,
Richmond, Virginia.*

MY DEAR SIR:

Referring to the case of *J. F. Lawler, sergeant of the city of Norfolk, v. the Auditor of Public Accounts*, which was decided by the circuit court of the city of Richmond granting a *mandamus* against you, compelling the payment of the fees to said sergeant in said proceedings mentioned. The judge of the circuit court, in rendering the opinion in this case, expressed a doubt as to whether the facts of this case brought it within the purview and influence of section 3533 of the Code, that is to say whether, on the facts of this case, this sergeant did receive a salary or allowance for general services paid out of the treasury of a city.

After careful consideration of the question, I entertain such serious doubts on this point, as to whether the sergeant did in fact receive such a salary or allowance for general services paid out of the treasury of the city as would bar him from receiving the fees claimed by him, that I have, therefore, declined to take the case to the court of appeals; and nothing will remain, therefore, but for you to comply with the court's order and to pay these fees.

But, I desire it to be distinctly understood that so far from changing my written opinion rendered you in my letter dated December 2, 1912, on this subject that, after the maturest reflection, I adhere strictly to and reiterate that opinion; and if the facts of this case, in my judgment, brought the case within the meaning and influence of section 3533 of the Code, I would certainly have appealed this case. In all cases in which it does appear that the sergeant does in fact receive a salary or allowance for general services out of the treasury of a city, I am clearly of opinion

that he is not entitled to be paid any fees out of the public treasury of the State. I am,

Yours truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *November 20, 1913.*

Hon. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR SIR:

Referring to the inquiry which you submitted to us some days ago with reference to the claim of Judge James S. Barron for fees in cases where the costs had not been collected at the time he rendered his account. We understand the question to be as follows:

Judge Barron had rendered the service required under the statute and made out his bill charging only one-half the fees that were allowed under the statute, on the ground that the costs had not been collected and paid into the proper officer of the Commonwealth, but afterwards, in the usual course, all the costs are collected and covered into the treasury; and the question is whether or not he would afterwards be entitled to make out his bill for the one-half of the fees that had been omitted in the account furnished by him.

The statute provides for the payment of these fees, but states that the justice shall be entitled to only one-half of the fees allowed by law unless the costs are collected from the defendant; but it does not provide that in case the justice proceeds to collect the one-half fees due him at length, he shall not be entitled at any time after to collect the full fees in the event that the costs are paid into the treasury; and it is my opinion that the justice is entitled to charge the full amount of his fees in every case in which the costs are actually collected from the defendant, and that it makes no difference as to his right whether he has already presented his account to you claiming the one-half that was due him at any length whether the costs were collected or not.

His failure to collect the costs before rendering his bill cannot fairly be held to forfeit his right to collect afterwards when the costs are actually collected; and we think that in the case presented by you Judge Barron is entitled to be paid out of the treasury the amount of his claim.

This letter has been read to and is approved by the Attorney General.

Yours truly,

RICHARD B. DAVIS,
Assistant Attorney General.

RICHMOND, VIRGINIA, *December 31, 1913.*

Hon. C. LEE MOORE,
Auditor of Public Accounts,
Richmond.

DEAR SIR:

Replying to your inquiry as to the question submitted by Mr. C. R. Howard, treasurer of the city of Fredericksburg, as to the power of the

court to reduce his bond, I would say that section 815 of the Code requires a bond to be executed by the treasurer of a city in a penalty which is not greater than the whole amount of the revenue to be collected by him for State purposes, and not less than 75 per cent of said amount, provided he gives a surety company as security. In other cases, however, the penalty is required to be double the amount of the bond.

It would seem from this provision that it is within the discretion of the judge before whom the bond is given to fix the penalty within the bounds prescribed in this section.

After the bond has once been given, however, I do not know of any provision for giving a new bond, except as provided by section 178, where the court is authorized to require additional bond, or in case the surety on the bond asks to be relieved, &c.

I do not know of any law by which the court, of its own motion, may reduce the amount of the bond already given by an officer.

Very truly yours,

RICHARD B. DAVIS,
Assistant Attorney General.

To the Superintendent of Public Instruction.

RICHMOND, VIRGINIA, *May 24, 1913.*

Hon. R. C. STEARNES,
Superintendent Public Instruction,
Richmond, Virginia.

DEAR SIR:

Replying to your letter of this inst., in which you ask my opinion as to whether the council of the city of Newport News and the City School Board may supplement the salary of the division superintendent of schools, under section 16, page 25 of the school laws, in reply I am of opinion that the statute to which you refer (Code section 438) does not authorize the council of any city out of any surplus of funds in the treasury of such city to supplement the salary of the division superintendent of schools of such city, and also under the same statute that a city school board out of local funds also supplement the salary of the superintendent of schools of such city.

It seems to me that applying the usual and ordinary rules of construction to this statute that no other conclusion can be properly arrived at.

I am,

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *October 3, 1913.*

Hon. R. C. STEARNES,
Superintendent Public Instruction,
Richmond, Virginia.

DEAR SIR:

I herewith return, with approval, the title to school property, Central District, Charlotte county, and Alleghany district, Montgomery county, the

defects heretofore pointed out in these titles now appearing to have been cured.

I regret to be compelled to return, without approval, the title to the school property in Third district, Smyth county. Notwithstanding the learned argument of the attorney for the Commonwealth of the county of Smyth, I am constrained to disapprove this title. The attorney for the Commonwealth, Mr. Cook, seems to have entirely misapprehended the difficulty which I intended to point out in this title. In my memorandum I distinctly called his attention to the Code, section 1482, which provides that the title to all public free school property shall vest in the district school board as a corporation. I have frequently held, and held correctly, that a deed conveying property to the trustees by name is not a deed to the district school board as a corporation, and the suggestion I made was that the trustees should make a deed conveying this property to the district school board as a corporation, and also intended to convey the idea that if part of the trustees were dead that then the survivor, or survivors, under the law, should convey the property.

As you well know, we have had this question over and over again, and have been compelled to require a great many deeds of this character to be made by the trustees, or the survivors, before the title could be passed; and the argument of the Commonwealth's attorney that the deed does not provide for survivors, and that a trust will never be allowed to fail for want of a trustee, has no sort of application to the question involved here; and, on the point that the title must be approved by a duly appointed attorney at law, under the Acts of 1912, page 79, it is sufficient to say that the title to the trustees was made in 1897; but the real title will be vested in the district school board as a corporation only when the trustees named in the deed make a conveyance to the district school board, and the doctrine of adverse possession, to which he refers, has no sort of application, for the adverse possession, if any, has been the possession of the trustees—not of the district school board as a corporation.

I am, therefore, sorry to be compelled to differ with the learned attorney for the Commonwealth in his conclusion that the district school board has "a good and sufficient title to the property in question." I do not think the district school board has any title whatever to the property in question, except the equitable title, and the statute authorizing the loaning of money to school districts requires emphatically that the district school board shall have a clear, unencumbered legal title to the property.

I have thus reviewed the opinion of the attorney for the Commonwealth for the reason that he asked me to do so. I adhere to my former ruling and disapprove this title, holding that the school board as a corporation has no legal title to this property, and until this is made to appear I cannot approve the title.

I am,

Yours truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, October 16, 1913.

Hon. R. C. STEARNES,
*Superintendent Public Instruction,
Richmond, Virginia.*

DEAR SIR:

Your communication of October 15th to hand, referring to me a letter from Mr. P. Tulane Atkinson, division superintendent of schools, county of Prince Edward, relative to the acquisition of land for school purposes therein mentioned, in which he proposes to convey the property to the school board without charging anything for it, provided the deed is so written as to embody a provision that should the property cease to be used for free school purposes it shall revert to the grantor in the deed, or his heirs, and the question is asked me whether this would be legal. In reply, I beg to say that where a school board proceeds to acquire land for public free school purposes, either by purchase or condemnation, the only title they are authorized to acquire is a fee simple title; but I know of nothing prohibiting the school board from receiving a donation of land for school purposes upon the terms indicated, provided that a further stipulation is contained in the deed to the effect that when the land reverts, if it ever does, that the buildings upon the land shall remain the property of the school board, with the right to remove the same.

It should be borne in mind, however, that under this kind of a deed, no money could be borrowed from the literary fund, for the simple reason that the board would not have a clear fee simple title to the property.

I am,

Yours truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

To the Commissioner of Labor.

RICHMOND, VIRGINIA, November 19, 1912.

Hon. JAMES B. DOHERTY,
*Commissioner of Labor,
Richmond, Virginia.*

DEAR SIR:

Your favor of October 28th, asking for the opinion of the Attorney General as to whether or not the provisions of chapter 248 of Acts of 1912, apply "strictly to these engaged as sales ladies, and does not embrace alteration departments and work-rooms of millinery establishments," came duly to hand, but the Attorney General has been necessarily absent and I myself have been absent for a week, and we have not found an earlier occasion to answer your inquiry.

You will understand that it is not the province of this office to construe laws enacted by the legislature, as that duty is devolved entirely upon the courts, and the only way in which this office has any concern in that matter is either in a case that is pending for trial and is brought to the Supreme Court of the State, or else indirectly in advising the departments as to how they shall act in any given case.

From your letter I gather that you have properly commenced proceedings in Norfolk to ascertain the exact meaning of the statute, which we

think is entirely right but there is no statute that imposes upon this office the duty, or gives the Attorney General the authority, to declare the meaning of any particular statute, and it would therefore be improper for me to express any opinion about the real meaning of this statute, especially in view of the fact that that question is now pending in a court of competent jurisdiction charged by law with the duty of interpreting its meaning.

I am,

Very truly yours,

RICHARD B. DAVIS,
Assistant Attorney General.

RICHMOND, VIRGINIA, April 4, 1913.

Hon. JAMES B. DOHERTY,
Commissioner of Labor,
Richmond, Virginia.

MY DEAR SIR:

Your letter of the 2nd instant to hand, and which is as follows:

"Kindly let me know if the semi-monthly pay bill is applicable to a company employing, in the machine shop, six men, two helpers; in blacksmith shop, two men, two helpers; in the foundry, three men, two helpers; in the carpenter shop, two men; in the planing mills, sixty men and boys; in the box shook factory, thirty-five men and boys. Complaint has been made that this company pays its employees monthly. It is my desire to know if the semi-monthly pay bill applies to the plant as a whole or to any part of the said plant.

"Also, if a company has a right to issue coupons and metal checks to the employees for wages redeemable in merchandise."

The law bearing on the question submitted is to be found in the Acts of 1912, chapter 106, p. 188, and was approved March 11, 1912.

This law as applied to the case or cases stated in your letter provides as follows:

"§2. All persons, firms, companies, corporations or associations in this Commonwealth, engaged in operating railroad shops, mining coal, ore, or other minerals, or mining and manufacturing them, or either of them, or manufacturing iron or steel, or both, or any other kind of manufacturing, shall pay their employees engaged in the employments aforesaid as provided in this act.

And then the act then provides: "All persons, firms, companies, corporations or associations, engaged in any of the business aforesaid, shall settle with such employees at least twice in each month, and pay them the amounts due them for their work or services, in lawful money of the United States, or by check, or by cash order, as described and required in section three of this act."

Then section 3 of the act provides that "it shall not be lawful for any person, firm, company, corporation, or association, engaged in the business aforesaid, their clerk, agent, officer or servant in this State to issue for payment of such labor any order or other payment whatever, unless the same purports to be payable or redeemable for its face value in lawful

money of the United States, such order to be made payable on demand and without condition to employees, or bearer, bearing interest at legal rate, and redeemable by the person, firm, company, corporation or association giving, making or issuing the same;" and then section 3 makes it a misdemeanor for any one to violate the provisions of this law.

Thus far the law seems to be perfectly clear, and it cannot be more clearly expounded than simply to say that law means what it says, and what the reasonable and natural construction and import of the words used mean in their usual acceptance.

But there is a proviso in section 2 of the act which must be considered, and which is as follows:

"Provided, however, that the semi-monthly payment of wages requirement of this act shall not apply to mining coal, manufacturing coke, mining ore, or other minerals, excelsior mills or saw mills; but the employers of labor engaged in such enterprises shall settle with their employees at least once in each month."

This proviso in some respects seems to be in conflict with some previous parts of the act, but I take it that the proviso will prevail, and that the semi-monthly payments required by the act does not apply to the cases mentioned in the proviso.

In the cases submitted in your letter, it is only the operatives in the saw mills who seem to come within the purview of meaning of this proviso, and in determining what is a saw mill within the meaning of this law, here again the usual rule of construction must prevail. The language used in the statute must be given their usual, ordinary and natural meaning. They being words of common acceptance, must be taken or construed in their commonly accepted meaning, and applying this rule of construction, you will be able to determine what part of the company's operation mentioned in your letter will, or will not, be embraced in the term "saw mill."

When it is determined what part of the plant referred to in your letter is embraced in the term "saw mill," then the employers must pay the laborers engaged in such employment at least once a month, and as to such parts of the plant as do not come within the purview of the term "saw mill," then the employers must pay the employees engaged therein twice a month as provided by law.

The law already quoted answers the latter part of your inquiry. See section 3 of the act quoted above.

Very truly yours,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, April 10, 1913.

Hon. JAMES B. DOHERTY,
Commissioner of Labor,
Richmond, Virginia.

DEAR SIR:

Some weeks ago, through Mr. J. B. Clinedinst, special agent Department of Labor, you submitted to me the question as to whether a justice of the peace had a right to demand payment of his fees for issuing and

trying warrants against parties charged with a violation of the act entitled "An act to amend and re-enact chapter 14, Acts 1910, entitled an act in relation to certain proper sanitary arrangements to be provided in factories, workshops, mercantile establishments or offices, and imposing penalties for failure to provide such arrangements, approved February 9, 1910," and in this connection you call my attention to a receipt for fees which were paid by Mr. Clinedinst, which is in the words and figures following, to-wit:

"Received of J. B. Clinedinst, special agent Department of Labor, (\$7.00) seven dollars in full for issuing and trying seven warrants for violation of sanitary law of the State of Virginia in regard to water closets.

February 3, 1913.

C. D. SHACKELFORD,
Justice of the Peace."

Mr. Clinedinst informed me that he was compelled to pay these fees to the justice before he could get him to issue the warrants referred to in the receipt; and the direct question submitted to me is whether under the laws of this State a justice of the peace can demand and require the payment of his fee as a condition precedent to issuing and trying warrants for alleged violations of a State statute. Stated differently, the proposition is, has a justice a right to demand the prepayment of his fees before issuing a warrant for the alleged violation of said statute where a prima facie case is presented to the justice showing the propriety of the issuance of the warrants.

I am of the opinion that a justice has no such right, and that prosecutions under this statute stand exactly as prosecutions under any other statute for offences which are made misdemeanors under the laws of this State.

Section 4 of the act referred to prescribes that your office shall give a certain notice of the changes necessary to be made before a criminal prosecution shall be instituted; and section 5 of said act provides that persons violating the provisions of the act shall be deemed guilty of a misdemeanor, and of course are liable to be prosecuted and punished as such.

Section 3956 of the Code prescribes what are the duties of a justice of the peace when applied to for the issuance of a warrant in misdemeanor cases, and this application may be made by any reputable and responsible citizen of this State; and the fact that your agent has certain duties to perform under section 4 of the act makes it highly proper for him to institute and set on foot prosecutions for alleged violations of this statute. The fees to which a justice of the peace are entitled are prescribed in section 3530 of the Code, which also requires that these fees, when properly certified by the judge of the court allowing the account, are payable by the Auditor of Public Accounts out of the State treasury, except in that class of cases (for example, violation of the revenue laws) where the law prescribes that no fees shall be paid out of the public treasury.

My opinion, therefore, is as stated above, that a justice of the peace has no legal right to demand prepayment of his fees before he will issue and try a warrant for alleged violation of a State statute, where a prima

facia case is presented to him, and he is asked to issue his warrant thereon. The justice can demand that complaint in writing be made if he chooses to do so, but if he accepts a verbal statement this does not alter the case.

I return the receipt which Mr Clinedinst left with me.

I am,

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

To the State Corporation Commission.

*To the Honorable State Corporation Commission,
Richmond, Virginia.*

DEAR SIRs:

Your favor of the 8th, addressed to the Attorney General, asking for an opinion as to whether the franchise tax is to be imposed on building and loan associations, is duly to hand; and the Attorney General has requested me to answer the same.

By section 43 of the tax bill, adopted in 1903, every corporation, joint stock company or association organized under the laws of this State, except railway, canal, insurance, banking and security companies, telephone companies having an authorized capital of \$5,000, and religious and charitable corporations were required to pay a franchise tax; and the State Corporation Commission was required to assess the tax on all corporations by the provisions of the same section.

Afterwards, by an act approved February 23, 1904, (Acts, 1904, page 71,) "building and loan associations were incorporated among the companies exempted from the payment of the franchise tax."

This amendment of section 43 naming these associations among those exempted from the franchise tax proved the intention of the legislature to exempt them from the franchise tax. At the same session of the legislature (Acts 1904, page 333) the State Corporation Commission was directed to recall the assessment of the franchise tax against all building and loan associations for the year 1904.

Afterwards, by an act approved March 14, 1908, (Acts 1908, page 591,) this section 43 was again amended and building and loan associations were omitted from the corporations therein named as exempt from the franchise tax; and there was no other act which I have been able to find which relieved such corporations from the franchise tax.

Again in 1910, by an act approved February 26, 1910, (Acts 1910, page 87,) this section 43 was amended, and light, heat and power companies, gas and water companies were added to the list of companies exempt from the payment of the franchise tax; but building and loan companies were not embraced in that list.

The statute being amended is evidently one which embraces all the legislation on the subjects therein referred to, and it seems to me that under the doctrine laid down in *Cox adm. v. Commonwealth*, 16 Gratt. 1; *Davies v. Creighton*, 33 Gratt. 696, and in *Somers v. Commonwealth*, 97 Va. 957, the omission of these building and loan companies from the list of

the exempted companies must be taken as evidence of an intention on the part of the legislature to subject these parties to the franchise tax in the same manner as all other companies not therein exempted are required to be taxed.

It is true that under the provision of section 82 of the tax bill of 1903 that the shares of stock issued by any building and loan association or company, which had paid the license tax therein imposed, was not taxable in the hands of the holder, nor could any additional State tax be imposed on the paid-in capital of such association; but this provision was already in the tax bill in 1904 when the legislature, deeming such companies liable to the franchise tax, incorporated them in the body of section 43, among the exempted companies, and passed the act requiring the Corporation Commission to recall the assessment for 1904.

Under the well established rule of construction that all exemption from taxation must be supported by clear language of the statute, or necessary inferences therefrom, as declared in the several cases above cited, it seems to me that building and loan associations are not exempt from franchise tax and the duty devolves upon the State Corporation Commission to assess the tax thereon in the mode prescribed by law.

I note what is said in the letter addressed to the Attorney General by your clerk that the amendment in 1908 was prepared by the commission; and that it was not the intention of the commission to render these companies liable for the franchise tax; but I do not think that that fact would make any difference in the construction of the statute. The intention of the lawmaker must be gathered from the wording of the statute itself, and the intention of the parties who drafted the bill is not competent evidence of its meaning except in cases where the language used is of doubtful meaning, when possibly recourse may be had to such evidence.

In the case of Fox's Adm. the provision taxing collateral inheritance which was contained in a former statute was omitted in a subsequent statute, and it was held that such omission repealed the tax on collateral inheritances and rendered them no longer taxable. Upon the same reasoning, it would seem to follow that where building and loan associations were included among the companies specifically relieved from the tax in a former statute imposing the tax on all corporations and were omitted from the list of exempted corporations in a subsequent statute, such omission would render them liable to taxation under the general law.

Looking at the statute, which is plain and distinct in its language, the intention of the legislature to impose a franchise tax on all companies not specifically therein exempted seems to me to be perfectly apparent; and it does not seem to me that any evidence of intention on the part of the legislature other than that expressed in the plain terms of the statute can be introduced.

Very respectfully,

RICHARD B. DAVIS,
Assistant Attorney General.

To the Superintendent of Public Printing.

RICHMOND, VIRGINIA, *December 6, 1912.*

Hon. C. LEE MOORE,
Auditor of Public Accounts,
and

Hon. DAVIS BOTTOM,
Superintendent of Public Printing,
Richmond, Virginia.

GENTLEMEN:

I am in receipt of a letter of date December 5, 1912, from Hon. Davis Bottom, Superintendent of Public Printing, relating to the matter as to what fund should bear the expense of printing the Roster of Confederate Pensioners of Virginia compiled by the Auditor of Public Accounts and issued as a supplement to his annual report.

I had a conversation with Hon. C. Lee Moore, Auditor of Public Accounts, on the same subject, and at my request he has given me in writing, in a letter dated December 6, 1912, his reasons for concluding that this pension is payable out of the appropriation made for public printing, instead of out of the fund appropriated for pensions.

I have duly considered the two letters referred to and the reasons adduced on both sides of the question, and am of opinion that the views expressed by the Auditor of Public Accounts are correct, and that the said printing should be paid out of the appropriation for public printing. There are many reasons sustaining this opinion, but an all sufficient reason is that the roster referred to might have been incorporated in the Auditor's report and printed and bound therewith, and the fact that he simply makes it as a supplement to his report for convenience makes the document, in my opinion, none the less a part of the annual report of the Auditor, and it is therefore payable out of the appropriation for public printing.

A copy of this letter is sent both to the Auditor and the Superintendent of Public Printing.

Yours truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *December 30, 1912.*

Hon. C. LEE MOORE,
Auditor of Public Accounts,
and

Hon. DAVIS BOTTOM,
Superintendent of Public Printing,
Richmond, Virginia.

GENTLEMEN:

In a letter dated December 6, 1912, addressed to you, my opinion on the matter submitted is therein stated, in which I said that I had duly considered the letters written by the Auditor and Superintendent of Public Printing respectively, (and which were then before me) and in which I expressed the opinion that the views of the Auditor of Public Accounts as

therein stated were correct, and that the printing referred to should be paid for out of the appropriation for public printing, and in this letter I also stated as follows:

"I have duly considered the two letters referred to and the reasons adduced on both sides of the question, and am of opinion that the views expressed by the Auditor of Public Accounts are correct, and that the said printing should be paid out of the appropriation for public printing. There are many reasons sustaining this opinion, but an all sufficient reason is that the roster referred to might have been incorporated in the Auditor's report and printed and bound therewith, and the fact that he simply makes it as a supplement to his report for convenience makes the document, in my opinion, none the less a part of the annual report of the Auditor, and it is, therefore, payable out of the appropriation for public printing."

The fact on which this statement was made is contained in the letter of the Auditor to me, and as I stated, I thought that fact was sufficient on which to base the opinion. I also stated that there were many other reasons sustaining that opinion, having in mind the two statutes governing the question, namely, section 275 of the Code in regard to printing, and section 13 of the Pension law. I have been asked to reconsider this opinion, and have received a communication from the Auditor of date December 9, 1912, and also a communication from the Superintendent of Public Printing of date of December 7, 1912. At my request the Auditor and the Superintendent of Public Printing came to my office for consultation, and have conferred fully with me; and after hearing the views expressed by them, I adhere to my former opinion, and base this opinion on the express provisions of section 275 of the printing law which provides that the Superintendent of Public Printing shall supply all the officers and departments at the seat of government (including the Auditor) with such printing, stationery, etc., as may be required by them in the several departments for the proper conduct of the business of the State in his department. The Superintendent of Public Printing insisted that this printing should be paid for out of the Pension Fund. I cannot concur with him in this view. I am of opinion that the Auditor can comply with every requirement of the Pension law without having the printing done which is the subject of this investigation, and the Auditor distinctly stated in this connection that this printing is not being done to enable him to comply with section 13 of the Pension law.

The result of my investigation of the matter and conclusion is that the printing in question being deemed by the Auditor necessary for the conduct of the business of his office, that the payment for this printing must be controlled by sections 275 and 276 of the printing law.

As to the other questions submitted in the letter of the Superintendent of Public Printing, these are questions, in my opinion, of detail which must be worked out by the Superintendent of Public Printing under the laws passed by the legislature for his guidance, and if any concrete case arises in regard thereto which raises a question of construction of a statute, I will be very glad to render him any aid in regard to the solution that I can.

It may be proper to add that as the matter now stands, the Superintendent of Public Printing might very properly class the printing of the said roster under the head of pamphlet work as suggested by him.

This opinion is supplemental to, or explanatory of, my opinion of December 6, 1912, above referred to.

Very truly yours,

SAML. W. WILLIAMS,
Attorney General of Virginia.

To the Adjutant General.

RICHMOND, VIRGINIA, *October 29, 1913.*

General W. W. SALE,

*Adjutant General of Virginia,
Richmond, Virginia.*

MY DEAR SIR:

Your communication of recent date was received, with enclosures, in which you call my attention to an agreement, dated the 29th of November, 1911, between the Military Board of Virginia and the Norfolk Southern Railroad Company, which provides for the conveyance of a right of way to the said railroad company as therein set forth. You also call my attention to the correspondence between you and the said railroad company in regard thereto, and also to a blue print on which the right of way is laid down and outlined; and in your letter, with said enclosures you make this request: "It is requested that you have proper conveyance made under agreement between the Military Board and the Norfolk Southern Railroad Company."

In reply, it appears that the land over which this right of way is to run has been conveyed to the State of Virginia and the title is now held by and vested in the State of Virginia. This right of way will constitute, in legal effect, really a conveyance of a part of the real estate.

Without expressing any opinion as to whether the said contract for the said right of way is or is not valid and binding upon the State, I beg to say that I know of no authority whatever being vested in the Governor, the Military Board, or any one else to make any conveyance of this real estate, the title to which is vested in the State. To accomplish this result, it will be necessary to have proper legislation passed:

I return, herewith, the enclosures submitted with your letter.

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

To the Register of the Land Office.

RICHMOND, VIRGINIA, *May 9, 1913.*

Hon. JOHN W. RICHARDSON,

*Register Land Office,
Richmond, Virginia.*

DEAR SIR:

I am in receipt of a communication from you under date of April 28, 1913, in which you ask the following question:

"Can the United States Government take up vacant land, under authority of a land office treasury warrant, and if not by what authority or process can it obtain title to vacant land in this State.

In reply, I am of the opinion that this cannot be done; that the Government of the United States can only acquire lands in Virginia under and by virtue of some statute authorizing it to be done, and I know of no statute authorizing the government to procure title to land in the manner indicated in your inquiry. I am,

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

To the Dairy and Food Commissioner.

RICHMOND, VIRGINIA, *February 20, 1913.*

Hon. W. D. SAUNDERS,

*Dairy and Food Commissioner,
Richmond, Virginia.*

DEAR SIR:

Referring to our conversation on the subject, you have referred to me for my opinion question as to the proper manner of the appointment of persons who you call assistants to aid in the execution of the laws relating to the duties of yourself as the Dairy and Food Commissioner in carrying out the laws pertaining to the department over which you preside.

In reply, the laws upon the subject seem to be contained in three acts of the legislature of Virginia. The first is the act approved March 11, 1908 (Acts 1908, chapter 188); the second is the act approved March 14, 1908 (Acts 1908, chapter 372); and the third is the act approved March 14, 1910 (Acts of 1910, chapter 151). The act approved March 11, 1908, provides for the appointment by the Governor of a suitable person to be Dairy and Food Commissioner, which office is created by said act, and provides for a Deputy Dairy and Food Commissioner, who shall be appointed by the joint act of the Commissioner of Agriculture and the Dairy and Food Commissioner; and it further provides that the said commissioner named above may also appoint, by and with the advice of the Board of Agriculture and Immigration, such other special assistants as the proper performance of the duties of the office may require. The act of March 14, 1910, provides that for the proper execution of the provisions of this act the Dairy and Food Commissioner shall, with the approval of the commissioner (meaning the Commissioner of Agriculture) and the board (meaning the Board of Agriculture) make such appointment as may be necessary, and the board shall fix the compensation of such appointees; and this act of March 14, 1910, in express terms repeals all other laws in conflict with this act in so far only as they may be in conflict with the provisions of this act. All of said acts of the legislature being on the same general subject must be construed together as being in *pari materia*, and the true intent of the legislature is to be gathered from a fair construction of all the laws on the subject.

It is a well settled rule of construction that the last act upon a given subject must be construed as the final declaration of the legislative will on such subject.

I am, therefore, of opinion that so far as the appointment of assistants under said laws (when considered as a whole) is concerned, that such appointments shall be made by the said Dairy and Food Commissioner with the approval of the Commissioner of Agriculture and of the State Board of Agriculture, and that all three must concur before an appointment under said laws can be legally made, that is, it requires the concurrent act of the Dairy and Food Commissioner, the Commissioner of Agriculture and of the board to make valid appointment under said acts, the primary appointment or selection being with the Dairy and Food Commissioner, but subject to the approval of the commissioner and the board as aforesaid.

Any other construction would result in either a multiplication of appointments under said laws, or an irreconcilable conflict in the manner of appointment, for the reason that under the act of March 11, 1908, provision is made for the appointment of such special assistants as the proper performance of the duties of the office may require, these appointments to be made by the said commissioners, to-wit, the Dairy and Food Commissioner and the Commissioner of Agriculture by and with the advice of the board of agriculture. This act contemplates the joint action of the two commissioners in making the appointment, whilst under the act approved March 14, 1908, it is provided that the Dairy and Food Commissioner, with the approval of the board of agriculture, shall make such appointments as may be necessary under the said act, thereby eliminating the Commissioner of Agriculture; and as already seen the last act upon the subject provides an entirely different method of making such appointments. This last act, as already shown, controls, and the appointment in my opinion must be made as provided in said act of March 14, 1910.

Yours truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

To the State Health Commissioner.

RICHMOND, VIRGINIA, *December 14, 1912.*

Dr. ENNION G. WILLIAMS,
State Health Commissioner,
Richmond, Virginia.

DEAR SIR:

Under date of November 30, 1912, you addressed to me a communication and asked my opinion on the case submitted therein, which communication is as follows:

"Dear Sir:

Several months ago, with the authorization of the State Board of Health, I wrote to the board of supervisors of Roanoke county, calling their attention to the miserable and even dangerous condition of the road leading from the sanatorium station on the Norfolk and Western Railroad to the grounds of the Catawba Sanatorium, and offering to co-operate with them to the extent of appropriating \$5,000.00 if they would use the convicts and the county machinery to improve this road.

At a subsequent meeting of the board of supervisors they agreed to this proposition, and expect in the near future to begin the work of bettering the road.

The State Board of Health expected to use \$5,000.00 from the appropriation of \$50,000 which the legislature made for "Betterments, Catawba Sanatorium."

As the question has recently been raised as to whether the board of health has authority to use money from that appropriation for this purpose, I would respectfully request you to give us your opinion as to whether the State board can use money for bettering the road which is not on the sanatorium property, and if not from this fund can it be taken from the appropriation for maintenance or from the fund received from patients for their board."

In reply, I am of opinion that the State Board of Health is not authorized under the Constitution and laws of this State to use any part of the money appropriated by the legislature of Virginia, and under the control of the board, for any other purposes than those expressly designated in the law making the appropriation. The language of the statute making the appropriation of \$50,000.00 is for "Betterments, Catawba Sanatorium," and in a letter addressed to the Auditor under date of June 18, 1912, on this same subject I then expressed the opinion that "The betterments must be an adjunct or addition to the property owned and used as the Catawba Sanatorium at the time of the passage of said act, and must be of a permanent character so as to become permanent additions to the property." I do not think the board has any authority whatever to use any of the funds under its control, derived from any source whatever, for the improvement of the public highways of the county of Roanoke, not on the sanatorium property. In fact it is questionable to my mind whether this money could, without further legislation, be used by the board for a public highway on the property, as a public highway is under the control, not of the board, but of the road authorities of the State and county, and such road must be constructed and maintained from the road funds of the State and county designated for the purpose of road construction and maintenance. The only authority that the board would have in regard to roads, in my opinion, would be to use such funds as might be necessary for the construction and maintenance of a private road on the property of the sanatorium, which might be properly classed as a betterment to the property.

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

Miscellaneous.

RICHMOND, VIRGINIA, *March 5, 1913.*

Mr. C. R. Hoskins.

Newport News, Virginia.

DEAR SIR:

I received your communication of February 23, 1913, signed "Democratic Executive Committee of Newport News, Virginia, by C. R. Hoskins," in which you submit for my opinion the question "as to whether they can

hold the primary for city officers, and for nomination of a representative to the House of Delegates of Virginia, under the enclosed plan which was used by them for its last primary election," and in which you say that "The Byrd primary law is so objectionable, that they do not want to use it unless in your opinion it is the only plan that will be lawful."

Please accept my excuse or apology for not answering your letter sooner, which is that I have been very much crowded with official engagements, some of which required my absence from the office; and I did not want to answer your letter until I had ample opportunity to investigate the question submitted and give you the result of my mature deliberations. I beg to say that whilst I cannot, under the law, render an official opinion on the point submitted, my unofficial opinion is as follows:

The real question submitted is whether the general law commonly called the Byrd Law, which was approved March 14, 1912, repeals the previous special law applicable to the city of Newport News which was approved February 21, 1898. (See Acts of 1897-8, p. 452.)

The parts of the two acts seemingly in conflict, are the provisions contained in clause 2 of the act approved March 12, 1912 (Byrd Law), which provides as follows:

"This act shall apply to the nomination of candidates for such offices as shall be nominated by a direct primary, and to no other nominations"; and in the same section it is further provided:

"All nominations made by direct primary shall be made in accordance with the provisions of this act"; whilst in the special act approved February 21, 1898, it is provided "That it shall be lawful for any political party in the city of Newport News, in this State, previous to any general election held for the purpose of electing any State, municipal or Federal officer, should they desire so to do, to hold a primary election or convention for the nomination of candidates for the offices to be voted for at the said ensuing general election, upon such rules and regulations as may be prescribed by the local executive committee of such party," and provided that the party holding the primary shall bear the expense thereof, and the Byrd Law, section 2, also contains the provision that the constituted authorities of any political party for any city office, and for members of the House of Delegates, shall have the right to provide that the nomination shall be made by direct primary or by some other method.

The real question submitted, as stated above, is whether the subsequent general law on the subject repeals the previous special law on the same subject.

It is to be noted that there is no repealing clause contained in the Byrd Law repealing previous laws on the subject, or even repealing laws in conflict with this statute, and if the previous special act is repealed by the subsequent general law, then it is a repeal by implication because the two statutes are so directly in conflict with each other that the two cannot stand together.

It is a rule of universal application that the repeal of statutes by implication is not favored by the courts.

It is also a settled rule of law that the implied repeal of a statute is not a rule of positive law, but a rule of construction only.

In *Trchy v. Marge*, 100 Va., p. 44, our court of appeals lays the rule down as follows:

"The well settled doctrine derived from all authorities is that laws special and local in their application, are not repealed by general legislation, except upon the clearest manifestation of an intent by the legislature to effect such repeal, and, ordinarily, an express repeal by some intelligible reference to the special act is necessary to accomplish that end."

In *Southern Railway Co. v. Commonwealth*, 104 Va., 314, our court of appeals has laid down the rule as follows:

"Where there are two statutes, the earlier special and the latter general, but containing terms broad enough to cover the subject matter of the special, the presumption is that the special is to be considered as remaining an exception to the general, and the general will not repeal the special unless its provisions are manifestly inconsistent with those of the special."

The same principles are laid down by our court of appeals in the case of *Eureka Club v. Commonwealth*, 105 Va., 564. See also 36 Cyc., pp. 1087, 1090, and notes.

The case of *Vansant v. Commonwealth*, 108 Va., is sometimes cited as being in conflict with the decisions above quoted. A careful consideration of the case, however, shows that this is not true, for in that case Judge Keith, delivering the opinion of the court, quotes with approval the doctrine laid down in previous cases as follows:

"The repeal of a statute by implication is not favored by the courts. The presumption is always against the intention to repeal where express terms are not used, or the latter statute does not amend the former. To justify the presumption of an intention to repeal one statute by another, the two statutes must be irreconcilable. If by a fair and reasonable construction they can be reconciled, both must stand. If, however, they are inconsistent and irreconcilable, then an intention to repeal is presumed, but only to the extent of the repugnance. * * * But where the latter statute was plainly intended to embrace the whole legislation on the subject to which it refers, and to be wholly substituted for all former statutes on the same subject, it must be held to be a legislative declaration that whatever is embraced in it shall prevail, and whatever is excluded is discarded and repealed."

And Judge Keith further points out that the statute under review in that case really amended a former statute. But both were general statutes and the latter statute was plainly intended to embrace the whole legislation on the subject, and to be wholly substituted for all former statutes on the same subject.

This clearly distinguishes the case from the cases cited above.

I therefore conclude and am of opinion that the special act referred to has not been repealed and is still in force, and that your committee can make its nominations under this act if they elect and prefer so to do.

I have not considered the question as to whether the method of holding the primary outlined in the printed plan submitted in your letter does or

does not comply with the law, being of opinion that this is a matter to be determined by the committee under the general powers conferred on the committee who make such rules and regulations in regard to holding the primary as it may think proper.

I am,

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *April 1, 1913.*

Hon. JOHN W. FISHBURNE,
Charlottesville, Virginia.

MY DEAR JUDGE:

Your letter to hand, and in reply I am of opinion that your qualifications as judge of the circuit court renders you ineligible to continue as a member of the State Library Board. The Code, section 3130, provides that "no person holding the office of judge shall hold any other office or public trust during his continuance in office."

The Constitution of the State, section 132, clause 5, prescribes that the State Board of Education shall appoint a board of directors consisting of five members to serve without compensation, which shall have the management of the State Library, and the appointment of a librarian, and the statute carrying this statutory provision into effect is to be found in section 254 of Pollard's Code.

I think it clear that even if it should be held that the members of this library board are not officers within the meaning of the law, yet they are clearly the holders of a public trust within the meaning of the Constitution and statutes, and that you as judge of the circuit court cannot lawfully hold both positions.

As there may be some possible question as to whether your qualification as judge works your removal from the office or trust as a member of the library board, I beg to suggest that if you concur with my view, that all doubt would be removed by your tendering your resignation to the State Board of Education as a member of the library board.

Wishing you abundant success in your judicial career, I am,

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *September 9, 1913.*

Mr. ROBERT LECKY, JR.,
*Treasurer Virginia Home and Industrial School for Girls,
Richmond, Virginia.*

DEAR SIR:

Your letter of the 6th instant, with enclosure, to hand, which letter, so far as material to the question you propound, is as follows:

"Enclosed please find letter from the State Board of Charities and Corrections, addressed to me as treasurer of the Virginia Home and Industrial School for Girls, and to which I would ask your attention,

and the favor of your opinion on the first item, \$170.92. As questions of expenditure are subject to review by the State Accountant, as we enjoy a State appropriation, I wish to know if this item can be paid by us as a proper charge levied under the statute."

I beg to reply as follows:

By the act approved March 14, 1910, entitled "An act to allow compensation to the 'Virginia Home and Industrial School for Girls' for caring for girls committed to its custody and control under a commitment of a court, judge or justice" provides as follows: (Acts 1910, p. 254.)

"Be it enacted by the General Assembly of Virginia, That the 'Virginia Home and Industrial School for Girls,' a corporation created and organized under the laws of this Commonwealth, having for its purposes the care and training of incorrigible or vicious white girls, who are without proper restraint and training, between the ages of eight and eighteen years, shall, when its home has been established and the commitment to its custody and control, with its consent, by any court, judge, or justice, under the laws of this State, of any white girl, be entitled, upon the certificate of the judge of the circuit court of the county wherein such home shall be located, out of the public treasury, to the following compensation:

"For receiving a person into said home when first committed, fifty cents.

"For keeping and supporting her therein for each day, the sum of fifty cents.

"Provided, that not more than twelve thousand dollars shall be expended for this purpose in any one year."

The Acts of 1912, p. 271, provide as follows:

"To the Virginia Home and Industrial School for Girls, which shall include the amount appropriated by the Acts of 1910, for necessary improvements on the property, twelve thousand dollars (\$12,000.00)."

By the act approved March 13, 1908, entitled "An act to establish a Board of Charities and Corrections, to define its duties and to fix the compensation of said board and subordinates and to provide for the manner in which they shall be appointed to said offices, it is provided as follows:

"16. Whenever the Governor considers it proper or necessary to investigate the management of any institution receiving aid from the State and required to be inspected under the provisions of this act, he may direct the Board of Charities and Corrections, or any committee thereof, to make such investigation as he may require. And for the purposes of such investigation, the board, or the committee thereof, designated by the Governor, shall have the power to administer oaths, and to summon officers, employees or other persons to attend as witnesses and to enforce their attendance, and to compel them to produce documents and give evidence. Each member of the said board conducting such investigations shall be paid out of the funds of the institution investigated his necessary expenses and five dollars a day during such actual service." Acts 1908, chapter 290.

As far as I have been able to find, this is all the law on the subject. This being true, I do not think that the charge of \$170.92 referred to in your letter, which is for stenographic services rendered the State Board

of Charities and Corrections in the recent investigation, which was conducted by that board, of the Virginia Home and Industrial School for Girls, can be legally paid by you.

I am,

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, November 1, 1913.

REV. GEO. W. McDANIEL,
Richmond, Virginia.

MY DEAR SIR:

Yours with enclosures to hand. I have read the copies of the indictments enclosed, one against the Virginia Home and Industrial School for Girls and the other against yourself and others, as directors of said home, both charging that the Industrial Home for Girls, in Chesterfield county, was a nuisance for the reasons stated in said indictment; one of said indictments being against the said home, as a corporation, and the other against yourself and others as the directors of this home.

I am of opinion that your counsel will be able to maintain the proposition that neither of the indictments can be sustained under the law, and both should be quashed.

I am also of opinion that it is the plain duty of the directors, as such, to employ counsel and defend these indictments, and that the members of the board individually ought not to be put to any costs or expense in connection therewith; and if you have any funds under the control of the board of directors which can be used for this purpose, it would be perfectly right for the directors to do so.

The Attorney General cannot take any part in the trial of these indictments as they are being prosecuted under the name of the Commonwealth, and it is not the duty of the Attorney General to appear in the trial of criminal cases in the trial courts, unless it is a case in which the public revenues of the Commonwealth are involved; in fact, but for the peculiar, if not unprecedented character of these prosecutions, I would not feel called upon to express any opinion in the matter whatever, but I do so because I think the matter of such public interest that it is right that I should give an official opinion in regard to it when called upon to do so.

I return the copies of the indictments as requested.

Yours truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, November 4, 1913.

General E. W. NICHOLS,
Lexington, Virginia.

DEAR GENERAL:

Since writing you under date of October 30th, I have succeeded in procuring a copy of the Federal Income Tax Law, and also "An Analysis of the Act and Explanatory Notes by Luther P. Speer," which I have as carefully considered as the time at my command will warrant.

Referring to your letter of October 23rd, in which you call my attention to section 1573 of the Code of Virginia, my consideration of the matter leads me to conclude that this section has no controlling bearing or effect on the real question which you submit, and on which you ask my opinion, as is contained in your second letter, which is this: whether or not the professors at the Virginia Military Institute are required to return their salaries as income under the Federal Income Tax Law.

I find upon examination of this law that in passing the law, Congress has exempted from its operations "the compensation of all officers and employees of a State, or any political sub-division thereof, except when such compensation is paid by the United States Government" (see section 2, sub-division B, near end thereof, of the Federal Income Tax Law). I take it that no part of the salaries of any of the professors at the Virginia Military Institute "is paid by the United States Government."

By excluding from the operations of the Income Tax Law the compensation of all officers and employees of a State is a clear recognition by Congress of the well established and known rule of constitutional law that the Congress of the United States can levy no tax or burden, directly or indirectly, upon a State government, or any of the officers or instrumentalities of a State, which would have the effect of either destroying or of materially interfering with the existence or efficiency of the State government. On the contrary, the Constitution of the United States expressly enjoins upon Congress the duty of securing to every State in the Union a republican form of government. No State can perform its governmental functions except through the agency and instrumentality of officers and employees of the State; and, to arrive at the true construction of this act of Congress and of the true meaning of the exception above quoted, we are face to face with the proposition as to who are "officers and employees of a State" within the meaning of this law of Congress. I cannot find that the Internal Revenue Department at Washington, charged with the interpretation and enforcement of this Income Tax Law, has ever made any ruling on the point now under consideration.

Our own Court of Appeals in several cases has held that the University of Virginia, the Virginia Military Institute, and all other public State institutions, being instrumentalities or departments of the State government, constitute a part of the State itself, and, therefore, are immune from suits, except only in the limited class of cases in which, under the law and charters of the institutions, they are permitted to be sued. Our court has held that one department of the State government, to-wit, one of our State hospitals, cannot sue another department of the government, to-wit, the General Board of Hospitals in Virginia, for the primary reason that each of these institutions are departments of the State government, and, therefore, the one cannot sue the other.

Applying this well established principle to the case of the Virginia Military Institute, which is admittedly a State institution, supported by State appropriations, and all of whose officers and employees receive their commissions and their compensation from the State, and whose duties, in the main are prescribed by State laws, and the affairs of the institution controlled by a board of visitors, created, appointed and commissioned under State laws,

I am of opinion that all of the professors and other officers and employes of the Virginia Military Institute are "officers and employees" of the State government of Virginia within the meaning of the exemption contained in the Federal Income Tax Law above quoted; and that the compensation of all of such officers is not required to be given in as income for taxation under the Federal Income Tax Law.

The opinion herein given is strongly supported by the views expressed by the Virginia Court of Appeals in the recent case of *Lambert v. Barrett*, reported in the Virginia Appeals, volume 8, page 51, in the number bearing date June 21, 1913, wherein the court holds that members of a common council of a city are, for certain purposes, State officers for the reason "that their duties and functions do not relate exclusively to the local affairs of the city, but in many instances to matters in which the public at large is directly interested." This is carrying the doctrine much further than the views I have expressed in the opinion above given.

Whilst I have no ruling of the Internal Revenue Department, and can find no direct precedent in any decided case on the direct point under consideration, I am firmly convinced that the conclusion arrived at by me is correct.

I am,

Yours very truly,

SAML. W. WILLIAMS,
Attorney General of Virginia.

RICHMOND, VIRGINIA, *December 13, 1913.*

MR. MACK PRITCHETT,
Clerk of Council,
South Hill, Virginia.

DEAR SIR:

Your letter of the 6th inst., addressed to the Attorney General, requesting his opinion as to the right of a town council to impose an income tax upon its citizens, came by due course of mail, and has been handed to me for reply.

You know, of course, that the Attorney General is not authorized by law to give an opinion as to the construction of any statute except when requested by the heads of the departments here in Richmond. Judge Williams has uniformly declined to give even his personal opinion in such matters, except in a few cases. But we can refer you to the law on the subject, from which you will probably be able to come to a satisfactory conclusion with reference to the question.

I take it that the town of South Hill has no special charter, but is incorporated under the general laws of the State.

The right to impose a tax as granted to the common councils of cities and towns, incorporated under the general law—by section 1043 of the Code, wherein it is provided that the councils of either city or town shall make up a budget or statement of the amounts of money necessary to be raised by levy, in addition to what may be raised by licenses and other sources, and authorizes them to levy for the amount so ascertained, and proceeds: "The levy so ordered may be upon the male persons of said city or town

above the age of twenty-one years, and upon any property therein, and on such other subjects as may at the time be assessed with State taxes against persons residing therein."

Section 170 of the Constitution provides as follows: "The General Assembly may levy a tax on income in excess of \$600.00 per annum." By the general tax law of the State, which you will find—Acts 1912, pages 572-3—the various subjects of taxation are classified, and under Schedule B persons are required to list for taxation their income in excess of \$2,000.00, the provision being as follows: "The aggregate amount of income in excess of \$2,000.00, whether received or due, but not received within one year next preceding the first of February of each year, etc."

The Court of Appeals, so far as I know, has not passed specifically upon the question whether cities and towns can impose an income tax, but I do not know of any statute prohibiting it, or of any decision of court indicating that the town councils have not that power.

Previous to the adoption of the present Constitution, the question was raised whether or not the city of Lynchburg could impose a tax on collateral inheritance, either under the provisions of its charter or under the provisions of the general statute; and it was held in two cases—to-wit—*Peters v. Lynchburg*, 76 Va. 927, and *Schoolfield v. Lynchburg*, 78, Va. 366—that the city did not have the right to impose such a tax; but the opinion seemed to have been based in each case upon the fact that collateral inheritances were sporadic in their character and did not constitute a part of the ordinary subject of taxation for the purpose of receiving the annual revenues, and intimates that if the subject sought to be taxed was one of the subjects for annual taxation, the law would have been otherwise.

Referring to the general statute authorizing the city to tax all subjects that were taxed by the State, says: "The provision is general and was intended to apply to the general subjects of taxation, such as are provided for taxes general, and ought not to be extended to include a special power to levy this special tax, unless the authority be expressly given by law."

I trust that your town council will be able, from this statement, to make up its mind as to its powers in the premises.

Very truly yours,

RICHARD B. DAVIS,
Assistant Attorney General.

RICHMOND, VIRGINIA, *December 11, 1913.*

MR. H. S. RUCKER,
Attorney-at-Law,
Buena Vista, Virginia.

MY DEAR SIR:

After considering the matter, I am answering your letter of the 9th inst., in which you ask for my opinion as to qualifications to vote in the special election to be held on January 6, 1914, for the election of a senator from the twenty-second senatorial district to fill the vacancy occasioned by the resignation of Senator Tucker, which special election has been called by the Governor.

The Constitution itself only prescribes in terms the qualifications of voters at regular elections, and does not in terms prescribe the qualifica-

tions for special elections. The Code, section 62 prescribed the qualifications of voters at general elections, and in doing so, followed the provisions of the Constitution. This section of the Code was amended by act approved February 25, 1908, (see pages 13 and 14 of Election Law,) commonly known as the Ward Law, which does provide for the qualifications of voters at special elections. And the Code, section 109, provides the time for holding general elections. Section 110 of the Code defines what is a special election, and prescribes that an election to supply vacancies in any office is a special election.

Section 62 as amended and section 110 being in *pari materia* must be construed together, from which I conclude and am of the opinion that section 62 of the Code as amended applies to and controls the question as to the qualifications of voters in the special election for the election of a senator in your district, and that all voters who come within the provisions of section 62 of the Code as amended (the Ward Law) are entitled to vote at said election.

Some doubt has been expressed as to the constitutionality of the Ward Law as to the election of officers named in the Constitution, but I waive this question for the reason that the Senate under the Constitution is the sole judge of the election and qualification of its own members.

As to the second question propounded in your letter. This presents more serious difficulty, and I cannot find any specific statute which in terms seems to provide for the emergency which has been created in the case of this special election. But my solution of it on general principles is that the situation should be met by requiring the clerk, under clause 3 of section 86-B, to furnish the judges of election a list of voters, and, of course, he can only furnish it as it exists in his office. And this leaves open the question as to the class of voters not on the list furnished by the clerk, and who are otherwise qualified to vote, but have not paid their capitation taxes in time to be put on said list, but who have paid their taxes within the time prescribed in section 62 of the Code as amended. I think they should be allowed to vote; and if the right of this class of voters to vote is challenged, then said challenge should be determined by the judges in the way and manner provided for in section 127 of the Election Law. (See page 43.)

I arrive at these conclusions with some doubt and diffidence, but think they are sound on general principles and present the only reasonable solution of the difficulty, and gives the right to every qualified voter to take part in the election. I think a liberal construction of the Constitution and laws warrants the conclusions.

Very truly yours,

SAML. W. WILLIAMS,
Attorney General of Virginia.

Entrance Fees Paid by Candidates in Primaries.

On the 23rd day of August, 1912, I received from the Honorable A. W. Harman, Jr., Treasurer of Virginia, the following communication:

Hon. S. W. WILLIAMS,
Attorney General,
Richmond, Virginia.

DEAR SIR:

Section 11, chapter 307, Acts of Assembly of Virginia of 1912, entitled "An Act to Establish and Regulate holding of Primary Elections."

Under this act, I have in my possession certified check of Walter A. Watson, candidate for Congress in the Fourth Congressional District, for \$375.00, being required by this act to be put in the hands of the treasurer, this check being five per cent. of the salary for the first year for the office for which he was running.

Also certified check of Robert Turnbull for \$375.00, candidate for Congress in the Fourth Congressional District.

Certified check of S. R. Buxton for \$375.00, candidate for Congress in the First Congressional District.

\$375.00 in currency from Wm. A. Jones, candidate for Congress in the First Congressional District.

Certified check of John Lamb for \$375.00, candidate for Congress in the Third Congressional District.

Certified check of A. J. Montague for \$375.00, candidate for Congress in the Third Congressional District.

Certified check of Don P. Halsey for \$375.00, candidate for Congress in the Sixth Congressional District.

Certified check of T. R. Tillett for \$375.00, candidate for Congress in the Sixth Congressional District.

Certified check of Carter Glass for \$375.00, candidate for Congress in the Sixth Congressional District.

I tendered this \$3,375.00 to the Auditor of Public Accounts today, which he declined to receive, and I would be glad to have your written opinion as to what, in your judgment, is my duty to do with the above mentioned amount.

Yours very truly,

A. W. HARMAN, JR.,
Treasurer of Virginia.

To which, after due consideration, under date of September 16, 1912, I made the following reply:

Hon. A. W. HARMAN, JR.,
State Treasurer,
Richmond, Virginia.

DEAR SIR:

Your letter of recent date informing me that you have in your possession checks from Merris. Walter A. Watson, Robert Turnbull, R. S. Buxton, Wm. A. Jones, John Lamb, A. J. Montague, Don P. Halsey, T. R. Tillett and Carter Glass, asking for a written opinion as to what, in my judgment, you should do with the above checks, is to hand, and in reply to your inquiry I beg to say that there does not seem to be any specific provision made in the statute as to what disposition is to be made of these checks.

It was no doubt the intention of the legislature that these fees paid

in by the candidates submitting their names in a primary election were to be used in payment of the costs of such primary election, but there is no provision in the statute, so far as I can find, directing that to be done.

The only provisions in the statute bearing upon the subject, so far as I have been able to find, are contained in section 11 of the Act of Assembly of 1912, entitled "An Act to Establish and Regulate holding of Primary Elections," which so far as applicable to the question here raised, are as follows:

"11. Every candidate for any office at any primary, before he files his declaration of candidacy as herein provided, shall pay a fee equal to five per centum of one year's salary attached to the office for which he is a candidate. In the case of a candidate whose compensation is paid in whole or in part by fees, the amount to be paid by such candidate as his contribution for the payment of the expenses of the primary shall be fixed by the proper committee of the respective parties.

(a) Candidates for United States Senate, for representatives in Congress and for all State offices shall pay said fee to the treasurer of Virginia.

(b) All other candidates shall pay said fee to the treasurer of the city or county in which they reside. A receipt for the payment of said fee must accompany and be attached to said declaration of candidacy, otherwise the same shall not be received or filed."

There is no provision in this statute directing the distribution to be made by the treasurer of the fund so paid into his hands, but it is expressly provided for by section 21 of the same statute (D. 618) that the necessary expenses incident to the holding and conducting of primaries, such as the payment of the judges and clerks of election, &c., "shall be paid as expenses of elections are paid;" and it is also provided in the same statute that the word "election" in the statute shall be construed to mean a general or municipal election as distinguished from a primary election.

The general law governing the payment of costs in these general elections is fixed by section 122-p of the Code, which is in these words: "The costs of conducting elections under this chapter shall be paid by the counties and cities, respectively."

It seems to be apparent from this that the money in your hands cannot be paid into the hands of the treasurers of the counties and cities composing the Congressional districts, as there is no provision to that effect in the statute; but it can hardly be imagined that the legislature intended that this money, although made payable to the treasurer of Virginia, was intended to be covered into the State treasury because if it was once covered into the State treasury there would be no way of withdrawing it therefrom except by some act of the legislature; and there is no act of the legislature, so far as I have been able to find, authorizing the withdrawal of this money from the State treasury.

It would, therefore, seem to be a fair construction of the law that this money was paid into your hands as an individual, and not strictly as the treasurer of the State; that is to say, that the money was to be paid into the hands of the person who at the time of the payment occupied the office of treasurer of the Commonwealth, but was not intended to be put into the State treasury so as to become a part of the property of the State; as if

that had been the intention, the legislature would most probably have provided in the statute itself some means by which the money so deposited could be withdrawn from the State treasury and devoted to the purposes for which the payment was evidently intended to cover.

There being no direction in the statute as to what you shall do with the money, and it being fairly inferable that it was not intended to be mingled with, and deposited as, money belonging to the State, it would seem that it would be necessary for you simply to hold this money subject to the rights of the parties who have paid it in, if they have any, and to such future direction as may be given you by the legislature.

It, therefore, seems to me that the best course for you to pursue is to deposit each of these checks on an interest bearing certificate with the largest interest you can get, and hold these certificates subject to the future order of the legislature, or of some court of competent jurisdiction.

Very truly yours,

SAML. W. WILLIAMS,
Attorney General of Virginia.

Similar inquiry was made by the treasurer in regard to the entrance fees paid by candidates in the State primary, held on the 5th day of August, 1913, and I gave to the treasurer a verbal opinion that he should make the same disposition of the fees paid by candidates in the State primary that he had made of the fees of candidates paid him in the Congressional primary referred to in the above correspondence.

It is proper to further add, in support of this opinion, that the law is clear and explicit as to the manner in which money can be paid into the public treasury, viz.: through the medium of the regular pay-in warrant, as is provided by law. See Code sections 752-757, from which it clearly appears that the payment of money to "A. W. Harman, Jr., Treasurer of Virginia," is not a payment "into the treasury of Virginia."

But should it be conceded that the payment to A. W. Harman, Jr., Treasurer of Virginia, is a payment into the treasury of the State, then, under the Constitution and laws of this State, no money can be paid out of the public treasury except in pursuance of a regular appropriation made by law, and there has been no such appropriation and there is no law providing how this money could be paid out of the public treasury even if it could be held to have been lawfully paid therein. See Virginia Constitution, section 186.

HOW COSTS OF PRIMARY ELECTIONS PAID.

Section 21 of the act of March 14, 1912, commonly called "The Byrd Primary Law," provides as follows: .

"21. The necessary expenses incident to holding and conducting primaries, such as the payment of judges and clerks of election, necessary stationery and supplies, rent of polling places, furnishing and distributing ballot boxes and poll books, delivering poll books, printing and providing ballots, and other like expenses shall be paid as expenses of elections are paid."

And the general election law, section 122-p, provides that "the cost of conducting elections under this chapter shall be paid by the counties and cities respectively," from which it necessarily results that the legislature should pass appropriate legislation directing A. W. Harman, Jr., Treasurer of Virginia, what disposition to make of the said funds which he has safely deposited in bank, drawing, as I am informed, three per cent—the best rate of interest obtainable; whether this money shall be paid into the public treasury of the State, or shall be paid to the counties and cities, or otherwise disposed of as the legislature may see fit.

Claims and Debts Due the Commonwealth.

The Auditor of Public Accounts, in his report for the year ending September 30, 1912, voluntarily makes the following reference to the Attorney General:

"I have had frequent occasion to call upon Hon. Samuel W. Williams, Attorney General of Virginia, for advice, and desire to state that he has been most indefatigable and untiring in rendering the Auditor of Public Accounts all the assistance possible. His services, so far as the same relate to the conduct of the affairs of this office, have been very advantageous to the State; especially has he made it his business to look after claims and debts due the Commonwealth and has been successful in procuring for the State considerable sums of money which, without his efforts, might not have been obtained, and he is still assiduously and successfully prosecuting matters of this character."

I am very glad to have this endorsement of the plan which I have pursued ever since I have been the Attorney General of Virginia. I have prosecuted with diligence all claims due the Commonwealth the existence of which has come to my knowledge; and I am very glad to be able to report that the records of the Auditor's office will verify the statement that this office has collected in claims due the Commonwealth, other than suits referred to this office by the Auditor of Public Accounts, many times more than the entire legal department has cost the State government during the four years of my term of office.

Assessment for Taxation of Intangible Property.

In concluding my former annual report, I stated "I do not deem it amiss to state that I have felt it my duty and have at all times responded promptly to the numerous demands which have been made upon me by the Auditor of Public Accounts, the State Treasurer, the Second Auditor, the Superintendent of Public Instruction and all other heads of departments of the State government, and whenever called on have rendered them the best service of which I am capable, to aid them in the proper administration of the affairs of their several departments, and I shall continue as long as I am the incumbent of this office to pursue this course with proper energy and diligence." I have strictly adhered to the policy thus outlined. In the month of September, 1913, the Auditor of Public Accounts called my attention to the fact that he had good reason to believe that a large number of

persons and estates in the city of Richmond and elsewhere in the State had failed to make proper reports of intangible properties owned by them for taxation. Through the aid of the Auditor of Public Accounts and the energetic and valuable services of Honorable Wm. H. Sands, the examiner of records for the Tenth Judicial Circuit, the Auditor of Public Accounts, in co-operation with the said examiner of records and with this office, discovered the facts to be that a very large amount of this class of property had been omitted from taxation in previous years. Investigations were at once put on foot and diligently prosecuted. Letters were sent out from this office calling the attention of the personal representatives of these large estates to the fact that the office was in possession of data showing that certain properties named in each case, and for certain years, had been omitted from taxation, and calling upon the parties to come forward and pay these omitted taxes, properly assessed, and thereby avoid litigation. Since that time a number of these cases have been settled and very large amounts of omitted taxes have been paid into the public treasury, and, in some instances, large amounts have been paid into the treasury of the county of Henrico on properties liable to taxation in said county which had been omitted. The amounts collected from these sources for the State will appear from the records of the Auditor of Public Accounts.

I have been unable, chiefly for want of proper facilities, to press the matter to have these investigations made in other cities of the Commonwealth. Basing my opinion upon the experience and observation, and from close contact with the subject for the last four years, and especially in view of the recent experience in the city of Richmond, I am clearly of the opinion that the method of assessing the intangible property of the State is inadequate, and that some more efficient methods of assessing this class of property should be provided; and, if this is done, that class of property which has heretofore, to a very great extent, escaped taxation will be assessed and the taxes thereon collected, and will result, or should result, in paying a very large revenue into the treasury of the State of which the State has heretofore been deprived.

I do not venture to suggest the improved methods which should be adopted, leaving that to the wisdom of the legislature. I only venture to suggest the necessity for improved methods in making these assessments.

Law Books for Use of Attorney General's Office.

On assuming the duties of Attorney General, I found myself very much embarrassed by the want of necessary law books for use in the office, and especially the want of proper digests of the Virginia Reports and of the United States Supreme Court Reports. I assumed the responsibility of purchasing from the Michie Company the very valuable Digest of Virginia Cases published by that company; and also purchased from the same company the Encyclopedia Digest of United States Supreme Court Reports, volumes 1 to 11, at the price of \$170.00. I have managed to pay for these books, and for other books purchased, out of the contingent fund of the office the purchase price thereof, except the sum of \$70.00, which is represented by seven notes which I executed as Attorney General to the Michie Company. These notes are still due and unpaid. The books are in the office and should be paid for and the books retained for the use of the office.

Conclusion.

In my former reports, I felt constrained to mention the valuable services rendered by the Assistant Attorney General, Mr. Richard B. Davis, and by the then clerk of this office, Mr. T. Gray Haddon, for the diligent and able services rendered by them. I desire to repeat with emphasis that two more faithful public servants, to my knowledge, have never been in the service of the State. Mr. Haddon resigned his position and left the office on the 1st of October, 1913, and was succeeded by Mr. M. A. Powers, who has proven himself to be a valuable officer, and has faithfully and efficiently discharged every duty devolving upon him.

Respectfully,

SAML. W. WILLIAMS,
Attorney General of Virginia.

Statement.

*Showing the Current Expenses of the Office of the Attorney General from
November 1, 1912, to December 31, 1913.*

1912.		
Nov.	1. Balance to credit of contingent fund.....	\$161 30
	12. Lawyers' Co-operative Publishing Company, law books	\$14 00
	12. M. B. Watts, Virginia Appeals.....	3 50
	12. Winston Construction Company, repairs elec- tric fan	2 50
	12. Everett Waddey Company, office supplies.....	21 10
	12. Chesapeake and Potomac Telephone Company, long distance calls	24 80
	12. Beaufont Lithia Water Company, drinking water	5 00
Dec.	4. Postage stamps	12 00
	7. Western Union Telegraph Company, telegrams.	2 68
1913.		
Jan.	24. S. W. Williams, Attorney General, sundry items paid by him	12 00
Feb.	13. Western Union Telegraph Company, telegrams.	1 42
	27. Lawyers' Co-operative Publishing Company, law books	6 00
	27. The Michie Company, law books.....	2 00
	27. The Everett Waddey Company, office supplies..	2 10
	27. S. W. Williams, Attorney General, sundry items paid by him.....	52 20
		<hr/>
		\$161 30
		<hr/>
Mar.	1. Appropriation to defray current expenses to March 1, 1914.....	\$400 00
April	5. Western Union Telegraph Company, telegrams.	\$ 3 03
	22. Mrs. O. H. Pringle, extra stenographic work...	30 00

May	9.	E. J. Warren, extra stenographic work.....	2 50	
	24.	S. W. Williams, Attorney General, sundry items paid by him.....	27 40	
June	6.	Chesapeake and Potomac Telegraph Company, long distance messages and 'phone extension	32 05	
	6.	The Michie Company, law books.....	32 50	
	6.	Western Union Telegraph Company, telegrams.	5 53	
	6.	Beaufont Lithia Water Company, drinking water	5 50	
	6.	Miss A. Kilcoyne, extra stenographic work..	14 00	
Aug.	8.	Western Union Telegraph Company, telegrams.	18 75	
Sept.	2.	Miss Louise Gordon, extra stenographic work..	10 27	
	2.	Postage stamps	12 00	
Oct.	1.	The Michie Company, law books.....	10 00	
	1.	S. W. Williams, Attorney General, sundry items of expense paid by him.....	10 95	
	1.	T. W. Bickett, copy tobacco trust record.....	6 67	
	1.	Miss H. D. White, extra stenographic work...	14 35	
	1.	Southern Stamp and Stationery Company, rub- ber stamps	2 75	
	1.	Western Union Telegraph Company, telegrams.	10 75	
	1.	Postage stamps	12 00	
	1.	Lawyers' Co-operative Publishing Company, law books	4 50	
Nov.	1.	S. W. Williams, Attorney General, expenses...	12 25	
	1.	Bell Book Company, office supplies.....	60	
	1.	Postage stamps	12 00	
	1.	Chesapeake and Potomac Telephone Company, long distance calls	5 05	
	1.	Western Union Telegraph Company, telegrams.	3 90	
	3.	The Michie Company, law books.....	6 00	
Dec.	8.	Soap and towels	50	
	8.	Everett Waddey Company, office supplies.....	40	
	8.	Southern Bell Telephone Company, long dis- tance calls	5 95	
	8.	M. B. Watts, Virginia Appeals	3 50	
	8.	Postage stamps	5 00	
	8.	Western Union Telegraph Company, telegrams.	6 40	
	8.	Beaufont Lithia Water Company, drinking water	1 50	
	15.	Miss Louise Gordon, extra stenographic work..	10 00	
			<hr/>	\$338 55
Dec.	31.	Balance to credit of contingent fund.....	\$ 61 45	

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