To the members of the House of Delegates. [1866].

To the Members of the House of Delegates.

Gentlemen:

As one of the members of the Board of Public Works after the passage of the resolution by the Senate in regard to the Orange & Alexandria Railroad, I deem it due to you and those interested to make a statement of the case as I understand it, that you may have the benefit of the statement before you act on the Senate's resolution. I am the only member of the Board that was acting at the time the order was made directing Messrs. Jamison and Quigley to take possession of the road, and put it in order and work it until further orders, by consent of the military authorities. The authority of the Board is now called in question, and it is claimed that Mr. Barbour is President of the road, both by virtue of his former election and the election at Alexandria on the 16th of November last. I am of the opinion that he is not President under either.

In 1861, when the rebellion commenced, Mr. Barbour was President of the Orange and Alexandria Railroad, which was then completed. He removed all the rolling stock of the road, and other material, from the shop at Alexandria, and continued to use the stock and road in aid of the war on the Confederate side. In April, 1865, when the United States, by its army, occupied Virginia, the military authorities took possession of all the railroads in the State, and held them as captured property, they having been used in aid of the Confederate authorities during the war. No former officer was permitted to use any of the roads in the State, except as they were permitted by the military authorities of the United States. Mr. Barbour applied to the authorities at Washington for permission to take possession of the Orange & Alexandria Railroad, and was refused. This ended Mr. Barbour's presidency of that road. It was the decree of the military authority or power of the nation, which was final and binding. After that order he was either President or he was not President of the road. If he was President, he had a right to take possession of the road and to work it. He did not take possession of it. Why? Because the military authorities declared he should not. That is an end of the argument. But if Mr. Barbour was the rightful President, he should have enforced his demand. But on whom should he enforce it? The President of the United States. But to whom should he apply for a mandamus—who could enforce the order of the court? The whole section in which the road was located was declared to be in insurrection against the Government of the United States. It will be seen by a mere statement of the case that Mr. Barbour's claim to the presidency is a mere technical claim, under the law of the State, against the stern prohibition of a military order in time of war. It is an empty title without a shadow of power to enforce his rights.
Immediately after the evacuation of Richmond, I asked the military authorities at Washington to turn over the railroads of the State to the Board of Public Works, informing them that the State had a large interest in these roads, and maintained that the interest of the State could not be confiscated; that it was of the highest importance in the restoration of order and harmony that these roads should be put immediately in running condition. As fast as the military necessities of the case allowed I got the roads turned over—in some instances immediately to the old officers; in others, to the Board of Public Works, and the Board took the management. In the case of the Orange & Alexandria Railroad, the road, by military order, was turned over to Messrs. Jamison & Quigley, at the request of the Board. It was deemed by some of the members of the Board that the State had a right to take possession of the road, on the ground that the Company had abandoned it for three years—so, in the order this provision was referred to, I did not regard it as taking possession of the road in the name of the State, and under the provisions of that law. But an intense pressure from the great section of the State through which the road passed for transportation and postal communication, induced the Board to take the responsibility in the exercise of a sound discretion under the exigencies with which they were surrounded. Much assistance was to be derived from the Federal Government. The Board found it was necessary to procure men of energy and means and who had the confidence of the officers of the Government, with whom they had to work in concert. The rapidity with which the work progressed to completion, and the manner in which it has since been conducted, is the best vindication of the wisdom of the action.

In the latter part of September, after the road was put in running condition from Lynchburg to Alexandria, Messrs. Jamison and Quigley proposed that a meeting of the stockholders should be called to elect officers of the road. Upon consultation, it was determined to hold the meeting about the time fixed for holding the annual meeting. So the Board called a meeting of the Stockholders to assemble at the council chamber, in Alexandria, on the 15th day of November, and appointed three proxies. A portion of the stockholders assembled at the place designated on the day named, and proceeded to organize the meeting by the appointment of a President and Secretary of the meeting, and appointed a committee of nine to examine the proxies and see how many votes there were present, and adjourned to meet at Lyceum Hall that P. M. at three or four o'clock, but did not meet there until seven or eight, owing to the committee not being ready to report. The committee entered upon the discharge of their duty; among their first resolutions was to determine that no proxy which did not, on its face, authorize the vote to be cast on that day should be received. The committee had not proceeded far until Louis Mackenzie presented the proxy of Bareda, representing 2,207 shares. This proxy was legally drawn, regularly acknowledged in Liverpool, England, but did not provide that the holder should vote on the 15th day of October, 1865; but it authorized the holder to vote at all meetings of the Company, &c. The committee adjourned for dinner before completing their work. All the proxies which had been presented were left on the table except the Barreda proxy,
which was carried off. When the committee returned after dinner, Mr. Mackenzie demanded a vote on the Barreda proxy. Eight of the members of the committee were present—full time had been had for consultation, and five of the eight committeemen voted to reject the Barreda proxy. On this vote being taken, Mackenzie left the committee, and refused further to participate with that committee.

It was known during the evening that there were rival candidates for the presidency of the road—Mr. Barbour and Mr. Jamison—that there would be two meetings; and two meetings were held, on that and the next day—one at Lyceum Hall, where the friends of Mr. Barbour met; the other at the Council Chamber, where the friends of Mr. Jamison met, the place designated by the Board of Public Works for the meeting. By the minutes it appears that 7,158 stockholders were reported by the chairman of the committee to be present then and the night before. Of the truthfulness of this statement the Board had no evidence. It was also denied by the party holding the meeting at the Council Chamber that that number was present, they maintaining that a number of the votes counted and included at Lyceum Hall were present and voting at the Council Chamber meeting. The Board, in its investigation of the subject, looked to the votes of each meeting cast for the president. There were cast at Lyceum Hall for Mr. Barbour, 6,486 votes; for other parties, 20 votes, making of all the private stockholder's votes present 6,506.

It was reported that 14,053 votes were the whole number of votes that could be cast at the meeting. Seven thousand and twenty-seven votes were therefore requisite to make a majority. There was, then, not a majority at the meeting at the Lyceum Hall, where Mr. Barbour was voted for by 521 votes.

At the Council Chamber meeting, where Mr. Jamison was voted for, including the State vote, there were 6,620 votes cast for Mr. Jamison. By scaling the State vote his vote would be greatly reduced. The Board, after carefully considering the subject, and hearing very learned arguments from Messrs. Green and Neeson in favor of Mr. Barbour's claims, decided that there was no election, by either party, for want of a quorum present at their meetings, according to law; and determined to order another meeting, hoping for a better result.

Complaint was made that the number of shares of stock which was reported to be voted upon, differed from that of former years. That the stock list was made out by Mr. Reed, the former Secretary of the Board and a partisan of Mr. Barbour. The Board determined to send for the books and have a correct stock list made out before ordering a new election. They directed Mr. DeWitt to proceed and get the books of the company and make out a correct list, and report the facts; he proceeded to his work and was upwards of four weeks in making the list, by the aid of Mr. Reed, the former Secretary of the road, whose particular duty it was to keep books, make the lists, &c. While this work was being done, Mr. Barbour came forward with his petition to the General Assembly...
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asking it to pass a joint resolution declaring him President. While this resolution was pending, I determined that I would have nothing to do with ordering a meeting of the stockholders.

I cannot see how the question is to be settled by a resolution of the General Assembly. Who is to carry out the opinion the General Assembly express? Or, is it intended to alter the charter of the Orange and Alexandria railroad by resolution, and appoint Mr. Barbour President? The company is acting under a charter, the charter provides for the election of president and directors. If a party is aggrieved by unfairness at an election, he has his remedy in the courts, and before the same tribunals, if his rights are denied him which he gains by an election.

But Mr. Barbour was not elected at the meeting held on the 15th November last.

I heard the argument of the eminent legal gentlemen before the Board of Public Works in favor of Mr. Barbour’s election. It has been since printed. I have not had the honor of reading it. It totally failed to convince the Board that he had any claim.

It is provided by law that, “To constitute a meeting of stockholders * * * there must be present those who can give a majority of all the votes which can be given by all the stockholders.” ‘If less than a majority attend, they may adjourn, &c.’ See Re 9th, page 332, Code of Virginia, 1860.

It is provided by law that, “The Board * * * shall appoint one or more proxies to represent the stock held by or on behalf of the State in such company.” It has been the custom, for many years, for the Board to appoint three proxies, with instructions, that a majority of the three can cast the vote of the State; if one be absent, two can cast the vote; but if they are divided, the vote falls—but one is not authorized to cast the vote. It is further provided by law that if a proxy is absent, the Board can appoint a proxy for that special meeting. It is customary where two of the proxies are absent, for the Board to appoint one for the special meeting. This appointment of three proxies has been observed through Governors Johnson, Wise and Letcher’s terms of office. The present Board have adopted the old proxy and instructions. The usage is in accordance with law.

Messrs. Miller, Mackenzie and Early were the proxies appointed by the Board. Early was not present when the stockholders met, but came after they were in two organizations—one at Lyceum Hall, and one at Council Chamber. Mackenzie and Miller were at Council Chamber, Early was at Lyceum Hall, and attempted to cast the vote of the State, but cast it against Mr. Barbour. It is simply a waste of time to undertake to make an argument maintaining that one proxy can cast a vote where three are appointed according to law with positive instructions that a majority of them shall cast the vote of the State. Early's presence at the Lyceum Hall meeting, professing to represent the State, gave no
votes to that meeting. The majority of the proxies were at another meeting. Mr. Early was powerless without one of his colleagues.

But it is maintained that the meeting at which Mr. Barbour was voted for was constituted by a majority of all the votes that could be cast being present when the meeting was organized. How is that ascertained? The meeting assembled at half past nine o'clock on the morning of the 16th.—The committee reported through Mr. Whitehead, “that the votes represented by proxy with those answering on the roll call of the PREVIOUS NIGHT amounted to 7,158 votes, which with the State vote of William E. Early—State proxy, then present—gave a majority.” This was the first time that any attempt was made to ascertain the number of votes present—and it is not said how many are there then—but the proxies, with those who had been there the PREVIOUS NIGHT, with Mr. Early, constituted a quorum. They immediately proceeded to vote, when only six thousand five hundred and six votes were cast—6,486 for Mr. Barbour. More than five hundred less than a quorum was present. But it is maintained that from the minutes it is shown that 7,158 votes were present at the organization of the meeting. The minutes do not say so. “Those represented by proxy, and those answering to roll call the NIGHT BEFORE, make 7,158 votes.” When was this meeting CONSTITUTED in the language of the act? When was the committee appointed to examine proxies? Certainly not. It was then uncertain what number was present. Was it at any of the subsequent adjournments? No; because the amount of votes present was not ascertained. The meeting could not be constituted until it was ascertained how many proxies were present. The meeting was composed of two classes—one of stockholders, who cast their own votes; the other who voted by proxy. The roll had been called the night before, and it appeared that a certain number of voters had answered to their names. Were they present at the meeting on the 16th? The test, when the vote was taken, shows that they were not present then at the meeting. “The law says that to constitute a meeting of stockholders there must be present a majority of all the votes that could be given by all the stockholders.” If they are not present, they are to adjourn?om day to day until a majority appears. When is the meeting constituted? It is on the day and at the time when, by count of proxies and roll call, it shall be ascertained that there are present a majority of all the votes, &c. Some decisions of the common law are quoted to ssustain the position that, after a meeting is constituted, a minority can do the business. In every case there quoted there was a majority present at the organization of the meeting. But in this case there quoted there was a majority present at the organization of the meeting. But in this case there is no evidence that there was a majority present at any one moment from the first attempt at organization until the time of final adjournment.—There were persons back and forward, but it is not maintained that Mackenzie and those acting with him constituted any part of the Barbour meeting But the common law has nothing to do with deciding this case. The statute has provided that, to constitute a meeting, there shall be present those who can give a majority of all the votes of all the stockholders. Present when? Present when a vote is taken. The meaning is plain and simple. Suppose the stockholders of the Virginia Central road were
called to-day to meet in the Capitol, and they could vote 10,000 votes—all the stockholders were present—and adjourned to meet tomorrow; and when to-morrow came, and the hour arrived, and from any cause only three votes were present. Does any man in his sense suppose that, because 10,000 had been present yesterday, and only three present to-day, the three could transact the business? No. Why? because the statute says that to constitute a meeting there must be present—present when? when they vote—a majority of all &c., and it was for this reason the common law has been altered by the statute requiring to be present those who can cast a majority. I deem it unnecessary to follow this argument further. But from the fact that by some legerdemain the Senate was imposed upon by a pressure of some kind. I should have supposed that a mere statement of the case would have been sufficient.

I have remarked, that a complaint was made about a difference between the number of votes and the amount of stock represented this year, and the number and amount represented last year. Here the Board procured the books and had a list made out by the aid of Mr. Reed, Mr. Barbour's Secretary. The investigation develops this remarkable fact, that in 1864 we had thirty-nine thousand eight-hundred and eighty five (39,885) shares of stock, having thirteen thousand nine hundred and forty-two votes—this year, 1865, same Secretary represents that he has 40,460 shares and 14,036 votes—he reported to Alexandria that he had 14,053—in 1863 he reported 41,655 shares. The only remark I have on this subject is, that it is a convenient mode of keeping books, where from one to two thousand shares of stock is added on or taken off at pleasure. The books develop this further fact, that although the road has been completed six years, yet there is on the stock list sixteen hundred and nine (1,609) shares of stock for which no certificate of stock has been issued, yet parties are voting on their stock. It said this stock is for land damages, lawyer's fees and work done on the road, the amount of which is not ascertained, yet the stock is put down, and is growing.

I find, further, that there are upwards of two hundred and fifty shares of this stock subscribed, on a part of which two dollars on fifty has been paid. Twenty-five dollars per share is paid on a small portion, on a few shares more than $25 is paid. Yet all this stock stands on the books and is voted on. This is an abuse of the law, and ought not to be allowed. It is a wrong on stockholders who have paid their money. The law provides that at the time of subscribing, two dollars shall be paid, and the party shall pay the residue when required. This has been required to be paid perhaps seven years ago, yet no steps have been taken to enforce payment. Nor has the names of the parties been stricken from the roll. From this slip-shod mode of doing business, it is not wonderful that a work of internal improvement should halt and doubt hang over its future. Nor is it wonderful that the large stockholders should desire a change. More than two-thirds of the stock was represented at the meeting that voted for Mr. Jamison. Large stockholders looking after their interests are not satisfied with such a loose mode of doing business.
Great complaint has been made about Messrs. Jamison and Quigley, and their management of the road. All I have to say on that subject is, that the road under their management shows a larger business and a larger income than it ever presented under Mr. Barbour's administration. I hereto append a statement of their affairs up to the first day of January, 1866, from which it will be seen that a larger business in freight and passengers has been done than was done over the road before, notwithstanding the efforts at panic and misrepresentation. Mr. Barbour and his friends can call a meeting of the Board if they desire, or the House can follow the example of the Senate, and declare by resolution that Mr. Barbour is elected. But how that will settle the matter I am at a loss to see. The Board has no power to declare Mr. Barbour elected, and can only express an opinion.

A Statement of Disbursements from January 27 to December 31, 1885.

On pay rolls, including salaries of Superintennent and Treasurer, pay of clerks, station agents, conductors, &c., employed in operating the road, labor on repairs of machinery and rolling stock, labor on road bed, railway and bridges, &c., $164,685 51

$164,685 61

For Engines and Cars.

Three Locomotives, 35,275 00

Four Passenger Cars, 10,550 00

Forty-eight box and stock cars, &c., 17,630 00

63,155 00

For cross-ties, 26,000 00

For Wood, 25,000 00

For repairs of stations and buildings, &c., 7,300 00

For T. S. revenue taxes, 5,902 16

Miscellaneous expenses, supplies and materials for road and shops, including iron, car wheels and axles, tools, lumber & material for bridges, and supplies of every description, office expenses, &c., printing and advertising bills, 63,242 61

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$355,625 28

A Statement of Receipts from all Sources from June 20th to December 31st, 1865.

*From Freight Revenue:*

June 20 to July 31, 853 89

August, 4,084 81

September, 15,887 07

October, 29,352 60

November, 29,829 07

December, 36,572 31

$116,580 65

*From Passenger Revenue:*

June 27 to July 31, 10,263 10

August, 31,682 87

September, 34,086 74

October, 34,540 87

November, 36,308 54

December, 31,396 32

$178,178 41

$294,790 06

From sales of old iron, 9,950 14
From other sources, 1,916 08

Borrowed and unpaid Jan. 1st, 1866:

From Riggs & Co., 24,000 00

From Adams Express Company, 25,000 00

Total amount received from earnings and loans, $355,625 28

It will be seen from the foregoing statement of the earnings and disbursements of the road, 50,000 cross-ties have been put under the rails; large amount of ditching required; water stations and pumps to build and repair; four new bridges have been built, nearly all complete—one across the Rapidan, long and expensive. The equipments of the road are nearly new, made so by Jamison and Quigley in the short space of time they have had control of the road. There has been some accidents on the road, but they all occurred since the order for the election of officers. I forbear adverting to that subject further. I am satisfied and am frank in saying so, that in my opinion, the interest of the stockholders demand that Mr. Barbour should not be president of the road. Mr. Barbour has given out that the company owned a large amount of cotton, part of which he has sold. He has made no report of his transactions. My opinion is that there should be another president, and new set of directors to settle with Mr. Barbour. I have candidly and without reserve given you this short statement and opinion in the case.

F. H. PEIRPOINT.