

JOURNAL

—OF THE—

HALL OF RECORDS  
ANNAPOLIS, MARYLAND

PROCEEDINGS

—OF THE—

Senate of Maryland,

*JANUARY SESSION, 1892.*

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BY AUTHORITY.

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ANNAPOLIS:

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1892.

the Commissioners of Howard county to issue bonds to the amount of \$15,000, to be expended in the construction of said bridge and the acquisition of the necessary land adjoining it, and to authorize the condemnation of such land and to authorize the levying of taxes by the respective counties, to provide for the payment of said said bonds with interest and for the keeping said bridge in repair, and to provide for the opening of roads to afford access to said bridge.

Which was read the second time, and ordered to be engrossed for a third reading.

Mr. Gorter, from a Select Committee, reported favorably,

Senate bill entitled an Act to enable the Sheriff to charge and receive one dollar for every arrest on warrant and return in criminal cases, and one dollar and fifty cents for serving and return every attachment for contempt of court.

Which was read the second time, and ordered to be engrossed for a third reading.

The Baltimore City Senators reported without recommendation,

Senate bill entitled an Act to create free scholarships in the Baltimore Manual Training School.

Which was considered, and referred to the Committee on Finance.

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A messenger appeared and delivered a communication from the Executive.

The President presented the following:

*To the Hon. Frank Brown, Governor of Maryland:*

The petition of the undersigned sureties upon the official bonds of Stevenson Archer, late Treasurer of Maryland, respectfully represent to the Governor:

1. That a memorial for relief has been duly presented by them to the several branches of the Legislature, as by the copy thereof presented to the Governor appears.

2. That a bill entitled "An Act for the relief of the sureties upon the official bonds of Stevenson Archer, late Treasurer of Maryland," has already been introduced in the Senate.

3. That Article 3, section 33, of the Constitution of this State requires the recommendation of either the Governor or officers of the Treasury Department before the General Assembly can pass a law for the relief of your petitioners.

4. Your petitioners therefore respectfully pray that the Governor will entertain this, their petition, and recommend to the General Assembly the passage of a bill for their relief, and they respectfully submit the following as some of the considerations entitling them to relief :

A. The facts and law referred to in the report of the Joint Special Committee of the General Assembly of 1890, appointed to investigate the accounts of said Archer, and the evidence taken by said committee.

B. The failure for many years of all Governors (with not more than one exception) Comptrollers and Treasurers of the State, to comply with the various provisions of the Constitution and laws intended for the protection of the State securities and funds, by interrogating the Treasurer under oath and actually calling for the production of the securities which were or ought to have been in his possession, which duty the sureties had a right to believe would be performed.

C. The failure of successive Legislatures to comply with the duties imposed by various provisions of law, the full discharge of which would surely have led to a much earlier discovery of Archer's defalcation;

Art. 95, secs. 22 and 23, Code of Public General Laws, Vol. 2, p. 1431 Const. Art. 3, sec. 24.

D. The Court of Appeals, though not permitted under the law, to admit as a defence against the State, the well known facts attending Archer's defalcations, have not hesitated to express their views of the hardship of the case. The hardship to the State having been suggested, they say, we have nothing to do with the supposed hardship of the case; but it must be evident that the hardship is not entirely on one side. When Archer's sureties executed this official bond, they had a most just and reasonable expectation that their liability would not extend beyond the period of two years, with the addition of the short time allowed by law for the qualification of a successor. Circum-

stances, which are well known, continued in the liability for two years longer; and this occurred without any default on their part. The law operated against them with great severity, but it was enforced.

Opinion of the Court, per Judge Bryan, on motion to remand for new trial case on bond of 1886.

E Precedents for the relief of sureties on official bonds are numerous. In this State, the Legislature (Act of 1858, chapter 286), released *entirely* the sureties of Lloyd B. Smith, Collector of Taxes in Allegany county, and in 15th Md. 205 (*State vs. Hendrickson & Smith*), the Court of Appeals affirmed the right of the Legislature to do so. Again, (Act 1868, chapter 327), the Legislature released *entirely* the sureties of Sheriff Knotts of Caroline county.

Acts of our own Legislature for *partial* release of sureties are very numerous.

Amongst the Acts of Congress are many such precedents.

About 1842, Purser Southall, of the Navy, defaulted to the extent of \$40,000, and in 1852 or 1853, Congress released his sureties upon the payment of \$1,400.

About 1872, David L. Stanton, Collector of Internal Revenue for a Maryland District, defaulted to the extent \$40,000. The Forty-Third Congress in 1875, released *entirely* Zephaniah Poteet, John H. Longnecker and John T. Ensor, his sureties. (Statute at Large, volume 18, part 3, page 419.)

On March 6, 1886, Congress released *entirely* the sureties of J. T. Carter, Secretary of Arizona; on March 7, 1888, those of J. C. Dexter, Receiver of Public Moneys, Michigan; on March 14, 1888, those of Samuel A. Blaine, Indian Agent, Texas; on January 8, 1891, those of George W. Hook, Receiver at Land Office, California; and on March 22, 1886, those of Frank Soule, Collector of Internal Revenue, California.

These are a few of the many cases found among the U. S. Statutes at Large.

An examination of the reasons for relief in the above cases, where they can be learned, exhibits facts much less strong than those in this case.

Your petitioners therefore most respectfully, but earnestly submit, that the facts and considerations in this case are such that it would be inequitable and unjust to hold them for Archer's defalcations later than February, 1888, and if they are so held, the consequence will be the total impoverishment of some of them.

(Signed,) H. W. & W. A. ARCHER,  
Executors.  
(Signed,) J. THOS. C. HOPKINS,  
(Signed,) EDWIN H. WEBSTER,  
(Signed,) J. M. STREET,  
(Signed,) ALLAN HOFFMAN,  
(Signed,) P. HOWARD,  
(Signed,) S. A. WILLIAMS.

STATE OF MARYLAND,

EXECUTIVE DEPARTMENT.

Annapolis, February 26th, 1892.

*To the Honorable, the General Assembly:*

I respectfully transmit to you a communication addressed to me under date of February 16th, 1892, by Messrs. Edwin H. Webster, Stevenson A. Williams, Joseph M. Street, J. Thomas C. Hopkins, Patrick Howard, Allen Hoffman, Henry W. Archer, Jr. and Murray Vandiver, sureties on the bonds of Stevenson Archer, late State Treasurer.

You will perceive that its object is to lay the foundation for the passage of an Act for their relief, by obtaining the recommendation of the Governor to this effect, as prescribed by section 33, of Article 3, of the Constitution, without which recommendation, or that of the "Officers of the Treasury Department," no such Act can properly be passed.

The transactions which have led to this application are so well known to the people, as to need but a brief recital.

Mr. Archer was elected Treasurer for the first time in January, 1886, and qualified on February 2, 1886, by taking the oath of office and giving bond as required by law.

On January 13th, 1888, he was elected for a second term and should have qualified by taking the oath of

office and giving bond within thirty days thereafter, but he did not in fact attempt to qualify or give bond until November 18th, 1889.

On January 9th, 1890, he was elected for a third term and qualified and gave bond on January 30th, 1890.

Upon the first bond given by him a judgment has been recovered by the State for \$60,000.

Upon the second bond the Court of Appeals have decided that the sureties are not liable at all.

The suit upon the third bond has not been tried, but the sureties assert that his defalcations subsequent to its date amount only to \$5,000. Assuming this to be correct, the State's whole claim against his sureties amounts to \$65,000.

According to the regular and orderly course of events, this first bond should have come to an end not later than February 13th, 1888, and been superseded by the bond under his second election of January 13th, 1888, but in consequence of his failure to qualify under his second election, the Court of Appeals have decided that he held over under his first election, and that his first bond was in law responsible for the whole period from February 2d, 1886, down to the 30th January, 1890, when he gave bond under his third appointment.

In other words, they have extended the *legal* liability of his sureties upon his first bond for two years longer than it was originally expected by the sureties that it would be responsible. The bulk of his defalcations occurred during this extended period, and the sureties apply to me to recommend to your Honorable Bodies to relieve them from the strict measure of the *legal* liability thus fixed by the Court of Appeals.

They do not ask, as you will observe, an *entire release* from their responsibility, but tendering themselves ready to pay at once in cash the amount of their principal's defalcation during the period beginning on February 2d, 1886, and ending on February 13th, 1888, they pray to be relieved from all greater liability.

After careful reflection, it seems to me that the case of the sureties on the first bond presents a strong

equity, which should be passed upon by the General Assembly and not by the Governor alone; and, accordingly, I respectfully recommend that you take their memorial into consideration, and extend to them such measure of equitable relief, as upon a review of all the facts and circumstances of the case, shall appear to you to be fair and just.

I notice that the memorial makes no mention of the third bond, and proposes no indemnity to the State for the costs and expenses of the litigation. And therefore, if you shall see fit to grant their application in whole or in part, I suggest that in any bill which you shall pass, provision be made for the payment by the sureties on the third bond of the amount misappropriated subsequent to its approval; and also for full indemnity to the State for the costs of all the suits at law and in equity in the Circuit Courts and in the Court of Appeals, and also for proper compensation, out of the sum to be paid by them, to the State's special counsel, for his laborious services in the whole litigation.

The liability upon the third bond is not disputed, I believe, and hence, it seems to me to be only reasonable that the amount covered by it should be paid, together with all the expenses of every kind to which the State has been subjected, throughout the entire controversy, as a condition of any *equitable* adjustment of their responsibility upon the first bond.

FRANK BROWN,  
Governor.

Which was read, and referred to the Committee on Finance.

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At 2.10 P. M.,

On motion by Mr. Robinson,  
The Senate went into executive session.

At 2.20 P. M.,

The Senate resumed the consideration of Legislative business, and

On motion by Mr. Toadvin,  
The Senate adjourned.