

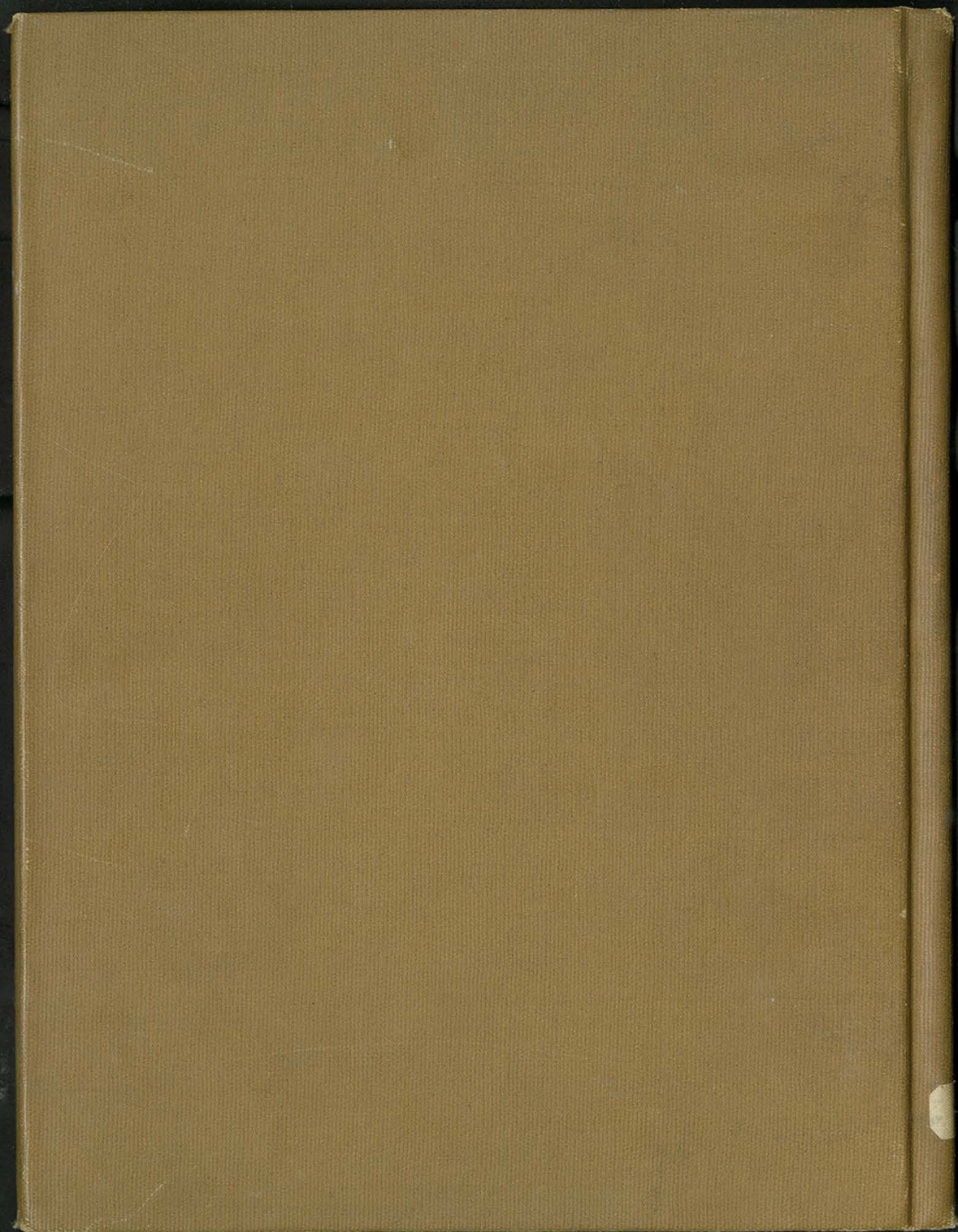
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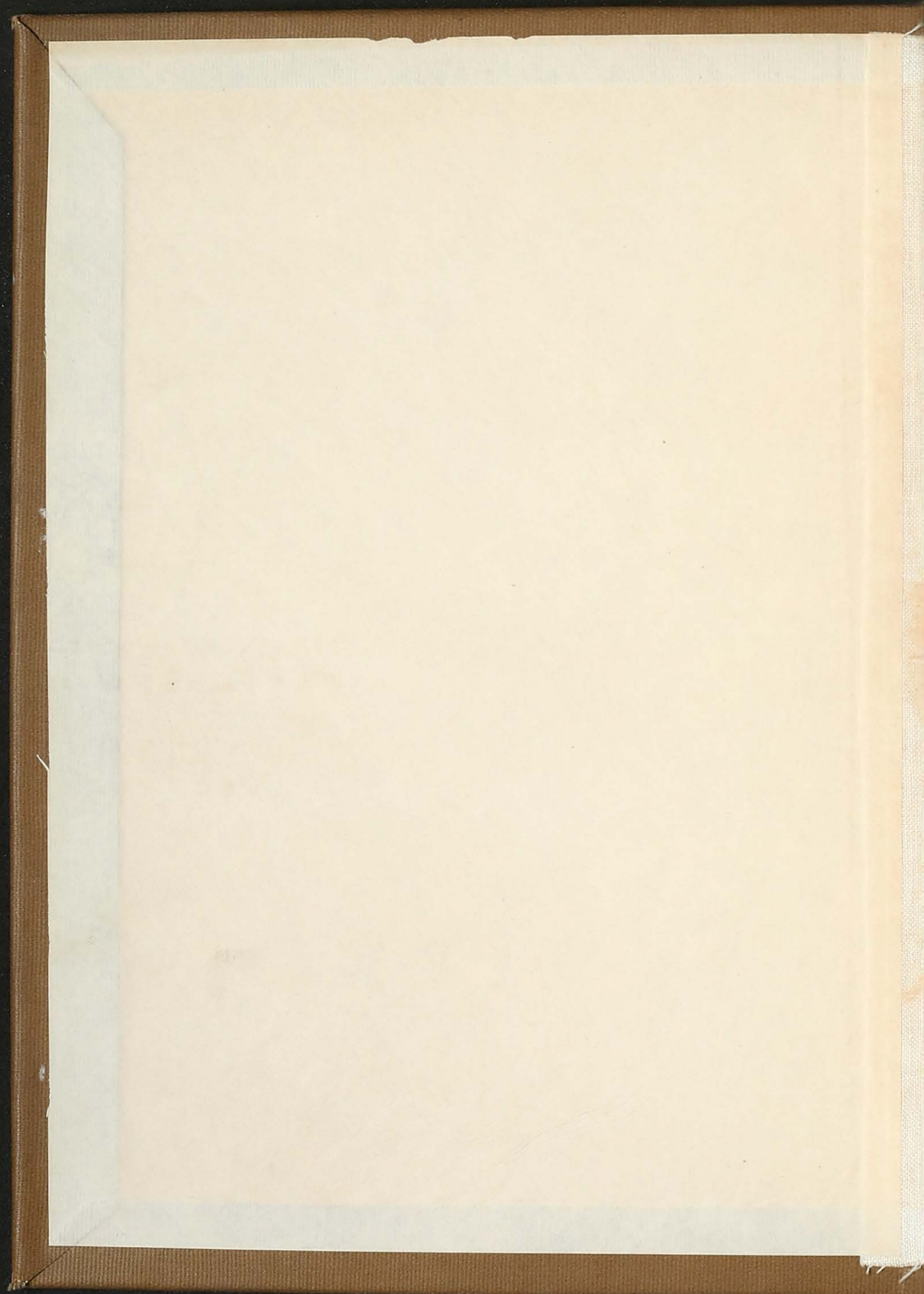




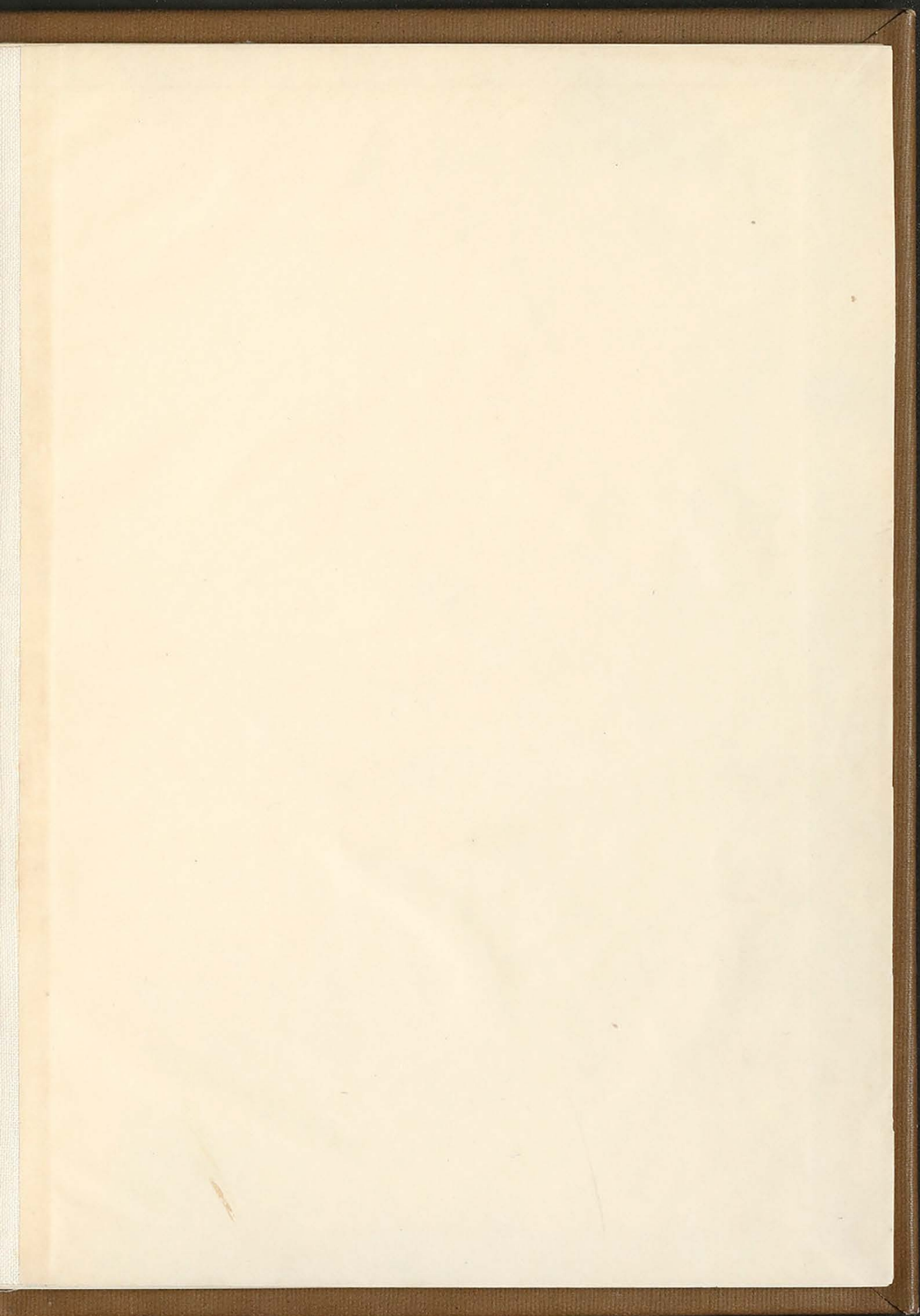
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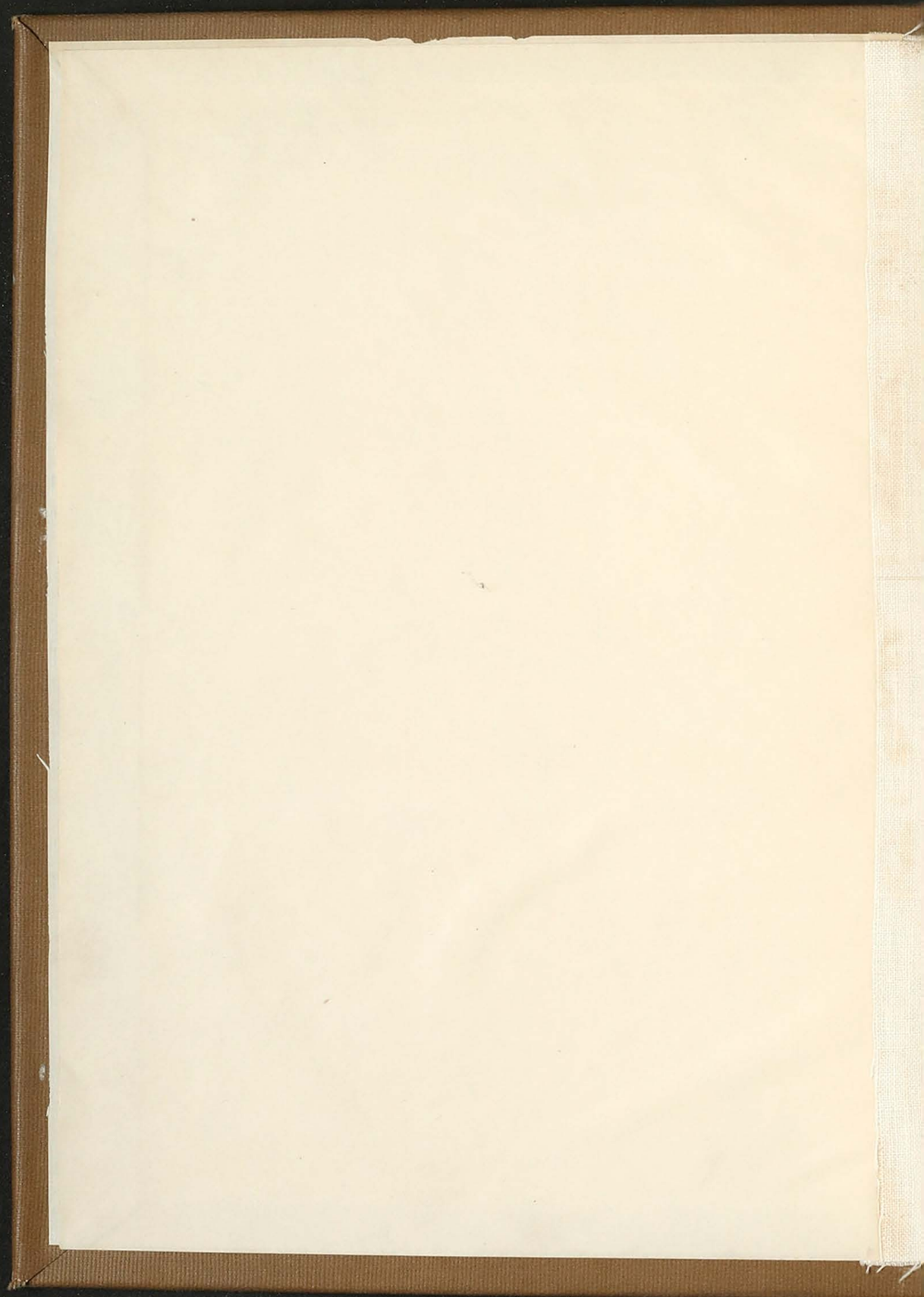




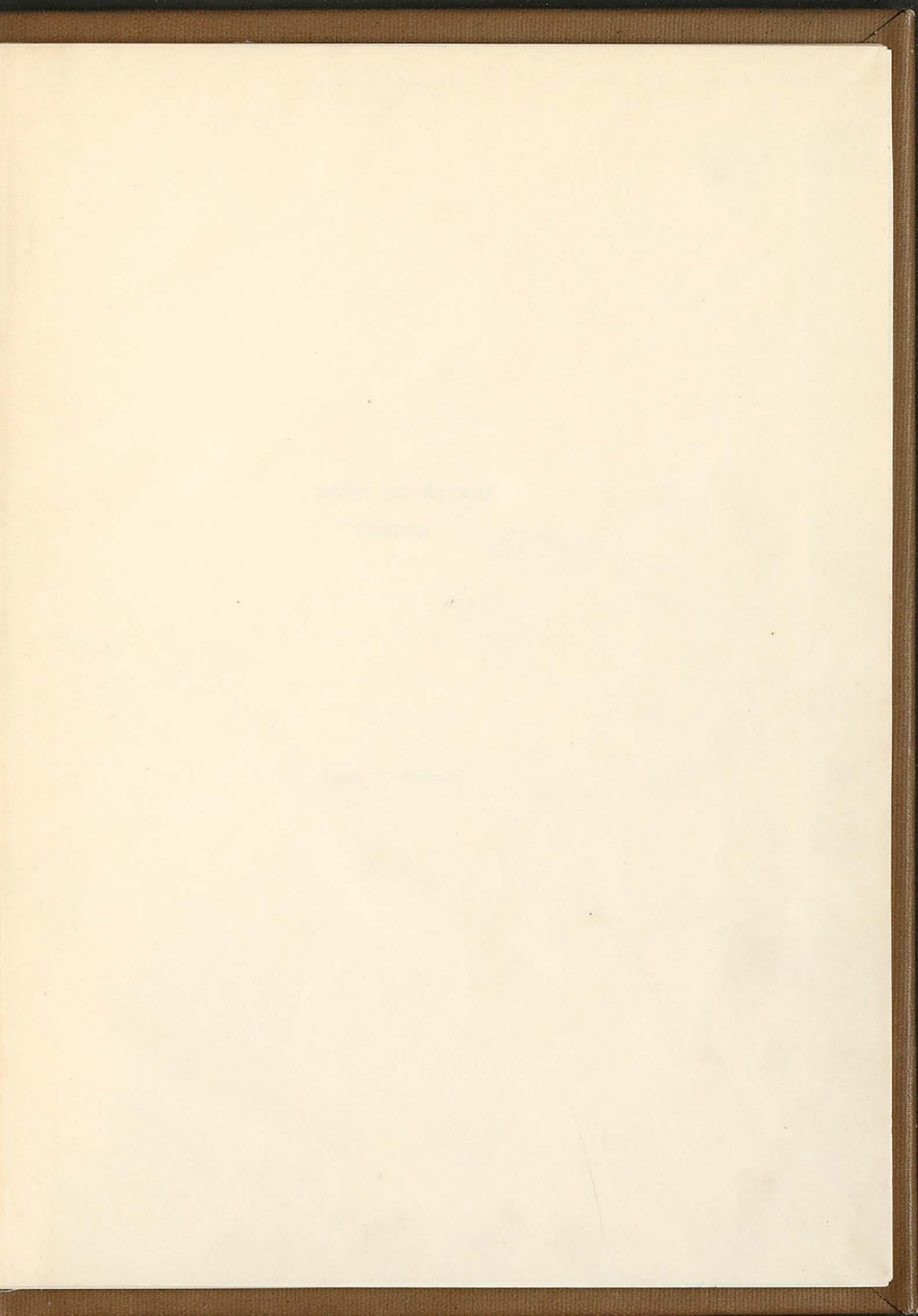




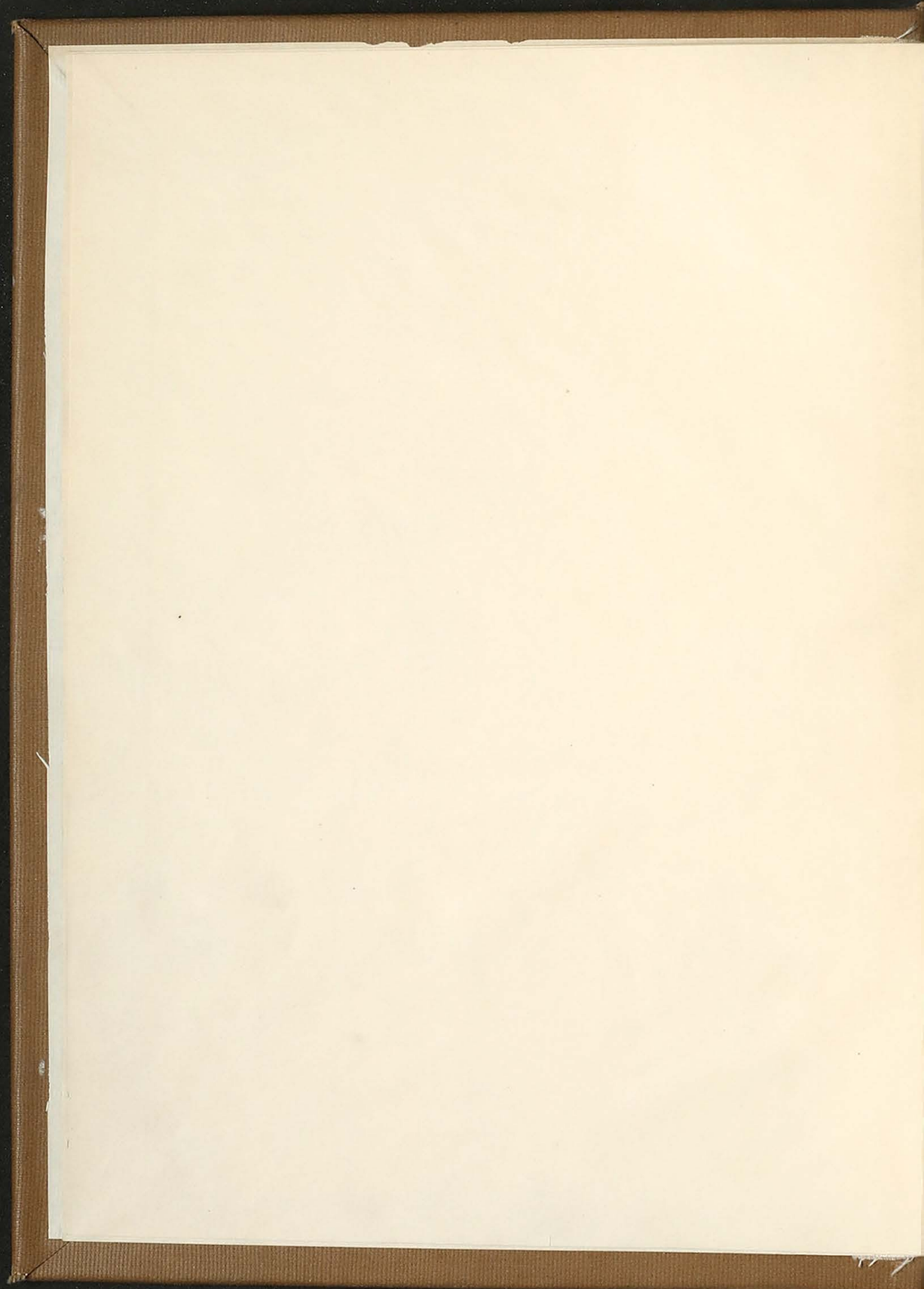














CHURCH AND STATE IN  
VIRGINIA

Noah D. Comer.

[1929]



GIFT

U. Va. Masters  
Thesis

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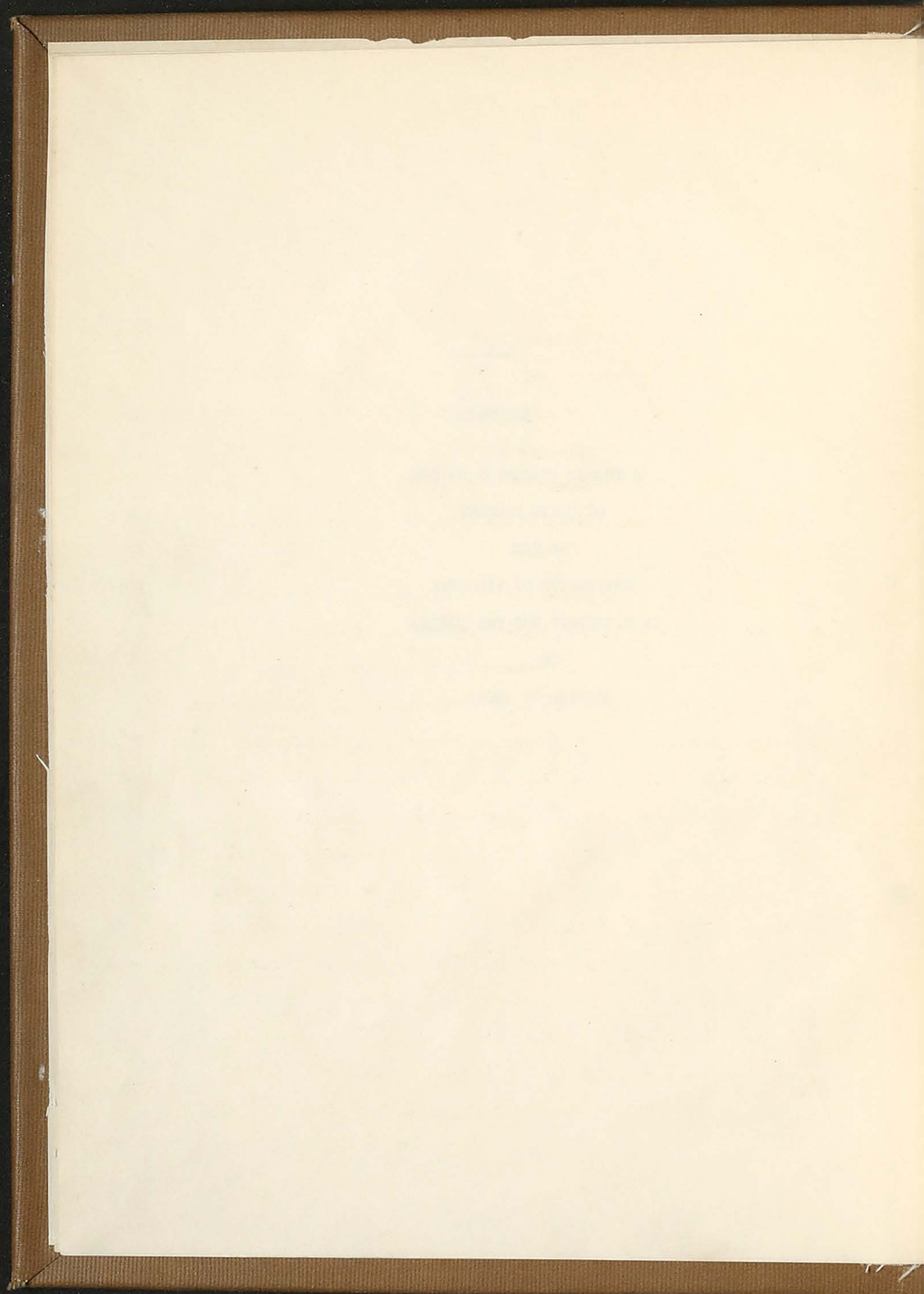
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A THESIS PRESENTED TO THE  
ACADEMIC FACULTY  
OF THE  
UNIVERSITY OF VIRGINIA  
IN CANDIDACY FOR THE DEGREE  
OF  
MASTER OF ARTS.







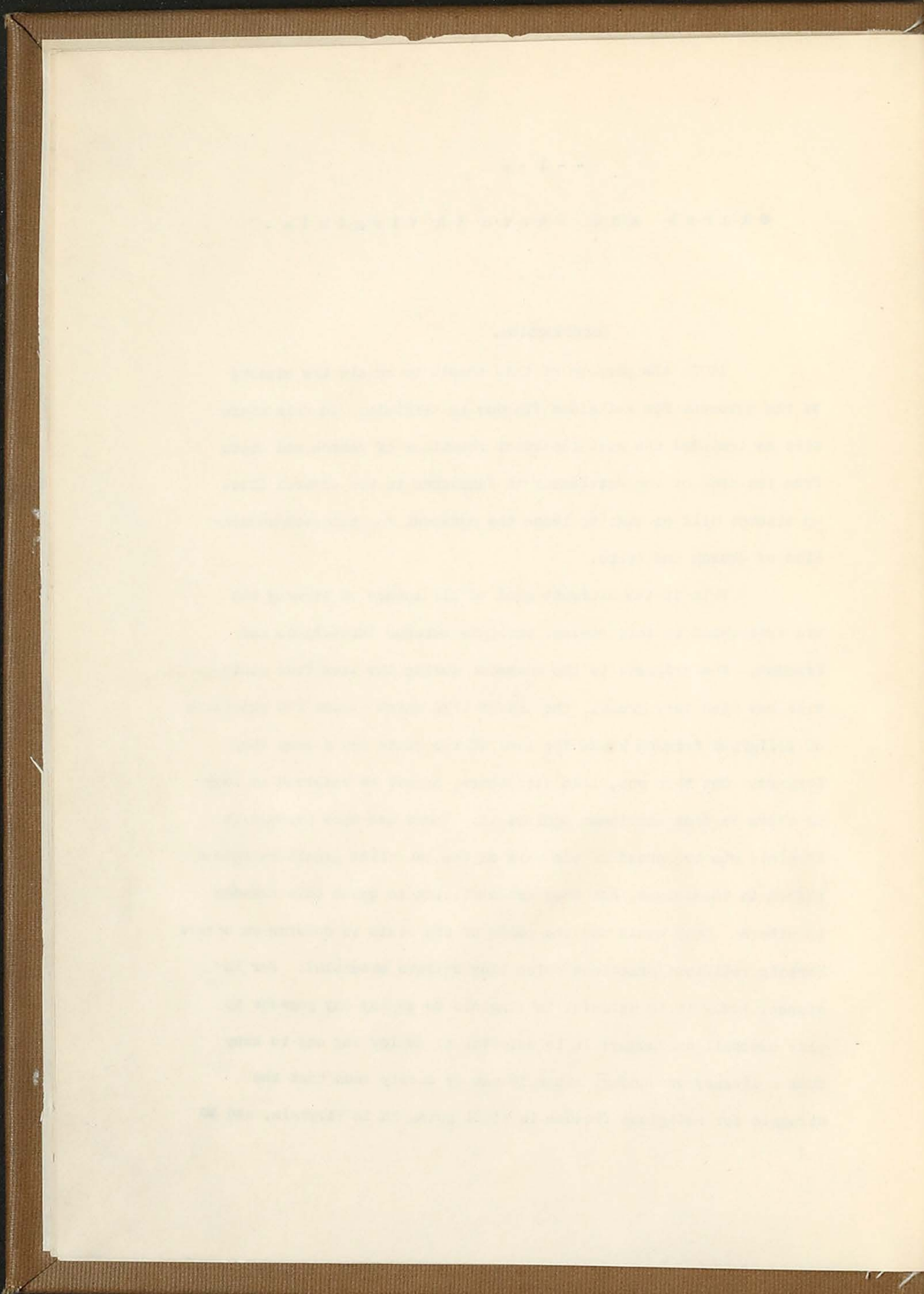
## Church and State in Virginia.

### Introduction.

It is the purpose of this thesis to relate the history of the movement for religious freedom in Virginia. In this there will be included the most important relations of Church and State from the time of the settlement at Jamestown to the present time. An attempt will be made to trace the movement for complete separation of Church and State.

This is the ultimate goal of all lovers of liberty who are interested in this eternal struggle between intolerance and freedom. The progress in the movement during the last four centuries has been very great. The act of 1786 which placed the principle of religious freedom among the laws of the state was a long step forward. But this act, like all others, cannot be enforced as long as there is much sentiment against it. There are many persons in Virginia who are proud of the part of the act which grants religious reform to themselves, but they are unwilling to grant this freedom to others. They would use the power of the state to enforce on others certain religious practices which they believe essential. For instance, today it is unlawful in Virginia to employ any persons to play baseball on Sunday; it is unlawful to employ any one to keep open a library on Sunday. Thus it can be easily seen that the struggle for religious freedom is still going on in Virginia, and is

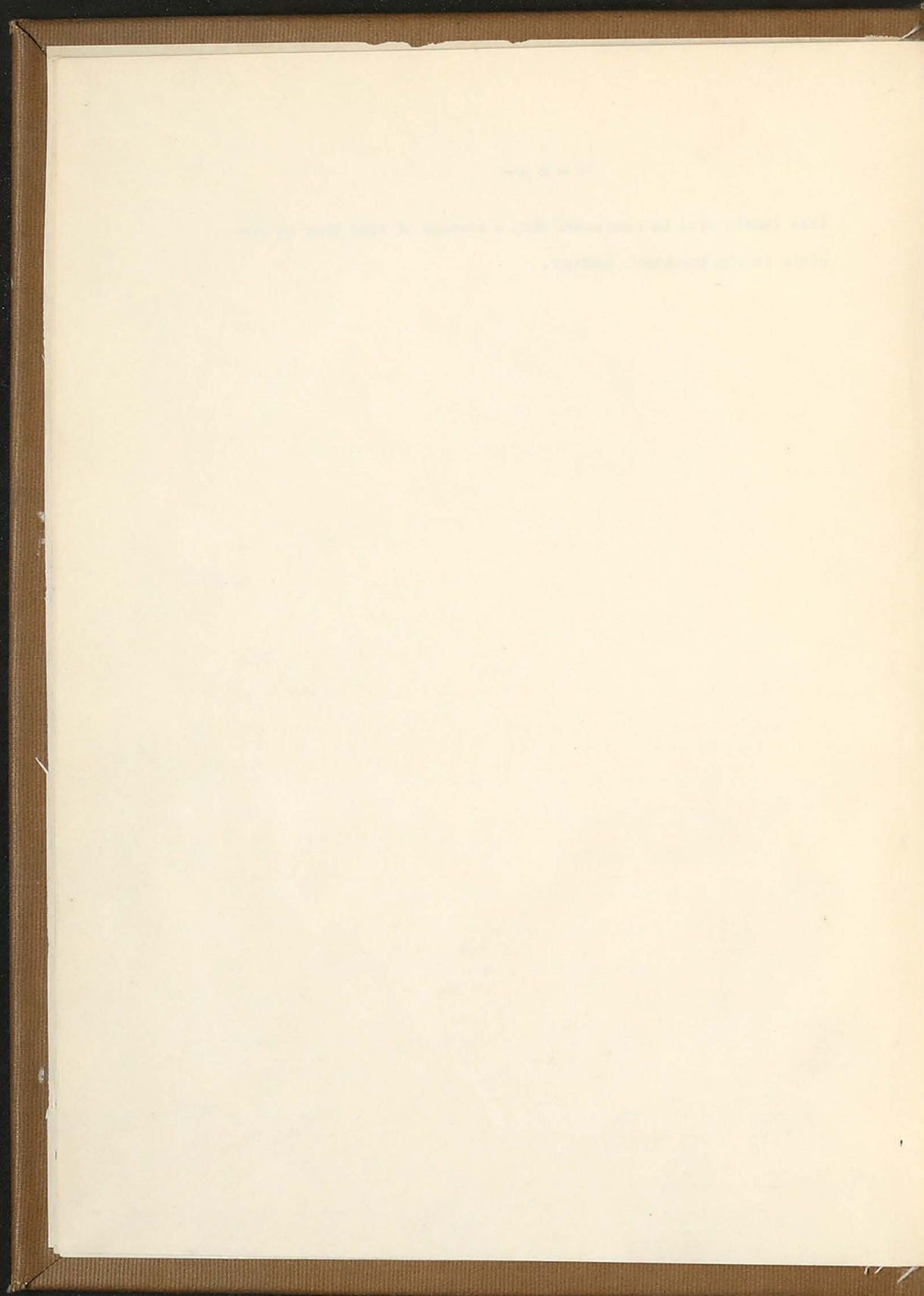






this thesis will be concluded with a history of blue laws in Virginia in the twentieth century.







CHAPTER I.

Struggle for Religious Toleration.

The charter of the company which settled at Jamestown in 1607 enjoined the establishment of religion according to the doctrines and usages of the Church of England. This church was regulated by the Colonial Legislature. Until about 1750 nearly everybody belonged to the church, and dissenters were few.

The inhabited parts of Virginia were laid off into parishes in each of which was a minister, who had a fixed salary, in tobacco, together with a glebe and a parsonage-house. There was a general assessment on all the inhabitants, to meet the expense.

In 1623, the salary of an incumbent consisted of ten pounds of tobacco and a bushel of corn for every tithable in a parish. His remuneration fluctuated with the rise and fall in the value of each of these commodities. In 1695, the amount had been fixed at sixteen thousand pounds, a sum that ranged in purchasing power from eighty to one hundred pounds sterling--and in addition, he was granted the use of a glebe and a rectory. Some of the clergy were in possession of good estates, either in inheritance or through their own providence. The inventory of Rev. Thomas Teakie, for instance, fell little short of fifty thousand dollars in modern value. In character, the clergy did not sink below the standard of those in the same class in England; and as a rule they were graduates of English universities, and of excellent social connection in their native country.<sup>1</sup>

In the early days of the Colony there was only one church

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<sup>1</sup> McIlwaine: The Struggle of the Protestant Dissenters for Religious Toleration in Virginia, pp. 1-10.

THE HISTORY OF THE UNITED STATES

The history of the United States is a subject of great interest and importance. It is a subject which has attracted the attention of the people of all nations. The history of the United States is a story of the growth of a great nation from a small colony of English settlers. It is a story of the struggles of the people for freedom and independence. It is a story of the development of a great republic. The history of the United States is a story of the triumph of the people over the forces of tyranny and oppression. It is a story of the establishment of a great nation which has become a model for the people of all nations. The history of the United States is a story of the growth of a great nation from a small colony of English settlers. It is a story of the struggles of the people for freedom and independence. It is a story of the development of a great republic. The history of the United States is a story of the triumph of the people over the forces of tyranny and oppression. It is a story of the establishment of a great nation which has become a model for the people of all nations.



In Virginia. That was the established church, or the Episcopal Church. To pay the expenses of this church, a general assessment on all the inhabitants was made. The established church became very powerful because there was not much opposition to it. For a number of years nearly everybody who migrated to Virginia was an Episcopalian; those who were not usually went to Massachusetts or elsewhere, for they knew they would not be welcome in Virginia.

To add to the power of the established church and prevent the dissemination of heretical doctrines there was passed by the General Assembly of Virginia in 1643, and re-enacted in 1662, a law which deprived the inhabitants of that Colony of a kind of liberty which is prized by many persons today more highly than life itself--the liberty to preach and teach in matters concerning religion without interference by the authority of the state. According to this law<sup>1</sup>, before any minister could preach in Virginia there were two things which he was compelled to do: (1) show the Governor a testimonial that he had been

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<sup>1</sup> Beverley's History of Virginia, p. 212.

This law provided: "That for the preservation of purity and unity of doctrine and discipline in the church, and the right administration of the sacraments no minister be admitted to officiate in this country but such as shall produce to the Governor a testimonial that he hath received his ordination from some bishop in England, and shall then subscribe to be conformable to the orders and constitution of the Church of England, and the laws there established: upon which the Governor is hereby requested to induct the said minister into any parish that shall make presentation of him; and if any other person, pretending himself a minister, shall, contrary to this act, presume to teach or preach publicly or privately, the Governor and Council are hereby desired and empowered to suspend and silence the person so offending; and upon his obstinate persistence, to compel him to depart from the country with the first convenience."





ordained by some bishop in England and (2) agree to conform to the laws and orders of the Church of England. No other minister was allowed to preach or teach. If any person, pretending to be a minister, should, contrary to this act, teach or preach publicly or privately, the Governor and Council were empowered to silence him and "compel him to depart from the country".

At the session of the General Assembly for 1661-62, a revision of this law was made. It provided that twelve men of each parish should be chosen to be vestrymen, whose duties should be to make and proportion levies of money to pay the preachers, to make gifts to the poor, and to build and repair churches. From among themselves this body of vestrymen, acting with the minister, chose two churchwardens every year. The vestry was given power to fill vacancies made in its own number by death or removal from the parish.<sup>1</sup>

By Act XIII.<sup>2</sup> of the same session churchwardens were required to make, twice a year, in the county courts, presentments of such misdemeanors as, in their own knowledge or by common fame, had been committed. These misdemeanors were swearing, abusing the sabbath, contemning God's Word or sacraments, absence from church, drunkenness, fornication, adultery, slandering and backbiting.

The vestrymen were the leading men of the community. George Washington was for some time a vestryman. A member of the parish vestry was nearly always chosen to represent the county in the House of Burgesses. Bishop Meade makes the statement that there were not three

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<sup>1</sup> Henning's Statutes at Large, II, 44.

<sup>2</sup> Ibid, II, 52.





members of the Virginia Convention of 1776 who were not vestrymen of the Established Church. Their power became so great that the Governor, the commissary and the clergy did not have much power over them. Therefore, in the absence of a central authority, the Church of Virginia was really a collection of independent congregations.

Under such conditions there is reason to believe that there was some toleration in Virginia as early as 1611. In 1631, certain congregations in Nansemond County sent to New England for three ministers. Two of them were forced to leave the colony because they had not been ordained by the Church of England. The government adopted such measures against these Nansemond Independents as were calculated to deprive them of their leaders. Consequently, many of them emigrated to Maryland, where they were allowed more liberty.

Aside from the Nansemond Independents there were very few persons in Virginia, prior to 1649, who did not nominally adhere to the Established Church. During this period very few dissenters came to Virginia.<sup>1</sup> Men of this class usually preferred New England. The first break in uniformity of church worship was made by nonconformists in Nansemond County, Norfolk County and Princess Anne County, about 1642. Severe laws were enacted against them, and somewhat later in the century the same treatment was awarded the poor Quakers flying from persecution in New England and the Mother Country.

As was usual everywhere, Quakers were severely persecuted in Virginia. About the year 1656 they began to appear in the Colony. Elizabeth Harris was their first missionary. There was no law ~~against~~

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<sup>1</sup> Beverley's History of Virginia, p. 232.





against Quakers at this time. Nevertheless, in 1657 William Robinson was imprisoned for holding this belief. Also Jonah Cole and Thomas Thurston, who came over from England toward the close of the same year, probably suffered imprisonment for the same offense.<sup>1</sup> In 1660 a severe law was passed against the Quakers.<sup>2</sup> It provided that any master or commander of a ship who brought a Quaker into Virginia should pay a penalty of 100 pounds sterling; and that all Quakers were to be apprehended and committed to prison without "baile or mainprize" till they could give security to leave the country. If any should return they should be punished and again banished. If any should return after this second expulsion they should be proceeded against as a felon. Any person who entertained a Quaker that had been "questioned by Governor and Council" or permitted them to assemble in or near his house, should pay a penalty of 100 pounds. Distribution of their literature was also forbidden.

There is <sup>no</sup> evidence that any Quakers suffered the extreme penalties of this harsh law. Its effect was probably softened by a declaration of Charles II issued April 14, 1660, that no man should be called in question for differences of religious opinions so long as he did not disturb the peace of the kingdom.<sup>3</sup>

In 1662 a more severe law was passed against the Quakers. In this act prohibiting the profanation of the Sabbath by unnecessary work or by absence from church services, Quakers were excepted and put

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1 Janney, History of the Religious Society of the Friends, I, 430 ff.

2 Henning's Statutes at Large, I, 532.

3 Cf. Virginia Carolanum, p. 283.





in a special class. On these, for a month's absence from church a fine of 50 pounds was imposed.<sup>1</sup> The same year an act was passed imposing 200 pounds of tobacco on any one who refused to have his child baptized. The following year a law was passed prohibiting the unlawful assembly of Quakers and other Nonconformists.<sup>2</sup> The provisions of this act was as follows:

1. If five or more Quakers sixteen years or over assembled together, they were fined, for the first offense, two hundred pounds of tobacco; for the second, five hundred pounds of tobacco- and for the third, they were compelled to suffer banishment from the Colony.

2. If any one could not pay the fine imposed on him it was to be collected from one of the wealthier Quakers at the meeting.

3. Masters of a ship who brought over Quakers into the Colony were to be fined five thousand pounds of tobacco and compelled to take them away on the return trip.

4. If any one entertained a Quaker in order for him to preach he was fined five thousand pounds of tobacco for each offense.

5. Officers of the law who failed to carry out the provisions of this act were required to pay a fine of two thousand pounds of tobacco.

6. Quakers and other Separatists who gave security to attend no meetings in the future, were to be released from the penalties of the law.

It is difficult to determine the number of Quakers who suffered under this law, for the court records have in most cases been lost. The Quakers themselves have preserved numerous accounts of persecutions, but

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<sup>1</sup> Henning's Statutes at Large, II, 164.

<sup>2</sup> Ibid, II, 180 ff.





in many cases it is probable that the persecutions were inflicted at the hands of the populace and not by order of the courts. The whipping of Mary Thompkins and Alice Ambrose, if it actually occurred, for instance, was probably the work of a mob and not due to the action of officers of the Colony. As the execution of the law depended upon local feeling, in many places it became a dead letter. Another reason why the act was so vigorously enforced was because the people desired an increase in population. Furthermore, the crown had encouraged toleration in a letter to Sir William Berkeley on the 12th of September, 1662.<sup>1</sup>

The Quakers sometimes got in trouble because it is against their religion to take an oath. In 1663 John Porter, who was accused of being well affected toward the Quakers, was expelled from the House of Burgesses because he refused to take the oath of allegiance and supremacy.<sup>2</sup> On other occasions the people were more tolerant toward these people. Referring to some of them in Accomac County, Bishop Meade says: "Thomas Brown and his wife, though Quakers, were yet of such known integrity that their affirmation was received instead of their oath."<sup>3</sup>

In 1689 the English Parliament passed the famous Toleration Act. All persons were thereby allowed to worship in their own meeting-houses provided they took the oath of allegiance and supremacy, and subscribed to a declaration against transubstantiation. Under certain

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1 McIlwaine: The Struggle of the Protestant Dissenters for Religious Toleration in Virginia, p. 23.

2 Ibid. p. 24.

3 Meade: Old Churches and Families of Virginia, I, p. 255.

It is a very common mistake to suppose that the  
only way to get the most out of a book is to  
read it straight through. This is not the case.  
The best way to get the most out of a book is to  
read it in a way that suits your own needs.  
This may mean reading it in a different order,  
or it may mean reading it in a different way.  
The important thing is to read it in a way that  
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conditions dissenting ministers were allowed to preach, and Quakers were allowed to make a declaration of fidelity toward the government, instead of taking the regular oath.<sup>1</sup> The Toleration Act was incorporated into the laws of Virginia in April, 1699. Protestant Dissenters were excepted from penalties incurred by failure to attend exercises of worship held at the regular parish churches. In 1705 the General Assembly passed an act permitting the affirmation of Quakers to be considered valid in law in place of the ordinary oath.<sup>2</sup>

At the time of the passage of the Toleration Act there were not very many Dissenters in Virginia. Most of these were in the southeastern part of the state. There is on record the testimony of an unknown writer who says: "There are few or no Dissenters in that country; not so many of any sort as to set up a meeting house, except three or four meetings of Quakers and one of Presbyterians." Josiah Mackie was probably the first dissenting minister who qualified under this act to preach in Virginia.<sup>4</sup>

In 1711 there was a conflict between the Quakers of Virginia and Governor Spotswood in regard to military service. During that year there was an alarm of an intended French invasion. Governor Spotswood endeavored to put the Colony in a position of defense, but the Quakers did not appear to be willing to help do so, for it is against their religion for them to fight. In a letter to

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1 McIlwaine, The Struggle of the Protestant Dissenters for Religious Toleration in Virginia.

2 Henning, Statutes at Large, III, 168 ff.

3 McIlwaine, The Struggle of the Protestant Dissenters for Religious Toleration in Virginia, p. 30.

4. Ibid, p. 31.





Lord Dartmouth the Governor describes the attitude of the Quakers.<sup>1</sup>

"They have not only refused to work themselves," he says, "or suffer any of their servants to be employed in the fortifications, but affirm that their consciences will not permit them to contribute in any manner or way to the defense of the country, even so much as trusting the government for provisions to support them that do work though at the same time they say that, being obliged by their religion to feed their enemies, if the French should come here and want provisions, they must, in conscience, supply them." Fortunately, the French scare soon passed over and the conflict ended.

Sometimes the Quakers refused to pay parish dues. One evidence of this is found in the case of Robert Jordan, who was imprisoned in 1720, and again in 1724, in Elizabeth City County for refusal to pay tithes and for disrespectful language to the court when sued.<sup>2</sup>

After the passage of the Act of 1705, permitting preachers of different sects to obtain a license to preach in the Colony, there was little for the Quakers to complain of except being taxed in support of the Established Church. The Quakers in a memorial address to the Legislature in 1737 frankly confessed themselves as pleased with the treatment which they experienced.

In addition to the Quakers, other dissenters came to Virginia. Often they were invited. The cause of the increase in the number of Dissenters is to be found primarily in the policy of the government with

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<sup>1</sup> Spotswood's Letters, I, 120.

<sup>2</sup> Janney, History of the Religious Society of the Friends, III, 270.





the strengthening of the frontiers. The first illustration of this policy is seen in the location in 1700 of Huguenots at Manakin Town, and in 1713 of Germans at Germanna. Governor Spotswood wanted these immigrants to guard the frontier against the Indians. These Immigrants indicated their willingness to submit to the rules of the Established Church. All of these people came to Virginia with the consent of the government of the Colony. This fact should be taken into consideration when we later discuss their struggles for religious toleration.

After 1732 the Valley of Virginia was settled, principally, by Germans, Scotch-Irish and English, who came at first largely from Pennsylvania but later from Europe. Many denominations were represented among them: Presbyterians, Lutherans, Quakers, Mennonites and Tinkers. At the time of the formation of Augusta and Frederick counties in 1733, the Dissenters greatly outnumbered regular Churchmen. By the law of Virginia, whenever a new county was formed, a parish was formed at the same time. The county and parish were one. In each parish the Dissenters chose twelve representatives who were qualified to take the oath. They outwardly submitted to the Established form, knowing that they would be almost independent in their actions. Episcopal ministers were sent to these parishes, but many people refused to attend the meetings of the Established Church. They had ministers of their own and churches of their own.<sup>1</sup> Governor Boock was very liberal to them. He

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<sup>1</sup> McIlwaine: The Struggle of the Protestant Dissenters for Religious Toleration in Virginia, p. 32 ff.





once wrote to Rev. Mr. Anderson of Philadelphia: "And as I have always been inclined to favor the people who have lately removed from the provinces to settle on the western side of our great mountains: so you may be assured that no interruption shall be given to any ministers of your profession who shall come among them, so long as they conform themselves to the rules prescribed by the Act of Toleration . . . registering the place of their meeting."<sup>1</sup>

Soon, however, Governor Gooch ceased to be tolerant to these Dissenters. This was a result of a great change in their preaching which took place as a result of revivals. Fired up by religious enthusiasm some of the ministers began to deliver denunciatory harangues in unlicensed meeting-houses. In their zeal they sometimes made violent denunciations of the ministry of the Established Church. As a result, the clergy and their friends became thoroughly aroused, and the matter was brought before the courts. At the meeting of the General Court in April, 1745, Governor Gooch delivered to the grand jury a long and earnest charge in reference to the matter.<sup>2</sup> He did not wish to go beyond the letter of the law in his efforts to suppress the Dissenters. Sir John Randolph, a skillful lawyer, acted as his prosecuting attorney and did his best to convict some of the offenders. He held trials at Williamsburg, some distance away from the scenes of the religious excitement, because in that way he hoped to obtain more convictions. Still,

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<sup>1</sup> Foote, Sketches of Virginia, p. 104.

<sup>2</sup> Burke's History of Virginia, III, 113 ff.





even under these conditions, he was able to secure only two convictions: Thomas Watkins and Joshua Morris each were fined forty shillings and costs. It is probable that the Dissenters would have suffered more severely if they had not had many friends in other states north of Virginia who came to Virginia and helped defend them in the courts.<sup>1</sup>

The greatest toleration in the Colony was allowed the settlers on the frontiers, both east and west of the Blue Ridge Mountains. But when dissent began to spread in Hanover and adjacent counties, the inhabitants of which were originally adherents of the Established Church, the government became alarmed and tried to suppress it. The claim of the Dissenters in the contest which thus arose was that they should be accorded the privileges enjoyed by their brethren in England, where the licensing of ministers and the registering of meeting-houses lay with local courts, and a minister's license made it legal for him to preach in any registered house whatever. On the other hand, the General Court took the ground that only so much of the English law on the subject applied to Virginia as had been incorporated into her statutes, and that in practice this must be brought into harmony with laws of Virginia already existing. According to this construction, the General Court kept in its own hands the licensing of ministers and meeting-houses, and confined each minister to the specified places for which he had been granted license. It claimed also the right to decide how many meeting-houses

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<sup>1</sup> Foote, Sketches of Virginia, pp. 137-140.





each minister should be allowed. But there was a change in this spirit during the French and Indian War, when the government was straining every nerve to present a solid front to the enemy, and when Churchmen and Dissenters were drawn closer together by common danger. At the same time, the influence of the clergy, owing to the unpopularity of their struggle in reference to the payment of salaries, steadily waned.

Under these circumstances, the Dissenters began to enjoy the rights which they had claimed, modified, however, by the construction still put upon the law by the General Court which continued to reserve to itself the consideration of all questions in regard to license. The Dissenters had not gained their contention that the county courts should have jurisdiction in such cases, but in other respects the English construction of the law now prevailed.

The surest way of reaching the Dissenters through the law was by means of fines for absence from church. The first Presbyterian meeting-houses were licensed April 14, 1747. Those who attended services in them, up to this time, were subject to fines for being absent from the services of the parish churches. It is difficult to determine the extent to which the law was enforced. Mr. Samuel Morris records that he himself was repeatedly fined for non-attendance at church. Mr. Morris, however, was the leader of the movement, and was on this account more likely to be singled out for prosecution. It is not probable that others were so strictly dealt with.

In granting license to dissenting ministers, the county in which the minister preached was usually very liberal. But when the





license was reviewed by the General Court the action was often annulled. Soon the General Court began to reserve to itself entire jurisdiction in all such questions. Thus, when the county court of New Kent, in 1750, granted a license for a meeting-house in that county, the license was promptly revoked by the General Court. The reason for such a course is evident. The General Court consisted of the Governor and his Council; and the Council, made up of the leading representatives of the office-holding aristocracy of the Colony, was naturally inclined toward the repression of all innovations, both in Church and in State proceeding from the masses.

The Quakers were very patient; they bowed their heads to afflictions, and the authorities got tired of persecuting them. For many years after the Revolution the Quakers had strong conventicles in Hanover and Isle of Wight counties, and in York, New Kent, and Charles City counties, but with the cessation of persecution their influence began to decline and their numbers decreased. The petition for the abolition of slavery from the Quakers in Charles City County figured in the debate in the Legislature in 1832.

In the seventeenth century a few Presbyterian ministers were preaching in Virginia. Among them was Francis Pickens (1658-1708). He put the church upon its feet and is looked upon as the Father of the Presbyterian Church in America. In the spring of 1705 he formed at Philadelphia the first Presbytery ever established in the United States. He was followed by Samuel Davies, who preached in Hanover County, and named the place "Providence." The ranks of the Presbyterians were immensely augmented by the Scotch-Irish who poured





into the Valley of Virginia. In the bitter antagonism to the establishment the Presbyterians joined with the Quakers and Baptists, and supported all the bills for the divorce from the state. After the Revolution, when the legislature passed an act incorporating the Episcopal Church the Presbytery of Hanover was implacable and protested against it and assisted in accomplishing its repeal.

The next in order of the greater denominations of Christians were the Baptists. In 1714 some immigrants Baptists settled in south-east Virginia and in 1743 another party settled in the northwest, but a larger accession came from New England about the period of the "New Light Stir." The first formed church was established in Hanover County in 1760, but soon there were numbers of others in Chesterfield, Middlesex, Caroline, and other counties. A passionate impetus swayed the preachers of the Baptist faith. The Toleration act required all ministers to have a license and the Baptists disregarded its injunction. For breach of the law many of their preachers were confined in jails, and the jails of that period had no fire places and were cold and comfortless. Nevertheless, through the windows of their places of confinement they preached to great throngs of people. Baptists preached through prison bars at Fredericks burg. At their trial the prosecutor declared: "They cannot meet a man upon the road but they must ram a text of Scripture down his throat." Foote says that Patrick Henry rode fifty miles to volunteer his services in behalf of the Baptists. A dramatic scene is described, and a part of a speech attributed to Henry has been much quoted, but there is reason to believe that Henry did not make the speech. A controversy





on the subject arose in 1871, Horatio Gates Jones defending and the Editor of the Richmond Religious Herald assailing the authenticity of the printed version.<sup>1</sup>

Albert B. Semple, in his "History of Baptists in Virginia", tells of the tribulations of various ministers of that church who were sent to jail as "disturbers of the peace." They were bold in their demands of freedom of speech and persistent in their attempt to secure it. "It was in making this attempt," says Semple, "that they were so fortunate as to interest in their belief the celebrated Patrick Henry; being always a friend of liberty, he only needed to be informed of their oppression; without hesitation, he went forward to their relief. From that time until the day of their complete emancipation from the shackles of tyranny, the Baptists found in Patrick Henry an unwavering friend." So interested did Henry become in this work that he paid out of his own pocket the jail fees of the Rev. Weatherford, whose relief in Chesterfield County had been secured through his agency. Not for twenty years did this clergyman know that Henry had been his good angel.<sup>1</sup>

The results of these persecutions is what might have been foreseen. The Baptists only grew stronger, and when the opportunity presented itself with the coming of the Revolution they were the bitterest opponents of the state Church.<sup>2</sup>

Virginia was more intolerant toward Papists than toward any other body of Christian believers. During the early days of the

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1 George Morgan: The True Patrick Henry (J. P. Lippincott & Co., 1917), pp. 125-126.

2 Tyler's History of Virginia, vol. 2 pp. 537-540.





the Colony prayers were said at Jamestown mornings and evenings in which Papists were spoken of as "scum and dregs of the earth".<sup>1</sup> The Second Charter of Virginia (issued in 1609) contains a clause (XVI) in which Roman Catholicism is spoken of as "superstition", and in which desire is expressed that no Papist should come to the Colony.<sup>2</sup> In 1754 a very intolerant feeling against Papists broke out in Virginia. It was during the French and Indian Wars. If France should win the war it was believed that French invaders would bring Roman Catholicism from Canada into Virginia. During this alarm the General Assembly in March, 1756, passed an act for disarming Papists and "reputed Papists" who refuse to take the oaths to the government; also an act for transporting to Great Britain those of the "wretched Acadians" who had found their way to Virginia.<sup>3</sup>

In Colonial days the Catholics were much feared and disliked by the people of Virginia, as by Protestants everywhere. They might vote but the test oath prevented them from holding offices. Notwithstanding this the Brent family, though Catholic, held office in Colonial days, the oath being doubtless waived as to them. With the Revolution came more liberal feelings, and the Statute of Religious Freedom guaranteed everybody, including Catholics, equality of rights in Virginia.<sup>4</sup>

We have discussed the following causes of the increase in the number of Dissenters in Virginia:

1 West, Source Book in American History, p. 16.

2 Ibid, p. 43.

3 Penning's Statutes at Large, VI, 35.

4 Tyler's History of Virginia, pp. 541-542.

THE HISTORY OF THE  
CITY OF BOSTON  
FROM THE FIRST SETTLEMENT  
TO THE PRESENT TIME  
BY  
JOHN B. BOWEN  
OF THE CITY OF BOSTON  
IN TWO VOLUMES  
VOL. I.  
BOSTON: PUBLISHED BY  
J. B. BOWEN, 1845.



1. The policy of the government with reference to the strengthening of the frontiers. This is illustrated by the location in 1700 of the Huguenots at Tanakin Town and by the location in 1713 of the Germans at Germanna. In 1732 the Shenandoah Valley was settled by Germans and Scotch-Irish from Pennsylvania.

2. During the French and Indian wars, when there was fear of danger of invasion of Roman Catholicism from Canada, the Established Church was more tolerant toward Dissenters. This gave them an opportunity to preach with more boldness and for the weaker and less brave persons to make an open profession.

3. The consequent ease with which it was possible for a Dissenting minister to obtain a license. The statement seems warranted that during the French and Indian War one phase of the struggle between the Dissenters and the Established Church came to an end. After this time, indeed, the General Court still insisted upon keeping the matter of licensing ministers and meeting-houses under its own supervision, but the spirit in which the law was executed was changed. Applicants for licenses could now go to the General Court with reasonable assurance that their requests would be granted.

There is one other cause for the increase in the number and influence of the Dissenters which should now be discussed. The clergy were not only engaged in a contest against the Dissenters but they now became engaged in a contest with the government. This contest is the one which ended in the celebrated "Farsons' Cause." The significance of the case is sufficient to justify a relation of this contest in some detail.





In 1696 a law was passed by which each minister of a parish had been provided with an annual stipend of 16,000 pounds of tobacco. The act was re-enacted in 1748. The price of tobacco had long remained at almost the same price each year--about two pence per pound. But this year, 1756, there was a shortage in the tobacco crop, and the legislature passed a law that year to permit the inhabitants of the Colony to discharge their tobacco debts, either in tobacco or in money. This law continued in force for ten months, during which time there appears to have been no objection on the part of the clergy. But again, in 1758, there was another shortage of tobacco and this law was re-enacted. The price of tobacco rose immediately from 16 shillings and 8 pence to 50 shillings per ~~hundred~~ one hundred pounds. The clergy bitterly assailed the law. There followed a war of pamphlets both for and against the interests of the clergy. Finally the King in council took up the matter and declared the Act of 1758 utterly null and void. The clergy brought the matter before the courts and demanded that their wages should be paid in tobacco. They had good reasons to do this, for a payment in tobacco would mean a much higher salary for them.

The first suit took place in the county of Hanover. It was instituted by the Rev. James Maury. Then it appeared that the clergy were about to win the case, Patrick Henry was engaged to plead against them. Rev. Patrick Maury, an uncle of the young Henry, started to attend the trial, at which there were a large number of other clergymen. The young lawyer asked his uncle to go back home and not attend the trial, for, he said, "I shall be obliged to say some hard things of the clergy, and I am unwilling to give pain to





your feelings." His uncle yielded and did not attend the trial.

When the court opened there sat on the bench in front of Patrick Henry more than twenty clergymen, the most learned men in the colony. Henry arose and made a very eloquent speech, at the close of which the jury quickly rendered a verdict of one penny damages. It required a great deal of courage for Patrick Henry to make a speech under such conditions as these. He opposed the king, for the king had had declared the act of 1758 null and void; he opposed the clergy and faced them in his declarations; he acted contrary to the advice of his uncle who had said: "as to your saying hard things of the clergy, I advise you to let that alone:--..you will do yourself more harm than you will them."<sup>1</sup>

The contention on the part of the clergy for an increase of salary which was clearly unjust had the effect of alienating many people from the Established Church. It was through the efforts of lovers of liberty, such as Patrick Henry, that Dissenters were granted toleration and finally religious liberty in Virginia. But there is one name which stands out above all others in Virginia in this cause. This is the name of Thomas Jefferson. It was Thomas Jefferson who did more than any other person in legally emancipating the conscience of all Virginians. A history of this important movement which led to the separation of church and state by Jefferson's Statute for Religious Freedom in Virginia will be told in the following chapter.

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<sup>1</sup> William Wirt: Life and Character of Patrick Henry, pp. 40-45.





CHAPTER II.

The Statute for Religious Freedom.

We have seen that there were several causes which had led to the increase in the number of dissenters in Virginia. There were present a number of rival sects. Mr. Jefferson thus explains the success of these different sects: "In process of time, however, other sectarianisms were introduced, chiefly of the Presbyterian family; and the established clergy, secure for life in their glebes and salaries, adding to these generally the emoluments of a classical school, found employment enough in their farms and school-rooms for the rest of the week, and devoted Sunday only to the edification of their flock, by service, and a sermon at their parish church. Their other pastoral functions were little attended to. Against this inactivity, the zeal and industry of sectarian preachers had an open and undisputed field: and by the time of the Revolution, a majority of the inhabitants had become dissenters from the established church, but were still obliged to pay contributions to support the pastors of the minority. This unrighteous compulsion to maintain teachers of what they deemed religious errors, was grievously felt during the royal government, and without hope of relief.<sup>1</sup>

The successive steps by which an institution, which was deeply rooted in the affections of many of the principal citizens, was deprived of its power and property, without disturbing the public tranquillity, may be not unworthy of notice.

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<sup>1</sup> Tucker's Life of Jefferson, vol. 1, p. 101 ff.

The importance of the subject

The first part of the paper is devoted to a general survey of the subject. It is then divided into three main parts. The first part is devoted to the history of the subject. The second part is devoted to the present state of the subject. The third part is devoted to the future of the subject. The first part is divided into two sections. The first section is devoted to the history of the subject in the United States. The second section is devoted to the history of the subject in Europe. The second part is divided into two sections. The first section is devoted to the present state of the subject in the United States. The second section is devoted to the present state of the subject in Europe. The third part is divided into two sections. The first section is devoted to the future of the subject in the United States. The second section is devoted to the future of the subject in Europe.



It was the belief of Mr. Jefferson that two-thirds or at any rate a majority of the people of Virginia were Dissenters from the dominant faith even before the Revolutionary War.<sup>1</sup> Therefore these Dissenters started a movement for the disestablishment of the state church. In the bill of rights which was drawn up by George Mason, June 12, 1776, the principle of religious freedom is distinctly asserted in the last article, which declares, "that religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience." But the Constitution itself, passed June 29th, is silent on the subject of religion, except that it renders "all ministers of the gospel" incapable of being members of either house of the Assembly or of the Executive Council.

The first session of the legislature which met in 1775 was crowded with petitions to abolish the spiritual tyranny, the Baptists being the most active and persistent in urging complaints. The petitions were referred to the Committee of the whole House on the state of the country, and a desperate contest resulted. The progressive, headed by Mr. Jefferson, wanted to do away with the church establishment entirely and place all the sects upon an equal footing, but the majority of the legislature had apparently a differ-

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<sup>1</sup> Tyler's History of Virginia, vol. 2, p. 255 ff.





ent idea of the meaning of the religious liberty clause in the Declaration of Rights. They were inclined to think that after freeing the other sects from having to take out licenses and pay taxes, thus easing tender consciences, the Establishment should be kept up and it did not enter into their views to approve the total overthrow of the Church.<sup>1</sup> At its session of the Legislature Mr. Jefferson draughted and supported a law for the relief of the Dissenters, which, he says, brought on the severest contests in which he was ever engaged. Here, too, he encountered the formidable opposition of Mr. Pendleton and Mr. H. C. Nicholas, both zealous churchmen. The bill finally passed; but modified by its opponents. It declared all acts of Parliament, which prescribe or punish the maintenance of any opinions in matters of religion, the forbearing to repair to church, or the exercising any mode of worship whatever, to be of no validity within the Commonwealth--it exempted Dissenters from all contributions for the support of the established church; and, as this exemption might, in some places, make the support of the clergy too burthensome on the members of the church, it suspends, till the end of the succeeding session, all acts which provide salaries for the clergy, (except as to arrears then due) and leaves them to voluntary contributions. But, at the same time, it reserves to the Established Church its glebe lands, and other property, and it defers "to the discussion and final determination of a future Assembly," the question whether every one should not be subjected by law to a general assessment for the support of the pastor of his choice; or "every religious

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<sup>1</sup> Memorial for an Established Church, Nov. 8, 1776, in Tyler's Quarterly, II, 230.





society should be left to voluntary contributions". The church party had previously succeeded so far as to obtain a declaration in committee, "that religious assemblies ought to be regulated, and that provision ought to be made for continuing the succession of the clergy, and superintending their conduct."

In the two following years, the question of providing for the ministers of religion by law, or leaving it to individual contributions, was renewed; but the advocates of the latter plan were only able to obtain, at each session, a suspension of those laws which provided salaries for the clergy--the natural progress in favor of liberal sentiments being counterbalanced by the fact, that some of the dissenting sects, with the exception of the Baptists, satisfied with having been relieved from a tax which they felt to be both unjust and degrading, had no objection to a general assessment; and, on this question, voted with the friends of the church. But the advocates of religious freedom finally prevailed, and after five suspending acts, the laws for the support of the clergy were, at the second session of 1773, unconditionally repealed. And although Mr. Jefferson was not then a member of the Legislature, it is probable that his influence as Governor of the Commonwealth, was efficiently exerted towards its repeal. But to protect the rights of conscience, it was not deemed enough to remove past injustice, it was also thought prudent to prevent its recurrence. Among the bills, therefore, reported by the revisers, was the celebrated act of religious ~~taxes~~ freedom drawn by Mr. Jefferson, which not merely re-asserts the principles of religious liberty contained in the bill of rights, but aims to give them permanence, by an argument equally clear, simple, and conclusive.





This bill, with many others, was not acted upon by the Legislature for several years; but, in the mean time, the friends of the Episcopal Church prepared to make one more effort to recover a portion of its ancient privileges by a general assessment. Their first object was to get an act of incorporation for the church, to enable it the better to retain and defend the large property it held, as well as to facilitate further acquisitions. A resolution having passed by a large majority, in favor of incorporating "all societies of the Christian religion" which desired it, leave was immediately given to bring in a bill "to incorporate the Protestant Episcopal Church," by which the minister and vestry, in each parish, were made a body incorporate, for holding and acquiring property, and regulating the concerns of the church, and which finally passed into a law. The plan of a general assessment met with a more difficulty. The petitions which had been got up among the people gave it the show or popularity, and it received the powerful aid of Patrick Henry's eloquence. Thus supported it seemed likely to obtain a majority, when those who were opposed to the measure, on principle, for the purpose of gaining time, proposed to refer the matter to the people, before the Legislature acted on it, and they succeeded in postponing it. George Mason, George Nicholas, and others of the party, then proposed to Mr. Madison, to prepare a remonstrance to the next Legislature against the assessment, to be circulated through the state for signatures. This was done, and the paper which he prepared, exhibiting the same candid dispassionate and forcible reasoning, which has ever characterized the production of his pen, convinced those who before doubted, so that





there was a general disapprobation of the measure among all sects and parties; and at the next session, the table could scarcely hold the petitions and remonstrances against the proposed assessment. Such a manifestation of public opinion was not to be resisted. The measure was abandoned, and Mr. Jefferson's bill, with some slight alteration, was then passed, without difficulty.

To conclude this history of religious establishments in Virginia: the law could not fairly claim the praise of impartiality, so long as a single church had the benefits of incorporation; and the injustice was the greater, if, as the other sects maintained, most of the large property it held it owed to the public bounty. In two years afterwards, the act allowing religious incorporation was repealed, but with a saving to all religious societies of the property they possessed, with the right of appointing trustees for its management. In 1799, all these laws, as well as those made for the benefit of the dissenters and the church, were repealed, as inconsistent with the bill of rights, and the principles of religious freedom-- and lastly, in 1801, the overseers of the poor, in each county, were authorized to sell all glebe lands, as soon as they should become vacant by the death or removal of the incumbents for the time; but reserving the rights of all private donations before 1777. By the execution of this act, the last vestige of legal privilege which this church had over other sects was completely eradicated.

Before this experiment of the entire freedom of religion was made, philosophical sagacity had foreseen that if there were numerous religious sects in a country, all equal in the eye of the





law, they would live together in more harmony with one another, and be less likely to disturb the public peace, than where there was an established church, armed with the power of the law, to repress dangerous heresies, and to control rival sects. That principle has been completely verified by the experience of the United States. The ministers of the different persuasions live here, if not in fraternal concord, at least with all the outward signs of peace; and the public witnesses no other consequence of their diversity in sentiment than in the general emulation for popular favor. This emulation has, however, produced another effect which was not expected. It was supposed by some that the experiment was likely to result in the general decline of religion. They said that, if the support of the ministers of religion and the teachers of its doctrines are left to depend on voluntary contributions, these would commonly be inadequate and precarious: that, although the fervour of new-born zeal may occasionally call forth sufficient liberality, it cannot be expected to prevail permanently against a feeling so steady and powerful with the mass of mankind, as the love of property; and that the ministers, worse and worse paid, would lessen in numbers, and deteriorate in quality, until they fell into insignificance and utter disgrace: that nothing but the resistless force of law can extract from the community the means of supporting an adequate and respectable ministry; and consequently, for religion to be permanent, it must be established and maintained by legal authority. Yet, contrary to this plausible reasoning, it is found that the emulation produced among the several sects, since they have all been put on an equal footing, has the effect of increasing their fervor, their

The first thing I noticed when I stepped out of the car was the cold. It was a sharp contrast to the warm blanket of the car's interior. I shivered slightly, pulling my coat tighter around me. The air was crisp and clear, a welcome change from the stuffy atmosphere of the train. I looked up at the sky, which was a pale, hazy blue. The sun was just beginning to rise, its light filtering through the clouds. I took a deep breath, feeling the cool air fill my lungs. It was a good feeling, a sense of being awake and alive. I started walking, my feet hitting the pavement. The sound was rhythmic, a steady beat that matched the pace of my thoughts. I was alone, but not lonely. There was a quiet companionship in the solitude. I walked for a while, enjoying the simple pleasure of a morning stroll. The world was still so quiet, so still. I could hear the distant hum of traffic, the occasional bird call. It was a peaceful scene, a moment of calm in a busy world. I continued walking, feeling a sense of purpose. I was going to work, to face the day ahead. But for now, I was just a person walking in the morning air, feeling the first rays of the sun on my face. It was a beautiful start to a new day.

sanctity, and exertions, which again produce a corresponding effect on the community. They all find, that it is only by being more orthodox expounders of the Scriptures, by having more of the unction of piety, by more cogent reasoning, or more persuasive eloquence, that they can extend the influence of their particular sects, as well as increase their individual fame. There is, therefore, an energy, and an extensive diffusion of religious sentiment at this time, which was unknown before the Revolution, and it has been for some years on the increase. It is true that the rewards of its ministers are more moderate than they probably would be if there was an establishment, and less than in any of the nations of Europe: but it is still found sufficient to keep up an adequate number of preachers, aided as it is by the additional zeal and piety which this state of things calls forth: and if many individuals now pay nothing, or very little towards the support of a minister, there are some who contribute more liberally than they might be required to under an establishment.

There is another consequence to be observed from this entire freedom of religion in the United States, and its dependence on the public favor for support. The emulation for popularity is not confined to the different sects, but even extends to the members of the same church; and their rivalry sometimes proceeds so far as to divide the same sect in the same town into two parts, forming distinct congregations, under separate pastors and assembling in separate churches. Occasionally, the seceders lay the foundation of a new sect, which, being propagated by zeal and talent, comes in time to rival its parent in numbers and influence.<sup>1</sup>

<sup>1</sup> Tucker's Life of Jefferson, vol. 1, pp. 101-103.





Jefferson's bill for religious freedom passed the House of Delegates by a majority of 74 to 20. This bill is so important that it is quoted in full in the appendix of this thesis. This wonderful bill gave a final interpretation to the meaning of the words regarding religious freedom enunciated by Mason in the Declaration of Rights. It was a second Declaration of Independence, differing only from the first as a hymn of praise or halleluiah differs from a war song. Jefferson himself considered it so important that he had placed on his tombstone an inscription stating that he was author of the "Statute for Religious Freedom in Virginia."

The following is the main provision of this statute:

"Be it therefore enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.<sup>1</sup>

It placed Virginia in the front, for all the other states still imposed religious tests upon the civil office holders, this being especially the case in New England. Even in Rhode Island, Roman Catholics were not permitted to hold office. Virginia was not only the first state in America to take its stand for equality and freedom of religion to all people of all faiths--Christian, Jews, Mohammedans, etc., but the first state in all the world to do so. Mason proclaimed the doctrine and Jefferson explained it. The statute was translated into French and Italian and widely read and commented upon in Europe.

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<sup>1</sup> Tyler's History of Virginia, vol. 2, pp. 257-258.  
Tucker's Life of Jefferson, Appendix.









but a practical conception developed by long experience. In this view the testimony of Virginia has the weight of history, as well as the wisdom of philosophy.

The substance of this act has been incorporated in two sections of the Constitution of Virginia (1902) which I quote below:<sup>1</sup>

Section 58.

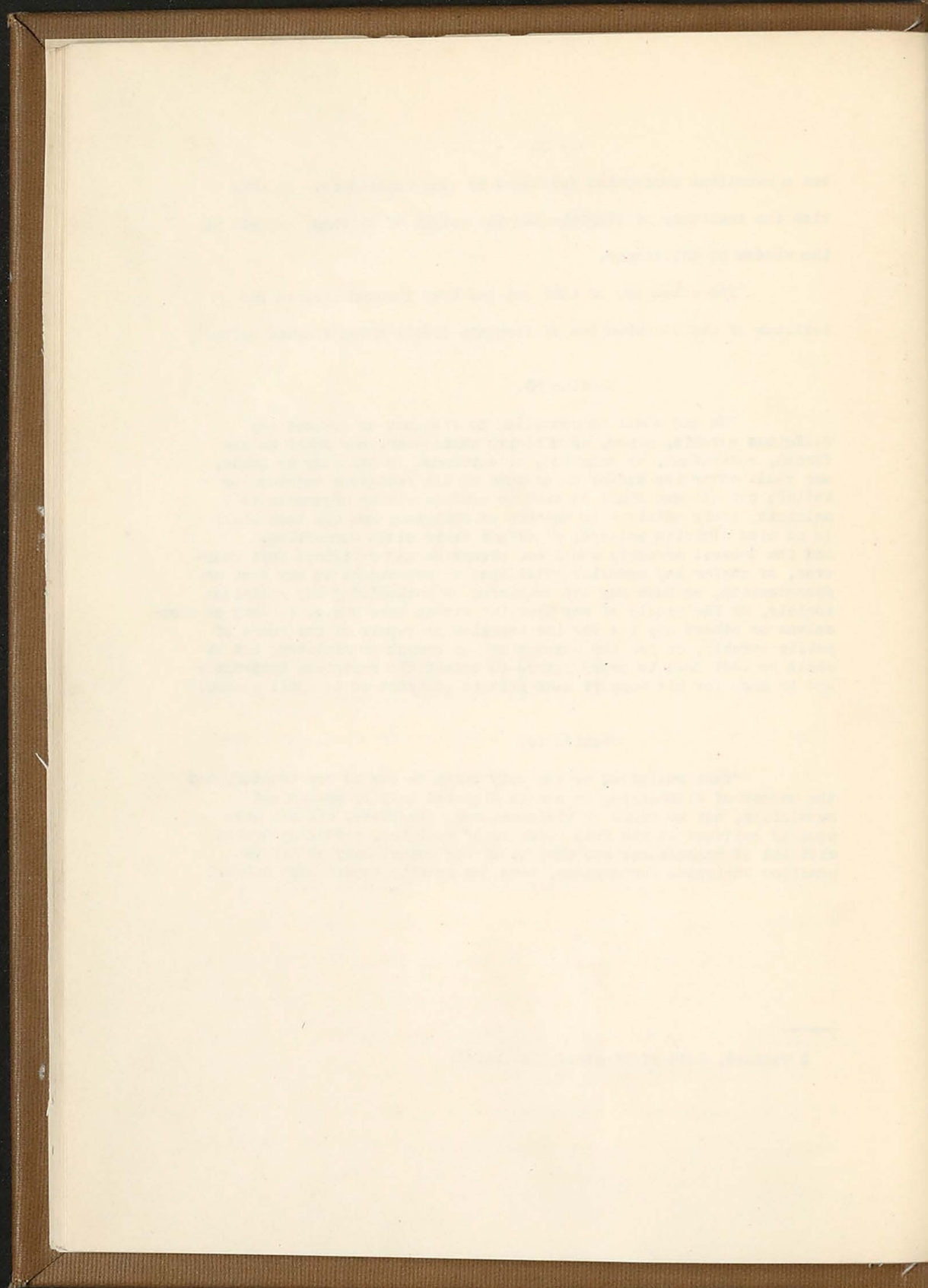
"No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever; nor shall be enforced, restrained, or molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by arguments to maintain, their opinions in matters of religion, and the same shall in no wise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others any tax for the erection or repair of any house of public worship, or for the purpose of any church or ministry; but it shall be left free to every person to select his religious instructor and to make for his support such private contract as he shall please."

Section 16.

"That religion, or the duty which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity toward each other."

<sup>1</sup> Pollard, Code of Virginia [Annotated].





CHAPTER III.

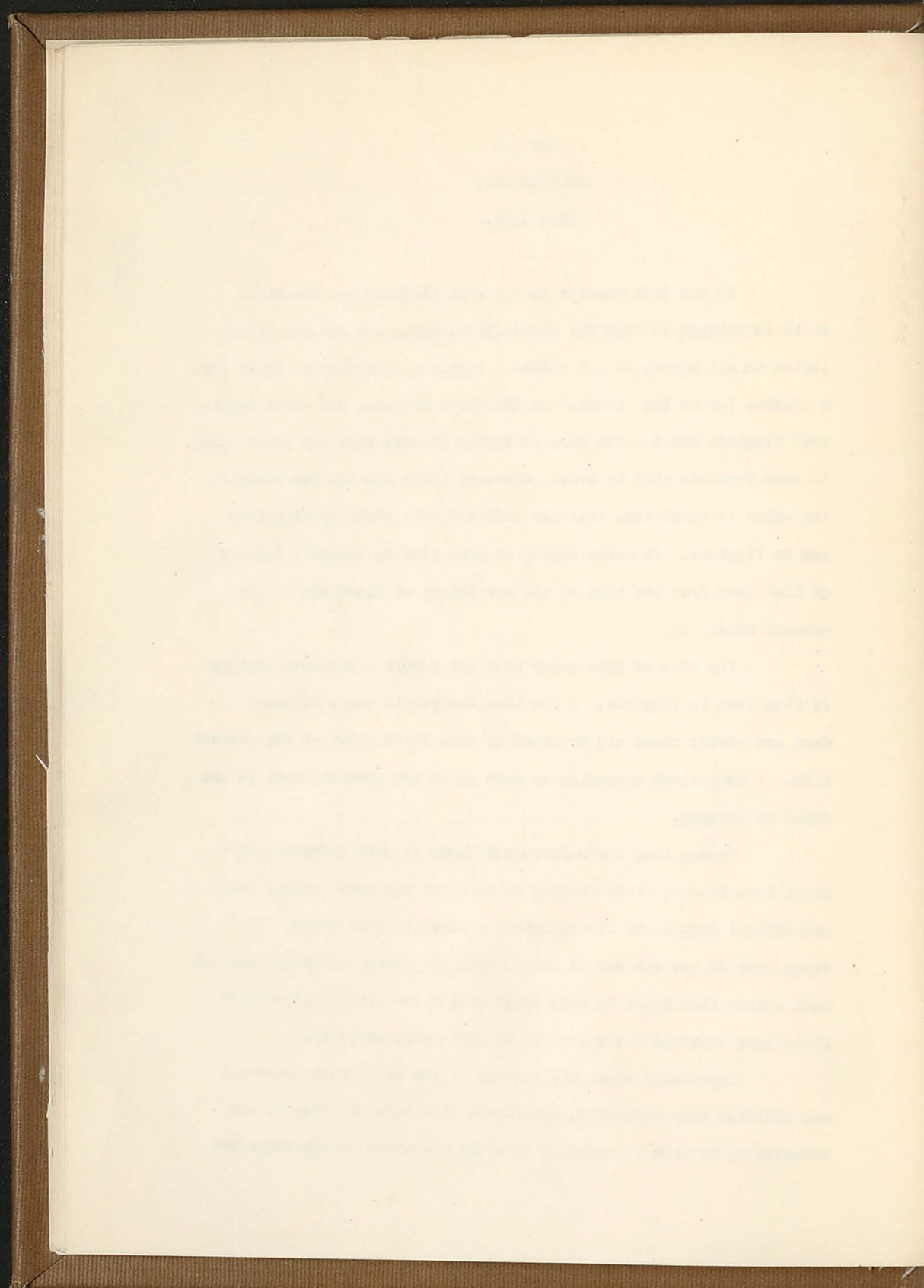
Blue Laws.

In the last chapter we saw that Virginia was the first state in America to take its stand for equality and freedom of religion to all people of all faiths. Having on her statute books such a liberal law as the Statute for Religious Freedom, one would imagine that Virginia would allow more religious liberty than any other State. In some respects this is true. However, there are now few state in the union in which blue laws are enforced more strictly than they are in Virginia. It seems worthy at this time to relate a history of blue laws from the time of the settlement at Jamestown to the present time.

The size of this paper will not permit a complete history of blue laws in Virginia. A few laws enacted in early Colonial days are given; these are followed by laws which exist at the present time. A comparison can easily be made as to the progress made in the cause of liberty.

Sunday blue law enforcement today is more severe in Virginia than in most other states, in spite of the very liberal Constitutional provisions for religious liberty in this state. The state laws on the subject of Sunday work or Sunday amusements are not more severe than those in many other states but the courts of Virginia have enforced these laws in Virginia very strictly.

Especially since the passage of the Eighteenth Amendment was ratified many reformers, emboldened with hope of success, are threatening us with a Sunday as blue and cheerless as the reformers





and their lobbyists can bring to pass. These reformers mean business. The question is, Will they enforce a strict observance of old laws providing for an idle Sunday, which it is believed are already in existence in all of the states except California and Oregon? With few exceptions, it may be said that laws providing for the observance of Sunday by an enforced idleness have been upheld by the courts throughout the state. On what grounds are these decisions made? What is the basis for the enforcement of Sunday laws? Is it to secure the physical welfare of citizens? If the purpose is to give rest and physical recreation, and not as a mere religious observance enforced on those who are of a different faith, what is the reason for enforcing laws forbidding amusements and recreation on Sunday? Why should the state forbid games on Sunday afternoons?

The following is a comparison of the court decisions and blue laws of Virginia, both in Colonial days and at the present time.

In the early Colonial days the Established Church, through its vestrymen, were the guardians of the morals of all the people. We have seen that these men were usually elected to the Legislature, thus making Church and State in Virginia almost a unity. By Act XIII of the session of 1661-62 churchwardens were required to make, twice a year, in the county courts, presentments of such misdemeanors as, in their knowledge, or by common fame, had been committed. Those misdemeanors were swearing, abusing the Sabbath, contemning God's word or sacraments, absence from church, drunkenness, fornication, adultery, slandering and backbiting.<sup>1</sup>

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<sup>1</sup> Henning's Statutes at Large, II, 52.

the first thing I noticed when I stepped out of the car was the  
familiarity of the air. The humidity was just what I needed after  
the long drive. I walked towards the building, feeling a sense of  
purpose. The door was open, and I stepped inside. The room was  
large and airy, with high ceilings and large windows. I looked  
around, taking in the details of the architecture. The floor was  
polished and gleamed under the light. The walls were a warm  
color, and the furniture was simple and elegant. I felt a sense of  
peace and tranquility. I walked towards the back of the room,  
where I saw a small table and two chairs. I sat down, feeling  
relieved. I took a deep breath and closed my eyes. I felt a sense  
of calm and serenity. I was home.

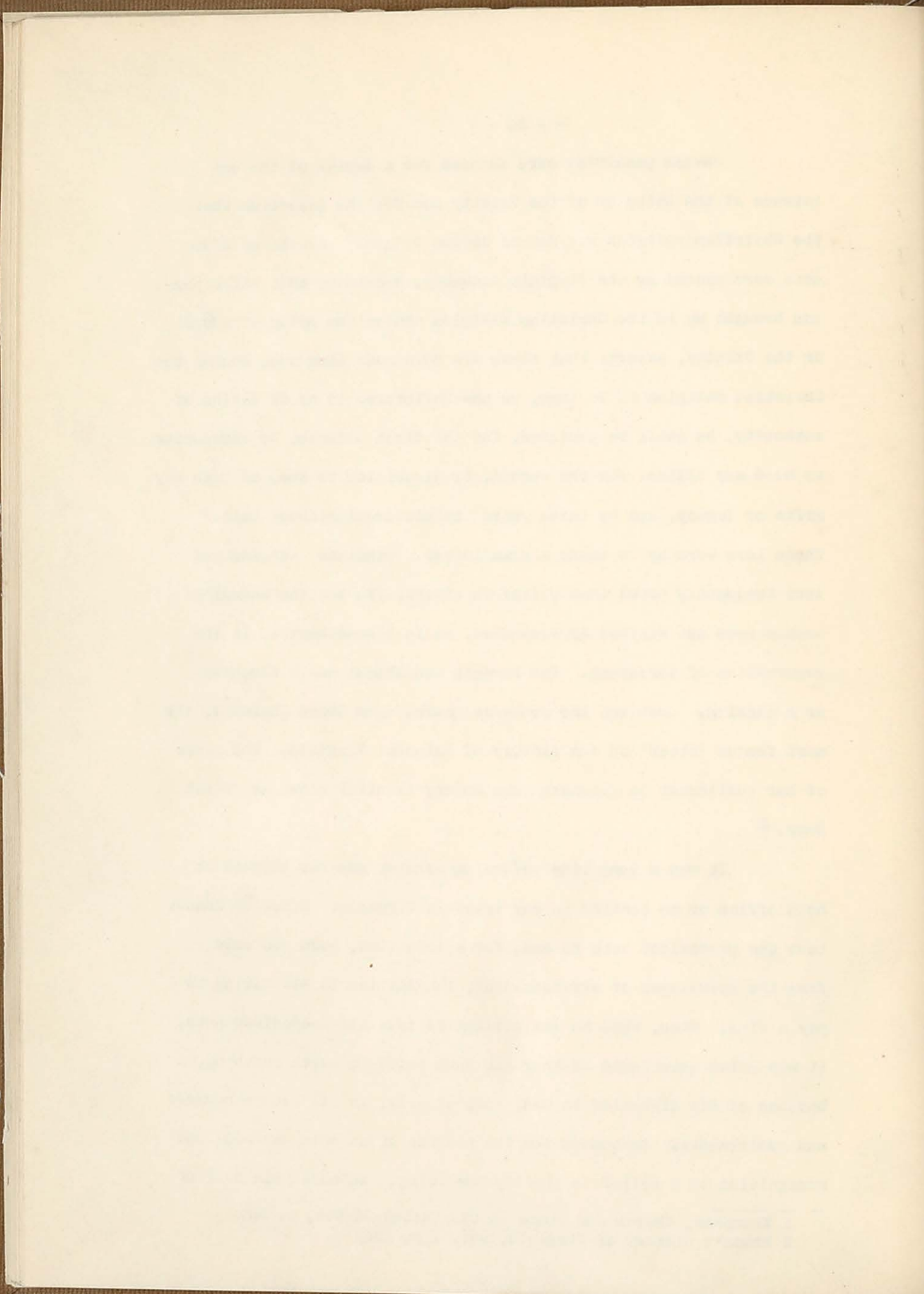
Severe penalties were imposed for a denial of the existence of the Deity or of the Trinity and for the assertion that the Christian religion was not of divine origin. As late as 1705 acts were passed by the Virginia Assembly, decreeing that "if a person brought up in the Christian religion denies the being of a God or the Trinity, asserts that there are more gods than one, denies the Christian religion to be true, or the scriptures to be of divine authority, he shall be punished, for the first offense, by incapacity to hold any office; for the second, by disability to sue, to take any gifts or legacy, and by three years' imprisonment without bail.<sup>1</sup> These laws were by no means a dead letter. Atheists were less frequently noted than belief in witchcraft; but the Colony's annals were not stained by bloodshed, as in Massachusetts, in the suppression of sorcerers. The hardest punishment was a flogging or a ducking. Such was the sentence passed upon Grace Sherwood, the most famous "witch" in the history of Colonial Virginia. The scene of her punishment in Princess Anne County is still known as "Witch Duck."<sup>2</sup>

It was a long time before an atheist ~~can~~ was allowed to hold office or to testify in any trial in Virginia. Since <sup>he</sup> ~~he~~ cannot take the prescribed oath he had, for a long time, been excluded from the privileges of officeholding, in addition to his having to pay a fine. Then, when he was willing to take the prescribed oath, it was often questioned whether his oath would be worth anything, because of his disbelief in God, and, usually, in all future rewards and punishments. In common law the essence of an oath has been the recognition of a belief in the Supreme Being. In more than half of

<sup>1</sup> Thomson, Church and State in the United States, p. 35.

<sup>2</sup> Bruce's History of Virginia, vol. I p. 235.





the states the privilege of affirming in lieu of making an oath is now given to atheists, either by provisions expressly doing away with incompetency on account of religious belief, or by general provisions declaring complete equality of civil rights, privileges and capacities.<sup>1</sup> By constitutional provision (Section 58) atheists were placed on an equality before the law with all believers in religion.

There is one record of a trial in Virginia in which there was an attempt to overrule the testimony of a witness who did not believe in future rewards and punishments. This occurred in May 1846. A prisoner was being tried for murder in a county court. On the trial a witness, a Mr. Percy, was produced on the part of the Commonwealth, who was objected to by the prisoner, on the ground that his religious opinions disqualified him from being a witness. Upon interrogatories put by the prisoner, the witness gave a voluntary answer that he believed in a God, the Creator, and Governor of the Universe, but did not believe that mankind would be rewarded and punished in a future state of existence, for their good and evil actions in this life; but that offenses will meet their punishment here. The Court being of the opinion that the Constitution and Bill of Rights secure to every citizen freedom of opinion in all matters of religion, and that to deny the capacity to testify as a witness in a Court of Justice on account of religious opinions, would operate as a restraint on the freedom of opinions secured by the Constitution. The Court overruled the objection of the prisoner, whereupon the prisoner applied to the

<sup>1</sup> Percy's Case, 3 Gt. 632.

See Cooley's Constitutional Limitations, p. 586.





General Court for a writ of error. The General Court decided that the only error which the "Court below" committed was in allowing the witness to be questioned on matters relating to his religious opinions. The significance of this decision was that no person is incapacitated from being a witness on account of his religious belief.<sup>1</sup>

Kissing the Bible when taking an oath is one legal practice which might have been discarded several hundred years ago. This has always been looked upon as a very sacred act. We would ask the reader how he would like to kiss a Holy Bible after it had been kissed by twenty persons from the slums. Until 1920 an officer could compel a witness to kiss a Bible while taking an oath whenever he desired to do so. I quote below an act, in force February 17, 1920, which abolished this mediaeval practice:<sup>2</sup>

"Whereas, The kissing of the Holy Bible, or any book or books thereof, is unnecessary under the law of Virginia in administering and taking oath; and,

"Whereas, The practice aforesaid is unsanitary in the extreme and should be discouraged and prohibited; now, therefore,

"1. Be it enacted by the General Assembly of Virginia, That no officer of this state, or any political subdivision thereof, shall in administering an oath in pursuance of law, require or request any person taking oath to kiss the Holy Bible, or any book or books thereof, but a person being sworn for any purpose may be requested to place his hand on the Holy Bible.

"2. An officer violating this act shall be subject to a fine of one hundred dollars."

Swearing was looked upon as a very great crime in Colonial days. We are familiar with Captain John Smith's habit of pouring

1 Percy's Case, 3 Grat. 632.

2 Pollard, Code of Virginia (Annotated), vol. III, p. 926.



cold water down the sleeves of workmen who practiced swearing. The Legislature also regarded the habit as very dangerous. At the first representative Assembly in Virginia, the General Assembly of Virginia, August 4, 1619, passed the following law regarding swearing: "For reformation of swearing, every freeman and master of a family, after thrice admonition (by church wardens), shall give 5s...to the use of the church...and every servant...except his Mr discharge the fine, shall be subject to whipping, Provided that, the payment of the fine notwithstanding, the said servant shall acknowledge his fault publicly in the church."<sup>1</sup> It will be noticed that the money obtained from fines was to be paid into the church. Doubtless this was an encouragement to the church wardens to spy upon the actions of every one and thus obtain as many fines and payments of money into his church as possible.

The first General Assembly of Virginia, in 1619, passed the following law to enforce attendance at church: "All persons whatsoever upon the sabbath days shall frequent divine service and sermons both forenoon and afternoon, and all siche as beare arms shall bring their pieces, swordes, poulder and shotte. And every one that shall transgress this lawe shall forfeit three shillings a fine to the use of the church, all lawfull and necessary impeliments excepted."<sup>2</sup>

In March, 1643, the General Assembly passed the following law in regard to sabbath breaking:<sup>3</sup> "Be it enacted by and confirmed, for the better observation of the sabbath, that no person or persons

<sup>1</sup> West, Source Book of American History, pp. 61-61.

<sup>2</sup> Ibid., p. 61.

<sup>3</sup> Ibid., p. 61.





shall take a voyage upon the same, except it be to church, or for other cause of extreme necessity, upon the penalty of the forfeiture for such offense of twenty pounds of tobacco, being justly convicted for the same.

Laws at the present time setting aside Sunday as a day of rest are upheld in law, not from any right of the government to legislate for the promotion of religious observances, but from its right to promote protect all persons from the physical and moral debasement which comes from uninterrupted labor.<sup>1</sup>

The general law of Virginia prohibiting laboring on Sunday is as follows:<sup>2</sup>

"If a person on Sunday be found laboring at any trade or calling, or employ his apprentices or servants in labor or other business, except in household or other work of charity he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars for each offense. Every day any person or servant or apprentice is so employed shall constitute a distinct offense and the court in which or the justice by whom any judgment of conviction is rendered may require of the person so convicted a recognizance in the penalty of not less than one hundred dollars or more than five thousand dollars, with or without security that such a person shall be of good behavior, and especially to refrain from a repetition of such offense, for a period of not exceeding twelve months. This section shall not apply to furnaces, kilns, plants and other businesses of like kind that may be necessary to be conducted on Sunday."

Jews are also excepted from the provisions of this law if they conscientiously believe the seventh day of the week ought to be observed as Sabbath and actually refrain from all secular business and labor on that day, provided they do not compel servants or ap-

<sup>1</sup> See quoted in *Worfolk & Western N.H. Co. v. Commonwealth*, 93 Va. 762, 34 S.E. 105.

<sup>2</sup> Pollard's Code of Virginia (Annotated), Sec. 4570.

There is a great deal of talk about the future of the world.

Some people say that the world is going to be a better place.

Others say that the world is going to be a worse place.

It is hard to say for sure.

But I think that the world is going to be a better place.

Because I think that people are going to be kinder to each other.

And I think that people are going to be more honest.

And I think that people are going to be more loving.

And I think that people are going to be more just.

And I think that people are going to be more peaceful.

And I think that people are going to be more happy.

And I think that people are going to be more free.

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prentices, not of their belief, to do secular work or business on Sunday, and do not on that day disturb any other person.

The Virginia Sunday law (Virginia Code, 1919, Section 4570) has had various renderings in different court decisions: it has been decided that the law is a valid exercise of police power;<sup>1</sup> that the law should be reasonably construed;<sup>2</sup> that what work is "necessary" is generally a question for the jury to decide.<sup>3</sup>

Empty coal cars, which have been used exclusively to transport coal from one state to another, and which are intended to be so used again, are not, while being returned from one point in this state to another, engaged in transporting articles of interstate commerce, though en route to the coal fields outside of the state; and the transportation of such cars is, therefore, controlled exclusively by the laws of this state. Such transportation on Sunday is forbidden by Section 4572, Code of 1919.<sup>4</sup>

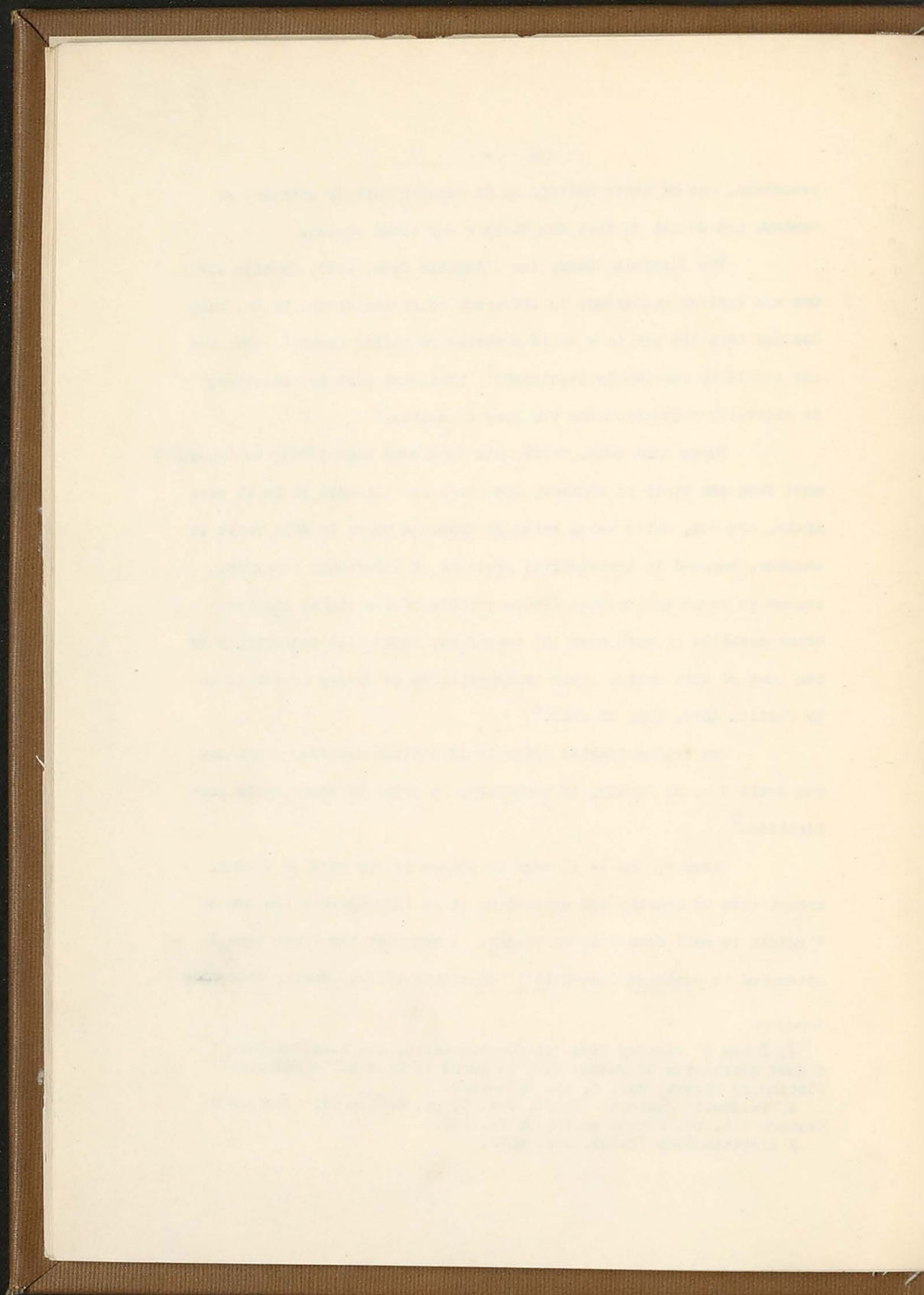
Any trains started prior to 12 o'clock Saturday night may run until 9 a. m. Sunday, if necessary, in order to reach their destination.<sup>5</sup>

Since no one is allowed to engage in any work on Sunday, except work of charity and necessity, it is thus against the law of Virginia to sell Coca-Cola on Sunday. I remember the first time I attempted to purchase Coca-Cola in Charlottesville. Having come

1, 2 and 3 Pinkley Bros. vs. Commonwealth, 114 S.E. 764-769. A good discussion of Sunday laws is found in Caldwell's Judicial Dictionary Digest, vol. 6, pp. 4324-4329.

4. Caldwell's Judicial Digest, vol. 6, pp. 4324-4329. Norfolk & Western R.R. vs. Commonwealth, 93 Va. 749.

5 Virginia Code (1919), Sec. 4573.



from Chicago and Washington where it was easy to obtain soft drinks on Sunday, I walked up to a soft drink fountain in Charlottesville one hot Sunday and called for a "dope". To my surprise I was told that no one was allowed to sell Coca-Cola on Sunday in Virginia. I then walked down the street without anything to drink. I look for a running water fountain out on the street, but could not find one. Charlottesville had made no such provision for the thirsty. Before I could get anything to drink I had to go into a restaurant and ask for a drink of water.

At certain eating-houses where I am now acquainted I can buy a Coca-Cola on Sunday. This drink is usually served in a cup. This is done because if some one should come in and see me drinking he would probably be deluded to think that I am drinking coffee! Some fountains will sell you soft drinks and ice cream on Sunday, provided you purchase a sandwich or something else to eat with your drink, or with your cream. In larger cities in Virginia, such as Norfolk and Richmond, recently more and more places have been violating, without being fined, court rulings against the sale of soft drinks and ice cream on Sunday.

An important court decision, on which most of such fears about selling Coca-Cola on Sunday are based, is the Ellis Case. Mr. Ellis was convicted for selling Coca-Cola on Sunday in Covington, Virginia, and fined five dollars. He appealed to the Circuit Court of Alleghany County. This court sustained the decision of the lower court. The case was then carried to the Supreme Court of Appeals at Richmond. Here on November 15, 1917, the decisions of the lower courts were affirmed.

Mr. Ellis was carrying on two well-defined trades or callings,





said this higher court, under separate licenses: (1) he was conducting an eating-house, or restaurant, the exercise of which business on the Sabbath day, admittedly, was not a violation of the city ordinance; and (2) he was engaged in selling soft drinks (including Coca-Cola) from a soda fountain, the sale of which on the Sabbath day is a plain violation of the ordinance. Such beverages cannot be dispensed without a license; for they constitute a distinct class from coffee, tea and other unlicensed drinks, which are commonly used at meals with food. It is claimed that he served Coca Cola with food, but this was no defence. Coca-Cola was not within the class of beverages covered by the eating house or restaurant license. Ellis could not lawfully dispense soft drinks, even on a week-day without license; and "plainly could not, though licensed, ply his calling of selling such drinks on the Sabbath Day in any way so as to escape liability under the ordinance."<sup>1</sup>

There would not usually be much objection to amusements on Sunday. But to have certain amusements, some one must be employed to produce them. It appears that the courts usually decide that amusements are not necessary on Sunday. One illustration of this is moving pictures. In order to have picture shown on Sunday some one must be employed. The manager of the business could be fined provided a jury should decide that such amusements were not necessary. A jury does not usually give such a decision, although I understand that several years ago a jury in Hopewell did decide unanimously that moving pictures were a Sunday necessity. The Washington Post has given

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<sup>1</sup> Ellis vs. Town of Covington, 112 Va. 321.





accounts of picture shows being held in Winchester, Virginia, during the month of May, 1924. These pictures were shown on Sunday afternoons and were under the direction of two ministers of the city. Many of the other ministers of the city objected to these pictures and tried to have the house closed.

I have not found a public library in Virginia that opened on Sunday. Libraries in Indiana and in Washington, D. C., open on Sunday. It still remains to be seen whether Virginia will follow the lead of the northern states, whom she has ridiculed for their Colonial blue laws. Public opinion will have to be educated before the courts will permit the opening of libraries or even of places of amusement or recreation on Sunday. When this is done, it will be easy to find a jury which will declare it is necessary to take amusement and recreation on Sunday; certainly it should not be long until public opinion will unite in demanding laws which will declare that recreation and amusement are more necessary on Sunday than is our present idle Sunday.

Professional ball games are not allow<sup>ed</sup> in Virginia on Sunday, i.e. ball games in which any one receives a salary for his service. Could there be a more harmless recreation than attending a ball game on Sunday at three o'clock?

There was an attempt last spring to hold a baseball game at Portsmouth, Virginia. On Saturday, April 19, 1924, the local papers announced that on the following Sunday there would be a baseball game. On Sunday morning the ministers of the city brought the matter before their congregations, asking all persons to stand up who were opposed to the Sunday baseball. Of course, nearly the whole congregation stood up in each case. As a result, by the time the game was scheduled



to take place the police station had received so many petitions from the churches that officers were sent to the grounds. Several thousand persons assembled to see the game. The players appeared and started the game. The officers ordered them to stop but they refused, whereupon they were all arrested and brought before the court.

It would seem that if any amusement could be entirely harmless and suitable to be enjoyed on Sunday it is the practice of visiting a cave. But only recently this amusement has been condemned by the highest courts of Virginia. The Pirkey Bros. recently began opening on Sunday Weyer's Cave, sometimes called the Grottoes of the Shenandoah. Some of the churches near by objected on the grounds that some persons were visiting the cave and neglecting to attend church on the Sabbath day. The managers of the Cave were haled before the Circuit Court of Augusta County and fined \$250. The case was carried to the Supreme Court of Appeals, where the decision of the lower court was upheld. I quote from a part of the decision of the higher court: "reasonable fair-minded men might draw different conclusions as to the ultimate fact to be ascertained, to wit was the work done one of necessity in view of modern conditions of life?" Under such conditions the court felt that it should not interfere with the decision of the jury of the lower courts, and the fine of \$250 was allowed. In May, 1924, this cave was still open on Sunday, doubtless for the reason that it was difficult to find a jury to declare that persons employed in the cave were not performing a work of necessity.

It is only recently that swimming pools have been allowed to open on Sunday. A test case came from Roanoke, Virginia. The Lakeside



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Inn Corporation opened a swimming pool in Lakeside Park, just outside of the city limits of Roanoke. This pool was kept open from 1:30 p.m. until 6:30 p.m. on Sundays. The churches of the city started a fight to have the pool closed on Sunday, and easily obtained conviction in the Circuit Court at Salem, Virginia, against the operators of the pool. The Lakeside Inn Corporation was fined \$75. The case was carried to the Supreme Court of appeals. This higher court, on November 16, 1922, found that the lower court had committed several errors, and the verdict of the jury of the lower court was set aside and the case remanded for a new trial.<sup>1</sup>

It can be seen that during the 317 years since the foundation of the colony at Jamestown there has been a great deal of progress made in the movement toward the separation of Church and State in Virginia, but it can be seen from the foregoing blue laws and court decisions that this separation, in actual practice, lacks a great deal of being entirely complete.

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1 114 N.S. 769-772.

The first part of the book is devoted to a general  
survey of the history of the world, from the  
beginning of time to the present day. The author  
treats of the various races of men, the different  
civilizations, and the progress of the human  
mind. He also discusses the various religions,  
philosophies, and sciences, and the influence  
of each upon the world. The second part of the  
book is devoted to a detailed account of the  
history of the United States, from the first  
settlements to the present day. The author  
treats of the various events, the different  
presidents, and the progress of the country.  
The third part of the book is devoted to a  
detailed account of the history of the world,  
from the first settlements to the present day.  
The author treats of the various events, the  
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A P P E N D I X

AN ACT FOR ESTABLISHING RELIGIOUS FREEDOM, PASSED  
IN THE ASSEMBLY OF VIRGINIA IN THE BEGINNING  
OF THE YEAR 1786.

Well aware that Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, hath chose not to propagate it by coercions on either as was in his Almighty power to do; that the iniquitous presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only sure and infallible ones, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose power he feels most persuasive to righteousness, and is withdrawing from the ministry those temporal rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to the offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal ~~if~~ who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his power into the field of opinions to restrain the profession or propagation of principles, on the supposition of their ill-tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of the civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, and she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to freely contradict them.

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Be it enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

And though we well know that this Assembly, elected by the people for the ordinary purpose of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with the power equal to our own, and that therefore to declare this act irrevocable, would be of no effect in law, yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.<sup>1</sup>

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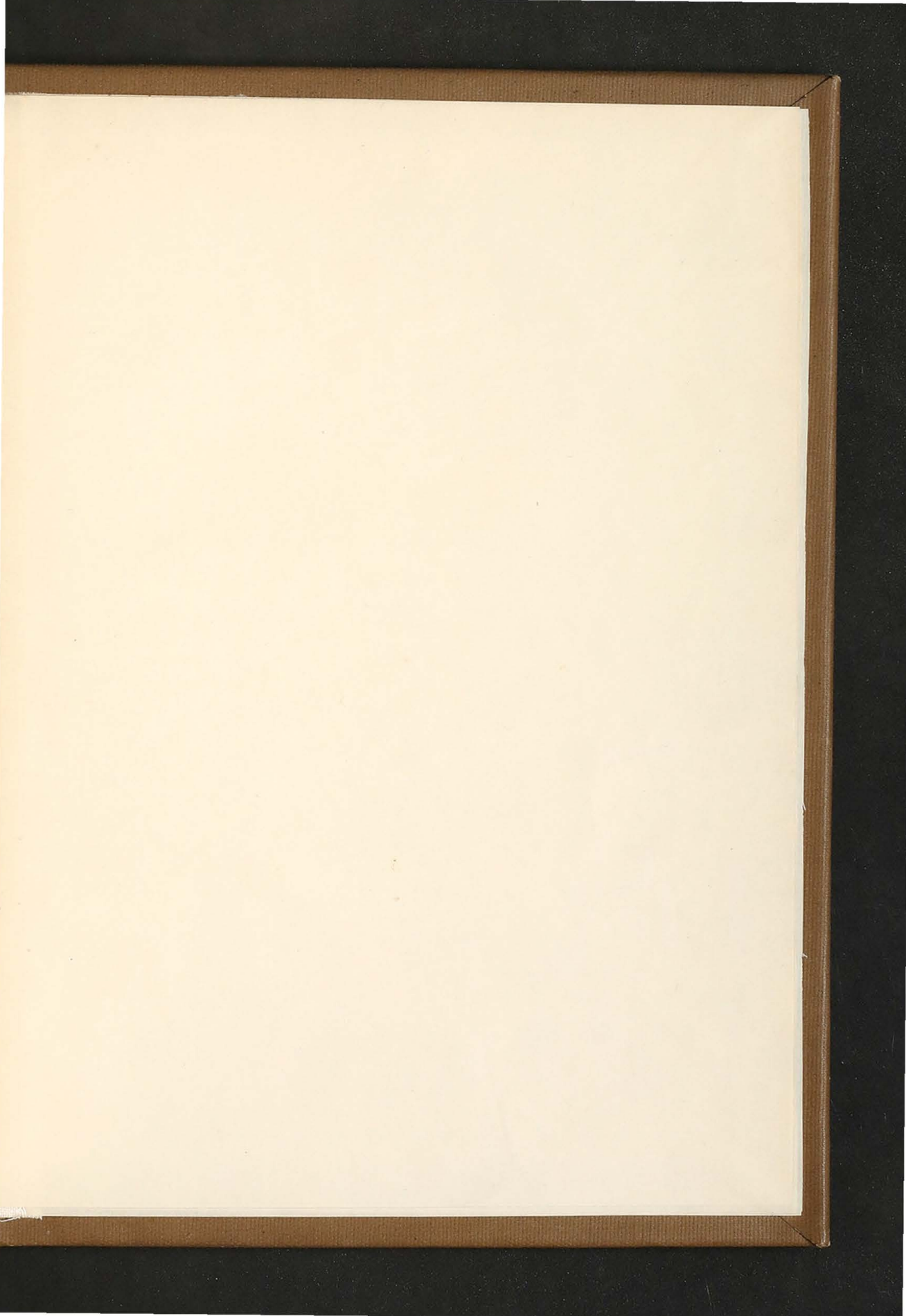
1. Tucker's Life of Jefferson, Appendix.

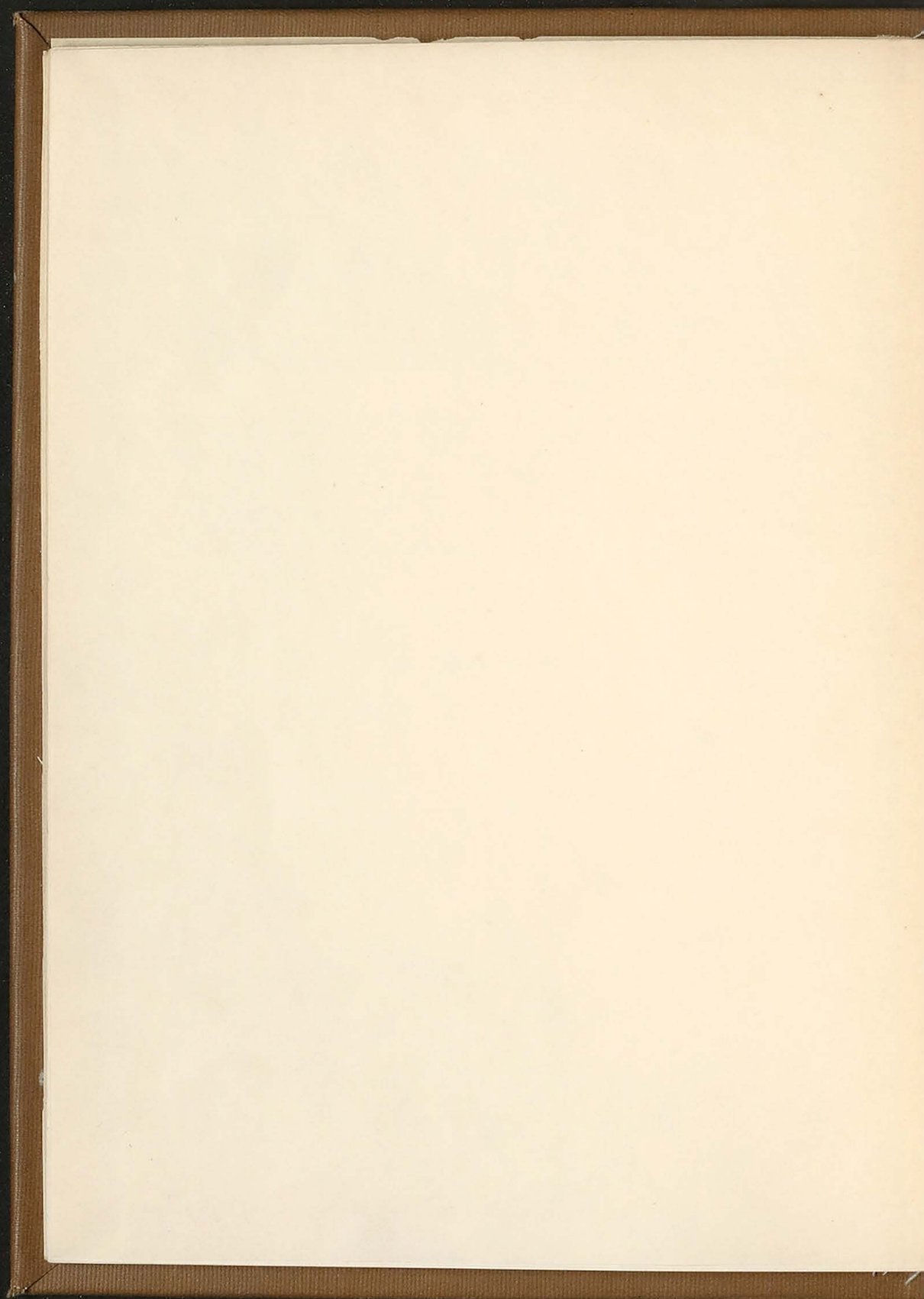


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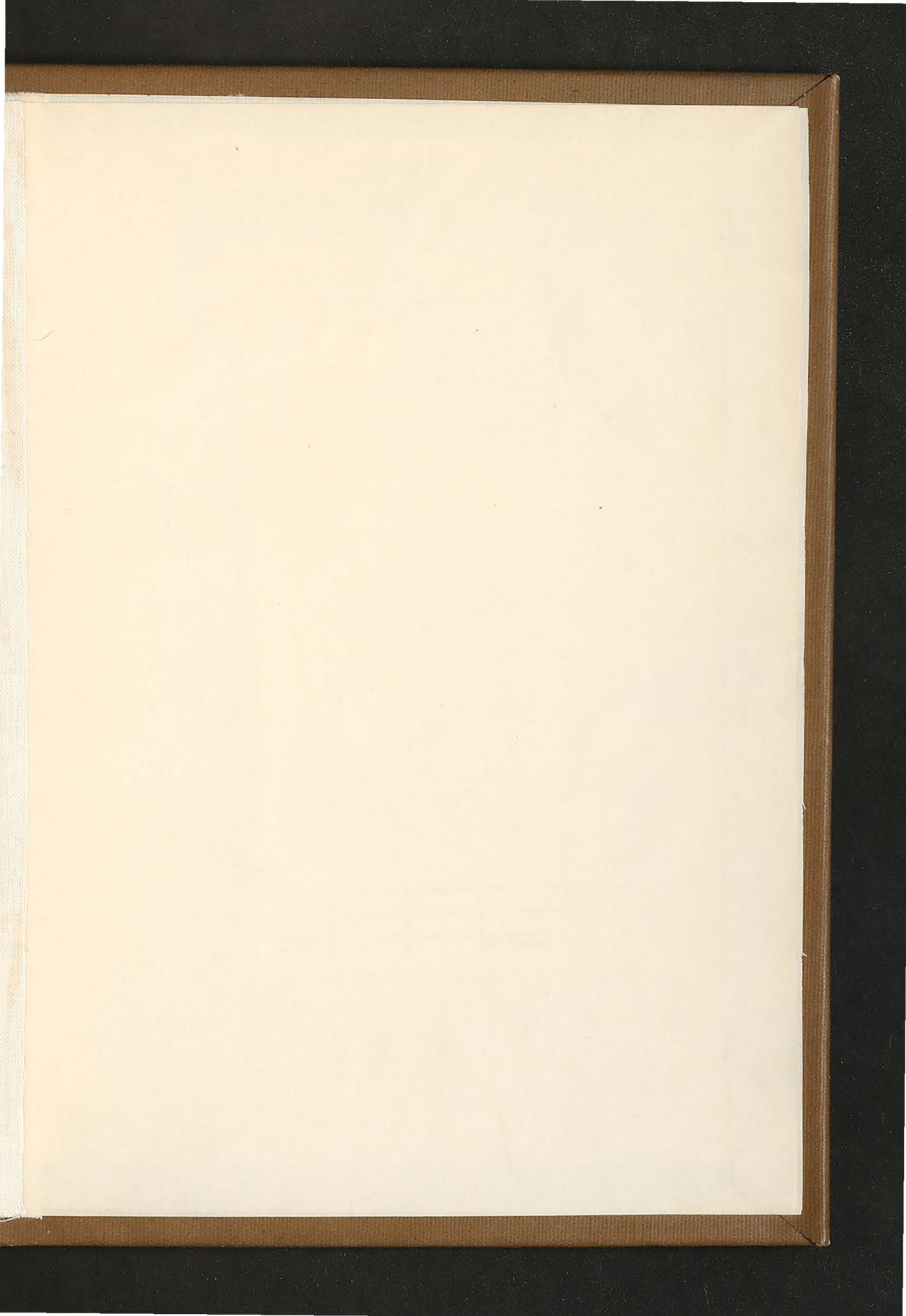
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THE HISTORY OF THE UNITED STATES









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