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Earnest T. Gearheart Jr

University of Richmond

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RELIGION IN THE VIRGINIA STATUTES

By

Earnest T. Gearheart, Jr.

(Major Essay in History)

Richmond College

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This work began as a listing of abstracts of laws pertaining to religion and an investigation of those institutions revealed therein; but its scope has enlarged to consist of a listing of those laws, an index to that list, and a fairly extended history of the evolution of real religious freedom in Virginia. Mr. P. A. Bruce and others have covered the field of describing those institutions far better than I could, so that there was no use attempting to duplicate their work. My efforts have been directed to studying the source and effect of those laws which were most important in the evolution of complete religious freedom in Virginia.

The paper is divided into a chronological compilation of abstracts of the laws; a modified topical index to those abstracts; and a somewhat more extensive investigation of the period which has not, so far as I am aware, heretofore been treated fully. In compiling the laws, it was extremely difficult to determine which laws pertained to religion and which did not. In those border-line cases, such as those dealing with marriage and divorce, I have included them.

In treating a subject from the viewpoint of what legislation reveals, one has to recognize the limitations of the revealing powers of laws. Besides the fact that legislation notoriously lags far behind actual developments, it obscures its causative forces by legalistic terminology and more or less specious preambles; but one may be assured that it sooner or later reflects landmarks in developments, and that is what this study aims to treat. It has been impossible to treat all phases fully, of course. Therefore the footnotes indicate references for more minute investigation, and the index may also be of some aid in that direction.

I should like especially to recognize publicly my indebtedness to Rev. G. MacLaren Brydon, Treasurer of the Episcopal Diocese of Virginia, and an authority on Virginia church history, for his aid to me.

E.T.G.
RELIBION IN THE VIRGINIA STATUTES

It has generally been recognized by historians of the relations of Church to State in Virginia that the history divides itself into three general periods: the period of the unquestioned supremacy of the Church of England in Virginia, the period of struggle by dissenters from that church for religious toleration, and the period of struggle for complete religious freedom. However, it appears that most of these historians have accepted the Act for Religious Freedom as a definitive separation of Church and State, whereas it really only marked the point of departure for a struggle for actual religious freedom.

It appears to the writer, therefore, that in addition to the three aforementioned phases there are two other more of less definite phases in the relationships of Church and State before there could be said to be absolute and undiscriminating religious freedom in Virginia. The fourth phase will be termed, for lack of a more expressive term, the period of liquidation; that is, the period in which the property and special privileges of the former established Church were gradually restored to the State and divided equally among all denominations. The fifth phase, at first an almost imperceptible continuation of the preceding one, is the period in which the State manifested the extreme policy of entirely ignoring, or at least avoiding any overt relations with religious institutions until apparently it finally became aware of the inexpediency of such a policy and took a more liberal view. It seems that this period might well be named the leaning-over-backward period. It is best manifested in the refusal of the State Legislature to incorporate a theological seminary until the year 1854.

The period of the unquestioned supremacy of the Established Church extends from the first years of the Virginia colony's existence to about 1649. Even the early charters of the colonies bound the colonists

To guard against the papal religion and asserted the power of the council in England both as to civil and religious matters, vesting in the royal Governor and the local council certain powers with regard to the same. At the first meeting of the legislature, and at practically all of those in that early period, a large part of the law-making consisted in providing for the Church of England. They provided that there should be a house of worship in every plantation, that the worship was to be strictly in accordance with the canons of the Church of England, that persons who absented themselves from divine services, including the ministers, were to be severely fined, that (in order to protect the very few available ministers), anyone disparaging a minister should be heavily fined, and that the ministers' salaries were to be deducted before any of their parishioners could otherwise dispose of their tobacco. Laws subsequent to these were along the same lines, providing minutely for the salaries and duties of the ministers, church-wardens, the administration of the oath of supremacy, the marriage ceremony, punishment of offenses against morality, disabling from office-holding "popish recusants" and other refusing to take the oaths of allegiance and supremacy, and so on.

The first evidence of an intention on the part of the Government to suppress or oppress the Puritan group which had grown up in one section of the colony was the act of Assembly of February, 1631, although there had previously been enactments mildly to the same effect. It is not known to what extent the Puritans were persecuted in the enforcement of this act, if at all. It is known, however, that with the accession of "bigoted Governor Berkeley" the persecution of Puritans began in earnest. Two acts passed by the General Assembly in 1642 were aimed at

2. Cf. Ibid., p.175  3. William Waller Hening, The Statutes At Large, ... 1, 97-98, 1819-Ibid., p.95
the Puritans, one prescribing that the Book of Common Prayer should be the foundation of all religious services in the colony, and the other providing that all nonconformists were to be compelled to depart from the colony. In 1647 the Assembly, at Governor Berkeley's instigation, passed a more specific act of intolerance, providing that those ministers who refused to read common prayer were not entitled to any tithes or duties from their parishioners.

In spite of an act of Parliament, during the period when England was a Commonwealth under Cromwell, which prohibited the use of the Book of Common Prayer, Berkeley continued his persecution of the settlement of Puritans in Nansemond County until they emigrated almost en masse to Maryland.

During this whole period the laws had been unrelenting toward the papists, partly because it was thought that a papist could not be "at heart, a loyal Englishman" and the "claims of Catholic Spain upon the territory of Virginia were not to be lost sight of." The act of the Assembly in 1643 seems to be the first Virginia law expressly providing for the deportation of "popish priests" and disabling "popish recusants" from holding office in the civil government. There surely was no tolerance in that direction.

In theory, the Church of Virginia was simply a branch of the Church of England, but in respect to forms of worship, and more especially in respect to church government, it developed such important differences that in its actual workings it fell far short of true Episcopacy." An Act of 1643 had the effect of making the Governor the head of the Church of Virginia, insofar as he is empowered to indict those ministers who have received ordination by a bishop in England. But by the same act the vestries are conferred the right of presentation of ministers of

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their choice to be inducted, which reduced the power of the Governor substantially. This is the law upon which the vestries henceforth based their claim to the right of presentation. It was re-enacted, in effect, in 1662.

The vestries were placed upon their final legal basis by the act of the session 1661-2, providing that "twelve of the most able men of each parish be by the major part of said parish chosen to be the vestrymen," and each of these vestries were empowered to choose from their number, in cooperation with the minister, two church-wardens (who were the "guardians of the morals of the people" and the executive agents of the vestry). A provision which proved very important was that the remaining members of the vestry should in their own right fill vacancies in the vestry as a result of death or removal.

This legislation was the basis of church government until the Revolution. Although at first the vestries consisted of the leading men of the community, by virtue of their election by the people, the bestowal of this power to fill its own vacancies tended to make it henceforth entirely irresponsible to the people, in spite of the almost unlimited power it possessed over parochial matters. One writer has stated:

"Vestries fixed the amount of the assessment for the ministers' salary, church expenses, poor relief, and the individual apportionment. They transacted the parochial business and presented the minister. As a consequence a few leading gentlemen in each neighborhood administered religious matters to suit themselves, and the great mass of parishioners could make no protest. In many cases, however, the vestries doubtless acted in accordance with public sentiment, especially in keeping ministers' salaries as low as possible"
The Puritans having emigrated in large numbers to Maryland, the established Church for a time apparently saw no special threat to its domination, except by the "popish recusants", against whom harsh laws continued to be invoked. But along about the time of the overthrow of the Commonwealth of England, Quakers began to emigrate into the colony. In view of the natural proclivity of those in control of the civil government to resent and oppose any tendencies which do not meet with their approval, and in view of the fact that most of the officers of the civil government were also leaders in the Established Church, it is not strange that the Assembly should have passed, in the session of 1659-60, an act which allowed the Quakers no tolerance whatsoever. This act was "for suppressing the Quakers", and provided for the expulsion of Quakers already in the colony and for the prevention of the importation of any more Quakers. This act reflected the policy inaugurated in London to rigidly suppress dissenters. There is no evidence that any Quaker suffered the extreme penalty of the act ("to be proceeded against as felons"), which may be a reflection of Charles II's declaration of Breda.

These restrictions on the Quakers were quite probably a reflection not so much of an attitude of religious intolerance on the part of the governing authorities as of political necessity. During this period of the colony's existence it was constantly in danger of attack by Indians, which made it necessary that every man be prepared to defend

25. Hening, II, 44. 26. McIlwaine, p. 181. 27. Semple, p. 47. 28. H. J. Eckenrode, Separation of Church and State in Virginia, p.119; cf. Semple, p.498. In this session of 1661-2 the supremacy of the Church of England was again established, and the first nine acts were devoted to prescribing minutely the government of the church. (Semple, p. 49; Hening, II, 25-30).
29. Semple, p. 48 30. 31. 32. Ibid. 33. Hening, I, 532. 34. William E. Dodd, "The Emergence of the First Social Order in the United States", American Historical Review, XL, pp. 221, 223. (Jan.1935). Evidently the practise with regard to those Quakers who came over before 1860 was the general English practise-imprisonment (McIlwaine, p.188).
35. Hening, loc. cit. 36. McIlwaine, p. 189 37. Mr. MacLaren Brydon's oral statement. It is interesting to note, in this connection, the
his colony on a moment's notice. The nature of the settlement - far-apart plantations and little community life - was such that it was absolutely necessary that all persons have arms on hand and be ready to muster at a given spot on quick notice. The Quakers' tenets forbids them to have arms for the purpose of fighting or to engage in war-like actions, and it was therefore quite beyond the intentions of the legislators that such recalcitrants be allowed to dwell in the colony.

Indeed, to a certain extent a large part of the so-called persecution of non-confirmists was in reality merely the efforts of the legislature to prevent "dangerous & assembling of a "disturbing social element". There were other acts in persecution of Quakers from time to time, but they were noticeably less harsh. Furthermore, there were certain incentives for the government to be rather lax in the enforcement of such laws, and gradually, as Quakers in certain districts became better known, toleration reached such a state that by 1672 the act of 1663 became practically inoperative in its extreme provisions.

Chief among these incentives was the desire of the colonists for an increased population, which was overtly manifested subsequently in the act of 1705, which encouraged Huguenots (who had been persecuted in their native country after the revocation of the Edict of Nantes) to settle at Manakin Town, by exempting them from the payment of public and county levies. In 1713 German Protestants in Germanna were likewise exempted, and other exemptions followed.

35.(cont.)

 incident in 1711 when Quakers defied Governor Spotswood in refusing military service and affirmed that if the French should come to their gates they would feel constrained to "feed their enemies", in obedience to the Biblical injunction (McIlwaine, p.200).

36. Preamble to act against Quakers, 1663 (Hening, II, 180).

37. Eckenrode, p.37, speaking especially of Baptists.

38. See Index to Chronology of Abstracts. McIlwaine, p.189.

Such was the state of affairs when in 1689 the Toleration Act, which was enacted by Parliament in 1688, was incorporated into the Virginia laws by reference. Mr. Hening (of whose religious affiliations, I am unaware) notes that "It is surely an abuse of terms to call a law a toleration act, which imposes a religious test on the conscience, in order to avoid the penalties of another law equally violating every principle of religious freedom". And Mr. Semple, and ardent Baptist, heartily agrees therewith.

While this provision for exempting from the penalties of not attending the Established Church at least once in two months those who should qualify according to the Toleration Act of William and Mary was a long step forward, much depended upon the manner in which it should be administered. For one thing, it might not offer leniency to dissenters who had no means of finding out how to qualify themselves "according to one act of parliament." Mr. Hening points out that there was probably not one person in a thousand in the colony who was at all acquainted with the exact provisions of this Toleration Act, and it is doubtful that there was any immediately available method whereby any great number of dissenters might be able to find out those provisions. This position finds good support in an admission of the legislature, as late as 1789, that "...(whereas) the good people of this Commonwealth may be ensnared by an ignorance of acts of Parliament, which have been published in any collection of the laws...".

It seems on first glance that the only means that such dissenters had of finding out whether they were so qualified was to absent themselves from the parish church over a period of two months and see how quickly they would be called before a justice of the peace and obliged of the Established Church did not fear that this would endanger its position of supremacy, because, although the church services were to be in French, they were practically the same as those of the Church of England (McIlwaine, p. 204).

42. (cont.).
43. Ibid., p. 234; Hening, IV, 306
44. Ibid., III, 171; McIlwaine, p.197.
45. Semple, p. 50. Dr. McIlwaine is in error in citing the Virginia law.
to pay their five shillings fine. And, even assuming that such dissenters intended to qualify themselves according to the provision of the law, one could not be sure that there would be a justice of the peace who would offer to administer the required oaths and declarations. In order to become qualified, the dissenters were, upon their own initiative, to offer to take these oaths; and, in the absence of other means of finding out that they were supposed to present themselves to the justices of the peace, to take these oaths, it would seem that they would become aware of that fact only by having been convicted of the offence once. Henceforth such persons who embraced the required oaths and declarations would be qualified.

But such a difficulty is more apparent than real. Although the Toleration Act "is not believed to have been strictly obligatory in Virginia" before its incorporation into the laws of Virginia in 1699, it had already been acted under in several instances before that time. In view of the fact that Reverend Josias Mackie, a Quaker preacher, secured a license to preach at certain registered places from the Norfolk County court as early as June 22, 1692, it would seem that there were some dissenting ministers, at least, who in some way had secured a knowledge of the provision of the law by which they might be qualified to preach. Other county courts issued preaching licenses at about the same time. We may be assured that such a vocal element of the population were actively engaged in apprising their flocks how they might be excused from attendance at the parish church without penalty.

46.(cont.) as requiring attendance at the parish church at least once a month (p.224); the act says at least once every two months (Hening, III, 171). It was not until the act of 1705 that attendance was required once a month. (Hening, III, 358).

47. Hening, loc. cit.; 48. Ibid. Preamble to Act of Nov. 25, 1789.


55. Ibid., p. 220.
Those dissenters so exempted were to be deprived of the benefit of the exemption if they attended an assembly of dissenters behind locked doors. The toleration certainly stopped short of exempting those dissenters from supporting the Established Church by parish levies, a dispensation which was not realised until after the passage of the Act for Religious Freedom.

Thus ended the period of struggle for nominal religious toleration. The struggle for real toleration is particularly well typified by - and largely hinged on - the case of the Rev. Samuel Davies. There had been a great deal of disturbance among loyal churchmen over the fact that "itinerant" preachers, unlicensed and preaching to Presbyterians in unlicensed houses, were violently attacking the Established Church. Governor Gooch, although very much incensed by the matter, was not disposed to persecute these "New Lights" but suppressed only those who had not complied with the Toleration Act, and in doing so he abode within the letter of what he was required by law to do.

The Davies case concerned the construction of the Toleration Act with respect to the number of congregations a minister might preach to, or the number of the houses which might be licensed for him to preach in. Mr. Davies, succeeding Rev. John Rodgers, had built up such a reputation and following that he found himself in great demand as a preacher. By 1748 he had secured from the General Court a license to preach in seven meeting houses. The General Court considered that "under the most liberal construction of the law possible, seven meeting-houses were certainly enough for a man who

Raithby, loc. cit., Art. V.  
Ibid., Art. VI.  
McIlwaine, pp. 214-215.  
Bishop William Meade, Old Churches, Ministers and Families of Virginia, I, 429 et seq.

The General Court had usurped the right of licensing dissenting ministers and places of worship from the county courts (McIlwaine, p. 220).
of the dissenters cooperation in resisting the threat of the French and Indians. The effect of the controversy over the ministers' salaries was slightly more positive, in that it alienated the people still more strongly from the Established Church, and dissension in the Established Church meant strengthening the dissenters in numbers and influence.

During the period of the French and Indian War, the two most significant acts were the one of March 1756 for "disarming Papists and reputed Papists refusing to take oaths to the government" and the act of April 1757, "to explain appointment and resignation of vestrymen." Both of them reflected the prevailing distrust in America and in England of all things popish or in any way traceable to the French. The first required that a person suspected of being a papist should be administered the oaths which had been substituted by Parliament for the oaths of allegiance and supremacy. The second continued in effect the practice of filling a vacancy in the vestry by election by the remaining vestrymen, but the elected vestrymen were required to take the same oaths as in the above act and in addition an oath of allegiance to the doctrine of Catholic exclusion from the English throne.

Those oaths which were substituted for the former oaths of allegiance and supremacy are as follows:

(a) "I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to his Majesty King George: So Help Me God."
(b) "I, A. B., do swear that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position that Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their subjects, or any whatsoever. And I do declare that no foreign Prince, Person, Prelate, State, or Potentate hath or ought to have any Power, Superiority, Preeminence, or Authority, Ecclesiastical or Spiritual, within this Realm: So Help Me God."

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McIlwaine, p.231. 
Ibid., p.233. 
Ibid., p.132. 
Hening, loc. cit. 
I George I, Stat.2, Ch. 15, Art. I (1714) (Raithby, Vol. 4, p.280)
Although the additional oath referred to by the act of Assembly concerning vestrymen, contained in an act of parliament in 1714, is much too lengthy to be quoted in full here, the substance of it is that the vestryman taking the oath pledges perpetual allegiance to King George and to his successors who inherit the crown legally, according to the act of Parliament passed in 1700 (by which only the Protestant heirs of Princess Sophia might succeed to the throne), and declares himself opposed to any thereby illegal attempts to usurp the throne.

The total obvious effect of a vestryman's subscribing to these oaths would be that he would, if conscientious in his vows, be loyal to the lawful King, and that a papist would be barred from becoming a vestryman, since the second oath almost certainly involves the renunciation of one of the cardinal principles of papism, and the third oath binds him to recognise that only Protestants have the right of succession to the English throne.

The Parson's Cause concerned whether or not the ministers of the Established Church might be deprived of their salaries in the form which had been provided for by act of the Assembly with the assent of the King, by a superseding act of the Assembly without the assent of the King. The case hinged so intimately upon the status of the clergy before the civil government that a short review of the statutory provisions with respect to the clergy's salary may be an order. Semple has outlined it thus:

"The first allowance made to the ministers was ten pounds of tobacco and a bushel of corn for each tithable; and every laboring person, of what quality or condition soever, was bound to contribute. (73) In the year 1631 the Assembly granted to the ministers besides the former allowance of ten pounds of tobacco and a bushel of corn, the twentieth malf, the twentieth kid and the twentieth pig. (74) This was the first introduction of tithes, properly so called, in Virginia. But it did not continue long for in 1733 (1633 ?) the law was repealed..." (75).

A levy of fifteen pounds of tobacco per the poll was laid, in the year 1655, upon all tithables, the surplus of which, after paying the minister's salary, was to be laid out in purchasing a glebe and stock for the minister. (76) This law was re-enacted in the revisal of 1657. (77)
After the restoration of Charles II, which happened on the 29th of May, 1660, a temporary provision was again made for the Established Church. In the acts of 1661-62, devoted to the restoration of the Church of England, "Glebes were directed to be procured for the ministers, and convenient houses built thereon; in addition to which their salaries were fixed at £ 80 per annum, at least, besides their perquisites.... The salary of the ministers was first settled at 16000 pounds of tobacco, in the year 1696, to be levied by the vestry on the tithables of their parish (80), and so continued to the Revolution (81). Any ministers admitted into a parish was entitled to all the spiritual and temporal rights thereof; and might maintain an action against any person who attempted to disturb him in his possession." (82)

In 1755, due to the failure of the tobacco crop and its consequent increase in value, the Assembly, in order to relieve the people of having to pay the normal 16000 pounds of tobacco at the prevailing exorbitant price, passed an act enabling the people to discharge their tobacco debts "... either in tobacco or in money, at the rate of sixteen shillings and eight pence [the ordinary market price] for every hundred pounds..." , and it had re-enacted it in 1758, without a suspending clause. The series of litigations among the clergy, on the one hand, for their "lawful" salaries, and the representatives of the government -"the people" - on the other, found their focal point in the famed Parson's Cause, which, incidentally, constituted Patrick Henry's debut on the political stage of the colony. Popular sentiment swung almost unanimously to the side which Henry represented , and when the case was tried before the Henrico court Henry's oratory was so compelling that the court violated the ancient and accepted judicial rules and capitulated , sustaining the defendant in his refusal to pay the minister's just salary. So obvious was the popular sentiment on the question that all but two of the pending cases were immediately dropped, and the other two subsequently defeated on trivial technicalities.

Just as in the period of absolute supremacy of the Established Church the Puritans were the predominant dissenting group, and in the period of the struggle for toleration the Presbyterians and Quakers were the reform agitators, so, in the period of the struggle for religious freedom, the Baptists were the most conspicuous and irreconcilable reformists. They became an important element in the political and social life of Virginia in the period immediately following the French and Indian War. Their somewhat radical likes and dislikes respecting religious, political, social and economic ideas appealed to the plain people of Virginia enough for them to be the fastest growing religious group in that period of growing restlessness preceding the Revolution.

The history of the struggle for nominal religious freedom has already been treated better than I could hope to do. Therefore my efforts should be directed towards merely outlining that legislation which forms a background for the ensuing period - that of securing real religious freedom.

The Baptists presented a problem to the authorities. Their ministers seldom attempted to conform to the law by applying for licenses, because they thought that the occasional refusal of licenses to them by the authorities - ostensibly because of their itinerant nature - was unjustifiable. The authorities, on the other hand, were very suspicious of them because their radical zeal almost invariably agitated whole communities, and rendered them, in the eyes of the government, a "disturbing social element". Suppression of this evil frequently amounted to persecution of the Baptists, whose tender sensibilities were easily offended because of their inherent attachment to the idea of absolute toleration, and many were arrested. The

86. C.F. JAMES, Documentary History of the Struggle for Religious Liberty in Virginia, p.182.
88. Ibid., p.37. 89. Mr. Thom's monograph, 86.cit. 90. Eckenrode, pp.37-38
attitude of the deputy-governor, John Blair, toward this was one of watchful tolerance, as is shown in his letter to the attorney for Spotsylvania county in July, 1768, where he says: "The act of toleration...has given them a right to apply, in a proper manner for licensed houses, for the worship of God, according to their consciences; and I persuade myself, the gentlemen will quietly overlook their meeting till the Court..." (93)

In spite of the General Assembly's rejection of the first Baptist petition in 1770, the Baptists had so increased in numbers and strength by 1774 that "they began to entertain serious hopes, not only of obtaining liberty of conscience, but of actually overturning the church establishment, from whence all their oppressions had arisen". Petitions to that effect gained wide circulation and ready subscription. It is even likely that the more radical non-conformists held out for special considerations before they would join heartily into the Revolution, but it is hardly likely that the democratic Baptists were opposed to throwing off the yoke. Whether as a capitulation to their conditions or not, the Assembly passed acts putting dissenting ministers on an approximately equal footing with others in preaching to the armies, and Baptists and Methodists were induced to serve by allowing them to raise their own companies and elect subordinate officers of their own religious denominations.

The first Virginia Constitutional Convention met on May 6, 1776 and drew up the Declaration of Rights, the sixteenth article of which declares "That all men are equally entitled to the free exercise of religion, according to the dictates of conscience". In the second act of the first

91. Ibid. 92. Thom, p. 21. 93. Ibid., p. 22. 94. Ibid., p. 29. 95. Semple, p. 25.

96. Mr. Brydon's suspicions in that direction find considerable support in the impression one receives in reading a petition presented by the Baptists on June 20, 1776 (Semple, pp. 494-495); but cf. also James, op. cit., p. 183.

97. Hening, IX, 9, et seq. 98. Ibid., 348. 99. Ibid., 111; Mr. James's comment that James Madison "rendered his name immortal by his famous amendment...striking out toleration and inserting liberty in its stead" does not fit into the picture, in my opinion, because I have been unable to find the word liberty in this article.
Session of the General Assembly of the Commonwealth, the principle embodied in the Declaration of Rights was given some effect in the "Act for exempting the different societies of Dissenters from the support and maintenance of the church as by law established, and its ministers", Furthermore, all acts of Parliament of the nature of religious intolerance were invalidated. The act merely declared that dissenters should be exempt from levies for the Established Church, and deferred the question of whether all denominations ought to be supported by a compulsory general assessment or a voluntary contribution until a later Assembly, which left the clergy of the Established Church without any assurance that their salaries would be paid. They were left in a difficult position, and the difficulty in which they found themselves as the result of the State's action in cutting off their only source of financial support - taxation - caused a very sharp reduction in their number in the years immediately following the Revolution.

The most significant steps in the process of "liquidation" of the property and privileges which previously belonged exclusively to the Established Church were: the Act of the Assembly (session of 1779) which rather definitively severed the most important economic bond between Church and State in Virginia, after a series of acts had merely remitted temporarily the payment of the ministers' salaries by parish levies; the act of 1780 which transferred from the vestries and church-wardens certain public powers and duties; another act of 1780 which conferred on a certain number of licensed dissenting ministers the authority to perform a lawful marriage.

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Hening, X, 197. This may well be considered a sequel to the Parson's Cause, in that it was a revolt against the economic aspect of the power of the Established Church over the people (Thom, pp.35, 67).

beremony, thus breaking up the Episcopal clergy's monopoly of the marriage ceremonies and fees; the act of 1784 incorporating the Protestant Episcopal Church, dissolving all the vestries, and empowering the church to regulate its own religious concerns; Jefferson's masterpiece, the Act Establishing Religious Freedom, passed in the session of 1786; the act of 1786, inspired by a storm of protesting petitions from the other religious denominations, repealing the act incorporating the Protestant Episcopal Church and putting it on an equal basis with all other denominations by providing for regulation of all its affairs by appointed trustees; and supplemented by a subsequent act providing that the trustees of The Protestant Episcopal Church should hold and manage all property which had been vested in the former vestries; the act of the session of 1798 which recognizes the incompatibility of certain former acts of the Assembly with the Declaration of Rights and repeals all of those in any way touching upon religious subjects, leaving the subject of religion to be referred entirely to the people's conscience—the so-called reconstruction act; and, finally, the act of 1801 providing for the sale of vacant glebe lands and those whose incumbents should subsequently cease or remove, upon the principle that the act for the reconstruction of the Bill of Rights tacitly recognized—that all the property which had been granted the late Established Church by the public reverted to the State upon its demise.

Thus can we trace the wavering policy of a legislature with respect to a vague fundamental idea, with militant organizations diametrically opposed

105. Ibid., pp. 361-363; cf. XI, 281,503-505
106. Ibid., pp. 532-537.
107. Ibid., XII, 84-86.
108. Brydon, loc. cit., p. 29; Eckenrode, p. 119.
109. Hening, XII, 266.
110. Ibid., p. 705.
111. Statutes At Large (Shepherd's New Series), II, 149.
In their construction of the fundamental idea. It is not strange that
this period of legislative liquidation of rights and privileges vested in
one body under the influence of monarchy should have been so apparently
vaccillating. For one thing, the idea was so new and ill-defined in the
minds of people in terms of practicable specific policies that it had to
be experimented with, just as a novice at any new process of performance
must experiment in many directions before he hits upon the best and just
as the national government was at that very time engaged in the same pro-
cess of making an idealistic idea practicable. For another thing, the
vast amount of vested interests involved made it necessary that a pro-
cess of liquidation be gradual rather than precipitate - so that the
slow formulation of the idea in the thinking of many legislators was
well calculated to avoid precipitate interference with vested interests.
And, finally, the nature of the subject, religious, made it necessary
to handle it carefully - with rubber gloves, if you please - especially
in view of the strength of both the opposing factions.

At any rate, by 1802 the law was enacted which completed the separa-
tion of Church and State in Virginia. In the administration of the law
for the overseers of the poor taking possession of all real estate owned
by the Episcopal Church which had been raised through taxation, three
classes of property were supposed to be exempted from seizure: church
buildings, property which was then being used by the lawful incumbent,
and real estate which had been devised to the church by wills of donors.
Although the Churches had been erected with public money for the most
part, it seems that it would have been unfair to deprive the Episcopal
Church of that property. As to the second class of property exempted, it
was seized gradually as the lawful incumbents gradually died or moved
away during the

113. Shepherd (New Series), II, 314-316; cf. also E. W. Peet, "God's
Mercy and Man's Ministry"; Historical Magazine of the Protestant
Episcopal Church, Vol. II, No. 3 (September, 1933), p. 32.
114. Brydon, p. 42.
succeeding few years. With respect to the third class of property exempted, however, there is fairly good evidence to show that the exemptions were not overly respected in the administration of the law. Even considering the natural Episcopalian proclivities of Mr. Brydon, it cannot reasonably be supposed that he fabricated the story of two conspicuous cases in which the overseers of the poor in one parish sold tracts of glebe-land for the benefit of the county, expressly indicating the tracts sold by the names of their original donors to the Church ("Allen's lands", etc.) in the deeds of transfer, which apparently constitutes an explicit admission of the high-handedness of such a procedure.

At this point in the development of the relations between the State and religious societies began the imperceptible transition from the fourth to the fifth phase of those relations. The advance thus far consisted in putting all religious societies on an absolutely equal basis with respect to privileges they were to enjoy. No one church was patronized by the State and no church was burdened especially by the laws of the State. In fact, the State having attained that state of religious freedom in which its primary duty with respect to religion seemed to be to leave it strictly alone, the legislators apparently determined to "stand pat" on that accomplishment and to manfully refuse to yield to any petitions for the State's entering into any relationships with religious institutions. And that was the attitude which characterized the legislatures and constitutional conventions from about 1804 until 1854, while the attitude was typically manifested in the vain efforts of various religious denominations to secure charters of incorporation for some of their agencies or even for themselves as churches.

(It has been suggested, and very plausibly, I think, that one of the)
principal reasons why some of the younger denominations were more irreconciliably opposed to incorporation of churches than the older one was that home had less property than the others to protect, and - the general object of incorporation being to make the property of the corporation more secure - those who had least property were the ones who most violently opposed the incorporation. Ignoring for the moment other factors which will be considered later, we may tally the scores thus: In 1784, when the Assembly had under consideration the resolution providing that:

"... it is the opinion of this committee (of the whole house), that acts ought to pass for the incorporation of all societies of the Christian religion, which may apply for the same", (120)

it is perfectly obvious that the Protestant Episcopal Church was by far the wealthiest church in the State and, by the same token, had the most interest in protecting its property. That the Episcopal Church was the sole petitioner for such an act, and that, although the resolution provided that "acts ought to pass for the incorporation of all societies ... which may apply", the Episcopal Church was the only one to apply for incorporation, seems ample evidence that the other religious congregations did not possess enough property at that time to move them to secure their property by applying for incorporation, as they were entitled to do.

Furthermore, the Presbyterian Church was next in age to the former Established Church, having grown up in the period of struggle for nominal religious toleration, and consequently probably owned more property than the younger Baptist Church. The wording of a recommendation of a House Committee on Religion on June 8, 1784, that so much of the Episcopal and Presbyterian petitions "as relates to an incorporation of their societies is reasonable" seems on the surface to confirm this thesis, but there were certain factors which qualified and partially contradicted the committee's report. The Pres-

Suggestion of Mr. Brydon. Eckenrode, p.92. Ibid., p.78.

baptarians were quite opposed to the bill incorporating the Episcopal Church and did not apply for incorporation of their society; the act of incorporation aroused the Presbyterian opposition and was in large part responsible for their strong stand, in company with the Baptists, for complete separation of Church and State.

The Baptists seem to have been so occupied with their fight for equal privileges with respect to the performance of the marriage ceremony, the inequality of the vestry law provisions, and the opposition to the proposed general assessment bill, that they seem not to have seriously opposed the incorporation bill at the time it was being considered; but they awoke when the bill was passed, and, the general assessment bill - against which most Baptists seem to have been convinced that they were the only organised opponents - having been defeated on the third reading, complained of the favoritism of the Government towards one society in strong terms.

At that time the Baptist Church was a young but lusty and growing infant and consequently had very little property to protect and secure by incorporation. But as it grew in size and wealth during the first half of the nineteenth century, the need for securing its property began to pinch more and more and evidently facilitated a growth of a more conservative attitude with respect to State incorporation of religious societies, among some of its members. In 1790 the Episcopal Church, though wealthier, was on the decline in its conservative influence on the governmental policy, and the Baptist and Presbyterian Churches had comparatively little property and were

Neglecting for the moment the question of whether the Society of Friends (Quakers) might be older.

Journal of the House of Delegates, May, 1784; cited by Eckenrode, p.79.
Ibid., p.79. Ibid., p.81. Ibid., p.79. Ibid., p.107. Ibid., p.119.
December 24, 1784 (Eckenrode, pp. 102,113).
in the ascendant in their progressive influence for more complete separation of Church and State; but by the middle of the nineteenth century, the former dissenting group was dominant both in numbers and in wealth, and - apparently in substantiation of the aphorism that ownership of wealth ever exerts a conservative influence - the general sentiment in the direction of limited security of property of religious agencies was reflected in the attitude of a large number of the legislators.

After the repeal of the act of incorporation of the Protestant Episcopal Church and the resumption of the glebe lands, there ensued a period in which many educational societies, usually of a denominational character, applied for charters of incorporation for their institutions of learning.

The philosophy of Thomas Jefferson, whole-heartedly endorsed by the Baptists, was that the "state was in no wise to concern itself with religion" and the adherence of the legislature to that principle was quite clearly apparent in their refusal to incorporate any religious sects, "To enable them to hold and administer more conveniently for the religious objects of the petitioning sect, property to a limited amount, voluntarily contributed for those purposes." (139).

The same attitude was no less apparent in the policy of the legislature towards incorporating educational institutions. It refused to incorporate theological seminaries, as a matter of course, and undertook to insure that the State should not be an unknowing accomplice in the matter of denominational theological instruction by inserting in the charters of those institutions which it did incorporate a provision prohibiting the establishment of any theological professorships therein, or else ex-

135. Semple indicates an instance as early as 1807 where the Baptists felt the need of more security for their property (op. cit., p. 135).

136. The substance of the opinion of Mr. Brydon, as expressed in conversation. The fact that the legislators were perfectly willing to encourage the growth of Christian principles whenever they considered it safe to do so is attested by their grant of a charter of incorporation to the Bible Society of Virginia in 1813 (Acts of Assembly, 1806-1815, p. 120).
pressly reserving to the State the right to revise, modify or revoke the
140. charter at will. It was the Jeffersonian philosophy being reflected in
the legislature's refusing to allow the Government to support colleges
with schools of divinity. Such, they held, was contrary to the Declaration
141. of Rights. This influence on the followers of Jefferson, and especially
upon the Baptists, whose principal temporal pride lay in the fact that they
were historically the chief protagonists of the complete avoidance of any
142. semblance of State intervention in religious affairs, was no doubt a quite
considerable factor in the prolongation of the leaning-over-backward period
of legislative inactivity.

The principal difficulty in the way of securing any favorable commit-
ment of the legislature on these questions concerning religious institu-
tions was that the tide of public opinion had swung so far from the conserv-
143. ative reaction of 1784-85 and toward the Jeffersonian principles, that
the legislators were "church-shy". Whenever any questions concerning the
Church arose, the Act for Religious Freedom (which was reverenced by them
as much as the fundamental law, although it was not incorporated into the
Constitution until 1830) presented itself to their minds and apparently in-
hibited any action. Any applications of religious societies for legislative

137. See Index to Chronology of Abstracts, "Incorporation of Theological
Seminaries".
139. Virginia Reports, 11 Leigh 133.
141. 142. 143. 144.
Eckenrode, p. 108 et seq. An illuminating instance is given by an
Episcopal minister, which may, of course, be slightly exaggerated; "Before we [the Episcopalians] could repair the building we had
to get possession of it.... I went to Richmond one year with our
petition. It was instantly scouted. We had permitted the word Church
to get in. We learned wisdom for the next year. We simply begged the
repeal of the act respecting the schoolhouse. I stayed away myself.
It passed in silence ...". (Peet, loc. cit., p.32).
relief, according to Judge Stanard,

"encountered in the Legislature the two fold objection of their incompatibility with the principles of religious freedom, declared by the act of 1785, and of the inexpediency of exercising the power to create such corporations, though it were constitutional to do so; and that under the influence of one or other of these objections, or of both combined, those applications were rejected by large majorities." (145).

During this period the question was somewhat confused by the failure of the legislators and the public generally to distinguish between two generally divergent purposes of the applicants. The Episcopal Church represented generally the applicant with the first purpose - that of securing incorporation of the Church, rather than of merely securing incorporation of agents of the Church. Even granting that in the early part of the struggle the problem was not susceptible of being thus divided into two such aspects, the Episcopal Church remains in this first category, because even as late as 1845 its petition included a request "for a law authorizing the Religious Congregations of the State to hold property to a limited amount."

The Presbyterian Church best represented the second purpose of applications.

Virginia Reports, 11 Leigh 133 (1840).
Journal of the House of Delegates of Virginia Session 1845-46, Document 8. This in spite of an Act of Assembly of February 3, 1842 (Acts of Assembly, 1841, p.60) purporting to secure any property in real estate, within certain stated limits, to the trustees of any religious congregation, and providing that a majority of those trustees may sue or be sued for such property or its use, one member of the congregation being authorized to institute such suit against the trustees to compel them to use that property for the benefit of the congregation. Where the law cramped the Episcopal Church most was in that it protected only real estate, and even then it limited the amount of real estate the church might own.

With respect to inheritances of money and so forth, the laws still gave the church no relief. The fact that the courts would not entertain any suit by a member of such a congregation to compel a trustee to use any such devises for the benefit of the congregation, and that if the trustee should decease his legal personal heirs might contest any devises he might make - with a fair assurance of securing the inheritance - made the gathering of a large endowment almost an impossible task.

"Every penny left by will (or given directly) to the Seminary had to be left or given to an individual by name (cf. Gallego's Executors v. The Attorney-General, 3 Leigh 450), and he was not legally bound to account for it or to use it for the purpose desired." (Goodwin, op. cit., I, 327).
to the legislature. Its interest ostensibly - and even apparently - lay solely in better securing the property of educational institutions under religious auspices. The most conspicuous manifestation of this is the Presbyterian application for a charter for the "Theological Seminary of Virginia" in 1815.

This introduces an element which figured only slightly in previous applications for incorporation - that of education. The Established Church had been vitally interested in education and had established the College of William and Mary as an aid to ministerial students and had looked with favor upon the establishment of private schools such as Eaton's. The Presbyterian Church became interested in education and was actively in favor of incorporation of its theological seminary as one intended for all denominations (and "for the furtherance of Christianity"), and so stated in their petition for a charter. But the legislature was dubious and consequently refused. The Baptists were rather slow in undertaking educational activities.

The fact, the question of incorporation became more and more, towards the middle of the century, a question of whether the State would continue to suffer the traditional domination of religious motives in educational activities. It was during the forties and fifties of the nineteenth century that the State began to awaken to its responsibility in the matter of education. When the State began to enter that field more extensively in the decades prior to the Civil War, there was need for some sort of compromise which would be suitable to the State's undertaking public education at the same time that it reserved some little religious influence therein.

In order to circumvent the difficulty that the devise to a trustee was frequently contested by the devisee's lawful heirs, the Diocesan Convention secured the services of some of the best lawyers to draw up a "Form of a Bequest", taking note of that difficulty by providing that "... this legacy is to be paid (to the Treasurer of the Seminary) whether [he]... shall be under any legal obligation to apply it as above described or not; it being my intention, that no kindred or other legatee of mine shall take, or be entitled to... any interest or trust in the said legacy", whether the legatee should carry out the wishes of the devisee or not. (Journal of the Convention of the Protestant Episcopal..."
The Jeffersonian principle of strict construction of the Act for Religious Freedom was incompatible with the State's cooperation with religious institutions in the field of education. Indeed it appeared that education was "the base of a triangle which had its apex in the meeting of the lines of church and state". When that fact dawned on the legislators in 1854, they abandoned the old Jeffersonian principle of complete and absolute abstinence of the State from intervention in matters of religious interest, and unconsciously adopted the interpretation of the principle of separation which meant merely a policy of cooperation with the Church without legal alliance. The incorporation of the Protestant Episcopal Seminary of Virginia in 1854 was apparently an evidence of that change of attitude.

It has already been seen that the legislature was very much against the incorporation of any religious society from 1804 to 1830. When the Constitutional Convention of 1830 met it was faced with this question. It was moved that there be expressly reserved to the legislature the power "of incorporating by law the trustees or directors of any theological seminary, or other religious society or body of men created for charitable purposes or for the advancement of piety and learning, so as to protect them in the enjoyment of their property and immunities, in such case and under such regulations as the legislature might deem expedient and proper."

The motion was opposed, and when the author of the motion suggested that, in the absence of any constitutional prohibition, the legislature might have that power without express authorization, it was overruled by a large majority who were of the opinion that such power ought neither to be conferred nor exercised. Furthermore, the representatives were convinced that...
The Act for Religious Freedom implicitly prohibited the legislature from incorporating religious societies, so that, instead of expressly prohibiting the same, they incorporated the Act for Religious Freedom into the Constitution.

The Presbyterians were denied their request for incorporation of a theological seminary in 1815. The Baptists formed the Virginia Baptist Education Society in 1830 and established the Virginia Baptist Seminary at Richmond in 1832. Having done so, the property of the Seminary began to assume a considerable value, and there was felt the necessity of securing the property to the Seminary by incorporating the trustees of the institution. Overcoming their previous scruples with respect to incorporation of religious societies, they joined with the Alexandria Episcopal Theological School in applying for a charter. Of course the applications were rejected because of the theological nature of the institution. The Baptist Education Society was faced with the alternative either of abandoning the class in theology and applying for a charter as a liberal arts college or of not being incorporated at all. The Baptists had been slow to adopt the idea of sponsoring educational enterprises for their ministers, and they were not averse to receding a little in that respect. The change in nature of the institution met with the approval of most of those concerned, and when the officers of the institution asked to be incorporated as a purely literary institution, the legislature acceded to the request and incorporated the Trustees of Richmond College on March 4, 1840, including in the charter a prohibition against the establishment of any theological professorship therein.

The Episcopal Church took note of the efforts of the Presbyterians toward the establishment of a theological seminary, and began, in 1815, to consider providing a theological chair at William and Mary College, whose chief mission, in its inception, had been the education of young men for the ministry. In spite of some little agitation against it, a professorship in theology was established at William and Mary College in 1821. But the undertaking fell through for various reasons. During the slightly over a year of its existence there, only one student presented himself for theological instruction, and it was rumored that the "irreligious atmosphere" of that place was not conductive to such study. In October 1823, Rev. R. Keith established himself at Alexandria and began teaching in theology. For a period of thirty years after that the friends of the Seminary, particularly Bishop Meade, made repeated efforts to secure a charter of incorporation for the Seminary, but in vain. In 1845 the Episcopal ministers again besought the legislature to pass a law "authorizing the Religious Congregations of the State to hold property to a limited amount."

By this time, however, the Episcopalians apparently had seen that the likelihood of the legislature's incorporating a church as such was very slight, but that the growing interest of the State in matters pertaining to education offered encouragement that their seminary might receive favorable consideration. Therefore they devoted a good portion of their petition to the enumeration of reasons why the seminary should be incorporated as a unit in itself, thus changing their position from that of the first aspect to include a little of both aspects mentioned above. As was to be

Expected, the fact that the Episcopal Church had petitioned for the incorporation of their denomination evoked counterpetitions from Methodists and Presbyterians. The most important opposition came from a Presbyterian preacher, Rev. William S. Plumer, who appeared before the Committee of the Courts of Justice and delivered a lengthy argument against the policy of granting "... corporate privileges for every congregation and society which has been or may be formed...". As a result of the opposition, the Committee unanimously resolved "That the policy of the laws of this Commonwealth by which the power to take and hold property is withheld from religious corporations is founded in the highest wisdom, as well for the safety of the State as for the purity of the churches".

But the seeds of concession were sown. The Episcopalians had at length come to the point where they laid the emphasis on the incorporation of the Seminary rather than the church. On that point they reached agreement with the aims of the Presbyterians and with what the Baptists had desired before they had secured incorporation of their various institutions of learning without theological curricula. In fact, Mr. Plumer expressly declared that his address was not to be construed as contesting the granting a charter to the Episcopal Seminary, but that he sought rather to see that the legislature should not, by a general law, "create as many religious corporations as there are congregations and religious societies in the State." At any rate, those petitions, replies and counter-replies marked the beginning of the general movement in the State for incorporation of agencies of the churches which culminated in 1854 in the granting of a charter to the Episcopal Seminary, and in 1855 to the Presbyterian (Union) Seminary.

A portion of this petition well reflects the traditional attitude of the Episcopal Church - and the growing attitude of the other churches - concerning the place of religion in education:

"Religious education lies at the bottom of all true social melioration. Private donations for that object, as well for the motives from which they proceed, as their value to the community, deserve a thank-
Meanwhile the Constitutional Convention of 1851 met and adopted a provision that "The general assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law." Finally Rev. John Cole secured the reluctant consent of Bishop Meade to make another effort to obtain a charter for the Episcopal Seminary from the legislature. He spent all his time and efforts in the undertaking. The Presbyterians and Baptists, fearing that an incorporation of the Seminary would secure the Episcopalians "some unusual advantages", again opposed his efforts. But Mr. Cole was personally acquainted with the Speaker of the House, and - having secured his good will towards the endeavor - he engaged many other members of the legislature in tactful interviews and brought persuasive arguments to bear on them. Furthermore, Bishop Meade was acquainted with a number of influential men in the legislature, which no doubt helped their cause along.

"Mr. Cole's steady and placid perseverance gained him a hearing from many who had influence; the manifest justice and propriety of the application were at last appreciated, and the act of incorporation was granted in a most liberal form [February 28, 1854] (185). Every one was surprised at Mr. Cole's success, so unexpected and so contrary to the predictions of many and to the experiences of the past."

The legislature construed the constitutional provision so as to permit the ful reception; and any government must be disposed rather to encourage than to discountenance them. Religious Seminaries are not the less useful in encouraging sound learning, because they derive their motives and sanctions from higher than human sources, and the policy which creates a distinction between these and other literary institutions, may be questioned as both unjust and impolitic. The latter have been recognized as legal entities, and made capable to take donations, and it can hardly be objected that religious schools are not equally worthy of the state's regard." (Journal, 1845-46, Document 8).


Bell, pp. 313-318. In fact, he did not apologize for the Presbyterians' application for a charter for their seminary in 1815, but considered it favorably (p. 77).
Incorporation of agencies of churches, which was later held constitutional by the courts. The Presbyterians looked, and saw that it was good, and secured for their Seminary a charter the following year.

Thus it is that the legislature effected the separation of Church and State and in doing so went to an extreme in its zeal; and after tenaciously clinging to that extreme for almost a half-century, it finally became aware of the impolicy of that position and relaxed its over-vigilant antagonism to a point where not only did religious freedom exist, but it was aided by a species of cooperation between Church and State without any legal alliances. And the fact that such was accomplished by 1854 ought to be ample reason why this discussion should end at that point, in spite of the fact that the question has arisen in various ways since then.

Miss Bell summarizes it thus:

"The present attitude of Virginia toward the problem of religion in education, which seeks to pervade education with a strong religious tone, while barring any recognition of that fact in law, is comprehensible enough in light of the review of certain factors in her more than three centuries of history. The interacting relationships of church, state, and education during this period have been controlled by three political philosophies - that of union, that of separation, and that of cooperation without legal alliance between church and state." (190.)


184. Letter from Dean Rollins, Protestant Episcopal Theological Seminary in Virginia, April 22, 1935.


187. Bell, p. 477. Bell, p. 365. In the Constitutional Convention of 1901 the question arose as to whether the legislature ought to be empowered to incorporate churches as well as agencies of the church, but it was finally decided to incorporate the same provision as had been in the Constitution of 1851 (supra) (Debates in Const. Conv. of 1901, p. 745 et seq.), in spite of the fact that it was pointed out that at that time there were 43 States in the Union which granted charters of incorporation to churches (R. C. McDanel, The Virginia Constitutional Convention of 1901-1902,(Johns Hopkins University Studies in Historical and Political Science, Vol. 46, 1928), p. 95.)
And James Madison spoke perhaps even truer than he thought when he said that:

"Torrents of blood have been spilt in the old world by vain attempts of the secular arm to extinguish religious discord by proscribing all differences in religious opinion. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American theatre has exhibited proofs that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State." (191.)

That "relaxation of narrow and rigorous policy" was accomplished in successive degrees during the history of Virginia, and it reached its climax in 1854.

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190. *De pol.* , p. 647.
191. Quoted by Semple, p. 506.
CHRONOLOGICAL COMPILATION
OF
ABSTRACTS OF LAWS
WITH
TOPICAL INDEX
The following index had to be adapted to the peculiarities of this paper; consequently, it is not an index directly to the laws pertaining to Religion in their primary sources, but rather it is an index to the laws as they are listed in the chronologically arranged abstracts. Its purpose is to enable the reader to trace specific aspects of the laws chronologically through the abstracts. By referring to the location in the lists of abstracts, the investigator may find the specific page of the statute book on which the full text of the law may be found.

The first number indicated refers to the number of the page of the Compilation of Abstracts where the law in question is referred to; the second number indicates the date of the particular session of the Assembly which enacted the law; the third number refers to the number of the act in question, as it is listed in the statute books. Thus, 19, 1738, II would be interpreted to read: On page 19 of the Compilation of Abstracts, in the laws of the session of 1738, Act number II, concerning the particular topic in question, will be found.

Attendance at church services: 1, 1623-4, 2; 2, 1629, VIII; 2, 1631-2, II;
3, 1632, II; 4, 1642-3, XLI; 7, 1657-8, III; 10, 1660-1, IX; 12, 1675-6, Articles... 14, 1691, XI; 15, 1699, I; 19, 1738, II; 19, 1744, II; 25, 1766, XXIX; 25, 1769, XXVI; 26, 1775, II; 31, 1785, XXXIV.

Benefit of Clergy: 18, 1732, VI; 18, 1733, VII; 22, 1748, XXXVIII; 33, 1789, XXII; 34, 1792, 38; 34, 1792,47, 65; 35, 1796, 2; 39, 1819 (Rev. Code), 172; 41, 1847, XI; 42, 1849 (Rev. Code), CXCIX.

Burial: 11, 1660-1, XV; 17, 1712, IV.

Catechism: 5, 1645-6, V; 8, 1660-1, XXXII.

Churches, location, etc.: 1, 1623-4, I; 2, 1628, 2; 3, 1631-2, XIII; 1631-2, XV; 3, 1632, V; 6, 1655, IX; 8, 1660-1, Order (1); 10, 1660-1, I; 17, 1710, XII; 17, 1712, IV; 17, 1715, III; 17, 1722, XII; 22, 1752, VI; 27, 1776, II; 32, 1785, CXI; 36, 1801, 5; 42, 1849, (Rev. Code), XXXV; 43, 1852, 1, 99.

Church Wardens: 2, 1631-2, III; 2, 1631-2, IV, XIV; 3, 1632, III, VIII; 4, 1633, XX; 5, 1644-5, VI; 5, 1645-6, I-II; 10, 1860-1, XIII-XIV; 15, 1676, VI; 14, 1696, I; 17, 1727, VII; 21, 1748, XVIII; 25, 1769, LIV; 29, 1780, XII; 31, 1784, XLIX; 31, 1785, IV.


Disability from holding office: 4, 1642-3, I; 7, 1657-8, II; 15, 1699, I; 16, 1705, IV; 18, 1730, II; 31, 1785, XXXIV; 42, Const. of 1830.
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Divorce: 33, 1789, LXXIX; 33, 1790, XLII; 37, 1803, 64; 39, 1826, p. 21; 40, 1840, p. 78; 41, 1847, 122; 43, 1858, 35.

Dissenters: 4, 1642-3, LI; 5, 1642-3, LXIV; 6, 1654 (Atheist); 7, 1659-60, VI (Quakers); 10, 1660-1, IX (Recusants); 11, 1662, III (Scismatical persons); 11, 1663, I (Quakers); 12, 1663, Order; 15, 1699, I (toleration); 16, 1705, XIX (Quakers); 17, 1705, LV (Huguenots); 18, 1730, XXIV (German Protestants); 18, 1732, XI (Quakers); 19, 1735, XII (Foreign Protestants); 20, 1748, VI (Papist); 23, 1755, IV (papist); 24, 1759, XXI (dissenting vestrymen); 24, 1762, I (Quakers); 27, 1776, I (Declaration of Rights); 27, 1776, II (exemption from support of Established Church).

Education: 6, 1655, II; 8, 1660-1, XX; 8, 1660-1, Order (3); 11, 1660-1, XVIII; 14, 1693, III; 24, 1759, XXI (inc. of Prot. Ep. Ch.); 32, 1786, XII (repeal of inc. of Prot. Ep. Ch.); 38, 1813, LVII (inc. of Bible Society); 39, 1829, 48 (R.M. Coll.); 40, 1839, 12 (Devises to theol. sem.'s); 40, 1839, 184 (J.A. Coll.); 40, 1839, 115 (Richmond Coll.); 40, 1839, 116 (Bethany Coll.); 40, 1840, 167 (academic); 40, 1841, 102 (devises to religious congregations); 41, 1844, 119, 120 (Marshall Acad., etc.); 42, 1849, (Rev. Code) (devises, etc.); 43, 1852, Constn.; 43, 1852-3, 344 (Roanoke Coll.); 43, 1853-4, 107 (Prot. Ep. Theol. Sem. inc.).

Indians: 6, 1665, II; 12, 1670, V; 16, 1705, XIX; 22, 1748, XXXVIII; 22, 1753, IX; 25, 1769, LIV.

King: 5, 1649, I; 6, 1651, Art. 11.

Legislature: 6, 1653, Order (minister ineligible); 7, 1659-60, Order; 12, 1663, Order; 13, 1676, XII.

Lord Protector (Cromwell): 7, 1656-9 (Communication).

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Marriage: 1, 1628-9, I; 2, 1631-2, VI; 3, 1632, V; 4, 1642-3, XX; 5, 1645-6, XIV; 6, 1655, XII; 7, 1656-7-8, I; 7, 1657-8, XIV; 10, 1660-1, XII; 11, 1660-1, XVIII, XCIIX; 12, 1670, VI; 14, 1689, X; 16, 1705, XLVIII; 18, 1730, II; 21, 1748, XXXIV; 22, 1753, VII; 28, 1776, XXV; 29, 1780, XVI; 30, 1783, XXXV; 30, 1784, XXXVII; 32, 1788, XXIII; 34, 1792, 42; 35, 1794, 15; 35, 1796, 28; 37, 1811, XV; 35, 1817, XVIII; 39, 1819 (Rev. Code), 106; 39, 1830, XXXV; 40, 1831, XXIX; 41, 1844, 67; 42, 1847, 121.

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G. Ass., Mch. 10, 1655

Act IX- All the counties to be divided into parishes, which levy poll tax (15 lb. tobacco per poll) for building churches and purchasing a glebe and stock for the minister; vestries of respective counties responsible for tobacco levied.

XII- No guns to be shot except at marriages and funerals.

G. Ass., Mch. 31, 1655

II- Indian children, by leave of their parents, may be taken as servants, but must be educated and brought in the Christian religion.

V- A reward of 20 pounds sterling for importing a minister, ministers being few.

Order; that ministers and six servants each to be exempted from public levies, but subject to examination.

G. Ass., Mch. 13, 1657-8

(A revision of the laws having been ordered by the assembly, these acts following are among those which serve as a summary of all laws in force in the Commonwealth at that time).

I- Various problems concerning parishes or parishioners be referred to the people of the parish; registers of births, marriages, and deaths,
and celebration of marriages

II. Persons guilty of drunkenness, blasphemous cursing and swearing, adultery and fornication, incapable of being a witness or of holding any public office; penalties

II. The Sabbath to be kept holy: no journey to be performed, no goods laden, nor guns fired on the Sabbath; penalty; servants and others to attend church

XIV. Concerning secret marriages: Servants marrying without consent of master to serve one year after their respective terms; concerning penalties for fornication between servants and between free man and servant.

LII. No writ or warrant to be executed at a muster nor on a Sabbath day.

LVIII. Holy days in commemoration of colonies' deliverance from massacres.

XIV. Against shooting at drinkings (in effect, the same as G.A. March. 1655-6, p. 401)


Communication from Council of the Lord Protector, exhorting the colony to pursue their former course; preserving peace and promoting religion


X. Concerning the charges of a parochial Burgess; Vestry of each parish electing a Burgess to direct payment of his wages; collectors may exact payment by distress.

26. G.Ass., Mch. 13, 1659-60

VI. An act for suppressing the Quakers: Fine of £ 100 sterling on masters of vessels for bringing in quakers; all quakers to be apprehended and committed to prison till they give security to leave the colony; penalty for returning; for returning a third time, to be proceeded against as felons; penalty on colonists for entertaining or permitting assemblies of quakers; duty of magistrates and officers relative hereto; penalty for publishing books containing the tenets of the quakers.

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(2) that vestries destitute of means to support an able ministry procure subscriptions from neighboring vestries who are willing to help support the ministry. 37
(3) Provision for a college: Commissioners of county courts make and receive subscriptions for promoting the building of a college 37

(The following acts constitute part of the complete code which was intended to be in effect after this session of the assembly, the revisal being made to clarify the law which had become somewhat confused during the "late unhappy distractions"--referring to the many changes in the law during the recent government of the Commonwealth of England,
I-A church or a chapel to be built in every parish

II-Vestries: Duties, how appointed, number; how vacancies in vestry to be supplied; vestry-men to take oath of allegiance and supremacy and subscribe to conform to the church of England

III-Provision for the ministry: Glebes to be laid out in every parish; at least 80 per annum salary, besides perquisites and glebe.

IV-Induction of ministers: to receive ordination from some bishop in England only; how inducted; those not properly inducted to be suspended and sent out of the colony. (see Act 64, Vol. I, p. 277)

V-Every parish without a minister to have a reader chosen by the parish.

VI-Canons of the church of England to be observed and liturgy read.

VII-Only the catechism appointed by the church to be taught; readers not to expound catechism or scriptures. (see Vol. I, p. 157, 182)

VIII-Ministers to preach every Sunday and administer sacrament twice a year. (see I, 151, 181, 290, 311)

IX-Sundays not to be profaned, but kept holy: No work done, except in cases of necessity; divine service and preaching to be diligently attended on Sundays and holy-days; general penalty for violation; further penalty on quakers and recusants, who are to be fined under stat 23d Eliz.; quakers' meetings, prevention and punishment; more able to pay insolvents' fines. (see I, 144, 261, 434).

X-January 30 to be a holy-day, commemorating the beheading of Chas. I.

XI-May 29 to be a holy-day, commemorating the restoration of Chas. II.

XII-No one to be married except by ministers according to the laws of England, viz. not without license or publication of banns; penalty upon minister violating; issue of persons hereafter married otherwise to be illegitimate. (see I, 156, 181, 241, 332, 433).

XIII-Church wardens to make presentments of certain enumerated offences twice a year and may summon witnesses.
IV- Power and duty of churchwardens to keep the church in repair and provide certain ornaments, and to collect ministers' dues. 52

V- Private burial of servants or others prohibited; burying places to be appointed in every parish; neighbors to be called in to view the corpse in case of suspicion; none to be buried in any other place, except by their own appointment. (see I, 123, 161227, 241) 53

VI- Register of births, deaths and marriages to be kept by ministers or readers; penalty for omitting to inform minister or reader; fees for entering register and fine for neglect to enter. (see I, 155, 158, 180, 182, 433, 542) 54

VII- Issuance of marriage licenses: how issued; governor's, clerk's, secretary's and minister's fees, and how collected. (see I, 156, 181, 241, 433; II, 28) 54-55

VIII- Provision for a college: lands to be taken up or purchased for a college and free school. (see II, 25, 37) 56

IX- No arrests on Sabbaths or certain holidays, or at musters or election of burgesses, except for felony or breaches of the peace. (see I, 457) 86

X- Penalty on secret marriage: on minister for marrying servants without a certificate from their masters; upon the servants; upon a free person marrying with a servant (see I, 252, 438). 114

C- Punishment for fornication upon free persons and servants; provision for bastards. 114-115

Grand Assembly, Dec. 23, 1662

III- "Scismaticall" persons, refusing to have their children baptized, to be fined 2000 lbs of tobacco. 166

VI- Disposition of women servants gotten with child by their masters 167

VIII- Men servants getting bastards to indemnify the parish for expense of keeping the child during the reputed father's indenture. 168

XII- Double fines for fornication between a Christian and a negro. 170

G. Ass., Sept. 10, 1663

I- An act prohibiting the unlawful assembling of Quakers: Quakers as-
sembling to the number of five for the purposes of religious worship, how punished for first, second, and third offences (third offence, banishment from the colony); the more able Quakers to pay the fines of the insolvents; fine upon masters of vessels for bringing in Quakers; penalty on inhabitants for entertaining Quakers to preach; penalty on officers for neglecting the execution of this act; justices of the peace to hear and determine the offences in these cases; disposition of fines; Quakers who, after conviction, give security not to violate the above provisions, to be released from the penalties imposed. (see 3 I,53; II,48)

Ordered: (Sept. 12, 1663) John Porter, a member of the House of Burgesses, expelled for his attachment to Quakers, his opposition to infant baptizing, and his refusing to take the oaths of allegiance and supremacy.

Resolution: Sept. 13 declared an annual holy-day, commemorating the failure of the plot of that date.

G. Ass., Sept. 23, 1667

III- An act declaring that baptism of slaves does not alter the condition of the persons nor exempt them from bondage.

G. Ass., Sept. 17, 1668

1- August 27 next to set aside as a fast day, and no working, drinking, nor gambling to be done, under penalty of fine; duty of ministers prescribed.

G. A., Oct. 3, 1670

V- Free negroes and Indians not permitted to buy Christian servants, but may buy those of their own nation.

VI- Certificate for marriage only to issue from the clerk of the county where the parents dwell; their personal consent necessary.

G. A., Nov. 7, 1675-6

I. (last provision) Last Fridays in April and May next to be set aside as fast days, to obtain the good pleasure of Almighty God upon their endeav-
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Genl. Ass., April 16, 1691

XI - An act for the more effectual suppressing the several sins and the offences of swearing, cursing, profaning God's holy name, Sabbath abusing, drunkenness, fornication and adultery; fine of one shilling imposed for every offence of swearing, cursing, or profaning God's holy name; Lord's day to be kept holy; no meetings, assemblies, or concourse of people out of their own parishes or travelling permitted on the Sabbath, under penalty of 20 shillings fine; fine of 10 shillings for getting drunk; not being able to pay fine, committed to stock for three hours; fornication, 20 20 sterling fine; adultery 5/sterling fine; 30 lashes or 3 months imprisonment if unable to pay fine; persons frequenting the company of a lewd woman or entertaining her in his house after being admonished by the minister and churchwardens with the consent of the vestry to be punished as for adultery; grand jury to present offences under this law; appropriation of fines.

Oct. 10, 1693, G.A.

III - An act ascertaining the place for erecting the College of William and Mary in Virginia (at Middle Plantation, now Williamsburg)

G.A., Sepy. 24, 1696

I - An act for punishment of certain enumerated sins and offences: cerm previous laws repealed; penalties for swearing, cursing, profaning God's name, not keeping the Sabbath holy, drunkenness, fornication, and adultery. (very similar to Act XI, G.A., Apr. 16, 1691, in content); special provisions for fornication and adultery by servants, and for bastards of servants; grand juries and churchwardens to present offences; justices empowered to punish offenders according to the act; method of recovering penalties; all children to be bond or free according to the condition of the mother.

X - For prevention of clandestine marriages: former act repealed (Vol. II, p.49); none to be married except as the rubrick in the common prayer
book prescribes; penalty on ministers for marrying otherwise and on clerks for issuance of licenses in violation of provisions of this act; females between 12 and 16 years of age contracting marriage forfeit their inheritance to the next of their kin.

XI- For the better supply and maintenance of the clergy: salary of ministers fixed at 16,000 pounds of tobacco per year, besides perquisites; vestry of each parish to appoint collectors, who may make distress; vestry empowered to purchase a glebe at the expense of the parish and build a house for the minister; providing when small parishes may consolidate; fee of clerk of registers for births, marriages and deaths.

G.A., April 27, 1699

I- An act for the more effectual suppressing of the blasphemy, swearing, cursing, drunkenness, and Sabbath breaking; to deny by spoken or written word the being of a God or the trinity, or to assert that there are more gods than one, or to deny the Christian religion to be true; or the scriptures to be of divine authority, subjects the offender, for the first offense, to incapacity to hold any office; for the second offense, to disability to sue and disqualification to be a guardian or executor, or to take any gift or legacy, and moreover to further incapability of holding any office, and three years imprisonment, provided that information of the blasphemy be given the justice within one month and prosecution within twelve months; convicted offender may, by renouncing opinions within six months, be discharged from the penalties; for cursing, swearing, or drunkenness, offender to pay 5 shillings fine; what deemed sufficient evidence for conviction; 10 lashes in case of inability to pay fine; 5 shillings fine for neglecting to attend church, but Protestant dissenters, qualified according to the toleration act of 1 Wm. and Mary, shall be exempted from penalties for not attending parish church. (Provisions of Toleration Act in Blackstone's Commentaries, IV, 52, 53).

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Chap. III, VI: No process or writ executed by sheriff or duties on Sunday or at musters or elections to be valid, except (VII) for treason, felony, breaches of the peace, or prison escapes.

Chap. IV: Blasphemy and perjury among offences which bar offenders from bearing any office in Virginia.

Chap. XIX: Proceedings of the General Court: Provision XXXI-Affirmation of Quakers, instead of solemn oath, allowed in being called as witness, according to an act of Parliament; popish recusants, regroes, mulattoes, and Indians, not being Christians, deemed incapable of being witnesses.

Chap. XXX: An act for the effectual suppression of vice, and restraint and punishment of blasphemous, wicked, and dissolute persons: Blasphemy, atheism, deism, and infidelity punishable as in act I, G.A., April 27, 1699 (content substantially the same); Adultery and fornication, how punishable (similar to foregoing acts); fines appropriated to the poor; the act to be read in churches; clergymen violating present act not exempted from further punishment.

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G.A., May 21, 1730

II. An act for enforcing the act entitled "An act for the effectual suppression of vice and restraint and punishment of blasphemous, wicked and dissolute persons", and for preventing incestuous marriages and copulations: Offences made punishable by incapacity to hold office, etc., to be triable in the general court; marriage within levitical degrees (as set forth in laws of England) prohibited, and such marriages dissolved by general court, issue of such marriages being illegitimate; attorney general to prosecute; parties further punished at discretion of court; incestuous copulations, punishable by fines within discretion of general court; such fines appropriated for the support of the poor.

XXIV. An act to exempt certain German Protestants, in the county of Stafford, from the payment of parish levies.

G.A., May 18, 1732

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XI. Provision exempting Quakers from oath in this act, allowing them to affirm instead.

G.A., Aug. 22, 1734

XIX. Glebes in several parishes directed to be sold and the money applied to other parochial uses.

G.A., Aug. 5, 1736

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2. Procl. of Gov., containing an appointment of a day of thanksgiving for the peace treaty concluded between the Queen (Anne) and the Governor (Spotswood). (Aug. 12, 1713).

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64 G.A., Nov. 1, 1738
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CH. XII- An act to encourage settlement of the southern boundary of the colony by aliens - also "foreign protestants" - by exempting settlers from certain levies.

CH. XXI, provision V: certain aliens settling must take oaths of allegiance and supremacy.

59. G.A., May 22, 1740
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59. G.A., Sept. 4, 1744
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[Text content]
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CH. X- provision V- Processes, except in criminal cases or escapes, executed on Sundays or at musters or elections of burgesses, invalid.

CH. XIV, provision IX- Christians may not be servants of certain races: negroes, etc.

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CH. XVIII, pr. VI- Parishes pay charges of supporting poor and sick vagrants until they are well enough to be sent to their own parishes; penalties upon vestries and churchwardens for refusing to do so.

CH. XXI- An act for preventing excessive and deceitful gaming: ill gaming debts void; real estate encumbered by gaming devolves to next heir; loser of forty shillings or more may sue to recover money lost and paid; if loser does not sue in three months, any other person may do so, being able to recover as much as treble the money paid, besides costs; but repayment discharges the penalty; penalties on persons playing at public places; penalty on gaming quarrels and brawls.

CH. XXXII- An act concerning marriages. (a summary of foregoing provisions concerning marriage): No person shall be married without a license or publication of the banns; penalty on ministers marrying other ways, and on clerks, etc., for granting a false certificate of the banns being published; the manner of issuing marriage licenses; under 21 years of age, consent of parent or guardian required; feme sole, between 12 and 16, forfeits inheritance upon marrying illegally; penalties on publishing banns for, or marrying, servants without certificate of master; penalties on servants marrying illegally, and on free persons marrying servants; marriage fees.
An act for the support of the clergy, and for the regular collecting and paying the parish levies: salary of ministers; time and manner of laying the parish levy; provision for vacant parishes; how levy to be collected and paid; provision for glebe lands and buildings; buildings upon glebe lands and buildings; buildings upon glebes to be kept in repair by ministers; ministers' rights; vestries' right of presentation declared and limited.

CH. XXXVIII- pr. III-IV- When a servant may, and when he may not, have benefit of clergy upon conviction of offenses.

Pr. XX- Negro, mulatto, or Indian who lifts his hand against a Christian white person, to have thirty lashes.

CH. VI- An act for enlarging the church in the city of Williamsburg, and purchasing an organ for it.

CH. XXI- Encouragement to foreign Protestants to settle along the Mississippi (see also CH. VI, G.A., Nov. 1, 1753, p. 355)

CH. XXII- An act for dissolving the vestry of Frederick parish for corruption and misapplication of levies; provision for election of new vestry therein.

CH. XXVIII- An act for dissolving the vestry of the parish of Nottoway, due to illegal election, and provision for new election.

CH. VII:

IV- Baptism of slaves does not exempt them from bondage.
IX- Negroes, etc., may not have a Christian servant.
XIII- Rules as to women servants having bastard children,
XIV- No white to intermarry with a black or mulatto.

CH. VIII- An act for paying certain ministers one hundred pounds annually instead of the salaries now allowed.

CH. XXI- An act to enable the vestry of the parish of Blisland to sell
a plantation and 200 acres of land in the said parish, and to buy communion plate and ornaments for the lower church in that parish, with the purchase money.

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CH. VI- An act for employing and better maintaining the poor by the vestry of each parish: vestry to have power to purchase or rent a tract of land whereon to have a workhouse built, where beggars and able poor people be sent to work, in exchange for their support by the parish; vestry to have power to make ordinances relating to the poor in the workhouse; able poor refusing to work not allowed to receive relief; churchwardens to keep a register of the poor; poor to wear a badge.

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CH. XVIII-, CH. XXIII, CH. XXIV, Dissolution of other vestries and new elections.

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CH. IV- An act for disarming papists and reputed papists refusing to take the oaths to the government: When a person is known or suspected of being a papist, to be tendered by justices of the peace the oaths appointed by act of parliament to be taken instead of the oaths of allegiance and supremacy; may not possess arms nor ammunition other than is allowed by justices for protection of their persons; justices may order search and seizure of all arms possessed by papists; defaulting or violating papists to be imprisoned and fined; those apprised of papists' holding arms and not reporting same, or abetting such papists, to receive same punishment; persons exposing armed papists to receive reward amounting to value of arms discovered; if offender, desiring to conform, takes prescribed oaths, he will be discharged of disabilities; no papist to keep any horse above the value of 5 pounds to be sold, under penalty of imprisonment and fine.

35-39
G.A., Apr. 14, 1757

CH. XII - An act to explain appointment and resignation of vestrymen: vestrymen may resign; vacancy to be supplied by election by remaining vestrymen; those vestrymen elected to take oaths appointed by an act of parliament, instead of the oaths of allegiance and supremacy, as well as subscribing to a declaration prescribed by an act of parliament (1 Geo. I, Oath of allegiance to George I), and shall subscribe to be conformable to the doctrine and discipline of the church of England.

G.A., Feb. 22, 1759

CH. XXI - An act for dissolving several vestries guilty of arbitrary, oppressive and illegal practices, and for holding a new election of vestries in those parishes; method of disqualification of vestrymen belonging to or joining congregations dissenting from the church of England; disqualified vestrymen may qualify for re-election upon becoming a communicant of the church of England; seven members the minimum to constitute a vestry; if less than seven qualified vestrymen, such vestry to inform the General Assembly; seven members of the vestry to constitute a quorum.

CH. XXX - An act for the better regulating Eaton's Charity School: masters appointed by trustees, subject to examination by the minister of that parish; restricting admission of pupils to those who are in need of charity.

Nov. 2, 1762

CH. I, pr. XIII - Quakers allowed to affirm rather than swear on oath in regulating the elections of burgesses.

VOLUME VIII 1764 - 1773

G.A., Jan. 12, 1764

CH. III - An act to empower the vestry of the parish of Elizabeth River to purchase and improve lots in the borough of Norfolk for the use of
the minister, instead of a glebe, and to pay their minister's salary in money instead of tobacco.

CH. G.A., Nov. 6, 1766

CH. XXI—In an act concerning the better regulating and disciplining the militia, Quakers are among those exempted from militia duty; Quakers only ones exempted from providing arms; in case of invasion or insurrection, each Quaker (all between 16 and 60 are enrolled) to serve or provide an able substitute, under penalty of heavy fine; a proviso in the act preventing discrimination against Quakers (int.); Quakers, in order to be exempted from military service, must furnish testimonials of their membership, in good standing, in the society.

CH. XXXIX—An act for exempting the minister and other parishioners of St. James's parish, in Mecklenburg county, from the payment of ferryage on Sundays, court days, and general muster days, since they are obliged to attend these meetings, thus putting them at an unfair disadvantage.

CH. XXVIII—An act for increasing the salary of a minister.

CH. XVII—An act for preventing and suppressing demoralizing private lotteries.

CH. XXVII—Method of proceeding to compel the fathers of bastard children, born of free single women, to indemnify the parish for the expense of their maintenance; the woman not compilable to be examined before delivery; fine for having a bastard, but not to be whipped; master of convict servant women to maintain their bastard children and provide for their education, etc., as for apprentices, being entitled to their services until they are 21 (boys) or 18 (girls).

CH. XXXVI—CH. XXXIX, G.A., 1766 (p. 257), repealed.

CH. LIV—An act empowering the churchwardens and vestry of the parish of Hungars, in Northampton county, to lease out certain lands, and ap-
appropriety the proceeds for the relief of aged, sick and disabled Indians.

§3. G.A., Feb. 10, 1772

An act to allow the minister of a certain parish the same salary as other ministers are entitled to receive.

HENING VOLUME IX 1775 - 1778

(As to the reliance of the colonists in rebellion on the Sovereign Disposer of All Events, see declaration of the convention in their Journal of Dec. 13, 1775).

ORDINANCES OF THE CONVENTIONS OF DELEGATES, during the Revolution and prior to the adoption of the first Virginia Constitution on June 29, 1776: the "INTERREGNUM".

1. Convention of Delegates, July 17, 1775

CH. II- Articles of War:

Art. II- All soldiers recommended to attend diligently all divine services; penalties prescribed for indecent behavior or irreverence at divine services.

Art. III- Same penalties as above on soldiers guilty of profanity, and penalty prescribed for officers for same; gaming, how punished.

Art. LXXI- Chaplain guilty of infamous behavior to be discharged from office.

2. Convention, Dec. 1, 1775

CH. V- Members of a certain vestry who have resigned request ed to resume offices; if a certain number refuse to do so, the vestry to be dissolved and a new one elected; qualifications for vestrymen henceforth (being the first prescription of vestry qualifications since the break with the mother country): take oath to execute well their duties.
as vestrymen and subscribe to be conformable to the doctrine and discipline of the church of England (N.B. No oaths of allegiance or supremacy required).

Conventio

CH. I- A Declaration of Rights

Art. 16- Toleration in Religion: "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, towards each other.

CH. XII- All overseers, quakers and menonists to be enrolled in militia, but quakers and menonists exempted from attendance at musters.

Acts of the General Assemblies, subsequent to the adoption of the Constitution on June 29, 1776.

G.A., October 6, 1776

CH. II- An act for exempting the different societies of Dissenters from contributing to the support and maintenance of the church as by law established, and its ministers: Acts of parliament punishing the holding of religious opinions, not attending church, or exercising any mode of worship, held invalid henceforth; all dissenters exempt from levies for support of the established church and its ministers; except, that vestries are empowered to levy for arrears of salary, prior contracts, and provision for the poor; glebes, churches, ornaments, donations, perpetually reserved to the use of the parishes; solution of dispute as to whether general assessment or voluntary contributions for the support of the several denominations deferred to later assembly; act providing a fixed salary for the clergy temporarily suspended, leaving support of the clergy voluntary; lists of tithables, how taken, and penalties
for neglect of duty, etc. 164-167

CH. XXV (Oct. 1776) Fees of Governor for marriage licenses abolished 225

2 G. A., May 5, 1777.

CH. I-Ministers of the gospel licensed to preach according to the rules of their sect, who shall previously have taken an oath of fidelity to the Commonwealth, are among those exempted from service in the militia. 267

CH. XVI-Compulsory levy for the support of the clergy of the church of England further suspended. 312

3 G. A., Oct. 20, 1777

CH. I-Quakers and menonists drafted for service in the militia to be exempted from personal service; but expense of providing substitutes for them to be defrayed by equitable assessment on the whole society of quakers or menonists. 345

Baptists and Methodists privileged to serve under officers of their own religion, the subordinate officers being elected by them and the superior officers being appointed by the Governor. 348

CH. XIII-An act for further suspending the payment of certain fixed salaries for ministers of the church of England by parishes, in favor of voluntary contributions. 387

4 G. A., May 4, 1778

CH. XVIII-Fixed salaries of clergy further suspended (again suspended CH. XXXVIII, Oct. 1778, p. 578) 469

5 G. A., Oct. 5, 1778

CH. XXI-Religion of inhabitants of newly created county of Illinois respected. 553

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6 May 3, 1779

CH. VII-An act permitting those whose religious beliefs forbid their taking oaths to be qualified by solemnities and forms in every case where an
oath has heretofore and henceforth will be required by law.

CH. XXXIX—Further suspension of payment of salaries of clergy

7, G. A., Oct. 4, 1779

CH. XXXVI—An act to repeal so much of the act for the support of the clergy, and for the regular collecting and paying the parish levies, as relates to the payment of the salaries by levies by vestry, heretofore given to the clergy of the church of England; provided that all debts or contracts as of Jan. 1, 1777, arrears of salaries of ministers, and provision for poor are to be paid by parish levies.

CH. XLII—An act to suppress excessive gaming: contracts for paying gaming debts void; conveyances to secure money, etc., won at gaming, to enure to the benefit of the loser's heir; penalties on those who play or bet at games or wagers; lotteries and raffling prohibited, etc.

CH. XII—Quakers or menonists drafted exempted from personal service, but a substitute to be provided at the expense of the society, recoverable by distress on goods and chattels of assessed person, if he refuses to pay. (see also CH. XXXV, May 1780, p. 314; CH. 111, Oct. 1780, p. 334; CH. XVIII, May 1781, p. 417)

CH. XXII—An act for electing a board of overseers of the poor, which is to succeed to the powers and duties of vestries and churchwardens.

CH. XVI—An act declaring what shall be a lawful marriage: All Christians may legally be married according to the rules and usages of their respective religious societies (former marriages by dissenting ministers confirmed); provided, that the marriage be not incestuous according to the former law, and that no marriages (except between quakers and menonists) without license or publication of banns; penalties and fees prescribed and limited; certificates of all marriages to be re-
turned to the clerk of the court and recorded, and penalty for not doing so; county courts to license dissenting ministers who may marry, not exceeding four of one sect per county. 361-3

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11. G.A., May 5, 1783
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CH. XXXV- An act to authorize certain laymen to perform marriage ceremony if parties produce a license or certificate of publication of banns; how publication of the banns shall be made; fees and penalties; certain former marriages performed by magistrates and others are confirmed; provided that no incest nor polygamy be allowed. 281

12. G.A., May 3, 1784
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13. G.A., Oct. 18, 1784
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CH. XXXVII- An act to regulate the solemnization of marriages (a general procedure): By any ordained minister, upon the presentation by the parties of a license, according to the forms and customs of his church, provided the minister produces credentials granted by county court upon his taking oath of allegiance and furnishing in bonds; testimonials for performing marriage not to be granted to itinerant minist-
ERS; quakers, menonists, and similar Christian societies may unite in matrimony according to the regulations of their societies; former marriages, except where incestuous or polygamous, declared valid; fees and penalties prescribed; register of all marriages preserved by clerk of county (based partly upon "Concerning Marriages", 1748). 503-5

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CH. XXXIV- An act for establishing religious freedom: (The preamble being a very eloquent and logical citation of reasons for the passage of the act); No man compelled to frequent or support any religious worship, nor suffer in any way on account of his religious beliefs; all free to profess and by argument to maintain their religious opinions, without such in any way affecting their civil capacities; declaration (not a provision) that the rights asserted by this act, although by law
they may be rescinded, are the natural rights of man, and any law re¬
pealing this act or narrowing its application, is an infringement of
natural right.

CH. XXXVII- An act to authorize the election of certain vest¬
*F* rews, provi¬
*P* sion made in the incorporation act concerning same having been pre¬
*V* vented from being carried out in certain parishes within the limited
time provided by the same.

CH. CXI- Minister and elders of the German Lutheran Church authorized
to raise money by a lottery to complete a church; also, a vestry empow¬
ered to do the same.

G.S.A., Oct. 16, 1786

CH. XII- An act to repeal the act for incorporat¬
ing the Protestant Epis¬
*P* copal Church, and secur¬ing to each religious society its prop¬erty, and
authorizing it to regulate its own discipline by appointing trustees, ac¬
cording to the rules of its sect, to manage such property.

CH. XVII- An act amending the act to elect overseers of the poor, some¬
what extending their powers and duties, and defining and enlarging
the jurisdiction of the county courts in relation to the poor.

CH. LIV- No officer to arrest any licensed minister while such mini¬
ster is holding religious services; any person maliciously disturbing
any congregation in place of religious worship to be restrained by any
justice present and imprisoned in default of two securities; any per¬
son found working, or employing any other, at works not of necessity
or charity to be fined ten shillings for each offense, each person so
employed and each day so employed constituting a distinct offense.

CH. XLVIII- An act to amend the act concerning the poor.

G.S.A., June 23, 1788

CH. XXXII- Degrees of consanguinity, within which marriages are prohib¬
itied, prescribed.

CH. XXXIV- Bigamy and polygamy defined and made punishable by death.
HENING VOL. XII 1785 - 1788

CH. XLVII- Trustees of the property of the Protestant Episcopal Church to be considered successors to former vestries, with same power of holding and managing all property vested in them.

CH. LIII- Trustees of religious societies to collect balances due to parishes for arrearages.

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G.A., Oct. 19, 1789

CH. XXII- Benefit of clergy deprived of principals in the first and second degrees of murder, burglary, arson at common law, wilful burning of certain public buildings of prescribed classes, etc.; also deprived of accessories before the fact in certain prescribed cases, similar to the above; when benefit of the clergy allowed, unless expressly taken away by act of assembly; females on par with males in receiving benefit; slaves on par with free negroes and mulattoes in receiving benefit; benefit not deprived of any person guilty of any offense which is expressly allowed to such offense by previous acts, nor allowed to any person guilty of any offense which is expressly taken away by any act of assembly.

CH. LXXIX- Prescribing the mode of procedure in securing a dissolution of marriage of one woman with a husband guilty of desertion and adultery. (seemingly an early form of divorce)

G.A., Oct. 18, 1790

CH. LIX- An act authorizing and requiring the trustees of the Protestant Episcopal Church to sell the glebe lands in the county of Hardy, and for other purposes therein mentioned.

CH. XLIII- Prescribing a similar procedure (see Vol. XIII, CH. LXXIX, p. 97 above) in securing a dissolution of marriage of one man with a wife guilty of desertion and adultery.

(Another case of dissolution of marriage, on slightly different
grounds, is provided for in CH.LVII, OCT.1791, p.301 infra ).

G.A., Oct. 17, 1791

CH. LXIX- An act authorizing lotteries for the benefit of the Episcopal Society in building and repairing certain churches and glebes. 314

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G.A., Oct1, 1792

CH. 18- Attachment against absconding debtors may be issued and served on the Sabbath 40

CH. 19- Sheriff not to serve processes on Sunday except in cases of treason, felony, riot, breach of the peace, and prison escapes. 46

CH. 34- An act reducing into one the several acts to prevent unlawful gaming ( In effect, the same as previously, with minor variations and additions ). 105-10

CH. 38- An act making the crime of buggery a felony, punishable by death without benefit of clergy. 113

CH. 42- An act to regulate the solemnization of marriages, prohibiting such as are incestuous or otherwise unlawful; to prevent forcible and secret marriages; and for punishment of the crime of bigamy ( being a summary of foregoing laws with the following variations and additions : fee of minister for performing marriage ceremony to be no more than one dollar, and a fine to be exacted from a minister, clerk, or reader for refusing to marry, publish bans, or exacting more than legal fees; bigamy made a felony, punishable as such; felony to take any woman or woman child unlawfully against her will, punishable by imprisonment 1. 130-6

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§3 (fine per offense) for profane swearing, cursing and drunkenness; no licensed minister to be arrested while performing divine service; any person disturbing a congregation to be arrested and bound to good behavior; § 1.67 fine per offense of laboring or employing labor not of necessitous character on Sunday; § 20 and § 10 fine for adulterers and fornicators, respectively.

1. G.A., Oct. 21, 1793
Ch. I, Sect. 14 - Quakers and menonists in good standing exempted from actual service in militia, provided they furnish a satisfactory substitute.

22. G.A., Nov. 11, 1794
CH. 15 - An amendment to the act concerning marriage, providing that in two certain counties the county courts may appoint two persons, in the absence of ordained ministers, who are to have the powers, duties, and fees of ministers, as regards performing matrimony.

33. G.A., Nov. 10, 1795
CH. 1 - Ministers of the gospel exempted from actual militia duty; also quakers and menonists, under aforementioned conditions.

VOLUME II (New Series) 1796 - 1802

34. G.A., Nov. 8, 1796
CH. 2 - First degree murder the only crime hereafter to be punishable by death; benefit of clergy done away with entirely.

CH. 28 - Benefit of act allowing certain appointees of county courts to perform matrimony in the absence of ordained ministers, extended to two other counties; certain provisions as to the certification by the clerk that bond and permission of parents for marriage have been given, repealed. (There follow after this act many more extending to other counties who have no regular ordained minister the privilege of making such appointments. Since these acts are almost identical in content and are
of no particular individual interest except as a part of the whole series, they will not hereafter be individually indicated).

CH. I-So much of any act as exempts Quakers and Menonists from mustering (underscoring mine) is repealed.

CH. 9-Restatement of the construction of the Bill of Rights and the Constitution, concerning the complete divorcement of any government of religious sects or societies from the civil government, and the repeal of all acts which have assumed, or have seemed to admit, that the civil government has any connection with an ecclesiastical government; these acts repealed are: act for exempting dissenters from support of the church, act for repeal of act allowing fixed salaries to ministers of established church, various acts for incorporating religious sects or bestowing certain powers upon trustees thereof; the subject of religion, as in the Bill of Rights, to be referred entirely to conscience.

(But there follow after this act several acts authorizing the sale of certain glebe lands, all of which lead up to the following act:—)

36. G. A., Dec. 7, 1801

CH. 5-All property, previously by law belonging to the vestries, etc., according to a principle tacitly recognized in the reconstruction of the Act for Religious Freedom, devolved to the state; therefore, the overseers of the poor shall have authority to sell all vacant glebe lands and those whose incumbents shall subsequently decease, and pay debts due from parishes and appropriate the proceeds as a majority of the freeholders of said parishes shall direct by election, provided that the proceeds shall not be appropriated to any religious purpose whatsoever; churches and church yards and their contents to remain intact, as well as certain private donations; incumbents not to commit waste on glebe lands, nor remove the personal...
property, and must pay debts for the use of the church; compensation to overseers in such transactions.

CH. 21—Penalty for dealing (commercially) with slaves on the Sabbath day

27. G. A., Dec. 6, 1802

CH. 35—To amend the acts to prevent gaming, to the end that they be more speedily and effectively executed, in order to check the "general corruption of the morals of youth" (preamble), certain technical procedure prescribed.

CH. 64—An act dissolving a marriage, on grounds of illegitimate issue from the wife, within five months after the marriage, of a mulatto child;

(an identical case in Vol. III (N. S.), CH. 6, p. 26)

28. G. A., Dec. 5, 1803

CH. I—All ministers of the gospel exempted from militia duty, but no Quakers nor Menonists, explicitly nor (it seems) implicitly, exempted.


CH. 4—Quakers and Menonists excepted in cases of exacting fines for refusing to receive arms or equipment of militia, or to give receipt therefor.

(But in act passed in December 1806, no mention is made of Quakers or Menonists being excepted in the same cases—no repeal being mentioned either).

CH. 30—Quakers, Menonists and Dunkers not compelled to receive arms.

30. G. A., Dec. 2, 1811

CH. XXV—Ministers of the gospel residing in adjoining states authorized to celebrate the rites of matrimony in this state, provided he produces credentials of ordination, etc.; such ministers not to be required to
CH. XI, G. A., Dec. 6, 1813: provision which excludes persons furnishing substitutes to the militia from certain advantages.

CH. LVII—An act incorporating the Bible Society of Virginia, "for the gratuitous dissemination of the Holy Scriptures to the poor of this country and to the Heathen"

CH. VI—"In ascertaining what shall be considered as the majority of a class authorized to act under this law, those members of the class belonging to the sects of Quakers, Menonists, or Dunkards, whose religious tenets prevent them from acting at all in relation to military subjects, shall not be counted."

CH. XVIII—Amending the act for solemnization of marriages by prescribing procedure and allowing the jurisdiction to Superior Courts, etc. (Repealed moh. 3, 1819)

CH. CXV—An act to perpetuate the trust of certain lands belonging to the Society of Friends, by appointing trustees and providing for perpetual succession of trustees.

C. 3 Sect. 16: Bill of Rights; Declaration of religious toleration.
C. 31. The act for establishing Religious Freedom (1785)
(a)
C. 32 The act repealing certain laws concerning the legislature's power over religious bodies, and to declare the construction of the Bill of Rights and the Constitution, concerning religion. (1798)
(b)
C. 32 The act concerning the resumption and sale of glebe lands and churches within the Commonwealth. (1801).
1. 106. An act to reduce into one the several acts to regulate the solemnization of marriages, prohibiting such as are incestuous or otherwise unlawful; to prevent forcible and stolen marriages; and for the punishment of the crime of bigamy. (Summary of 1730, 1748, 1792).


3. 172. An act concerning the benefit of clergy (1789) (On the establishment of the penitentiary system, the benefit of clergy was abolished in respect to free persons; this act is, therefore, now (1819) only applicable to slaves. R. C. 1819, C. 171, p. 618).

ACTS OF ASSEMBLY

(Law concerning rape, 1824, p. 22)

Dec. 6, 1826, G. A.

Superior Courts of Chancery given jurisdiction to grant divorce upon presentation of certain petitions and evidence.

G. A., Dec. 7, 1829

CH. 48. An act to incorporate the trustees of Randolph Macon College:

Establishment of a theological professorship prohibited.

35. Convention of 1830.

Article of Religious Freedom included in Bill of Rights prefixed to revised Constitution.

36. G. A., Dec. 6, 1830

CH. XXXV—Ministers assigned to certain posts or circuits may secure testimonials to perform rites of matrimony.

CH. XL—So much of a former act as inflicted whipping upon offender who defaulted fines for swearing, drunkenness, etc, is repealed.

37. G. A., Dec. 5, 1831
ACTS OF ASSEMBLY

CH. XXIX. Where father or guardian of person under twenty-one desiring marriage license is dead, consent of mother sufficient to authorize issuance.

18. G.A., Jan. 7, 1839

CH. 12. An act legalizing devises and bequests to trustees for the establishment or endowment of any unincorporated school, academy, or college; provided that said institutions shall become incorporated within two years after the date of probate of such will; devises to theological seminaries declared invalid.

CH. 184. An act to incorporate the trustees of Emory and Henry College: Majority of trustees of the institution at no time to consist of any one religious denomination, and religious opinions not to disqualify for office. No religious denomination to establish at any time a theological school or professorship in connection with this college.

1839, CH. 74—act prescribing procedure against bigamy between parties marrying out of state.


CH. 115. An act incorporating the trustees of Richmond College: establishment of theological professorship prohibited.

CH. 116. An act incorporating the trustees of Bethany College: establishment of theological professorship prohibited.

40. G.A., Dec. 1, 1840

CH. An act giving circuit courts jurisdiction to grant divorces when a cause is proved for which marriage is annulled by the ecclesiastical law.

CH. 147. In incorporation of two academies, establishment of theological professorship by any religious denomination prohibited.

41. G.A., Dec. 6, 1841

CH. 102. Trustees of religious congregations may hold property conveyed or devised to the congregation, and may sue and be sued for congreg-
ions, within limits, and only for public worship, religious, or other instruction, burial ground and residence of minister.

42. G.A., Dec. 4, 1843

CH. 1. Ministers of the gospel exempted from tax on income derived from clerical services. (Also 1844, etc.)

43. G.A., Dec. 2, 1844

CH. 67. Consent of father or guardian to marriage of infant not required to be under seal (see 1 R.C. 1819, C. 106 s. 16, p.398)

CH. 119. No theological professorship to be established in connection with Marshall Academy.

CH. 120. Nor at Virginia Collegiate Institute.

44. G.A., Dec. 7, 1846

CH. Congregations enabled to compel trustees properly to execute trusts, through one or more of congregation being able to bring suit against trustees in ordinary manner without making any members of the congregation parties defendant.

45. G.A., Dec. 6, 1847

CH. 1. Ministers of the gospel exempt from taxation.

CH. VIII- Offenses against chastity, morality and decency cited, and punishment therefor: including adultery and fornication, polygamy, lascivious cohabitation, keeping a house of ill fame, imparting, printing, etc., obscene books or prints, disturbing religious worship, Sabbath breaking, etc. (Search warrants allowed 160)

CH. 122 An act prescribing general regulations to govern applications for divorces a vinculo matrimonii: - Jurisdiction of circuit courts to authorize one or both parties to remarry.

CH. XI- Benefit of clergy abolished.

CH. XII-13. Any slave who shall preach, exhort or conduct any meeting for religious or other purposes, shall for every such offense be punished by stripes not exceeding thirty-nine. (See also p.120- "unlawful assemb-
CH. 121. Provisions concerning marriages:—Acts requiring consent of parents or guardian attestable by one witness; marriages after publication of banns not lawful.

BILL OF RIGHTS, clause on Religion

Constitution of Virginia (1830): Ministers ineligible to election to either house of the General Assembly.

Provision concerning religion

CH. XXXV—No tax assessed or collected on church property.

CH. XLIX—Ministers privileged from arrest while performing religious services &c.

ACT for Establishing Religious Freedom

CH. LXXVII—Of Church Property and Benevolent Associations: Appropriation of the property held by the Episcopal Church before the Revolution; provision as to donations; property acquired by churches since the Revolution to be vested in trustees, and their successors, appointed by the circuit court; conveyances, devise and dedications to churches to be valid; such trustees may sue and be sued; limitation of property church may own; members of congregation may sue trustee to compel him to apply property to the benefit of the congregation.

CH. CXCVI—Of offenses against Morality and Decency (repetition of Ch. VII, p. 11, 1847-48).

CH. CXCVIII—Negroes prohibited from assembling for religious worship.

CH. CXCIX* Sect. 4* No plea of benefit of clergy allowed in prosecution of criminals.

1852

CH. 1—Church property exempt from taxation; also ministers.

CH. 99—An act to authorise the circuit courts to direct the sale of church
Whenever any religious congregation for whose use a conveyance, devise or dedication of land has been lawfully made, shall deem that their interests will be promoted by a sale of such land, it shall be lawful for any member of such congregation, in his name, and on behalf of the other members thereof, to prosecute a suit in equity for that purpose in the circuit court ... against the trustees, or the survivors of them in whom the legal title may be; and it shall be lawful for such court, if a proper case be made, and the court be of opinion that the rights of others will not be violated thereby, to order the sale of such land, and make such disposition of the proceeds thereof as the congregation may desire.

"2. No member of the congregation need be made a defendant to such suit, but any member thereof may voluntarily enter himself as such and contest the same."

Bill of Rights re-enacted, along with the revised Constitution, drafted by the Convention of 1851.

15. Religious liberty guaranteed

32. General Assembly "shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law."

35. "The General Assembly shall confer on the courts the power to grant divorces ... but shall not, by special legislation, grant relief in such cases; or in any other case of which the courts or other tribunals may have jurisdiction.

1852-1853

CH. 344- No theological professorship to be established at Roanoke College.

1853-1854

CH. 107 An act incorporating the Protestant Episcopal Theological Seminary and High School in Virginia (passed Feb. 28, 1854).
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