THE HISTORY OF THE VIRGINIA COLONIAL
CHILDREN LEGISLATION FROM 1619 TO 1792.

BY

FRANCES VIRGINIA SALTER.
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CHAPTER I.

INTRODUCTION.

1. Purpose.

The Purpose of this thesis is to collect, to present, and to trace all of the laws in Virginia which are connected or concerned in any way with children, by which legally are meant persons under twenty-one years of age, from the time of the first Assembly of Virginia in 1619 through the Colonial Period to 1792. The closing date was chosen by the writer not only because Hening's Statutes included this date, but because it enabled the writer to trace the laws through the Revolutionary War showing the effects of the War on the legislation at that time, and to give a trend of the laws immediately after the War, with a hope that this added research will make further studies upon this subject less complicated.

2. Collection of Data.

For a source, the writer has used the thirteen volumes of William Waller Hening's Statutes at Large, the one authentic publication of these early Virginia Laws, which cover the period 1619 to 1792. According
to Hening, it had long been a subject of serious regret among men of liberal and enlarged minds that no legislative means were adopted for the preservation of Virginia's ancient laws, which were so essential to a correct view of Virginia history, therefore, the legislature, at the session of 1795, passed an act directing that all the laws and clauses of laws, whether public or private, relating to land tenements, or hereditaments, within this Commonwealth, at any time passed since the first settlement of Virginia, should be collected, and an edition of one thousand copies published. * William Waller Hening was chosen to do the work and after spending more than twenty years collecting the laws, he published the Virginia Statutes at Large. He was aided in his work by such valuable manuscripts as the Jefferson Manuscript, the Randolph Manuscript and the Purvis Collection of early Virginia laws. The authenticity of the laws was established by an Act of Assembly in 1807, as expressed by Hening in the following quotation:

"At the session of 1807, the editor submitted a memorial to the General Assembly, stating his object and requesting that some mode might be adopted to give authenticity to the laws which he was about to publish. An Act was accordingly passed, in pursuance of which, the work has been proceeded on. That he has executed

it to the entire satisfaction of everyone, cannot be expected; but that he has spared no pains to render it worthy of the approbation of an enlightened public, he is perfectly conscious."

In collecting the material for this work, the indexes of the thirteen volumes of Hening's Statutes At Large have been used. The writer searched under the heads apprentices, bastards, birth, cattle, children, criminals, dower, education, feme covert, guardians, husbands, infants, orphans, parents, poor, servants, slaves, mills and mines for the laws relating to persons under twenty-one years of age. Finding that the indexes as a whole were inadequate, it became necessary to resort to a thorough page by page search for the laws. Although the writer feels that, by this careful and laborious method of search, every law in this field has been found, there is a chance that a few have been missed, since in several of the volumes, the printing is in places extremely poor and difficult to read. However, undoubtedly all of the most important laws have been secured. Besides using the thirteen volumes of Hening's Statutes at Large, the writer has extensively used for further check on the laws and also for the development of the historical background of these laws, Philip Alexander Bruce's *Economic History of Virginia in the Seventeenth Century; his Institutional History*

of Virginia in the Seventeenth Century; and his Social History of Virginia in the Seventeenth Century.

According to Dening, during the early periods of legislation in Virginia, it was the usual practice, whenever a law required amendment, to re-enact it, with the amendments introduced into the body of it. It was also customary at each session to repeal all former laws, and either re-enact them in the very same words of the Act repealed, or with such amendments as experience might suggest. With this point in mind the writer has attempted to collect every law which was definitely connected or concerned in any way with any person under twenty-one years of age, according to the methods described above, and has quoted in full each separate law in this field as it first appeared in the statutes in this stated period, pointing out the date of each time the law reappeared in the statutes even though in the identical previous words, and also designating and recording the definite changes in each law as they took place. It was decided that the laws would be quoted in full because of their historical, legislative, and social interest; because of the doubtful legal accuracy of any

attempt at abstracting or condensing them, so making possible doubts of the competence of such abstracting; and because the writer's purpose is to present the materials for various further studies, made possible, it is hoped by this full and unabridged compilation.

It is necessary to keep in mind that there were four definite revisions of laws of Virginia during the period 1619 to 1792. Henig stated that the first revision was made in September, 1632, though none were expressly so called until March 1642-3. In March, 1657-8, during the existence of the Commonwealth of England, another revision was made adapting the laws of the Colony to the state of the Church, and to the republican institutions of that period. In March, 1661-2, after the Restoration, the laws were again revised. One of the avowed objects of this revision, as expressed in the preamble of the Acts, was to repeal and expunge all law "which might keep in memory their forced deviation from his majestic obedience." The last revision was in 1705.*

3. Comment on English Background.

Since in the beginning, Virginia was so closely tied up with England and English customs and views, it is exceedingly essential to give some of the English

background which our ancestors brought with them and which influenced and moulded their social system and ideals. Bruce points out that these early English Settlers brought with them their system of laws as well as their social customs and their religious doctrines; and time was to prove that this system was to undergo, after transplantation, as slight a modification as the forms of their church government and the framework of their social life. From the very beginning, English authorities aimed to maintain in the communities of Virginia, not only the spirit, but also the letter of the English Law; in the instructions which the King gave in 1606 for the management of the projected colony's affairs, he expressly enjoined that the persons who were to have these affairs in charge should, in administering them adhere as closely as possible "to the common law of England, and the equity thereof." *.

Bruce adds that the first Charter, granted in 1606 for the establishment of a colony in Virginia and the administration of its affairs, laid down two principles which have had an important influence in shaping the history of the colonial empire of Great Britain, and indirectly the history of Great Britain itself; first the colony was to be under the immediate control of the Crown, and not of the Crown and Parliament together, as was the case with England itself; secondly, the King's subjects

residing in Virginia, whether they had emigrated thither or been born there, were to enjoy all the "liberties, franchises, and immunities within any of the royal dominions" just as if they had first seen the light in the Mother Country itself.

This first principle is shown in the following quotation: "When a petition was presented by the London Company to Parliament touching the affairs of Virginia, and a committee was appointed to consider it, the King sent a special message to Parliament expressly forbidding it to intervene, on the ground that it was without jurisdiction in such matters, since that jurisdiction belonged to him alone. This principle he successfully maintained; and when, in the following century, the same body sought to enforce in America certain revenue Acts passed without the consent or participation of the American people, the latter, remembering that principle, justly claimed that, by the original charters, they were subject to the royal authority alone." *

It was further stated that when it was provided in the Charter of 1606 that every citizen of Virginia should enjoy "the liberties, franchises, and immunities" of one born in England, the first step was taken towards the introduction into the projected colony of all free institutions so long planted in the Mother Country itself. Had the government of that colony remained, during the whole course of these early years, in the exclusive control of

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* Bruce. — Institutional History of Va. in 17th Century. Vol. II. Page 361
the King himself, instead of being, in 1609, delegated to a company, this clause would sooner or later have assured, among other privileges, that of local representation, which was granted by the company itself nine years after it had received its second charter. In those above momentous words of the first charter, there lay the real authority for calling together the earliest legislative assembly to convene on the American Continent among the English-speaking peoples; they were broad enough to receive so liberal an interpretation; and advantage was taken of this fact as soon as the condition of Virginia justified it. Profoundly grateful as we should be to the enlightened men who were directing the London Company in 1619, — the year the first Assembly came together, — nevertheless, it should be remembered that whether intended or not, it was owing to James' proclamation in the first Charter of the memorable principle of the common rights of all English subjects, whether born under English skies, or on the remote plantations in the West, that the meeting of this first Assembly -- the second great event in the History of English colonization, was made possible.

Under the Charter of 1606, the Crown's chief agency in governing the colony was to consist of a council of thirteen persons resident in England, who were to be nominated and appointed by the King himself, and to be guided in all their proceedings by such laws, ordinances and instructions as he should give. The membership of the body could, at any time, be changed by the royal will, and increased or diminished should that will decide it to
be advisable. This Council was authorized to name a second Council to reside in Virginia, with a direct control over the administration of its affairs, but, like the parent Council, subject to the laws, ordinances, and instructions laid down by the King, of which they were to be informed as ordained. Each member of the Council of thirteen in England was required to take an oath that, whenever a question of importance or perplexity should arise, he would join with his associates in referring it to the consideration of the Privy Council, whose decision was to be accepted as conclusive. Later the Council in England was enlarged and an assembly composed of any of its members was authorized to nominate officers; to adopt ordinances and laws; and to execute all the other powers conferred on the original council. *

Bruce further points out that in 1609, Virginia was granted a new charter whose rights and powers were much broader in their scope than those granted by the Charter of 1606. The controlling power was transferred from the King to the Company itself. The London Company, as reorganized in this year, was composed of six hundred fifty-nine persons; and of this number, twenty-one were peers of the realm; ninety-six, knights; eleven, professional men; fifty-three, captains; twenty-eight, squares; fifty-eight, gentlemen; and one hundred ten, merchants; and the remaining two hundred eighty-two, citizens entitled to no special classification. It is doubtful whether in

in that age, the kingdom could have furnished a body more representative of all that was best and highest in its various walks of life than the men enrolled as incorporators under this charter. The Council residing in England was composed of fifty-two members, fourteen of whom belonged to the House of Lords and thirty to the House of Commons. It was provided that the Company's business could be legally transacted at any meeting of the stockholders attended by five Councillors and fifteen of the generality; and these meetings were to take place at least four times in the course of the year at regular intervals corresponding to the seasons of spring, summer, autumn and winter; for which reason they were designated as "quarter courts." It was in these quarter courts that all laws for the colony's government were passed, and all officers for the active administration of its affairs chosen. Although affairs did not always run smoothly, the company managed to hold its sway for some years to come. The Company granted to the people of Virginia, among other rights, one supreme right, which was to constitute the beginning of civil liberty in the remote West. This great right, which, together with the rights associated with it, was bestowed for the express purpose of establishing "an equal and uniform kind of government" in the colony, was embodied in the noble series of instructions ratified at the quarter court concerning November 28, 1619, as a date which should be among the most celebrated in the history of the English-speaking race. By the provisions of this epoch-making document, the new Governor, Sir George
Yearly, was authorized to call together a General Assembly, consisting of the Governor and Council of State, and two Burgesses chosen by popular election from the body of the inhabitants of each town, hundred, or group of plantations.

Not content with granting the right to call an Assembly, the Company two years later took steps to have codified a series of ordinances, which, from some points of view, bear a close resemblance to a written constitution. In April, 1620, Sir Edwin Sandys, who at one time was treasurer of the London Company, withdrew into the country with instructions from the previous quarter court to use the quiet and leisure of his retirement to go over the body of the English laws, and under the guidance of the information acquired from this and other sources, to frame a general system of rules for the permanent administration of the Colony's affairs. The object of this set of regulations, the first draft of which was thus prepared by one of the most distinguished, upright, and fearless statesmen of that age, and afterwards hammered into final shape by the deliberations of various committees, was declared at the time to be to settle in Virginia "Such a form of government as might be to the greatest benefit and comfort of the people; and thereby all injustice, grievances, and oppression might be prevented, and kept off as much as possible from the Colony." *

* Ibid. Vol II. P. 240-247
This carries us a little beyond the date that the first Assembly met in Virginia, but shows us the definite influence that the English customs had on our Virginia laws as a whole. From time to time we find many orders issued from England enjoining the authorities in Virginia to administer justice according to the laws of England. For examples, the above order was issued to William Berkeley soon after his appointment as governor; and the same instructions were inserted in the commission of every governor whose term followed Berkeley's. Again we find that as early as the year 1631-2, the oath which each judge in Virginia was required to take, commanded him "to do justice as near as may be" to the English laws. The General Assembly also stated that, in systematizing the Acts of Virginia in 1660, always bear in mind the English statutes, which they had adopted "as near as the capacity and constitution of the Colony " would allow."

Of course there were some laws made in Virginia in opposition to the English laws, statutory or common, but these laws had their origin in a reason of convenience or economy applicable to the Colony alone and were necessary for the government of the Colony.

CHAPTER II.

LAWS CONCERNING MARRIAGE AND CHURCH

PART I.

MARRIAGE LAWS.

"There was great strictness and exactness in the Colony of Virginia in throwing around marriages all the safeguards the law could create and enforce." *

As early as 1632, it was provided by law that, except in cases of necessity, the marriage ceremony should be performed in the Church; this is found in I Hening's Statutes Act III of the above year:

"And all preachinge, administeringe of the communion baptizing of children and marriages, shall be done in the Church except in cases of necessitie." **

The close of the ceremony at this period seems to have been followed by a lively fusillade; but this finally led to such an alarming expenditure of powder that it was restricted, if not forbidden altogether,

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* Bruce, Social History, P. 231.

** I. Hening's Statutes, p. 183.
in those years when there was fear of trouble with the Indians. Since in some of the parishes, the Church was situated so remote from many of the inhabitants and since it would necessitate a day’s or more journey to reach the Church, some of the local magistrates were empowered to perform the ceremony. However, this resulted in so much confusion that a law was passed confining the right to clergymen; this change probably did not alter that which must have prevailed during the time the magistrates could marry couples, namely, that the ceremony could take place in a private home. * No matter where or by whom the ceremony was performed, certain fees were charged which were arranged by law. According to Bruce, as early as 1631, each minister was empowered to charge two shillings and sixpence for the marriage service. Twelve years afterwards, the fee allowed for the marriage service, when banns had been published, was forty pounds of tobacco, and one hundred when a license had been obtained. We learn from a statement made by the House of Burgesses in 1696 that the fee which the clergyman had the right to charge at this time amounted to twenty shillings, or two hundred pounds of tobacco; and this is confirmed by Beverley’s testimony as to a marriage following a license; but if the ceremony had been preceded by the publication of banns, the fee was limited

* Bruce. Social History in Virginia in 17th Century. Page. 234
to five shillings, or fifty pounds of tobacco. *

It seems to have been usual at times for the prospective bridegroom to set up at the court house door, a written notice of his intention to marry; this was done, for instance, in 1657, by Richard Markham who was engaged to Frances Yeaatts, both residents of Lower Norfolk County. The publication of the banns in the parish church shows how closely English customs were followed in the Colony; this method of legalizing an intended marriage, in most cases, was probably preferred to the license, if for no other reason than for the reason stated above that the fees were less for marriage when banns had been published than when a license had been obtained. **

There was a frequent occurrence of runaway and extremely early marriages during this period. Of course since these marriages violated the laws requiring the consent of the parents or guardians for the marriage of persons under twenty-one years of age and since they occurred so frequently, it was deemed necessary by the law makers of this period to pass laws concerning these problems in an attempt to remedy the evils, which laws are given later in this chapter. Aside from the above evils, some children occasionally were stolen and made

* Bruce, Inst. History of Va. in 17th Century. Vo.L.F.159
** " Social " " " " " P.232-3
to marry. Even at times women and children were imported from England for the purpose of coming to America and marrying the settlers here. Bruce states that in a letter from the Company to the Governor and Council in Virginia, dated August, 1621, it was stated that one widow and eleven maids had been dispatched, and that fifty more maids would soon follow. In September of the same year, the Company again wrote that thirty-eight maids had been sent out; and it is probable that this number was additional to the fifty previously referred to. *

A good example of the early marriage of a young girl was found in Northampton County. It seems that in 1662, a prominent citizen of Northampton County ran off with Elizabeth Charlton, a girl only twelve years of age, an heiress and a member of one of the most conspicuous families on the Eastern Shore. At the time, she was staying at the home of Captain Jones, where she was receiving her education. The marriage in this case occurred on the other side of the Bay, whither the couple had fled in a sail-boat. The license was probably obtained there, as there the two were unknown. **

Frequently these early marriages required these children too early to assume the burden and responsibility of family life and soon their health broke under

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** Ibid - P. 233.
the strain of raising a family. Although the parents' or guardians' consent was necessary before a person under twenty-one years could marry, some of the county clerks were negligent in upholding the legal requirements in regard to this.

These and other reasons were the causes for the following laws to be passed from time to time by the Virginia Assembly.

The first law in Virginia, which was concerned with the rules and legal requirements of marriage and which was relative in any way to children, was passed by the General Assembly in 1631. This same law was re-enacted in 1632 in the very same words. It reads:

"No mynister shall celebrate matrimony between any persons without a facultie or lycense granted by the Governor; except the baynes of matrimony have been first published 3 severall Sundays or holydays in the time of the dwayne service in the parish churches where the sayd persons dwell according to the booke of Common Prayer, neither shall any mynister under any pretense whatsoever joyn any persons soe licensed in marriage at any unseasonable tymes but only betweene the houres of 3 or 12 in the forenoon, nor when banes are thrice asked, and no lycense in that respect necessarie, before the parents or guardians of the parties to be married beinge under the age of 20 and 1 years, shall either personally or by sufficient testimony signifie unto him their consents given to the said marriage." *

An Act, passed in 1670 and re-enacted in somewhat different terms in 1705 and 1749, deals with the lawful way of securing a license for the marriage of persons

* I Hening's Statutes, p. 156-7 and p. 181 (1631).
under twenty-one years of age. The act is self-explanatory:

"Whereas complaint had been made that diverse persons to the defeating the law and defrauding parents and guardians of that natural right and just privilege in disposing of their children or orphans in marriage, have clandestinely procured the clerks of other counties then that the parents live in, to give them certificates for lycenses, and see the parents by the inequality of the match dishonored, and the child ruined in her fortunes, it is enacted that the Act for lycenses to issue on certificates from clerks of the county courts be declared to extend to noe other clerks but of the county, where the maid, her parents or guardian dwell, and that the said clerks of the county shall not grant any such certificate without the personal consent of the parent or guardian, and that in every certificate the clerk shall expressly aver the same, and every clerk that shall grant them otherwise then above expressed shall forfeite his peace." *

In the Acts of 1705 and 1748, the county clerk was required to issue a certificate saying the marriage bond had been given and this certificate was in turn taken to the presiding justice of each county court who was impowered to issue a marriage license. In Hening the law is stated thus:

Sec. II. "... and if either of the persons intended to be married, shall be under the age of 1 and 20 years, and not therefore married, the consent of the parent and guardian of every such person under age of 1 and 20 years, shall be personally given before the said clerk (of county in which either lives) or signified under the hand and seal of the said parent or guardian, and attested by 2 witnesses; all which being done, the clerk shall write the license, and shall certify specially the said bond: And if persons with license or either of them, be under the age of 1 and 20 years, as aforesaid, he shall also certify the consent of the parent or guardian of such so under age, and the manner thereof, to the first

justice in commission of the peace for that county, or to such other person as shall be thereto commissioned. . . ."

The Act of 1748 is a repetition of the above Act except for denoting more definitely "Such other person as shall be thereto commissioned."

The difference is as follows:

Sec. II. ". . . And the manner thereof, to the first justice sworn in commission of the peace, or in his absence to the next sworn in that county, who is hereby authorized and required to sign and direct the same: And every license so obtained and signed, and no other whatsoever, is hereby declared to be lawful license: "

Recognizing the harm and undesirability of the above mentioned early marriages, the General Assembly of Virginia passed an Act in 1696 which was re-enacted in 1705 and 1748 with a slightly different terminology and which was termed "for the prevention of clandestine marriages." As cited in Hening's Statutes, the Act reads:

"And be it enacted by the authority aforesaid, and it is hereby enacted, that if any woman, child, or maiden being above the age of 12 and under the age of 16 years, do att any time consent or agree to such person, that so shall make any contract of matrimony without the consent of the parent or guardian or without the publication of the bannes as aforesaid, that then the next in kin to the said woman, child, or maid to whom the inheritance should descend, fall or come after the death of the said woman, child, or maid, shall from the time of such agreement and assent hold, sow and enjoy all such lands, tenements, and hereditaments as the said woman, child, or maid had in possession, reversion,

** Ibid. Vol. VI. p. 82 (1748).
or remainder at the time of such coverture, and after the decease of the husband of the said woman, child, or maid having so contracted matrimony that then the said lands, tenements, and hereditaments shall descend, revert, and remain to such woman, child, or maid, or such person or persons as they should have done in case this Act had never been made."

The different terminology used in the two later Acts consisted in the use of the words "womankind" and "maiden" in the Act of 1705 and "feme sole" in the Act of 1748 for "woman", "child," and "maid" found in the Act above.

Another slight difference found in the later Acts is the definite denotation of what persons shall inherit the lands, tenements and hereditaments should the woman, child, or maid's husband die. This difference is:

"... And remain in the said feme, and her heirs, other than her husbands, and she and they, and every of them, may re-enter, and take possession, thereof, as if this Act had never been made."

In 1789, an Act termed "An Act against forcible and stolen marriages" was enacted. (XXII Hening's Statutes).

Sec. II. "If any above the age of 14 years, shall unlawfully take or convey away or shall cause to be unlawfully taken or conveyed away, any maiden or woman child unmarried, being within the age of 16 years, out of or from the possession and against the will of such person or persons, as then shall happen to have, or by any lawful ways or means, the order, keeping, education, or governance of any such maiden, or woman child, and being thereof duly convicted, shall suffer imprisonment without bail or main-prize, for any term set exceeding 2 years, as shall be adjudged against him.

Sec. III. "If any person or persons, shall so take away or cause to be taken away as is aforesaid, and deflower any such maid or woman child as is aforesaid, or shall against the will or knowledge of the father of any such maid or woman child, if the father be in life, or against the will or knowledge of the mother of any such maid or woman child, having the custody or governance of such child, if the father be dead, by secret letters, messages, or otherwise, contract matrimony with any such maid or woman child, every person so offending and being thereof lawfully convicted shall suffer imprisonment of his body, by the space of 5 years without bail or mainprise." 

Although the laws concerning the marriages of slaves and servants including the ones concerned with illegitimate children will be discussed later in the chapter under "Bastards", one law was found relating to illegitimate children which concerned marriages as a whole. This law was passed in 1661 and is as follows:

"...And any pretended marriage hereafter made by any other than a minister be reputed null, and the children born out of such marriage of the parents, be esteemed illegitimate and the parents suffer such punishment as by the laws prohibiting fornication ought to be inflicted." *


II. " Act. VII. p 61 (1861).
PART II

CHURCH LAWS

The English Government from the first showed great solicitude that conformity to the doctrines and ceremonies of the Church of England be strictly maintained in Virginia. It seems that as early as 1606, when instructions were drawn up by the King for the guidance of those having the first expedition in charge, an injunction was laid on the President, Council, and minister that, not only should the "true word and service of God be preached, planted and used" in the projected Colony, both among the English settlers and the savages, but that the word and service should be "taught and performed" according to the doctrines and rites of the Church of England alone. In order to insure universal conformity, the Divine and Martial Laws of 1611 required that every man and woman then residing in Virginia, or who should hereafter arrive, should make a candid confession of religious belief; if found deficient in religious knowledge, then he or she, as the case might be, was directed to apply at once to the minister for the proper instructions; and should the person fail to do so without excuse, then the penalty was to be one whipping for the first offense, two for the second and for the third a daily whipping until compliance was proven. *

* Bruce - Instit. History of Va. in 17th Century, p.215-16
Besides requiring the men and women to receive religious instructions, it was deemed necessary to our early law-makers to pass laws requiring the servants and children to receive catechism instruction. Accordingly such a law was passed in 1631 and re-enacted in the same words in 1632, and again in 1645, with a somewhat different meaning. This law is as follows:

"It is also thought fit, That upon every Sunday the minster shall have an hour or more before evening prayer examine, catechise, and instruct the youth and ignorant persons of his parish; in the ten commandments, the Articles of the belif: and in the Lord's prayer; and shall diligently heare, instruct and teach them the catechisme, sett forth in the books of common prayer. And all fathers, mothers, maysters and mistresses shall cause their children, servants, or appprentizes which have not learned the catechisme to come to the Church at the tymne appoynted, obedient: to heare, and to be ordered by the minster untill they have learned the same: And if any of the sayd ffathers, mothers, maysters and mistresses, children, servants or apprentizes, shall neglect their duties as the one sorte in not causings them to come and the other in refusainge to learne as aforesayd, they shall be censured by the corts in those places holden. And this Act to take beginnings at Easter next."

The law passed in 1645 was, as stated before, slightly different from the above law and will be quoted in full. It definitely denoted the fines imposed on persons not adhering to these laws.

"Whereas it was enacted the 12th of June, 1631, and continued by an Act 17th of February, 1632, That all ministers should preach in the forenoon and catechise in the afternoon of every Sunday, and in case they fail soe to do, that then they forfeit 500 pounds of tobacco to be disposed off by the vestry for the use of the parish: Be it

* I. Benning's Statutes, Act VIII. p 157 (1631) Act. VII. Page 181 (1632)
further enacted, That all masters of families upon warning given by the ministers in the several places where they shall reside, do cause their children and servants to repair to the places appointed to be instructed and catechised as aforesaid upon the like penalties that is imposed on the minister in case of his default, to be disposed as aforesaid, unless sufficient cause be shown to the contrary."

A large number of people residing in the Colony in 1660 rejected the doctrine laid down in the book of Common Prayer, particularly; that by baptism the infant was regenerated with the Holy Spirit. Those early Baptists in Virginia were termed as "schismatical persons," as "averse to the orthodox established religion", or as conforming to "the new fangled conceits of their own heretical inventions." A fine of two thousand pounds of tobacco was imposed on a person who refused to baptise his child and at times the offense was considered so serious that the matter was taken up by General Court for settlement. Accordingly a law was enacted in 1662 "against such person who refuse to have their children baptised."

"Whereas as many schismaticall persons out of their aversion to the orthodox established religion, or out of the new fangled conceits of their own heretical inventions, refuse to have their children baptized, Be it therefore enacted by the authority aforesaid that all persons that, in contempt of the divine sacrament of baptism, shall refuse when they may carry their child to a lawfull minister in that county to have them baptized shalbe answerd 2000 pounds of tobacco, halfe to the informer, halfe to the publique." 


** Ibid, Vol. II. (Hening's Statutes) Act. IV. p. 168 (1662)
This was one of the early laws in the Virginia Colony directed against Baptists and others who did not follow the practices and teachings of the Church of England. Interesting examples of the above law were found in Lower Norfolk County. For instance, in 1675, the General Court issued an order requiring the father named in it to baptize his child at once; and in the course of the same year, the County Court directed John Biggs to repair to the minister of his parish for a like purpose. This he must have declined to do, as only a few months afterwards, he was fined 3500 pounds of tobacco under a judgment of the General Court, to which his obduracy had been referred for punishment. *

* Bruce - Institutional History of Virginia in 17th Century - p. 221.
CHAPTER III.

LAWS CONCERNING ORPHANS, GUARDIANS AND

ESTATES

1. Background.

Although it is generally thought by the laymen of today that there was little legal provision in the Colonial days for children, particularly orphans, and their estates, this was not the case, which will be shown by laws quoted later in this chapter.

One of the most important aspects of the County Courts' jurisdiction was the power it possessed over orphans' estates. Many examples exist in the earliest colonial records to show that this power was executed with extraordinary vigilance and scrupulous care. There was a special term of justices, known as Orphans' Court, which was held for the definite and exclusive purpose of passing upon the accounts of guardians and correcting any form of neglect, mismanagement, or malfeasance which may have distinguished guardians' handling of their wards' affairs. The Orphans' Courts in each county generally met once a year, and the guardian or guardians of each orphan child were required by law to report to this court on the present condition of
the property in their charge, and also to report what
had been done in connection with it during the previous
twelve months. Sufficient notice of the date of the next
meeting of the Orphans' Court was given from the bench
by the justices, and the sheriff was also instructed to
proclaim the date at different places in the County, so
that all who had the supervision of orphans, whether of
their persons or estates, would have no excuse for fail-
ing to be present with a full and complete report as to
their manner of performing their trust since the Court
last convened.

The following law, which was passed in 1749, is
the only law recorded in Hening's Statutes which design-
ated the holding of an Orphans' Court in a definite
locality: (Hening's Statutes, VI. Page 210).

Sec. XVI. "... and that an Orphans' Court be held, for the said county of
Innenburg, in October annually."

Although this law is the only one of its kind, Orphans' Courts were held much earlier than 1749, as is evident
from the laws, which will be quoted later in this chapter.

The laws relating to orphans, guardians, and es-
tates were very brief at first, but as time went on,
all these brief laws were collected and re-enacted into
long-inclusive laws which covered all aspects of the
necessary protection of orphans.
2. For Protection of Orphans' Estates from Sale and Forfeiture.

The first law for the protection of orphans' estates from sale and forfeiture was enacted in 1629 and re-enacted in 1657, and 1661, each time with a few additional requirements. The law passed in 1629 is as follows:

"Be it also enacted and confirmed for the benefit of all orphans that the commissioners of the several County Courts, do take into their serious consideration and care that no land belonging to any orphan within their counties respectively, be alienated, sold, estranged, or taken up as deserted by any person or persons during their minority, until 3 years after their full age, nor that they suffer, nor any waifs convic of the overseers or guardians intrusted for orphans as aforesaid, do farm, sett, or lett to lease any tenements or lands due to such orphans for any longer term of years then until said orphans shall come to age as aforesaid." *

The following sentence was added to this above law in 1657:

"... And in such lease provide against waste of the timber, and for keeping the houses in such repair as he finds them." **

In the Act of 1661 definite denotation was made as to the necessary improvements and care of such orphans' lands:

"Be it also enacted for the future benefit of all orphans that the several County Courts doe take into their serious consideration and care that the lands in the County belonging to any orphans be not alienated, sold or taken up as deserted land and by any person during the minority of the orphan,

* Hening's Statutes, Act XXXII. p. 260 (1629)
** Ibid. Act. XXI. p.443 (1657)
and that the guardians or overseers of any orphans do not let, set or farm out any land belonging to any orphan, for longer termes than till the orphan be at age, and that an especiall care be had that the tenant shall improve the plantation by planting an orchard and building a good house, and that the tenant shalbe bound to maintaine a good fence about the orchard, and keep the house in sufficient reparaie and leave it tenantable at the surrender, and that provision be made in the lease for preventing all waste of timber, or improving it to any other use than use of the plantation."


In order to ward off and prevent any unfairness or trickery which was likely to result from older persons trading or trucking with orphans and realizing the immaturity and lack of knowledge, on the part of the orphans in making such a trade, the Assembly passed a law in 1642, which formed a basis for our present law in regard to trading with minora, that any person or persons who bartered, bargained or sold with any orphan should be held responsible for such an act. The law, as cited in I. Hening's Statutes, p. 269, reads:

"Whereas at an Assembly in June, 1642, upon consideration bad of the bad effects that trading and trucking with orphans may in time produce, It was thought fitt in due time so to provide that for the future no such bartering or trading be at all had with any orphan. And therefore did enact that what person or persons so ever shall barter, bargain, buy or sell with any orphans under

# Ibid. Vol II. Act. LXXVII. p. 94 (1661).
age shall loose all that he so hath, or shall also forfeit double the
quantity thereof, the one half to the
informer, the other to his master. This present
Grand Assembly to all intents and purposes doth
hereby ratifye and confirm the same.

This law does not appear again in the Statutes.

4. For Securing and Managing Orphans' Estates:

As stated above, the County Courts were very
diligent and careful in upholding and enforcing the
laws relating to orphans' estates. These laws pro-
vided for the maintenance and education of the orphan,
for the security of the orphans' estates, for the return
of their own labors, if they are not bound apprentices,
after they reach seventeen years of age, for the fee
allowed the guardians for the collection of debts due
to the estate, for the fee allowed each appraiser for
the appraisement of all estates, and for the regulation
of excessive funeral charges by the commissioners where
nothing is mentioned concerning them in the descents' will. As other needs for the care of orphans arose, new
clauses concerning these needs were added to the old
laws which were re-enacted from time to time as necessity
demanded.

Although most of these laws are connected in some
way with the system of indenture which was transported
from England to Virginia, the question of indenture will
only be mentioned here because it will be considered
thoroughly in Chapter IV dealing entirely with "Laws
Concerning Indenture."
The first law for the securing and managing of orphans estates was enacted in 1642 and was very brief. It dealt chiefly with the duties of the guardians in regard to such estates, which fact can be noticed from the law as found in the Statutes:

"Whereas that hath been the general sufferings of the Colony, that the orphans of divers deceased persons have been very much abused and prejudiced in their estates by the negligence of overseers and guardians of such orphans, be it therefore enacted and confirmed, that the guardians and overseers of all orphans shall carefully keep and preserve such estates as shall be committed to their trust either by order of Court or otherwise, and shall likewise deliver an exact account once everie year to the Commissioners of the several County Courts, respectively of the said estates and of the increase and improvement, who are hereby required to keep an exact register thereof, and all overseers and guardians of such orphans are enjoined by the authority aforesaid to educate and instruct them according to their best endeavours in Christian religion and in rudiments of learning and to provide for them necessaries according to the competence of their estates, and where any shall be found delinquent in the premises the Commissioners of the said County Courts are required to take the care of the said orphans and their estates into due consideration and to see them provided for according to their estates and qualities."*

This above Act of 1642 was enlarged and re-enacted in 1655, 1658, and 1662. Since these three acts agree almost verbatim and entirely in substance with each other, only the Act of 1662 will be given in full because it is more detailed than the two previous acts.

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* I Hening's Statutes - Act XXXIV p. 260-61 (1642)
and because it is referred to in two later acts in 1672 and 1679. In these laws the first mention of binding out orphans is made, as is shown in the following law:

"Concerning orphans estates, be it enacted that all wills and testaments be firm and inviolable, unless the executors or overseers doe refuse to execute the trust reposed in them by the testators in which case the Court may appoint others to act according to the will, but if the said will be so made that noe person will undertake the managing of the estate, or education of these orphans according to the tenor of it, then that the estate by appoint- ment of the Court shalbe managed according to the rules sett downe for the ordering the estate of the person intestate as followeth:

First, that noe account be allowed for dyett, cloaths, phisick, or else against any orphans estate, but that to be educated and provided for by the interest of the estate, and in- crease of their stock according to the propor- tion of their estates, if it will bear it; but if the estate be no mean and inconsider- able, that it will not extend to a free educa- tion then it is enacted that such orphans shalbe bound apprentices to some handycraft trade until 1 and 20 years of age, except some kinsman or relation will maintain them for the interest of the small estate they have, without diminution of the principal which whether greate, or small always to be delivered to the orphans at the years appointed by the law.

That all cattle, horses, and sheep be re- turned in kind by the guardian according to age and number, according as he received them; and because severall had before the first making of this Act estates of orphans in their hands in which they kept for the male increase, and giveing the yearly accept of the augmentation or declination of the orphans stock (which by the salesmes or wickedness of the guardians was usually consumed before they came to age) and dis-putes thereupon arise in several Courts.
how such persons should be proceeded with, and account of orphans estates how to be given them. It is hereby declared that all persons possessed of orphans stocks before the first making of this act, shall be bound to deliver to the orphans when he comes to age, such and soe, many of any kind as he was possess of when he gave his account to the next orphans Court succeeding the publication thereof.

That all plate and money be perserved and delivered in kind according to the weight and quantity; that other household stuffs and lumber be apprized in money, and the value thereof paid by the guardian to the orphan when he comes to age, in the country commodity at the price current as it shall be worth at the time in the place where the orphans estate is managed.

That the Court take able and sufficient security for orphans estates, and inquire yearly of the security; and if the Court see cause to have it changed and called in and placed as the Court shall think fitt; the Court also to inquire whither orphans be kept maintained and educated according to their estates, and if they find any notorious defects to remove the orphans to other guardians; also for those that are bound apprentices to change their masters if they use them rigorously or neglect to teach them his trade.

* That such orphans as are not bound apprentices shall after seventeen years of age have the produce of their own labour and industry, and liberty to dispose thereof at their discretion, the guardians still allowing them their maintenance for the interest of their estate.

* This clause was left out in this Act according to Hening, but was inserted in Vol. I, page 416. So he adds this above clause because the two acts were similar. It seems he could not find these clauses in the manuscripts from which he collected his material.
That noe more be allowed guardians for collecting debts due to any estate than ten in the hundred, the usual allowance of merchants to their factors and attorneys.

That thirty pounds of tobacco per day be allowed to each appraiser for appraisements of any estate, if they will take it and noe more.

That no allowance be made by Court of excessive funeral expenses, but a regulation of the estate, and the quality of the person."

Since many of the Courts endeavoured to dispose of some estates of orphans according to the above Act, but failed to find any persons willing to take and secure them in the manner and form as this law required, it was deemed necessary to add a clause to the law giving the County Courts the authority to dispose of orphans estates according to the best of their judgments and to advantage of the orphans. The fact is shown in the Act of 1672 termed "An additional Act concerning Orphans' Estates."

"Whereas the 66th Act of the Grand Assembly helden at James City the 23rd of March, 1652, had laid down sundry rules unto the County Courts for the management and securing the estates of orphans; now for as much as it hath beene manifested to this Assembly that some Courts having endeavoured to dispose of some estates of orphans according to the Act, have not found any persons willing to take and secure them in manner and forme as that law requires, this Grand Assembly taking the same into consideration, and desirous that such an expedient might be

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** Vol. II. pp. 92-94 Act LXVI (1661)
provided that in such like cases neither the Courts nor the orphans may be prejudiced, have thought fitt that an additional act be made thereof; Be it therefore enacted by the Governour, Councell and Burgesses of this Grand Assembly, and by the authority thereof, that it shall be lawfull for the County Courts to dispose of orphans estates according to the best of their judgments and advantage of the orphans in such cases where the said Courts cannot find persons who will take orphans estates according to the afore recited act. *

As mentioned above, a further act was passed in 1679 in addition to Act 66, which was passed for the purpose of assuring the County Courts that the orphans' estates would be more certain of obtaining good security than before the act came into being. Three additional requirements for good security of orphans' estates were passed in the following law:

"Whereas the 66th Act of Assembly in the printed books relating to orphans estates is found too short and deficien, and by the neglect of the Courts in taking security upon granting orders for administrations, great prejudices have ensued and may ensue, for the prevention thereof for the future, Bee it enacted by this present grand Assembly, and the authority thereof, and it is hereby enacted, that before any order for administrations upon estates of deceased persons shalbe granted to issue forth from the office, see as letters of administration shall or may thereupon posse and be signed by the justices as by law is directed and enjoyed, good security shallbe taken for the parties due administration according to law. And be it further enacted that all justices setting in Court whencesoever administrations are sued for and granted, and shall upon granting order or orders of administrations neglect to make order for security

* II Lening's Statutes Act. II. p. 295-6 (1672).*
as is before enjoined to be taken, shall there- 
by and for such their neglect become lyable to 
make good such estate in case the same shall be 
imbezzled by such administrator. And it is 
also further enacted that all justices of the 
peace stand enjoined, and hereby are required 
before they sign letters of administration to 
demand certificate from the clerke that secu-
ritie is given according to law and duly entered 
upon record to the end all orphans, & c. may 
be secured in their estates, and the justices 
safe in the due execution of their office and 
places. " *

Act 66 of the year 1662 and the Acts of 1679
and 1679 were combined and re-enacted in the years
1705, 1730, 1743 and 1785, and although they did not
agree verbatim, they did agree in substance. Since
the Act of 1743 is the fullest and most complete of
all the acts mentioned above, and will give the reader
a definite idea of the requirements made "for the
better securing and managing of orphans' estates," it
will be quoted in full. The two Acts of 1785 also will
be quoted in full, since they are the last acts concern-
ings orphans, estates, and guardians which were enacted
in the period covered by this study. Mention will be
made of the new and different clauses which appear in
the Act of 1705; however, since no new clauses appear
in the Act of 1730, it will not be quoted although, as
stated above, it does not agree entirely verbatim with
the Act of 1743, however, it is the same in substance.

* Hening's Statutes - Act VII. p. 444 (1679).
In the Act of 1705, the following new clause appeared:

Section VII. "And for the better securing the estates of all persons deceased, and of all orphans' estates. Sec. VIII. Be it enacted and declared, That when any person shall be chargeable, as executor, or administrator, or otherwise, with the estate of any person deceased, or with any orphan's estate and shall die so chargeable, the estate of such person so dying, shall be liable to pay and satisfy such other deceased person's or orphan's estate, before any other debt whatsoever, any law, custom, or usage to the contrary hereof, in anywise, notwithstanding."

The remainder of this law is as stated above, the same in substance as Act 66 of 1662 and the Acts of 1672 and 1679.

Before the Act of 1743 is given it is necessary to cite the Act of 1740 which was enacted "for enforcing execution of the laws made for the better managing of orphans' estates," dealing more definite than any time before with the accounts of orphans' estates which the guardians were required to bring yearly to the County Courts. As cited in V Rening's Statutes, (Chapter VII, pages 100 and 101), the law reads:

"Sec. I. - Whereas, the justices of many County Courts of the Colony have neglected to put in execution the laws made for the better managing and securing orphans' estates, to the great damage of many such orphans, For remedy whereof,

Sec. II. Be it enacted by the Lieutenant Governor, Council and Burgesses, and it is enacted by the authority aforesaid, That every person heretofore appointed, or hereafter to be appointed guardian to any orphan, by any County Court, shall, at the Court held for the County in the month of August, in every year; or if no Court shall be then held, at the succeeding Court to be held for that County, exhibit a true account of the profits of such orphans' estates, upon oath, according to the directions of the laws now in force; And the justices of every County Court shall, yearly, at the same Court examine into all accounts of guardians so to be exhibited to them, and shall direct process to issue, returnable to the next County Court against all guardians that shall then fail to appear and render such account, as aforesaid, whether such guardian be resident in the same or in any other County; and the said justices shall then also enquire into all abuses and mismanagements of guardians, and whether any such guardians, or their securities, are likely to become insolvent; and thereupon make and establish such orders and rules as they shall think fit, according to the power and authority given them, by the laws given them for that purpose made and provided. And the justices of every Court, who shall fail or neglect to do their duty herein, shall forfeit and pay sum of three thousand pounds of tobacco; one-half to our sovereign, Lord the King, his heirs and successors, to and for the use of the County; and other half to the informer: to be recovered by action of debt or information, in any Court of record in this Colony; wherein no essaisin, protection, or wages of shall be allowed, or more than one imparlance granted.

Sec. III. Provided always, That nothing in this Act shall be construed to abridge or restrain the power of the several County Courts, to enquire as often as they shall think proper, into abuses and mismanagements of guardians; but that it and may be lawful for them to exercise such power, in as full and complete manner, as they might have done if this Act had never been made; anything
herein contained to the contrary, or seeming to be contrary, in any wise, notwithstanding."

The following Act of 1748 was found to be very full and to include all the previous acts with additional clauses which time and circumstances demanded in securing and managing Orphans' estates:

Sec. I. "Be it enacted, by the Lieutenant Governor, Council and Burgesses, of this present Assembly, and it is hereby enacted, by the authority of the same, That where any person hath, or shall have, any child or children under the age of twenty one years, and not married, at the time of his death, it shall and may be lawful to and for the father of such child and children, whether born at the time of the decease of the father, or than an infant or infants in the womb, or whether such father be within the age of one and twenty years, or or full age, by his deed executed in his life time, or by his last will and testament in writing, in the presence of two or more credible witnesses, in such manner and from time to time as he shall think fit, to dispose of the custody and tuition of such child or children for and during such time as he, she, or they, shall remain under the age of one and twenty years, or for any lesser time to any person or persons, in possession or remainder, other than popish recusants; and every such disposition heretofore made, or hereafter to be made, shall be good and effectual against all and every person or persons claiming the custody and tuition of such child, or children, as guardians in socage, or otherwise; and the person or persons to whom such custody and tuition hath been or shall be so disposed or devised, shall and may maintain an action of ravishment of word, or trespass, against any person or persons who shall wrongfully take away or detain such child or children, for the recovery of such child or children and shall and may recover damages for the same, in the said action, for the use and benefit of such child or children."
"Sec. II. And that every person or persons to whom such custody and tuition hath, as aforesaid, shall and may take into his or their custody, to the use of such child or children, the profits of all lands, tenements, and hereditaments, and also the slaves, goods, chattels, and personal estate of such child or children, till their respective age of one and twenty years, or any lesser time according to such dispositions as aforesaid, and may bring such action or actions, in relation thereto, as by law a guardian in common socage might do.

"Sec. III. Provided always, That nothing herein before contained, shall extend to discharge any apprentice from his apprenticeship. Nor to take away the power of the General Court, or County Court, upon complaint to them made, or such guardians abusing the trust reposed in him, by misusing the child or children under his tuition, or neglecting the care of their education suitable to their estate, or wasting, converting to his own use, or other ways, mismanaging such estate, to make and establish, from time to time, such rules, orders and decrees for securing the estate, and for the better education and usages of such orphans as they in their discretion shall judge meet and necessary.

"Sec. IV. And be it further enacted, by the authority aforesaid, That the General Court and the several County Courts of this dominion within their respective jurisdictions have, and shall have full power and authority from time to time, to take cognizance of all matters concerning orphans and their estates, and to appoint guardians in such cases, where to them it shall appear necessary, and shall take good security of all guardians by them appointed, for the estates of the orphans to them respectively committed; and if any County Court shall commit an orphan's estate, to the charge, or guardianship of any person or persons, without taking good and sufficient security for the same, in such case, the justices appointing such guardian or committing such estate, and every of them, shall be liable for all loss and damage sustained by the
orphan, for want of such security; to be recovered with costs, by action at the Common Law, in any Court of record at the suit of the party grieved.

"Sec. V. Provided always, That where the securities were good at the time of their being so accepted and taken, but afterwards become insolvent, in such case the justice shall not be liable.

"Sec. VI. And be it further enacted, by the authority aforesaid, That wherever a guardian shall be appointed to any orphan, by the general court, or by any County Court, such guardian shall, at the next court after his appointment, exhibit his account upon oath of all the estate of such orphan, which he shall have received into his hands; and every guardian heretofore and hereafter to be by such Court appointed, shall, once every year, exhibit his account and state of the profits and other incomes of the estate of such orphan, upon his oath; And such accounts so to be exhibited, shall be entered by the clerk in a book to be provided and kept for that purpose only: And when the said Courts shall respectively know, or be informed, that any guardian or guardians, by them respectively appointed, do waste or convert the money or estate of any orphan to his or their own use, or do in any manner mismanage the same, or do not take due care of the educating and maintaining any orphan, according to his degree and circumstances; or where such guardian or his securities are likely to become insolvent, such Court shall have power, from time to time, to make and establish such orders and rules, for the better ordering, managing, and securing such estate, and for the better educating and maintaining such orphans, or to appoint another guardian, as they in their discretion shall think most fit and expedient.

"Sec. VII. And that every person heretofore appointed, or hereafter to be appointed guardian to any orphan, by any County Court, shall at the Court held for that County in the month of August, in every year, or if no Court be then held, at the next succeeding Court held for that County, exhibit such account as aforesaid: And the justices of every County Court shall yearly at the same Court, examine into
all accounts of guardians so to be exhibited to them, and shall direct process to issue returnable to their next Court, against all guardians who shall then fail to appear and render such account, whether such guardian be resident in the same or in any other County; and shall then enquire into the abuses and mismanagements of guardians, and whether they or their securities are likely to become insolvent, and thereupon to proceed according to the power in this Act before given them; and the justices of every County Court who shall fail or neglect to do their duty herein, shall forfeit and pay the sum of five thousand pounds of tobacco, one half to our sovereign Lord the King, his heirs and successors, to and for the use of the County, and the other half to the informer; to be recovered by action of debt or information, in any Court of record in this Colony.

"Sec. VIII. Provided always, That nothing herein before contained shall be construed to abridge or restrain the power of the several County Courts to enquire, as often as they shall think proper, into the abuses and mismanagements of guardians, but that it shall be lawful for them to exercise such power, at any time or times, when to them it shall appear necessary; anything in this Act to the contrary, or seeming to the contrary notwithstanding.

"Sec. IX. And be it further enacted by the authority aforesaid, That it shall be lawful for every guardian, to charge to his account, all reasonable disbursements, and expenses; and if upon rendering such account, it shall appear to the Court, that such guardian hath really and bona fide disbursed more in any one year than the profits of the orphan's estate, do amount unto, for the education and maintenance of the orphan, such guardian shall be allowed and paid for the same out of the profits of such orphans' estate, in any other year during his or her guardianship.
"Sec. X. Provided always, That such disbursements be, in the opinion of the Court, suitable to the degree and circumstances of the estate of such orphan; And that where such estate shall be of so small value, that person will educate and maintain him or her for the profits thereof, such orphan shall, by direction of the Court, be bound apprentice, every male to some tradesman, merchant, mariner, or other person approved by the Court, until he shall attain the age of one and twenty years, and every female to some suitable trade or employment, 'til her age of eighteen years; and the master or mistress of every such servant, shall find and provide for him or her, diet, clothes, lodgings and accommodations fit and necessary, and shall teach, or cause him or her to be taught to read and write, and at the expiration of his or her apprenticeship, shall pay every such servant, the like allowance as is by law appointed by servants by indenture or custom, and on refusal, shall be compellable thereto in like manner: And if upon complaint made to the County Court, it shall appear, that any such apprentice is ill used, or not taught the trade or profession to which he or she was bound, it shall be lawful for such Court to remove and bind him or her to such other person or persons as they shall think fit.

"Sec. XI. And be it further enacted by the authority aforesaid, That when any person who now is or hereafter shall be security for the estate of any orphan, shall afterwards, conceive himself in danger by reason thereof, and petition the Court where such security was entered into for relief it shall be lawful for such Court, upon such petition to them exhibited, forthwith to order summons to issue against the party or parties, with and for whom to give sufficient, other, or sound security, to be approved by the said Court, or to deliver up the estate to the petitioner, or such person as the Court shall direct, or they may, and are hereby impowered to make such order or decree therein for relief of the petitioner and better securing such orphan's estate, as to them shall appear just and equitable."
"Sec. XII. Provided always, That such Court shall take good and sufficient security of the person or persons to whom such estate shall be so committed, in the like manner, and under the like penalty, as is by this Act required to be taken of guardians appointed by the Court, and every such person shall also exhibit his account, and be subject to the rules and orders of the Court; And every such person shall exhibit his account and be subject to the rules and orders of the Court, in the same manner, to all intents and purposes, as is herein before required of guardians, or they are made subject unto.

"Sec. XIII. Further enacted, That when any guardian, or person chargeable with the estate of any orphan, or with the estate of a person deceased, to him committed by any Court of record in this Colony, shall die so chargeable, the executors and administrators of such person so dying shall be compellable to pay and satisfy, out of the estate of their testator, or intestate, so much as shall appear due to the estate of such orphan, or person deceased, before any other or proper debt whatsoever of such testator, or intestate by law, custom, or usage, to the contrary thereof, in any wise, notwithstanding.

"Sec. XIV. Further enacted, That all and every act and acts, clause and clauses, heretofore made, for or concerning any matter or thing within the purvio of this act, shall be and are hereby repealed.

"Sec. XV. Further enacted, That this Act shall commence, and be in force, from and immediately after 10th day of June, which shall be in year of our Lord, 1751. " *

In the two acts of 1785, it should be noted that although they are the same in substance as the act of 1748, they are shorter, more concise, and are expressed in words and phrases more like our laws of today than any of the laws quoted above. The Acts

as found in Hening's Statutes, Vol. XII, Acts LXXXV and LXXXVI, pages 193-7, read:

"Be it enacted by the General Assembly, That where any person under the age of twenty-one years, or of unsound mind, is, or shall be seized or possessed of any land, tenements or hereditaments, in trust or by way of mortgage, the guardian of the one, or committee of the other (which committee shall be appointed by the high Court of Chancery, by order of such Court made, upon the petition of one or more of the parties interested, and after hearing them all, may execute any such deed, or perform any other such act as the trustee, or mortgagee, if he were of full age, or sane mind, respectively might have executed or performed; and such deed or other act shall be valid, expect that he shall not be bound by a warranty or other covenant contained in the deed, Also the said Court may in like manner empower such guardian or committee to make or take, a surrender or a former lease, or to take; or make, a new lease, as the case may require, and as it shall seem most for the advantage of the infant, idiot, or lunatic, out of whose estate any fine that may be advanced and all other just expenses that may be incurred in order to obtain a new lease to him, shall be reimbursed, and the new lease shall not only be chargeable with such fine and expenses, but shall remain subject to all incumbrances which the lease surrendered would have been subject to.

"Sec. II. This Act shall commence and be in force from and after the first day of January, 1787."

"Sec. I. Be it enacted by the General Assembly, That any father, even if he be not twenty-one years old, may by deed or last will and testament, either of them being executed in presence of two creditable witnesses grant or devise the custody or tuition of his child, which has never been married, although it be not born, during any part of the infancy of such child to whomsoever he will; and such grant or devise heretofore or hereafter to be made, shall give the
grantee or devisee the same power over the person of the child as a guardian in common socage hath and authorize him, by action of ravishment of word or trespass, to recover the child, with damages, for the wrongful taking or detaining him or her, for his or her uses, and for the same use to undertake the care and management and receive the profits of the ward's estate, real and personal, and prosecute and maintain any such action and suits concerning the same as a guardian in common socage may do.

The high Court of Chancery generally, and the Court of every county in Chancery within the limits of their jurisdiction, shall have the power from time to time to control guardians and hear and determine all matters between them and their wards; to require security of any guardian in socage, or statutory guardian, when that caution shall seem necessary, for prevention of any damage his ward may suffer, by neglect, mismanagement, or malversation; and if the security be refused or delayed, or if such guardian appear to have been guilty of a flagrant abuse of trust, to displace him and appoint another in his stead, and to give such directions, and make such rules and common, as they shall see fit, for the government, maintenance and education of wards, and preservation of their states, and for the conduct of guardians. Every Court appointing a guardian, shall take bond of him, with sufficient surety, for the faithful execution of his office, and if any court omit his duty, or take such surety as shall not satisfy them of his efficiency, which may be done as well by the sureties' affidavit, as otherwise, the ward, by an action on the case against the judges or justices so making default, may recover so much of the damages which the guardian and surety shall be answerable for as these shall be unable to pay. If any guardian refuse, or be unable to give the surety required of him, the court may put the estate into the hands of curator, the fittest they can prevail upon, to undertake the care of it, to be accountable to them, and in that case shall not be answerable for his ability. Every guardian, or curator, to be appointed by any court, shall, at the term or session next afterwards, deliver into
such court, an inventory, upon oath, of all the estates which he shall received, to be entered of record in a separate book; and such guardian, or curator, and every guardian heretofore appointed shall exhibit to such court, once in every year, which, if it be a county court, shall be in August, or at the next session, if there be none in that month, or oftener, if he specially required, accounts of the produce of the estate, of the sales and dispositions of that produce, and of the disbursements, which accounts shall be examined by the court, or by such persons as the court shall refer them to, and being found and certified, are reported to be properly and fairly stated, and the articles thereof to be justified by the vouchers, and the report, in case of a reference, being approved and affirmed by the court, shall with such certificate or confirmation, be entered of record in the book aforesaid: And if any articles of such accounts at any time afterward be accepted by the said, or his representative, it shall be incumbent on him to prove or shew the falsity or injustice thereof, unless notice on his behalf shall have been given at the time of passing the accounts, that such article would be accepted to, and a memorandum of that notice shall be entered on record or desired to be. The Court, at any time when they shall know or have cause to suspect that the surety of a guardian is failing, may require and compel such guardian to give supplemental security, or if he refuse or neglect to do so, may displace him. A guardian who shall not deliver in such inventory, and render such accounts as aforesaid, shall, by order of the court to which he is amenable, be summoned, and if he remain in default, be compelled to perform his duty, or be displaced; for which purpose the summons, or other process from a county court may be directed to and shall be executed by the sheriff of any other county wherein the guardian may be found, and every judge or justice of the county sitting therein, at any time during the term or session in which the process ought to have been ordered, if it be not ordered accordingly, shall be amerced.
If the disbursements of the guardian, being suitable to the estate and circumstance of the ward, shall exceed the profits of his estate in any year, the balance, with the allowance of the court, may be debited in the account of a succeeding year, and a balance appearing to the contrary side, may be put out to interest, for the benefit of the ward, upon such security as the court shall approve, or the guardian, if it remain in his hands, shall account for the interest, to be computed from the time his accounts were, or ought to have been passed. If any surety for a guardian, by petition to the court before whom they were bound, setting forth, that he apprehended himself to be in danger of suffering thereby shall pray that he be relieved, the court, after a summons to answer the petition shall have been served upon the guardian, or a copy of such summons shall have been left at his place of usual abode, shall order him to give counter security, or to deliver the ward's estate into the hands of the surety, or some other, in that case taking sufficient security, or may make such other order for relief of the petitioner as to them shall seem just. The estate of a guardian, not under a specific lien, shall, after his death, be liable for whatsoever may be due from him on account of his guardianship to his ward before any other debt due from such guardian. Every orphan who hath no estate, or not sufficient for a maintenance out of the profits, shall, by order of the court of the county in which he or she resides, be bound apprentice, until the age of twenty-one years, if a boy, or eighteen years, if a girl, to some master or mistress, who shall covenant to both the apprentice at some trade, or business, to be particularized in the indenture, as also reading and writing, and if a boy, common arithmetic, including the rule of three, and to pay him or her three pounds and ten shillings at the expiration of the time. Any guardian may, with the approbation of that court in which his appointment shall be recorded, and not otherwise, bind his ward apprentice to such person, for learning such art or trade, and with such covenants on the part of the master or mistress as the said court shall direct; and any such apprentice, with the like approbation, or any apprentice bound by his father, may, with the approbation of the court of that county in which the father shall reside, after he shall be sixteen years of age, agree to serve until he shall be twenty-four years of age, or any shorter time, and such
agreement entered on record shall bind him:

"Sec. II. The Court of every county, city or borrough, shall at all times receive com-
plaint, the complaints of apprentices, or hired servants, being citizens of any one of the
Confederated States of America, who reside within the jurisdiction of such court, against
their masters or mistresses, alleging undes-
erved or immediate correction, insufficient allowance of food, raiment, or lodging, or
want of instruction, and may hear and deter-
mine such cases in a summary way, making such
orders thereupon as in their judgment will re-
lieve the party injured in future, or removing
the apprentices, and binding them to other
masters, or mistresses, when it shall seem
necessary; and may also, in the same manner,
hear and determine complaints of masters and
mistresses against their apprentices, or hired
servants, for desertion without good cause, and
may oblige the latter for loss thereby occasioned
to make retribution, by further services, after
expiration of the times for which they had been
bound.

"Sec. III. And be it further enacted, That the
Court of Hustings of Williamsburg, Richmond, and
Norfolk, shall have same power as is hereby given
the county courts.

"Sec. IV. This Act shall commence and be in
force from and after the first of January,
1797."

A few illustrations showing how the above laws
were put into practice should be given. "First as to
those possessing property. In 1639, George Ford, as
the guardian of John Saker, of York, was required by
the justices of that county to present an account of
all the costs which he had so far incurred in the boy's
education. From this account, it would appear that he
had, for that purpose, paid out, during the first year,
two hundred pounds of tobacco, and during the second
one hundred fifty. * Eight years later, William Hawkins, as the guardian of an orphan who had inherited a considerable stock of cattle from his grandfather, was instructed by the justices of York, in which county the parties resided, to devote only the herd's male increase to his ward's maintenance and tuition, as that would be amply sufficient for both. ** In the first of these cases, the guardian was reimbursed for advances; but an Act passed in 1656 (mentioned above I Hening's Statutes p. 416) stated that no person performing these duties thereafter was to be permitted to receive an allowance from Court for himself for money paid by him for the education of any child under his care, who was in possession of sufficient property to meet that expense out of his own income. The cost of his education, to use the words of the statute, must be covered by the "interest of the estate according to the proportion of the estate." There are numerous proofs that the Act was strictly enforced. In 1668, Captain John Scarbrooke was directed by the County Court of York to assume charge of the person and property of Dorothy Tucker,

an orphan girl, and to expend for her maintenance and instruction an amount that would be in due proportion to the value of her estate; but it must be drawn exclusively from the profits. * In years later, Morgan Bouldin, the stepfather and guardian of Elizabeth Longe, assured the justices of Northampton that he would during the following two years, send her to school; which was probably done only after the court had reminded him that he was neglecting her education." ** These and many other examples can be found illustrating the laws on managing and securing orphans' estates.

In 1705, they passed the following law granting "every person, male or female, imported or entering into the Colony or Dominion, the right to fifty acres of land." The law is as follows:

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** Bruce, Institutional History of Virginia in the 17th Century, Vo. I. p. 309 & 310.
5. Concerning Patents for Land.

Again partraying their concern and extreme care and vigilance in protecting the orphans, the General Assembly in their several different laws relating to "the granting, seating, and planting, and for settling titles and bounds of lands; and for preventing unlawful shooting and ranging" enacted special laws and statutes to take care of the interests of the children concerned and also enacted special provisions, safeguarding again the children's interest, in other laws and statutes which were not exclusively concerned with children.

In 1705, they passed the following law granting "every person, male or female, imported or coming into the Colony or dominion, the right to fifty acres of land:"

The law is as follows:

"Be it enacted, by the Governor, Council, and Burgesses, of this present General Assembly, and it is hereby enacted and declared by the authority of the same, That all and every person, male or female, imported and coming into this colony and dominion free, has the right to fifty acres of land; and every Christian servant, male and female imported after he or she becomes free, or time of servitude is expired, has a right to fifty acres of land for his or her importation; and every person coming into this colony, and importing a wife or children under age, hath a right to fifty acres of land for himself, his wife, and every such child so imported,
and certificate thereof shall be granted to every such free persons and master of a family demanding the same, and to every such servant after such their freedom in manner and form as is by this act hereafter directed, And that no person or persons by virtue of such importation shall here-after claim any right to land other than the persons so imported as aforesaid, or those to whom they shall assign their right in the presence of two witnesses; Any law, usage or custom to the contrary in any wise notwithstanding." *

Since it would necessitate too long and too detailed an account to give and discuss all the laws relating to "the granting, seating, and planting, and for settling titles and bounds of lands; and for preventing unlawful shooting and ranging", in most cases, only the provision dealing specifically with orphans and children will be given, however in one or two instances, the whole law will be quoted inclusive of the special provision for such persons but no discussion will be given.

The first law found in this connection was enacted in 1646 and re-enacted in 1657 and 1661, each time with a few slight changes, but always the same in substance. The law as it appeared in 1646 reads:

"Whereas sundry suits, controversies, and debate, in law, have been and dayly do arise about claymes and titles to land to the great impoverishing of divers of his

majestie's subjects; ffor remedy and redresse of the like inconveniences hereafter, and for the better establishing the rights and possessions of the inhabitants, Be it enacted that all persons whatsoever that have or doe pretend any title to any land shall within five years after the date of this act prosecute their claims or titles by commencing suite or entering action for the same, otherwise it shall be a good plea in barr for the possessor of such land claimed or pretended, to affirm, That he hath peaceable possession without clayme by commencement of suit to the time lymitted by this said act which shall be accepted a sufficient confirmation to these possessors and shall conclude the claim and title of the pretender; And this act is to extend according to the limitation expressed to all that shall take up land de future, Provided all waies notwithstanding anything in this act to the contrary, that the lymitation of ffive years in this act expressed shall not conclude orphans in theire titles, but that it shall be lawfull for them within ffive years after they come to age to commence suit for any land claymed by them; In which case it shall be no barr for the possessor to plead five years possession without clayme, unless the suit be commenced about 5 years after the orphans shall be of age."  

The next law which appeared in the statutes named, "Concerning Leating of Land" was passed in 1657 and re-enacted in 1710 and 1748. The act of 1657 reads:

"Whereas diverse suitts are and have commenced in Courtes depending on differences of the whole collony, ffor prevention whereof, Be it enacted and confirmed, That if any person or persons whatsoever have sett downe or any plantation or ground which did properly belong to any other man, and

"  " Vol. I. Act. XXXIX. p. 451 (1657)
"  " Vol. II. Act. LXXII, p. 97 (1661)
if it shall fall out by a just survey to bee the right of him, although it hath bin formerley peopled, cleared and builded upon by another, that a valuable consideration be allowed the judgment of twelve men upon oath to the first that hath seated upon it, but if the charge shall amount to more then the owner is willing to disburse, then hee that is in possession shall give satisfaction for the land which it may be judged worth, by twelve men before the seating thereof, which jurie is to be sworn by the next authoritye qualified to the administration of an oath. Provided that this act shall not extend to any orphans land, nor that such land be accounted disertaed until three yeeres after the age of any orphans. Alsoe it is provided further that where it appeares that hath bin lawfull wearing, noe consideration is to be allowed for building and clearing."

Another law found named "Concerning Surveighers"

was passed in 1653 and re-enacted in 1672, 1705, 1710, and 1749. The law of 1653 is as follows:

"Whereas many contentious suits do arise about titles to land, occasioned much through the fraudulent and underhand dealing of surveighers who frequently make sale of the surveige by them made, in the behalfe of one person to another, whereby often times he that had the first and justest right is unjustly deprived of his due, for prevention whereof for the future, be it enacted and ordained that noe surveigher of land shall give a platt of any land surveyed by him unto any other person whatsoever, until six months after such platt is drawn according to its surveigh, and that all land surveyed shall be at the surveighing thereof plainly marked and bounded for all persons to take notice of that none may by ignorance of the bounds intrench upon another's right. And the person offending either in giving out of

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* Hening's Statutes, - Vol. I. Act XXII. p.443 (1657)
  " " " III. Chap. XIII. p. 527 (1710)
  " " " V. Chapt. I. p. 420 (1749)
of surveys, contrary to this Act, or not sufficiently marking his bounds, for every one hundred acres the surveys shall be given of, to the use of the County. That all owners of elder patents shall be obliged to show their bounds to those that shall require it having land bounded upon theirs, with all convenience, at least within twelve months after demand, and in case of neglect the younger being exactly bounded to be valid in law, the other presumed not to have been lawfully surveyed which will prevent quarrels amongst neighbors, all future differences especially concerning orphans, And this act not to extend to orphans land or persons out of the Colony, And all lands so bounded to be kept and continued by new marking or setting up of new marks in the place of these false."

Still another law in regard to this subject was passed in 1705 and re-enacted in 1710, 1748, and 1786. Only the provisions concerning orphans will be given in this set of laws and the one in the Act of 1786 has been chosen because of its modern terminology, and because it includes in its provision not only orphans or infants, but also any "feme covert", "Person non composante's", or "persons out of the commonwealth." It reads:

"But nothing herein contained shall be construed, or extend to give liberty to any person to locate or obtain a grant for any unappropriated swamp, marshes, or sunden grounds lying contiguous to

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  "   " II. " III. " 305 (1672)
  "   " III. Chap. XXI. Page 327 (1705)
  "   " III. Act. XIII " 534 (1710)
  "   " V. Chap. I. " 430 (1748).
the high land of any feme covert, infant, person not being comos mentis, or person out of the Commonwealth, but such persons shall be allowed twelve months after the removal of their several disabilities for the pre-exemption of such lands."

The last act which appears on the subject was enacted in 1705, and re-enacted twice in 1705, twice in 1710, and once in 1748. It reads:

"Provided, nevertheless, That if any person or persons, that is or shall be entitled to such writ or writs, or that hath or shall have such right or title to entry be or shall be at the time of the said right or title first descended accrued, come or fallen within the age of one and twenty years, feme covert, non comos mentis, imprisoned or out of this Colony, that then such person or persons and his and their heir or heirs shall or may, notwithstanding the said twenty years are expired, bring his action or make his entry as he might have done before this act, so as such person or persons, or his or their heir or heirs within ten years next after his or their full age, discovery coming of sound mind, enlargement out of prison, or coming into this condition, or death, take benefit of, and sue for the same, and at no time after the said ten years."

* Hening's Statutes, Vol. III. Chap. XXI, P. 307 (1705)
  " " " III. Act. XIII. P. 529 (1710)
  " " " V. Chap. I. P. 422 (1748)
  " " " XII. " III. p. 239 (1756)

** Hening's Statutes Voll III. Capt. XXI. P. 323 (1705)
  " " " III. " XXI. P. 324 (1705)
  " " " III. " XIII. P. 522 (1710)
  " " " III. " V. L. P. 416 (1748)
C. Other Laws Concerning Orphans' Estates.

Since a few laws were found which were not definitely connected with any of the topics considered above, but were definitely concerned with Orphans' Estates, these will be quoted in this chapter, however, no discussion will be included because most of the laws are self explanatory and because they are of minor importance when considered in relation to the laws given above.

The first to be considered in this group was passed in 1714, and was termed "An Act to oblige owners and occupiers of mills to which Public Roads shall lead, to make Dams of such mills ten feet wide at the top." The provision for persons under twenty-one years of age is as follows:

Sec. II. ... "And if the owner or owners of such mill shall be under the age of twenty-one years, or shall reside out of this Colony, that then the guardians of such infant, and the attorney of such owner, who shall reside out of this Colony, shall at the charge of such infant, and owner, residing out of this Colony, by the said last day of November, make and afterwards keep such mill dam, bridge, and passage, of the breadth above by this Act directed for the whole length of such dam, bridge, and passage. ..." *

This Act also states certain penalties for not carrying out the above legal requirements.

* Hening's Statutes. Vol. IV. Chap. II. Page 53 (1714)
Another Act concerning water mills was passed in 1748, and reads:

Sec. IV. "Provided also, That where any water mill shall belong to any person being within the age of one and twenty years, feme covert, non compos mentis, or imprisoned, and shall be discontinued, burnt, or destroyed by tempest, every such person, his or her heirs, shall have liberty to rebuild or repair within three years after such disabilities removed." *

Another law termed "For reducing the laws made for amending the stable of tobacco; and for preventing frauds in his majesty's customs, into one Act of Assembly, was passed in 1742 and reappeared in 1748, and 1766. As cited in Hening's Statutes, it reads:

Sec. XXIX. "And be it furthered enacted, and it is enacted by the authority aforesaid, And where warehouses are not already built at any place aforesaid, or where any new warehouses, shall be hereafter appointed to be kept at any other place, it shall and may be lawful for the justices of the Court of that County, wherein such place is, or shall be, and they are hereby required, to cause the owner or proprietor of the land, where such warehouses are and shall be appointed to be kept; and in case such owner or proprietor be under age, feme covert, or out of the County, then the guardian, husband, or known attorney (as the case is) of such owner or proprietor, to be summoned to appear before them, at the next succeeding County Court, after such summons shall issue there to declare whether they will undertake to erect and build such houses, wharfs, and other conveniences, as the said Court shall think fit to direct, And lett the same to

* Hening's Statutes: Vol. VI. Chap. XXVI. page 56 (1748)
the inspectors appointed to attend at such
warehouses, at the rent settled by this Act
or which shall hereafter be settled for same."

Certain penalties were imposed upon persons who
refused to conform with the above legal requirements.

An Act for hemp warehouses was enacted in 1766
but due to its similarity to the above Act, it will
not be quoted. ***

An interesting law concerning Infants' lands
entitled "An Act for clearing and improving the navi-
gation of the James River," was passed in 1794. As
cited in XI Hening's Statutes, Chapter XIX, page 457,
the law states:

Sec. VII. "Be it enacted, That it shall and
maybe lawful, for the said president and
directors, or a majority of them, to agree
with the owners of any land, through which
the said canal is intended to pass, for the
purchase thereof; And in case of disagreement,
or in case the owner thereof shall be a ferme
covert, under age, non compos mentis, or out
of the State, on application to any two
justices of the County in which such land
shall be in, the said justice shall issue
their warrants under their bounds, to the
sheriff of their County, to summon a jury
of twenty-four inhabitants of his County
of property and reputation, not related to
the parties, nor in any manner interested,
to meet on the land to be valued, at a day
to be expressed in the warrant, not less
than ten, nor more than twenty days there-
after; at least twelve should be present,

*** Hening's Statutes. Vol. VIII. Chap. XXXVI. p. 253 (1766)
and the sheriff must administer and oath to them. Their valuation conclusive on all persons."

When a law was passed in 1674 fining certain persons so many pounds of tobacco for the king's revenue to carry on his courts, a clause was inserted in the act which relieved orphans of such fines. This can be seen in the following act:

"And whereas this General Assembly are sensible by the lowness of our publique revenue that money may yet be wanting for the advance and carrying on the most necessary works, Be it alsoe further enacted by this General Assembly and the authority thereof the seventy pounds of tobacco per cause in the General, fifty pounds of tobacco in the County Courts, per cause, shalbe ascered in in the name of a paine, upon every person that shalbe cost in any suite except in action of debt, in which if any be cast, he or they se caste as aforesaid shalbe in the general Court fifty pounds of tobacco, in the County Court, thirty pounds of tobacco, and in case of appeals doubled; Provided nevertheless that all causes of orphans be out of this clause of amercements utterly excluded and foreprised." **

Certain orders or resolutions appeared from time to time in the statutes which, according to Hening, seem to deal with private or local subjects, as contrast distinguished from the Acts, which are of general concern. An order which appeared in 1659 and which was referred to earlier in this chapter commands:

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* Hening's Statutes. Vol. XI. Chap. XIX. p. 457 (1794)
"That the Secretary issue forth summons for Assemblies ex officio, And that sherriffs summon all persons to bring in accounts of orphans estates, And the clerks of County Courts register the said accounts ex officio."

As said before this order is mentioned earlier in this Chapter.

CHAPTER IV.

LAWS CONCERNING INDENTURE.

1. Background.

The System of Indenture found early in the beginnings of Virginia was a carryover from the English Custom of Indenture and apprenticeship, which the early settlers brought with them. According to James Curtis Ballagh in his Study of "White Servitude in the Colony of Virginia," by a special application of the English system of apprenticeship, well established in England after the Statute of Apprentices of Elizabeth in 1563, an attempt was made "to round out" a tenancy and insure its perpetuity for the purpose of transporting servants to the Colony of Virginia. Accordingly, one hundred poor boys and girls who were found starving in the streets of London were sent to the Colony of Virginia in 1619, by the aid of the mayor and the Council of the City, to be bound to the land tenants in Virginia, for a term of years, at the end of which they were to become themselves tenants - at halfs on the public lands, and were given to start with an allowance of stock and corn.
Industrial apprenticeship was also provided for, to encourage trade and to stop the excessive planting of tobacco. The term was usually limited to seven years, or in the case of girls, upon marriage or becoming of age. Apprentices soon began to be disposed of to the planters upon their reimbursing the Company for the charges of the outfitt and transportation, and the records in several cases suggest a suspicion of speculation. **

Ballagh adds that a number of causes combined to fasten the system very early upon Virginia. These were the stimulus given to the acquisition of wealth resulting from the establishment of private property in land, the phenomenally rapid growth of tobacco culture, occasioned by the productiveness of labor employed in it, and the returns to be had in ready money from its sale; the increasing cost of hired labor; the "head right" of fifty acres which was for every person transported; but particularly the unfortunate condition of the laboring classes in England whose real wages (owing to the great rise in prices in the latter part of the 16th Century) were exceedingly low and gave rise to a large class of unemployed. ***

** J. C. Ballagh, White Servitude in Colony of Va. p. 28
*** Ibid. p. 42
Since the very beginning of Jamestown, ship loads of servants, including men and women, but largely boys and girls, had been sent over to the Colony. Of course the Company bore the expense of their transportation, but it was their plan to be reimbursed for this expenditure when they sold the servants to settlers in the Colony. Bruce states that in 1621, it was established that the cost of sending fifty boys to Virginia was five hundred pounds sterling, or ten pounds to the boy, which included not only the charges for the transportation, but also the cost of food and clothing. The Company looked forward to recovering the amount by the sale of the youths, the price expected for each being sixty-six hundred pounds of tobacco at three shilling a pound. It was discovered that this quality did not always meet the expense incurred in the case of each youth, and in this event, the rule required that the purchaser should make good the difference, since it was unjust that the Company should be exposed to any loss when it was considering the benefit of the planters in undertaking to supply them with servants.

The preference displayed for the introduction of many young persons had its origin in considerations the influence of which lasted throughout the century. Boys were not only more easily controlled, but their
term continued for a greater length of time than few persons who had reached maturity, and in consequence, their masters were not called upon to fill their places so often or so soon. A youth of eighteen or nineteen was capable of performing almost as heavy tasks as a man of twenty-three or twenty-four, and whatever difference of physical strength there might have been in the latter's favor was covered by the advantage accruing for longer service. It must not be forgotten, however, that boys were more easily secured than adults because so many were bound out as apprentices.

It is well to point out that this system of servitude and apprenticeship falls into three rather distinct periods as shown by Ballagh. The first period, lasting from 1619 to 1642, is characterised by the development of certain incidents of servitude from practices originating in the first twelve years of the Company's government. These gradually became fixed during this period chiefly in customary law. In the second period, lasting from 1642 to 1726, the provisions of the former law were extended and further established by Statute Law, and the system was reduced to legal uniformity in contrast to the somewhat varying practices of the courts in the former period. The institution reaches also in this period its highest

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practical development. The third period, lasting from 1726 to 1789, represents the period of decline of the system in consequence of the rising institution of negro slavery.*

2. First Laws Concerning Indenture.

In 1619 the number of tenants of land and servants in Virginia was sufficiently large to make necessary some regulation for the future condition of their servitude. However, as stated above, it was not until 1642 that these regulations were put into statutes law. Accordingly, the first law passed in this connection was enacted in 1642 and re-enacted in 1657 with definite changes as to the length of the indenture. The Act of 1642 states that:

"Whereas divers controversies have risen between masters and servants being brought into the colony without indenture or covenants to testify their agreements whereby both masters and servants have been often prejudiced, Be it therefore enacted and confirmed for prevention of future controversies of the like nature, that such servants as shall be imported having no indentures or covenants either men or women if they be above twenty years old to serve four years, if they shall be above twelve and under twenty to serve five years, and if under twelve to serve seven years."

The following change in the length of the indenture was enacted in the Act of 1657:

* J. C. Ballagh, White Servitude in Colony of Virginia, p. 49
** Hening's Statutes Vol. I. Act. XXVI. p. 227 (1848)
"-.-. That all persons as shall be imported having no indenture or covenant, either men or women, if they be above sixteen years old shall serve four years, if under fifteen to serve till hee or shee shall be one and 20 years of age, and the courts to be judges of their ages."

3. Laws of Indenture Concerning Poor Children.

Influenced by English practices, and under the urge of the authorities in England, the Virginia Assembly gave attention to the production of manufactured articles, and in 1646 passed an act to establish at Jamestown, then James City, a public flax house, after the pattern of the English workhouse, on the excuse of providing for poor children and giving them a trade education. Following is the exceedingly interesting statute (I Hening's Statutes Act XXVII, pages 336-337) enacted at that time:

"Whereas, sundry laws and statutes by act of parliament established, have with great wisdome ordained, for the better educating of youth in honest and profitable trades and manufactures, as also to avoid sloth and idleness wherewith such young people are easily corrupted, as also for relief of such parents whose poverty extends not to give them breeding, That the justices of peace should at their discretion, bind out children to tradesmen and husbandmen to be brought up in some good and lawfull calling. And whereas God Almighty, among many of his other blessings, hath vouchsafed increase of children to this colony, who now are multiplied to a considerable number, who if instructed in good and lawfull trades

* Hening's Statutes, Vo. I. Act. XVIII. D. 441 (1667)
may much improve the honor and reputation of the country, and noe lesse their owne good and their parents comfort: But forasmuch as for the most part the parents, either through fond indulgence or perverse obstinacy, are most averse and unwilling to parte with their children, Be it therefore enacted by the authorities of this Grand Assembly, according to the aforesaid laudable custom in the Kingdom of England, That the Commissioners of the severall counties respectively do, at their discretion, make choice of two children in each county of the age of eight or seaven yeares at least, either male or female, which are to be sent up to James City between this and June next to be employed in the public flax houses under such master or mistresse as shall be there appointed, in carding, knitting and spinning, & c. And that the said children be furnished from the said county with sixe barrels of corne, two coverletts, or one rug and one blanket: One bed, one wooden bowle or tray, two pewter spoones, a sow linen and woolen, with hose and shoes, And for the better provision of houseing for the said children, It is inacted, That there be two houses built by the first of April next of 40 foot long apace with good and substantial timber, The houses to be 20 foot brede apace, 8 foot high in the pitche and a stack of brick chimneys standing in the midst of each house, And that they be lofted with sawnne boards and made convenient partitions, And it is further thought fitt that the Commissioners not take up any children but from parents who by reason of their poverty are disabled to maintain and educate them, Be it likewise agreed, That the Governour hath agreed with the Assembly for the summe of 10,000 pounds of tob’o to be paid him the next crop, to build and finish the said houses in manner and form before expressed."

This statute was never complied with as far as any records show.

In 1661, the Assembly delegated the supervision of the poor to the vestries, who made levies for their support. Later, the vestries, by act of Assembly wh