

THE VOLUNTARY HOSPITALS (PAYING PATIENTS) ACT, 1936

EXPLANATORY MEMORANDUM

PREPARED BY

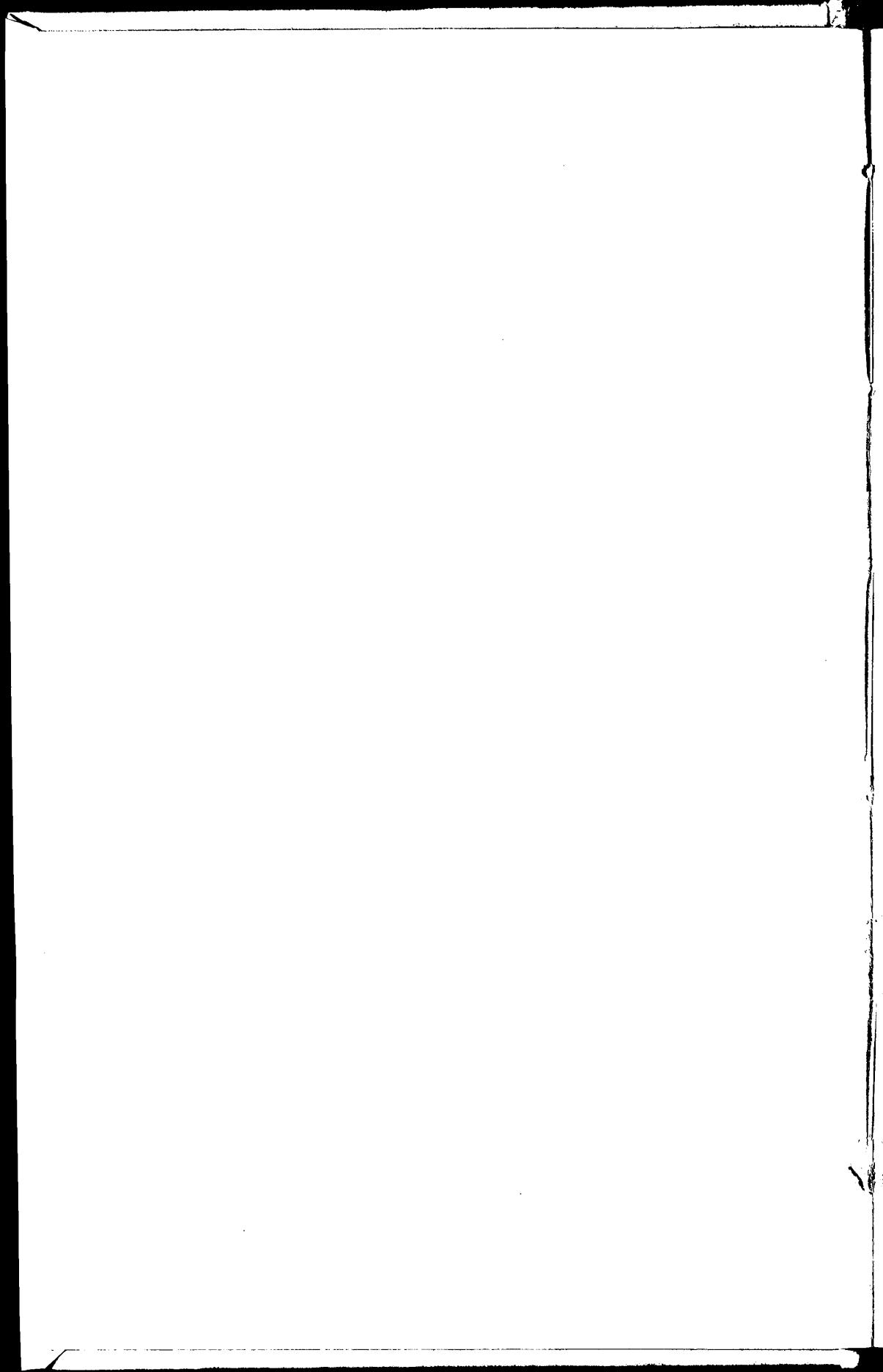
KING EDWARD'S HOSPITAL FUND
FOR LONDON
AND THE
BRITISH HOSPITALS ASSOCIATION

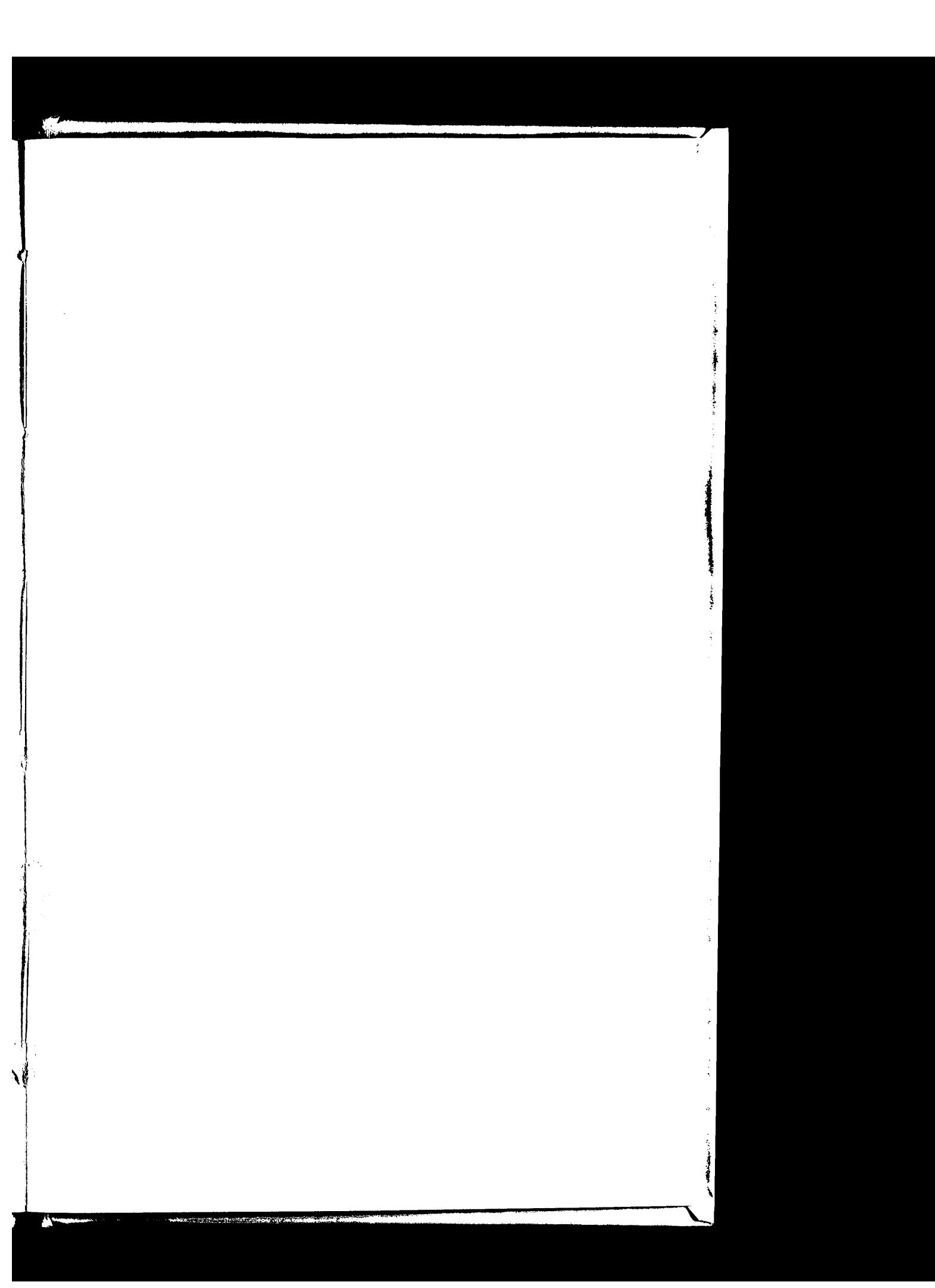
September, 1936

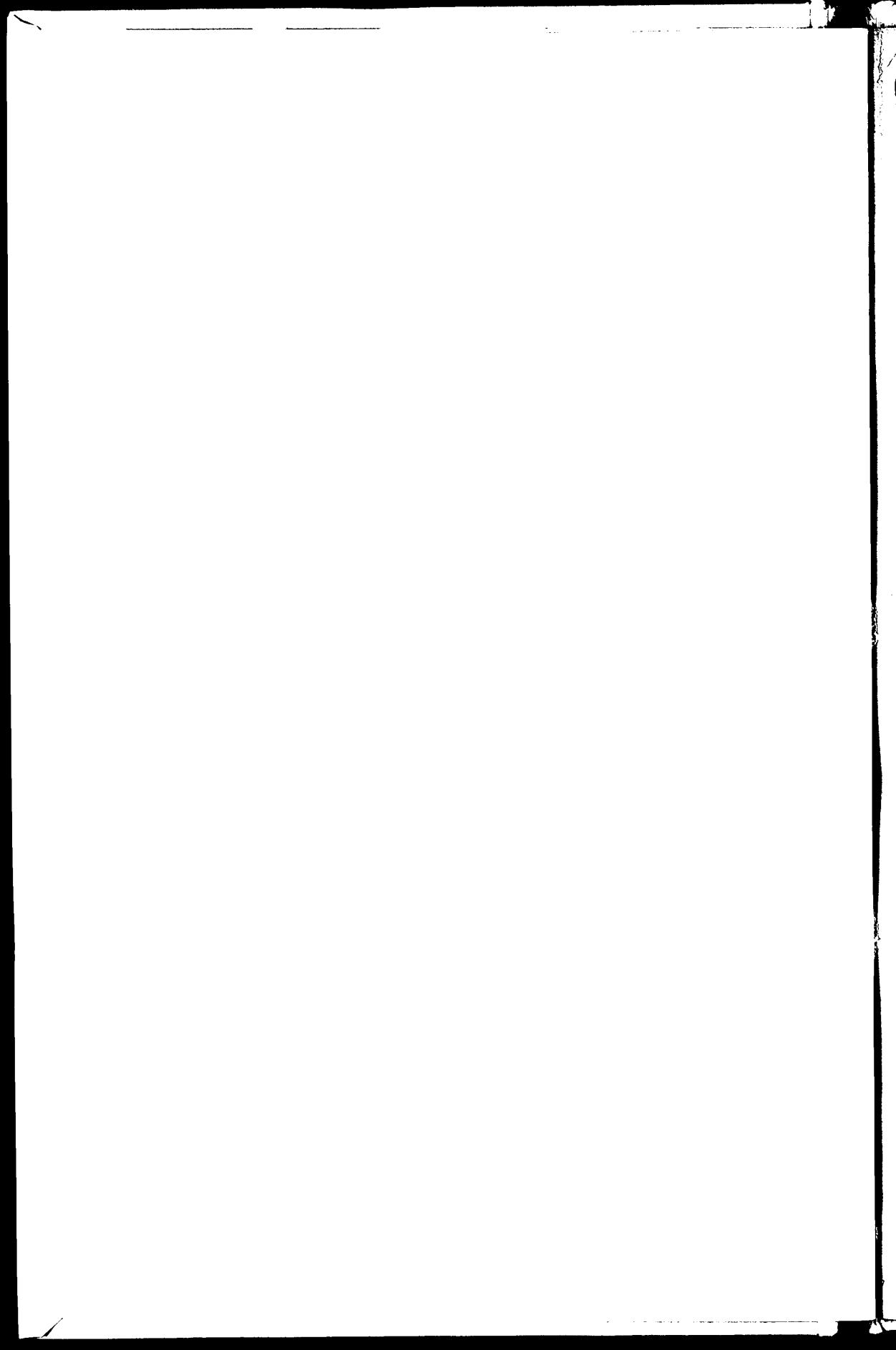


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**KING EDWARD'S HOSPITAL FUND
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1. The Voluntary Hospitals (Paying Patients) Bill was promoted by King Edward's Hospital Fund for London in co-operation with the British Hospitals Association to enable hospitals to obtain from the Charity Commissioners legal power to carry out schemes for providing pay beds,* by means of funds specially received or collected for the purpose, where they do not already possess, under their existing powers, the necessary authority to carry out such schemes.

2. The power of the Charity Commissioners to sanction any such scheme is subject to the proviso that the scheme will not diminish or restrict the accommodation that would otherwise be available for ordinary patients†; and is subject also to provisos, added by Parliament, whereby more specific safeguards are provided for funds or property intended for ordinary patients under existing trusts, and whereby a proportion of the pay bed patients must resemble ordinary patients in that they are unable to pay their full cost.

3. The object of this Memorandum is to summarise for the use of hospitals such practical information about the scope and the provisions of the Act as the promoters have acquired during the drafting of the Bill and its passage through Parliament. The Memorandum does not profess to give authoritative information on such questions as the powers already possessed by hospitals under their existing trusts, the legal interpretation of the Act, or the principles or procedure which will be adopted by the Charity Commissioners.

4. Subject to these limitations, it is hoped that the Memorandum may be of use to hospitals.

* See Appendix III (i).

† See Appendix III (ii).

SUMMARY OF THE PROVISIONS OF THE ACT.

5. The following is believed to be an accurate general summary of the effect of the Act :

- (A) Where the existing powers of the hospital do not prevent the use of existing funds or property for pay beds, no application need be made to the Charity Commissioners (Section 6 (1)) ;
- (B) Where the existing trusts of a hospital prevent the use either of its funds, or of its buildings, or of its land, for the provision of pay beds, the hospital can apply to the Charity Commissioners for an Order authorising it to provide a specified number of pay beds for a specified period, at a specified scale of charges* (Section 2 (1) and (2)).

In cases falling under (B) :—

- (a) The Charity Commissioners will have no power to authorise the hospital to use, for providing the capital cost of the pay beds, funds held under the existing trusts (Section 6 (3)). It follows that the capital cost must be provided out of money specially received or collected for the purpose, or for purposes which specifically include it, *e.g.*, for an extension scheme in which pay beds are mentioned ;
- (b) The Charity Commissioners will have no power to authorise the use of buildings held under the existing trusts except in the following circumstances, viz. :—
 - (i) unless the buildings cannot be used for ordinary patients by reason of want of funds or absence of demand, either at the time, or in the near future (Section 4 (b) (i) and (ii)) ;
or
 - (ii) unless the hospital provides equivalent new accommodation to be used for the benefit of ordinary patients by way of exchange† (Section 4 (b) (iii)) ;
- (c) The Charity Commissioners will have no power to authorise the use of land held under the existing trusts unless the hospital can satisfy the Commissioners that it will not be able to use the land for the purposes of such existing trusts until after the expiration of a substantial period (Section 4 (a)) ;
- (d) The Charity Commissioners must normally require that the scale should include charges suited to patients of moderate or limited means who cannot pay their full cost, and that in the use of a specified number of the pay beds priority should be given to such patients, the hospital being authorised to meet the deficit on these patients out of its general funds (Section 3 (1) and (2)). Subject to this, there is nothing in the Act to prevent

* See Appendix III (iii).

† For example, a hospital may wish to build a new nurses' home and to convert the existing nurses' quarters into pay wards, the money for the pay bed part of the scheme being specially raised.

the Charity Commissioners from authorising a suitable number of beds at charges appropriate to well-to-do patients* ;

(e) The Charity Commissioners will have no power to authorise the hospital to use, for the maintenance of pay beds, funds held under existing trusts, except for the purpose described in subparagraph (d) above (Section 6 (3)) ;

and, generally speaking :—

(f) The Charity Commissioners will have no power in any case to authorise the use of property or funds held under existing trusts unless this will not diminish or restrict the accommodation for ordinary patients which the hospital provides and can maintain (Section 4 (c)).

6. The Act also contains definitions (Section 1) ; sections giving the Charity Commissioners power to vary an Order on the application of the hospital or if the Commissioners consider that there has been a material change of circumstances (Section 2 (4)), power to make rules (Section 5 (1) and (2)), and power to charge costs to the hospital (Section 5 (3)) ; and certain incidental provisions (Sections 2 (3), 6 (2) and 7 (1)).

7. The Act does not apply to Scotland or Northern Ireland (Section 7 (2)).

NOTE ON THE LEGAL POWERS OF HOSPITALS.

8. Questions as to the power of a hospital to provide pay beds are liable to arise where the hospital desires to treat patients with whom it will make a contract for payment, and to use for the purpose either capital or maintenance funds, or equipment or buildings or site, not specially given for the purpose.

9. It would appear—

(a) that, generally speaking, a hospital has power to provide pay beds :

- (i) if the document defining its trusts or objects gives specific power to provide treatment otherwise than gratuitously ;
- (ii) if the document defining the trusts or objects contains no words implying only gratuitous treatment ; regard being had to the fact that words defining the object as treatment of the poor, or of the necessitous, or of the destitute, may be held to imply only gratuitous treatment ;

* The explanation given for the Government on Second Reading was : " It would be equally open to the rich man, as well as to the person of more limited means, to pay the charges specified in the Order. It is suggested, therefore, that it would be right that power should be given to the Commissioners to insert in any Order made by them provisions reserving a certain proportion of the accommodation for patients of limited means." (*Hansard*, H.L., Vol. 96, No. 40, col. 478.)

- (iii) If there is no document defining its trusts or objects, other than a document drawn up by the governing body and alterable by them ;
- (b) that, in some cases, it is doubtful whether under its existing trusts the hospital has or has not the power to provide pay beds ;
- (c) that, except in the rare cases where the original trusts have failed, an extension of the trusts cannot be obtained except under the 1936 Act or by means of an Act of Parliament.

10. A hospital whose existing trusts do not permit the provision of pay beds can apply to the Charity Commissioners for sanction :

- (a) if the hospital cannot continue to use its existing accommodation, or part of it, for the original purposes, either through lack of funds or through lack of demand, *i.e.*, if there is an actual failure of the trust : in such cases the Charity Commissioners can give authority for the provision of pay beds under the *cy près* doctrine, without making use of the 1936 Act ;
- (b) if the hospital proposes to collect or receive new gifts specifically for the provision of pay beds in addition to its existing accommodation, including the provision of new land for the purpose, and if therefore the only question is whether pay beds come within the legal objects of the institution : in such cases the Charity Commissioners can, if necessary, treat the proposal as the establishment of a separate new trust, without making use of the 1936 Act ;
- (c) if, in a case otherwise similar to (a), there is no actual failure of the existing trusts but only a probable failure in the near future ; or if, in a case otherwise similar to (b), it is proposed to provide the pay beds on part of the existing land of the hospital, or to use part of its buildings or other property for this purpose ; in such cases the Charity Commissioners cannot grant sanction except under the 1936 Act and in accordance with its provisions.

11. The attention of hospitals making use of this Memorandum is specially directed to paragraph 3 above.

APPENDICES

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APPENDIX I

COPY OF

“ MEMORANDUM ”

(attached to the Bill as introduced into Parliament).

“ 1. The object of the Bill is to give power to provide pay beds in voluntary hospitals for patients who, in the event of serious illness or operation, cannot afford the cost of private treatment, but are able and willing to pay for treatment in a hospital at charges proportionate to their means. There are also now many modern methods of diagnosis and treatment which cannot be provided without the aid of the specialised equipment and staff of a hospital, except at great expense, if at all.

“ 2. Parliament has already conferred on several hospitals, who have obtained private Acts, powers to provide accommodation and treatment for paying patients and a number of hospitals already have the necessary powers under their constitution.

“ 3. At some hospitals, however, although the need is no less great and there is every willingness to meet it, the provision of pay beds is prevented by legal obstacles and anomalies arising from the fact that the need was not foreseen at the time when the legal definition of the objects of the hospital was settled. In some instances the legal position is in doubt.

“ 4. This Bill is promoted to provide a uniform method of removing these legal obstacles and anomalies, while at the same time fully safeguarding the interests of the sick poor by reserving control to the Charity Commissioners, who are the recognised custodians of such interests.”

APPENDIX II

COPY OF THE ACT

with marginal cross-references to paragraphs of the present
Memorandum.

[26 GEO. 5. & Voluntary Hospitals (Paying [CH. 17.]
EDW. 8.] Patients) Act, 1936.

An Act to empower voluntary hospitals in
pursuance of Orders of the Charity Com-
missioners to provide accommodation and
treatment for paying patients.

A.D. 1936. paragraph.

BE it enacted by the King's most Excellent
Majesty, by and with the advice and consent
of the Lords Spiritual and Temporal, and Commons,
in this present Parliament assembled, and by the
authority of the same, as follows:—

1. In this Act unless the context otherwise requires—

“ voluntary hospital ” means an institution
(not being an institution which is carried
on for profit or which is maintained wholly
or mainly at the expense of the rates)
which provides medical or surgical treat-
ment for in-patients ;

6

“ committee of management ” includes any
body or persons having the management
or control of a voluntary hospital ;

“ Order ” means an Order made by the Charity
Commissioners for any of the purposes
specified in subsection (1) of section two of
this Act.

5 (B) Accommodation for and charges to paying patients.

2.—(1) Notwithstanding the trusts express or implied upon which the property and funds of a voluntary hospital are held, and notwithstanding any prohibition or restriction imposed by or under any local Act, being an Act relating expressly to the hospital, charter, scheme, deed, will, or otherwise, not being a prohibition or restriction imposed by a public general Act or by any local Act not so relating, the committee of management may provide and maintain on such land from time to time belonging to them such new buildings or such existing buildings of the hospital, or such parts of such new or existing buildings and such and so many beds therein and for such period as the Charity Commissioners may on the application of the committee of management from time to time by Order authorise, for the accommodation and treatment of patients who are able and willing to make payment therefor.

5 (B)

(2) The committee of management may charge such patients as aforesaid for accommodation and maintenance (including such medical and surgical attendance and treatment as is given by the resident staff of the hospital) in accordance with such scale of charges as may be specified in an Order.

6

(3) An Order may include any consequential or incidental provisions appearing to the Charity Commissioners to be necessary or desirable.

6

(4) The Charity Commissioners may, from time to time on the application of the committee of management, vary an Order, and, if in the opinion of the Commissioners there has been any material change in the circumstances existing at the time when an Order was made, they may, after giving to the committee of management and to any other persons appearing to the Commissioners to be concerned an opportunity of making representations, of their own motion vary or revoke the Order.

5 (d) Provision for patients able to make some, but not full, payment.

3.—(1) Except where the Charity Commissioners are satisfied that it would be inappropriate in the circumstances so to do, they shall include in the scale of charges specified in an Order charges fixed with a view to meeting the needs of patients who, though able to make some payment, are unable to pay charges sufficient to meet the full expense to the hospital of their accommodation and mainten-

ance (including such medical and surgical attendance and treatment as is given by the resident staff of the hospital), and shall make it a condition of the Order that in the use of a number to be specified therein of the beds whose maintenance is authorised thereby priority shall be given to such patients.

5 (d)

(2) An Order may, in cases where the committee of management have not the power so to do apart from an Order, authorise them to defray out of any funds applicable to the general purposes of the hospital the difference between the full expense to the hospital of the accommodation and maintenance (including such medical and surgical attendance and treatment as is given by the resident staff of the hospital) of such patients as aforesaid on the one hand, and the sums with which those patients are charged under the authority of the Order on the other hand.

5 (d)

4. The Charity Commissioners shall not make Provisions an Order authorising any use or application of property or funds which, apart from the Order, existing would involve a breach of any trusts upon which the property or funds are held or a contravention of any prohibition or restriction imposed as mentioned in section two of this Act—

5 (c)

(a) on an application for authority to use land, unless they are satisfied that if the Order were not made the land would not come into use for the purposes for which the trusts were created or the prohibition or restriction was imposed, until after the expiration of a substantial period from the date of the application;

(b) on an application for authority to use existing buildings or part of existing buildings, unless they are satisfied either—

5 (b) (i)

(i) that the use of the buildings or part thereof for the purposes for which the trusts were created or the prohibition or restriction was imposed is impracticable, or is likely soon so to become, because the committee of management have not at their disposal, and will be unable to obtain, sufficient funds to enable the buildings or that part thereof to be, or to continue to be, so used;

5 (b) (i)

(ii) that the use of the buildings or part thereof for the purposes aforesaid is impracticable, or is likely soon so to become because of a shortage of demand for accommodation on the part of the persons for whose benefit the trusts were created or the prohibition or restriction was imposed ; or

5 (b) (ii)

(iii) that the committee of management have, or are likely soon to have, at their disposal premises which could be put to the use to which the application relates without breach of any trust upon which those premises are held or contravention of any such prohibition or restriction as aforesaid and that the buildings or part thereof will be used by way of exchange for those premises ;

5 (f)

(c) in any case, unless they are satisfied that the authorisation will not diminish or restrict the accommodation for such persons as aforesaid which is provided in the hospital at the date of the application for the Order and which the committee of management would be able to continue to provide if the Order were not made.

6 Power to
Charity
Commis-
sioners to
make rules

5.—(1) The Charity Commissioners may make rules in relation to applications for Orders and proceedings in connection therewith, and to the publication of notices and advertisements and the manner in which and the time within which representations or objections with reference to any application or other proceedings are to be made, and to the holding of inquiries in such cases as they may think advisable and to any other matters arising under or in pursuance of this Act.

6

(2) Any rules made in pursuance of this section shall be laid before Parliament as soon as may be after they are made.

6

(3) The Charity Commissioners may require such sum as they may determine to represent costs or expenses incurred by them in the exercise of the powers conferred upon them by this Act (including a sum in respect of the services of an officer engaged in an inquiry) to be provided out of any funds, being funds under the control of the committee of

management of the hospital in relation to which the expenses are incurred, whether representing capital or income, which in the opinion of the Charity Commissioners may properly be made applicable for that purpose.

6

6.—(1) Nothing in this Act shall be construed as Savings.
limiting or restricting the exercise by the committee of management of any power which apart from this Act they would have been entitled to exercise.

5 (A)

(2) The powers conferred on the Charity Commissioners by this Act shall be in addition to and not in derogation of any other powers exercisable by them.

6

(3) Except to the extent of an application of funds authorised under subsection (2) of section three of this Act, an Order shall not be construed as authorising any application of funds.

5 (e)
5 (a)

7.—(1) This Act may be cited as the Voluntary Hospitals (Paying Patients) Act, 1936. Short title and extent.

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(2) This Act shall not apply to Scotland or to Northern Ireland.

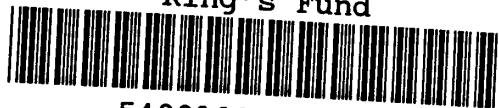
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APPENDIX III

DEFINITIONS OF CERTAIN TERMS AS USED IN THIS MEMORANDUM.

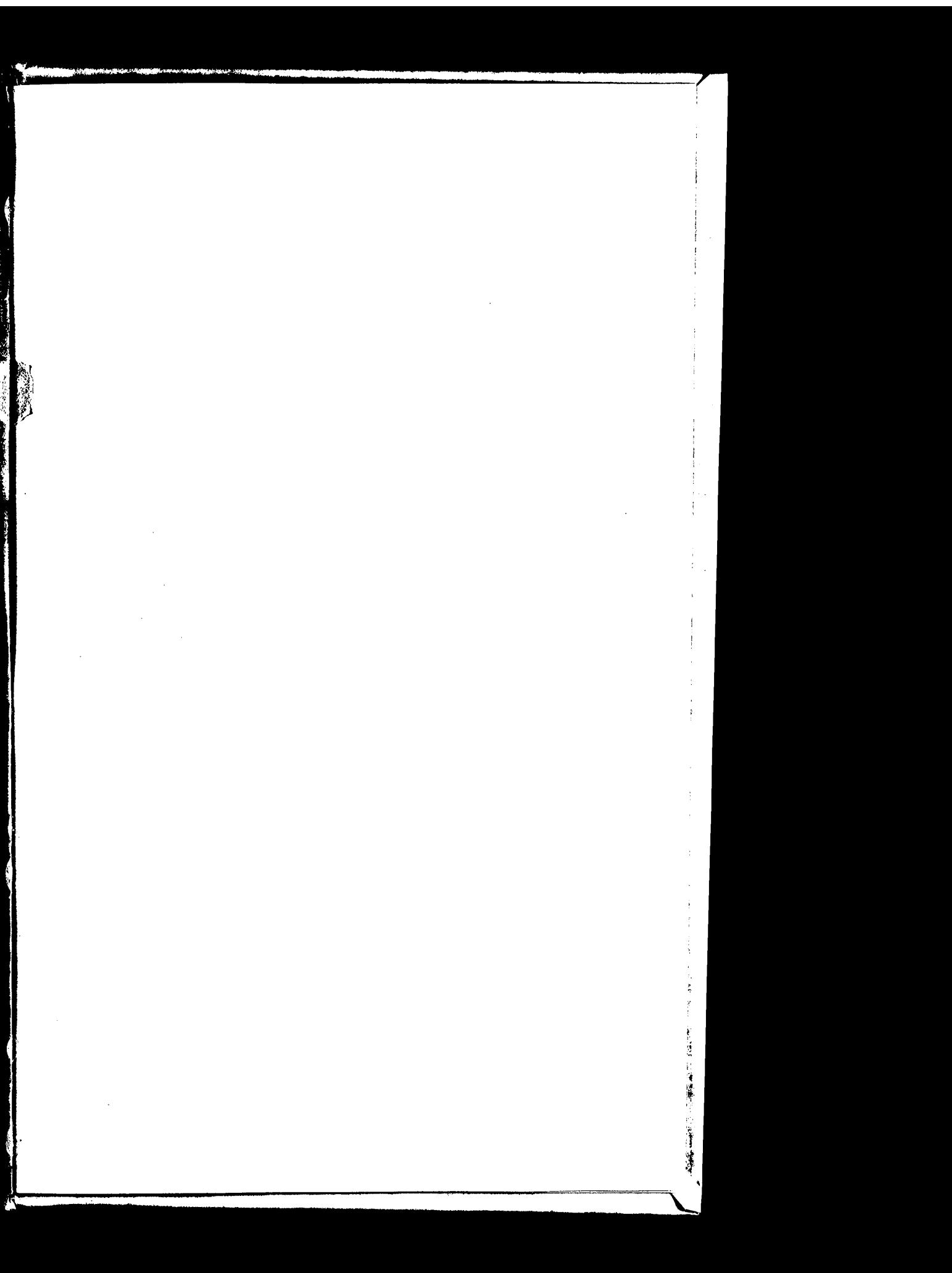
- (i) In this Memorandum the term "pay beds" is used, as in the Report of the Pay Beds Committee of the King's Fund, for special accommodation provided for patients who contract with the hospital to pay charges. The use of the term was explained in the Report of that Committee, as follows : "The term 'pay bed patients' is suggested "by the title of the Committee. The alternative 'paying patients' is "ambiguous now that so many ordinary patients contribute according "to their means, while 'private patients' is often used for patients in "single rooms, or for the patients in the private practice of members of "the medical staff."
- (ii) In this Memorandum the term "ordinary patients" is used for the patients for whose benefit the existing trusts of the hospital were created, as distinct from pay bed patients.
- (iii) In this Memorandum the term "charges" is used for charges made by the hospital for what the hospital provides ; as distinct from the term "fees" for payments made by the patient to his medical or surgical attendants for what they provide. The scale of charges specified by the Charity Commissioners will relate to the former, not to the latter.

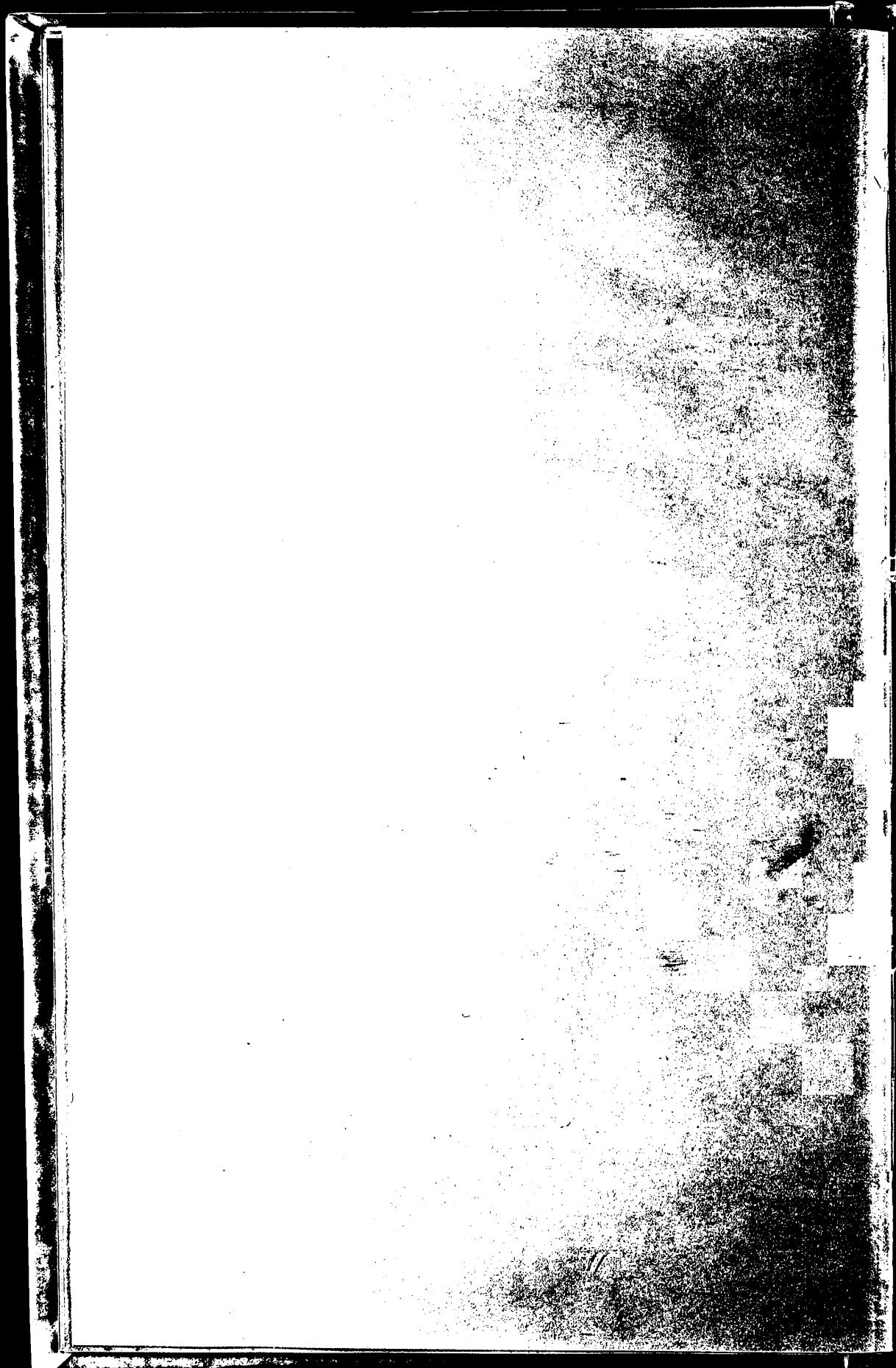
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