

The Girls Portion

A short history of a 1688 Maryland land patent
containing 1,776 acres, a “portion”
of which in 1776 would be the first such
patent describing land located in Montgomery County;
And in particular, the title history to
one small lot in Silver Spring, Maryland

PREFACE

More than thirty years ago I first had the idea to write a treatise on land boundaries in the State of Maryland, at a time when I was both practicing land surveying and attending the University of Maryland School of Law. Working with surveyors was a great opportunity to learn the practices and procedures of land surveying, from using instruments to applying certain mathematical rules to fix the bounds of a tract of land. Being trained as a land surveyor was a good study on how to interpret the language of deeds and easements, and other instruments of title, including land patents, and how one applies the rule of priorities and the common custom of surveyors in order to re-establish a boundary line.

However, while practicing land surveying, I was not aware of either the actual cases or statutory laws on the subjects of surveying and boundary law. Although law school provided me with a very solid base for an understanding of real property and estate law, little time was spent on the actual law pertaining to the descriptive elements of a conveyance.

After I began my practice of law, I started to teach a course each year sponsored by the Maryland Society of Surveyors, for people who had surveying related jobs, including many who aspired to obtain their professional license. In addition, through the years, I have been engaged to give many lectures on surveying related subjects, all of which helped me to attain a fair degree of knowledge on how boundary lines are re-established.

What I found in my pursuits as a teacher and lecturer was that there was not a good source book on the principals of Maryland boundary law and its related subjects. I then set out to accumulate all of the pertinent Maryland cases (including some from other jurisdictions), and all of the statutory laws on these subjects, and whatever treatises I could find, filling many boxes with copies of this and that. My goal was to someday compile all of my research into one book which could be used by surveyors, title examiners and lawyers in order to give them a better understanding of these survey related subjects. Finally in 2008 I managed to finish the writing, editing and compilation of my total work product into a volume entitled *The Law of Land Boundaries in Maryland and Related Materials*.

But with my study and practice of boundary law, I became especially intrigued and fascinated by the Maryland land patent system, including its history, and with the methods to be employed for the examination and research of titles to real estate. I then embarked into the study and mysteries of the record title to my own property which was located in Silver Spring, Maryland, tracing it back to the original land patent as it was issued by the colonial government in 1688.

This herein short history is the study of that original land patent, which has taken me back into the study of the early histories of Montgomery County and the District of Columbia, including the prominent families who first settled in Maryland, and the lords proprietor who ruled Maryland for more than 140 years.

I hope that the readers of this history will not find it to be too parochial, as it is somewhat very narrow in scope, dealing mainly with land transactions which took place in one particular part of Maryland over the past more than three centuries, specifically in parts of Montgomery County and the District of Columbia (a portion of which was formerly a part of Maryland), and a history of my very small “portion” of the original land patent.

I cannot proceed any further without giving my thanks to the many title examiners (especially Anne W. Cissel), land surveyors and various staff members with the Maryland State Achieves, and especially Dr. Edward C. Papenfuse, the former State Archivist, who assisted me with some of the research for this project; and with a special thanks to my friend and fellow land surveyor, Chas Langelan, who spent much time in tracking down documents for me in the Office of the Surveyor for the District of Columbia, and who is one of the driving forces behind the District of Columbia Association of Land Surveyors (DCALS).

I. INTRODUCTION

One afternoon while I was planting some pachysandra in a portion of the rear yard of my small subdivided lot in Silver Spring, Maryland, which obviously had not been spaded for many years, I uncovered an odd shaped and rather heavy piece of metal. I later identified it as a weight from a floor clock, the former owner of my lot having been a repairer of old clocks, and he had probably used the yard as a dump site of old parts. That same day I dug up another metal object which still remains unidentified, but which is probably some sort of a clockmaker’s tool, it also having been apparently discarded by its former owner.

My lot, which is described in the public records as “Lot 24, Block C,” in the subdivision of “Seven Oaks,” was the apparent burial site for old clock parts, and is one of the thousands of properties located in and near the heart of the unincorporated area of Silver Spring, in one of the older sections of Montgomery County, Maryland. Those clock related archaeological finds got me to thinking about the history of my somewhat small suburban lot.

When I purchased this lot in 1985, the required title examination was performed by a title company for the customary past 60 year period, with that examination turning-up such routine items as expired and unenforceable restrictive covenants, and the normal servitude of a minimum building restriction line. But nothing in that limited title search indicated the roots of the record title for this lot, or the identity of the many people who had owned this property over the course of all the years prior to that arbitrary 60 year period.

After some research I learned that my lot was situated within the bounds of an original land patent from Charles, Third Lord Proprietor of Maryland, which was issued to one Colonial Henry Darnell on June 12, 1688 for 1,776 acres of land, and given the name of *The Girls Portion*.¹ I then took on the task to trace the history of this land patent from September 15, 1687 (the date of the survey for this land patent) to the present, which became for me a fascinating, but a time consuming and somewhat obsessive endeavor.

¹ The name of this land patent has been spelled and referred to in different ways over more than the past 300 years. “The Girls Portion” may be the “official” spelling, but often times it is spelled and referred to as “Girles Portion” and “The Girl’s Portion.”

That historic research took me into a study of the land patent system in Maryland, the lord proprietors of Maryland, the development of portions of Washington, D.C. and Silver Spring, the prominent Maryland Carroll family, the common law system of inheritances, and into many other related topics, all of which I have, to the best of my abilities, touched upon in this short history.

What so fascinated me with the history of *The Girls Portion* was that it was the first land grant which someday a part of it would be located in Montgomery County, in a place where I had lived for many years, and which contained such beautiful woodlands like Sligo Creek and Rock Creek Parks, where I had walked, bicycled and ran through so many times. A part of *The Girls Portion* was now occupied by the Rock Creek Golf Course, off of 16th Street, N.W., in the Nation's Capital, a place where I had caddied so many times for my father.

Rock Creek Park is today a large urban park that bisects the northwest quadrant of Washington, D.C., and contains, in accordance with the United States Department of the Interior, 1,826.77 acres of land. It was only the third national park established by the United States, following Yellowstone in 1872 and Mackinac National Park in 1875. The first boundaries for the Park were set aside by the Congress in 1890, and it is somewhat important to know how this history of Rock Creek Park fits into any discussion of *The Girls Portion*.

Captain John Smith, and his men, were the first known Europeans to view Rock Creek during their voyage of the Chesapeake Bay region in 1608. Englishmen continued to explore and eventually settled the area after the removal of the Native-American tribes. While *The Girls Portion* was the first land patent claimed in the area along Rock Creek in 1687, little of it was utilized due to the fear of Indian conflicts. The persistent threat from Indian war parties, led mostly by such tribes as the Nanticokes and Conoys, deterred English settlers for several decades.² These threats from Indian attacks would partially explain why so much time elapsed before parcels of land were conveyed from the bounds of the original land patent.

One member of the prominent Maryland Carroll family, Charles Carroll of Annapolis, at one time owned two tracts of land, the bounds of which are now partially contained within Rock Creek Park - *The Girls Portion* and an adjoining tract of land named *Clouin Course*. Although there are few recorded documents to show how many parcels of land were leased by the Carrolls, there is some evidence to show that Carroll did lease a portion of his properties to tenant farmers. Some leases indicate that for a one hundred-acre tract, tenants were required to pay six hundred pounds of tobacco and plant one hundred apple trees. Utilizing metes and bounds and descriptions of the leased tracts, archeologists found two colonial house sites within Rock Creek Park, and a third outside of the park boundary³ that were located on lands owned by Carroll.

A site located in the *Clouin Course* patent was found on a narrow ridge overlooking a small stream, and another site contains the archeological remains of a colonial tenant farm leased to William Hall in 1741. Another unearthened tenant site within Rock Creek Park is what is referred to by the Park Service as the "Carroll Tenancy," as it is located within the southern section of the *Clouin*

² Louis Berger Group, Bold, Rocky, and Picturesque: Archeological Identification and Evaluation Study of Rock Creek Park (Washington, D.C.:NPS, 2008)

³ Louis Berger Group, *id.*

Course patent, on a ridge near Piney Branch; and it is known that one James Tomlinson established a tenancy farm there in 1740, but little else is known of these early tenants.

What can be gleaned from the scant evidence of tenant occupation in the area of Rock Creek Park which was owned by the Carrolls, is that the dream of the original proprietors of Maryland, George and Caecilius Calvert of creating vast manors like that found in England, never came to pass, which would have been possible under the Maryland Charter, because of the exclusion of the Statute of *Quia Emptories*. In fact, the first conveyances from the Patent were two tracts of land, containing respectively 200 and 20 acres of land, made by Charles Carroll of Bellevue, and occurred in 1823 to Joel Simpson (135 years after the granting of the Patent in 1688), and no manors were ever created.

Having been born, raised and schooled in Washington, D.C., the area of land that made up what was originally called *The Girls Portion* was a part of my history. I felt like I had family ties to this area as a young boy, and now I was a grown man living in the community of Silver Spring, with my lot occupying a small portion of this large ancient land patent. My roots were here in this land patent, and I wanted to discover more about its history.

Today the unincorporated area of Silver Spring is close to being 8 square miles in area, and according to the last estimates made by the U.S. Census Bureau has a population of 76,716. It is very urbanized, and it is the oldest part of Montgomery County, with a major business hub, lying directly adjacent to the north side of Washington, D.C. With reference to the subject of this paper, Silver Spring can trace its origins back to the granting of the land patent for *The Girls Portion*. The land which would eventually become Silver Spring was a part of Charles County until 1695, when it became a part of the new Prince George's County. It then became a part of Frederick County in 1745 when that county was carved out of Prince George's. Finally, Montgomery County was created on October 1, 1776, from a part of Frederick County.

Uncovering the story about *The Girls Portion* took me into a study of the most prominent families in Maryland's colonial history. It involves the Stuart kings of England, the Carroll family, who have been referred to as the "Princes of Ireland and the Planters of Maryland,"⁴ the Calvert family, the various lord proprietaries of Maryland, and the patentee himself, Colonial Henry Darnall, and his family. What was somewhat intriguing to me was the story of how the Carrolls, the Calverts and the Darnalls were so closely related by marriage and kinship, and by their respective holders of many important governmental offices; and only from a study of these families and their great land holdings in Maryland can the story of *The Girls Portion* be clearly told. However, notwithstanding the size and location of the Patent, and its importance in later years in how it was developed, very little can be found out about the "hows" and "whys" for the granting of this particular tract of land. The following is only my modest attempt to answer some of these questions, and to describe the title history to the "Demmas' Small Portion of The Girls Portion."

II. THE LAND PATENT SYSTEM IN MARYLAND

⁴ "Princes of Ireland, Planters of Maryland, A Carroll Saga, 1500-1782," Hoffman, Ronald (2000), The University of North Carolina Press.

To understand the land patent system in Maryland, one must be somewhat familiar with Maryland's colonial history. George Calvert (1580-1632), who had desired to create a proprietary colony named Avalon in the New World between the years 1622 and 1627, made an attempt to found that colony in Newfoundland, but after residing there for two years, that endeavor was abandoned because of the harsh climate.

Calvert, was the son of Leonard Calvert, a Yorkshire farmer of Flemish descent, and was an under-secretary of state to Sir Robert Cecil, for whom Calvert named his eldest son. Calvert had managed to have courted the favor of the Stuart kings, and in 1617 King James I knighted him, and given the post of principal secretary of state in 1619, which was in effect at that time, the Prime Minister. The King granted him a large area of land at Baltimore, on the southwest coast of Ireland, and shortly thereafter granted him, in fee simple, 3,900 acres at Longford, Ireland, which he began colonizing.

Upon the death of James I in March of 1625, the throne fell to his son Charles I, and Calvert sold his office as secretary of state to his successor for £6,000. In that same year Calvert's career took a new turn when he declared himself a Roman Catholic, however, soon thereafter Charles I, who had developed a personally liking for Calvert, because of his keen intellect, poise and quick wit, raised him to the Irish Peerage as Baron of Baltimore. Incapacitated for public office by virtue of his religion, Sir George Calvert, now Lord Baltimore, with his estate in County Longford, Ireland, thereafter devoted himself to cultivating that private estate. However, having taken a liking to the lands in and around the Chesapeake Bay, which he had visited in connection with his failed colony of Avalon, he lobbied King Charles I for a charter for *Terra Maria*, which soon came to be known as Maryland.

One interesting thing concerning the colony of Maryland, was that the land contained within the ultimate grant to Calvert, was of land which belonged by a previous grant of James I, to the shareholders of the Virginia Company. William Claiborne had been sent to Virginia in 1621 by the Virginia Company, as a surveyor in 1621, and purchased Kent Island from the Indians, who had settled the island before George Calvert came to Virginia. Furthermore, Claiborne said that the Calvert grant read that Calvert was granted land which was *hactenus in culta* – that is: land which is unsettled and unimproved, whereas Kent Island had been already settled by him as a part of Virginia, and was represented by delegates in the Virginia House of Burgesses!

Notwithstanding Virginia's claim to Maryland, prior to Calvert's death on April 15, 1632, the Charter of Maryland⁵ received the privy seal, it being the first stage of authentication. The Charter, as finally issued on June 20, 1632, named as the patentee Caecilius Calvert, the second Baron of Baltimore, the eldest son and heir of George Calvert. Caecilius, like his father, Sir George Calvert, intended to make this colony a refuge for English and Irish Roman Catholics, as the Puritans had settled in parts of New England. Because of George Calvert's liberal attitude, the freemen of the colony were to be given a voice in its government, and it was Calvert's special desire that none be discriminated against because of religious matters.

⁵ It has been said that Maryland was named in honor of the English queen, Henrietta Maria, wife of King Charles I, she being the Catholic daughter of King Henry IV of France; and some have said that the Province was named to really honor the Virgin Mary.

Cecilius, when eighteen years of age, married Lady Anne Arundel, the daughter of Thomas Arundel, Lord of Wardour, who had been implicated in the Gunpowder Plot to blow up the House of Parliament in 1605. Arundel was said to have converted George Calvert to Roman Catholicism, and advocated settling Catholics in Maryland, although Cecilius never came to America.

Opposition to the Calvert grant continued after it had passed the great seal, and the case was tried before the Privy Council which, as was to be expected, decided in favor of Calvert. The Charter conferred upon Calvert rights and privileges which had never been granted by a sovereign of England to any other individual – in effect, a despotism. The grant included all the land, minerals, rivers, bays and fishings within the present state of Maryland, and a considerable area now in the States of Pennsylvania and Delaware.

The Charter granted to Calvert the right to confer titles, incorporate cities and towns, levy import and export taxes, dispose of land, erect manors, establish courts of justice, appoint all officials, declare martial law, muster and train men to make war, to pursue men and put them to death, and included the patronage and advowsons [the right in English law of presenting a nominee to a vacant ecclesiastical benefice] of all churches to be built. The King bound himself and his successors not to levy any tax or contribution whatever on the people; but this did not extend to customs duties, and no appeal on any controversy between Calvert and the settlers in Maryland could be taken to any British court.

Further, any enactments by the Maryland Legislature were not required to be submitted to the King in council, as later was provided in the grant to William Penn. Maryland was constituted a palatinate equal to a principality. Calvert planned the foundation of an aristocratic state, with large tracts of land possessed by individuals, who would thereby uphold his authority. An assembly, composed of landholders, to act under Calvert dictation, was established at an early date.

The boundaries of this colony, in accordance with various Articles of the Charter⁶, were to encompass:

... all of that part of the Peninsula, ... lying in the parts of America, between the Ocean on the East and the Bay of Chesapeake on the West; divided from the Residue thereof by a Right Line drawn from the Promontory, or Head-Land, called Watkin's Point, ... unto the main Ocean on the East; and between that Boundary on the South, unto that Part of the Bay of Delaware on the North, which lieth under the Fortieth Degree of North Latitude from the Equinoctial, where New England is terminated;... unto the true meridian of the first Fountain of the River of Pattowmack, thence verging towards the South, unto the further bank of the said River,... unto the Promontory called Cape Charles ...To Hold of Us, our Heirs and Successors, Kings of England, as of our Castle of Windsor, in our County of Berks,

⁶ The Charter of Maryland: 1632, as interpreted by Yale Law School; Lillian Goldman Law Library, The Avalon Project: Documents in Law, History and Diplomacy.

in free and common Soccage⁷, by Fealty only for all Services, and not in Capite, nor by Knights Service, Yielding therefore unto Us our Heirs and Successors Two Indian Arrows of these Parts, to be delivered at the said Castle of Windsor, every Year, on Tuesday in Easter Week: And also the fifth Part of all Gold and Silver Ore, which shall happen from Time to Time, to be found within the aforesaid Limits...

The Charter conferred on Lord Baltimore the palatine⁸ powers of a lord proprietor, the land being granted “in free and common socage”; and Baltimore was empowered to:

... assign, alien, grant, demise, or enfeoff⁹ so many, such, and proportionate Parts and Parcels of the Premises, to any Person or Persons willing to purchase the same, as they shall think convenient, to have and to hold in Fee-simple or Fee-tail¹⁰, or for Term of Life, Lives, or Years; to hold of the aforesaid now Baron of Baltimore, his Heirs and Assigns, by ... such ... Services, Customs and Rents of this kind, as to the same now Baron of Baltimore, his Heirs and Assigns, shall seem fit and agreeable, and not immediately of Us.

After much preparation by Caecilius Calvert, having recruited some three hundred laboring men, nearly twenty “gentlemen of good fashion,” and his two younger brothers for the project, two vessels, the Ark and the Dove, were chartered and departed England for Maryland on November 22, 1633, and arrived in March of 1634, but the expedition found only 128 person aboard, all of whom took the oath of allegiance to Lord Baltimore, it having been ordered that the Charter be read aloud to all the settlers that they might know their rights as well as their powers.¹¹ However, Cecilius was busy defending his grant against attack in England and appointed his brother, Leonard Calvert, then twenty-six years of age, to go to Maryland as the governor of that colony.

Most of the colonists were young men, and most were Protestants. A number of “gentlemen” were on board – the younger sons of the gentry – and they were mostly Catholic. Those who were paying their own way would receive generous grants of land. It was the promise of land, so hard to come by in England that brought most of the colonists to Maryland.¹² Caecilius, like his father before him, had many motives for establishing the colony of Maryland. He hoped it would be a profitable enterprise and enrich his family; and he also hoped to convert the Indians to Christianity. But like George Calvert, Caecilius had another motivation: the dream to build a society where English Catholics could worship freely and participate fully in public life.

⁷ More correctly spelled “Socage,” which is a land tenure in England, whereby the tenant held certain lands in consideration of certain inferior services to be performed by him to the lord of the fee. *Black’s Law Dictionary* (Fourth Addition).

⁸ Possessing royal privileges.

⁹ Enfeoff - To make a gift of any corporeal hereditaments to another, *Black’s, id.*

¹⁰ Fee Tail – A freehold estate of inheritance in which there is a fixed line of inheritable succession. § 2-102, *Real Property Article* has effectively abolished this particular estate in Maryland.

¹¹ “A Relation of the Successful Beginnings of the Lord Baltimore’s Plantation in Maryland,” Carr, Lois Green (1990).

¹² “The Delightful Land,” Virta, Alan (1990).

Because of the Lord Proprietor's great desire to facilitate the conveyancing of parts of the province as quickly as possible, which would result in much revenue to the Proprietor, in 1637 Caecilius created a commission which appointed a Provincial Secretary, who in turn created the post of Surveyor General, with John Langford being appointed to that post in 1642.

The Charter granted Baltimore full rights to create a peerage, with all of the titles and other attributes that had existed in England's similar system. The original requirement for the creation of a manor was only 1,000 acres, which was later raised to 3,000 acres. These manors would have their own courts and politically independent local government. The intention was to have a very similar structure to the feudal system of England. The Lords of the Manors, by which title they were to be referred, would of course, be the ones who would control the economy and political system of the colony, and be very strong supporters of Calvert. Lord Baltimore thus became virtually the absolute owner and proprietor of the soil of Maryland; he was the source of all patronage in the Province, with all offices deriving their appointment from him.

Within a short time, most of the people who had come over as servants and field workers worked out their passage. Then, in a country where there was such an enormous amount of land available, they acquired much of that land and established themselves at first as independent planters. The climate and beneficent laws that governed the colony of Maryland, at first, continued to attract immigration, and they speedily made clearings in the forest, and reduced the land to cultivation. Tobacco and corn were the principal articles cultivated. This, of course, led to a great increase in the number of applications for land patents, as well as the surveys and descriptions necessary to have issue these patents.¹³

The Jesuit brotherhood and others were active, in the early years of the settlement, in obtaining land rights from the Indians, which prompted Calvert to issue the order that such rights were void and that land titles not obtained from him, as the lord proprietor, were not valid, as he held a monopoly of all the land in the province by a royal grant. He further declared that there should be no land held in mortmain that is an inalienable possession of land and buildings by an ecclesiastical or other corporation. This also brought Calvert into conflict with the Jesuits.

In order to distribute as much land as possible, and hence realized maximum revenues, the proprietary officials established a simple mechanism for its land office to make those distributions. First, a warrant was issued entitling the holder to have the surveyor lay out a stated number of acres on vacant land anywhere in the province. Second, a certificate was returned by the surveyor with metes and bounds of the survey, which authorized the holder to proceed to the third and final step, which was to obtain a land patent under the seal of the province, conveying title in fee simple subject to an annual quitrent.¹⁴ Ironically, the successful land system undermined one of Lord Baltimore's designs for his province. Instead of manorial lords and faithful tenants, the single-family freehold prevailed.¹⁵

¹³ The Colonial Land Patent System in Maryland, Donnelly, Ralph H. (1978).

¹⁴ Maryland –A History, Walsh, Richard and Fox, William Lloyd (1983).

¹⁵ At the time of the American Revolution, most of the lands within the State had already been granted by the Lords Proprietary, and the rights of such private owners, except in so far as they may have been confiscated for disloyalty to

With land in Maryland being so plentiful, and with the proprietors needing the revenues as quickly as possible in order to recoup their heavy expenditures in financing the adventure of the province, most of the grants of land did not result in the creation of manors, as it was originally intended. And in reality, in the early days of the founding, the land had little or no sales value. After the early formative years, however, land speculation became one of the minor economics of the Province.

As written in “The Flowering of the Maryland Palatinate” (1984), by Harry Wright Newman:

The Lord Proprietary, his heirs, and successors held absolute title to all domain, as granted under the royal Charter by Charles I, so only Lord Baltimore through his resident agent had the vested power to confer land on the Maryland settlers. No land in Maryland, therefor, was ever granted by the King of England to a single subject, and under strict construction Lord Baltimore was the sole and absolute landlord, while the settlers or planters were his lawful tenants. They, however, enjoyed all the rights, privileges, and benefits of land in fee simple and entail and no restraint was placed upon them in exercising their rights of assignment, except by an alienation fee, and inheritance. Warrants were issued through His Lordship’s agent in Maryland, and the grantee had the right of assignment even before the actual survey and letters patent were issued.

The system of granting lands by the proprietary government led to no regularity in size, shape or location of the grants. Grants of land assumed all sorts of fantastic shapes, running wherever a vein of fertile soil enticed, and avoiding gulleys, swamps, and undesirable parcels.¹⁶ But the surveyors running the patent lines were themselves planters of the counties, appointed through influence with the Surveyor General, and often had only the roughest knowledge of land surveying. Moreover, the persons who were interested in having their lands surveyed were often friends and relatives, and thus the principle of “stringing” developed, which was that that in running the lines of a warrant for a land patent, there was a practice of avoiding undesirable land. The instructions from the Proprietors always forbade what was technically known as stringing, although it continued to be practiced by the surveyors appointed to execute the warrants to survey.¹⁷ By way of an example of the surveyors in ignoring the Proprietors instructions, the 5th and closing line of *The Girls Portion*, appears to not bind with the somewhat adjoining land patent to the west entitled *Clouin Course*, from which came parts of Rock Creek Park, thus creating a small gap. By a plat dated September 22, 1878, it shows that a still later land patent was issued for this gap, which was given the name of *Second Addition to Hazard*.

With respect to the original survey of *The Girls Portion*, there is no record of the identities of the persons who may have been involved with the survey, and the Patent consist of only five lines, forming a very simple geometric polygon. Much to the regret of this writer, the actual Certificate of Survey appears to be no longer in existence.

the new government, were not affected by the transfer of sovereignty to the new State. *Title to Real and Leasehold Estates and Liens*, Frank, Eli (1912).

¹⁶ “The Land System in Maryland,” Gould, Clarence P. (1913).

¹⁷ *The Land System in Maryland, 1720-1765*, Gould, Clarence P. (1913).

After the first few difficult years since the first settlers arrived in Maryland, the population had grown steadily and rapidly. Lord Baltimore's promise of religious toleration, as well as his promise of land, drew the settlers here, with a steady stream of Anglicans, Catholics, Presbyterians, Puritans, Quakers, and other dissenters, coming from England, Scotland, Wales, Ireland, and even France. By the time of the issuance of the Patent for *The Girls Portion* in 1688, Maryland was the home of approximately 25,000 people – the most diverse and pluralistic population in North America.¹⁸

The modern day procedure for granting land patents in Maryland is not that far different than it was in 1687, although certainly the governmental bodies having jurisdiction of the procedure have changed; and in 1972 the Maryland General Assembly revised the land patent procedures in some regards.¹⁹

§ 13-102(b), *supra*, states that:

It is the intention of the General Assembly, therefore, that the State's land patent proceedings provide a simple, convenient and prompt method for promoting private ownership of vacant land and, in certain instances, for clarifying the ownership of land previously patented.

§ 13-101, *supra*, states that:

... (h) Patent – “Patent” means:

- (1) Any grant confirmed by Article 5 of the Declaration of Rights of the State Constitution;
- (2) Any valid grant made under prior law by the State of its interest in any vacant²⁰, resurveyed, escheat or confiscated land: or
- (3) Any Grant made under this title by the State of its interest in any land; or...

The following is a “thumbnail” listing (a very short and condense listing) of the necessary modern steps which are needed for the application and the receiving of a land patent from the State of Maryland:

An application is filed with the Commissioner of Land Patents, which shall include a description of the alleged vacant land, and the estimated area covered by it;... the issuance of a warrant by the Commissioner to the surveyor named in the application to survey the land as specified in application;... notices are sent by the Commissioner to the applicant, each adjoining landowner, and each person and governmental body who may have a claim to any portion of the land;... the publication of a notice in the Maryland Register, and in a

¹⁸ The Delightful Land,” *id.*

¹⁹ Title 13, *Real Property Article*, Annotated Code of Maryland.

²⁰ “Vacant land” is defined as land for which a patent never has been issued. § 13-101(n), *Real Property Article*, *supra*.

newspaper of general circulation in the county where the land is located, for three consecutive weeks;... the posting of a notice by the sheriff in a conspicuous place on the land;... the surveyor returning his certificate of survey to the Commissioner;... the determination of the purchase price for the vacant land by the supervisor of assessments;... the filing of objections to the grant of the patent, generally within six months after the issuance of the warrant;... a hearing before the Commissioner;... the preparation of the patent by the Commissioner;... the review and approval of the patent by the Board of Public Works;... and the signing of the land patent by the Governor, and with it being sealed with the Great Seal of the State of Maryland.

However, the above is not to be relied upon in any way as a complete list of the steps in the process, and how one would apply for a land patent in the State of Maryland. For the complete statutory method in making such an application, and how the process is completed, Title 13, *Real Property Article*, and COMAR must be consulted.

I would be remiss in writing this short treatise if I did not quote extensively from the very well researched Maryland Court of Special Appeals opinion cited as *Maryland Coal and Realty Company v. Eckhart*, 25 Md.App. 605, 337 A.2d 150 (1975), to wit:

Lowe, Judge. . . . The State's authority to patent lands derives from its sovereign heritage. In 1631 the royal charter of Charles I granting what is now Maryland to George, Lord Baron of Baltimore, "authorized [him] to create manors, with courts baron and all things appertaining to them, with view of frank-pledge²¹, etc....Maryland was then in the nature of a grand-fief or honor, held by tenure of "free and common socage" whereupon the Lord Baltimore presented "to the King two Indian arrows annually" in petit serjeanty and "the power of sub-infeudation was expressly conferred." Matthews v. Ward, 10 Gill & J. 443 (1839).

This power was exercised by the different "Lords Proprietary," the sale and leases of their land forming the principal portion of their resources. Consequently beginning around 1680 the Land Office became the principal office of the Province. See generally Kilty, The Landholder's Assistant (1808).

The first formal instructions given by the Lord Proprietor to his Land Council in 1684 substantially remain the basic procedure for petitioning vacant land by warrant of survey or contiguous vacant land by warrant of resurvey. Md. Code, Art. 21, Title 13, Land Patents (now Real Property Article, Title 13). . . .

The process survived the Revolution as evidenced by Chapter 15 of the Act of General Assembly, April Session, 1777. This Act manifested the legislative intent that the business of the Lord Proprietor's Land Office, in respect to lands not yet granted, be assumed by and carried on under the authority of the State, rather than the Proprietary. The importance of the land office was further enhanced by the Acts of Assembly, ... whereby all property of British subjects was declared confiscated for use by the State.

²¹ "Frank-Pledge" – A pledge for the general good behavior of each free-born inhabitant above the age of fourteen years.

Although the land office was divided to accommodate the citizenry by an office and Registers on each side of the bay, the judge of the Land Office on the Western Shore was, from a very early period, the Chancellor of the State. Following the adoption of the Constitution of Maryland in 1850, a more explicit and comprehensive procedure was enacted under the administration of Governor Enoch Louise Lowe. It expressly authorized the Commissioner of the Land Office to issue patents for lands, especially those lands confiscated from British subjects. Included, presumably, was Sir Robert Eden who, as Governor of the Province, was the last representative of the Lord Proprietary when the differences with Great Britain culminated in the act of formal separation by the Colonies, declaring themselves to be independent states.

THE PROCEDURE

*Although the procedural particulars have been changed from time to time, the general procedure, sufficient for our purposes here, has not. "The land office has always been, as it now is, the general market in which all public lands have been offered for sale; and into which any one capable of holding real estate might come and purchase according to the prescribed rules and terms of sale. . . . If the rules of the office were complied with, and the purchase money paid, a grant for the land was issued as of course, otherwise not." *Baltimore v. McKim* (1831), 3 Bland, 453, 455-456.*

*Any person desiring to take up vacant lands would apply to the Commissioner of the Land Office for a warrant of survey or resurvey, directed to the County Surveyor requiring him to survey the vacant land in question. After the surveyor returned the certificate of survey it was required to remain in the Land Office for six months during which time the claim was subject to caveat. If none was filed and the "whole composition or purchase money" has been paid, the applicant or successors in interest was entitled to a patent to the land. Obviously there were prescribed procedures for public notice required which varied over the years. Once the patent emanated properly signed by the Governor and sealed by the Great Seal of Maryland, no caveat could thereafter be entered. *Steyer v. Hoyer*, 12 Gill. & J. 202 (1841).*

A caveat is the procedure to oppose issuance of a patent by the Land Office. It serves as a warning to the commissioner not to put the seal on a patent for a tract of land as prayed. A caveat unheard or enacted upon was permitted to continue no longer than twelve months, Acts of 1797, Ch. 114. The grounds upon which a caveat could be entered included a showing that no grant ought issue because it would be unjust to the public or to some individual. Upon the filing of a caveat the commissioner would assign the cause for hearing.

*Since a patentee could only take subject to all prior claims, encumbrances and equities, the decision on a caveat was not conclusive of the right. *Baltimore v. McKim*, 3 Bland. at 459. For that reason, the general rule of the Land Office in doubtful cases was to let the patent issue, for if it were granted, the question thereafter could be brought before a court of law or equity to vacate the patent. *Jones v. Badley*, 4 Md.Ch. 167.*

However in 1852 a right of appeal from the final decision of the Commissioner of the Land Office was permitted to the Court of Appeals by Chapter 361 of the General Assembly. In 1853, the Legislature assured the conclusiveness of the Commissioner's determination by declaring:

That the court of the commissioner of the land office, is hereby erected into and declared henceforth to be a court of record, with the same powers to preserve order, punish contempts and enforce obedience to the proper order and adjudications of the said commissioner, as are now possessed by any court of record of this State. Laws of Md., 1853, Ch. 415...

The Appeals Court also wrote in *Maryland Coal* that “[a]n albatross in the wake of every title searcher is the ominous question of whether he has gone back far enough in the chain of title.”

No discussion of land patents and title examinations in the State of Maryland can ignore the case of *Ski Roundtop, Inc. v. Wagerman*, 79 Md.App. 357, 556 A.2d 1144 (1989), the seminal case on these subjects, with its focus being a dispute over interpreting original ancient land patents, the intent of the original surveyor, and a purported gap between two of those patents.

That case involved the ownership of a tract of land on a mountainside near Emmitsburg, Maryland. Ski Roundtop was the owner of six parcels of land that it contended encompassed the land in question. Wagerman alleged that four of these parcels of land were on the north side of the parcel of land in dispute, referred to as “Pleasant View,” and that their original title had been traced back to the original patent of a tract of land issued in 1796, which was referred to as “Carolina.” Wagerman further alleged that the remaining two parcels bordered on the south side of the disputed realty and had evolved from an original land patent in 1794 referred to as “Nigh Nicking,” which itself was the northern tract of a parcel of land referred to in an even earlier patent issued in 1775, and referred to as “Carricks Chance.” The Brawner family (being the family name for the appellee, Wagerman), contended that “Pleasant View” was a gap of land existing between “Carolina” and “Nigh Nicking,” and that the Brawner family was the record owners of this gap. Ski Roundtop contended that the southern boundary of Carolina and the northern boundary of Nigh Nicking are one and the same, thus a common boundary line, and therefore there was no gap.²²

At the conclusion of a three-day trial, the trial court gave credence to the Brawners’ evidence and determined that the “Pleasant View” gap did exist between the Carolina and Nigh Nicking land patents. The title for “Pleasant View” had been traced back in the public

²² As a general canon of boundary law, it is well-settled that a call to an adjoining boundary takes precedence over a metes and bounds description in the same instrument. *Wood v. Hildebrand*, 185 Md. 56, 42 A.2d 919 (1945). Had a gap existed between Ski Roundtop’s properties, the logical inference would be that the ownership of the unpatented land remained in the State. *Ski Roundtop, id.*

records to February 22, 1812, when a special warrant for a land patent was granted by the Maryland Land Office to Andrew Smith of Frederick County, for a parcel of land containing about 16.75 acres. Although an application of this land patent had been filed by Smith with the State, but for some unknown reason, no such patent was ever issued. However, the court had previously ruled, on a motion for summary judgment that Andrew Smith, the Brawners' purported predecessor in title, did not obtain a patent from the State for Pleasant View, and therefore the record title to this parcel was not in the Brawners' chain of title. Smith had also, in fact, withdrawn his caution money (the deposit), which had been transferred to the State in contemplation of the transfer of title to him.

In overturning the Circuit Court's decision, the Maryland Court of Special Appeals ruled that there was no gap between the patents of "Carolina" and "Nigh Nicking," that Wagerman did not have the record title to "Pleasant View," as it did not exist, and wrote some very definitive language concerning land patents, that:

Although the case law in this area is sparse, it appears that a requisite for valid title to real property is an original conveyance of public land by the State. See 3 American Law of Property, § 12:16 (1952); 73B C.J.S., Public Lands, § 188 (1983); 2 Patton on Titles, § 281 (2d ed. 1957). **Absent such a conveyance, one purporting to transfer an ownership interest in such property transfers nothing, and no quantity of successive transfers by deed nor the mere passage of time will metamorphose good title from void title** [emphasis added]. Simply put, the Brawners' admission that a patent was never issued to their predecessor vitiates their assertion of record title.

Two somewhat recent land patent cases should be mentioned at this point, the first being one that involved Maryland surveyor Joseph F. Brown, III. While Joe was surveying in the Catoctin area of Frederick County for his client, Edward Walter, he noticed that he could not locate the correct record owner of a surrounding property, the area of which contained approximately 77 acres. In checking the available records of Frederick County it was revealed that this land had once been called the "Sheep Pasture," but no record owner could be found. As reported in an article appearing in *Maryland Magazine* (Spring, 1986), there had been a warrant to survey this same property in 1839, but that survey had been abandoned, and there was no record of the State of Maryland ever issuing a land patent for this particular tract of land. After doing much historical and title research concerning this land, and after following all of the procedures required in accordance with Title 13 of the *Real Property Article*, and by the Maryland Code of Regulations (COMAR), on the 15th day of December, 1983, the State of Maryland granted to Joe and Ed all of its right, title, and interest in and to that tract known as "Sheep Pasture," containing 77.745 acres of land.

The second case has to do with a property in the Broad Creek area of Harford County, in which a land patent was issued to the Boy Scouts of America of Baltimore City, by the State of Maryland, for 19.014 acres of land, more or less.

The Boy Scouts had acquired through purchases and gifts various properties for their campground referred to as the Broad Creek Memorial Scout Reservation, it being a 1,700 acre tract of land, which the Boy Scouts had operated for more than 60 years, and which is used by more than 20,000 boys and adults every year. The Scouts intended to put most of its property into a series of land trusts to preserve those properties in their nature state. After beginning the process of having an 800 acre tract put into such a trust, which the Boy Scouts believed that they owned of record, they came to realize that it could not be determined that they had clear title to a 19 acre parcel of land. In searching the public records, and having a land survey performed, they were unable to determine that the property had ever been granted to anyone by either the colonial government or the State of Maryland, and that led them to start the process of applying for a land patent.

The Scouts hired professional land surveyor Frank Sheppard Richardson to survey the property, and he then filed in 2011 the required certificate of survey plat, along with a metes and bounds description of the alleged vacancy. After complying with all of the requirements of the State Code, including the hearing before the Commissioner of Land Patents on May 9, 2012, the Commissioner of Land Patents issued an opinion declaring that the land was indeed “vacant,” and with the Board of Public Works thereafter giving its approval, Governor Martin O’Malley signed the Land Patent on June 20, 2012, with the Great Seal of the State of Maryland being affixed thereto, officially giving the Scouts the title to the land.²³

III. THE PROPRIETORS OF MARYLAND AND THE LORDS BALTIMORE, *Et Al.*

Sir George Calvert (1580 -1632)	1 st Lord Baltimore
Cecilius Calvert (1605-1675) (Much of the colony was under republican control from 1650-1658)	2 nd Lord Baltimore (1633-1675)
Leonard Calvert (1606-1647) (Cecilius’ brother and the First Proprietary Governor of Maryland)	
Charles Calvert (1630-1715) (Deprived of his proprietorship for his support of James II – died in 1715)	3 rd Lord Baltimore (1675-1689)
Benedict Calvert (1677-1715)	4 th Lord Baltimore (1715)
Charles Calvert (1699-1751)	5 th Lord Baltimore (1715-1751)
Frederick Calvert (1731-1771)	6 th Lord Baltimore (1751-1771)

²³ “Unowned Land in Harford County,” The Baltimore Sun, February 1, 2012; The Land Patent, “Lands of Baltimore Area Council, Boy Scouts of America,” June 20, 2012, Liber 9971 at folio 276, Land Records for Harford, County, Maryland.

Henry Harford – the illegitimate son of the 6th Lord Baltimore, by his mistress Hester Whelan. By Frederick Calvert’s Last Will and Testament, Henry became the successor to the proprietorship of the province, and thus the 5th Proprietor of Maryland (1771-1776).

As stated before, the land patent for *The Girls Portion* was issued on June 12, 1688, under the seal of Charles Calvert, 3rd Lord Baltimore. In 1661, at the age of thirty-one, Charles was appointed Governor of Maryland by his father, Cecilius Calvert, and he lived in Maryland most of his life. At his father’s death, fourteen years later, he became the Third Lord Baltimore. Charles was the first Maryland proprietor to actually reside in the colony, although even he was called back to England for long periods of time, because of the unsettled condition of the English government at that time.

Charles Calvert’s terms as governor and proprietary (1661-1715) covered fifty-four years, which was the lengthiest of any Maryland administrator. These years were marked by internal troubles and religious conflicts, due to the rise of Puritan power. In 1690 the government of the province was taken from the Calverts and placed in the hands of a royal governor. Charles Calvert, the Fifth Lord Baltimore, although still the proprietor, then became virtually a landlord, entitled only to the rentals from his lands, his tenants’ quit-rents, and impost duties on tobacco. Until his death in England in 1715, at the age of eighty-five, Charles Calvert endeavored to have his proprietary rights returned to him, but all of his efforts proved fruitless.²⁴

Between 1776 and 1781, the political powers of Lord Baltimore, which had been restored in 1715, and all of his rights relating to land in Maryland, were taken over by the State. The heirs of the last Lord Baltimore (among whom was the wife of the last proprietary governor, Sir Robert Eden) attempted to wrest compensation for their losses from the State after the American Revolution, but without success. From 1781 onward the powers over land matters that were once held by Lord Baltimore were vested in the judges of the Land Office, a position that today is titled as the Commissioner of Land Patents.

IV. THE PATENT FOR THE GIRLS PORTION²⁵

Charles etc To all persons from those presents shall come greetings in our Lord God Everlasting. **Know ye** that for and in consideration that the honorable Colonel Henry Darnall of Calvert County in our said province of Maryland hath due unto him one thousand seven hundred seventy six acres of land within our said province being part of a warrant for two thousand acres of land within our province being part of a warrant for two thousand acres reserved to him the said Colonel Henry Darnall the fifteenth day of September one thousand six hundred and eighty seven [September 15, 1687] as appears upon record and upon such conditions and _____ expected in

²⁴ *The Lords Baltimore*, A Collection of Portraits Loaned by Dr. Hugh H. Young, Enoch Pratt Free Library (1935).

²⁵ The translator of this Patent cannot guarantee the accuracy of such translation, however, all spelling, grammar and punctuation have been retained from the original, but the footnotes are additions to the original text.

the Conditions of plantation of this our province – bearing date fifth day of April One Thousand Six Hundred eight Four [April 5, 1684].

WE DO therefore hereby grant unto him the said Colonel Henry lying in Charles County and beginning at a bounded black oak standing on the northeast side of a fresh run that falleth into Rock Creek then downward the fresh south southeast²⁶ [South 22° 30' East], one hundred and sixty perches [2,640 feet] to a bounded Chestnut by the side of a small run that falleth into the said fresh, thence up the said run north east by east [North 56° 15' East] three hundred and twenty perches [5,280 feet] to a bounded white oak by an Indian field then northeast by north [North 33° 45' East] six hundred and forty perches [10,560 feet] to a bounded black oak that standeth in a branch of that falleth into the eastern branch of Potomock thence north with west [North 11° 15' West] four hundred and twenty perches [6,930 feet] to a bounded chestnut in another of said branches thence with a straight line to the first bounded tree. Containing and now laid out for one thousand seven hundred seventy six acres more or less according to the Certificate of survey²⁷ thereof taken and returned unto the Land Office of the City of St. Maryes bearing date of the twentieth day of September one thousand six hundred eight seven [September 20, 1687] and there remaining upon record together with all rights, profits, benefits and privileges thereunto belonging (Royal Mines Excepted).

To have & to hold the same unto him the said Col. Henry Darnall and his heirs and assigns forever to be beholden to us and our heirs as of our Manor of Zachariah in free and common socage by fealty only for all manner of services. **Yielding** and paying therefore yearly unto us and our heirs at our receipt ____ at our City of St. Maryes at the two most usual feast in the year viz:

The feasts of the Annunciation of the Blessed Virgin Mary²⁸ and St. Michael the Archangel²⁹ by even and equal portions to rent of three poundes, eleven shillings and a half penny sterling silver or gold and for a fine upon every alienation of the said land or any part or parcel thereof one whole years rent in silver or gold or the full value thereof in such commodities as we and our heirs or such officer or officers shall be appointed by us and our heirs from time to time to collect and record the names shall accept in discharge thereof at the choice of us and our heirs or such officer or officers aforesaid.

Provided that if the said sum for a fine of alienation shall not be paid unto us and our heirs or such officer or officers as aforesaid before such alienation and that alienation entered upon record either in said Provincial Court or in that county court where the said parcel of land lyeth within one month next, the said alienation shall be void and non effect. Given at our said City of St. Maryes under the Great Seal of our said province of Maryland the twelfth day of June in the thirteenth year of our Cominion, etc. anno domini 1688 [June 12, 1688].

Witnes our trusty and well beloved Colonel Henry Darnall Keeper of the Great Seal of our said province of Maryland.

²⁶ By the “Points on the Compass.”

²⁷ Neither the “Certificate of [S]urvey, nor any other survey of the Patent, can be found in the records maintained by the Maryland Archives.

²⁸ Sometime around the 25th day of March of each year.

²⁹ The 29th day of September of each year.

The area land contained within the bounds of *The Girls Portion* in the 17th Century was covered in a vast swath of forest crossed by creeks and small streams that feed into the Potomac and Anacostia Rivers, as can be gleaned from the language of the Patent. A few small villages of the Piscataway, members of the Algonquian people, were scattered across these lands, as evidenced by the “Indian Field” at the third corner of the Patent. Closely associated with the Piscataway were the Nacotchtank people (Anacostans), who lived around present-day Washington, D.C. at the time the Patent was issued, and they had a sophisticated society based on agriculture, which provided maize, beans, squash, and other plants.

The Piscataway shared hunting camps and foot paths with members of rival peoples like the Susquehannocks and the Senecas, having arrived in the Potomac River drainage area since at least by 1300 A.D. However, the tribes were soon to disappear, as the Piscataway fortunes declined while at the same time the colony of Maryland grew and prospered. These Indians were much weakened from warfare, and were especially adversely affected by epidemics of infectious disease spread by the Europeans, which decimated their population, as well as intertribal and colonial warfare, by the year 1697, when they were removed from their lands and relocated in Pennsylvania.³¹ The English had begun the removal of tribes from their homelands in 1680, and many of the Piscataway fled from encroaching English settlers to the Zekiah Swamp in Charles County, Maryland. The story about the Indian removal from Maryland is still to be written.

The Girls Portion was the first tract of land which, in part, was later to become Montgomery County, and granted by the Calvert family to a colonist. Darnall, however, and other claimants had no intention of settling their families there - they were little more than speculators, securing tracts of land from the colonial government, and intending to sell and lease their lands in pieces to settlers. It was not until approximately 1715 that the first British settlers began building farms and plantations in the area of the Patent.

One interesting principal of real property law which relates to the subject matter of this paper, is that Darnall, and the various members of the Carroll family who had an interest in *The Girls Portion*, were given the authority by the Charter to establish manors in the province of Maryland, in a way that was forbidden in England, and in most of the other thirteen original colonies, by virtue of the Statute of *Quia Emptories*, which had been enacted during the reign of Edward I in 1290. This Statute is considered to be a major turning point in the development of the principle of free marketability and, as it turned out, the decline of the feudal system. Before *Quia Emptories*, tenants could transfer their estates either by substitution or subinfeudation. *Quia Emptories* was a compromise between the major lords and the lower tenants; transfers by substitution would be freely permitted, without any requirement of the lord’s consent; but transfer by subinfeudation in fee simple would henceforth be prohibited. Some of the Statute’s consequences, such as the free marketability of land, were immediate.³²

³⁰ Charles Calvert, Third Lord Baltimore, but affixed by Henry Darnall!

³¹ “Certain Early Maryland Landowners in the Vicinity of Washington,” Riggs, John Beverley, *The Records of The Columbia Historical Society of Washington, D.C.*, Volume 48-49 (1939).

³² *Real Property*, Goldstein, Paul, University Casebook Series (1984).

However, the 1632 Charter of Maryland specifically excluded this Statute from the law of Maryland. Article XVIII of the Charter states in part that:

... [the] Baron of Baltimore [shall hold], his Heirs and Assigns, of what Estate of Inheritance soever, in Fee Simple or Fee-tail, or otherwise, as to them and the now Baron of Baltimore, his Heirs and Assigns' shall seem expedient; the Statute made in the Parliament of Lord Edward, Son of King Henry, late King of England, our Progenitor, commonly called the "Statute Quia Emptores Terrarum," heretofore published in our Kingdom of England, or any other Statute, Act, Ordinance, Usage, Law, or Custom, or any other Thing, Cause, or Matter, to the contrary thereof, heretofore had, done, published, ordained or provided to the contrary thereof notwithstanding.

As stated above, one granting land in fee simple could, and usually did, create a tenure between himself and his grantee by requiring the latter to hold of him, the grantor, instead of holding of the grantor's lord. This practice, known as "subinfeudation," operated to the disadvantage of the grantor's lord, and its prevention was in part the purpose of this Statute, which provided that thereafter the grantee of land should hold of the grantor's lord and not of the grantor.³³

By virtue of *Quia Emptories* not being a part of the Charter of Maryland, Darnall, and the Carrolls, could have kept the feudal system operating in Maryland, as it did in England prior to 1290, but circumstances in this new and large country, with land being so plentiful, and with so many settlers being available to establish relatively small farms and plantations, the feudal system did not take hold in Maryland.

V. COLONIAL HENRY DARNALL

Colonial Henry Darnall (1645-1711) was born into a distinguished English family of London barristers. The Darnall family was related to the Calvert family, the proprietors of Maryland, by marriage and friendship. Colonial Darnall was married to Eleanor Hatton Brooke (1642-1724), and his first cousin, Mary, the daughter of his brother, Ralph Darnell, was the first wife of Charles Calvert, the Third Lord Baltimore.

Darnall immigrated to Maryland around 1664 at about the age of 19. He probably was prompted into this move by offers of land and political offices of power and profit from Charles Calvert, for once he landed in Maryland he quickly began to accumulate both. Darnall qualified for and was appointed to the Governor's Council (1679-1689), was the agent for the Proprietor, served on the Board of Deputy Governors (1684-1689), and the Board of Deputy Governors (1684-1689), and

³³ Outlines of Real Property, Tiffany, Herbert Thorndike (1929).

was the Maryland Chancellor (1685-1689), His Lordship's Agent and Receiver General (1684-1711), the Rent-Roll Keeper, and the Keeper of the Great Seal (1683-1711). In 1681 he was promoted to Colonial in the militia, after serving as a captain and lieutenant colonel. In short, Darnall had become a very important and influential man in the Province of Maryland.³⁴

Colonial Darnall was foremost among the defenders of Charles Calvert at the time of the Protestant Revolution in Maryland, which was the consequence of the 1688 Glorious Revolution in England. Darnall, though deprived, like all nonconforming Catholics, of his political posts after 1689, had retained all of his positions within the proprietor's private establishment, and the power and wealth that continued to flow from these posts made him indisputably one of the colony's dominant personalities.³⁵

Darnall's accumulated fortune at the time of his death in 1711 consisted of large landholdings of approximately 35,000 acres in present day Anne Arundel, Baltimore, Calvert, Charles, Prince George's, Montgomery, and St. Mary's counties, he owning more than 27,000 acres and 106 slaves in Prince George's County alone.

Among the many tracts of land granted to Darnall, one was "Darnall's Chance," located today in Upper Marlboro, Prince George's County, was the principal home of Colonial Darnall in his later years, and it was originally constructed between 1694 and 1713. Upon the Colonial's death in 1711, most of his property, including Darnall's Chance, went to his eldest son, Henry Darnall, II, although the younger Darnall possessed neither the skill nor the good fortune of his father in the realms of politics and property. By the 1720's the younger Darnall was experiencing severe financial difficulties and was forced to sell off most of his land-holdings in order to pay his creditors.

However, *The Girls Portion* was somehow the "step-daughter" of the Colonial's vast estates. This particular tract of land did not pass to Darnall II, but as explained elsewhere in this paper, was devised by will to senior's son-in-law, Charles Carroll, the Settler, by his marriage to Darnall's daughter, Mary Darnall (1678-1742).³⁶ Maybe the area contained in this land patent was intended by the Colonial to be set-aside for his daughter, apart from his huge estate, but as seen, it never passed directly to Mary – maybe the prominent Carroll family was thought to be more important than his daughter, but then maybe the common law system of estates dictated that the male should be the one to benefit by this inheritance.

³⁴ *Colonel Henry Darnall*, from a written paper, however, the name of the author is not indicated.

³⁵ Hoffman, *id.*

³⁶ Had the title to *The Girls Portion* vested in Mary Darnall, by a deed or by will, she would have been considered to be under a disability, according to the common law, and without the joinder of her husband in a subsequent deed by Mary, granting the property to another party, that deed would have been void.

One theory is that the Settler, at the age of 32 years, received four tracts of land from his father-in-law, Henry Darnall, which were a part of the Settler's marriage settlement with Darnall's daughter in 1693/1694, at the age of 15 years, which makes some sense,³⁷ assuming that *The Girls Portion* was one of these four tracts. This settlement was apparently tantamount to Mary's dowry, in consideration of the Settler agreeing to marry her.

With respect to the study of land patents in the Province of Maryland, and the incestuous process which so involved the Settler, the proprietor, and offices which Darnall held, the acquisition of land began with the payment of "caution money" (120 pounds of tobacco per 100 acres) to the proprietor's agent and receiver general, who in 1694 was Henry Darnall! The agent then directed the clerk of the land office (in this case, Darnall's son-in-law Charles Carroll - Darnall's daughter Mary's husband) to forward a warrant to the deputy surveyor for a tract to be laid out in a particular county. Following the survey and the approval of the certificate of the examiner general, the clerk of the land office drew up a patent confirming the tract. The patent then went to the keeper of the great seal (again, Henry Darnall), who affixed the proprietor's stamp and returned the document to the land office to be picked up by the patentee.³⁸

VI. VARIOUS MEMBERS OF THE CARROLL FAMILY WHO ARE A PART OF THIS STORY

In order to track the chain of title to *The Girls Portion*, it begins with Colonial Darnall, and then the title must then be "traversed and chained" through the various members of the Carroll family.

Much has been written about the Carroll family and their importance in not only the founding of Maryland, but that of the United States. Some writers have considered the not so familiar members of the Carroll family as some of our Founding Fathers, along with George Washington, Thomas Jefferson, Benjamin Franklin, and all of the others whom we consider to be so important in our founding of our nation.

Charles Carroll of Carrollton (1737-1832) was the most illustrious and best-known of the Carrolls. He was the only signer whose property Carrollton was mentioned in the Declaration of Independence. Carrollton was the 10,000 acre estate in Frederick County, Maryland that Charles Carroll's father had given him on his return to America from his education in Europe.³⁹ And it was his cousin, Daniel Carroll (1730-1796) who signed both the Articles of Confederation and the United States Constitution, and was a member of the first United States Congress. In addition to holding many government positions, Daniel Carroll was appointed by George Washington as one of the first three commissioners of the District of Columbia. Daniel Carroll's brother, John Carroll (1735-1815), became America's First Catholic bishop, and the founder of Georgetown University.

However, in this short history concerning only one Maryland land patent, the concentration must be on only those members of the Carroll family who had a direct connection with the land as described in the Patent, and that would begin with Charles Carroll the Settler, who arrived in Maryland from England in 1688.

³⁷ *Princes of Ireland, Planters of Maryland*, Hoffman, Ronald.

³⁸ Carr and Jordan, *Maryland's Revolution of Government*, 36.

³⁹ *Catholic Founding Fathers – The Carroll Family*, Carter, Charles Carroll (2011).

Charles Carroll the Settler (1661-1720).

Charles Carroll the Settler (sometimes referred to as the “Immigrant”), could trace his ancestry back to Daniel O’Carroll, who by the end of the twelfth century had settled his clan at Litterluna, a parish in the northeast corner of the barony of Ballybritt, Ireland; and it has been written that he was a defiant and ambitious Irish Catholic. Having acquired an intensive schooling in both England and France, in part at institutions operated by the Society of Jesus, he gained admission into the commons of the Inner Temple in 1685. He left the old world because the Carroll family had been ruined by the confiscation of their ancestral lands in Ireland in the aftermath of the English conquest beginning in the twelfth century. Unwilling to renounce his religion and become a Protestant in order to ingratiate himself with the English, the Settler resolved to seek his fortune in Maryland, a colony that from its founding had welcomed Catholics and extended to them civil rights, including the vote and ability to hold office, and to practice law which were denied to members of their faith in England and Ireland.

Unwilling to accept the prospects that the English conquest of Ireland allotted to Catholics, Charles left England and arrived in St. Mary’s City in 1688, at the age of 27, the provincial capital, securing the midlevel post of attorney general in Maryland through a series of fortuitous links to the colony’s proprietors, the Calverts, Lords Baltimore – an English Roman Catholic family with Irish connections.⁴⁰ However, after 1690 Maryland became one of the most intolerant of all the thirteen colonies. Ironically, by the time of his death in 1720, the Settler was, in terms of his civil rights, no better off than he had been before he came to Maryland. He could not vote, hold public office, practice law, worship publicly, or educate his children in their religion, because the Maryland Assembly had enacted legislation making all of these activities illegal for Roman Catholics.⁴¹

The Settler, disdainful to solve his problems by changing his religion, seized the economic opportunities still available to him and built a handsome fortune based on land, slaves, moneylending, and mercantile pursuits.

On November 9, 1689 the Settler married Martha Ridgeley, whose husband Anthony Underwood had died only six months previously, leaving Martha an inheritance. Interestingly, the Settler was the executor of the late Mr. Underwood’s estate, and at that time he was the Temporary Surveyor General of Maryland. In November of 1690 Martha died in childbirth, with a portion of the Ridgeley legacy going to the Settler, which was to become central to the Settler’s rise to power and wealth.

During this period of time, the Settler provided astute legal advice not only to the Proprietor, Charles Calvert, but also to Calvert’s cousin, Colonial Henry Darnall, who oversaw Lord Baltimore’s interest in Maryland. The Settler’s fearless efforts to protect proprietary interests brought him enormously important benefits: the Third Lord Baltimore’s gratitude and, perhaps even more significant, the approbation of patronage of Darnall.⁴² The Settler had positioned himself

⁴⁰ Hoffman and Mason, *id.*

⁴¹ Hoffman and Mason, *id.*

⁴² Hoffman, *id.*

in a circle of influential patrons, including the Calverts and Darnall, and consolidated his gains in 1694 by marrying the Colonial's fifteen year old daughter, Mary, a girl less than half his age.

In 1771 Charles Carroll of Carrollton recounted to a European correspondent the circumstances that inspired his grandfather's coming to Maryland:

The family estate being greatly impaired by the iniquity of the times, which had stripped the most ancient Irish families of their property, he resolved to seek his fortune far distant from the scene of such oppressions. Being a Roman Catholick he pitched on Maryd where the free exercise of that religion & equal privileges were granted to its professors by a royal Charter, after wards confirmed by a perpetual law of this Province.⁴³

The Settler's land acquisitions were clearly related to the improved prospects brought by his second marriage and show his ambition to build a landed estate. Beginning in 1696, two years after he wed Mary Darnall, the Settler commenced purchasing warrants, the first step in securing title to land, and by 1700 he had bought warrants for more than 12,000 acres. The next quantum leap in the Settler's accumulation of land occurred in 1711, the year his father-in-law, Henry Darnall, died. He immediately assumed both of Darnall's important offices in the proprietor's private establishment, becoming agent and receiver general as well as keeper of the great seal.

And by adding in small part to the Settler's great rise to fame and fortune in this history of *The Girls Portion*, because by virtue of Darnall's 1711 Last Will and Testament⁴⁴, which states in part: "I give and bequeath unto my loving son-in-law Charles Carroll two tracts of land lying in Prince George's County, one called *The Girls Portion* containing seventeen hundred and seventy-six acres of land..." the Settler's holdings of land were again enhanced.

Upon the Settler's death in 1720, he bequeathed to his heirs a substantial estate, an inheritance that his eldest surviving son, Charles Carroll of Annapolis, would expand into one of the great fortunes of colonial America, which included *The Girls Portion* by virtue of the specific devise to the Settler's son. The Settler's Last Will is interestingly silent on the specific tracts inherited from Darnall, although the Will mentioned other lands by name.

The Settler's Last Will also mentions 20,000 acres of unpatented land in Prince George's County. Charles Carroll of Annapolis laid part of this tract out as Carrolltown, containing 10,000 acres in 1723.

Charles Carroll of Annapolis (1702-1782).

⁴³ Hoffman, *id.*, and found in the CCC letterbook 1770-1774, Maryland Historical Society.

⁴⁴ Prior to January 1, 1970, the title to a decedent's real property in Maryland passed directly to the heirs or devisees upon his death, and the personal representative [the executor] of the estate, without express provision in the will, had no interest in the realty. *Goldman v. Walker*, 260 Md. 222, 271 A.2d 639 (1970). At common law, upon the death of the owner of an estate of inheritance, without leaving a will, the estate would pass, subject to the rights of the surviving spouse, to those persons designated by the law to take, known as heirs-at-law. Frank, Eli, *id.*

Charles Carroll of Annapolis, the Settler's eldest son, was a wealthy Maryland planter and lawyer, inherited both his father's wealth and his legacy of political importance, and he assumed the control of the family fortune after the Settler's death. Charles extended his father's fortune but, as a Roman Catholic was barred from participation in Maryland politics. It would fall to his son, Charles Carroll of Carrollton (1737-1832), one of the signers (and longest-lived) of the Declaration of Independence, to see religious toleration restored to Maryland.

Charles Carroll of Annapolis was born in Annapolis, Maryland, and he was the third child and second son of Charles Carroll the Settler and Mary Darnall. Like many sons of wealthy Marylanders, Carroll was sent to England to study law. He returned to Maryland on his father's death in order to inherit the family estates,⁴⁵ and in time became the richest man in America. Although he was free to study law, he could not practice it, because of the penal statutes which forbade him from being called to the bar.

By sometime in the middle of the 18th Century, Charles Carroll of Annapolis found himself to be the sole survivor among his father's original heirs, and the only one of his mother's ten children to outlive her, and by that time, through skill, shrewdness, and hard work, had accumulated the wealth that made him a man to be reckoned with.⁴⁶ However, there is much that is not completely understood today about the family's rankling and disagreements concerning the manner in which the Carroll fortunes should be divided-up, and with what appears would be referred to today as an estate plan for the Carroll land holdings, an agreement was reached in March of 1757 between the family members, apparently mainly with Charles' nephew, Charles Carroll of Duddington, whose father was Daniel Carroll of Duddington, who had died in 1734. By this agreement (which actually took many years to completely finalize), in an attempt to settle the landed portion of the Settler's estate, Charles Carroll of Annapolis transferred to his nephew, Charles Carroll of Duddington, five of the tenanted tracts he had developed, which included *Clouin Course* and *The Girls Portion* in Prince George's County, a portion of which in 1776 became to be within the bounds of Montgomery County.

Charles Carroll of Duddington (1729-1773).

This Charles Carroll's father was Daniel Carroll of Duddington (1707-1734), and his mother was Ann Rozier [or Rozer] (1710-1764). Charles, who was sometimes referred to as Charles Carroll, Jr. of Prince George's County, married Mary Hill on February 13, 1763, and their children were Charles Carroll "of Carrollsburgh and Bellevue" (1767-1823), Daniel Carroll "of Duddington" (1770-1849) and Henry Hill Carroll.

Not much has been written on this Carroll in connection with his inherited lands in and around Rock Creek, and he is best known from his inheritances in the Federal City from his father, who

⁴⁵ Official website of the Carroll House in Annapolis.

⁴⁶ Hoffman, *id.*

had owned all of the land on which the U.S. Capitol now sits; however, it appears that Carroll of Duddington never made the money from this inheritance that he had hoped.⁴⁷

What remains of the Duddington name has to do with a once-grand mansion built by Daniel Carroll, which was sold to a developer, and then razed. To remind us today of the Duddington name, there is a short street in Washington, D.C. named Duddington Place, which runs from 1st to 2nd Streets, between E and F Streets, SE.

Charles Carroll of Belle Vue (1767-1823).

In his father's Last Will (Charles Carroll of Duddington) it states: "... I give, devise and bequeath to my son, Charles Carroll of Bellevue, and his heirs, all those 2 tracts of land called *Girls Portion* and *Clouin Course* both lying on Rock Creek in Frederick County⁴⁸ and I also give, devise and bequeath to my said son Charles Carroll one other tract of land called *Aix la Chappelle* lying on a branch of Seneca in Frederick County aforesaid to have and to hold the same several tracts of land called *Girls Portion*, *Clouen Course*, *Aix la Chappelle* to him the said Charles Carroll, his heirs and assigns..."

Charles Carroll of Bellevue was born in what was known as Carrollsburg, the area of which is now located in Washington, D.C., and he died in Groveland, Livingston County, New York.

By a reading of his Last Will and Testament, dated the 14th day of September, 1823, which was probated in Livingston County, it is clear that Charles had acquired certain tracts of land in the State of New York, in addition to the Carroll land which he had inherited in Maryland, including *The Girls Portion*. His net estate was divided among various family members, to wit: his wife, Ann Sprigg Carroll (1769-1865), and his sons Charles Holker Carroll (1794-1865), Daniel J. Carroll (1801-1863) and William Thomas Carroll (1802-1863), and his daughters Hannah Lee Carroll, Ann Rebecca Lane and Elizabeth Barbara Carroll. However, two (2) tracts of land, respectively containing 100 acres and 20 acres of land, both being parts of *The Girls Portion*, were conveyed to Joel Simpson on November 18, 1822, eleven months before Charles' death on October 28, 1823. These conveyances to Simpson were the first such conveyances from the patented land, and the area of land which is the ultimate focus of this paper, *i.e.*, "Lot 24, Block C," it being a part of the 100 acre tract. Thus, all of the remaining lands of *The Girls Portion* which later came to be known as Silver Spring, Rock Creek Park and other parts of Montgomery County and Washington, D.C. can trace the origins of their titles back to the Estate of Charles Carroll of Bellevue.

⁴⁷ "Lost Capitol Hill: Duddington" (author unknown).

⁴⁸ Following the signing of the Declaration of Independence in 1776, the Maryland Constitution was drafted and Montgomery County was formed from parts of Charles, Prince George's and Frederick Counties, naming it after General Richard Montgomery. In 1791, portions of Montgomery County were ceded to form the new District of Columbia, along with portions of Prince George's County, Maryland, as well as parts of Virginia that were later returned to Virginia.

Just for the purpose of not losing this one point of information, an excellent title examiner reported to me, and which was confirmed by other sources, that Daniel Carroll of Duddington's (1707-1734) father was the Settlor, his mother was Mary Darnall, and his brother was Charles Carroll of Annapolis. And that Daniel Carroll was married to Ann Rozer (1710-1764), the heiress to the lands of Notly Rozer, and that these lands were composed of various "Duddington" parcels, the future site of Capitol Hill, running down and along the Potomac River, part of which were later referred to as "Carrollsburgh." But more importantly for the purposes of this paper, Daniel may of had some title interest in *The Girls Portion*, as inherited from the Settlor, but after much research on my own, I could never verify exactly what that interest consisted of, but apparently the Agreement of 1757 resolved whatever estate issues the family had with one another. Maybe some reader of this paper knows more than I do, and can set the record straight for me.

VII. TITLE EXAMINATIONS IN GENERAL AND THE SIXTY YEAR RULE

A "full title examination" is a set of documentation, a part of which is referred to as a "chain of title," sufficient to describe the legal history of a parcel of land, as contained in the public records filed in the jurisdiction where the property is located. The customary period of time for this examination in Maryland is sixty years, which is considered as a safe "rule of thumb," however, there may arise conditions within the search itself which dictate an expansion of this standard, as for example, when the property was subdivided more than sixty years ago. No matter what, the examination should encompass a length of time sufficient to reveal all of the circumstances of legal history which might bear on the property's present legal status.⁴⁹

In an effort to not lose what institutional knowledge that I may have acquired from others over the years, I understand, although maybe incorrectly, that this examination period of sixty years, is made-up of three common law rules, to wit: (i) the statute of limitations of twenty years for adverse possession actions, § 5-103, *Courts and Judicial Proceedings*, Annotated Code of Maryland and the Statute of 21 James I, c.16 (1623); (ii) the rule in the *Duke of Norfolk Case* (1682), which set a period of time of "twenty-one years after the some life in being at the time of the creation of the interest"; and (3) the age of majority of twenty-one years [now eighteen years, Article 1, § 24(a), *Rules of Interpretation, supra*], which totals to sixty (60) years, more or less.

The focus of this short title history, however, is on a particular land patent, so therefore the full examination of title must begin on the date that the Patent was issued. With respect to all title examinations, a land patent is certainly recognized as a "good" starting point for the search.

VIII. THE TITLE EXAMINATION FOR THE GIRLS PORTION

The "good starting point" for the title examination of *The Girls Portion* must begin with the issuance of the land patent in 1688, and end with the conveyance in 2014, when my son and his wife, acquired the record title to "Lot 24, Block C," in the subdivision known as "Seven Oak," in Montgomery County, Maryland.

⁴⁹ The Maryland Title Searchers' Handbook, Second Edition, Waterbury, Bayard H., III (1990).

But in performing this title examination, which is somewhat limited in nature, many principles of English real property laws must be kept in mind and understood, as many of the earlier conveyances do not appear in any land record system.

The one principle of English real property law to understand is the law of primogeniture. In accordance with the English law of descent, *i.e.*, with the transfer of land from an ancestor to a decedent, this principle required that where there were two or more males in equal degree, the eldest only would inherit. Interestingly, females in equal degree would, however, inherit equally.⁵⁰ The limitations to this principle were that eldest son must be legitimate, and the son of a deceased elder brother would inherit before a living younger brother by right of substitution for the deceased heir.

This law of primogeniture in England, and as applied in Maryland with its founding, had its origins in the Middle Ages, which due to the feudal system necessitated that the estates of land-owning feudal lords be kept as large and united as possible to maintain social stability, as well as the wealth, power and social standing of their families.

Until the Statutes of Wills were enacted during the reign of Henry VIII, a will could control only the inheritance of personal property. Real estate passed to the eldest male descendant by operation of law, but the earlier Statute added a provision that a landowner could “devise” land by the use of a new device called a “testament.” The rule of primogeniture in England was not changed until the Administration of Estates Act in 1925; and in parts of the original colonies, primogeniture never became widely established – and it certainly is not in effect today in Maryland.

One goal of mine in writing this paper, and in the attempt to make it more meaningful in this 21st Century, was to make some comparisons with the early common law, including the relevant British Statutes with respect to wills, inheritances, land patents and the transfer of real property, with the background story of *The Girls Portion*, to how the law has developed with the present day Maryland statutes and practices for the conveyance of land.

In accordance with the *Statute of Wills* (St. 32 Hen. VIII (1540) ch.1), and the *Statute of Wills* (St. 34 & 35 Hen. VIII (1542-1543) ch. 5), the pertinent part for the purpose of this paper states:

And also that all land singular person and persons having a sole estate or interest in fee simple,... shall have full and free liberty, power and authority to give, dispose, will or devise to any person [subject to some exceptions] by his last will and testament in writing...

Prior to the enactment of these Statutes of Wills, land could be passed by descent only if and when the landholder had competent living relatives who survived him, and descent was subject to the rules of primogeniture. When a landowner died without any living relatives, his land would escheat to the Crown. The Statutes were something of a political compromise between Henry VIII and the English landowners, who were growing increasingly frustrated with primogeniture and

⁵⁰ *Title to Real and Leasehold Estates and Liens*, Frank, Eli (1912).

royal control of land. Subsequent to the Statutes, it was made possible for landholders to determine who would inherit their land upon their death by permitting devise by a last will and testament.

Today in Maryland, a testator can leave his property to anyone of his own choosing, and “disinherit” any of his heirs, but subject to § 3-102, *Estates and Trust Article*, Annotated Code of Maryland, the share of a surviving spouse, when the decedent died intestate (without a last will and testament), is entitled to at least equal to one-half of the net estate; and by virtue of § 3-203, *supra*, a surviving spouse is entitled to at least one-third of the net estate of the decedent who died testate (with a will). If there are no persons entitled to inherit a decedent’s estate, subject, of course to exceptions, by virtue of § 3-105, *supra*, the net estate is converted to cash and paid to the board of education in the county where the estate is being probated.

However, please keep in mind that the following is more like a “chain of title,” listing in chronological order the record owners of the subject properties. It is not a complete report of the title examination, because no mortgages, other security type instruments, easements (with a few exceptions), and other conditions and servitudes of title are not indicated. Therefore, this “limited” examination begins with John Cabot (c.1450-c.1500), an Italian navigator and explorer, from the Republic of Genoa, whose 1497 discovery of parts of North America under the Commission of **Henry VII of England** (1485-1509), is commonly held to have been the first European exploration of the mainland of North America since the Norse Vikings’ visit to Vinland in the eleventh century. England based her claim to North America (Maryland, of course, being included within its bounds) on Cabot’s discovery, which led to the formation of the English colonies in the New World, and then by succession

To: Charles I, King of England, Scotland, France and Ireland, and Defender of the Faith⁵¹ (1625-1649), and then

To: Caecilius Calvert, the Second Lord Baltimore, by virtue of the Maryland Charter, which was issued on the 20th day of June, 1632, then from **Charles Calvert, the Third Lord Baltimore**, and then

To: Colonel Henry Darnall (1645-1711), by virtue of the land patent for *The Girls Portion*, for 1776 acres of land, more or less; the Warrant having been issued on the 15th day of September, 1687; with the Great Seal of the Province of Maryland being affixed on the 12th day of June, 1688, and then by virtue of the Colonel’s Last Will and Testament of 1711, devised *The Girls Portion* to his son-in-law,

To: Charles Carroll, the Settlor (1661-1720), and then, by virtue of the Settlor’s Last Will and Testament of 1718, and probated in 1720,

⁵¹ Charles quarreled with the Parliament of England, which sought to curb his royal prerogative, he believing in the divine right of kings. The King fought the armies of the English and Scottish parliaments in the English Civil War, beginning in 1642, and was later tried, convicted, and executed by beheading, for high treason in January, 1649.

To: Charles Carroll of “Duddington” and “Carrollsburgh” (1729-1773), and then by virtue of his Last Will and Testament of 1773, devised certain “tracts of land called *Girls Portion* and *Clouen Course*,” an adjoining land patent,

To: Charles Carroll of Bellevue [sometimes Belle Vue] (1767-1823).

The Carroll lands were assessed in 1783 in the name of Ignatious Fenwick (Charles Carroll’s step-father), in the first tax records for Montgomery County (5th District), indicating “Girls Portion... 1776 acres, tenant house, poor, thin soil.”

The boundaries of the new Federal City, and the outlying surrounding County of Washington, passed through both *The Girls Portion* and the said adjacent land patent of *Clouen Course*. The Maryland Tax Assessments, beginning in 1804, and later, reflect the loss of the lands located within the District of Columbia from the Montgomery County Tax Rolls, and indicate that the owner as being “Charles Carroll, part of Girl’s Portion... 1109 acres.” Charles Carroll of Belle Vue⁵² then conveyed from *The Girls Portion*, two parcels of land, containing respectively 200 and 20 acres of land, a part of the 200 acre tract being the subject matter of this paper, and then

To: Joel Simpson (his wife being Angelica Simpson), by a deed dated November 18, 1822 and recorded the 9th day of May, 1823 in Liber W at folio 374 among the Land Records of Montgomery County, Maryland, in consideration of \$2,640, for the said two tracts of land containing 200 and 20 acres of land respectably,⁵³ and then

To: Thomas P. Simpson (his wife being Christiana Simpson), from Angelica Simpson, Mary E. Simpson and Margaret Simpson, in accordance with the estate administration of Joel Simpson, by a deed dated the 11th day of May, 1852 and recorded the 11th day of May, 1852 in Liber JGH 1 at folio 254 among the said Land Records, for a tract of land containing 185 acres (being a part of the 200 acre tract), and then

To: Alfred Drain, by a deed dated the 14th day of December and recorded the 2nd day of June, 1856 in Liber JGH 5 at folio 220 among the said Land Records, for a tract of land containing 81 acres, in consideration of \$3,000, and then

To: Francis P. Blair by a deed dated the 21st day of December, 1867 and recorded the 25th day of January, 1868 in Liber EBP 5 at folio 67 among the said Land Records, for a tract of land

⁵² Charles Carroll of Belle Vue was a resident of Livingston County, New York, dying there in October 28, 1823. Charles’ Last Will and Testament was probated in the Surrogate Court of Livingston County, New York, and was entered in the records of Montgomery County, Maryland in 1890 at RWS 15-321 (refilled in 1902); and no probate or inventory of his estate was shown.

⁵³ From my research, it appears that this conveyance from Charles Carroll of Belle Vue to Joel Simpson was the first such conveyance from *The Girls Portion*, i.e., this first conveyance in fee simple having occurred 135 years after the issuance of the Patent in 1688. However, many recorded leases on *Clouen Course*, *The Girls Portion* and *Darnall’s Goodwill*, can be found in the Land Records of Prince George’s County prior to 1823. It appears that the vast majority of these lease agreement were for twenty-one years, although two tenants on the Girls Portion secured leases for three lives. Because not all of the leases were recorded – recording being by the choice and at the expense of the tenant, the records are not clear with regard to the number and terms of leases executed between the owners and the tenants.

containing 85 acres (other lands had apparently been added to the Drain holdings), in consideration of \$5,000.

Note: Francis Preston Blair (1791-1876) was an American politician, the editor of the Washington Globe, a keen supporter of the Democratic Party, and he was a part of Andrew Jackson's "kitchen cabinet." In 1854 he helped to launch the new Republican Party, and was a supporter of Abraham Lincoln.

Legend has it that in 1840 Blair encountered a "mica-flecked" spring in the vicinity of Seventh Street Pike (now Acorn Park on Blair Mill Road, off the renamed Georgia Avenue), and that he liked the location so much that he purchased the surrounding land and created a summer home for his family which he called "Silver Spring." The unincorporated city of Silver Spring took its name from Blair's estate⁵⁴.

By 1867 Blair had acquired many tracts of land, containing hundreds of acres in the area of Silver Spring. Those tracts included all or parts of the land patents known as *The Girl's Portion*, *Kilmarnock*, *Slago* [sic], *Labyrinth*, *Re-Survey on Belt's Chance*, *Clouen Course*, and *Addition to Haggard* ("or by whatever names the same may be known which he holds"), by virtue of a Special Warrant dated the 11th day of July, 1867, and thereafter a new patent then was issued to Francis P. Blair, to confirm those lands which Blair owned, as re-surveyed the 9th day of December, 1867, and as recorded the 10th day of March 1887 in Liber JA 4 at folio 447 among the Land Records for Montgomery County, for 993 and 1/8 acres, more or less, and given the new name of "Falkland Manor."

According to Item Second of Francis P. Blair's Last Will and Testament, dated the 15th day of February, 1870, probated on the 27th day of October, 1878, and filed in RWC 6 at folio 331, the "Northern part of 'Falkland Manor'" included about 125 acres, and which was then devised

To: Montgomery Blair,⁵⁵ Francis P. Blair's son, and then

To: Mary E. Blair, the wife of Montgomery Blair, by virtue of the Last Will and Testament of Montgomery Blair, dated the 20th day of August, 1883 and filed in RWC 6 at folio 331 among the said Land Records, and then

To: Woodbury Blair, Gist Blair, and Montgomery Blair, as Trustees; and Minna Blair Richey, by virtue of Mary E. Blair's Last Will and Testament, dated the 22nd day of March, 1884 and probated on the 11th day of February, 1887 in RWC 15 at 107, and then

To: The Takoma Park Loan & Trust Company, by a deed dated the 13th day of July, 1891 and recorded the 26th day of July, 1890 in Liber JA 49 at folio 193, among the said Land Records, conveying 100 acres of land, excepting therefrom 3 roods and 4 square perches, and then

⁵⁴ *Francis Preston Blair*, Smith, Elbert B. (1980).

⁵⁵ Montgomery Blair (1813-1883) was the United States Postmaster General in the cabinet of President Abraham Lincoln, from March 5, 1861 to September 24, 1864, during the Civil War; and his children were Woodbury Blair, Gist Blair, Montgomery Blair, Jr. and Minnie Blair.

To: Samuel R. Bond and B.F. Leighton, by a deed dated the 30th day of April, 1895 and recorded the 7th day of March, 1895 in Liber JA 49 at folio 79 among the said Land Records, conveying in Parcel 2 100 acres of land, and then Benjamin F. Leighton and Sarah A. Leighton, his wife, and Samuel R. Bond and Mary N. Bond, his wife, by a deed dated the 1st day of July, 1920 and recorded the 2nd day of July, 1920 in Liber 294 at folio 420 (saving and excepting 19/100 of an acre to the Washington Colesville and Ashton Turnpike Company, by a deed dated the 13th day of October, 1903 and recorded in Liber TD 27 at folio 184 all among the said Land Records); and having acquired additional lands, conveyed 175 acres of land, more or less,

To: James H. Cissel, by a deed dated the 1st day of July, 1920 and recorded the 2nd day of July, 1920 in Liber 294 at folio 420 among the said Land Records, and then James H. Cissel, conveyed 70 acres of land, more or less

To: Armstrong Development Corporation (Frances I. Cissel, the wife of James H. Cissel joined in to release her dower interest in the property⁵⁶), by a deed dated the 23rd day of March, 1923 and recorded the 24th day of March, 1923 in Liber 328 at folio 377. A part of the aforesaid 70 acre tract was then platted as “Section One – Seven Oaks” in Plat Book 3 as Plat No. 253 on March 19, 1923, creating a Lot 4, Block C, containing 32,694 square feet of land (the area of “Lot 24, Block C,” which was to later become my lot, was included within the bounds of Lot 4) [The First Subdivision]. Armstrong Development Corporation then further resubdivided its property, with the filing of a plat entitled “Sections One & Two of Seven Oaks” as recorded in Plat Book 4 Plat No. 320, creating a new Lot 4, Block C, now containing 37,964 square feet of land, and within its bounds would be the area of “Lot 24, Block C,” [the Second Subdivision] and Lot 4 was then conveyed

To: Albert Lepper and Augusta Lapper, by a deed dated the 22nd day of May, 1923 and recorded the 22nd day of May, 1923 in Liber 332 at folio 369, and included in this deed were five restrictive covenants, mainly dealing with zoning type matters, however one such covenant was a so-called “racial restrictive covenant,” which the Supreme Court of the United States later ruled to be unenforceable. *Shelley v. Kraemer*, 334 U.S. 1; 68 S.Ct. 836 (1948). Another plat of resubdivision was then filed to resubdivide a part of said Plat No. 320, which delineated Lots 19 thru 23, Block C in the subdivision of “Section One – Seven Oaks,” and filed on the 15th day of July, 1957 in Plat Book 60 at folio 4951 [the Third Subdivision]; and then Henry A. Lepper and Georgie H. Lepper, his wife, and Augusta Lapper, widow, by Henry A Lepper, her attorney in fact, conveyed Lots 19 through 23, Block C

To: Joseph F. Anastasi, by a deed dated the 19th day of July, 1957 and recorded the 30th day of July, 1957 in Liber 2367 at folio 101, and then the same Lots 19 through 23 were conveyed by a deed dated the 19th day of July, 1957 and recorded the 30th day of July, 1957 in Liber 2367 at folio 103 by Joseph F. Anastasi and Teresa Anastasi, his wife

⁵⁶ Dower was a species of a life estate by which a woman was, by law, entitled to claim on the death of her husband, a one-third interest in the lands and tenements of which he was seized in fee during the marriage, and which her issue, if any, might possibly have inherited. 1 Steph. Comm. 249. The estates of both dower and curtesy were abolished in Maryland in 1970, by § 3-202, *Estates and Trusts*, supra.

To: Wilbert A. Martin and Jane M. Martin, his wife. The same property was again resubdivided, now into Lots 24, 25 and Outlot A, Block C, by a plat filed on February, 11, 1958 in Plat Book 61 as Plat Number 5159 [The Fourth Subdivision]; and then the Martins conveyed “Lot 24, Block C” by a deed dated the 6th day of June, 1958 and recorded the 10th day of June, 1958 in Liber 2466 at folio 333

To: Charles Landis and Dorothy Landis, his wife. Charles Landis died testate on the 11th day of October, 1980, and Dorothy Landis, as the surviving tenant by the entirety, then conveyed “Lot 24 Block C”

To: James J. Demma and Lola Demma, his wife, by a deed dated the 30th day of April, 1985 and recorded the 1st day of May, 1985 in Liber 6722 at folio 590; and then by intermediary conveyances, and through the Estate of Lola Demma, who died testate on the 5th day of May, 2009, “Lot 24 Block C” was then conveyed

To: James Charles Demma and Yasmin Demma, his wife, as tenants by the entirety, by a deed dated the 8th day of January, 2014 and recorded the 23rd day of January, 2014 in Liber 48228 at folio 168.

And now, as of the date of this short history, the aforesaid “chain of title” describes how the title to “The Demmas’ Small Portion of the Girls Portion” became vested in the present day owners, of course, subject to all conditions of record.

IX. THE “RESURVEY” OF THE GIRLS PORTION

Sometime in about 2010 I took it upon myself to “resurvey” *The Girls Portion*, at least on paper, which was somewhat of an impossible task, however, my limited goal was to at least delineate its boundaries on a present day street map, in order to see what lands were actually encompassed, and then attempt to generally locate where the actual corners would be today on the ground.

Like with the preparation for any boundary survey, I first accumulated all of the pertinent and relevant deeds, patents, surveys, maps and other drawings that could be found, and which described or otherwise delineated the properties which were found to be located within, and adjacent to the bounds of *The Girls Portion* Patent. Those documents were found in many different locations, such as the Land Records of Montgomery, Prince George’s and Charles Counties, Maryland, the Maryland State Archives, the Recorder of Deed for the District of Columbia, the Office of the Surveyor for the District of Columbia, The Columbia Historical Society of Washington, D.C., the Maryland Department of Assessments and Taxation, the Montgomery County Historical Society, “Darnall’s Chance” in Upper Marlboro as maintained by the Maryland-

National Capital Park and Planning Commission, and other places for the depository of such records. I had the original land patent translated from its 17th Century cursive handwriting and flowering script, and then plotted out. And then, like with other resurveys, the information gleaned from those documents were then pieced together in a deed plotting, and I then superimposed on modern day street and tax maps.

I then personally went to where all of the corners as described in the Patent were approximately called for, to the best of my determination, which included the existing roadways of Colesville and Piney Branch Roads, Rock Creek, Sligo Creek, and the “backbones” of subdivided lots in Silver Spring and Takoma Park, Maryland, which to my surprise, in part still honor the original patent lines from 1688.

The “monuments” as called for in the Patent, and which would control my resurvey for *The Girls Portion*, are as follows:

1. Beginning at a “bounded oak” standing on the northeast side of a “fresh run” that falleth into “Rock Creek”:

Although there are many trees presently standing in this location, near the present-day Beach Drive in Rock Creek Park, after 328 years it is doubtful that the bounded oak is one of those still standing; however the “fresh run” can still be located, and it is shown on the United States Geodetic Survey Map 38077-H1-TB-024, and Rock Creek appears by observation to be in the same location as it has been for centuries, maybe subject to some minor erosion, and then to

2. A “bounded Chestnut” by the side of a small run that falleth into the said fresh:

As before, it is doubtful that this “bounded Chestnut” is still standing near Beach Drive; but the “small run” can be located. For further reference, that corner appears to also be the beginning point for the adjacent land patent of “Good Luck,” which was issued on December 10, 1716, and on many surveys found in the Office of the Surveyor for the District of Columbia, it shows that a “Stone R P 1793” was placed at this point, and then to

3. A “bounded white oak” by an “Indian Field”:

That “bounded white oak” is definitely no longer still standing, and there is certainly no evidence of an “Indian Field,” as this corner would now be located somewhere in the pavement, close to the intersection of Van Buren Street and Piney Branch Road, N.W. The 3rd Line of *The Girls Portion* then follows, in part, from the District of Columbia/Maryland line, the “backbone” of certain lots, following Blocks 78, 79, 80 and 81 in the 1891 “Subdivision of Takoma Park Near Washington, D.C.,” as described in J.A. No. 27 at folio 193; and Block 11 in the 1890 subdivision

of “Mrs. Sarah E. Brashers Subdivision Adjoining ‘Takoma Park’ Montgomery County Md.,” as filed in Liber J.A. No.21 at folio 199, to the intersection of Philadelphia Avenue and Piney Branch Road, and thereafter the 3rd Line appears to follow portions of the existing Piney Branch Road to the next monument. On the 1890 subdivision plat the rear lines of Lots 10 through 18, Block 11 are marked as being the “3rd Line of ‘The Girls Portion,’” - and then to

4. A “bounded black oak” that standeth in “the branch” of that falleth into the eastern branch [the Anacostia River] of Potomock [the Potomac River]:

It is doubtful that this same “bounded black oak” is still standing, but the “branch” is still in existence, and this corner would be in what is referred to today as Sligo Creek⁵⁷, somewhere near where Sligo Creek Parkway and Piney Branch Road intersect. The 4th Line of the Patent then follows, in part, the “backbone” of certain lots and parcels located in and otherwise delineated on a plat of subdivision of “Section 7, Sligo Park Hills,” recorded as Plat No 7470, and Lots 1 through 6 as delineated on the 1938 plat of subdivision of “Highland View Park,” recorded as Plat No. 933 – then to

5. A “Bounded chestnut” in another of said branches:

The “bounded chestnut” is definitely no longer in existence as this corner would now be located in or near the pavement for Bruce Drive, in the subdivision of “North Hills of Sligo Park,” as recorded as Plat Number 431, and close to one of the ramps leading off of Exit 30 of the Capital Beltway (Interstate 495), to Colesville Road (Maryland Route 29)⁵⁸,

6. Thence “a straight line” to the first bounded tree:

The “straight line” (the 5th Line of *The Girls Portion*) appears to very generally follow, in part, the centerline of the now existing Colesville Road. By a rough mathematical computation the 5th Line would be 18,884 feet in length, or more than 3 and 1/2 miles, more or less.

The total lineal miles of *The Girls Portion*, considering all five sides, would be more than eight miles.

X. AFTER THOUGHTS

It should now be apparent to the reader of this short history of one particular land patent, that it is not a scholarly paper on the history of Maryland, the Lords Proprietors, the Maryland land patent system, or in any way complete biographies of the Calvert and Carroll families, or the Darnalls, and all of the other somewhat luminaries whom are mentioned. It is simply a short story about one land patent containing 1,776 acres of land, more or less, and how my small lot in Silver Spring, Maryland, containing only 8,350 square feet, or 0.1917 of an acre of land, came to be carved out of the large parent tract. The evolution of the title to my family’s lot over 328 years did take me into somewhat mundane areas of history and the law, but I can only hope that you the reader found

⁵⁷ “Sligo” – named after County Sligo in Ireland

⁵⁸ At various times known as the Colesville and Ashton Turnpike, Colesville Pike and Colesville-Baltimore Pike.

this story to be as interesting as I did, as an attorney, a land surveyor, a property owner, and an amateur historian.

But by saying the above in somewhat of a defense of my meager efforts to write this short history, I am plagued by the questions for which I cannot find the answers: How were the men selected to be on the Darnall survey crew, and who were they? Where can their field notes be found? By what method was the tract area calculated at 1,776 acres of land, from a warrant to survey 2,000 acres? By what actual route did the surveyors actually travel (presumably from St. Mary's County, over land and water) to get to the lands surveyed? Why was this particular part of Maryland chosen, far from any existing settlements? Did Darnall ever actually visit this property? "Indian Fields" - what is meant by this term - was it an Indian cornfield? What is the full story behind the removal of Indians from this area of Maryland? Did the survey crew actually encounter any Indians? What kind of instruments and equipment did the survey crew use, although it can certainly be assumed that a Gunter's Chain and a compass were the main tools used, with maybe some pacing? Did Darnall ever keep a diary, and if so, where can it be found? And the most pressing question is the meaning of the name *The Girls Portion*? Maybe that tract of land was reserved for Mary, Colonel Darnall's only daughter - however, her "portion," was devised to her husband Charles Carroll, probably because the common law at that time deemed that Mary was under a disability by virtue of her marriage! Why upon Charles' death didn't Mary get her dower interest? But then maybe Mary had released that interest in a document yet to be found. These are only a few of my unanswered questions, but these answers would not really make any difference to my story. I can only but think that my parish priest would probably just say: "It's a mystery."

And, I cannot conclude the writing of this paper without stating what any prudent title examiner would state in making a report of title, and that is: No one can rely on any of the title information given herein without the express written permission of the undersigned, and that this limited report is further subject to what a recent and accurate boundary survey of the lands and premises as described herein would reveal.

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Appendix
Supplemental Vocabulary

Advowson

The right in English law of a patron (avowee) to present to the diocesan bishop a nominee for appointment to a vacant ecclesiastical benefice or church, a process known as presentation.

Anno Domini

Latin – in the year of our Lord.

Cominion

Apparently refers to a particular reign of a proprietor. That is, in the Patent where is states “the thirteenth year of our Cominion,” means the thirteenth year of the reign of Charles Calvert, the 3rd Lord Baltimore, beginning in 1675 to 1688, the year of the granting of the Patent.

Conditions of Plantation

In order to explain the land tenures granted, the immunities conferred, and what was intended by the Charter of Maryland, the Proprietary, from time to time, issued and propounded certain “Conditions of Plantation, Proclamations and Orders,” the first one being published in 1633.

Gunpowder Plot

The Gunpowder Plot on November 5, 1605, in earlier centuries often called the Gunpowder Treason Plot or the Jesuit Treason, was a failed assassination attempt against King James I of England and VI of Scotland by a group of provincial English Catholics led by Robert Catesby and Guy Fawkes, among others. The plan was to blow up the House of Lords during the State Opening of England’s Parliament, as the prelude to a popular revolt. Today, what has come to be known as Guy Fawkes Night, is celebrated on November 5th of each year, by the ringing of church bells, bonfires and fireworks.

Personal (Common Law) Disabilities

The statute of limitations invariably extends the period for bringing actions to recover land in case the plaintiff was under disability at the time the right of action accrued. The Statute of James I contained such exceptions in favor of: (1) persons under twenty-one years, (2) *femes covert*, (3) persons *non compos mentis*, (4) persons imprisoned, and (5) persons “beyond the seas.”

The Piscataway Tribe

The Piscataway are Native-Americans, once constituting the most populous and powerful Native polities of the Chesapeake Bay region. They spoke Algonquian Piscataway, a dialect of Nanticoke. One of their neighboring tribes, with whom they merged after a massive decline of population following two centuries of interactions with European settler, called them Conoy. The Piscataway by 1600 were living primarily on the north bank of the Potomac River, in what is now Charles, southern Prince George’s, and probably some of western St. Mary’s Counties in southern Maryland. Closely associated with them were the Nacotchtank people (Anacostians) who lived around present-day Washington, D.C. The Piscataway fortunes declined as the English Maryland colony grew and prospered. They were especially adversely affected by epidemics of infectious disease, which decimated their population, as well as intertribal and colonial warfare. After the English tried to remove tribes from their homelands in 1680, many of the Piscataway fled from encroaching English settlers to the Zekiah Swamp in Charles County, Maryland.

Vinland

The area of coastal North American and Newfoundland explored by Norse Vikings, where Leif Erikson first landed in c. 1000, approximately five centuries prior to the voyages of Christopher Columbus. Vinland was the name given to the Newfoundland costal area of North America, as far as it was explored by the Vikings, presumably including both Newfoundland and the Gulf of Saint Lawrence, and as far as northeastern New Brunswick.

We-Sorts

A name (regarded as derogatory by some) for a group of Native Americans in Maryland who are in part from the Piscataway tribe. Some of the Native-Americans from the area in and around the area of the patent for *The Girls Portion* were “removed,” or otherwise “resettled” in the Zekiah Swamp, in Charles County, Maryland; and many “intermarried” with run-away slaves

who had escaped to live in the Swamp. Over the years, some of people from these unions have been referred to as We-Sorts.

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