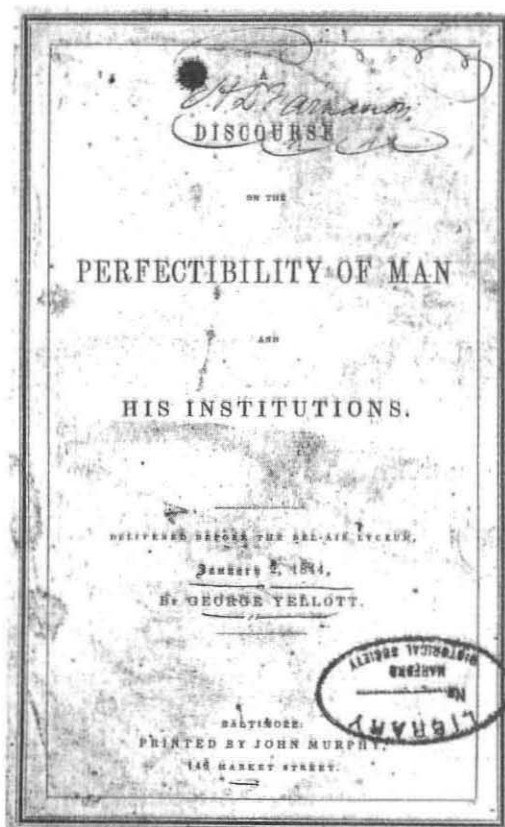

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The Pursuit of Justice in Early Harford County



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Women, Law, and the Pursuit of Happiness in Early Harford County

by
Jeffrey K. Sawyer

Introduction

Martha Griffith filed suit in 1794 against the executors of her late husband's estate. His will had left her a large, waterfront plantation on Swan Creek for the remainder of her life, but she wanted more. The suit demanded a large share of the family's working capital, specifically, live-stock, supplies, farm equipment, and the slave labor force that made plantations prosperous in those times. The people and property involved in this case were for the most part members of a closely knit Harford County community, but the legal battle and its outcome had some larger implications.

The decision in *Griffith v. Griffith's Executors*, rendered by the General Court and affirmed by the Court of Appeals, constitutes a significant piece of the legal history of early America.¹ First, it re-established the undisputed rights of Maryland widows to a share of both the *real* and *personal* property of their deceased husbands. Second, it forced leading judges and lawyers in Maryland to undertake a deep historical and logical analysis of the authority of British legal precedents. What law would apply in cases where post-Revolutionary Maryland legislation was unclear? Third, the judgment silently affirmed that slaves in Maryland fell under the regime of personal property with respect to inheritance.²

The events surrounding the suit are particularly revealing of how *law in action* affected women with respect to inheritance and property. Despite many inequalities that affected women under the old common law in early Maryland, women had a clear legal right to *own* property and to

¹ *Griffith v. Griffith's Executors*, [*Maryland Reports*] 4 H. & McH. 101 (1798).

² Upon the death of a Maryland plantation owner, slaves often made up a large share of the *personal* wealth in the estate's inventory. Although slaves were clearly at issue in the *Griffith* case, they are not mentioned in the published versions of the General Court's opinion. Before 1864 African-Americans held as slaves in this state were, legally speaking, both "persons" and the "personal property" of their masters. The 1800 U.S. Census enumerates 4126 persons held as slaves living in Harford County and perhaps another 1880 free African-Americans. The 4126 slaves fell under many of the common law rules respecting "goods and chattels" (the common law designation of *personal* property). Slavery was abolished in Maryland during the Civil War by the State Constitution of 1864 and then of course made illegal in all of the United States by the ratification of the Thirteenth Amendment to the Constitution on December 18, 1865.

use the courts of law to secure their rights. A widow's right to a reasonable share of her husband's property extended back into Anglo-Saxon times, and was one of the guarantees written into the *Magna Charta*.³ "Dower" is the old common law name for a widow's share. Customarily dower consisted of the use of and profit from one third of the deceased husband's real estate for the widow's lifetime, and one third of his personal estate after his debts were paid. But dower could also be fixed by a formal agreement.

Dower rights came under attack in the later seventeenth and eighteenth centuries in England, but by that time they had already been established in many of the English colonies.⁴ For this reason, the property rights of the daughters and widows of wealthy men were among the rights of women most securely protected before the advent of married women's property acts in the mid-nineteenth century.⁵ Such rights, however, were neither altogether settled, nor as empowering as one might at first imagine. The laws controlling inheritances were intricate, and often pitted family members against each other—males against females, sons and daughters against their parents, brothers and sisters against each other.

In an age when financial security could rarely be attained through hard work alone, inheritance of land and capital was a key factor in the life chances of an individual. This was perhaps even more true for women because of the limited opportunities for female employment. These circumstances often placed widows in the anomalous position of controlling family assets by chance. Yet at the same time, widow's legal rights to property were integral to the economic and social scheme of early America, particularly in the Chesapeake region.⁶ Maryland widows in the age of the Revolution, that is, at the end of the eighteenth century, were comparatively well treated compared, that is, to the treatment of their mothers or grandmothers, or similarly situated women in England or New England.

³ "A widow shall have her marriage portion and inheritance immediately after the death of her husband and without difficulty; nor shall she give anything for her dowry or for her marriage portion or for her inheritance—which inheritance she and her husband were holding on the day of that husband's death. And after his death she shall remain in the principal dwelling of her husband for forty days, within which her dowry shall be assigned to her, unless it has been assigned to her earlier, or unless that house is a castle. And if she leaves the castle, she shall at once be provided with a suitable house, in which she may honorably dwell until her dowry is assigned to her as aforesaid. And in the meantime she shall have her reasonable estovers of common [share of the produce]. Moreover, she shall be assigned as dowry one-third of all the land held by her husband during his lifetime, unless she was endowed with less at the church door." Second Reissue of Magna Charta (1225), in Carl Stephenson and Frederick George Marcham, eds. *Sources of English Constitutional History*, 2 vols. (New York: Harper and Row, 1972), 1:117.

⁴ Richard H. Chused, "Married Women's Property Law 1800-1850," *Georgetown Law Journal* 51:5 (1983), 1359-1425.

⁵ Mary Lynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986), 141ff.

⁶ *Women in the Age of the American Revolution*, Ed. Ronald Hoffman and Peter J. Albert (United States Capitol Historical Society, Univ. Press of Virginia, Charlottesville, 1989); see especially, Carr, *infra* n. 30 at 156ff.

One reason for this was almost certainly the strength of the legal right to dower.

Locally in Harford County, the most famous woman of wealth in the Revolutionary War era was Sophia (White) Hall. At one point she held an estate of several thousands of acres of prime Harford County land, part of which became renowned as "Sophia's Dairy." Sophia was the daughter of Col. Thomas White a mid-eighteenth century surveyor, authority on titles, and big-time land speculator.⁷ Sophia's mother, Sophia (Hall) White, was a wealthy woman in her own right through her father, Capt. John Hall, who gave her 813 acres as a marriage gift.⁸ Sophia (the daughter) married her cousin Aquila Hall, and the couple built the beautiful two-and-a-half story brick mansion on the Bush River that remains one of Harford County's architectural treasures.⁹ (It now overlooks the old Beta shoe manufacturing complex on U.S. Route 40.) Even after Aquila died, and much of the family's land was distributed to the next generation, her wealth remained formidable. Few if any women of the time rivaled Sophia in land holdings, but other women headed households and were listed as tax payers in the County according to the official assessments of 1783 and later.

Six women appear prominently in the family inheritance drama unfolded below. In addition to the widow Martha Griffith who filed the law suit at the core of our story, there were four other heiresses. Three were Martha's step-daughters; the fourth was a sister-in-law of the deceased also made one of the guardians over the children. Eventually the widow of the principal heir came into the picture. The two unmarried daughters may have had a special need for the assets that would bring them the financial security, dignity, and happiness they sought in life. But their step-mother challenged part of their claims under the provisions of their father's will.

Later one of Martha Griffith's step daughters, Martha (Griffith) Smith (later Jay), twice came into possession of large estates as a widow, first, of Colonel Alexander Lawson Smith in January 1802 and second, of

⁷ C. Milton Wright, *Our Harford Heritage*, rev. ed. (French-Bray Glen Burnie, Md., 1980), 30-31.

⁸ Robert Barnes, ed., *Baltimore County, Maryland: Deed Abstracts 1659-1750* (Westminster, Md.: Family Line Publ., 1996), 193.

⁹ Christopher Weeks, *An Architectural History of Harford County, Maryland* (Baltimore and London: Johns Hopkins University Press, 1996), 33, 36-40. Much of Sophia's massive wealth as a widow in 1783 is itemized in the *Maryland Tax List, 1783, Harford County*, (Philadelphia: Rhistone Pub., 1970) [listings are by county and then alphabetical for each district or "hundred"].

Samuel Jay of Havre de Grace in 1818.¹⁰ An enterprising woman, she actively managed considerable assets for her children and herself and purchased a farm during her first widowhood which has remained in the family ever since.

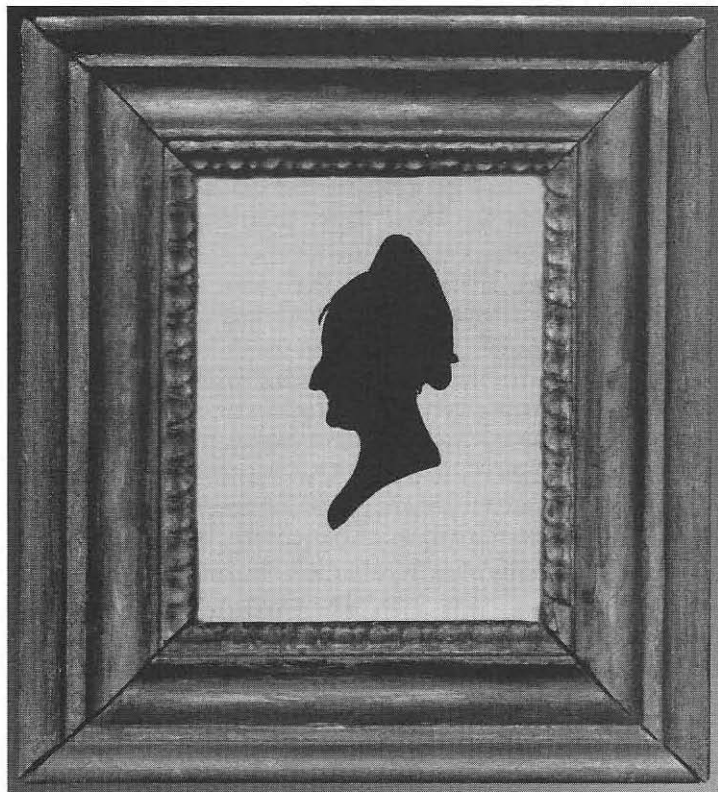


Figure 1. Martha Griffith (Smith Jay), the eldest daughter and one of the heirs of Samuel Griffith whose last will and testament sparked the law suit explored in this article. Silhouette from life; courtesy, private collection. Reprographics by Nan Jay Barchowsky.

¹⁰ Martha was appointed administratrix of the estates as well as guardian of the children both times. There were three young Smith children in 1802 (a boy and two girls), and Martha managed their share of the estate until they came of age, frequently filing annual guardian's accounts for each; see inventory for Smith filed Feb. 8, 1802, Reg. Wills, Harf. Co., Maryland Hall of Records (hereinafter "MHR"), Microfilmed Record (hereinafter "Mfilm."), WK 833: 219, 223-225 and, guardian account for the Smith children, Reg. Wills, Harf. Co., Guardian Accounts, MHR, Mfilm., WK 837: 42ff. Martha was later appointed guardian over 20 month old John Jay on Oct. 20, 1818; Reg. Wills, Harf. Co., Orphan's Court Proceedings, MHR, Mfilm., CR 422-2 (Lib. A. J. 2): 402. The administration of the Jay estate was particularly complex and required several filings; on May 2, 1820 she had \$17,597.29 1/2 worth of personal estate "in hand"; Reg. Wills, Harf. Co., Inventories, MHR, Mfilm., WK 834-835-2: 170-171.

The events recounted below tell, in part, a clichéd family story of struggle for control of family wealth. Beyond that, however, the story reveals how central the laws of property and inheritance were to the social structure and economic life of a place like Harford County in the pre-industrial age. This family's efforts to manage its property over the course of a generation also illustrates how the legal regime of property shaped an individual's pursuit of happiness two hundred years ago.

Who were the Griffiths?

Martha Hall married Samuel Griffith on November 17, 1778.¹¹ It was the second marriage for both, and both were from wealthy, well established families in the region. Samuel's father (also named Samuel) had owned property near Romney Creek as early as 1738, and Samuel's brother, Luke, also farmed a plantation in the Spesutia region. Another relative, Dr. Samuel Griffith, owned a large tract of land nearby. Martha was the eldest daughter of Captain Jonathan Hall "of Cranberry," a leading Harford County citizen. "Cranberry Hall" had descended from an early (1694) patent for 1,547 acres to a member of the Hall family,¹² and it remained a very large estate at the time of the Revolution. When it descended to Martha's brothers (she had three brothers and four sisters) it was still an immense, unwieldy tract straddling the "Great Road leading from Bush Town to Susquehanna lower Ferry", a road later known as the Post Road between Baltimore and Philadelphia and now (roughly) Route 7 around Aberdeen.¹³ In the hall itself (which remains standing to this day), Martha grew up in elegant surroundings by the standards of the times. The inventory of her father's estate referred to fine furnishings, fancy punch bowls, a backgammon set, precious tobacco boxes, seven expensive bed sets, and supplies for a shoe manufacturing operation, among many other things.¹⁴ Out of this family estate Martha received a significant bequest upon leaving home for her first marriage to William Robinson Presbury, son of another prominent family in the region.¹⁵

¹¹ Information from several primary sources containing information about the families is usefully brought together in Henry C. Peden, Jr., *Early Harford Countians* (Westminster Md.: Family Line Pub., 1993), 170-172. Records of births, deaths and marriages were kept by the St. George's parish officials of the Church of England (later the Episcopal Church) where the Griffiths and many of their neighbors were parishioners. See *St. George's Parish Registers, 1689-1793*, ed. Bill & Martha Reamy (Silver Spring, Md.: Family Line Pub., 1988).

¹² Wright, *supra* n. 7 at 21.

¹³ Will of John Hall of Cranberry, dated Sept. 10, 1779, Reg. Wills, Harf. Co., Wills, MHR, Mfm., CR 44,758-1 (A.J. C.) 267-279. There were several branches of the Hall family living in Harford and Baltimore Counties. Jonathan Hall of Cranberry's will makes clear that he and Sophia (White) Hall [of Sophia's Dary] were grandchildren of the same John Hall, a major landholder earlier in the century in parts of Baltimore County that became Harford County.

¹⁴ Inventory for John Hall of Cranberry, filed Feb. 7, 1770, Reg. Wills, Harf. Co., Inventories, MHR, Mfm., WK 852-833-1.

¹⁵ The marriage gift is noted in her father's will, *supra* n. 13.

When Martha married Samuel Griffith after Presbury's death they were both middle aged, he 40 and she 32. The two must have been socially acquainted for a long time. They had grown up in the same community and married their first spouses within a few weeks of each other in St. George's parish church (in 1764). Both Martha and Samuel had four surviving children by their prior marriages. Four of Samuel's children by Freenettah Garrettson were still at home—Martha, Frances, Sarah, and Samuel Goldsmith Griffith (ages seven, five, three, and one)—at the time their step-mother came into the household.¹⁶ Some of Martha's children by Presbury probably also resided in the Griffith household for a while.¹⁷ Soon Martha gave birth to another daughter who died young.¹⁸ Over the next several years Samuel and Martha then had four sons—John Hall, Edward, Luke, and Alexander Lawson. Whether Martha managed the household personally and supervised the care of some or all of these three sets of children we cannot say. For her husband the various sets of children remained distinct family units, as we shall see.

Samuel Griffith held several large tracts of farmland in the area now occupied by the Aberdeen Proving Grounds, then known as part of the "Spesutia Lower Hundred" division of the County. The principal holding, a farm in the region then known as Rumney Neck, had been pieced together by Samuel from three tracts of inherited and purchased property comprising perhaps about 586 acres all together.¹⁹ A second holding was the Swan Creek farm, thought to contain 515 acres "more or less" lying on the east side of Swan Creek. (See Maps.) A third property, in "Taylors Neck", was situated in "Gunpowder Lower Hundred" (the southeastern part of the county).

Samuel and Martha prospered in the 1780s. Tax records indicate thirteen white inhabitants in their household in 1783, twenty-two slaves, extensive livestock, and some silver and pewter.²⁰ Samuel continued to buy land in the 1780s, although he also sold 100 acres to his brother Luke. The 1790 census reports thirteen white inhabitants still in the household and an increase in the number of slaves to thirty-eight.²¹ Then Samuel must

¹⁶ Freenettah had died at age 31 on September 5, 1777, four days after the birth of this last child; Peden, *Harford Countians*, *supra* n. 11 at 171, and Reamy, *supra* n. 11 at 96. Samuel and Freenettah had several other children who did not survive into the period we focus on here.

¹⁷ The 1783 tax list records 13 white inhabitants in their household, three of whom were noted as "Major" which probably meant "adult". So the household might then have included four of Samuel's children by Freenettah, four of Martha's children by William, and two of Martha and Samuel's children; see *Maryland Tax List, 1783*, *supra* n. 9. See also Peden, *Harford Countians*, *supra* n. 11 at 171. Martha noted the names four adult children, a son and three daughters, by William Presbury in her will, dated Sept. 19, 1795 [proved Jan. 12, 1808], Reg. Wills, Harf. Co, Wills, MHR, (T.S.B. C): 179.

¹⁸ Avarilla was born in on December 1, 1779 and died on August 2, 1781 see Peden, *Harford Countians*, *supra* n. 11 at 171, and Reamy, *supra* n. 11 at 96.

¹⁹ Deed of Conveyance from Samuel G. Griffith to Frances Garrettson, January 9, 1802, 11st. Soc Harf. Co., Arch., Deeds and Mortgages, "Rumney Neck" folder. *Maryland Tax List, 1783*, *supra* n. 9, see also Peden, *Harford Countians*, *supra* n. 11 at 171.

²⁰ *Maryland Tax List, 1783*, *supra* n. 9.

²¹ Peden, *Harford Countians*, *supra* n. 11 at 172.



Figure 2. Detail of the title section of a map drawn by engineer C.P. Hauducoeur to promote Havre de Grace (oriented with north to right.) By permission, Historical Society of Harford County.

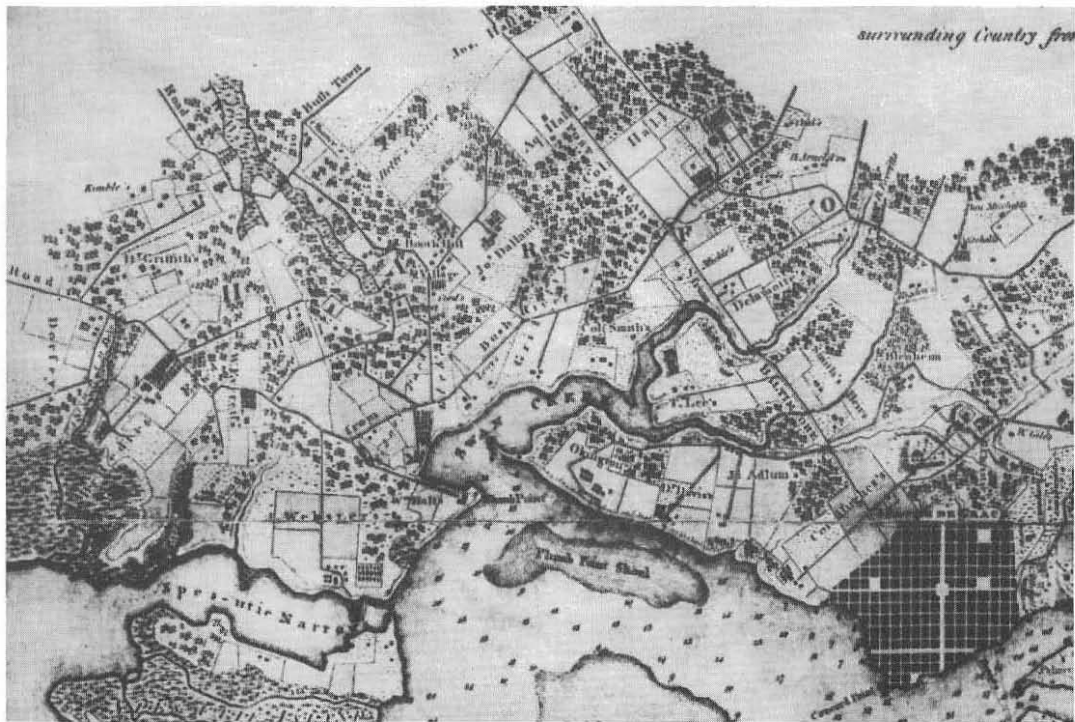


Figure 3. Detail of Hauducoeur's map showing location of the Griffith's farm on Swan Creek near what is now the town of Aberdeen. By permission, Historical Society of Harford County.

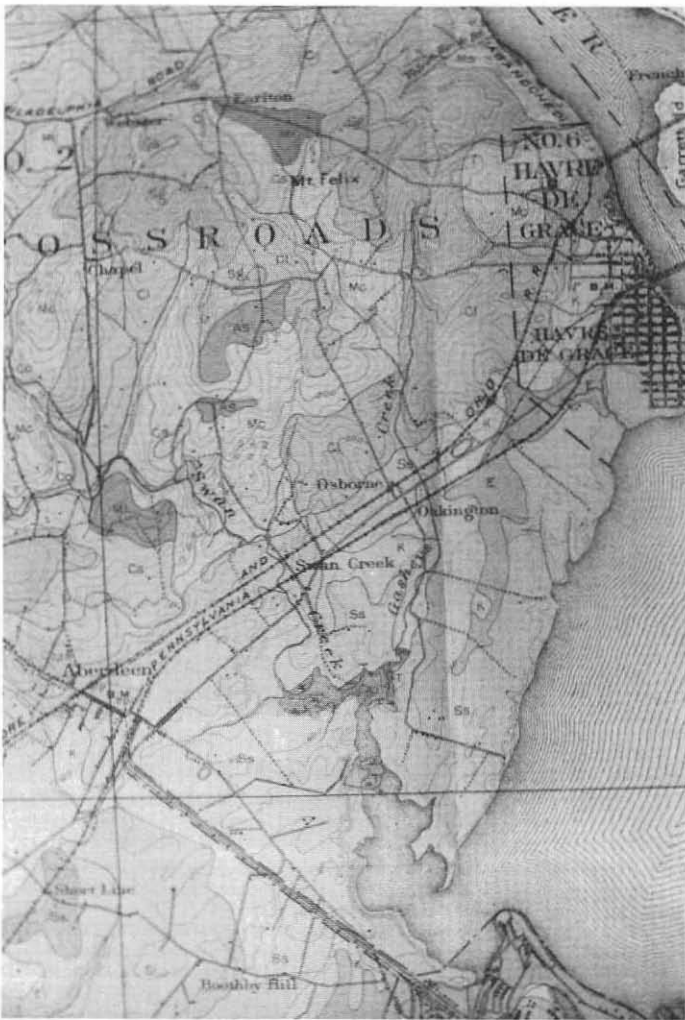


Figure 4. Detail of modern 1941 map showing Swan Creek area of Harford County. The former Griffith property is now part of Aberdeen Proving Ground. By permission, Historical Society of Harford County.

have gotten ill in the winter of 1793-1794. He executed a will that January and died the following March, 1794.

The Inheritance and the Makings of the Law Suit

Samuel left Martha the farm on Swan Creek, and his will gave detailed instructions for the distribution of the rest of his real estate, personal property, and slaves—over 1000 acres of real property in all and about £3400 worth of personal estate. The largest share went to his eldest son Samuel Goldsmith Griffith, who became the principal heir.²² Other than to Martha(w),²³ the remaining property real and personal, was left to his other seven living children and to Frances Garrettson, the older children's aunt.

The will was "proved" on June 24, 1794.²⁴ Administration of the estate was then taken over by the three executors/administrators and the executrix/administratrix namely, Col. Alexander L. Smith, Dr. Elijah Davis, Dr. Samuel Griffith, and Frances Garrettson. Davis was a prominent planter who lived nearby. Smith was a son in law of the deceased, and Dr. Griffith was probably a cousin. Miss Garrettson was an unmarried, wealthy sister-in-law.

The goods and chattels (anything of value that was not real property) were inventoried on July 21 and the greater part was assessed at £3174:03:4 1/4.²⁵ Forty-nine slaves accounted for just under half of this *personal* net worth. The rest was household furnishings, farm equipment, live-

²²Will of Samuel Griffith, Reg. Wills, Harf. Co. Wills, MHR, Mfm, CR 94,785 (A J. 2): 258, at 260-261. [Note: Some records spell the son's middle name "Gouldsmith."]

²³To help avoid confusion of identity between Martha Griffith the widow, and her oldest step-daughter, Martha Griffith Smith, the former will be designated hereafter as Martha(w), the latter as Martha(d) or by their surnames as well, e.g. Martha Griffith Smith or Martha Griffith Smith lay.

²⁴Proving was generally done before the Register of Wills for the County. Often the witnesses to the making and signing of the will were asked to verify their presence and signatures, and this was noted in the record. In the present instance, an addendum in the record by Abraham Jarrett in 1803 notes that any "Defect for want of the Signature of the late Register to the probate of the will of Sam'l Griffith was this day cured in Court agreeably to the act of assembly passed November Session 1800"; *supra* n. 22 at 260-261.

²⁵Inventory for Samuel Griffith, Reg. Wills, Harf. Co., Inventories, MHR, Mfm, WK 832-2: 251, 260-267 and WK 833-1: 1. Accurate notes in the G. W. Archer Collection, Historical Society of Harford County (hereinafter, "Hist. Soc. Harf. Co."), Archives ("Arch."), summarize the "first account" as having £3768.5 10 in assets, including money receivable, and £3254.4 dispersed for funeral expenses, etc. Very roughly, Griffith's estate *excluding* the land would be worth about \$500,000 in 1999 adjusted for inflation based on the parameters in John J. McCusker, *How much is that in real money? A Historical Price Index for Use as a Deflator of Money Values in the Economy of the United States*, reprinted from the Proceedings of the American Antiquarian Society, vol.101/2, (Worcester: American Antiquarian Society, 1992). Although dollars had been in use in colonial Maryland, Maryland's money of account in the 1790s was pounds, shillings, and pence (1£=20s.; 1s = 12d.) ["d." for the Latin "denarius" a common Roman coin was the monetary symbol for pence]. This money, often referred to as "current money," had a floating relationship to English Sterling and other harder currencies such as Pennsylvania money. In 1792 the United States government moved definitively to a dollar based financial system, and denominations in dollars were increasingly used in Maryland thereafter. At the end of the eighteenth century 1£ Maryland money = \$2.66 (officially, but not necessarily in fact), the exchange value of 1£ British Sterling fluctuated around \$4 5 U.S.

stock, and supplies. An additional part of the inventory came from the Swan Creek farm, itemizing 120 bushels of corn, 8 tons of hay, 10 bushels of potatoes, 35 bushels of turnips, among other household things apparently in storage; this added another £314 to the estate.²⁶

The long list of inventoried items reflects the day-to-day texture of early Harford County life in upper-class planter households. There was some silverware, quite a bit of livestock, 9 turkeys, a dunghill, an extensive list of farm implements, bar soap, 22 pounds of coffee, lump sugar, 1/4 pound of cinnamon and 1/3 pound of ginger, and dozens of skeins of thread, lumber, a silver watch, a box of wafers, a looking glass, a corkscrew, several gallons of sherry, port and whisky, a bit of cash, and an unexpired lease on the "Marsh Plantation."²⁷ The two oldest daughters, Martha(d) and Frances, "witnessed" and signed the official inventory and appraisal drawn up by the assessors, and it would later be copied into the county records and sworn to by the parties involved.²⁸

By a literal reading of the will, no part of the goods and chattels inventoried in 1795 went to the forty-eight year old widow Martha. Despite very detailed instructions, Samuel failed to make clear whether he intended to leave to her for use during the remaining years of her life, as was customary, a share of this extensive accumulation of personal property. The section of the will read, "I Desire my wife Martha Griffith Should have the use and benefit of my Farm in Swan Creek during her widowhood provided She claims no thirds of my Lands in Rumney Neck."²⁹ There was nothing more given to her.

Is this what Samuel had really wanted? No one seems, at first, to have acted as if the provisions for Martha(w) created a problem. Martha(w) did not contest the will, something she had a clear right to do (within forty days) under Maryland law.³⁰ And it is unlikely that the legal problem with the will was simply the result of an oversight by Samuel and his legal advisers. Specific instructions were given for dividing up the residue of the personal estate after all of the specific bequests had been sat-

²⁶ Addendum to the inventory, *id.* at WK 837-1: 1

²⁷ Financial interests such as future income from a leased property, debts to be collected, shares in a business, or stock certificates, were part of individual personal estate upon death and were to be distributed to the heirs.

²⁸ Inventory, *supra* n. 2⁵ at WK 852-2 267 and WK 835-1: 1

²⁹ *Supra* n. 22 at 259.

³⁰ It would later be argued by lawyers on behalf of the executors that this failure precluded Martha(w) from challenging any aspect of the property distribution under the terms of the will. *Griffith v Griffith's Ex'rs.* *supra* n. 1 at 115 (Luther Martin's argument on this point was that, as a general rule, a person could not take what was devised under the terms of the will and reject the will). As a matter of fact, a significant number of women in Chesapeake region of Maryland renounced their husbands' wills. Data from four counties (including Baltimore), show that over half of the women who received less than their thirds renounced their husbands' wills, see Lois Green Carr, "Inheritance in the Colonial Chesapeake" in *Women in the Age of the American Revolution*, *supra* n. 6, 155-208, at 174, 177.

isfied, and Martha(w) was excluded from receiving any such residue. Having left his widow a large prosperous plantation Samuel may have felt Martha(w) should abandon, in deference to his children, any further claims to farm equipment, livestock, seed, and provisions, as well as to any of the work force of forty-nine slaves. She was, after all, a woman from a very wealthy family, and she might have provisioned the Swan Creek farm out of other assets. She had assets of her own, and three older children by the prior marriage. It is quite plausible also, since he named others and *not* Martha(w) as guardians for all the children, that Samuel didn't expect his wife to outlive him by many years.³¹

Soon after the forty day period during which Martha(w) could have had the will set aside the conflict began to emerge. Martha(w) challenged the work of the executors with the help of legal adviser and neighbor, Aquila Hall Jr.³² The suit was filed in Bel Air later that summer as people in Harford County looked toward the season's harvests and contemplated its distribution. (Harford County's Courthouse had only recently been erected in Bel Air, over the objections of those who thought Havre de Grace a better location.³³ The contest between the two towns had been settled by referendum in 1787, and the first term in the new Courthouse had been in March of 1791.)

The Honorable Joshua Seney (Chief Judge) certified on August 16, 1794 that the parties in the Griffith case were to appear in court the second Monday of March 1795.³⁴ Adversarial proceedings began in earnest in Martha(w)'s case about two months after the initial filing when she and her sons-in-law, William Hall and George Patterson, filed a bond with the Court in the amount of "three thousand pounds current money."³⁵ The bond pledged them to honor any determination the Court might make in the suit. John Lee Gibson, clerk of the court, then issued formally the writ of replevin (over Seney's signature), indicating that the plaintiff Martha(w)

³¹Samuel also left care of his children generally to his executors and executrix, so he anticipated that Martha(w) would not alone manage the farm, care for the children, and so forth.

³²There were several men named Aquila Hall in Harford County during this era. The individual identified here practiced law in Cecil and Harford, and at the time of his death in 1815 owned \$60 worth of law books, 38 slaves, and five tracts of land in Baltimore county; see Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York and London: Garland Publishing, Inc., 1989), 377. The fact that Hall was advising Martha is indicated by his appearance for her in the suit and his witnessing of her own will in September 1795, see *supra* n. 12.

³³Wright, *Harford Heritage*, *supra* n. 7 at 68-69. The first county courthouse burned down on February 19, 1838, and a new one (still standing at West Courtland Street between later additions) was quickly built to replace it; *id* at 70.

³⁴Griffith v. Smith, Davis, Griffith and Garrettsen, original writ of replevin, Aug. 16, 1794 ["issued" Oct. 13, 1794], Hist. Soc. Harf. Co., Court Records (hereinafter "Ct. Rec."), Ms. 20.20(5)b

³⁵Surety bond, dated Oct. 13, 1794; Hist. Soc. Harf. Co., Ct. Rec., Ms. 20.20(5)c.

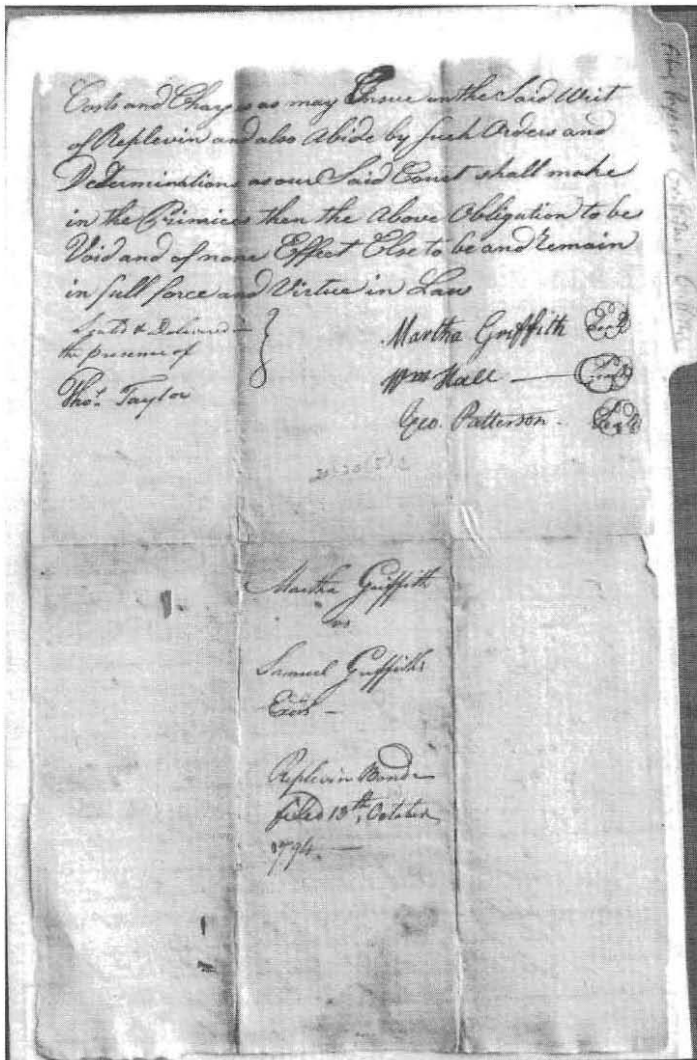


Figure 5. Replevin Bond, one of the initial documents filed in the Harford County Court relative to the widow Martha Griffith's law suit. This bond pledges Martha's backers to guarantee payment of any judgement against her (or other liability as a result of the suit as determined by the court). By permission, Historical Society of Harford County, Court Records.

Griffith, widow of Samuel, had "found sufficient securities" (persons who had pledged to be legally and financially liable on behalf of the plaintiff). The defendants (executors Davis, Smith, [Dr.] Griffith, and Garrettson) would have received official notice of the suit at this point.

Martha(w) and her attorneys chose an action of replevin for the recovery of personal property, an old common law form of action. The property was alleged to be "taken and unjustly detained" by the defendants.⁶⁶ According to the ancient procedural rules associated with this type of common law suit, the writ also ordered the Sheriff to secure the contested property from the defendants' possession and deliver it to the plaintiff for her use while the final outcome of the case was pending. Martha(w)'s original complaint to the court therefore contained an itemized list of the property in dispute, and once the bond was posted, Judge Seney's writ directed the sheriff to deliver all of the property described in the complaint to Martha(w) at Swan Creek.

Pursuant to the Court's order, Sheriff Ben Preston commissioned Greenberry Dorsey, David Crane Jr., John Nelson, and Joseph Webster to identify and appraise the property in question, which they did; the appraised value was £582:10:0.⁶⁷ The schedule of goods, noted as "Replev'd & Del'd," was then returned to the Court by the Sheriff. The schedule refers to twelve slaves (identified by their first names, their sex, and their ages), a carefully identified assortment of livestock, and various pieces of farm equipment. The slaves were listed in a way that suggests family groupings, and probably comprised two or more nuclear families with various aged children as well as some single men and women. The horses ranged in appraised value from nothing (the appraised value of Brandy was scratched out) or £1 (for one "old Bl'k [mare]") to £25 for a Sorel mare named Primrose. There were three milk cows and two pair of oxen and one old ox, an ox cart and yokes, several other cattle including a large hornless steer, a white faced heifer, a bull and five other steers, five yearlings, and twenty-five head of sheep.

Martha(w) should have, at this point, been in possession not just of 500+ acres⁶⁸ and some buildings, but also a work force, and sufficient horses, cattle, oxen, and sheep, and other assets needed to operate the farm. The appearance on the list of family groupings of slaves and relatively

⁶⁶ J. H. Baker, *An Introduction to English Legal History*, 3d ed. (London: Butterworths, 1990), 441.

⁶⁷ Schedule filed with sheriffs return to original writ of replevin [see *supra* n. 33], Hist. Soc. Harf. Co., Ct. Rec., Ms 20:2015d.

⁶⁸ In Martha's time the tract was thought to contain 515 acres "more or less." A resurvey of Swan Creek, which had formerly been known as "Palmer's Point," initiated by Josias W. Dallam in 1818, determined the tract to contain 552 3/4 acres, Alice Parker Collection, Hist. Soc. Harf. Co., Arch., Deeds and Mortgages, "Bush River."

worthless horses suggest that the legal battle was not simply about money, but also about securing for her remaining life the surroundings and quality of life she had enjoyed before Samuel died.

But the legal battle had just begun. The following June Samuel Chase, Chief Judge of the General Court for the Western Shore, ordered by writ of *certiorari* that the case be brought before his court on the second Tuesday of October [1795].³⁹ Chase, of course, was a prominent Maryland lawyer and politician with a national reputation. He had been a member of the Continental Congress and signer of the Declaration of Independence. He had been appointed Chief Justice for Baltimore County in 1788, before his appointment as Chief Justice of the General Court.⁴⁰ His career as the controversial Federal judge had not yet begun, but apparently he was acting already on his penchant for decisive intervention in controversial cases. By the time Martha(w)'s case was finally heard before Maryland's Court, however, Chase had been appointed to the Supreme Court by President Washington in time for that Court's February 1796 term.⁴¹

In Harford County, meanwhile, the Orphan's Court continued to exercise its jurisdiction over the Griffith estate and the distribution of assets.⁴² The common law suit apparently did not stay the proceedings in the Orphan's Court, and as the common law suit moved toward the higher court, the contest between Martha and the executors continued intermittently at the local level from March 1795 through March 1797. The executors were ordered to answer a formal complaint from Martha at the March 1795 term of the Orphan's Court. As a result the Orphan's Court at its June 1795 term ordered the executors to distribute Martha's widow's portion to her, but the executors continued to drag their feet. At the June 1796 term the Court again ordered that the executors settle, and also ordered that they bear the costs (filing fees, recording fees, attorney fees, etc.) of the action. The executors then prayed an appeal, which was granted.⁴³ But the executors lost at every turn, and were eventually cited for contempt. Relations between Martha(w) and the executors may have grown increasingly hostile; she filed another suit against them in March

³⁹ Writ of *certiorari*, June 23, 1795 in Griffith v. Griffith's Ex'rs; over Chase's signature, (issued by N P [Ninian Pinkney?] on ? August); Hist. Soc. Harf. Co., Ct. Rec., Ms 20:20(51a).

⁴⁰ See Day, *Lawyers in Maryland*, *supra* n. 32 at 255-257.

⁴¹ James Haw, Francis F. Beirne, Rosamond R. Beirne, R. Samuel Jett, *Stormy Patriot: The Life of Samuel Chase* (Baltimore: Maryland Historical Society, 1980), 178.

⁴² See Henry C. Peden, Jr., *Abstracts of the Orphan's Court Proceedings, 1778-1800*, (Westminster, Md.: Family Line Publ., 1990), 53ff.

⁴³ *Id.* at 60. All of this was a parallel proceeding but separate from the common law suit. The executor's appeal from the Orphan's Court order shows up in the docket books of General Court for the May Term 1798 as having been filed in December, 1796, and still being "continued" by consent; "Alexander L. Smith et al v Martha Griffith." MHR, General Court, Docket Book, May Term, 1798, f. 250.

The State of Maryland to the Chief Justice, of said
 County, and Clerk of the said County, greeting. Whereas
 lately in our said Court Elizabeth Davis, a Shipwreck
 and for Smith, Francis Garrison & several
 Griffith Executors of Samuel Griffith deceased made
 themselves to appear unto me the said Chief Justice
 severally taking and detaining the goods and chattels of
 the said Martha Griffith as it is said which said
 plea is still depending before you our said Justice
 in our said County Court, as it is said and determined,
 and now being desirous for certain reasons that the
 record and proceedings in the plea aforesaid
 be by you be certified to me in manner
 that you said, under your seal the record of the
 proceedings aforesaid on the plea aforesaid with
 all things touching the same unto our general
 Court, to be held at the City of Annapolis the
 second Tuesday of October next, plainly and
 distinctly, and in a full and ample manner
 and remains before you, together with
 this writ, so that we may be able hereon to
 proceed, and to do what shall appear to
 us of right ought to be done. Witness the
 honorable Samuel Chase Esquire Chief
 Judge of our said Court the twenty third
 day of June Anno Domini 1795

day of August 1795

Figure 7. Writ of Certiorari ordered by Samuel Chase. This judicial order, over the signature of Samuel Chase (later a Justice of the Supreme Court of the United States), required that the proceedings in Martha Griffith's case be removed to Maryland's General Court for the Western Shore. By permission, Historical Society of Harford County, Court Records.

1797. This time it was an action of trespass alleging the misappropriation of fifty wagon loads of hay, a harvest of apples, and a still.⁴²

Martha's Legal Claims in Historical Perspective

Martha(w) Griffith's quest for a maximum legal share of her husband's estate placed her at the center of a vital question. Did a husband have the *right*, or did he not, to will all of his *personal* estate away from his wife?

Despite the historic rights of widows, legal developments in England had worked against women in the seventeenth century with the growing popularity of complex settlements by last will and testament. Social reality in the colonies, however, helped to strengthen the claims of widows to a portion of what we think of today as *marital* property. In many colonies intestacy statutes entitled widows to one third or one half the husband's personal holdings (depending on whether there were children).

In colonial Maryland early statutes provided that the "Widow shall succeed to the Goods & Chattells of the deceased intestate if there be no Child and if there be but one Child the Widow shall succeed to the one half & the Child to the other half[.] And if there be more than one Child the widow shall succeed to one third and the children to the residue by equall Shares."⁴³ The General Assembly passed many such acts throughout the colonial period, and the General Court's opinion in *Griffith* rehearsed the history of this early Maryland legislation. The colonial codifications of 1704 and 1715 and the post-Revolutionary Maryland statute of 1794 made similar provisions for a widow's succession to one third part of the personal estate of her deceased husband if there were children.⁴⁴

Despite this long history of legislation on the matter, the legal complexity of Martha(w)'s case grew partly out of a lingering ambiguity in Maryland law. Could a widow claim personal property *both* under 1) a specific bequest in the will and 2) the rule of her general right to a *minimum* share? One solution to this ambiguity was to enforce rules requiring widows to elect one or the other within forty days that is, either accept the bequest under the will or renounce the will and claim her shares. But this

⁴² Writ of Arrest, March 28, 1797, Hist Soc Harf Co.; Ct Rec., 25:28(9)a. This suit appears to have been dropped.

⁴³ "An Act touching Succession to goods of Intestate Persons," Assembly Proceedings, (July-August 1642), in William Hand Browne, et al., eds. *Archives of Maryland*, 71 vols. (Baltimore: Maryland Historical Society, 1887-1972), I:156-157.

⁴⁴ *Griffith v Griffith's Ex'rs*, *supra* n. 1 at 103.

rule appears not to have been consistently enforced. Furthermore, Martha(w) had neither renounced her husband's will nor taken any share of personal property under the will because nothing had been left to her. The Maryland statutes then in effect did not provide for this particular situation.

The fact that no Maryland law fit exactly the facts of this case raised interesting problems from a lawyer's point of view. What does a court do when the law simply isn't clear? In post-Revolutionary Maryland this question raised further issues, calling into play the relationship of the ancient English common law to the law of the new, republican State of Maryland.

An article intended to settle such matters had been included in the State Constitution of 1776. Designed to guarantee continuity between pre- and post-independence common law, Article 3 in Maryland's original *Declaration of Rights* provided the following:

That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes, as existed at the time of their first emigration, and which by experience have been found applicable to their local and other circumstances, and of such others as have been since made in England, or Great-Britain, and have been introduced, used, and practiced by the courts of law or equity; and also to all acts of assembly in force on the first of June seventeen hundred and seventy-four.¹⁷

But the ultimate source of legal authority remained a burning political question in the 1790s. The issue had become part of the struggle between the Federalists and the Jeffersonians because it pitted the authority of British legal tradition against the authority of the people through their elected legislatures.¹⁸

In such a context it is not surprising that some of the most impressive legal talent of the age became involved in the case. In the early stages of the suit Philip Barton Key entered appearances in Annapolis on Martha(w)'s behalf, while the executors employed Zebulon Hollingsworth. The case was heard before the General Court's three

¹⁷ *The Decisive Blow is Struck: A Facsimile Edition of the Proceedings of the Constitutional Convention of the Province of Maryland*, intro. Edward G. Pappenfuss and Gregory A. Stiverson (Annapolis: State of Maryland, 1977).

¹⁸ The same year Martha's suit was first heard, the General Assembly commissioned in 1795 a study by the Chancellor, Alexander Contee Hanson, to undertake an extensive report that would decide the matter once and for all. This report never materialized, but a new one was commissioned and assigned to Chancellor Kilty several years later. See Jeffrey K. Sawyer, "Distrust of the Legal Establishment in Comparative Perspective," *The Georgia Journal of Southern Legal History* 27:1&2 (1993), 14-17.

highly respected judges—Chief Justice Robert Goldsborough, Jeremiah Townley Chase (Samuel Chase's cousin), and Gabriel Duvall. The General Court, the successor to the Provincial Court of the colonial era, now had two divisions, one for the Eastern and one for the Western Shore, and was the most significant state court.⁴⁸ Before the General Court in May 1798, the learned James Winchester presented the case for Mrs. Griffith while the formidable Attorney General, Luther Martin, (former delegate to the Constitutional Convention in Philadelphia) argued the other side.

The arguments at the October Term 1797 were lengthy, detailed, and filled with references to English and Maryland law. The lawyers and judges referenced an impressive array of treatises, cases, statutes, and customs. Martin argued the executors' side of the case in strident terms, focusing on a man's right to dispose freely of his personal estate both while living and by last will and testament. He suggested that Martha(w)'s failure to challenge the will originally during the specified forty day period of time allowed by statute meant that Mrs. Griffith had to accept what was given her in the will with respect to her husband's personal estate—nothing.

Winchester reasoned from a different angle, arguing eloquently that the widow's portion was in fact a widow's common law right to a reasonable share of her husband's goods, a right that had extended from England to Maryland and remained viable under post-Revolutionary Maryland law. A husband could not deprive his wife of her right through his will. Furthermore, Martha(w) was not precluded from claiming her share of the *personal* estate simply because she accepted the devise in the will of a share of the *real* estate.

William Pinkney also participated in the case. Pinkney was a particularly distinguished member of the bar, who had started his career in Harford County and later become one of the Nation's leading admiralty lawyers.⁴⁹ Shortly after Bel Air became the seat of justice for the county, Pinkney began his practice there. He was highly successful as a young lawyer and later as a diplomat, helped to recover Maryland's shares in the Bank of England.

Absent from Maryland at the time of this trial on a mission to Great Britain, Pinkney was nonetheless invited by the Court (along with another prominent attorney, William Cooke) to give an opinion in the case. His brief was printed along with Cooke's in the official report along with

⁴⁸ The Maryland Court of Appeals existed, but had not yet come to exercise its appellate authority very aggressively. See Sawyer, "Distrust," *id.* at 6-22.

⁴⁹ On Pinkney's career: see James E. Chnsmer, "Harford County's Role in the Development of the Bill of Rights," *Harford Historical Bulletin*, 52 (1972): 33-69 at 35-36.



Figure 8. Portrait of Luther Martin, first Attorney General for the State of Maryland. Martin, who argued the executors' side of the case, was after the Revolution a heavy speculator in confiscated Loyalist lands and later an ardent opponent of the newly centralized national government.

the lawyer's arguments and the Court's decision. Pinkney's analysis, like the others, offered a learned history of inheritance law in Maryland and England. Pinkney summarized this history deftly. He then concluded with one of the rhetorical flourishes for which he was famous, that if Martha(w) had no absolute right to the personal property she claimed, "it would be difficult to show that [Maryland] had any law at all!"⁵¹

Jeremiah Townley Chase wrote the Court's deeply intelligent opinion, which was joined by Goldsborough and Duvall. The opinion referred succinctly to the legislative history of widow's rights in Maryland and the issue of taking personal estate both by bequest and by common law right to a third. Chase sided with Winchester and Pinkney in conceptualizing the widow's common law right as a general one. Maryland law had recognized this right, and Maryland statutes had historically *modified* the right and the circumstances under which it applied. Chase thought that the statutory history suggested that the wife "could take the bequest and the third part also, if such appeared to be the intention of the husband" in pre-Revolutionary Maryland. Chase agreed that the law had changed considerably in England over the course of the colonial period, and also noted that the practice in England had not been uniform from region to region. He then cited a key section in William Blackstone's *Commentaries on the Laws of England* to support his main line of reasoning from common law and Maryland statutes. American lawyers during this period often used Blackstone's authoritative four-volume treatise, first published in 1765 (and many times reprinted in Great Britain and the United States) as a definitive statement of the common law. In this case Chase found in Blackstone evidence that widows rights were stronger in the early seventeenth century than later, and that the earlier practice (in place at the time of the founding of Maryland) should be considered the basis of Maryland's common law.

It is the opinion of... Blackstone that the wife at common law was entitled to a third part of the personal estate; and this opinion is supported by great and respectable authorities, Bracton and many others; and Blackstone cites a decision of Finch, in the time of Charles I, (which was about the time [Maryland's] charter was granted,) in support of this opinion... Upon the whole, I am of opinion that the plaintiff in this cases is entitled to one-third part of the personal estate of her husband, after deducting the debts and funeral charges.⁵²

This was the Court's holding, and it was eventually affirmed on appeal in

⁵¹ Griffith v. Griffith's Ex'rs, *supra* n. 1 at 117ff.

⁵² *Id.* at 123.



WILLIAM PINKNEY

Figure 9. Portrait of William Pinkney, prominent lawyer and diplomat who began his legal career in Bel Air in 1786. Pinkney, whose father lost his land because of his Tory activities, was elected to Congress in 1790 and later served as Senator and U.S. Attorney General.

the Maryland Court of Appeals (November term, 1801). A final distribution of Martha(w)'s share of the estate's assets, £1162:9:6 1/2, was recorded in the Orphan's Court on September 1, 1803.⁵⁵

Martha had won. And when the decision in this case became established precedent, Maryland women in general won. This happened in a subsequent case in which an Anne Arundel County widow renounced a will executed in 1817 that left her no part of her husband's personal estate, and in which *Griffith v. Griffith's Ex'rs* was cited as having settled the matter in Maryland law of the widow's rights to her thirds.⁵⁶

Beyond the courtroom, Martha(w) and the farm were also successful. Swan Creek remained in her possession until her death in December 1807. She died close to her 62nd birthday possessed of a plantation, a large work force of slaves, and considerable bank stock. During thirteen years of widowhood she had prospered personally and also worked for the future of her young boys. The inventory of her personal estate, sworn to on January 22, 1808, gave a total worth of \$7776.71 and contained references to fine furniture made of mahogany, walnut, and cherry, fine table coverings, fancy bedding, framed prints, "worsted carpet," and so forth.⁵⁷ She spent her last years living in material surroundings comparable to her mother's and father's household and distinctly more affluent and stylish than that of her second husband.

When Martha(w) died, the Swan Creek farm was sold in January 1809 to John Leypold, father-in-law to Martha(w)'s step-son, Samuel G. Griffith. Each of the eight Griffith children received an equal \$1500 share of the \$12000 sale price, as their father had instructed.⁵⁸

Applying the Logic of a "Strict Settlement"

The Griffith family story illustrates several prominent features of estate law during this era in America. In his last will and testament Samuel was trying to do well by his family according to his own sense of justice and right, and according to the repertoire of legal devices familiar to him and his legal advisers. His will was a typical Maryland adaptation of English "strict settlements."⁵⁹ The purpose of such complex settlements in a last will and testament was to orchestrate the distribution of family assets according a detailed plan. A man or women with extensive assets could pass the property along in particular ways to specific family members. Under the care of executors and administrators acting as trustees, these

⁵⁵ Reg. Wills., Harf. Co., Distributions, MHR, Mflm, CR 10,960-1 33

⁵⁶ Coomes et al. vs Clements 4 H. & J. 460

⁵⁷ Reg. Wills., Harf. Co., Inventories, MHR, Mflm, WK 833: 450-451.

⁵⁸ Guardian Account of Edward Griffith for Alexander L. Griffith, May 7, 1811, Reg. Wills, Harf. Co., Guardian Accounts, MHR, Mflm, WK 832 1, and Edward's inventory of the ward's property, on Feb. 13, 1810, at WK 833: 74-75 (noting the \$1500 credit from "John Leypold's bond.")

Baker, *English Legal History*, *supra* n. 36 at 332.

legacies were administered much more efficiently and over extended periods of time until younger children came of age or until other family members died. Such complex settlements replaced raw primogeniture because they provided elaborate legal strategies empowering men to pass the bulk of their estate to a single heir, if they so chose, while avoiding the injustice of leaving everything to the eldest son. At the same time, such settlements prolonged the spirit of primogeniture in Maryland by overcoming statutes of intestacy that required equal division among the children.

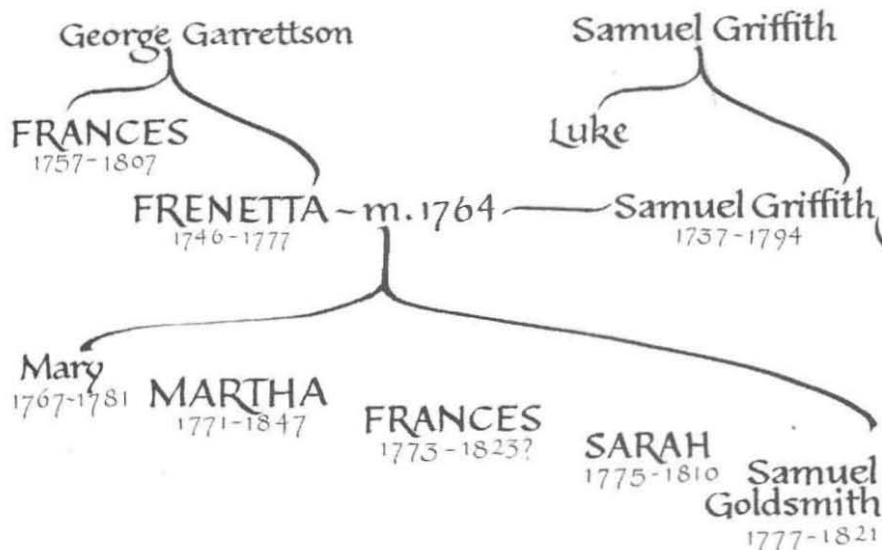
At the time of Samuel Griffith's illness and death in 1794 seven of his eight children lived in his household. His oldest son and principal heir was still a minor. Martha(d), the eldest, then twenty-three, had married and left home. Her husband, Col. Smith, already mentioned above as one of the executors of Samuel's will, owned a plantation near the Griffiths' Swan Creek Farm. Griffith noted in his will that a significant marriage gift had already been given to Martha(d), so she had already been partly provided for. Neither the second daughter, Frances (now twenty-one years old), nor the third, Sarah (nineteen), had yet married. According to the conventions of the day, by which young women in their late teens were believed to make the most desirable wives, Frances was already somewhat old to begin looking for a husband.³⁸ Samuel Goldsmith Griffith (the principal heir) was seventeen, and his half brothers were thirteen, eleven, seven, and three years of age.

Griffith's last will and testament aimed to distribute assets according to the social reality of this family structure, but also according to his personal values. In his mind his first born son was to take his father's place as a Harford County planter. Additionally, the needs or claims of his older children (by his first wife), even though they were female, outweighed those of younger children (by his second wife). In addition to the ages of the children, the sources of the family's wealth may have affected his calculations, that is, wealth that had come into the family through the first marriage (particularly land or slaves) might morally be thought to belong to the children of that marriage. Martha(w), the second wife, may or may not have shared these views, but she certainly acted quickly upon the death of Samuel to counter its effects, as will be seen below.

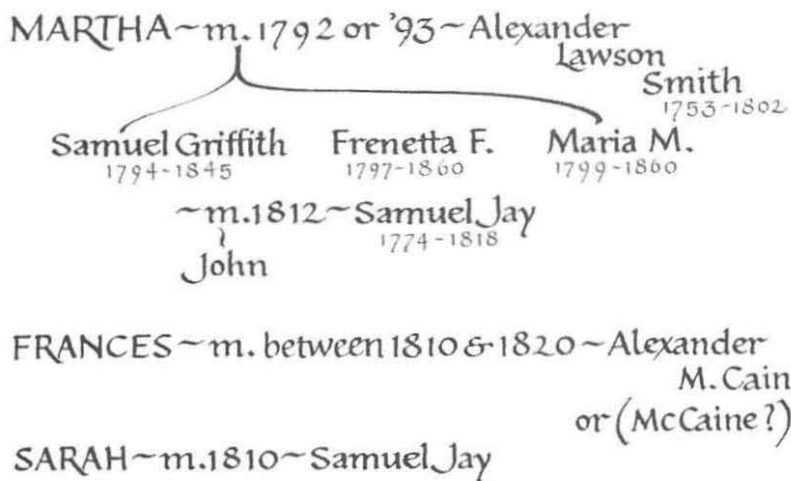
Ultimately the records suggest a major cleavage of the family into a Garrettson/Smith/Griffith faction and a Hall/Presbury/Griffith faction. The first evidence of this comes in the will itself. Samuel appointed as his

³⁸ Lynne A. Ebbhardt, "Tassion and Propriety: Tidewater Marriages in the Colonial Chesapeake," *Maryland Historical Magazine*, 93 (Fall 1998), 325-347 (citing strong evidence of established men seeking wives in their late teens); the average age at marriage in this particular region in the late eighteenth century was 19; see Ruth Ann Becker, "Spesutia Lower Hundred, 1681-1779: A Study of a Colonial Maryland Parish," M.A. Thesis, Univ. of Maryland, 1978, p. 46.

THE GENEALOGIES

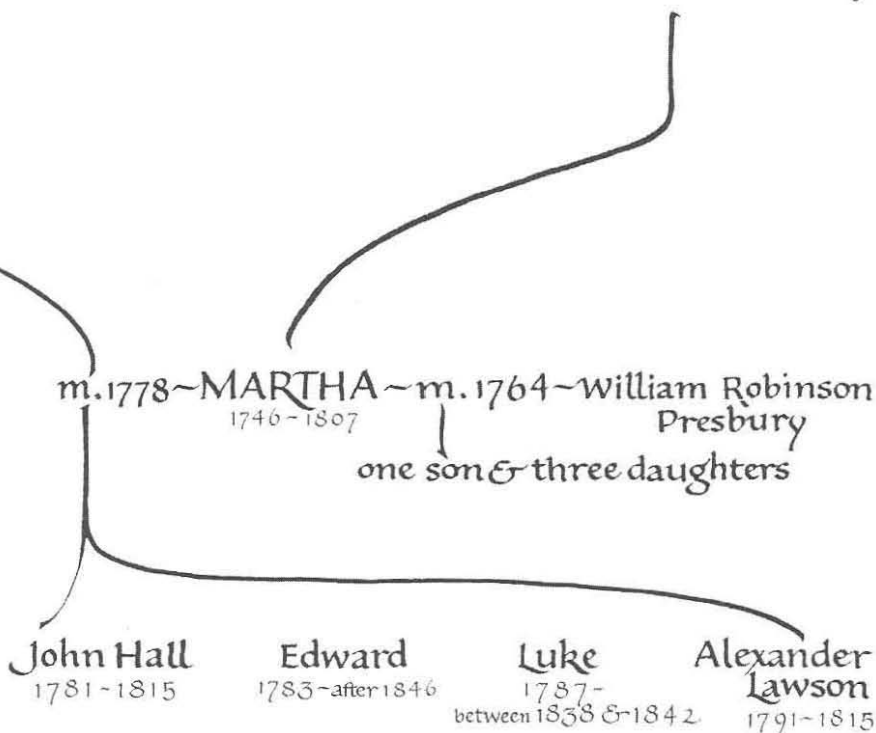


Marriages of the Daughters of Frenetta & Samuel Griffith



THE GENEALOGIES

Jonathan Hall of Cranberry



All dates are to the best knowledge of the author.
Children who died at an early age are not listed.

NJB

administrators/executors, "my trusty and worthy friends Col. Alexander L. Smith[,] Doct'r Elijah Davis[,] Doct'r Sam'l Griffith Executors and my beloved Sister In Law Frances Garrettson Executrix of this my last will and Testam. in whom I have put the most Sacred of trusts in hopes they will take care of my Children until they Should be able to take care of themselves."³⁹ As noted above, the three men were prominent neighbors, including a son-in-law, a close family friend, and a relative. Frances Garrettson was his first wife's sister. Samuel could have placed his wife in this role, but instead chose others to look after his estate and his children. Although not uncommon in early Maryland for a wife to be named as the administratrix/executrix, it became less common by the time of the Revolution.⁴⁰ It was rare for any other woman to be so named. Garrettson, a wealthy and single woman, remained important to her nieces and nephew over the next decades, not only as part of their social circle, but also helping them to manage their financial affairs.

Griffith's plan was to distribute the bulk of his real estate and a large share of his personal property to his oldest son. But all of the children would get a share of the personal estate. And since there were several tracts of real estate involved, Griffith could also afford to distribute interests in land to his daughters as well. The logic of all this was not unusual, but the favoritism towards the daughters and the sister-in-law by the first marriage over the sons by the second is noteworthy. Through the devices of the complex settlement, daughters were often provided with land, cash or future earnings or proceeds from other assets that could be used as marriage inducements or as future financial support. Griffith gave all three daughters future joint ownership of 300 acre Tapley Neck as well as a share of proceeds from other real estate in addition to a large share of personal estate. In fact, to secure even more definitively the fortunes of his daughters, Griffith included in the will a clause that would have largely disinherited the eldest son were he to contest the gift of land to his sisters.⁴¹

Griffith's sons by Martha(w) received no real estate directly, only a

³⁹ *Supra* n. 22 at 260.

⁴⁰ It may have even been the norm in seventeenth-century Maryland for the wife to be named as the executrix. The practice became less common in the eighteenth century, see Carr, "Inheritance in the Colonial Chesapeake" in *Women in the Age of the American Revolution*, *supra* n. 6, at 19n. Close financial as well as familial relations with the Garrettsons is suggested by the fact that Samuel had in the early 1780s held a considerable estate as guardian of the "heirs Garrettson": *Maryland Tax List, 1783*, *supra* n. 9.

⁴¹ Conditional bequests with a punitive enforcement clause were common in complex settlements. Their purpose was, generally, to insure that the more favored heirs would honor bequests to the others. The clause in the will read "Secondly I give and Bequeath to my Son Samuel Gouldsmith Griffith all my land lying in Rumney Neck provided when he Shall arrive at the years of twenty one he will convey to his three Sisters Martha Smith, wife of Col. Alexander Lawson Smith, Frances Griffith and Sarah Griffith, a Tract of land lying in Gunpowder neck known by the name of Tapley neck[,] but in case he Should refuse to Convey the Same I then give in my three Daughters as before mentioned all my land in Rumney neck to them or the Survivors of them to be Equally Divided" *supra* n. 22 at 258.

cash settlement of £100 each (less than one thirtieth of their father's personal estate!), plus the one eighth interest in the proceeds from the sale of the Swan Creek farm upon the death of their mother. Samuel Goldsmith Griffith (the only son by the first marriage, it will be remembered), received all of the Rumney neck property, substantial household and kitchen furnishings of the main residence, a very extensive collection of farming equipment and craftsman's implements, thirty-two head of livestock (cows, sheep, hogs), a large quantity of wheat and corn for consumption and seeding crops. Moreover, he received through explicit bequests most of his father's personal effects (his clothes, silver watch, largest gun, and sword) and a specially designated group of slaves in addition to the others he would inherit as part of his residual share.

The precise provisions for the daughters were intricate. Upon receiving his inheritance at twenty-one years of age Samuel was to convey to his three sisters equal shares of the family's third major tract of land (Tapley Neck).⁶² Martha(d)'s two sisters would receive legacies equal in value to what she had already received when she left home to marry Col. Smith before any general division of the personal property. All three daughters would also receive an equal share of the £100 devised to any of their half brothers, Martha(w)'s boys, should any of them die before age 21. (A similar provision was made for the proceeds from the sale of the Swan Creek farm upon Martha(w)'s death. Although divided equally among each of the eight children, the share of any of the younger four, should he die before inheriting, was to be divided equally among the older four, not among *all* the remaining children). And finally the three daughters were to receive an equal share of *all* of the personal property remaining and not otherwise devised after any debts and funeral charges were paid. This last clause, as we have seen, conflicted directly with Martha(w)'s right to her thirds.

The other bequest in the will was to Frances Garrettson, the executrix and "beloved" sister-in-law. She received a pair of horses and a coach (or \$300 dollars to purchase them), a "genteel suit of mourning" and a "mourning ring." This dramatic and extravagant bequest, when combined with the other provisions in the will, is suggestive of both emotional and financial entanglements.

⁶² *Id.* The property was duly conveyed, and Samuel's sisters sold it in August 1800, presumably to raise cash, see property description in an indenture from Billingslea to Bradford for the same property, March 24, 1824, Harf. Co. Hist. Soc., Arch., Deeds and Mortgages, "Tapley Neck."

Women Making the Best of It

How did Samuel Griffith's sons and daughters actually fare as a result of his scheme? Wills and deeds—with their official purposes and formulaic phrases reveal only the sparsest clues about the personal and emotional lives of people. Fortunately the eighteenth and nineteenth centuries were ages of letter writing. Correspondence from the mid to later 1790s and the early 1800s among several of the family members survives in the Jay Papers at the Maryland Historical Society.⁶⁴ Martha(d) Smith (often called "Patty") is the recipient of most of the letters in this collection. Frances and Sarah (often called "Sally" in the correspondence) regularly wrote to their sister, who managed her husband's household on Swan Creek, even before his death in 1800 since he was apparently frequently absent. The Griffith/Garrettson/Smith side of the family spent considerable time in Alexandria during this period because Samuel had set up his household and shipping business there. They convened at Swan Creek for the summer months—fleeing the stifling summer climate of Alexandria and renewing their family ties. The letters discuss personal matters and domestic concerns, but also financial matters that impacted their sense of security and happiness.

Samuel G. Griffith, the principal heir to the Harford County farming enterprise, did not (as his father surely wanted) assume personal direction of the Rumney Neck plantation.⁶⁵ Instead, he sold the farm in January of 1802 to his former guardian and aunt (Frances Garrettson) for the impressive sum of \$10,000.⁶⁶ Samuel then moved to Alexandria, a boom town nearer the Nation's new Capital, and used the proceeds from the farm to set himself up in business. His sisters Frances and Sarah joined his household, and remained members of it for some time. About 1807 Samuel again inherited the Rumney Neck farm when his aunt died without any descendants.⁶⁷

Samuel married Mary Leypold, and the couple eventually took up residence in Baltimore. With what may have been state of the art financing, Mary's father purchased the Griffith family's Swan Creek and Rumney

⁶⁴ Jay Family Papers, Maryland Historical Society (hereinafter "MHS") Ms. 1829. Unfortunately, a significant portion of the correspondence is undated or incompletely dated.

⁶⁵ It will be recalled that he was a tutor when his father died, and his step mother's suit was still pending when he turned twenty-one.

⁶⁶ This very large sum of money was apparently under Frances's sole control. The original indenture from Samuel G. Griffith to Frances Garrettson, recorded Feb. 17, 1802, contains a section in which Samuel Jay signs for the receipt of \$10,000 in full, "the consideration money." Hist. Soc. Harf. Co., Arch., Deeds and Mortgages, "Rumney Neck" folder.

⁶⁷ Samuel came into possession a third time when John Leypold died. Indenture (copy of Baltimore County record enrolled December 19, 1815). Hist. Soc. Harf. Co., Arch., Deeds and Mortgages, "Rumney Neck "



Figure 10. Linen spun from Harford County flax by Martha Griffith Smith (later Jay) illustrating one of Martha Griffith's many skills and echoing a letter to Martha from her sister Frances extant in the Jay Papers at the Maryland Historical Society. Courtesy, private collection.

Neck plantations using bank supplied mortgage money. But Mr. Leypold soon fell ill and died in 1810. About the same time Frances and Sarah left Samuel's household to marry, and after that Samuel's relationship to his sisters is more difficult to track.

The correspondence among Samuel's sisters from these years shows Martha(d) Griffith Smith a meticulous, pragmatic, and busy woman keeping track of and assisting her family. She helped Frances and Sally collect money from their Harford County interests and served as their banker to some extent. She also took an interest in raising chickens properly and once sent her sisters home-spun cotton or linen she had crafted herself. An example of her craftsmanship survives to this day.

Married with young children and apparently running the plantation, Martha(d) did not always see her independence as a blessing. She once complained in emotional terms to her husband of his absences. Prior

to another period of absence (to Calvert County) Col. Smith wrote back affectionately, and perhaps also a bit patronizingly, promising to return in a few days, if possible. "I am very impatient indeed to return to Harford again to embrace her who is as dear to me as my own life. . . there never was a lover more impatient to return to the armes of a Mistress than I am to return to you and believe me . . . my dear girl."⁶⁷

Col. Smith died probably unexpectedly and without having executed a will in January 1802, leaving her the executrix of his estate and guardian of their three children, Samuel Griffith Smith (age 7), Frenettah Smith (age 4), and Maria Smith (age 3). There was not a great deal of personal estate, and she moved quickly to sell off some assets to raise money for herself and the children.⁶⁸ The Orphan's court required two established men of the community, her brother and Elijah Davis, to serve as her securities for the administration of the estate and guardianship of the children.⁶⁹ But it was she who managed the family's affairs over the next decade, filing guardian accounts and administration accounts, arranging for the sale of some family assets, ordering lumber and plaster of Paris, contracting with local businessmen, for example, and trying to arrange for schooling for her son.⁷⁰

Frances Griffith saw herself as a woman of society and was inclined to dramatic gestures. She complained to her sister in one letter about the dullness of Alexandria compared to Georgetown (the former "all gaiety," the latter "as dull as you can imagine"), and noted that while there was "talk of a procession on General Washington's birthday" she was disappointed because "as it comes on Sunday I suppose the best part of the entertainment will be lost in the ball at night."⁷¹ Brief comments in the same letter concerning Martha(d)'s new baby have the tone of an afterthought. She lamented in one particularly revealing letter that a splendid social season was about to begin in Alexandria, but that she probably wouldn't be able to participate much because of her financial (and, implicitly, marital) circumstances.

⁶⁷ Col. Alexander Lawson Smith to "Patty" [Martha Smith], Nov. 3, 1792, Jay Papers, MHS, Ms. 1828.

⁶⁸ Inventory of the Estate of Alexander Lawson Smith, February 8, 1802, Reg. Wills, Harf. Co., MHR, Inventories, Mfint., WK 833-2: 219-222, valued at \$ 3417.03. Permission to sell as per schedule, at ff. 223-224. She later filed information with the Orphan's Court on Oct. 9, 1804 that he had an additional \$300 on hand, *id.*, WK 331-1: 94. Further proceedings are noted in the Records of the Orphan's Court, *id.*, CR 422-1: 44, 212.

⁶⁹ Entry for August 10, 1802, Reg. Wills, Harf. Co., MHR, Orphan's Court Minutes, 1800-1802, f. 74.

⁷⁰ Letter from Elijah Davis to Martha ["Dear Patty"] Smith, May 29 1806, regarding the best way to have her ton of plaster shipped; note from Mrs. Martha Smith to Ames Osborn for 1600 feet of "poplar plank" at "2.5 per hundred"; letter from J. Hall to Martha Smith, April 29, 1811, about the fee for Martha's son, Samuel, to attend his school (and other financial matters), Jay Papers, MHS, Ms. 1828.

⁷¹ Frances Griffith to Martha Smith, Feb. 16 [no year given, but letter indicates Col. Smith, who died in early 1802, is still alive], *id.*

Alexandria will be very gay this winter but I fear a very small part of it will be mine to partake of. The play I can't afford to attend. The [public] Assemblys I have little or no prospect of attending & private parties I suppose will admit me sometimes if I behave myself — I want very much to know how peoples pulse beats about money Matters. I fear by the time they are ready to pay I shall be quite ready to receive for mine begins to run low.⁷²

The same letter refers with telling understatement to the emotional tensions that will beset the family during the approaching Christmas season.

In this and other letters Frances described her excitement about investing in bank stock, and promised to help her sister purchase some, either when shares became available after a dividend was paid in one case, or when the price became more attractive again in another.⁷³ She knew that some bank stock was more attractive than other issues because of the way the profits were divided. She and Sarah frequently felt themselves in need of money and reminded Martha(d) of this, with subtle and not-so-subtle hints for assistance.⁷⁴ Martha(d) must have also lent them money, as the following passage from Frances reveals.

I would not wish to give you the trouble to visit on Mr. Dallam. I think it to [sic] long a ride for you as the Doctr. has promised to call on him!] Should he not I will try rather than impose too much on you to make what money you have been kind enough to procure for me serve untill August when I hope to see you all [in Harford County.] Your statement is very correct. I will send the ballance up by Aunt Franny.⁷⁵

The sense of style, perhaps extravagance, of Frances and Sarah is revealed in a number of passages in these letters. Mary (Mrs. Samuel G. Griffith) once wrote in polite but transparently complaining tones, that she could not locate anywhere in Baltimore the sort of "Bonnet" Sarah request-

⁷² Frances Griffith to Martha Smith [undated], letter indicates Col. Smith is still alive), *id.*

⁷³ Frances Griffith to Martha Smith [undated], *id.*; and *idem* from Alexandria, Dec. 20, 1801, *id.*

⁷⁴ Sarah Griffith to Martha Smith, April 1 [no year]. "If anybody has left any Money for me at your House please send it by Sam'l". *id.* In another example, Frances Griffith to Martha Smith, Feb. 16, 1781. "Should Amos call as he returns from Philadelphia it will be charity to find me a little money if any person has thought proper to leave any at your house or the Doctors for me!] Sally talks in the same stile money money[sic]."

⁷⁵ Frances Griffith to Martha Smith [undated], *id.*

ed be purchased for her, but was able to find a plainer one that she felt would do.⁷⁶ Frances wrote her sister on another occasion, 'our town is unusually gay this winter. We have had two assemblies. . . . At [the second] we had the felicity of capering a little with the fine folks & I have the pleasure to tell you for sure you will be pleased to hear your sisters if not more had on as handsome dresses as any in the Ballroom."⁷⁷

The correspondence dries up around the end of the first decade of the nineteenth century. Frances and Sarah found husbands. Frances married Alexander M. Cain (or MCain) of Baltimore, but not before she purchased in her own name in January 1809 a 165 acre farm for \$1732.50 near the other family holdings around Swan Creek.⁷⁸ The funds almost certainly came from her share of the proceeds from the sale of the Swan Creek farm on which her stepmother, Martha(w), had lived.

Aunt Franny remained connected to the family, but was often mentioned as being away from Alexandria, or meeting up with them in Harford County. Franny arranged for Sarah Griffith to accompany her and her lady friends on one of her trips. Sarah found the group of "ladies . . . some times agreeable and sometimes otherwise."⁷⁹ She added "[t]he waters at Yourk [Pennsylvania] I found very usefull if I could of staid there comfortable should of liked it very much but the company and amusement were not to my mind." Remarks later in the same letter suggest that Sarah had bouts of depression during which she liked to avoid joining the conversation and instead preferred to stay in her room thinking about better places and better times—especially country life and the extended family setting in Harford County. "I cannot account for it my dear sister but feel very low spirited this morning an ill foreboding of something[;] it is alone in my Roome only that I have the best satisfaction[;] there I indulge myself in thinking of you all."⁸⁰ Sarah Griffith married Samuel Jay of Havre de Grace on April 6, 1810, but died shortly thereafter, most likely in childbirth.⁸¹

The legal remains of the sale of the Swan Creek farm tell much of the story of the family's changing structure in the second and third decade of the century.⁸² In January 1809 eight Griffith siblings were living when

⁷⁶ Mary Griffith (Ms. Samuel Gouldsmith Griffith) to Martha Smith (July 3, 1807), *id*.

⁷⁷ Frances Griffith to Martha Smith, *supra* n. 60.

⁷⁸ Conveyance from Peter Hootman to Frances Griffith, Harford County Land Records, U HD 175 [from transcription by Nan Jay Barchowsky]

⁷⁹ Sarah Griffith to Martha Smith, from Alexandria August 9 [no year]; Jay Papers, MHS, Ms 1828.

⁸⁰ *Id*.

⁸¹ Register of Harford County Marriage Licenses, MHR, M.F.m., WK 82b (listed by year).

⁸² Indenture, Alexander M. Cain, Frances [Griffith] Cain, Martha [Griffith] Jay, Edward Griffith and Luke Griffith, convey Swan Creek to Mary Griffith, March 17, 1827, Alice Parker Collection, Hist. Soc., Harf. Co., Arch., Deeds and Mortgages. (The 1827 deed recites the terms of the 1809 deed, and a draft of a similar deed from 1820 also survives, *id*.)



Figure 11. Shipping crate (for importing tea) addressed to Samuel G. Griffith, Esq, from the commercial ventures of Samuel Goldsmith Griffith who abandoned rural life in Harford County around 1800 for the life of a merchant in Alexandria and Baltimore. (Photo shows crate on its side.) Courtesy, private collection.

they sold their interests in Martha(w)'s Swan Creek farm to John Leypold. For reasons that remain unclear, a proper conveyance could not be executed. In 1827 when a final deed was drawn up, only four of the eight were still living. Two of the four younger brothers, John Hall and Alexander Lawson had died. The latter are described in this deed, along with Sarah, as dying "intestate." Although this was not exactly true with respect to the

men, who both left wills, none of the three had left any living descendants. Leybold had also died, so the heirs re-conveyed the property to his daughter, Mary Griffith, who was by then Samuel Goldsmith Griffith's widow (and thus their sister-in-law).⁸¹ Rather ironically, when title devolved to Mary Griffith, the Swan Creek farm once again helped to support a widow's financial independence more than thirty years after it had been left to Martha(w) (her late mother in law) for life as her widow's portion.

Conclusions: Women, Property Law, and the Pursuit of Happiness

The story of this family continues, however we stop at this point to evaluate the success of the sons and daughters of Samuel Griffith in the thirty years following his death. The principal heir had not maintained his father's stature in the local community. He parlayed much of his inheritance into merchant capital instead and apparently did well for himself and his family. The 1820 census officials found him living in Baltimore in a house in the 9th ward consisting of five white inhabitants and five "free Negroes."⁸² While Samuel had retained major financial interests in Harford County real estate, the in-county portion of his personal assets were meager at the time of his death. When in 1821 his half-brother, Luke, auctioned the personal property in Harford with the permission of the Orphan's Court, only the small sum of \$1395.66 resulted. By the time debts and judgments were paid nothing was left.⁸³ Fortunately, other portions of the family holdings must have remained debt free, probably due both to the careful structuring of family assets and separate ownership of property by Samuel's wife. The widow Mary Griffith was listed in the 1831 Harford County tax assessment as a very wealthy woman, and she died in 1835 with \$10,057.85 in personal property assets alone.⁸⁴

As for Samuel's younger half-brothers, two had died several years before him in April of 1815, leaving very modest personal estates, no bequests of real estate, and no descendants. John Hall Griffith may have been a seaman. He possessed two mariner's books, a broken quadrant, and "Sundries Saved from the wreck of the Schooner Ranger" at the time of his death. He left the bulk of his personal property to George Presbury

⁸¹ *Id.*

⁸² Federal Census of 1820 for Maryland, Harford County, MHS, Mfilm., f. 539.

⁸³ Mary renounced administration of the estate in favor of Luke Griffith in January, 1821; Reg. Wills, Harf. Co., Orphans Court Proceedings, MHR, Mfilm., CR 422-1, (A.J. 2) 487, 494. By the time the legal fees were paid and the judgments settled, there was nothing left in the estate; Administration Accounts, *id.* WK 831: 111-112, 116.

⁸⁴ 1831 Tax List for Harford County Maryland, transcribed by Jon Harlan Livezey (Harford Co. Genealogical Society Special Publication No. 16, 1995), 16. For the estate inventory, see December 29, 1835, Reg. Wills, Harf. Co., Inventories, MHR, Mfilm., WK 835: 115-116.

(probably his half-brother by his mother's first marriage) including his "Schooner and Eighty dollars worth of wood" and "likewise all the articles & utensils of husbandry that belonged to me."⁵⁷ He distributed the rest of his effects to friends and to his brothers. Alexander Lawson Griffith lived even more modestly. According to the terms of his will he possessed little of value other than slaves (which he had probably inherited) and a horse that was not completely paid for.⁵⁸ He devised everything to his brothers. Luke and Edward fared better. Luke retained interests in Harford County, but within a few years of the death of his brothers, moved his household west to Virginia. Only Edward became an established gentleman in Harford County.

As for the women, these widows and heiresses of wealthy planters had a much better life than most of the population, and better chances for happiness in some ways than many men, even their younger brothers. Over the course of two generations, the Garrettson sisters (Frances and Freenettah), Martha Hall Presbury Griffith, and Martha Griffith Smith Jay and her sisters all lived privileged lives. Two years after the death of her sister Sarah, Martha(d) married on March 7, 1812 widower Samuel Jay, who in addition to being her brother in law, had been financially involved with the family for over a decade. Samuel Jay lived about six more years leaving Mrs. Martha(d) Jay widowed again with a sizeable estate to manage and 20 month old John.

But fortunate birth and the fortunes of marriage were not the whole story here. These women did not take for granted their financial security or personal happiness, and they achieved much on their own.

Both Marthas skillfully managed the assets they controlled, investing in their own names in land and in bank stock. Martha(w) was quick to resort to law suits as well as to complicated real estate transactions in order to protect both in her own interests and those of her children. Following Samuel Griffith's death, for example, she quickly purchased in her own name two hundred acres of her father's old estate (Cranberry Hall), which she must have wanted specifically for the purpose of passing it on to the boys when they grew older, since they had been excluded from the real estate in their father's will.⁵⁹ Her own will, drawn up in September 1795 shortly after this purchase, gave instructions that all of her estate real and

⁵⁷ Will of John Hall Griffith, Reg. Wills, Harf. Co., Wills. MHR, Mfm. WK 827-28 (A.P.): 44; the inventory of Sept. 24, 1816 gives a value of \$1558 12 ¢, most of which was embodied in his eight slaves, Inventories, *id.* WK 834-1: 174.

⁵⁸ Will of Alexander Lawson Griffith, Wills, *id.* WK 827-28 (A.P.) 43.

⁵⁹ A description of this transaction can be found in a later conveyance from Isabella Hall to all of Martha's children, April 21, 1812, following some difficulties involving the title: Harf. Co., Land Records, MHR, MdMm., Lib. "W" t. 370.

personal go to the support of her four sons by her second marriage.⁸ She excluded both her children by her first marriage (whom the will mentions as older and well provided for) and her Griffith stepson and stepdaughters. The language of the will pleaded in emotional terms to the administrators/executors/guardians to see to the boys' upbringing and education and to use all of her assets for that purpose. She obviously felt deeply the need to make up as best she could for what the boys' father did not (or could not) leave them. Later, after the marriage of her son Edward and early death of his young wife Codelia, she pursued a complicated strategy to secure Edward's rights to various portions Cranberry and its profits.⁹

Martha(d) handled adeptly the estates of Col. Smith and Samuel Jay, both in her own interests and those of her children. She often directed her own financial affairs borrowing and lending money, politely putting off creditors, and strategically accumulating real estate.¹⁰ Her second husband's estate contained "elegant" furnishings, "Venetian" carpets and fine furniture, a very large number of books of all kinds, including travel books, reference works, and up-to-date books on Maryland law such as Chancellor Kilty's *Laws of Maryland*.¹¹ The estate was also plagued with litigation and many other problems of administration, but she managed to preserve its value.¹² She reared her son to majority and, almost twenty years after she had been widowed for the second time, helped set up John Jay in business and farming.

The younger Griffith sisters had also flourished. Their inheritances from their father, even if tied up in litigation for a number of years, nevertheless gave them some independence and security. Frances, as we have seen, had a mind of her own, enjoyed life and social occasions, and

⁸ Martha(w)'s will, supra n. 17

⁹ Martha(w) apparently owned an undivided 6th part of Cranberry which may have been the same as, or in addition to, the 200 hundred acres she had purchased in 1795 from Thomas Hall. Edward's deceased wife, Codelia, had also had an interest in part of Cranberry, and Martha was pressing as a matter of equity Edward's rights as "tenant by the courtesy of England," Harf. Co., Land Records, MHR, Volm, Lib. 11D "S" ff. 222-228.

¹⁰ Martha(d) managed to set up her first son in farming, and raise her two daughters to adulthood. By 1824, six years after the death of her second husband, she was able to purchase Swansbury from her brother in law, which she eventually passed on to her son, John Jay, see vertical file assembled by Christopher Weeks, Hist. Soc. Harf. Co., "Swansbury" (11A-240). She wrote to one of her creditors in 1833 that she could not take up her note that year due to the failure of the crops and her inability to collect another sum owed to her, letter from Martha Jay to Albert Constable Esq., Dec. 3, 1833, Hist. Soc. Harf. Co., Arch. Deeds and Mortgages, "Jay" folder. She also accumulated shares in a smaller property adjoining Swansbury; see deed from Goldsborough S. Griffith to Martha Jay, recorded Nov. 26, 1836, *id*.

¹¹ Inventory for Samuel Jay, Reg. Wills, Harf. Co., Inventories, MHR Mfilm, WK 834-854 441-444.

¹² Martha's Administration Account as of May 2, 1820, gives the net value as \$17,597.28 (after lawyers fees and other income and expenses, up more than \$1000 since her filing on April 27, 1819, Reg. Wills, Harf. Co., Administration Accounts, MHR, WK 830: 170-171. By the time of her "Third" account, passed May 1, 1838, litigation and other expenses (and losses) had eaten substantially into the estate, leaving only \$11,730.97, *id.*, at WK 832-409. Martha Jay died in August 1847 at age 76, see Henry C. Peden, Jr., *St. John's and St. George's Parish Registers, 1696-1857* (Silver Spring, Md.: Family Lane Publ., 1987), 226.

took an interest in banking and investing. At some point in her late twenties and early thirties, she may have enjoyed a life of genuine personal and financial independence similar to that of her namesake and aunt, Frances Garrettson. We can weigh carefully in the balance, however, the evident constraints on her freedom. While in her twenties she depended heavily on the support of her brother's and married sister's households. And as their correspondence reveals, she and her sister Sarah both found painful some aspects their dependent status while living with their brother.

These life stories reflect a complex image of upper-class women in early Harford County pursuing life's pleasures and working for financial security with intelligence and energy. Yes, they gossiped, entertained, raised children, worried about their families, and took pride in their dresses. They also invested in bank stock, managed farms and households, accumulated real estate, went on vacations with lady friends sometimes, and when necessary, used the courts to press their property rights.