Privilege, Property, and Probates: The Legal Standing and Economic Conditions of White Women in Colonial Maryland, 1632-1777.

HIST 7314
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Introduction

In the year 1632, King Charles I of England (1600-1649)[1] granted Cecilius "Cecil" Calvert, the Second Lord Baltimore, with the Charter of what was to be known as Maryland, named for the King's consort Queen Henrietta Maria.[2] The goal in establishing this new colony in the New World was largely to provide a home for England's Catholic community without the fear of looming religious persecution. On November 22, 1633, the *Ark*, carrying around one hundred and forty passengers and its accompanying cargo ship the *Dove* set sail from the Isle of Wight for the Maryland colony.[3] After landing in Old Point Comfort on February 24th, 1634,[4] the colonists and crew aboard the *Ark* would soon go on to move to what would come to be known as the settlement of St. Mary's, officially established in 1634.[5] While the *Dove* brought over supplies from Britain to help the Maryland colonists establish themselves on the land purchased from the Yaocomaco,[6] the colonists, like their Southern, Protestant, Virginian neighbors, abided by the legal codes of their motherland. The British Common Law system therefore carried over to the colonies, with the Maryland General Assembly established in St.

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[1] "The Execution of Charles I," Historic Royal Places, accessed 31 March 2024, https://www.hrp.org.uk/banqueting-house/history-and-stories/the-execution-of-charles-i/#gs.6yx0te.
[2] "Maryland at a Glance," Maryland State Archives, accessed 1 April 2024, https://msa.maryland.gov/msa/mdmanual/01glance/html/name.html#:~:text=Maryland's%20name%20honors%20Queen%20Henrietta,Medici%20(1573%2D1642).
[3] "The Dove Story," Maryland Dove, accessed 29 March 2024, https://www.marylanddove.org/history.
[4] Maryland Dove, "The Dove Story."
[5] "St. Mary's County, Maryland: Historical Chronology," Maryland State Archives, accessed 1 April 2024, https://msa.maryland.gov/msa/mdmanual/36loc/sm/chron/html/smchron.html.
[6] Maryland State Archives, "St. Mary's County, Maryland: Historical Chronology."

Mary's, Maryland in the mid 1630s[7] before separating "into two chambers" in 1650,[8] those being the Lower House and the Upper House.[9]

While the legal system was largely concerned with the business dealings and land acquisitions of men landing on the shores of Maryland, women coming to Maryland from England and Ireland, even with comprising of a small percent of the population in 17th and early 18th century Maryland,[10] were crucial both in terms of labor and the structuring of Maryland's legal system. The debate on whether women in Britain or women in the colonies had more legal freedoms than one another has long divided scholars of 17th and 18th British and colonial American history. Perhaps the most influential book on this subject is Richard Morris's *Studies in the History of American Law*, first published in 1930 and re-released as a second edition in 1959. Morris argues that women in the colonies experienced a greater number of freedoms, with Morris pointing to the fact that "the notion of mutuality basic in the civil marriage lay at the root of the substantial advancement in the position of the wife in the seventeenth-century American law,"[11] and that, "the acceptance of the marriage contract as a reciprocal agreement helped materially to raise the woman from the state of legal subordination which was her position in England."[12] In one of the most cited articles on the topic of women and property in colonial Maryland, "The Planter's Wife: The Experience of White Women in Seventeenth Century Maryland" (1977), Lois Green Carr and Lorena S. Walsh write that because of the harsh

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[7] "Senate: Origins and Function," Maryland State Archives, accessed 30 March 2024, https://msa.maryland.gov/msa/mdmanual/05sen/html/senf.html#:~:text=17th%20Century.,it%20separated%20into%20two%20chambers.
[8] "House of Delegates: Origin & Functions," Maryland State Archives, accessed 31 March 2024, https://msa.maryland.gov/msa/mdmanual/06hse/html/hsef.html.
[9] Maryland State Archives, "House of Delegates: Origin & Functions."
[10] Lois Carr Green and Lorena S. Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," *The William & Mary Quarterly* 34, no. 4 (1977): 550, https://www.jstor.org/stable/2936182.
[11] Richard Morris, *Studies in the History of American Law* (Philadelphia: Joseph M. Mitchell Co., 1959), 127.
[12] Morris, *Studies in the History of American Law*, 127.

conditions of the colonial world and thus the shorter life expectancies of both men and women, that "...nearly a quarter fifth of men who had children left all to their wives, trusting them to see that the children received fair portions."[13] They further argued that women in colonial Maryland were not only highly desired because of the scarce marriage market of colonial Maryland,[14] but also women were largely entrusted with the majority of their husband's estate upon his death.

The 1980s and 1990s saw a shift in the conversation surrounding the "golden age myth" of colonial American women's legal advancement over their British counterparts,[15] with historians such as Marylynn Salmon in "The Legal Status of Women in Early America: A Reappraisal" (1983) rejecting much of the research conducted in Morris's 1959 edition of *Studies in the History of American Law.* She writes that "Morris's essay is filled with shortcomings of early twentieth century historical studies,"[16] particularly because of Morris and other scholars' belief that, "the economic contributions of women in agricultural societies and primitive commercial economies were recognized and rewarded,"[17] a notion that Salmon does not agree with because of the complexities of local variations of the overall legal system in the colonies. In the 21st century historians such as Lindsay R. Moore in "Women, Property, and the Law in the Anglo-American World, 1630-1700" (2016) writes that "The restrictions women faced under common law were remarkably enduring and persistent across the Anglo-American world"[18] and that, "The colonial formulation of coverture was much like its English counterpart: though inheritance practices varied between colonies, under colonial common law married

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[13] Carr and Walsh, "The Planter's Wife," 550.
[14] Carr and Walsh, "The Planter's Wife," 551.
[15] Marylynn Salmon, "The Legal Status of Women in Earl America: A Reappraisal," *Law and History Review* 1, no. 1 (1983): 540, https://www.jstor.org/stable/744005.
[16] Morris, *Studies in the History of American Law*, 131.
[17] Morris, *Studies in the History of American Law*, 133.
[18] Lindsay R. Moore, "Women, Property, and the Law in the Anglo-American World, 1630-1700," *Early American Studies* 14, no. 3 (2016): 545, https://www.jstor.org/stable/10.2307/earlamerstud.14.3.537.

women could still not own or manage property, nor could they initiate or defend a suit in a common law court without their husbands' assistance."[19]

While both sides of this argument make strong points regarding the differences and similarities between British women and colonial women regarding inheritance, dowry laws, and customs of the eighteenth century, what both groups fail to consider on a greater scale is the differences between these two locations surrounding the local economy and the laws as they relate to colonial economic interests. While the Maryland Courts unique structure allowed for widows the potential to inherit larger and more valuable amounts of their late husbands' estates, Carole Shammas writes in "English Inheritance Law and Its Transfer to the Colonies" (1987) that "...only Virginia and Maryland [continued] to grant widows a right to chattel."[20] Lorena S. Walsh further writes in "The Chesapeake Slave Trade: Regional Patterns, African Origins, and Some Implications" (2001) that "Elite planters coming of age at the turn of the century almost invariably acquired ample land and some slaves as gifts or bequests from their parents as well as from their wives' dowries."[21] This paper does not make the claim that British women or American colonial women overall enjoyed more or less freedoms than one another. I instead argue that because of the proximity to slavery in the American colonies, chattel slavery became the top currency for Maryland dowries, for the heads of household were able to leave their unmarried or newly established daughters with valuable property that would help to situate her future or new household under her spouse. This introduces a new perspective in viewing the golden age debate, and thus this paper offers a re-examination of scholarship on probate records

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[19] Moore, "Women, Property, and the Law in the Anglo-American World," 545.
[20] Carole Shammas, "English Inheritance Law and Its Transfer to the Colonies," *The American Journal of Legal History* 31, no. 2 (1987): 158, https://www.jstor.org/stable/845880.
[21] Lorena S. Walsh, "The Chesapeake Slave Trade: Regional Patterns, African Origins, and Some Implications," *The William and Mary Quarterly* 58, no. 1 (2001): 156, https://www.jstor.org/stable/2674422.

from the 18th century from the lens of dowries, women, and chattel slavery, and seeks to explore how the unique courts and laws of Maryland pre-1777 helped shape this new chattel dowry system.

Part I of this essay will first look at the development of inheritance laws in Britain and their adoption in colonial Maryland such as the implementation of the Statue of Wills and the dowry system of young women and their future spouses. This section will then explain and expand on the demand of unmarried women in the colonies, and how their labor, gender, and legal status as understood in the Maryland colony was understood and necessary for the maintenance of family land and property. Finally, Part I will establish the economics of Maryland and the population of enslaved individuals in the eighteenth century, and the legal circumstances surrounding women and chattel inheritance in the Maryland colony and how this separated Maryland from other American colonies. Part II explores the growing tobacco economy of the 18th century and how the number of enslaved people in Maryland rapidly expanded to meet these economic demands. Using probate records previously examined by fellow historians such as Marylynn Salmon as well as records from members of my maternal family line, this section aims to show how the daughters within the patriarchal, colonial family structure stood to gain the ownership of enslaved individuals belonging to their fathers, and how it was the unmarried daughters within the household that stood to gain the most in terms of property of high value.

Part I: The Law of Inheritance in Colonial Maryland: Women and Property

The British common law system was closely followed in the Maryland colony, as this was the will and goal of Lord Baltimore upon the colonies' founding,[22] with historian William Nelson describing the court system of 17th and 18th century Maryland to be "highly technical and formalistic."[23]As early as the sixteenth century, Britain enacted the Statute of Wills (1540), which "permitted testators to devise all of their freehold land and two-thirds of knight's service reality to their heirs of their choice,"[24] with Carole Shammas adding that, "The other third became divisible about 130 years later with the abolition of feudal tenures."[25] As established under the reign of King Henry VIII, the Statue of Wills, enacted by Parliament, required for a will to be written, "signed by the testator (the person making the will) and witnessed by at least two other persons."[26] As Henry VIII did not have any male heirs of his own during this time, it would make sense that the King would therefore seek legislation that would ensure that men without male heirs could determine the inheritance of their property[27] rather than relying on the accepted primogeniture practice. It was the English law the Statue of Distributions (1670) that "standardized the apportionment and descent of personal property when there was no will."[28] Maryland adopted these measures of governance surrounding inheritance and estates in the early

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[22] William E. Nelson, "The Law of Colonial Maryland: Virginia Without Its Grandeur," *The American Journal of Legal History* 54, no. 2 (2014): 178, https://www.jstor.org/stable/24465923.
[23] Nelson, "The Law of Colonial Maryland," 182.
[24] Shammas, "English Inheritance Law and Its Transfer to the Colonies," 149.
[25] Shammas, "English Inheritance Law and Its Transfer to the Colonies," 149.
[26] Regina Jeffers, "Statue of Wills, Henry VIII's Answer to Primogeniture," reginajeffers.blog, Accessed 28 March 2024, https://reginajeffers.blog/2022/07/25/statute-of-wills-henry-viiis-answer-to-primogeniture/.
[27] Henry Bley-Vroman, "Inheritance Laws: England, 16th-18th Centuries," sls.hawaii, Accessed 30 March 2024, http://www.sls.hawaii.edu/bley-vroman/henry/EntailmentLaws.html#:~:text=%22Entail%22%20means%20to%20interfere%20with,be%20sent%20to%20a%20man).
[28] "Understanding Maryland Records: Inheritance of Property," Maryland State Archives, accessed 2 April 2024, https://guide.msa.maryland.gov/pages/viewer.aspx?page=inheritanceproperty#:~:text=Unless%20a%20person%20made%20a,property)%20to%20the%20eldest%20son.

eighteenth-century stipulating that, "If a widow and children survived, the widow received one-third and the residue was divided equally among the children. In cases where a child has died earlier, leaving issue, his or her children would divide equally what would have been that child's share."[29]

While women made up overall a very small percentage of the population in colonial Maryland, their role was vital in ensuring that the property of their fathers, brothers, and spouses were protected and passed on to their children and other members of their immediate family. Unmarried women found themselves in a unique role once they arrived in Maryland from Britain or Ireland. In "The Planter's Wife," Carr and Walsh state that any women in colonial America whether they be "Comely or homely, strong or weak, any young woman was too valuable to be overlooked, and most could find a man with prospects,"[30] which was further emphasized by the large ratio of men to women at the time. Social class also played an important role when considering the relationship between men and women during the 17th century. Women of lower classes equally found themselves desirable to men seeking wives during the seventeenth century. Fueled by optimistic portrayals of the New World which promised a "bright…life that awaited men and women,"[31] the equal opportunity for women to marry well was additional incentive.

Women were almost guaranteed to find a husband in American colonies such as Maryland, however this journey to the American colonies was undoubtedly dangerous with the chance of catching disease such as malaria almost as certain as catching the attention of an eligible bachelor.[32] Women of a working-class background who came to Maryland would

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[29] Maryland State Archives, "Understanding Maryland Records: Inheritance of Property."
[30] Carr and Walsh, "The Planter's Wife," 550.
[31] Ibid., 546.
[32] Ibid., 546.

therefore work in the households of planter's or families that could afford paying for help. Carr and Walsh write that these women would pay for their transportation costs over the course of a four to five year period, however this could be complicated because of a very real problem that many women and men faced in these circumstances; the chance of having a child out of wedlock.[33] Carr and Walsh dismiss the notion that men were sending for working women to just make them their wives and mother of their children, and that her primary purpose was indeed labor. Women in the role as servant could have their debts paid by husbands that they found while working in the colonies,[34] given that women, as previously states, were most certainly in demand.

Widows, even without a will, stood to gain a sizable portion of a late husband's estate upon his (probable) early death. In "The Planter's Wife," Carr and Walsh write that because of the short life expectancy of colonists in the seventeenth century, mens "...wills reflected their feelings and tell something of how they regarded their wives."[35] They continue by stating that "nearly a fifth of the men who had children left all to their wives, trusting them to see that the children received fair portions."[36] The authors further their argument wherein looking at the record of colonial Maryland, only about eleven percent of men "deprived their wives of such powers."[37] In chapter eight of her book *Women and the Law of Property in Early America,* Marylynn Salmon points out that if a woman's husband did provide for her while he was alive, "in the majority of families men left no wills."[38] The one-third of the estate that the wife was

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[33] Ibid., 548.
[34] Ibid., 549.
[35] Ibid., 555.
[36] Ibid., 555.
[37] Ibid., 555.
[38] Marylynn Salmon, *Women and the law of property in early America,* (Chapel Hill: The University of North Carolina Press 1886), 141.

entitled to, also known as the dower, was adopted in the American colonies from the English common law system.[39] The dower "presented the minimal right of a woman to her husband's estate,"[40] with Salmon adding that if a woman refused the dower system and instead 'demand[ed] an assignment of her thirds,'"[41] the widow could only claim personal items that belonged to her person. When the widow eventually died, the dower that she received would therefore transfer to her husband's children, and if the couple had no children, it would go to her husband's family and not her own.[42]

In chapter seven in *Women and the Law of Property in Early America*, Salmon writes that widows in the Chesapeake region did have more to gain upon their spouses' death than in other colonies. Pointing to the legal case *Griffith v. Griffith's Executors* (1798) in which Mrs. Griffith petitioned the court because "no part of his personal property [was left] to her in his will,"[43] Mrs. Griffith's counsel argued for a statute from 1638-1729 that granted widows the right to personal property.[44] The Court of Appeals ruled for Mrs. Griffith, stating that "the Maryland statute of 1704 had delineated the right of widows to dower in personal property, even if common law provisions in the previous century had been equivocal."[45] This ruling meant that a widow's dower could therefore include personal property in colonial Maryland, entitling her to a larger and more equal portion of her late husband's property.[46] It was also assumed that if a woman were to outlive her husband in the colonial world that she would seek a new husband,

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[39] Salmon, *Women and the law of property in early America,* 141.
[40] Ibid., 141.
[41] Ibid., 141.
[42] Ibid., 143.
[43] Ibid., 149.
[44] Ibid., 149.
[45] Ibid., 150.
[46] Ibid., 150.

invoking the previous issue of the small number of eligible women available to available to unmarried and eager men. Lindsay R. Moore agrees with the above statement in "Women, Property, and the Law in the Anglo-American World, 1630-1700" (2016), writing that because of the difference in population statistics between men and women in the colonies, especially in the Chesapeake, women were expected to marry again. Not only would a woman perhaps remarry twice or three times, but if each husband left her a will, she could be in control of a "substantial amount of property."[47] While women gained property after their spouses passing, during the marriage women did not have legal right to property or the property in which they brought with them before their nuptials. In *Commentaries of the Laws of England* Vol. 1 (1765), Sir William Blackstone, in discussing coverture, marriage, and property, states the following:

> By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs every thing; and is therefore called in our law-French e feme-covert, foemina viro co-operta; is said to be covert baron, or under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture.[48]

While the colonies were varied in their stances, argues Lindsey Moore, common law in colonial America dictated that women could not own or manage property, Maryland was the first colony to establish "a separate equity jurisdiction in the Court of Chancery, in 1677,"[49] in which these courts, such as in England, helped to establish trusts that would protect married women's assets and were enforceable only in courts of equity, not in common law courts."[50]

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[47] Moore, "Women, Property, and the Law in the Anglo-American World," 539.
[48] William Blackstone, *Commentaries on the Laws of England,* Vol. I (Oxford: Clarendon Press, 1765) 442-445.
[49] Moore, "Women, Property, and the Law in the Anglo-American World," 550.
[50] Ibid., 550.

While Moore disagrees with the broad statement that women in the American colonies were somehow legally more advantaged than their sisters in Britain, she does concede that Maryland was, in some instances, less stringent when it came to women and inheritance. Moore also adds to the scholarship surrounding Maryland women and their participation in the courts as explored by Salmon and the case *Griffith v. Griffith's Executors.* Moore writes that women in Maryland represented 25% of common law court cases from 1666-1670, and of those 61% were widows and "the other 39 percent were married women appearing as co-parties alongside their husbands,"[51] numbers that Moore states were a great deal higher than those in England and in the Massachusetts colony.[52] This was due, according to Moore, because the Maryland Provincial Court before 1677 heard both common law and equity cases, which is significant because "equity law had exclusive jurisdiction over land held in trust, a legal device in which a married woman could retain independent control of her property during her marriage."[53] By the seventeenth century, Carole Shammas opines, colonial law "no longer contained any clauses on collaterals that deviated from English law,"[54] and that besides in Massachusetts and Virginia, the American colonies never created nor enacted legislation that "[reduced] the rights of mothers inheriting personalty from their children."[55] This is all to say that the Maryland colony and the legal system within was structured not only differently from other American colonies, but also in a way that benefited women in terms of petitioning the courts, as seen in Part II with the case of Mrs. Hopewell Hebb.

Part II: White Women in 18th Century Probates: An Examination

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[51] Ibid., 548.
[52] Ibid., 548.
[53] Ibid., 549.
[54] Shammas, "English Inheritance Law and Its Transfer to the Colonies," 161.
[55] Shammas, "English Inheritance Law and Its Transfer to the Colonies," 161.

A disclaimer: The following probate records pertaining to dowries, inheritance, and chattel slavery are that of the Hagoe/Hagan and Gardiner families, who first emigrated to Maryland in 1662 with the arrival of Thomas Clark Hagan Sr. (1645-1716) to Charles County, Maryland.[56] Thomas and his wife Mary Aisquith (1645-1726) would go on to have at least ten children including Thomas Clark Hagan Jr. (1683-1743). Thomas Hagan Jr. and his wife Sarah Mudd (1682-1758) would also go on to have an estimated ten children, including Basil Hagan (1715-1765). Basil's father-in-law Ignatius A. Gardiner (1711-1777) was, like his father, born in Maryland, as well as his wife Anne Edelen (1710-1778). These individuals also happen to be members of my maternal family, with Thomas Hagoe being my eighth great-grandfather, Thomas Hagan Jr. and Ignatius Gardiner my seventh great grandfather, Basil Hagan my sixth great granduncle, and Charity Morgan, mentioned in the will of her father, my sixth-great grandaunt. While these individuals may have lived hundreds of years ago, their decisions, from crossing the Atlantic, to obtaining land in North America, to obtaining wealth through the enslavement of others, while certainly out of my control, has certainly shaped my life almost three hundred and thirty-seven years after Thomas Sr. first stepped foot on the shores of Maryland. A family tree is appended on figure 1.[57]

While freedom of religious persecution as established by the Maryland Toleration Act of 1649[58] was certainly a factor in why Catholic men and women would want to travel across the

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[56] "Thomas Hagan, the Immigrant," Geni, accessed 25 March 2024, https://www.geni.com/people/Thomas-Hagan-theImmigrant/1656274#:~:text=Thomas%20immigrated%20in%201662%20to,consider%20able%20amoum%20of%20property.

[57] "Hagan Family Tree," Ancestry, accessed 20 March 2024, https://www.ancestry.com/family-tree/tree/196386600/family/pedigree?_gl=1%2A1eccdaa%2A_up%2AMQ..&cfpid=262567284873&gclid=Cj0KCQjw2uiwBhCXARIsACMvIU2ucic8YC-F1LNJ3HgWMCv8lPT8H874CMdTyHRmto6p47YskTQ0UwYaAtXBEALw_wcB&gclsrc=aw.ds.

[58] "Maryland Toleration Act; September 21, 1649," American Battlefield Trust, accessed 3 April 2024, https://www.battlefields.org/learn/primary-sources/maryland-toleration-act-september-21-1649#:~:text=The%20Maryland%20Toleration%20Act%20of,freedom%20in%20the%20Thirteen%20Colonies.

Atlantic to the newly established Maryland colony, economic opportunities in the form of agriculture was undoubtably a large factor. As stated in "The Planter's Wife," tobacco was both profitable and labor intensive, but white women were not necessarily involved in its cultivation.[59] Therefore, women fit into the agricultural economy not just because of the labor that they performed, but also because of their importance in maintaining property. As William E. Nelson writes in "The Law of Colonial Maryland: Virginia Without Its Grandeur," (2014) "In order to waive dower rights or otherwise grant land in which she had an interest, a married woman had to be examined, in the absence of her husband, to ensure that she was acting freely."[60] While Nelson does not make clear what exactly this examination was perse, he does make it clear that this act was not to give women more rights in terms of gender equality and property under the law. Rather, the law was due in part of the Maryland courts' desire to uphold property titles,"[61] making women not equal to men, but invaluable when it came to the maintenance of property within a family.

The population of enslaved individuals in the Calvert, Charles, Prince George's, and St. Mary's counties in Maryland grew rapidly as the tobacco industry began to flourish and planter's began to invest more in the slavery system.[62] Russell Menard reports in "The Maryland Slave Population, 1658 to 1730: A Demographic Profile of Blacks in Four Counties" that from between 1658-1710, only about one hundred enslaved individuals were recorded in these counties, but from 1695-1708, "at least 4,022 slaves arrived in the province, an average of nearly

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[59] Carr and Walsh, "The Planter's Wife," 548.
[60] Nelson, "The Law of Colonial Maryland, 172.
[61] Nelson, "The Law of Colonial Maryland," 173.
[62] Russell R. Menard, "The Maryland Slave Population, 1658 to 1730: A Demographic Profile of Blacks in Four Counties," *The William and Mary Quarterly* 32, no. 1 (1975): 30, https://www.jstor.org/stable/1922593.

300 a year."[63] In "Wealth and Welfare in Early Maryland: Evidence from St. Mary's County" (1999), authors Lois Green Carr and Russell R. Menard contend that "Maryland law followed English statute in requiring that, if a man died with- out a will, slaves and other personalty were to be equally divided among the children after the widow received her thirds."[64] Women of a more affluent background who had established family systems in the colonies and thus had access to property were also certainly of interest to eligible men of the time. In looking at unmarried women and property, a prominent and important practice in Britain as well as in many parts of the world, the dowry was an important financial consideration for families when considering their daughters or son's marriage prospects.

In regard to coverture, slavery, and probate records, enslaved individuals are present in the probate records of the seventeenth century, with Salmon writing in "The Legal Status of Women in Early America: A Reappraisal" about the case of a widow by the name of Mrs. Hopewell Hebb, who used her rights as a dower under Maryland law to gain "an absolute title over one third of her deceased husband's slaves, including the right to devise them at her death."[65] Mrs. Hebb would go on to leave her daughter Elizabeth one enslaved individual, her daughter Gracy one enslaved individual, her daughter Ann four enslaved individuals, her last daughter Priscilla £20 sterling, and finally "the remainder of her considerable estate to her son Vernon."[66] Salmon argues that surely Mrs. Hebb favored some of her children over others, I do not think that is in fact what Mrs. Hebb was dividing her estate up as she did in 1773. Established officially in 1670 when then brother of Lord Baltimore and the Lieutenant General,

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[63] Menard, "The Maryland Slave Population, 1658 to 1730," 30-31.
[64] Lois Green Carr and Russell R. Menard, "Wealth and Welfare in Early Maryland: Evidence from St. Mary's County," *The William and Mary Quarterly* 56, no.1 (1999): 107, https://www.jstor.org/stable/2674596.
[65] Salmon, *Women and the law of property in early America,* 139.
[66] Salmon, *Women and the law of property in early America,* 139-140.

Leonard Calvert, appointed his secretary "to hear, sentence, and declare all matters touching wills, administrations, and inventories."[67] Philip Calvert would then gain control of the court, in which he did not use the name Proventil Court, until 1682, in which, "the term reappeared and was used continuously thereafter."[68] The court as a whole would go on to be abolished in 1777 with the establishment of the Maryland State Constitution,[69] for probate records became the responsibility of the individual counties.[70]

In looking at the family tree of Hopewell Hebb (1717-1773) and her late husband William Hebb (1713-1758),[71] I was able to see that her daughter Priscilla (1738-1795) was married between 1753-1757,[72] and while I could not confirm Grace or Elizabeth's marriage dates, Ann was married approximately around 1769, for according to the 1790 US Census, she was listed as Ann Fenwick by 1770.[73]Ann, who quite possibly was the last Hebb daughter to marry, inherited four enslaved individuals in her mother's last will, compared to the one that Grace and Elizabeth received and the zero that Priscilla received. However, perhaps in looking at it from the view of the marriage dates, Mrs. Webb's decision seems less callous and more calculated. Priscilla was already well established in her household, and Grace and Elizabeth both

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[67] "Prerogative Court," Maryland State Archives, accessed 1 April 2024, https://guide.msa.maryland.gov/pages/history.aspx?ID=SH4.
[68] Maryland State Archives, "Prerogative Court."
[69] "Probate Records, Colonial, Index, 1634-1777: Index 1, MSA S1393," Maryland State Archives, accessed 23 March 2024,https://msa.maryland.gov/megafile/msa/stagsere/se1/se4/000000/html/index.html.
[70] Maryland State Archives, "Prerogative Court."
[71] "CJBM Family Tree," Ancestry, accessed 5 April 2024, https://www.ancestry.com/family-tree/tree/155727428/family?_phsrc=SSj1688&_phstart=successSource&cfpid=262056599808&fpid=262056599808&usePUBJs=true.
[72] Edward C. Papenfuse, et al. *A Biographical Dictionary of the Maryland Legislature 1635-1789* (Baltimore: The Johns Hopkins University, 2008) 440.
[73] "The National Archives in Washington, DC; Washington, DC; *First Census of the United States, 1790.*; Year: *1790*; Census Place: *Unknown Township, St Marys, Maryland*; Series: *M637*; Roll: *3*; Page: *339*; Family History Library Film: *0568143,"* Ancestry, accessed 6 April 2024, https://www.ancestry.com/discoveryui-content/view/129765:5058?tid=155727428&pid=262068393938&queryId=da9c00f5-1bd7-425f-8ece-7f69e3d7b932&_phsrc=SSj1580&_phstart=successSource.

most likely were already established as well given the ripe marriage market of colonial Maryland. Mrs. Hebb could have very well left her son to marry daughter the most to help establish the young couple, while her son Vernon, the only son, was expected to inherit everything else from his parents and having established his own household. While Mrs. Webb did in fact favor one daughter over the other, it could be that Mrs. Webb fundamentally, and personally, understood the legal and social position of women during this time. And while the property of the four daughters of Hopewell Webb would become that of their husbands upon marriage, Hopewell would have not only understood this, but was preparing for this. While the Webb daughters were not married and did not need a dowry for any potential marriage, the unmarried daughters of a colonial Maryland man perhaps were financially situated above their siblings in the wills of their late fathers because of their precarious position in society and their proximity to the chattel slavery system, unlike their British counterparts in the metropole.

Further exploration of women and their relation to slavery and the imagined dowry system can be conducted by first looking at the value of enslaved individuals in relation to other property within a planter's household inventory. From the time Thomas Hagoe Sr. arrived in Maryland to the time that his property and inventory was evaluated on March 10th, 1715, he was able to accumulate an impressive amount of personal wealth (see fig. 2).[74] Oversaw by a Mr. Joseph Boarman, the inventory record lists property in order from the most valuable to the least valuable, starting with "Three Negroes," which according to Thomas's inventory were worth a total of 6000.00 pounds (the pound was the currency in Maryland until 1773).[75] Under "Three

[74] TJHagan7, "Charles County: Thomas Hagoe- Inventory," n.d., Scan of paper document, Ancestry, accessed 22 March 2024, https://www.ancestry.com/family-tree/person/tree/196386600/person/262561326189/hints?usePUBJs=true.
[75] "Understanding Maryland Records: Money," Maryland State Archives, accessed 7 April 2024, https://guide.msa.maryland.gov/pages/viewer.aspx?page=money.

Negroes" is "Twenty four heads of Cattle young and old," worth 2601.00 pounds (fig. 2). Clearly, human beings were an asset, both in terms of labor and in the records of inventory of white settlers.

While we do not know the names of these three individuals or what happened to them, the will of Thomas Clarke Hagan Jr, Thomas Sr.'s son, shows a more direct relationship between women and enslaved bodies. Thomas Jr.'s last will and testament, executed on the 22nd of November 1742 lists provisions such as "I give and Bequeath my loving wife Sarah Hagan all the minority part of my land and during her natural life and after [unknown] to my Loving son Bazil Hagan to his and his heirs for Ever" (see fig. 3).[76] He continues with, "But if any of my sons before named should die without a heir of their own Body then their parts- to fall to my other four sons hereafter named [unknown symbol] Joseph, Benjamin, William, and Henry Hagan to [unknown] and their heirs for Ever" (fig. 3). Thomas Hagan Jr. does not negate his daughters in his two daughters in his last testament, either. He states, "I give and Bequeath unto my Loving daughter Mary Hagan one negro girl named Judith also one feather Bed and furniture-" and "I give and Bequeath unto my Loving daughter Rebecca Hagan one negro girl named Lucy also one feather Bed and furniture-" (fig. 3). Mary, also known Charity Morgan was newly married in 1738 to a Mr. George Hayden[77] and her sister Rebecca (nee Hagan) Eleanor

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[76] Maryland Prerogative Court, "Maryland, U.S. Wills and Probate Records, 1635-1777: Thomas Hagan, p. 59," 1742, Scan of a paper document, Ancestry, accessed 22 March 2024, https://www.ancestry.com/discoveryui-content/view/408954:9068?ssrc=pt&tid=196386600&pid=262561324893.

[77] Wanda M. Schmhart, "The Morgan Family: St. Mary's County, Maryland from William & Charity Morgan ca 1755 to 1900+," n.d., Scanned copy of report, Ancestry, accessed 26 March 2024, https://www.ancestry.com/mediaui-viewer/collection/1030/tree/196386600/person/262561325264/media/f3e86806-33dc-4b88-ae99 ae9d0a67dfe8?_phsrc=SSj1843&usePUBJs=true&galleryindex=1&albums=pg&showGalleryAlbums=true&tab=0&pid=262561325264.

Sansbury (1723-1791) married to a Thomas Sansbury sometime before 1790.[78] Thomas Hagan Jr.'s last decree is that "I give and Bequeath unto my Loving wife Sarah Hagan all the remaining- part of my personal Estate" (fig. 3).

In comparing Thomas Hagan Jr. to Mrs. Hopewell Hebb, perhaps Thomas was looking at his two young, but of marriageable age daughters and saw fit to leave them valuable property in the form of enslaved individuals that could (and would) become a part of their own households. It is of significance that while he includes his sons Ignatius (my direct grandfather), James, and Bazil Hagan in his will directly, along with his "Loving Brother Ignatius Hagan" property (fig. 3) his other four sons would only receive property if his fourth-born son were to die without heirs of his own. The fate of Judith and Lucy are not known, but what is known is that their value extended just beyond the estate of Thomas Hagan Jr., but rather to the young daughters within the family. Thomas's beloved son Bazil (also written as Basil) Hagan (1715-1765) married a woman named Susanna (nee Gardiner.)

Basil's father-in-law Ignatius Aloysius Gardiner too left substantial property to both three of his daughters and his youngest son in his 1777 will. To his youngest daughter Catherine Gardiner, who was married to a Thomas James Boarman III,[79] Ignatius A. Gardiner writes, "I give and Bequeath unto my Loving daughter Catherine Gardiner five negroes known by the

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[78] "The National Archives in Washington, DC; Washington, DC; *First Census of the United States, 1790.*; Year: *1790*; Census Place: *Prince Georges, Maryland*; Series: *M637*; Roll: *3*; Page: *316*; Family History Library Film: *0568143,*" Ancestry, accessed 5 April 2024, https://www.ancestry.com/discoveryui-content/view/127242:5058?tid=196386600&pid=262561325265&queryId=57e845cb-07b8-4269-8d6b-e63c70b8af35&_phsrc=SSj1853&_phstart=successSource.

[79] Kentucky Department for Libraries and Archives, "Kentucky, U.S., Death Records, 1852-1965, p. 573," Ancestry, accessed 8 April 2024, https://www.ancestry.com/discoveryui-content/view/750977892:1222?tid=196386600&pid=262570569725&hid=1004326304721.

names of Simon, Terry, Jack, Frank, and [Ben?]" (see fig. 4).[80] To his youngest son, Ignatius Gardiner, he writes "...son Ignatius Gardiner three Negroes known by the names of Charles, Sarah, and Judea," to his married daughter Susannah Edelin "one Negro girl named Rebeckah," his daughter Jean Boon "one Negro girl named Charity," and to his daughter Ann Hagan (my direct grandmother and the second of Ignatius's daughters to marry into the Hagan family) "one Negro by the name Robbin" (fig. 4). This record shows that while Catherine Gardiner was in fact married by the time of the creation of her father's last will and testament in February of 1777, Ignatius A. Gardiner showed preference to his youngest children and daughters in terms of property and the insurance that his female line would receive valuable property for the continuation of their own families. He, like Thomas Clarke Hagan, names his wife as the Executor in his will, connecting back to the point made by Carr and Walsh in "The Planter's Wife" that even men who had heirs in the form of children, a good majority of men would still entrust their wives to handle their wills and the property within.[81]

The last probate record comes from Basil Hagan, who was mentioned in his father's, Thomas C. Hagan Jr. was the primary heir in which all property would be transferred to, even though he himself was not the first-born son. The brother of my grandfather Ignatius Hagan, Basil's close relationship with Ignatius is evident in his own records, in which he states that, "I give and Bequeath unto my Brother Ignatius Hagan Ten acres and half a land out of a Trust of land [unknown] by the name of Clear with his Dwelling house" (see fig. 5).[82] Basil Hagan has

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[80] Maryland Prerogative Court, "Maryland, U.S. Wills and Probate Records, 1635-1777: Ignatius Aloysius Gardiner, pp. 546-547," 1777, Scan of a paper document, Ancestry, accessed 26 March 2024, https://www.ancestry.com/discoveryui-content/view/313346:9068?tid=196386600&pid=262569512584&queryId=ea13026d-cb9b-4f20-bc5b-4cf6bcad86fe&_phsrc=SSj1904&_phstart=successSource.

[81] Carr and Walsh, "The Planter's Wife," 555.

[82] Maryland Prerogative Court, "Maryland, U.S. Wills and Probate Records, 1635-1777: Basil Hagan, p.153," 1764, Scan of a paper document, Ancestry, accessed 28 March 2024, https://www.ancestry.com/discoveryui-

multiple sons but only one daughter, Theresa Hagan (1759-1832). To his then six-year-old daughter, Basil left "one Negro woman called Agnes," the only enslaved individual who appears in his last will and testament. Basil even includes in his will that, "I give and Bequeath all the remaining part of my personal Estate after my Debts are paid and my Loving wife's Dowry is taken out to my two children Raphael [unknown] and John Barton Hagan to their and their Heirs forever." (fig. 4) It is interesting still to see that Susanna did in fact have a dowry upon her marriage to Basil, and while its contents are not known, it perhaps can be assumed that it was something, or someone, of value.

What can be concluded from the examination of these probate records is that those in the Maryland colony were in a unique legal, economic, and social position that included were deeply connected and dependent on the labor and bodies of enslaved individuals, who identities exist both in the context of these documents but also in the larger conversation surrounding the American colonies and the chattel slavery system. As explored throughout this essay, while it is not conclusive or agreeable amongst historians whether colonial American women experienced more legal freedoms overall than those in Britain, certainly women in the Maryland colony profited off their proximity and the proximity of their male relatives to chattel labor and the economics of the New World agricultural landscape.

While widows perhaps had the most opportunities for personal economic growth and the right (and return of) their own property upon the death of their spouses -in which there were often multiple- unmarried women too were not forgotten by their fathers in these records. For some such as Ann Fenwick, it was their mothers, with the death of her spouse, who ensured that

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her newly established daughter would be able to contribute to her young family through the property of her late father. Catherine Gardiner, herself married with children, received five male enslaved individuals, which certainly would have cost her father Ignatius a substantial amount. Russell Menard writes on this that, "Because sex and age were important determinants of value, appraisers usually distinguished male slaves from female slaves and some- times recorded their ages in years. In most cases when sex is not specifically mentioned, it can be inferred from the 'slave's name."[83] Young children such as Theresa Hagan too could expect to inherit another human being, in this case a woman named Agnes, even though she herself would not go on to be married until around 1775.[84]

While feminist and American scholars of the 20th and 21st century will certainly continue to dispute the rights of women in the American colonies, it is enslaved women and men who have largely been left out of the conservation when discussing inheritance law and the use of probate records to show the transfer of property, a method that is used throughout the ever popular "The Planter's Wife." Their stories, unlike those of the Hagans and the Gardiners, are largely unknown, and yet their role in the maintenance of familial wealth and property in Maryland during the 18th century cannot be understated or undervalued. This examination of probate records can perhaps show how bodies were waged to keep property within a family, while also contributing to conversations surrounding how white women were not passive in the buying, selling, trading, and inheritance of enslaved bodies.

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[83] Menard, "The Maryland Slave Population, 1658 to 1730," 31.
[84] Kentucky Department for Libraries and Archives, "Kentucky, U.S., Death Records, 1852-1965, Film 9904048: Marshall, Martin, Mason, Meade," Ancestry, accessed 10 April 2024, https://www.ancestry.com/discoveryui-content/view/996204:1222?tid=196386600&pid=262570608412&queryId=8a3ade17-8c26-4bc6-b9ae-97074e95d152&_phsrc=SSj1956&_phstart=successSource.

Figures

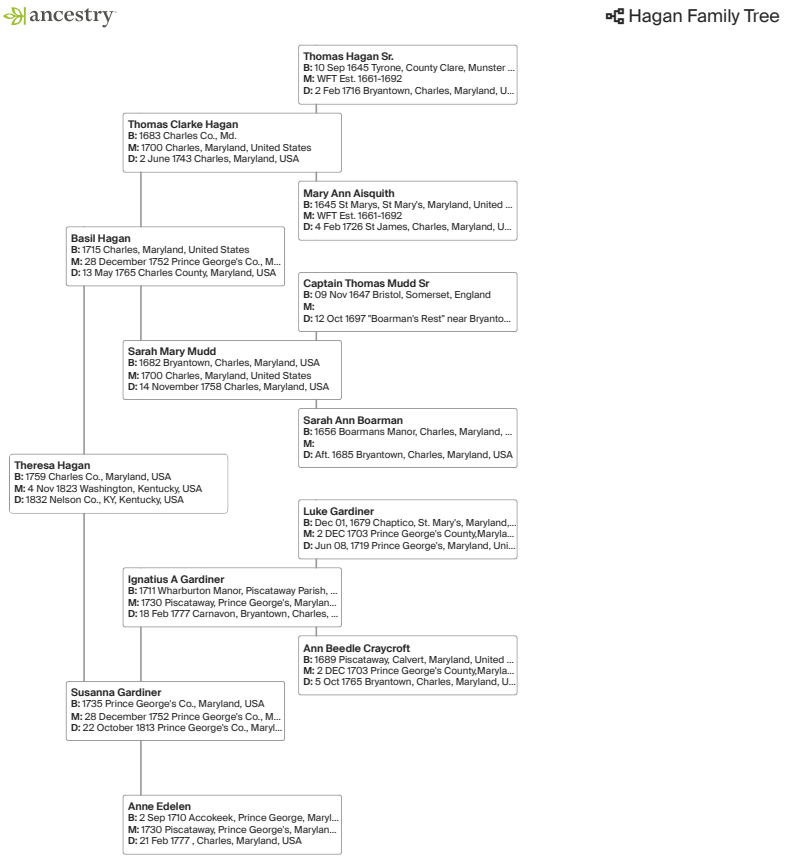
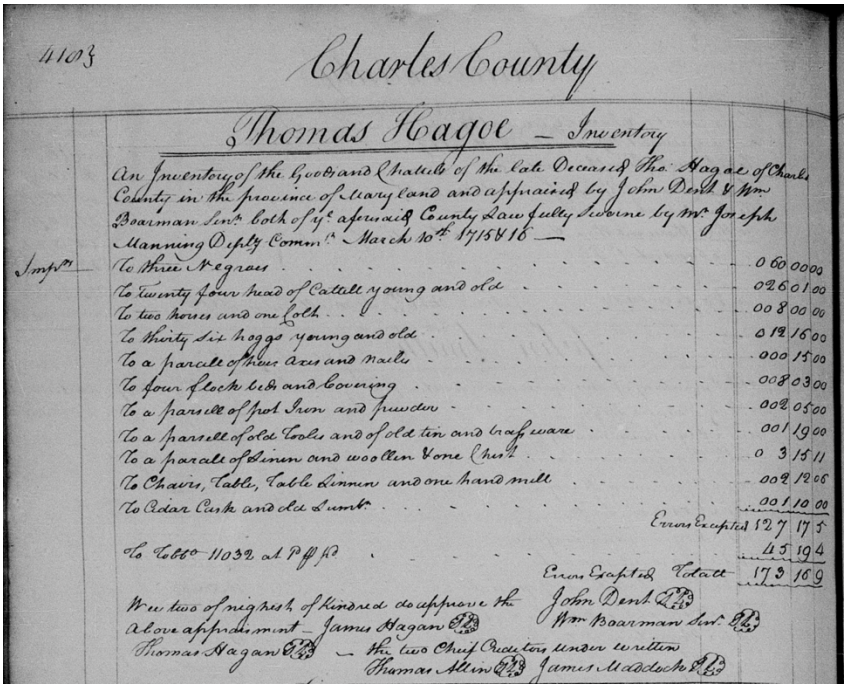


Figure 1. "Hagan Family Tree," Ancestry, accessed 20 March 2024, https://www.ancestry.com/family-tree/tree/196386600/family/pedigree?_gl=1%2A1eccdaa%2A_up%2AMQ..&cfpid=262567284873&gclid=Cj0KCQjw2uiwBhCXARIsACMvIU2ucic8YC-F1LNJ3HgWMCv8lPT8H874CMdTyHRmto6p47YskTQ0UwYaAtXBEALw_wcB&gclsrc=aw.ds.



4103

Charles County

Thomas Hagoe – Inventory

An Inventory of the Goods and Chattels of the late Deceased Thos. Hagoe of Charles County in the province of Maryland and appraised by John Dent & Wm Boarman Senr. both of ye aforesaid County Lawfully sworne by Mr Joseph Manning Deputy Comnr – March 10th 1715 & 16 –

Impr.	To three Negroes	060 00 00
	To twenty four head of Cattell young and old	026 01 00
	To two horses and one foal	008 00 00
	To thirty six hogge young and old	012 16 00
	To a parcell of their axes and nails	000 15 00
	To four flock beds and covering	008 03 00
	To a parcell of pot Iron and puncton	002 05 00
	To a parcell of old Tools and of old tin and brassware	001 19 00
	To a parcell of linen and woollen Yone Cloth	0 3 15 11
	To Chairs, Table, Table linnen and one hand mill	002 12 06
	To Cedar Cask and old Lumb	001 10 00
	Errors Excepted	127 17 5
	To Tobco 11032 at P ℔ ℔	45 19 4
	Errors Excepted Totall	173 16 9

We two of neighrs of Kindred do approve the above appridisement – James Hagan

John Dent

Wm Boarman Senr.

Thomas Hagan – the two Chief Auditors under written

Thomas Allin

James Maddock

Figure 2. TJHagan7, "Charles County: Thomas Hagoe- Inventory," n.d, Scan of paper document, Ancestry, Accessed 22 March 2024, https://www.ancestry.com/family-tree/person/tree/196386600/person/262561326189/hints?usePUBJs=true.

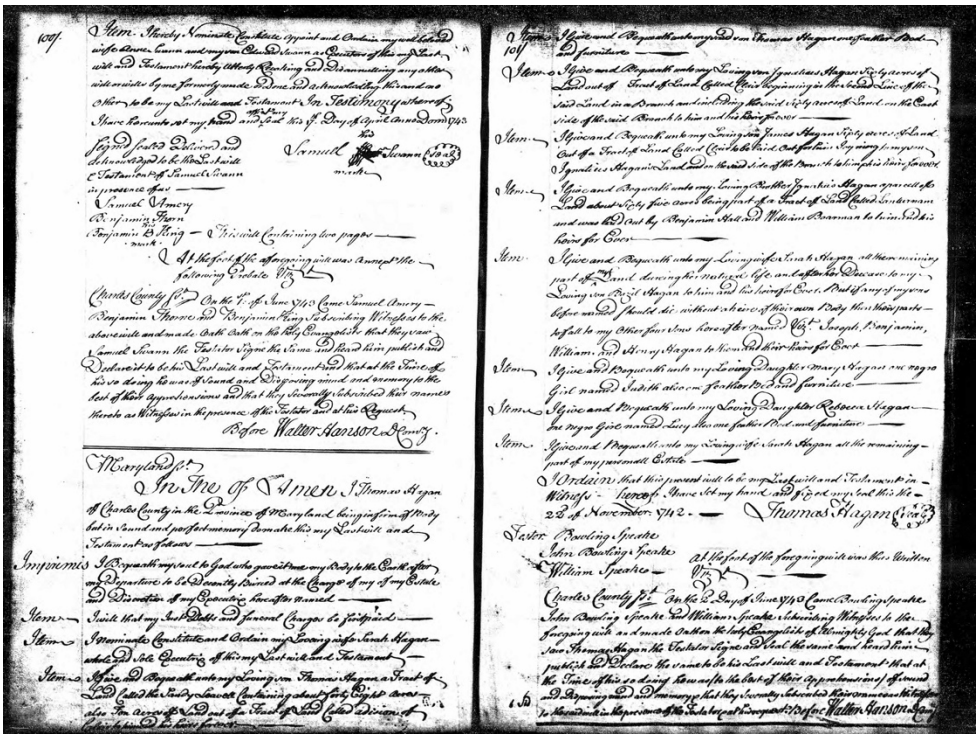


Figure 3. Maryland Prerogative Court, "Maryland, U.S. Wills and Probate Records, 1635-1777: Thomas Hagan, p. 59," 1742. Scan of a paper document, Ancestry, Accessed 22 March 2024, https://www.ancestry.com/discoveryui-content/view/408954:9068?ssrc=pt&tid=196386600&pid=262561324893.

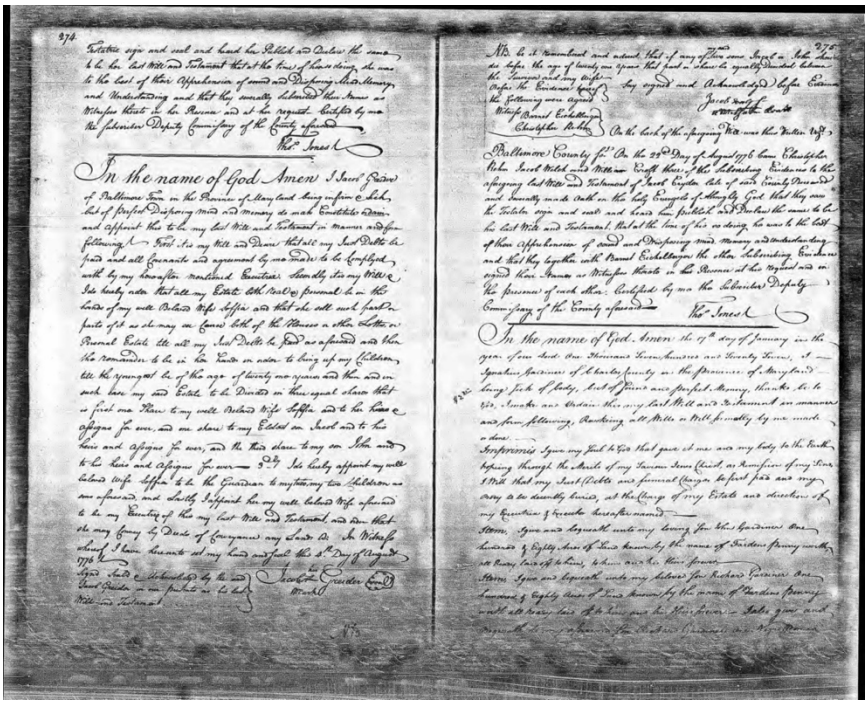


Figure 4. Maryland Prerogative Court. “Maryland, U.S. Wills and Probate Records, 1635-1777: Ignatius Aloysius Gardiner, pp. 546-547.” 1777. Scan of a paper document. Ancestry. Accessed 26 March 2024. https://www.ancestry.com/discoveryui-content/view/313346:9068?tid=196386600&pid=262569512584&queryId=ea13026d-cb9b-4f20-bc5b-4cf6bcad86fe&_phsrc=SSj1904&_phstart=successSource.

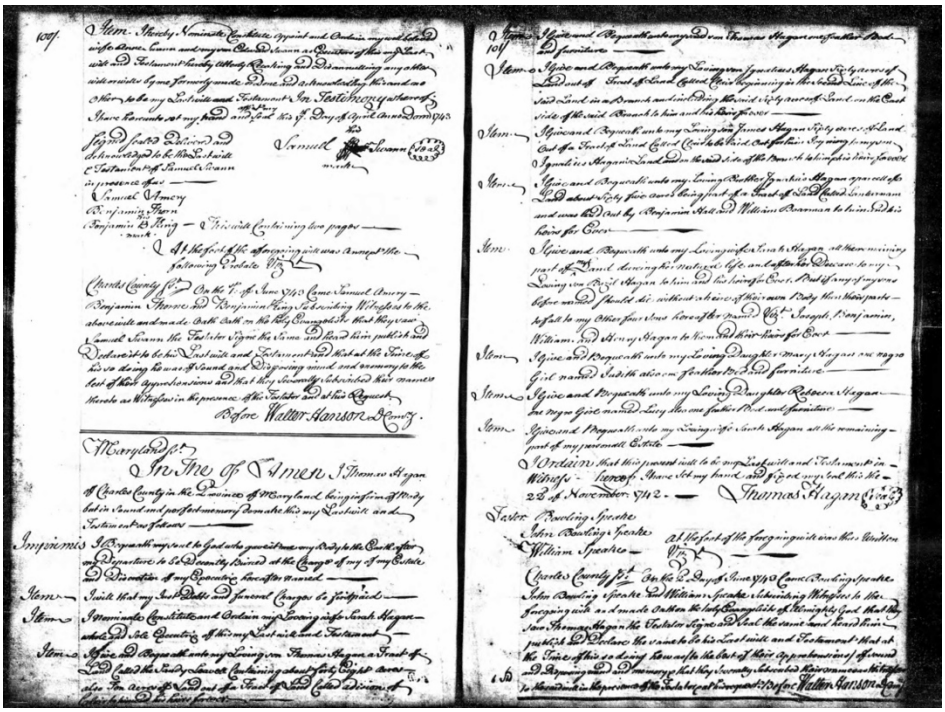


Figure 5. Maryland Prerogative Court. “Maryland, U.S. Wills and Probate Records, 1635-1777: Basil Hagan, p.153.” 1764. Scan of a paper document. Ancestry. Accessed 28 March 2024. https://www.ancestry.com/discoveryui-content/view/319447:9068?tid=196386600&pid=262561325259&queryId=7dc6c7b3-0e8c-41f3-9377-0e37fd878f76&_phsrc=SSj1908&_phstart=successSource.

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