

ADOPTION OF ENGLISH LAW IN MARYLAND

Garrett Power  
Professor Emeritus  
University of Maryland  
School of Law

## ABSTRACT

It served as an axiom of Maryland's constitutional history that settlers carried with them the "rights of Englishmen" when they crossed the Atlantic. In 1642 the Assembly of Maryland Freemen declared Maryland's provincial judges were to follow the law of England. Maryland's 1776 Declaration of Independence left a legal lacuna--- what were to be the laws and public institutions of this newly created sovereign entity? This paper considers the manner in which the sovereign state of Maryland filled the void.

## ADOPTION OF ENGLISH LAW IN MARYLAND

### I. THE PROPRIETORSHIP

In 1632 King Charles I of England granted Cecil Calvert, the Second Lord Baltimore, a charter making him the first Lord Proprietor of Maryland with all the feudal privileges of a monarch over a New World colony.<sup>1</sup> The Proprietorship allowed Lord Baltimore and his heirs to grant the lands of Maryland to any person willing to purchase.<sup>2</sup> Calvert promoted settlement by offering “adventurers” land patents of “hundreds” in return for the transportation of themselves and their laborers who undertook “plantation.”<sup>3</sup>

The Barons of Baltimore, however, were vested with seigniorship. The 1632 Charter bestowed upon their hereditary line sovereign powers of the highest order. They were authorized “for the good and happy Government of the said Province, . . . to . . . Enact Laws . . . with the Advise, Assent, and Approbation of the Free-Men of the same Province . . . .”<sup>4</sup>

It served as an axiom of our constitutional history that these settlers carried with them the “rights of Englishmen” when they crossed the Atlantic.<sup>5</sup> And Maryland’s Charter guaranteed the

---

<sup>1</sup> See, e.g., 1 J. THOMAS SCHARF, HISTORY OF MARYLAND FROM THE EARLIEST PERIOD TO THE PRESENT DAY 53, 63 (photo. reprint 1967) (1879).

<sup>2</sup> See Maryland Charter of 1632, para. XVIII, translated in 3 THE FEDERAL AND STATE CONSTITUTIONS: COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA 1677, 1684-85 (Francis Newton Thorpe ed., 1909) [hereinafter 3 FEDERAL AND STATE CONSTITUTIONS]. The original charter was in Latin, and a copy of an early, printed English version, available at <http://www.msa.md.gov/msa/educ/exhibits/founding/pdf/charter.pdf>, may be accessed through the Archives of Maryland Online, but this version is paginated rather than organized by paragraphs.

<sup>3</sup> See CLARENCE P. GOULD, THE LAND SYSTEM IN MARYLAND 1720-1765, at 9-10 (1913). By 1683, however, “transportation of settlers ceased to be the basis for the granting of lands, which were thereafter obtainable only on the payment of a purchase price . . . .” *Id.* at 9. See also JOHN KILTY, THE LAND-HOLDER’S ASSISTANT, AND LAND-OFFICE GUIDE 29-64 (Baltimore, G. Dobbin & Murphy 1808). The text of this book, available at <http://aomol.net/000001/000073/html/index.html>, may also be accessed through the Archives of Maryland Online.

<sup>4</sup> Maryland Charter of 1632, para. VII, translated in 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 2, at 1677, 1679.

<sup>5</sup> Bernard C. Steiner, *Adoption of English Law in Maryland*, 8 YALE L.J. 353, 353 (1899).

colonists the right to preserve their citizenship and to possess “all Privileges, Franchises and Liberties of this our Kingdom of England . . . .”<sup>6</sup>

At its 1642 session, in An Act for Rule of Judicature, the Assembly of Maryland Freemen stated the role of Maryland’s provincial judges as follows:

Right & just in all civill Causes shall be determined according to the law or most Generall usage of the province . . . . And in defect of such Law usage or president then right & just shall be determined according to equity & good concience, not neglecting (so far as the Judge or Judges shall be informed thereof & shall find no inconvenience in the applycation to this province) the rules by which right & just useth & ought to be determined in England in the same or the like cases And all crimes and offences shall be judged & determined according to the law of the Province or in defect of certain Law then they may be determined according to the best discretion of the Judge or Judges judging as neer as Conveniently may be to the laudable law or usage of England in the same or the like offenses Provided that no person be adjudged of life member or freehold without Law certain of the Province<sup>7</sup>

England was yet a powerful influence in the young, colonial world of Maryland.

## II. INDEPENDENCE

A century later, on July 3, 1776, the Maryland Convention in Annapolis adopted a resolution of independence.<sup>8</sup> The next day in Philadelphia Charles Carroll of Carrollton, Samuel Chase, Thomas Stone, and William Paca signed the Declaration of Independence on the new state’s behalf.<sup>9</sup> Independence left a legal lacuna—what were to be the laws and public institutions of

---

<sup>6</sup> Maryland Charter of 1632, para. X, *translated in* 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 2, at 1677, 1681.

<sup>7</sup> An Act for Rule of Judicature (1642), *reprinted in* 1 ARCHIVES OF MARYLAND: PROCEEDINGS AND ACTS OF THE GENERAL ASSEMBLY OF MARYLAND 147, 147-48 (William Hand Browne ed., Baltimore, Md. Historical Soc’y 1883). The text of this book, *available at* <http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000001/html/>, may also be accessed through the Archives of Maryland Online.

<sup>8</sup> ROBERT J. BRUGGER, MARYLAND: A MIDDLE TEMPERAMENT 1634-1980, at 119-20, 802 (1988).

<sup>9</sup> *Id.* at 802.

this newly created sovereign entity? The Maryland Convention filled the void when on August 14, 1776 it adopted a Declaration of Rights.<sup>10</sup> Article 3 of that Declaration read as follows:

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 practised by the courts of law or equity; . . . and the inhabitants of Maryland are also entitled to all property, derived to them, from or under the Charter, granted by his Majesty Charles I. to Caecilius Calvert, Baron of Baltimore.<sup>11</sup>

This Article 3 adopted three of England’s bodies of law for the independent state of Maryland: the common law as previously decided by judges; the statutes as previously enacted by Parliament; and the institution of property as derived from the feudal tradition. This paper will dissect these bodies, one at a time.

#### *A. The Common Law of England*

The Declaration of Rights refers to the mass of common law as it existed in England on July 4, 1776 and makes it the law of Maryland as it remains yet today, except to the extent it has been changed or modified.<sup>12</sup> It remained incumbent on the Maryland courts to decide whether the English common law should be made applicable under the circumstances,<sup>13</sup> and once it was incorporated it was subject to change either by Maryland legislative act or judicial decision.<sup>14</sup>

---

<sup>10</sup> See 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 2, at 1686 n.a.

<sup>11</sup> MD. CONST. of 1776, Declaration of Rights, art. III, *reprinted in id.* at 1686, 1686-87. For a brief history and overview of Maryland’s 1776 Declaration of Rights, see H. H. WALKER LEWIS, THE MARYLAND CONSTITUTION 1776, at 45-52 (1976) (prepared for the Special Committee on the Bicentennial of the Maryland State Bar Association).

<sup>12</sup> See, e.g., *Evans v. State*, 886 A.2d 562, 574 (Md. 2005); *Shaw v. Glickman*, 415 A.2d 625, 631 (Md. Ct. Spec. App. 1980), *cert. denied*, 288 Md. 742 (1980); *Jackson v. Jackson*, 292 A.2d 145, 145 (Md. Ct. Spec. App. 1972) (citations omitted).

<sup>13</sup> See, e.g., *State v. Buchanan*, 5 H. & J. 317 (Md. 1821) (upholding an indictment for common law conspiracy where no Maryland statute defining the particular offense existed).

<sup>14</sup> See, e.g., *Pope v. State*, 396 A.2d 1054, 1073 (Md. 1979) (“[T]he common law is subject to change. This is clearly apparent from its derivation and its very nature . . . . It may be changed by legislative act . . . . It may also be changed by judicial decision.” (citations omitted)).

The Maryland fate of the English laws of intestacy provides a case in point. Primogeniture—brought to England by the Normans sometime after the conquest in 1066—prescribed the common law right to descent of land.<sup>15</sup> It ordained that in the absence of a will the eldest son would inherit the whole of his father’s landed estate, to the exclusion of other siblings.<sup>16</sup> Primogeniture principles applied in the Maryland colony and in 1776 became the law of the state of Maryland under Article 3 of the Declaration of Rights.<sup>17</sup> But in 1786 that law would change. That year the Maryland General Assembly passed An Act to Direct Descents, which declared that “the law of de[s]cents, which originated with the feudal [s]y[s]tem and military tenures, is contrary to ju[s]tice, and ought to be aboli[s]hed . . . .”<sup>18</sup> It substituted rules of intestate succession, which divided the landed estate among all of the decedent’s living children.<sup>19</sup>

Under a legal system based upon *stare decisis*, this adoption by the Maryland courts of pre-existing common law is unremarkable. And over the course of the ensuing two centuries, old English precedents have been found applicable by Maryland courts in a variety of cases. Illustrations abound: In the early nineteenth century the Court of Appeals determined that a testator’s bequest to “the poor children belonging to the congregation of *Saint Peter’s Protestant Episcopal Church*” failed according to the old English common law prohibition on indefinite charitable gifts.<sup>20</sup> In the early twentieth century the Court of Appeals found women at

---

<sup>15</sup> See, e.g., HUGH M. THOMAS, *THE NORMAN CONQUEST: ENGLAND AFTER WILLIAM THE CONQUEROR* 101 (2007).

<sup>16</sup> See Maryland State Archives Reference and Research, Understanding Maryland Records: Inheritance of Property, <http://www.msa.md.gov/msa/refserv/html/inherit.html> (last visited July 16, 2008) [hereinafter Inheritance of Property].

<sup>17</sup> See MD. CONST. of 1776, Declaration of Rights, art. III, reprinted in 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 2, at 1686, 1686-87 (adopting principles of English law).

<sup>18</sup> An Act to Direct Descents, ch. XLV, pmbl. (1786), reprinted in 204 ARCHIVES OF MARYLAND: LAWS OF MARYLAND, 1785-1791, at 184, 184 (2000). The text of this book, available at <http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000204/html/index.html>, may also be accessed through the Archives of Maryland Online. See also Inheritance of Property, *supra* note 16.

<sup>19</sup> See Inheritance of Property, *supra* note 16.

<sup>20</sup> *Dashiell v. Attorney Gen.*, 5 H. & J. 392, 398-99 (Md. 1822).

a common law disability, which precluded them from taking official part in state government.<sup>21</sup>

And late in the twentieth century the Court of Special Appeals held courts of equity had the power to compel debtors to post bond so as to discourage them from absconding from their creditors by virtue of an ancient common law writ.<sup>22</sup>

Pre-1776 common law continues to be recognized as applicable in the twenty-first century. For example, in *Mason v. Board of Education*,<sup>23</sup> when the plaintiff filed suit on her twenty-first birthday to recover for negligence allegedly inflicted on her while she was a minor, the Maryland Court of Appeals held she was one day too late under the three-year statute of limitations.<sup>24</sup> Since under the old English common law the plaintiff's disability was removed one day prior to the anniversary of her birth, the statute of limitations had begun running the day before her eighteenth birthday.<sup>25</sup>

The English common law crimes (murder, burglary, larceny, and perjury, etc.) were also made part of Maryland law by the 1776 Declaration of Rights.<sup>26</sup> Likewise included within the ambit of this incorporation were rules as to accessoryship<sup>27</sup> and the "notion that an attempt to commit a crime [was] itself a crime . . . ."<sup>28</sup>

---

<sup>21</sup> *In re Maddox*, 50 A. 487, 488 (Md. 1901) (denying a female law graduate admission to the Maryland bar).

<sup>22</sup> *See Jackson v. Jackson*, 292 A.2d 145, 147-49 (Md. Ct. Spec. App. 1972) (upholding common law writ of *ne exeat* but quashing it upon the facts because it "cannot issue until after a court has passed a decree awarding alimony or support and there has been a default thereunder").

<sup>23</sup> 826 A.2d 433 (Md. 2003).

<sup>24</sup> *See id.* at 434, 438.

<sup>25</sup> *See id.* at 435.

<sup>26</sup> *See Gladden v. State*, 330 A.2d 176, 180 (Md. 1974) (murder); *State v. Levitt*, 426 A.2d 383, 388-89 (Md. Ct. Spec. App. 1981) (perjury); *Sizemore v. State*, 272 A.2d 824, 824-25 (Md. Ct. Spec. App. 1971) (burglary), *cert. denied*, 261 Md. 728 (1971); *Gazaille v. State*, 235 A.2d 306, 307 (Md. Ct. Spec. App. 1967) (larceny).

<sup>27</sup> *State v. Ward*, 396 A.2d 1041, 1043 (Md. 1978), *overruled in part by Lewis v. State*, 404 A.2d 1073, 1077-79 (Md. 1979) (upholding *Ward* modification to common law allowing the trial of an accessory before the sentencing of a principal but "because the principal . . . had not been sentenced [in *Ward*] . . . such modification should in our judgment be given only prospective effect").

<sup>28</sup> *Gray v. State*, 403 A.2d 853, 854 (Md. Ct. Spec. App. 1979).

Today this embrace of the common law of crimes and punishments may prove to be constitutionally problematic. In *Rogers v. Tennessee*,<sup>29</sup> the United States Supreme Court recognized that the Due Process Clause of the Fourteenth Amendment included “core due process concepts of notice, foreseeability, and, in particular, the right to fair warning as those concepts bear on the constitutionality of attaching criminal penalties to what previously had been innocent conduct.”<sup>30</sup> Will the prosecution of obscure and largely forgotten common law crimes run afoul of “criminal due process”?

The nineteenth century case of *State v. Buchanan*<sup>31</sup> illustrates the problem. A criminal prosecution was brought against a group of Baltimore bankers who had held the controlling interest in the Baltimore branch of the Bank of the United States.<sup>32</sup> The defendants had lent themselves the bank’s money without paying interest and without providing any security.<sup>33</sup> When the bank failed and they were unable to repay the loans, they were criminally prosecuted for a “conspiracy.”<sup>34</sup> Since Maryland had not yet enacted an embezzlement statute the bankers defended themselves on the grounds that the indictment specified no underlying crime that they had conspired to commit.<sup>35</sup> Insider trading and self-dealing might amount to a breach of trust, but they were not common law crimes, they argued.

The trial court discharged the defendants, but on appeal by the state the Maryland Court of Appeals reversed and ordered a new trial. The appeals court considered the allegations of the indictment as establishing a punishable conspiracy at common law—a conspiracy “wrongfully to

---

<sup>29</sup> 532 U.S. 451 (2001).

<sup>30</sup> *Id.* at 459 (citing *Bouie v. City of Columbia*, 378 U.S. 347, 351-52, 354-55 (1964)).

<sup>31</sup> 5 H. & J. 317 (Md. 1821).

<sup>32</sup> *See id.* at 360.

<sup>33</sup> *See id.* at 319-21 (indictment by Luther Martin, Attorney General).

<sup>34</sup> *Id.* at 360.

<sup>35</sup> *Id.* at 333-34, 360.



prejudice a third person . . . .”<sup>36</sup> One wonders whether under contemporary notions of criminal due process the prosecution of “conspirators,” absent predetermined and specified criminal conduct, would pass constitutional muster.

Retroactive changes in the elements of the common law of crimes may also be challenged under the Ex Post Facto Clause of the U.S. Constitution.<sup>37</sup> For a twenty-first century example consider *Rogers v. Tennessee*.<sup>38</sup> The state of Tennessee had always adhered to the common law rule that a murder conviction would only be upheld if the victim died within “a year and a day” of the defendant’s action.<sup>39</sup> But in *Rogers* the Tennessee Supreme Court retroactively abolished that rule and sustained the defendant’s conviction for murder despite the fact that the victim lived for fifteen months after the defendant struck the ultimately fatal blow.<sup>40</sup> On certiorari to the U.S. Supreme Court, the defendant argued that his conviction was a violation of the Constitution’s Ex Post Facto Clause.<sup>41</sup>

In a split five to four opinion a majority of the Rehnquist Court upheld the conviction.<sup>42</sup> But Justice Scalia, on behalf of the dissent, forcefully applied his originalist understanding of the Ex Post Facto Clause and concluded that the Tennessee Supreme Court’s retroactive application of its decision to remove the year-and-a-day rule from its jurisprudence rendered Rogers’ conviction for murder invalid.<sup>43</sup> It remains to be seen whether Scalia might muster a majority for this view under the recently reconstituted Roberts’ Court.

---

<sup>36</sup> *Id.* at 366 (Chase, C.J., concurring) (citation omitted) (emphasis omitted). Judge Buchanan delivered the opinion of the court.

<sup>37</sup> U.S. CONST. art. 1, § 10, cl. 1 (prohibiting the states, among other things, from passing ex post facto laws).

<sup>38</sup> 532 U.S. 451 (2001).

<sup>39</sup> *See id.* at 455.

<sup>40</sup> *See id.* at 454-56.

<sup>41</sup> *See id.* at 456.

<sup>42</sup> *See id.* (opinion of O’Connor, J., joined by Rehnquist, C.J., and Kennedy, Souter, and Ginsburg, JJ.).

<sup>43</sup> *See id.* at 467-81 (Scalia, J., dissenting, joined by Stevens, Thomas, and Breyer (in part), JJ.).

An earlier Maryland court had faced a similar *ex post facto* problem. In *Lewis v. State*,<sup>44</sup> the Maryland Court of Appeals changed the common law rule that an accessory could not be tried until the principal was sentenced because it was convinced that “the rule has become unsound in the circumstances of modern life,” and because “[w]hatever may have been the reason for the rule governing the sequence of the accessory’s and principal’s trials, that reason has long since disappeared.”<sup>45</sup> But the court decided to give the rule change only prospective application out of concern that a retrospective change would impinge on basic fairness to the defendant.<sup>46</sup>

### *B. Statutes of England*

Subsequent Maryland Constitutions followed the lead of Article 3 of the Constitution of 1776 in adopting English statutes, but with somewhat different wording. The incorporation clause now found in Article 5 of the Declaration of Rights of the Maryland Constitution of 1867 reads as follows:

That the Inhabitants of Maryland are entitled to . . . the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity . . . .<sup>47</sup>

In 1809, out of a concern that applicability of English statutes was left to rest on so vague a standard, the Maryland General Assembly directed Chancellor William Kilty to prepare a report of all such English statutes that were covered by the language of the Declaration of Rights.<sup>48</sup> Kilty’s report, published in 1811, found “one hundred and ninety-one Statutes applicable and

---

<sup>44</sup> 404 A.2d 1073 (Md. 1979).

<sup>45</sup> *Id.* at 1078-79 (citations omitted).

<sup>46</sup> *Id.* at 1077.

<sup>47</sup> MD. CONST. of 1867, Declaration of Rights, art. 5, *reprinted in* 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 2, at 1779, 1780. The 1867 Constitution was the last one adopted in Maryland, and its current text, *available at* <http://www.msa.md.gov/msa/mdmanual/43const/pdf/2006const.pdf>, may also be accessed through the Archives of Maryland Online. For a comparison with Article 3 of the Declaration of Rights of the Constitution of 1776, see *supra* note 17.

<sup>48</sup> *See* Steiner, *supra* note 5, at 357-58.

proper to be incorporated.”<sup>49</sup> Sixty years later in 1870, Julian Alexander published *A Collection of the British Statutes in Force in Maryland, According to the Report Thereof Made to the General Assembly by the Late Chancellor Kilty*.<sup>50</sup> It consisted of 847 pages of the compiled statutes and supporting notes.<sup>51</sup> Although never officially adopted, *Alexander’s British Statutes* has typically been treated as authoritative by the Maryland Court of Appeals.

For example, in 1822 in *Dashiell v. Attorney General*,<sup>52</sup> the court accepted as gospel the conclusion in Kilty’s report that the Statute of Charitable Uses<sup>53</sup> was not in force in Maryland. The court noted that the report had been prepared “under the sanction of the state, for the use of its officers, and is a safe guide in exploring an otherwise very dubious path.”<sup>54</sup> Writing in 1899, Bernard Steiner found that “in only two cases . . . were additional Statutes decided to have been found applicable, and that, in no case, was one found applicable by Kilty taken out of the list by the Court of Appeals.”<sup>55</sup>

There are numerous examples of twentieth and twenty-first century applications of *Alexander’s British Statutes*. Listed therein and still in force in Maryland today is the twenty year limitation in adverse possession on an owner’s right to enter upon land—imposed by Parliament in 1623<sup>56</sup>—and the original statute of frauds as passed by Parliament in 1676.<sup>57</sup> A

---

<sup>49</sup> *Id.* at 359 (referring to WILLIAM KILTY, A REPORT OF ALL SUCH ENGLISH STATUTES (Annapolis, Jehu Chandler 1811)).

<sup>50</sup> JULIAN J. ALEXANDER, A COLLECTION OF THE BRITISH STATUTES IN FORCE IN MARYLAND, ACCORDING TO THE REPORT THEREOF MADE TO THE GENERAL ASSEMBLY BY THE LATE CHANCELLOR KILTY (Baltimore, Cushings & Bailey 1870).

<sup>51</sup> *Id.*

<sup>52</sup> 5 H. & J. 392 (Md. 1822).

<sup>53</sup> Statute of Charitable Uses, 1601, 43 Eliz., c. 4 (Eng.).

<sup>54</sup> *Dashiell*, 5 H. & J. at 403.

<sup>55</sup> Steiner, *supra* note 5, at 360-61 (citing *Sibley v. Williams*, 3 G. & J. 52, 63 (Md. 1830) and *Shriver v. State*, 9 G. & J. 1, 11 (Md. 1837)).

<sup>56</sup> See An Act for Limitation of Actions, and for Avoiding of Suits in Law, 21 Jac., c. 16 (1623), reprinted in 2 JULIAN J. ALEXANDER, BRITISH STATUTES IN FORCE IN MARYLAND: ACCORDING TO THE REPORT THEREOF MADE TO THE GENERAL ASSEMBLY BY THE LATE CHANCELLOR KILTY 599, 599-600 (Ward Baldwin Coe ed., 1912) [hereinafter 2 ALEXANDER’S BRITISH STATUTES]. See *Clayton v. Jensen*, 214 A.2d 154, 157-58 (Md. 1965)

Parliamentary enactment in 1381 that permitted dispossessed owners to peaceably retake possession of their property without a court's assistance likewise remains in effect.<sup>58</sup>

And in one case the Maryland Court of Appeals may have created some contrarian “incorporation” jurisprudence. In *Moxley v. Acker*,<sup>59</sup> the court found that the cause of action for forcible detainer, which had been created by Parliament in 1429, had been incorporated into Maryland law by Article 5 of the Declaration of Rights.<sup>60</sup> The foundational English statute provided that when land was wrongfully possessed and “forcibly” held that the justices of the peace should have the sheriff put the malefactors out.<sup>61</sup>

According to the court's view “[t]he issue in this case [was] whether force is required, or should be required, in the cause of action of forcible detainer.”<sup>62</sup> The court found that while it was clear that forcible detention had been required under the English law, the court had the power to change the rule if found to be “unsound in the circumstances of modern life . . . .”<sup>63</sup>

Accordingly, it abolished the element of force and held “that the action of forcible detainer requires only that one unlawfully detain the property from the lawful possessor.”<sup>64</sup> Hence in one

---

(upholding *supra* statute in an easement by prescription); *Wilson v. Waters*, 64 A.2d 135, 137 (Md. 1949) (affirming *supra* statute in adverse possession).

<sup>57</sup> An Act for Prevention of Frauds and Perjuries, 1676, 29 Car. 2, c. 3, reprinted in 2 ALEXANDER'S BRITISH STATUTES, *supra* note 56, at 689, 689-94. See *Adams v. Wilson*, 284 A.2d 434, 438 (Md. 1971) (applying *supra* Statute of Frauds); *Kline v. Lightman*, 221 A.2d 675, 681-82 (Md. 1966) (affirming *supra* Statute of Frauds in its original form with a few “minor statutory modifications”).

<sup>58</sup> The Penalty Where Any Doth Enter into Lands Where It Is Not Lawful, or with Force, 1381, 5 Rich. 2, c. 8, reprinted in 1 JULIAN J. ALEXANDER, BRITISH STATUTES IN FORCE IN MARYLAND: ACCORDING TO THE REPORT THEREOF MADE TO THE GENERAL ASSEMBLY BY THE LATE CHANCELLOR KILTY 247, 247 (Ward Baldwin Coe ed., 1912) [hereinafter 1 ALEXANDER'S BRITISH STATUTES]. See *Laney v. State*, 842 A.2d 773, 785 (Md. 2004) (upholding *supra* statute in a lawful landowner's right to peacefully recover possession of property without court assistance).

<sup>59</sup> 447 A.2d 857 (Md. 1982).

<sup>60</sup> See *id.* at 858.

<sup>61</sup> See The Duty of Justices of Peace Where Land is Entred upon or Detained with Force, 1429, 8 Hen. 6, c. 9, reprinted in 1 ALEXANDER'S BRITISH STATUTES, *supra* note 58, at 299, 300.

<sup>62</sup> *Moxley*, 447 A.2d at 859.

<sup>63</sup> *Id.* at 859-60 (citation omitted).

<sup>64</sup> *Id.* at 860. *Laney v. State* further clarifies *Moxley*'s judicial modification:

Another remedy available to a mortgagee seeking to gain possession of property from a holdover mortgagor is through a cause of action of forcible detainer. . . . This cause of

case at least the Maryland Court of Appeals has treated an incorporated English statute as if it was “common law” and therefore subject to judicial modification without legislative amendment.

In 1974 the Maryland General Assembly undertook to clear up any lingering confusion as to which pre-1776 English statutes remained part of Maryland law. As part of the re-codification of the Annotated Code of Maryland, and as a negative counterpoint to *Alexander’s British Statutes*, Section 14-115 of the Real Property Article of the Maryland Code lists the eighty British statutes that were in force and effect on July 4, 1776 that are no longer in force and effect.<sup>65</sup>

### *C. Property Derived Under Charter Granted to Lord Baltimore*

The statute *Quia Emptores Terrarum*<sup>66</sup> was among the laws in force and effect in England when in 1632 Charles I granted the Maryland Charter to Cecil Calvert the Lord Baltimore.<sup>67</sup> *Quia Emptores* permitted “every Freeman to sell at his own pleasure his Lands and Tenements” outright in fee simple but prohibited the grantors from establishing themselves as feudal overlords by retention of perquisites such as fines for alienation or rents.<sup>68</sup> But the eighteenth paragraph of the Maryland Charter granted Calvert and his heirs the power to grant Maryland lands “to Persons willing to take or purchase the same . . . by . . . Customs and Rents of this

---

action, applicable to mortgagees seeking to oust holdover mortgagors, has been modified by § 8-402(b) of the Real Property Article . . . . In *Moxley*, this Court further modified the “forcible detainer” action by deleting the requirement of force so that one can bring the cause of action to regain possession of property wrongfully detained in any way.

842 A.2d 773, 785 n.15 (Md. 2004) (citations omitted).

<sup>65</sup> MD. CODE ANN., REAL PROP. § 14-115 (LexisNexis 2003).

<sup>66</sup> *Quia Emptores Terrarum* (“*Quia Emptores*”), 18 Edw., c. 1 (1290), reprinted in 1 APPENDIX—NO. 1, REFERRED TO IN THE ARGUMENT ON BEHALF OF THE ROSE BENEFICENT ASSOCIATION: STATUTES OF THE REALM 9, 9 (n.d.).

<sup>67</sup> See Maryland Charter of 1632, para. XVIII, translated in 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 2, at 1677, 1684-85. See also W. Calvin Chesnut, *The Effect of Quia Emptores on Pennsylvania and Maryland Ground Rents*, 91 U. PA. L. REV. 137, 139-40 (1942).

<sup>68</sup> See *supra* note 66. See also Chesnut, *supra* note 67, at 137-39. Chesnut explains that “[t]he effect of this was, of course, to bring the purchaser of land into direct relationship of responsibility to the chief overlord and thus to preserve to him unimpaired the benefit of the feudal incidents which had resulted from his original grant of the land.” *Id.* at 139.

Kind, as . . . shall seem fit and agreeable . . . ”<sup>69</sup> The following non obstante clause in the Charter explained the contradiction: when granting property in fee simple the Lords Baltimore were expressly authorized to charge rents “[s]tatute Quia Emptores Terrarum’ . . . to the contrary thereof notwithstanding.”<sup>70</sup> The Calvert family was empowered to create their own feudal fiefdom in the wilderness.

The Lords Baltimore had looked to take their profit from the soil. They offered patents to Maryland’s vacant lands in return for the purchase price, called “caution money,” payable at first in tobacco and then later in pounds sterling.<sup>71</sup> When granting patents, however, Cecil and his successors only passed title by way of “subinfeudation.”<sup>72</sup> After the grants, the “takers-up” continued to owe the Calvert family an annual quit-rent payable in perpetuity.<sup>73</sup> The annual quit-rents typically were set at four shillings per hundred acres.<sup>74</sup> The quit-rents provided a perpetual source of income that would be passed on from the current generation to the eldest male heir in perpetuity.<sup>75</sup>

Cecil Calvert also started the policy of reserving large parcels of land to be erected into proprietary manors.<sup>76</sup> These lands were held by the Baltimore barony in anticipation of increased values and, in the meantime, leased for cultivation in smaller holdings to long-term tenants.<sup>77</sup> These proprietary lands would perpetuate the family’s aristocracy.<sup>78</sup>

---

<sup>69</sup> Maryland Charter of 1632, para. XVIII, *translated in* 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 2, at 1677, 1684.

<sup>70</sup> *Id.*, *translated in* 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 2, at 1677, 1685.

<sup>71</sup> GOULD, *supra* note 3, at 9-10.

<sup>72</sup> *See* KILTY, *supra* note 3, at 27-28. *See also* BLACK’S LAW DICTIONARY 1465 (8th ed. 2004) (“The system under which the tenants in a feudal system granted smaller estates to their tenants, who in turn did the same from their pieces of land.”).

<sup>73</sup> *See* GOULD, *supra* note 3, at 9. *See also* KILTY, *supra* note 3, at 32.

<sup>74</sup> GOULD, *supra* note 3, at 9.

<sup>75</sup> *See* sources cited *supra* note 73.

<sup>76</sup> GOULD, *supra* note 3, at 91.

<sup>77</sup> *See id.* at 91-92.

<sup>78</sup> *See* Charles M. Andrews, *Introduction to* BEVERLEY W. BOND, JR., *THE QUIT-RENT SYSTEM IN THE AMERICAN COLONIES* 11, 18 (1919). *See also* GOULD, *supra* note 3, at 89-101.

By the beginning of the American Revolution the quit-rents reserved by the Lords Baltimore totaled over £8,000 per year.<sup>79</sup> It is hard to determine just how economically burdensome the quit-rents were on the landowners of Maryland. The amount of the quit-rent (four shillings per hundred acres) was assessed according to the acreage of the land, not according to the value of the land.<sup>80</sup> When compared with market value, rents were cheap for expensive land but expensive for cheap land. It seems likely, however, that Maryland's eighteenth century aristocrats who had amassed their fortunes in land (e.g. Carrolls, Lloyds, Howards, Dulanys, Bennetts, Keys, and Dorseys)<sup>81</sup> were paying Lord Baltimore a significant annual tribute.<sup>82</sup> One rough extrapolation put the average rate of exaction at approximately 1% of the land's value.<sup>83</sup>

And independence only improved the economic circumstances of these Revolutionary aristocrats. Article 3 of the Maryland Declaration of Rights in the 1776 Maryland Constitution confirmed their entitlement "to all property, derived to them, from or under the Charter, granted . . . to Caecilius Calvert, Baron of Baltimore."<sup>84</sup> But in 1780 the Maryland General Assembly declared it "highly improper for, and derogatory to, the citizens of this [s]overeign and independent [s]tate, to pay quit-rent . . . to the [s]ubject of a foreign prince . . ." <sup>85</sup> The citizens of Maryland "from the declaration of independence, and for ever thereafter . . . [were]

---

<sup>79</sup> Beverly W. Bond, Jr., *The Quit-Rent System in the American Colonies*, 17 AM. HIST. REV. 496, 511 (1912).

<sup>80</sup> See *id.* at 501. See also GOULD, *supra* note 3, at 54.

<sup>81</sup> See GOULD, *supra* note 3, at 76, 82-85.

<sup>82</sup> See Beverly W. Bond, Jr., *The Quit Rent in Maryland*, 5 MD. HIST. MAG. 350, 358 (1910) (providing a table of rent values and maintaining that the burden to the individual landholder was not "greatly oppressive").

<sup>83</sup> See GOULD, *supra* note 3, at 54.

<sup>84</sup> MD. CONST. of 1776, Declaration of Rights, art. III, *reprinted in* 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 2, at 1686, 1687.

<sup>85</sup> An Act to Abolish For Ever the Payment of Quit-Rent, ch. XVIII, pmbl. (1780), *reprinted in* 203 ARCHIVES OF MARYLAND: HANSON'S LAWS OF MARYLAND 238, 238 (photo. reprint 2000) (1787) [hereinafter HANSON'S LAWS OF MARYLAND]. The text of this book, *available at* <http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000203/html/index.html>, may also be accessed through the Archives of Maryland Online.

exonerated and di[s]charged from the payment of the afore[s]aid quit-rent . . . .”<sup>86</sup> Likewise, the reserved Baltimore manors were taken away; an act was passed to “[s]eize, confi[s]cate and appropriate” all property owned by British subjects within the state.<sup>87</sup>

The Revolution had relieved Maryland land owners from the burdensome and perpetual quit rents they had owed the Barons of Baltimore. Moreover, the Baltimore proprietary manors and the property of loyalist supporters of the Crown had been confiscated and made the public property of the state of Maryland. In 1781 Henry Harford, the last Lord Baltimore, estimated his loss at £447,000.<sup>88</sup> Maryland’s independence served to both retain and shed selective aspects of its English legacy: English property was confiscated and its feudal privileges abolished, while the statutory and common law precedents of England were incorporated into Maryland law.

---

<sup>86</sup> An Act to Abolish For Ever the Payment of Quit-Rent, ch. XVIII, para. II (1780), *reprinted in* HANSON’S LAWS OF MARYLAND, *supra* note 85, at 238, 238-39.

<sup>87</sup> An Act to Procure a Loan, and for the Sale of Escheat Lands, and the Confiscated British Property therein Mentioned, ch. LI, para. IV (1780), *reprinted in id.* at 274, 275.

<sup>88</sup> *See* 2 SCHARF, *supra* note 1, at 394.