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PLATE 1



Above (a), seal ring of Charles Carroll, Barrister. *See page 96.*

Collection of the National Society of the Colonial Dames of America in the State of Maryland,
Mount Clare Museum House.

Below (b), the arms of Charles Carnan Ridgely on a French porcelain tureen.
See page 102.

U.S. National Park Service, Hampton National Historic Site.





Armorial fanlight at Hampton (Maryland), showing a variant version of the arms of Ridgely. *See page 102.*

Photograph by J. McMillan.

THE MARYLAND NAME AND ARMS ACTS

HERALDIC LAW IN THE UNITED STATES

Joseph McMillan

The problem that has most consistently bedeviled students of American heraldry is whether there has been a law of arms in the United States since Independence. The debate has usually focused on the permissibility of armorial assumption and more recently the protection of arms against usurpation, but rarely on the question of how arms are transmitted across generations. This lack of attention to armorial succession is probably a function of the lack of controversy over the matter. Out of force of habit if not of law, Americans have tended to follow the general European custom that arms descend only in the direct male line.¹

This principle, stated categorically by Bartolo in 1358,² and restated by Coke in the specifically English context in 1628,³ led men who had no sons to devise legal mechanisms to pass on their surname and arms through a female line and thus ensure that their family did not disappear from history.⁴ The first recorded case in England was that of Edmund Deincourt in 1314.⁵ But there is only one other example of such a licence through the end of the reign of Henry VI, one granted to Robert de Ogle in 1406.⁶ We must conclude either that changes of name and arms were extraordinarily rare in England—roughly one per century—or, more likely, that it was not yet fully accepted that such an action required royal consent.

By the time the English settlement of North America began, however, it seems to have been generally understood that royal consent was necessary for anyone other than a man's heirs male to inherit his arms. Francis Thynne, Lancaster Herald, wrote two years before the 1607 landing at Jamestown that under the law of England a man who had only daughters 'might have licence of the King to alien his Name or Arms to any other for the Preservation of the Memory of them both.... But withal it is

¹ Notwithstanding Eugene Zieber's comment in *Heraldry in America* (Philadelphia 1895), p. 81, that 'in America, coats of arms of maternal ancestors (not heiresses) are occasionally borne by descendants as paternal arms' this has been very much the exception.

² *Tractatus de Insigniis et Armis*, 10.

³ 1 Inst. lib. 1, cap. 2, sec. 31.

⁴ See for example Christian Maurel, 'Un artifice contre l'extinction des familles?', *Médiévales* 9 (1990), no. 19, pp. 29-35.

⁵ *CPR 1313-17*, p. 89. In rebutting the view that a subsequent patent to Deincourt was the first English royal licence for a change of name and arms, Fox-Davies hypothesized the existence of this earlier document but was unable to locate it. See A. C. Fox-Davies and P. W. P. Carlyon-Britton, *Treatise on the Law Concerning Names and Changes of Names* (London 1906), p. 62.

⁶ *CPR 1405-8*, p. 144.

gathered, that he could not alien the same without Licence of the Prince (who might dispence with the Law).⁷ Indeed, the first modern English royal licence for a change of name and arms, issued by Charles II in 1679, specifically asserted that such a change was prohibited by the law of arms without the King's 'dispensacion and licence... as We are by Our supream power and prerogative the onely Fountain of Honour.'⁸ From the beginning of the eighteenth century, a second means was available to gain the sovereign's sanction for a change of name and arms: a private act of Parliament. The first such act appears to have been passed in 1700,⁹ and by the time of George III scarcely a year went by without at least one or two such statutes.

The question is whether this principle—that arms could not pass outside the framework of agnatic descent without the consent of the sovereign—crossed the Atlantic to the new English colonies, and if so whether it survived the breach with Britain in a form that could reasonably be construed as law. The practice of petitioning the legislature for private acts authorizing changes of name certainly did transfer, and quite quickly after the British parliament passed the first such act. None of the acts passed by colonial assemblies mentions armorial bearings, although in at least two Massachusetts cases the person taking the new surname did in practice also take the arms that went with it.¹⁰

After Independence, however, we find four such private acts passed by the General Assembly of the State of Maryland between 1783 and 1804 expressly authorizing a petitioner to assume armorial bearings to which he would not have been entitled by the ordinary operation of agnatic succession. The first two, by which the nephews of Charles Carroll, Barrister, and Charles Ridgely took the arms of their respective uncles, were triggered by provisions of the uncles' wills. The third, allowing Henry Rozer's arms to descend to his granddaughter's children, was mandated by a marriage settlement, and the fourth, permitting James Clerk and his wife Margaret to take the arms of her grandfather Richard Lee, seems to have arisen simply to fulfill a wish expressed by Margaret's maiden aunt.

Maccubbin to Carroll

Charles Carroll (1723-83), whose last will and testament prompted the first American legislative act explicitly providing for a change of armorial bearings, was invariably known throughout his adult life as 'Charles Carroll, Barrister' to distinguish him from a number of other prominent Charles Carrolls living in and around Annapolis, the capital city of Maryland.¹¹ He was the only surviving son of another Charles Carroll, a surgeon who arrived in Maryland from Ireland in 1715 and who over a four-decade period parlayed a series of astute investments in agriculture, industry, commerce, and

⁷ Quoted in Fox-Davies and Carlyon-Britton, p. 62.

⁸ Quoted *ibid.*, pp. 64, 66.

⁹ 1700 (12 & 13 Will. 3) c. 25, permitting Ellis Mews to assume the name and arms of St. John.

¹⁰ Spencer Bennet taking the name and arms of Phips (1716) and William Sparhawk taking the name and arms of Pepperrell (1766).

¹¹ Charles Carroll of Annapolis (1702-82), his son Charles Carroll of Carrollton (1737-1832), and their cousin Charles Carroll of Duddington (1729-73), none of them close relations of Charles Carroll, Barrister.

THE MARYLAND NAME AND ARMS ACTS

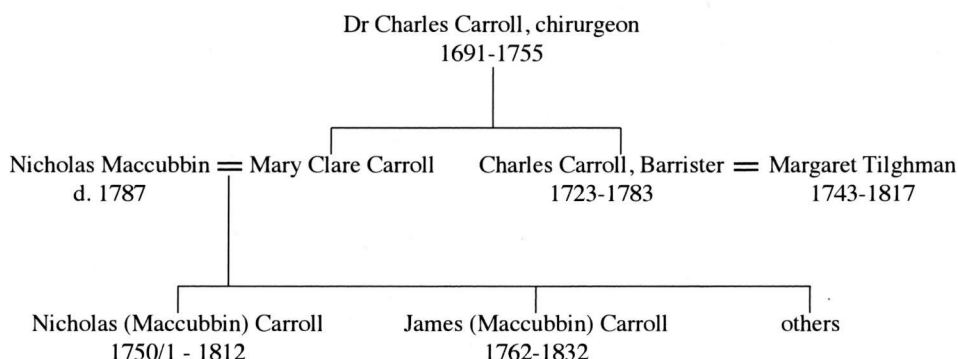


Table A: The Carroll and Maccubbin families.

land speculation into one of the largest fortunes in the province. By the time of his death, Dr Carroll's estate ran to some 15,000 acres (6,100 ha) of land and a one-fifth interest in the Baltimore Company, an iron works he established in 1731 in partnership with four other leading members of the local gentry.¹²

The income from these enterprises enabled the elder Carroll to give his son the education appropriate to a scion of the colonial elite: Eton, Cambridge, and the Middle Temple, whence the younger Charles was called to the bar in 1755. When Dr Carroll died a few months afterward, the new barrister found himself the principal heir to his father's extensive holdings, the remainder going to his only sister Mary Clare and her husband Nicholas Maccubbin, a leading Annapolis merchant and high sheriff of Anne Arundel County (see **Table A**). The barrister would spend much of the next three decades building upon this material legacy,¹³ but also found time to enjoy it, breeding and racing thoroughbreds and taking guests shooting on his privately owned 900-acre island in Chesapeake Bay. Furthermore, he was a patron of the arts, the most generous of a small group of donors who enabled the young Annapolis painter Charles Willson Peale to study under Benjamin West in London.

It was as a statesman, however, that Carroll made his most important mark. A few months after his father's death, he was elected to the seat in Maryland's Lower House of Assembly that the elder Carroll had occupied for seventeen years. As tensions with Britain rose in the 1770s, he took a major role in the province's resistance to royal and parliamentary impositions. Along with his father-in-law, Matthew Til-

¹² Edward C. Papenfuss et al., *A Biographical Dictionary of the Maryland Legislature, 1635-1789* (Baltimore 1979), vol. 1 p. 194. Available as *Archives of Maryland* [henceforth AOM] 426 at AOM Online, <http://aomol.net/000001/000426/html>.

¹³ At his death, the barrister owned not only extensive tracts of land and 20 percent of the iron company but two gristmills, a bakery, and his own dock in Annapolis, and was the leading supplier of brick clay for construction in Baltimore, then the fastest growing city in the United States.

THE COAT OF ARMS



Figure 1: The arms of Carroll impaling Blake, from the tombstone of Dorothy Blake Carroll, Bennett's Point (Maryland).

By courtesy of the Maryland Archaeological Conservation Laboratory, Jefferson Patterson Park & Museum.



Figure 2: Bookplate of Charles Carroll, barrister.

GRA 115, William Augustus Brewer bookplate collection, University of Delaware Library special collns.

ghman, he was among the leading moderates in the Annapolis Convention, which met as a *de facto* legislature after the governor, Sir Robert Eden, Bt., dissolved the Provincial Assembly in 1774. In 1776-77, he represented Maryland in the Continental Congress in Philadelphia, and then for the final six years of his life sat in the state House of Delegates, the successor to the Lower House of Assembly.

His only two children having died in infancy, Carroll's will, dated 7 August 1781, entailed the vast bulk of his estate on his nephew Nicholas Maccubbin, Jr.,

... and the Heirs of his Body lawfully begotten provided and on Condition that he the said Nicholas Maccubbin Junior and the Heirs of his Body lawfully begotten shall and do take upon himself and themselves and use the surname of Carroll only together with the Coat of Arms and armorial Bearings of the Family of Carroll at all Times from and after my decease.

If Nicholas declined to comply with these conditions, his portion would pass to his younger brothers in succession, again provided they agreed to the name and arms clause. Further, whichever nephew accepted the legacy was directed to 'endeavour to obtain an Act of Assembly for altering his name to Carroll using the Coat of Arms of the Carroll or O'Carroll Family,' although if this proved impossible he could still retain the legacy as long as he took the name and arms.¹⁴

¹⁴ Will of Charles Carroll, Baltimore Co., Md., Register of Wills, bk 3, folio 503, Maryland State Archives [hereafter MSA] C437-22.

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Figure 3: The arms of Charles Carroll, barrister, engraved on a silver platter at Mount Clare.

Collection of the National Society of the Colonial Dames of America in the State of Maryland, Mount Clare Museum House.



A codicil to the will, signed on the day of Carroll's death, withdrew from Nicholas's share the plantation on the outskirts of Baltimore known as Mount Clare, which had become the barrister's favorite residence in his final years, and bequeathed it instead to Nicholas's younger brother James Maccubbin, subject to all the same conditions as to name and arms that the will itself had placed on Nicholas.

Charles Carroll, Barrister, died at Mount Clare on 23 March 1783. In compliance with the will, the Maccubbin brothers promptly sought a private act from the Maryland General Assembly authorizing the change of name and arms. A bill was duly introduced on 9 May and passed both houses the same day.¹⁵ It provided:

that it shall and may be lawful for the said Nicholas Maccubbin, junior, and James Maccubbin, from henceforth to take upon himself and themselves the surname of Carroll instead of that of Maccubbin, and also to use the coat of arms and armorial bearings of the family of Carroll, or O'Carroll, and also for the children and descendants of the said Nicholas Maccubbin and James Maccubbin, to take upon himself, herself, and themselves, the surname of Carroll, and also to use the coat of arms and armorial bearings of the family of Carroll, or O'Carroll.

The coat of arms assumed by the Maccubbin brothers pursuant to this act was *Gules two lions rampant combatant or supporting a sword palewise proper hilted and pommelled or*. The crest was *Upon the stump of a tree a falcon rising proper*.¹⁶ These

¹⁵ 1783 Md Laws c. 3.

¹⁶ The other armigerous Carrolls in Maryland, including Charles Carroll of Carrollton (signer of the Declaration of Independence), his cousin Daniel Carroll of Rock Creek (signer of the United States Constitution), and the latter's brother, the Most Rev. John Carroll, S.J. (first bishop and archbishop of Baltimore), bore *Ar. two lions rampant gu. supporting a sword palewise ppr hilted and pommelled or*. The barrister's family may have been distantly related to these other Carrolls.

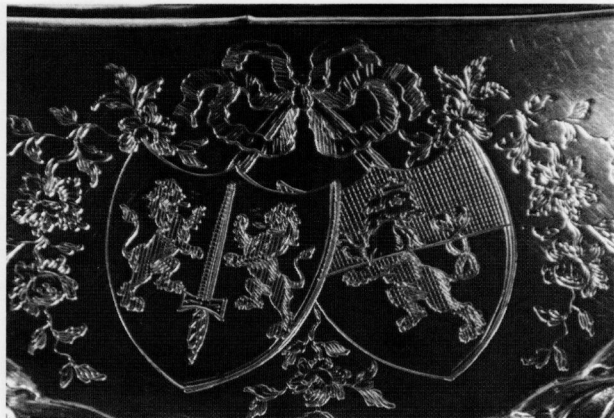


Figure 4: The arms of Carroll *accolé* with those of Tilghman, engraved on a silver punch bowl at Mount Clare.

Collection of the National Society of the Colonial Dames of America in the State of Maryland, Mount Clare Museum House.

arms, one of several similar coats borne by various Irish O'Carroll families, had been brought to Maryland by Dr Charles Carroll, who was the son of yet another Charles Carroll, 'of Clounlisk in the King's County and Kingdom of Ireland' according to the inscription on the tombstone of the doctor's wife, Dorothy Blake Carroll (1702-34), in Kent County, Maryland. The stone is also carved with the Carroll arms, albeit without indication of tinctures, impaling the deceased's paternal arms of Blake, [*Argent*] *a chevron between three garbs* [*sable*] (see **Figure 1**). We know the tinctures of the Carroll arms consistently used by the barrister and his family—a red field with golden lions—from the hatching on his bookplate (see **Figure 2**) and numerous pieces of silver in the Mount Clare collection (see **Figure 3**). The sole exception appears on a punch bowl dated to about 1771, showing the Carroll arms with a silver field and red lions (see **Figure 4**).

In October 1763, a few months after marrying Margaret Tilghman, Carroll wrote to his supplier in London ordering a new seal ring, 'set in Gold and Cut on Cornelian [*sic*] or other Hard Stone the Coat of Arms Inclosed being the Tilghmans Quartered with mine.'¹⁷ What is curious about this ring (which in the event was made of topaz rather than carnelian) is that it shows the red version of the Carroll arms quartered with *Argent a lion sejant regardant* [*sable*?] (see **Plate 1a**). Similar versions are engraved on a silver chocolate pot and a silver cake basket, both circa 1764. The arms of Tilghman, however, are not a lion sejant regardant. At the 1619 visitation of Kent, Margaret's great-great-grandfather Oswald Tilghman was confirmed in the arms *Per fess sable and argent a lion double-tailed rampant regardant counterchanged crowned or*, with *A demi-lion statant sable* for crest.¹⁸ These arms are engraved on the bookplate of Margaret's uncle James, with a the lion in the crest crowned as in the arms

¹⁷ Charles Carroll to William Anderson, 25 Oct 1763, 'Letters of Charles Carroll, Barrister', *Maryland Historical Magazine* 33 (1938), p. 382

¹⁸ *Visitation of the County of Kent Taken in the Year 1619*, ed. Joseph Jackson Howard (Harl. Soc. pubns. vol. 42, London 1898) p. 37; 'Tilghman family', *Maryland Historical Magazine* 1 (1906), p. 181.

Figure 5: Bookplate of James Tilghman of Annapolis.

Winterthur Library, Wilmington
(Delaware).



and with a mullet for difference (see **Figure 5**), and *accolé* with the white version of the Carroll arms on the 1771 punch bowl mentioned above.

As can be seen on the bookplate, the demi-lion statant in the crest closely resembles a lion sejant, the only differences being that the lower parts of the lion's rear legs emerge from instead of resting upon the torse and the tail is not visible. It would therefore appear that the lion sejant regardant used by Charles and Margaret Carroll as their Tilghman quartering was actually a hybrid of the beasts from the Tilghman shield and crest—the sejant posture from the crest, the regardant attitude from the shield.

The other point of interest is that Charles and Margaret Carroll displayed a quartered coat of arms even though she was not a heraldic heiress. Two of her three brothers outlived the barrister, and between them they had four sons living when Margaret herself died in 1817.¹⁹ Even if she had been an heiress, today's rules would require the barrister to show the arms of Tilghman on an escutcheon of pretense rather than quartered.

The modern rules, however, evolved over a long period from the very different practices of the late Middle Ages, when, as W. H. D. Longstaffe showed,²⁰

The modern rules as to husbands only impaling or wearing escutcheons of pretence, and the issue only quartering were unknown. When the husband took a vested right in his

¹⁹ 'Tilghman family', p. 376.

²⁰ W. H. D. Longstaffe, 'The old heraldry of the Percys', *Archæologica Æliana* n.s. 4 (1860), p. 158.

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Figure 6: Bookplate of James (Maccubbin) Carroll.

Winterthur Library, Wilmington (Delaware).

wife's lands, he either impaled or quartered her arms; while for the issue, the inherited coats were sometimes impaled as well as quartered with each other.... Usually, however, males quartered the arms of their wives or ancestresses from whom they acquired their lands, while impalements were practically the general bearings of married women, who took an immediate interest in their husbands' lands by right of dower.

Although the practice of the College of Arms was codified in the late sixteenth century and has since become standard throughout the English-speaking heraldic world, Alexander Nisbet's discussion of marshalling in his 1722 *System of Heraldry* shows that these rules were far from universally observed outside England as late as the early eighteenth century.²¹ In the case of Charles Carroll, Barrister, and his wife, the use of quartering might well reflect an earlier armorial usage, one that may still have been current in Ireland up to the time of Dr. Charles Carroll's emigration. It is noteworthy that the same arrangement appears on the tombstone of another Marylander of Irish origin, Daniel Dulany (d. 1753), and his wife Rebecca Smith (d. 1737) in St. Anne's churchyard in Annapolis, even though Rebecca, like Margaret Carroll, was not a heraldic heiress.

The will of Charles Carroll, Barrister, required that his beneficiaries bear the surname and arms of Carroll alone, but it may be asked whether they had other arms

²¹ Alexander Nisbet, *A System of Heraldry* (Edinburgh 1722) vol. 2, p. 36, notes that it was not uncommon for the husband of a heraldic heiress to quarter her paternal arms immediately upon marriage rather than placing them on an escutcheon of pretense.

to use in any case. Nicholas and James's great-grandfather John Maccubbin, who immigrated to Maryland in 1649, is sometimes said to have been a cadet of McCubbin of Knockdolian, Ayrshire, but no proof of this has yet been found,²² and there is no evidence that any of the Maryland Maccubbins ever used the arms matriculated in Lyon Register by Fergus McAben (McCubbin) of Knockdolian in 1673, *Azure upon a rock proper a castle argent*,²³ or any other arms.

In practice, Nicholas Carroll may never have used arms at all, either before or after the passage of the act, although the Carroll arms with the red field do appear on a late nineteenth-century engraving of The Caves, a plantation some fifteen miles north of Baltimore that was part of Nicholas's inheritance.²⁴ James Carroll's bookplate shows the identical arms borne by his uncle the barrister (see **Figure 6**).

Carnan to Ridgely

In some ways the life of Captain Charles Ridgely (1733-1790) resembled that of Charles Carroll, Barrister. Like Carroll, Ridgely was the son and namesake of a wealthy landowner and merchant. He played nearly as prominent a role in Maryland politics before and through the American Revolution. But there were contrasts as well, especially in the two men's education. At the age when Charles Carroll was receiving a proper gentleman's schooling at Eton and Cambridge, Charles Ridgely was being trained as a mariner, starting as supercargo on a ship under charter to his father. He eventually worked his way up to serve as master of several merchant vessels, whence the honorific title by which he was known for the rest of his life.

The Ridgelys had been solidly established in the Maryland planter elite for three generations and nearly 100 years when the future captain was born. The family fortune was originally built on land and tobacco, but the captain's father, Colonel Charles Ridgely, had branched out into a variety of mercantile and manufacturing endeavours, including the Northampton Iron Works north of Baltimore. When the colonel died in 1772, the younger Charles became sole proprietor of one of the largest industrial enterprises in British North America. He soon took up the political role appropriate to his standing. In 1773, Captain Ridgely was elected to the seat in the Lower House of Assembly that had been held successively by his father and elder brother until shortly before the latter's death in 1771. Ridgely sat along with Carroll in the revolutionary Annapolis Convention and later in the House of Delegates, and finally capped his political career by leading the opposition to Maryland's ratification of the new Federal Constitution—albeit unsuccessfully—in 1788.

Ridgely devoted his two remaining years to completing a magnificent house on a 2,000-acre tract known as Hampton that had been a wedding gift from his father in 1760. Located more than ten miles north of Baltimore, in an area consisting of small

²² Rudolph Loeser, 'John Maccubbin of Anne Arundel County', *Maryland Genealogical Society Bulletin* 40 (1999), no. 2, pp. 159-221.

²³ PRABScot 1, 359.

²⁴ J. Thomas Scharf, *History of Baltimore City and County* (Philadelphia 1881) facing p. 706. At the time of publication, The Caves was the property of Nicholas (Maccubbin) Carroll's grandson, General John Carroll.

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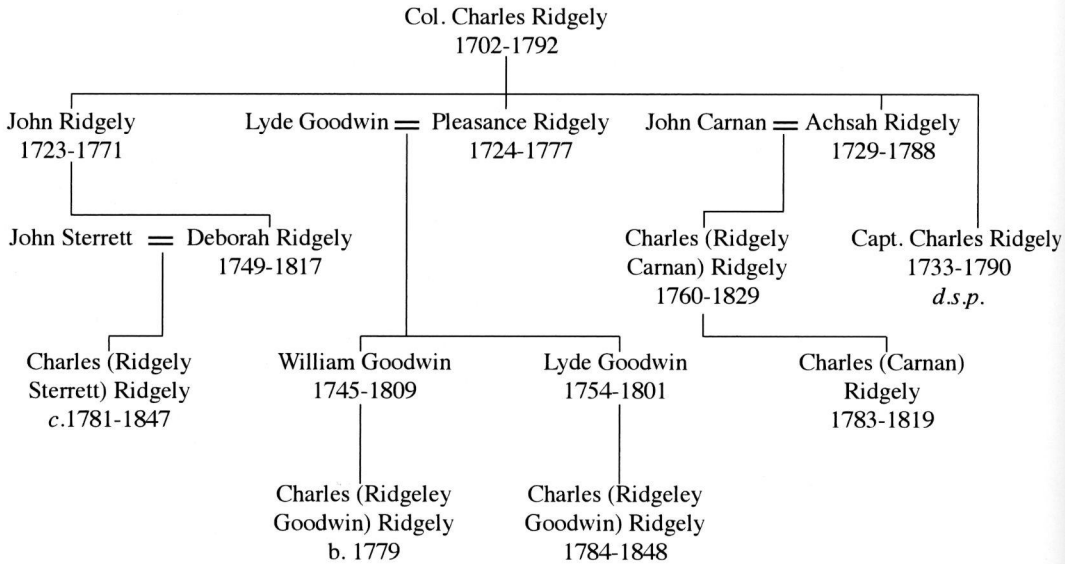


Table B: The Ridgely, Carnan, Sterrett and Goodwin families.

farms, woods, and ironworks, the ambitious project was derided by the locals as ‘Ridgely’s Folly’. When it was finished in 1790, its 22,500 square feet (2,100 square metres) of living space made it the largest house in the United States. It would remain the largest private residence for another decade, being surpassed only by the White House, completed in 1800.

Charles Ridgely had no children to inherit the mansion and his other far-flung properties. He therefore wrote an extensive and complex will, dated 7 April 1780, distributing most of his estate among various nephews and great-nephews, all of whom had been named after him (see **Table B**).²⁵ All the bequests were made on the condition that the beneficiaries would:

... immediately on my death take upon themselves and each bear the names and Sir names [*sic*] of Charles Ridgely and that their Male descendants bear and be called by the Sir name of Ridgely...and that application be made by them [or] on their Behalf to the General Assembly for that purpose for a Law Enabling them and their descendants to bear the name of Ridgely forever hereafter and if they or any of them should refuse to take upon themselves the name of Ridgely as aforesaid then and in such case the Several Devises and Bequests to them respectively given shall respectively cease and be void.

Captain Charles Ridgely died at Hampton on 28 June 1790. As Nicholas and James Maccubbin had done seven years earlier, the nephews mentioned in the will (or their parents) petitioned the General Assembly for a private act authorizing the changes

²⁵ Will of Charles Ridgely, Baltimore Co., Md., Register of Wills, bk 4, folio 450, MSA C437-46.

of name. The principal beneficiaries, Charles Ridgely Carnan and his son Charles, petitioned to be allowed to assume the Ridgely arms as well, even though doing so was not a requirement of the will. As in the Carroll case, the bill passed quickly, being approved by the House of Delegates without dissent on 24 November 1790, and by a 7-3 vote in the Senate two days later.²⁶ On 14 December, Governor John Eager Howard signed into law the act providing, in part,

That it shall and may be lawful for the said Charles Ridgely Carnan, and his said son Charles, and for each of them, to take upon himself and themselves the name and surname of Charles Ridgely, in the stead of their present names and surnames, and also for the male descendants of the said Charles Ridgely Carnan, and of his said son Charles, to take upon himself and themselves the surname of Ridgely, and also to use and bear the coat of arms and armorial bearings of the family of Ridgely.

Charles Ridgely Carnan (1760-1829), now renamed Charles Carnan Ridgely, turned out to be even more distinguished than his uncle, with a political career that culminated in three consecutive one-year terms as governor of Maryland from 1816 to 1819, the maximum allowed by the state constitution. Governor Ridgely built upon his uncle's material legacy as well, but it was for his aristocratic style and conduct rather than his sheer wealth or political power that Charles Carnan Ridgely was best known. The *Maryland Gazette* made special mention of it in his obituary: "The splendour with which he entertained, his plate and his equipage, was adapted to his fortune as well as his disposition; while they procured him the admiration of all, they were never made use of to wound the feelings of any."²⁷ Like Charles Carroll, Barrister, Governor Ridgely bred and raced thoroughbreds and patronized the fine arts, although where Carroll had favored Charles Willson Peale, Ridgely's painter of choice was the young English immigrant Thomas Sully, who left a portrait that speaks eloquently of the personal elegance for which the governor was acclaimed.

The arms adopted by Charles Carnan Ridgely and his son were *Argent on a chevron sable three pierced mullets argent*, with *A stag's head erased or* for crest. These arms were confirmed to the Ridgelys of Albright Hussey in the 1623 visitation of Shropshire,²⁸ but there is no evidence of their use by any of the Maryland Ridgelys before Captain Charles Ridgely's death in 1790, and no genealogical connection between the Hampton and Shropshire families has ever been proven.²⁹ Indeed, Captain Ridgely's failure to mention a change of arms in his will may well imply that he was unaware of their existence.

However it was that Charles Carnan Ridgely chose to petition for a change of arms not required by the will, and however he came to identify these arms as the ones he was authorized to take under the act, he and his wife Priscilla certainly used them

²⁶ 1790 Md. Laws c. 10.

²⁷ *Maryland Gazette* (Annapolis), 23 July 1829, p. 3.

²⁸ *The Visitation of Shropshire Taken in the Year 1623*, ed. George Grazebrook and John Paul Rylands (Harl. Soc. pubns. vol. 29, London 1889), part 2 p. 419. The visitation blazons the crest as a buck's head, but the Ridgelys of Hampton invariably depicted the deer with the sharp antlers of a stag.

²⁹ Lynne Dakin Hastings, 'Furnished with "Gentility": use of the Ridgely arms at Hampton', *Maryland Antiques Show and Sales 1987* (Baltimore 1987), p. 94.

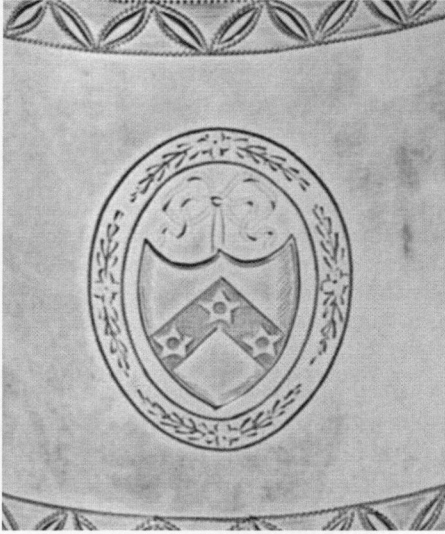


Figure 7: Arms of Charles Carnan Ridgely, engraved on a silver tea caddy.

U.S. National Park Service, Hampton National Historic Site.

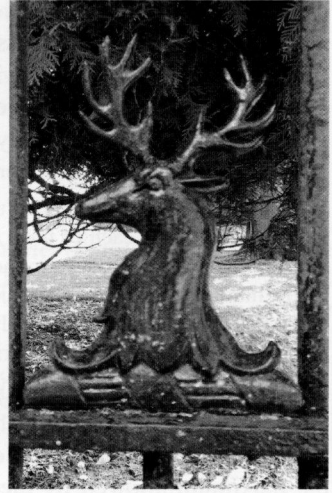


Figure 8: Crest of Ridgely in a wrought-iron gate at Hampton.

Author's photograph.

lavishly in furnishing their grand house.³⁰ Almost immediately after inducing Captain Ridgely's widow to relinquish her life estate so they could move in, the new master and mistress of Hampton were ordering armorial silver (see **Figure 7**). That would be only the beginning. A large service of French armorial porcelain would follow in the 1820s, although with a significant error that is said to have annoyed the purchasers,³¹ the substitution of gold unpierced mullets in place of the original silver pierced ones (see **Plate 1b**).

Governor Ridgely's descendants would be equally if not more assiduous in the heraldic embellishment of Hampton. In the 1850s, Eliza Ridgely Ridgely, wife and cousin of the governor's son and heir John Carnan Ridgely,³² installed curtain tie-backs in the form of the Ridgely crest, pier mirrors and valances carved variously with the crest or the shield of the arms, and stained glass armorial fanlights with yet another error in tincture, *Azure on a chevron gules three mullets argent* (see **Plate 2**). The stag's head was a particularly favored decorative motif, appearing on silverware, china, carriages and horse harness, and the estate's wrought-iron gates (see **Figure 8**), among other items. Today a National Historic Site owned and operated by the U.S.

³⁰ As had been the case with the Maccubbin brothers, the Carnans do not appear to have had paternal arms for Charles Carnan Ridgely to marshal with those of his uncle.

³¹ Hastings, loc. cit.

³² As a teenager, Eliza was the beautiful 'Lady with a Harp' in Sully's famous painting, now at the National Gallery of Art in Washington.

National Park Service, Hampton even has in its collections a pair of cufflinks with the Ridgely arms that were ordered by one of the governor's descendants as late as the 1930s.

Hall to Rozer

Compared to Charles Carroll, Barrister, and Captain Charles Ridgely, Henry Rozer (1725-1802) is not well known in Maryland history, partly because for the first 54 years of his life he held no civil or military office and played no significant role in politics. There was a good reason for this: unlike Carroll and Ridgely, Rozer was a Roman Catholic. From 1715 until the American Revolution no one could hold office in Maryland without subscribing to the Oath of Supremacy.

Rozer was nevertheless an important member of Maryland's social if not political elite. His paternal grandfather had come to Maryland from Barbados in the 1660s and soon achieved a powerful position, thanks in part to having married the Lord Proprietor's stepdaughter.³³ Henry's father Notley was named after his godfather Deputy Governor Thomas Notley, from whom he inherited the thousand-acre Cerne Abbey Manor, now the site of the United States Capitol. Henry's mother, Elizabeth Whetenhall, came from a prominent family of Kentish recusants, and his half-sister Anne was an aunt of Charles Carroll of Carrollton, a signer of the Declaration of Independence and by far the wealthiest and most prominent Catholic layman in the newly independent United States.

Henry Rozer was educated in Europe, probably at St. Omer's School in Artois, the Jesuit institution favored by well-to-do English and colonial Catholics of the day.³⁴ Throughout his life, even during the years that he was barred from political office, he played the public role expected of a gentleman to the extent he was permitted, especially within the Catholic community. For example, he was one of 13 signatories of a petition to the Upper House of the Provincial Assembly in about 1755, protesting a bill that would have deprived 'Papists' of their few remaining civil and religious rights.³⁵

Eventually, as the break with the mother country approached in 1775, the voters of Prince George's County showed themselves ready to abandon the British-imposed religious test by electing Henry Rozer to the county committee of observation to enforce the Continental Congress's embargo against British goods. A few years later

³³ D. D. Debe and R. R. Menard, 'The transition to African slavery in Maryland: a note on the Barbados connection', *Slavery and Abolition* 32 (2011), pp. 129-41 at 133.

³⁴ Deposition by Henry Rozer, Prince George's Co., Md., 10 Nov 1801: 'this deponent was sent over to Europe for his Education at the age of Ten years' [i.e., about 1735] (Prince George's Co., Md., Land Records, liber JRM 9, folio 205, MSA). Dom Aidan Bellinger, 'Early North American connections of the English Benedictine Congregation', 6 Nov 2012, online at www.monlib.org.uk/papers/ebch/1992bellenger.htm, quotes T. G. Holt, *St. Omers and Bruges Colleges 1593-1773* (Catholic Rec. Soc. pubns. vol. 69, London 1979), pp. 226-7: 'Several students of the name Rozer or Rozier (from America) appear in the records of the English Jesuit Continental Colleges'.

³⁵ 'Popery in Maryland', *American Catholic Historical Researches* n.s. 4 (1908), p. 264.

THE COAT OF ARMS

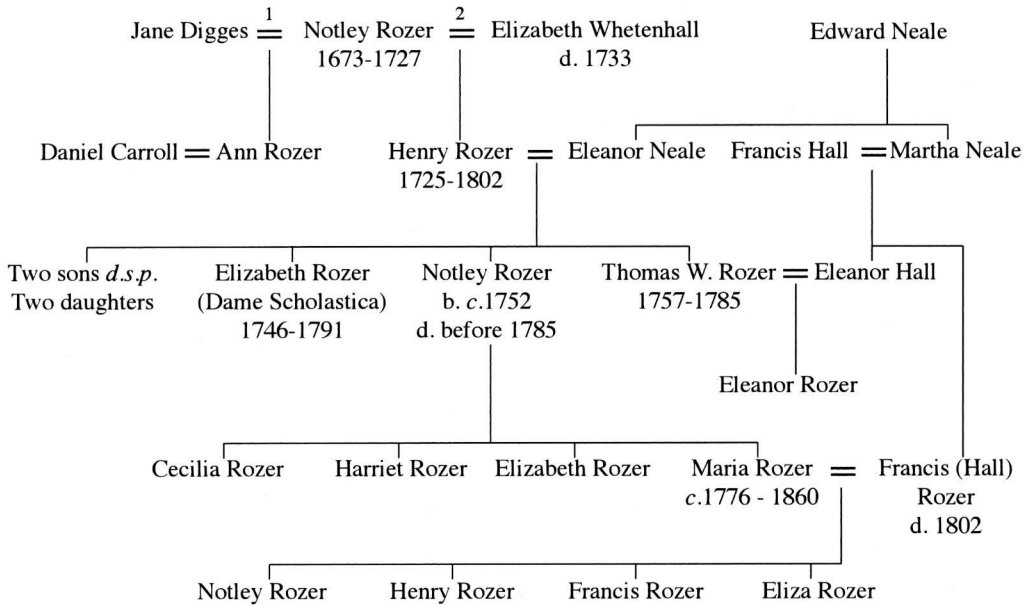


Table C: The Rozers and Halls.

he was named a justice of the peace for both Prince George's and Frederick counties. After Independence, Rozer served on the fundraising committee for the new Jesuit college that would eventually become Georgetown University, his name appearing on the list second only to that of Charles Carroll of Carrollton. And when the newly installed bishop of Baltimore, John Carroll, organized the first American printing of the Douay-Rheims Bible, his friend Henry Rozer was among those underwriting the project.³⁶

Henry Rozer's plantation, styled Admirathoria in the land records but in practice known as Notley Hall, lay almost directly across the Potomac from Alexandria, Virginia, some eight miles upstream from George Washington's Mount Vernon. Rozer was active in business on both banks of the river, spending enough of his time on the Virginia side to be considered an inhabitant of Alexandria when the time came to

³⁶ While in Europe in 1760, Henry Rozer was one of the witnesses to the quitclaim deed by which John Carroll, then a theology student in Liège, renounced his share of his father's estate in favor of his siblings, as required by his vow of poverty as a Jesuit. *Provincial Court Land Records, 1759-1763* (Annapolis 2007) = AOM 723 (AOM Online <http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000723/html>), pp. 118-21.

petition the Virginia General Assembly for the incorporation of the town.³⁷ He and Washington were business associates in ventures ranging from horse breeding to land speculation as well as social acquaintances, both before and after the Revolution.³⁸

Like many of his contemporaries, Henry Rozer was intent on ensuring that his material legacy be preserved in the Rozer family for future generations, and he had a habit of going to great lengths to ensure that all eventualities were covered—sometimes with unfortunate results. One 1759 deed that he and his wife executed in favour of their children was so full of reservations and contingent remainders that it took a private act of the Maryland General Assembly to vest clear title in the various grantees.³⁹ Even so the property was still being disputed in court as late as 1834.⁴⁰

Rozer's efforts were to no avail, however, as all four of his sons died well before he did, two without issue and two having begotten only daughters (see **Table C**). Rozer therefore undertook to guarantee the survival of the family name by requiring his nephew Francis Hall, Jr., to take the surname Rozer as a condition of marrying Henry's granddaughter Maria. Francis himself was not required to take the Rozer arms, but any children he and Maria might have were to do so. Accordingly, a few weeks before the wedding, Francis Hall petitioned the General Assembly and was duly authorized by an act of 22 December 1792:⁴¹

to take upon himself the name and surname of Francis Hall Rozer, in the stead of his present name and surname, and also for the descendants of the said Francis Hall to take upon themselves the name of Rozer, and also use and bear the coat of arms and armorial bearings of the family of Rozer.

This statute had the happy effect of preserving the Rozer name but what practical armorial consequences it had are less clear, since we do not know what arms Henry Rozer actually bore. A tantalizing lead appears in a 1900 genealogical collection, stating that the tombstone of Henry's son Thomas Whetenhall Rozer (1757-85) in Queenstown, Maryland, was 'in a good state of preservation, bearing the coat of arms of the Rozier [*sic*] family'.⁴² Unfortunately, inquiries as to the stone's present location, if it still exists, have been fruitless. Although arms associated with families

³⁷ Alexandria 1778 12 3, Church 903P, Record Group 78, The Library of Virginia, Fairfax Resolves Chapter, Virginia Society of the Sons of the American Revolution. Available at www.fairfaxresolvessar.org/content/ffx_historical_petitions/Alexandria%201778%2012%203%20Church%20903P.pdf.

³⁸ Donald Jackson (ed.), *Diaries of George Washington* (Charlottesville 1976) vol. 1, pp. 299, 301 (entries for 28 June and 4 July 1762); vol. 2, pp. 126 (3 Feb. 1769), 140 (2 Apr. 1769); vol. 3, p. 234 (20 Feb. 1774); vol. 5, pp. 36 (6 Sep 1786), 320 (12 May 1788), 326 (22 May 1788). Rozer's name appears along with those of George Washington, the brothers Richard Henry Lee and Francis Lightfoot Lee, and a number of other members of leading Virginia and Maryland families among the shareholders attending the general meeting of the Mississippi Company at Stafford Court House, Virginia, on 27 May 1767. C. E. Carter, 'Documents Relating to the Mississippi Land Company, 1763-1769'. *American Historical Review* 16 (1910-11), pp. 311-19 at 317.

³⁹ 1787 Md Laws c. 18.

⁴⁰ *Dulany's Lessee v. Tilghman*, 6 G&J 461.

⁴¹ 1792 Md Laws c. 24.

⁴² Mary Burke Emory, *Colonial Families and Their Descendants* (Baltimore 1900), p. 224.

named Roser, Rosher, Rosier, and Rosser appear in sources such as Berry's 1828 *Encyclopædia Heraldica*, Robson's 1828 *British Herald*, and Burke's 1842 *General Armory*. Henry Rozer's English forebears have yet to be conclusively traced, so it is impossible to say from which if any of these families he may have been descended.

Clerk to Clerk Lee

Elinor Ann Lee, the moving force behind the fourth and last Maryland act for a change of name and arms, was a fifth-generation member of one of the most distinguished families in American history. The landholdings of the numerous Lee cousins ran to nearly 100,000 acres (40,500 ha) in at least eight Virginia and Maryland counties. Their political prominence matched their economic and social standing. Before Independence, Elinor's father had been a member of the Lord Proprietor of Maryland's Council for more than thirty years, four of those as its president, the highest position to which a colonist could aspire. He was even acting governor for several months in 1774 while Sir Robert Eden was absent in England. Elinor's brother and grandfather also sat in the Council, which was Maryland's functional equivalent of the British Privy Council and House of Lords combined. Earlier still, her great-grandfather and great-great-grandfather had both been members of the counterpart body in Virginia, as were several of her uncles and cousins after them. During and after the Revolution, Elinor's first cousin Thomas Sim Lee served five one-year terms as governor of Maryland. Two second cousins signed the Declaration of Independence; another was an eminent cavalry commander in the Continental Army and later a three-term governor of Virginia.

But by 1803, when Elinor initiated the chain of events that led her niece's husband James Clerk to assume the additional surname of Lee and the arms that went with it, the senior line of the Lee dynasty in Maryland was in danger of extinction. The members of this branch were known as the Lees of Blenheim, from the name of the plantation in Charles County that Elinor's grandfather, Captain Philip Lee (1681-1744), had established in the early 1700s. Her father Richard (1706-89) was the eldest of Philip's nine sons and thus inherited the bulk of his lands, more than 4,000 acres (1,600 ha) including Blenheim itself. Richard also succeeded Philip on the Lord Proprietor's Council and in other duties of state.

Richard Lee of Blenheim, commonly known as 'Squire Lee', had six children: two sons and four daughters. The elder son, Philip Thomas Lee, was marked to carry on the family legacy. Born in 1738, he was educated at Eton, Cambridge, and the Inns of Court. Shortly after being called to the bar from the Middle Temple in 1764, Philip Thomas Lee contracted a mutually advantageous marriage with his first cousin Ann Russell, daughter of his father's sister Ann and her husband James Russell, a Scottish-born, London-based tobacco merchant who had lived in Maryland from the 1730s to 1750s.⁴³ After returning to Maryland with his new family, Philip Thomas soon began taking over the aging Squire's political duties, first as a local judge and

⁴³ J. M. Price, 'One family's empire: the Russell-Lee-Clerk connection in Maryland, Britain, and India, 1707-1857', *Maryland Historical Magazine* 72 (1977), pp. 168-73, 182.

later as councillor, justice of the Provincial Court, and 'naval officer'—essentially the chief customs official—for the upper Potomac River.

With Philip Thomas destined to succeed as squire of Blenheim, his younger brother Richard was set up with a substantial landed estate of his own on both sides of the Potomac and appointed to an office befitting his heritage, sheriff of Charles County, Maryland. But Richard Lee, Jr., proved to be a fractious, even capricious official, making numerous enemies within and beyond the county and showing early hints of the mental instability that would eventually lead to his being declared legally insane in 1786.⁴⁴

Unlike most of the Lees, all three of the Blenheim men, father and sons, adhered to the loyalist side when the breach with Britain occurred in 1775-76, but only Richard Lee, Jr., actually fled to England and thus suffered the confiscation of his lands. Richard Lee, Sr., retired to Blenheim and was allowed to live there quietly until his death in 1789, conditional on the payment of treble property taxes for his refusal to swear allegiance to the newly independent State of Maryland. Philip Thomas persevered in his loyalty to George III for two years before taking the oath in 1778, only to die a few months later at the age of forty. He left behind four daughters and a two-year-old son, named Russell after his maternal grandfather, upon whom the future of the Blenheim line now rested. The death of this boy in 1793 at the age of 17 after being kicked by a horse came as a heavy blow. As the epitaph on his tombstone in the family cemetery said, he had been 'the last fond hope of a respectable and a numerous and once extensive family'.⁴⁵

The Blenheim family now counted only mad brother Richard, safely tucked away in the Yorkshire countryside; Richard's one remaining unwed sister Elinor Ann Lee; and Philip Thomas Lee's four daughters—Sarah, Ann, Eleanor, and Margaret—all by now married or soon to be. Only Elinor Ann Lee was left to serve as guardian of the Blenheim heritage. She was co-administratrix of her father's estate and co-executrix of her mother's, and the one who took responsibility for marking the graves of her parents and young nephew Russell in the family cemetery at Blenheim. It was also Elinor Ann Lee who hit upon a method of ensuring the survival of the family's distinguished name by persuading the husband of her niece Margaret to change his name. It is not clear what methods of persuasion Miss Lee employed; when she died in 1806 her will showed no particular favour to the niece who had honored her wishes. Whatever the case, in late 1803 Margaret Russell Lee and her husband James Clerk filed a petition in the General Assembly that led soon thereafter to 'An ACT to alter and change the names of James Clerk, and Margaret Russell his wife, of Prince-George's county, and of their children'.⁴⁶ This provided as follows:

⁴⁴ Price, *op. cit.* pp. 192-3.

⁴⁵ Maryland Historical Trust/Maryland Inventory of Historic Properties Form, Lee Graves, vic. Newburg, Md. (Inventory No. CH-181), MSA. The gravestones were transcribed in 1939. That there were numerous living descendants of Philip Lee's 16 other children, including former Governor Thomas Sim Lee, seems not to have mattered; by then they would have been far enough removed not to be thought of as being 'of Blenheim'.

⁴⁶ 1803 Md Laws c. 69.

THE COAT OF ARMS

Whereas James Clerk, and Margaret Russell his wife, have represented to this general assembly, that Miss Eleanor Anne Lee, aunt to the said Margaret, having no offspring of her own, is desirous that the said James and Margaret, and their issue, should add her family name, (Lee,) to their's [*sic*], and that they should assume and take upon themselves the surname of Clerk Lee hereafter, which they are willing to do;

II. Be it enacted, by the General Assembly of Maryland, That it shall and may be lawful for the said James Clerk, and Margaret Russell Clerk, and their issue, born or hereafter to be born, to take upon themselves, and each of them, the surname of Clerk Lee, in the stead of their present surname, and also to use and bear the coat of arms and armorial bearings of the family of Lee ...

The armorial bearings to which the act referred, a checkered gold and blue fess upon a red field scattered with silver billets, had been used in slightly varying forms by the Lees of Virginia and Maryland for nearly 150 years, perhaps longer, by the time this statute was enacted. They were in the family no later than 1655, when Captain Philip Lee's father, Colonel Richard Lee I, lodged a petition with Lord Protector Cromwell and his Council to obtain the release of a large amount of silver, 'every piece having [his] coat of arms', that had been detained in customs when Colonel Lee tried to return home to Virginia after a visit to England.⁴⁷

The petition did not give the blazon of the arms, but John Gibbon, who spent some fifteen months in Virginia as a guest at Colonel Lee's plantation, Dividing Creeks, in 1659-61, rectified that omission. In addition to his oft-quoted observations on the skin paint and shields of the Virginia Indians—from which he concluded that 'Heraldry was ingrafted naturally into the sense of the humane [*sic*] Race'—Gibbon made a note of the arms borne by his host: *Gul. a Fes Chequy Or, Bl. between eight Billets Arg.* After being appointed Bluemantle Pursuivant in 1670, Gibbon documented Colonel Lee's use of these arms in the records of the College of Arms and published them, with an illustration, in his *Introductio ad Latinam Blasoniam*, where he also noted the existence of a ten-billet variant.⁴⁸

There is plentiful physical evidence of the use of these arms by succeeding generations of Lees. They are engraved on a silver pint cup at Queen's College, Oxford, inscribed with the name of Colonel Lee's eldest son John and the date 1658, and on a communion chalice left to Wicomico Parish Church in Northumberland County, Virginia, by John's younger brother Hancock in 1711.⁴⁹ With the addition of a large crescent in upper sinister for difference, the arms were carved in wood above the front door of Cobb's Hall, the home of Richard Lee I's grandson Charles Lee, probably in about 1720.

When another of Colonel Lee's grandsons, Thomas Lee of Machodoc, reported in the *Maryland Gazette* in 1729 that nearly twenty pieces of plate had been stolen

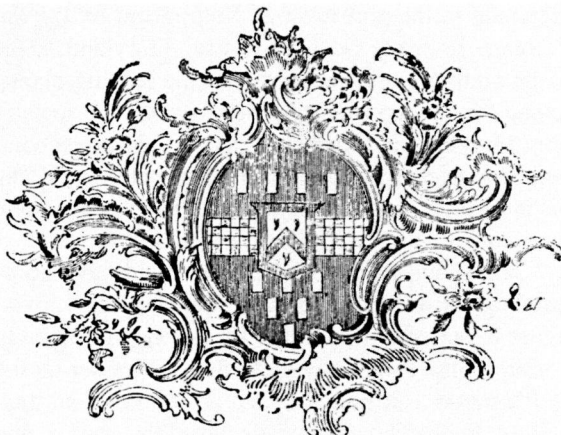
⁴⁷ *CSP Col* vol. 12, p. 430. The petition was successful.

⁴⁸ John Gibbon, *Introductio ad Latinam Blasoniam* (London 1682), p. 156.

⁴⁹ The rococo style of the engraving on the Queen's College cup has led some to conclude that the date 1658 is an error, but pieces of silver that were said to have been gifts of gentleman commoners such as John Lee were generally purchased by the college after the fact from the extra fees paid by such students. The date is thus not that of the cup's acquisition, but of its donor's matriculation. See J. R. Magrath, *The Queen's College* (Oxford 1921) vol. 2, p. 36.

Figure 9: Arms of Lee with Russell in pretense, drawn from an engraved silver dish.

Edmund Jennings Lee, *Lee of Virginia 1642-1892. Biographical and genealogical sketches of the descendants of Colonel Richard Lee* (Philadelphia 1895), p. 305.



from his house shortly before it was destroyed by arson, he described the missing items as being engraved with 'Fess cheque [*sic*] between eight billets, Four and Four. The Crest is a Squirrel sitting upon and eating an Acorn off the branch of a Tree proper.'⁵⁰ This coat, in the ten billet form, crossed the Potomac to Maryland along with Captain Philip Lee.⁵¹ It is found, for example, on the seal of Elinor Ann Lee's cousin, Governor Thomas Sim Lee. More importantly for our purposes, it also appears on a silver platter belonging to Philip Thomas Lee of Blenheim, with his wife's paternal arms in pretense, as shown in a drawing in Edmund Jennings Lee's *Lee of Virginia* (1895) (see **Figure 9**).

The two other armorial families who figured in this case were also distinguished, if not quite as historically prominent as the Lees. Philip Thomas Lee's father-in-law, James Russell (1708-1788), came of a family of landowners, clergymen, and lawyers from north Peeblesshire, not far from the border with Midlothian. He was the eldest son of James Russell, W.S. (b. 1668), procurator-fiscal of Edinburgh, who was in turn the second son of James Russell of Kingseat.

This third James Russell undertook to pursue his fortune as a merchant in the American colonies, departing for the New World shortly after reaching adulthood on the journey that would lead directly to his connection with the Lee dynasty. By the age of twenty-seven, he was well established as a financier, shipper, and tobacco

⁵⁰ *Maryland Gazette* (Annapolis), 11-18 March 1728/29, p. 4.

⁵¹ At some point c. 1750, the arms used by the descendants of Thomas Lee (known as Thomas Lee of Stratford from the name of the house he built to replace Machodoc) underwent a genealogically questionable transformation when Thomas's sons adopted the quartering of the arms of Astley—*Az. a cinquefoil pierced ar. within a bordure engrailed erm.*—used by the Lees of Coton Hall, Salop., based on a 1745 exchange of letters between their father and Lancelot Lee of Coton Hall. These quartered arms are often mistakenly attributed to all the descendants of the original Colonel Richard Lee, probably thanks to the historic prominence of the Stratford line, but other branches of the family including that of Blenheim continued to bear the unquartered version in the ten-billet variant reported by Gibbon.

merchant in the port town of Nottingham on the Patuxent River, a tributary of the Potomac, in Prince George's County, Maryland. In the course of his business, Russell made numerous connections with the leading planters along both banks of the Potomac River, who were *ipso facto* among the social, economic, and political elite of both Maryland and Virginia. Among his earliest contacts were Richard Lee of Blenheim and Richard's younger brothers Francis and Thomas.⁵² In the long run, perhaps his most important connection was the one he made with their sister Anne, whom he married within a few years of settling in Maryland.

James and Anne Lee Russell would have no sons to inherit Russell's rapidly growing fortune, but did have four daughters, two of whom made marriages that figure in our story (see **Table D**). As we have already seen, Ann Russell married her cousin Philip Thomas Lee, the first son of her mother's eldest brother, Richard Lee of Blenheim. Because Ann had no brothers and therefore expected to be a heraldic heiress, Philip Thomas Lee displayed the arms of his father-in-law on an escutcheon of pretense surmounting those of Lee, as mentioned above.

The father-in-law's arms were those of Russell of Kingseat, *Argent a chevron between three powets* (i.e. tadpoles) *within a bordure sable*, which had been matriculated in Lyon Register by James Russell's grandfather between 1672 and 1676. The crest of the Kingseat family was *A fountain proper* and the motto *Agitatione purgatur* ('It is cleansed by agitation').⁵³ The hatching on the drawing of the Lee-Russell dish implies that James Russell used a version of the Kingseat arms differenced for cadency, with the chevron and bordure Gules rather than Sable, but there are four reasons why this was probably not actually the case. First, the omission of the dots for Or in the hatching of the fess in the basic Lee arms suggests that the artist may not have been familiar with the heraldic significance of the lines on the engraving. Secondly, the dish was reportedly examined by George W. Marshall, then Rouge Dragon Pursuivant and later York Herald, who blazoned the chevron and bordure on the inescutcheon as sable.⁵⁴ Thirdly, a red bordure and chevron would be a differenced version of the arms of Russell of that Ilk, *Argent a chevron Gules between three powets sable*. It is unlikely that a scion of the Kingseat house would revert within two generations to those arms as the basis for his own. Finally, the arms with black bordure and chevron appear on a Chinese export porcelain teapot, sold at auction in 2008, which seems likely to have belonged to James Russell.⁵⁵

In 1757, one of James Russell's younger daughters, Sarah, married another Scottish merchant based in London, Thomas Clerk of Listonshiels (1722-69). Thomas was the eldest son of Dr John Clerk of Listonshiels (1689-1757),⁵⁶ past president of

⁵² Price, *op. cit.* p. 168.

⁵³ PRABScot 1, 405; Robert Gayre of Gayre and Nigg, *Roll of Scottish Arms* (Edinburgh 1964-69) vol. 2, p. 350.

⁵⁴ Edmund Jennings Lee, *Lee of Virginia* (Philadelphia 1895), p. 304, note 1.

⁵⁵ See Northeast Auctions, Annual Marine, China Trade and Sporting Auction, 15-17 Aug 2008, Manchester, N.H., at www.northeastauctions.com/search/detail.php?l=1744&a=marine08. The arms are misidentified as Russell of that Ilk, which has a chevron gules and no bordure.

⁵⁶ Joseph Foster, *The Royal Lineage of Our Noble and Gentle Families* (London 1884) vol. 2, pp. 109-12.

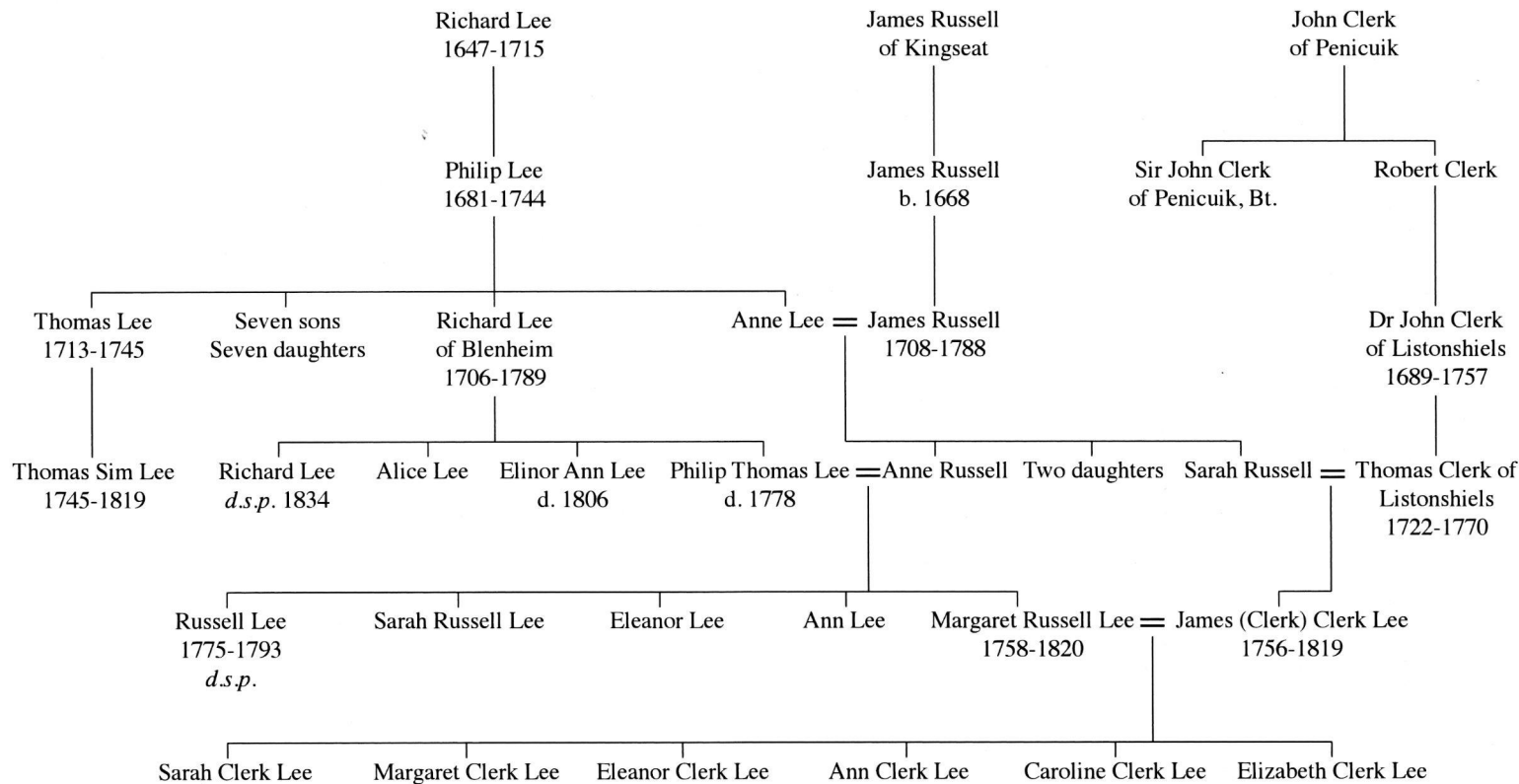


Table D: The Lees Russells, Clerks and Clerk Lees.

the Royal College of Physicians of Edinburgh and a man with close connections to the leading figures of the Scottish Enlightenment, including Joseph Black and Adam Smith. Dr Clerk was the grandson of another John Clerk (1611-74), a native of Montrose who had set up business in Paris as a general merchant and founded a family fortune sufficient to buy the estate of Penicuik, near Edinburgh, and thus enter the landed gentry. His first cousin, Sir John Clerk of Penicuik, Bt., was an eminent advocate, a baron of the exchequer, one of the Scottish commissioners for the 1707 Treaty of Union, and a founder of what is now the Royal Society of Edinburgh.

The James Clerk who later took the name and arms of Lee was Thomas and Sarah Russell Clerk's first son, born in London in 1758. James grew up in his grandfather James Russell's household after the premature deaths of his mother (1763) and father (1770) and first came to Maryland in 1781 to represent his grandfather's interests when Russell got word of legislation that jeopardized his land and business interests in the state.⁵⁷ After a decade of travelling back and forth across the Atlantic, Clerk married his first cousin, Margaret Russell Lee, on 8 November 1792 at the fashionable St. Marylebone Church in London. Soon thereafter, the newlyweds returned to Maryland to claim Margaret's inheritance from the estate of her grandfather, Squire Richard Lee.⁵⁸

The bookplate used by James Clerk prior to the change of name and arms (see **Figure 10**) shows *Argent a fess chequy azure and argent between in chief two crescents gules and in base a boar's head couped sable all within a bordure azure*, with the crest *a staff of Aesculapius [proper?]* and the motto *Sat cito si sat tuto* ('Quick enough if safe enough'). The silver field is probably an engraver's error, as the arms of James's father, Dr John Clerk, are illustrated in Nisbet's *System of Heraldry* as virtually identical with those on the bookplate, but with a gold field (see **Figure 11**).⁵⁹ Dr Clerk's arms are consistent with his being a cadet of the house of Penicuik, the arms of which are *Or a fess chequy azure and argent between in chief two crescents gules and in base a boar's head couped sable*, with the crest *A demi-man winding a horn proper*. These arms were matriculated in Lyon Register between 1672 and 1676 by Dr Clerk's uncle, John Clerk of Pennicook,⁶⁰ later Sir John Clerk, Bt. They are also illustrated in Nisbet.⁶¹

Had James Clerk Lee⁶² chosen, he could appropriately have used a coat of arms consisting of the quartered arms of Lee, Clerk, and Russell. A number of arrangements are theoretically possible given the three generations of intermarriage among the families, but had he done so—and there is no evidence he did—the simplest and most likely would seem to have been to place the arms of Lee in the first and fourth quarters, Clerk of Listonshiels in the second, and Russell of Kingseat in the third.

⁵⁷ Price, op. cit. p. 202; Foster, op. cit. p. 112.

⁵⁸ Price, op. cit. p. 207.

⁵⁹ The other difference, probably also an engraver's error, is that Dr Clerk's boar's head faces sinister rather than dexter. Nisbet, op. cit. (note 21 above) vol. 2, plate 9.

⁶⁰ PRABScot 1, 129; Gayre, op. cit. vol. 1, p. 71.

⁶¹ Nisbet, op. cit. vol. 1, plate 10; vol. 2, plate 8.

⁶² 'Clerk Lee' soon curiously merged into 'Clerklee', but this unique name disappeared after one more generation, since James and Margaret Clerklee had no sons to carry it on.



Figure 10: Bookplate of James Clerk.

GRA 115, William Augustus Brewer bookplate collection, University of Delaware Library special collns.



Figure 11: Arms of Dr John Clerk of Listonshiels.

Alexander Nisbet, *A System of Heraldry* (Edinburgh 1722), vol. 2, plate 9.

Unfortunately, we have no record of what arms, if any, he actually employed after the change.

Implications for an American Law of Arms

Compared to England and Scotland, name and arms clauses have been relatively rare in American deeds and wills, but with a few recent exceptions courts have been willing to enforce them if properly drafted.⁶³ The most frequently cited authority is the ruling of the New York County (Manhattan) Surrogate's Court in 1913: 'what are called "name and arms" clauses in wills or deeds of gift are entirely valid at common

⁶³ In *Jiles v. Flegel*, 9 Ill. App. 3d 74; 291 N.E.2d 300 (4th Dist. 1972) the Illinois Court of Appeals called the validity of such clauses into question, and in *Cast v. National Bank of Commerce*, 186 Neb 385; 183 NW 2d 485 (1971) the Nebraska Supreme Court rejected them altogether on the grounds that they are 'trivial' and 'whimsical', echoing the views of Lord Mansfield, CJ, who described such a clause as 'silly' in saying much the same thing in *Gulliver v. Ashby*, 4 Burr 1930 at 1941 (1766). Cited in O. M. Stone, 'Name worship and statutory interpretation in the law of wills,' *Modern Law Review* 26 (1963), pp. 652-9 at 653. Noel Cox, 'Conditional gifts and freedom of testation—time for a review?', *Waikato Law Review* 9 (2001) pp. 106-44, observes that from about 1945 to 1962 some English courts refused to enforce name and arms clauses on public policy grounds if they required a wife to take a different surname than that of her husband. See also G. D. Squibb, 'The end of the Name and Arms clause?', *Law Quarterly Review* 69 (1959), pp. 219-25.

law'.⁶⁴ Even the U.S. Supreme Court itself upheld a change of name clause as early as 1824, including the requirement in that particular will that the change be made pursuant to 'an act of public authority of the state'.⁶⁵ Judging from the cases contained in law reports, the vast majority seem to have required only that the beneficiary take the grantor's or testator's surname, but there have been a few high profile instances in which a change of arms was also specified, such as the one that would have required the Confederate General Robert E. Lee's son, George Washington Custis Lee, to take the name and arms of Custis as a condition of inheriting his maternal grandfather's 1,100 acre estate across the Potomac from Washington, D.C.—now the site of Arlington National Cemetery. The fact that Custis Lee's siblings had to sign formal renunciations of their claims to Arlington before a Virginia court would relieve him of the obligation to change his name and arms illustrates the importance that American judges have placed on compliance with such provisions.⁶⁶

The importance of Maryland's armorial private acts therefore lies not in the state's willingness to enforce provisions requiring changes of names and arms but in the General Assembly's implicit acceptance of the principle that only the sovereign can waive the prohibition, under the law of arms, against one man's taking the arms of another except by agnatic succession. Of course it might well be that, in approving the requests for changes of name and arms, most members of the General Assembly did not intend to ratify the survival of the English law of arms in the free state of Maryland but merely facilitate the petitioners' compliance with the testator's or grantor's intent. But the rule of statutory construction is that no provision of an act is intended to be without effect. We must therefore interpret the words, 'it shall and may be lawful for [the petitioner] ... to use the coat of arms and armorial bearings' concerned, as meaning that it would have been unlawful for him to do so without the permission of the state.

If the General Assembly's implicit understanding was correct, how did this aspect of the law of arms make its way into the laws of Maryland? English law was received by newly independent Maryland through article 3 of the Declaration of Rights of 14 August 1776 (drafted under the leadership of Charles Carroll, Barrister):

[T]he inhabitants of Maryland are entitled to the common law of England ... 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...

On its face, this language would not capture the English law of arms, most of which is neither common law nor statute. But perhaps such a stringent reading is not supportable, given that much of the law practiced in Maryland's courts, especially the courts

⁶⁴ *Matter of Anonymous*, 141 NY Supp 700, 704 (Surr. Ct., 1913).

⁶⁵ *Taylor v. Mason*, 22 US 325, 9 Wheat 325 (1824).

⁶⁶ Karl Decker and Angus McSween, *Historic Arlington* (Washington 1892), pp. 80-2. That the property was tied up in litigation over the U.S. government's seizure of the property during the Civil War, ostensibly for non-payment of taxes, may have made it easier for Custis Lee's brothers and sisters to relinquish their claims.

of equity, was also technically neither common nor statute law. In any case, the English law of arms clearly was not received in its entirety, witness the fact that Charles Carnan was authorized to assume the arms of Ridgely even though Captain Charles Ridgely himself had apparently never borne them and certainly had not documented a right to them. Indeed, it would have been difficult if not impossible for Maryland to have received the complete English law of arms, given not only the lack of any heraldic regulatory structure but more importantly that the prerogative powers through which the English law of arms functions in its country of origin were expressly denied to the executive by article 33 of the Maryland Constitution of 11 November 1776: 'The Governor shall not, under any pretence, exercise any power or prerogative by virtue of any law, statute, or custom of England or Great Britain.'⁶⁷

Obviously the form of the private act authorizing a change of name and arms in Maryland was modelled closely on the practice of the British parliament, but it is important to understand that the *substance* was not peculiar to Britain. The underlying logic—that the prohibition against transmission of arms through female heirs could only be waived by an act of the sovereign authority—was common to several and perhaps even most western European societies. Half a century before Lancaster Thynne enunciated this principle in the English context, it had already been embodied in the French Ordinance of Amboise of 1555, which made it unlawful to change one's name or arms without royal consent, on pain of a fine and degradation from any status of nobility.⁶⁸ In Castille, the Laws of Toro of 1505 achieved the same effect by requiring the king's licence to establish a new *mayorazgo* (majorat, or primogeniture entail), one of the principal vehicles by which a surname and arms might pass through a female line in Spain.

It may therefore be possible to posit that, in passing the four private acts authorizing changes of name and arms, the Maryland General Assembly was acting in the framework not of the specifically English law of arms but rather that of the customary transnational law of arms that had grown up across western Europe before the development of national armorial regulation. If so, that might imply the similar survival in the United States—or at least in Maryland—of other aspects of that same customary law of arms, such as the principles for resolving which of two contending parties has the superior right to disputed arms.

Admittedly the foundation is a flimsy one on which to build an argument that a viable heraldic law in the United States has somehow survived, if in a state of suspended animation, since the last name and arms act more than 200 years ago. Certainly

⁶⁷ Of course Maryland also had no official heraldic authority to register or record the arms assumed pursuant to the General Assembly's armorial acts. It should be noted, however, that according to Sir George Grey, writing as Home Secretary in the second Palmerston government, it was only in 1783 that a regulation mandated a role for the College of Arms in the change of name and arms process in England itself. W. P. W. Phillimore, 'The law and practice of change of name', in W. P. W. Phillimore and E. A. Fry, *An Index to Changes of Name* (London 1905), p. xxiv.

⁶⁸ In practice, substitutions of name and arms were authorized by letters patent issued by the royal chancellery and registered with the courts. Nicolas Viton de Saint-Allais, *De l'ancienne France* (Paris 1833) vol. 1, pp. 525-6.

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there is unlikely to be another such act passed by an American legislature. Name and arms clauses have long since gone out of fashion in the United States, and even when they were still in vogue the task of granting the state's permission for the change of arms had passed *de facto* from legislatures to judges. But if a case for an American law of arms is ever to be made, it will have to be based on just such shreds of evidence that there have been times, however few and far between, when American institutions such as the General Assembly of Maryland have taken armorial bearings as appropriate matters of serious public attention.⁶⁹

⁶⁹ The author is grateful for the assistance of the people and institutions with custody of the records and artifacts cited in this article. Among these, he would particularly like to thank Jane Woltereck, site director of the Mount Clare Museum House, for the exceptional access she permitted to the armorial possessions of Charles Carroll, Barrister. Patricia Samford of the Maryland Archaeological Laboratory, Jeanne Solensky of the Winterthur Library, and Laurie Rizzo of the University of Delaware Library all made the process of obtaining images of items in their collections, and the permissions to publish them, easy and pleasant. Letitia Grant and Carter Refo of the Society of the Lees of Virginia did yeoman work attempting to trace Philip Thomas Lee's silver platter for me. And finally, thanks to those members of the reference staff at the Maryland State Archives, whose names I do not know, who guided me through the MSA's superb collections.