In Testimony that the foregoing is a true Copy taken from the Original, One of the records of the Orphans Court for Queen Anne's County I have hereto set my hand and affixed the public Seal of my Office this Seventh day of June, Eighteen hundred and twenty. Thos. Earle Regr. Wills Q. A. County.

Queen Anns Orphans Court Seal

It is admitted that the said Henry Elliott never suffered any fine common recovery or executed any Deed or Deeds of bargain & Sale to bar any entail or supposed entail created by his father's Will. It is agreed that the lands devised to John by his fathers Will called Nathan's Enlargement containing 155 more worth $12 per acre & the lands called Grumbly neck addition & Buck range containing 225 acres more worth $7 per acre at the time of his death. It is admitted that Sarah Gibson the wife of Woolman Gibson is a Sister of said Henry Elliott, John Elliott & daughter of John Elliott the first Devisor, that Ruth the wife of the Defendant is also a Sister of John & Henry and daughter of John the 1st Devisor & that Rachel Wilson, James John & Eliza & Henry Kelley are the sons & daughters of another Sister of John & Henry & daughter of said Devisor and that William Henry & Mary Taylor are the sons & daughter of another Sister of John & Henry Elliott & daughter of the devisor & that the other daughters of said John Elliott mentioned in his Will died Intestate & without Issue before the institution of this suit. It is agreed that the Court upon the above statement shall determine whether the Plff. Lessor is entitled, if they shall determine that they are entitled to recover Judgment shall be entered for such proportion as the Court shall adjudge of otherwise Judgment of Non pross.

Kensey Harrison for Plaintiff
Wm. Carmichael for Defendant

Whereupon all and singular the premises being by the Court here seen heard and fully understood and mature deliberation thereupon had for that it appears that Richard Penn Lessee as aforesaid is not entitled to recover his title as stated in his said declaration. Therefore it is considered by the Court here that the said Richard Penn Lessee of the aforesaid Woolman Gibson & Sarah his Wife & others take nothing by his declaration aforesaid but that he for his false Clamor be in Mercy &c. And that the said William L Horton go thereof without day &c. And it is further considered that the said William L Horton recover against the said John Denn Lessee as aforesaid the sum of Eleven Dollars sixty one cents and two thirds of a cent by the Court here unto him the said William L Horton on his Absent adjudged for his costs and charges by him about his defence in this behalf laid out and expended and that he have thereof his execution and so forth. — And thereupon the aforesaid John Denn Lessee as aforesaid by his attorney aforesaid prays an appeal from the Judgment aforesaid so as aforesaid rendered to the high Court of Appeals of the State of Maryland for the Eastern Shore of said State and it is granted him. It is therefore ordered by the Court here that the Record & proceedings in the plea aforesaid with all things thereunto relating be transmitted to the said high Court of Appeals accordingly.

Test Thos. Murphey Clk. —

Maryland Queen Anns County sc. Seal of Queen Anns County Court

I hereby certify that the foregoing is truly taken from the record of proceedings of Queen Anns County Court.

In Testimony whereof to this exemplification I hereunto subscribe my name and affix the Public Seal of my Office this Seventh day of June in the year of our Lord Eighteen hundred and twenty & forty fourth year of the Independence of the United State of America.

Thos. Murphey Clk Queen Anns County Court. —

And now come into the Court of Appeals here, as well the said John Denn Lessee of Woolman Gibson & Sarah his Wife & others as aforesaid by Henry Tilghman & Hensey Harrison Esqrs. his Attornies as the said William L Horton by William Carmichael Esq. his Attorney. And the said John Denn Lessee as aforesaid by his Attornies aforesaid says that in the record of proceedings aforesaid, and also in the giving of Judgment aforesaid, there is manifest error in this to wit, that by the record aforesaid it appears that the judgment aforesaid in the plea aforesaid given was given for the said William L Horton against the said John Denn Lessee as aforesaid, when by the law of the land that judgment ought to have been given for the said John Denn Lessee as aforesaid against the said William L Horton, therefore in that there is manifest error and he prays that the judgment aforesaid for that error and others being in the record of proceedings aforesaid, may be reversed annulled and held entirely as void

and that he the said John Denn Lessee as aforesaid may be restored to all things which he hath lost by occasion of the said Judgment; and that the said William L Horton may reply to the errors aforesaid &c. — And the said William L Horton by his Attorney aforesaid, says there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid, and he prays that the Court of Appeals here will proceed to the examination as well of the record of proceedings aforesaid, as of the Matters aforesaid by the said John Denn Lessee as aforesaid above for error assigned and that the said Judgment may be in all things affirmed &c. But because, the Court of Appeals here are not advised what judgment to give of and upon the premises, day therefore is given to the parties aforesaid before the Court of Appeals here until the last Monday in November next, to hear the judgment of the Court of Appeals here of and upon the premises, for that the Court now here thereof are not advised &c. At which said last Monday in November, being the twenty seventh day of the said Month in the year of our Lord One thousand eight hundred and twenty Come again into the Court of Appeals here, the parties aforesaid, by their Attornies aforesaid; whereupon further proceeding of and upon the premises, between the parties aforesaid is by virtue of an Act of Assembly in such case made and provided, further Continued before the Court of Appeals here, until the first Monday in June next; the same day is given to the said parties, there then to hear the judgment of the Court of Appeals here, of & upon the said premises &c. And now at this day to wit; the said first Monday in June being the fourth day of the said month in the year of our Lord One thousand eight hundred and twenty one Come again into the Court of Appeals here the parties aforesaid by their Attornies aforesaid. — Whereupon as well the record of proceedings aforesaid, and the judgment given in form aforesaid as the Matters aforesaid by the said John Denn Lessee as aforesaid above for error assigned, being seen, and by the Court of Appeals here fully understood, and mature deliberation thereupon had for that it appears to the Court of Appeals here that there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid; therefore it is considered by the Court of Appeals here that the judgment aforesaid, given in form aforesaid, be in all things affirmed and stand in full force and effect, the said Causes for error above assigned and alledged in any wise notwithstanding; and it is further considered by the Court of Appeals here that the said William L Horton have execution against the said John Denn Lessee of the said Woolman Gibson & Sarah his wife formerly Sarah Elliott, William Wilson and Rachel his wife late Rachel Kelley, James John & Eliza and Henry Kelly heirs of Elizabeth Kelly deceased formerly Elizabeth Elliott William Henry & Mary Taylor as well for the sum of Eleven Dollars sixty one cents and two thirds of a cent Costs and charges aforesaid adjudged unto him in the said County Court of Queen Anns as also for the sum of Thirty two Dollars twenty eight cents and one third of a cent adjudged unto the said William L Horton by the Court of Appeals here, on his Absent for his costs and charges which he sustained by occasion of the delay of the execution of the judgment aforesaid by pretext of the prosecution of the said Appeal by the said John Denn Lessee as aforesaid for the Correcting of errors of & upon the premises as aft. prosecuted &c.

Memorandum. — Judgment was affirmed in this case on the Ninth day of June 1821 and execution awarded for the sum of $11.61⅔ cts Costs in County Court and $32.28⅔ cts Costs in Court of Appeals. —

Ellest, James Farrell Clerk.

Woolman Gibson & wife and others Plaintiffs Lessee
vs
William L Horton
"Matthew's Enlargement"

Appeal from Queen Anns County Court.

Opinion of the Court delivered by Johnson Judge.

This was an Action of Ejectment brought by the Appellants (the plaintiffs below) to recover a tract of land in Queen Anns County called "Matthew's Enlargement" The Cause was tried on a Case stated, when the judgment was rendered in form of the defendant, from which the plaintiffs appealed.

The Case depends entirely on the true legal construction of the Will of John Elliott bearing date the 23 of October 1784.

It is admitted that John Elliott was seized in fee of the land in question, together with two other tracts called Grubby Neck & Bucks Range; and that he died on the 20th of November 1784, leaving his Will duly executed and leaving the Children, in the Will mentioned. —

The parts of the Will on which the question depends are as follows, "I give and bequeath to my son John" "Elliott my dwelling plantation called Matthews Enlargement containing 155 acres and gores" "in Chester Forrest near the Red Lyon Branch to him and his heirs forever; Item I give & bequeath" "to my son Henry Elliott my plantation in Caroline County known by the name of Grubby Neck"