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## Using Lawsuits to Identify Family Origins: George Cunningham of Virginia

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By Victor S. Dunn, CG

*Records of litigated disputes can establish  
family relationships where other sources fail.*

**R**esearch in areas and times lacking censuses and vital records challenges family historians, particularly when an ancestor dies intestate. Legal records of contentious ancestors may provide evidence not found elsewhere. The Cunninghams of eighteenth-century Frederick County, Virginia, and its many daughter counties, left few generational clues until they arrived in court.

### PROBATE, LAND, AND CHURCH RECORDS

#### *George Cunningham, Gentleman*

George Cunningham first appears in public records on 3 October 1750, when he served as a chain carrier for a survey of Robert Cunningham's 318 acres on Mill Creek in Frederick County.<sup>1</sup> Assuming George was in his mid-twenties when he first purchased land in Fairfax County, Virginia, in 1755, he was born about 1730.<sup>2</sup> In 1763 George and his wife Lydia Cunningham sold this land,

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1. Northern Neck Land Office, Northern Neck Surveys from the Virginia Land Office, 1697–1781 (Bulk 1722–1781), alphabetically arranged by county and thereunder by grantee, for Frederick County, Robert Cunningham, 3 October 1750; Records of the Virginia Land Office, Record Group 4; Land Office Inventory 108, State Government Records Collection, Library of Virginia (LVA), Richmond; LVA Northern Neck Surveys microfilm 12, frames 263–65.

2. Fairfax Co., Va., Deed Book D-1:163–65, Wilson and wife to Cunningham, 19 August 1755; Circuit Court Archives, Fairfax; LVA Fairfax Co. microfilm 3.

which then lay in Loudoun County, Virginia.<sup>3</sup> The purchase and sale deeds refer to him as George Cunningham of Frederick County, millwright. George bought several tracts of land in the part of Frederick County that later became Berkeley County, Virginia, and during the Civil War became part of West Virginia.<sup>4</sup>

An apparently accurate family record of unknown provenance indicates George and Lydia married 7 September 1758, Lydia died 30 August 1774, and George and his second wife, Ruth, married on 20 March 1776. Ruth was probably the daughter of William and Priscilla (Bowen) Gaddis.<sup>5</sup> By 19 October 1779 Ruth Cunningham was the “late widow of Absalom Chinoweth, deceased.”<sup>6</sup> The Mill Creek Baptist Church register of members indicates “Ruth Chenoweth alias Cunningham died Feby 26<sup>th</sup> 1815.”<sup>7</sup> Ruth is the only Cunningham listed in the register, suggesting her second husband, George Cunningham, was not a member of this congregation.

Prominent in Berkeley County, George served as a gentleman justice of the county court and was addressed as “esquire.”<sup>8</sup> On 21 September 1791 “George Cunningham,<sub>[j]</sub> Gentleman” was sworn sheriff of Berkeley County.<sup>9</sup> Listed on the 1811 property tax rolls, George died likely between 1 March and 17

3. Loudoun Co., Va., Deed Book C:681–83, Cunningham and wife to Rutherford, 10 August 1763; Circuit Clerk’s Archives, Leesburg. Also, “An Act for dividing the County of Fairfax,” in William Waller Hening, ed., *The Statutes at Large . . . of Virginia* (Richmond: privately printed, 1820), 7:148–49.

4. “Virginia Land Office Patents and Grants/Northern Neck Grants and Surveys” online database, *Library of Virginia* ([http://lva1.hosted.exlibrisgroup.com/F/?func=file&file\\_name=find-b-clas30&local\\_base=CLAS30](http://lva1.hosted.exlibrisgroup.com/F/?func=file&file_name=find-b-clas30&local_base=CLAS30)), George Cunningham, 26 March 1771. The grant lay in Berkeley County. See Berkeley Co., W.Va., Deed Book 8:106, George Cunningham and wife to Richard Ridgeway, 15 April 1788; County Clerk’s office, Martinsburg. The other purchases occurred after 1772, when Berkeley was formed from Frederick. See Berkeley Co., Deed Book 5:557–58, William Bailey and wife to George Cunningham, 19 September 1780; and 5:698–700, Springer to Cunningham, 17 March 1778.

5. Victor S. Dunn, in “Family Record of George Cunningham of Berkeley County, (West) Virginia, and Probable Parentage of His Second Wife Ruth,” *Magazine of Virginia Genealogy* 48 (February 2010): 29–35, provides a transcription of the record and analysis of its accuracy.

6. Berkeley Co., Deed Book 5:399–400, Chinoweth’s executors to McKown, 16 November 1779.

7. Mill Creek Baptist Church (Berkeley Co., W.V.), Minute Book, 1757–1928, p. 5; LVA miscellaneous microfilm 472. The membership list precedes the minutes.

8. For “gentleman justice,” see Berkeley Co., Deed Book 6:220, Morgan and Cunningham deposition, 17 February 1784. For “esquire,” see Berkeley Co., Land [Tax] Book[s], 1788–1803, arranged chronologically and then semi-alphabetically, entries for George Cunningham, Esq.; West Virginia Archives and History Library, Charleston; FHL microfilm 531,232.

9. Berkeley Co., Minute Book D:406, George Cunningham sworn sheriff, 21 September 1791; County Court, Martinsburg; microfilm 565, Berkeley County Historical Society, Martinsburg.

October that year.<sup>10</sup> His will, written 16 May 1807 and proved in 1811, names his “present” wife Ruth; son Robert, deceased; son George Geddis Cunningham; son Levi Cunningham; eldest daughter Lydia Cunningham; and daughter Rhoda Brown.<sup>11</sup>

### *Robert Cunningham, Brother of George*

Indexed Cunningham wills and deeds through 1830 in Berkeley County and neighboring Frederick County, bordering the Mill Creek district where George’s family lived, and Orange County records through 1743 do not identify his parents.<sup>12</sup> (Although Frederick County was formed in 1738 from Orange County, its court did not meet until 1743, suggesting Orange’s pre-1743 relevance to Frederick’s residents.)<sup>13</sup> These sources do, however, establish other family relationships:

- The 1766 Frederick County will of Robert Cunningham names wife Ann and children including William Cunningham and youngest son Robert Cunningham who received the 318-acre tract surveyed in 1750, for which George Cunningham acted as chain carrier.<sup>14</sup>

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10. Auditor of Public Accounts, Personal Property Tax Lists, Berkeley Co., 1811, James Wilson’s District, unpaginated, George Cunningham, Esqr.; manuscript collections, LVA; LVA Personal Property Tax microfilm 42, frame 558. In February 1808 the Virginia legislature passed a law requiring all sheriffs and commissioners to take taxes as of 1 March 1809 and each year thereafter. See Samuel Shepherd, *Statutes at Large of Virginia from October Session 1792, to December Session 1806 Inclusive*, 3 vols. (1835; reprint, New York: AMS Press, Inc., 1970), 3:362–63. Indexes to the statutes 1808–11 indicate the Virginia General Assembly did not amend the law before 1812. See *Acts Passed at a General Assembly of the Commonwealth of Virginia Begun and Held at the Capitol, in the City of Richmond, on Monday the Fifth Day of December in the year of Our Lord, 1808* (1809, 1810 and 1811, respectively) and *of the Commonwealth the 33rd* (34th, 35th and 36th, respectively) (Richmond: Commonwealth of Virginia, 1809–1812) in *Records of the States of the United States of America: a Microfilm Compilation* [B.2, Session Laws, Virginia, 1660–1837] (Washington, D.C.: Library of Congress Photoduplication Service, 1949); LVA Library of Congress microfilm series 358, reel 4.

11. Berkeley Co., Will Book 4:445–46, George Cunningham; County Clerk’s office, Martinsburg.

12. Berkeley Co., Will Books 1–10, 1772–1832, and Deed Books 1–32, 1772–1832; both at County Clerk’s office, Martinsburg. Also, Frederick County, Va., Will Books, 1–16, 1745–1831, and Deed Books 1–57, 1743–1831; both at Circuit Clerk’s office, Winchester. For Mill Creek’s location, see Jno. P. Kearfott, *Map of Berkeley County, Virginia* (1847; reprint, Martinsburg, W.Va.: Berkeley County Historical Society, n.d.).

13. Orange Co., Va., Will Book 1, 1735–43, LVA Orange Co., microfilm 23; Deed Books 1–9, 1734–44, LVA Orange Co. microfilms 1–3; and Order Books 1–4, 1734–46; LVA Orange Co. microfilms 30–31; all at County Court, Orange. For details see [John Frederick Dorman], “A Guide to the Counties of Virginia: Frederick County,” *Virginia Genealogist* 10 (October–December 1966): 174–75.

14. Frederick County, Va., Will Book 3, 1761–70, pp. 484–87, Robert Cunningham will. Also, Northern Neck Land Office, Northern Neck Surveys, for Frederick County, Robert Cunningham, 3 October 1750.

- The 1785 Berkeley will of Robert Cunningham identifies his stepfather as William Slaughter and names his brother William Cunningham and uncle George Cunningham as executors.<sup>15</sup>
- The 1786 Berkeley will of William Cunningham names numerous family members including his mother Ann Slaughter and stepfather William Slaughter. It bequeaths personal property to his cousin Robert Cunningham, son of George Cunningham “Esq[ui]re.”<sup>16</sup>

These probates indicate George and Robert, husband of Ann, were brothers. Robert and Ann Cunningham’s eldest child was born in 1748.<sup>17</sup> This suggests Robert was born in the mid-1720s or earlier and could have been the elder of the two brothers.

### *James Cunningham of Frederick County, Virginia*

In a deed dated 2 October 1745, James Cunningham of Frederick County gave his daughter Elizabeth Cunningham a fifty-gallon still on Robert Cunningham’s plantation.<sup>18</sup> The deed does not mention a relationship between Robert and James. Since James’s daughter Elizabeth was likely at least in her late teens in 1745, so born in the 1720s or earlier, James apparently was a generation older than the brothers Robert and George and therefore a paternal candidate.

On 6 June 1749 a Frederick court granted James Cunningham’s petition to operate an ordinary at his home for one year.<sup>19</sup> James died before 11 February 1752, apparently intestate since no will was filed in Frederick County and Ann Cunningham was administratrix, not executrix, of his estate.<sup>20</sup> Although Ann’s relationship to James is unstated, courts typically granted widows administration of their husband’s estates.<sup>21</sup> Were George and Robert sons of James and Ann Cunningham?

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15. Berkeley Co., Will Book 1:379–80, Robert Cunningham.

16. *Ibid.*, 432–33, William Cunningham.

17. Norborne Parish (Bunker Hill, W.Va.), “Morgan’s Chapel Register, 1741–1838, 1855,” arranged semi-alphabetically by surname, James Cunningham entry; negative photostat, 1940; accession 22,910, Church Records Collection, LVA. The original’s location is unknown.

18. Frederick Co., Deed Book 1:248–49, Cunningham to Cunningham, 3 October 1745.

19. Frederick Co., Order Book 3:85, James Cunningham license, 6 June 1749; Circuit Clerk’s office, Winchester.

20. Frederick Co., Will Book 2:6–7, James Cunningham estate administrator appointment.

21. Shepherd, *Statutes at Large of Virginia* 1:88–101, chap. 30, para. 28, p. 93, “An Act reducing into one, the several acts concerning wills, the distribution of intestates’ estates, and the duty of executors and administrators.” The court “shall grant certificates for obtaining such administration, to the representatives who apply for the same; preferring the husband or wife, and then such others as are next entitled to distribution.”

Under colonial Virginia law, land owned by an individual who died intestate descended to the eldest son.<sup>22</sup> Accordingly, Robert Cunningham or an elder brother would inherit land James Cunningham owned at his death. Frederick and Berkeley counties lay within Virginia's Northern Neck Proprietary.<sup>23</sup> James Cunningham of Frederick County asked the proprietary for a warrant to purchase two hundred acres adjoining James Caudy on Dillons Run, a branch of Caccapon River. On 15 February 1752, after James died, the proprietary issued a warrant to George Washington to survey the land. Apparently this land was never granted to James's heirs, since a notation on the warrant's back states "Dead and Neland Claims It."<sup>24</sup>

#### LAWSUITS

Land, probate, and church records fail to identify George Cunningham's parents. Similarly, the few known surviving colonial rent rolls for Frederick County do not provide answers.<sup>25</sup> Court records, however, provide the gateway to identifying George's parents.

Order books and associated loose papers survive for eighteenth-century Frederick County. The order books record the court's daily activities, including estates presented for probate, naturalizations, binding out of children, and appointments of civic and military positions. Most entries report lawsuits. Loose papers survive for two categories of cases:

- Chancery suits typically include witness testimony gathered in written depositions for cases brought before the chancery court. They often provide much genealogical information.<sup>26</sup>
- Suits tried at law, called ended causes—also called final judgments, court papers, or dead papers—frequently consist of pages and scraps of paper

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22. For explanation of descent to the heir at law, see St. George Tucker, *Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States and the Commonwealth of Virginia*, 5 vols. (1803; reprint, Union, New Jersey: Lawbook Exchange, 1996), 3:504. For explanation that male issue is preferred to female and where there are two or more males, the eldest shall inherit, see *ibid.*, 3:212–13.

23. For a discussion of the Northern Neck Proprietary, see Minor T. Weisiger, *Northern Neck Land Proprietary Records, Library of Virginia Research Notes Number 23* (Richmond: Library of Virginia, 2002).

24. Fairfax Family, Proprietary Papers, 1675–1843; Robert Alonzo Brock Collection, Huntington Library, San Marino, Calif.; series 2, survey warrants, 1722–1760, alphabetically arranged by county; LVA miscellaneous microfilm 4620, BR 327 in mss BR Box 230, no frame numbers.

25. *Ibid.*, series 5, rentals, Frederick Co., for 1746, 1750, 1759, and 1764; LVA miscellaneous microfilm 4,624.

26. Henry Campbell Black, in *Black's Law Dictionary*, revised 4th ed. (St. Paul, Minn.: West, 1968), 634, defines chancery as "synonymous and interchangeable with equity."

collected and filed according to the date the suit ended. Witnesses typically give unrecorded testimony. The papers, some with original signatures, contain bonds, accounts, summonses, and other documents. Although they provide less genealogical data than chancery causes, they may yield clues to family connections, migration, and relationships.<sup>27</sup>

Frederick County order books from this court's inception through 1762 and indexed entries from 1763 through 1800 provide numerous Cunningham references, particularly for James.<sup>28</sup>

### *James Cunningham*

James first appears in Frederick County records on 10 December 1743, when he brought a debt suit against Hugh Ferguson.<sup>29</sup> On 5 September 1745, Andrew Caldwell assignee of William Caldwell brought a debt suit against James Cunningham, Robert Cunningham, and John Cunningham.<sup>30</sup> A bond the Cunninghams signed on 11 June 1742 identifies them as residents of "Hopewell and Paxton townships in the county of Lancaster, province of Pennsylvania," implying James migrated to Virginia between 11 June 1742 and 10 December 1743.<sup>31</sup>

James's last suit before his death is a 16 November 1751 case he brought against John Nealans, likely "Neland" who claimed James's two hundred acres on Dillon's Run.<sup>32</sup> James died between 16 November 1751 and 10 February 1752, when probate records indicate he was deceased.<sup>33</sup>

Two James Cunninghams lived in Lancaster County, Pennsylvania, in the 1730s. One died before 1 May 1733, when Alice Cunningham gave bond for

27. Victor S. Dunn, "Getting the Most from Virginia's Court Records: Order Books, Minute Books, and Ended Causes," *The Virginia Genealogical Society Newsletter* 32 (August 2006): 1–5 and 32 (October 2006): 1–5.

28. Frederick Co., Court Order Books 1–34, 1743–1801. Pre-1764 orders were read page by page and several unindexed post-1763 order books were read page by page. In addition to the cited cases, see Frederick Co., Order Book 1:1, 8, 51, 83, 116, 310, 336, 398 and 477; Order Book 2:44, 54, 221, 281, 284, 303, 340, 460 and 477; and Order Book 3:130, 232, 233, 255, 268, and 444.

29. Frederick Co., Order Book 1:8, James Cunningham v. Hugh Ferguson, petition, 10 December 1743.

30. *Ibid.*, 431, "Andw Caldwell assignee of Willm Caldwell v. Jams Cunningham, Robt Cunningham & Jno Cunningham," order, 5 September 1745.

31. Frederick Co., Ended Causes, September 1745, Andrew Caldwell v. James, Robert and John Cunningham case file; State Records Center, Richmond.

32. Frederick Co., Order Book 4:89, James Cunningham v. John Nealans, petition, 16 November 1751.

33. Frederick Co., Will Book 2:6–7, James Cunningham estate administrator appointment.

her administration of his estate, with John Caldwell and Andrew Cunningham, bondsmen.<sup>34</sup> In February 1739 the other James Cunningham, of Derry Township, successfully petitioned the Lancaster County court to sell “beer &c.”<sup>35</sup>

Association with the sale and production of alcoholic beverages suggests the Lancaster County beer seller moved to Frederick County. While living in Lancaster County he was involved in several legal disputes.<sup>36</sup>

James Cunningham’s daughter Elizabeth appears in Frederick County court records with a connection to the sale of alcohol, perhaps produced by her father’s still. On 4 November 1746 a grand jury made a presentment against her for running a tipling house.<sup>37</sup> The case was dismissed on 15 February 1749/50.<sup>38</sup>

Robert Cunningham, associated with James in 1745, first appears independently of him on 13 July 1742, when Thomas Renick signed a note agreeing to pay Robert “for value received” by Renick. The note does not specify Robert’s residence.<sup>39</sup>

#### *Ann (Shadwell [Caldwell?]) (Cunningham) Smith*

On 5 September 1745 Ann Cunningham of Frederick County brought a complaint against James Cunningham, her husband, for “barbarously beating” her. James was required to give security for his good behavior towards her and provide alimony.<sup>40</sup> Orders on 10 February 1752, noting she obtained letters of administration on his estate, identify her as his widow.<sup>41</sup>

Although most of Frederick County’s colonial marriage records have not survived, court records provide evidence of Ann’s remarriage between April 1755 and November 1756.<sup>42</sup> On 3 November 1756 William Smith and Ann his

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34. Lancaster County, Pa., James Cunningham, deceased, administrators bond (1733); document Inv 1733 F003c, Estate Inventories Collection; Archives South, box 18; Lancaster County Historical Society, Lancaster.

35. Lancaster Co., Quarter Sessions Docket 1:280, James Cunningham license, 5 and 6 February 1739; Lancaster County Historical Society.

36. Lancaster Co., Common Pleas Appearance Docket, 1737–1738, unpaginated, Hugh Davy v. James Cunningham, February 1737/8; Lancaster County Historical Society. Also, Lancaster Co., Common Pleas Appearance Docket, 1740–1742, unpaginated, Charles Coldshare endorsee of Peter Mathews v. James Cunningham, 4 August 1741; and Gordon Howard v. James Cunningham, 4 August 1741.

37. Frederick Co., Order Book 2:194, Elizabeth Cunningham presentment, 4 November 1746.

38. Ibid. 3:211, Grand Jury v. Elizabeth Cunningham, order, 15 February 1749/50.

39. Frederick Co., Ended Causes, June 1745, John Mitchell assignee of Robert Cunningham v. Thomas Renick case file.

40. Frederick Co., Order Book 1:438, James Cunningham order and recognizance, 5 September 1745.

41. Ibid., 4:106, James Cunningham estate entry, 10 February 1752.

42. Ibid., 6:224, Edward Greyham’s exor. v. James Cunningham’s admin., order, 3 April 1755.

wife, “late Ann Cunningham, administratrix of James Cunningham,” sued Murty Handley.<sup>43</sup>

James Cunningham and Anne “Shadwell” married 16 November 1739 in the town of Lancaster, Pennsylvania.<sup>44</sup> No known Cunninghams associated with Shadwells in Lancaster or Frederick County. Andrew Caldwell, however, owned lands adjoining George and Robert Cunningham’s properties in Frederick County, and Robert Cunningham witnessed and proved Andrew Caldwell’s will.<sup>45</sup> Possibly the German minister performing the marriage incorrectly wrote Caldwell as Shadwell.<sup>46</sup>

*Eleanor (Cunningham) Chenoweth, daughter of James*

The heirs of Robert Cunningham, husband of Ann, disputed ownership of the 318-acre tract. They filed a suit of ejectment in Winchester District Court in 1792.<sup>47</sup> The dispute, later brought before the Chancery Court, was discontinued in 1834.<sup>48</sup> In a deposition dated 4 June 1804 George Cunningham said he was Robert Cunningham’s brother.<sup>49</sup> Eleanor Chenoweth, giving a deposition from her home in Hampshire County, Virginia, on 22 August 1801, indicated she was about fifty-six years old (born about 1745). She stated that in 1763, “in consequence of the Indians being troublesome,” she and her family moved from Capon, in Hampshire County, to Frederick County, “now” Berkeley. She said she was a half-sister of “Robert Cunningham Senior” and lived on his land during that time.<sup>50</sup> Eleanor was the wife of John Chenoweth—a brother of Absalom

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43. Frederick Co., Order Book 7:148, William Smith and Ann his wife, late Ann Cunningham administratrix of James Cunningham v. Murty Handley, order, 3 November 1756.

44. John Casper Stoever, Ministerial Record, 1729–1798, unpaginated, marriage no. 266; Historical Society of Pennsylvania, Philadelphia; FHL microfilm 20,436, item 7.

45. Frederick Co., Order Book 7:274, Andrew Caldwell will proved, 2 August 1757. For the land plats, see [Victor S.] Dunn, “Old Frederick,” compressed electronic file, in “Deed Data Pool,” *Direct Line Software* (<http://www.directlinesoftware.com/pool.htm>).

46. For information on the minister, see *Records of John Casper Stoever: Baptismal and Marriage; 1730–1779* (Harrisburg, Pa.: Harrisburg Publishing Co., 1896), 3.

47. Frederick Co., Superior [District] Court Order Book 1789–1793, p. 317, John Doe Lessee of Ann Cunningham v. Robert Davidson, ejectment, 23 April 1792. For Berkeley as part of the Winchester District, see “District Court Information,” *Library of Virginia* ([http://www.lva.virginia.gov/public/guides/burned\\_juris/Superior\\_Courts\\_info.htm](http://www.lva.virginia.gov/public/guides/burned_juris/Superior_Courts_info.htm)).

48. Frederick Co., District Court Chancery Papers, James Stephenson and Wife, Heirs of Robert Cunningham v. Robert Holliday, case 1834–056 CSC, wrapper with dates; LVA Frederick Co. microfilm 354, frame 489. The file contains papers dated 1801 through 1803, but the suit was continued through various court terms in 1812–13; a notation indicates it was discontinued in May 1834.

49. *Ibid.*, George Cunningham deposition, 4 June 1804; frame 435.

50. *Ibid.*, Eleanor Chenoweth deposition 22 August 1801; frames 454–55.



Chinoweth/Chenoweth, first husband of George Cunningham's second wife, Ruth.<sup>51</sup>

Frederick County ended-cause papers contain further information on Eleanor. Leonard Helm provided an account due from "Mr. James Cunningham, deceased," with an entry dated 1751 for "boarding y<sup>r</sup> daughter Eleanor for 3 Months & 24 Days."<sup>52</sup> A complaint filed by William Smith states that in May 1759 George Cunningham called William Smith a "dam[n]ed rogue & deserves to be hanged for cohabitating with his daughter in law Elinor Cunningham," daughter of the plaintiff's wife.<sup>53</sup> The same complaint was filed in a separate suit Smith brought against Robert Cunningham.<sup>54</sup> Since Eleanor was James's daughter and Robert's half-sister and George was Robert's brother, both were sons of James Cunningham and his unidentified wife, who apparently died before James's marriage to Ann.

#### *John Cunningham, son of James and brother of George*

Further proof of kinship between George and James Cunningham is found in Frederick County court records of John Cunningham, who signed a 1742 Lancaster County bond with James and Robert Cunningham.<sup>55</sup> A 1749 account for a debt due from James Cunningham states "To ep<sup>r</sup> assumpsit to pay me for ep<sup>r</sup> Son John Cunningham £3.10.0."<sup>56</sup> The back of a summons dated 5 September 1765 for John Cunningham to appear in court contains the notation "George brother."<sup>57</sup>

John is first found contracting independently of his father on 7 March 1742/3, when he signed a bond promising to pay Robert Armstrong in linen "for value received," suggesting he had arrived at age twenty-one by that time.<sup>58</sup>

51. Ibid. Although the suit does not identify Eleanor as John Chenoweth's wife, both gave depositions on 22 August 1801 indicating each had a daughter Elizabeth born 10 September 1765. Further, the will of John Chinwith names wife Eleanor. See Hampshire Co., W.Va., Will Book 5:293–95, John Chinwith; County Court, Romney; LVA Hampshire Co. microfilm 47. John and Absalom were sons of John Chenoweth. See Frederick Co., Will Book 4:61–63, John Chenoweth.

52. Frederick Co., Ended Causes, September 1754, Leonard Helms v. James Cunningham's administratrix case file.

53. Ibid., September 1764, William Smith v. George Cunningham case file.

54. Ibid., William Smith v. Robert Cunningham case file.

55. Ibid., September 1745, Caldwell v. Cunningham case file.

56. Ibid., February 1749/50, Jacob Hite v. John Cunningham case file. *Epr assumpsit* appears to be an abbreviation for the legal term *express assumpsit*, which is an undertaking to do some act or pay a sum of money to another manifested by express terms. *Express*, when used by itself, is defined as clear, definite, explicit, unmistakable and not dubious or ambiguous. See Black, *Black's Law Dictionary*, 691.

57. Frederick Co., Ended Causes, October 1765, Robert Pearis v. John Cunningham case file.

58. Ibid., July 1744, Robert Armstrong v. John Cunningham case file. For Virginia law regarding the minimum age to contract, see Tucker, *Blackstone's Commentaries: 2*: 463–65. For Pennsylvania, see John Reed, *Pennsylvania Blackstone Being A Modification of the Commentaries of Sir William Blackstone*, 3 Vols. (1831; reprint, Clark, N.J.: Lawbook Exchange, 2006), 1:249 and 251–52.

His residence at that time is uncertain. John, Robert, George, and Elizabeth Cunningham, who was likely born in the 1720s or earlier, may share the same mother—an unidentified first wife of James Cunningham.

## GENEALOGICAL SUMMARY

1. **James Cunningham** was born about 1695, assuming he was in his mid-twenties when Robert Cunningham, apparently his eldest son, was born.<sup>59</sup> James died between 16 November 1751 and 10 February 1752, probably in Frederick County, Virginia.<sup>60</sup> James married a woman whose identity is unknown about 1718.<sup>61</sup> She likely died prior to 16 November 1739 when James married **Ann Shadwell (Caldwell?)** in Lancaster County, Pennsylvania.<sup>62</sup> Ann married as her second husband, William Smith, between April 1755 and November 1756.<sup>63</sup> She died after May 1759.<sup>64</sup>

James and his first wife had four known children:

- 2 i. ROBERT CUNNINGHAM, born about 1719; married Ann ([—?—]), about 1747;<sup>65</sup> died between March 1768 and 5 April 1769.<sup>66</sup>
- 3 ii. JOHN CUNNINGHAM, born about 1721;<sup>67</sup> died after 2 September 1778, when he and George Cunningham defended a suit in Frederick County.<sup>68</sup> No evidence suggests he married or left issue.

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59. Robert's listing immediately after his father and before his brother John in the 1745 court case suggests he was the elder son. See Frederick Co., Order Book 1:431. His brother John was born before 7 March 1721/2. See Frederick Co., Ended Causes, July 1744, Armstrong v. Cunningham case file. Assuming the two were not twins, Robert's birth date was about 1719 and John's two years later.

60. Frederick Co., Order Book 4:89, James Cunningham estate entry, 10 February 1752; and 106, James Cunningham v. John Nealans, petition, 16 November 1751.

61. This estimated date is two years before Robert Cunningham's estimated birth date.

62. Stoever, Ministerial Record, 1729–1798, unpaginated, marriage no. 266.

63. Frederick Co., Order Books 6:224 and 7:148.

64. Frederick Co., Ended Causes, September 1764, Smith v. Cunningham case files.

65. This date is based on the first child's birth on 11 August 1748. See Norborne Parish (Bunker Hill, W.Va.), "Morgan's Chapel Register, 1741–1838, 1855," arranged semi-alphabetically by surname, James Cunningham entry.

66. Frederick Co., Ended Causes, March 1768, Robert Cunningham v. James Holliday case file. Robert agreed on a suit with James Holiday in March 1768. See Frederick Co., Will Book 3:484–87.

67. John Cunningham was born before 7 March 1721/2. See Frederick Co., Ended Causes, July 1744, Armstrong v. Cunningham case file.

68. Frederick Co., Order Book 17:96, Peter How v. John and George Cunningham, order, 2 September 1778.

- 4 iii. ELIZABETH CUNNINGHAM, born about 1725;<sup>69</sup> died after 7 May 1761, when she witnessed Robert Bull and Sarah Milburn's marriage in Frederick County.<sup>70</sup> No evidence suggests she married.
- 5 iv. GEORGE CUNNINGHAM, born about 1730;<sup>71</sup> married (1) Lydia ([—?—]), 7 September 1758, probably Frederick County;<sup>72</sup> married (2) Ruth (Gaddis?) Chenoweth, 20 March 1776, probably Berkeley County;<sup>73</sup> died between 1 March and 11 October 1811, probably Berkeley County.<sup>74</sup>

James and Ann Cunningham had one known child:

- 6 i. ELEANOR CUNNINGHAM, born about 1745, probably Frederick County;<sup>75</sup> married John Chenoweth, about 1762;<sup>76</sup> died after 6 October 1812.<sup>77</sup>

## CONCLUSION

Astute family historians researching in challenging locations and time periods, like colonial Virginia, particularly when ancestors die intestate, must seek underused sources for evidence of kinship. Records of litigated disputes can establish family relationships when other sources fail.

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69. Elizabeth's birth date is calculated to fall between those of her brothers John and George. The calculation also assumes she was about twenty in 1745, when she received a still from her father. See Frederick Co., Deed Book 1:248–49.

70. Hopewell (Frederick Co., Va.) Monthly Meeting, Births, Marriages, Burials, 1671–1817, 1758–1939, p. 8; unnumbered microfilm, Stewart Bell Archives, Handley Library, Winchester, Va.

71. The calculation of George's birth date assumes he was in his mid-twenties when he first purchased land. See Fairfax Co., Deed Book D-1:163–65.

72. Dunn, "Family Record of George Cunningham of Berkeley County," 29.

73. *Ibid.*, 29–35.

74. Auditor of Public Accounts, Personal Property Tax Lists, Berkeley Co., 1811, James Wilson's District, unpaginated, George Cunningham. Also, Berkeley Co., Will Book 4:445–46.

75. Frederick Co., District Court, Chancery Papers, James Stephenson and Wife, Heirs of Robert Cunningham v. Robert Holliday, case 1834–056 CSC; LVA Frederick Co. microfilm 354, frames 454–55.

76. *Ibid.* John and Eleanor Chenoweth's depositions say their family moved from Hampshire County to Berkeley County in 1763, suggesting that they had at least one child at the time. Accordingly, the marriage date is calculated as 1762.

77. Eleanor is listed as the widow purchasing items at the estate sale of her deceased husband. See Hampshire Co., Will Book 5:377–79, John Chenoweth estate sale.