

Abstract

Denny FAIRFAX (of LeedsCastle,KentENG) by attorney -> James DONALDSON, and/or "John and Thomas DONALDSON, his sons",  
[the quoted words were to be inserted after references to James, according to an N.B. postscript to the deed]  
for £1/14/6 yearly rent, plus any costs for surveying or registering the land, and all and any taxes levied on it,  
138a in the Manor of Leeds, FauquierCoVA,  
bounded by a survey made by John MOFFETT  
BEG (A) 2RO cor OLDHAM, GARRETT; S27W, 150p; (B) mrkd trees, lin NORMAN; W; 100p; (C) mrkd saps; N2W; 185p; (D) lin OLDHAM; S73E, w OLDHAM  
TTB

The lease was transferable to the "heirs, executors, administrators, or assigns" of James and/or his named sons, and was to run indefinitely, until terminated by the lessees' failure to pay the rents on it "for two full years".

The Lessees are also enjoined from:

- (a) subleasing any part of the land without the approval of the lessor;
  - (b) from wasting the timber beyond the ordinary daily needs;  
and he is required to erect or lay in on the property "with all expedition", and keep in good repair and order;
- and are required:

- (1) to erect a 16x20' dwelling house with a brick or stone chimney;
- (2) to plant a fenced orchard of 100 apple trees at least 30' apart.

Sgnd: Denny FAIRFAX, James DONALDSON

Wits: Thomas MASSIE, John MOREHEAD, Elisha WARDEN

Acknowledged at the 24Apr1787 FauquierCo Court by both parties,

Fairfax's attorney, Thomas Bryan MARTIN, and by James DONALDSON,  
and Proved by the oaths of the three witnesses

Although the surname in this document is consistently spelled "Donaldson" we know, both from the extensive legal controversies over it, both at law and chancery, and by the land tax records for FauquierCo from 1788 through 1810, that this 138a was taxed to James DENNISON from 1788 through 1807, and then, for 1809-1810, to Thomas DENNISON, his son. Since, for 1811, and in particularly from 1813-1815, neither Thomas DENNISON nor anyone else in FauquierCo is taxed for 138a, presumably Thomas vacated the land no later than 1810, although the county personal property taxes continue to show him as a resident through at least 1819, and a Thomas Dennis (aged 45+) heads a FauquierCo household in the 1820 USCensus (DENNISON is often in these Fauquier records truncated to "Dennis", although I think that there were also plain "Dennis"es in the county).

The last minute addition of James's two oldest sons to this document gives it the form of a traditional British "three lives" lease, although technically, since the lease as written (and without the added language incorporating the sons) allows it to be transferred to James's "assigns" as well as his heirs, presumably he could have passed it off or sold it to anyone—although the assignment would have to be irrevocable since "subleasing" of the land was prohibited without the approval of the lessor.

However, who the lessor actually was had become problematic by the 1800s.

The Fairfaxes, including Lord Thomas Fairfax who lived in Virginia but died in 1781, were and remained British throughout and after the Revolutionary War, and in the war's aftermath a large number of court cases ensued at both the national and the state level, supplemented by diplomatic machinations, to determine who really owned the lands and other property of leftover British citizens and Loyalists. I have read, though without any details provided, that the Fairfax cases dragged out in Virginia courts until about 1806, and that generic solutions to these problems weren't laid down until an 1815 Supreme Court case. I suspect that much of the Fairfax land escheated to the Virginia Commonwealth, and was probably re-granted after all existing leases expired.

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of the said Denny Fairfax (by Thomas Bryan Martin his attorney) and Josiah Maysie, by the oaths of John Black, Thomas Maysie, and John Morehead witnesses thereto, and ordered to be recorded.

E<sup>o</sup> & d<sup>o</sup>

Teste, J. Brooke &c

Fairfax  
to  
Donaldson

This Indenture made the twenty first day of April one thousand seven hundred and eighty seven Between Denny Fairfax lately called Denny Martin of Leeds Castle, in the County of Kent and Kingdom of Great Britain, Clerk, a devisee and legatee named in the last will and Testament of the right Honourable Thomas Lord Fairfax, Baron of Cameron, in that part of Great Britain called Scotland, and proprietor of the Northern Neck of Virginia, deceased, by Thomas Bryan Martin Esq: of Greenway Court, County of Frederick and State of Virginia of the one part, and James Donaldson of Fauquier County in the said State of the other part: Whereas the said Denny Fairfax by his letter or power of attorney, dated the seventh day of November one thousand seven hundred and eighty three, and duly and legally proved before Nathaniel Nainbham Esq: Lord Mayor of the City of London and certified by him under the seal of the office of Mayoralty of the said City, the eighth day of the same month of November, did authorize and empower his Brother the said Thomas Bryan Martin among other things to lease out his lands in the said State of Virginia so devised to him by his uncle the said Thomas Lord Fairfax, deceased, for any number of years, on such rents, covenants and terms as he the said Thomas Bryan Martin should think reasonable and necessary, and upon payment of such rents, or any part thereof, to give acquittances and discharges for the same, and upon non payment thereof to make distresses or to sue for implead or prosecute the several defaulters to Judgment and Execution, as by the said Letter or power of attorney now in the possession of the said Thomas Bryan Martin May more fully and at large appear. Now this Indenture witnesseth that the said Denny Fairfax by his attorney aforesaid, for and in consideration of the rents and covenants hereafter mentioned, hath demised, Granted and to farm letten and by these presents doth demise Grant and to farm let unto the said James Donaldson all that piece, parcel and lot of land in the County of Fauquier being part of the Manor of Leeds and bounded as by a survey thereof lately made, by John Moffett

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thence along and beyond Garrett south 27 West 150 Poles to sundry marked Trees in Nor-  
mans line thence along the said Line West 100 to sundry marked saplins thence North  
2 West 185 Poles to Oldhams line thence along the same south 73 East to the beginning  
Containing one hundred and thirty eight acres. To have and to hold  
the said one hundred and thirty eight acres of land to the said James Donaldson  
his Heirs, Executors, administrators or assigns, for and during the life of the said  
James Donaldson, John and Thomas Donaldson his sons to commence from  
the day of the date of these presents, he the said James Donaldson his heirs  
Executors administrators or assigns, yielding and paying to the said Denny  
Fairfax, or his attorney aforesaid, his heirs, Executors administrators or assigns  
the yearly rent of one pound fourteen shillings and six pence current Money of the  
state of Virginia, and also pay or cause to be paid to the said Denny Fairfax  
or his attorney aforesaid, or to the person or persons appointed by Law  
to receive the same, and at the time for the payment of the present  
assessment or Land Tax, and all other future assessments a Land Taxes,  
or other Taxes, either ordinary or Extraordinary, that shall or may be  
laid on the said Land or any part thereof, by the General assembly of  
the state of Virginia or other legal authority during the said term. And  
further the said James Donaldson for himself his heirs, Executors, admini-  
strators or assigns, doth Covenant and grant to and with the said Denny  
Fairfax, his heirs, Executors, administrators and assigns, by his attorney  
aforesaid, that he the said James Donaldson his heirs, Executors, adminis-  
trators, and assigns, will pay or cause to be paid all Charges and expences  
attending or accruing for surveying the said lot, the drawing the lease  
and recording the same; and that he the said James Donaldson his Heirs  
Executors administrators or assigns, shall not put or place on the said lot  
or any part thereof, any sub or under tenants without the leave or license  
of the said Denny Fairfax, or his attorney aforesaid. And further the  
said James Donaldson for himself his heirs, Executors, administrators  
or assigns, doth Covenant and agree to and with the said Denny Fairfax  
by his attorney aforesaid, his Executors, administrator or assigns, that he

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will, with all expedition erect and build on the said Lot of Ground of one hundred and thirty eight acres, one dwelling house twenty feet long and sixteen feet wide, with a brick or stone Chimney to the same, and keep the same in good and tenantable repair and leave the same in such good repair at the expiration of the said term. And further the said James Donaldson doth Covenant and agree to and with the said Denny Fairfax, by his attorney aforesaid, his heirs, executors, administrators or assigns, that he will, with all Expedition, raise and plant an orchard of one hundred apple Trees, and plant the same at least thirty feet asunder, and keep the same well trimmed and fenced for and during the said term, and leave the same in good order and well Inclosed at the expiration thereof. And further the said James Donaldson doth Covenant and grant to and with the said Denny Fairfax by his attorney aforesaid, his heirs, executors, administrators or assigns, not to waste, unnecessarily destroy, or dispose of any Timber Growing upon the said Land, but only to make necessary use of the same for the benefit of the said Plantation and premises. And further that if the said James Donaldson his heirs, executors, Administrators or assigns, shall at any one time for the space of two whole Years fail in the payment of the rent herein before reserved or any part thereof or in the performance of all or any of the Covenants herein before contained, then it shall and may be lawful for the said Denny Fairfax, by his attorney aforesaid, his heirs, executors, administrators or assigns, to reenter the Land and premises hereby leased, and be in the actual possession of the same, to all intents and purposes as if this lease had never been made. In witness whereof both parties the said Denny Fairfax by his attorney aforesaid and the said James Donaldson have hereunto set their hands and seals the day and year before written.

signed sealed and Delivered  
in the presence of  
Thomas Maffie  
John Morehead  
Elisha Warden

Denny Fairfax Ls  
James Donaldson Ls

N.B The words " John and Thomas Donaldson his sons" were inserted before the executing this deed. —

At a Court continued and held for Fauquier County the 24th day of April 1787.

This Indenture was proved to be the act and deed of the said

359 Denny Fairfax (by Thomas Bryan Martin his attorney) and James Donaldson  
by the oaths of Thomas Maffie, John Machead, and Elisha Warden witnesses  
thereto and ordered to be recorded. —  
E. J. W. Teste, P. Brooke, &c.