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PATRIARCHY AND PROPERTY: THE NINETEENTH-CENTURY
MISSISSIPPI MARRIED WOMEN'S PROPERTY ACTS

by

Amanda Sims

A thesis submitted to the faculty of

Brigham Young University

In partial fulfillment of the requirements for the degree of

Master of Arts

Department of History

Brigham Young University

August 2007

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BRIGHAM YOUNG UNIVERSITY

GRADUATE COMMITTEE APPROVAL

of a thesis submitted by

Amanda Sims

This thesis has been read by each member of the following graduate committee and by majority vote has been found to be satisfactory.

Date

Mary Stovall Richards, Chair

Date

Susan S. Rugh

Date

Matthew E. Mason

BRIGHAM YOUNG UNIVERSITY

As chair of the candidate's graduate committee, I have read the thesis of Amanda Sims in its final form and have found that (1) its format, citations, and bibliographical style are consistent and acceptable and fulfill university and department style requirements; (2) its illustrative materials including figures, tables, and charts are in place; and (3) the final manuscript is satisfactory to the graduate committee and is ready for submission to the university library.

Date

Mary Stovall Richards
Chair, Graduate Committee

Accepted for the Department

Kendall W. Brown
Graduate Coordinator

Accepted for the College

David B. Magleby
Dean, College of Family, Home and Social Sciences

ABSTRACT

PATRIARCHY AND PROPERTY: THE NINETEENTH-CENTURY MISSISSIPPI MARRIED WOMEN'S PROPERTY ACTS

Amanda Sims

Department of History

Master of Arts

The Mississippi Married Women's Property Acts of 1839, 1846, and 1857 reflected the desire of the Mississippi patriarchy to protect themselves from economic instabilities. Analysis of women's deeds in Jefferson county, Mississippi, from 1792 to 1871 and the rulings of the Mississippi High Court of Error and Appeals demonstrate the patriarchy's attempt to balance their desire for preservation of power with honor's demands that patriarchs provide for their families. The MWPA gave women the right to own property in their own names but restricted their ability to use and alienate that property. This made women property owners in name only, an action that preserved a portion of a family's estate which husbands controlled but which could not be taken from them.

Women benefited in small ways from men's desire to protect personal wealth in Jefferson county. Women's property transactions there rose over the century—the

increase roughly correlating with the passage of the 1839 law and its amendments. Court cases reveal that men and women acted as it best suited them financially employing the MWPA pragmatically rather than deliberately to widen women's sphere. The 1846 amendment essentially constitutes the legislature's response to these individual interpretations of the law, and the 1857 amendment is a digest of further additions and clarifications of the MWPA by the High Court itself. Legislative action and High Court rulings clarify the intent behind the MWPA regarding women's place and role in family and society. It is evident that the design of the law was not to bring gender equality to property law or to recognize the wife as a separate entity within the marriage

This is the message of the various versions of the Mississippi MWPA and the resultant court decisions: vesting property in an inert owner ensures that it will be safe from the claims of predacious creditors and therefore available in perpetuity. The Mississippi MWPA in essence designated married women as a sure investment for their families' financial preservation.

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CHAPTER I

“BY MARRIAGE, THE HUSBAND AND WIFE ARE ONE PERSON IN LAW”: THE MARRIED WOMENS PROPERTY ACTS AND THEIR PLACE IN HISTORY

Blackstone, *Commentaries on the Laws of England*¹

On the sixth of April 1839 widower Arthur B. Sims executed a deed of gift conveying nine slaves to his ten-year-old daughter, Martha Jane. Perhaps he thought he was securing her future with the deed, providing for her in case of his death in the Mississippi River-bordered county of Jefferson, Mississippi. The deed was executed only four days before Arthur’s marriage to his second wife, Hannah Powell, so perhaps he intended to ensure that his first wife’s property passed to her only living child, Martha Jane. Arthur’s reasoning as to why he might consider the deed to his daughter necessary is unclear. The timing of the deed and events in succeeding years imply that Sims might have had any of several motives—especially as he did not seem to provide for his later children in this same manner. A case file surviving in the county’s chancery court reveals some of the details of the Simses’ future and the future of the father’s gift to his eldest daughter.²

¹ William Blackstone, *Commentaries on the Laws of England*, vol. I. (New York: Garland Pub., 1978), 442.

² Chancery Court Jefferson County, Mississippi, Bill of Complaint, *Chancery Court Case #12, Rosaline Frisby by Next Friend vs. A. W. Sutphen et ux*, microfilm located at the Family History Library, Salt Lake City, Utah, FHL US/CAN Film 1905642.

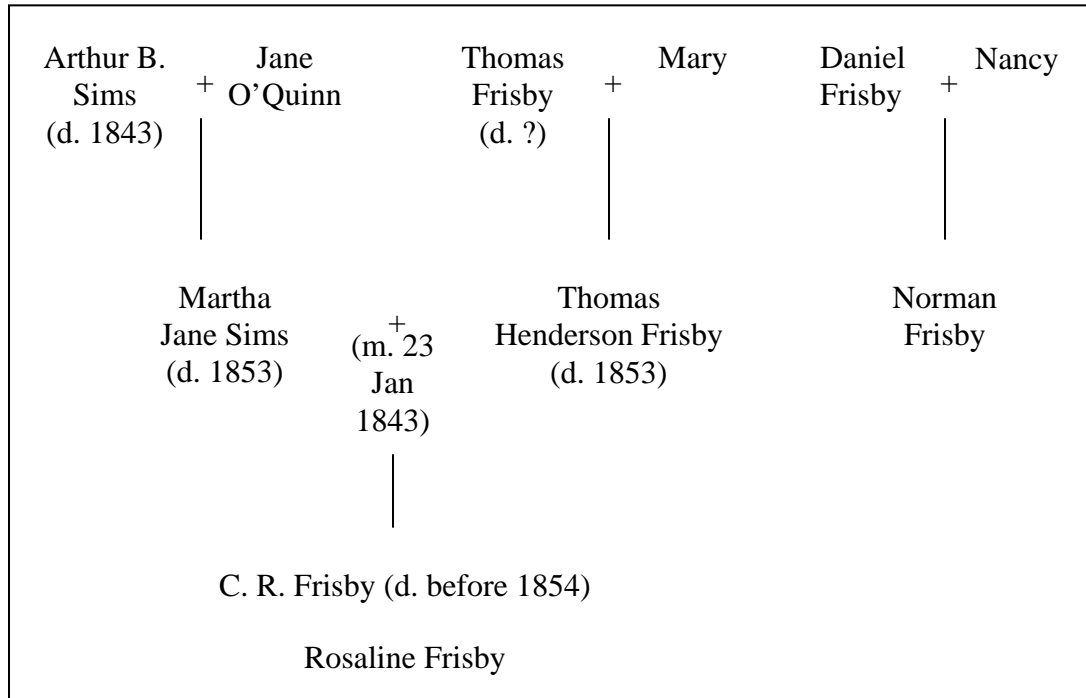
On the twenty-third of January 1843 in Claiborne county, which borders Jefferson on the north, fourteen-year-old Martha Jane Sims, without her father's knowledge and consent, was married to twenty-three-year-old Thomas Henderson Frisby, the son of the late Thomas Frisby (see figure 1 on next page for familial relationships). The circumstances leading to the marriage are unknown, as are the reasons for Arthur Sims's subsequent violent opposition to the marriage (though the more obvious causes for his opposition can be inferred after looking into Thomas Frisby's finances and considering the age of the bride). This opposition might also have had something to do with his loss of control of the slaves named in the deed to his daughter since they would have accompanied Martha Jane's removal from her father's household.

Norman Frisby, Thomas's cousin, later reported these details and others to the chancery court where he revealed that following Martha Jane's infamous marriage, Arthur Sims attempted to reclaim the slaves he had previously deeded to her. According to Frisby, Arthur Sims died in the same year Martha married and, by the time Norman Frisby recorded the story in 1854, the administration of Sims's estate was final. Norman maintained that Martha Jane and her husband were in possession of the nine slaves until both Thomas and Martha Jane Frisby died in 1853, implying Sims was unsuccessful in reclaiming the slaves from his daughter. However, according to Norman Frisby, when he assumed guardianship over Rosaline Frisby, Thomas and Martha's only surviving child, and her estate, he found one of the original nine slaves, Sarah, and her two young children missing.³ Sarah and her children were, at the time Norman initiated his suit in

³ Ibid.

the chancery court, in the possession of Abram W. Sutphen, whom Norman sued to regain the slaves.

Figure 1. Relationships involved in Chancery Court case No. 12 in Jefferson county, Mississippi, *Rosaline Frisby by Next Friend v. Arthur Sutphen et ux.*



The deposition recording Sutphen's side of the story survives in the probate court.

Abram W. Sutphen countered that Norman Frisby's story was bunk. Among his many contentions, Sutphen refused to accept that such a deed of gift from Arthur Sims to his daughter existed, but alleged that if it did exist,

said deed was made and said Negroes delivered to said Martha without any valuable consideration whatever, and with the intent to hinder delay and defraud the creditors of the said A. B. Sims. [Sutphen] states that at the date of said deed of gift the said A. B. Sims was largely involved in debt and was insolvent. Among other persons he was then indebted to Calvin Smith in the amount of a promissory note for twenty six hundred and eighty nine 30/100 dollars due December 1, 1837, with interest from its maturity . . . and to various other persons in large sums which he was altogether unable to pay and which he never did pay. And being thus

indebted the said A. B. Sims to cover up his property from his said creditors and to secure to himself the use and enjoyment of it made said deed of gift to his infant daughter then under ten years of age and put the same upon record⁴

Sutphen further contended that because Sims defaulted on his debts, the court seized the slaves in execution of the judgment Sims's creditors brought against him. Because Sims could not pay the debts he owed in the time allotted by the court, the slaves were subsequently sold at public auction, held March 1, 1843, to pay Sims's creditors. Lewis H. Sims, Arthur Sims's brother, was the highest bidder for the slaves and possessed the slaves as his own until February 25, 1846, when Lewis Sims sold Sarah to James Kelly, who later sold the slave to Martha Sutphen in April 1847.

Among his other arguments, Sutphen asserted that Frisby could not sue him for the slaves because they belonged to Sutphen's wife; Martha Sutphen purchased the slaves for her own personal use and, therefore, she was the owner. By 1847 the Mississippi legislature had made it legal for married women to obtain their own property in certain ways, but the law still provided that a married woman could not be sued in her own name. In order for the case to proceed in the courts, Frisby had to petition to change the defendant in the suit. The suit was amended by adding Martha Sutphen's name to the court documents with that of her husband.

This convoluted case is extremely interesting for several reasons. The case of course raises several specific questions: What was the impetus for the deed? Did Arthur Sims attempt to shield his property from creditors by transferring it to his daughter? Did Sims try to regain the slaves in an attempt to disinherit his daughter and thus lose them to

⁴ Chancery Court Jefferson County, Mississippi, Respondent's Answer, *Chancery Court Case #12, Rosaline Frisby by Next Friend vs. A. W. Sutphen et ux*, microfilm located at the Family History Library, Salt Lake City, Utah, FHL US/CAN Film 1905642.

his creditors? It also leads to a certain amount of speculation: Surviving family correspondence tells us that Arthur Sims was often in financial difficulties.⁵ Perhaps, as Sutphen alleged, the slaves were never really meant to leave Sims's possession. Sutphen argued that since Martha Jane Sims was a minor at the time the deed was created, the slaves never left Arthur Sims's possession and thus were never truly delivered to Martha as the law directed. Not only did this nullify the deed of gift, but in Sutphen's estimation it proved that Sims's motive for the deed of gift was simply to maintain control of the slaves by pretending that they legally belonged to his daughter. Was Sutphen correct?

The contradictions between Sutphen's account of events and Norman Frisby's account of events are obvious. The evidence and other witnesses produced in the case convinced the court that Sims's deed had indeed been an attempt to protect the slaves from seizure in payment of his debts and that the deed was never properly executed. The court ruled in favor of Martha Sutphen's claim to the slaves. Indeed, Hays B. Harrison testified that Arthur Sims himself admitted the deed had been made while Sims was drunk in order to preserve the slaves from becoming the payment on notes for which Sims was the security and which were in default. Harrison testified that Sims considered the deed of no effect and admitted that the deed was never fully executed.⁶ Harrison also divulged further information about the precarious financial circumstances that led to

⁵ Ann Mims Wright, *A Record of the Descendants of Isaac Ross and Jean Brown: and the Allied Families of Alexander, Conger, Harris, Hill, King, Killingsworth, Mackey, Moores, Sims, Wade, etc.* (Jackson, Miss.: Consumers Stationery and Print. Co., 1911), microfiche, Ann Arbor, MI: University Microfilms International, 1986.

⁶ Chancery Court Jefferson County, Mississippi, Hays B. Harrison Deposition, *Chancery Court Case #12, Rosaline Frisby by Next Friend vs. A. W. Sutphen et ux*, microfilm located at the Family History Library, Salt Lake City, Utah, FHL US/CAN Film 1905642.

Arthur Sims's financial distress—circumstances that were not uncommon following the financial panic of 1837.

In a larger sense the case also serves as an example of both men's and women's relationships to property and the law, as well as their relationships with one another in matters regarding property generally. Frisby's and Sutphen's stories not only question Sims's motive behind the deed of gift to his daughter but the purpose of similar transactions of other men. Both plaintiff and defendant in the case used the peculiarities of property law as it applied to women in order to gain or keep possession of the slaves in question. Norman Frisby claimed that the slaves were the property of A. B. Sims's deceased first wife, Jane O'Quinn, and subsequently of Martha Jane Frisby and Rosaline Frisby. In doing so he was trying to utilize several aspects of property and inheritance law that might strengthen Rosaline's claim to the slaves, from which slaves, as her guardian and as an heir at law of Thomas Henderson Frisby in default of other heirs, Norman Frisby stood to benefit.

Similarly, Abram Sutphen was quick to point out that it was his wife, not himself, who owned the slaves. While this was not a direct claim to the slaves, Sutphen retained a vested legal interest in his wife's property and was not a disinterested party in the suit. Just what this interest was and how and why Sutphen and Frisby each stood to gain from winning this case requires a greater understanding of the legal traditions operating during the antebellum period. The story of the Fisbys and the Simses represents the twisted relationship that existed between women and the law in the nineteenth century. It also questions the motive behind and illustrates the peculiarities of Mississippi's married women's property act.

On the 15 of February 1839, nearly two months prior to Sims's deed of gift, the Mississippi legislature approved "An Act for the protection and preservation of the rights and property of married women."⁷ This act, the married women's property act (hereinafter MWPA), commonly called "the woman's law," was the first of its kind in the United States and evidently was intended to take effect directly upon its passage.⁸ It granted women the right to own property apart from their husbands without the need to specify the creation of a separate estate in the chancery court. This bill merged portions of the three forms of legal tradition that governed most of the United States in the nineteenth century: the common law, equity, and statutory law--all systems inherited from England in the colonial period. However, the 1839 MWPA was in force for only seven years before it was amended in 1846 and therefore cannot be considered in isolation. In fact, the law was amended again in 1857—and in 1880 the Mississippi legislature made the law obsolete when it passed a new law which completely abolished property ownership restrictions based on gender and marital status.

This thesis examines the effects of the Mississippi married women's property act and the subsequent amendments of 1846 and 1857 on women's participation in property transactions, how these laws were interpreted by the courts and applied to real life situations, and explores possible motives for the passage of these acts. The passage of

⁷ An Act for the protection and preservation of the rights and property of Married Women, *Session Laws of American States and Territories: Mississippi State 1817-1898*, Chap. 46, sections 1-5 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche, 51. The law is commonly known as the Mississippi Married Women's Property Act of 1839; full text is in appendix A.

⁸ As no date was specified by the legislature I have been unable to determine the exact date the law took effect, though this seems to have been an issue generally because the legislature specifically stated the time at which the act would take effect in the 1846 amendment. Since the 1846 amendment was to take effect immediately upon its passage, it is assumed that this was the intended activation date attached to the original act as well. In regard to the claim that Mississippi passed the first MWPA, it must be noted that Arkansas, as a territory, passed an act in 1835 that recognized women's limited rights to property. In 1846 when Arkansas became a state it adopted almost verbatim the 1839 Mississippi Act as its own law.

the Mississippi MWPA, a seemingly radical change in the status quo for women, offers an important case study for determining the extent to which Southern women gained financial independence from their husbands and greater freedom in participating in society's business sector during the nineteenth century. As a result of these laws, women's de facto rights to own and control property increased in the antebellum period, laying the groundwork for the changes to their roles in Southern society later in the nineteenth and early twentieth centuries. The 1839 MWPA increased women's rights only slightly, while the subsequent amendments gave women far greater freedom and responsibility, without, however, removing the ultimate authority concerning property from the husband and patriarch of the home. These new rights for women most likely grew out of economic necessity coupled with the southern patriarchy's sense of honor in regard to the safety and security of southern women.

The 1839 MWPA did nothing more than legally pass the title to property to a married woman, while reserving all the privileges of ownership to her husband and providing her some recourse in retaining her separate property from his creditors, but she benefited only in the continued possession of the property, not necessarily in the enjoyment of the usual benefits of property ownership. It was with the passage of the 1846 amendment that women were finally entitled to the benefits of property ownership, but even this amendment and the following amendment in 1857 restricted women's ability to choose what they would do with their separate property. It was not until 1880 that the Mississippi legislature passed an act that completely removed the strings attached to married women's property rights. The increasing need to recognize that a husband could not or would not always maintain or represent the interests and identity of his wife

in his actions, as well as the difficulty in determining liability with regard to property transactions, eventually led to the elimination of the concept of the feme covert with regard to property rights—a concept clearly demonstrated by the Mississippi MWPA.⁹ The changes were slow to take effect, however, and it is clear that prior to the Civil War, and indeed even in the 1870s, Mississippi men felt that women still needed protection from their own judgment. Women gave credence to the myth of the Southern Lady¹⁰ as well, and in most cases their use of the law was limited to using their new rights to help other family members.

Law and the way people utilize the law are indications of a society's values. It is a shame therefore that there is a general lack of secondary literature that treats women's rights, both theoretical and real, in the early nineteenth century. While excellent work exists to describe the general day-to-day life of women during the nineteenth century, very little demonstrates the influence of the changing laws on women's lives. The passage of the Mississippi 1839 MWPA, a seemingly radical change in the status quo for women, has become the focus for a couple of historians who are convinced that the

⁹ By 1877, 26 states had already passed legislation removing some or all of the disabilities of coverture. However, the belief in women's inferiority remained ingrained in society. In 1873 the US Supreme Court upheld the idea of coverture in the case of *Bradwell v. Illinois*, declaring that a married woman was not able to contract freely despite the changes that had been made to women's property laws. The suit revolved around Bradwell, a married woman, who passed the Illinois bar exam in 1869 but whom Illinois refused to allow to practice as an attorney because she was not male. In addition to pointing out the changes in women's property laws, as well as the favorable language in other state and federal laws, Bradwell argued that her Fourteenth Amendment rights were violated by the discrimination against her. The Supreme Court ruled, however, that Illinois had the right to discriminate by gender. Although all states eventually granted feme coverts equal property rights with men, gender discrimination as a matter of state's rights continued until 1971 when the Supreme Court reversed its opinion in *Reed v. Reed*. This decision extended the protection of the Fourteenth Amendment to apply to arbitrary gender discrimination in the law. The disabilities of coverture are therefore no longer valid in the US unless applied equally to both men and women.

¹⁰ The "Southern Lady" was supposed to be pious, virtuous, and submissive. She should refrain from challenging male prerogative. For greater detail on this idea, see Anne Firor Scott, *The Southern Lady: From Pedestal to Politics, 1830-1930*, 2d ed. (Charlottesville: The University Press of Virginia, 1995).

expansion of women's rights in the South began much earlier than is traditionally accepted.

Historiography

The passage of married women's property acts is currently only a minor part of the discussion of what led to greater equality in the United States between men and women in the latter nineteenth and twentieth centuries.¹¹ Most states in the United States eventually passed married women's property acts. While it is clear that the MWPAs affected at least a few individual women, historians question whether or not these laws affected women on a societal scale and, if so, how. Scholars have only begun to investigate this phenomenon. The laws concerning women's property ownership came gradually and sporadically over the course of the nineteenth century, and the motivation for the passage of some of these acts is in dispute. Similarly, the literature regarding women's property acts and women's position in society generally began in the early twentieth century but has only recently become a subject that informs the larger historical community. It is necessary, therefore, to first review the literature regarding the married

¹¹ For examinations on women's property laws as a means for extending women's equality see Elizabeth Bowles Warbasse, *The Changing Rights of Married Women, 1800-1861* (New York: Garland Publishing, Inc., 1987); Peggy A. Rabkin, "The Origins of Law Reform: The Social Significance of the Nineteenth-Century Codification Movement and Its Contribution to the Passage of the Early Married Women's Property Acts," *Buffalo Law Review* 24 (Spring 1975): 683-760; Peggy A. Rabkin, *Fathers to Daughters: The Legal Foundations of Female Emancipation* (Westport, Conn.: Greenwood Press, 1980); Kay Ellen Thurman, "The Married Women's Property Acts" (unpublished LL.M. thesis, University of Wisconsin Law School, 1966); Mary Beard, *Women as Force in History: A Study in Tradition and Realities* (New York: Persea Books, 1987); Marylynn Salmon, "Women and Property in South Carolina: The Evidence from Marriage Settlements," *William and Mary Quarterly* 39 (1982): 655-685; Mary Beth Norton, *Liberty's Daughters: The Revolutionary Experience of American Women, 1750-1850* (Boston: Little, Brown, 1980); Norma Basch, *In the Eyes of the Law: Women, Marriage and Property in Nineteenth-Century New York* (Ithaca, New York: Cornell University Press, 1982); Emily F. Van Tassel, "Women, Property and Politics in Nineteenth-Century Law," *Reviews In American History*, 11 (1983): 374-380.

women's property acts and then explore how this literature has impacted the writing of women's history generally.

In 1944 Elizabeth Gaspar Brown first addressed the seeming oddity of the 1839 Mississippi MWPA in an article for the *Michigan Law Review*.¹² She points out that historians neglect the Mississippi Law of 1839 (the first MWPA passed by a state) and focus instead on the New York law of 1848 as the beginning of emancipation for women. As is evident from Norma Basch's book on New York and more recent studies, this seems to be the case.¹³ Brown complains, however, that not only was the Louisiana civil code a precursor to the New York law of 1848, but Mississippi, Maine, Michigan, and Texas all preceded New York in legislating greater property rights for married women. Brown discusses the oral traditions as well as the existing historical evidence concerning the passing of what was in Mississippi popularly called the "woman's law."

Brown admits the evidence is not sufficient to do more than suggest a possible motive behind the bill, one that most other authors who discuss "the woman's law" adopt: One of the proponents of the original MWP bill was T. B. J. Hadley. It seems that Hadley was in financial difficulty and that his wife ran a boarding house where many of the state legislators resided while in session. The Hadleys had lived for a short while in Louisiana, where under the civil code women enjoyed more freedom with regard to property rights. Oral tradition says that Mrs. Hadley used her influence over the legislators' stomachs to encourage their vote for "the woman's law." The state senate minutes remain and offer only a glimpse at the debate that initially killed the bill only to

¹² Elizabeth Gaspar Brown, "Husband and Wife: Memorandum on the Mississippi Woman's Law of 1839," *Michigan Law Review*, 42, no 6 (June 1944): 1110-1121.

¹³ Basch, *In the Eyes of the Law*.

see it revived, revised, and approved a few days later. Other than the fact that a bill for “the Relief of Mr. T. B. J. Hadley” was passed just prior to the introduction of the MWPA, the historical record offers no hint of the actual motives behind the introduction of the MWPA nor does it tell what the reaction was in the state house of representatives other than to record that the house also passed the amended bill, and the governor signed it into law the same day.¹⁴ Clearly Brown views Mississippi’s 1839 act as one of the first steps for women towards equality with men. Because she attempted to show a connection between the new Mississippi law and the civil law tradition in Louisiana, Brown assumes that the motive for the passage of the new law was to expand women’s rights rather than provide protection from Hadley’s creditors for his wife’s property and interest in the boarding house.

Brown continues in her article to briefly discuss the Maine, Michigan, and Texas laws regarding married women’s property. She points out that the Maine act, passed just eleven days before the Michigan act, was almost identical to the Mississippi MWPA. This seems to show that the Mississippi law was a catalyst in the growing women’s movement in the Northeast because it served as the example; however, she admits the Michigan act cannot be connected directly to the Mississippi act. She argues that Texas derived its position on married women’s rights from the civil code that had operated in Texas under Spanish, Mexican, and Texan rule and noted that New York specifically referred to the Texas model in its adoption of married women’s property rights.¹⁵

¹⁴ Brown, “Husband and Wife,” 1110-1121.

¹⁵ Ibid.

The next author to really tackle the subject of the MWPAs should be credited for directing most of the work that has since followed on this subject. *The Changing Legal Rights of Married Women, 1800-1861*, briefly examines the development of women's property law for each of the states and regions of the United States. The author, Elizabeth Warbasse, argues that while changes were occurring across the nation, the extent and the motivation for those changes were not the same across regions. The South, she argues, narrowly constructed their MWPAs to aid the economy after a slump, while the rising women's movement and settlement patterns in the Northern and Western states encouraged the changes in the laws there.¹⁶ Warbasse's work was originally published in 1960 as her dissertation when there was still little interest in women's history as a whole, much less in the rights of married women. However, Garland Publishing Company offered to republish her work in 1987 as interest in women's history began to grow.

Historians of women's property rights generally follow Warbasse's lead, arguing as she has for the regional nature of women's property law and for the generally conservative nature of these laws. During the 1980s and 1990s a few historians attempted sweeping overviews of women's property laws, while most focused on narrower geographical studies, which bear out Warbasse's contention that the MWPAs developed in some cases from local agitation. Nearly all agree that women's property legislation was not designed specifically to further women's legal status.

One study that attempts to examine women's property law on a larger scale, Marylynn Salmon's *Women and the Law of Property in Early America*, explores the importance that the developing legal system played in early American women's lives.

¹⁶ Warbasse. *Changing Legal Rights of Married Women*.

She argues that women were increasingly active in the economy of early America, as demonstrated by the development and use of the chancery courts during the late colonial and early republic periods in certain Southern states. Chancery law allowed women to participate in society in ways in which common law courts did not. Salmon's work, however, only details the system until 1830 and does not deal with the emergence of the MWPA's in the following years. She also makes the case that laws with regard to women varied from state to state, essentially echoing Warbasse's earlier assertions.¹⁷

Joan Hoff's *Law, Gender and Injustice: A Legal History of U.S. Women* describes some of the changes that occurred from the colonial period to the nineteenth century in the law with regards to women. She argues that the nineteenth century was a period of general neglect of women's legal rights and that the ideology of republican motherhood acted as a mask to disguise a retreat from women's rights under the law. She censures the early MWPA's as token acts that accomplished nothing for most women.¹⁸ Cynics, like Hoff and Basch, argue that the benefit to the wife from many of these early property laws was secondary in nature because for the most part the wife did not in reality gain any rights to her property unless she became a widow. The vast majority of husbands reserved the right of control over a wife's property and its use during her life and following her death, a traditional privilege known in the common law as *courtesy*. The protection of a wife's property merely gave added protection to the husband himself from bankruptcy and utter financial ruin in some cases. A husband might risk all his

¹⁷ Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986).

¹⁸ Joan Hoff, *Law, Gender and Injustice: A Legal History of U.S. Women* (New York: New York University Press, 1991), 120-128.

assets in financial ventures, and yet his wife's separate property would be protected from the claims of his creditors.

The best examples of the local studies are the work of Suzanne Leacock, whose first publication on this subject, "Radical Reconstruction and the Property Rights of Southern Women," focuses on the MWPAs passed in the aftermath of the Civil War. In direct opposition to Brown's thesis, Leacock discusses the place of women's property acts in the reconstructed Southern states as a part of the progress of legislation in the South over the course of the century with regards to women. She argues that this legislation was meant to benefit men and the greater society rather than to recognize women's equality or separate identity from their husbands. Leacock's later book, *The Free Women of Petersburg*, addresses many of these same issues, but it targets women's experience only in Petersburg, Virginia. Virginia was one of the last states to pass a MWPA in 1877 because it considered that the chancery system was more than adequate for dealing with women's property rights.¹⁹ When Virginia finally did pass a MWPA, it was quite liberal in giving married women not only separate property rights, but all the rights of *femes sole* (unmarried women).

Norma Basch has thoroughly traced the changes in women's property laws in nineteenth-century New York in her book, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York*. Though many people view the New York law as a by-product of the fledgling women's rights movement, Basch, like Joan Hoff and others, argues that the early MWPAs in New York did not elevate the status of

¹⁹ Suzanne D. Leacock, "Radical Reconstruction and the Property Rights of Southern Women," *Journal of Southern History* 43, no. 2 (1977): 195-216; *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York: Norton, 1984).

women under the law, accomplishing nothing more than codifying exceptions that traditionally existed under equity law. These property rights were available to only a limited number of elite women in the antebellum period. She concludes that the judiciary perceived that the New York legislature's purpose in passing the 1848-1849 MWPA was to protect women's separate property from creditors, not to identify the wife separately from her husband as an individual capable of controlling her own affairs.²⁰ Her thesis agrees ultimately with the conclusion Elizabeth Warbasse reached on this same subject: that the passage of the 1848 New York MWPA was based in part on the desire to protect women financially in a changing economic system and in part to clearly define the law with respect to women's equitable estates. While the women's movement contributed to the debate over women's property laws, it also represented a stumbling block for many men in the first half of the nineteenth century. Basch is generally representative of the literature on this subject for New York.

Richard H. Chused, "Late Nineteenth Century Married Women's Property Law," considers the developing law concerning women's right to property in Oregon based on the public grants made to married women in the latter half of the nineteenth century. He argues that women's property law there developed out of necessity in the newly settled territory. Legislation passed granting property to women separately from their husbands was used to promote family settlement in a territory with high male mortality rates. The succeeding laws attempted to clarify the ambiguity of the status of married women's property rights that developed from these early land grants. Chused argues that the controversy over property rights that developed out of the early land grants and the

²⁰ Basch, *In the Eyes of the Law*.

attempts to rectify this in the law are significant in the development of women's legal and social status in the Northwest.²¹

The next historian to investigate the MWPA's returned once again to Brown's original argument. Sandra Moncrief, like both Elizabeth Brown and Elizabeth Warbasse, attempts to explore the motivation for passing the 1839 MWPA.²² Both Brown and Warbasse recount the story of the Hadleys. Moncrief does not break with this tradition, but she adds the story of Betsy Love Allen, a Choctaw woman, to the record. Choctaw tradition held that land and property passed through the maternal line and, therefore, was controlled by the wife and not the husband. Allen's suit claimed that her husband's sale of her land was invalid under Choctaw practice. The state supreme court agreed, based on the evidence that the Allens were married before the state of Mississippi claimed jurisdiction over the Choctaw. Moncrief argues that Betsy Love Allen's court case, decided two years before the passage of the MWPA, fueled the idea that women could own and control property separately from their husbands. Moncrief asserts that the men who proposed the act faced strong opposition in the legislature, but she does not explain why the bill finally passed despite this opposition.²³ Her overall argument is that local custom, as well as the influence of the civil law, were the major influences on the development of Mississippi's 1839 MWPA.

²¹ Richard H. Chused, "Late Nineteenth Century Married Women's Property Law: Reception of the Early Married Women's Property Acts by Courts and Legislatures," *American Journal of Legal History* 29, no. 1 (1985): 3-35.

²² Sandra Moncrief, "The Mississippi Married Women's Property Act of 1839," *Journal of Mississippi History* 47, no. 2 (1985): 110-125.

²³ Moncrief, 110-125.

At the same time Moncrief was re-examining societal influences on the passage of Mississippi's MWPA, Michael Dougan took issue with Mississippi's claim to the earliest of these women's laws. Dougan takes a deeper look at the history of women's property law in Arkansas, where the first MWPA was passed in 1835. Although the law gained favor during the economic crisis, Dougan finds that early married women's property law reforms began in Arkansas even before the economic downturn in 1837 for the same reasons Chused argues drove women's property in Oregon: frontier necessity. However, Dougan also traces the effects of the legislation in the local and state judiciary and finds that the interpretation of the laws ranged greatly from one area to another and from case to case, usually depending on the views of the judge with regards to the place of women in society. His study highlights the subjective nature of the meaning of women's property law in the nineteenth-century South.²⁴

Dianne Avery and Alfred S. Konefsky have published a study of women's changing property rights in nineteenth-century Massachusetts. Their article, "The Daughters of Job: Property Rights and Women's Lives in Mid-Nineteenth Century Massachusetts," discusses the questions some women were raising about inequality under the law and men's legal reasoning that professed the existence of legal equality for both genders. They demonstrate that the widespread belief in Massachusetts was that the common law sufficiently represented the wife's interests in those of the husband because the marital state made husband and wife one.²⁵

²⁴ Michael Dougan, "The Arkansas Married Women's Property Law," *Arkansas Historical Quarterly* 46 (1987): 3-26; see also Sara Zeigler, "Uniformity and Conformity: Regionalism and the Adjudication of the Married Women's Property Acts," *Polity* 28, no 4 (1996): 467-495; Chused, "Late Nineteenth Century Married Women's Property Law."

²⁵ Dianne Avery and Alfred S. Konefsky, "The Daughters of Job: Property Rights and Women's Lives in Mid-Nineteenth-Century Massachusetts," *Law and History Review* 10, no. 2 (1992): 323-357.

Catherine B. Cleary examines the development of married women's property rights in Wisconsin from 1846 to 1872. She follows the activities of the Wisconsin legislature, which attempted to establish women's separate rights to property in its first constitution and again in the following decades as the public repeatedly repulsed the idea. Cleary's work argues for the radical nature of the MWPA by exhibiting the reluctance of society to accept such changes in the Midwest.²⁶

Donna Schuele details the extension of property rights to women in nineteenth-century California. She finds that despite the vague inclusion of women's property rights in the 1850 state constitution, they were reluctantly granted only later in the century. She argues that the agitation and arguments over women's property rights in California differed from the agitation for the same rights in the Eastern states because California's legal code was not derived from the common law.²⁷

Over the years then, historians have looked at the many states in various regions and their motives for passing the MWPA as well as the struggle involved in bringing about these laws. However, much of what has been written on the subject is embodied in Elizabeth Warbasse's work as it was originally completed in 1960. The exception to this is the sparse literature that surrounds the passage of the Mississippi MWPA of 1839. Moncrief, of course, argues that there were more forces at work than economic necessity or one particular woman's interest.

²⁶ Catherine B. Cleary, "Married Women's Property Rights In Wisconsin 1846-1872," *Wisconsin Magazine of History* 78, no. 2 (1994-95): 110-137.

²⁷ Donna C. Schuele, "Community Property Law and the Politics of Married Women's Rights in Nineteenth-Century California," *Western Legal History* 7, no. 2 (1994): 244-281.

While these historians debate the causes behind the changes in women's property law, only one person has yet to attempt to examine the actual impact the Mississippi MWPA had on women's property ownership in the nineteenth century. Jennifer Payne explored the changes in the number of married women leaving wills in Amite county, Mississippi, from 1840 to 1919.²⁸ She argues that based on the detailed and exacting nature of wills married women left in Amite county (a total of fifteen in the time period examined—eight prior to the Civil War and seven between 1871 and 1919), women welcomed independent control of their property during their coverture (duration of a woman's marriage) when it was given to them. There are, of course, several acknowledged problems with a study of this sort, namely that the disruption of the Civil War altered the nature of property ownership for the South as well as depressed the Southern economy and potentially reduced the number of female property owners who died still married.

An unacknowledged problem, however, is that the study examines only married women who left wills, not all married women who left property to be distributed or who were interested in dividing their property upon their death. It is unclear from Payne's work what percentage of all property holding women in the county these fifteen women who left wills represents. Many men, let alone women, did not bother to leave wills, relying instead on intestacy laws to provide for the distribution of their estates. Those who owned property and wanted to avoid the cost of the probate process may have executed deeds to distribute their property or simply divided the property amongst their

²⁸ Jennifer M. Payne, "Independent Minds and Shared Community: Married Women's Wills in Amite County, Mississippi, 1840-1919" (MA Thesis, Rice University, 1996) [database on-line]; available from ProQuest Theses and Dissertations.

heirs before their death, leaving no legal trail whatsoever. Some families simply divided an estate amongst themselves if they could do so amicably in order to avoid the cost and time involved in a probate action.²⁹

A yet more troubling problem with Payne's work, however, is the lack of attention to the changing nature of the Mississippi MWPA. Though passed in 1839, the original law was amended twice—once in 1846 and again in 1857. In 1880, the legislature made the law obsolete by passing a new law which entirely eliminated the disabilities of coverture in Mississippi. This law had the effect of making it possible for married women who owned property to dispose of their property by last will and testament, an action which was not possible previously except where the husband granted permission or a equitable arrangement had been made with such a provision. (Such a clause was not typical in marriage contracts unless the bride had inherited property from a previous husband.) It is interesting that the number of women in Payne's study who left wills after 1880, when all women were legally able to do so, is smaller than the pre-1880 number—not particularly indicative of women who welcomed independent property ownership.

The subject of MWPAs, however, has had little impact on the historical interpretation of women's history until recently. If one looks more broadly at the interpretation of women's history, it is evident that recent historians' contributions on this front are groundbreaking. Because most of the regional studies have demonstrated that the passage of early MWPAs had little to do with the woman's rights movement or

²⁹ Carol Shammass, Marylynn Salmon, and Michel Dahlin, *Inheritance in America From Colonial Times to the Present* (Galveston, Texas: Rutgers University Press, 1987; reprint, Galveston, Texas: Frontier Press, 1997), 15-19, 105-108.

indeed with women's enjoying equal rights with men, many historians have chosen not to evaluate further what these laws actually do demonstrate about women's history. For instance, women's historians have argued for a number of years over whether or not women's power in society increased or decreased following the colonial period, but it is only more recently that these historians have used the passage of the MWPAs as evidence for their stance on this issue.

Jane Turner Censer emphasizes women's gains in property holding after the Civil War as a sign that women's power in society was rising in the latter half of the nineteenth century. She demonstrates that although scholarship focuses on nineteenth-century Southern women's disabilities under the common law, in reality, even before the war, many women still owned property and participated in business. She points especially to the chancery courts and the practice of creating separate estates for women as the mechanism for women's property ownership. Admittedly, while many separate estates may have vested ownership to women in name only, still, Censer argues, there was a growing recognition in society of women's property rights. This recognition, she claims, resulted in an increased number of women during the postwar years with access to property either as a separate estate or as an inheritance. When they died, fathers and mothers were more likely to divide their property equally between their sons and daughters, irrespective of their marital status, after the war. This meant that both wed and unwed daughters were increasingly left their own property. Censer also argues that because of property women received from family either by inheritance or as a separate estate, the relatively limited number of fee simple legacies husbands left to wives in the postwar period is not indicative of women's total property ownership. Though small in

number, women of the Southern elite did own property and manage business affairs, and their number gradually increased in the postwar South.³⁰

In addition to Lebsock's and Censer's arguments that the presence of chancery law in the Southern states delayed the need for MWPAs, most Southern historians argue that Southern society and Southern women for the most part did not desire greater equality for women. In the growing examination of women's place in Southern history, many historians focus on women's contributions to the Civil War and the effect of the Civil War and Reconstruction, not the early MWPAs, in drawing greater numbers of women out of their homes and into the workforce. Many of these same historians conclude that the patriarchal structure the South knew before the war was as much in place following the war as ever.³¹ Any increase in women's participation in the larger society was an act of mere necessity, and, where possible, the patriarchal society remained the ideal way of life. It was not until the postwar period that the development of women's church and charitable organizations assisted in the creation of a limited women's movement in the South.³² Stephanie McCurry in *Masters of Small Worlds* particularly argues that in the years just before the Civil War southern men, rich and poor alike, clung tenaciously to their role as the head of their households requiring the subservience of wives, children, servants, and slaves.³³ Drew Gilpin Faust demonstrates

³⁰ Jane Turner Censer, *The Reconstruction of White Southern Womanhood, 1865-1895* (Baton Rouge: Louisiana State University Press, 2003), 98-126.

³¹ *Ibid.*, 99.

³² Anne Firor Scott, *The Southern Lady: From Pedestal to Politics, 1830-1930* 2d ed. (Charlottesville: The University Press of Virginia, 1995).

³³ Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, & the Political Culture of the Antebellum South Carolina Low Country* (New York: Oxford University Press, 1995).

in her work that while women often rose to the occasion when necessity required it during the Civil War, they did not relish these more independent roles in society and gladly relinquished them as soon as possible.³⁴

Most southern historians, like Lebsack and Faust above, have written that increasing women's legal or social freedom was not the design or the outcome of the laws and traditions in most southern states. Conversely, those historians who have studied the Mississippi MWPA, in particular, have been drawn to it because of the contradiction to the traditional picture of women's history it seems to represent. Brown and Moncrief both argue that the passage of the law and the possible causes leading thereto indicate that women had greater power to influence society than most historians are willing to recognize. Brown's and Moncrief's theories presuppose that the design of the Mississippi legislature was to endow women with greater rights to property. While Brown convincingly demonstrates the influence that Mississippi's 1839 MWPA had on Maine, the influence of Mississippi's MWPA has not been directly linked to the women's rights movement. Instead, Elizabeth Warbasse offers a couple of alternative motives to those of Brown and Moncrief for the Mississippi legislature's actions that fall more in line with these other Southern historians' views on women's history.

The first alternative position, as discussed previously, is the idea that the law was passed in the wake of the Panic of 1837 to protect women's property from seizure by a husband's creditors and thus protect the family financially in the aftermath of the closure of the National Bank. Warbasse asserts that the 1839 law was so narrowly constructed

³⁴ Drew Gilpin Faust, "Altars of Sacrifice: Confederate Women and the Narratives of War," *The Journal of American History*, vol. 76, no. 4 (March, 1990): 1200-1228 and *Mothers of Invention: Women of the Slaveholding South in the American Civil War* (Chapel Hill: University of North Carolina Press, 1996).

that it did not actually change women's rights to use property. Rather, the law was designed to alter only the name that appeared to have legal title to the property, thus barring creditors from seizing the property for a husband's debts when legally the property was in the wife's name.³⁵ This theory is evidenced in the accounts of the opposition to the law, which focused not only on fears of unsexing women, but on the fear that creditors would not be able to collect on their debts because men would hide property by giving it to their wives.

There are two problems with this well accepted theory: first, that the actual law seems to protect property given to women only after the law passed in 1839, which would seem to favor creditors in the initial aftermath of the 1837 panic, and thus appears to be more of a safeguard against future economic problems rather than an immediate remedy to the economic crisis then raging. The second problem is that the law provided that men would not be able to hide property from their creditors by deeding it to their wives. Instead, the 1839 MWPA specifically prohibited the transfer of property from a man to a woman after they were married.³⁶

The second alternative Warbasse describes is the codification movement. Many state legislatures spent numerous hours passing legislation that spelled out the legalities of citizens' everyday life. Since much of the law at the turn of the nineteenth century was based on the common law, the only portions of the law that were statutory were portions

³⁵ Elizabeth Bowles Warbasse, *The Changing Rights of Married Women, 1800-1861*, 142-151. See also Michael Dougan in "The Arkansas Married Women's Property Law," who argues that the married women's property laws were meant to protect property from the husband's creditors following financial declines in the wake of the 1837 panic.

³⁶ An Act for the protection and preservation of the rights and property of Married Women, *Session Laws of American States and Territories: Mississippi State 1817-1898*, Chap. 46, secs. 1-5 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche, 51. The law is commonly known as the Mississippi Married Women's Property Act of 1839; full text is in appendix A.

of the law that the colonies, and subsequently states, had changed or altered from common law practice or which differed from the statutes of England. As the colonies became states and the states became a nation, it became increasingly necessary to explain the difference in law that had grown up in the separate states. However, the codification movement had its roots in England as well, where Jeremy Bentham began early in the nineteenth century to criticize the common law as retaining too much of feudal inequity in addition to its being far too large and complex to navigate for the common individual. By the 1820s the idea of codification was catching the attention of American lawmakers. This idea alone does not explain, however, why Mississippi, a highly conservative state when it comes to women's social and political status, was the first to pass a law that appears on the surface to grant women greater rights to property.³⁷

As Payne attempts to demonstrate, whether or not the 1839 MWPA was radical or empowered women is not simply a function of its passage in the legislature but also of its reception by the public and its application in society. Both the public attitudes and the attitudes with which the people and the courts interpreted the law are important to our understanding of the purpose the law served during the nineteenth century as represented in Michael Dougan's research in Arkansas and Cleary's work in Wisconsin. Whether the Mississippi law functioned as a means of empowering women decades before the women's movement reached the South should be revealed by women's and men's use of the law and its function in society, not merely the motivation of those who introduced the law.

³⁷ Warbasse, *The Changing Property Rights of Married Women*, 57-87; Basch, *In the Eyes of the Law*, 126-135. Various other authors mention codification as a factor in women's changing rights.

If, as most historians have averred,³⁸ the South meant to serve the male patriarchy's desires in expanding their personal power and wealth by the passage of the MWPA, the historical record should reflect limited use of the law for the benefit of women, little change in women's acquiring property, and little increase in women's use of their separate property for their own purposes. The MWPA should also receive little attention from the judiciary system, which would then uphold the rights of creditors to property a wife owned in payment of a husband's debts. If women themselves did not desire economic independence, the historical record should reflect their limited involvement or their continued reliance on men to handle their economic affairs for them. If, however, the law was a means of empowering women in this period, one would expect to see its use growing in popularity. This would be manifest in an upsurge in the number of women acquiring property and participating in property transactions. Similarly, one would expect to find the judiciary defending women's property from confiscation by a husband's creditors in the court records.³⁹

This thesis examines whether the married women's property act significantly changed women's role and participation in society in one Southern state—Mississippi—in the years before the Civil War (1835-1860) by allowing women to hold greater rights to property. In other words, this study examines whether the law altered women's relationship to property on a societal level, how the MWPA was treated by the court system as well as on a local level by regular men and women, and reveals some of the probable motivations in increasing women's property rights in a society that was so

³⁸ These historians include: Hoff, Warbasse, Basch, Scott, and Lebsack as discussed above.

³⁹ Other expected changes include increased bequests and legacies to daughters in men's wills and an increase in the number of wills women wrote, but consideration of these issues is beyond the scope of this thesis.

ardently white male-centric. Chapter two examines the nature of women's relationship to property ownership prior to and following the passage of the 1839 Mississippi MWPA and the 1846 and 1857 amendments. This chapter also explores women's participation in property transactions not only across the century but at different stages of a woman's life and legal existence. Chapter three examines Mississippi's highest court's interpretation of the married women's property act and its amendments. This comparison reveals men's attitudes towards women's property ownership on both local and state levels and provides insight into the legislature's purposes in passing these laws.

Jefferson county, Mississippi, provides an excellent case study for answering questions about how the MWPA functioned on a local level as well as the role that property played in women's lives. Located along the Mississippi River and originally formed in 1799 as Pickering county, Jefferson county was the home to a number of early wealthy plantation holders—those who would have made use of the married women's property act.⁴⁰ Unlike many early counties, Jefferson has suffered relatively little record loss; its court, land, and probate records are extensive, thus negating the aberrations that might occur by studying an area with greater record loss over several decades. Jefferson county therefore is the subject of study in chapter two.

From the data compiled on Jefferson county, this researcher has found that the 1839 Mississippi married women's property act had a very limited impact on the activity level of women in economic, political, and social systems during the antebellum period. Those who took advantage of the law were a small proportion of the population—the Southern elite—and many of these were not greatly affected by the MWPA initially. The

⁴⁰ The name of the county changed from Pickering to Jefferson in 1802 when the boundaries of Pickering were redrawn. Though the Jefferson county boundary changed slightly a couple of times, the boundary has remained constant since 1820 when its northern border with Claiborne county was finalized.

number of women who benefited from the law after the amendment in 1846 appears much higher but is still relatively slight when compared with men's property transactions. Women benefited under the MWPA almost entirely by grace of their patriarchs: property still generally came to women from male relatives. Most women did not control property apart from their husbands in a manner that they could choose to settle that property on other women until after the 1846 amendment nor did women often bequeath significant amounts of property for the same reason. Most women who did gain control of property used that property to assist and aid family. Women used their separate property to aid their husbands or gave what property they could distribute to their children.

Men made up the legislative and judicial systems that decided whether a woman had rights to property in question and exactly what those rights allowed her to do. The evidence suggests that more than any other motive, the motive to protect women's property as security for their lifetime, as the title of the bill suggests, was what preoccupied the legislature and then later the courts as they administered the new law. It appears that the derivation of the Mississippi Women's Property Act was in actuality a result of Southern men's sense of honor and duty to protect and secure the lifestyle to which they and their wives were accustomed as much as it was anything else.⁴¹ In other words, the law may have increasingly made women property owners, but in name only.

As in most cultures, one would expect that social acceptance of the changes the MWPA provided for was limited and slow in coming, especially as women directly controlled none of the systems that the law relied on to implement the change in policy. The study of the application of women's property law in nineteenth-century Mississippi

⁴¹ Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982).

reveals the persistence of the state's social biases. A change in law does not necessarily indicate a change in the way a society governs itself. Chapter three, therefore, demonstrates this conflict as it compares the 1839 law with the 1846 amendment and examines the state supreme court's interpretation and application of both laws to society. An analysis of the supreme court records, which include cases from the chancery court, circuit, and probate courts, reveals the attitudes that men held towards women's ownership of separate property and how they interpreted the MWPA on both local and state levels.

Court records reveal that men and women generally adopted an extremely flexible approach to the MWPA based on what they deemed their best interest in a given situation. Some individuals interpreted the law as extending the absolute power of contracting to women—but then when it was in their favor to recognize that the MWPA did not extend women the absolute power to contract, they readily pointed this out instead. If we return to the Frisbys' story that began this chapter, we find that this desire for self-preservation or preservation of one's own economic status was at the root of most men's and some women's motives for their actions. Although Arthur Brown Sims did indeed deed nine slaves to his daughter Martha Jane, her actual possession of the slaves was an issue for the court. Though Norman Frisby testified that Martha Jane and her husband Thomas Henderson Frisby were in possession of Sarah and Sarah's children when they died, the defense brought forward other witnesses that testified that Sarah and her children were clearly not in the Frisbys' possession. While it is difficult to corroborate one side of the story or the other, the likelihood is that Sarah and her children were not in the Frisbys' possession when they died, if indeed they ever were. The

Sutphens' evidence was supported by witnesses and since it seemed that Sarah and her children had never actually passed into Martha Jane's possession, the court denied Rosaline Frisby's claim to the slaves. The 1850 census slave schedule for Jefferson county shows that Thomas Frisby owned six slaves approximately three years before he died: three males and three females. Although the names of the slaves are not given in the census, this list seems to correspond to the six slaves, three males and three females, listed in the appraisal of Thomas Frisby's estate as given on January 9, 1854, by A. J. Scott, L. H. Sims, and A. K. Vause.⁴² Two of the six slaves listed in the census were ages eight and five, too young to be any of the slaves named in the 1839 deed. Thomas Frisby himself inherited three slaves from his father, none of whom appear listed in the inventory of his estate. Only one of the slaves' names from the inventory matches one of the slaves' names in the deed of gift from Arthur B. Sims to Martha Jane, though this does not mean that in fact this was the same slave named in the deed of gift. Norman Frisby prosecuted other suits in connection with Rosaline's inheritance that demonstrate a seeming desire to increase the wealth of his heir by any means possible. Norman Frisby himself gained a reputation for greed later in his life that is legendary.⁴³ All the evidence seems to exhibit that the pursuit of Rosaline's inheritance was motivated by Norman Frisby's greed as much as it may have been motivated by duty or concern for his young ward.

⁴² T. H. Frisby, 1850 US Census Slave schedules, Jefferson county, Mississippi, p. 43, lines 18-23; Chancery Court Jefferson County, Mississippi, Appraisal of T. H. Frisby's Estate, Chancery Court Packet C663, microfilm located at the Family History Library, Salt Lake City, Utah, FHL US/CAN Film 1903182.

⁴³ Mr. and Mrs. Carl Netherland, "Legendary Norman Frisby and His Tensas Parish Empire," *North Louisiana Historical Association Journal* 4, No.4 (1973): 122-130; Sam Hanna, "Frisby House," *Monroe Morning World* April 21, 1957 (Online: Madison County, Louisiana Genweb), <http://www.rootsweb.com/~lamadiso/articles/frisby.htm>, accessed March 2007.

Had Norman Frisby not appeared to be blatantly lying, the outcome of the case might have rested instead on whether or not the slaves had originally belonged to Arthur Sims's first wife, Jane O'Quinn. A brief discussion of general property law as well as the different legal systems of common law and equity is necessary to understand the nature of women's property rights before 1839 and how these rights changed with the passage of the 1839 MWPA. The following section will explain the difference between real and personal property as well as briefly explain terms such as fee simple and estates for life. After covering this basic territory, one can then follow the explanation of the legal status of women in Mississippi prior to the passage of the 1839 MWPA in preparation to examine the MWPA and its subsequent amendments. All these steps are necessary in order to understand in what ways the "woman's law" did and did not alter the legal tradition and societal practice in Mississippi.

General Property Law

The law distinguishes between two different types of property: real and personal. Real property is immovable and generally consists of land and tenements. Personal property is anything that can be moved from place to place such as furniture or livestock. Personal property also includes cash and any wages or profits earned from labor performed by a person or gained from the use and management of his or her property.

In addition to different types of property there are different ways in which property might be owned. The two most important categories of ownership for this discussion are the fee simple and life estates. The owner of fee simple property has the power to sell, give away or in any other way alienate that property if he or she chooses.

In other words, fee simple ownership vests the rights to assign property in an individual.⁴⁴

Property one owns as a life estate, however, is under certain restrictions. The owner of a life estate is entitled to the benefits of the property for the term of his or her life only and therefore cannot alienate that property by sale or gift beyond the term of his or her life. The owner of a life estate cannot devise or bequeath the property by a will and testament. One could rent property owned for life to someone else during his or her lifetime, but at the end of the lifetime designated in the original contract granting a life estate, the property would revert to the fee simple owner. The forms of life estate that are most relevant to women's property rights in the nineteenth century are dower and courtesy. Dower is a life estate to which a widow is entitled at the death of her husband, while courtesy is a life estate that a husband is entitled to upon the death of his wife.⁴⁵ Both have unique characteristics inherently linked to gender that will be further discussed in the next section.

Women's Legal Status Before the MWPA: Common Law and Equity

The common law was that body of legal concepts comprised of English judicial precedents, tradition, and Parliamentary actions that governed the decisions made in the King's Court. In the 1760s William Blackstone, an English barrister, published a four-volume treatise on the common law entitled *Commentaries on the Laws of England*. Though not early enough to serve as the primary influence on the English colonies in

⁴⁴ Black's Law Dictionary, (2004), s.v. Property.

⁴⁵ Ibid, s.v. Estate, Dower, and Curtesy.

America, where each colony already used combinations of the common law, equity, statutory, and county law, Blackstone's work embodied the principles that were at work in the earliest colonies and still served as a guide to many of the early legalists in the United States as the new country and its states began to design their own systems of government. Though Mississippi did not begin as an English colony, the territory adopted the common law under U.S. possession, and since many of the early citizens of the territory were previously citizens of the former British colonies, the common law principles and ideas, as outlined in Blackstone's work, were already ingrained in much of the populace when the United States officially gained control of the Mississippi Territory in 1783 and in fact under the Pinckney Treaty in 1795, finally organizing the territory in 1798. As such, Blackstone's commentaries serve as a basis for understanding the general principles that governed women's property law in Mississippi prior to 1839.⁴⁶

Women existed under the common law in one of two states: as a feme sole or as a feme covert. A feme sole was the term one used to describe any single woman of legal age and competency, including unmarried women, widows, and (to a certain extent) divorced women. A married woman might be given special recognition as a feme sole in certain circumstances (a status often called sole trader, which allowed women to act for themselves in business circumstances), but generally she was considered a feme covert.⁴⁷

⁴⁶ The territories in the old Southwest were governed by civil law as inherited from the French and Spanish governments, but in areas where the population was mostly of British descent the common law was favored and adopted after the United States Congress organized the Mississippi Territory in 1798. As the territories were increasingly divided, the present state of Louisiana became the only jurisdiction to continue in the civil law tradition. See Brown, "Husband and Wife," 1111.

⁴⁷ Feme coverts might be designated as feme soles for the purpose of carrying on business in their husbands' absences. These women were also known as sole traders. The permission for a feme covert to act as a feme sole was generally derived from the state legislature via a private bill and was, therefore, fairly rare.

Entering marriage for a woman was to enter a state of existence known as coverture. A feme covert, or a woman under coverture, was under her husband's protection from all claims made against her under the law; she no longer had the right to sue or be sued except as his representative. Under the common law of England, when a woman married, her husband absorbed her identity. He gained the almost exclusive right to act for the couple in all legal matters. He assumed all her debts and became the representative in any other legal matters to which his wife might formerly have been a participant (also known as her chases in action). The married couple was treated as one entity, and the husband served as the legal representative for the whole. A married woman could therefore not act on her own under the common law; she had no right to make deeds, enter into contracts, or sue in court without her husband. A husband assumed the right to manage all property and money that the couple owned and obtained. Custom made certain allowances for a wife to act as a representative for her husband, such as in purchasing items from a merchant on her husband's account, but in legal matters she was not permitted to act separately from her husband. This legal status was known as coverture, because the husband covered the woman under the law.⁴⁸

Any property a woman owned prior to her marriage was subject to her husband's control under a legal tradition called tenancy under courtesy (or curtesy). Upon the birth of issue to the marriage (whether that issue lived or not was unimportant), the husband gained a life estate in his wife's property. This life estate allowed him to control her property for the term of his life. This meant he had the right to make decisions as to whether the property should be used, rented, or sold. He also gained the right to the

⁴⁸ Black's Law Dictionary, (2004), s.v. Feme; Blackstone, *Commentaries on the Laws of England*, vol. I.

proceeds or profits of that property, meaning that if he hired out her slaves, he gained the profits of their labors. If his wife worked and earned an income, the husband gained control of her wages, and he could decide how the money would be spent.⁴⁹

Over time, the common law gave allowances to married women, such as the right to a dower interest (minimum one-third interest) in all real property the couple had ever owned as well as the right to refuse to renounce her dower right to any of that property. Dower was another type of life estate, this time for the term of the widow's life. This meant that although her husband could choose to sell either her property or property the couple acquired while they were married, a woman could refuse to sign the deed or agree to the sale. The property could still pass out of the hands of the couple to the husband's assignee, but the title to the real estate would not be free and clear of the woman's dower claim to the property. Upon her husband's death the woman who had not relinquished her dower rights could sue for her rights to enjoy one-third of the property for the rest of her life. In this way, women could inhibit their husband's ability to sell their real estate. These allowances for the most part were designed to provide for a woman after the husband's death, easing the burden widows placed on society by providing a minimal inheritance to them. Dower only functioned, however, in absence of a will. If a will existed, a woman could only claim her dower rights if she renounced the will.⁵⁰

⁴⁹ Blackstone.

⁵⁰ This is a rather simplified explanation of dower. Dower rights generally only applied to women whose husbands died intestate. If a husband left a will that apportioned his wife less than she would receive under dower, she had the right to claim her dower thirds, but she lost the right to claim the property specified in the will. Generally women only renounced a husband's will if the difference between the property under dower and her husband's gift and bequest were substantially different. Carol Shammass, et. al, *Inheritance in America*; Warbasse, *The Changing Rights of Married Women*, 9-16.

Under the common law then—to return to the example discussed at the beginning of this chapter—when Martha Sims married Thomas Frisby and bore a child, the slaves her father had given her would become as though they were Thomas Frisby’s property.⁵¹ As such, the slaves would become subject to his control and debts for the rest of his life. He would have power to sell the slaves at any time or will them upon his death. Under the common law and the rules of dower, if Martha outlived Thomas, then she would be entitled to at least a one-third life interest in Thomas’s real estate and, as in most states, one-third of the value of Thomas’s personal estate after his debts had been paid. She would also be entitled to her paraphernalia (such as clothing) and household items and any real estate that she had brought to the marriage that she and Thomas had not sold. Outliving Thomas was the only way in which Martha would ever have had legal control over any of the slaves her father had given her had the slaves come into her possession. Mississippi, however, changed the law in 1839. Just two months prior to Arthur Sims’s deed of gift to Martha and four years before her marriage to Frisby, Mississippi added an element of equity to Mississippi laws regarding women’s property ownership by statute.

⁵¹ It should also be noted that rules governing real and personal property were somewhat different. Under courtesy a man gained only a life interest in his wife’s real estate, meaning that if she survived him, he could not will the real property, but she regained control of that property she owned before their marriage upon his death as long as she had not previously renounced her dower and consented to its sale. On the other hand, a man gained full control upon marriage of almost all his wife’s personal property, excepting what was termed her paraphernalia that generally included clothing, jewelry, and some other personal and household items. See Blackstone; Shammass, *Inheritance*; and Salmon, *Women and the Law of Property*. Slaves, however, were often categorized as either real or personal estate depending on the time and place. See Virginia, “Chapter XXIII: An Act Declaring the Negro, Mulatto, and Indian Slaves Within This Dominion, to Be Real Property,” *The Statutes at Large: Being A Collection of All The Laws of Virginia From the First Session of the Legislature, In the Year 1619* [2nd ed.] Volume 3, Richmond, 1819-1823, 13 vols. in *Sabin Collection* (Online: Thompson Gale), subscription database, www.galenet.galegroup.com, accessed April 2007, page 333; In this 1705 law, for example, Virginia classified slaves as real estate for inheritance purposes while in Mississippi during the nineteenth century slaves were mostly treated as personal property.

Equity law views all individuals, both women and men, as equal, and decisions are not based necessarily on precedent but on what is equitable or fair. The chancery courts were responsible to handle equity matters. Under equity a woman could own property separately from her husband in what was called a separate estate. Anyone having property he or she held in fee simple that he or she wished to bestow upon a woman independent from her husband could establish a separate estate for the woman in question.⁵² A woman's separate estate or separate property might consist of either real or personal property, or both, and was not liable for the debts her husband contracted. Separate estates created in the courts themselves might impose limits on the woman's control of the property, however. In most instances separate estates were meant to guard a married or widowed woman and her children from destitution. The principal property was usually untouchable, held in trust for the woman and her children, and meant to garner an income that could be used to support the family if needed. The property was often transferred to a guardian rather than directly to the woman herself. The guardian might be given full control over the property, limited control he or she shared with the woman in question, or absolutely no control whatsoever, in which case the woman might have full control over her financial affairs. A provision might be made for the woman to appoint her own guardians for the property. Sometimes husbands created separate estates for their wives naming themselves as guardians before the marriage, or sometimes women granted guardianship to their husbands for their estates. In this way a husband could maintain control over his wife's property and decisions regarding it but with the

⁵² Warbasse, *The Changing Rights of Married Women*, 29-48 discusses the details in creating separate estates. The necessary legal instrument as well as the necessary legal phrases needed to establish a separate estate changed from location to location as well as over time. See also, Salmon, *Women and the Law of Property*; Black's Law Dictionary, (2004), s.v. Estate and Separate Property.

added benefit that the separate estate was not liable for debts he contracted under his own name.⁵³ This last arrangement, where the husband controlled the use of his wife's separate property, but where the property itself was not subject to his debts, was clearly the arrangement outlined in the first Married Women's Property Act. The act simply extended the privilege of the separate estate to all women who received property, not merely those who could afford to have it protected in court.

The 1839 Mississippi Married Women's Property Act

The original bill proposed in 1839 with regards to women's property rights was far-reaching: It established the right of a married woman to control the entirety of her property, both real and personal, that she accrued during her lifetime separately from her husband or, indeed, from any guardian or trustee. This proposed legislation also allowed for women to devise and bequeath their separate property as they chose. The initial bill was voted down and later revised in committee, so that when the final bill passed the legislature in February 1839, it bore little semblance to the original proposal.⁵⁴

The final bill that became the 1839 MWPA⁵⁵ consisted of five sections, the first of which guaranteed to a woman the right to own property, both real and personal, in her own name as long as the property did not come from her husband after their marriage. While the first section embraces a change in the common law that is traditional in equity, the caveat attached is in keeping with the common law practice. Under the common law

⁵³ Salmon, *Women and the Law of Property*, 88-90; 100-119.

⁵⁴ Warbasse, *The Changing Legal Rights of Married Women*, 138-144.

⁵⁵ An Act for the protection and preservation of the rights and property of Married Women; full text is in appendix A.

a man and his wife were one legal entity and, therefore, a husband could not contract with his wife because he could not contract with himself. This caveat, however, was very important because it addresses the motive behind the passage of the final act. The legislature, it appears, thought that the prohibition of giving property to one's wife after coverture limited the possibility that men would attempt to hide property from their creditors by "giving" it to their wives when they felt they were in danger of having the property seized for their debts.⁵⁶

The second and third sections of the 1839 law deal with women's ownership of slaves, making all slaves a woman received, except those from her husband, her own, despite her coverture. These sections are interesting in that slaves were considered personal property and, therefore, should not have required their own section since section one of the act already gave women the right to hold personal property separate from their husbands. Section four reserves the right of courtesy to the husband with regard to his wife's slaves; that is to say, the husband maintained the right to control and manage the slaves his wife owned as well as the profits of their labor. In the event of a wife's death, slaves descended to the children of the marriage, and in the event that there were no children, the slaves became the property of the husband and his heirs. The last section preserved the rights of the husband to control the sale and transfer of his wife's slaves, requiring that the transfer of those slaves was only valid under a jointly signed deed. Thus, a woman could now refuse to agree to the sale of her slaves as well as real estate the couple owned, but a husband could likewise refuse to agree to the sale of slaves or real estate his wife owned.

⁵⁶ Warbasse, *The Changing Legal Rights of Married Women*, 142.

Under the Mississippi 1839 MWPA the slaves Arthur B. Sims gave his daughter by gift in 1839 would have qualified as her separate property had he had a clear title to convey them. This meant that the slaves deeded to Martha would have been her own, and upon her marriage to Frisby she would have retained ownership of the slaves rather than losing it under the rules of coverture. The 1839 act, however, provided that a husband retained a limited right of courtesy, thus controlling the employment of his wife's slave property (the most common form of property transferred to women) and any benefits derived therefrom during his lifetime as well as their sale, but he could not sell the property without his wife's consent nor could she sell or make decisions regarding the property she "owned" without his consent.

The MWPA also provided for the manner in which the separate property should be distributed after a woman's death unless she left a will. Upon Martha Sims Frisby's death, for instance, her slaves descended directly to her children unless she had no heirs, in which case the slaves became the property of her husband and then his heirs.⁵⁷ Thus, while the 1839 act effectively gave property in name to a wife, it did not change her power over that property very much. Without a caveat in the instrument of conveyance specifically granting her the powers to control the property independent of her husband (thereby creating a separate estate in equity that the chancery court might uphold), the only power over her separate property the 1839 MWPA guaranteed a married woman was the power to prevent its sale or transfer without her consent: a magnification of the feme covert's dower right.

⁵⁷ An Act for the protection and preservation of the rights and property of Married Women, *Session Laws of American States and Territories: Mississippi State 1817-1898*, Chap. 46, secs. 1-5 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche, 51. The law is commonly known as the Mississippi Married Women's Property Act of 1839; full text is in appendix A.

Though small, this benefit had the potential to greatly help women. As previously mentioned, before 1839 women had used their right to refuse to relinquish their dower thirds to property as a means of maintaining some power over their husband's real property. For example, in a Jefferson county deed recorded May 14, 1835, between William Fauver and Edmund Andrews, the deed specifically notifies Andrews that Fauver and Maria, his wife, had purchased the land from David Mede without a clear title. Mede's wife Polly had refused to relinquish her dower rights to the land. The land was sold to Edmund Andrews with the understanding that Polly Mede and her heirs might still demand her dower rights to that property.⁵⁸ It seems Polly was in the minority in Jefferson county during this time period, however. Many women in the county were granting away their dower rights to property they had inherited. Levi Harris's wife relinquished her dower rights to her inheritance from her father when her husband sold the land in 1834, as did Charlotte Mills in 1836 when her second husband sold land she had inherited after both her first husband and his only heir died.⁵⁹

Like most of the legislation over the course of the century concerning women's property rights, the first MWPA was fairly vague, requiring clarification and expansion by additional legislation and court rulings. An amendment to the law was passed in 1846,⁶⁰ whereby the fourth and fifth sections of the original act were repealed. These sections were slightly revised and reimplemented in the amendment, thus revoking the

⁵⁸ Jefferson County, Mississippi, Chancery Court, Deed Book C, Fayette, Jefferson County, Mississippi, microfilm, FHL 892555, 250.

⁵⁹ Deed Book C, 143, 428.

⁶⁰ An Act to amend an act entitled an act for the protection and preservation of the rights of married women, approved February 15th, 1839, *Session Laws of American States and Territories: Mississippi State 1817-1898*, Chap. 13, secs. 1-9 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche, 72; full text is in appendix A.

husband's rights of tenancy under courtesy of all a woman's real estate and slaves during her life, but reserving the right of courtesy to him if he survived her. This addition made the law far more radical and potentially liberating to Mississippi women. The amendment further provided that the rents and profits of any property a woman owned separately from her husband also belonged to her and exempted all her property from liability for her husband's debts. Other sections of the amendment directed that all property a married woman owned, if sold, must be conveyed by a joint deed of husband and wife, as well as stipulating that any suits involving the property must be prosecuted under the names of both husband and wife. The amendment's penultimate section excluded husbands who married after the passage of the act from liability for debts their wives' incurred prior to the marriage, while an earlier section stipulated that a wife's separate property could be seized by creditors for debts she had contracted. The final section of the amendment stipulated that the act would "take effect and be in force from and after its passage."⁶¹ The Mississippi legislature passed this much more liberal version of the law on February 28, 1846. The amended MWPA was further ratified by another amendment in 1857.

In 1854, the legislature voted to "revise, digest and codify" Mississippi's laws. The Judges of the High Court of Error and Appeals were required to appoint three commissioners to carry out the codification process. The commissioners returned their work in 1856, and a special session of the legislature was convened to review the results.

⁶¹ Ibid., 155.

After discussion and debate, corrections and additions, the legislature voted to adopt the code, and this is the origin of the 1857 MWPA.⁶²

The new laws implemented a few important changes. Whereas the previous laws exempted a wife's separate estate from liability for her husband's debts, the new law only exempted her property beyond the value of her annual income.⁶³ The new laws also made specific stipulations regarding the husband's ability to purchase property in his wife's name or for her benefit. Women no longer had to be joined by their husbands in a lawsuit if the suit might recover the woman's separate property. The law also placed responsibility for a wife's debts on her separate property, removing the husband's liabilities for such debts. Finally, the law also adjusted the rights of tenancy by curtesy to reduce its effect to a level approximately equal with dower.⁶⁴

While the literature regarding women in the nineteenth century has expanded in recent years and a couple of historians have touched specifically on the Mississippi married women's property act, still nothing in particular is known about how the law actually affected the lives of women in Mississippi. No study exists that examines the 1846 and 1857 amendments or considers the implications of their passage on the original bill's intent. While the legislature's intentions for the bill are important to understanding women's place in antebellum society, it is equally important to consider both the implementation of the law by men and women and the judicial interpretation of the law,

⁶² Mississippi State Legislature, *The Revised Code of the Statute Laws of the State of Mississippi* (Jackson, MS: E. Barksdale, State Printer, 1857), iii-iv.

⁶³ *Ibid.*, 336.

⁶⁴ For a further discussion of these changes, see Chapter III.

for people's actions and the courts' interpretation determined what society actually did rather than necessarily what the legislature intended it to do.

CHAPTER II
WOMEN'S PROPERTY TRANSACTIONS IN JEFFERSON COUNTY:
A PROFILE

Do the 1839 Mississippi Women's Property Act and the 1846 and 1857 amendments lead to greater numbers of women who claim ownership of property? If they do, where does this property come from, and what kind of property is it? What are the motivations for vesting this property in women? How is women's property used? Is it used as a safeguard as the title of the 1839 law suggests, or is it used in the same manner that men used their property as an attempt to increase one's own personal wealth? This chapter seeks to answer these questions by looking at what these laws actually accomplished through the examination of women's property transactions in one county—Jefferson.

The simplest way to approach these questions is with a sample of women's property transactions covering the period before the 1839 law was passed, the period between the passage of the law and the amendment in 1846, and the period following the 1846 amendment. Such a sample generates a great deal of information that will be used to address the questions above throughout this chapter and demonstrate that the 1839 law and the 1846 and 1857 amendments did increase the frequency of married women's presence in property transactions. Though the change is not large, it is significant in

demonstrating that the citizens of Jefferson county, at least, recognized the changes in the law and attempted to use the new laws to their advantage.

In Jefferson county the number of women transacting deeds certainly does rise over time, though women's participation in property transactions remains an extremely small percentage of the total. (See Table 1.) From the early settlement in Jefferson county, after the Spanish regained control of the territory in 1781, until 1871 a sample of 2669 deeds yields the following information.¹

¹ This sample was compiled by the author. Source: Jefferson County, Mississippi, Chancery Clerk, Deed Index, 1797-1871, Fayette, Jefferson County, Mississippi, microfilm. FHL US/CAN Film 892550. All property deeds for grantors with surnames beginning A-F were used to compile the sample, amounting to 2660 deeds. Nine deeds were found recorded in the deed books themselves but not recorded in the direct deed index. These nine deeds were added to the sample, which brought the total to 2669 deeds. Of the total sample, 345 deeds contained either a female grantor or grantee or both. For the discussion, the sample has also been categorized by transaction. A transaction for the purpose of this analysis is either the act of a grantee or the act of the grantor. Thus, since there are 2669 deeds in the sample, there are a total of 5338 transactions. In seven transactions the gender of one party was unknown. The sample did not count a woman as a grantor or grantee when she was simply signing her husband's deed to acknowledge her release of her dower rights (often recorded in the deed index under her husband's name followed by the phrase "and wife" or "*et ux.*," the Latin abbreviation for "and wife.") The sample also did not count women as grantors or grantees when they were identified by a male's name followed by "*et al.*" in the deed index. "*Et al.*" is the Latin abbreviation for "and others." Women generally appear in deeds under this phrase on rare occasions, usually when they are one of a number of heirs to an estate and the transaction is a distribution of the estate to another heir. The sample also underestimates the number of women who are actually participating in the transactions because it only considers the principal parties to the deed. For example, two sisters granting land to three nieces is considered to have one female grantor and one female grantee. However, because the same principle applies to males, the ratio of major male to major female participants is not affected.

Table 1. Female Participation in Deeds Sample, Jefferson county, Mississippi, 1781-1871, By Decade.

Decade	Number of Females' Deeds	Female Deeds as Percentage of Total	Deeds in which the Grantor was Female	Percentage of Total Deeds in which Grantor was Female	Percentage Female Deeds with Female Grantor	Deeds in which the Grantee was Female	Percentage Total Deeds in which Grantee was Female	Percentage Female Deeds with Female Grantee
1790s	3	0.11%	2	0.07%	0.58%	1	0.04%	0.29%
1800s	10	0.37%	3	0.11%	0.87%	7	0.26%	2.03%
1810s	23	0.86%	15	0.56%	4.35%	9	0.34%	2.61%
1820s	27	1.01%	22	0.82%	6.38%	6	0.22%	1.74%
1830s	44	1.65%	22	0.82%	6.38%	23	0.86%	6.67%
1840s	61	2.29%	18	0.67%	5.22%	45	1.69%	13.04%
1850s	112	4.20%	39	1.46%	11.30%	79	2.96%	22.90%
1860s	60	2.25%	20	0.75%	5.80%	46	1.72%	13.33%
SubTotal	340	12.74%	141	5.28%	40.87%	216	8.09%	62.61%
1870	5	0.19%	1	0.04%	0.29%	4	0.15%	1.16%
Total	345	12.93%	142	5.32%	41.16%	220	8.24%	63.77%

Total Sample Size: 2669 deeds. Source: Jefferson County, Mississippi, Chancery Clerk, "Deed Index, 1797-1871," Fayette, Jefferson County, Mississippi. Microfilm. FHL US/CAN Film 892550.

Women served as grantors in 5.32 percent of the deeds and as grantees in 8.24 percent of the total deeds. The number of deeds in which women participated from the sample was 345, or 12.93 percent, of the total 2669 sample, though the total number of times women participated as grantors or grantees is actually 357, or 13.38 percent, of the total number of deeds in the sample. The difference between the two numbers in this instance is caused by a small number of women granting property to other women—a situation that occurred in only 18 deeds, comprising approximately 0.67 percent of the entire sample and only 5.22 percent of the 345 separate deeds in which women participated. The sample includes both married and single women who controlled both real and personal property, as well as women who were acting as the executrix or administratrix of estates or as guardians for minor children. The sample does not include

women hidden with men under the all encompassing phrase “et al,” or women who were recorded under their husband’s names as “and wife” or et ux” as relinquishing their dower rights.

If the sample is broken down by decade, there appears a marked difference over time. The number of deeds containing female grantors and grantees rose substantially over the decades. It also appears that women’s participation in deeds and property transactions was increasing over time prior to the passage of the 1839 MWPA. For instance, the number of female deeds more than doubles between the 1800s and 1820s. Between the 1830s and 1840s, and again between the 1840s and 1850s, the number of deeds in which females appeared, and thus the number of women’s property transactions, increased significantly. More important, the number of women’s deeds as a percentage of the total number of deeds during those decades continued to rise significantly; it increased by 0.64 percent from the 1830s to 1840s and 1.91 percent from the 1840s to 1850s. This indicates that the number of females’ deeds rose proportionally to the number of males’ deeds, or that women gained somewhat in property transactions compared with men.

The rate of change in females’ deeds is interesting to note, however. While there were certainly more deeds created by females in the mid-century than in the early century, the rate of change between the decades was actually a lot higher in the earlier century. (See Table 2) This simply means that while the actual number of females deeds was rising, the rate at which these changes were occurring was slowing. Table 2 also demonstrates that the rate of female participation in property transactions began to increase again following the passage of the 1846 amendment.

Table 2. Rate of Change for Female Deeds and Transactions by Decade

Decade	Number of Females' Deeds	Rate of Change between decades	Total Female Transactions	Rate of Change between decades
1790s	3	N/A	3	N/A
1800s	10	233.33%	10	233.33%
1810s	23	130.00%	24	140.00%
1820s	27	17.39%	28	16.67%
1830s	44	62.96%	45	60.71%
1840s	61	38.64%	63	40.00%
1850s	112	83.61%	118	87.30%
1860s	60	-46.43%	66	-44.07%

Source: Jefferson County, Mississippi, Chancery Clerk, "Deed Index, 1797-1871," Fayette, Jefferson County, Mississippi. Microfilm. FHL US/CAN Film 892550.

The difference in the number of female deeds and property transactions over time is far more clear, however, when looking at the annual numbers. (See table B1 in appendix B.) Since the laws in question do not correspond to the beginning of each decade, the change over time in the number of women's transactions is even more impressive if it is considered by the periods to which the laws apply. Table B1 depicts the number of transactions for each year for the entire range of the sample. Only 101, or 29.28 percent, of the transactions recorded in which a female appeared as the grantor or grantee occurred before 1839; this is equivalent to only 3.78 percent of the total sample, in over forty years. However, from 1839 until February 1846,² in the mere seven years between the passage of the original act and the amendment, 40 transactions, 11.20 percent of the total female transactions, occurred. These forty transactions are over a third of the pre-1839 number of transactions in less than a sixth of the same number of years.

² One transaction in the sample occurred in January 1846 and for the purpose of the analysis in the text it has been placed in the pre-1846 amendment category. Thus, while it appears from Table B1 that there were 39 transactions from 1839 to 1846, in reality there were 40 transactions that occurred between the passage of the 1839 law and the 1846 amendment.

Roughly 1.42 percent of the total number of deeds in the sample included a female grantor or grantee. From 1846 until 1871 when the sample ends, a twenty-five year period, 218 transactions occurred in which women participated. If instead the time period is narrowed to that between the passage of the 1846 amendment to the end of 1861, when the Lower Mississippi Valley began to feel the economic effects of the Civil War, 159 female transactions occurred, roughly 43.19 percent of all female transactions for the entire period between 1781 and 1871, and 5.58 percent of the total sample of deeds. (See figure B1 in Appendix B).

The ebb and flow of Jefferson county's population during these years is also important to understanding how much women's participation in property transactions increased over time. Though definite population data is not available for each year, the census data for Jefferson county offers a picture of the general population trends. (See tables 3-7.) The increases and decreases in the total population and particularly the adult population as indicated by the census demonstrates that the above changes in female property transactions are more significant because they represent increases in the *percentage* of women participating in property transactions rather than simple increases in the size of the female population of the county and thus increases in the number of women participating in property transactions.³

³ Historical Census Browser. 2004, [database on-line]; available from the University of Virginia, Geospatial and Statistical Data Center: <http://fisher.lib.virginia.edu/collections/stats/histcensus/index.html>.

Table 3. Total Population, Total Free Population, and Change in Total Free Population, Jefferson county, Mississippi.

Year	Total Population	Total Free Persons	Percentage Change in Total Free Persons
1790	N/A	N/A	N/A
1800	N/A	N/A	N/A
1810	N/A	N/A	N/A
1820	6,822	3,187	N/A
1830	9,755	3,055	-4.13%
1840	11,650	2,483	-18.72%
1850	13,193	2700	8.74%
1860	15,349	2953	9.37%

Source: Historical Census Browser. 2004, [database on-line]; available from the University of Virginia, Geospatial and Statistical Data Center: <http://fisher.lib.virginia.edu/collections/stats/histcensus/index.html>.

Table 4. Free Female Population, Aggregate and Percentage Change in Free Female Population, Jefferson county, Mississippi.

Year	Free Females	Change in Free Female Population	Percentage Change in Free Female Population
1790	N/A	N/A	N/A
1800	N/A	N/A	N/A
1810	N/A	N/A	N/A
1820	1,316	N/A	N/A
1830	1367	51	3.88%
1840	1110	-257	-18.80%
1850	1259	149	3.42%
1860	1374	115	9.13%

Source: Historical Census Browser. 2004, [database on-line]; available from the University of Virginia, Geospatial and Statistical Data Center: <http://fisher.lib.virginia.edu/collections/stats/histcensus/index.html>.

Table 5. Free Adult Female Population, Aggregate and Percentage Change in Free Adult Female Population, Jefferson county, Mississippi.

Year	Free Adult Females	Change in Free Adult Female Population	Percentage Change in Free Adult Female Population
1790	N/A	N/A	N/A
1800	N/A	N/A	N/A
1810	N/A	N/A	N/A
1820	529	N/A	N/A
1830	537	8	1.51%
1840	468	-69	-12.85%
1850	558	90	19.23%
1860	626	68	12.19%

Source: Historical Census Browser. 2004, [database on-line]; available from the University of Virginia, Geospatial and Statistical Data Center: <http://fisher.lib.virginia.edu/collections/stats/histcensus/index.html>.

Table 6. Free Male Population, Aggregate and Percentage Change in Free Male Population, Jefferson county, Mississippi.

Year	Free Males	Change in Free Male Population	Percentage Change in Free Male Population
1790	N/A	N/A	N/A
1800	N/A	N/A	N/A
1810	N/A	N/A	N/A
1820	1,871	N/A	N/A
1830	1688	-183	-9.78%
1840	1373	-315	-18.66%
1850	1441	68	4.95%
1860	1579	138	9.58%

Source: Historical Census Browser. 2004, [database on-line]; available from the University of Virginia, Geospatial and Statistical Data Center: <http://fisher.lib.virginia.edu/collections/stats/histcensus/index.html>.

Table 7. Free Adult Male Population, Aggregate and Percentage Change in Free Adult Male Population, Jefferson county, Mississippi.

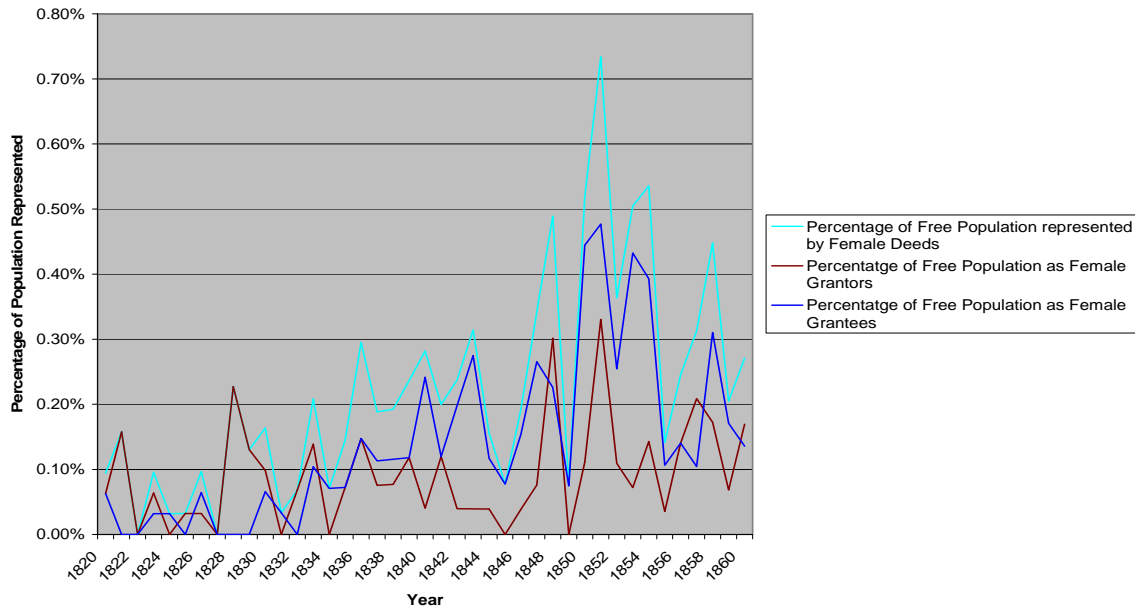
Year	Free Adult Males	Change in Free Adult Male Population	Percentage Change in Free Adult Male Population
1790	N/A	N/A	N/A
1800	N/A	N/A	N/A
1810	N/A	N/A	N/A
1820	924	N/A	N/A
1830	753	-171	-18.51%
1840	747	-6	-0.80%
1850	774	27	3.61%
1860	856	82	10.59%

Source: Historical Census Browser. 2004, [database on-line]; available from the University of Virginia, Geospatial and Statistical Data Center: <http://fisher.lib.virginia.edu/collections/stats/histcensus/index.html>.

There are a few things to note while looking at the raw population data. While the overall free population decreases from 1820 through 1840, the drop in the 1820s is not a function of a decreasing female population. Rather, during the 1820s the free female population was on the rise, though only just over a third of the increase is attributable to adult women. This happens to correspond to the increase in the rate at which females were creating deeds and also helps to explain the jump in the percentage of total deeds for which females account between 1820 and 1830. The 1830 and 1840 population data, however, tells a much different story. Between these years the total free population decreased by 18.72 percent, while the free female portion of this population decreased by 18.80 percent. Even more interesting is that the free adult female population accounts for about two-thirds of the decrease in the free female population, or 12.85 percent. Either the adult women in the county experienced a drastic rise in mortality rates or many

women left the county.⁴ Likewise, the drop in the adult male population from 1820 to 1840 suggests that the increase in the number of women's deeds and property transactions was not simply a function of increasing population. Tables 9-10 in the appendix demonstrate the percentage of the free population that is represented in female deeds for each year, while figures 2 and 3 represent that data visually.

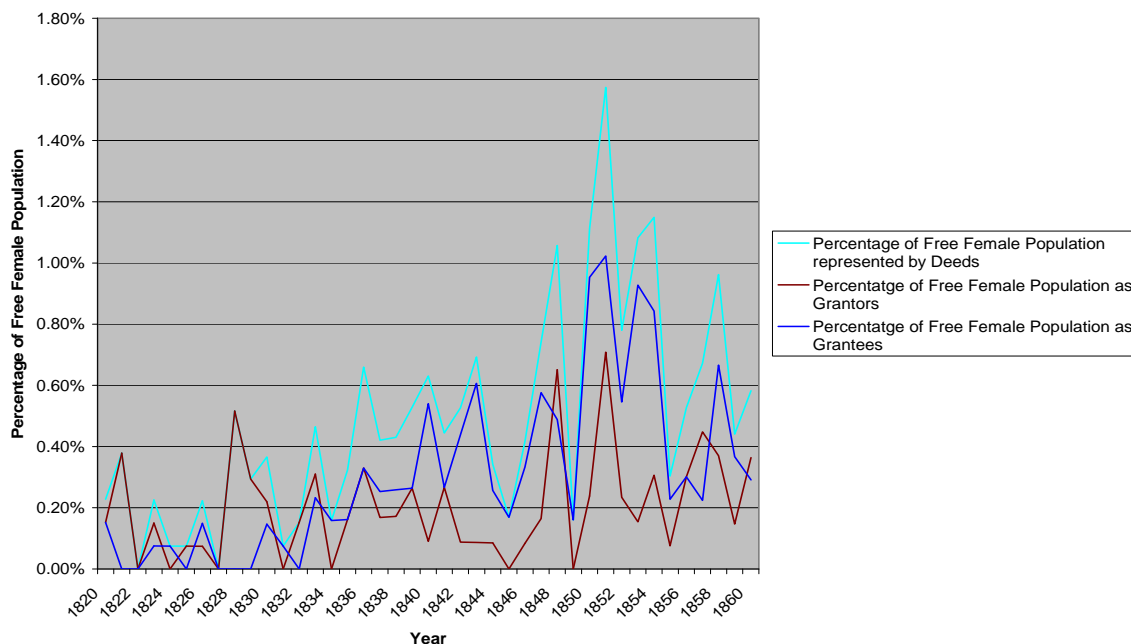
Figure 2. Percentage of Total Population Represented by Female Deeds. A Visual Representation of Table B2.⁵



⁴ The migration data compiled by Joan E. Cashin, *A Family Venture: Men and Women on the Southern Frontier* (New York: Oxford University Press, 1991) suggests that Jefferson county acted much more like the Old South rather than the newly settled portions.

⁵ The population data is interpolated, meaning that it was derived for the years between censuses by taking the difference between the census figures and applying the change equally over the intervening years.

Figure 3. Percentage of Total Free Female Population Represented by Female Deeds. A Visual Representation of Table B1.



Overall, there is a rise in the number of female transactions which corresponds to the passage of the 1839 MWPA and the 1846 and 1857 amendments. This rise in female participation cannot be accounted for during this same period by an increase in population. The conclusion from this data is that the MWPA served to enable women in gaining greater access to property and in allowing them to buy, sell, and mortgage that property.

There are, of course, several factors to consider while examining this growth trend other than population. For instance, the 1850s clearly contained the largest number of women participating in deeds, but it was also the high point of the Southern economy. A low point in Mississippi's economy occurred in 1819 and again in the 1830s, following the closure of the national bank in 1837.⁶ Yet, the number of women participating in

⁶ Richard Aubrey McLemore, *A History of Mississippi*, vol. 1, ed. (Hattiesburg: University & College Press of Mississippi, 1973), 272, 291-293, 348, 394.

property transactions during the 1840s remained higher than in the previous decades. It is also interesting to note that, even during this particularly difficult economic period, the number of female grantees began to vastly surpass the number of female grantors, a trend that continued through at least the next two decades. It is highly probable that this shift represents a growth in bequests and gifts made to women or an increase of property granted to women because of the change in the property laws, but because of the previous growth trend during economically difficult times, as well as the lack of recorded motivations, it is impossible to attribute this trend to the change in the law. It is difficult to make any connection between this trend and economic patterns other than to note that in those years when the economic situation was not favorable to planters, the total number of land transactions involving women was smaller than in other years, though overall both the raw number and the number of women as a percentage of the population participating in property transactions continued to rise.⁷

The 1846 amendment to the MWPA may also have served as a major factor in increasing the number of women who participated in property transactions, or at least the number of women who participated in recorded property transactions. Tables 9 and 10 and Figures 2 and 3 show that relative to the population, the number of females' deeds increased greatly following the passage of the 1846 act and, with only a few exceptions, continued through the 1850s. The 1839 act was ambiguous with respect to women's ownership of wages and profits derived from their property, as well as the terms under which real estate in particular was to be handled. For instance, while the original act

⁷ See Table B1 and Figure B1 in appendix B for a comparison in real numbers for the entire female portion of the sample. Figure B1 particularly demonstrates that the pattern of female property transactions seems to correspond generally to economic fluctuation. Note the dip in overall participation during particular financially difficult years such as in 1819-20, 1837, and 1862-65 during the Civil War.

guaranteed that women could own slaves separately from their husbands, it provided that husbands would enjoy the traditional right of tenancy under courtesy for those slaves. In other words, a woman could own slaves, but the husband reserved the right to the profits of the slaves' labor and the decision as to how those slaves were employed for the term of his life if the marriage had produced children.⁸

Such a caveat was not present in the 1839 act with regard to real estate. This omission raised the question of whether the right of tenancy under courtesy applied to real property as well as to slaves, which were considered personal property. This small difference in terminology may also help to account for the vast difference in growth between the 1840s and 1850s. The 1846 amendment specifically addressed this problem by revoking a husband's rights of courtesy during his wife's life for both real property and slaves.⁹

Another factor that may be at work in the above sample was the nature of the deeds themselves. While not all deeds were recorded in the county deed books, a larger percentage of deeds was recorded for real property than for personal property. If a deed had not been recorded by the court clerk, it was not considered legally valid; thus, deeds for property of any valuable consideration to an individual, but most often land, were recorded regularly in the deed books. While tradition holds that a chain of title is necessary to prove absolute ownership of real property, personal property often did not

⁸ An Act for the protection and preservation of the rights and property of Married Women, *Session Laws of American States and Territories: Mississippi State 1817-1898*, Chap. 46, sections 3-4 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche, 51; full text is in appendix A. See chapter one for an extended discussion of this law.

⁹ *Ibid.*, section 1; An Act to amend an act entitled an act for the protection and preservation of the rights of married women, approved February 15th, 1839, *Session Laws of American States and Territories: Mississippi State 1817-1898*, Chap. 13, secs. 1-9 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche, 72, p. 154-155; see particularly sections 2 and 6 regarding the husband's rights to courtesy.

require this type of record trail, nor does most personal property today. Thus, it was common not to have a deed for the sale of slaves recorded. The 1846 amendment also addressed this issue by directing that the county clerk record bills of sale for slaves in the deeds register. This change along with the change in practice of courtesy rights and the growth in the Southern economy and of the local population all contributed to the large increase in women's participation in the deeds during the 1850s.

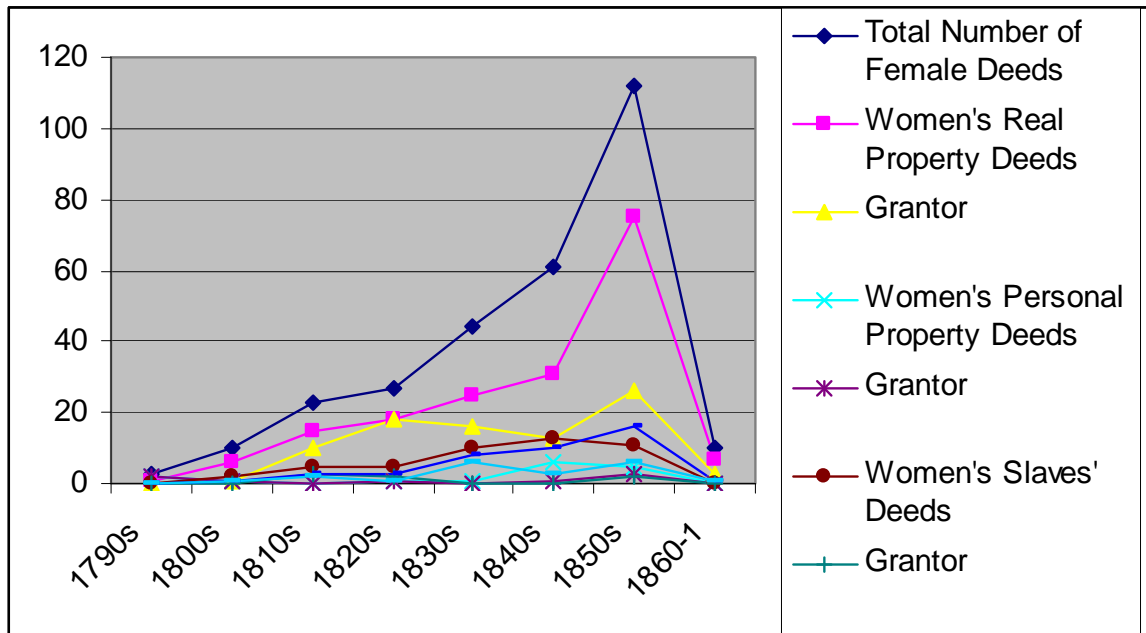
So, while it is now established that the number of female deeds did increase over time, an increase which generally seems to correspond with the passage of the 1839 and 1846 acts, it is also necessary to look at the nature of these deeds. A closer look at the types of property that were recorded in females' deeds is extremely informative, as it tells us what they valued as well as, often, how they obtained their property. If we look solely at the deeds from 1781 to 1861, we find there are a total of 290 deeds for female grantors or grantees, the earliest created in 1792. Of this number, 178, or 61.34 percent, concern solely real property; the type of property conveyed is unknown in 8 deeds, and of the remainder, 68 deeds, or 23.45 percent, concern only personal property, while 42 deeds, or 14.48 percent, convey both real and personal property. A glance at Table B3 shows the breakdown of these deeds by property type as well as the number of transactions in which women acted as grantors or grantees.

Table 8. Females' Deeds Categorized by Type of Property Conveyed.

Decade	Total Number of Female Deeds	Women's Real Property Deeds	Women's Personal Property Deeds ¹		Women's Slaves' Deeds		Women's Combination Deeds					
			Grantor	Grantee	Grantor	Grantee	Grantor	Grantee				
1790s	3	1	0	1	2	2	0	0	0	0	0	0
1800s	10	6	1	5	1	1	0	2	0	2	1	1
1810s	23	15	10	6	0	0	0	5	3	2	3	2
1820s	27	18	18	0	1	1	1	5	2	3	3	1
1830s	44	25	16	10	1	0	1	10	0	10	8	6
1840s	61	31	13	19	6	1	5	13	0	13	10	3
1850s	112	75	26	53	5	3	3	11	2	10	16	6
1860-1	10	7	3	5	0	0	0	0	0	0	1	1
Total	290	178	87	99	16	8	10	46	7	40	42	20

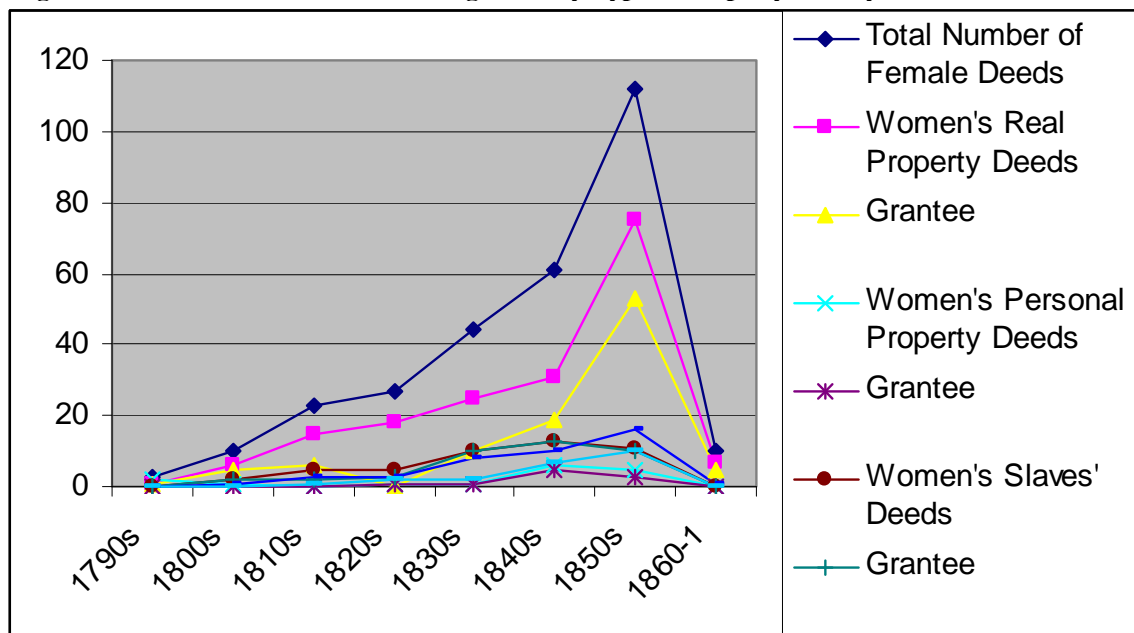
Source: Jefferson County, Mississippi, Chancery Clerk, "Deed Index, 1797-1871," Fayette, Jefferson County, Mississippi. Microfilm. FHL US/CAN Film 892550.

Figure 4. Female Grantors' Deeds Categorized by Type of Property Conveyed.



¹ Personal property other than slaves.

Figure 5. Female Grantees' Deeds Categorized by Type of Property Conveyed.



A closer look at the real property deeds demonstrates that not only was real property the largest category of property represented in the sample, but that women were far more likely to be the grantors of real property than the grantees of real property until the 1840s when the situation reverses. Numbers can be deceiving, and in this case they probably are to some extent. The 45 deeds in which women granted real property before 1840, however, are the actions of only 22 women, 5 of whom are responsible for multiple deeds. One of these women, Sarah Calvit, seems to have been an anomaly for her time participating in 22 deeds as a grantor, 17 of which occurred before 1840. If we examine, for instance, the three women who are most active as female grantors, a slightly different picture emerges than the one that seems to indicate women's ready willingness and ability to participate in property transactions. These three women account for 40 of the

145 grants made by women, or 27.59 percent of the total number of females' deeds in the entire sample.

Sarah Calvit carries the distinction of the woman in the sample who acts as a grantor most often. Her husband Samuel Calvit left her extensive property upon his death, but she never remarried, which allowed her complete control of the property she inherited during her life--even if the property was only hers under the rights of dower. Since she and Samuel had no children who survived him, Sarah was entitled under dower to at least half of Samuel's property.² From the appearance of matters, the income on the dower property allowed her to purchase the title to lands in her own name as well.³

The vast majority of Sarah's grants convey real estate, most of them town lots in Rodney, Mississippi, but some of agricultural land. She leased many of the lots, sold others, and a couple of the deeds were made in connection with men who appear to be business associates, though the exact nature of the relationship is unclear. Only two of the deeds are possible gifts to the grantees: one a deed of trust that does not mention any money owed to Sarah for the property deeded in trust to three minor girls and the other the sale of a small town lot for one dollar. On the other hand, Sarah Calvit is the grantee in only four deeds. Three of these deeds are quitclaims by other persons in consideration of \$2000.00 Sarah Calvit paid them, to property her husband, Samuel Calvit, who had

² It is unclear how much of Sarah's property was dower property, and how much was property that she may have gained from other sources. As part of the common law, any real property that Sarah brought to her marriage with Samuel and which they had not sold vested in fee simple to her when he died. Since dower vested Sarah Calvit with a life estate in one-half of her husband's property, she could not permanently alienate that property, but she could rent the property for the term of her life, and she could collect the rents and profits that derived from the use of the property. Since Samuel Calvit seems to have owned extensive property, both real and personal, Sarah was left well provided for. She seems also to have purchased the rights to some of the dower property as well as additional property; see footnote 79.

³ See Jefferson County, Mississippi, Chancery Court, Deed Book E, Fayette, Jefferson County, Mississippi, microfilm. FHL US/CAN Film 892556, 693-696; Deed Book G, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 892557, 8.

died in 1826, patented early in the century. The last of the deeds was the result of a purchase of a plantation and slaves at auction in the summer of 1848. The sale of the plantation in question was a result of a suit filed by Sarah Calvit against the owner James Payne, probably for failure to pay his mortgage on several thousand acres that he bought from her in 1833, 1836, and 1840. The chancellor in the case ruled that the plantation known as the “Miskell Place” should be sold along with the slaves to pay James Payne’s debts; Sarah Calvit was the highest bidder paying \$34,055.00 for the whole.⁴ Indeed, Sarah seems to have been a fairly savvy businesswoman. In the 1850 census she claimed to be a planter with \$20,000 in real estate. In 1860, at about the age of 70 years old, she was listed as owning \$10,000 in real estate and \$12,000 of personal estate.⁵

Sarah Calvit, however, seems to be the exception rather than the rule. The next two women who appear as prolific grantors in the deed sample are Olivia Dunbar and Adaline Daingerfield, both with nine grants each. Both also appear as grantees: Olivia Dunbar as one of the most prolific female grantees with eleven grants and Adaline Daingerfield with three. Both women, like Sarah Calvit, were widowed, Adaline Daingerfield twice, and survived their husbands by several years.

Olivia Magruder married Joseph Dunbar on December 12, 1808, in Adams county. Joseph Dunbar amassed large amounts of land during his lifetime, and the couple owned multiple plantations in Jefferson county. It was at one of these plantations that Joseph Dunbar died in 1846 “possessed of a large amount of real and personal

⁴Ibid.

⁵ The 1850 census gives Sarah’s age as fifty-five while the 1860 records her age as fifty-four. Based on the known birth dates of her siblings, however, Sarah’s actual birth date is estimated to be 1788 which would make her about 72 in 1860.

property.”⁶ Joseph Dunbar left no will, however, and the estate was subject to the laws of inheritance for intestates and his wife became the administratrix for the estate.⁷ Since Joseph and Olivia had no living children when he died, Olivia became the heir to half of the real property for the term of her life and half of the personal property in fee simple under the rules of dower. The remainder of the estate would be divided among his other heirs at law, in this case his siblings and their children. Olivia’s activity in the deeds is a direct result of her position as widow and administratrix for Joseph Dunbar. Five of the nine grants made by Olivia Dunbar were a direct result of court-ordered sales of Joseph Dunbar’s real property in an effort to settle the debts owed by the estate. Of the remaining four grants one was a court-ordered sale of real estate resulting from a lawsuit probably again for debts owed; one was an appointment of powers of attorney; one was for release of dower to property; and the last was a sale of real estate that appears to have occurred after the settlement of Joseph Dunbar’s estate was final.⁸

As a grantee, Olivia Dunbar does not seem to have been less occupied with settling her husband’s estate. One of the eleven deeds in which she appears as the grantee was a deed signed to finish a land transaction which her husband had begun before he died. Nine of the eleven deeds concern the renegotiation of her dower rights to her husband’s real estate with his other heirs. Since the property to which she now held a

⁶ Jefferson County, Mississippi, Chancery Court, Deed Book H, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 892557, 153.

⁷ Jefferson County, Mississippi, Chancery Clerk, “Adminstrator’s Bond for the Estate of Joseph Dunbar,” Administrator, Executor, Guardian Bonds and Letters, 1839-1903, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 893060.

⁸ Jefferson County, Mississippi, Chancery Court, Deed Book F, Fayette, Jefferson County, Mississippi, microfilm. FHL US/CAN Film 892556, 440, 713, 808, 811; Deed Book H, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 892557, 60, 191,193; Deed Book J, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 892558, 50; Deed Book K, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 892558, 313.

life interest was so widely spread, these nine deeds arranged exchanges of certain lands for others with all the heirs of the estate so that Olivia would be responsible for fewer tracts of land in total. The last deed, signed about two years before her death, was for the purchase of Linwood Plantation situated on a tract of seventy or eighty acres for the purchase price of \$1000.00. Yet despite the seeming indebtedness of the estate, Joseph Dunbar left his wife well provided for. In the 1850 census Olivia estimated her real estate at a value of \$45,000.00. The slave schedule records that at the same time she owned 144 slaves.⁹

Adaline Daingerfield was less fortunate financially than Sarah Calvit and Olivia Dunbar. Adaline Dunbar was married first to Washington S. Burch on May 18, 1829, in Jefferson county. Washington died September 7, 1843, leaving Adaline with three living children: Eliza Jane, Isaac W., and Nancy Burch. Like Samuel Calvit and Joseph Dunbar, Washington Burch left significant real and personal property behind. The inventory conducted on March 21, 1844, valued his personal estate at \$35,980.00. He also left a will that directed that his executors, who included Adaline and two men, pay for the comfortable support of his wife so long as she remained his widow, as well as an equal portion of his estate for the children for the term of her life, also the plantation on which they were then living and the special privilege,

that she have the use of the household & Kitchen furniture and stock, for and during her natural life, and that neither shall be divided among the heirs without her express assent until after her death, when the same shall

⁹ Olevia [*sic*] Dunbar, 1850 US Census, Township 8 West, Jefferson county, Mississippi, p. 86b, line 16; 1850 US Slave Schedules, Jefferson county, Mississippi, p. 85, 90-91. The amount of property reflected in the 1850 census may not entirely be Olivia's and may reflect the fact that the final distribution of Joseph Dunbar's estate had not yet been made.

be divided as herein before provided in regards to other property equally among my children.¹⁰

The final provision made for Adaline was that her portion was to be distributed to her as soon as she chose rather than remain in common with the rest of the property of the estate until all the children's distributions were made. The last thing Washington did for Adaline was to add a codicil to the will leaving her an additional specific tract of land in Fayette for the term of her life in addition to the other gifts he had already specified.

Adaline did not long remain a widow, however. On August 14, 1845, she married Henry W. Daingerfield. Henry joined Adaline in acting as guardian for the children, and the Daingerfields from then on participated only rarely in the executors' affairs. Henry Daingerfield, however, was not as well to do as Washington Burch. When Henry died in August 1853 he left no will and a large number of debts rendering his estate insolvent.¹¹ Perhaps it was his financial difficulties or a penchant for living beyond his means that caused Adaline to petition for her distribution of Washington Burch's personal estate, which she received in January 1846. The personal property included seventeen slaves, valued at \$6,875.00, as well as the household furnishings bringing the total of her portion to \$7,536.87.¹² Technically under the MWPA of 1839 this property was Adaline's separate property; however, because slaves were subject to the management and control

¹⁰ Will of Washington S. Burch, Estate File C489, Jefferson County, Mississippi, Chancery Court, Chancery Court Records, Packets 1800-1860, Fayette, Jefferson County, Mississippi, microfilm, FHL 1902589- 1902590.

¹¹ Estate File of Henry W. Daingerfield, C662, Jefferson County, Mississippi, Chancery Court, Chancery Court Records, Packets 1800-1860, Fayette, Jefferson County, Mississippi, microfilm, FHL 1902590.

¹² Account of Distribution, Washington S. Burch Estate File C489, Jefferson County, Mississippi, Chancery Court, Chancery Court Records, Packets 1800-1860, Fayette, Jefferson County, Mississippi, microfilm, FHL 1902589-1902590.

of a woman's husband, Henry Daingerfield controlled the use of the slaves Adaline inherited and the profits of their labors. Luckily for Adaline, he could not sell them without her permission, and in the same month that the distribution was made, several court rulings were made which further enabled Adaline to maintain control of the slaves she inherited from Washington Burch despite her husband's debts. These court decisions will be examined further in the next section.

Adaline was appointed the administratrix of Henry Daingerfield's estate, and it is again largely this role that motivated her involvement in property transactions. In an effort to get the estate to pay for Henry's debts, she mortgaged much of the property. In addition to the mortgages, the other half of her property transactions are between herself and her children passing slaves and land back and forth. It is unclear precisely why the Burches passed the property back and forth between themselves and their mother, but it probably had something to do with the attempts to settle Daingerfield's affairs. It may also have had something to do with her children's financial problems as well. James Miller, Adaline's son-in-law, served as her surety for an administrator's bond in 1853 after Henry Daingerfield died, but in June 1854 Miller petitioned the court to be released as her surety because he feared his own insolvency.¹³

Adaline's property transactions begin in 1854 and end in 1858, the time period during which Adaline was administering Henry's estate and a year or so after. Though she lived until 1864 her property transactions apparently ended as soon as she had settled the debts of her husband and secured her own inheritance adequately. The initial

¹³ Estate File of Henry W. Daingerfield, C662, Jefferson County, Mississippi, Chancery Court, Chancery Court Records, Packets 1800-1860, Fayette, Jefferson County, Mississippi, microfilm, FHL 1902590.

appraisal of Henry Daingerfield's personal property placed upon it a value of \$8161.50. As early as September 5, 1854, however, Adaline petitioned the court for the power to sell Henry W. Daingerfield's slaves and personal effects in order to settle the remaining debts since all the funds of the estate had already been expended in discharging debts. She also stated that she was not sure the sale of the slaves and personal effects would generate a sufficient sum to discharge the remaining debts, which she estimated to be four or five thousand dollars. A copy of the sign dated December 4, 1854, posted in the town to announce the administration sale advertised the estate as "Consisting mostly of six Negro slaves, to wit: Dick, Aleck, Joe, Ellen, Henry, & Delphy, and of a plantation stock of animals & implements, comprising 16 Horses & mules, 5 yoke of Oxen, 50 head cattle, 27 head sheep, & 50 head hogs, wagons, ploughs & other effects, particularly enumerated in the appraisalment of the personal estate of the deceased." The accompanying account from the estate sale shows that the sale garnered \$4,412.00. In August 1855 Adaline petitioned the court again to be allowed to sell some of Henry Daingerfield's real estate in order to finish settling the debts he left.¹⁴ While most of the transactions involve the transfer of land and slaves, Adaline did exercise the right given to her by her first husband Washington Burch to distribute some of her household goods to her daughter Nancy, wife of Robert Campbell. In 1858 she sold to Nancy the silverware and sundry other personal property for \$100. With this last deed to her daughter Adaline was finished with deeding property.¹⁵

¹⁴ Ibid.

¹⁵ Jefferson County, Mississippi, Chancery Court, Deed Book K, Fayette, Jefferson County, Mississippi microfilm FHL US/CAN Film 892558, 232.

These three women, Sarah Calvit, Olivia Dunbar, and Adaline Daingerfield, were the most often represented women in the deeds sample, yet they were all widows. With the exception of Sarah Calvit and a few of Adaline Dunbar's transactions, most of their involvement with property sales and transactions rested on their position as administratrixes or executrixes of their husbands' estates. This is true for many of the other women who appear deeding and receiving property in the sample and demonstrates that while the rates of women's representation in property transactions rises over time, that increase may not be solely a result of the 1839 MWPA; it may be a function of the number of propertied men who died leaving their wives as either executrixes or administratrixes.

Women who owned property themselves and had the right to transfer that property to someone else often chose to do this during their lifetime by deed rather than by will after their death; if one did not own a great deal of property, it was less expensive to pay the cost of recording the deed than to pay for the cost of having one's estate probated. Such was clearly the case in Ann Brashear's deed of gift to her daughter, Betsy Harrington, in 1820.

. . . In consideration of the natural love and affection I have for my daughter Betsy Harrington and as a settlement on and provision for her my said daughter and in consideration of the sum of five dollars to me in hand paid by the said Betsy the receipt whereof is hereby acknowledged have given granted and settled . . . the following negro slaves for life. Fors . . . aged about twenty one, Cresey aged about thirty seven, Ned aged about nine Isaac aged about seven and Louise aged about three years and their issue one desk, two Bureaus, one dining table and dressing table, two looking glasses one dressing glass, three glass mugs, three feather beds and furniture one half dozen [fancy] chains one riding horse a ladies saddle and bridle and also the land which I now hold or may hereafter hold in my own right. To have and to hold the said negroes and their increase and the said property to the said Betsy Harrington and the heirs of her body forever and the said Ann does hereby warrant and defend the said

property and slaves against the claim and right of all & every person whatsoever unto the said Betsy and the heirs of her body But it is hereby declared by the grantor hereof and the intention hereof is that in case the said Betsy should die without issue that then the said slaves and property shall go and be delivered to the heirs of the [bodies] of my two sons Stephen B. Minor and William B. Minor in equal portions and in case the said Stephen B. Minor should die without issue then the portion or remainder limited to the heirs of his body shall go and pass to the heirs of the body of William and it is hereby further understood and declared by the Grantor of this deed that the foregoing grant or conveyance is made upon this express condition that the said Negroes and other property shall remain in my [possession] until my decease unless I shall think proper to deliver the same to the said Betsy before, In Witness¹⁶

Ann makes it quite clear at the end of her deed to Betsy that the gift of property is to inure to Betsy only after Ann has died, making this deed function in lieu of a will.

Of the 290 total (grantor and grantee) females' deeds between 1781 and 1861 not related to the probate of an estate, eighteen, or 6.21 percent, record mothers' conveying property to their children, while two additional deeds record grandmothers' giving property to grandsons. These deeds include all types of property: six conveyed real property; three conveyed combinations of real and personal property; four conveyed personal property such as mules, stock, and household goods; six conveyed slaves; and one sought to convey property of an unspecified nature. Most of the mothers who gave daughters property did so only in the late 1850s when five of the total seven mother-daughter deeds were made. This seems to indicate that this is the first period where this type of gift was possible. This is a strong contrast to the deeds from mother to son, seven of the eight of which occurred before 1840 and the last of which did not occur until 1860. This too may have something to do with the sons' feeling that their mothers were otherwise provided for. Other deeds made by women clearly record gifts of property,

¹⁶ Jefferson County, Mississippi, Chancery Court, Deed Book B, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 892552, 178.

although no relationship to the grantee is given as was the case in Sarah Calvit's deed of trust for Mary, Mariah, and Anne Shorter.¹⁷

Certainly, while some women took advantage of their ability to hold and dispose of property, not all women enjoyed these rights even under the new laws. Women still had to acquire property from some source, and generally the only source of property available to women was the benevolent male relative. By far, most gifts of property by family members to women came from father to daughter. Of the 72 deeds for which there are known relationships, 17 record a deed of gift from father to daughter, 15 of which convey only slaves. All 15 of the father-daughter deeds for slaves were made between 1830 and 1850. While some of the deeds are clearly dividing the property among the man's heirs, as in the deed from Charles Flowers to his daughters Sarah and Laura Ann, others like Abraham Frisby's deed to his daughter Mary Silliman intended the ownership of the slaves and the use of the slaves to pass to their daughters with the sealing of the deed or shortly thereafter.¹⁸ Only 5 of the 17 deeds from father to daughter occurred before the daughter married, and only two of the 17 deeds specified that the slaves were to be the separate property of the daughter, not liable for her husband's debts, in an attempt to establish the slaves as the daughter's separate property.¹⁹

Of the 290 total female deeds recorded before 1862, only seventy-two, or 24.83 percent of these deeds contain a grantor and grantee that are known to be related, and

¹⁷ Jefferson County, Mississippi, Chancery Court, Deed Book B, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 892552, 682.

¹⁸ Jefferson County, Mississippi, Chancery Court, Deed Book F, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 892556, 163; Deed Book C, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 892555, 2.

¹⁹ Jefferson County, Mississippi, Chancery Court, Deed Book F, Fayette, Jefferson County, Mississippi, microfilm FHL US/CAN Film 892556, 147, 163. Both deeds were made in 1845.

nineteen of these are a result of the distribution of property to heirs. If one looks, then, solely at these distributions of property, one sees that slaves were a far more popular gift than real property or even other forms of personal property. Looking back at Table 8, with the category for personal property broken down even further into slaves and other movables, one can see how often slaves were considered appropriate gifts to women. Slaves account for 15.86 percent of the known property conveyed in the 290 deeds. Of the deeds concerning slaves, twenty-eight, or 60.89 percent, were deeds between a grantor and grantee with a known familial relationship. Most women received their property from male relatives either as a gift or as a result of inheritance, and slaves were not least among the types of property conveyed in these ways.

In light of the provision in section one of the 1839 MWPA, which granted married women rights to separate property so long as that property did not come from the husband after coverture, the practices Lebsack noted in Petersburg with regard to the establishment of separate estates by husbands for wives and fathers for daughters may have been somewhat different in Mississippi than in Virginia, or they may simply have changed after 1839. If this specific provision were made with the intent to prevent husbands from hiding their assets from creditors, as some historians assume, by transferring it to their wives in the wake of the 1837 panic and the depression that followed, husbands may have decided to transfer that property instead to their daughters. This may explain why so many of the deeds concerning slaves are father-daughter deeds during the 1830s and 1840s.

Despite the potential problems, the number of deeds for men granting property to their female relatives increased after the passage of the 1839 MWPA as described

previously, particularly the transfer of property from fathers to daughters. In addition to Charles H. Flowers's deed to his two daughters Sarah Virginia and Laura Ann Flowers conveying to each of them several slaves "in such manner as that they shall at all times hold the same to their sole and separate use, free from all liability from the contracts or debts of their future husbands,"²⁰ Andrew Barland likewise "in consideration of the natural love and affection" for his daughter Mary Ann Hammett, late Mary Ann Barland, gave her five slaves to enjoy along with their increase to herself and her heirs, "the said slaves to remain in my possession until my death and if there be a crop then growing on my place until such crop is completed and gathered."²¹ While he probably valued the security the separate estate he created for his daughter represented, Andrew Barland was not about to give up his slaves to his daughter until he could no longer use them. This scenario brings us back to the question of motive that was initially raised in Arthur Sims's deed of gift to his daughter Martha in 1839. Did Arthur Sims deed the slaves to his daughter with the intention of hiding them from his creditors? The answer is almost certainly yes, and the probability is that he was not the only man to do so.

Due to the stipulation in article one of the 1839 MWPA, which stated that husbands could not transfer property to their wives, the prenuptial contract became far more important in securing the rights of a woman to her separate property. From 1835 until 1861 a total of 754 marriages took place in Jefferson county. Of the 333 marriages in the sample surveyed, or 44.16 percent of the total number of marriages in the county, only six resulted in the creation of separate estates. A minority of marriages involved the

²⁰ Deed Book F, 163.

²¹ Deed Book E, 846.

establishment of separate estates by marriage contract or prenuptial agreement, seemingly because it was assumed the husband would be capable until he proved himself otherwise, or perhaps because it was an affront to his honor to assume that he was not responsible with his accounts.²² Separate estates were not popular in the the South prior to 1830, though the reason is not entirely clear. It is believed, however, that the creation of separate estates increased over time as equity jurisprudence was incorporated more and more into the common law. The creation of separate estates was also far more likely for a woman who had been previously married.²³

Each of the six separate estates in the Jefferson county sample varied from the others in one way or another, but the small number bears out the earlier unpopularity of separate estates. All but two of the separate estates were established after the passage of the 1839 MWPA. One of these separate estates created before the MWPA, dated in 1835, was created by a father for his daughter after her marriage. The other pre-MWPA separate estate, created in 1838 for Catherine A. Green, protected a large inheritance Catherine received from her father's estate. Not surprisingly, three of the remaining four separate estates involved widows who were remarrying. None of the remaining four transactions consisted of husbands' attempting to create a separate estate for their wives after marriage because, of course, that was prohibited by the MWPA. That means that the remaining four separate estates were marriage contracts or prenuptial agreements.²⁴

²² Suzanne D. Lesock, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York: Norton, 1984), 63.

²³ Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986), 83-84, 88.

²⁴ Jefferson County, Mississippi, Circuit Court, Index to Marriage Records, 1805-1869. FHL US/CAN Film 893069 and 1940139 it. 3-5; Jefferson County, Mississippi, Chancery Court, Deed Books A-L, Fayette, Jefferson County, Mississippi, microfilm. FHL US/CAN Film 892550-892559.

Three of the women for whom these separate estates were created were widows, who in remarrying probably wanted to protect property they inherited from their previous marriage. Filmer Green created the remaining separate estate in 1841 for his daughter Laura Laminda Green prior to her marriage to Robert Cox.

Preuptial agreements, or separate estates established before a marriage, generally gave women the most control over their estates, although even this varied. In another sample, taken from all the deeds created between June 1834 and January 1837, four separate estates appear in the deed books, two created prior to marriage, and the others created by the husbands after their marriages.²⁵ One of these four pre-MWPA separate estates was instigated by the groom-to-be to guarantee his future wife a more limited portion of his estate than dower laws required. Widow Mary J. Sellico Mortimer traded in her one-third dower rights for a one-seventh portion in order to marry Rush Nutt in 1836. The devious Nutt stipulated that he retain control of all his property during his lifetime and that none of the property could be sold after his death in order to furnish her one-seventh life interest in the estate.²⁶ Nutt was clearly concerned first and foremost that his estate remain intact, rather than that his widow be comfortably situated. Why Mortimer agreed to this arrangement is unclear.

The 1838 contract between Blanton B. Ellis and Catherine A. Green gave her all the rights and privileges of her separate property including the powers to devise it by will

²⁵ Deed Book C. In this sample only half of the separate estates located involved prenuptial agreements versus the five out of six in the marriage sample. This is probably attributable to the difference in the sampling technique. The first sample demonstrates how frequently an intended marriage resulted in the establishment of a separate estate. The second, smaller sample was meant to look at the frequency with which separate estates were created during a particular period. The differences before and after the passage of the 1839 law do not appear to be statistically significant.

²⁶ Jefferson County, Mississippi, Chancery Court, Deed Book C, Fayette, Jefferson County, Mississippi, microfilm. FHL US/CAN Film 892555, 367.

and dispose of it by sale. He was prohibited from taking any part or benefit of the property she owned at the time of marriage, as well as any property she might acquire in the future.²⁷ Even after the 1839 MWPA, a marriage contract such as Catherine Green's guaranteed her greater rights to the control and benefit of her property than women in general gained under the 1839 MWPA and its amendments until coverture was entirely abolished in Mississippi in 1880.

The March 1839 marriage contract established between David Gibson and Sarah Harrison transferred their large estates to trustees who were to entitle each spouse to the benefit of half the total estate during their joint life for their separate and sole use independent of one another.²⁸ The contract also specified that upon the death of one of the couple that the property was to descend to the heirs of the spouse according to law as though the marriage between the two people had never occurred. The contract did not permit Sarah to devise the property by will, but it did protect the property from her husband's designs. The separate estate was probably established in this manner because Sarah Harrison was a widow and David Gibson a widower. Since both had property and children from previous marriages, a separate estate was the easiest means of insuring that there would be no squabbling among the heirs when one of the couple died.

In 1841, Laura Green did not fare as well as either of the previous two women. Robert Cox contracted with Green and James Wood as trustee that all his future wife's separate estate would be available for Cox's use during his life and after his death to Green and her heirs according to law. Again, no stipulation was made that allowed for

²⁷ Jefferson County, Mississippi, Chancery Court, Deed Book D, Fayette, Jefferson County, Mississippi, microfilm. FHL US/CAN Film 892555, 247.

²⁸ *Ibid.*, 306.

the division of the property by will.²⁹ In practice, the terms outlined by the marriage contract differed little from the provisions of the 1839 MWPA, but it had the effect of denying Laura Green the one recourse women were allowed if they disagreed with their husband's management of their property: the right to oppose a sale by not revoking their dower privileges. The type of marriage contract to which Laura Green agreed robbed her entirely of any separate identity with respect to her property during her marriage.

Of the marriages during this same time period 102, or approximately 13.53 percent, involved widows who were remarrying.³⁰ Of the 16 widows surveyed who remarried, only two established separate estates from their new husbands, and both women had children by a previous marriage. Maintaining a separate estate could be a mixed blessing. Matilda McCaleb, who married James G. G. Garrett in 1845, was expected to support not only herself on the profits of her separate estate, but also “the education of the children born unto the said Ann M. McCaleb during the coverture of the said Ann M. McCaleb and the late David W. McCaleb deceased and other children that may hereafter be born unto the said Ann M. McCaleb.”³¹

Prior to the passage of the 1839 MWPA, husbands could establish separate estates for their wives after marriage. In 1834 Thomas J. Grafton deeded away his rights and

²⁹ Jefferson County, Mississippi, Chancery Court, Deed Book E, Fayette, Jefferson County, Mississippi, microfilm. FHL US/CAN Film 892556, 206.

³⁰ Jefferson County, Mississippi, Circuit Court, Index to Marriage Records, 1805-1869. FHL US/CAN Film 893069 and 1940139 it. 3-5. Widows are usually distinguishable in the marriage records by the title “Mrs.” Only twenty-one out of a total of 754 marriages surveyed women could not be distinguished as a widow or maiden by their title between 1835 and 1860. In a few of these cases no title was given, but more often the title was illegible. The same data for men is currently not available for comparison because all men were given the title “Mr.,” “Rev.,” or “Dr.” which do not imply marital status.

³¹ Jefferson County, Mississippi, Chancery Court, Deed Book F, Fayette, Jefferson County, Mississippi, microfilm. FHL US/CAN Film 892556, 190. Periods have been added to the initials in accordance with modern standards of punctuation to make the quoted material easier to read. No changes were made that altered the meaning of the original document.

entitlements to his wife Henriette's property that was due to her on the final settlement of her father William's estate. In this case Mary Ann Erwin, Henriette's mother, became the trustee for Henriette. The terms of the separate estate also dictated that portions of the trust were to be paid to Henriette's heirs on their arrival at the age of legal majority or, in the case of the daughters, upon their marriage.³² Under the common law a husband could not deed property to his wife, but he could create a separate estate in trust for her under equity. This changed in Mississippi with the passage of the 1839 act that stipulated that husbands could not create separate estates from their property for their wives after coverture. This did not disallow husbands' creation of separate estates for the wives from property that was given to the wife by a third party as in Henriette's case, but the change in the law might have impacted the number of separate estates established overall.³³

Other transactions were more detrimental to women's fortunes. Thomas Scott's wife Sarah was formerly the widow of Nathaniel Coleman and in consideration of \$1000 relinquished all her dower rights to land Scott sold in 1836.³⁴ The money from the sale probably went directly into Scott's pocket and may have been used in further land speculations and purchase of slaves rather than providing that Sarah was properly supported. The process of changing the real estate to personal estate (the transfer of land for money) meant that Sarah lost all legal power to influence what her husband did with the property.

³² Deed Book C, 139.

³³ "An Act for the protection and preservation of the rights and property of Married Women." Section 1.

³⁴ Ibid., 482.

Economic misfortune for some women could lead to intervention by relatives or the court to establish separate estates. Suzanne Lebsock's *The Free Women of Petersburg* demonstrates that many separate estates were established by fathers or male relatives for daughters "only after the husband had proved himself a loser."³⁵ In Mississippi the chancellor of the equity court might also direct the establishment of a separate estate if he deemed it necessary. One deed of trust, for example, directed that four-fifths of all William Davis's property go to his wife and children "if the said William L. Davis should again indulge in the use of [spirituous] or other intoxicating liquors and abuse and maltreat his wife."³⁶

The establishment of separate estates under equity accounts for an extremely small percentage of the property transactions involving women. Women's property transactions varied widely, but for the most part, women involved in property transactions were widows whose husbands had left them a large inheritance or who were involved in the probate of their husbands' estates. This accounts for the numerous real property transactions that are recorded in the deeds sample. Similarly, the property transactions in which unmarried females appear are often those deeds conveying property from a family member to the female. The most popular of these familial gifts was given to daughters by fathers in the form of slaves. Where mothers managed to control property of their own, they often made deeds of gift to their children. Slowly, but certainly, the number and percentage of women's property transactions rose over time. This suggests that women were gaining more access to property. Whether that access

³⁵ Lebsock, *Free Women*, 63.

³⁶ Deed Book C, 431.

was temporary, such as the guardianship of a child's inheritance, or whether it was absolute, such as a bequest to a wife from a deceased husband, the increase of women's involvement in property transactions made it far more acceptable in society for women to participate in roles that were traditionally male.

From the appearance of matters, women were not intended to benefit greatly from the Mississippi MHPA. Instead, the benefits women derived from the possession of an independent fortune still depended on the disposition of their patriarchs. Women were far more often the grantee than the grantor in the decades just before the Civil War. This illustrates an increase in grants and gifts to women in this period and is indicative of the growing movement to give property more evenly to sons and daughters. But the limitations the MHPAs placed on women's separate property made it difficult for women to use the property without their husband's consent. If women were not the MHPAs' intended beneficiary, men must have expected some return from the new law. One can only speculate as to what return, precisely, they received. One thing seems clear, however. While conservative by today's standards, the Mississippi MHPA was, on the surface, a drastic change to the status quo. The rates of female property ownership were certainly increasing in conjunction with the passage of the 1839, 1846, and 1857 acts, and the nature of their transactions was also changing. Below the surface, however, the reservations of certain rights regarding women's property to the husband appears to support the contentions of those historians who claim the law served the purposes of the patriarchy rather than increasing the rights of women. The next chapter will investigate this claim further by examining the problems that surfaced in the courts regarding married women's property rights.

CHAPTER III

“IN THE EXPOSITION OF OUR STATUTE”: THE HIGH COURT’S INTERPRETATIONS

Alexander M. Clayton, *Davis v. Foy*¹

The change in the number and frequency of women’s property transactions does not fully explain the motives behind the 1839 MWPA, nor does it explain its effectiveness at liberating or curtailing women’s property rights. However, the passage of an amendment to the 1839 law just seven years later seems rather telling. Like the purpose of the MWPA’s passage, the motives for the passage of the 1846 amendment are not clear--but a comparison of the two laws is instructive. In comparing the two laws, one might ask if the changes legislated were meant to broaden and expand the powers granted women by the original law or to rein them in. One might also ask if the intent of the original law was perhaps not always clear and whether the legislature may have intended simply to clarify points of the original law with the passage of the amendment.

Possible motives for the passage of the 1839 law and the 1846 amendment also become evident after examining the state’s judicial records. The tradition in the American government system expects the judiciary to interpret the laws the legislature makes and apply their interpretation of the law to judge real life situations. The opinions

¹ W. C. Smedes and T.A. Marshall, *Davis v. Foy*, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 7 in *Mississippi Reports*, Vol. 15 (Boston: Charles C. Little & James Brown, 1847), 67

offered by the Mississippi high court, therefore, represent not only the problems and conflicts that the new law raised, but also offer a contemporary explication of the motives behind the woman's law. This chapter examines both the changes wrought by the 1846 amendment and how those changes may have been influenced by judicial interpretation and application of the 1839 law.

From 1833 until 1870 the Mississippi High Court of Error and Appeals served as the state supreme court. The court was composed of three judges, each of whom was elected by one of three districts created specifically for that purpose. The judges were elected to fill a term of six years, and a new judge was to be elected by one of the three districts every two years. Not officially designated as such, the chief justice of the court was decided by the three judges themselves. The chief justice was responsible for recording the court's official decisions. The court's decisions represent the verdict of the majority of the three justices.²

The first case before the High Court of Error and Appeals that dealt with the 1839 MWPA did not directly challenge the new law; rather, the case hinged on the female plaintiff's right to own the profits of her separate estate. Justice Alexander M. Clayton of the High Court found that the case, appealed from the district chancery court in Carrollton in 1844, rested on the question of whether the woman involved in the suit, Elizabeth R. Beatty, was entitled to the profits of the cotton grown on land she owned and

² Dunbar Rowland, *Courts, Judges and Lawyers of Mississippi, 1790-1935* (Jackson, MS: Printed for the State Department of Archives and History and the Mississippi Historical Society, 1935), 78-80, microfiche. The source of the decisions used in this paper is W. C. Smedes and T.A. Marshall, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the State of Mississippi* (Columbia, Mo.: E. W. Stephens Publishing Co. et al., 1834-1966). This is the source of information used by the legal system to report the court's decisions, and the volumes are commonly referred to as "the state reporters" because they are compiled by the state reporter. This is a record and general summary of all the cases before the state's high court, and the depth of information varies somewhat over the years and from case to case. No minority reports were recorded in this compilation for the cases examined in this study.

cultivated by slaves she owned separately from her husband. Elizabeth Beatty alleged that she had purchased a tract of land and slaves on credit with the understanding that the value of the crops raised on the property would be applied to payment of the mortgage. Meanwhile, Elizabeth's husband, David Beatty, acted as a surety for a friend in a bond. When the bond came due, the friend defaulted on the loan, and the creditors sought payment from David Beatty and the other sureties to the bond. In the course of settling David Beatty's liability for his friend's debt, an execution of sale was levied on Elizabeth Beatty's cotton crop. Justice Clayton concluded that under the woman's law "the proceeds of the wife's property, as regulated by that law, during the coverture, belong to the husband." Although the law supposedly protected real and personal property women obtained as their separate property, section four of the act reserved to the husband the right to the "receipt of the productions" of a wife's slaves' labor.³ The cotton was therefore not considered her personal property, but the profits of her slaves' labor and therefore her husband's property. By this reasoning, Beatty could not contest the court-ordered sale of the cotton to cover her husband's debts because her husband owned the profits of her separate property.⁴

The first section of the 1846 amendment to the 1839 MWPA repealed the fourth and fifth sections of the original act, thus repealing the clause that stipulated that David Beatty owned the profits of Elizabeth's slaves' production. With respect to this issue, the

³ "An Act for the protection and preservation of the rights and property of Married Women," *Session Laws of American States and Territories: Mississippi State 1817-1898*, Chap. 46, secs. 1-5 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche, 51. The law is commonly known as the Mississippi Married Women's Property Act of 1839 or "The woman's law"; full text is in appendix A.

⁴ W. C. Smedes and T.A. Marshall, James Beatty et al. v. Jordan Smith, et al., *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the State of Mississippi*, Vol. 2, in *Mississippi Reports* Vol. 10 (Boston: Charles C. Little & James Brown, 1844), 567-570.

second section of the 1846 amendment stated that a married woman owning real estate was entitled to the “rents, issues and profits” of that real estate for her sole and separate use and benefit.⁵ Likewise, the fourth section of the amendment secured the proceeds and product of a married woman’s slaves’ labor to her sole and separate use and benefit.⁶ The provisions of the 1846 amendment would likely have entirely changed the decision of the court in the Beatty case and protected Elizabeth’s cotton crop from seizure by her husband’s creditors. These provisions in the amendment clearly seem to support the idea that the legislature intended to protect a married woman’s property, in any form whatsoever, from her husband’s creditors.

The next year the High Court heard another case that this time asked the court to interpret the law of 1839 a little further. It seems that one M. T. Moore was indebted to Michael J. McKie and that McKie sought the repayment of the debt through the sale of several of Moore’s slaves. Moore maintained that the slaves were the property of his wife Mary E. Moore by deed of gift to her from her father, John Webb, in 1840. The initial case decided against the Moores, the jury believing that Webb had given the slaves to Mr. Moore in 1838. In the appeal to the court McKie’s attorney argued that even if the slaves were conveyed to Mrs. Moore by the deed of gift the deed did

. . . not vest a separate and exclusive property in the slaves in Mrs. Moore. The husband is entitled, then, to the profits of their labor, as this court has already decided. He has such an interest in the slaves, during the lifetime of Mrs. Moore, it is contended, as is subject to sale for his debts. Under the statute of 1839, he may control and direct their labor, they shall be sold

⁵ An Act to amend an act entitled an act for the protection and preservation of the rights of married women, approved February 15th, 1839,” *Session Laws of American Sates and Territories: Mississippi State 1817-1898*, Chap. 13, secs. 1-9 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche, 72, p. 154-155; full text is in appendix A.

⁶ “An Act to amend an act entitled an act for the protection and preservation of the rights of married women.”

by the joint deed of himself and wife. What more can be wanting to constitute an actual, though limited, property in the slaves in him, which is subject to sale under execution? It is not necessary that a property in chattels should be full and absolute, in order to make it liable to execution. The deed of Mrs. Moore from her father, [*sic*] contains not one word respecting an exclusive right intended to be vested in her.⁷

This argument directly challenges the provision made in Section two of the 1839 MWPA that states that the slaves held as a woman's separate property are "exempt from any liability for the debts or contracts of her husband."⁸ The judge did not comment on the right of the court to sell the slaves if they, in fact, were found to be Mrs. Moore's separate property under the 1839 act. Based on other merits of the case, the judgment was reversed and the cause remanded, but the point raised by McKie's attorney during the appeal demonstrates the belief of some persons that women's rights to property under the 1839 statute were not very secure. Furthermore, McKie's attorney challenged the claim of the wife to separate property based on the fact that the deed in question did not specify that the slaves were to be Mrs. Moore's separate property, a problem that the very existence of the women's law seems to nullify.

Whether the 1839 law was intended to apply immediately after its passage and in what circumstances were definitely issues for some men and women. In 1846 the Mississippi High Court of Error and Appeals ruled on more than one case that questioned the application of the law to certain *femes covert*. The first case heard in the January term of 1846, *McGee v. Ford*, came out of Holmes county where James G. McGee had

⁷ W. C. Smedes and T.A. Marshall, *Moore v. McKie*, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 5 in *Mississippi Reports*, Vol. 13 (Boston: Charles C. Little & James Brown, 1846), 240-241.

⁸ "An Act for the protection and preservation of the rights and property of Married Women."

married Mary Ann Ford, daughter of David Ford, prior to the passage of the 1839 MWPA.⁹ Also prior to the 1839 act David Ford apparently died. In 1841 James McGee applied for a distributive portion of David Ford's estate as an heir in right of his wife. Mary Ann (Ford) McGee petitioned the court to be added a co-complainant with her husband and demanded that the distribution of the estate be made to her alone for her "sole and separate use." In the course of the action the administrators of the estate alleged that James McGee was in debt to the estate for the value of several items he had purchased at the estate sale. The probate court in Holmes county that had originally heard the case decided that the distribution should be made to James McGee in the form of a credit on the debt he owed, completely disregarding the claim of his wife. The McGees appealed the court's decision and argued that the court's determination that the debt of one of the plaintiffs should be paid out of the distribution of the estate was beyond the scope of the probate court's power; rather, they argued, the probate court's jurisdiction was limited to establishing the sum due the heirs in the distribution of the estate. The appellants argued that were the court a court of chancery,

. . . it would not, most assuredly, allow an insolvent husband to possess himself of the wife's money, or debts and leave her unprovided for. It is a universal rule that if the husband have to seek the aid of a court to recover the wife's debts, that she will be allowed a suitable provision out of the fund [*sic*] due to her.

In other words, in suing for distribution of the estate, James McGee perceived himself to be following the common law tradition of suing to recover debts owed to his wife. He argued that an equity court would not deprive his wife entirely of a portion of the distribution simply because her husband was insolvent. Justice Joseph S. B. Thacher of

⁹ W. C. Smedes and T.A. Marshall, McGee et ux. v. Ford et al., *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 5 in *Mississippi Reports*, Vol. 13 (Boston: Charles C. Little & James Brown, 1846), 769-772.

the High Court of Error and Appeals, however, delivered a decision that agreed both with the original defendants and the probate court

that the distributive share of McGee accrued after his marriage, and therefore inured to him alone, and could be sued for by him, without joining his wife McGee, also, being indebted to the estate, upon judgment, a credit upon that judgment, to the amount of his distributive share, may be received as a payment to him of so much money.

This decision seems to rest on the date of the events. Because Mary Ann was married when her father died, the court found that the distribution of her father's estate rightfully belonged to her husband since she was a feme covert. This ruling seems to suggest that the new MWPA did not apply to property that inured to women before the act's passage in 1839.

Indeed, January 1846 was a time of disappointment for many married women who had seen the 1839 MWPA as expanding their rights to property or altering their status under the law but were frustrated by judicial interpretation of the law's meaning. Several cases appeared that year that dealt in some form with the act of 1839. All of the high court's decisions regarding the cases either recognized men's rights to property above the rights of married women or protected women's separate property from creditors by regarding married women as unable to act competently in legal transactions.

The case of *Davis v. Foy*, which came before the high court in January of 1846 from the circuit court in Carroll county, shows that the opponents of the MWPA were right to worry that if women were given separate property rights, men would use their wives in an attempt to avoid their creditors. When Amos Foy sued Calvin and Elizabeth M. Davis for debt, he did so based on the proof of a promissory note dated November 21, 1843, and signed by both Calvin and Elizabeth. The Davises argued that the agreement

was meant to be between Foy and Elizabeth Davis only and that Calvin Davis signed the note only as surety. Since Calvin and Elizabeth were married at the time, they argued that as a feme covert, Elizabeth could not make a valid contract since she was not legally able to contract for herself. Under these circumstances they argued that as the principal, if she were not liable for the contract, then neither was Calvin as her surety. Amos Foy's attorneys for the defense argued that under the new statute of 1839 the common law was reversed and that the law "expressly gives her a power and legal capacity to contract."¹⁰

The Court of Appeals reversed the circuit court's judgment and found that

In the exposition of our statute, called familiarly the married woman's law, it has already been decided, that it has not the effect to extend her power of contracting, or of binding herself or her property. Its effect rather is to take away all power of subjecting her property to her contracts, except in the particular mode specified in the statute.¹¹

The mode specified in the statute directs that a woman's separate property "may be sold by the joint deed of husband and wife, executed, proved and recorded, agreeably to the laws now in force in regard to the conveyance of the real estate of feme coverts, and not otherwise." The Davises' claim that Calvin signed the deed only as surety meant that the deed was not a joint deed and therefore an invalid action under the 1839 law. In this case the woman's lack of rights as a feme covert served to void the original transaction.

While the ruling certainly protected the Davises' interests in some respects, it did not prosper the cause of married women's rights under the law because it reinforced what the law spelled out, namely that a married woman was incapable of contracting for herself or

¹⁰ W. C. Smedes and T.A. Marshall, *Davis v. Foy*, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 7 in *Mississippi Reports*, Vol. 15 (Boston: Charles C. Little & James Brown, 1847), 64-67.

¹¹ *Ibid.*, 67.

by herself. The court's opinion seems to support the idea that the purpose of the law was to prevent women's property from being taken away from them in any circumstance except that stipulated.

The ruling, however, raises yet another question about the function of the 1839 MWPA: Was the 1839 act meant to limit women's ability to control separate property given to them in the form of a separate estate? For instance, if a woman were given power over her separate property to act as a feme sole with regard to that property, does the law prohibit this action? The problem with this question is that it calls for a judgment as to whether the matters pursued in courts of equity can be overruled in a court of law. Traditionally equity and law were considered separate systems, equity supplying some of the deficiencies found in common law and statutory law. The whole reason that the equity system existed was to deal with problems that could not be answered by the other courts. To negate the creation of separate estates under equity would be in essence to negate equity's purpose and function in society. The court attempted to address this problem the next year in the case of *Doty v. Mitchell*, where it ruled that a separate estate designated as such in a manner that differed from the statute of 1839 and that could be upheld in a court of chancery was not subject to the limitations imposed upon women's separate property as defined in the 1839 statute.¹² This decision was confirmed in subsequent cases, but the cases clearly demonstrate that separate estates created in

¹² W. C. Smedes and T.A. Marshall, *Doty v. Mitchell*, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 9 in *Mississippi Reports*, Vol. 17 (Boston: Charles C. Little & James Brown, 1848), 435; *Montgomery v. The Agricultural Bank*, 566.

chancery could give women greater freedom in the use of their property than the early MWPAs.¹³

A case before the high court in the 1846 January term upheld a woman's rights to her separate property (under the 1839 statute) against a creditor because the court believed the woman incapable of legally contracting. In *Frost & Co. v. William G. Doyle and Jane Doyle*, the court ruled that a jointly signed note for payment of articles purchased by the Doyles did not constitute a charge on Jane's separate property since the note was signed only reluctantly by Jane Doyle when the store's clerk called at the Davis home to settle the account.¹⁴ The decision held that as the sale had not been made upon the faith of Jane's separate property with the consent of William Doyle, that William Doyle alone was chargeable for the debt. It is instructive to quote the comments of Chief Justice William L. Sharkey at length:

The deed of gift bears date subsequent to the act of the legislature, entitled "an act for the protection and preservation of the rights and property of married women," and on its face makes reference to the act. The provisions of that law must be regarded as controlling the question before us. From its title it would seem that something more was intended than to secure merely a separate ownership, and its provisions seem to have been framed with the view of restraining the wife from conveying, or disposing of her personal property in the usual modes of transfer. It secures the property owned before coverture, or acquired afterwards by conveyance, gift, inheritance, distribution, or otherwise, to the separate use of the wife, subject to the control of the husband, who is also entitled to the profits. The last section declares that slaves owned by a feme covert, under the provisions of the act, may be sold by the joint deed of the husband and wife, executed, proved, and recorded agreeably to the laws then in force, in regard to the conveyance of the real estate of feme coverts, "and not otherwise." The mode of transfer is not only pointed out by reference to

¹³ See, *Montgomery v. The Agricultural Bank* in 1848 and *Mitchell v. Ottey*, 1851.

¹⁴ W. C. Smedes and T.A. Marshall, *Frost & Co. v. Doyle and Wife*, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 7 in *Mississippi Reports*, Vol. 15 (Boston: Charles C. Little & James Brown, 1846), 68-76.

another law, but there is a prohibition as to any other mode of conveyance. In designating the mode of conveyance, and in limiting the capacity to convey to the prescribed mode, the legislature seem to have had it in view to protect the wife against the undue influence of the husband and others. *The general rule at common law is, that a feme covert, having a separate estate, acts with regard to it as a feme sole; a rule which this statute must have been designed to limit, by requiring that the husband should join in the conveyance, and that it should be made under certain prescribed ceremonials.* If she cannot convey the absolute title, except in the prescribed mode, it seems to follow, that, in accordance with the spirit of the act, she cannot incumber [*sic*] the property by charges, in any other way than that pointed out. The object of the act would be defeated in many instances, by holding that her contracts by bonds or notes amounted to a charge.¹⁵

Not only did the judges in this case uphold the letter of the law, but they speculated upon the intent of the law, giving as their opinion that the law was designed to protect women's property from the influence of their husbands and others that might persuade a woman to do something with her separate property that might not be in her best interest. The judge felt that the law restricted the rights of women to act as feme sole with regard to their separate property by requiring the husband to join the wife in alienating her separate property, thus protecting her from becoming the victim of a swindler.

This decision and opinion of the legislature's intent in passing the 1839 MWPA was echoed in *Berry v. Bland* in the same court term.¹⁶ Emeline Bland and her husband signed as sureties to a bond that was forfeited. In an attempt to recover the debt, the local court issued an execution for the sale of Mrs. Bland's slaves, which were her separate property under the 1839 MWPA. The Blands argued that since Emeline was under coverture, she was prevented from entering into any contract and additionally that the

¹⁵ *Ibid.*, 74-75. Emphasis added.

¹⁶ W. C. Smedes and T.A. Marshall, *Berry v. Bland*, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 7 in *Mississippi Reports*, Vol. 15 (Boston: Charles C. Little & James Brown, 1846), 77-84.

1839 act prescribed a precise method in order to alienate her separate property, which method would be compromised by the alienation of her separate property in fulfillment of the bond.

The appellant argued that Mrs. Bland, despite her coverture, was capable of contracting for herself under the laws of Mississippi because the act of 1839 removed the disability of a feme covert to contract for herself. He argued that the reason the law held that femes covert could not contract was because first, they might be taken in execution,¹⁷ “and her husband deprived of society, which the law would not allow,” and second because the law “deprived her of the power of holding property in her own name and right.”¹⁸ The appellant argued that “neither of these measures exist in this state.”¹⁹ Mississippi held that a woman could not be taken in execution, and the 1839 MWPA altered the law so that a feme covert could own property in her own right. “The reasons of the disability not existing, the disability itself does not exist; and married women are with us restored to their primitive right of contracting; a natural right which, in the

¹⁷ To execute upon property is in this sense to seize the property in lieu of the money owed to a creditor. When a debtor loses his or her lawsuit, an officer of the court is sent to execute upon the debtor’s property. The judgment in the case is taken to the clerk of the court who issues a writ of execution that instructs the sheriff as to what property is to be executed upon. In the event that the property executed is real property, a lien must first be placed upon the property before it can be executed (seized). The debtor has the opportunity to pay the debt owed the creditor in another manner provided he or she does so before the seized property is sold. In the nineteenth century it was common to take debtors who had no property to seize and place them in debtor’s prison. The argument made by the appellant in this case seems to be referring to the wife herself being seized upon and taken to debtor’s prison. The court ruled in *James Beatty et al. v. Jordan Smith, et al.*, 10: 567-570, that the proceeds of the separate property of the wife held under the 1839 MWPA belonged to the husband and were subject to executions against him. It follows then that any debts attached to the property were also subject to execution against him. It appears therefore that this would remove the impediment the appellant is referring to in his argument. It also appears from this that the court decided that the contract was not a joint deed of husband and wife, but it was in fact Mr. Bland signing as a surety for his wife.

¹⁸ W. C. Smedes and T.A. Marshall, *Berry v. Bland*, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 7 in *Mississippi Reports*, Vol. 15 (Boston: Charles C. Little & James Brown, 1846), 79.

¹⁹ *Ibid.*

absence of any social restriction, belongs to every sane human being who has attained to years of discretion.”²⁰

The court found that the act of 1839 provided a specific manner in which a feme covert, under the provisions of the act, could convey her property—by the joint deed of husband and wife and not otherwise. As a married women executing a bond jointly with her husband as sureties for a third party, when the bond was forfeited Mrs. Bland’s slaves were not liable to be sold under execution.²¹

Justice Alexander M. Clayton, who delivered the decision, reasoned that under the common law

a feme covert, is not liable personally for any debt: nor is her separate property in general liable in equity for the payment of her general debts, or her general personal engagements. Yet the fact that the debt has been contracted during the coverture, either as a principal or as a surety for her husband, or jointly with him, seems ordinarily to be held prima facie evidence to charge her separate estate, without any proof of a positive agreement, or intention to do so²²

Essentially Clayton held that the evidence in the case was sufficient to suggest that the Blands were liable to pay the bond whether or not Mrs. Bland was under coverture. However, the Blands were able to articulate a legitimate reason why Mrs. Bland’s separate property could not be seized in payment of the obligation. Clayton agreed with the Blands’ reasoning that the MWPA prohibited the alienation of her property in this manner.

In this condition of the English law the statute was passed in this state, upon which we are called to place a construction. The intention of the

²⁰ Ibid.

²¹ Ibid, 83-84.

²² Ibid, 83.

legislature is too plain to be mistaken. The statute directs a particular mode in which a feme covert may alienate her separate property, and provides that it shall not be done otherwise. To hold that it cannot be alienated directly in any other mode, yet that it may be charged with debts, contracted during coverture, subjected to execution and sold indirectly would be to let in all the mischiefs, against which the statute seems directed. The object in view appears to have been to guard her against her own acts, into which her affection for her husband, or his influence over her might lead her. Our duty is to follow the plain provisions of the statute, and not to defeat its end, by the interpolation of equitable exceptions. When the community know that married women with a separate estate have no power to charge it or bind it, except in the manner pointed out by the statute, contracts will be framed to meet that state of the law. There is no more reason to decide that her personal estate can be subjected to the payment of debts under this act, than that her real estate may be, under the previous law. Both are now upon the same footing This is in our opinion the true exposition of the statute, and our decision rests upon that alone.²³

Based on these cases it appears that the high court felt the law was meant to protect women by limiting their rights to alienate their separate property. This idea certainly fits the model proposed by most historians that, while on the surface the MWPA seems to offer women more freedom under the law, in fact it was a device used by the patriarchy to limit women's control to use their separate property.²⁴ But the passage of the 1846 amendment in February following so closely on the heels of the many decisions rendered by the high court in January 1846 concerning the 1839 MWPA suggests that the judiciary's interpretation may not have been in line with the Mississippi legislature's intentions. The verdicts rendered by the high court in the years following the 1846

²³ Ibid, 83-84.

²⁴ See Elizabeth Bowles Warbasse, *The Changing Rights of Married Women, 1800-1861* (New York: Garland Publishing, Inc., 1987); Suzanne D. Lebsack, "Radical Reconstruction and the Property Rights of Southern Women," *Journal of Southern History* 43, no. 2 (1977): 195-216; *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York: Norton, 1984); Anne Firor Scott, *The Southern Lady: From Pedestal to Politics, 1830-1930*, 2d ed. (Charlottesville: The University Press of Virginia, 1995); Joan Hoff, *Law, Gender and Injustice: A Legal History of U.S. Women* (New York: New York University Press, 1991); and others as discussed in Chapter 1.

amendment were so different from those presented above as to necessitate further consideration in discerning the purpose of the Mississippi MWPA.

Indeed, the decision of the High Court of Error and Appeals in the case of *Dalton v. Murphy* in 1857 viewed the purpose of the MWPA as protecting the rights of married women and serving as an enabling act.²⁵ Albina (Hobson) Murphy initiated this case in 1854 in the circuit court of Monroe county, Mississippi, in order to reclaim the slaves left to her from her father's estate. Albina had married Macon Murphy on March 25, 1848, in Alabama and in December 1849 the couple moved to Aberdeen in Monroe county. In January 1851 Albina's father, Matthew Hobson, died at his home in Alabama; in December 1852 a number of slaves were sent to Albina in Mississippi as her distributive portion of Hobson's estate.

In May 1854, however, the Murphys were temporarily in Bladen Springs, Alabama, in an attempt to better Macon Murphy's health. While in Alabama they executed a deed conveying Albina's slaves (still at the Murphy residence in Mississippi) to R. H. Dalton in trust to secure a debt of \$3000.00 Macon Murphy owed to a Mr. Walker. The deed of trust between the Murphys and Dalton recognized that both parties were residents of Monroe county, Mississippi, and stipulated that in the event Macon Murphy defaulted on the debt he owed, Dalton was to take Albina's slaves and, after proper notice, sell the slaves in Aberdeen. The deed, however, was executed in accordance with the laws of Alabama, whose laws differed from those of Mississippi. Alabama required that both Macon and Albina Murphy sign the deed before two witnesses, which they did. The laws of Alabama, however, did not require that Albina

²⁵ James Z. George, *Dalton v. Murphy, Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 30 in *Mississippi Reports*, Vol. 30 (Philadelphia: T & J.W. Johnson & Co., Law Booksellers & Publishers, 1857), 59-66.

Murphy be examined separately from her husband by an officer of the court to determine that her husband had not forced her to endorse the deed against her will or by trickery.

Macon Murphy died shortly after the deed was drafted. Albina applied to the Monroe county circuit court to void the deed of trust so that she could reclaim her slaves from Dalton on the grounds that the deed did not conform to the laws of the state of Mississippi with regard to her position as a feme covert at the time of its execution. The circuit court found for Albina on the basis that the slaves to be sold were in Mississippi and that the Murphys were residents of Mississippi at the time of the deed; therefore, the laws of Mississippi should apply in this case. Dalton, the defendant, filed a bill of exception with the high court after his motion for a new trial was overruled. He claimed that Mississippi law was not relevant to the case for several reasons. The primary issue for Dalton's defense argued that the deed was executed in accordance with the law in the location where it was made and was therefore in force no matter where the parties resided. Similarly, since Albina and Macon were married in the state of Alabama, Albina was subject to the law of the domicil under the civil law then operating upon her. The law of the domicil stipulated that a woman's residence at the time of her marriage governed her power to contract, that "any subsequent change of domicil will neither increase, nor diminish her powers."²⁶ Under the civil law in Alabama, Albina had the power to contract as a married woman and therefore after she left Alabama she was still able to contract, so her deed was valid no matter where she resided.

Justice J. Fisher recorded the high court's decision on this matter and ruled in favor of Albina Murphy on the grounds that since the contract was to be performed in a

²⁶ Ibid, 61.

particular place (in this case in Aberdeen, Mississippi), the deed must be created with respect to the laws governing that place. He ruled that the deed was void because it was not in accordance with the laws of the state of Mississippi where the deed was meant to operate and therefore could not be enforced. “A feme covert, can only contract with reference to her slaves held under the [1846] statute, in the mode which the statute itself has prescribed.”²⁷ Since the statute directed that the joint sale of Albina’s slaves must be “acknowledged by such married woman, as deeds of married women are required by law to be acknowledged,” the deed was void because Albina was not examined separately from her husband as to her approbation to the trust as was required for married women signing deeds in Mississippi.²⁸

The decision of the high court to this point seems to be in line with its prior decisions. The court once again protected a woman’s property by acknowledging that the specifics of the law did not permit her to contract under the circumstance in question. However, what is interesting is the light in which Justice Ephraim S. Fisher perceived the 1846 act. In his decision Fisher explained:

It is not like a restraining statute, which takes away previous rights, but it is an enabling statute, removing certain disabilities, and giving the feme covert power to contract, by observing certain forms and ceremonies, without the observance of which the power does not exist The contract, to be binding upon the wife, must bear upon its face the evidence of her free and voluntary consent thereto.²⁹

Certainly Fisher’s assessment is correct in remarking that the statute did not take away women’s rights to property, because previously women enjoyed only the right to reserve

²⁷ Ibid, 65.

²⁸ Ibid.

²⁹ Ibid., 65.

their dower share to property their husbands sold. His remarks relative to the law's not removing all of a married woman's power to contract are evident from the text of the law itself. The 1846 law specifies that the woman is able to contract jointly with her husband regarding the sale or hire of her slaves and the purchase of supplies for the plantation and slaves.³⁰ Other rights to contract are implied, although not specifically stated, in the third section of the act, which makes it lawful for women "to acquire, and to hold and possess in her own right . . . all such stock, farming utensils and implements of husbandry, as shall be necessary for successfully conducting the business and operation of planting."³¹ Section six in the statute also gave women the express right to convey by joint deed with her husband any real property she owned. Contrary to previous decisions such as that rendered in *Frost v. Doyle*, Justice Fisher portrayed the statute as an enabling statute, not designed to limit women's rights but broaden their rights by allowing them to contract in these certain circumstances.

Fisher's remarks also seem to explain what he considers to be the proper circumstances in which women were allowed to contract. His emphasis that "the contract, to be binding upon the wife, must bear upon its face the evidence of her free and voluntary consent thereto," illustrates a concern that women's contracts might be coerced.³² Clearly, Fisher fears that a woman's ability to contract, even in these limited circumstances, might become a hazard to her well-being. He emphasizes that the 1846

³⁰ "An Act for the protection and preservation of the rights and property of Married Women;" full text is in appendix A.

³¹ Ibid, section 3.

³² James Z. George, *Dalton v. Murphy*, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 30 in *Mississippi Reports*, Vol. 30 (Philadelphia: T & J.W. Johnson & Co., Law Booksellers & Publishers, 1857), 65.

statute provides her a way out of an undesirable contract by allowing that a woman must have freely consented to the contract. The statute states that contracts for purchases made by the husband and/or wife on her behalf are binding as long as the bill of sale is evidenced under seal and acknowledged in a private interview between the woman and an officer of the court to be her voluntary act. Fisher's interpretation of the law supports the argument that the 1846 MWPA was meant to allow women greater access to property and a greater ability to use that property for their own benefit, while protecting them from the loss of that property to desperate or devious men.

Perhaps Justice Fisher had the previous case of *Mary K. James v. Alvarez Fisk, et al.* in mind as he composed the court's decision. This case, brought before the high court in 1847, concerned the separate estate created in February of 1837 in chancery for Mary K. James before her marriage to Joshua James.³³ Since the suit involved a matter of equity, the case rose to the high court through the chancery system beginning in Adams county. In 1840 Joshua James, with Thomas Bernard as surety, became heavily indebted to Alvarez Fisk. Mary James alleged that she was persuaded by her husband and Mr. Bernard, who also happened to be the trustee of her separate estate, to mortgage her separate property in order to secure the promissory notes offered by James and Bernard on the debt owed Fisk. When the first promissory note came due, Fisk filed a bill to foreclose on Mrs. James's property. On the grounds that her husband acted fraudulently in concealing the extent of the mortgage and debt, as well as the particulars of the process that led to the decree for foreclosure, Mary James sought to have the foreclosure set aside.

³³ W. C. Smedes and T.A. Marshall, *James v. Fisk, Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 9 in *Mississippi Reports*, Vol. 17 (Boston: Charles C. Little & James Brown, 1848), 145-154.

Justice Alexander M. Clayton of the High Court rendered the decision in the case, which reasoned that because the Jameses had complied with all the points of law pertaining to the use of Mrs. James's separate property as collateral for Mr. James's debt, suspicion of fraud was not grounds to preclude the foreclosure on the property.³⁴ The marriage settlement clearly conferred on Mrs. James the power to deed or devise her property as she chose, and there was no evidence to suggest that her trustee had been unfaithful in his role, or that her husband had conspired to deprive her of her estate. The seizure of Mrs. James's property was stalled temporarily on the grounds that Fisk's original bill unlawfully called for the foreclosure on the entire property on default of payment for any of the four installments outlined by the mortgage contract. Precedent directed that only a portion of the property necessary to cover the payment of the note due at the time could be seized in foreclosure since the debtors might be able to pay the remaining installments. Clayton's decision makes it quite clear that because Mrs. James had full right to control her property and since she had been provided with a trustee and with a husband, one of whom should always be on the lookout for her welfare, the law could not protect her. This decision offers the underlying sense that the patriarchy of the state created the laws with the intent to protect women from their own ignorance and inabilities; where women chose to act outside of this proffered protection, the law could not save them.

This is evident in the 1857 MWPA, which offered women few additional freedoms when compared to its predecessors. Instead, the amendment focused on further protecting women's property from loss to creditors, while adding and enumerating the responsibilities and liabilities that accompanied separate property ownership as protected

³⁴ Ibid.

by the MWPA. The changes in the law are consistent with a patriarchal society that is honor bound to provide for the women in that society while maintaining the ultimate authority and control within that society.

Chapter forty of the 1857 Code, entitled “An Act Concerning Marriages, Divorces, and the Separate Property of Married Women,” appears quite similar to the previous laws, with some important alterations.³⁵ While *femes covert* were permitted the ownership of all property of any kind whatsoever that might become the property of a *feme sole*, whether brought by her to the marriage or acquired in some manner thereafter, a few changes were made in the liability of the wife for the husband’s debts. Article twenty-three states that “no conveyance or incumbrance, [*sic*] for the separate debts of the husband shall be binding on the wife, beyond the amount of her income.”³⁶ With the 1846 amendment, the law had excluded women entirely for responsibility for their husband’s debts. Article twenty-four included the specific provision, that if a husband purchased property with his wife’s money, but in his own name, he would be recognized as the trustee of that property only, unless credit had been extended to him on the basis of his ownership of said property; in such a case, the property could be used to satisfy the husband’s debts. Such stipulations are rampant throughout the new law, evidencing the questions that had been brought before the high-court and the obvious problems with fraud to which the woman’s law led.

³⁵ Mississippi State Legislature, *The Revised Code of the Statute Laws of the State of Mississippi* (Jackson, MS: E. Barksdale, State Printer, 1857), 331-339; of particular interest for this discussion is section V, “Of the Separate Property of Married Women.”

³⁶ Mississippi State Legislature, *The Revised Code of the Statute Laws of the State of Mississippi* (Jackson, MS: E. Barksdale, State Printer, 1857), 336.

While previously all lawsuits involving married women had to be pursued jointly with one's spouse, article twenty-six expanded women's ability to use the court to recover property by allowing her to sue alone if her husband would not join her in the suit. It also stipulated that if a woman were sued jointly with her spouse, no judgment would be issued against her unless it was first proved that her separate property was liable for the debt. This was the course which the high court of Mississippi had been following, and it is probable that the clause was meant to encourage lower courts to focus on this aspect of a case before rendering a judgment. Additionally, article twenty-seven limited the effects that a judgment against a woman's separate estate might have. When the feme covert alone was liable for the debt, the judgment could only be levied on "the rents, profits, product or income of the estate, and not otherwise."³⁷ This essentially protected the woman's physical property with the exception of cash from being seized and sold, allowing her to continue owning and using the property to generate revenue—a privilege not extended to men. This indisputably represents the law as a method of protecting property of women for their benefit and the benefit of their family.³⁸

Another addition to the 1857 law regarded the right of tenancy under curtesy. While the law followed the precedent established in the 1846 amendment that granted the surviving husband the right to curtesy, his right was reduced to one-third of the wife's separate property (the same as a woman's dower right) if she had heirs by another marriage. This is clearly a clarification for purposes of probating a woman's estate. Since the MWPA did not empower women to dispose of their property by will, all femes covert who died seized of property, died intestate; their property was to be distributed

³⁷ Ibid., 337.

³⁸ Ibid.

according to the laws of inheritance in such cases. The reduction of the husband's curtesy right in favor of the children is yet again another point of the law which indicates that the purpose of the Married Women's Property Acts was to safeguard the family's means of survival.

The most interesting alteration in the 1857 MWPA concerns the widow's right to claim dower. Article thirty mandates that in the event a widow is possessed of property at least equal to the value of dower in her husband's estate, she cannot renounce her husband's will in favor of claiming her dower share. Essentially, as long as the woman was provided with the means of survival, it was the husband's right to reward her in his will as he saw fit. Article thirty continues, directing in what manner dower should be given to a woman who has a separate estate. The value of her separate property relative to the value of her dower share dictated how much of the dower portion she actually received from the estate. Clearly, the object of the law was not to make women wealthy property owners and promote their interests over those of men. The object of the law as outlined here was to ensure that women were provided with a means of survival when their husbands were incapable of supplying their needs.

The 1857 MWPA offered women few additional freedoms and instead focused on further protecting women's property from loss to creditors, while adding and enumerating the responsibilities and liabilities that accompanied separate property ownership as protected by the MWPA. The changes in the law are consistent with a patriarchal society that is honor bound to provide for the women in that society while maintaining the ultimate authority and control within that society.

One of the last provisions on the 1857 MWPA, comprising article thirty-one, stipulates that a woman was also empowered to execute a bond, either jointly with her husband or alone, if the bond were necessary to establish or enforce the woman's right to her property or the profits of that property. A feme covert's bond was, however, binding upon her separate estate. This article seems to be offered as a remedy to those cases which appeared before the high court in which women had entered into bonds. Since the method of contracting a bond was not consistent with the specified mode in which women were allowed to alienate their property under the 1846 amendment, a woman's bond was automatically not binding on a woman's separate property.

The decision in *Whitworth v. Carter* shows that this interpretation continued even after the Civil War.³⁹ The case clearly outlines the court's interpretation of the 1839, 1846 and 1857 statutes as they operated in 1870. Justice Horatio F. Simrall, who presented the court's decision, stated:

In *Davis v. Foy*, the court in reaffirming former adjudications, construing the act of 1839, adds: "This act has not the effect to extend the wife's power of contracting or of binding herself or her property—its effect is rather to take away all power of subjecting her separate estate to her contracts, except in the particular mode specified." . . . *Frost v. Doyle et ux.*, . . . originating under the same act . . . says that this statute of 1839, was intended to limit the rule, "that a feme covert having separate estate, acts with regard to it as a feme sole."⁴⁰

Justice Simrall continues to review cases that followed, including *Doty v. Mitchell*, *James v. Fisk*, and *Berry v. Bland*. He cites other cases that echo the verdicts and sentiments of those above represented before concluding,

³⁹ J. S. Morris, *Whitworth v. Carter*, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the state of Mississippi*, Vol. 43 in *Mississippi Reports*, Vol. 43 (Jackson, MS: Kimball, Raymond & Co., Book Printers, 1871), 61-75.

⁴⁰ *Ibid.*, 71.

The language of the decisions from 1839 to this time, adjudicating under the acts of 1839, the amendments and enlargements of 1846, and of 1847, [sic] are uniform, that that these are enabling statutes, that the feme covert is still subject to her common law disabilities, except as to the class and subjects of contracts therein enumerated. That if she be the owner of separate property, then she can make certain enumerated contracts, but in every case where she or her estate is sought to be charged, the primary enquiry is, was this a liability which she was authorized by the statute to incur? If not, then she is remitted to her condition at common law, that of absolute disability.⁴¹

Simrall's words echo those of his predecessors. It is clear he sees in the MWPA a set of conditions by which women can act as a property owner with the power to contract.

These conditions are evidently put in place to prevent her losing her separate property by disallowing her actions under the law.

⁴¹ Ibid., 71-72.

CHAPTER IV

EVEN THE DISABILITIES WHICH THE WIFE LIES UNDER, ARE FOR THE MOST PART INTENDED FOR HER PROTECTION AND BENEFIT

Blackstone, *Commentaries on the Laws of England*¹

The most radical change to women's property ownership came not from the 1839 married women's property act, but from the amendment of 1846. The initial act essentially extended the right to women to hold title to property in their name, as well as the right to refuse the sale of any property held in their name. This was little different from the provisions for dower rights allowed by the common law in which women could refuse to renounce their dower claim to property. The provisions of the 1839 law were obviously a vast improvement, but small compared with the changes made to the law in 1846.

The 1846 amendment still limited the mode and manner in which women could dispose of their property, but it expanded women's rights to use and benefit from their property in limited ways. With the right to refuse the sale of their property, in addition to the right to collect the profits, benefits, and wages of that property, married women who owned separate property could participate far more in business and society without the aid of their husbands than previously if they desired. They could not, however, alienate

¹ William Blackstone, *Commentaries on the Laws of England*, vol. I. (New York: Garland Pub., 1978), 445.

their property or enter into contracts without their husband's assent. This provision acted as the safety net for the patriarchy, knowing that women were still inherently bound to their judgment.

The amendment of 1857 did more to clarify the particulars of the law with regard to the rights of the husband to his wife's separate property and to emphasize the mode and manner in which women could contract. It also made women slightly more responsible for the actions which previous laws had not allowed for, but which men and women were performing anyway. The amendment, created in conjunction with the High Court's previous rulings on feme covert matters, allowed women to enter into bonds—bonds which could only be made to preserve women's separate property.

The initial aim of the Mississippi MWPA of 1839 was not to provide women with greater freedom or access to property—it was to provide a safety net for the planters' way of life, to provide for women in an honorable fashion. This idea is clearly evident in the High Court's interpretation of the 1846 and 1857 amendments. It is also clearly evident that the design of the law was not to bring gender equality to property law or to recognize the wife as a separate entity within the marriage. Considering the short life span of the original 1839 act, and given the decisions coming from the court, which in some instances continued to be detrimental to women because of their husband's actions, it seems probable that the legislature felt that a highly limited right to own all types of property was a greater safeguard to married women's and their families' livelihood. The limitations the new law retained on married women's power to contract ensured that married women could not operate entirely independent of their husbands. These limitations were clearly designed to provide for the continuance of the patriarchal society.

The first chapter of this thesis claimed that laws reflect the values of the society they govern. Indeed, the ultimate purpose of the Mississippi MWPA was to retain property for the affluent members of society and perpetuate the life of wealth and security which the elite level of Southern society generally enjoyed. If the goal of many Southerners was to obtain and establish wealth, as historians have generally claimed, and to create in the South a type of landed aristocracy which had existed in Europe, the MWPA made women the vehicle for protecting that wealth and transmitting it to future generations.

While the initial Married Women's Property bill presented to the Mississippi legislature in 1839 offered women rights and access to property, the bill that actually passed stood entirely denuded of those benefits, transferring property to women in name only. Only six years later, it became clear to the legislature that the bill was not capable of protecting property as well as had been supposed. Based on the example of several court cases, it became apparent that if men continued to claim the income of their wives' separate property, it could be lost to creditors. To protect the income of women's separate property from a husband's creditors, that income too had to become the property of the wife. This resulted in the 1846 alterations to the 1839 law.

If a man wanted to insure that property could not be taken from the family, it needed to be placed in the legal custody of his wife, in a manner so that she could not easily transfer that title without the clear intent to do so and her husband's explicit approval of her actions. The 1846 law still provided that with the exception of ready money, women could not dispose of their wealth without their husband's permission. That women were allowed to provide for their slaves and purchase necessities

specifically for the purpose of growing their plantations indicates that the law was meant to govern the property and actions of women in the planter class. Many of the legislature and the leaders in the state belonged to the moneyed levels of Southern society, and it is evident that the MWPA was meant to protect their interests. The value of the MWPA is that it protected the future of the Southern planters' lifestyle and ensured the continuation of whatever dynasty they might establish.

The language of the law itself, coupled with the examples of how various individuals used the law, demonstrates that the preservation of a family's finances was of the utmost importance in Southern society. Men's and women's machinations as represented in the cases before the High Court of Error and Appeals demonstrates that they were willing to read the law in whatever way happened to be most advantageous to them financially. This is the message of the various versions of the Mississippi MWPA and the resultant court decisions: vesting property in an inert owner ensures that it will be safe from the claims of predacious creditors and therefore available in perpetuity. The Mississippi MWPA in essence designated married women as a sure investment for their families' financial preservation.

On 13 December 1853 William C. Stampley sold 138 acres to John T. Bowman for the sum of \$2000.00.² Both men were residents of Jefferson county. There was nothing particularly unusual about this transaction itself. What makes the deed so interesting is actually the deed recorded just prior to this one in the deed book and dated 14 December 1853. In this second deed, John T. Bowman sold for \$2000.00 the same tract he had purchased the day before from William C. Stampley, to William C.

² Jefferson County, Mississippi, Chancery Court, Deed Book H, Fayette, Jefferson County, Mississippi, microfilm. FHL US/CAN Film 892557, 508-510.

Stampley's wife. Ann Stampley had signed the deed of 13 December 1853 acceding to the sale and removing her right to dower in the property. The next day she became the full owner of the same property.

There is currently no known evidence that suggests William C. Stampley's attempt to transfer the property to his wife through another person was an effort to defraud his creditors. It is indicative, however, of the growing trend in Jefferson county, and Mississippi in general, for men to secure property for the future by vesting it in their female relatives. Despite the prohibitions of the MWPA that men could not transfer property to their wives after coverture, men still found ways, as in the example above, to use the law to their advantage. It may be that Ann Stampley was a competent woman who was interested in learning to run the business affairs of a plantation herself and that her husband was supportive of her desires. It is more likely, however, that William Stampley recognized that his wife would defer to his experience and understanding in her use of the property, and that transferring a portion of his large estate to her hands would preserve it from any future financial problems that he might encounter while allowing him the power of supervising its use. Ann Stampley could not sell the property without William's consent nor will it upon her death; thus, she represented a wise investment option for her husband, equivalent to an interest accruing savings bank.

Men had been taking this exact same action all across the South since colonial times. Essentially, the transfer of the property to Ann Stampley created for her a limited separate estate, an action that had previously only been possible under equity. Mississippi's MWPA, however, made the establishment of separate estates for women much more commonplace. By including it as part of the state's statutes, the legislature

made the establishment of a limited separate estate automatic upon the transfer of property to any woman. Other Southern states passed similar statutes in the years following Mississippi's 1839 statute, with the exception of Georgia, South Carolina, and Virginia. It is probable that the difference between those states that passed MWPAs before the Civil War and those who did not was the strength of their equity courts. In Virginia and South Carolina, scholars have established the strength of the equity systems there.³ The confusion that surrounded the equity system generally meant that it had not fully developed in the northern colonies and later the western states to the extent that it did in the South. It appears that this same confusion regarding equity existed in the newer southern territories and states as well, leaving the door open for these states to adopt certain portions of equitable law by statute in an attempt to simplify a complicated system. Mississippi's law was then indicative of what was happening in other Southern states.

³ Suzanne D. Lebsack, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York: Norton, 1984); Jane Turner Censer, *The Reconstruction of White Southern Womanhood, 1865-1895* (Baton Rouge: Louisiana State University Press, 2003).

Table 9. Years in which Southern States passed MWPA's.

State	Year Initial Act Passed	Scope of Act	Year of Amendment	Scope of New Law
Alabama	1846	protected from debts only	1848	Gave limited Contractual Rights
Arkansas	1835 (terr.)/1846 state	protected from debts only		
Florida				
Georgia	1866	Separate Prop. & Full Feme Sole Rights	1867-69	Separate Prop. & Full Feme Sole Rights (State Constitution)
Kentucky	1838/9	protected from debts only	1846	Gave limited Contractual Rights
Louisiana	n/a			
Maryland	1843	protected from debts only	1842	Gave limited Contractual Rights
Mississippi	1838/9	protected from debts only		
Missouri				
North Carolina	1849	protected from debts only	1867-69	Separate Prop. & Full Feme Sole Rights (State Constitution)
South Carolina	1867-69	Separate Prop. & Full Feme Sole Rights (State Constitution)		
Tennessee	1850	protected from debts only		
Texas	n/a			
Virginia	1877	Separate Prop. & Full Feme Sole Rights		

Chart compiled from information provided in Elizabeth Bowles Warbasse, *The Changing Rights of Married Women, 1800-1861* (New York: Garland Publishing, Inc., 1987).

That states in other areas of the country also adopted MWPA's during this time period suggests that they, too, were wrestling with problems inherent in the common law tradition and that this was not simply a southern phenomenon. That the initial acts passed by states in the North, West or South before the Civil War gave only limited rights to women regarding property, generally connected to protecting her property from the debts of her husband, suggests that these initial MWPA's were never meant to expand women's

rights, but were an attempt to protect traditionally moneyed women (along with their husbands) from the embarrassing circumstances of sudden poverty, a fear which the panic of 1837 and the rise of the industrial revolution seems to have inspired throughout the country.

Women's role in Southern society had the potential to increase, as demonstrated by Mississippi, as she became the means of perpetuating Southern planters' wealth and lifestyle. Although the MWPAs' focus was on preserving the family's wealth, women were certainly beneficiaries of this patriarchal design in the end. Despite the patriarchy's continued hold on the financial and legal power in Southern society, small gains for women are evident in the slight rise in the number of women participating in property transactions. Though many women continued no doubt to project the ideal image of the "Southern Lady," the nature of society's perception of women's rights to own and use property was changing. As it became more acceptable for women to own property, more and more women became property owners. This had the potential to benefit all women--married, single, and widowed—in softening the perception of women who ran businesses and operated outside the sphere of the submissive and financially ignorant female.

The tradition of providing women in the South with slaves adds an additional dimension to the impact of the MWPAs, however. Women who owned slaves possessed a valuable resource. Not only did slaves represent a large monetary sum, but their labors for their owner could bring additional revenue. It begs the question as to whether, from 1846 forward, Southern women were as completely subject to patriarchal power as historians tend to portray. It seems that unless women in other regions of the US received comparable sums of money or property that elite Southern women may actually

have had a greater access to much more valuable property than their peers in other regions. This is certainly a question which future research might explore.

Several decades before women gained the right to vote, the law enabled women to own property. This property ownership was bound by limitations on women's use and ability to dispose of that property until after the Civil War. However, women still benefited from the laws as it became more and more acceptable to vest married women with property. This change was slow and gradual. Mississippi's leaders, statesmen, judges, and financiers created and amended the law until it ensured that taking property a married woman held legitimately was almost impossible without her consent and, even more important, without the consent of her husband. Other states eventually followed Mississippi's lead. The MWPA in essence gave women rights to property that she did not have before, limited or not. These rights evolved over the course of less than twenty years, and though not as far reaching as some may have liked, gave more women greater opportunity to participate in society and to influence their husbands' actions.

APPENDIX A

AN ACT for the protection and preservation of the rights and property of Married Women.

CHAPTER 46.

Real & per-
sonal property
of the husband,
&c.

Proviso.
Sec. 1. *Be it enacted, by the Legislature of the State of Mississippi,* That any married woman may become seized or possessed of any property, real or personal, by direct bequest, demise, gift, purchase, or distribution, in her own name, and as of her own property: *Provided,* the same does not come from her husband after coverture.

Slaves owned
before
marriage.
Sec. 2. *And be it further enacted,* That hereafter when any woman possessed of a property in slaves, shall marry, her property in such slaves and their natural increase shall continue to her, notwithstanding her coverture; and she shall have, hold, and possess the same, as her separate property, exempt from any liability for the debts or contracts of the husband.

Sec. 3. *And be it further enacted,* That when any woman, during coverture, shall become entitled to, or possessed of, slaves by conveyance, gift, inheritance, distribution, or otherwise, such slaves, together with their natural increase, shall enure and belong to the wife, in like manner as is above provided as to slaves which she may possess at the time of marriage.

Sec. 4. *And be it further enacted,* That the control and management of all such slaves, the direction of their labor, and the receipt of the productions thereof, shall remain to the husband, agreeably to the laws heretofore in force.

All suits to recover the property or possession of such slaves, shall be prosecuted or defended, as the case may be, in the joint names of the husband and wife. In case of the death of the husband and wife, such slaves shall descend and go to the children of her and her said husband, jointly be- gotten; and in case there shall be no child born to the wife during such her coverture, then such slaves shall descend and go to the husband and to his heirs.

Sec. 5. *And be it further enacted,* That the slaves owned by a feme covert under the provisions of this act, may be sold by the joint deed of husband and wife, executed, proved, and recorded, agreeably to the laws now in force in regard to the conveyance of the real estate of feme coverts, and not otherwise.

Approved, February 15, 1839.

“An Act for the protection and preservation of the rights and property of Married Women,” *Session Laws of American States and Territories: Mississippi State 1817-1898*, Chap. 46, secs. 1-5 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche, 51. The law is commonly known as the Mississippi Married Women’s Property Act of 1839.

CHAPTER 13.

AN ACT to amend an act entitled an act for the protection and preservation of the rights of married women, approved February 15th, 1839.

Section 1. Be it enacted by the Legislature of the State of Mississippi, That the fourth and fifth sections of the above recited act, be and the same are hereby repealed.

Sec. 2. Be it further enacted, That the rents, issues and profits of real estate owned by any married woman, in her own right, at the time of her marriage, while sole, or subsequently acquired by her under the provisions of the first section of the act to which this is an amendment, shall inure to the sole and separate use and benefit of such married women.

What property to be held.
Sec. 3. Be it further enacted, That when any married woman shall own and possess in her own right a plantation and slaves, it shall be lawful for her to acquire, and to hold and possess in her own right, exempt from liability for the debts and contracts of her husband, all such stock, farming utensils and implements of husbandry, as shall be necessary for successfully conducting the business and operations of planting.

May contract jointly with husband.
Sec. 4. Be it further enacted, That the products and proceeds of the labor of all slaves owned by a married woman, in her sole and separate right, shall inure to her sole and separate use and benefit; and it shall be competent for her jointly with her husband, to make any contract for the sale or hire of any such slaves, for their necessary clothing,

maintenance, care and support, and for the employment of any agent or overseer for their management and control; and all contracts for the purchase of supplies for the plantation and slaves, or for the slaves alone, owned by any married woman, made by the husband and wife, or by either of them, either expressed or implied, shall be obligatory upon the husband and wife, and may be enforced against the proceeds and income of the separate property of such married woman: *Provided*, that all sales of any such slaves shall be evidenced by bill of sale under seal, acknowledged by such married woman, as deeds of married women are required by law to be acknowledged.

How suits to be conducted.
Sec. 5. Be it further enacted, That all suits for the recovery of the property or possession of such slaves, shall be prosecuted or defended in the joint names of the husband and wife; and all suits upon contracts in relation to, or affecting the separate property of the wife, either real or personal, shall be prosecuted or defended in the joint names of the husband and wife, and may be prosecuted in the courts of common law jurisdiction, in all cases in which said courts would have jurisdiction of the subject matter in controversy between unmarried persons.

To execute deeds jointly.
Sec. 6. Be it further enacted, That it shall be competent for a married woman, by deed of conveyance, executed jointly with her husband, according to the laws of this State in relation to deeds made by feme covert, to sell and convey her real estate as fully and effectually as she could if she were unmarried. If any married woman shall die

“An Act to amend an act entitled an act for the protection and preservation of the rights of married women, approved February 15th, 1839,” *Session Laws of American States and Territories: Mississippi State 1817-1898*, Chap. 13, secs. 1-9 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche no. 72, 152-153.

seized and possessed of real estate or freehold, acquired under the provisions of the act to which this is an amendment, her husband surviving shall be entitled to tenancy of the same, by courtesy as in other cases; and if she die possessed of slaves or other personal chattels as her separate property, leaving issue of her body, either by a former husband, or by her surviving husband, such slaves and other personal chattels shall descend to her child or children, in equal shares; but if she die without issue surviving her, the same slaves and other personal property, shall vest in the surviving husband.

Sec. 7. *Be it further enacted*, That a schedule of the real and personal estate of any married woman to be now owned separately from her husband, under the provisions of this act, shall be recorded in the clerk's office of the probate court of the county in which such property is situated, within six months after the passage of this act, and a similar schedule shall, from time to time, be recorded within three months after the acquisition of any property, real or personal, by any such married woman; and for making such record, the clerk of probate shall receive the same fees as they are entitled to for recording deeds.

Sec. 8. *Be it further enacted*, That no husband married after the passage of this act, shall be held not liable for debts of liable or bound for any debt contracted by his wife previous to marriage, until all the separate property of said wife shall be exhausted; nor shall said husband be liable, either at law or equity, for any debt contracted by his wife after marriage, if at the time of contracting said debt, the wife held separate property, under the provisions of this act.

Sec. 9. *And be it further enacted*, That this act shall take effect and be in force from and after its passage.

Approved February 28, 1846.

“An Act to amend an act entitled an act for the protection and preservation of the rights of married women, approved February 15th, 1839,” *Session Laws of American States and Territories: Mississippi State 1817-1898*, Chap. 13, secs. 1-9 (Westport, CT: Redgrave Information Resources Corp., n.d.), microfiche no. 72, 154-155.

be entitled to half her lawful dower and half of what would be her distributive share of the personality. If her separate property be worth only one-third in value what she would be entitled to, then she shall be entitled to two-thirds of her lawful dower, and two-thirds of what would be her distributive share in the personality, &c. But this article shall not preclude or prevent any married woman from renouncing the provisions of her husband's will, and electing to take her lawful portion, if her separate property do not amount in value, to one-third of what she would be entitled to.

ARR. 31. Any married woman may either jointly with her husband or separately, execute any bond which may be necessary, in any proceedings either at law or in equity, to establish or enforce her right to property, or to the profits thereof, and the same shall be binding upon her separate property.

ARR. 32. When any legacy, distributive share of property, money, or personal property of any description, shall be due or payable to any married woman as her separate property, the joint receipt or acquittance of the husband and wife, or the separate acquittance of the wife alone, shall be a good discharge of the person from whom the same is payable or receivable, and shall bar any action thereon.

LANDLORD AND TENANT

CHAPTER XII.

An Act in relation to Landlord and Tenant.

20. Representatives of tenant for life, who has demised, may recover.	20. Affidavit, bond, and attachment, goods sold, unless replevin.
21. Notice to quit.	21. Distress for rent not due, on affidavit, &c.
22. Subsequent irregularity not to make the distress unlawful.	22. Goods removed before rent due, may be distrained.
23. Tenant holding over, to pay double rent.	23. Goods removed at any time, may be seized in thirty days.
24. Proceedings when tenant deserts premises.	24. Term of bond, and proceedings thereon.
25. Action of replevin may be revived.	25. Jurors after termination of lease.
26. Fees of officers making distress.	26. To be reasonable, and not removed out of county.
27. Summary remedy against tenants in certain cases.	27. Remedy for pound-breach or rescission of pound-bond, and not a wrongful distress.
28. Affidavit to be made.	28. Action of replevin bond, &c.
29. Summons to be issued.	29. Goods of third person, not liable to action of replevin.
30. How served.	30. Action of replevin triable at first form.
31. If no cause shown, warrant to issue.	31. Action of debt, covenant or assumption for rent.
32. Tenant may controvert the complaint.	32. Rights of assignees of the lessor.
33. Jury may be summoned.	33. Remedies of lessees against such assignees.
34. How impanelled.	34. Remedy of executor or administrator for rent due.
35. Adjournment. Witnesses.	35. Husband may recover, after wife's death.
36. Proceedings on verdict for the plaintiff for the defendant.	36. Action for use and occupation.
37. On verdict for defendant.	
38. Stayed on payment, or securing the rent.	
39. Fees of officers.	
40. Certiorari, and proceedings thereon.	

SECTION I.

Respecting the collection of Rent.

1. If any lessor of lands or tenements, his executors or administrators, agents or attorneys, shall make complaint on oath before the justice of the peace of the county where such lands or tenements are, that his tenant, his executor, or administrator, is indebted for rent due and in arrear on such leased premises, specifying the number and shall give bond and security as required in cases of default against absent debtors, such justice shall issue an attachment against the goods and chattels of such tenant, directed to the sheriff or any constable of the county, commanding him to distrain on and distain of such tenant, to an amount sufficient to satisfy the debt due and in arrear, and all costs.

The officer making a distress shall give notice thereof, in writing, to the tenant or his representatives, in person, or by leaving such notice at the dwelling house, or other most convenient place on the premises above described.

APPENDIX B

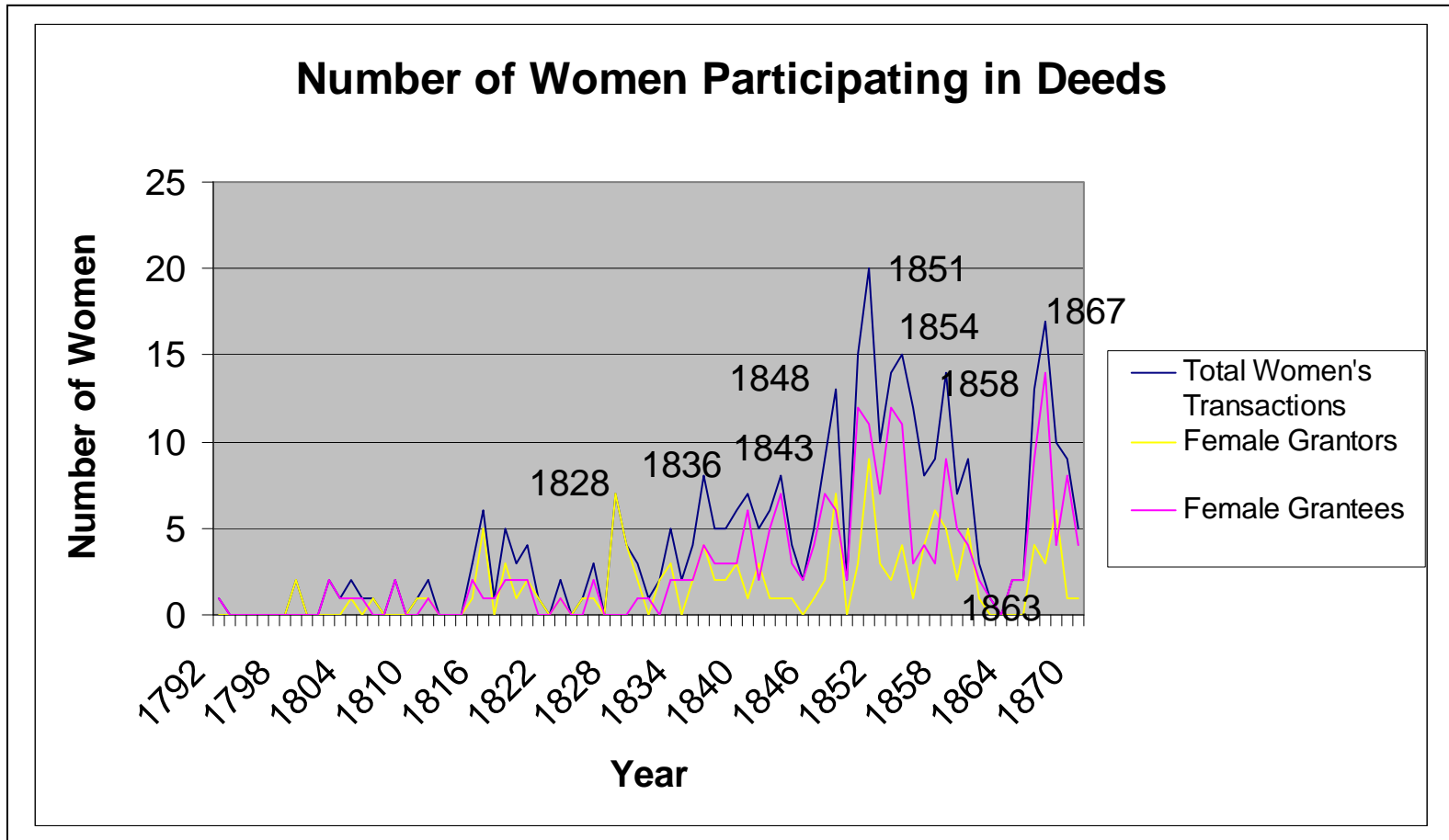


Figure B1. Actual female participation in deeds between 1792 and 1871. Trend in participation corresponds to the passage of the MWPA and its amendments.

Table B1. Number of Female Real and Personal Property Transactions, Jefferson county, Mississippi, 1781-1871, By Year.

Year	Total Women's Transactions	Female Grantors	Female Grantees	Percentage of Total Deeds	Percentage of Total Female Grantors	Percentage Total Female Grantees
1792	1	0	1	0.037%	0.000%	0.037%
1793	0	0	0	0.000%	0.000%	0.000%
1794	0	0	0	0.000%	0.000%	0.000%
1795	0	0	0	0.000%	0.000%	0.000%
1796	0	0	0	0.000%	0.000%	0.000%
1797	0	0	0	0.000%	0.000%	0.000%
1798	0	0	0	0.000%	0.000%	0.000%
1799	2	2	0	0.075%	0.075%	0.000%
1800	0	0	0	0.000%	0.000%	0.000%
1801	0	0	0	0.000%	0.000%	0.000%
1802	2	0	2	0.075%	0.000%	0.075%
1803	1	0	1	0.037%	0.000%	0.037%
1804	2	1	1	0.075%	0.037%	0.037%
1805	1	0	1	0.037%	0.000%	0.037%
1806	2	2	0	0.075%	0.075%	0.000%
1807	0	0	0	0.000%	0.000%	0.000%
1808	2	0	2	0.075%	0.000%	0.075%
1809	0	0	0	0.000%	0.000%	0.000%
1810	1	1	0	0.037%	0.037%	0.000%
1811	2	1	1	0.075%	0.037%	0.037%
1812	0	0	0	0.000%	0.000%	0.000%
1813	0	0	0	0.000%	0.000%	0.000%
1814	0	0	0	0.000%	0.000%	0.000%
1815	3	1	2	0.112%	0.037%	0.075%
1816	6	5	1	0.225%	0.187%	0.037%
1817	1	0	1	0.037%	0.000%	0.037%
1818	8	6	2	0.300%	0.225%	0.075%
1819	3	1	2	0.112%	0.037%	0.075%
1820	4	2	2	0.150%	0.075%	0.075%
1821	5	5	0	0.187%	0.187%	0.000%
1822	0	0	0	0.000%	0.000%	0.000%
1823	3	2	1	0.112%	0.075%	0.037%
1824	1	0	1	0.037%	0.000%	0.037%
1825	1	1	0	0.037%	0.037%	0.000%
1826	3	1	2	0.112%	0.037%	0.075%
1827	0	0	0	0.000%	0.000%	0.000%
1828	7	7	0	0.262%	0.262%	0.000%
1829	4	4	0	0.150%	0.150%	0.000%
1830	5	3	2	0.187%	0.112%	0.075%
1831	1	0	1	0.037%	0.000%	0.037%
1832	2	2	0	0.075%	0.075%	0.000%

1833	7	4	3	0.262%	0.150%	0.112%
1834	2	0	2	0.075%	0.000%	0.075%
1835	4	2	2	0.150%	0.075%	0.075%
1836	8	4	4	0.300%	0.150%	0.150%
1837	5	2	3	0.187%	0.075%	0.112%
1838	5	2	3	0.187%	0.075%	0.112%
1839	6	3	3	0.225%	0.112%	0.112%
1840	7	1	6	0.262%	0.037%	0.225%
1841	6	3	3	0.225%	0.112%	0.112%
1842	6	1	5	0.225%	0.037%	0.187%
1843	8	1	7	0.300%	0.037%	0.262%
1844	4	1	3	0.150%	0.037%	0.112%
1845	2	0	2	0.075%	0.000%	0.075%
1846	5	1	4	0.187%	0.037%	0.150%
1847	9	2	7	0.337%	0.075%	0.262%
1848	14	8	6	0.525%	0.300%	0.225%
1849	2	0	2	0.075%	0.000%	0.075%
1850	15	3	12	0.562%	0.112%	0.450%
1851	22	9	13	0.824%	0.337%	0.487%
1852	10	3	7	0.375%	0.112%	0.262%
1853	14	2	12	0.525%	0.075%	0.450%
1854	15	4	11	0.562%	0.150%	0.412%
1855	4	1	3	0.150%	0.037%	0.112%
1856	8	4	4	0.300%	0.150%	0.150%
1857	9	6	3	0.337%	0.225%	0.112%
1858	14	5	9	0.525%	0.187%	0.337%
1859	7	2	5	0.262%	0.075%	0.187%
1860	9	5	4	0.337%	0.187%	0.150%
1861	3	1	2	0.112%	0.037%	0.075%
1862	1	0	1	0.037%	0.000%	0.037%
1863	0	0	0	0.000%	0.000%	0.000%
1864	2	0	2	0.075%	0.000%	0.075%
1865	2	0	2	0.075%	0.000%	0.075%
1866	13	4	9	0.487%	0.150%	0.337%
1867	17	3	14	0.637%	0.112%	0.524%
1868	10	6	4	0.375%	0.225%	0.150%
1869	9	1	8	0.337%	0.037%	0.299%
1870	5	1	4	0.187%	0.037%	0.150%
1871	0	0	0	0.000%	0.000%	0.000%

Total Sample Size: 2669 deeds, transactions. Source: Jefferson County, Mississippi, Chancery Clerk, "Deed Index, 1797-1871," Fayette, Jefferson County, Mississippi. Microfilm. FHL US/CAN Film 892550.

Table B2. Percentage of Population Represented in Female Deeds Annually.¹

Year	Total Free Persons Interpolated	Number of Females' Deeds	Percentage of Free Population represented by Female Deeds	Female Grantors	Percentage of Free Population as Female Grantors	Female Grantees	Percentage of Free Population as Female Grantees
1820	3187.0	3	0.09%	2	0.06%	2	0.06%
1821	3173.8	5	0.16%	5	0.16%	0	0.00%
1822	3160.6	0	0.00%	0	0.00%	0	0.00%
1823	3147.4	3	0.10%	2	0.06%	1	0.03%
1824	3134.2	1	0.03%	0	0.00%	1	0.03%
1825	3121.0	1	0.03%	1	0.03%	0	0.00%
1826	3107.8	3	0.10%	1	0.03%	2	0.06%
1827	3094.6	0	0.00%	0	0.00%	0	0.00%
1828	3081.4	7	0.23%	7	0.23%	0	0.00%
1829	3068.2	4	0.13%	4	0.13%	0	0.00%
1830	3055.0	5	0.16%	3	0.10%	2	0.07%
1831	2997.8	1	0.03%	0	0.00%	1	0.03%
1832	2940.6	2	0.07%	2	0.07%	0	0.00%
1833	2883.4	6	0.21%	4	0.14%	3	0.10%
1834	2826.2	2	0.07%	0	0.00%	2	0.07%
1835	2769.0	4	0.14%	2	0.07%	2	0.07%
1836	2711.8	8	0.30%	4	0.15%	4	0.15%
1837	2654.6	5	0.19%	2	0.08%	3	0.11%
1838	2597.4	5	0.19%	2	0.08%	3	0.12%
1839	2540.2	6	0.24%	3	0.12%	3	0.12%
1840	2483.0	7	0.28%	1	0.04%	6	0.24%
1841	2504.7	5	0.20%	3	0.12%	3	0.12%
1842	2526.4	6	0.24%	1	0.04%	5	0.20%
1843	2548.1	8	0.31%	1	0.04%	7	0.27%
1844	2569.8	4	0.16%	1	0.04%	3	0.12%
1845	2591.5	2	0.08%	0	0.00%	2	0.08%
1846	2613.2	5	0.19%	1	0.04%	4	0.15%
1847	2634.9	9	0.34%	2	0.08%	7	0.27%
1848	2656.6	13	0.49%	8	0.30%	6	0.23%
1849	2678.3	2	0.07%	0	0.00%	2	0.07%
1850	2700.0	14	0.52%	3	0.11%	12	0.44%
1851	2725.3	20	0.73%	9	0.33%	13	0.48%
1852	2750.6	10	0.36%	3	0.11%	7	0.25%
1853	2775.9	14	0.50%	2	0.07%	12	0.43%
1854	2801.2	15	0.54%	4	0.14%	11	0.39%
1855	2826.5	4	0.14%	1	0.04%	3	0.11%
1856	2851.8	7	0.25%	4	0.14%	4	0.14%
1857	2877.1	9	0.31%	6	0.21%	3	0.10%

¹ The population data is interpolated, meaning that it was derived for the years between censuses by taking the difference between the census figures and applying the change equally over the intervening years.

1858	2902.4	13	0.45%	5	0.17%	9	0.31%
1859	2927.7	6	0.20%	2	0.07%	5	0.17%
1860	2953.0	8	0.27%	5	0.17%	4	0.14%

Total Sample Size: 2669 deeds, transactions. Source: Jefferson County, Mississippi, Chancery Clerk, "Deed Index, 1797-1871," Fayette, Jefferson County, Mississippi. Microfilm. FHL US/CAN Film 892550.

Table B3. Percentage of Free Female Population Represented by Female Deeds, Grantors, and Grantees.

Year	Free Female Population Interpolated	Number of Females' Deeds	Percentage of Free Female Population represented by Deeds	Female Grantors	Percentage of Free Female Population as Grantors	Female Grantees	Percentage of Free Female Population as Grantees
1820	1316.0	3	0.23%	2	0.15%	2	0.15%
1821	1321.1	5	0.38%	5	0.38%	0	0.00%
1822	1326.2	0	0.00%	0	0.00%	0	0.00%
1823	1331.3	3	0.23%	2	0.15%	1	0.08%
1824	1336.4	1	0.07%	0	0.00%	1	0.07%
1825	1341.5	1	0.07%	1	0.07%	0	0.00%
1826	1346.6	3	0.22%	1	0.07%	2	0.15%
1827	1351.7	0	0.00%	0	0.00%	0	0.00%
1828	1356.8	7	0.52%	7	0.52%	0	0.00%
1829	1361.9	4	0.29%	4	0.29%	0	0.00%
1830	1367.0	5	0.37%	3	0.22%	2	0.15%
1831	1341.3	1	0.07%	0	0.00%	1	0.07%
1832	1315.6	2	0.15%	2	0.15%	0	0.00%
1833	1289.9	6	0.47%	4	0.31%	3	0.23%
1834	1264.2	2	0.16%	0	0.00%	2	0.16%
1835	1238.5	4	0.32%	2	0.16%	2	0.16%
1836	1212.8	8	0.66%	4	0.33%	4	0.33%
1837	1187.1	5	0.42%	2	0.17%	3	0.25%
1838	1161.4	5	0.43%	2	0.17%	3	0.26%
1839	1135.7	6	0.53%	3	0.26%	3	0.26%
1840	1110.0	7	0.63%	1	0.09%	6	0.54%
1841	1124.9	5	0.44%	3	0.27%	3	0.27%
1842	1139.8	6	0.53%	1	0.09%	5	0.44%
1843	1154.7	8	0.69%	1	0.09%	7	0.61%
1844	1169.6	4	0.34%	1	0.09%	3	0.26%
1845	1184.5	2	0.17%	0	0.00%	2	0.17%
1846	1199.4	5	0.42%	1	0.08%	4	0.33%
1847	1214.3	9	0.74%	2	0.16%	7	0.58%
1848	1229.2	13	1.06%	8	0.65%	6	0.49%
1849	1244.1	2	0.16%	0	0.00%	2	0.16%
1850	1259.0	14	1.11%	3	0.24%	12	0.95%
1851	1270.5	20	1.57%	9	0.71%	13	1.02%

1852	1282.0	10	0.78%	3	0.23%	7	0.55%
1853	1293.5	14	1.08%	2	0.15%	12	0.93%
1854	1305.0	15	1.15%	4	0.31%	11	0.84%
1855	1316.5	4	0.30%	1	0.08%	3	0.23%
1856	1328.0	7	0.53%	4	0.30%	4	0.30%
1857	1339.5	9	0.67%	6	0.45%	3	0.22%
1858	1351.0	13	0.96%	5	0.37%	9	0.67%
1859	1362.5	6	0.44%	2	0.15%	5	0.37%
1860	1374.0	8	0.58%	5	0.36%	4	0.29%

Source: Jefferson County, Mississippi, Chancery Clerk, "Deed Index, 1797-1871," Fayette, Jefferson County, Mississippi. Microfilm. FHL US/CAN Film 892550.

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