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"Sole and Separate": The Progression of Married Women's Property Rights in the State of Mississippi

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“Sole and Separate”: The Progression of Married Women’s Property Rights in the State of Mississippi

Good Morning,

I am Maggie Ellis, a senior history student here at the W, and I am presenting an overview of my capstone research paper. The information presented here is the culmination of over two semesters of intensive archival research conducted using probate and chancery court records from Lowndes county courts regarding the legal battles of Mrs. Laura Young Whitfield and her family. I started this project this past summer as part of Summer Scholars under the belief that my project would be about Baskerville Manor and its involvement with Pilgrimage. I spent about the first 2 weeks of this project struggling to find any material that was even mildly interesting. But everything changed when Dr. Kempker and I started digging into Chancery and Probate court files regarding the Young and Whitfield families. What I found was a story, unnoticed and untouched by others, that reveals one woman’s life and struggles financially—but through that case study we see the importance of women’s access to legal redress and property.

That said, while not known for a history of progressive politics, Mississippi was a leader in the early women’s rights movement. The Married Women’s Property Rights act of 1839 made Mississippi the first state in the nation to grant married women the right to retain their property. However, historians disagree about the extent to which this law should be understood as a women’s rights initiative. The prevailing account often awards the honor of first to such a law to New York’s 1848 statute, duly ignoring both Mississippi’s own legislation and Louisiana’s long-standing common law system. Following the establishment of similar laws and the end of the American Civil War, women saw an increase in the overall legal acceptance of their power over property. Understanding the State of Mississippi’s intent regarding married women’s property

and how married women and couples utilized the act to protect their assets and themselves is the key to understanding the legacy of women's property right in the state and in the nation. The expansion of married women's property rights was central to women's rights arguments of the period, but the question remains as to how far these acts functionally protected women from profligate husbands. The union of Laura Young and Henry B. Whitfield exemplifies the promise that married women's property reform held for women of the era, in that they might be able to stabilize their financial state despite spendthrift spouses, but additionally, showcased the perils that persisted in husband's attempting to utilize their spouses' legal protections to shield their own communal wealth from creditors.

Prior to the 1839 law, Mississippi, like the rest of the United States, operated under a Common Law System – which understood women as existing as either Fem Sole or Fem Covert. The latter of which relegated married women's legal identities as having been subsumed by that of their husbands – meaning that women ceased to exist as Laura Young and became Mrs. Henry Whitfield. This lack of legal separation placed women firmly within legally inconsequential boundaries that possessed potentially damning financial consequences, not only for her as a wife, but also as a disadvantaged mother. This lack of civil liberty prevented women's ability to sue in their own self-interest and name, and rendered them, as women's rights activists at the 1848 Seneca Falls Conference proclaimed “in the eye of the law, civilly dead.” Mississippi was the first state in the nation to change this legal statue. The 1840 Mississippi constitution reads:

Any Married women 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.

Even with this ground-breaking legislation, women were still far from achieving full legal capacity, either single or married. This act in turn, directly affected the lives of women like Laura Young Whitfield, as it impacted her ability to inherit and pass property onto her heirs – thus encouraging plantation-wealthy patriarchs to institute a system of financial support of their female heirs.

Laura Young Whitfield was born in Lowndes County, MS in 1839, as the third daughter of Alexander Sr. and Elizabeth Davis Young. At its height, the Young Family estate covered over 1400 acres and spread across Lowndes, Oktibbeha, and Winston Counties. Alexander Sr. claimed ownership of over 50 enslaved persons. Additionally, the Young Family had enough residual wealth to buy bonds in support of the Columbus Female Institute, one of the institutions prior to the II&C. Laura graduated from the Columbus Female Institute in 1856, and married Henry B. Whitfield in March 1858.

Born in Georgia, Henry B. Whitfield was the fourth child of James Whitfield – a former Mississippi Governor and perennial member of the state legislature. Henry graduated from the University of Alabama in 1854 and earned his law degree from Cumberland University in 1858. While both parties brought wealth to the union, the Young family's plantation-owned wealth was far and beyond that of the merchant-accrued wealth of the Whitfields.

My research herein takes off after the deaths of Laura's parents. Her father, Alexander Sr. died intestate in August 1862, leaving her mother as the administrator of their estate; however, Elizabeth, Laura's mother, died shortly after in February 1863 – leaving the estate in total upheaval. Without a will dictating otherwise, the Young Family Estate was to be divided equally amongst the five heirs-at-law – which was only further complicated by three of the portions being held for minor children – the children of Ella McGavock, a sister already dead, and

Laura's two younger brothers. Following the death of Laura's mother, Henry petitioned the court in 1863 to be appointed the guardian of the two Young boys, Alexander Jr. and John. The courts allowed \$800/annum to provide for these boys, but Henry allowed them to spend far more, racking up thousands of dollars in bills for clothes, shoes, and horses, all before reaching adulthood. Henry's management was so questionable the judge scolded him and explained that the boys could decide upon adulthood if they were going to take on the debt Henry allowed them to accrue.

In 1867, Laura filed a lawsuit against her husband Henry, his brothers George and Anthony, George's business partner – John M. Billups, and two other businessmen- James Hawthorne and James O. Banks.¹ In this case, Laura asserts that her father being quote “a man of wealth” struck an agreement with Henry in that a so-called “dwelling house” would be constructed to be kept as her sole and separate property. Per this agreement, Henry received over \$12,000 from Alexander Sr. for the purchase, construction, and furnishing of the home. However, despite having done as requested, Henry took the title of the house in his own name, rather than that of his wife, thoroughly defrauding her of her own rightful Estate.

With the death of Laura's parents, each of the Young heirs-at-law were set to inherent a one-fifth interest in their plantation. With the civil raging at time, the division was continuously delayed. As such, the plantation was maintained and carried on for the benefit of the heirs producing a hefty cotton crop in 1865 – which was also to be divided amongst the Young children. But the Civil War was raging, and the division of the property was delayed for years. In the meantime, the estate dwindled.

¹ Initial Bill of Complaint in *Laura Y. Whitfield v. Henry B. Whitfield*, 1868, Chancery Court Case #217, Garth-Billups Local History Archives, Columbus-Lowndes Public Library, Columbus, MS.

Henry utilized Laura's portion of the estate to construct a cotton and grist mill, and never seemed to make ends meet, and instead often functioned as a financial sinkhole. As a result of several mortgages and deeds taken out to support the failing mill, Henry sold Laura's house without her consent. Thus, this asset liquidation "convert[ed] the whole of the separate property of [Laura]" to Henry's use, when the purpose of establishing a separate estate on her behalf was to prevent such opportunities.² Following the sale of the house and of the cotton crop, Henry invested over \$18,000 of Laura's estate in 'Cibolo Mills' without her prior consent.³ Furthermore, in attempting to construct and furnish his business, Henry "gave sundry deeds in trust and mortgages" to the remaining defendants, effectively taking out loans based on the value of Laura's house.⁴ These debts reduced Henry to "failing circumstances" if he was "not already largely insolvent," leaving Laura in "great-danger of l[o]sing the money thus invested" in her estate.⁵ In the culmination of her petition, Laura calls on a court of equity to right the "injustice" that Henry had done her by divesting him of his rights to the "mill and factory" known as 'Cibolo Mills.' In other words, to compensate her for her loss of the house, she wants the mill, which isn't going to make her whole financially, but is all Henry has.

For his part, Henry did not protest much. As the result of his mortgages, the sale of the house, and his continuously failing mill, Henry reported to the court that "his remaining interest [was] all that he ha[d] left" as compensation for Laura. Altogether, Henry owed Laura's estate \$18,092.67, an amount in which his personal property and would not be able to cover.⁶ Thus

² Ibid, 4.

³ Ibid, 4.

⁴ Initial Bill of Complaint in *Laura Y. Whitfield v. Henry B. Whitfield*, 1868, Chancery Court Case #217, Garth-Billups Local History Archives, Columbus-Lowndes Public Library, Columbus, MS. 5.

⁵ Ibid, 5.

⁶ Deed of Conveyance in *Laura Y. Whitfield c. Henry B. Whitfield*, 1867, Chancery Court Case #217, Garth-Billups Local History Archives, Columbus-Lowndes Public Library, Columbus, MS, 4.

facing down the debt he owed, on August 6th, 1867, Henry “grant[ed], bargained, sold, conveyed, transferred” to Laura, via her trustee – John H. Sykes, all of his “right title and interest in and to the property known as the ‘Cibolo Mills’”.⁷ In short, Henry, almost single-handedly lost his last remaining investment in ‘Cibolo Mills’ and Laura’s house; additionally, much of the wealth of the entire Whitfield estate was squandered under his guardianship. Under such circumstances, as when the husband does not appear in court to refute the accusations of his wife, Laura’s case appears to have been accepted by the court at its face value.

Laura’s suit against Henry came to a close in February 1868. The court ruled that as Henry had (1) confessed to the liens and mortgages signed without his wife; (2) appropriated the money therein for his own uses; and (3) was in failing circumstances, the remainder of his right title and interests should be divested out of him and duly conveyed into a trust for Laura and her heirs, with John Sykes acting as the trustee of her estate. Ironically, the ruling still evidences the power of coverture, because the mill was transferred to a trust maintained by John H. Sykes—not to Laura, herself.

This case was not the end, however. was also revisited in subsequent years, when additional creditors of Henry came out of the woodwork. Following just months after the final decree of *Laura v. Henry*, his older brother also turned to the legal system to recoup drastic financial losses at the hands of Henry. George Whitfield was the eldest surviving Whitfield heir, and twelve years Henry’s senior. The root of the issue lay in a \$2834.00 loan taken out by Henry in February 1860 from one F.M. Sheppard. George signed as the surety on the note.⁸ Despite being due twelve months after issue, Henry allowed the note to go “due and unpaid” for the

⁷ *Ibid*, 5.

⁸ The Original Bill in *George Whitfield v. Henry B. Whitfield*, 1868, Chancery Court Case #243 no.1, Garth-Billups Local History Archives, Columbus-Lowndes Public Library, Columbus, MS. 2.

duration of the Civil War, leaving George to grow increasingly worried over his own involvement in the deal. Fearing that the debt would force him to “become a lo[s]er,” George urged his younger brother to “secure him” through either assets or property as a way of rendering his debt “harmless on account of his said suretyship.”⁹ Having gone unpaid, Sheppard took the brothers to court in February of 1868. The court, expectedly, ruled in favor of Sheppard and ordered Henry to repay the loan, only to find him *nulla bona*, or without property, which left the debt to George to be paid as per his suretyship agreement.¹⁰ After more than half a decade, the \$2834.00 loan with a 10% interest rate, plus the incurred court cost totaled to \$5391.20. He paid the bill, but in turn took Henry to court later the same year, with the accusation that Henry should not have been considered *nulla bona* by the court as he had purchased a one-fifth interest in the Young Estate from Leila Sykes and her husband, John Sykes, in early 1866. Effectively, George argues that Henry professed to have no property, but actually did have property that he did not report. He argued that Laura was part of this deception and that their previous legal battle was also about shielding property from creditors.

Ultimately, Laura loses the mill to Henry’s brother, George, to satisfy debts to him. The court believes George’s theory that Henry and Laura were working together to shield property from Henry’s debts. While Laura won a battle versus Henry, she lost the war against George, as the court ruled that the couple was guilty of his accusations and were forced to recoup payment for the initial loan and the cost of the 3 year court case. In the end, a woman’s claim to property did not hold against the claim of her husband’s male creditors.

⁹ *Ibid*, 2.

¹⁰ *Nulla Bona* is the state in which a defendant is found to be without any real or personal property. *Black’s Law Dictionary Online*, s.v. “What is Nulla Bona?” [Last Accessed 20 November 2021 <https://thelawdictionary.org/nulla-bona/>]

While many states after the Civil War revised laws to allow for married women's property rights, states did not overturn coverture. For this reason, women's independence was far from clear, and remember, they still were not guaranteed the right to vote (not until 1920). As late as late as 1873, the Supreme Court denied married women the right to practice law, even if they passed the bar, because as married women the court did not believe they could or should contract with clients independently of husbands—in essence, they were not independent operators, since they were married women (*Bradwell v. Illinois*), said the court.

Laura's case is a fascinating glimpse into a married woman's life and women's history. Her story indicates how difficult it would be to achieve women's independence at court and before the law. Laura's case against her husband proved that women felt ownership of their property and tried to defend their rights, but also that courts continued to use women's property to satisfy claims against joined estates—true separation from a husband's actions and behavior was simply not possible. That said, Married women's property rights were the first small steps toward the larger 20th century movement. Despite appearing as legal advancement, ultimately, the subsequent wave of women's property rights was not set into motion for the propulsion of women as legal entities in society, but rather to protect property and wealth for the continuation of family names. Meeting the exact requirements of the law and maintaining wealth against profligate husbands often was not possible even when the husband acknowledged his wrongdoing and the wife successfully demonstrates the husband's fraud.

Laura Young Whitfield's case against her husband proved that women felt ownership of their property and tried to defend their rights, but also that courts continued to use women's property to satisfy claims against joined estates—true separation from a husband's actions and behavior was simply not possible. That struggle for women's rights would continue well into the

late 20th century. Separating wives' wealth from the will of husbands was not as easy as the 1839 law would have it seem.