



Women and Property – What is a Private Examination?

by Lamora Lucia Haidar, 2019

“Past societies lived by different standards, followed different laws, spoke in different terms, and defined ethnicity differently. When we evaluate and interpret records of past times and other places, we must do so in the context of their ideology, not ours.” Elizabeth Shown Mills

On Monday, the 16th of July 1821 Hazle Moreland, Sr. and the State Bank of Illinois recorded a Deed of Mortgage between the two in Gallatin County, Illinois detailing the terms of his borrowing the sum of \$500.00¹. Using as collateral the real property he had originally purchased from the U. S. Government, at the end of the lengthy document was a coda or an afterthought. It stated his wife Hannah, had been taken into a separate room and asked if she agreed to the terms of the contract. Did she understand the transaction would sever her dower rights to the property offered as surety for the loan?

When one considers the place, (the newly admitted State of Illinois) and year this document recording is taking place, it also brings up the question why would it matter what Hannah

¹ Moreland to State Bank of Illinois, Mortgage Gallatin County, Illinois Deed Book A 124-125, drawn 16 July 1821, recorded 22 April 1822 Family Search Film #977339 .

thought about her husband borrowing money? Nearly everyone knows married women have little or no property rights---especially in the early 19th century. However, as genealogists, if we look a little closer at the context of the record, there is perhaps another piece of the story. Too often presentism clouds our perspective of the past and diminishes our understanding.

As we have discussed in the Best Practices Group meetings at the Dallas Genealogical Society, to fully understand a Land Record or Will you should also research the laws that were in place when the document was created and what the social framework was at the time. How was society organized in a frontier locality where there were Native Americans, previous occupants (the French,) and newly arrived settlers? Doing this also deepens our insight into what the document is meant to record. Having written evidence at hand may verify what happened, but if we do not analyze the context thoroughly, we will miss important clues.

The story of this land record, although dated in 1821 really begins the 9th of February 1809, when Congress created the Illinois territory, which was the southwestern most part of the Northwest Territories it had received from Great Britain in the Treaty of Paris 1783 after the Revolution. The western most boundary was the Mississippi River. All newly formed Territories once recognized by Congress elected a Governor and Legislature. Laws were written and enacted to provide an orderly transition from a Territorial government to statehood as soon as the residents met the established threshold and Congress agreed.

Hazle Moreland Sr. and his sons were some of the first settlers to apply for Pre-emption rights at the Shawnee Town District Land Office in July 1814.² In the newly opened Territory of Illinois, the U. S. Government had surveyed the area and divided it into Townships and Sections. Pre-emption allowed persons who were already squatting an opportunity to legitimize their claim. The land was sold at \$2.00 per acre on credit, but a deposit protected your claim until you could pay off the balance. Hazle had carefully chosen a prime location on a bluff called Gold Hill overlooking the busy river port of Shawnee Town which sat at the confluence of the Ohio and Wabash rivers. Shawnee Town was the eastern gateway to the Illinois interior at the time.

Hazle had married Hannah Willis in Rowan County, North Carolina on 8 January 1785.³ Together with their growing family, and after a brief interlude in Kentucky in the 1790s, they had moved further west to the Illinois Territory by 1810.⁴

What did the legislators use as a model to write the statutes for the Territory and later the State of Illinois? As some members were lawyers from other jurisdictions, they employed precepts reaching far back to English Common Law traditions. In particular, the legislators paid

² State of Illinois. *Illinois, Public Land Purchase Records, 1813-1909* [database on-line]. Provo, UT, USA: Ancestry.com Operations Inc, 1999, accessed 29 January 2019.

³ North Carolina, County Marriages, 1762-1979, " database with images, *FamilySearch* (<https://familysearch.org/ark:/61903/3:1:S3HY-6SCS-FQY?cc=1726957&wc=QD8P-6LL%3A1588772726%2C1588772777> : 22 December 2016), Rowan > Marriage bonds, 1753-1868, vol 1-4 > image 342 of 1010; North Carolina State Archives Division of Archives and History, accessed 29 January 2019.

⁴ Margaret Cross Norton, editor, *Illinois Census Returns 1810, 1818*, (Springfield, Illinois: Illinois State Historical Library, 1935), 22.

keen attention to the proper conveyance of real property. Just as the protection of property rights was of paramount concern to the writers of the Constitution, it was given the same importance by the legislators writing the laws for the new state of Illinois.

One of these rights had to do with the protection and claim of a married woman to property owned by the husband. According to English Law, to safeguard married women's financial interest in a transaction of real property whether it was a conveyance or mortgage, she was required to consent to the agreement in a private "examination" away from the influence of her husband. It was important to establish independently that her agreement was not coerced. Otherwise, a court could invalidate the contract at a future date. To protect all parties, the Illinois state statute required the Private Examination of a wife, which provided an additional endorsement of legitimacy if there were questions later in the future should a problem occur.

Think about this: In the early 19th century, in Illinois, it was acknowledged by the clerk as a legal agent of Gallatin County, recording the transaction between her husband and the State Bank of Illinois that Hannah Willis Moreland, aged 56 had "property rights." If she refused to relinquish her dower rights, Hazle would not get his money. The Statutes of the State of Illinois dated 1819 codified this.⁵

⁵ *Laws passed by The First General Assembly, of the State of Illinois, at their Second Session held at Kaskaskia, 1819.* "AN ACT establishing the Recorder's office, and for other purposes." Approved, February 19, 1819. Section 11 [pg. 21} <https://books.google.com/books?id=22E3AQAAMAAJ&pg=PA21#v=onepage&q=conveyance&f=true>, accessed 27 January 2019.

Do you have a “Private Examination” in your collection of land records for your ancestors? You might want to consider looking up the case law in the state or territory to understand how this impacted the participants in the transaction. The Private Examination clause was appended to conveyances in most states until the passage of Married Women’s Property Acts by individual states in the middle of the 19th century.

As genealogists collect documents relating to the activities and actions of our ancestors’ lives, we enrich and expand our understanding of evidence of their lives when we look a little closer at the meaning and context of the documents we find.

Suggested Reading

Women and the Law of Property in Early America (Studies in Legal History) by Marylynn Salmon. Nb. – This was the text the Best Practices Group used in 2017. We have two remaining chapters to cover in 2019. A seminal work on the topic and a necessary reference for every genealogist’s bookshelf to understand the rights of Women and property.

Women and Property: In Early Modern England by Amy Louise Erickson. Another excellent reference work on women’s property rights which delves deeper into the origins of women’s rights in the Early Modern Era.