An Introduction to the History of Tennessee's Confusing Land Laws

Whenever seasoned Tennessee attorneys are asked to discuss the history of the state's real property (land) laws and transactions, their first responses are usually grimaces. With the number of boundary and governmental changes, statutory revisions, treaties with Native American tribes, and fraudulent activities that have affected Tennessee lands, it is nearly impossible to give comprehensive treatment to the issues in a short treatise or speech. Noted 19th Century attorney Henry D. Whitney described the subject thus:

"The law of real property in Tennessee is of a peculiar and complex character, more so, probably, than that of any other State in the Union except those in which titles are affected by old Spanish grants, as for example Louisiana and Mississippi."[1]

The Courts were left to decide numerous, often complex, issues: " ... [The] whole land law system of Tennessee -- if it may be called a system ... is designed as a compilation of the statutes of *rights*, and only incidentally has the question of *remedies* been touched upon.[2]

A brief introduction to some of the laws governing Tennessee property transactions is required to begin understanding them. The most useful published collection of Tennessee's real property laws relative to the State's early history is Whitney's *The Land Laws of Tennessee*[3], a rare volume available in some Tennessee libraries.

Tennessee's land records are important because they provide direct and inferred information about a number of individuals. Direct information usually includes the names and residence locations of the transacting parties. In addition to the grantor and grantee, the names of subscribing witnesses and neighboring landowners are usually present. Important information, such as the original patent to the property, may be included. If a landowner moved away or became incapacitated, he may have authorized someone (usually a family member) to act in his stead through a Power of Attorney. By inference, researchers can determine (from the location of his residence at the time of a land transfer) the approximate date an individual arrived in or left the area.

If land passes by inheritance in Tennessee, heirs do not have a deed to record for the property bequeathed to them.[4] It is possible, then, that a parcel of land could have been owned by a family for more than 200 years without another deed recorded since the original land grant was registered. If the land passes by will, the probated will becomes a public record and has the same effect as a deed. If the estate is probated without a will, the descent of land through the probate action is recorded. If there is no probate, there will be no record.

If land passes by inheritance and is later sold, assigned, or mortgaged, however, all heirs (or their guardians) with an interest in the property are required to sign any instruments. Early laws required that husbands of married female heirs also sign these documents.

In some land records, details of marriages and deaths have been recorded. A deed registered in 1799 in Hawkins County, Tennessee, lists the following heirs of Balthasar ORTH, who died intestate in Pennsylvania: widow, Rosina ORTH, of Dauphin Co., PA; children Godleib ORTH, Martin LIGHT, and Barbara LIGHT.[5] A deed recorded in Hawkins County in 1798 gives specific details of the marriage contract between Stockley DONELSON and his wife, Elizabeth (*neè* GLASGOW) MARTIN DONELSON.[6]

Tennessee is described as a "metes and bounds" state. By definition, metes and bounds are "the lines separating a piece of land from the land surrounding it."[7] In lay terms, this means the property descriptions in deeds and grants name the adjacent landowners or geographic features that border a tract. In older legal texts, it is sometimes referred to as "butts and bounds."[8] "Butts" refers to the corners or angles of boundary lines. "Bounds" are the boundaries of surrounding lands.[9]

Most real property laws in Great Britain's North American colonies were based on British common and statutory law. This was true of North Carolina.[10] When North Carolina ceded its Western Lands to the United States government for the second time (1789), it retained the right to grant land there as payment to its soldiers for Revolutionary service.[11] Condition 8 of the Cession Act of 1789 mandated that laws in force in North Carolina would continue in force in the ceded territory, later to become Tennessee.[12] Tennessee's General Assembly (legislature) initially modeled the new State's real property code after North Carolina's.

North Carolina's Assembly began passing laws governing the ownership, transfer, and taxation of real property very early in its existence. After the American Revolution began, however, the Assembly became more aggressive in its legislation regarding land. For example, a 1777 law provided for anyone who was, or who became, a citizen of North Carolina to enter lands for survey in any county in the State. The lands subject to entry were restricted to those not previously granted by the British Crown or lords proprietors of Carolina before July 4, 1776, or those lands that North Carolina acquired by treaty or conquest afterward.[13] Unfortunately, the State's ensuing actions quickly laid waste to this law and the spirit it embodied.

In 1784, the North Carolina Assembly adopted sweeping changes to its land laws. British common law, in effect until that time, was no longer satisfactory to the people of North Carolina. In an 1826 case, the Tennessee Supreme Court described North Carolina's motives thus:

"The Acts of 1784, Chapter 22, Sections 3 and 7 and 1784 Chapter 10, Section 3 have three grand objects[:] to destroy primogeniture[14]; to destroy the indivisibility of real estate; and to preserve real estate in the blood of the transmitting ancestor."[15]

The legislators' vexation with the British system and their imminent desire to preserve the "blood" -- lineal descent of land through genetic relatives of close degree to the landowner -- can be seen in the preambles to some sections of the Acts of 1784:

"Whereas it will tend to promote that equality of property which is of the spirit and principle of a genuine republic, and that real estate of persons dying intestate should undergo a more general and equal distribution than has hitherto prevailed in this state[16] ... and whereas it

is almost peculiar to the law of Great Britain and founded in the principles of the feudal system which no longer apply in that government and can never apply in this state[17] ... and whereas by the law of descents as it now stands, when any person seized of a real estate in fee simple dies intestate without issue, and not having any brothers or sisters, such estate descends to some collateral relation, notwithstanding the intestate may have parents living, a doctrine grounded upon a maxim of law not founded in reason, and often iniquitous in its consequences."[18]

It should be noted that most of the Assemblymen were large landowners and speculators, so revisions to the laws directly benefitted them. While they had outstanding foresight, these men were also creatures of their culture. Early laws did not vest a decedent's daughters or sisters with any real property rights if sons or brothers were living (even half-brothers inherited over full-blood sisters).

Intestate Succession

The impetus for the Acts of 1784 was to clarify and make equitable the passing of land through estates, whether the landowner died testate (leaving a valid will) or intestate (without leaving a will or with a will that is declared invalid). Subsequent Court decisions included partial intestacy within the meaning of this Chapter.[19] For the first time in the State's history, the Acts of 1784 established the structure for "intestate succession," the manner in which land would pass through an intestate estate without consideration to the source of the intestate decedent's title to the land.[20] Subsequent Court decisions affirmed the "Statute of Descent,"which stated that "whatever right, title or interest the decedent had, passes to the heirs."[21]

For the most part, laws and decisions reinforced the common-law doctrine that land acquired by gift, devise, or descent from an ancestor could only be inherited by persons of the same ancestral blood. Such land was to descend according to the following hierarchy:

- *Lineal Descendants:* To the decedent's sons equally; if no sons, to his daughters. If any of his children predeceased the intestate decedent, lineal descendants of the deceased child would share equally in their deceased parent's share of the present estate.[22] If the decedent left no surviving issue, then

- *Collateral Kindred:* To the decedent's whole or half-brothers; if no brothers, to his sisters. If any of the decedent's siblings predeceased him, the sibling's lineal descendants would share equally in their deceased parent's share of the present estate. Preference was granted to the blood line of descent of any land the decedent had inherited[23] (*i.e.*, if he had half-brothers by both his parents, and the land had been inherited through his mother's lineage, the half-brothers by his father would be excluded). If the decedent left no surviving siblings, then

- *Ascendants:* To the parent from whom the land derived, if living; if not, to the father; then to the mother; then to the father's heirs; then to the mother's heirs, if so acquired.[24]

- The same rules of descent applied to both lineal and collateral descendants, if the lineal descendants were farther removed from their ancestor than grandchildren and the collaterals were farther removed than children of the decedent's siblings.[25] Priority of descent was based

on the degree of relationship to the decedent:

- if equal degree and the land passed to the decedent by gift, devise, or descent, priority was given to the blood of the first purchaser of the land;
- if unequal degree and the land had passed by gift, devise, or descent to the decedent, proximity of degree was preferred without regard to the blood of the first purchaser;
- If the land was purchased by the decedent, proximity was preferred without regard to the decedent's paternal line or the blood of the first purchaser of the land.[26]

The Tennessee General Assembly modified these provisions slightly, in an attempt to be more fair to the collateral kindred and/or parents of an intestate who died without issue[27]:

- If the land were acquired by the intestate decedent during his lifetime, and he died without issue, his brothers *and sisters* "of the whole and half blood, born before his death or afterwards" would divide the land equally as tenants in common. The lineal descendants of a deceased sibling would share equally in their deceased parent's portion.

If there were no surviving siblings or siblings' lineal descendants, early laws passed the property to the decedent's father, then to his mother, then to heirs of his father, then to heirs of his mother ("forever").[28] Later, the law passed the land to the decedent's surviving parent or both (if living) as tenants in common. If both parents predeceased the intestate decedent, the heirs of his father and mother in equal degree (of relationship to the decedent) would share in equal moieties. If there were heirs of unequal degree, the heirs nearest in blood took preference.[29]

- If the land came to the intestate decedent by gift, devise, or descent, from a parent or the ancestor of a parent, and the decedent had whole brothers or sisters, they would share equally in the estate. If the decedent had half-brothers and -sisters in both his paternal and maternal lines, the land would be shared equally by the half-siblings on the side from which the decedent inherited the land. If there were no half-siblings in the line from which the land had been inherited by the decedent, his half-siblings in the other line would share equally. Again, the lineal heirs of a sibling who predeceased the intestate decedent would share equally in that sibling's portion.[30]
- Overturning the common law rule known as "seizin in deed," Tennessee law no longer required that land inherited by an individual had to be physically entered (walked on by the owner) before it was transmittable to his heirs."[31]
- If the intestate decedent were an illegitimate child, his real property devised to his mother; if she predeceased him, then to his siblings by her or to their descendants.[32] Legitimizing the decedent did not vacate the mother's rights in favor of his father or his father's heirs.[33]
- Aliens (foreign nationals) were excluded from taking by descent, even if they were closer in relationship to the decedent than U. S. citizens.[34]

- An 1825 law prevented "children of color" from inheriting from their mother's husband, unless the mother's husband was a person of color.[35]

The Tennessee Assembly also provided for the illegitimate offspring of an intestate female decedent (the "natural born" child(ren) of a woman would inherit equally with her other child(ren)).[36] In 1819, a law was enacted to apply the rules of intestate descent to the mother's estate if her only children were illegitimate.[37]

Over time, Tennessee Court decisions have reinforced the legislation governing intestate succession:

"The right to transmit property by descent to one's own offspring and blood is dictated by the voice of nature, and antedates constitutions.[38] The statutes of descent and distribution, except as to surviving spouse are based solely on blood kinship and follow the lines of consanguinity.[39] The Code...makes subdivisions which require to be construed together as parts of a common plan...[40] Statutes of descent and distribution are to be construed in keeping with their general purpose to effectuate a complete and orderly distribution of intestate estates where such purpose can be gleaned from the language of the statute."[41]

Interestingly, the Tennessee Supreme Court later obfuscated the spirit of the legislation by deciding in favor of the paternal half-brothers and -sisters of a decedent over his maternal uncles and aunts, even though the land was inherited through the decedent's mother. Thus, the land passed out of the decedent's ancestral blood.[42] The Court also dealt with the rights of siblings born after the death of the intestate, deciding that "after-born siblings" had no interest unless they were "born within the period fixed by law" (originally ten months).[43]

Testate Decedents

In the case of testate decedents, statutes required that provisions of a will be followed unless they violated the law, except where those provisions concerned the decedent's widow. The Tennessee Supreme Court further explained the law's intention to see that the wishes of the testator -- the person who made the will -- were followed (within the bounds of the law):

"For a will is an assurance of title, vesting an inchoate right in the devisee as soon as executed, which is conclusive on the death of the testator, when it relates to the date of the will."[44]

Every devise (gift of real property by will) conveyed the testator's entire estate in a parcel of land, unless his will stated otherwise.[45]

Other laws and Court decisions regarding land passing by devise were as follows:

- If the amount bequeathed is the same as the law would have allowed to pass by descent (in intestacy), the devisee held title by descent.[46]

- Property rights held in joint tenancy by a testator did not automatically pass to his surviving joint tenants; rather, the rights passed to the heirs of the decedent. The same rules applied to joint devisees, if one died within the lifetime of the testator.[47]

- A posthumous child "born within ten calendar months" and not provided for in the will took by descent whatever share would have come to him in case of intestacy; his share was to be contributed by the devisees and legatees in the proportion of their several bequests and legacies to the whole estate."[48]

- If a devisee died, leaving issue, before the testator, his death would have been considered as if he had died immediately after the testator.[49] In that case, property rights vested in the deceased devisee's issue as it would have in the original devisee, "unless a contrary intention shall appear in the will."[50]

If any part of a will were invalidated, resulting in partial intestacy, that part of the estate was handled as though the individual died intestate.[51] Insolvent estates were settled by selling the decedent's lands at public sale on petition of the Executor or Administrator (the heirs and/or widow were also included as parties).[52] If land was sold to pay a decedent's debts, any cash remainder was divided among his heirs as personalty according to laws of distribution in effect at the time. "Distribution," in the legal sense, refers only to personalty.[53] All unclaimed assets that passed by devise or descent were paid into the State Treasury after seven years.[54]

Dower Right

What rights were granted to the decedent's widow? The Acts of 1784 did not address property jointly owned by a husband and wife. Courts later decided that such property would pass to the survivor.[55] By common law, a husband historically had an "estate" in his wife's land.[56] A wife, however, merely had an "interest" in lands in which her husband was seized (had ownership of some sort) *during his lifetime*.[57] This interest was known as a "dower," or a "dower right."

In the Acts of 1784, North Carolina limited a woman's dower interest to one-third of her husband's aggregate land holdings.[58] The Acts also provided that, if a man died intestate, his widow's dower continued as a life estate in one-third of his real property after his death.[59] A divorced wife lost her dower interest.[60] Any homestead interest in the decedent's lands was first set apart; the widow's dower interest vested in one-third of the remainder.[61] A dower interest created an encumbrance on the heirs' devise, if the husband died testate.[62]

North Carolina provided that a widow could dissent against provisions in her husband's will and secure a dower right in one-third of his estate.[63] Common law did not require a widow to make an election (asserting her right to dissent), unless it was required in the will or was necessary to satisfy her dower interest.[64] Within one year of probate, she could elect to dissent from her husband's will if it did not make satisfactory provisions in his real property or personalty for her. A widow could also sue for her dower right if all of her deceased husband's estate was taken to pay his debts. In either case, the dower right would be set apart as though the man had died intestate.[65] There was one drawback to dissenting: if the widow had more than two children, she would only receive a child's portion of the estate.[66] The law also prevented "collation," or the combining of any advancements made by a decedent to his children during his lifetime with the residue of his estate after his death in order to assess

the value of his widow's dower right. She was only entitled to a share of the residuary estate.[67] A widow also had the right to combine her interest into one tract, but she could not be forced to do so.[68]

Widows' rights were further adjudicated in several 19th Century court cases: while his heirs' rights vested in property immediately upon the death of a man, his widow had no estate in the land (meaning she could not sell, assign, or sue for possession of, or injuries to, the land) until her dower interest was assigned. By common law, if her dower interest could not be set out in metes and bounds, a widow was entitled to one-third of any annual rents on the lands in which she an interest; and, in assessing dower interest in her deceased's husband's lands, the house and outbuildings could not be included.[69] The value of any lands located outside the county of probate was to be estimated and included in her dower.[70] The Administrator of her husband's estate was required to notify the widow of the estate's total value.[71] Any court of competent jurisdiction could then lay off her dower.[72] The widow's dower took precedence over any petition for partition of the lands filed by (or on behalf of) heirs.[73] If the widow was not a resident of the county where her deceased husband's estate was being probated, she had a limit of three years to apply for rehearing of her dower interests.[74]

Until about 1950, women had to be interrogated separately from their husbands before signing a deed or a release of dower right (to get their signatures notarized). This was ostensibly to prevent coercion or fraud.[75] The absence of a dower release on a deed does not mean the man selling the property was unmarried. It does, however, raise questions as to the validity of the transfer for the duration of her life, if she survived her husband and was entitled to a dower interest.

Dower and curtesy were abolished in Tennessee in 1977; rights vested before 01 April 1977 were protected.[76]

"Courts of Competent Jurisdiction"

The law provides that legal proceedings arising from probate or land transactions are to be resolved in a "court of competent jurisdiction." This means any court authorized by statute to hear such matters may resolve them. On the local level, the Quarterly Court (by its various names) originally adjudicated most matters. The three District Courts (Superior Courts of Law & Equity) heard appeals of decisions from the Quarterly Court; they could also hear original matters involving more than £100. In 1810, the District Courts were abolished and Circuit Courts were established in most counties. In 1835, Chancery Courts were established as courts of law and equity. Since that time, most disputes arising from estates or land transactions have been resolved there. It is important to note that most case law (Court decisions) regarding descent of land was established in the mid- to late-19th Century and has not been overturned or vacated.

Other Anomalies and Points of Interest

Laws governing land in present-day Tennessee have also provided for a number of odd

situations to arise. Some of those are listed below:

- *Duplicate Registration*: As land speculation and migration increased in her Western Lands (present-day Tennessee), North Carolina enacted measures allowing an individual to record instruments both in the county where the land lay and in the individual's county of residence.[77] Some early Hawkins County deeds for land in present-day Middle Tennessee were recorded in Orange County, North Carolina; Hawkins County, Tennessee; and Davidson County, Tennessee.

- *Transcription of Records*: The Tennessee Legislature, in 1805 and 1817, enacted measures governing the transcription of records found, upon examination by the Court, to be kept in a disorderly or illegible manner.[78] While transcriptions were to be checked closely, this clouds the validity of a "contemporaneous" record.

- *Chancery Deed*: Before 1801, the parties having title to land settled in a lawsuit were required to execute a deed as directed in the judge's decree. A Chancellor's decree in Chancery Court immediately vests title in the litigated land in the successful litigant(s). This decree, which must be registered, vacates existing title to land.[79]

- *Probate of Deeds*: Probate, or proving, of conveyances has its roots in common law. From passage of the *Acts of Tennessee* (1797) until 01 October 1947, deeds had to be "proved" in open Court.[80] This meant that the seller or witnesses to the transaction had to appear and give testimony ("proof") acknowledging the transfer. Until the deed was proven, it could not be registered. Provisions were made for acknowledgement of the deed before the clerk of any court in the United States; a certificate of the acknowledgement was then transcribed into the record with the deed.[81] Later law provided for acknowledgement before a Notary Public as a substitute for probating before the Clerk of Court.

- *Land Grants*: Grants of land were issued by individual states or the federal government in exchange for cash, civil service, or military service. The time for registering land grants in the county where the land was located was generally one year from the date of issue; otherwise, the grant was voided. Numerous laws extending that time were passed. A survey of the records indicates Registers generally ignored the law. Many grants were never registered. Others were not registered (or were re-registered) when the grant was broken up into smaller parcels and sold.[82]

- *Quitclaim*: An individual does not actually have to hold an interest in land to execute a Quitclaim Deed; anyone could (and can) quitclaim "any right, title, or interest [he] may have" in any parcel. This is often used as a safeguard measure; by having all potential claimants quitclaim their interest in land, there is less chance a dispute will arise when the land is actually sold. In probate matters, it is common to see heirs quitclaim their interests to one individual, so that he can then transfer the land's title without having to obtain numerous signatures -- quite an ordeal two hundred years ago!

- *Adverse Possession*: Early Tennessee law permitted that, after seven years, individuals who claimed ownership of land and who had used or resided on the land without a dispute by the actual landowner would become vested in the title to the land by right of "peaceable adverse

possession."[83]

- *Race [to the Courthouse] State*: Tennessee is a "race state." This means that, if a landowner legally executes deeds to several individuals for the same parcel of land, whoever gets his deed registered first is the lawful owner.

- *Transfers of Land by Females*: Before the "Married Women's Laws" were passed in the 19th Century, an unmarried woman (*femme sole*) could transfer property in her own right, but a married woman (*femme covert*) could not (known as "coverture"). These laws allowed married women to sell or dispose of their own property during marriage.[84] An 1850 law prevented her husband from selling a woman's land without her permission.[85] Both husbands and wives had to be named in the deed, and it had to contain language indicating that both were active participants in the transfer.[86]

Under British Common Law, a woman's husband had full use of her property; he could sell, assign, or mortgage her property even if they divorced. Her lands could be sold to pay his debts.[87] Tennessee prevented lands passed to a woman through devise or gift from being sold to pay her husband's debts. Also, if a husband deserted his wife or she left him as a result of violent treatment, and she later acquired land, the husband had no rights in the land during the period of separation.[88]

- *Time Requirements*: Although numerous 18th and 19th Century laws provided that deeds and grants had to be recorded within a specified period of time after execution (generally two years), there are enough "extension acts" to indicate that many individuals ignored the laws. In modern law, there are no requirements as to when, or even if, a deed must be recorded.[89]

- *Property Settled in Consideration of Marriage*: Deeds and mesne conveyances executed in settlement of a woman's property in consideration of marriage were to be registered in the husband's county of residence and in every Tennessee county "where he may remove with it." If the marriage contract had been executed outside the state, the instrument had to be registered in every Tennessee county where the couple might move with the property.[90]

- *Disaster Recovery*: There has never been a general law addressing the recovery of records in the Register's Office in the event of a fire or other disaster. Current laws govern the retention of records by all county officials[91]; Registers typically have their records microfilmed about every six months. If the records were destroyed, most counties attempted to recreate them. There were no requirements to do so, however. An 1865 law allowed re-registration of deeds in counties whose records were lost during the Civil War; an 1858 law said Sevier County's transcripts of deeds lost in a fire in 1831 [*sic*] were as good as the original; a law in 1877 allowed individuals to have their deeds re-registered within twelve months of a fire in the Register's Office and pay only one-half the usual recording fees.[92]

- *New Counties*: When new counties were formed, some Registers visited the parent counties and copied relevant deeds from the older books. There were no laws governing this procedure, however, so individuals often "appear" as sellers in a county with no record in that county of how they acquired the land.[93]

- *Indices Required*: From its earliest history, Tennessee law required Registers to keep an

index ("alphabet") of recorded instruments. There were no guidelines for how detailed the index should be, nor for where it should be kept. Many were kept in separate volumes. Sadly, not every name is indexed. Occasionally, the only record of an ancestor in any location is his signature as a witness to a deed.

- *Statutes of Limitation*: For actions based on real property issues, all statutes of limitation that would have expired from 06 May 1861 until 01 January 1867 were extended ("tolled").[94]

- Tennessee's land laws were not compiled into one volume until 1891. Even the various "code" volumes did not contain *all* the laws in effect at their various dates of publication.[95]

The practice of genealogy requires one to study the land transactions of his ancestors. Comprehension of real property laws will aid in one's understanding his ancestors' land transactions (or lack thereof). Clearly, it is impossible to present a concise summary of the laws that have affected Tennessee lands. The genealogist's burden is lightened by such resources as Whitney's *Land Laws of Tennessee*. While the subject may appear overwhelming, it rewards its students with an awareness of Tennessee's cultural, social, economic, political, and legal history.

Notes

1 Henry D. Whitney, *The Land Laws of Tennessee* (Chattanooga, TN: Deardorff & Sons, 1891), [iii].

2 *Ibid.*, [vi].

3 *Ibid.*

4 Beginning with British Common Law and continuing to the present time, title to land vests in the heirs immediately upon the death of the landowner.

5 Hawkins County, Tennessee, Deed Book 1, p. 289.

6 *Ibid.*, p. 248.

7 Frederic Jesup Stimson, *A Concise Law Dictionary of Words, Phrases, and Maxims*, revised by Harvey Cortland Voorhees (Boston: Little, Brown & Co., 1911), p. 100.

8 *Ibid.*, p. 248.

9 *Ibid.*, p. 100.

10 *North Carolina Legislative Acts* (1715), Chapter 31, §§6 and 7.

11 Shirley Rice, *The Hidden Revolutionary War Land Grants in the Tennessee Military Reservation* (Lawrenceburg, TN: Family Tree Press, 1992), p. 108. This was not abolished until the U. S. Congress interceded on Tennessee's behalf in 1806. Extensive litigation between the two states did not end until 1846, but its effects continued until at least the end of the 19th Century (Whitney, *op. cit.*, [iii].)

12 *North Carolina Legislative Acts* (1789), Chapter 3.

13 *North Carolina Legislative Acts* (1777), Chapter 1, §3.

14 The rule of primogeniture has ancient origins. It was practiced in England and carried to her colonies. Under primogeniture, land passes only to the oldest surviving son of a landowner.

15 *See* Butler v. King, 2 Yer. 115 (alternatively cited as "10 Tenn. 115"); this was reaffirmed in Towls v. Rains, 49 Tenn. 355 (1870). [Note: Citations in this style are from reported cases, or lawsuits. They can be found in published or electronic volumes in most law libraries.]

16 *North Carolina Legislative Acts* (1784), Chapter 22, "Preamble."

17 *Ibid.*, §2.

18 *Ibid.*, §3.

19 W. A. Milliken and John J. Vertrees, *The Code of Tennessee ... 1884* (Nashville, TN: Marshall & Bruce, 1884), §3268 (*see* 3 Yer. 95, 10 Yer. 359, 4 Sneed 247, and 3 Head 350).

20 Return J. Meigs, *Digest of all the Decisions of the Former Superior Courts of Law and Equity, and of the Present Supreme Court of Errors and Appeals, in the State of Tennessee*, vol. I (Nashville, TN: W. F. Bang & Co.-B. R. McKennie, 1848) p. 426.

21 *Ibid.*, p. 428; Milliken and Vertrees, *op. cit.*, §3268 (*see* Meigs 565, 3 Yer. 561).

22 *North Carolina Legislative Acts* (1784), Chapter 22, §2. In 1985, the Tennessee Court of Appeals defined "issue of the decedent" as "direct, lineal descendants of the deceased." In the same case (Carter v. Hutchison), the Court differentiated "issue of the decedent" from "the more common reference to `heirs at law,' `heirs,' or `heirs of the body.'"

23 *Ibid.*, §3.

24 *Ibid.*, §7.

25 Milliken and Vertrees, *op. cit.*, §3271 (see *North Carolina Legislative Acts* (1784), Chapter 22).

26 Meigs, *op. cit.*, p. 427.

27 The standard resource for information on wills and estates in Tennessee for more than 100 years has been Robert Pritchard's *A Treatise on the Law of Wills and Administrations...*, first published in 1894 and updated regularly since then.

28 *Ibid.*

29 *Ibid.*, p. 426; Milliken and Vertrees, §3269 (see *North Carolina Legislative Acts* (1784); *Acts of Tennessee*, 1841-2, Chapter 171).

30 Milliken and Vertrees, *op. cit.*, §3270 (see *Acts of Tennessee*, 1841, ch. 171, and 1874, ch. 22).

31 Meigs, *op. cit.*, p. 428-429.

32 Milliken and Vertrees, *op. cit.*, §3273.

33 Meigs, *op. cit.*, p. 428.

34 *Ibid.* (see *Acts of Tennessee* 1809, Chapter 53, §1).

35 *Ibid.*

36 Milliken and Vertrees, *op. cit.*, §3274 (see *Acts of Tennessee* 1866-7, Chapter 36, §10). The issue of descent to illegitimate children of a deceased male was not addressed by Tennessee Courts until the late 20th Century.

37 Meigs, *op. cit.*, p. 428.

38 *Tennessee Code Annotated*, §31-2-104 (note 1) (*see* Stratton v. Morris, 89 Tenn. 497, 15 S.W. 87, 12 L.R.A.

70 (1891); reaffirmed in Southern R. Co. v. Memphis, 126 Tenn. 267, 148 S. W. 662, 41 L.R.A. (n.s.) 828, Ann. Cas. 1913E, 153 (1912).

39 *Tenn. Code Ann.* §31-2-104 (note 3) (*see* Black v. Washam, 57 Tenn. App. 601, 421 S.W.2d 380 (1969)).

40 *See* 2 Lea 62.

41 *Tenn. Code Ann*. §31-2-104 (note 3) (*see* Rippeth v. Connelly, 60 Tenn. App. 430, 447 S.W.2d 380 (1969)).

42 *See* 3 Bax. 425.

43 *See* 2 Heis. 298.

44 *See* Allen v. Huff, 1 Yer. 408-409 (Knoxville, 1830); alternatively cited as 9 Yer. 408-409.

45 Milliken and Vertrees, *op. cit.*, §3005.

46 Meigs, *op. cit.*, p. 429. This law is still in effect.

47 *Ibid.* (*see* Rhodes v. Holland, 10 Tenn. 341 (1830)).

48 Milliken and Vertrees, *op. cit.*, §3275; Meigs, *op. cit.*, p. 428 (see *Acts of Tennessee* 1823).

49 *Ibid.*, §3276.

50 *Ibid.*, §3277.

51 Meigs, *op. cit.*, p. 428 (see *North Carolina Legislative Acts* (1784), Chapter 22).

52 Milliken and Vertrees, *op. cit.*, §3183.

53 Meigs, *op. cit.*, p. 429; *Tenn. Code Ann.* §31-2-101, *et. seq*.

54 Milliken and Vertrees, *op. cit.*, §3120.

55 *Ibid.*, §3268 (*see* 7 Yer. 319, 4 Sneed 683, 6 Cold. 116).

56 Olin Browder, Roger A. Cunningham, and Joseph R. Julian, *Basic Property Law*, 2nd ed., American Casebook Series (St. Paul, MN: West Publishing Company, 1973), p. 284. An "estate" is merely an interest in land (Stimson, *op. cit.*, p. 179). If the husband had issue born alive of his wife, and those children were capable of inheriting from their mother, the husband held a life estate in his wife's lands; such an estate was referred to as "curtesy" (Stimson, *op. cit.*, p. 148). If land was conveyed to a married woman "for her sole and separate use" and to "the children of her body begotten by her then husband," the husband had no rights in the land (Milliken and Vertrees, *op. cit.*, §2812). A husband's marital rights could be excluded (Thompson and Steger, *op. cit.*, §2006; see *Acts of Tennessee* 1851-2, Chapter 33, §1).

57 *Ibid*. "Interest" means the wife derived a benefit from the land (Stimson, *op. cit.*, p. 222). By common law, the dower right applied to "all lands and tenements whereof the husband was seized at any time during the marriage" (Meigs, *op. cit.*, p. 438).

58 Meigs, *op. cit.*, p. 441.

59 *Ibid*. The dower right was in all lands in which the intestate decedent was legally seized or held equity, including trusts or mortgages, for the duration of her natural life. (Milliken and Vertrees, *op. cit.*, §3244-3246.) The widow had the right to exclude the residence (often called "mansion house") and its outbuildings; otherwise, they were automatically included (*Ibid*., §3247). The Court could limit her dower if it was unjust to the decedent's issue, giving "due regard to her condition and past manner of life" (*Ibid*., §3248).

60 Browder, Cunningham, and Julian, *op. cit.*, p. 284.

61 Milliken and Vertrees, *op. cit.*, §3250. "Homestead" was a right possessed by the head of a family. It was defined as the real estate and improvements with total value of $1,000, which were exempted from legal process (§1879). All amounts greater than $1,000 were not exempted. Homestead also applied to any leasehold of two to fifteen years. Interestingly, homestead rights passed to the wife in a divorce (*see* §§2935-2946). The homestead exemption was abolished in Tennessee in 1978.

62 Meigs, *op. cit.*, p. 438.

63 *Ibid.*, p. 441.

64 *Ibid.*

65 Milliken and Vertrees, *op. cit.*, §3251.

66 *Ibid.*, §3252; Meigs, *op. cit.*, p. 285. In the Acts of 1784 (*at* Chapter 22, §8), the widow was required to dissent within six months' of her husband's death.

67 Meigs, *op. cit.*, p. 285.

68 Milliken, *op. cit.*, §3249.

69 *Ibid.*, §3250; Meigs, *op. cit.*, p. 442. See also Note 61 regarding the Homestead Exemption.

70 *Ibid.*, §3264.

71 *Ibid.*, §3253.

72 *Ibid.*, §3255. The Acts of 1784 (*at* Chapter 22, §9) provided for the widow to petition the Court for setting apart her dower interest. Twelve freeholders were then appointed to set off the dower interest (Meigs, *op. cit.*, p. 442).

73 *Ibid.*, §3262.

74 *Ibid.*, §3257.

75 Return J. Meigs and William F. Cooper, eds., *The Code of Tennessee Enacted by the General Assembly of 1857-'8* (Nashville: E. G. Eastman and Co., State Printers, 1858), §2076.

76 *Acts of Tennessee* 1976 (Adj. S.), Chapter 529, §1; and 1977, Chapter 25, §§4, 5.

77 A. B. Pruitt, *Glasgow Land Fraud Papers*, vol. 2 (Whitakers?, NC: By the Author, 1988-1993), p. 1.

78 *Acts of Tennessee* (1805), Chapter 62, §§1 through 5; *Acts of Tennessee* (1817), Chapter 155, §1.

79 Seymour D. Thompson and Thomas M. Steger, *A Compilation of the Statue Laws of the State of Tennessee...* (St. Louis, MO: W. J. Gilbert, Law Book Publisher, 1873), §4484-5 (see *Acts of Tennessee* (1801), Chapter 6, §48); W. J. Hicks, *The Tennessee Manual of Chancery Practice* (Knoxville: The "Whig" Steam Book and Job Office, 1870), §290.

80 *Acts of Tennessee* (1797), Chapter 43. *See also* a notation entered in an unnumbered volume *Probate of Deeds* (Sep 1946-Oct 1947), Jefferson County Clerk's Office.

81 Thompson and Steger, *op. cit.*, 2040. This practice was first authorized by North Carolina Legislative Acts (1797), Chapter 43.

82 Henry Price, Esq. (Hawkins County Historian), Letter to Author, February, 1994.

83 *Acts of Tennessee* (1797), Chapter 43. Based on North Carolina Legislative Acts

84 Browder, Cunningham, and Julian, *op. cit.*, p. 283. A complete description of the rights of a single woman is found in Meigs and Cooper, *op.* cit., §2486.

85 *Acts of Tennessee* (1850), Chapter 36.

86 Return J. Meigs, *Digest of all the Decisions ...*, 2nd ed. (Clarksville, TN: Neblett & Titus, Printers, 1881-87), §1170. (Hereafter referred to as "Meigs 2nd".) [Note: This writer's copy was damaged; title pages are missing . Spine marked "Meigs Digest 2nd Ed. Milliken (ed.?) S. J. Kirkpatrick (publisher?).]

87 Browder, Cunningham, and Julian, *op. cit.*, pp. 282-283.

88 Meigs and Cooper, *op. cit.*, §§2481-2482, 2485.

89 Meigs, *Meigs 2nd*, §1187 (lists numerous Court decisions to support this change).

90 Milliken and Vertrees, *op. cit.*, §2837(11).

91 *Tenn. Code Ann.* §10-7-401, *et seq.*

92 Whitney, *op. cit.*, p. 602-3 (see *Acts of Tennessee* (1877), Chapters 2 and 6; *Acts of Tennessee* (1865), Chapter 28; *Acts of Tennessee* (1858), Chapter 128); Thompson and Steger, *op. cit.*, §2031.

93 *Acts of Tennessee* (1871), Chapter 112, §2.

94 *Acts of Tennessee* (1865), Chapter 10.

95 Whitney, *op. cit.*, p. [iii].