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WOMEN AND WILLS: AN EMPIRICAL ANALYSIS OF THE MARRIED WOMEN'S PROPERTY ACT AND ITS REMARKABLE RESONANCE TODAY

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I. Introduction

*"The oft repeated rule of the common law is that marriage is an absolute gift to the husband of all the personal estate of the wife which she had at the time of the marriage, or which accrues to her in her own right, during coverture, and upon his death it will vest in his personal representative."*²

By 1900, the state of Missouri had a quarter century's worth of experience with its version of the Married Women's Property Act, passed in 1875 to reverse the common law and decree that personal property acquired by a married woman was her own to control.³ In 1889, the statute was amended to grant a married woman similar rights over her real property.⁴ While the new statute did

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² HENRY S. KELLEY ET AL., A TREATISE ON THE LAW RELATING TO THE POWERS, DUTIES, RIGHTS, AND LIABILITIES OF EXECUTORS, ADMINISTRATORS, AND GUARDIANS, § 199, at 196 (Vernon Law Book Co., 4th ed. 1913) [hereinafter KELLEY'S 1913 PROBATE GUIDE].

³ MO. REV. STAT. § 3296 (1879). See also R. Richard Geddes and Sharon Tennyson, *Passage of the Married Women's Property Acts and Earnings Acts in the United States: 1850 to 1920*, 29 RESEARCH IN ECONOMIC HISTORY 145, 179-180 (2013) (noting that the statute was first adopted in 1875 and contains identical language to the 1879 version cited).

⁴ MO. REV. STAT. § 6869 (1889).

not affect any property a wife had acquired before its passage,⁵ it specifically provided that the husband had no right to any property she obtained after the law went into effect.⁶ However, a married woman in Missouri was still constrained in other ways. She could not serve as executrix or administratrix of an estate, and if she had been appointed as such, her letters were revoked as soon as her marriage was suggested to the probate court.⁷ Although Missouri allowed women to write their wills, the will of a single woman who later married was automatically revoked under the theory that marriage repealed a woman's ability to execute her own will.⁸ Overall, the ability for a woman to change these laws was limited: no woman, married or single, could be Governor or any other executive officer, state legislator, juror or judge of a circuit court in Missouri.⁹ Furthermore, women could not vote in the state until the 1919 presidential election.¹⁰

My research investigates whether these restrictions on women are reflected in the probate files for the year 1900 in the city of St. Louis. I chose that city in part because it was the fourth largest city in the United States at that time,¹¹ and in part because its probate files are available online.¹² I examine all 805 probate files for the year to examine issues such as:

⁵ See, e.g., *Gitchell v. Messmer*, 87 Mo. 131, 134 (1885) (finding husband acquired one-half interest in his wife's real property upon marrying her).

⁶ KELLEY'S 1913 PROBATE GUIDE, *supra* note 2, § 200, at 197-198.

⁷ Application For Letters Under A Will at 3, *In re Estate of Girard*, No. 25764 (St. Louis City Prob. Ct. 1900). KELLEY'S 1913 PROBATE GUIDE, *supra* note 2, § 140, at 130.

⁸ KELLEY'S 1913 PROBATE GUIDE, *supra* note 2, § 55, at 47.

⁹ W.W. Keysor, *Legal Status of Women in Missouri: Part I*, 1 ST. LOUIS L. REV. 1, 3 (1915); *State v. Hostetter*, 39 S.W. 270, 271 (Mo. 1897) (noting that the Missouri Constitution requires "the governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general and superintendent of public schools [to] be male citizens, as must also be the members of the general assembly . . . Every circuit judge must be a qualified voter, which requirement is, in effect the same as the word male imposes . . ."). She likewise could not be a school director. *State v. McSpaden*, 39 S.W. 81, 82 (Mo. 1897). However, a woman could be elected to serve as a county clerk. *Hostetter*, 39 S.W. at 271-272.

¹⁰ MARGOT McMILLEN, *THE GOLDEN LANE: HOW MISSOURI WOMEN GAINED THE VOTE AND CHANGED HISTORY* 107 (The History Press 2011).

¹¹ JAMES NEAL PRIMM, *LION OF THE VALLEY: ST. LOUIS, MISSOURI, 1764-1980*, 339 (Missouri Historical Society Press, 3rd ed., 1998).

¹² See MO. DIGITAL HERITAGE, MO. OFFICE OF THE SECRETARY OF STATE, MO. STATE ARCHIVES, MO.'S JUDICIAL RECORDS, (1900) <http://sos.mo.gov/records/archives/archivesdb/judicialrecords>.

1. What assets did married women have in 1900? What about single women? To whom did they leave their property?
2. Did women have their own businesses as reflected in the probate files? Did women provide the bonds for administrators or executors? Would I find professional women in the probate files -- doctors, lawyers, notaries – or mainly clerical workers?
3. Did married men name their wives as executrix, or fathers their daughters rather than their sons, especially if they had real property that would require management for two years or more while the estate went through probate? Probate administration of real property was not a passive role: the files reflect the work done in collecting rents; hiring roofers, plumbers, and painters; and in one case, finishing work on buildings on four properties including supervising the installation of electricity and an elevator.¹³
4. St. Louis was a pioneer in establishing public education.¹⁴ Even so, many of its citizens, especially women, could not read or write. Would that be an obstacle to appointing someone to administer an estate or to execute her will?
5. Did the probate code accurately reflect the average married person's wishes, or did these testators have other ideas?

¹³ See *In re Estate of Stifel*, No. 25721 (St. Louis City Prob. Ct. 1900). Elisha Otis installed the first passenger elevator in New York in 1857; his company Otis Brothers later installed the first successful electric elevator, also in New York, in 1889. *ENCYCLOPEDIA BRITANNICA* VOL. 8, 351-52 (14th ed. 1929).

¹⁴ The 1865 Missouri State Convention established a goal of free public schooling, with mandatory minimum attendance of sixteen months for every child at some point before age eighteen. 3 WILLIAM E. PARRISH, *A HISTORY OF MISSOURI 1860-1875* 170 (University of Missouri Press, 1973). That year, St. Louis established three public schools. *Id.* at p. 171. Susan Blow started the first kindergarten successfully integrated into the public school system in St. Louis in 1873. KATHARINE T. CORBETT, *IN HER PLACE : A GUIDE TO ST. LOUIS WOMEN'S HISTORY 108-09* (Missouri Historical Society Press, 1999). “[B]y 1878, the district implemented kindergarten classes throughout the system,” and became a national model. *Id.* at 109.

II. Overview of Study: Who Chooses to Go Through Probate?

St. Louis, the fourth largest city in the United States in 1900, was rapidly growing with a population of 575,238, a twenty-seven percent increase over the 451,770 total population in 1890.¹⁵ Twenty percent were foreign born and another forty-two percent had foreign-born parents,¹⁶ with those born in Germany or of German descent predominating.¹⁷ The probate files¹⁸ reflect this diversity: fifty-seven decedents had German connections with at least nineteen born in Germany, another twenty-one with relatives in Germany such as parents or siblings, seventeen more giving to German charities such as the St. Vincent's Orphans Asylum and the German Evangelical Lutheran Hospital, and three dying in Germany.¹⁹ In other files, decedents had similar connections to Ireland, England, Switzerland, Bohemia and Scotland.²⁰

There were 9,217 deaths due to disease recorded in St. Louis that year,²¹ resulting in 771 probate filings or just eight percent of those who died.²² Earlier studies have found much higher percentages of probate filings, especially Richard Powell and Charles Looker's study of New York from 1914 to 1929, with figures ranging between twenty-five and thirty-three percent.²³ Similarly, Edward Ward and J.H. Beuscher's examination of Wisconsin estates between 1929 and 1944

¹⁵ U.S. CENSUS OFFICE, DEP'T OF THE INTERIOR, TWELFTH CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1900, Vol. 1, tbl. 4, at 28 (1902). The increase also ebbed slightly from 1880-1890, when the city population swelled twenty-nine percent. *Id.*

¹⁶ PRIMM, *supra* note 11, at 338.

¹⁷ ANNETTE R. HOFMANN, TURNEN AND SPORT: TRANSATLANTIC TRANSFERS 91 (Waxmann Verlag GmbH, 2004).

¹⁸ Unless stated otherwise, all data used throughout this article is a product of my own research, collected using the entirety of the St. Louis probate files for 1900. *See* MO. DIGITAL HERITAGE, *supra* note 12.

¹⁹ Many of these testators had German surnames such as Kortemeier, Schlueter, Meier and Schaeffer.

²⁰ *See* MO. DIGITAL HERITAGE, *supra* note 12.

²¹ WALTER B. STEVENS, WATER PURIFICATION AT SAINT LOUIS: THE PLAIN STORY OF SEDIMENTATION THROUGH THE IRON AND LIME TREATMENT SUPPLEMENTED BY THE WEIR SYSTEM 25 (1911).

²² Of the 805 probate files for 1900, ten were to dissolve partnerships; seventeen were ancillary probate of estates of non-residents; and seven were for those dying in years other than 1900.

²³ Richard R. Powell & Charles Looker, *Decedents' Estates: Illumination from Probate and Tax Records*, 30 COLUM. L. REV. 919, 923-25 (1930).

amounted to forty-two percent in the probate files.²⁴ My finding for St. Louis (eight percent) is quite close to the seven percent figure found by David Horton in his recent study of every estate administration of those who died in one California county in 2007.²⁵ Professor Horton attributes this low number in California to a variety of factors: the state's exemption of estates under \$150,000, universal succession for spouses, and "the desire for probate avoidance" leading to a rise in the use of *inter vivos* trusts and pour-over wills.²⁶

Professor Jeffrey Schoenblum's much larger study of 36,832 deaths in a Tennessee county from 1976 to 1984, found that wills were filed in twenty-one percent of the deaths.²⁷ Schoenblum attributed the fact that so few wills were filed to five causes: some who died were not capable of executing wills because they were too young, or lacked mental capacity; some families chose not to submit wills to the court for probate since there was no legal requirement to do so; those who died late in one year might have had their estates administered the following year (although he noted this would seemingly average out from year to year); some used will substitutes such as joint tenancies and revocable *inter vivos* trusts; and finally, "many persons die without estates consisting of sufficient assets to require probate."²⁸

My 1900 study revealed no pour-over wills, no universal succession for spouses, and little evidence of probate avoidance. To the contrary, in twenty cases, life insurance, a typical way to avoid probate,²⁹ was the only asset the decedent owned at death and the proceeds were made payable to

²⁴ Edward H. Ward & J.H. Beuscher, *The Inheritance Process in Wisconsin*, 1950 WIS. L. REV. 393, 396 (1950).

²⁵ David Horton, *In Partial Defense of Probate: Evidence From Alameda County, California*, 103 GEO. L. J. 605, 627 (2015).

²⁶ *Id.* at 627-28.

²⁷ Jeffrey A. Schoenblum, *Will Contests – An Empirical Study*, 22 REAL PROP., PROB. & TRUST J. 607, 612 (1987).

²⁸ *Id.* at 607.

²⁹ See, e.g., Howard Kaye, *How Estate Planning With Life Insurance Can Help To Avoid Probate*, HOWARD KAYE INSURANCE (March 2, 2017), <http://howardkayeinsurance.com/estate-planning-life-insurance-can-help-avoid-probate/>. To be effective, the insured must name a beneficiary to receive the proceeds on his or her death. "Life insurance is thus a form of pay-on-death ["POD"] contract that operates independently of probate administration." JESSE DUKEMINIER & ROBERT H. SITKOFF, *WILLS, TRUSTS, AND ESTATES* 41 (Wolters Kluwer 9th ed. 2014).

his or her estate. In another twelve cases, life insurance was the major asset, with the remainder of the property going to a spouse or family member.³⁰ Another fourteen estates included life insurance along with other assets.³¹ However, a clue as to why survivors were glad to be in probate can be gleaned by the very high number of life insurance cases which had an “Order of No Process.” This would mean the heirs or legatees (or creditors of the estate) wanted to clear the estate of debts when assets were insufficient. For the twenty files whose only asset was life insurance, twelve (sixty percent) ended with an "Order of No Process." For those in which almost all of the assets were life insurance, seven out of twelve (fifty-eight percent) ended with that order. This is far higher than the overall number of files ending with an “Order of No Process,” with ninety files out of a total of 795, or eleven percent. As one might expect, the rate is far higher for intestate files: twenty-one percent for the intestate files (sixty-six out of three hundred twelve), versus five percent of the wills (twenty-four out of four hundred eighty-three).

A key reason for probate is the need to transfer title, and this could explain the very high number of files with real property solely owned by the decedent. In 1900 St. Louis, only twenty-three percent of families owned their homes, trailing smaller cities such as Detroit, Michigan at forty percent and Springfield, Illinois at forty-nine percent.³² In the probate files, by contrast,

³⁰ For example, Otto Schmidt left a life insurance policy of \$2,000 and personal goods appraised at \$100,000. Probate Estate Files at 9, *In re* Estate of Schmidt, No. 26047 (St. Louis City Prob. Ct. 1900). He was survived by his pregnant wife, whose child was born 5 ½ months after her husband’s death. *Id.* In December 1902, her petition for \$400 for allowance in lieu of provisions for herself and her child was granted, and the estate closed. *Id.* at 33. In Case 25613, Frank Ilegosh left about three hundred seven dollars in personal property: three hundred five in life insurance and two dollars worth of clothing in a trunk. Probate Estate Files at 2, *In re* Estate of Ilegosh, No. 25613 (St. Louis City Prob. Ct. 1900).

³¹ In 1900, an insured could designate a beneficiary to be paid directly by the company to avoid probate administration of the proceeds. E-mail from Will Tchakirides, Company Historian, Northwestern Mutual Life Insurance Company, to Alyssa Thurston, Head of Reference Services, Pepperdine University School of Law Library (Nov. 17, 2017) (on file with author).

³² PRIMM, *supra* note 11, at 339. 46.5% of the U.S. population owned their own home in 1900. Steve Kerch, *1900 To 2010: Evolution of the American Home Today: Fun Housing Facts*, CHICAGO TRIBUNE (June 18, 2000).

sixty-five percent of the decedents owned real property, including eighty-two percent of male testators and sixty-three percent of female testators, with some owning multiple parcels in other states.³³ An earlier study of St. Louis probate files in 1893 and 1894 had found sixty-three percent of decedents owned real property, with seventy-eight percent of testators, and forty-three percent of those dying intestate, owning at least one parcel.³⁴ Probate, and in some cases ancillary probate, was necessary to transfer title of the real property to the decedents' heirs or devisees. These numbers are remarkably consistent to those found in other studies, despite the enormously different economic, political and social differences which might have been present. Lawrence M. Friedman *et al.*, having examined California probate files from 1964, found that sixty-six and a half percent of all decedents owned real property at death.³⁵ A study of Los Angeles probate files from 1893 found slightly higher numbers, with seventy-seven percent of those dying testate owning at least one parcel of real property, along with seventy-two percent of intestate decedents.³⁶

Decedents in St. Louis during the year 1900 had few options for the “will substitutes” that are common today. To avoid probate, decedents could buy life insurance and correctly fill out the beneficiary designation, or they could own very few assets at death. A person of means could create an irrevocable *inter vivos* trust or title property as joint tenancy with right of survivorship, either of which would avoid probate administration but would also immediately transfer interests to third parties and thus would not be true will substitutes. Any real property held solely in the decedent's

³³ See, e.g., Probate Estate Files, *In re* Estate of Howard, No. 25528 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Greene, No. 25989 (St. Louis City Prob. Ct. 1900) (six lots including two in Wisconsin); Probate Estate Files, *In re* Estate of Belcher, No. 26197 (St. Louis City Prob. Ct. 1900) (four lots in Kansas).

³⁴ Kristine S. Knaplund, *Becoming Charitable: Predicting and Encouraging Charitable Bequests in Wills*, 77 U. OF PITTSBURGH L. REV. 1, 12 (2015).

³⁵ Lawrence M. Friedman, et al., *The Inheritance Process in San Bernardino County, California, 1964: A Research Note*, 43 HOUS. L. REV. 1445, 1458 (2007).

³⁶ Knaplund, *supra* note 34.

name at death would require probate to transfer title. Some grantors tried to avoid probate, while still maintaining one hundred percent control, by using deeds with language that the “deed shall not go into effect until the death of” the grantor, but Missouri courts routinely struck them down as void, stating that these deeds were testamentary and thus required to comply with Missouri’s Statute of Wills.³⁷ Even the grantor’s recording of the deed was not sufficient to convince the court that an immediate, irrevocable interest was conveyed to the grantee.³⁸ The notion of a valid revocable *inter vivos* trust with the settlor acting as trustee, called a “tentative trust” (later a “Totten trust”) by a New York court, was still four years away, and was not recognized in Missouri for another twenty-four years.³⁹

III. Delving Into the Files: *Qui Bono?*

While surveys have previously concluded that a majority of Americans do not execute a will,⁴⁰ researching a select sample of those who go through probate often yields quite a different result. The 1900 St. Louis probate files contained a majority of wills.⁴¹ Of the 796 files, sixty-one percent contained wills.⁴² Men predominated in all categories: married and unmarried testators and intestates.

³⁷ See, e.g., *Goins v. Melton*, 343 Mo. 413 (1938); *Thorp v. Daniel*, 339 Mo. 763 (1936); *Terry v. Glover*, 235 Mo. 544 (1911); *Aldridge v. Aldridge*, 202 Mo. 565 (1907).

³⁸ See, e.g., *Goodale v. Evans*, 263 Mo. 219 (1914).

³⁹ See *In re Totten*, 179 N.Y. 112, 126 (1904). Missouri recognized the *Totten* trust in *Frank v. Heimann*, 302 Mo. 334 (1924).

⁴⁰ See, e.g., Jeffrey M. Jones, *Majority in U.S. Do Not Have A Will*, GALLUP (May 18, 2016), <http://news.gallup.com/poll/191651/majority-not.aspx> (finding that forty-four percent had wills); Jeff Reeves, *Plan ahead: 64% of Americans don't have a will*, USA TODAY (Jul. 11, 2015), <https://www.usatoday.com/story/money/personalfinance/2015/07/11/estate-plan-will/71270548/>; Sheryl Nance-Nash, *Why More Than Half Of Americans Don't Have Wills*, AOL.COM (Aug. 26, 2011), <https://www.aol.com/2011/08/26/what-america-thinks-about-estate-planning/>; Barbranda Lumpkins Walls, *Haven't Done A Will Yet?*, AARP, <https://www.aarp.org/money/investing/info-2017/half-of-adults-do-not-have-wills.html>.

⁴¹ See MO. DIGITAL HERITAGE, *supra* note 12 and accompanying text at note 18.

⁴² *Id.* This is a slightly higher percentage than the fifty-six percent testate in 1893-94 St. Louis. Knaplund, *supra* note 34.

Five hundred out of seven hundred ninety-five, or sixty-three percent, were men, with sixty-one percent of the men executing wills, and thirty-nine percent intestate.⁴³ The women, while fewer in number, reflected the same propensity toward testacy: sixty percent had wills (176 of the 295 women), while forty percent died intestate. These percentages of testacy are similar to those found in other studies: Professor Horton's 2007 study, for example, also found that sixty percent executed wills in Alameda County, California.⁴⁴ Marvin Sussman's study of 659 Ohio estates in 1964 and 1965 concluded that sixty-nine percent had wills.⁴⁵ Friedman's New Jersey study had rates of sixty-three percent testate in 1875 and fifty-four percent testate in 1900.⁴⁶

Although the St. Louis probate files have women and men with wills at about the same frequency, the numbers diverge when marital status is factored in. By 1900, with Missouri's passage of its versions of the Married Women's Property Act, a married woman theoretically could have substantial assets by the time she died. Missouri law allowed women to write wills at the age of eighteen,⁴⁷ while men could devise real property at the age of twenty-one and personal property at the age of eighteen,⁴⁸ subject to dower, curtesy and homestead rights if the decedent were married at death.⁴⁹ Before Missouri expanded a married woman's rights to her property in 1875, however, she

⁴³ The gender of one decedent could not be determined and that file is excluded. *See In re Estate of Lomay*, No. 26118 (St. Louis City Probate Ct. 1900).

⁴⁴ Horton, *supra* note 25, at 627.

⁴⁵ MARVIN B. SUSSMAN, JUDITH N. CATES & DAVID T. SMITH, *THE FAMILY AND INHERITANCE*, 44-45, 63 (1970).

⁴⁶ Lawrence M. Friedman, *Patterns of Testation in the 19th Century: A Study of Essex County (New Jersey) Wills*, 8 AM. J. LEGAL HIST. 34, 35 n.6 (1964). Ward and Beuscher reported a range of rates in Wisconsin, with sixty-two percent testate in 1929 but only thirty-nine percent testate in 1944. Ward & Beuscher, *supra* note 24, at 411-12. Others have lower numbers: males in Dunham's Illinois studies were fifty-three percent testate while females were fifty-seven percent testate. Allison Dunham, *The Method, Process and Frequency of Wealth Transmission at Death*, 30 U. CHI. L. REV. 241, 328 (1963). Decedents in 1893 Los Angeles were forty-four percent testate. Kristine S. Knaplund, *The Evolution of Women's Rights in Inheritance*, 19 HASTINGS WOMEN'S L.J. 3, 14 (2008).

⁴⁷ MO. REV. STAT. § 4603 (1899). Earlier, the disability of coverture usually meant a married woman could not execute a will: "Prior to 1865 a married woman could not make a will unless the right to do so was secured to her by the marriage contract." W.W. Keysor, *Legal Status of Women In Missouri: Part I*, 1 ST. LOUIS L. REV. 1, 10 (1915).

⁴⁸ MO. REV. STAT. § 4603 (1899).

⁴⁹ KELLEY'S 1913 PROBATE GUIDE, *supra* note 2, § 6, p. 3-4.

would have had little property to devise. As soon as she married, her personal property became her husband's.⁵⁰ As for her real property, while she retained title, her husband gained the exclusive right to possession,⁵¹ “and he is the proper and only party to be made a defendant in a suit for lands claimed to belong to her.”⁵²

In 1875, Missouri changed the common law by enacting its version of the Married Women's Property Act to give a married woman full ownership and control of her personal property and her earnings,⁵³ and in 1889, control of her real property, whether acquired before or during the marriage.

⁵⁴ The latter statute also gave her the same capacity to contract as a *femme sole*.⁵⁵ These laws seemingly enabled married women to have substantial assets by 1900, with twenty-five years to accumulate personal property, and eleven for real property. But Missouri court decisions quickly constrained the impact of the statutes by holding that the statutes could only apply to property acquired after their enactment. As the Supreme Court of Missouri observed in 1893, “[t]he rule is that the act is to operate *prospectively* only, and not otherwise, unless upon the face of the act itself the exceptions to the prospective rule do plainly and unmistakably appear.”⁵⁶ Thus, the 1875 statute did not apply in *Leete* when the plaintiff inherited \$17,000 after her father died in 1870, and she subsequently married in 1871; her husband acquired his interest in the property upon the marriage, which could not be retroactively taken away. This would continue as long as he was alive, which

⁵⁰ *Id.* at § 199, p. 196.

⁵¹ *See, e.g.,* *Reed v. Painter*, 145 Mo. 341, 354 (1898).

⁵² *Bledsoe v. Simms*, 53 Mo. 305, 308 (1873).

⁵³ MO. REV. STAT. § 3296 (1879).

⁵⁴ *Id.* § 6869 (1889).

⁵⁵ *Id.*

⁵⁶ *Leete v. State Bank of St. Louis*, 115 Mo. 184 (1893).

could be for decades.⁵⁷ In contrast, when a wife inherited personal property from her father in 1876, the statute applied to declare it her separate property and her husband had no interest in it.⁵⁸

Thus, we should not be surprised that very few of the probate files involved married women.⁵⁹

Overall, forty-four percent of the probate files were opened for a married decedent,⁶⁰ with married men comprising eighty percent of these “married at death” files.⁶¹ Married men were also much more likely to execute a will than married women: while fifty-five percent of all the men (testate and intestate) were married at death,⁶² seventy-two percent of married men died testate.⁶³ Only twenty-three percent of the women in the probate files were married,⁶⁴ and just less than half of the married women – forty-nine percent – died with wills.⁶⁵

It is theoretically possible that many married women had property to will away in 1900 but were perfectly happy with Missouri’s intestacy scheme, and so had no reason to execute a will. If the decedent was survived by their child, the spouse would receive the child’s share in intestacy;⁶⁶ if no child survived, but the decedent left parents or siblings, the spouse received half.⁶⁷ If the decedent

⁵⁷ See, e.g., *Babcock v. Adams*, 196 S.W. 1118 (Mo. 1917) (finding married woman who acquired title to real property in 1873 was under disability of coverture until her husband’s death in 1912).

⁵⁸ See *McLeod v. Venable*, 163 Mo. 536 (1901).

⁵⁹ Of the 785 probate files for which marital status could be determined, less than 9% (68 women) were opened for women who were married at death. In contrast, men married at death constituted 35% (274 men) of the files.

⁶⁰ Marital status could be determined for 785 of the 795 probate files.

⁶¹ Of the 343 male decedents who married at least once in their lives, 274 were married at death (about 80%).

⁶² See MO. DIGITAL HERITAGE, *supra* note 12 and accompanying text at note 18. Of the 500 men listed in probate filings, 274 men were married at death (196 testate and 78 intestate), 136 men were single (55 testate and 81 intestate), and 83 were widowed (50 testate and 33 intestate). Only 2 were divorced (1 testate and 1 intestate). For 5 of the testate men, marital status could not be determined.

⁶³ *Id.* Of the 274 men married at death, 196 were testate or 72%.

⁶⁴ *Id.* Within the probate files for the year of 1900, 68 of the 295 women were married at death (33 testate and 35 intestate); 65 were single (36 testate and 29 intestate); and 157 were widowed (103 testate and 54 intestate). None were divorced. In 5 cases, marital status could not be determined (4 testate and 1 intestate).

⁶⁵ *Id.* Of the 68 women married at death, only 33 had wills while the other 35 were intestate.

⁶⁶ See, e.g., Memorandum at 75, *In re Estate of Bernhard*, No. 25942 (St. Louis City Prob. Ct. 1900) (determining decedent was survived by her husband and daughter who received 1/3 and 2/3 of estate respectively).

⁶⁷ See, e.g., Petition for Appointment of Administrator at 5, *In re Estate of Palmer*, No. 25843 (St. Louis City Prob. Ct. 1900)(decedent survived by husband, parents, brother and sister).

merely wanted her husband to receive his intestate share, she didn't need a will. Of the married testators, how many altered the intestate scheme? Not surprisingly, virtually all of them did. Fifty-eight percent of the women gave all their property to their surviving husband.⁶⁸ Six percent made significant bequests to others while giving the rest to their husbands,⁶⁹ while fifteen percent split their giving between others and their husbands.⁷⁰ Thus, seventy-nine percent gave their husbands more than an intestate share. The remaining testators gave him nothing or a minimal bequest such as a dollar,⁷¹ while one husband took his intestate share due to the fact that the will was executed before the marriage and thus revoked by operation of law.⁷²

⁶⁸ See MO. DIGITAL HERITAGE, *supra* note 12 and accompanying text at note 18. Of the 33 testate married women, 19 gave all to their husbands. In 7 of these 19 cases, no children survived. Probate Estate Files, *In re* Estate of Spencer, No. 25556 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Marshall, No. 25632 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of O'Reilly, No. 25906 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Bauer, No. 25968 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Mullen, No. 25992 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Uhl, No. 26014 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Busch, No. 26235 (St. Louis City Prob. Ct. 1900). In an eighth case, only a grandson survived. Probate Estate Files, *In re* Estate of Rechten, No. 25706 (St. Louis City Prob. Ct. 1900).

⁶⁹ Probate Estate Files, *In re* Estate of Korbesmeyer, No. 25986 (St. Louis City Prob. Ct. 1900) (gave \$250 each to her two sons and a daughter, while leaving the rest to her husband); Probate Estate Files, *In re* Estate of McDonald, No. 26106 (St. Louis City Prob. Ct. 1900) (gave \$700 to one son, \$1287 to a daughter, \$600 to a second daughter; minor bequests to two grandchildren, and the rest to her husband).

⁷⁰ The value to the husband of these 5 cases varied widely. Magdalena Reising gave all to her husband for life, then to her nephews, while Clara Block gave her personal property (appraised at \$2,200) to her sisters, nieces and a stepdaughter, and her real property (which sold for \$1,520) to her husband. Probate Estate Files, *In re* Estate of Reising, No. 26222 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Block, No. 26191 (St. Louis City Prob. Ct. 1900). Frederika Rothweiler left \$500 to her husband, \$50 to her brother and \$1,000 to her son, with the rest to her daughter and son-in-law. Probate Estate Files, *In re* Estate of Rothweiler, No. 26107 (St. Louis City Prob. Ct. 1900). Rosa Schomaker gave \$100 to her husband, \$200 to her sister, and the rest to her four brothers and a second sister. Probate Estate Files, *In re* Estate of Schomaker, No. 26448 (St. Louis City Prob. Ct. 1900). Ella Gaty Van Sice gave 2/3 to her brothers, sisters, nieces and nephews, and 1/3 to her husband. Probate Estate Files, *In re* Estate of Van Sice, No. 26168 (St. Louis City Prob. Ct. 1900).

⁷¹ Four testators left nothing to their husbands. Probate Estate Files, *In re* Estate of Woesten, No. 26038 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Brennan, No. 25820 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Siegrist, No. 26243 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Thomas, No. 25780 (St. Louis City Prob. Ct. 1900). Wilhelmine Diesing gave her husband \$1 and Caroline Schroeder left her husband three shares of stock if her son predeceased her, which he did not. Probate Estate Files, *In re* Estate of Diesing, No. 26272 (St. Louis City Prob. Ct. 1900); Probate Estate Files, *In re* Estate of Schroeder, No. 25568 (St. Louis City Prob. Ct. 1900).

⁷² Probate Estate Files, *In re* Estate of Steiniger, No. 26318 (St. Louis City Prob. Ct. 1900).

While married men also did not follow the intestacy scheme in writing their wills, they were more generous in their bequests to the surviving spouse, again a result consistent with later studies. Eighty-eight percent of married men gave all or a substantial portion of their property to their widows.⁷³ Two percent gave their wives their intestate share. In seven percent of wills, widows renounced their bequests, receiving their larger statutory share. Men left nothing to their wives in just three percent of cases – not twenty-one percent, as with women.

This *could* confirm the hypothesis that when a married woman died, her husband was more likely to have already been taken care of with her pre-1887 personal property and pre-1889 income from her real property. And so, in a fifth of the cases, not only did she leave him nothing, but he also did not renounce the will and receive his statutory share. Later studies have shown the same pattern. In California in 1964, a community property state in which all property acquired after the marriage (with the exception of gifts and inherited property) belonged in equal shares to the husband and wife,⁷⁴ we see the same pattern: “married women were somewhat less likely to provide for their husbands than married men were to provide for their wives.”⁷⁵ The reason, the authors believe, was “fairly obvious. Some husbands no doubt could provide for themselves, and women preferred to leave money to children and grandchildren.”⁷⁶

Bequest to Spouse Greater Than Intestate Share

	d Male Testator	d Female Testator
Spouse		
to 3 rd Party/		

⁷³ See MO. DIGITAL HERITAGE, *supra* note 12 and accompanying text at note 18. Fifty-eight percent (58%) gave all or virtually all to their wives, leaving less than 10% of their personal property to others. Fifteen percent made more substantial bequests to others while leaving the residue to their wives, and 15% split their estates between their wives and others.

⁷⁴ CAL. PROB. CODE § 28.

⁷⁵ Lawrence M. Friedman et al., *supra* note 35, at 1460.

⁷⁶ *Id.* at 1460.

e to Spouse		
etween 3 rd Parties and Spouse		
L		

Bequest to Spouse Less Than or Equal To Intestate Share

	d Male Testator	d Female Testator
te Share to Spouse		
e Renounced Will		
ng to Spouse		
L		

IV. Women’s Roles In the Files

Missouri law gave the spouse first priority to administer the estate if no executor were named in the will or if the decedent died intestate.⁷⁷ Seventy-one percent of the married male testators named their wives to be executrix,⁷⁸ while sixty-seven percent of married women named their husbands.⁷⁹ If we add in those serving as administrator c.t.a.⁸⁰ because no executor was named in the will, or the one named was disqualified or declined to serve, widows served as executrix or administratrix of their deceased husband’s estates in eighty-four percent of the files, and widowers in seventy-six percent of the files. Husbands named their wives as executrix despite the fact that, in six cases, the widow

⁷⁷ KELLEY’S 1913 PROBATE GUIDE, *supra* note 2, at 99.

⁷⁸ 158 out of 196 married men named their wives as executrix, with only five of the 158 failing to waive the bond (3%). Bonds were rarely required; only four percent of all testators - thirteen men and eight women - necessitated one by not expressing stating “to serve without bond” in the will.

⁷⁹ Twenty-two of thirty-three women married at death named their husband to be executor. No married woman required her husband to give bond to be executor.

⁸⁰ C.t.a. means *cum testaments annexed*, or with will annexed.

signed with all documents with an X, likely signifying that she could not read or write.⁸¹ Women agreed to serve as administratrix for thirty percent of the men who died intestate, and eight percent of the female intestates.

Because a high percentage of probate files included real property, those administering the estates had very active duties to perform. Overall, sixty-five percent of the files included real property. Unfortunately, in most cases the land was not valued in the inventory; its worth could be determined only if it were sold during probate administration by order of the court, or if it were devised to a collateral heir and thus subject to the Collateral Inheritance Tax.⁸² Eighty-two percent of men with wills had real property to devise, compared with sixty-three percent of women. This meant that the executrix had to collect rents, supervise plumbers, electricians, and the hauling of ashes, and report regularly to the court. In addition to the work that Charles Stifel's widow and son-in-law oversaw in installing electricity and elevators in four buildings,⁸³ there are cases where the widow successfully petitioned to carry on the deceased's business.⁸⁴

Women are identified in the probate files in professional capacities other than estate administrators. The most frequent is as a notary; Missouri law expressly authorized the appointment of women as notaries,⁸⁵ and we find twenty-one female notaries public attesting documents. Although notaries

⁸¹ Oath of Executrix at 8, *In re Estate of Baumhoefer*, No. 26139 (St. Louis City Prob. Ct. 1900); Oath of Executrix at 3, *In re Estate of Foy*, No. 25742 (St. Louis City Prob. Ct. 1900); Oath of Executrix at 10, *In re Estate of Reinhold* No. 25662 (St. Louis City Prob. Ct. 1900); Oath of Executrix at 5, *In re Estate of Sheehy*, No. 25545 (St. Louis City Prob. Ct. 1900); Oath of Executrix at 5, *In re Estate of Simonis*, No. 25798 (St. Louis City Prob. Ct. 1900); Oath of Executrix at 5, *In re Estate of Tierney*, No. 25732 (St. Louis City Prob. Ct. 1900). In only one of these six (Baumhoefer) did the husband's will require the executrix to file a bond.

⁸² The State of Missouri assessed this tax on collateral relatives and nonrelatives: *i.e.*, siblings, nieces, cousins, aunts, uncles, and friends. MO. ANN. STAT. § 1.299 (1906). Charities were exempt. *Id.*

⁸³ *In re Estate of Stifel*, No. 25721 (St. Louis City Prob. Ct. 1900).

⁸⁴ *See, e.g.*, Probate Estate Files at 23, *In re Estate of Lynam*, No. 25474 (St. Louis City Prob. Ct. 1900) (permitting executrix to continue operation of store until suitable buyer found).

⁸⁵ W.W. Keysor, *Legal Status of Women in Missouri: Part I*, 1 WASH. U. L. REV. 1, 3 n. 24 (Jan. 1915) (citing to MO. STAT. § 10177 (1909)).

could represent executors and administrators in probate cases,⁸⁶ none of those who did so in 1900 were female. Eighteen women offered up their real property, up to \$10,000 of bonds, either for an administrator or administratrix, or in the rare case when a testator required an executor or executrix to give bond. Three of the doctors who filed claims for a last illness were women,⁸⁷ and a female attorney, Daisy Barbee, appears twice: once as executrix, and once as attorney for the executrix.⁸⁸ One of the decedents was a composer, whose opera was copyrighted,⁸⁹ another was a trained nurse.⁹⁰ Bills were submitted from a variety of female vendors including a florist,⁹¹ the owner of a livery stable,⁹² a masseuse,⁹³ a repairer of electric bells, lights, motors, etc.,⁹⁴ a hat maker,⁹⁵ and a stenographer.⁹⁶ Two appraisers of personal property were female.⁹⁷ Overall in St. Louis, women were a little over twenty-three percent of the paid workforce: forty percent of those employed in

⁸⁶ See, e.g., Affidavit of Executor of Administrator at 10, *In re* Estate of Adam, No. 25823 (St. Louis City Prob. Ct. 1900); Affidavit of Executor of Administrator at 10, *In re* Estate of Schmees, No. 25825 (St. Louis City Prob. Ct. 1900); Affidavit of Executor of Administrator at 8, *In re* Estate of Huber, No. 25845 (St. Louis City Prob. Ct. 1900); Affidavit of Executor of Administrator at 10, *In re* Estate of Schwarz, No. 25923 (St. Louis City Prob. Ct. 1900); Affidavit of Executor of Administrator at 14, *In re* Estate of Wolf, No. 26417 (St. Louis City Prob. Ct. 1900).

⁸⁷ Probate Estate Files, *In re* Estate of Houser, No. 25582 (St. Louis City Prob. Ct. 1900) (Dr. Mary McLean); Probate Estate Files, *In re* Estate of Nuernberger, No. 25940 (St. Louis City Prob. Ct. 1900) (Dr. Ellen Osborne); Probate Estate Files, *In re* Estate of Ketring, No. 26217 (St. Louis City Prob. Ct. 1900) (Dr. Mary Sargent).

⁸⁸ Probate Estate Files at 3, *In re* Estate of Avis, No. 25733 (St. Louis City Prob. Ct. 1900) (listing Daisy Barbee as executrix); Application for Probate of Will, *In re* Estate of T. Brown, No. 26348 (St. Louis City Prob. Ct. 1900) (listing Daisy Barbee as attorney for executrix).

⁸⁹ Probate Estate Files at 4, *In re* Estate of Tanner, No. 25699 (St. Louis City Prob. Ct. 1900). In the appraisal, her opera, which was copyrighted in Washington D.C. in 1891 under the name “Watouska” or “White Lily,” was considered of no pecuniary value. *Id.*

⁹⁰ *Sallie Rodes Hunt*, Find A Grave, <https://www.findagrave.com/memorial/127043935/sallie-rodes-hunt> (last visited July 25, 2018) (death certificate lists occupation as “[t]rained nurse).

⁹¹ Probate Estate Files at 131, *In re* Estate of Griesedieck, No. 25898 (St. Louis City Prob. Ct. 1900) (receipt to Mrs. Mathilde D. Eggeling, Dr., Florist).

⁹² Probate Estate Files at 45, *In re* Estate of O’Connor, No. 26090 (St. Louis City Prob. Ct. 1900) (payment to Mary Clark, Livery Stable).

⁹³ Probate Estate Files at 104, *In re* Estate of Kehrmann, No. 26044 (St. Louis City Prob. Ct. 1900) (payment to Mrs. T.O. Pohl).

⁹⁴ Probate Estate Files at 52, *In re* Estate of Conrad, No. 25997 (St. Louis City Prob. Ct. 1900) (payment to Mrs. Ida Roy).

⁹⁵ Probate Estate Files at 1, *In re* Estate of Grimm, No. 26220 (St. Louis City Prob. Ct. 1900) (payment to Miss Mary Mellage, Fine Millinery + Dress Making).

⁹⁶ Probate Estate Files at 1, *In re* Estate of Riechmann, No. 26405 (St. Louis City Prob. Ct. 1900).

⁹⁷ Probate Estate Files at 24, *In re* Estate of Schmieding, No. 25816 (St. Louis City Prob. Ct. 1900); Probate Estate Files at 14, *In re* Estate of Delahay, No. 25982 (St. Louis City Prob. Ct. 1900).

domestic and personal services, twenty-eight percent of professionals, nineteen percent of those in manufacturing jobs, and eleven percent of those in commercial work.⁹⁸

V. Litigation in the Probate Files

Studies have correctly noted that few will contests are filed,⁹⁹ but they miss the broader point: many other aspects of the probate process are fiercely disputed, and that pattern plays out in 1900 St Louis. Ninety-seven of the 796 cases had significant litigation, or about twelve percent of the files, a finding identical to David Horton's contemporary study in Alameda county.¹⁰⁰ In the ninety-four cases in which the nature of the litigation could be established, twenty-three percent of the suits involved attacks on the will, questions on the interpretation of the will, or issues regarding the identity of those who inherited.¹⁰¹ Another twenty-three percent involved significant objections to actions of the executor or administrator, including ten cases demanding that the person be removed from office, granted by the probate court in eight out of ten. The remaining fifty-three percent had claims litigation in which subpoenas were issued, a trial or hearing occurred or the case was settled, and often the verdict was appealed. Forty-one of these involved creditors suing the estate for claims, and about half the time (twenty-two cases) the creditors fully recovered. The estate sued creditors in the remaining thirteen cases, with six of these cases involving claims of

⁹⁸ PRIMM, *supra* note 11, 338.

⁹⁹ *See, e.g.*, Ward & Beuscher, *supra* note 24, at 415-416 (finding a total of six contests in 166 testate estates, or 3.6%); Friedman et al., *supra* note 35, at 1458 (finding a total of seven contests in 342 testate estates, or 2%); Jeffrey A. Schoenblum, *supra* note 27, at 613-614 (finding sixty-six of 7,638 wills offered for probate were contested between 1976 and 1984 in a Tennessee county, or .864 percent).

¹⁰⁰ Horton, *supra* note 35, at 629 (finding litigation in eighty-three out of 668 cases, or twelve percent).

¹⁰¹ The twenty-two cases included six will contests, seven suits for construction of the will, three suits regarding whether the testator was married at death, and three suits to determine the identity of other heirs (a deceased son's "wife," an "adopted" daughter, and a previously unknown out-of-wedlock half-brother). In two cases, a child who was omitted from the will sued for his or her intestate share. Finally, one suit involved whether a testator had accomplished a deathbed delivery of a deed to her real property, thus removing it from her probate assets. As Sussman et al. concluded in their study of Ohio wills, the percentage of true will contests was very small: just 1.3% in either case, although no contest was successful in Ohio, whereas two were successful in our study. MARVIN B. SUSSMAN, ET AL., *THE FAMILY AND INHERITANCE* 89 (1970).

concealment of assets, generally against other family members; another four cases were suits against life insurance companies for refusing to pay on the deceased's policy. While today "creditors do not use or need probate,"¹⁰² debt collection and litigation were a large part of the probate process in 1900.

Can we find any gender patterns in this litigation? Women comprise only thirty-seven percent of our pool of probate files, and yet fifty-nine percent of the files with litigation regarding the will or heirs involved female decedents; if we add in the suits involving decisions made by the executor or administrator, far fewer involve female decedents, but still the number is considerable at forty-five percent. Another measure is whether a family member is more willing to bring a will contest or file an objection if the administrator or executor is female, but it turns out there is no disparity there. In all the case files, thirty-four percent of those administering the estate were women, but in the litigation subset, only eighteen percent for the will contest/construction category were women, and twenty-three percent overall. But women certainly were not shy about initiating litigation. Women brought five of the six will contests, and were four out the six litigants for the sixth contest. Women were the sole plaintiffs in three of the seven suits for construction of the will, and four of those suing to remove the executor, even in cases in which it placed them at odds with other family members. For example, in *Estate of Eichele*, four sisters successfully petitioned to remove their brother-in-law, the husband of the fifth sister, from administration of their father's estate.¹⁰³ In *Estate of Janssen*, nineteen-year-old Nettie Jenssen filed a motion to revoke her mother's letters as administratrix of her father's estate for failing to inventory about \$4,000 worth of property; once the administratrix filed a supplemental inventory with another \$2,500 in assets, Nettie's motion was

¹⁰² John H. Langbein, *The Nonprobate Revolution and The Future of Succession*, 97 HARV. L. REV. 1108, 1120 (1984).

¹⁰³ Probate Estate Files at 1, *In re Estate of Eichele*, No. 26334 (St. Louis City Prob. Ct. 1900).

dismissed.¹⁰⁴ Women sued family members short of removing them from office as well. In *Estate of Schwarz*, Amelia Bogard joined her brothers in suing her mother for failing to inventory over \$30,000 in assets, and later filed exceptions to her mother's final settlement of the estate, claiming her mother had wrongfully appropriated over \$20,000.¹⁰⁵ In *Estate of Wilde*, a daughter objected to her mother's actions as executrix: her mother, who was given a life estate by the will, had nonetheless charged the estate with payment of the property taxes, and appropriated the personal property to herself absolutely; the daughter was forced to appeal to the circuit court to correct the probate court's rulings on these matters.¹⁰⁶ These examples, plus many other cases involving suits by sons, brothers and nephews against their relatives,¹⁰⁷ align with David Horton's questioning of earlier conclusions that "the close-knit relationship between family members minimizes disputes."¹⁰⁸

Women are also at the forefront in bringing creditors' claims against estates. The six cases in which claims were brought for housekeeping or nursing services all were filed by women.¹⁰⁹ Widows sued their husbands' estates. In one case, the widow filed a claim for re-payment of a loan of \$5,000 at six percent interest claiming an oral agreement with the deceased. The legal brief for

¹⁰⁴ Probate Estate Files, *In re Estate of Janssen*, No. 26012 (St. Louis City Prob. Ct. 1900). The initial inventory claimed only \$2,911 in personal property, or about \$80,256 in 2017\$. The amended inventory almost doubled that amount to \$5,449 (\$150,229 in 2017\$).

¹⁰⁵ Probate Estate Files at 1, *In re Estate of Schwarz*, No. 25923 (St. Louis Prob. Ct. 1900). Neither claim was successful.

¹⁰⁶ Probate Estate Files at 1, *In re Estate of Wilde*, No. 25990 (St. Louis Prob. Ct. 1900).

¹⁰⁷ See, e.g., *In re Estate of Kenny*, No. 25623 (St. Louis Prob. Ct. 1900) (one son sued the other son/executor over construction of the will); *In re Estate of Meiners*, No. 25496 (St. Louis Prob. Ct. 1900) (decedent's two brothers sued decedent's son/executor to increase their share); *In re Estate of Huber*, No. 25845 (St. Louis Prob. Ct. 1900) (son and daughter sued daughter/executrix over construction of the will; compromise eliminated executrix's commissions); *In re Estate of Vastine*, No. 26261 (St. Louis Prob. Ct. 1900) (brother sued his sister/executrix regarding her claim that their mother had delivered a deed to her *inter vivos*); *In re Estate of Hoffmeister*, No. 26344 (St. Louis Prob. Ct. 1900) (one son successfully sued to remove other son as executor; he was later reinstated); *In re Estate of Bobbitt*, No. 26204 (St. Louis Prob. Ct. 1900) (decedent's brother and sister brought motion to compel widow/executrix to testify under oath as to decedent's assets, which she had earlier refused to do).

¹⁰⁸ Horton, *supra* note 25, at 608 (citing Richard V. Wellman, *The Uniform Probate Code: A Possible Answer To Probate Avoidance*, 44 IND. L.J. 191, 191-92 (1969)).

¹⁰⁹ Two daughters, one daughter-in-law, and one woman claiming to be an adopted daughter filed claims; the other two were unrelated to the decedent. All were successful in recovering at least a portion of their claim.

the administrator *ad litem* claimed that a wife cannot sue her husband at law. The probate court disagreed, and awarded her \$5,255.00, which was promptly paid.¹¹⁰ In another case, the widow claimed the couple's real property was held as a tenancy by the entirety, on which she had paid the money they had borrowed and sued for the estate to pay her back. The administrator *pendente lite*, and the probate court, refused to pay her on the theory that she did not have an identity separate from her husband. On appeal, the court found for her for \$1,204.40 plus costs.¹¹¹

This litigation came with a high price. Of the eighty-eight files which had litigation and for which attorneys' fees were charged, fifty-nine percent paid fees of \$100 or more, or \$2,757 in 2017 dollars. Five percent were charged fees over \$1,000 (\$27,570 in 2017).¹¹²

VI. Conclusion

In many ways, a woman's status in 1900 Missouri was vastly different from her counterpart in 1930s Wisconsin,¹¹³ 1964 California,¹¹⁴ or California in 2007:¹¹⁵ she could not vote or serve in most public offices, and if she was married she was unlikely to work outside the home for pay, she could not administer an estate, and her property was largely controlled by her husband. Still, we find substantial areas of common ground regarding who is writing wills, to whom married men and women are leaving their assets, whether they own real property, and the extent to which their decisions are challenged in litigation.

¹¹⁰ Probate Estate Files, *In re* Estate of Warren, No. 25882 (St. Louis Prob. Ct.).

¹¹¹ Probate Estate Files, *In re* Estate of Marlatt, No. 25620 (St. Louis Prob. Ct.).

¹¹² CPI Inflation Calculator, <https://www.officialdata.org/1900-dollars-in-2017?amount=100>.

¹¹³ See Ward & Beuscher, *supra* note 24.

¹¹⁴ See Friedman et al, *supra* note 35.

¹¹⁵ See Horton, *supra* note 25.

A handful of women in 1900 St. Louis had substantial assets. The five richest women to die in 1900 included a widow whose personal property would today be valued at over \$28 million;¹¹⁶ the second richest woman owned nine lots of real property, plus personal property worth over \$16 million today.¹¹⁷ All five, not surprisingly, executed a valid will. Four of the five were widows,¹¹⁸ only the smallest estate of the five, worth just over \$2 million today including her real property, was of a married woman.¹¹⁹ She was Minnie Lawrence Siegrist, “married in 1883 when she was considered the most beautiful girl of the early eighties Her education had been furthered in the best schools of this country and Europe and extensive travel added, largely to the fund of graceful knowledge that distinguished the society woman [S]he spent nearly an entire year in foreign travel gathering for her elegant new mansion in Westmoreland Place which her father had built and presented to her all the furnishings, paintings and bric-a-brac . . .”¹²⁰ Thus, while married women had had fifteen years to accumulate and control their own personal property, and eleven years for their real property since Missouri’s adoption of its version of the Married Women’s Property Act, the retroactive application of these laws meant that most married women still had relatively little property to give away at death. A woman married before 1885 for her personal property, or 1889 for her real property, still “made an absolute gift to her husband” of her estate, as Henry Kelley so aptly

¹¹⁶ Probate Estate Files, *In re* Estate of Wainwright, No. 26215 (St. Louis Prob. Ct. 1900). Her personal property was appraised at \$1,039,488.50. She also owned one lot of real property which was not appraised.

¹¹⁷ Probate Estate Files, *In re* Estate of Brinckwirth, No. 25771 (St. Louis Prob. Ct. 1900). Her personal property was appraised at \$585,747.44.

¹¹⁸ In addition to Wainwright and Brinckwirth, *In re* Estate of Meister, No. 25684 (St. Louis Prob. Ct. 1900) (nineteen lots of real property plus personal property appraised at \$214,408.17, worth \$5,911,233.20 in 2017\$); *In re* Estate of Goetz, No. 25750 (St. Louis Prob. Ct. 1900) (twelve lots of real property and personal property appraised at \$129,192.00, worth \$3,561,823.40 in 2017\$).

¹¹⁹ Probate Estate Files, *In re* Estate of Siegrist, No. 15750 (St. Louis Prob. Ct. 1900). One lot of real property in Westmoreland Place sold for \$61,000 plus personal property appraised at \$18,347.00 = \$79,347.00.

¹²⁰ *Minnie Lawrence Siegrist*, FIND A GRAVE, <https://www.findagrave.com/memorial/35463535/minnie-siegrist> (last visited July 25, 2018) (quoting the April 30, 1900 edition of the St. Louis Republic).

phrased it. Her husband controlled its use and profits, and was the only proper party in a suit regarding it as long as he was alive.

Even if Missouri law did not trust married women with property while their husbands were alive, their husbands certainly had confidence in their wives after the husbands' death. Men routinely named their wives as executrix of their wills, and women rarely declined to serve, even in cases where they could not read or write. Men seldom required their spouses to file a bond before serving. A number of male and female testators named women as executrix when male relatives were eligible to serve.

Also in the probate files, we see the beginnings of a female professional class in St. Louis, with several doctors and a lawyer making claims for payment. Women appear frequently as notaries public, and also file bonds for administrators.

Women were also not shy about litigating when they were not pleased with how an estate was being managed. Women form the vast majority of those bringing will contests; they also sued on claims such as omitted child, and allegations that they were an adopted daughter or spouse. Daughters and daughters-in-law who nursed decedents in their last illnesses filed claims for their services. Widows sued to be reimbursed for debts they paid for their husbands.

In these and other ways, we can get a glimpse of women's lives in St. Louis and the very active role they took in managing finances and estates in probate. We also see remarkable parallels to probate processes today, despite all the apparent differences in the history and culture from 1900 St. Louis.