



Lineage of Land: Tracing Property Without Recorded Deeds

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This case study traces a piece of property for two hundred years, from the Native Americans to the Dutch, to the English, and through fourteen members of the Hicks family over five generations. Transfer of title occurs through various instruments, including patents, unrecorded deeds, inheritance, escheatment, private laws, entails, deeds of lease and release, life estates, and coverture. Tracing the lineage of the property elucidates family relationships that were otherwise forgotten.

Three Takeaways

1. Land records (or records that provide evidence of land transactions) can offer incredible details about family relationships, both stated outright and implied. Three examples in this case were:

- A letter in a manuscript collection in an attempted legal claim for land provides the mother's surname to an illegitimate child.
- Petitions to the New York State Assembly to vest land have evidence of various relationships.
- An unrecorded deed provides evidence of parentage when gifting land for “natural love and affection he hath for his son.”

2. Don't limit yourself to county deed books – a variety of types of records have evidence of land transactions that can be found in lesser-used repositories. Here are some types of records that help with this case.

- Colonial patents: land to citizens
- Colonial patents: land to towns
- Deeds in town records
- Earmarks in town records
- Petitions to the state assembly
- Private laws
- Provincial secretary files
- Tax records
- Unrecorded deeds
- Various manuscript collections
- Wills

3. Understand the different ways land is transferred and controlled. In this case, property was transferred or controlled by the following instruments or laws:

- Agreements with Native Americans
- Colonial town patents
- Land grants from the town
- Coverture
- Curtesy
- Deeds between private parties
- Dower
- Entails
- Escheatment
- Intestate law
- Lease & release
- Life estates
- Private Law
- Silent transfer
- Will

Definitions

The definitions below are in my own words and within the context of this case. I am not a lawyer

😊 To get a more exact definition for these terms, consult *Black's Law Dictionary*, revised fourth edition.

Charter: In this case, Keift's Dutch patents to create the towns of Hempstead and Flushing were called charters. A charter is a grant from a sovereign power.

Confirm title: There are many times in this case where the title to the property was unclear, in which case someone needed to confirm the title. This means to clarify or establish who has title to or owns the property.

CONVEY. To pass or transmit the title to property from one to another; to transfer property or the title to property by deed or instrument under seal. Used popularly in sense of "assign," "sale," or "transfer." *Crookshanks v. Ransbarger*, 80 W.Va. 21, 92 S.E. 78, 82; *McQuiddy Printing Co. v. Hirsig*, 23 Tenn.App. 434, 134 S.W.2d 197, 205.

Coverture: "The condition or state of a married woman."¹ This is the same as being a *femme covert*. When it comes to real property, a *femme covert* maintains ownership of a piece of property, but her husband controls it during her state of coverture.

Henry Campbell Black, *Black's Law Dictionary*, 4th ed. rev. (St. Paul, Minn.: West Pub. Co., 1968), 402, "convey."

Curtesy: If a woman owns property during her marriage (it could be in fee simple or entailed), upon her death, her husband gets a freehold estate during his lifetime, assuming they had a child that took a single breath. However, if they did not, then curtesy does not apply.

Deed: A written agreement between parties that transfers the title of real property. The seller and witnesses usually sign it. Original deeds are rare as they were provided to the purchaser, and if they still exist are typically found in a safe deposit box or manuscript collection. It is most common to use a record copy of a deed transcribed by a clerk into a deed book. A record copy will not have original signatures for comparison.

Devise: When real property is given away in a will.

¹ Henry Campbell Black, *Black's Law Dictionary*, 4th ed. rev. (St. Paul, Minn.: West Pub. Co., 1968), 439, "coverture."

Double Dating: How dates from January 1 – March 25 are described when America transitioned from the Julian to the Gregorian calendars. A date of 4 January 1741/2 doesn't mean you get to pick which year or that the year was unclear. It means that the year was 1741 according to the Julian calendar and 1742 according to the Gregorian calendar.²

Dower: “The life estate to which every married woman is entitled on the death of her husband, intestate, or, in case she dissents from his will, one-third in value in all lands of which her husband was beneficially seized, in law or fact, at any time during coverture.”³

Earmark: This is how a farmer would mark the ear of their cattle for everyone to know it was theirs. This was required when there were public pastures. Men would have their earmarks recorded in town records. They were frequently passed from father to son. In this case, although not discussed in the presentation, earmarks recorded in the Hempstead town records provide evidence to support the change of ownership of the “New Field” farm in North Hempstead.

Entails: By having property entailed, the property is restricted on who may have title to it. For example, in this case, Thomas, The Attorney, wrote that his property would go to his sister Mary and the “heirs of her body lawfully begotten or to be begotten.” This means that although Mary would own the property, she would not be allowed to sell it to a neighbor.

Escheat: When real property reverts to the government without a legal heir. Mary could have no legal heirs in this case, so the property was escheated to the state.

Executor: A person named by a testator (the person who wrote a will) to carry out the requests documented in the will.

Femme Couvert: See coverture.

Freehold estate: Right to an estate for an unknown duration, for example, for a life. You don't know how long someone will live, so a life estate is a freehold estate. This is not the same as being a freeloader!

Grant: To give, bestow, confer, or transfer real property. It is a generic term.

Indenture: A legal agreement between two parties with obligations to each other. In a typical deed, the grantor gives the grantee land in exchange for money.

FEE SIMPLE.

Absolute

A fee simple absolute is an estate limited absolutely to a man and his heirs and assigns forever without limitation or condition. *Rathbun v. State*, 284 Mich. 521, 280 N.W. 35, 40.

Henry Campbell Black, *Black's Law Dictionary*, 4th ed. rev. (St. Paul, Minn.: West Pub. Co., 1968), 742, “fee simple.”

Deed vs. Indenture

An indenture is a legal agreement between two parties; a deed is a written agreement between parties that transfers the title of real property. All deeds are indentures, but not all indentures are deeds. Just like how all squares are rectangles, but not all rectangles are squares.

² For more information on double dating: “England Calendar Changes,” *FamilySearch Research Wiki* (https://www.familysearch.org/en/wiki/England_Calendar_Changes: accessed 22 Aug. 2023).

³ Henry Campbell Black, *Black's Law Dictionary*, 4th ed. rev. (St. Paul, Minn.: West Pub. Co., 1968), 580, “dower.”

Intestate law: When someone dies without leaving a will, they die intestate. Intestate law is the law in place at the time that determines how an estate will be divided.

Lease & Release: A lease and release is a combination of two transactions. In this case, the first transaction is the lease from the Van Wycks to the Hicks, and the second transaction would be for the Van Wycks to release the Hicks from the obligation to return the property.

Life estates: A life estate is a type of freehold estate where someone gets the right to the realty for the duration of their life or the life of someone else. Examples of life estates by law are because of dowry, curtesy, or entailment.

Patent: A grant of land by a government. In this case, to confirm ownership of the land once the English took control of New Netherland, the governor gave a patent to Thomas Hicks, The Progenitor.

Patentee: Someone who receives a patent. In this case, the patents to create towns were given to a list of patentees or town founders.

Perfect title: To confirm the title, make it without defects, or clarify who owns the property.

Petition: A written plea from a person to right a wrong. In this case, the petitions from William Hicks, The Cordwainer, and Richard Penn Hicks were submitted to the New York State Assembly to request that a private law be passed to give them the land rather than the state taking the land due to escheatment.

Private law: In this case, a private law is a law that doesn't pertain to the public – only a private citizen for a private purpose, but is published publicly.

Provincial secretary files: Files that were created during a leader's administration. For example, for Governor Andros' administration paperwork, his provincial secretary's files have been published as "[The Andros Papers](#)."

Quitclaim deed: A deed where someone releases any claim they might have on a property. It doesn't mean they have a right, but any right they might have. This type of deed is frequently between family members; for example, all of the heirs might quitclaim their right to their father's property to one sibling. However, it is not limited to family.

Silent transfer: "Land that changes hands without a record, almost always by inheritance."⁴

Tax records: Regarding land ownership, tax records can be challenging to find, but they show who was responsible for paying taxes. Someone new showing up on tax records may indicate a recent purchase; someone dropped from the tax records could indicate a recent death. A property with the same valuation or location associated with a different name than previously may indicate a recent transfer of land. Tax records can also be used to separate men of the same name by looking at the order of neighbors or by relative tax burden.

⁴ Patricia Law Hatcher, *Locating Your Roots: Discover Your Ancestors Using Land Records* (Baltimore: Genealogical Publishing Company, 2016), 200, "silent transfer."

Testate: When someone dies leaving a will.

Town records: The records that are specific to a town. Usually includes town meeting minutes, earmarks, division of land, deeds, the election of officers, and details of other governmental functions.

Title may be defined generally to be the evidence of right which a person has to the possession of property. The word "title" certainly does not merely signify the right which a person has to the possession of property; because there are many instances in which a person may have the right to the possession of property, and at the same time have no title to the same. In its ordinary legal

Henry Campbell Black, *Black's Law Dictionary*, 4th ed. rev. (St. Paul, Minn.: West Pub. Co., 1968), 1655, "title."

Transfer: To convey property from one person to another.

Unrecorded deed: A deed not submitted to a government (i.e., town or county) to be recorded. These are original documents with original signatures.

Vested: Absolute interest or ownership that is not conditional. In the case of property, ownership is without contingencies like a life estate or entailment.

Hints for Land Research

1. Record loss might impact the availability of records.
2. Geographic places can change names.
3. Changing boundaries impacts where you search for records.
4. Look at records of neighbors and associates.
5. Keep looking for newly available sources.
6. Our ancestors were human — not all children were born within wedlock.
7. Understand the law in the time and place you are researching.
8. Don't assume your ancestors understood the law.
9. Ask for supporting documentation – even if you don't know whether it exists.
10. Trace land forward in time for more details.

Resources for Land Research

- Greenwood, Val D. *The Researcher's Guide to American Genealogy*, 4th ed. Baltimore, Md.: Genealogical Publishing Company, 2017.
- Hatcher, Patricia Law. *Locating Your Roots: Discover Your Ancestors Using Land Records*. Baltimore: Genealogical Publishing Company, 2016.
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- Price, Edward T. *Dividing the Land: Early American Beginnings of Our Private Property Mosaic*. Chicago, Il.: University of Chicago Press, 1995.
- Russell, Judy. *The Legal Genealogist* blog. <https://www.legalgenealogist.com/>.
- Salmon, Marylynn. *Women and the Law of Property in Early America*. Chapel Hill, N.C.: University of North Carolina Press, 1986.