

# **Participation of Women in the Notarial Public Deed of the 16th Century. From the Constriction of the Marital Licence to the Fullness of Widowhood**

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## **Abstract**

This study intends to analyse the participation of the married woman and the widow in the notarial public deed of the 16th century, in Spain, in light of the notarial forms and treatises of the time and the process itself of executing a notarial public deed. Visigothic Law would gather, to certain extent, Roman limitations and the openness brought by the Christian doctrine, resulting in the different legal systems of High Medieval times, when the married woman needed a licence from her husband in order to act. Spanish Law 56 of Toro would regulate the marital licence as a general system and compulsory requirement for the valid intervention of the married woman. In the beginning of the 16th century, not a few women executed notarial deeds and wrote royal letters related to registering as residents, returning properties and shortening litigations.

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**Keywords:** Married woman, widow, notarial public, 16<sup>th</sup> century, Spain, notarial deeds

## **The marital licence and its expression in the notarial forms of the 16th century**

The lack of legal capacity of women in classic Roman Law gives rise to the encouragement of their social condition granted by Christianity, trend that would influence decisively the perception about women that would exist over the Post Classic and Justinian Periods. Visigothic Law would gather, to certain extent, Roman limitations and the openness brought by the Christian doctrine, resulting in the different legal systems of High Medieval times (Segura Graíño, 1986), when the married woman needed a licence from her

husband in order to act<sup>1</sup>. Spanish Law 56 of Toro would regulate the marital licence as a general system and compulsory requirement for the valid intervention of the married woman (Pacheco Fernández, 2006).

The licence granted by the husband to his wife to act as owner when executing a public deed found its first notarial expression in the *Formularium Instrumentorum* (Sánchez Galo, 1925, 1926, 1927, 1935), where there is record of the licence that the husband grants to his wife to sell part of her assets or to adopt children.

To the faculty and the licence to sell granted by the husband to his wife, Roque de Huerta also adds in his *Recopilación de notas...* the granting of the faculty to establish a ground rent over a real estate (De Huerta, 1551: 79). On his part, Díaz de Toledo in *Las notas del relator...* without converting the woman in the beneficiary of the licence, inserts, together with the licence to sell, the licence to exchange or change estates (Díaz de Toledo, 1531: XXX). The *Suma de notas copiosas* by Juan de Medina develops the model of the licence to convey real estate (De Medina, 1539: XII).

This way, throughout the 16th century, we find documents or notarial deeds where the husband grants licence to his wife to jointly execute a deed of assignment and transfer of tax<sup>2</sup>. In other documents, there appears a licence established between a married couple for the granting of a power of attorney to receive and charge *maravedís*, being such power likewise granted jointly<sup>3</sup>. Or there are notarial deeds where the licence granted by the husband to his wife is the previous step to ratify and approve a sale<sup>4</sup>. These documentary models, where there is a petition for licence, are named letters of approval and may convey not only the ratification and approval of a sale, but also the execution of other processes such as the redemption of rent charges<sup>5</sup>. They are gathered in the way of forms by Díaz

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<sup>1</sup> “Due to the Repopulation phenomenon and the continuous military incursions of husbands, according to local Regulations married women may act occasionally without said “granting”, although it is true that they are transactions of little relevance: of less than five *sueldos* or one *maravedí* and “womanly issues”. Muñoz García, María José (1989). Limitaciones a la capacidad de obrar de la mujer casada en el Derecho Histórico español. Especial referencia a las leyes 54 a 61 del Ordenamiento de Toro y a su proyección. *Anuario de la Facultad de Derecho*, 7, 433-456. Quote from p. 446.

<sup>2</sup> Archivo Histórico Provincial de Málaga (A. H. P. M.), *Protocolos*, legajo 33, escribanía de Juan de Moscoso, año 1521, fols. 202-204.

<sup>3</sup> A. H. P. M., *Protocolos*, legajo 271, escribanía de Lázaro Mas, año 1551, s/f.

<sup>4</sup> A. H. P. M., *Protocolos*, legajo 224, escribanía de Alonso de Jerez, año 1551, fols. 802v-803.

<sup>5</sup> A. H. P. M., *Protocolos*, legajo 328, escribanía de Baltasar de Salazar, 1-4-1551, s/f.

de Toledo and Roque de Huerta in their respective notarial treatises of the time.

On the other hand, it should be highlighted that some of the above mentioned documents present a licence awarded by way of a granting that, as examined before, is executed jointly by husband and wife. This was, as Gabriel de Monterroso y Alvarado points out, an incorrect, as well as unnecessary, practice widely extended among notaries public of that time, given that:

“furthermore, it has to be assumed that as long as husband and wife jointly execute a notarial deed and both are parties to the same, whether be it a letter of dowry, or sale or gift or any other, there is no need for a licence. Inasmuch as the husband is party to the deed, as said before, and there is evidence that he has granted licence to his wife, then no further licence is required”.

This incorrect practice reported by Monterroso was extended throughout the notarial deeds of the time. The writer believes that the reason is the custom, as the woman only requires the licence when her husband is away, or when she executes a deed and acts as the only party to the same, being her husband present. He bases all these precepts upon the content of Law 61 of Toro.

In the absence of marital licence, Laws 57, 58 and 59 of Toro regulate other legal procedures that may replace the husband's authorization: the marital ratification and the supplementary judicial licence. The married woman is able to act judicial and extra judicially either with marital licence, ratification of her husband or judicial license. It is so reflected in notarial forms. When the husband was away, the wife could appear before the ordinary judge where he lived, and further to providing information about the absence of her husband and giving a legitimate cause, she could request a licence from said judge, theoretical model that Gabriel de Monterroso includes in his *Práctica civil y criminal...* (De Monterroso y Alvarado, 1571: 199-200).

In this context of petition for licence, there are letters presenting some peculiarities as regards their structure, as they offer a joint title whereby two wives simultaneously request licence from their husbands to execute a deed: “we, the above said Elvira Fernández and María de Ribera”. The petition for licence and the appearing formula are expressed as follows: “in the presence of and with licence, authority and express consent of our said husbands, who are present, to whom we request, in order to execute what shall be set forth hereinafter”. Immediately after, the husbands appear in a new joint title that goes along with the appearing formula and the following phrase preceding the recital: “and we ... who are present, declare

that...”. The recital reads as follows: “we grant the said licence” and appears together with a compromise of firmness and non-contradiction: “we promise to always hold it as firm and no to contradict it”<sup>6</sup>.

### **The waiver of the laws that *speak* in favour of women...**

However, according to ancient law, there were two contracts that the woman was not entitled to enter into, not even with her husband’s licence. Law 61 of Toro stated that “from now onwards, the woman shall not bind herself as guarantor of her husband... and in the event that husband and wife bound themselves jointly... the wife shall not be liable for anything whatsoever, unless proved that such debt turned to be for her benefit” (Martínez Alcubilla, 1982: 484). In Castilian Law, the prohibition for the married woman to act as guarantor of her husband was not regulated specifically until the year 1505. The Laws that benefited the woman in general (*Senadoconsulto Veleyano y Partidas V, 12, 2 and 3*), and the married woman in particular (Real *si qua mulier* and Laws of *Toro*), as the waiver of said laws is possible, no longer produce such benefit and, in fact, give to woman and man equal status because they may bind themselves and act as guarantors. They waive, to their own detriment, the favour granted to them. In respect of the women’s clause of waiver of the emperors’ law and amendments of the Laws of Toro –appearing in most notarial deeds of the 16th century, in which grantors are married women-, it should be pointed out that, pursuant to the law of the *senatus consultum Veleyano –Beliano* as written on deeds due to the lack of skill of notaries public and notarial officers-, women could not act as guarantors of other person. It was a law introduced in favour of the female gender, by virtue of her fragility, so that although women were liable as guarantors, they were not effectively liable<sup>7</sup>. Therefore, if a woman wanted to be guarantor of another person, she had to waive these laws so that the deed could be effective and valid.

Related to the waiver of this law, there used to be inaccuracies in the practice of notaries public. It is so implied by Gabriel de Monterroso in his *Práctica civil y criminal...* in the seventh treatise, where he states that<sup>8</sup>:

“in the event that a judge asked the notary to declare the assistance of the *Senatus consulto Beliano*, but he were not

<sup>6</sup> A. H. P. M., *Protocolos*, legajo 33, Juan de Moscoso, año 1521, 13 April, fols. 202-204.

<sup>7</sup> According to Roman Law, the married woman was not allowed to intercede, in general, and pledge her husband, in particular, respectively through the *Senatus Consultum Veleyano* and the real *si qua mulier*, consequence of the coexistence and complement given to the “protection and prohibition” principles of the woman. Interceding was not allowed and, therefore, her field of action was limited, although, at the same time, she was being protected from prejudices that may affect her due to the lack of knowledge of legal matters”. Muñoz García. *Limitaciones a la capacidad de obrar...* p. 449.

<sup>8</sup> N. del T.: The original quotation is written in old Castilian.

able to say, such waiver would not be valid, even though the Notary may have attested that he certified the same to the said woman. And furthermore, the Notary should acknowledge that, having being waived said law of the Senatus consulto Beliano, there is no need to waive neither the laws of Justinian nor the laws of Toro, as the waiver of Beliano is sufficient, because even though Justinian approved the laws of Beliano, he did not add any strength whatsoever, but rather restricted them in great extent, where women may act as guarantors without any such waiver” (De Monterroso y Alvarado, 1571: 163-164).

Therefore, these assessments made by Monterroso lead us to think that notaries’ offices of that time had a poor knowledge of law inasmuch as, according to the above stated, the waiver of the laws of *Toro* would not have been necessary.

### **The married woman in legal acts of adoption**

In the above paragraphs, we have mentioned the participation of the woman as grantor, with previous licence from her husband, in commercial processes and transactions. However, a separate consideration has to be made as regards the married woman and her intervention, in this case, in legal acts of adoption. The *Partidas* allowed to adopt those who, being out of the parental responsibility, were over eighteen years of age (*Las Siete Partidas*, 1989: Laws 2 and 4, Forth), if adopted as a son/daughter, or over thirty-six years of age if adopted as a grandchild. Impotent, women, those who had legitimate descendants and clergymen were not allowed to adopt. Nevertheless, women could adopt, with King’s license, in the event that they had lost their son in a battle in the service of king or an estate of his council (Martínez Alcubilla, 1982: 189. De Ribera, 1577: LXXXIX-XC. De Monterroso y Alvarado, 1571: 209-210). Formal evidence of the legal act of adoption appears in the *Formularium Instrumentorum*, where it is explained how “the woman, with her husband’s licence, adopts children other than her own children”, always provided that she has been granted the King’s licence<sup>9</sup>. *Notas del Relator* by Díaz de Toledo also refers to the “Licence note that the King grants allowing the adoption” (Díaz de Toledo, 1531: LI). On the contrary, the forms by Roque de Huerta and Juan de Medina do not develop any content in connection with this legal act.

Diego de Ribera in *Esripturas y orden de partición...* offers two models of deed of adoption, the first one referring to the adoption of a child over fourteen years of age, and the second one in connection with the

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<sup>9</sup> *Formularium instrumentorum*, op. cit. Fórmula LXXII.

adoption of a child between seven and fourteen years of age, process for which it was not necessary the pupil's consent (De Ribera, 1577: LXXXIX nad XC). This type of adoption is the one that Gabriel Monterroso offers as theoretical model in his *Práctica civil y criminal...* (De Monterroso y Alvarado, 1571: 209-210).

The woman could appear as beneficiary of the adoption and, at the same time, as second grantor, as is the case of Catalina Rodríguez “wife of Francisco de Trugillo...”, with whom Juan García adopts his legitimate daughter, Leonor, of four years of age, explaining that Catalina Rodríguez requested the adoption as she had no legitimate child to inherit her estate.

In the letter of adoption there follows the execution by the adoptive mother “ and I, the said Catalina Rodríguez, present herein...” with a compromise statement reciprocal to that stated by the first grantor, concluding such statement with the corresponding personal liability clause, and liens and encumbrances, of the second grantor, “I hereby bind myself and all my real and personal property, present and future”, delegation of authority in favour of the judges or *guarentigia* clause by both grantors: “both parties hereby grant power...”, joint waiver of laws that may benefit the grantors and waiver of the law governing renunciations<sup>10</sup>.

Other adoption and service letters<sup>11</sup> are a mixed model whereby the parents, further to the granting of licence by the husband and the referral to the joint responsibility, state that “we hereby acknowledge that we take on your service and adopt you, Pero López de Canillas, residing in this city, present herein, and Melchor Chacón, our son aged thirteen years more or less...”, falling the framework of the deed within the typical model for adoptions.

### **The sale of assets pertaining to the dowry.**

On the 18th of May of 1541, Mari Núñez, with licence granted by her husband, sells two portions of land “intended for grain farming” to Juan Martínez, incumbent clergyman of the villa of Mijas (Málaga)<sup>12</sup>. Further to the formula of petition and granting of licence by the husband, and the waiver of the laws of the joint responsibility, there appears the recital stating the execution: “we hereby grant and acknowledge that we sell and transfer in perpetuity”. Further to describing the asset and establishing its price and amount, the granting spouses are satisfied and consider themselves as paid.

<sup>10</sup> A. H. P. M., *Protocolos*, leg. 79, escribanía de Cristóbal Arias, año de 1521, fols. 369-370r.

<sup>11</sup> A. H. P. M., *Protocolos*, leg. 33, escribanía de Juan de Moscoso, año de 1521, fols. 212v-213r.

<sup>12</sup> A. H. P. M., *Protocolos*, legajo 73, escribanía de García de Villoslada, 18-5-1541, unnumbered pages.

Once they have declared that the established amount is “the right and true value” of the land, there follows some complementary clauses concerning directly women, whereby Mari Núñez waives the emperors’ laws and the amendments made by the laws of Toro, upon the notary’s warning, as well as Mari Núñez’s oath stating that she will neither oppose the contract due to her dowry assets, nor declare that she was forced by her husband to execute it. It is therefore a clear example of how they proceeded in the 16th century to sell assets that were considered part of a dowry (Nausia Pimoulier, 2008).

The married woman had to grant licence to her husband to sell assets pertaining to her dowry. Thus, the wrongful sale of these kind of assets led to numerous litigations throughout the 16th century aimed at giving back to married women what corresponded to their dowry. This is what happened to María de Sepúlveda, wife of Martín de Lunar, who had sold without her licence some assets of her dowry to Francisco Sánchez, Pedro Mudarra and the convent of la *Concepción de San Martín de Valdeiglesias* in Madrid, civil proceedings acknowledged by the notary public Alonso de Santisteban<sup>13</sup>. Of the same nature is the enforcement of the proceedings brought by Inés Rodríguez against Hernán Suárez, both residing in Tineo (Asturias), in connection with the return of some land pertaining to Inés Rodríguez’s dowry, which had been sold by her husband without her licence<sup>14</sup>. Or the case of María Sánchez, called the *Manjona*, residing in La Campana de Albalá (Cáceres), with Francisco de Rivera, residing in Don Gil (Cáceres), in relation to the return to María Sánchez of her dowry assets, which had been sold by her husband without her licence to the said Francisco Rivera<sup>15</sup>.

The Laws 54 to 61 of the Toro Regulation, as they govern the essential institutions relating to the capacity of the married woman to participate in legal acts, would become the fundamental legal text up to the amendment of the Spanish Civil Code in 1975.

### **The privilege of widows in the Modern Age.**

As already stated in the previous section, Christianity had been decisive to guarantee the legal protection of women, focusing now on the case of the widow, baton that the Western Roman Empire would take over. Legal texts of the Visigothic Hispania do not refer to the said privilege, having to wait until the regulation made by King Alfonso X of litigations of

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<sup>13</sup> Archivo Histórico Nacional (A. H. N.), PL CIVILES, PÉREZ ALONSO (F), CAJA 913, 10.

<sup>14</sup> A. H. N., REGISTRO DE EJECUTORIAS, CAJA 372, 40.

<sup>15</sup> A. H. N., REGISTRO DE EJECUTORIAS, CAJA 399, 59.

widows and other defenceless people<sup>16</sup>. Between the 16th and 18th century, some Castilian authors would discuss in their writings the privilege of jurisdiction, with special attention to that of widows, thus granting a doctrinal structure to the practice of royal courts<sup>17</sup>. Ultimately, in order to grant to the widow the privilege of choosing jurisdiction, an irreproachable moral conduct is required from her, differing the authors as regards the degree of decency required. There was great controversy, being the glosses and conclusions extended to the notarial forms and treatises. Therefore, for example, Gabriel de Monterroso y Alvarado, in the fifth treatise of his *Práctica civil y criminal e instrucción de escrivanos* states as follows<sup>18</sup>:

“Furthermore, if a widow brought a claim and was requested to provide information as regards how she lives in a decent manner, a grievance would be caused to her ...(...) The widow who lives in a decent manner is entitled to bring a court case not only as plaintiff but also as defendant, provided that she has chosen the President and Hearers as judges, and for such purpose she is granted a provision named ordinary, whereby all inferior judges are restrained to the supreme courts, even though they may be

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<sup>16</sup> It was within Family Law and Inheritance Law where dispositions related to widows were more frequent. See Gacto Fernández, E. (1975), *La condición jurídica del cónyuge viudo en el derecho visigodo y en los fueros de León y Castilla*. España, Sevilla: Universidad de Sevilla. See also Bermejo Castrillo, M. A., (1996) *Parentesco, matrimonio, Propiedad y Herencia en la Castilla altomedieval*, pp. 270-271. García Herrero, María del Carmen (1993). Viudedad foral y viudas aragonesas a finales de la Edad Media. *Hispania: revista española de Historia*, 184(53), 431-450.

<sup>17</sup> A good synthesis of this doctrinal debate can be seen in Bouzada Gil, María Teresa (1997). El privilegio de las viudas en el Derecho Castellano. *Cuadernos de Historia del Derecho*, 4, from p. 231.

Other works for the study of the widow's condition in the Modern Period include:

Montagut Contreras, Eduardo (1993). Viudas y varas de alguaciles de Casa y Corte (siglos XVI-

XVII). *Torre de los Lujanes: Boletín de la real Sociedad Económica Matritense de Amigos del País*, 24, 115-128.

Barbazza, Marie-Catherine (1999), Las viudas campesinas de Castilla la Nueva en los siglos XVI-XVII. In María Teresa López Beltrán (coord.), *De la Edad Media a la Moderna: mujeres, educación y familia en el ámbito rural y urbano*, (pp. 133-164). España, Málaga: Universidad de Málaga.

Sánchez Ramos, Valeriano (2000). Las viudas de la Alpujarra en la repoblación de Felipe II. In María de los Desamparados Martínez San Pedro (coord.), *Los marginados en el mundo medieval y moderno* (pp. 131-152). España, Almería: Instituto de Estudios Almerienses.

Martínez-Burgos García, Palma (2008). Viudas ejemplares: la princesa doña Juana de Austria, mecenazgo y devoción. *Chronica nova: Revista de historia moderna de la universidad de Granada*, 34, 63-89.

<sup>18</sup> N.d. T.: The original quotation is written in old Castilian.

members of the administrative-judicial institution, provided that she is widow and lives decently, except in six cases...” (De Monterroso y Alvarado, 1571: Fifth, 59r.); (...) “that the widow is such because her husband died long ago, and since that date she has been seen living decently and still lives in such a manner...” (De Monterroso y Alvarado, 1571: Fifth, 59v).

The obvious form of what in the Modern Age is understood as *Privilege of Widows*, goodness of treatment also applicable to other defenceless people, that allowed to go in the first instance to the highest royal courts that provided the royal jurisdiction to resolve their litigations (Bouzada Gil, 1997: 203), is present in documents as the following one, where the Queen addresses a letter to the Bishop of Segovia, President of the Chancery of Valladolid, requesting that the claim brought by María de Alfaro against Mencía de Soto and spouses, all residing in Salamanca, in relation to certain assets of her estate, as she is widow and poor, not be delayed<sup>19</sup>.

Therefore, compared with the married woman –who has legal capacity but is not entitled to participate in legal acts, as her husband’s licence is required–, the widow obtains full legal capacity to act. Subsequently, descending to the level of notarial deeds, we are going to analyse various notarial deeds of the 16th century where the grantors were widows, gathering them in the following groups: conquest and border, various commercial transactions, relations with children and proximity to death.

### **Widow and border**

Adverse conditions of life in the border explained the presence of women established on their own. Epidemics, famine, deceases in the battlefield and captivity were factors that slowed down the success of repopulation and broke up families of tenant farmers, all the above taking into account that the disappearance of the border of Granada in 1492 did not put an end to the usual insecurity, especially in coastal areas, due to the frequent attacks and pillaging by Muslims from the other side of the Strait, which resulted in Christian captives (López Beltrán, 2008: 95). Given this situation, in the beginning of the 16th century, not a few women executed notarial deeds and wrote royal letters related to registering as residents, returning properties and shortening litigations.

Therefore, on 30th October 1500, an Order is issued by the King and Queen for the Chief Magistrate of the city of Loja, requesting his

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<sup>19</sup> A. H. N., CCA, CED, 9, 48, 1. Medina del Campo, 4 March 1504.

intervention in the claim brought by María Peregrina, residing in that city, and widow of Pedro Peregrina, in connection with the seizure by the juror Morales and Lope García de la Peñuela, her neighbours, of a vineyard that was part of a distribution made in her neighbourhood<sup>20</sup>.

Likewise, on the 6th of January of 1501, an order is issued by the King and Queen in Granada for Juan Gaitán, Chief Magistrate of Málaga and Vélez Málaga, requesting to return Isabel Sánchez, widow of Fernand Pérez Cabeza, a property in said town that had been granted to her husband in payment for measuring the land in the division of Mijas and then taken away and delivered to Miguel de Aragón<sup>21</sup>.

A favour was granted to Flandina Mejía, widow of Juan de Ormigado, in Níjar for the services rendered by her husband, squire of guards, by way of two plots of land and a farmhouse for a daughter, as a contribution to her wedding. This was an order issued for the distributor of legal residences in Níjar, for the purpose of making effective the favour granted by the King and Queen to the widow<sup>22</sup>. All these cases illustrate *de facto* how the widow was more defenceless, even though the laws in their doctrine protected her.

### **Widowhood and commercial transactions**

Commercial transactions where widows participated as grantors are recorded in part of the notarial registers of the 16th century, with documentary models such as the letter of slaves release in exchange for money, deed of taxation, letters of payment, leases and power of attorneys.

Catalina Ramos, widow of Bartolomé Ramos, grants freedom to Tomás, the son of Juana, who was the slave of Catalina Ramos, further to the payment of five golden ducats. The slave is identified and the formula “I have agreed with you to release you and in exchange you shall pay to me...” determines that this is a letter of slave release in exchange for money. Catalina Ramos concludes the clauses complementary to the recital waiving the laws in favour of women in order to make the slave release effective: “And furthermore I waive the laws of Emperors Justinian and Veliano, on the assistance to women, inasmuch as the notary public of this letter especially warned of them”<sup>23</sup>.

Her namesake Catalina Gil, widow of Rodrigo López, blind, executes a letter of taxation, in connection with a tax on one of the properties that she and her husband had sold to the incumbents of the *Mártires* church in the city of Málaga for 4000 *maravedís*. Catalina, pursuant to previous

<sup>20</sup> A. H. N., CCA, CED, 4, 209, 4. Granada.

<sup>21</sup> A. H. N., CCA, CED, 4, 270, 3. Granada.

<sup>22</sup> A. H. N., CCA, CED, 5, 245, 2. Granada, 18 September 1501.

<sup>23</sup> A. H. P. M., *Protocolos*, legajo 101, escribanía de Juan Parrado, 1521, fol. 145.

agreement, establishes a further 200 *maravedís* on the properties, selling them for 2000 *maravedís* to the incumbents. She waives the laws of the Emperors, being present at the notary office of Juan de la Plata. Along with the recital of three witnesses, there appears the signature of one of them on behalf of the grantor. The signature of the notary does not appear yet in the notarial record in 1521<sup>24</sup>. It is hardly surprising that in the beginning of the document Catalina defines herself as widow, stating the condition of blind of her husband, inasmuch as from the 16th to the 18th century authors have a wide understanding of the idea of losing the husband, extending the widows' privilege to those women whose husbands had been captured by enemies, exiled, imprisoned, injured in royal ships or were blind (Bouzada Gil, 1997: 231). Then it can be considered that in the beginning itself of the document, the grantor proceeds to indicate that she has been widow for a long time.

On the 14th of April of 1579, María de Zárate, widow of the painter Juan de Oñate and his executrix along with Martín de Amézaga, grants letter of payment for the amount of fifty *reales* and a half, owned to her for the bill corresponding to the sculpture and painting of an altarpiece for the Church of Ullíbarri-Viña by the deceased painter. She receives the payment from Juan López de Ullíbarri, church steward<sup>25</sup>.

On the 12th of September of 1555, Marinda de Landa, widow of Juan de Sabando, residing in Castillo, leases to Antonio de San Juan, tinker, residing in Vitoria, three properties in Meana, with a surface area of half a yoke of oxen the first one, one yoke the second and a half a yoke the third, for six years in exchange for three *fanegas* of wheat per year. Juan de Incazteguieta, bell ringer in the Church of San Pedro de Vitoria, and Gonzalo Fernández de Trocóniz, notary public residing in Hinoja, act as witnesses<sup>26</sup>.

There are also joint executions by women in commercial transactions. Thus, on the 13th of April of 1555, María Sáez de Ulíbarri, widow of Juan Íñiguez de Aranguiz, together with her sister Antonia Pérez de Ulíbarri, residing in Vitoria, sell to Diego Matínez, residing in Yurre, four *marcenas* of land intended for grain farming in exchange for 13 ducats<sup>27</sup>. On the 10th of April of 1573, Ana de Salinas, widow of Antonio Pérez, and residing in Medina del Campo, grants power of attorney in favour of Juan Portero before the notary public Martín de Pedro, also residing in Medina, to buy goods on her behalf, always provided that the goods acquired do not exceed one thousand ducats<sup>28</sup>.

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<sup>24</sup> A. H. P. M., *Protocolos*, legajo 137, Juan de la Plata, 29-1-1521, unnumbered pages.

<sup>25</sup> A. H. N., PRO, 04973, fol. 0176r.

<sup>26</sup> A. H. N., PRO, 06292C, fol. 0013v.

<sup>27</sup> A. H. N., PRO, 06292B, fol. 0010r.

<sup>28</sup> A. H. N., PRO, 04768, fol. 0276r.

## **Widow and descendants**

Within the context of notarial deeds that allow to analyse the relation of widows with their descendants, we find cases in which said descendants are directly related to commercial transactions referred to in previous paragraphs, as said widows act as guardians of minors and their representatives in court cases. This is what happens in the year 1531, in the city of Málaga, when Inés de Peralta, widow of Pedro León, on behalf of their children, addresses to Alonso de Palma, acting as grantor of a tax redemption letter<sup>29</sup>.

The same representation role was present in documentary models such as the gift. As a way of example, in the year 1551 the notary office of Alonso de Jerez keeps in its records the deed of a widow who makes “good, pure and perfect gift for present and future times” of “a vineyard and a farmhouse”, “given that her son is going to be ordained as a priest and needs maintenance”. Until her son takes possession, as he is under 18 years of age, the grantor becomes holder and possessor on his behalf. She waives the Emperors’s law that speaks in favour of women. As she cannot write, a witness signs on her behalf and then the notary<sup>30</sup>.

Finally, by means of a letter of tutelage and guardianship, on the 19th of September of 1531, before the notary public Juan Parrado, María Lozana requests as widow of Francisco Hernández the tutelage and guardianship of her children, Pedro and María, “minors of fourteen years of age”, their assets and “any other child who may be born in the future”, given that she was about to give birth<sup>31</sup>, thus including the tutelage and guardianship of the *nasciturus* descendant.

## **The proximity of death**

In many occasions, the widow, when becoming executrix of the deceased husband, had to go to the notary office to bear witness to the husband’s inventory of assets. Thus, in 1521<sup>32</sup>, Elvira Rodríguez, “wife of Pero de Clara, Lord rest his soul”, knows about her husband’s death occurred in Zafi two or three months ago. “Hence”, she states that she intends to declare and make inventory of the assets left by her husband, requesting the notary public Juan de la Plata to give witness. There follows in the deed the list of assets, the possessor of which, in this case, was a seaman. The final clause of this inventory states as follows: “the aforesaid assets have been included by Elvira Rodríguez in the inventory, as wife and heir of the

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<sup>29</sup> A. H. P. M., *Protocolos*, legajo 147, escribanía de Martínez Tarégano, 1531, unnumbered pages.

<sup>30</sup> A. H. P. M., *Protocolos*, leg. 224, Alonso de Jerez, 1551, fol. 51.

<sup>31</sup> A. H. P. M., *Protocolos*, legajo 109, Juan Parrado, 19-9, 1531, unnumbered pages.

<sup>32</sup> A. H. P. M., *Protocolos*, Legajo 137, Juan de la Plata, 1521, fol. 528.

aforsaid Pero de Clara, whose inheritance with inventory she has accepted, declaring that she neither possesses nor is aware of any further assets, and in the event of becoming aware of any further asset, she will declare the same”. There appear two witnesses residing in Málaga. Likewise, in May of 1511 the inventory of assets pertaining to Duke Diego López de Zúñiga’s house is made upon request of Beatriz Bravo, his widow, as well as the deposit of some properties owned by said duke<sup>33</sup>.

On the other side, women’s last will, personal and not transferable, documentary model that equals the married woman and the widow, becomes the only document of social and legal nature for the execution of which the woman did not need the man. The uniqueness of the last will is due to its personal nature, expression of the individual’s last will, in connection with the strong religious environment of the time. In addition to the above, the respect for the dowry in the Spanish historical law as individual property, explains why most testamentary provisions of married women were in connection with the assignment of individual property. In this way, Isabel de Horozco, widow of Alardín Patyn, residing in Málaga, being her body ill and her will in perfect condition, grants her last will, stating that her body be buried in the *Mártires* Church, where her mother is also buried, and leaving her household linen and furnishings, a woollen mattress, to her godmother; a Dutch quilt and a woollen mattress to Rodrigo Serrano’s daughter –for her wedding-; and releasing her black slave to serve Rodrigo Serrano’s wife for an amount to be stipulated<sup>34</sup>.

The same applies to the codicil, extension or amendment of a last will. Catalina Díaz, on the 22nd of December of 1541<sup>35</sup>, had executed her last will before the notary public Cristóbal Arias, but at the moment of the present drafting, on 24th of December of 1541, she wants to add some new dispositions in the form of a codicil “being at the house where she resides”, due to her serious health condition. The paragraph reads as follows: “I hereby grant and acknowledge the following legacies”; this formula is followed by dispositions consisting of gifts to a monastery and a convent. The final clause of the codicil reads as follows: “all the foregoing I hereby order to be fulfilled, pursuant to the statements set forth in the codicil, remaining said will in full force and effect for everything contained herein”. After this, there appears the ratification statement “in witness whereof I executed this letter before the notary public and the witnesses hereinabove stated”. After the names of the witnesses, present at the execution of the will, and after the request made to one of them to sign the codicil in the name of

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<sup>33</sup> A. H. N., CCA, DIV, 40, 20.

<sup>34</sup> A. H. P. M., *Protocolos*, legajo 76, L. de Portillo, 1521, fol. 496-499.

<sup>35</sup> A. H. P. M., *Protocolos*, legajo 94, Cristóbal Arias, 24-12-1541, unnumbered pages.

the grantor, there appear the signature of the notary public, on the left-hand side, and that of the witness, on the right-hand side.

## Conclusion

Through the analysis of the participation of women in the notarial deeds of the 16th century, we have examined a notarial documentation that refers to the woman, although is not drafted by women, having such documentation an extraordinary value for the study of the female condition. The attentive exam of cases and doctrine has allowed us to verify how the woman has, in the assessed times, an active participation in notarial deeds, being her condition as widow the more active one.

When the woman gets married, any civil action implying the execution of a public deed inevitably requires the husband's licence, who exercises total authority on her, authority on which she depends to sell, adopt, lease, etc... The woman hardly has a leading role in the execution of notarial deeds during her marriage, and when she plays such a leading role is usually because the object of transaction corresponds to her dowry and her husband is not entitled to transfer it on his own, or because of the personal nature of her last will and the freely disposal of her own dowry assets in such will.

When the woman becomes a widow she has access to "freedom" within the field of notarial deeds. It is so evidenced by the analysis of all legal actions that we have observed. If the woman reaches the social fullness when becoming a widow is because she adopts the masculine role, thus scratching off her everlasting historic invisibility. We do not speak about illiteracy<sup>36</sup>, about signing a deed when executing the same or signing through a witness, but about the coercion or the freedom of the woman to execute notarial deeds, which convey her social development and affect her privacy, both emotional and pragmatic.

This represents another way to interact with the writing universe: women were not material authors, but were indeed grantors and recipients of vital realities passed on by men who requested the execution of deeds to a notary public. Then, ultimately, women had an active participation in the origin of documentary production. Therefore, another perspective arises, under which the feminine literacy and education in the beginning of Modern

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<sup>36</sup> Most women who participated in the notarial deeds of the assessed period cannot write. In the 16<sup>th</sup> century, in the city of Ávila for instance, only 16.6 per cent could write. In the secondary sector only the artists' wives are out of place as regards the generally extended illiteracy. The highest illiteracy level is in the primary sector: nobody can write. The nobility is the only social segment where women can read massively. See De Tapia, Serafín (1998). Nivel de alfabetización en una ciudad castellana del siglo XVI: sectores sociales y grupos étnicos en Ávila. *Studia historica. Historia moderna*, 6, 481-502.

Age should be considered. Except for religious and noble women, with higher education and literacy levels, this approach would be focused mainly on ordinary women. In summary, it would represent the relation between illiterate and emancipated women (in legal terms) –aware of the meaning of attestation by a notary public and the importance of written documents- with the universe of written documents (notarial deeds), relation that highlights once again the access to and the participation in the notarial deeds as instrument of power and social action.

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