

Esther Eccles McCoun (1792-1881), Ancestor 41

By her great great great (3x) great granddaughter Linda R. Horton, 18 December 2021¹

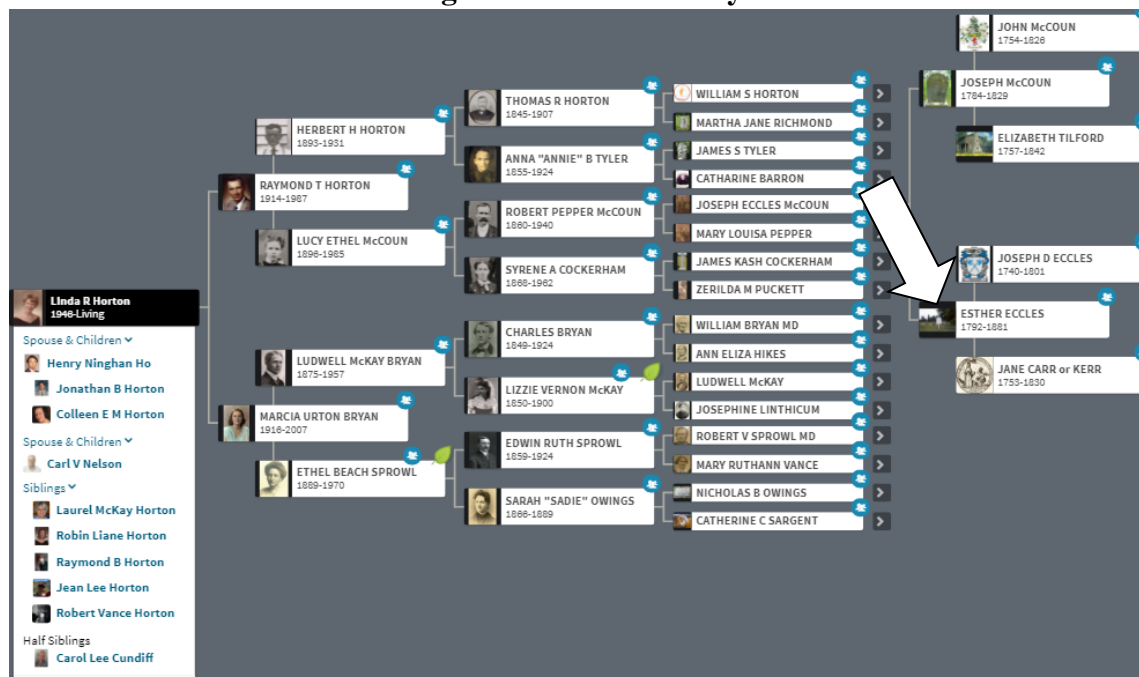
Shakespeare's Portia in *Merchant of Venice* was a forceful character who, in a male-dominated society and despite lack of legal training, used the judicial system to achieve her desired ends.¹ With no photograph of Esther Eccles McCoun, this nineteenth century engraving of Portia² is a substitute.

In a place and era when women's rights were limited, Esther brought legal actions—naming her own children as defendants—to enforce her rights to her late husband's estate. Esther even petitioned the Kentucky state legislature, obtaining an additional land tract. While the typical widow of her time period might simply have trusted her adult children to provide a roof over her head, Esther acted to secure her property rights.

Esther was born on 3 February 1792, in Mercer County, Kentucky. She was the sixth of eight children of Joseph Eccles (1740-c1801), and Jane Carr (1753-1830), both born in Virginia³ to parents who likely were newly arrived Ulster Scots Presbyterians. Esther married Joseph McCoun (1784-1829) on 19 June 1816. They had six children in 13 years. When Joseph was not quite 45 years old, he died on 19 July 1829. Esther survived him by 52 years, dying at age 89. Death for her came on 12 July 1881.



Placing Esther on the family tree

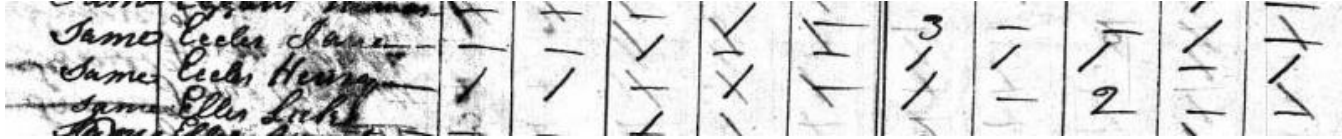


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Esther's early years

Esther's birth occurred four months before Kentucky became the 15th state.⁴ Before statehood, Kentucky was but a large western appendage of Virginia. Esther's long life coincided with momentous events in U.S. history, including the War of 1812, the Mexican American War, and the Civil War. The number of U.S. states tripled, from 15 in 1792 to 45 by 1881.⁵

Esther's father had died when she was young, probably in about 1801. Esther's mother Jane Carr Eccles appeared as head of household in the 1810 census report for Mercer County, living next door to her brother, Henry Eccles:



As is exemplified by the above extract from the 1820 census, before 1850 U.S. census reports included only the name of the head of household and a count of the number of individuals in each gender, age range, and race. Jane's household consisted of one male aged between 16 and 25 (her 19-year-old son Henry) and one female 45 and older (herself, age 57). Jane's three daughters are shown as one female under age 10 (Rebecca), one female between 10 and 15 (Mary), and one female between 16 and 25 (Esther, then 18). A few months after Esther's marriage, her mother Jane, at age 63, married a widower named Archibald Thompson. In 1818 he signed the marriage bond for Rebecca.

Available sources do not say whether the schools in Mercer County,⁶ which were Kentucky's first, admitted girls. It is, nevertheless, reasonably certain that Esther could read and write, unlike many nineteenth century women in Kentucky. In the many census reports in which Esther was enumerated, not once was she identified as unable to read or write. Her literacy was no doubt helpful to her later when she sought to enforce her legal rights as a widow.

Esther Eccles and Joseph McCoun married

Esther married Joseph McCoun (1784-1829) on 19 June 1816. Details concerning their marriage bond are found in his biography. The couple probably lived with his parents, John McCoun (1754-1826) and Elizabeth Tilford McCoun (1757-1842), until the completion in 1820 of their home, shown below right. Six children were born during their 13-year marriage:

1. Arethusa B. McCoun, 1817-1881, who married Merit Cunningham.
2. William H.E. McCoun, 1819-1857, who married Vienna Peters in Missouri.
3. James M. McCoun, 1820-1824.
4. Mary Elizabeth McCoun, 1842-1908, who married James Earnest.
5. Our great great grandfather Joseph Eccles "Joe" McCoun, 1825-1897, who married Mary Louise "Luta" Pepper.
6. Arabella McCoun, 1829-1833.



Biographical sketches of the children are included at the end of this biography. In this biography, Esther's husband is referred to as "Joseph" while her son is called "Joe."

Like her mother, Esther was destined to become a young widow. Unlike her mother, Esther never remarried. She was only 37 when Joseph died, but his will created a significant disincentive to remarriage, namely, the forced sale of the property. Although, under the will, Esther would in case of remarriage receive a third of the proceeds from the sale, she may have preferred to stay in the house. So long as she remained single, Esther could enjoy the use of the entire plantation during her lifetime—or not. Let's have a look at Joseph's will, then discuss it.

Joseph's death and his will

Joseph McCoun died on 19 July 1829. Possible causes of death are discussed in his biography. He left a will:⁷

In the name of God Amen.

I Joseph Maccoun of the County of Mercer and state of Kentucky being in a low and afflicted state of body but sound in mind and memory and believing my days on earth to be few do ordain this Instrument of writing as my Last Will and Testament. First, I will my soul to God who gave it and my body to the grave to be decently buried at the discretion of my surviving friends as to any worldly substance which God in his goodness has given me, I will and desire that all my just debts be paid, and the remainder disposed of in the following manner.

To wit. I will that my two Negroes Jones and Bokey be sold by my Executor to be hereafter named to the highest bidder at a credit of twelve months with all my personal Estate except the choose of two horses three cows twelve head of sheep two hogs and all the household and kitchen furniture to remain in the possession of my beloved wife Esther Maccoun to assist in the raising and educating of my children. I also will to my said wife Esther the entire use of my plantation on which I now live to assist her in raising and educating my children to remain in her hand during her life or widowhood, but should she again marry I will that all my Estate above placed in the hands of my said wife shall be sold for money and one third of the interest arising therefrom to be applied to the use and benefit of my said wife Esther during her lifetime. Secondly, I will and desire that all real or personal estate that may fall to me from my father's estate which is now pending in a suit in Chancery in the Mercer Circuit Court agreeable to a bill filed by Wilson's heirs⁸ for the settlement of said Estate, shall be sold for money and the interest arising therefrom to be applied to the benefit of my children if needed to assist in their education if not to be equally divided among them. Third, also I will that my undivided interest in the grist mill and sawmill of Kennedy and Maccoun be sold, all my Estate be equally divided amongst my children to wit Arethusa, William H.E., Mary Elizabeth, Joseph E. Maccoun and my child that yet unborn as they severally arrive at the age of twenty one years. I also desire and request that my friend Aaron James shall be my Executor to this my last Will and Testament revoking all others whatever in witness hereof. I have set my hand and affixed my seal this 18th day of July 1829.

Joseph Maccoun {Seal}

At first glance, the will appears to be straightforward. It provides a means to raise cash quickly, as Joseph directed that the two named slaves be sold to the highest bidder (ugh) along with all of his personal property except certain chosen farm animals (these animals presumably would be chosen by Esther and remain in the part of the estate for her). Also, she would keep the household and kitchen furniture during her lifetime, so it also would not be sold. Any real or personal property that may come to Joseph due to pending litigation about his father's estate would be sold and the interest arising therefrom was to be applied to the benefit of the children if needed to assist in their education if not to be equally divided among them. Joseph's undivided interest in the grist mill and sawmill of Kennedy and McCoun would also be sold with the proceeds equally divided by the children, except that each child's share would go to that child only when he or she reached age 21. The years in which the McCoun children would reach age 21 were as follows: Arethusa in 1838, William in 1840, Mary Elizabeth in 1842, and Joe in 1846. As for Joseph's real property, during her life or widowhood, Esther was granted the "entire use" of the plantation on which he then lived during her life or widowhood. If she were to remarry, the property would be sold, and the interest therefrom applied for the benefit of Joseph's children if needed for their education. Remarriage would require that the entire estate left her be put up for sale, after which she would receive a third of the proceeds while the interest in the remaining two-thirds would be divided equally among the children.

The children ranged in age from three to twelve when Joseph passed away, and the will's provisions properly call for the widow to be left with the wherewithal to provide for the minor children, including the one that would be born one month after Joseph's death.

Although the will at first glance appears appropriate for such a widow, a child who reached adulthood and wished to inherit something from the deceased father may have preferred something more than the interest on the proceeds from sale of the grist mill and sawmill, to be paid out upon his or her 21st birthday. Would a child of Joseph be entitled to inherit a share of the real and personal estate of the deceased only when Esther died or remarried? Or might such inheritance rights arise for the adult child even though the mother is still alive?

An ambiguity is created by the testator's statement that he was bequeathing her the two horses, three cows, twelve head of sheep, two hogs and all household and kitchen furniture "to assist in the raising and educating of my children."

Similarly, the grant of "the entire use of my plantation on which I now live to assist her in raising and educating my children" presents two issues. Firstly, what is left to Esther is the "use" not "the plantation," meaning that Esther was not given title to the plantation but rather a life estate. Secondly, the grant of the use of the plantation is tied to assisting "in the raising and educating of my children." What was the testator's intention when the youngest child reached age 21? Arabella, the child with whom Esther was eight months pregnant when Joseph passed away, died shortly before her fourth birthday but, if she had lived to adulthood, she would have turned 21 in 1850. Because Arabella died at age four in 1833, the youngest surviving child was Joe, who reached age 21 in 1846. Had Joseph contemplated sale of the plantation at that point, considering that the purpose of the bequest to Esther of the use of the plantation—namely, to assist in the raising and educating of the children—had been fulfilled?

A better interpretation is that, even after the last of the children reached adulthood, the will continued to entitle Esther to the use of the personal property bequeathed to her as well as the

plantation, to give full effect to the language willing to her “*the entire use of my plantation on which I now live to assist her in raising and educating my children to remain in her hand during her life or widowhood,*” and particularly the last phrase “*to remain in her hand during her life or widowhood.*” Although the will called for the plantation and other property to be sold in the event of Esther’s remarriage, with one third of the sale’s proceeds for Esther, the will lacked provision for the plantation and other property to be sold when the youngest child reached adulthood. Clearly, Joseph knew how to tie a child’s receipt of property to his or her attaining age 21, as that is exactly what he did to secure each child’s share of the interest from the sale of the two mills.

This detailed analysis of Joseph McCoun’s will shows that its provisions are open to variant interpretations. Considering the not-insubstantial possibility that, in an era in which women’s rights were few and fragile, a reviewing court might compel sale of Joseph’s real and personal property when his youngest child reached 21, Esther was justified in taking legal actions to secure her rights under the will.

Esther as widowed head of household

It is plain from Joseph’s will that he considered it essential for his children to be educated. At the time of his death, the eldest, Arethusa, was 12, William was 10, Mary Elizabeth was five, and Joe was three. As is discussed on page 18 in the biographical sketch for Mary Elizabeth, she was educated in the Springfield Convent near Springfield, Kentucky. The other children probably attended a nearby school such as the one at the New Providence Presbyterian Church to which the family belonged.⁹ After Joseph’s death, Esther became the pewholder there in his place.¹⁰

Esther appeared as head of household in the 1830 census for Mercer County as “Easter” McCoun. Her household totaled 12 persons, consisting of seven white individuals and five enslaved blacks.



The male between five and nine was Joe; the male between 10 and 14 was William; the female under five was Arabella; the female between five and nine was Mary; the female between 10 and 14 was Arethusa; the female between 30 and 39 was Esther; and the female between 70 and 19 was likely Esther’s mother, Jane Carr Eccles Thompson, whose second husband had passed away the year before. The identity of the five enslaved persons is unknown. All we know is that one was a male between 10 and 23; two were females between 10 and 23; and two were females under age 10. The enslaved persons would have worked on the farm and assisted Esther with household chores. With such sparse information, it is no wonder that enslaved persons’ descendants can rarely identify ancestors in these early census reports.

The 1840 census showed Esther McCoun as “E.E. McCoun” in her household consisting of five white persons and no enslaved persons. Three household members can be identified: Esther, age 48, was the female between 40 and 49; Arethusa, age 23, was the female between 20 and 29; and William, age 21, was the male between 20 and 29. The identities are unknown of two other household members, a boy under age five and a girl under age five. Likewise unknown is the location of Esther’s other two children, Mary, age 16, and Joe, age 15. Mary may have been at boarding school in Springfield, Kentucky.

o. 4.)

SCHEDULE of the whole number of persons within the d

NAMES OF HEADS OF FAMILIES.	FREE WHITE PERSONS, INCLUDING HEADS OF FAMILIES.																			
	MALES													FEMALES						
	Under 5	5 under 10	10 under 15	15 under 20	20 under 30	30 under 40	40 under 50	50 under 60	60 under 70	70 under 80	80 under 90	90 under 100	100 and upwards.	Under 5	5 under 10	10 under 15	15 under 20	20 under 30	30 under 40	40 under 50
J. J. McAfee				1		1												1		
Henry McCoun						1								1				1		
E. E. McCoun	1				1									1				1		1

In the 1840 census, Joe may have been the male between 15 and 19 living two doors away with J.J. McAfee, who apparently was between the ages of 30 and 39 and married. Anyone from Mercer County named McAfee is a cousin, considering that a sister of James McCoun IV, our immigrant ancestor, married Robert McAfee of the exploratory group known as the McAfee Company. J.J. McAfee may have been renting land from Esther. Later a man named John J. McAfee was aligned with her in a lawsuit, described on page eight, involving land that was part of the estate of her father-in-law, John McCoun.

Joe may have gone to work for J.J. McAfee as a way to bring income to the family from outside sources. Similarly, the presence in the household of two unknown young children suggests a possible source of income for Esther if, for example, a young father whose wife had died were boarding two youngsters with Esther. We do not know what became of the five slaves enumerated in the 1830 census. I was unable to find an 1840 slave schedule for Esther. It is possible that she had sold the slaves that appeared in the 1830 schedule or was renting them out to other farms, as was common.

Many changes came to the Esther Eccles McCoun family in the 1840s. In 1841, Arethusa got married and gave birth to the first five of her eight children; in 1842, William moved to Missouri where he married and bought property, moved with his wife to Wisconsin for a while, and fathered three children. In 1846, Mary Elizabeth married, moved to Wisconsin, and bore the eldest of her eight children.

129	Merit Cunningham	45	M	Farmer	7500
	Arthusa	31	F		
	Joseph	7	M		
	Francis	5	"		
	Mary	3	F		
	Wilson Lufford	21	M	Farmer	
130	Joseph McCoun	24	"	"	4800
	Esther	59	F		

Merit Cunningham	1	44	M	
	1	31	M	
	1	26	M	
	1	22	F	
	1	14	F	
	1	13	F	
	1	12	F	
	1	8	F	
	1	3	F	
	1	1	F	
Joseph McCoun	1	32	M	
	1	31	M	
	1	11	F	
	1	9	F	
	1	8	F	
	1	6	F	
	1	5	F	
	1	2	F	

NAMES OF SLAVE OWNERS.	Number of Slaves.	DESCRIPTION.			Fugitives from the State.
		Age.	Sex.	Color.	
1	2	2	4	2	0
Joseph McCoun	1	1	M	M	

When the 1850 census was carried out in Mercer County on 21 August, Esther was 59 and sharing the Joseph McCoun house with her son, Joe, age 24. As a reflection of the male-oriented bias of the society at that time, Joe was described as head of household and to him was attributed the ownership of real property with a value of \$4800 (\$167,200 in 2021), despite his mother's rights to the house in which they were living and her prior status as head of household.¹¹ Living next door were Esther's daughter, Arethusa, son-in-law Merit Cunningham, and three of Esther's grandchildren, as well as a

21-year-old farmer named William Ladford. The house in which the Cunninghams lived was valued at \$7500 (\$262,500 in 2021). Both households owned slaves.¹² Just as head-of-household status had been attributed to Joe, the household's nine slaves were described as Joe's also: a 32-year-old man; two women in their early twenties; three boys aged eleven, six, and one; two girls aged eight and nine, and a five-month-old baby girl.

Merit owned ten slaves: three were men aged 44, 31, and 26 and one was a woman aged 22. Three were teenaged girls aged 14, 13, and 12. Also listed were three small children, a four-year-old male; a three-year-old female, and a one-year-old female.

Esther may have been content with this arrangement. Her eldest daughter was next door, and she and her son were sharing a home. The slave ownership we today find abominable meant then that 59-year-old Esther and her son had a lot of help with the home and farm.

Joe at this point, and for quite a few years, was his mother's mainstay. But Joe was not to become one of those adult children who remains single to care for an aging parent. Instead, he met and wanted to marry Miss Mary Louise "Luta" Pepper. She was more than eight years his junior and had spent her entire life as the youngest daughter in a wealthy family in nearby Woodford County. We do not know how Joe and Luta met, but her biography offers theories. We also do not know whether Joe's impending marriage was welcomed by Esther or seen as a harbinger of trouble due to Joe's choice of a wife whose background was different, whom Esther may have perceived as pampered, and who did not conceal her disinterest in living in the house and community that Esther had long called home.

Esther went to court to protect her rights as a widow

According to family historian Marcia Horton, Esther "was "feisty."¹³ This description stems from the lawsuits initiated by Esther to secure her rights under her late husband's will as well as his share of the estate of his father, John McCoun (1754-1826), who predeceased Esther's late

husband by only two years and whose estate was mired in litigation. When in her sixties, Esther boldly went to court, suing her own children as they were among the defendants described as the “known and unknown heirs of John McCoun.” Her objective was to secure her widow’s share. Call her “feisty,” or call her “Portia-esque.” Either way, like Shakespeare’s heroine, Esther was not litigating for trivial or unjustified reasons. When she took action to secure her widow’s rights, the objective was to ensure she had a place to live.

Esther had been a widow for 26 years when in 1855 she decided to take effective action to secure her rights, possibly because of concern that, as her children all were adults, she was no longer entitled under the will to the use of the plantation. A particular concern was the 1834 settlement of litigation involving the estate of her father-in-law, John McCoun. The following appeared in the Mercer County Deed Books:¹⁴

[11 April 1855] Deed Book 29—Page 470. Frank Ballinger as Commissioner of the Mercer Circuit Court in the case of John J. McAfee and Hester [sic] McCoun, plaintiffs, and David Wilson¹⁵ and others, the known and unknown heirs of John McCoun, [deceased], defendants by virtue of the said decree, Ballinger doth convey to Hester McCoun and her heirs and assigns a tract of land in Mercer Co. containing 40 acres and being a part of a survey of 476 acres made for Joseph McCoun and being lot no 3 as designated in the plat and same now in the possession of Esther and to be held by Esther and her heirs and assigns free from the claim of the known and unknown heirs of John McCoun and all other persons. Signature: Frank Ballinger.

The above conveyance was recorded in Mercer County, 20 May 1855.

The settlement of litigation involving the estate of John McCoun apparently had apparently thrown into question Esther’s rights under Joseph’s will. In the transaction described above, a house is not mentioned, but the Joseph McCoun House met the requirement that the property be “now in the possession of” Esther. She had lived there continuously as a wife and as a widow.¹⁶

Right to Dower vs Homestead¹⁷

In Kentucky, the widow could assert a right to dower consisting of a life estate of one third of real estate that was owned by the deceased husband. The widow was required to complete a legal process seeking assignment of dower. After the death of the spouse and before the assignment of dower, the surviving spouse was entitled to possession of the decedent’s land in which the dower rights exist. A surviving spouse who does so is treated as a “tenant at will” until dower is established—or a homestead is assigned, as discussed below—and after that she lives on decedent’s land as a “tenant for life.”

The surviving spouse must elect whether to take dower or homestead, since they are mutually exclusive. The choice of a widow to remain in her late husband’s house for a few years does not give rise to a conclusion that she has elected to take homestead rather than dower. However, her continued residence in the house after a lapse of considerable time since the spouse’s death results in a legal presumption that she has by inaction elected the alternative best for her. In such cases, where she made no express election, it will be conclusively presumed that the situation in which she was living was the option most beneficial to her.

In Esther’s case, the long period of time in which she continued to reside in her late husband’s house under the language in Joseph’s will, but without obtaining an assignment of a right to dower, appears to have led to a legal presumption that her action evidenced election of

homestead. The property rights granted her do not add up to a life estate in one-third of Joseph's real property, but perhaps the personal property she owned under the will made up the difference.

There had been earlier legal actions that Esther initiated but had not completed. In 1839, ten years after her husband's 1829 death, she had a survey done, and in 1852, Esther took initial steps toward obtaining judicial recognition of her widow's property rights. With respect to her early efforts, only in 1864 did she complete the process, as seen in this passage in the Mercer County Deed Books, dated 15 March 1864:¹⁸

Kentucky's Governor, Lazarus W. Powell, "in consideration of a warrant from the Mercer County Court, granted to Esther McCoun a parcel of land containing 2 acres, 3 roods,¹⁹ and 27 square poles bearing date of 11 March 1839 being in Mercer Co. on the Salt River. Boundaries: George McAfee's preemption survey in Alexander Armstrong's line—Joseph McCoun's line."

The warrant had been registered on 14 February 1852 but was not recorded in Mercer County until 15 March 1864. Based upon the small amount of property granted by the Governor, it appears that the grant may have been a homestead right rather than a dower right, which would have entitled Esther to significantly more property, i.e., a life estate in one-third of the real property that had belonged to Joseph. Alternatively, and more likely, the grant by the Governor might have been a special type of equitable legal remedy, separate from her rights under the will or the question of homestead versus dower rights.

One might wonder why Kentucky's Governor was involved in a small matter such as this. In the 19th century, governors dealt with many individual cases like Esther's. The administrative state we know today was in its infancy. In this case, it appears that there had been introduced in the Kentucky legislature a bill for the relief of Esther McCoun. This bill became a law, signed by the Governor, with the purpose of ensuring that Esther kept her home. Such relief may have been a remedy designed to ensure that, in a society without social security programs, and in which women had minimal property rights or employment opportunities, a widow was not cast out on the streets, becoming a public charge.

What might have caused Esther to act more forcefully in 1855 than she had in 1839 or 1852 to secure judicial protection of her widow's legal rights? I believe it likely that Joe and Luta had met and were discussing marriage. Luta probably made clear to Joe already that she would marry him only if he would buy her a home in her home county, Woodford. She might have agreed to move into Joe's home for a few years, and the 1860 census—discussed below—shows that she did, living with Joe, Esther, and two of their older children. That co-habitation was likely conditioned upon an understanding that this arrangement was temporary. Joe was to buy Luta a grander home in her native county.

The only way Joe could afford to purchase in Woodford the kind of property that Luta wanted was by acquiring the inheritances of his siblings (and his mother, so that the property he owned for resale included the house). By doing this, he could amass enough land so that, by adding his kin's tracts to his, he owned a sufficiently substantial parcel of contiguous property that he could

command a good price in selling it for cash to a buyer outside the family. Mercer County court and land records show that, from 1855 to 1864, Joe was involved in a large number of lawsuits and transactions aimed at obtaining other family members' shares of their father's estate.

Esther's 1855 actions to secure her rights were at cross-purposes with Joe's first steps to persuade his three siblings—the other Joseph McCoun heirs—to give him or sell to him their interests in the tracts they had inherited from their father. Presenting the proposal to Arethusa was easy, because she lived next door. The other two siblings lived far away, Mary in Wisconsin, and William in California. Records suggest that Joe had no idea his brother was in California but rather believed William to be still in Wisconsin. William and his family had lived there a few years before returning to Missouri, followed soon thereafter by William's move alone to California. For Mary and William, Joe's long negotiation process would begin with Joe's posting letters stating his interest in acquiring their property shares, followed by back-and-forth correspondence exchanging court papers in need of signing, and finally a bank cheque to each sibling, signed by Joe. The death of William (as discussed below) in the midst of Joe's property acquisition effort was a particular problem; rather than wrangle with appointment of a guardian in Missouri for William's minor children, Joe gave up on acquiring his brother's share.

The McCoun land that Joe wanted to sell had been in the family nearly a century. It was surveyed for his great grandfather James McCoun (1716-1800) back in 1773, passed to his grandfather John McCoun by gift or by James' 1800 will, and passed down at John's death to his children including Joseph. There were ambiguities concerning who owned what parts of the ancestral property. It fell to Joe to undertake the complex, time-consuming, and expensive process needed to obtain a clear title.

It is not known what Esther thought about her son's plan to sell her late husband's ancestral land, but we can infer from what Esther *did* do that she was adamantly opposed to her own ouster from the house in which she had lived since it was built in 1820. Nor did she want to rely on something as slippery as the kindness of others.

As we have seen, before Joe's efforts to acquire McCoun property for a cash sale might have undermined Esther's right to live in her home, so in 1855 she went to Mercer County court and secured for herself a 40-acre tract that was part of the 476-acre survey done for her father-in-law, John McCoun, dating back to 1773. She also was granted judicial recognition of her rights to another 25 acres that she said was deeded to her by Elizabeth T. McCoun.²⁰ Lastly, Esther had submitted a petition for relief to the state legislature, which provided her with a 2.75-acre land grant. Esther's combined land holding, totaling 67.75 acres, included the Joseph McCoun house.

Joe and Luta began married life

The marriage of Joe and Luta took place on 2 December 1856 in Sweet Lawn, the home of her parents, Samuel and Mahala Pepper. Joe was 31 and Luta 22. After the marriage, Luta moved into the home that Esther and Joe shared, i.e., the Joseph McCoun House.

Esther's son William was killed in Mexico

Only four months after the wedding, disturbing news reached the McCoun family that Esther's older son, William, was dead. On 7 April 1857, he had been shot to death by a firing squad in the Mexican state of Sonora. William had foolishly signed on to a friend's quest, known as the Crabb Expedition, to invade Mexico and take over part of Sonora. Then he, along with Crabb

and other Americans involved in this folly, had been apprehended and executed. Because Crabb's invasion was a wholly private venture, not approved in any way by the U.S. government, there could be no official reprisals. Details are found in William's sketch at the end of this biography, at page 15.

Hearing of her eldest son's death must have been horrific for Esther. Just a few months earlier, in September 1856, word had reached her one of William's children, a nine-year-old boy named Frank, had died due to an accident when he and his 11-year-old brother were playing in their father's gun shop. William had been in California several years, but perhaps his wife, Vienna, was operating the shop. In any case, when the older boy dropped a gun, it discharged a bullet that hit Frank, who died several days later.²¹ Esther may have believed that her family life had already experienced an extraordinary amount of bad fortune and heartache, with the death of a husband in the prime of his life and two of their children. We can imagine how grief-stricken Esther might have been, hearing first about the death of a little grandson she never had the chance to meet, then of his father, her eldest son. These losses may have intensified her fears that her remaining son, Joe, might sell the very house in which she was living.

Joe and Luta started a family

Joseph E McCoun	34	M		Farmer	8000	11,100
Mary E	"	24	F			
Lue P	"	2	F			
Robert P	"	$\frac{2}{12}$	M			
Esther McCoun	68	F		/		1000

The 1860 census, taken 29 August, found Esther at age 68 sharing the Joseph McCoun house with Joe, 34; Luta, 24; and grandchildren Perla Sue ("Sue P"), two, and Robert P (our great grandfather), two months.²² The value of Joe's real estate was \$8,000 (\$263,000 in 2021) while the value of his personal property was greater, at \$11,100 (\$363,350 in 2021).

Esther, age 68, was not described as owning real property, despite her successful litigation. Her personal property was estimated to be worth \$1,000 (\$32,730 in 2021). A substantial portion of the personal property wealth reported by Joe and Esther consisted of enslaved human beings. The slave schedule accompanying the 1860 census, excerpted on the next page, was to be the nation's last, praise God, as the Civil War (1861-65) and Emancipation (1865) were imminent. However, in 1860, Joe McCoun owned ten slaves ranging in age from two to 49 years old while Esther reported ownership of one 17-year-old female.

Joe and Esther resolved their dispute, and Luta got her dream house

Luta's heart was set on moving to a fine home in Woodford County, and her husband was committed to making this happen. To do so, Joe went through an arduous process, described earlier, to acquire ancestral McCoun property for resale. Esther's success in securing a widow's share undermined Joe's competing efforts to gather family land into a substantial parcel for sale.

Fortunately, mother and son were able to achieve a happy ending. On 12 March 1864, Esther sold Joe her three land holdings for \$2,031.75, worth \$35,334 in 2021, so that he could go forward with the sale of McCoun land necessary for him to buy Luta the house she wanted. Then 72-years old, Esther probably had become more interested in a nest egg for her last years than in maintaining a house. With the tidy sum that Joe paid his mother, she could live comfortably with her daughter Arethusa, whose husband had died in 1860.

So, on 12 March 1864 Esther McCoun filed a statement²³ in Mercer County court in which she relinquished the right, title, and claim that she had to land owned by her late husband Joseph. On the same date, Arethusa McCoun Cunningham transferred to Joe, in return for a payment of \$1370.93, all her right, title, interest and claim in the land that Esther was relinquishing.²⁴ Arethusa's share consisted of a one-fourth undivided part of the interest in 111 acres, concerning which Joe had already filed in court a petition for land partition.

By insisting that Joe *pay her* for her share rather than expecting her simply to gift it to him, Esther ensured that she had money to guard against poverty in her old age. Family disagreements are painful, and those of us who descend from Esther and Joe can feel relief that mother and son were able to agree to a peaceful resolution of their dispute.

One month later Joe paid his mother for her property, and after that he and Luta on 21 April 1864 sold 173.75 acres for \$8,687, which in 2021 is worth \$151,056, to a man named John L. Jarvis. The tract sold consisted of Joe's inheritance plus land rights bought from Esther, plus that part of his siblings' shares that Joe had purchased. His sister Arethusa retained the part of her tract that included her house. Thus, a substantial portion of the land that was surveyed in 1773 for Joseph's grandfather James and father John McCoun was transferred out of McCoun family hands.

In early 1865, Joe's in-laws, Samuel and Mahala Pepper, decided to move into the home of their son, Robert, in nearby Frankfort. (Perhaps Mahala was ill: she died soon after the move.) Their desire to move into town dovetailed with the desire of their daughter and son-in-law to buy a home in Woodford County. Samuel offered to sell Joe his homestead, Sweet Lawn, shown on the next page, and its surrounding 205-acre farm. This was in the home in which Esther's daughter-

Figure 1: Slave Schedule, 1860 Census

Line	Name	Property	Slaves	Notes
15	J E McCoun	1 49	M M	27
16	" "	1 40	M B	
17	" "	1 21	M B	
18	" "	1 21	M B	
19	" "	1 19	M B	
20	" "	1 15	M B	
21	" "	1 12	M B	
22	" "	1 12	M B	
23	" "	1 7	M B	
24	" "	1 2	M B	
25	Esther McCoun	1 17	M B	
26	Arethusa Cunningham	1 50	M B	
27	" "	1 48	M B	
28	" "	1 45	M B	
29	" "	1 23	M B	
30	" "	1 22	M B	
31	" "	1 15	M B	
32	" "	1 14	M B	
33	" "	1 7	M B	
34	" "	1 7	M B	
35	" "	1 5	M B	
36	" "	1 2	M B	
37	" "	1 2	M B	



in-law Luta had been born in 1834. In addition, her parents offered to sell Joe and Luta an adjacent 82-acre tract that had once belonged to Roderick Perry (1776-1821) and Susannah Brown Perry (1785-1853), Luta's maternal grandparents.

Samuel's sale price was \$19,000, or \$326,230 in 2021 dollars, payable in three annual installments. The \$8,687 from the sale of the McCoun property more than took care of the first

installment. Woodford County Court records show Joe's purchase of the property on 18 March 1865. The deed was delivered to Joe two years later, on 25 May 1867, after Joe completed the second and third payments.²⁵

It must have been a happy day in 1865 when Joe, Luta, and their children moved into the new home, and that was where they were living at the time of the 1870 census. The house would not long be their home, however, as is recounted in the biographies of Joe and Luta. Their financial ruin, and the resulting move of Joe and his family to Texas in 1873, meant that Esther effectively lost another of her children. Joe would later return to Kentucky, but by then Esther had died.

Esther's last years

At the time of the 1870 census on 1 June, Esther had begun the last chapter of her life. She was

78 years old and living with her widowed daughter Arethusa, and several of her daughter's children (adult son, Frank, and teenagers Ella, Charlie and Susie). Also in the household was Arethusa's niece (and Esther's grandchild) Ella McCoun, age 19, the daughter of Esther's deceased son, William.

Cunningham Art	51	M	W	Wife	Home			"
Frank E.	25	M	W	Farmer				"
Ella	18	F	W	At home				"
Charlie	17	M	W	At School				"
Susie	15	F	W	At School				"
McCoun Esther	78	F	W	At home				"
Cunningham Harry	60	M	B	Farm hand				"
McCoun Clay	22	M	B	Farm hand				"
Pully George	19	M	B	Farm hand				"
Anderson Lucinda	35	F	B	Domestic Servant				"
Belia	7	F	B	Domestic Serv				"
Mary	3	F	M	Domestic Serv				"
Cunningham Mollie	8	F	B	Domestic Serv				"
McCoun Ella	19	F	W	At home				Missouri

Additionally, the household included three black male farm hands and four black or mulatto female domestic servants who are identified by name, at long last. What cannot be ascertained is whether freedom had improved the quality of their lives.

Just after Christmas that same year, Esther would receive word from Texas that Joe's wife had died of typhoid fever in Fort Worth, Texas on 27 December 1874. Mary Louise Pepper McCoun was only 40. All of Joe's children except his two oldest sons would soon appear on Esther's doorstep, as is evident in her last census, enumerated in June 1880 in Salvisa, Mercer County:

- | | | | | | | | | |
|-----|-----|-------------|---|----|----|--------------|---|---------------------|
| 247 | 255 | Chambers | W | 71 | 39 | | | Farmer |
| | | Wills on | W | 71 | 20 | Brother | 1 | Travelling Merchant |
| | | — Sue | W | 71 | 23 | Sister | 1 | Widow |
| | | — Curry | W | 71 | 42 | Son | | Widow |
| | | Jenningsham | W | 71 | 27 | Bro | | |
| | | McLean | W | 71 | 70 | Grand Mother | | |
| | | — Joseph | W | 71 | 99 | Nephew | | |
| | | — Paula | W | 71 | 19 | Niece | | |
| | | — Willie | W | 71 | 12 | Niece | | |
| | | — Katie | W | 71 | 12 | Niece | | |
| | | McKee | W | 71 | 13 | Servant | | Servant |
| | | — | W | 71 | 3 | | | |

Esther died the next year, on 12 July 1881. She was 89. She was buried next to Joseph in the cemetery of the New Providence Presbyterian Church. She had lived a long and full life and had earned her eternal rest.

Children of Esther Eccles and Joseph McCoun

Arethusa B. McCoun (1817-1874)

- Born in Mercer County, Kentucky, 11 February 1817.
- Married Merit Cunningham on 1 June 1841. Her brother Joe McCoun, only 15, was a witness.

With Merit, Arethusa had eight children:

- 21 April 1842: an unnamed stillborn daughter.
- 1843: Joseph Cunningham; in 1860 living with parents, working as farm hand.
- 1845: Francis "Frank" Cunningham; in 1880 census with Esther.
- 1847, 29 November: Mary E. Cunningham; died 11 August 1851.
- 1850, 25 August: Ella Cunningham; died without issue 25 September 1871.
- 1854 April: Charles Cunningham; in 1880 census with Esther so died at some later date
- 1856, 26 March: Sue Esther; married William Vance Wilson (1854-98) in 1878; with William had four children, Curry, Charles Francis, William Creed, and Annie; Sue died 10 March 1903 in Tazewell County, Virginia.
- 1858, 10 April: Laura; died 26 June 1859.
- Was widowed at age 43 when Merit died on 14 March 1860.
- Died in Mercer County on 10 August 1874 at age 57.
- Lived next door to or with her mother, Esther, her entire adult life.
- Was buried in New Providence Presbyterian Church cemetery.

The name, Arethusa: We do not know why Esther and Joseph chose such an unusual given name for their firstborn. Perhaps they were familiar with classical Greek mythology. Arethusa was a nymph pursued by the river god, Alpheus. In one version of the myth, she was rescued when the goddess Artemis helped Arethusa to escape to Ortygia and there transformed her into an underground spring. Ortygia is a small island off the eastern coast of Sicily, near Syracuse, that, in ancient times, was the site of important Greek communities.²⁶ Alpheus, however, made his way beneath the sea and united his water with the water of the spring.

In another version of the story, which may have been familiar to people whose books included Ovid's *Metamorphoses*,²⁷ Arethusa while bathing in the Alpheus River was seen and pursued by the river god. Artemis then changed her into a spring that, flowing underground, emerged at Ortygia. The story of Arethusa also was included in Homer's *Odyssey*.

William H. E. McCoun (1819-1857); full name may be William Henry Eccles McCoun.

- Born in Mercer County 13 February 1819.
- In the early 1840s, moved to Clay County, Missouri, near Liberty; bought a farm.
- Married Vienna Strother Sims Peters (1822-1868) in Clay County, 6 November 1842. With Vienna, William had four children:
 - 4 April 1844 in Missouri: James Philip McCoun; died 3 October 1844, age six months.
 - 4 August 1845 in Wisconsin: William Ernest McCoun; on 5 December 1872, married Susan M. Patterson (a daughter of Luta's sister, Susan) in Woodford County, Kentucky; he died 1 November 1905 in Laramie, Wyoming.
 - 25 May 1848 in Wisconsin: Frank McCoun; died of an accidental gunshot wound on 22 September 1856 in Liberty, Clay County, Missouri.

- 9 October 1850 in Missouri: Ella Esther McCoun; lived with Esther Eccles McCoun at time of 1870 census; married Conrad Withers, 6 August 1872; with him had three children; lived in Liberty, Clay County where she died 17 January 1906.
- Lived with Vienna in Hazel Green, Grant County, Wisconsin in 1848.²⁸
- In 1849, moved with Vienna and children to Liberty, Clay County, Missouri where he bought land and started a business selling guns.
- 1850 census: enumerated in Clay County with Vienna, William and Frank; Ella born there.
- About 1852: moved to California with others drawn to the Gold Rush; left Vienna and children in Missouri.
- 1854-1855: served in the California State Senate, representing Contra Costa County, across the bay from San Francisco.
- 1856, September: nine-year-old son Frank died when he and his 11-year-old brother William were playing in their father's gun shop. William dropped a gun, which discharged a bullet that hit Frank, who died a few days later.²⁹
- 7 April 1857: William executed by Mexican firing squad in Caborca, Sonora, Mexico.

While serving in the California Senate, William had become friends with another Senator, Henry Crabb. Defeated in his bid for re-election, Crabb formulated an absurd plan to invade Mexico. Married to a Mexican, Crabb was invited by a Mexican rebel named Ygnacio Pesqueira to bring a thousand fully armed Americans to the northern part of the Mexican state of Sonora, shown in black at right. In exchange for land, the Americans were to assist Pesqueira in his civil war against the government and in his battles with Apaches.



William McCoun foolishly agreed to take part in Crabb's ill-conceived plan and was among the group, led by Crabb, that reached Caborca, Sonora, in April 1857. Pesqueira had betrayed Crabb and informed authorities of the plot. When Mexican authorities had asked Crabb why he was in their country, he replied that he was there by invitation and had an interest in mining. Actually, Crabb had his own secret agenda. An ardent supporter of slavery, Crabb wished his settlement of Americans in Sonora to be admitted to the United States as a U.S. slave state. His plan was a miserable failure.

A large Mexican force easily subdued the Crabb group, which numbered less than a hundred men, as most who had been approached to join this foolish mission had declined. Crabb, McCoun, and other Americans were apprehended and on 7 April 1857 were executed by a firing squad.

The official U.S. government report on the Crabb affair described the executions and included a letter mentioning the need for William's mother (Esther) to be informed of his death.³⁰ In the United States, there was an outcry for revenge but, because the expedition was a private venture that was in no way authorized by the U.S. government, retaliation against the Mexico was not an option.

The government report included details on William McCoun's final minutes:

In the first executions it was found that the calmness of the Americans discomposed the executioners, and they shot too high or too low, in many cases only wounding their victims. The backs of the fated men were then turned to the troops, and they succeeded in aiming with better effect.

McCoun, (may he rest in peace,) owing to his great stature, was saved this torture; a ball struck him full in the breast at the first fire, and he fell dead. Crabb alone was reserved for a solitary death. He was taken to the alcalde's office, questioned, allowed to write a letter to his wife, and to have an interview with a Dr. Evans, a prisoner in the hands of the Mexicans, who had been in confinement some weeks on suspicion. The hour for his execution having arrived, he was led out, his hands stretched above his head and tied to a post in front of the building he had occupied, *his face to the post*, and his back to his executioners. At the command "fire," at least a hundred balls were fixed into his body, and all that was mortal of Henry A. Crabb hung dead, swinging by his tied hands. A Mexican stepped forward, and with a large knife severed his head from the body, the warm blood spiriting half way across the street. The head was placed on a table in front or in the office of the Juez, exposed to the jeers of the populace. It was then placed in a jar of mescal for preservation. Is there not something peculiarly terrible in such a fate for a man who has once controlled almost the destiny of a great State like California?



James McCoun (1820-1824)

- Born in Mercer County, 20 September 1820.
- Died in Mercer County, October 1824.
- Buried in the cemetery of the New Providence Presbyterian Church.

Mary Elizabeth McCoun (1824-1908)

- Born in Mercer County, 20 February 1824.
- Was educated in the Springfield Convent near Springfield, Kentucky.
- Married James H. Earnest (1818-1900), 26 May 1846; her brother Joe McCoun made an oath that the bride was 21.
- Moved with James to Lafayette County, Wisconsin, where he was a miner then a farmer.
- Died on 12 April 1908, age 84, in Milwaukee, Wisconsin.

JAMES H. EARNEST, for over three score years identified with the farming and mining interests of Lafayette county, Wis., died at his old home June 12, 1900. His birth occurred in Franklin county, Ky., Jan. 11, 1818, and in that State his parents died while he was still quite young, and he was early thrown upon his own resources.

In 1836 Mr. Earnest came alone to Wisconsin, and found work in the mines in New Diggings township, where he remained for fourteen years. About 1850 he purchased his farm, which was then unimproved, and erected good buildings for his family, with spacious barns and outbuildings for animals, of which he kept many. In politics Mr. Earnest belonged to the old Democratic party, and for sixteen years represented his county in the State Legislature. He was very prominent as a member, and was active in the promotion of many a law having for its object the welfare of the State. In the political work of his own county he was always in the front rank of workers and was looked upon as one of the most successful leaders.

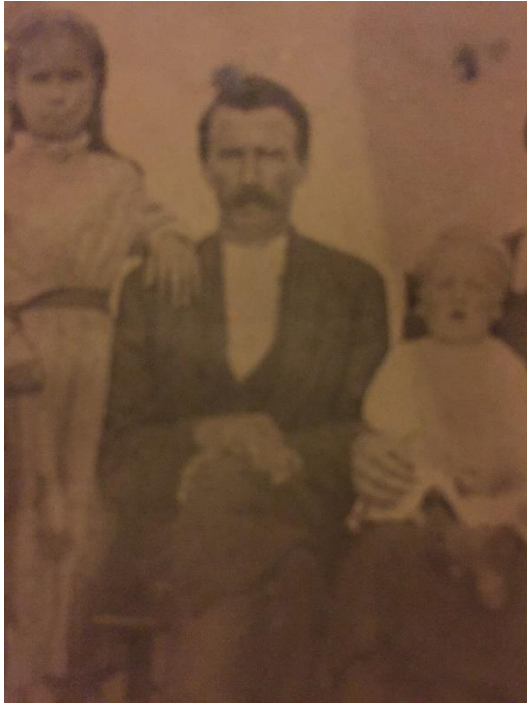
In 1846 Mr. Earnest wedded Miss Mary E. McCoun who was born in Kentucky in February, 1824, daughter of Joseph and Esther (Eccles) McCoun, who were both born and raised near Harrodsburg, Ky., in which State they both died, the former when Mrs. Earnest was quite small, and the latter when eighty years of age. There were four children in the family of Mr. and Mrs. McCoun, namely: Arethusa is the deceased wife of Merritt Cun-

ningham; William, born in 1822, married Miss Vienna Peters, and settled in Missouri, where he was engaged as a merchant, later going to Arizona, where he was killed by the Indians, leaving his widow with three children, the latter now residing in Missouri; Joseph, born in 1826, married Miss Louisa Pepper, and engaged in farming and distilling in Kentucky, later removing to Fort Worth, Texas, where his wife died, after which event he returned to Kentucky and there died in 1897, the father of three sons and three daughters—Perla, Hetty, Lueta, Robert, Samuel, and Joseph; and Mrs. Mary E. Earnest completes the family. Mrs. Earnest was educated in the Springfield Convent in Kentucky, and received a musical and literary education. She has, notwithstanding her life on the frontier, managed to keep up her education and is to-day a highly cultured woman and a fluent conversationalist. Her long years in home making in the early days are intensely interesting, and it is difficult to believe that one is listening to her own experiences. She proved herself a true helpmeet of her husband, ably seconding him in all his efforts, and taking an interest in the things about her. Eight children blessed their union: (1) Laura, born in New Diggings in May, 1847, was educated partly by the Sisters of Sinsinawa, Wis., and later in Miss Edwards Seminary in New Haven, Conn., where she acquired a good classical and musical education. She married William H. Hughes, an employe in the post office at Milwaukee. She has no children of her own, but has adopted the daughter, Marie, of her deceased sister. (2) Kate, born in August, 1849, was educated in the Sinsinawa Mound Sisters School, whence she was graduated. She married John Dunlop, a railroad man, and has three children, Laura, Earnest and John. (3) Louisa, born April 15, 1851, was gradu-

Joseph Eccles "Joe" McCoun (1825-1897); see his biography and that of Mary Louise Pepper.

- Born in Mercer County, 24 August 1825.
- Married, first, in Woodford County, Kentucky, on 2 December 1856, Mary Louise Pepper (1834-1874). With her had eight children.
- During their marriage, lived in Salvisa, Mercer County; Millville, Woodford County; and Fort Worth, Texas.
- After Mary Louise's 1874 death, moved with sons Rob and Sam to Throckmorton, Texas.
- Returned to Kentucky, working briefly in the timber industry in Wolfe County, Kentucky.

- Returned to Mercer County, Kentucky where he married, second, Mary Priscilla Adams Sea (1844-1930).
- Died there 28 March 1897. Buried in New Providence Presbyterian Church cemetery.



Above in 1872: Esther "Hettie" McCoun (1865-1955), age seven; Joe, age 47; William, about six months old; Luta, age 38; and Joseph Eccles McCoun, Jr. (1869-1941), age three. Three of Joe and Luta's children were missing from the 1871 photograph: Perla Sue McCoun (1857-1942); Robert Pepper "Rob" McCoun (1860-1940), who would become our great grandfather; Samuel Pepper McCoun (1862-1944); and Mary Louise McCoun (1867-1940). Also, a baby girl, Mahalie, had died in 1859 when she was only four days old.

Arabella McCoun

- Born in Mercer County, 27 August 1829.
- Died in Mercer County, 10 August 1833, shortly before her fourth birthday.
- Was likely named for a cousin, Arabella Anne Tilford McCoun (1802-1828), who had died one year earlier. This older Arabella McCoun had married at age 15 into the illustrious Clay family. She and her husband, the interestingly named Littleberry Bedford "L.B." Clay (1799-1879), had four children together.

I hope you enjoy my biographies. Comments on my stories are always welcome.

Linda Horton, lrhorton@comcast.net, 18 December 2021.

¹ Portia as a Radical Feminist, Exploratory Shakespeare, Dartmouth College.
<https://journeys.dartmouth.edu/exploratoryshakespeare/2015/07/14/portia-as-a-radical-feminist-the-true-merchant-of-venice/>

² 1881 engraving by Sir John Gilbert
https://www.google.com/search?rlz=1C1CHBD_enUS884US941&sxsrf=ALeKk03pk84Kuz64xEWQV3FyFjQjQCJBQ:1628562021901&source=univ&tbm=isch&q=sir+john+gilbert,+merchant+of+venice&sa=X&ved=2ahUKEwjG7LymSqXyAhU_F1kFHSM8B9kQjJkEegQIGBAC&biw=1067&bih=526#imgsrc=BRbz-f9MS5RDNM&lns=W10=

³ The Virginia birthplace of Esther's parents, based upon her entry in the 1880 census, refutes birthplace information in certain family Ancestry.com trees that her parents both were born in Monaghan, Ireland.

⁴ Kentucky became a state on 1 June 1792. <https://www.britannica.com/place/Kentucky/History>

⁵ <https://www.infoplease.com/us/states/states-by-order-of-entry-into-the-union>

⁶ Klimcheck, Maurie McCoun, *James McCoun & Margaret Walker & Their Descendants*, Vol. II, at 47.

⁷ Will of Joseph McCoun, 18 July 1829, Mercer County Will Book 9 at 228-229. The will was witnessed by Samuel McCoun, William W. Nourse (husband of Mary Eccles, 1795-1833, a sister of Esther, and William McCoun. The will was proved in September 1829. (acknowledged and recorded Mercer County 12 March 1874).

⁸ Joseph's sister, Priscilla had married a man named John Wilson (1790-1877) and with him had two sons, David and John, who were young teens when she passed away in 1828, a year before Joseph died. There was litigation involving the estate of John McCoun, father of Joseph and Priscilla, who passed away in 1826. No will has been found for John, although there was an indenture executed in the Mercer County Court on 23 August 1834 that settled a lawsuit by John's heirs. Will Book [number to be added], pages 595-597. Esther was not an heir to the estate of her father-in-law, but her four children were listed along with their first cousins. This settlement might have thrown into question the continued validity of Esther's rights under her husband's will.

⁹ Klimcheck, Maurie McCoun, *James McCoun & Margaret Walker & Their Descendants*, Vol. II, at 47.

¹⁰ McAfee, Robert B. *History of the rise and progress of the first settlement on Salt River and establishment of the New Providence Church*, published in the Register of the Kentucky State Historical Society, Vol. 29 No. 87 at 26, April 1931. <https://www.jstor.org/stable/23370120>
<http://jtenlen.drizzlehosting.com/mcafee/church/church3.html>

¹¹ This and other calculations were performed on the website, <https://www.officialdata.org/us/inflation/>

¹² The National Archive in Washington DC; Washington, DC; NARA Microform. Publication M432; Title: *Seventh Census of The United States, 1850*; Record Group: *Records of the Bureau of the Census*; Record Group Number: 29. M432.

¹³ Horton, Marcia Bryan. *A History of the McCoun Family compiled as a Memorial to my husband, Raymond Thomas Horton (1914-1987)* 1989 (hereinafter Horton, Marcia Bryan, *A History of the McCoun Family*), at 3; see also page A-23.

¹⁴ Mercer County Deed Book 29, page 470.

¹⁵ See note eight.

¹⁶ Rapier, Rebecca G. National Archives Catalog <https://catalog.archives.gov/id/123851427> Accessed 31 July 2021. 2005 application for registration of the Joseph McCoun House on the National Register of Historic Places. A portion of this application is appended to the biography of Joseph McCoun.

¹⁷ The discussion in the box relies heavily on this article: Vahlsing, Joseph H. and Hudson, William E. (1972), "Inchoate Dower--An Idea Whose Time is Past," *Kentucky Law Journal*: Vol. 60: Iss. 3, Article 5. Available at: <https://uknowledge.uky.edu/klj/vol60/iss3/5> The footnotes in the article cite relevant cases, including cases in the time period in which Esther Eccles McCoun had widow's rights to her late husband's property.

¹⁸ Mercer County Deed Book 34, page 507.

¹⁹ A rood is a British unit of land area equal to one-fourth acre. <https://www.merriam-webster.com/dictionary/rood>

²⁰ Klimcheck, Maurie McCoun, *James McCoun & Margaret Walker & Their Descendants*, Vol. II, at 236. It is not known whether the Elizabeth T. McCoun who had deeded land to Esther was her mother-in-law, Elizabeth Tilford McCoun (1757-1842), or her unmarried sister-in-law, another Elizabeth T. McCoun (1787-1855).

²¹ The incident was reported in the *Liberty Tribune* on 26 September 1856. Cited in Klimcheck, Maurie McCoun, *James McCoun & Margaret Walker & Their Descendants*, Vol. II, at 229.

²² Between Perla and Robert, there had been a baby girl named Mahalie, born 17 May 1859, who died when she was four days old.

²³ 12 March 1864, Deed Book 34—Page 507.

²⁴ 1864, 12 March. Deed Book 34—Page 508. Conveyance by Arethusa Cunningham to Joseph McCoun, both of Mercer County.

²⁵ Woodford County Deed Book 2:95.

²⁶ *Id.* at 229-230.

²⁷ *Id.* at 234, citing Deed Book 2:95.

²⁸ Deed Agreement dated 12 July 1848 found in the Mercer County, Kentucky, Judgment Box M-104 with documents pertaining to the 1861-1865 lawsuit. Cited by Klimcheck, Maurie McCoun, *James McCoun & Margaret Walker & Their Descendants*, Vol. II, at 227.

²⁹ The incident was reported in the *Liberty Tribune* on 26 September 1856. Cited in Klimcheck, Maurie McCoun, *James McCoun & Margaret Walker & Their Descendants*, Vol. II, at 229.

³⁰ U.S. Department of State (1857–1861). *Execution of Colonel Crabb and associates: Message from the President of the United States communicating official information and correspondence in relation to the execution of Colonel Crabb and his associates.*

<https://catalog.hathitrust.org/Record/011560380> William McCoun was mentioned on pages 65, 69-71, 74, 82-84. of this official document, excerpted below, which includes a reference to the need to notify William's mother (Esther) of her son's death:

ANOTHER MASSACRE

As a matter of general interest to many of our readers, we give place to the following letter from California, written by George N. Cardwell, esq., to his brother, Captain J. W. Cardwell, of this place :

SAN FRANCISCO, *June 3, 1857.*

DEAR BROTHER: By the steamer of the 20th ultimo I mailed to you, as usual, the papers in which was an account of the massacre of General H. A. Crabb and party, in Sonora, Mexico. They were looked upon there as filibusters; but that they were not you will be satisfied when you read what the papers contain sent out by the steamer that will bear this.

My object in alluding to this matter is, what I conceive to be a duty, to apprise distant relations, whom you know, of the fate of Colonel William H. McCoun, whose mother yet lives, I believe, in or near Salvisa, in your county; and also that of Dr. Henry L. Evans, formerly of Tompkinsville, Kentucky, whom you will recollect. These two gentlemen I knew well, and have had considerable intercourse with them lately. Both of them were very desirous that I should join their party—the same in which they have lost their lives.

I wish you, on receipt of this, to address a line to poor McCoun's family, as well as that of Henry Evans, who, I think, have moved to a little place called Franklin, in Allen county. There, I think, is where his mother died some few months since; and, if I mistake not, his wife still lives there. But you can write to either of his brothers—William, James, or Shelby—all of whom, I think, live in that region.

Before the expedition left here Henry told me that he had some \$1,800 that he intended to invest in stock in Mexico, if he was not pleased with Sonora. After he arrived there I received two letters from him, one from Cook's Wells, near Fort Yuma, and the other from Fort Yuma, in which he informed me that he would leave the expedition at that place and proceed on his own hook, (to use his expression,) requesting me to forward all his letters to him; and, at the same time, I wrote him at some length.

From the first information we received of the massacre he had gone before as he intended, was taken, however, as a prisoner, and, by the last advices, was shot at Altar, in Sonora, and there can be no doubt but that he, also, has fallen a victim to these worse than savages.

In regard to what McCoun left in the way of property, &c., I have not been able yet to find out anything, but will endeavor so to do.

There never was so cold-blooded a murder in the world as this has been, and none other than Mexicans could have perpetrated such a deed of blood.

If I can be of any service to the friends, I am to be found at this place.
G. N. CARDWELL.

[From the New York Tribune.]

LATER FROM CALIFORNIA.

By the arrival of the George Law, on Friday, we have California dates to the 20th of May.

* * * * *

From Sonora we have full details of the extermination of Colonel Crabb and his band of filibusters. We have heretofore printed the leading facts. The entire party, consisting of eighty-four men, including Henry A. Crabb, their commander, were massacred. On the 1st of April the party entered the town of Caborca, situated on the Gulf of California, and immediately encountered the Mexicans, under Rodriguez, who, with several of his soldiers, lost their lives. The filibusters next took possession of several houses on the plaza, but shortly thereafter were hemmed in by the foe. In this position a sort of guerilla warfare was sustained for eight days, with a loss to the Americans of twenty-five, and to the Mexicans of two hundred men.

See also https://en.wikipedia.org/wiki/Crabb_massacre