

Female Litigants before the Civil Courts of Nova Scotia, 1749–1801

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Women's experiences in the civil courts of eighteenth-century Nova Scotia suggest that gender was a significant variable in civil litigation in this early period of the province's history. Women faced great difficulties in the courts, both from their relative poverty and from the fact that the entire legal system was dominated by men. Many of the women, brought into historical light through indebtedness, were widows and by definition poor, a result of the peculiar working of the common law as it related to married women. A study of civil actions involving women, either as plaintiffs or as defendants, in Nova Scotia during the last half of the eighteenth century provides evidence regarding women's occupations and their level of literacy, and illustrates the extent to which women were involved in the economy. While women resorted to the courts far less readily than did men, women defended their interests vigorously, despite their social and legal disabilities. Indeed, the courts proved of great importance to some women in certain phases of their lives.

L'expérience féminine des tribunaux civils de la Nouvelle-Écosse du XVIII^e siècle porte à croire que le genre était une variable importante des procès civils du début de l'histoire de la province. Les femmes faisaient face à de grandes difficultés dans les tribunaux, tant du fait de leur pauvreté relative que de la domination masculine de l'appareil juridique tout entier. Beaucoup de femmes, placées sous les feux de l'histoire en raison de leur endettement, étaient des veuves, donc pauvres par définition, un résultat des rouages particuliers du common law en ce qui a trait aux femmes mariées. Une étude des poursuites civiles mettant en cause des femmes, comme plaignantes ou défenderesses, en Nouvelle-Écosse durant la deuxième moitié du XVIII^e siècle fournit des données sur les professions des femmes et leur niveau d'alphabétisation et illustre leur degré de participation à l'économie. Si les femmes s'empresaient beaucoup moins que les hommes à recourir aux tribunaux, elles n'en défendaient pas moins vigoureusement leurs intérêts en dépit de leurs handicaps sociaux et juridiques. De fait, les tribunaux ont été d'une grande importance pour certaines femmes à certaines étapes de leur vie.

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THE CHIEF END of all human institutions is the preservation of men's lives, liberties and properties. Our ancestors have manifested their wisdom in framing laws peculiarly adapted to those great purposes....¹

It is disturbing indeed to realize how little of the social history of colonial Nova Scotia has been written. Except for a very few preliminary studies of New England settlers in the 1760s, this generation of social historians appears almost to have abandoned pre-Confederation Nova Scotia. If four successive conferences in the decade of 1987 to 1997 expanded knowledge of this one immigrant group, the historians involved manifested but a casual interest in the topic and no settled ambition to attempt a general social history of the eighteenth-century colony.

This exploration of the working of the law in early Nova Scotia deepens our knowledge of eighteenth-century history of women in Nova Scotia.² As a study of women's experience of litigation, it is not principally concerned with the status of women before the law, though light is cast on the topic. The evidence marshalled here demonstrates that, if women had ready access to the courts in Nova Scotia, they still faced great, and perhaps growing, difficulties both from their relative poverty and from the fact that the entire legal system was dominated by men. From the passing of laws and the writing of legal texts, to the appointment of justices, juries, and arbitration boards, to the lawyers and their clerks, women were wholly excluded. Many of the women, brought into historical light for the first time through indebtedness, were widows and by definition poor, a situation that arose from the peculiar working of the common law as it related to married women. As married women they had endured a system that greatly diminished their right to own property in any form. Despite these systemic disabilities, some women in colonial Nova Scotia, at certain phases of their lives, found comfort in the courts, which proved of great importance to them.

Remarks made here derive from a study of some 765 civil actions, involving 427 different women, over a 53-year period between 1749 and 1801 inclusive.³ The research encompasses the study of all civil actions in the inferior court of common pleas (ICCP), the supreme court (SC), and the court of chancery for Nova Scotia before 1802. It complements research into Nova Scotia's criminal law before 1815, undertaken by Jim Phillips. The

1 Richard John Uniacke, ed., *The Statutes at Large ... of Nova Scotia* (Halifax, 1805).

2 Julian Gwyn, "Disposal of Property in Female Wills: Nova Scotia, 1750–1830", in Margaret Conrad and Barry Moody, eds., *Planter Links: Community and Culture in Colonial Nova Scotia* (Fredericton: Acadiensis Press, 2001), pp. 188–212. Research profited from the advice of Barry Cahill, Government Archives Division, NSARM. I wish to thank Carol Tobin for editorial help.

3 The sources at the Nova Scotia archives include RG36a, court of chancery (31 causes); RG37, Halifax county inferior court of common pleas (262 cases); RG37, Kings county inferior court of common pleas (two cases); RG37, Hants county inferior court of common pleas (one case); RG37, Lunenburg county inferior court of common pleas (22 cases); RG37, Shelburne county inferior court of common pleas (52 cases); and RG39C, supreme court (394 cases).

study includes all civil cases in which at least one of the litigants was female. Not more than 5 per cent of the estimated 15,300 surviving civil actions through 1801 involved women, either as plaintiffs or as defendants. In a few cases relating to real property or assault — a dozen of which appear — even female minors were occasionally involved. Among other things, a study of these cases illustrates the extent to which women acted as executrices of wills or administratrices of estates. It helps define female occupations, reveals evidence about female literacy, and provides illustration of the extent to which such women were involved in the economy.

The extensive concern for gender history that has characterized much recent historical writing has focused new attention on women's involvement in litigation. In colonial American legal historiography, of which this study forms a part, there has emerged in the last few years a "bustling academic cottage industry".⁴ Bruce Mann has noted that civil procedure, not criminal, was the form of law that "touched most people".⁵ Calling for more research on the court actions of women, Terri Snyder deplors the lack of research on litigants and litigation. "The county court was a central institution in the colonial South," she writes, "but we know little about its caseload."⁶ Cornelia Hughes Dayton complains that evidence from civil suits has rarely touched "the issue of women and gender".⁷ A rare example has been Mary Beth Norton's interest in women litigants from late-seventeenth-century Maryland.⁸ Useful scholarship on women and property in the colonial era was pioneered by Marylynn Salmon, who studied the period from 1750 to 1830, and by Linda Briggs Biemer.⁹

4 Richard J. Ross, "The Legal Past of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History", *William and Mary Quarterly*, vol. 50 (1993), p. 30, n. 9.

5 Bruce H. Mann, *Neighbors and Strangers: Law and Community in Early Connecticut* (Chapel Hill: North Carolina University Press, 1987), p. 6. Lack of concern for the social history of the civil law and the civil courts in Great Britain was noted by G. R. Rubin, "The County Courts and the Tally Trade, 1846–1914", in G. R. Rubin and David Sugarman, eds., *Law, Economy and Society, 1750–1914: Essays in the History of English Law* (Abingdon: Professional Books, 1984), p. 321. See Rubin's "Law, Poverty and Imprisonment for Debt, 1868–1914" in the same volume, pp. i–xv, 241–299, that found that the law was applied to those who were "simply too poor to pay off their consumer debts ... imprisonment for debt struck at those unable to pay rather than against those unwilling to pay" (p. 322). According to Timothy Stretton, "Social historians have only recently begun to realize the importance of studying private litigation." See *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998), p. 4.

6 Terri L. Snyder, "Legal History of the Colonial South: Assessment and Suggestions", *William and Mary Quarterly*, vol. 50 (1993), pp. 18–29.

7 Cornelia Hughes Dayton, "Turning Points and the Relevance of Colonial Legal History", *William and Mary Quarterly*, vol. 50 (1993), p. 13.

8 Mary Beth Norton, "Gender and Defamation in Seventeenth-Century Maryland", *William and Mary Quarterly*, vol. 44 (1987), pp. 3–39.

9 Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986). Salmon studied Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, and South Carolina. Linda Briggs Biemer, *Women and Property in Colonial New York: The Transition from Dutch to English Law, 1643–1727* (Ann Arbor: UMI Research Press, 1983).

Within the socio-legal historiography of British North America to 1867, concern for women and civil procedure is a welcome balance to the focus on criminal activity among women.¹⁰ If women were to appear before the courts, they were more likely to do so as a result of civil litigation, rather than through criminal process. Scholars who study nineteenth-century Ontario and pre-1825 Quebec understand this.¹¹ Among them, Evelyn Kolish explicitly advocates the use of court records in the form of civil action case files for the social history of women. Nova Scotia's historiography, while in part reflecting a particular focus on deviant or victimized women,¹² was enriched by the work of Philip Girard and Rebecca Veinott on women's property.¹³ As well, for Nova Scotia there are studies of rare civil matters like divorce and child custody.¹⁴ Civil actions in the courts particularize disputes not on such matters, but principally on debt and credit, defamation, and dower rights. In

- 10 New research is by Trudi Dale Johnson, "Matrimonial Property Law in Newfoundland to the End of the Nineteenth Century" (PhD thesis, Memorial University of Newfoundland, 1998), and her "Women and Inheritance in Nineteenth-Century Newfoundland" (paper presented at the Canadian Historical Association conference, Quebec City, 2002); Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), mentions Nova Scotians in matters of prostitution, infanticide, and wife battery. See as well J. Phillips, "'Securing Obedience to Necessary Laws': The Criminal Law in Eighteenth-Century Nova Scotia", *Nova Scotia Historical Review*, vol. 12 (December 1992), pp. 87–124, and his "Women, Crime and Criminal Justice in Early Halifax, 1750–1800", in J. Phillips, T. Lot, and S. Lewthwaite, eds., *Essays in the History of Canadian Law*, vol. 5: *Crime and Criminal Justice in Canadian History* (Toronto: University of Toronto Press, 1994).
- 11 J. A. Dickinson, *Justice et justiciables : la procédure civile à la prévôté de Québec, 1667–1759* (Quebec: Les Presses de l'Université Laval, 1982); Evelyn Kolish, "Some Aspects of Civil Litigation in Lower Canada, 1785–1825: Towards the Use of Court Records for Canadian Social History", *Canadian Historical Review*, vol. 70 (1988), pp. 337–365; Bettina Bradbury et al., "Property and Marriage: The Law and the Practice in Early Nineteenth-Century Montreal", *Histoire sociale/ Social History*, vol. 26, no. 51 (May 1993), pp. 9–39; Lori Chambers, *Married Women and Property Law in Victorian Ontario* (Toronto: University of Toronto Press, 1997).
- 12 As examples, see Rainer Baehre, "From Bridewell to Federal Penitentiary: Prisons and Punishment in Nova Scotia before 1880", in Philip Girard and J. Phillips, eds., *Essays in the History of Canadian Law*, vol. 3: *Nova Scotia* (Toronto: University of Toronto Press, 1990), pp. 163–199; B. Jane Price, "'Raised in Rockhead. Died in the Poor House': Female Petty Criminals in Halifax, 1864–1890", in Girard and Phillips, eds., *Essays in the History of Canadian Law*, vol. 3, pp. 200–231; Judith Fingard, *The Dark Side of Life in Victorian Halifax* (Porter's Lake, N.S.: Pottersfield Press, 1989).
- 13 Philip Girard, "Married Women's Property, Chancery Abolition, and Insolvency Law: Law Reform in Nova Scotia, 1820–1867", in Girard and Phillips, eds., *Essays in the History of Canadian Law*, vol. 3; Philip Girard and Rebecca Veinott, "Married Women's Property Law In Nova Scotia, 1850–1910", in Janet Guildford and Suzanne Morton, eds., *Separate Spheres: Women's Worlds in the 19th Century Maritimes* (Fredericton: Acadiensis Press, 1994), pp. 67–91.
- 14 Examples are James Snell, "Marital Cruelty: Women and the Nova Scotia Divorce Court, 1900–1939", *Acadiensis*, vol. 13 (Autumn 1988), pp. 3–32; Kimberley Smith Maynard, "Divorce in Nova Scotia, 1750–1910", in Girard and Phillips, eds., *Essays in the History of Canadian Law*, vol. 3, pp. 232–272; Rebecca Veinott, "Child Custody and Divorce: A Nova Scotia Study, 1868–1910", in Girard and Phillips, eds., *Essays in the History of Canadian Law*, vol. 3, pp. 273–302; Judith Fingard, "The Prevention of Cruelty, Marriage Breakdown and the Rights of Wives in Nova Scotia, 1880–1900", in Guildford and Morton, eds., *Separate Spheres*, pp. 211–231.

the court of chancery, installed in Nova Scotia from 1751 and which Salmon believes instituted a set of rules and precedents favouring “greater independence for women”, the business of three-quarters of the cases was mortgage foreclosure, while much of the rest concerned injunctions against proceedings simultaneously being carried on in other courts.¹⁵ Married women frequently found themselves, from the 1750s, enmeshed in civil actions as administratrices of the estates of their late husbands, even when such women had remarried. Then, they were named as co-plaintiffs or co-defendants with their new husbands. In addition, the study of such civil actions provides evidence of women in the economic sphere, hitherto obscure, at least in the historiography of early Nova Scotia.

Women’s Property Rights and the Courts

The law in Nova Scotia, as elsewhere in British America, reflected the contemporary understanding of marriage that defined the status of most women.¹⁶ During marriage, for instance, a woman could own, but not control, property. Her personal property came under her husband’s exclusive control. He could spend her wages, appropriate her clothing and jewellery, and sell her wares and the produce of her garden or dairy. Her services belonged to him. He controlled rents and disposed of profits. Her husband gained the right, but not the responsibility, for prosecuting suits regarding her property; she could not compel him to do so. Yet he could not alienate her realty unless she consented. The *feme covert* could not contract alone, but only with her husband. She could operate her own business only if her husband gave his written consent. Alone she could not sue for payment, but only as her husband’s agent. “In Orwellian language, she became an ‘unperson’.”¹⁷

15 Salmon, *Women and the Law of Property*, p. 185. She believes that, since “chancery administered trust estates, the vehicle under which wives owned property separately from their husbands, the presence or absence of an equity court virtually determined a colony’s position on female separate estates” (p. 11). For chancery, see Girard, “Married Women’s Property”; Barry Cahill, “Bleak House Revisited: The Records and Papers of the Court of Chancery of Nova Scotia, 1751–1855”, *Archivaria*, vol. 29 (Winter 1989–1990), pp. 149–167; Jim Cruickshank, “The Chancery Court of Nova Scotia: Jurisdiction and Procedure, 1751–1855”, *Dalhousie Journal of Legal Studies*, vol. 1 (1992), pp. 27–48. Chancery courts existed in New York, Maryland, Virginia, and South Carolina before 1776; see Salmon, *Women and the Law of Property*, p. 11. Established in Upper Canada only in 1837, the court was given jurisdiction in specified equity matters: fraud, trusts, executors and administrators, mortgages, dower, infants, “idiots and lunatics” and their estates, and specific performance of contracts.

16 See Girard and Veinott, “Married Women’s Property Law in Nova Scotia”; Constance Backhouse, “Married Women’s Property Law in Nineteenth-Century Canada”, *Law and History Review*, vol. 6 (1988), pp. 211–257; Norma Basch, *In the Eyes of the Law: Marriage and Property in Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982); Richard H. Chused, “Married Women’s Property Law: 1800–1850”, *Georgetown Law Journal*, vol. 71 (1983), pp. 1359–1425; Stretton, *Women Waging Law in Elizabethan England*. A useful contemporary study is *The Laws Respecting Women, as Regards Their Natural Rights, or Their Connections and Conduct ...* (London, 1777).

17 Joan Perkin, *Women and Marriage in Nineteenth-Century England* (London: Routledge, 1989), p. 2.

Owing to a wife's dower rights, purchasers wanted her consent before they would buy land from her husband. The widow enjoyed a one-third dower right to whatever freehold property her husband owned in his lifetime. In Nova Scotia, by a 1768 *Act for the Convenient and Speedy Assignment of Dower*, a widow had to be granted her dower within a month of her husband's death, or she gained the right to sue freeholders, with rights to damages.¹⁸ By a further act in 1771 *To Secure the Title of Purchasers Against Claims of Dower*, to ensure that consent to any sale was freely given by the wife, she had to acknowledge before a Justice of the Peace that she had done so "freely, voluntarily, and without compulsion from her husband", which undertaking the justice had to certify on the deed of conveyance.¹⁹ She had a life interest only and could not herself convey such real property nor undermine its value by extravagant waste. If she died childless, the property went to her husband's heirs, not hers. If her husband died insolvent, her dower rights preceded the demands of his creditors. As a widow she recovered all remaining land which at the time of her husband's death she had brought into the marriage, as well as all land they had jointly acquired during the marriage. A widow also had a one-third claim to her husband's personal effects, if he died intestate. The effect of the law on a widow ensured that her standard of living would fall dramatically compared to the one she had enjoyed when married. Even when she needed her late husband's property, the courts denied it her. Thus widows without families tended to become a burden on public charity.

An elaborate court system was well rooted in Nova Scotia by 1783.²⁰ English justice was meted out at Annapolis Royal decades before the centre of government was shifted to Halifax in 1749. The first governor, with his appointed council, constituted a general court and established a county court, consciously modelling themselves on the court system in Massachusetts. In 1752 the council transformed the county court into the inferior court of common pleas, as a court of civil jurisdiction. When the assembly first convened in 1758, it confirmed the existence of the courts of judicature and ratified their proceedings. In 1761 it established inferior courts of common pleas beyond Halifax, first in Lunenburg, Kings, and Annapolis counties, and then in Queens county in 1770, in Cumberland in 1774, Yarmouth in 1775, and Colchester and Shelburne in 1783.²¹ Only in Halifax did the inferior court meet four times a year (reduced to three in 1780); elsewhere it first met twice

18 8 Geo. III, c. 8.

19 11 Geo. III, c. 6.

20 T. G. Barnes, " 'As Near as May Be Agreeable to the Laws of this Kingdom': Legal Birthright and Legal Baggage at Chebucto, 1749", *Dalhousie Law Journal*, vol. 8 (June 1984), pp. 1-23; Barry Cahill, "James Monk's Observations on the Courts of Law in Nova Scotia, 1775", *University of New Brunswick Law Journal*, vol. 36 (1987), pp. 131-145, and his "Richard Gibbons's 'Review' of the Administration of Justice in Nova Scotia, 1774", *University of New Brunswick Law Journal*, vol. 37 (1988), pp. 34-58; Sandra E. Oxner, "The Evolution of the Lower Court of Nova Scotia", *Dalhousie Law Journal*, vol. 8 (June 1984), pp. 59-80.

21 1 Geo. III, c. 13.

yearly and later three times.²² The justices of such courts remained without the least legal training.

The general court became the supreme court only when a suitably trained and experienced chief justice took over in October 1754. In 1764 he was given two assistant justices, but until 1773 they were not allowed to act in his absence. At first it met only twice a year but, in response to an increased number of suits, in 1768 expanded to meeting four times a year.²³ In an attempt to reduce the costs of suits, the assembly from 1774 sent supreme court justices on circuit to nearby Kings and more distant Cumberland and Annapolis, where two of any three judges could hold sittings, acquiring thereby all the legal authority of the Halifax supreme court.²⁴ They held the jurisdiction of the court of king's bench (criminal), common pleas (civil), and exchequer (crown revenue).

In 1765 the assembly permitted the supreme court and inferior courts of common pleas to proceed in matters of debt in a summary way by witnesses, to examine the merits of causes of action, the value of which did not exceed £10 (amended in 1773 to £20), subject to a writ of error brought to the supreme court, when the judgement exceeded £5.²⁵ Suits for sums below £1 could be dealt with by a single justice, and under £3 by two (amended in 1771 to one justice).²⁶ If the debtor conceded the accuracy of the debt, whatever its size, a grant of execution could be made by one justice.²⁷ In 1774 a new act denied the right of appeal in summary trials for awards of less than £3 and narrowed the scope of summary trials by excluding any debt arising from rent from leases "or any other real contract or specialty, or any contract concerning matrimony".²⁸

The governor acted as chancellor in the court of chancery, where the assistant (common law) judges acted as masters of chancery.²⁹ This was an equity court, with remedies derived from its own peculiar jurisdiction. It was the sole court where foreclosure of a mortgage could occur. It performed the role of a *de facto* appellate court of error, where supreme court trials, determined by the jury's verdict, sometimes in contradiction to the bench, could be judicially reviewed, often first by the successful application for an injunction to stay the supreme court's proceedings and then by full adjudication of the cause in chancery leading to a final decree. It contested probate matters and breach of contract and dealt with guardianships, trusts, and personal property.

22 20 Geo. III, c. 1. This applied as well to the supreme court.

23 8 Geo. III, c. 5.

24 14 Geo. III, c. 6.

25 13 Geo. III, c. 9, para. 1–2, "if upon examination the matters of fact appeared doubtful, and arbitration was not resorted to, a jury trial would be ordered".

26 11 Geo. III, c. 21, para. 4.

27 5 Geo. III, c. 11.

28 14 Geo. III, c. 15, para 4. A further amending act was passed in 1775: 15 Geo. III, c. 3.

29 Charles J. Townshend, *History of the Court of Chancery in Nova Scotia* (Toronto: Carswell, 1900).

Table 1 Literacy Among Female Litigants, Nova Scotia, 1749–1801

Status	Literate	Illiterate	Unknown	Total
Minor	–	–	12	12
Spinster	5	6	51	62
Wife	8	8	87	103
Widow	40	28	122	190
Unknown	11	2	47	60
Total	64	44	319	427

Source: Archives of Nova Scotia, court records in RG36a (court of chancery), RG37 (inferior court of common pleas), RG39C (supreme court).

Literacy, Social Status, and Participation in the Economy

The courts' case files first provide some evidence about female literacy. In such cases, the measure used is the demonstrated ability of the litigant to sign her name. Evidence derives from several possible sources. If a plaintiff appeared without a lawyer, before a writ of summons was issued, she signed a sworn declaration. Otherwise the lawyer or her agent — always a male — might act for her. If she was not the principal plaintiff, her husband, acting for her, would sign the declaration. Frequently enough, the case file is so incomplete that this key document is altogether missing. If the case related to a debt owed her, her signature might appear on the account submitted. If a creditor submitted, as evidence, her note of hand or promissory note, the ability to sign her name would immediately be apparent. Such documents are rare. Of the 427 female litigants, the level of literacy is known for one-quarter. Of these 108, the marital status of 95 (88 per cent) is known. Although 11 of the 13 whose marital status is unknown were literate, overall some 59 per cent of the sample were literate (see Table 1).

Illiteracy was the condition of 55 per cent of the few spinsters for whom a record survives. Half the wives and about 41 per cent of widows whose status is known were illiterate. In general, women litigants were less likely to be literate in Lunenburg, more literate in Shelburne, and somewhere in between in Halifax. The relatively high female literacy level in Shelburne is probably explained by the nature of the society there, composed principally of recently arrived refugees from the United States, where, during the colonial era, a relatively high level of literacy, compared with other places, had been attained by the 1770s. Low literacy levels among female litigants observed in Lunenburg probably reflect the general absence of schools in that district in the eighteenth century.

Secondly, there is some evidence about female occupations to be derived from the court files. Therein, women litigants were usually described by their marital status, while their occupations were only infrequently assigned. When

Table 2 Occupations Among Female Litigants, 1749–1801

Occupations	Number	Literate	Illiterate	Unknown
Boardinghouse keeper	17	6	8	3
Dealer	6	–	2	4
Fisherwoman	1	–	–	1
Mantua-maker / milliner	6	3	–	3
Merchant	2	1	–	1
Midwife	2	–	–	2
Prostitute	1	–	–	1
Servant / slave	9	1	2	6
Shopkeeper / retailer	12	3	2	7
Tavernkeeper / innholder	10	2	–	8
Trader	21	6	2	13
Total	87	22	16	49

Source: Archives of Nova Scotia, court records in RG36a, RG37, RG39C.

we cross-tabulate literacy results with occupations, the following results emerge. The occupations of only 87 (20.4 per cent) of the 426 women were established. The level of literacy of 38 (43.7 per cent) of these women is known. Of these, almost 58 per cent were literate and 42 per cent illiterate. If a merchant, trader, retailer, or mantua-maker, the individual was more likely to be literate, whereas so-called “dealers” were more likely to be illiterate, as were those, mainly widows, who took in boarders and acted as launderers for their lodgers. The evidence for the rest of the occupational groups is too thin from which to draw useful inferences. For the period from 1749 to 1783, the proportion of literate to illiterate had scarcely changed. Before 1784, about 57 per cent of women in colonial Nova Scotia, in the first generation after the Halifax settlement, were literate and 43 per cent were illiterate. This would be more an indication of the literacy levels in the places from which this first generation had emigrated, rather than of the system of education available to them in the colony before 1801, where teachers, wholly unregulated as a profession, took in a few pupils for a fee.³⁰ Those who came before the courts in Halifax had been born principally in England, which then gave inconspicuous attention to the education of the masses, and in New England, which had a rather more heightened concern.

Most of the occupations noted here were derived from the court records (see Table 2). From internal evidence, several more, especially tavernkeepers and widows who offered room and board as well as laundering services to lodgers, can safely be assigned a principal occupation. The sole alleged prostitute had been a plaintiff in a defamation suit complaining of this description

30 In 1774 Mrs. Blackburn opened a school for ladies at the Corner House on the Grand Parade; see *Nova Scotia Gazette and Weekly Chronicle*, August 9, 1774. Information from J. Phillips.

of herself by a male Halifax capitalist. Incidentally, the fact that the occupations of almost 80 per cent of those in the sample are unknown, at least from court documents, contrasts with the information given for male litigants, whether their cases involved women or other men. Almost invariably, men were identified by occupation or social status. This applied even to the most humble common labourer, fisherman, mariner, truckman, bellman, summoner, or soldier. In this regard, the treatment of women in Nova Scotia's court records mirrored that found elsewhere in British America.

As far as marital status is concerned (and this will surprise no one who has worked with such court records), widows are prominent among the principals in civil actions. Of the 367 identified by marital status, some 190 (51.8 per cent) were widows. Of these, 46 appeared as principals in civil actions acting solely as executrices or administratrices of estates. Two others acted under the power of lawyers. Additionally, three had remarried, while still acting as executrices or administratrices of their late husbands' estates. The remaining 51 widows acted as plaintiffs or defendants on their own, without any reference to a power of lawyer or to powers from the court of probate. Of the 177 remaining in the sample, 103 (28.1 per cent of those whose marital status is known) were identified as wives. They acted in concert with their husbands, as co-plaintiffs or co-defendants. Of the 74 spinsters, 12 were minors. Almost 15 per cent of the 427 women have yet to be identified by marital status. Instead, the courts sometimes identified them merely by their occupations without reference to their marital status. They were probably spinsters or widows.

Thirdly, such court records also can be employed to provide some preliminary observations about the social structure of eighteenth-century Nova Scotia (see Table 3). Some 15 of the litigants appearing up to 1801 were not residents of Nova Scotia and were deleted from the sample. The remaining 412 represented the entire non-Native social spectrum.³¹ What follows derives from those litigants whose occupations or social status can reasonably be determined, from either their own principal occupations or those of their husbands, brothers, sisters, parents, late husbands, or companions. The elite, some 40 in number (9.7 per cent), have been subdivided first between those who were widows of those called "Esquire" or whose fathers bore that appellation, or whose husbands had been considerable merchants or public figures in Halifax. Secondly, this elite group included those whose husbands

31 See Carole Shammas, "The Female Social Structure of Philadelphia in 1775", *Pennsylvania Magazine of History and Biography*, vol. 107 (1983), pp. 69–83. She found that female household heads were very poor, with some 59% being exempted from municipal taxation, as compared to 13% of male household heads. She concluded that economic survival drove women to marriage and into remarriage. She drew on Susan Edith Klepp, "Philadelphia in Transition: A Demographic History of the City and its Occupational Groups" (PhD dissertation, University of Pennsylvania, 1980), and Frances May Manges, "Women Shopkeepers, Tavernkeepers, and Artisans in Colonial Philadelphia" (PhD dissertation, University of Pennsylvania, 1958).

Table 3 Social Rank of Female Litigants, 1749–1801

Social Rank	Number	%
Elite	40	9.7
Esquire and merchant	21	
Official and professional	19	
Middling Rank	187	45.5
Upper crust	32	
Agriculturalist	40	
Mariner	12	
Lower commercial	103	
Lower Order	158	38.5
Artisan	34	
Other	124	
Unknown	25	6.3
Total	411	100.0

Source: Archives of Nova Scotia, court records in RG36a, RG37, RG39C.

were called gentlemen and acted as officials, military officers, lawyers, or clergymen. In this rather primitive early stage of Nova Scotia's development as a British colony, few, however, whether connected to surgeons, military officers, or those who called themselves "gentlemen", were wholly removed from either manual labour or a direct involvement in the commercial life of the marketplace in Halifax, Shelburne, or Lunenburg, where the great bulk of the litigants resided. The middling ranks — a term used in contemporary England — embraced an upper crust that included widowed landowners, who rented land to either rural or urban tenants.³² Others were agriculturalists. Much later, there emerged at least three gradients among agriculturalists, from the more prosperous farming families who regularly produced surpluses, through subsistence farmers, to the very poor semi-subsistence ones. Yet in this early colonial period, when agriculture was rarely more than subsistence, there is little reason to subdivide this group. Social differences derived from greatly varying levels of wealth thus cannot in the still primitive state of the colony's economy be ascribed to farmers and their wives. Below them were the wives of mariners and fishermen and a great variety of those active in the retail sector of the economy. Finally, what is termed here the lower orders made their living strictly by their physical labour, but not in farming or on the sea. These included the better-off wives and widows of

32 Compare two contemporary estimates of social structure for England, based on income, by Joseph Massie in 1760 and by Patrick Colquhoun in 1803. For Massie, see Peter Mathias, "The Social Structure in the Eighteenth Century: A Calculation by Joseph Massie", in *The Transformation of England: Essays in the Economic and Social History of England in the Eighteenth Century* (London: Methuen 1979), pp. 171–187; Patrick Colquhoun, *A Treatise on Indigence* (London, 1806).

skilled artisans, or were themselves mantua-makers or midwives, as well as widows doing laundry and feeding boarders. Among the rest were found the slaves and servants, as well as the wives of soldiers, labourers, and dealers of the lower orders.

This approach to social hierarchy by occupation masks two distinct periods in the immigration history of Nova Scotia. Such early Nova Scotian society was anything but static. If the study of female litigants has value, it demonstrates that the loyalist refugee influx around 1783, while slightly diluting the proportionate size of the elite group, greatly swelled those occupational groups composing the lower-middle ranks and the lower orders. This evidence suggests that the loyalist influx attracted a disproportionately larger body of poorer families of the manual labour classes than better-off families of the elite and the higher middling ranks, a conclusion that fits adequately with what is known about loyalist refugees in general.³³

The bulk of the 765 suits related to debt. In all, such suits, or causes as they were termed in the court of chancery, numbered 645 (84.5 per cent). This approximates the findings of Clinton Francis for civil law courts in England between 1740 and 1840, and exceeds the 80 per cent estimate that Kolish made for Montreal and Quebec for 1785–1787, 1795, 1805, and 1815.³⁴ The variety of cases is noted in Table 4. The actions relating to assaults were not treated as criminal cases, but dealt with by requests for damages. One case dealt with separation, while four remarkable cases concerned the personal freedom of Blacks.

Cases for the recovery of debt provide welcome evidence of women's participation in the formal economy. Incidentally, they supplement comments on women in the economy from account books for Horton township.³⁵ The evidence describes the integral part that women occupied within the business world of eighteenth-century Nova Scotia. That world was built upon an elaborate system of credit flowing first from Great Britain. In the absence of banks, credit was extended by those with even the smallest amounts to advance, such as impoverished widows to their lodgers. Elsewhere credit, underpinning the Atlantic economy, was the sinew of inter-colonial trade, and after 1783 the trade between Nova Scotia and the United States. A few women were drawn into this form of external commerce. Most generated their debts and extended their credit within the confines of Nova Scotia's internal economy. The principal instruments of this system in the ledgers maintained by

33 See Neil MacKinnon, *This Unfriendly Soil: The Loyalist Experience in Nova Scotia 1783–1791* (Montreal: McGill-Queen's University Press, 1986).

34 Clinton W. Francis, "Practice, Strategy and Institution: Debt Collection in the English Common-Law Courts, 1740–1840", *Northwestern University Law Review*, vol. 80 (1980), p. 810; Kolish, "Some Aspects of Civil Litigation", Table 8, p. 352.

35 Elizabeth Mancke, "At the Counter of the General Store: Women and the Economy in Eighteenth-Century Horton, Nova Scotia", in Margaret Conrad, ed., *Intimate Relations: Family and Community in Planter Nova Scotia, 1759–1800* (Fredericton: Acadiensis Press, 1995), pp. 167–181.

Table 4 Case Types for Female Litigants in Nova Scotia, 1749–1801

Case Type	Inferior court of common pleas				Supreme court	Court of chancery	Total no.	%
	Lun	Shel	Misc	Hfx				
Debt	2	49	3	227	346	19	645	84.4
Ejection / trespass	1	–	–	7	22	2	32	4.2
Slander	9	2	1	9	4	–	25	3.3
Dower rights	–	–	–	–	10	–	10	1.3
Assault	2	–	–	2	3	–	7	0.9
Personal freedom	–	–	–	2	2	–	4	0.5
Breach of promise	2	–	–	–	2	–	4	0.5
Relief / injunction	–	–	–	–	–	7	7	0.9
Other	–	–	–	3	4	3	10	1.3
No details	6	1	–	12	2	–	21	2.7
Total	22	52	4	262	395	31	766	100.0

Source: Archives of Nova Scotia, court records in RG36a, RG37, RG39C.

Table 5 Debts Receivable or Payable by Female Litigants, 1749–1801

Value	Number	%	Cumulative %
Under £5	80	13.2	
Under £10	135	22.3	35.5
Under £15	82	13.6	49.1
Under £20	44	7.3	56.4
Under £50	111	18.3	74.7
Under £100	53	8.8	83.5
Under £300	64	10.6	94.1
Under £1,000	24	3.9	98.0
Under £10,000	12	2.0	100.0
Total	65	100.0	100.0
No details	40		
Total cases	645		

Source: Archives of Nova Scotia, court records in RG36a, RG37, RG39C.

retailers and wholesalers were mortgages on real property, promissory notes, and bills of exchange. All such creditors, whether London merchant banker or Halifax widow, were simultaneously also debtors.

Of the 605 suits for which adequate detail has survived, the following picture emerges on the size of debt (see Table 5). Altogether 35 per cent of debts were for less than £10 (43 per cent before 1783), while almost two-thirds were under £30 and 83 per cent under £100 (87 per cent before 1783). War-induced inflation, especially from 1793, in prices of goods and land had driven up the average size of these small debts.³⁶

That so many of the debts were for relatively small amounts should not surprise us. The income earned by women was small when compared to that earned by men, and many in this early stage of economic development in Nova Scotia were still very poor. The relative poverty of small debtors was no bar to them being pursued through the courts. What is perhaps surprising is the relatively large size of debts payable by some women, while acting for the estates of the recently deceased.

Many of these cases were pursued by women who were acting as administratrices of intestate estates or as executrices of wills. Some 90 (21 per cent) of the 427 litigants in 257 (33.6 per cent) of the 765 suits were thus identified in the court files as acting as either administratrices or co-administratrices of estates or executrices or co-executrices of wills. Of these, 76 were widows, only three of whom had remarried. The 14 others acted as executri-

³⁶ Julian Gwyn, *Excessive Expectations: Maritime Commerce and the Economic Development of Nova Scotia, 1740–1870* (Montreal and Kingston: McGill-Queen's University Press, 1998), pp. 21–24.

ces for their fathers, brothers, former masters, and, in the case of Carolina Henrietta Bedford in 1774, her mother, Finilia Lockman.

Anglo-American elements in early Nova Scotian society, in contrast to other groups, made the fullest use of the court system. Acadian women were simply absent from the civil law courts in this era, though Acadian men, as litigants, were involved in civil actions with other men. This was probably not passive resistance to British rule, as André Morel suggests for the behaviour of Canadiens in Quebec between 1764 and 1774.³⁷ Rather, as T. G. Barnes demonstrates, before 1749 Acadians, at least in the hinterland of Annapolis Royal, were integrated into the English juridical world.³⁸ When they began to drift back to Nova Scotia after 1763, they may have sorted out their individual disputes within their own communities without reference to the law courts. Similarly, in proportion to their numbers, Lunenburg Germans were initially seriously under-represented in the surviving files. Finally, Aboriginal litigants simply did not emerge in eighteenth-century Nova Scotia.

The Law Governing Debt

Cases involving debt comprise such a substantial portion of the business of the civil courts that something should be said about the laws governing debtors in Nova Scotia. By 1800 more than a dozen statutes had been passed on the subject, several of them frequently amended. They were of two sorts: those that applied to the dead, and those concerning the living. The dead, whose estates upon examination were found to be insufficient to meet the just claims of their creditors, were dealt with by a series of statutes usually entitled *An Act relating to Wills, Legacies, and Executors, and for the Settlement and Distribution of Estates*. One of the first acts of the very first assembly in 1758–1759 made it possible to sell any part of the real estate or personal effects of the deceased to satisfy any just claims by creditors, barring only the widow's dower rights.³⁹ Though the act was amended regularly thereafter, the principle remained intact.

For the living, the first statute was *An Act for Making Lands and Tenements Liable for the Payment of Debt*.⁴⁰ Among other provisions, the act stipulated that appraised land could be sold if the rents were insufficient to meet creditors' demands, but the debtors were allowed two years to recover the alienated land. In 1773 this act was amended to require that notice of any sale be published in the *Nova Scotia Gazette* or other newspaper and "in some public place in the township where the land lies" at least three times

37 André Morel, "La réaction des Canadiens devant l'administration de la justice de 1764 à 1774 : une forme de résistance passive", *Revue du barreau*, vol. 20 (1960), pp. 53–63.

38 T. G. Barnes, "The Dayly Cry for Justice: The Juridical Failure of the Annapolis Royal Regime, 1739–1749", in Girard and Phillips, eds., *Essays on the History of Canadian Law*, vol. 3.

39 32 Geo. II, c. 11, para. 9.

40 32 Geo. II, c. 15.

during the three months before the sale.⁴¹ The amended act made provision for the relief of “*femes covert*s to sue for recovery” of such lands or tenements thus sold. To deal with a problem created, in part, by wartime conditions, with military and naval personnel arriving in and departing from Nova Scotia, an act was passed in 1760 to enable creditors to receive their just debts out of the effects of their absent or absconding debtors.⁴² It allowed creditors to summon the absent debtors’ agents and saddled agents with the liability when goods in their care, belonging to debtors, were sold. In part, this was balanced by *An Act for the Relief of Insolvent Debtors*, passed in 1763, which allowed imprisoned debtors to petition the court for their discharge.⁴³ It permitted them wearing apparel, bedding for themselves and family, “and the tools or instruments” of their trade, together not to exceed £10 in value.⁴⁴ The creditors had to provide the prisoner with eight pounds of “wholesome biscuit bread per week”; failure to do so would result in the release of the prisoner. Further to ease the difficulties of very poor debtors by reducing court costs, a 1765 *Act for the Summary Trial of Actions* allowed the county courts, as we have seen, to proceed in a summary manner in causes of debt not exceeding £10, and, for any sum below 20 shillings, the case could be tried by a single justice.⁴⁵ This was further amended in 1774 by an act that “may greatly contribute to the ease of poor people in this Province” by allowing “one or more” justices, for debts under £3, at their discretion, to establish a schedule of debt payments suitable to the debtor’s circumstances.⁴⁶ It further specified that imprisonment for such small debts could not exceed two months. Its provisions did not apply to debts arising from rent or leases, or other real contracts or any matrimonial contracts. In 1770 *An Act to Avoid Double Payment of Debts* was passed. It applied to debtors of traders and “handicraftsmen” who demanded debts “of their customers upon their shop books long time after the same hath been due, and when, as they suppose, the particulars and certainty of the wares delivered to be forgotten”, they fraudulently entered false items in the accounts, “which in truth never were delivered”. The new act, from 1772 thereafter, forbade such tradesmen or handicraftsmen to use shop books as evidence of non-payment for debts of longer than two years’ standing. The act did not apply to the commercial intercourse between “merchant and merchant, merchant and tradesman, or between tradesman and tradesman”.⁴⁷

41 13 Geo. III, c. 4.

42 1 Geo. III, c. 8.

43 3–4 Geo. III, c. 5.

44 Uniacke, ed., *The Statutes at Large*, p. 90.

45 5 Geo. III, c. 11.

46 14 Geo. III, c. 15. This phrase was introduced in a 1775 amendment, as the 1774 act had given rise to inconvenience “particularly in country parts of the Province, where the Magistrates live at great distances from each other”.

47 10 Geo. III, c. 10.

The Cases

Some individual cases illustrate the points at hand. The most litigious of the sample studied here was Ann Webb, executrix of the estate of William Webb, who died in 1756, having been from 1750 a partner with Councillor Robert Ewer, both early Halifax merchants. She was involved in at least 32 actions between 1757 and 1765, from which a great part of her late husband's business, which centred on exporting fish to Oporto and trading between there and London, can be reconstructed.⁴⁸ An educated woman, apparently well familiar with the operations of the business, Ann Webb seems to have used the courts little differently than innumerable male litigants pursuing the same sort of civil actions. In this way she was atypical of the female litigants studied here.

She does resemble a few women who carried on a vigorous commercial life, but who appeared in court records only after their husbands' demise. If made invisible by the chattel nature imposed by the law on such married women, they nevertheless appear to have participated fully in their husbands' enterprises. As widows, they emerged from the obscurity imposed by legal fiction and continued and even expanded their late husbands' business activities.⁴⁹ One such example was Margaret McNamara, who ran her late husband's business in the heated economy of wartime Halifax. In 1783 she sued William Hazen Esq., the surviving partner of Messrs. Francklin, Hazen, and White, based in the Saint John River valley.⁵⁰ The £407.11.2 debt had originated in August 1782, when she shipped him 34 gallons of sherry, 66 gallons of brandy, 10 firkins of butter (703 pounds), and a 354-pound chest of bohea tea.⁵¹ A second example involved Jane Wallace, the widow of merchant Andrew Wallace who died aged 39 in 1780, whose extensive and profitable business made her a substantial trader. This widow, with four sons, all minors, after some years married an impecunious Dissenting minister. She had occasionally initiated civil actions to recover debts. Upon her second marriage, she vanished from the court records either as a plaintiff or defendant, while her husband, hitherto unknown, prominently appeared in court records as he pursued "his" debtors vigorously. She survived him and re-

48 Only one of her suits involved another woman. She successfully defended herself as her late husband's executrix in a suit launched by Joseph Woodmass, for £2,307 sterling. The account submitted by Woodmass covered the years 1750–1752, amounted to £8,246 sterling, and related to the vessel *Elizabeth Martine* owned by Messrs. Webb and Ewer. RG39C/3. Woodmass appealed the decision to the supreme court, whose verdict is unknown.

49 Much is made of this by Julie A. Matthaei, "Husbandless Women in the Colonial Economy: Women Working for Income", in *An Economic History of Women in America: Women's Work, the Sexual Division of Labor, and the Development of Capitalism* (New York: Schocken, 1982). This section of her chapter is derived from Elizabeth Dexter, *Colonial Women of Affairs: A Study of Women in Business and the Professions in America before 1776* (New York: Houghton Mifflin, 1924), research based on colonial newspapers.

50 Rod C. Campbell, "Simonds, Hazen and White: A Study of a New Brunswick Firm in the Commercial World of the Eighteenth Century" (MA thesis, University of New Brunswick, 1973).

51 RG39C/29, summons, May 24, 1783.

emerged in the 1790s in civil suits in pursuit of her late husband's debtors, one of her sons acting as her agent. These examples reflect the importance of women to the family enterprises of some of the most affluent firms then doing business in Nova Scotia. Further study alone will shed additional light on the social and economic position of such exceptional women.

At the other end of the social scale and the market were women who took in boarders. Usually widows, they emerged from obscurity when they sued, or were sued, for unpaid rents. As many historians have pointed out, such "household production" very much made them part of the marketplace.⁵² As Carole Shammas noted about Philadelphia in 1775, "Among men, it was generally the young who experienced the most economic instability and distress, for women it was the more mature.... The occupational, wage and property rights discrimination done to women affected widows most heavily because they headed their own households."⁵³ Their accounts, submitted though they were illiterate, clearly indicate that, besides supplying room and meals, they acted as lenders for petty sums and undertook services such as mending, washing, and making clothes. In June 1763 Margaret McLean, an illiterate widow, sued James Meaney, yeoman, for £3 1s. for unpaid board and lodging at 8 shillings a week, and for miscellaneous items she supplied him in July and August 1762.⁵⁴ In 1778 Eleanor Flynn, also illiterate, sued Joseph Foy, a mariner, for £4 5s. for unpaid room and board.⁵⁵ In 1782 Mary Woodyman sued for a debt of £14 2s. owed by William Gatens, a soldier in the Regiment of Nova Scotia Volunteers. It arose from board, lodging, washing, and a loan to him of 3 shillings.⁵⁶ The same year Margaret Jones, another illiterate widow, sued John Bains, a mariner, for £24 12s. for "boarding, lodging, and washing".⁵⁷ Mary Denis, who owned an impressive array of clothes, made her living by running a small boardinghouse in wartime Halifax. Her life on the raw edge of society could not have been easy. In 1783 she was forced to sue three mariners for unpaid debts arising from board, lodging, and washing done by her on their behalf.⁵⁸ In September 1773 illiterate widow Margaret

52 Bettina Bradbury, "Managing without a Spouse: Women's Inequality Laid Bare", in *Working Families: Age, Gender, and Daily Survival in Industrializing Montreal* (Toronto: McClelland & Stewart, 1993), pp. 183–213; Joan M. Jensen, "Cloth, Butter, and Boarders: Women's Household Production for the Market", *Review of Radical Political Economics*, vol. 12 (1980), pp. 14–24; Alexander Keyssar, "Widowhood in 18th-Century Massachusetts: A Problem in the History of the Family", *Perspectives in American History*, vol. 8 (1974), pp. 83–119.

53 Shammas, "The Female Social Structure", p. 83.

54 She won her case with costs. As the writ of execution went unsatisfied, she applied for a second writ, which in January 1764 was fully satisfied and the case closed (RG37Hfx/16/40).

55 RG39C/18, summons, February 10, 1778.

56 This is an interesting example of a woman who started to write her name on the sworn declaration before a writ of summons could be issued, but could not finish and so signed with an "X". Later, on April 11, 1782, she signed again with an "X" (RG39C/26).

57 Outcome unknown. RG39C/25, summons, November 18, 1782.

58 RG39C/27; the writs of summons were each dated August 21, 1783, against John Ennald for £17 9s., Peter McCoy for £18 19s., and John Vinson for £12 14s.

Butler sued fisherman Peter Martin for £25 10s. to the previous June, for “boarding, washing, making & mending for you and son John from 15 June 1771 ... being 102 weeks”.⁵⁹ She had taken as part payment two barrels of herring and one barrel of bread. In the same suit she demanded the back rent from her storehouse of £15 a year and 30 shillings for a tavern sign. Had this perhaps started as a mature relationship, but, when it collapsed, she produced the invoice?

Cases of unpaid rents or wages likewise raise the possibility of intimate relations gone sour. By taking in boarders or turning their houses partly into taverns, women could not only keep their children and earn an income by homemaking for strangers; they could hope for a new marriage.⁶⁰ In June 1763 the spinster Elizabeth Taylor sued David Lloyd, the gentleman attorney, for unpaid wages for taking “care of his household and family affairs as a domestic or housekeeper” between 1757 and 1763 at £10 a year.⁶¹ In 1767 spinster Catherine O’Brien unsuccessfully sued John Butler, the administrator of the late Governor Montagu Wilmot, Esq., for £265, her unpaid wages as Wilmot’s servant for 14 years.⁶² No details survive from the case files to indicate the arguments used by the parties, but it is at least odd that these two women turned to the courts only when the services were abruptly ended.

Boardinghouse operators were not the only women who made cash advances in small amounts. Martha Wynn, trader or retailer, in 1757 sued William Cannon, mariner and fisherman, for £8.8.10 for small cash advances as well as liquor, beer, nails, wood, and oil.⁶³ Margaret Butler, the illiterate administratrix of her late husband Thomas’s estate, sued William Mehegan, cooper, for £3.12.5 for sundries, for making clothes, and for cash loaned to him in 1760.⁶⁴ Such evidence demonstrates the extent of the reach of the credit system which then pervaded the Atlantic economy. From its source with the great banking and merchant houses in London, through the working of British government spending in the colonies, much of it financed by expanding the national debt, the system embraced even the poor lodgers and the Halifax widows who housed and fed them and who advanced them small sums either in cash or on credit.

Some details of their possessions can be established from the lists of goods attached for bail in cases involving women. Such evidence can supplement similar particulars found in probate inventories of deceased widows. For instance, Mary Notting, spinster, in March 1757 defended a suit brought by Patrick Murphy for £4.7.6 owing him for lodging. The provost marshal

59 Verdict unknown. RG39C/12, summons, September 13, 1773.

60 This point is made by Matthaei, “Husbandless Women”, p. 58.

61 RG37Hfx/14/118, summons, June 21, 1763. Lloyd died two days later. The outcome of the suit is unknown.

62 RG37Hfx/21/116, summons.

63 RG37Hfx/4/119, summons, March 11, 1757.

64 Thomas Butler died May 15, 1761. RG37Hfx/14/125, summons, May 23, 1762.

attached her bed, pillow, blanket, a pair of sheets, two coverlids, and a counterpane as bail against the payment of the debt before the case was heard.⁶⁵ The 1763 *Act for the Relief of Insolvent Debtors* would not have permitted such an invasion of personal effects. In 1759 the jury believed Elizabeth Downing, spinster, when she claimed as her property a trunk left with Patrick Fitzpatrick, trader or retailer, and his wife. Her trunk contained a silk gown, a stamped linen gown, two linen petticoats with borders, three shifts, five aprons (flowered, striped muslin, holland, and checked), a cambric handkerchief, a double holland handkerchief, a pair of ruffles, ten caps, four ribbons, a pair of pink shoes, two pairs of worsted stockings, a black silk hat, a scarlet cloak, a pair of gloves, a pair of stays, and a hoop.⁶⁶ Another case brought before the justices in March 1765 involved two widows, Ann Fisher and Mary Hawthorne. Ann was trying to recover some effects, retained by Joseph Burch, for unpaid room and board. Burch had prepared an inventory of the attached goods and given Mary a power of attorney to act on his behalf in his absence. The goods included six black birch chairs and a large black walnut table, thirteen pewter plates, two pewter dishes, a pewter hand basin, a brass kettle, an iron pot, a trammel and toaster, six tin patty pans, a pair of dog irons with tongues and shovel, a bellows, three “buckhandle” knives and forks, and a copper tea kettle.⁶⁷ In 1783 Anne Blagden, who had been left in straightened circumstances with a family of small children, sued Irene Thompson, the widow of lawyer George Thompson, for £20, the unpaid balance from three years’ house rent dating back to August 1780. Attached were two mahogany dining tables, six similar chairs, a mahogany tea table, a mahogany desk with drawers, and two gilt-frame looking-glasses.⁶⁸ Evidence of such intimate personal possessions is found nowhere else except in the civil court records and those generated by the probate court. Moreover, the courts clearly were attentive to the needs of women with few resources to protect their families from further impoverishment.

Frequent recourse was made by litigants of all social levels to arbitration even before the 1768 *Act for Determining Differences by Arbitration* formalized the process.⁶⁹ It applied to cases before both the supreme court and the inferior court of common pleas. Arbitration panels were invariably composed of two or three men — never a woman. Such men were usually of some commercial standing, or held some sort of appointment in their communities. Refusal by one party to accept the arbitration resulted in a series of penalties. The costs of the board invariably raised the overall legal expenses. This procedure was followed even when small sums were involved. When Charles Donovan sued Martha Bonar in September 1751 for £23.5.6, the

65 RG37Hfx/3/28.

66 RG37Hfx/5/31, summons, June 29, 1759.

67 RG37Hfx/19/25.

68 RG39C/27. George died March 3, 1783.

69 8 Geo. III, c. 1.

board awarded him only £4.4.4.⁷⁰ In 1752 Sarah Todd, a shopkeeper, defended herself against the £60 damages demanded by Henry Ferguson, trader and administrator of the estate of Robert Campbell. The arbitration board awarded him only £5.4.5.⁷¹ At the same court, two labourers claimed £8.11.3 from Amy Williams, sole trader. The board awarded her 3 shillings and her court costs of £1.3.10.⁷² In 1754 another board awarded Mary Cooke and John Cooke, a scrivener, £3 2s. in damages for an assault on Mary, when they had asked for £10.⁷³ Such arbitration boards, composed only of male freeholders, appear to have treated women in these circumstances no differently because of their gender.

When a case was decided, a writ of execution was issued and reissued until satisfaction was obtained. Satisfaction was frequently obtained only after assets were sold at public auction. As examples, in September 1754 a writ of execution was issued against Benjamin Storer, a shipwright in the naval yard, for £17.3.3, as a result of a suit by Elizabeth Gorham, then residing in Boston, widow and administratrix of the estate of the Hon. John Gorham.⁷⁴ Richard Gibbons Sr., as deputy provost marshal, reported on Christmas Eve that Storer's house in the North suburbs of Halifax had sold to the highest bidder, William Bourn Esq., for £17.16.6, giving full satisfaction for the original debt.⁷⁵ The following May a writ of execution for an outstanding debt of £45.18.6 against the late Hugh Reid, a soldier, in a suit brought by Malachy Salter, Esq., resulted again in a public auction of the house behind the artillery barracks. Salter was the highest bidder at £51.1.6, thus leaving £2 18s. to the widow, Sarah Reid, who acted as administratrix for her late husband's estate.⁷⁶

Flight to avoid payment was rarely a strategy followed by the female litigants in this sample. The only recorded case between 1749 and 1783 involved Mary Marcombe, described as "an absent debtor late of Halifax" on the July 1783 writ of summons. Her financial affairs were the occasion of a trial at the Halifax court house on October 23, 1784. The jury awarded her creditor, the trader Richard Tritton, £20.⁷⁷

Failure to make payment could result in immediate imprisonment; in some such cases, men could be women's victims. For instance, Lettice Piggot, a widow, brought suit against William Easton, a fisherman. The original debt, dating from November 1765, had been for £30 and had been owed to

70 RG37Hfx/A/102.

71 The board consisted of Joseph Fairbanks, Benjamin Gerrish, and John Codman. RG37Hfx/A/241.

72 John Greensword, John Wright, and Henry Sibley were the arbitrators. RG37Hfx/A/253/31.

73 RG37Hfx/B/67, summons, June 19, 1754.

74 He died July 26, 1758, and Ruth, aged 61, November 27, 1776. There is an inventory of Storer's estate after his death, November 3, 1758, when his effects were worth £12.3.5. RG37Hfx/10/79 and RG37Hfx/11/40.

75 Gorham died in 1751. RG37Hfx/A/352/18.

76 RG37Hfx/2a/85.

77 The debt dated from 1769–1773. Accounts in RG39C/30.

her late trader husband, William. Now £22 was still owing. When the writ of summons was issued on June 10, 1771, Deputy Provost Marshal John Taylor reported that “for want of effects I have committed the within defendant to His Majesty’s gaol in Halifax”.⁷⁸ As soon as poor Easton could, he petitioned the court for his release as he would be unable to maintain himself and his family. A second such case, also involving Lettice Piggot as her late husband’s executrix, ensnared David Jones. From prison Jones petitioned the justice of the inferior court of common pleas, “being poor and not capable of employing an attorney”, and begged to be given permission to defend himself. Piggot had leased Jones the Half Way House Inn on the Windsor Road, which Lettice owned and ran until her husband died in 1764.⁷⁹ It was leased, fully furnished with a farm and livestock, for 50 shillings a month and two pounds of butter weekly. A year later, Jones was forced to give up the lease. Lettice drew up a detailed list of the deficiencies and damages done to the inn under Jones: broken window panes, chairs, doors, glassware, and crockery. She demanded £27, while the jury’s verdict was to send the matter to arbitration, which awarded her £6.⁸⁰

Women themselves were not immune from threat of imprisonment for debt. If it seemed to have been rarely used against female litigants, they were not wholly removed from the dreadful anxiety that imprisonment for debt exercised over the affairs of men of every rank. In March 1759 Catherine Beaumont, a fisherwoman or trader, as the writ of summons described her, “for want of goods, chattels or estate” was imprisoned.⁸¹ Bail in the moderate amount of £10 was required in the case of slander brought against her by the Halifax gentleman, John Mergerum. Late in 1761 two retailers, Jane Smith and Roger Sweeney, lost three successive suits brought separately by merchants Robert Campbell, John Fillis, and Messrs. Rundle and Crawley. Together their debts amounted to £125.6.5 for rum, claret, madeira, beer, flour, and sugar supplied to them by the merchants between July 1760 and October 1761. When they failed to defend the suit, one of the two, Sweeney in preference to Smith, was imprisoned.⁸² In 1761 the world of Elizabeth Thane, a literate milliner and shopkeeper, began to collapse. She was first sued by William Jeffray for £50.8.9, then by Messrs. Proctor and Gray for £147.4.10, and could produce only £63 to answer their demands.⁸³ She lost, at the same time, a slander suit she had initiated against the merchant Robert

78 RG39C/9.

79 He died October 26, 1764.

80 The inventory of Thomas Power’s estate, as it related to the inn, served as the inventory David Jones had originally accepted (RG37Hfx/20/1). Jones, a trader, died August 6, 1782, aged 50.

81 RG37Hfx/6/53.

82 RG37Hfx/11/100, summons, October 9, 1761; RG37Hfx/11/194, summons, October 30, 1761; RG37Hfx/11/136, summons, November 12, 1761.

83 RG37Hfx/10/36, Jeffray’s sworn statement, February 9, 1761; RG37Hfx/11/43 and RG37Hfx/12/30, summons by Charles Proctor Esq. and John Gray, merchant, August 15, 1761.

Campbell, who, she claimed, had called her, among other things, a “cheat, vagabond, receiver of stolen goods”, and had to pay his and the court’s costs.⁸⁴ A year later she had to provide £440 bail to avoid prison in a suit launched by Joseph Woodmass Esq. and £50 in a second by Michael Francklin Esq.⁸⁵ Somehow avoiding prison as an insolvent debtor, she struggled on until 1765, when she succumbed to the twin blows dealt by William Buttar, merchant, late of Halifax and then of Boston, and the tenacious Joseph Woodmass. The former held her 1764, now worthless, promissory notes for £312.5.1, while the latter, who had since February 1761 supplied her with goods worth £693.18.3, was owed an unpaid balance of £355.14.7.⁸⁶ In February 1765 she was finally imprisoned. In August 1763 Mary Goff, spinster and tavernkeeper, was sued by Richard Wenman Esq. for beer supplied to her between July and November 1762. Unable to raise bail, she was promptly imprisoned.⁸⁷ In June 1765 Mary Ann Freeman, a debtor, was likewise imprisoned.⁸⁸ In 1783 Jane McNamara, a spinster then living in Halifax, found herself unable to make payment on a debt of £38.18.4 arising from a judgement in the inferior court of common pleas in Quebec in 1781. Pursued to Halifax by her creditor, Constant Freeman, she failed to defend herself, and judgement was rendered against her by default. She was imprisoned.⁸⁹

Other cases were not settled until an appeal to the supreme court confirmed or overturned the earlier decision of the county’s inferior court of common pleas. In June 1758 the widow Elizabeth Derbage brought suit successfully against James McManus, a gentleman, for his unpaid account of £6.11.3 outstanding for five months for a variety of items, such as his stockings, a silver thimble, tea, nutmegs, handkerchief, soap, ribbons, and mittens “for your man”.⁹⁰ McManus appealed the case to the supreme court, but he lost and had to pay an additional £1.15.4 in costs.⁹¹ In 1755 when Dr. John Grant sought to evict Catherine Winston from her home, it having been sold at public auction to meet her late husband’s debts, she refused to move. When a jury of the inferior court of common pleas decided she was guilty of illegally holding possession of the premises, she appealed the verdict and lost.⁹² In 1760 Mary Thompson (alias Swaile, alias Radewick), twice widowed, successfully appealed to the supreme court to recover possession of

84 RG37Hfx/11/141, summons, November 16, 1761.

85 RG37Hfx/13/51, summons, August 13, 1762; RG37Hfx/13/52, summons, August 14, 1762.

86 RG37Hfx/19/3 and RG37Hfx/19/49, summons for each case separately February 7, 1765, by Buttar and Woodmass; unable to make bail, she was imprisoned.

87 RG37Hfx/15/4, summons, August 22, 1763.

88 RG37Hfx/21/90. Details are unknown, as Mary Ann Freeman’s case file has not survived. In all other such returns for 1756, 1758, and 1760, the only other females were convicted criminals or awaiting criminal trial (RG39C/2, RG37Hfx/5/135.9, and RG39C/9/182).

89 RG39C/28.

90 RG37Hfx/5/30.

91 RG39C/2.

92 RG39C/2/172. She died June 9, 1769.

her house, from which trader Walter Manning had ejected her. She was awarded her costs, while Manning was instructed to leave her in quiet possession until her 11-year lease ran out.⁹³ By appeal, Ann Webb failed to overturn an arbitration award in 1760 of £100 against her husband's estate.⁹⁴ Likewise Elinor Power, widowed tavernkeeper, lost her 1763 appeal over a debt of £28.9.1 owing Thomas Meaney, shopkeeper or trader,⁹⁵ but a year later won an appeal, as a defendant, for the paltry sum of £2.17.6.⁹⁶

In matters of appeal, the records of the court of chancery are particularly relevant, as parties sought injunctions there to stay proceedings underway in the supreme court. Cases involving Catherine O'Brien, as administratrix of James Quin in 1770, Mary Murphy, as executrix of John Mergerum in 1771, and Elizabeth Doliff were such causes initiated for relief and injunction.⁹⁷ As only written evidence was receivable in chancery, historians may learn a great deal more about the causes dealt with there than in the *viva voce* courts.

In many such appeal actions the widow, as either executrix of a will or administratrix of an intestate, was suing or being sued for alleged debts. Almost all of Ann Webb's 32 actions were of this sort, as were all of Rebecca Gerrish's 14 suits, Catherine O'Brien's 16, Lettice Piggot's 14, and Margaret Butler's 11. Other examples included that of Hannah Jackson, the executrix of William Merry, surgeon and apothecary, who died in 1755; she successfully pursued the debtors of his estate. In one case, against James Fillis, she won her appeal in the supreme court by successfully demonstrating that Fillis, as executor of the late shopkeeper Adam Bullard, had wasted his capital and made himself liable for repayment of the outstanding account owed Merry's estate.⁹⁸ Another case arose between Michael Francklin and Mary Thompson, an illiterate retailer. As the administratrix of her late husband's estate, Thompson received a writ of summons in May 1769 to pay the balance of a £26 debt, first incurred five years earlier. Against this the Thompsons had made various payments through bills of hand and large quantities of fish including mackerel, leaving an unpaid balance of £7.10.10. The case was heard by the supreme court at Halifax in July 1769, and the widow and administratrix acknowledged her indebtedness.⁹⁹

Female litigants might be women who occupied high places in Halifax society. Such was Rebecca, the widow of Councillor Benjamin Gerrish, whose debts were such that almost all his "wealth" vanished in a series of suits

93 The inferior court verdict was given April 3, 1760, while her appeal was heard May 3, 1758 (RG39C/3).

94 RG39C/3, writ of execution, January 4, 1761.

95 RG39C/4, writ of execution, December 16, 1763.

96 Against blacksmith James Brenock for an unpaid account in 1759–1760 (RG39C/4).

97 RG36a/27, RG36a/28, RG36a/50.

98 RG39C/2.

99 Isaac Thompson died January 23, 1768, and Mary on August 5, 1771. RG39C/3, summons, May 9, 1769.

she vainly tried to defend. First pursued by Meredith Reese of Philadelphia, represented by John Butler Esq., for £1,274.16.2, Rebecca was named as defendant with Joseph Gray, her late husband's partner. Attached for bail was a £160 mortgage she held, a large dwelling house occupied by the Rev. John Breynton, and sundry lots.¹⁰⁰ In turn, she was forced to scramble to raise as much cash as possible by squeezing her debtors. First in line was Robert Martin, a Cornwallis husbandman, who owed her £90.4.7.¹⁰¹ He was not an easy target; in a counter-suit for unpaid labour and the use of his oxen and implements, he was awarded £108.16.11. When Breynton's house was seized, Rebecca's agent, Giles Tidmarsh, made payment.¹⁰² Her real target was John Butler Esq., whom in 1774 she sued for £1,692.16.9. The debt arose from disputed bills of exchange to pay Rebecca, which Butler had drawn on Robert Jones Esq., of London, for the use of the victualling contract held by her late husband.¹⁰³ She had to sue her husband's tenants for her dower rights, as well as a number of retailers and husbandmen, which only brought small returns.¹⁰⁴ In turn, she was sued by Messrs. Lane and Fraser, London merchants, for £895 18s., and by Messrs. Tappenden, Stanfield, and Denham, also London merchants, for £484.12.1. All her husband's remaining Halifax property, that along the Gaspereau River and 10,000 acres near Partridge Island, as well as £1,200 in Nova Scotia treasury notes were attached.¹⁰⁵ She lost everything as both causes went against her. The Dudley Park farm in Falmouth was seized, and auction notices were placed in the *Halifax Gazette* and at Falmouth and Windsor. The stock was sold to her tenant for £240. When Provost Marshal John Fenton demanded the treasury notes, Rebecca refused both his request and to part with any of her late husband's effects. She filed bills in court of chancery to foreclose the mortgage she held on Joseph Gray's Argyle Street houses and his 1,233-acre estate on the north bank of the Gaspereau River. Only remarriage in 1775, the usual pattern for widows, shored up her urgent situation.¹⁰⁶

Equally desperate and no more successful was Catherine O'Brien, a spinster who returned to Nova Scotia from Ireland upon learning of the death of her brother, James Quin, a Halifax tavernkeeper. Catherine had earlier hitched her fortune to that of Montagu Wilmot, governor of Nova Scotia, her companion since 1752, and was left stranded when death overtook him in

100 RG39C/11.

101 RG39C/12, summons, February 2, 1773.

102 RG39C/12, summons, April 27, 1773.

103 RG39C/13, summons, April 26, 1774.

104 RG39C/13, *Gerrish v. Walter et al.*

105 RG39C/14, summons, October 26 and November 9, 1773, with a detailed description of the valuation of the livestock. Still undeveloped in 1774, the land was valued at £500.

106 RG36a/32 and RG36a/33. On October 14, 1775, she married John Burbidge, a justice of the Kings county inferior court of common pleas.

1766.¹⁰⁷ Her decision to return to Nova Scotia must have been borne of a serious misunderstanding of the extent of her late brother's estate. It consisted of two small houses near Quin's wharf and a third small house near the barracks. Quin had died intestate in June 1768; his then companion, Jane Tracey, at first was named administratrix.¹⁰⁸ O'Brien obtained an order revoking these letters of administration and substituting herself in this role. Almost at once she found herself defending a suit for £223, the unpaid wages now claimed by Tracey "as a manual and domestick servant or house-keeper".¹⁰⁹ By 1770 she felt obliged to apply for an injunction against Tracey, her daughter Mary Sherlock, and Tracey's son-in-law, Foster Sherlock. Not only had Tracey, as initial administratrix, refused to provide O'Brien with an accounting of her stewardship, but she successfully sued O'Brien for "a pretended bond debt" of Quin's for £100 in the supreme court. To execute the judgement, Quin's real estate was due to be auctioned; O'Brien sought an injunction from the court of chancery to stay the proceedings, a process she was still pursuing unsuccessfully as late as 1780.¹¹⁰ Without her consent, O'Brien's attorney had withdrawn her complaint, behaviour so outrageous that it was commented upon by the notorious Richard Gibbons, Jr.

Suits for slander in Halifax county were not numerous and could be initiated by or against women. As the plaintiff in any such suit had to quote the offending words exactly and describe the circumstances in which they had allegedly been uttered, something of the popular and public culture of the era, a subject which so interests Richard Ross, can incidentally be recaptured from a study of such suits. The insulting words, in the legal formula, had to have been uttered "in the hearing of diverse of His Majesty's subjects" and to have diminished in a substantial way the hitherto unblemished public character of the person to whom the words were directed. As damages were invariably demanded, we are in a position to record any significant differences between the plaintiff's estimate of such hurt and the award made by the all-male jury. Here, for the sake of comparison, the work of G. S. Rowe on the women of colonial Pennsylvania is of particular relevance.¹¹¹

Let us consider some examples found in the records of Nova Scotia's courts. In December 1750 a case for slander was brought by Elizabeth Mears of Halifax against Margaret Grey, late of Halifax, asking for £50 in damages.

107 His was a military career with service at Louisbourg in 1746–1749. He was a lieutenant colonel of the 45th Regiment at Halifax in 1755, commanded a brigade at the 1758 siege of Louisbourg, and commanded the 80th Foot at Quebec in 1762; he became lieutenant governor of Nova Scotia in 1763. Phyllis R. Blakeley, "Montagu Wilmot", *Dictionary of Canadian Biography* (Toronto: University of Toronto Press, 1974), vol. 3, pp. 663–664.

108 Died June 1, 1768. Jane is named as his wife.

109 RG39C/14, *Tracey v. O'Brien*, writ of summons, April 27, 1773.

110 RG36a/27, *O'Brien v. Quin (alias Tracey), Sherlock, and Sherlock*, filed November 12, 1770. Mary Sherlock died August 11, 1782.

111 G. S. Rowe, "The Role of Courthouses in the Lives of Eighteenth-Century Pennsylvania Women", *Western Pennsylvania Historical Magazine*, vol. 68 (1985), pp. 5–23.

Mears accused Grey of so beating her that her life “was greatly despaired of”.¹¹² She also accused Grey of uttering “false, scandalous words ... you common whore. You may do well for you have two husbands. It can easily be proved, and that everyone knows you to be a common whore.” Such words, Mears claimed, had “greatly prejudiced and injured her good name and credit and reputation which she has and bore among her neighbours”. The jury found for the defendants, which included the husband John Grey, charging Francis and Elizabeth Mears the court costs. In January 1752 Halifax spinster Belinda Collier received a writ of summons with a demand to pay £100 damages for slander against Joseph White, a Halifax shopkeeper. She had called him a “rogue and villain”, adding that “he had not two pence when he came into the colony, that his debts were so large he was unable to pay them, and that his house must be put at auction to pay his debts”. Arrested for want of goods and chattels to attach for bail, she faced an uncertain future for her intemperate remarks.¹¹³ In yet another suit, Mary Haliburton had a writ of summons issued against Joseph Fairbanks, styled gentleman and a well-established Halifax capitalist, asking for £100 in damages. He had called her a whore, who “was great with Jonathan Gifford”. The jealous wife, having forced open a bedroom door in Jonathan’s house, “found Mary in bed with Jonathan” and thereupon hauled her husband naked from the bed.¹¹⁴ In another suit, brought in September 1758 by Joan Broaz, an illiterate spinster described as a sole dealer, trader, and tavernkeeper, against Frances Deckorret, a trader and tavernkeeper of the north suburbs, damages of £20 were demanded, the offending words being “thief ... whore with British soldiers and ... a Jew”.¹¹⁵ In January 1759 Elizabeth Nagle and her husband Garret, a cooper, sued Halifax labourer Thomas Murphy for £20 in damages. Murphy was quoted by them as having the day before called Elizabeth “a bitch and a whore, and was a whore to me before she was married to you”.¹¹⁶ In December 1761 Robert Campbell, a merchant of Halifax, and his wife Mary successfully defended a suit for slander brought against him by milliner Elizabeth Thane. He had called her “a runaway, a cheat, a vagabond, a receiver of stolen goods, an infamous bitch, and that she bought up goods from the people with an intention of never to pay for the same”.¹¹⁷ This he had repeated, adding that he would “spend a hundred guineas to drive her out of Halifax” and raised his boast later to 200 guineas. Elizabeth had to pay his costs. If, by these examples, the violence in eighteenth-century towns was not

112 RG37Hfx/1/68.

113 The verdict is unknown. RG37Hfx/1a/24.

114 RG37Hfx/B/134. The outcome is unknown. Gifford died January 22, 1761, and by June 1761 his jealous wife, Mary, had married George Vanput, Jonathan Gifford’s executor (RG37Hfx/10/160). Mary died September 25, 1767. George was a militia captain who died October 20, 1792, aged 73.

115 RG37Hfx/5/15.

116 The verdict is unknown. RG37Hfx/6/64, summons, January 13, 1759.

117 Mary Campbell died April 17, 1774, aged 50. RG37Hfx/11/141.

mirrored in the language of the streets of Halifax, which seems rather tame, it is clear that one could not slander either sexual or economic reputations with impunity.

For some reason slander suits were relatively more frequent in Lunenburg county, where half the female civil litigants were involved in such cases, than elsewhere in Nova Scotia. In 1784 Magdalena Wust, a widow, was called a thief by her brother-in-law for removing from the household, upon her remarriage, beds and clothing he alleged belonged to his sisters. His intemperate language cost him £10.¹¹⁸ In 1788 Elizabeth Hahn, a spinster, had accused Dorothy Born of having killed her newborn and buried its remains in her garden. The plaintiff was awarded one shilling by the jury in damages.¹¹⁹ In 1790 Barbara Haw sought £200 in damages for being called a whore by Barbara Wolf.¹²⁰ In 1792 Elizabeth Schneider accused Christiana Meldrum of being a whore for having been delivered of a “Mulatto bastard”. Elizabeth paid £1 19s. in damages.¹²¹ When in 1800 Magdalena Walter, a yeoman’s wife, was called a liar and a whore by weaver Henry Lohnes, an arbitration board awarded her £5.¹²² It seems that all-male juries were prepared to award much higher damages when men slandered women than when women slandered one another, an indication, perhaps, that men were being held to a higher moral standard in Lunenburg.

One suit for slander, of a quite different nature, was launched by Lucy Hutchinson and Robert Robertson, Halifax gentleman, four days before Christmas 1757, with damages unspecified in the summons. Named was Rev. Breynton, the Church of England rector of St. Paul’s. They charged that Breynton had refused to publish their banns of marriage on December 25 and 27, as asked. As a consequence the marriage had not been solemnized.¹²³

Additionally, mention should be made of one civil suit involving exclusively male litigants. The wife, in the words of the law, had eloped. Halifax mariner John Brown discovered that, while he was absent on a fishing expedition, Mary, his wife of ten years, had deserted him in September 1755 to live with Anthony Richardson, also a fisherman. Richardson had taken as well Brown’s several children’s “goods and furniture”, which had obliged Brown to “break up housekeeping”.¹²⁴ Though he accepted his wife’s desertion, when he sought £20 damages for the household goods, an arbitration board awarded him only 20 shillings plus costs. This was not an isolated event, for men regularly used the Halifax newspapers to warn the public that

118 RG37Lun/1/21, summons, July 12, 1784, *Wust v. Born*.

119 RG37Lun/2/60, summons, August 5, 1788, *Born v. Hahn*.

120 RG37Lun/3/36, summons, June 5, 1790, *Haw v. Wolf*.

121 RG37Lun/4/42, summons, September 27, 1792.

122 After she paid £3 to Lohnes’s son. RG37Lun/7/3, summons, September 29, 1800.

123 Verdict unknown. RG37Hfx/4/121.

124 RG37Hfx/3/4, *Brown v. Richardson*, summons, October 1, 1756.

they would not be held responsible for their deserting wives' debts.¹²⁵ Similar cases may survive in the court records, but the size of the award could not have encouraged other such suits.

Seven cases of assault were dealt with as civil actions, and damages demanded. Victims had a choice to pursue the matter through either the criminal or the civil process. Phillips has found from the surviving sessions of peace records for Halifax county that, of the 383 assault prosecutions between 1750 and 1800, 52 involved women defendants (of the prosecutors, 28 were women and 24 men), while 70 women were prosecutors in the remaining 331 cases.¹²⁶ If a criminal action was clearly the preferred process in such cases, a civil action involved an effort to compensate the victim, in the face of an often unsympathetic all-male jury. Mary Cook and her husband sued John Rock in June 1754 for assault and demanded £10 in damages. The details of the assault on Mary are unknown, but, as a result of an arbitration, she was awarded £3 2s. with costs of £1.16.2.¹²⁷ A much more serious case involved Jane Gleeson, a nine-year-old resident of the Orphan House, who, through Halifax baker Benjamin Leigh acting as her "next friend", sued the Marquis de Conti for £500 in damages.¹²⁸ He was a recently widowed Sicilian gentleman, living in Halifax since the spring of 1752.¹²⁹ The writ of summons was issued in December 1758, some weeks after the assault with intention to rape had occurred. Unable to raise the £100 bail, de Conti was imprisoned. If the outcome of the civil action is unknown, the evidence it produced led to a criminal charge, for which he spent three months in prison and suffered a £30 fine.¹³⁰ Also dealt with in a civil action was a remarkable 1759 assault on carpenter George Bray, who claimed that Margaret Simpson and her mariner husband, Joseph, set upon him with a hatchet, fists, feet, and teeth. One of the two bit and wounded his nose, while Margaret attacked him with a tomahawk, cutting his head and nose. Damages asked were £20, but the jury's verdict is

125 *Nova Scotia Gazette and Weekly Chronicle*, Johanna Berry, August 3, 1773; Ruth Greaves, November 7, 1775; Rebeckah Jordan, April 27, 1779; Mary Goget, September 14, 1779; Jane McDonnell, March 14, 1780; Marice Mackan, May 23, 1780; Margaret Martin, July 18, 1780; Sarah Ballantine, September 5, 1780. Information from J. Phillips.

126 Information from J. Phillips.

127 RG37Hfx/B/67, summons, June 19, 1754.

128 RG37Hfx/5/44.

129 She had died in August 1753, according to documents in a cause before chancery that involved a dispute between de Conti and the administrators of his deceased wife's estate (RG36a/8).

130 RG39J/117. Listed among the inmates of the Halifax jail on December 5 and 18, 1758, he was sentenced to "walk in the custody of the sheriff and constables" for an hour before noon up and down the Parade, with a notice inscribed with his crime fixed to his breast, a public humiliation he avoided (RG37Hfx/5/135.9; RG37Hfx/5/44, Lawrence to Foy, June 16, 1759). Robert Sanderson claimed that evidence at the trial indicated that the rape had actually occurred, from which the child contracted the "foul disease" (CO217/18, pp. 73–80). See also Philip Girard, "Children, Church, Migration and Money: Three Tales of Child Custody in Nova Scotia", in Hilary Thompson, ed., *Children's Voices in Atlantic Literature and Culture: Essays on Childhood* (Guelph: Canadian Children's Press, 1995), pp. 10–23.

unknown.¹³¹ Mary Denis, who took in boarders, sought £20 damages in 1783 for assault and battery by trader Robert Shea. Despite the supportive testimony of her witness, the jury awarded her only 6 shillings and her costs.¹³² It was not a verdict likely to encourage court action by battered women, though these cases appear to have been dealt with by the courts much more rapidly than other types of actions. Despite this, it appears that in early Nova Scotia this form of action, at least as far as female litigants were concerned, was an unrewarding avenue for compensation.

Finally, the cases of three free Black women, pleaded through their lawyers to retain or re-acquire their freedom, bring to an end our study of the treatment meted out to women in eighteenth-century Nova Scotia. Black African slavery was well established at French Louisbourg and from the English founding of Halifax in 1749. When some 8,000 New England planters settled in Nova Scotia in the 1760s, the slave population swelled.¹³³ Slavery had not been established in Nova Scotia by statute. Rather it was “presumed implicitly to be lawful until adjudged or legislated to be explicitly illegal”.¹³⁴ Barry Cahill has estimated that 1,200 slaves accompanied the white loyalist refugees to peninsular Nova Scotia, while his count of Nova Scotia slave owners exceeds 400. When freed Blacks from Shelburne and Halifax counties left Nova Scotia in 1792 for Sierra Leone, those Blacks who remained were principally slaves and concentrated in Annapolis county.¹³⁵ Attempts thereafter by Blacks to assert their rights to freedom had the widespread sympathy and assistance of the “Supreme Court bench and most of the bar”.¹³⁶

Elizabeth Watson, a freed Black who faced re-enslavement, was the first such woman to face the courts. In March 1778 before the Halifax county court of quarter sessions of the peace, witness Elizabeth Reed declared that Watson was “an absolute free woman ... that she lived in Boston from her childhood, and well knew the within named negro woman to be a free woman and also knew her parents who were free people likewise”, that she had known the family for 13 years, and that both Watson’s parents had since died.¹³⁷ Reed

131 Margaret died August 5, 1765. RG37Hfx/9/31.

132 RG39C/27, summons, March 10, 1783; jury’s verdict, April 12, 1783. Details of assault are not in the file.

133 Gary Hartlen, “Bound for Nova Scotia: Slaves in the Planter Migration, 1759–1800”, in Margaret Conrad, ed., *Making Adjustments: Change and Continuity in Planter Nova Scotia, 1759–1800* (Fredericton: Acadiensis Press, 1991), pp. 123–128; Allan B. Robertson, “Tenant Farmers, Black Labourers, Indentured Servants: Estate Management in Falmouth Township, Nova Scotia” (paper presented at 3rd New England Planter Conference, 1993); James W. St. G. Walker, *The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone, 1783–1870* (Toronto: University of Toronto Press, 1992).

134 Barry Cahill, “Slavery and the Judges of Loyalist Nova Scotia”, *University of New Brunswick Law Journal*, vol. 43 (1994), p. 79.

135 *Ibid.*, pp. 77–78.

136 *Ibid.*, p. 79.

137 RG37Hfx/22/45.

further identified Watson as having been both a servant of Mrs. Lobdell of Boston before she worked in Halifax for John Woodin Sr., the plaintiff.¹³⁸ The court declared her a free woman.

The case, unique in Nova Scotia's court records, arose because Elizabeth had petitioned the court saying that she had been brought to Halifax from Boston and, unknown to herself, had been sold by Elias Marshall, whose cruelty towards her she recounted in her sworn declaration.¹³⁹ A month and a day after the decision of the court of quarter sessions, this same Elizabeth Watson was seized by William Proud, a Halifax butcher, who insisted she was his runaway slave named Phyllis. Again, she swore a declaration describing his and his wife's cruelties. Forced into his household by the decision of the inferior court, Elizabeth sued the butcher before the supreme court, requesting £100 in damages for illegal confinement.

The supreme court, with Chief Justice Finucane presiding, dealt with the case in mid-September. Elizabeth Watson was represented by George Thomson, the most junior member of the bar, while Proud retained Richard Gibbons, Jr., the solicitor general and the senior member of the bar and its most prominent practitioner. There, one Samuel Laka swore that he had purchased Phyllis from Agnes Lobdell in Boston for £27 sterling, then brought her to Halifax and sold her to Mrs. Elias Marshall, for which he submitted a bill of sale.¹⁴⁰ He denied that he had ever heard of her as a free woman. Rather he knew of her for about the last six months of her time with Mrs. Lobdell, who had bought her from an Ebenezer Gorham. The jury found for Proud, declaring Elizabeth Watson "his property and slave".

A second example, both less pathetic and less tragic, equally underscores the fragility of the personal freedom experienced by people of colour in planter Nova Scotia in the midst of war.¹⁴¹ In April 1780 Thomas Ball, of Windsor, applied to the supreme court for the relief of his wife, Priscilla Ball, treated as a slave and taken into custody for bail as part of, in the words of Deputy Provost Marshal William Simpson, "an attachment & property of Joseph Haines impleaded at the suit of John McMonogle".¹⁴² When the court ordered her immediately released, Simpson refused to comply, noting a fortnight later, "No security being offered by the within said Thomas Ball, the said Priscilla Ball is still in custody of the provost marshal as assets on behalf of John McMonogle." Although the issues were illegal confinement

138 Died January 28, 1790, aged 78, while Mary Woodin, his wife, died February 15, 1783, aged 71.

139 RG39C/21, *Watson v. Proud*.

140 Elias Marshall, twice implicated in fraud, became the Halifax naval yard master shipwright. Julian Gwyn, "The Culture of Work in the Halifax Naval Yard before 1820", *Journal of the Royal Nova Scotia Historical Society*, vol. 2 (1999), pp. 129–130.

141 John N. Grant, "Black Immigrants into Nova Scotia, 1776–1815", *Journal of Negro History*, vol. 58 (1973), pp. 253–270.

142 Haines was a Windsor victualler. The attached goods included six horses, saddles and harness, a cask of West Indies rum, and one "Negro wench named Sillah" (RG39C/21). Priscilla Ball died in Halifax May 10, 1791, and was buried in St. Paul's graveyard.

and false imprisonment, these were the first known cases in Nova Scotia to test the legality of slavery. Cahill has argued, [that] “free-born or freed Blacks in Nova Scotia could seek judicial redress against the presumption of slavery ... is significant for the legal history of slavery during the post-bellum, loyalist period, when it became a question more of perpetuating the status of Black slaves who had been introduced into Nova Scotia by loyalists, than of pressing free-born Blacks into slavery.”¹⁴³ This case, occurring as it did before loyalist refugees arrived in large numbers in Nova Scotia, underlines the widespread acceptance of slavery within the colony during the ascendancy of New England planters.¹⁴⁴

Bills were introduced in the assembly to legislate slavery in Nova Scotia in 1787 and again in 1789. Walker believes that the second attempt arose in part owing to the frequent illegal seizure and export of free Blacks for sale abroad, while Cahill concludes that it was an attempt to prevent illegal re-enslavement of free Blacks, while doing nothing for Nova Scotia’s numerous Black slaves.

Finally in 1797 there arose the final example of a woman caught in this situation. It was the case of Rachel Bross, the wife since 1792 of Charles Fair, both illiterate Blacks of Brinley Town, a Black suburb of Digby, then a township and the largest community of free and slave Blacks in Annapolis county.¹⁴⁵ Bross had been a slave of Frederick William Hecht, Esq., a commissary of musters in the garrison of Annapolis Royal from 1785. On Hecht’s personal order she was seized without proper authority and taken from her home in October 1797. She was then dragged to Annapolis Royal and imprisoned as a fugitive and outlaw. She was immediately advertised for sale at public auction. Her husband applied to the supreme court in Halifax for her release, describing her merely as Hecht’s servant. The supreme court immediately ordered her to be conveyed from Annapolis. Finding the proceedings defective, when the matter came forward in July 1798, the chief justice discharged her, but intimated that “as she was claimed as a slave ... an action should be brought to try the right”.¹⁴⁶ Hecht immediately responded by bringing a suit against Phoebe Moody, a litigious Halifax retailer and the literate widow of James Moody, by whom Rachel Bross was then employed. Moody

143 Cahill, “Slavery and the Judges”, p. 81.

144 This point is made in a different context by Barry Cahill, “Colchester Men: The Pro-Slavery Presbyterian Witness of the Reverends Daniel Cock of Truro and David Smith of Londonderry”, in Conrad and Moody, eds., *Planter Links*, pp. 133–144.

145 RG39C/77, *R. v. Hecht* (1798). For the historical setting, see Barry Cahill, “Slaves Across the Bay; or, From Saint John to Digby: New York Loyalist Slaveholders”, “The Great and Efficacious Writ”, and his “*Habeas Corpus* and Slavery in Nova Scotia: *R. v. Hecht ex parte Rachel*, 1798”, *University of New Brunswick Law Journal*, vol. 44 (1995), pp. 179–209. The marriage occurred at Trinity Anglican Church, Digby, on December 27, 1792.

146 S. S. Blowers to Ward Chipman, January 7, 1800, cited in D. A. Jack, “The Loyalists and Slavery in New Brunswick”, *Transactions of the Royal Society of Canada*, 2nd series, vol. 4 (1898). Information from Barry Cahill.

was accused of having harboured Rachel, who had eluded his service to his material damage, which he valued at £100. Cahill believes this was the first such case “in which compensatory damages in trespass were sought by a slaveholder against someone who allegedly by fraud and deception had procured the personal services of a fugitive slave as a wage labourer”.¹⁴⁷ When the jury sided with Moody, who was represented by the profoundly anti-slavery advocate, Richard John Uniacke, and awarded her costs of £8, Rachel’s freedom was established. Her terrifying brush with Hecht in 1797 necessitated her permanent relocation to Halifax from Digby Township, a path followed both earlier and later by others in her unenviable condition.

Conclusion

What can be made of this great variety of evidence about female litigants? Salmon warns us not to ignore the intricacies of dower rights in preference to counting the number of administratrices.¹⁴⁸ Since surviving cases of dower rights in pre-1784 Nova Scotia are so few, we can conclude that the 1768 statute was largely effective. Since each such case sought to establish the widow’s right to one-third of either the value of or the income from the total property of her late husband, there was nothing remarkable in law about such suits. I thus restricted my study to widows who administered estates, and from habit counted them.

Salmon also warns us against heralding colonial women of business, without understanding the rules of contract which governed their activities. It is good advice. As it was rare in the eighteenth century for works on such substantive law to be published, knowledge of the eighteenth-century rules of contract, and the cases which supported them, can be obtained either by consulting the relevant chapters of Blackstone’s *Commentaries* or Comyn’s *Treatise of the Law Relative to Contracts*.¹⁴⁹ As their focus is England, their value for Nova Scotia is not absolute. Nevertheless, upon finding such women wholly unrecognized by historians, let me risk Salmon’s censure by giving them the attention they deserve. It is clear that women’s work, as found in these civil cases, was almost never domestic, even though the place of work or the store or shop was part of the house itself. This simply reinforces the impression found from a study of Halifax newspaper advertisements placed by women. As an example, in 1776 Mary Burton used the public prints to advertise an assortment of fine textiles for sale at “her house”.¹⁵⁰ Agnes Proctor made and sold excellent chocolate at her home, one street above the Dis-

147 Cahill, “Slaves across the Bay”, p. 20. Hecht had made no mention of lost slaves when he applied for compensation as a loyalist, nor were slaves included in the 1804 probate inventory of his assets (p. 21).

148 Salmon, *Women and the Law of Property*, p. xiii.

149 Samuel Comyn, *A Treatise of the Law Relative to Contracts and Agreements Not Under Seal*, 2 vols. (London, 1807).

150 *Nova Scotia Gazette and Weekly Chronicle*, July 9, 1776. Information from J. Phillips.

senting meeting house, in 1779.¹⁵¹ In 1780 Elizabeth Brehm, the illiterate widow of a butcher, converted her farm house to a “House of Entertainment ... where Gentlemen and Ladies may be accommodated with Tea, Coffee, and the best sorts of Wines”.¹⁵² Thus women’s work occurred in the formal marketplace, even if there were no government officials available to record its taxable value, and thereby leave a paper trail for twenty-first-century historians to act as scavengers. The women as workers ranged from the economically disadvantaged spinsters and widows trying to survive to the economically better-placed, like Mary McNamara, the widow of an artillery lieutenant. She, despite the wartime boom in Halifax, intended in 1780 to return to Old England. While offering her livestock and produce for sale, she let her farm and gave notice to her debtors to “make immediate payment or they may be expected to be sued next court” by her agent John Butler Esq. Such hitherto obscure women tavernkeepers, landladies, retailers, shopkeepers, mantua-makers, midwives, farmers, and traders surge forward as soon as the historian takes time to inquire.

Particularly interesting is the substantial evidence, from these and other court files, that Nova Scotia’s courts after 1783 dealt in an equitable manner with debts owed to Americans by loyalist refugees, as if no political gulf had divided North America since 1775. In view of the well-publicized reluctance of American patriots to treat loyalists justly, as the peace treaty of 1783 had required, or to repay pre-war debts to British creditors, this is particularly surprising. From evidence of court files involving female debtors as well as male, it is clear that American creditors, through their Nova Scotia agents, successfully pursued pre-war, wartime, and post-war debts owed them by loyalist refugees who settled in Nova Scotia. A study of similar evidence in Boston, New York, and Philadelphia, where Nova Scotians principally transacted their American business, would reveal the extent and outcome of similar suits initiated by loyalist refugees as creditors of such American debtors.

On a different point, that married women could do nothing alone under the civil law was the rule and the practice in Nova Scotia, as elsewhere in British America. The rule of law stated that, after marriage, a woman could not be sued without joining her husband.¹⁵³ Only in that form were such suits dealt with in Nova Scotia’s courts. There was little evidence of a different custom being practised of the sort others have noticed elsewhere in eighteenth-century America. One such piece relates to a 1750 case, in which the four justices ruled that a woman could bring an action “in her own name” if her husband was absent from the province for a year and a day.¹⁵⁴ No such rule applied in England. The cases studied here also indicate that, in compar-

151 *Nova Scotia Gazette and Weekly Chronicle*, July 13, 1779. Information from J. Phillips.

152 *Nova Scotia Gazette and Weekly Chronicle*, May 9, 1780. Information from J. Phillips.

153 See especially Comyn, “Of Contracts with Married Women”, in *A Treatise of the Law*, vol. 1, pp. 172–217, with all the relevant cases duly cited.

154 RG37Hfx/A/26/66, *Dunlap v. Stinson*. It remains the only case of its kind so far uncovered.

ison with the practice in England, real property was relatively unprotected, as it could be either attached for bail or sold to satisfy a writ of execution.

Evidence that the court of chancery waged constant war against the excessive common-law rights of husbands is wholly lacking for eighteenth-century Nova Scotia. The one area of the common law readily open to modification by this equity court on behalf of women lay in the right of married women to hold and control property of every sort. A trust could be established for a woman before marriage to ensure her income and to protect property from an improvident husband. The legal title lay, not with the wife, but with the trustee, who was obligated not to waste the property. Such trusts would potentially advantage the daughters of the wealthy. In a Nova Scotia characterized by widespread poverty with very small islands of elite wealth, no resort was ever made to this particular application of equity before 1802.

Additionally, there remains the vexing question of access to the law occasioned partly by distance to the courthouse. Given the province-wide jurisdiction of the court of chancery, the deficient system of communications by 1800, and the fact that this court never went on circuit, very few litigants, other than those who lived no farther away than Lunenburg or Windsor, ever used chancery. Its emphasis on mortgage foreclosure meant that only landowners, or those who had secured debts or loaned money on land, were likely to become involved in its proceedings. When one tries to measure the costs of litigation, both in the matter of court costs and those of the retained lawyers, it is probable that the well-positioned, in matters of income and wealth, were far better placed to defend themselves or take action against others than those at the lower end of the income and wealth pyramid. Everyone who has hazarded an opinion on this issue agrees. Yet the number of female litigants who risked much of their assets on a civil suit, or were forced to defend them, is nevertheless impressive. Still, the vast majority of undefended cases, which went by default to the plaintiff, were found probably among the poorest litigants.

The social standing of the defendant apparently influenced greatly the way that writs of summons or execution were administered. There is the appalling case of Priscilla Ball, imprisoned as part of the bail, arising from a writ of summons. This contrasts with the successful refusal of the socially prominent Rebecca Gerrish to give up either £1,200 in Nova Scotia treasury notes or any personal effects in answer to a writ of execution. She even barred the provost marshal from entering her Halifax house, while Priscilla's master could not prevent the deputy provost marshal from itemizing every object, including her own person, needed in the attachment for bail.

The evidence considered here suggests that gender was, after all, a significant variable in civil litigation in this early period of Nova Scotia's history. If, in spite of well-recognized social and legal disabilities, women, married or otherwise, asserted and defended their interests vigorously, they did so in a legal and economic world dominated by others. That less than 5 per cent of civil actions in the supreme court or inferior court of common pleas involved

female litigants is indicative both of their inferior economic position and of the fact that they resorted to these courts far less readily than men. Yet to some women, in certain phases of their lives, such courts proved of great importance. The close study of their records offers valuable insights into women's lives in colonial Nova Scotia. In this way the status of Anglo-American women, a matter of such interest to modern scholars, appears relatively less depressed in the second half of the eighteenth century than some historians have hitherto believed. A different conclusion would require new evidence, perhaps from comparisons made in a parallel study of male litigants in civil actions. Still, the status of women of colour before 1799 remained grim, desperate, unrelieved, and declining, and without any prospect of improvement. Thereafter, slaves, both women and men, were judicially emancipated.