The University of Hull The National Archives
The Arts and Humanities Research Council

Women in Chancery:
An Analysis of Chancery as a Court of Redress for Women in Late Seventeenth Century England

Being a thesis submitted for the degree of

Doctor of Philosophy

The University of Hull and The National Archives

by

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June 2019

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Repositories

CCA – Canterbury Cathedral Archives

HHC – Hull History Centre

FTNA – Friends of The National Archives

TNA – The National Archives

Litigants

JFP – Joint Female Plaintiff

JFD – Joint Female Defendant

MFJP – Male Female Joint Plaintiff

MFJD – Male Female Joint Defendant

No MS – No Marital Status (Singlewomen)

Male P – Exclusively Male Plaintiff(s)

SFP – Sole Female Plaintiff

SFD – Sole Female Defendant

Acknowledgements

I extended my sincerest thanks to the Arts and Humanities Research Council for seeing the value in, and need for, studying the history of women, and funding this PhD project. Without their support of humanities students, many fascinating and important research projects would never happen.

I would like to thank everyone at The National Archives (TNA). Everyone there was always so kind, and generous with their time. A very special thank you is due to Dr Andrew Little, who very kindly translated some documents for me that were written in Dutch. The biggest thank you for a specific member of the TNA team has to go to the wonderful Liz Hore. Liz's constant help, her hugely impressive knowledge of the Court of Chancery and the legal archive, and her willingness to go the extra mile made the research of this PhD possible. I owe her a huge debt.

To everyone in the History Department of the University of Hull – thank you! Your teaching, support, encouragement and guidance made me a curious and passionate lover of History. I would not be where, or who, I am today without being a part of this department from a nervous undergrad in September 2010, up until now.

I have been very fortunate to have excellent supervision throughout the PhD process. Firstly, thank you to Prof Peter Wilson, who left Hull to take up a position at Oxford during the first year of my PhD, but provided excellent guidance in those early, formative months. A massive thank you to Dr Briony McDonagh, whose insightful and committed supervision vastly improved my PhD experience, research and thesis. Thanks also to Dr Amanda Bevan – Dr Bevan has been extremely busy over the course of my PhD, but still always made time for me and my work. She has been a truly brilliant supervisor.

The PhD experience has all the ingredients of a very lonely journey, but I was lucky enough to make some friends along the way who I now consider friends for

life. They got me through the everyday highs and lows of postgraduate life, and I could not have done it without them.

Similarly, none of this would have been possible without my wonderful, loving, supportive family. Thank you to Kate and John Garside, whose unwavering support, love, generosity and belief drives me forward. Thank you to Georgia Garside, my sister and best friend. A special thank you to Thomas Broderick, not only has he held my hand through all of this, seen me through my very best and worst moments, but he even asked me to become his wife. I can't imagine having completed this work without him. I love you all so much, there are no words. Thank you.

My final thank you goes to someone without whom this PhD would never have happened. Dr Amanda Capern first saw a passion for History in me as a young undergraduate, she encouraged me to apply for my MA, and created this PhD project. She has helped, guided, and supported me every step of the way. She has supervised all three of my dissertations, and never wavered. It has never mattered what Amanda had going on in her own life – she has always made time for her students, and gone above and beyond for them, including me. She is, truly, one of the very best people I know and has shaped not only my experience as a student, but my whole life. Thank you so much, Amanda.

This thesis is dedicated, with love and sincere thanks, to everyone who made it possible, but particularly to the Garside family, Thomas Broderick, and Dr Amanda Capern – without whom it really would not have happened.

Abstract

The early-modern Court of Chancery has been hailed as a court of law unique in patriarchal England for its recognition of women's legal rights. This thesis is based on detailed quantitative and qualitative research into women's use of the Court of Chancery in the late seventeenth century, to assess if and how it served as a court of redress for women. The thesis also contributes to the growing historiography using court records to understand and interpret the everyday lives of women in early-modern society. The research not only reveals the role of Chancery as a women's court of redress, but adds to the discussion of the lives of women in the patriarchal society of seventeenth-century England. It may encourage more historians of early-modern society, culture, family and women to utilise the voluminous and underutilised Chancery litigation records.

1. Introduction

In February of 2016, a landmark case made national headlines in England when two women came to blows over which one of them had the legal rights to a share of a property owned by the late Norman Martin. Joy Williams bought a three-bedroom house in Dorchester (Dorset) with Norman Martin as tenants in common in 2009. They shared the home together as a couple until Mr Martin's death in 2012. However, upon Mr Martin's death, his share of the house did not automatically descend to Ms Williams. Instead, his share went straight to his long-estranged wife, from whom he had never legally divorced, Mrs Maureen Martin. Ms Williams thought it contrary to her property rights that part of the property she had shared with her partner for a number of years should be given to a separate party with no interest in the inheritance other than being wife to the deceased in nothing but law. She felt the law was working against her interests. In the eyes of Mrs Martin, however, she was the lawful wife of the late Mr Martin and therefore her claim upon the property was both fair and legal. Ultimately, Judge Nigel Gerald ruled that the share of the property in dispute should go to Ms Williams rather than the deceased's wife, as she had brought the claim to court for 'reasonable financial provision', and that it was a 'fair and reasonable result', or an equitable result.[1]

England has long possessed an arm of the law interested in equity as a legal principle rather than just the application of common law precedent. In the seventeenth-century court of equity law called Chancery one often finds women coming up against one another, disputing rival claims to property and the money arising thereof. These cases often reveal complicated and emotive relationships (familial, social and communal). In early-modern England people were deeply invested in and concerned about women's legal rights to property, and how the marital status and social position of women affected those rights. Seventeenth-century English society was litigious, and the women in this society were actively

[1] Online news article, 'Partner wins battle with estranged wife over share of house', *BBC News* (16/02/2016) [http://www.bbc.co.uk/news/uk-35589807, last accessed 18 February 2016].

involved in this culture of litigation and the law. Years of scholarship have, or should have, now eroded any shock a historian may have once felt over this assertion. As this thesis will demonstrate, women brought cases before the various legal courts of England throughout the early modern period and defended themselves too when the need arose, as it often did.

The early-modern Court of Chancery has long been a source of academic curiosity – even whilst the sheer volume of the records and complicated indexing left the archival material under-used. The voluminous records have just now been made more accessible by online cataloguing. They can now be used to reveal not only the development and application of equity law, which is of keen interest to many legal historians, but also some of the intricacies and difficulties of familial and communal life throughout the period in rich detail. Despite this, the picture of female involvement in the later seventeenth-century Chancery remains somewhat murky. How did women interact with Chancery, and why? What did it mean to be a female litigant in the equitable Court of Chancery in later seventeenth-century England? Of particular interest to the social and women's historian, perhaps, are the questions surrounding the detailed content of individual suits in which early-modern women were involved. What can the historian learn from the Chancery archival material about the lives of women?

This thesis aims to explore these research questions, by providing both qualitative and quantitative research surrounding women's use of Chancery in the late seventeenth century. Following this introductory chapter, detailing the methodology behind this research project as well as the current historiography surrounding the Court of Chancery, is a more general literature review. Chapter two covers the now extensive historiography surrounding women and the law in early-modern England. A historiographical consideration of how women were seen, and acted, as litigants at this time serves to set the scene for my own research on female interaction with Chancery more specifically. This chapter also offers an analysis of female legal knowledge. In order to understand fully women's activities at law, there is a necessity to provide space for a consideration of the extent of female knowledge of the law in general – how

women acquired the knowledge they did, and how this may have impacted their litigious endeavours at court. The literature review concludes with a section considering the 'Quantitative Historiography' surrounding early-modern women and the law, as well as the Court of Chancery more particularly; a review of the current quantitative data available in other words.

The third chapter of the thesis, 'Quantitative Analysis', presents my own quantitative findings, based on the re-se of the online catalogue data, reveals the presence, indeed the prevalence, of named female litigants in the later seventeenth-century Chancery, as well as how women appeared before the court. These new findings provide insight into the impact of marital status on female interaction in the court, as well as how they acted as litigants – independently, with other women, or with men. The chapter is organised by considering named female plaintiffs, then defendants, before providing some analysis surrounding cases that continued to deposition stage of Chancery procedure. This extended quantitative research provides fresh insight into whether early-modern Chancery served as a women's court of redress.

Chapters four to seven focus less on the quantitative findings of this research project and more upon the qualitative findings, with chapter seven serving as a case study chapter, unpacking two specific cases in great detail. In order to investigate the rich detail available in the Chancery archival records, the qualitative analysis used throughout the thesis is broadly based on a core sample of 30 cases. These chapters consider women as litigants in Chancery at the different, chronological stages of the expected female life-cycle: the singlewoman, the wife, the widow. These expected life-stages for early-modern women lend themselves well to the consideration of women and the law because they reflect the law's own division of women into legal categories. The marital status of the seventeenth-century woman determined her legal position, and is integral to any consideration of the position of women before the law – fundamental, therefore, to an in-depth analysis of the experience of women in early-modern Chancery.

The final qualitative chapter investigates two specific suits, Gee v. Hotham and Bubwith v. Shaw, in great detail as case studies. This enables the consideration of two suits that were of notable interest. For the case Gee v. Hotham, it was possible to build up a far more detailed picture of the case, and therefore the involvement of Mary Gee, as I was able to locate relevant documentation outside of TNA. Bubwith v. Shaw, on the other hand, provides rare insight into how Chancery's jurisdiction stretched over the seas, in this particular case partially taking place in Holland.

The key benefits of having a case study based chapter as part of this particular research-project is two-fold. Firstly, it demonstrates the richness of the Chancery litigation documents as a core primary source. The detail provided within these legal documents, coupled with the fact that they are part of a hugely voluminous archive, means that there are multiple ways to access the information held within. In the scope of one project it has been possible to analyse the documentation with quantitative, qualitative and case study methodologies.

Secondly, by examining suits brought before the Lord Chancellor in Chancery as individual case studies, the historian is given crucial space; space to investigate the cases in far fuller detail than elsewhere. In this instance, this approach has resulted in in-depth knowledge of suits, women, and families that may otherwise have never been fully explored. John Gerring said in 2007 that '[s]ometimes, in-depth knowledge of an individual example is more helpful than fleeting knowledge about a larger number of examples. We gain better understanding of the whole by focusing on a key part'.[2] By exploring these two suits as case studies, a clearer comprehension of the whole – that is to say, women's use of Chancery – has been possible.

Indeed, the sheer volume of detail within the Chancery archival records is staggering. Not only do they provide information for the historian interested in the legal lives of early-modern women, but they are of significant use and value

[2] John Gerring, *Case Study Research: Principles and Practices* (Cambridge: Cambridge University Press, 2007), p. 1.

to social, cultural, and economic historians too.[3] It is intended that the research questions and lines of investigation explored here will serve to provide early insight into the particulars of female involvement in the Court of Chancery in late seventeenth-century England. The findings will contribute generally to our historical understanding of how women lived and operated in early-modern England through this thorough study of women in Chancery. By providing new insight into women's activities, the multiple and different roles they played, exploring the legal capacity of women within a particular court and jurisdiction, this work delivers a highly detailed analysis to add to what is already known about early-modern women. This research will bring further clarity to our understanding of women's role and involvement in a society acknowledged as being highly litigious, whilst simultaneously developing a richer picture of the equitable concerns and endeavours of women throughout this period.

1.1 The Court of Chancery

In order to tackle these research questions, then, it is necessary to establish first a historical understanding of the Court of Chancery itself. J H Baker provides an essential account of the origins of the English Court of Chancery, which, as he tells us, originated in the Anglo-Saxon period from a department of state, the *scriptorium*, where royal charters and writs were drawn up and sealed. The head of the department was the Chancellor; it was he who held in his custody the great seal of England, and it was in fact on the basis of this custody that the office of Chancellor was founded. It was 'the most important mark of authority in the realm'.[4]

The monarch at any given time swore to the people 'to do equal and right justice and discretion in mercy and truth', thereby retaining the 'overriding power to

[3] Amanda L Capern, 'Emotions, Gender Expectations, and the Social Role of Chancery, 1550-1650' in *Authority, Gender and Emotions in Late Medieval and Early Modern England*, Ed. Susan Broomhall (London: Palgrave Macmillan, 2015), p. 188.
[4] J H Baker, *An Introduction to English Legal History* (London: Butterworths, 1979), pp. 84-85.

administer justice outside the regular system'.[5] It was out of this idea of justice administered by the monarch, a power that was channelled through a male individual operating in the role of Chancellor, that there developed an accessible, equitable jurisdiction for those people coming before Chancery. As Maria Cioni asserts, Chancery was, as any court was and is, 'both a product and reflection of its society'.[6] It was the responsibility of the king, or queen as was of course the case during the Tudor reigns of both Mary and Elizabeth, to administer monarchical justice, and the people needed it. By the fifteenth century, this justice delivered from the monarchy was firmly set in a few jurisdictions – the Court of Requests, Exchequer, the palatinate courts and Star Chamber, but also, crucially, the Court of Chancery.[7]

The Court of Chancery, in particular, was a court that was able to deliver swift and relatively inexpensive justice. The Chancellor, tasked with serving the equitable needs of the king or queen's subjects for whom the common law and ecclesiastical jurisdictions had failed, was not bound by the procedural formalities of common law. The Court of Chancery could, for instance, sit anywhere and was open for business at all times.[8] Wherever the Chancellor was the Chancery could, and would, be. For example, George Jeffreys, Lord Chancellor from 1685 to 1688, due to illness, added an extra room to his residence in Duke Street, London, in order to hear matters and perform his duties related to Chancery at home.[9] Causes were expedited outside of the formal court via

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[5] Baker, *An Introduction to English Legal History*, p. 84.
[6] Maria L Cioni, 'The Elizabethan Chancery and Women's Rights' in *Tudor Rule and Revolution: Essays for G R Elton from his American Friends* (Cambridge: Cambridge University Press, 1982), Eds. DeLloyd J Guth and John W McKenna, p. 159.
[7] Christopher W Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2008), p. 11.
[8] Timothy S Haskett, 'The Medieval English Court of Chancery', *Law and History Review*, Vol. 14, No. 2 (Autumn, 1996), p. 252.
[9] Paul D Halliday, 'Jeffreys, George, first Baron Jeffreys (1645-1689)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; Online Edn., May 2009 [http://www.oxforddnb.com/view/article/14702, last accessed 23 February 2017].

dedimus potestatem to gentlemen in the country (for instance, in Yorkshire).[10] Chancery was a major advocate for arbitration. The delegation of certain cases to both men and women outside of the court, in the distant country, was an effective way to avoid proceeding to judicial order whilst still providing the necessary legal aid. This form of finding conciliation led to arbitration becoming something of a 'touchstone' within equitable jurisdiction.[11]

These technical and legal advantages, enjoyed by both Chancery as well as its litigants, clearly aimed to deliver efficient and swift justice to the poor and the oppressed. It is important to remember, however, that whilst Chancery activity effectively operated outside of the confines of the common law, it did not interfere with the general rules of the common law courts.[12] Each individual case brought before the Lord Chancellor was 'seen to turn on its own facts', and the subsequent decrees bound only the parties of each case.[13] It was in this way that the legal work conducted by the Chancellor acted as a 'supplement' to the English common law system as opposed to a judicial rival: '[t]he Chancellor was not administering a self-sufficient body of law; he was supplementing the common law'.[14]

The process of bringing suit to Chancery began by filing a bill of complaint. Original bills of complaint (written in vernacular English), certainly by the later seventeenth century, were addressed to people of various different titles. Litigants appealed to 'The Keeper of the Greate Seale of England…', the 'The Lord High Chancellor…' or 'The Right Honourable…', sometimes even addressing multiple persons at once: 'To the Lords Commissioners…'. The 'Keepers of the

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[10] Baker, *An Introduction to English Legal History*, p. 88; *Dedimus potestatem* is Latin for 'we have the given power', at law this is a writ that effectively gives commission to one or more private persons outside of court to expedite an act formally performed by a judge, or, in the case of the Chancery, the Chancellor.
[11] Cioni, 'The Elizabethan Chancery', p. 161.
[12] Baker, *An Introduction to English Legal History*, p. 88.
[13] Haskett, 'The Medieval English Court of Chancery', pp. 252-253.
[14] Margaret E Avery, 'The History of the Equitable Jurisdiction of Chancery before 1460', *Bulletin of the Institute of Historical Research*, 42 (1969), p. 130, as quoted by Haskett, 'The Medieval English Court of Chancery', p. 253.

Seal' were, according to Baker, originally appointed on a temporary basis when between Chancellors, but in later periods would be granted on a permanent basis. When litigants addressed 'The Lord High Commissioner of the Great Seal of England', or 'The Lords Commissioners', rather than a specific 'Chancellor', it meant that the keeping of the Great Seal was at the time entrusted to several different persons simultaneously. Interestingly, there has not in reality been a Great Seal of England, nor a Chancellor of England, since 1708. Nevertheless, the court of the Lord High Chancellor of Great Britain remained in Chancery, and, regardless of the specific titles awarded to the judge presiding over Chancery at any given time, he held the power equated with being Chancellor, which was considerable.[15]

The Chancellor has always, first and foremost, been a minister of the crown and an officer of the state. The vast majority of Lord Chancellors were trained as lawyers, and up until around 1876 spent most of their time sitting in the court. Nonetheless, those appointed to the office were selected on political grounds. Many Chancellors of the medieval period were high-ranking members of the Church, and some took on what we would today in modern politics recognise as the role of Prime Minister in all but title; Baker points to Cardinal Wolsey (1515-29) as a key example of this. The role of, and path to becoming, Chancellor was therefore highly politicised, yet unclear and circumstantial. The fact that it was the politicians who held the highest legal office in England taken alongside the fact that the Chancellor's jurisdiction was of an 'undefined nature' created an exceedingly privileged position. Chancellors held their post strictly at the pleasure of their monarch, for the benefit of the ruler, and derived their notable power from no more than the custody of the Great Seal of England and a 'pre-eminent position in the King's council'.[16]

A huge staff of clerks operated under the Chancellor, working at various different levels. As both the Court of Chancery and the role of the Chancellor grew and developed, so did the body of staff and clerks that helped the court to function.

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[15] Baker, *An Introduction to English Legal History*, p. 85.
[16] Baker, *An Introduction to English Legal History*, pp. 85-86.

The growth of the equitable jurisdiction of the Chancellor led to the development of the 'Six Clerks'.[17] The Six Clerks were descended from medieval counterparts, of which there were three, who had originally, under the guidance of the Master of the Rolls, handled enrolments and kept records.[18]

Having discussed the structure of the Court of Chancery and its officials, it is necessary to provide some context for the archive of legal documents left behind by the court. The original bills of complaint and the corresponding answers from the later seventeenth century are consequently filed at The National Archives (TNA) under the Six Clerks Series of Chancery: Mitford (1570-1714, C8), Bridges (1613-1714, C5), Hamilton (1620-1714, C7), Collins (1625-1714, C6), Whittington (1640-1714, C10) and Reynardson (1649-1714, C9).[19] All of the series are now searchable via TNA's online catalogue search engine, 'Discovery'.[20] This thesis is based upon a set of sample cases taken from the C5 Bridges Series of archival Chancery material. The printed catalogue for this particular series was the first to be made searchable online, in 2012, and so was chosen for this research. Although the catalogue for C5 has some sporadic mistakes within it – for instance, in terms of the accurate identification of documents and the dating of documents – it is highly usable and ripe for in-depth, academic exploration. The value of having the catalogue online is considerable. When Amy Erickson looked at Chancery records for her work on marriage settlement cases, five of the division indices were still only available in original handwritten format, with very few of the seventeenth-century cases providing sufficient record description to know what each individual case was really about. The Bridges Division, C5, alone was printed (in the early twentieth century) with an indication of the cause of each suit, and so formed the basis of

[17] Baker, *An Introduction to English Legal History*, p. 85.
[18] W J Jones, *The Elizabethan Court of Chancery* (Oxford: Clarendon Press, 1967), p. 119.
[19] For more information on the filing of Chancery archival records see the Research Guide created by TNA, *Chancery Equity Suits After 1558* [http://www.nationalarchives.gov.uk/help-with-your-research/research-guides/chancery-equity-suits-after-1558, last accessed 17 February 2016].
[20] All of the Chancery series became searchable online from the 31st March 2018.

her work.[21] Online catalogues that are newly searchable make the whole process of locating and following specific suits in Chancery a far less daunting prospect, and will likely entice increasing numbers of historians to its relatively unexplored, archival depths.

As Chancery grew further still, the workload of the Six Clerks grew to unprecedented levels. The Clerks eventually, then, also had their own underlings, clerks that worked as deputies for them on their cases. They became known as the Sixty Clerks.[22] The Six Clerks were expected to fulfil a diverse range of legal and administrative tasks. So diverse, in fact, was the role of the Six Clerks that Jones describes them as having had 'an interest in almost every aspect of the Chancery machine'.[23] The Six Clerks were responsible for making patents for sheriffs, giving advice to their clients in the court, drawing and enrolling the decrees of the court, filing pleadings, possessed examinations taken in the country, and writs that held relevance in the equitable jurisdiction of Chancery were written in their office. The sheer volume of work entrusted to the Six Clerks highlights how the development and expansion of the offices led to the work being 'devolved upon their underclerks' – the Sixty Clerks.[24] As the workload of the Six Clerks augmented and the number of offices remained steadfastly at six, the Sixty Clerks gained increasing levels of work and, therefore, legal responsibility.

The business of the Court of Chancery certainly did grow over the course of the medieval and early-modern periods, taking on an ever larger case load. This, however, was not specific to Chancery. Christopher Brooks found that an increase in court usage, 'in the form of litigation between private parties', began gradually in the later years of Henry VIII's reign, becoming 'what can only be described as a flood during the Elizabethan period'.[25]

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[21] Amy L Erickson, *Women and Property in Early Modern England* (London and New York: Routledge, 1993), p. 114.
[22] Baker, *An Introduction to English Legal History*, p. 85.
[23] Jones, *Elizabethan Court of Chancery*, pp. 120-121.
[24] Jones, *Elizabethan Court of Chancery*, pp. 120-121.
[25] Brooks, *Law, Politics and Society in Early Modern England*, p. 61.

This dramatic increase in litigation was seen across the whole of England and her jurisdictions, and has been explained, by the likes of Christopher Brooks and Craig Muldrew, as largely being the result of demographic and economic change, 'as marketing and credit expanded'.[26] Indeed, the number of suits reaching advanced stages of pleading in the central courts of Common Pleas and King's Bench grew so rapidly, that they increased six-fold from 1563 to 1640.[27] This boom in legal business 'made the late sixteenth and early seventeenth centuries the most litigious age in English history', and the Court of Chancery experienced a rise in business as part of that general increase.[28]

The years of growth in litigious business were set against a backdrop of a changing legal structure, as the sixteenth and seventeenth centuries progressed. Early-modern courts such as Star Chamber, and the palatine jurisdictions of Durham and Chester, were either abolished during civil war, or 'gradually atrophied over the course of the late seventeenth and eighteenth centuries'.[29] Business that would have been held in those courts, then, found their way into those courts that managed to survive that period of turmoil and change, one of which was Chancery.

There were changes to the ecclesiastical courts too. The years between the accession of Henry VIII and the early 1550s saw a decline in the business of the ecclesiastical courts, which remained static in the years up until the accession of Elizabeth I. Attempts by common law lawyers and the English Reformation did not, however, extinguish the jurisdiction of these courts. The records in a number of dioceses reveal that the reigns of Elizabeth I and James I witnessed

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[26] Brooks, *Law, Politics and Society in Early Modern England*, p. 61; Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (Hampshire and New York: Palgrave, 1998), p. 203.
[27] Muldrew, *The Economy of Obligation*, p. 203.
[28] Christopher W Brooks, *Lawyers, Litigation and English Society Since 1450* (London and Rio Grande: The Hambledon Press, 1998), p. 71.
[29] Christopher W Brooks, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge, Cambrdige University Press, 1986), pp. 76-77.

the amount of litigation within this jurisdiction doubling.[30] The 1640s and the Interregnum, however, produced a different result. 'Unlike the civil courts, the ecclesiastical courts suffered a complete collapse' during those turbulent years.[31] Though they were restored in 1660, they never fully recovered.

Henry Horwitz tells us that the Court of Chancery, on the other hand, was rather less tainted by the unsettled and dangerous politics of the seventeenth century than other legal courts, such as Star Chamber and the ecclesiastical courts. Cromwell did institute a series of changes in Chancery by the 'Ordinance of 1654', which aimed to reduce costs and delays associated with the court. This ordinance, however, in fact expired in 1658, which resulted in the court's officials reviving traditional procedure a full two years before the restoration of the monarchy, procedures that largely remained intact from then up until the judicial reforms of the mid-nineteenth century.[32] Whilst the Civil War years saw an end to many institutions, Chancery came out the other side, not entirely unscathed, but still standing and all the stronger for it.[33]

Despite the increase in litigation over the early modern period, Barbara Sharpio highlighted that the reign of Elizabeth I also saw rise to an increase in dissatisfaction with the courts and legal procedure.[34] Indeed, by 1660, the enormity of the increase in the volume of litigation since the 1550s led to concerns that there were simply too many lawsuits – a view that was expressed by those on the inside, as well as outside, of the legal profession.[35] This did not, however, stem the flow of business in the courts of England, and Chancery was no exception. Whist it is true that by the eighteenth century the volume of litigation was becoming increasingly stagnant across the English courts, the early-modern Chancery entered the 1700s as a court that was remarkably

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[30] Brooks, *Lawyers, Litigation and English Society*, p. 71.
[31] Brooks, Lawyers, Litigation and English Society, p. 72.
[32] Henry Horwitz, *Chancery Equity Records and Proceedings, 1600-1800: A Guide to Documents in the Public Record Office* (London: HMSO, 1995), p. 5.
[33] Erickson, *Women and Property*, p. 31.
[34] Barbara Sharpio, 'Law Reform in Seventeenth Century England', *The American Journal of Legal History,* Vol. 19, No. 4 (October, 1975), p. 281.
[35] Brooks, *Pettyfoggers and Vipers*, p. 75.

successful, with an abundant case load, despite the turbulent years of the 1600s.[36]

The volume of the work entrusted to those lawyers employed in the Court of Chancery is certainly reflected in the amount of archival documentation we have to work with today. Timothy Haskett, quite rightly, points to the sheer volume of the Chancery's records as a primary reason why medievalists neglected them for so long – a case of 'too much rather than too little'.[37] He does recognise, however, the impressive historiography surrounding the early-modern Court of Chancery. Historians such as W J Jones, J H Baker, Christopher Brooks, Henry Horwitz, Maria Cioni and Amy Erickson opened the doors to the archival material we as historians can learn from today, providing the necessary history of the court and the court's records. The work of academics and archivists alike has made the voluminous documentation that Chancery left behind more accessible, enabling new historical discoveries and thought. Chancery is not to be used exclusively by legal historians, and has much to offer historians from a plethora of different academic backgrounds and fields.

'By Tudor times it was a trite that the Chancery was not a court of law but a court of conscience'.[38] With this line, Baker opens up a key aspect of understanding early-modern Chancery. Dennis R Klinck, in particular, has studied the relationship, the 'intimate connection', between early-modern notions of 'conscience' and equitable justice. Through a study of Lord Nottingham, who was Lord Keeper and the Lord Chancellor in Chancery from 1673 to 1682 – 'the father of systematic equity' – Klinck traces the role of conscience within the equitable jurisdiction of Chancery, along with issues related to it and those

[36] Brooks suggests that by the middle of the eighteenth century, the sheer expense of taking a case to law in the royal courts, coupled with a shift in the attitudes of attorneys towards business, 'may have led to a decline in the number of suits generally'.
Brooks, *Pettyfoggers and Vipers*, p. 75.
[37] Haskett, 'The Medieval English Court of Chancery', p. 245.
[38] Baker, *An Introduction to English Legal History*, p. 89.

figures who disliked it.[39] The problem with the place of equity within the law to the early-modern mind was, simply put, that the law required certainty. Consistency and predictability are the foundations of a functional legal system. Equity, however, is by its very nature more flexible. The equitable jurisdiction of the Court of Chancery was intended, after all, to alleviate the 'rigor of the strict common law' by responding individually to each specific suit brought before the Lord Chancellor.[40] Furthermore, the final decision made by the court was ultimately vested within the Chancellor alone, who relied not only upon the facts of each case but also upon his own legal opinion and conscience.

The problem of reconciling the flexibility of equity with the desire for legal certainty was the subject of discussion and commentary as early as the sixteenth century. John Selden (1584-1654) was a lawyer and accomplished scholar, and his comments on the issues surrounding equity succinctly summarise the perceived problems with Chancery[41]:

> Equity is a roguish thing. For law we have a measure, know what to trust to; equity is according to the conscience of him that is chancellor, and as that is larger or narrower, so is equity.[42]

It is from the now famed words of Selden that we get this idea of equity being as long as the Chancellor's foot. In other words, the decisions made by the Court of Chancery revolved around the conscience of whoever happened to be Chancellor at the time and the consciences of these men would vary to such a degree from one appointment to the next that there was no way to ensure Chancery was producing consistent and predictable outcomes. The variances between the

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[39] Dennis R Klinck, 'Lord Nottingham and the Conscience of Equity', *Journal of the History of Ideas*, Vol. 67, No. 1 (January, 2008), pp. 123-124.
[40] Dennis R Klinck, 'Lord Nottingham's "Certain Measures"', *Law and History Review*, Vol. 28, No. 3 (August, 2010), p. 711.
[41] Paul Christianson, 'Selden, John (1584-1624)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; Online Edn. (January, 2008) [http://www.oxforddnb.com/view/article/25052, last accessed 24 May 2016].
[42] John Selden, *Table Talk of John Selden*, Ed. with an introduction and notes by Samuel Harvey Reynolds (Oxford: Clarendon Press, 1892), p. 61.

consciences of men created much confusion when applied as a binding, legal jurisdiction of one of the central and most widely used courts of early-modern England. This legal, scholarly and moral dissatisfaction with the basis of the court's decision making, however, did not stem the rising tide of litigants coming before Chancery over the course of the turbulent seventeenth century. By the later seventeenth century, more people, and notably more women, were using the court than ever before – a court that John Habakkuk has argued 'consistently put the interest of the family first'.[43]

1.2 Methodology

As Alexandra Shepard articulated over a decade ago, 'legal records have allowed considerable insight into the workings of institutions integral to early-modern localities, and provided one of the most valuable windows on to the complexity of social relations'.[44] Over recent years, historians interested in women's legal history have employed different methodologies in exploring the lives of women. Christine Churches concisely summarises the approaches of Amy Erickson, Tim Stretton and Laura Gowing - each of whom wrote seminal works on the topic of early-modern women's legal pursuits - in a way that is extremely helpful to the student looking to delve into the world of legal records.[45] Erickson methodically looked at each of the jurisdictions that dealt with property rights – equity, common law, customary law, and ecclesiastical law – working from samples from selected localities as a means of plotting the experience of women at law. Stretton and Gowing, on the other hand (working on the Elizabethan Court of Requests and the London Consistory Court respectively), focus on female litigants within the context of a single institution. Within her own work, Churches focused on the legal pursuits of litigants who were either living or had

[43] John Habakkuk, *Marriage, Debt, and the Estates System: English Landownership 1650-1950* (Oxford: Clarendon Press, 1994), p. 73.
[44] Alexandra Shepard, 'Litigation and Locality: The Cambridge University Courts, 1560-1640', *Urban History*, Vol. 31, No. 1 (2004), p. 5.
[45] Christine Churches, 'Putting Women in their Place: Female Litigants at Whitehaven, 1600-1760' in *Women, Property and the Letters of the Law in Early Modern England* (Toronto, Buffalo and London: University of Toronto Press, 2004), Eds. Nancy E Wright, Margaret W Ferguson and A R Buck, passim but see pp. 51-62 in particular.

business in Whitehaven and appeared before any institution between the years 1600 and 1760. A focus on locality successfully achieved her aim, to 'reconnect litigants to the society in which they lived and worked'.[46] This is of even greater significance when researching the past lives of women. The focus on Whitehaven enabled Churches to link legal endeavours with the everyday realities of female life, to trace through legal records women's involvement in and connection to the family and the relationships that facilitated business and occupation.[47] These methodologies served to inform my own, and were a valuable source when looking at how best to create a sample for my research.

For all the benefits of working with such a large archive, the rather overwhelming amount of documentation we have from early-modern Chancery does present something of an issue when looking to conduct a comprehensive, efficient research project. Within the C5 series alone, there are some 61,496 records. It was therefore clear from a very early stage of this research project that it would be necessary to create a far smaller sample from the C5 documentation upon which to base both my quantitative and qualitative research.

First and foremost, then, the project required temporal parameters. I decided to focus on the later seventeenth century, more specifically the years 1680 to 1700, for several reasons. The volume of records within the C5 series alone meant that a narrow time frame was an absolute necessity if I was going to read cases in the level of detailed required for comprehensive qualitative research. A strict adherence to a small window of periodisation was the quickest and most straightforward way to reduce the number of cases on my 'research radar', and to start the process of creating a usable sample.

More specifically, however, it made sense to avoid the early- and mid-seventeenth century. These years were wrought by tremendous levels of political turbulence and this had a noticeable impact upon proceedings in

[46] Christine Churches, 'Putting Women in their Place', p. 51.
[47] Churches, 'Putting Women in their Place', pp. 51 and 62.

Chancery. Though, as noted earlier, the early-modern Chancery was markedly less tainted by the political upheaval of the time, it remained preferable to avoid those years that bore the brunt of the instability. An exploration of Chancery in the later seventeenth century, therefore, presented the most straightforward starting point when creating a sample of cases from the C5 series.

Further specificity was engineered into this research in terms of the geography of suits that this project centres upon. All the suits within the sample are based in Yorkshire, a county that was, in the early modern period, even more expansive than it is today. Yorkshire is an ideal county to focus on, as it is large enough to provide a sample of cases upon which to conduct a comprehensive quantitative analysis, yet still contributed to reducing the number of cases within the research sample, thereby helping to create a wieldy research project.[48] Not only this, but, a focus on a specific location allows the historian to find cases that are connected to one another far more readily than looking at a catalogue that included cases from anywhere in the country.[49] A focus on a specific county also allows scope for what Churches enjoyed in her analysis of the female litigants of Whitehaven; the ability to place women within their immediate communities and local businesses, as well as their own families.[50]

In addition to this, it was a point of interest to consider how the Court of Chancery functioned for, and was accessed by, those utilising the equitable system at a distance. This is, of course, an important consideration when investigating any of the major early-modern courts of law, as Tim Stretton has pointed out in his own work investigating the Court of Requests.[51] The 'London-centric' nature of Chancery raises questions about access to equity for those

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[48] As-yet unpublished research by Liz Hore at TNA has shown that, of the Six Clerks series, C5 contains 21 per cent of Yorkshire suits, second behind C10 with 39 per cent. The C10 catalogue was put online on 31 March 2018. (Personal communication, 31 August 2018).
[49] The cases Moor v. Lister, Moor v. Misdall and Moor v. Wentworth provide a key example for this.
[50] Churches, 'Putting Women in their Place', p. 62.
[51] Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998), pp. 76-79.

residing far from the capital, which a focus on Yorkshire is well suited to answer. Arbitration, depositions taken in the country, the cost and inconvenience of travelling to Chancery when necessary – these were the features of the Yorkshire litigants' equitable experience, and readily add more clarity to our understanding of how women operated within this jurisdiction and this court.

Subsequently, a sample of suits was assembled: all cases in the C5 Bridges series based in Yorkshire, in the years 1670 to 1710. Although the focus of the thesis is technically on the still smaller time frame of 1680 to 1700, as mentioned previously, it was considered necessary to extend the sample period by a decade both forwards and backwards in order to locate all relevant cases and to ensure that the sample caught any cases that started before the specific periodisation but continued into it, as well as those that began within the period but continued outside of it. A sample of 1,994 cases was created and put into a specifically designed database for analysis. Out of that original sample, 1,556 cases included within the recorded documentation, as catalogued, the original bill of complaint. It is on these 1,556 cases that all the quantitative analysis presented within this thesis is based.

Out of this sample, a qualitative sample of 30 cases was created. These cases were selected to be read to completion and form the basis of the qualitative data presented and analysed throughout this thesis. The cases were selected on the basis that they involved at least one named female litigant and appeared, at a catalogue level, to continue to deposition stage of Chancery procedure – although this was not always the case. There are instances in which more than one suit has the same short title, within the same temporal parameters, and was assigned to the same clerk.[52] It is nearly impossible to know for sure from the catalogue alone whether or not a C5 set of pleadings is truly connected to a set of depositions, C22 series, as that series does not have sufficient subject descriptions. One has to match the records based on short title and period (often a rough period at that), with no way of knowing if they are a true match until the

[52] Examples of this include Dunn v. Dunn and Haynes v. Haynes.

specific documents are ordered and read. The qualitative sample cases cover the full period of investigation, as well as named female litigants acting in a variety of roles and statuses – singlewoman, wife and widow, as well as sole female litigants, female litigants acting together, and female litigants acting with male co-litigants.

The complete reading of these 30 cases to build up the qualitative data for this research project often involved the reading of further suits, as well as material aside from the Chancery archival material (such as wills, and other legal documentation) where possible. As Joanne Bailey pointed out in 2001, one needs to utilise relevant documentation outside of a single, specific court when exploring the lives of litigants in the past. Only in doing so can one hope to create an accurate picture of the past, and past lives.[53] But building up complete paper trails for cases brought before Chancery is far from a simple task. Due to the complex recording, indexing, and storage systems employed by the court and the court's officials throughout Chancery's history, it has always been difficult to bring together the various different documents to create a complete record of an individual suit from beginning to end; from the original bill of complaint to the final decree. This struggle goes beyond matching original pleadings with relevant depositions, C5s with C22s, as detailed above.

First of all, the majority of cases brought before the Lord Chancellor in the early-modern Court of Chancery never actually continued past the initial stage of lodging a bill of complaint with the court. Often, the act of bringing a bill of complaint alone was in itself enough to encourage one's would-be rival at law to co-operate rather than becoming a defendant. Furthermore, early-modern society held strong, idealised values of communal harmony. Bernard Capp tells us that though our ancestors were 'easily roused to anger', they were also 'committed to the ideal of 'good neighbourliness' and expected harmony to be

[53] Joanne Bailey, 'Voices in Court: lawyers' or litigants'?', *Historical Research*, Vol. 74, No. 186 (November, 2001) p. 408.

restored once tempers had cooled'.[54] As a result, litigation was more often than not a last-ditch attempt by individuals to seek redress and resolution – would-be litigants often attempted arbitration and mediation at a local level before beginning the formal process of bringing suit.[55] The Chancery material itself also reveals communal mediations continuing to take place throughout proceedings, as disputants continued in their efforts to find mutually agreed solutions. Even those cases that did continue to deposition stage of Chancery procedure, therefore, could be, and often were, settled outside the formal space of the court room before the delivery of a final decree and judgement. Consequently, we do not, nor are we likely to ever, know the complete outcome of a great many cases brought before the Lord Chancellor in early-modern Chancery.

Knowing the potential gaps in the paper trails of individual suits whilst constructing my qualitative sample motivated me to try to find those cases that appeared most likely to continue to deposition stage, in order to gain as much insight as possible. Piecing the complete paperwork of a suit together, document by document, involved trawling through all the related catalogues and indexes, keeping a sharp eye out for the names of litigants, taking note of the date, location and correlating subject descriptions where applicable. The catalogue for the interrogatories and depositions of Chancery are online and searchable through Discovery, under the C22 series. Though searching through the C22 series can be time consuming, it is easy to navigate and thereby locate the desired documents, where they exist.

The contemporary manuscript indexes for the decrees and orders, which detail the location of items within the C22 series, on the other hand, are more difficult to work with. These indexes exist solely in hardbound (most are rebound) volumes in original index format at TNA, and cannot be searched online. The

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[54] Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003), p. 205.
[55] Maria L. Cioni, 'The Elizabethan Chancery and Women's Rights' in *Tudor Rule and Revolution: Essays for G R Elton from his American Friends* (Cambridge: Cambridge University Press, 1982), Eds. DeLloyd J. Guth and John W. McKenna, p. 161.

index books are organised chronologically, with two books per annum: book 'A' and book 'B'. Index books 'A' lists suits by the surname of the first named plaintiff, letters 'A' to 'K', alongside the first named defendant of the suit, for instance *Avis v. Piley*. The 'B' index books finish the alphabet, listing the surnames of the first named plaintiffs, letters 'L' to 'Z', for instance *Lee v. Mann*. Each book is organised into the annual legal terms – Hilary, Easter, Trinity and Michaelmas – but beyond that, the individual index books themselves are not organised in any greater detail, neither alphabetically nor chronologically. This effectively means that in order to ensure the location of all the relevant decrees and orders connected to a specific case, of which there could be several within the various different legal terms and multiple chronological years, one has to search manifold volumes completely in order to discover all the documents related to just one specific case. This is not only hugely time consuming, rife with potential for human error (missing names whilst scanning through list, after list, of names), but is further complicated by the fact that these searches can only be conducted at TNA (an issue exacerbated for those researchers based outside of London). Whilst some of the indexes have been photographed and put online as part of the remarkable and extensive project of Dr Robert Palmer on his website The Anglo-American Legal Tradition (AALT), the majority remain solely accessible in the Map Room of TNA.[56] Through this meticulous work, however, it has been possible to connect documentation to create comprehensive suit records.

The methodology employed whilst conducting the qualitative analysis of Yorkshire women's use of the late seventeenth-century Court of Chancery is also worth discussing in detail. In order to make sense of the quantitative data coming out of the sample of 1,556 cases it was necessary to create and apply various systems of categorisation that would serve to identify suits and litigants. One key point of interest is the consideration of how individual named female litigants interacted with the Court of Chancery. That is, whether they came before Chancery to bring or defend suit alone or with the assistance and support

[56] Robert Palmer (website creator), *The Anglo-American Legal Tradition* [http://aalt.law.uh.edu/, last accessed 4 August 2016].

of others (male or female). The archivists at TNA had already devised codes embedded in catalogue descriptions as a means of identifying and classifying suits. 'SFP' was used to highlight cases brought by 'Sole Female Plaintiffs', in other words women bringing suit before the court alone, as well as 'JFP' indicating 'Joint Female Plaintiffs'. JFP, however, was a code that had been utilised throughout the catalogue in slightly different ways dependant on who put the code into the online catalogue. Sometimes JFP was used to indicate women acting alongside other women exclusively, and sometimes simply to indicate women acting as the first litigant of a larger party, with other litigants, regardless of gender. Furthermore, there was no coding that highlighted how women were coming to the court as defendants. I therefore worked up some additional coding of my own to bring clarification and classification, of female defendants as well as plaintiffs, to my research project.

Coding					
Plaintiff			**Defendant**		
Code	Meaning	Application	Code	Meaning	Application
SFP	Sole Female Plaintiff	Women bringing suit alone	SFD	Sole Female Defendant	Women defending alone
JFP	Joint Female Plaintiff	Women bringing suit with other women	JFD	Joint Female Defendant	Women defending with other women
MFJP	Male and Female Joint Plaintiff	Women bringing suit with others, men and/or women	MFJD	Male and Female Joint Defendant	Women defending with others, men and/or women

Table 1
Codes used within the sample database, also can be used in TNA Discovery keyword search as search tools to locate records

The creation of codes for categorisation and application of them to the sample taken directly from the C5 Bridges online catalogue within the database enabled the highlighting of how female litigants came to the Court of Chancery: alone (as Sole Female Plaintiff or Defendant – SFP or SFD), with other female litigants (as a Joint Female Plaintiff or Defendant – JFP and JFD), or as part of a larger litigant party made up of both men and women (as a Male and Female Joint Plaintiff or Defendant – MFJP or MFJD). In addition to these codes, the database also highlights the marital status of the female litigants. Within the Chancery documentation women are, almost always, identified in terms of their marital status, unlike their male counterparts who were identified by their occupation or social status. Therefore, within the database the female litigants of the suits within the sample are identified both by how they came to the Court of Chancery as well as their marital status.

Horwitz and Polden recognised within their own consideration of the litigants using the Court of Chancery the issues ensuing from working on the basis of what information is provided within the catalogue and indexes, especially when considering the role played by women. They chose to focus on the first named plaintiffs within suits to explore 'The Identity of the Litigants'. By focusing on first named plaintiffs the voice of women in Chancery becomes fainter, and the consequent analysis therefore not fully representative. Married women in Chancery 'almost inevitably appear after their husbands (even if the claim the couple was making related to *her* father's estate)'. Singlewomen and widows were more likely to be first named plaintiffs, as they were more likely than the married woman to be coming before Chancery (either as plaintiffs or defendants) either alone or exclusively in the company of other women.[57] Nevertheless, a focus on first named plaintiffs, or first named defendants, is insufficient for a consideration of women in the early-modern Court of Chancery.

[57] Henry Horwitz and Patrick Polden, 'Continuity or Change in the Court of Chancery in the Seventeenth and Eighteenth Centuries?', *Journal of British Studies*, Vol. 35, No. 1 (January, 1996), p. 44.

The data presented is here, by necessity, based on all the named plaintiffs and defendants listed within the catalogue.

It was imperative to create space with the database to identify not only how named female litigants appeared before Chancery (alone or with others), but also by their marital status, as these two details are inextricably linked within the context of early-modern law. As Mary O'Dowd rightly points out, the identification of female litigants in terms of their marital status does not really tell us as historians anything about the social backgrounds of these women – yet it can be extremely illuminating in other ways.[58] Female litigants would be noted as being widows, occasionally as spinsters, as wives, and on the occasions where no details of marital status are given the woman in question was most likely single, being not yet or having never over the course of her lifetime been married (this assumption has thus far proven to be accurate within the sample). At what point in the typical life-cycle of the early-modern woman the female litigant chose, or was obliged, to go to court is highly significant. The relevance of the marital status of female litigants appearing before early-modern Chancery was great, given the implications marital status had on the legal position of women in the eyes of the law generally. It is, therefore, necessary to conduct quantitative research that includes a consideration of marital status of named female litigants, and, furthermore, logical to organise the qualitative evidence of this research project by marital status.

In terms of the subject matter of each individual suit, the online catalogue provides a basic subject description (created in the early-twentieth century, when descent of lands was of great interest) alongside every C5 record entry, for instance 'Property in Kingston upon Hull, Yorkshire'. Although these subject descriptions are simplistic, providing relatively little detail, they did allow me to create a sample made up of cases based in Yorkshire as well as devise a system of suit categorisation based on the overall subject matter of each individual case

[58] Mary O'Dowd, 'Women and the Irish Chancery Court in the Late Sixteenth and Early Seventeenth Centuries', *Irish Historical Studies*, Vol. 31, No. 124 (November, 1999), p. 474.

within my quantitative sample. I created five subject categories, derived entirely from the pre-existing subject descriptions as they are in the catalogue, that all of the suits within the working sample of 1,556 cases could be placed into:

1. Property and land
2. Personal estate
3. Money matters
4. Marriage settlements and contracts
5. Other

These simple terms of subject categorisation permit a broad, more general look at what it was that induced, or forced, female litigants to interact with the early-modern Court of Chancery.

Within Henry Horwitz's own study of the Court of Chancery, he too established five 'subject-groupings' that he employed when categorising the suits in his own sample:

1. Estate [testamentary and intestacy] matters
2. Landholding and land transactions
3. *Inter vivos* trusts
4. Debts and bonds
5. Business transactions

Horwitz's categorisations are the result of a study of specific documentation, as opposed to the subject descriptions provided within the Chancery catalogues, across multiple sample years (1627, 1685, 1735, 1818-19), totalling 1,118 sample suits (for the cases that never went beyond the original bill of complaint the information is based entirely upon the initial allegations made by the plaintiff).[59]

One thing that is evident from both these sets of sample categorisation is the prevalence of family business and conflict resolution within the Court of

[59] Horwitz, *Chancery Equity Records and Proceedings*, pp. 31-32.

Chancery. Inheritance provoked many a bitter conflict, as it still does today, as the law 'rarely covered every possible combination of multiple spouses, children, half-siblings, and cousins'.[60] Family business often involved land transactions, estate matters, and issues surrounding pre-existing settlements and contracts, which is readily reflected within both these sets of 'subject-groupings'. Horwitz rightly points out, however, that whilst these categories are useful, particularly in his case for comparing the business of Chancery across two centuries, they are 'artificial', as Chancery 'knew no forms of action and had no need to classify its business'.[61] It is an important point, and one to bear in mind, especially when attempting to decipher the circumstances under which early-modern men and women interacted with Chancery. Although these categorisations are artificial, and are in no way how early-modern litigants operating within the Court of Chancery would have understood their own suits or those of others they were aware of, they are nonetheless useful in terms of identifying and analysing any overall patterns in the use of Chancery over the course of the later seventeenth century.

The documents themselves can be tricky to work with too. The pleadings – that is, the bills of complaint, any answers, as well as additional documentation entered into the court in the initial stages of a suit such as replications, rejoinder, demurrers and schedules – can be relatively small, stored flat and written in an easily legible hand. Other times, the documents can be incredibly large, taking up entire tables, making for back-breaking reading. Some documents had fixes for the natural holes in the vellum – ranging from good and clean, like the example below, to those making for difficult reading (see Fig. 1). Some documents have multiple sections of vellum stitched together in order to create these huge documents (see Fig. 2). The other issue with working with the Chancery documents, is that one is never quite sure what to expect. Those items that have multiple different documents listed in the catalogue entries promise a lot of reading. However, those items that list nothing more than a bill of complaint

[60] Merry E Wiesner-Hanks, *Early Modern Europe, 1450-1789* (Cambridge: Cambridge University Press, 2006), p. 71.
[61] Horwitz, *Chancery Equity Records and Proceedings*, pp. 31-32.

could be reasonably sized and quick to get through, or an awe-inspiring, gargantuan document that folds out, and out, and out. This makes pre-planning and time management in the archive rather awkward at times.

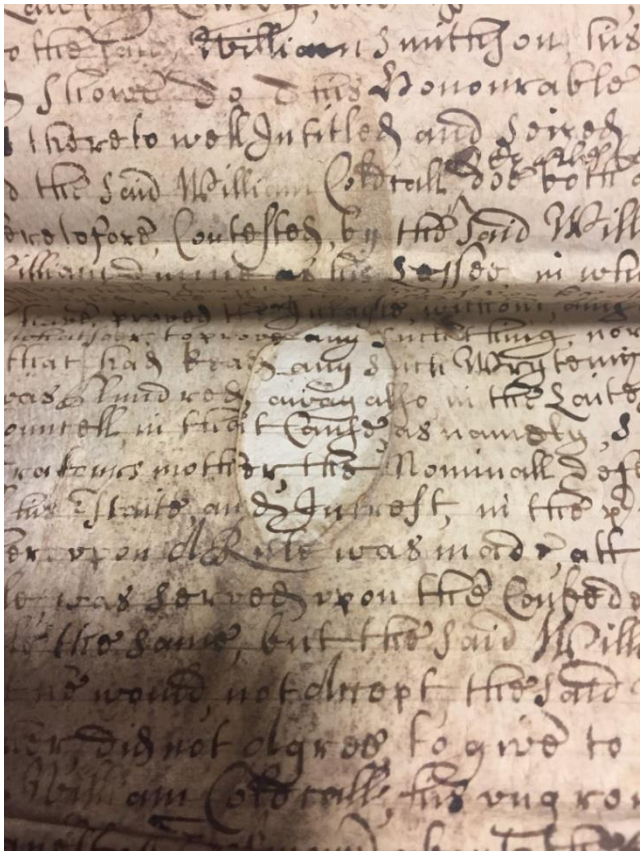

Fig 1
Example of a good repair on a Chancery bill of complaint, front and back (C7/326/41).

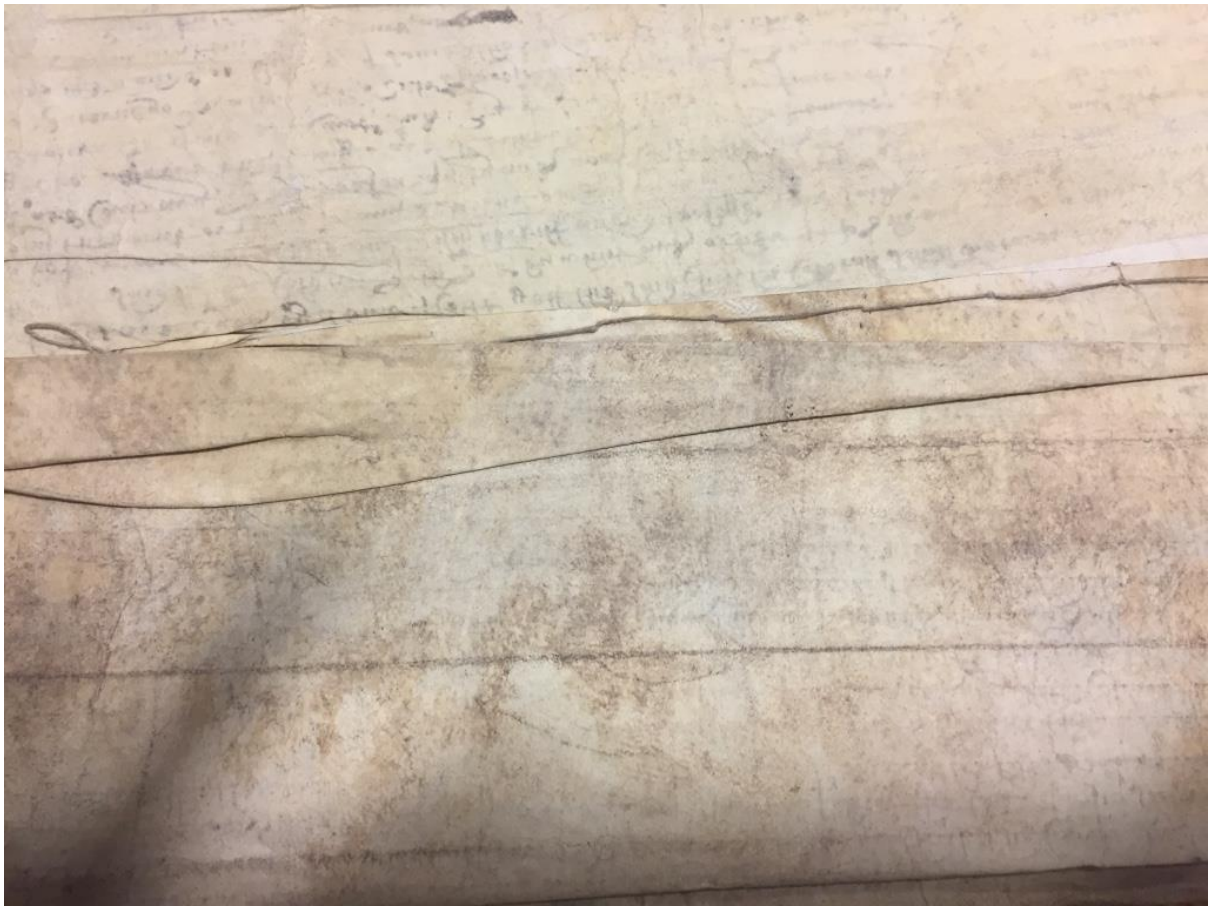

Fig 2
Example of multiple sections of vellum stitched together to enlarge a Chancery bill of complaint (C7/326/41).

Depositions are very tightly rolled and, due to storage, are more often than not filthy. They can be particularly difficult to read. The volumes that contain the decrees and orders are huge, great books that realistically take two people to lift. An especially difficult task was picking up and learning the abbreviations employed by the clerks who recorded the Chancery documents, such as 'con' for 'tion' – 'consideracon' becomes 'consideration'. Once accustomed to the abbreviations, palaeography and the formulaic style of the Chancery archival material, however, the reading of the documentation becomes relatively easy, so long as the condition of the document itself is good.

When quoting directly from the archival material throughout the thesis, all abbreviations and contractions have been silently contracted, and the full word has been used. Original spellings have been left intact, with modern spellings provided in square brackets as needed for clarity.

Despite the poor condition of a number of the documents, physically handling the records was important to my forming an understanding of early-modern Chancery and, in turn, its litigants. Holding the documents that were created by clerks on behalf of real people of seventeenth-century England, reading through the depositions that were physically recorded in Yorkshire homes and inns, in handling the vast volumes of decrees and orders that men would have hunched over for hours to create, the materiality of the research proved to be hugely important, creating a sense of connection with the people behind these items: from litigants to clerks. The physicality of the documents themselves led me to thinking about how they were created, how they travelled between hands and counties, even countries, and what they reveal about the materiality of the legal culture of early-modern England.

Ala Rekrut articulated the significance of the materiality of archives in 2014, stating:

> Archival records, whether born digital or analogue, are material culture; they are material traces of events and actions arising from within particular historical contexts. Historical records are rooted in the personal and social circumstances surrounding their creation and they are physically embodied in the materials that constitute and support the written text or images. Records are products of their times and every physical component has a complex socio-cultural and technological history; they have been participants in events in the histories of science, technology, industry and economics. The sizes, shapes and weights of records structure physical interactions between records and their users, and changes in their presentation and physical condition may provide evidence of their histories of use and stewardship.[62]

In reading these pertinent words, one cannot help but think of the historical importance of the Chancery archival records as material items as well as of

[62] Ala Rekrut, 'Matters of Substance: Materiality and Meaning in Historical Records and their Digital Images', *Archives and Manuscripts*, Vol. 42, No. 3 (2014), p. 238 [PP 238-247]

sources of detailed qualitative data. The Chancery records are the physical embodiment of a litigious society, witnesses to everyday activity at court and out in the community; a physical consequence of human interaction.

The presence of a multitude of cases taken before Chancery that never went beyond the very first stage of lodging a bill of complaint with the court, let alone finally culminating in the delivery of a final decree handed down from the Lord Chancellor, raises an important question: why were early-modern people using the Court of Chancery? Why choose equity over the manifold alternative jurisdictions available? Why, in the later seventeenth century, was Chancery thriving?

It is somewhat ironic that a court established and designed to be as efficient as possible, to serve the needs of the vulnerable at law, should develop in its more recent history practical and procedural delays. The Chancery of early-modern England endeavoured to find swift remedies for those litigants who turned to the conscience of the Chancellor, and, by extension, the King or Queen. By the time Dickens wrote the now famed *Bleak House*, however, Chancery had already established a lengthy, far less admirable, history of being equated not with equitable justice but with 'expense, delay and despair'.[63]

Nevertheless, when Elizabeth I died in 1603, Chancery had developed and expanded to become one of the central royal courts of England, a court that served to find resolutions to a broad range of disputes.[64] More significantly, for this research project in particular, however, is how the jurisdiction of Chancery developed its legal treatment of women. The Elizabethan era of Chancery 'increasingly entertained female litigants', as the treatment of women within the bounds of equitable jurisdictions, especially in Chancery, became ever more significant due to the courts willingness to offer legal relief to women when the common law, for whatever reason, was unavailable to them.[65] When all options

[63] Baker, *An Introduction to English Legal History*, p. 95.
[64] Horwitz, *Chancery Equity Records and Proceedings*, p. 1.
[65] Cioni, *The Elizabethan Chancery*, p. 159.

proved hopeless for women, when they found themselves ‘remediless’, they could and would submit themselves, desperate, to the conscience of the Lord Chancellor.

2. Literature Review: Women and the Law in Early Modern England

2.1 The Female Legal Experience

Tim Stretton describes the past hundred years of historiography surrounding women and the law as a 'see-saw of opinion'.[1] Despite the law being, at least in original intention, one of the more precise and certain elements of human existence, there has been much historiographical debate over the position of early-modern women in the eyes of the law. Frederic Maitland and Frederick Pollock, writing at the very end of the nineteenth century, felt that they could adequately and accurately summarise the position of women at private law as thus: 'private law with few exceptions puts women on a par with men'.[2]

Whilst a later assertion clarifies that this statement is part of a discussion surrounding 'women who are sole, who are spinsters and widows', and that the situation for married women was quite different, the general impression remains that on the eve of the twentieth century, historical academic thought taught that women and men operated relatively equally in the eyes of the law.[3] Early-modern women enjoyed something of a 'Golden Age' in terms of how they were treated at law.[4] Pearl Hogrefe supports this point, as she asserted in the 1970s that, in theory, women who were not yet or no longer married, that is to say legally single, did enjoy the same rights as men at private law.[5] Public law was, however, a different matter, as Maitland and Pollock recognised: 'public law gives a woman no rights and exacts from her no duties, save that of paying taxes and performing such services as can be performed by deputy'.[6]

This understanding of women having rights at private law that were, more or less, on a par with their male counterparts came under the scrutiny of modern

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[1] Stretton, *Women Waging Law*, p. 24.
[2] Frederick Pollock and Frederic William Maitland, *History of English Law before the time of Edward I* (Cambridge: Cambridge University Press, 1891), p. 465.
[3] Pollock and Maitland, *History of English Law*, p. 485.
[4] Stretton, *Women Waging Law*, p. 22.
[5] Pearl Hogrefe, 'Legal Rights of Tudor Women and the Circumvention by Men and Women', *Sixteenth Century Journal*, Vol. 3, No. 1 (April, 1972), p. 97.
[6] Pollock and Maitland, *History of English Law*, p. 465.

feminist historians in the later twentieth century, who took issue with the idea of the sixteenth and seventeenth centuries being a period of gender equality at law. It is today accepted that women in early-modern England were considered subordinate to men in virtually every area of life, both public and private. Writing in the late 1980s, Judith Bennett described this image of a 'Golden Age' as haunting the academic study of women in preindustrial England, demonstrating through an analysis of women's work that 'the notion of sexual equality (or even near equality) in the medieval or preindustrial past is not sustained by current research'.[7] Researchers interested in exploring the differentiations within the early-modern legal system between the rights of men and those of women have, in more recent years, analysed 'a catalogue of legal disabilities women endured in the sixteenth- and seventeenth centuries'.[8]

Antonia Fraser's view of women at law in seventeenth-century England was bleak indeed, finding that these early-modern weak vessels were 'weak at law', possessing no rights under the common law of England at the accession of James I, being subject to her father and then her husband, all women being 'understood either married or to be married'.[9] Yet, even with the law, it is not possible to apply 'black and white' notions of what it was to be a woman in comparison to a man in terms of treatment and rights at law – there was, as there always is when researching the historical activities and experiences of women in any context, a substantial amount of 'grey' that we as historians must grapple with. For Fraser, this 'grey' was represented by the wealthy widows of seventeenth-century England, who had potential strength in their position and therefore able to operate outside the 'nightmare of her theoretical weakness'.[10] In reality, there

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[7] Judith Bennett, '"History that Stands Still": Women's Work in the European Past', *Feminist Studies*, Vol. 14, No. 2 (Summer, 1988), pp. 269-271.
[8] Stretton, *Women Waging Law*, p. 22.
[9] Antonia Fraser, *The Weaker Vessel: Woman's Lot in Seventeenth-Century England* (London: Phoenix Press Paperback, 2002; First published in Great Britain in 1984 by William Heinemann), p. 6; Thomas Edgar, *The Lawes Resolutions of Womens Rights* (London: Printed by the Assignes of John Moore Esq. and are to be sold by John Grove, at his shop neere the Rowles in Chancery Lane, over against the Sixe-Clerks Office, 1632), p. 6.
[10] Fraser, *The Weaker Vessel*, p. 6.

were many ways in which early-modern women attempted, with varying degrees of success, to circumvent their unhappy position in the eyes of the law.

Modern historiography acknowledges the existence of a gap between the prescriptive ideals and the everyday realities in the treatment received by women in early-modern England. Amy Erickson has revealed some of these gaps between the doctrinaire law and actuality. Singlewomen, despite legal technicality and mandated social expectation, were perhaps not seen, or treated, as overwhelmingly inferior to their male counterparts as the prescribed ideals would have us believe. Erickson identified three aspect of everyday, economic life that can be used to evaluate the actual place of singlewomen within early-modern society: how much a parent would financially invest in a daughter's upbringing compared to a son's, the relative value of portions inherited by daughters and sons, and how parents and young women cared for and invested their portions as well as the significance of the portion when entering marriage negotiations.[11] She found that amongst ordinary people parents practiced 'gender-equal maintenance of children in early-modern England', daughters usually received exactly the same amount as their younger brothers (eldest sons still maintaining some privilege), and that portions inherited by daughters were treated with great care both in terms of their investment and protection.[12] Judith Spicksley has since asserted that whilst young girls could, and did, 'receive a wide range of commodities, from real estate to capital', allocation of family wealth amongst children was gendered.[13] Even so, women, despite their prescriptive position of subordination, inferiority and weakness, enjoyed notable levels of financial support from supportive families.

One aspect of the early-modern woman's life that highlights most starkly the gap between prescriptive ideals and everyday realities of seventeenth-century England for women, and considered by Erickson, was that of becoming and living

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[11] Erickson, *Women and Property*, p. 47.
[12] Erickson, *Women and Property*, p. 59, 77 and 96.
[13] Judith Spicksley, 'Usury, Legislation, Cash, and Credit: The Development of the Female Investor in the Late Tudor and Stuart Periods', *The Economic History Review*, New Series, Vol. 61, No. 2 (May, 2008), p. 279.

as a wife.[14] Once married, a woman automatically became *feme covert* and therefore subject to the marital doctrine of coverture. Her legal identity became subsumed by that of her husband, and she had no rights to property ownership. However, there are multiple instances to be found of women in seventeenth-century England circumventing the doctrine of coverture, again revealing a lived legal reality for women quite different from that prescribed by the moral, social and cultural authorities at this time. This shall be considered fully as part of a wider analysis of the married female litigant in the Court of Chancery in chapter five, 'To Have and To Hold'.

It is also necessary here to highlight the fact so well-articulated by Susan Amussen in 1988, that 'the gender hierarchy was superficially much simpler than that of class'.[15] Wives were subjects to their husbands, and, by extension therefore, women were subject to men 'whose authority was sustained informally through culture, custom and differences in education, and more formally through the law'.[16] However, as parents and guardians, or as wealthy neighbours, women may have held notable authority over men, making the relationship between man and wife a poor model for analysing all relations between men and women in early-modern England.[17] Men could be reliant on women in the seventeenth century for care and maintenance, be due an inheritance by them, or dependent on their benevolence as a tenant to their land or properties.

'By the common law rules of inheritance women in English landed society fell into two classes' – those who were entirely excluded from inheriting and those who were entitled to inherit the family estate.[18] Whilst primogeniture was the

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[14] Erickson, *Women and Property*, passim but see in particular 'Part III: Wives', pp. 99-151.
[15] Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York: Columbia University Press, 1988), p. 3.
[16] Amussen, *An Ordered Society*, p. 3.
[17] Amussen, *An Ordered Society,* p. 3.
[18] Eileen Spring, *Law, Land and Family: Aristocratic Inheritance in England 1300 to 1800* (Chapel Hill and London: The University of North Carolina Press, 1993), p. 9.

ideal situation for early-modern landed families and a law adhered to wherever possible, when there was no son to inherit the estate, land descended to daughters – the common law thereby giving preference to males 'but a limited preference'.[19] Eileen Spring's work on the heiress built on the assertion of E. A. Wrigley that 'in a stationary population 20 per cent of men who married left no children, 20 per cent left daughters only, and 60 per cent left one or more sons' – meaning 20 per cent of inheritances descended directly to daughters from their fathers.[20] Spring shows, however, that more than 20 per cent of inheritances would have been enjoyed by women via indirect inheritances, making a total of 25 per cent of all inheritances at common law going to women.[21]

Early-modern England was, undeniably, a patriarchal society and those women who did hold, own and manage property were regarded as 'transgressing the rights of men' – going against the prescribed ideals of culture and society. Yet a remarkable amount of property was held by women at this time – again revealing the dichotomy between the prescribed ideals and the lived realities of early-modern England. Whilst the property rights of all women (regardless of marital status) fell into two separate legal jurisdictions – the common law as briefly discussed previously and equity law – by 1700 the majority of these cases were being heard in equity courts, namely Chancery.[22]

The work conducted by Emma Hawkes and Amy Erickson suggests that women over the course of the late medieval and early modern periods were increasingly choosing the equitable Court of Chancery over the common law courts such as King's Bench and Common Pleas.[23] This suggests that women were becoming

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[19] Primogeniture is defined by the Oxford Dictionary as 'The right of succession belonging to the firstborn child, especially the feudal rule by which the whole real estate of an intestate passed to the eldest son', *Oxford Dictionary Online* [http://en.oxforddictionaries.com/definition/primogeniture, last accessed 3 July 2017]; Spring, *Law, Land and Family*, p. 9.
[20] Spring, *Law, Land and Family*, pp. 10-11.
[21] Spring, *Law, Land and Family*, p. 11.
[22] Amanda Capern, 'The Landed Woman in Early Modern England', *Parergon*, Vol. 19, No. 1 (January, 2002), pp. 186-187.
[23] Emma Hawkes, '"[S]he will … protect and defend her rights boldly by law and reason…": Women's Knowledge of Common Law and Equity Courts in Late

ever more aware of the differing jurisdictions in operation across the different courts of law in England, and their position – and subsequent chances of success – before them. Women were making conscious choices about where to pursue their legal endeavours.

2.2 Female Legal Knowledge

The fact that women were actively selecting jurisdictions, thereby demonstrating the use of legal tactics and a degree of legal aptitude and knowledge proves the now established point that women were not entirely helpless at law. Despite this, a larger question still remains: what was the extent of female legal knowledge in early-modern England? Breaking down this question raises a number of issues in need of consideration. For instance, how can historians be sure that the legal tactics employed by women were the result of feminine legal agency and successfully taking initiative, rather than simply acting on the advice of counsel?

The historian of women is, as is widely bemoaned, ever-frustrated by the lack of primary materials that inform what we know of feminine life in the past. Christine Churches pointed out in her study of female litigants in Whitehaven the fact that without personal records, such as relevant correspondence, it is virtually impossible to gauge from legal records alone how much of an input, if any, the early-modern litigant, whatever their gender, had in the running of their suits at law.[24] Frances Dolan has recently posited the question, however, that '[i]f legal records of women's voices were mediated by men, how different is this from the mediation that shapes all the texts that survive to us from the early modern period'?[25] The extent to which clients relied upon their lawyers is often unclear, and difficult to uncover.

Medieval England' in *Medieval Women and the Law*, Ed. Noël James Mengue (Woodbridge: The Boydell Press, 2000), p. 150; Erickson, *Women and Property*, p. 115.

[24] Churches, 'Putting Women in their Place', p. 55.

[25] Frances Dolan, *True Relations: Reading, Literature, and Evidence in Seventeenth-Century England* (Philadelphia: University of Pennsylvania Press, 2013), p. 117.

What can be considered here more fully, however, are the avenues by which female litigants in early-modern England could have gained legal knowledge that they could subsequently use to their own advantage. This chapter shall explore the historiographical discussions covering how women could gain knowledge of the law, positing that through active participation in a highly litigious society, and access to the educational materials that were available to that society, women were able to equip themselves with significant legal knowledge.

A set of sources we can look to, therefore, in order to gain some understanding of what information there was available to the general early-modern English public, both female and male, are the published, printed materials that served to inform contemporaries about the law. As early-modern legal and women's historians are well aware, the first treatise published that specifically dealt with the legal position and rights of women, *The Lawes Resolutions of Womens Rights: Or, the Lawes Provision for Woemen*, appeared in 1632. The deliberate misspelling of 'woemen', witty as it is, hints at the woeful position of women at law, signifying from the very first line that feminine position of legalised subordination.[26] The larger point, however, is that the creation, print and dissemination of this work establishes that women's position before the law was of significant interest and that there was a desire to know more about it.

The work serves to provide information on all of early-modern English laws relating to or concealing women in one convenient work, as the extended title suggests: 'A Methodicall Collection of Such Statutes and Customes, with the Cases, Opinions, Arguments and points of Learning in the Law, as doe properly concerne Women'.[27] A published document with the running title *The Woman's Lawyer* gives the modern-day women's historian a tantalising sense of this being a treatise designed to aid the early-modern female litigator; a published work specifically aimed at a female audience. Amy Erickson asserted in her analysis of

[26] Erickson, *Women and Property*, p. 21.
[27] Ed. Joan Larsen Klein, *Daughters Wives and Widows: Writings by Men about Women and Marriage in England, 1500-1640* (Urbana and Chicago: University of Illinois Press, 1992), p. 27; Edgar, *The Lawes Resolutions of Womens Rights*, Cover Page.

the text, that the author of the work, though intending to create 'a practical manual for lawyers', would have also expected a female audience. Her reading of *The Woman's Lawyer* suggests the publication that was not exclusively aimed at the 'deeplearned', but that is was accessible and utilised by both men and women alike.[28] This points to a published work that could well have been used by women in the eventuality that they became a litigant, or simply to build a bank of legal knowledge.

However, a consideration of the utility of a printed publication, tackling what is undeniably an intellectual issue, to a wide readership of women as well as men raises various socio-economic questions. For instance, would women, realistically, have had the means to access *The Woman's Lawyer*? Any potential female reader would have to have certain levels of purchasing power and disposable income in order to buy the text. Alternatively, she would need to be part of a family unit or community that had access to the text. She would then need to have the ability to read the work, and therefore be possessed of at least a rudimentary education. She could have it read to her instead, should literacy be a problem, yet she would nevertheless require the ability to engage with the material in a meaningful way. Increasingly, then, the would-be female reader of *The Woman's Lawyer* emerges as an individual of means and education.

Indeed, Wilfred Prest, through a detailed analysis of this text, concludes that *The Woman's Lawyer* was in all likelihood intended for an intellectual and institutionalised audience. It is unlikely to have been seriously used by those other than the well-educated pursuing detailed working knowledge of the law, as opposed to everyday men and women. Although Prest asserts that 'much of the conceptual apparatus and terminology of the unreformed land law, however incomprehensible to modern readers, would have been more or less familiar to a great many women in the early seventeenth century', his overall judgement affirms that any early-modern individual, regardless of gender, would have

[28] Erickson, *Women and Property*, p. 21.

struggled with the text without some formal legal training.[29] Without knowledge of Latin, French, and access to a 'fairly extensive' library of legal literature, Prest finds it difficult to believe that anyone could interact with *The Woman's Lawyer* in a comprehensive and meticulous fashion.[30]

Though technical, legalised language would not have prevented those educated women readers from consuming this treatise, Prest's struggle to see how *The Woman's Lawyer* had much, if any, practical utility for those other than law students and lawyers is compelling.[31] It seems unlikely that women outside of a certain socio-economic bracket would have been able to engage with or benefit from the publication. This point is further reinforced by Stretton, who asserted that the treatise was not likely to have been aimed at a female audience, highlighting one of the specific shortcomings of the work for his reasoning – the lack of equity. As a text that is primarily focused on the common law, there is hardly any mention of equitable law, the jurisdiction that stood out as being suitable for women's particular legal requirements. More specifically, the author of *The Woman's Lawyer* offers detailed analysis but no practical assistance on the matters of jointure versus dower and no guidance on how to draw up a marriage settlement or how to enforce them in either of the equitable Courts of Chancery or Requests.[32]

Stretton is keen to point out, however, and rightly so, that *The Woman's Lawyer* is nevertheless a hugely significant publication of the time. Whether or not the treatise was written to inform women of their legal rights, or to inform lawyers of them, the very fact that it exists is in itself telling. Clearly, within the context of the early modern world of English law, women were seen to hold significant enough of a place to merit an entire work dedicated to their legal position and status. Out of all the published works circulating in early-modern England, *The Woman's Lawyer* is unique in its dedication to the legal lives of women. In light of

[29] W R Prest, 'Law and Women's Rights in Early Modern England', *The Seventeenth Century*, 6:2 (1991), p. 176.
[30] Prest, 'Law and Women's Rights', p. 176; Stretton, *Women Waging Law*, p. 47.
[31] Prest, 'Law and Women's Rights', p. 177.
[32] Stretton, *Women Waging Law*, p. 47.

this, it certainly serves to reinforce an ever-clearer image of the early-modern woman as a litigator. Maria Cioni succinctly summarises the unavoidable significance of court records to the social historian in her study of Elizabethan Chancery: 'Chancery, like all other courts, was both a product and reflection of its society'.[33] Chancery developed to become a court singular in its treatment of women because of its recognition of the fact that early-modern women, particularly married women, required improved rights at law, and women became increasingly present amongst the Chancery's clientele over the course of the early modern period. The publication of a work dedicated entirely to the matter of women's rights at law is a product and reflection of this too.

The significance of *The Woman's Lawyer* is, then, evident. The contents however deserve further exploration. What is clear, as is highlighted by Anthony Fletcher, is that this treatise presents women as 'legally under privileged, discriminated against in some respects and vulnerable to exploitation'.[34] Women were inferior to men in the eyes of the law; even equity upheld this gendered imbalance, and there are links to be drawn between early-modern thinking on femininity and the status of women within the broader concepts of law, morality and society, not only in terms of understanding women's place but also the reasoning behind it.

Laura Gowing clearly articulates within her seminal work *Domestic Dangers* that 'morality, in the early-modern mind, was very often read as women's sexual conduct'.[35] Much of the published literature of the early modern period about women focused on a narrative of the natural weaknesses and failings of women, based in and stemming from the role played by Eve, and subsequently all women, in the Biblical fall of man. Eve's susceptibility to temptation, her insidious disobedience to God in listening to the serpent and eating an apple from the tree of knowledge, became something of a lesson. It demonstrated why

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[33] Cioni, 'The Elizabethan Chancery', p. 159.
[34] Anthony Fletcher, *Gender, Sex and Subordination in England 1500-1800* (New Haven and London: Yale University Press, 1995), p. 258.
[35] Laura Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford: Clarendon Press, 1998), p. 3.

all women were responsible for sin, showed how women were 'lacking in reason, weak-willed, and naturally-inclined to evil'. Adam and Eve's sudden consciousness and humiliation of their nakedness revealed women's 'inability to resist lust and their natural lasciviousness'.[36]

In this respect, *The Woman's Lawyer* is not dissimilar from the majority of English 'courtesy books' written for a female audience, by opening with a passage detailing the sins of Eve, which was very much understood in the early-modern mind to be fair reasoning and justification behind the inferior status and subordination of women.[37] Amanda Capern pointed out in her analysis of *The Woman's Lawyer* that the opening of the treatise, delving into the Scriptural basis of temporal law, demonstrates how the concept of laws in England, having originated in God's Law and Natural Law, created inevitable overlaps 'between legal discourse [and the discourse] of social prescription'.[38] In other words, the early-modern understanding of faith, Eve's being responsible for the fall of man and all women's subsequent, inherited, natural sin, was so deeply enmeshed with concepts of law, morality, society, and femininity that these different spheres constantly and irrevocably overlapped. They were intrinsically connected. To the early-modern mind, it was impossible to imagine women's legal lives not reflecting their shared responsibility for Eve's disgrace.

The basic organisation of the treatise following on from the opening discussion of the Biblical fall of mankind, and Eve's damming role in this, revolved around the typical life stages of early-modern women, centralising upon the unifying act of marriage. *The Woman's Lawyer* discusses female infancy, women grown and ready to be wives, wives, and then, finally, widows. In other words, the treatise followed the expected life-cycle of all early-modern women: maid, wife, widow.[39]

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[36] Amanda Capern, *The Historical Study of Women: England, 1500-1700* (London: Palgrave MacMillan, 2010), p. 8.
[37] Klein, *Daughters, Wives and Widows*, pp. 27-28.
[38] Capern, *The Historical Study of Women*, p. 90.
[39] Capern, *The Historical Study of Women*, p. 90.

It is hardly surprising to find a work on women created and published in early-modern England focusing on the expected life-cycle of women. Early-modern women were understood within the context of their marital status, and Gowing reinforces this point by asserting that 'we cannot understand this society without understanding marriage'.[40] Male litigants in Chancery would be defined by their occupation or social standing, say as a Gentleman or perhaps a Yeoman. Female litigants were defined by their marital status. A woman's marital status formed a crucial aspect of her identity and place in the world. So inalienable are early-modern English women from their marital status that modern works surrounding them, as a research field, tend to follow this same organisation; most notably Amy Erickson's *Women in Property in Early Modern England* and Tim Stretton's *Women Waging Law in Elizabethan England*.

So significant, in fact, was the institution of marriage on the legal position of women, that treatises focusing entirely upon the legal implications of marital union were published. *Baron and Feme: A Treatise of the Common Law Concerning Husbands and Wives* was published in 1700 (enlarged and reprinted in 1738). Then, in 1732, a work focusing entirely on the legal status of women within the paradigm of marriage was published: *A Treatise of Feme Coverts; Or, The Lady's Law*. These practical and straightforward manuals were intended for an audience of lawyers, but were possibly also perused by interested, perhaps in need of legal knowledge, gentlemen and women.[41]

The Lady's Law methodically and meticulously works through the rights of women at law, married or single, yet under the constant assumption that all women aimed to become, and would one day be, a wife. The publication of *The Lady's Law* is indicative not only of the massive impact of the fact that 'when a Man and Woman are join'd in Matrimony, the Woman is called a Feme Covert, and the law regards them but as one Person', but also of the recognised need for more accessible information on the legal rights, status and position of married

[40] Gowing, *Domestic Dangers*, p. 7.
[41] Erickson, *Women and Property*, p. 21.

women.[42] Although this publication enters into circulation after the time period of focus for this particular research project, it is worth noting as being part of an ever-augmenting and developing culture of litigious activity that advances over the course of the early modern period; a legal culture that women were clearly a part of.

It was not until 1735 that a work of female authorship on the subject of women and the law was published. Though anonymous, *The Hardships of the English Laws. In Relation to Wives. With an Explanation of the Original Curse of Subjection Passed Upon the Woman. In an Humble Address to the Legislature.* was written by a woman, rumoured to have been the wife of a Gloucestershire clergyman. This work is not a legal manual like *The Woman's Lawyer* or *The Lady's Law*, but rather a cautionary argument against the legal situation facing married women at the time.[43] Throughout the work, the author details her ten 'Objections' to the treatment of women. These objections range from the assertion that wives benefitted through marriage by their being safe from imprisonment in civil cases, when in fact this exemption from incarceration was the consequence of their having no property, to the fact that whilst generally the majority of wives had no cause for complaint it was with 'no thanks to the laws of our country'.[44] This is a work that all too clearly recognises the positions of women at law, and takes serious issue with it.

Printed literature did not just focus on litigants, male or female. Some publications explored specific courts of law in great detail, their jurisdictions and how they served the litigious English populace of the early modern era. *The*

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[42] B Lincor, *A Treatise of Feme Coverts; Or, The Lady's Law* (London: Printed by E and R Nutt and R Gosling (assigns of E Sayer, Esq) for B Lincor and Sold by D Lincor, at the Cross Keys, against St Dunstans Church in Fleet Street, 1732), a facsimile made from a copy in the British Library (New York and London: Garland Publishing Inc., 1978), The Preface, p. V.
[43] Erickson, *Women and Property*, p. 21.
[44] Anon, *The Hardships of the English Laws. In Relation to Wives. With an Explanation of the Original Curse of Subjection Passed Upon the Woman. In an Humble Address to the Legislature* (London: Printed for W Bowyer, for J Roberts, at the Oxford Arms in Warwick Lane, 1735), The Contents pp. 3-4.

Practice of the High Court of Chancery claimed within the opening statement to have been, although not the first to attempt a work detailing the process and procedure of the Court of Chancery, unparalleled in its pursuit of 'the path of truth so fully and clearly'.[45] Abel Roper was a book publisher in Fleet Street, London, in the later seventeenth century, who adopted his young nephew, a future political writer and bookseller himself also named Abel Roper, in 1677.[46] He published two editions of this particular pamphlet, the first in 1651 and then the second in 1672. There is a third version of this publication, also published in 1672, printed by John Streater, Henry Twyford, and Elizabeth Flesher, the assigns of R. Atkins Esq. and E. Atkins Esq. in London.[47]

The very fact that there were multiple editions of the work published under the title of *The Practice of the High Court of Chancery* is notable. Multiple editions of any printed work suggests a wide and active readership of the material. One can conclude, then, that knowledge of this court and its jurisdiction was in high demand. This correlates with the unprecedented volumes of new business enjoyed by The Court of Chancery over the course of the seventeenth century.

There was even provision for those who were quite unable to buy a treatise. The anonymous seventeenth-century chapbook *The Countryman's Counsellor: Or, Every Man Made his own Lawyer* detailed how to draw up a bond, write a will and, significantly for this research project, how to bring suit before Chancery.[48] It is important to reiterate here, however, the fact that early-modern understandings of the law was not restricted to a single court, or a single

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[45] Abel Roper, *The Practice of the High Court of Chancery Unfolded with the Nature of the Several Offices belonging in that Court AND the Reports of many cases wherein Relief hath been there had, and where denied* (London: Printed by A Miller for Abel Roper at the sign of the Sun in Fleet Street near Dunstans Church, 1651), p. 2.
[46] G A Atkin, 'Roper, Abel (*bap.* 1665, *d.* 1726)', Rev. M E Clayton, *Oxford Dictionary of National Biography*, Oxford University Press, 2004; Online Ed., May 2011 [http://www.oxforddn.bcom/view/article/24070, last accessed 29 June 2016].
[47] Early English Books Online (EEBO) [http://wwbo.chadwyck.com.home, last accessed 29 June 2016].
[48] Erickson, *Women and Property*, p. 23.

jurisdiction. Chancery was part of a very active network of law courts, with different jurisdictions, roles and practices. Furthermore, the rise in business experienced by The Court of Chancery in the seventeenth century was part of a rise litigation across the courts generally. As Craig Muldrew points out, 'England in the early modern period was a 'web of courts', as there were literally thousands of jurisdictions where civil suits could be heard'.[49] Christopher Brooks describes the rise in litigation across this 'web of courts' as what started as 'a gradual increase in court usage in the form of litigation … which began in the later part of the reign of Henry VIII' as a 'flood' by the Elizabethan period.[50]

The abundance of written work about the law published over the course of the early modern period in England demonstrates very clearly that there was a market for works that detailed both what the legal system was, what the implications of laws were, and how to operate within the various jurisdictions – a market that was made up not only of learned lawyers and gentlemen, but of women and ordinary folks too. *The Hardships of English Laws* and *The Woman's Lawyer* provide not-so-subtle hints of an indignant and rather defiant popular opinion surrounding the inequalities faced by 'woemen' at law gaining traction. Printed works no doubt reflected and had significant impact on early-modern levels of legal understanding.

Randall Martin's work, on female murderers and equality in early-modern England, further strengthens the idea that the act of reading legal material was of great significance to the role, status, and actions of early-modern women at law. His work on the widely circulated printed news surrounding the grotesquely fascinating stories of female homicide and child murder shows how the material resulted in a 'diverse readership outside the courtroom'; a readership that built

[49] Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (Hampshire and New York: Palgrave, 1998), p. 203.
[50] Christopher W Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2008), p. 61.

up a vigorous culture of popular legal opinion.[51] Early modern readers, we are told, benefitted from possessing high levels of independent legal awareness, which they gained from acting within this buoyant culture of litigation both as criminals and civil litigants.[52] In other words, early-modern people, men and women alike, gained legal knowledge by multiple means simultaneously. Not only were they informed by physically being connected to suits at law, either as litigants themselves or by being a close friend, neighbour, or kin member to someone who was, but they also consumed the always growing body of printed material concerning the law. The early-modern English public had access to the methodical, intellectual printed material concerning the law as well as the popularised accounts that were found in newspapers. Both these styles of printed publications fuelled the burgeoning culture of law and litigation that J. A. Sharpe describes as so potent that it 'had come to replace religion as the main ideological cement of society' by the end of the period.[53]

A consideration of how printed materials may have influenced female legal understanding and knowledge in early-modern England necessitates a brief consideration of female literacy at this time. The word 'literate', Wyn Ford explains, derives from the Latin word *litteratus*, the basic, yet beautiful, meaning for which is 'embroidered by letters'. *Litteratus* was typically used to distinguish the more able and better-educated clergy from those whose education was comparably rudimentary in medieval ecclesiastical records, labelling those who had the ability to understand Latin even if they could not read or write it. By the early sixteenth century, however, the need to be *litteratus* in the classical sense became ever more irrelevant in everyday life. As early as 1437, the Yorkshire gentry were writing their wills in vernacular English, and, over the course of the sixteenth century, English also became the 'preferred language' within the London Consistory Court. Chancery procedure, we know, was conducted and recorded in the vernacular, and by the eighteenth century Latin in general had

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[51] Randall Martin, *Women, Murder and Equity in Early Modern England* (New York and Abingdon: Routledge, 2008), p. 202.
[52] Randall Martin, *Women, Murder and Equity in Early Modern England* (New York and Abingdon: Routledge, 2008), p. 202.
[53] J A Sharpe, as quoted by Randall Martin in *Women, Murder and Equity*, p. 206.

become rather antiquated in even the more traditional and scholarly legal records.[54]

Although it is somehow still all too easy to expect exceedingly low levels of female literacy, especially amongst the lower classes, scholarship shows that despite the restraints of literacy, early-modern readers were in fact a 'stunningly heterogeneous group of men and women differentiated by sex and social status, profession, religious and political affiliation, region, and age'.[55] There are numerous examples of female readers who did not conform to the prescriptive account of women's reading we receive from early-modern conduct literature, women who read an extensive range of books extending far beyond those genres that were typically associated with them and actively participating in local literary cultures.[56]

Research into the hard to trace 'common' reader reveals how reading was a broadly utilised skill amongst those operating under the level of the 'elite'. The most basic level of literacy in early-modern England was the 'ability to read simple print, however hesitantly and slowly', and is considered to have been relatively widespread amongst those but of the very lowest orders.[57] Printed material could be purchased for a few pennies as the diverse range of 'ephemeral literature' expanded and became increasingly available over the course of the seventeenth century.[58]

Despite the fact that the more exact levels of literacy across early-modern England remain an issue of contention, it is clear that certainly by the late sixteenth century 'popular' readership had developed to become significant enough to be worth capitalising upon for those living by the book trade; 'an

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[54] Wyn Ford, 'The Problem of Literacy in Early Modern England', *History*, Vol. 78, No. 252 (February, 1993), pp. 24-26.
[55] Sasha Roberts, 'Reading in Early Modern England: Contexts and Problems', *Critical Survey*, Vol. 12, No. 2 (2000), pp. 2-3.
[56] Roberts, 'Reading in Early Modern England', pp. 2-3.
[57] Ford, 'The Problem of Literacy in Early Modern England', p. 23.
[58] Roberts, 'Reading in Early Modern England', pp. 5-6.

awareness of reader diversity was axiomatic in the period'.[59] It would be wrong to assume that those belonging to the orders under the elite were solely interested in 'popular' literature available to them over the course of the sixteenth- and seventeenth centuries. Legal records, Sasha Roberts tells us, 'record libellous verses invented, written by hand, and read aloud in local communities'.[60] Ford points to a 'hunger for knowledge' that was greater than the availability of utterly fluent readers to explain the practice of reading aloud for an audience made up of one's local community, a practice that was widespread across England by the sixteenth century.[61]Early modern people, men and women, rich and poor, were evidently keen to access written material – for both entertainment and education – whether they were literate or otherwise. Evidence points to a rising tide of literacy over the course of the sixteenth- and seventeenth centuries. Increased use of vernacular English, from the Holy Bible to the law, made the world of words, and all it had to offer, accessible. The more prolific women readers we know about did not limit themselves in their consumption of written material to what it was prescribed they ought to have read. A booming print culture and desire for knowledge created a communal practice of reading aloud, inviting the illiterate into this growing readership. It is evident that reading would have had significant influence on what women knew about the law and what they could achieve within the courtroom should the need arise. Gentlewomen certainly, and those of the middling-ranks who were 'relatively well-off' would have been familiar with legal texts, and, more particularly, would have been well versed in those laws relating to marriage 'which affected them most directly'.[62]

This concept of women being familiar with those laws and legal doctrines that affected them most over the course of their expected life-cycle, and general everyday life, is hugely significant when discussing the extent of female legal knowledge. How did the actual practicalities and realities of being a woman in

[59] Roberts, 'Reading in Early Modern England', p.2 and 6.
[60] Roberts, 'Reading in Early Modern England', p. 6.
[61] Ford, 'The Problem of Literacy in Early Modern England', p. 26.
[62] Erickson, *Women and Property*, p. 21.

early-modern England influence feminine knowledge? A key factor in early-modern female knowledge and feminine knowledge exchange is female socialisation throughout the period. The idea of women learning about the law, and more specifically their own gendered status and rights at law, by directly interacting with the law and the sprawling web of courts and jurisdictions as part of their everyday lives is compelling. This is not to say that every woman living in seventeenth-century England was a litigant, whether civil or criminal, at one time or another. However, it is possible to assert that, whether they were litigants or not, in a litigious society most women acquired at least a rudimentary knowledge of the law because legal texts for all levels of literacy were available and there was shared knowledge in society, including between women themselves. Christopher Brooks' work highlights this, as he explained in 2008: 'increasing amounts of litigation and growing numbers of lawyers were accompanied by a distinctive cast of legal mindedness'.[63]

We know that early-modern women were deeply integrated and active in their gendered, often localised, social networks. Sara Mendelson commented within a book chapter considering 'The Civility of Women in Seventeenth Century England' that the directives of polite behaviour were, more often than not, 'expressed and perpetuated by example and other non-verbal means'.[64] An extended analysis of women's recipe books over the early modern period revealed how women would share various recipes amongst themselves – kin, friends and acquaintances – sharing knowledge socially within their local communities, friendship networks and in an intergenerational fashion, as the recipes and the physical books themselves moved from mother to daughter.[65]

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[63] Christopher W Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2008), p. 62.
[64] Sara Mendelson, 'The Civility of Women in Seventeenth Century England' in *Civil Histories: Essays Presented to Sir Keith Thomas* (Oxford: Oxford University Press, 2000), Eds. Peter Burke, Brian Harrison and Paul Slack, pp. 114-115.
[65] Charlotte Garside, unpublished MA Dissertation, *Feminine Bonds in Early Modern England* (2014) passim, see especially Chapter Two 'Gifts in Life: Sharing Knowledge in Women's Recipe Books', pp. 33-55; For more on women's recipes and recipe books, domestic and medicinal, see Elaine Leong and Sarah Pennell, 'Recipe Collections and the Currency of Medical Knowledge in the Early Modern Market Place', *Medicine and the Market in England and its Colonies c.1450* –

Women learned a lot from one another in this manner, from how to preserve fruits to how best to ensure survival of both mother and baby during pregnancy.[66] Women enhanced their general knowledge socially, intellectually, morally and culturally through the practice of 'borrowing, donating and inheriting books', not just recipe books.[67] This all points to how female homosocial relationships and socialising operated as forms of knowledge exchange, and how early-modern women could learn about matters of the law through socialisation.

Limited source material makes tracing the female practice of behaviourally setting an example and oral communication somewhat more difficult to piece together. Mendelson tells us that women 'valued privacy within their own sphere' and were usually reluctant to divulge what they had been talking about or doing within the safe sanctum of the exclusively female social encounters when in mixed company.[68]

As part of this exploration of women's legal knowledge, one can conclude that women learnt a great deal from one another and through functioning in what is recognised to have been a highly litigious society. The use of litigation to settle disputes and the 'high level of popular participation in administering the legal process' resulted in the ordinary people of early-modern England, including women, accumulating varying degrees of knowledge on matters of the law thanks to first-hand experience and exposure.[69] This knowledge enabled female

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c.1850, Eds. Mark S. R. Jenner and Patrick Wallis (Basingstoke and New York: Palgrave Macmillan, 2007), pasim; Elizabeth Spiller, *Seventeenth Century English Recipe Books: Cooking, Physic and Chirurgery in the Works of Elizabeth Talbot Grey and Netheia Talbot Howard*, (Hampshire: Ashgate Publishing, Ltd., 2008); Jane A. Crawshaw, ' Families, Medical Secrets and Public Health in Early Modern Venice', *Renaissance Studies*, Vol. 28, No. 4 (2014), pasim; Mary E. Fissell, 'Introduction: Women, Health, and Healing in Early Modern Europe', *Bulletin of the History of Medicine*, Vol. 82 No. 1 (Spring, 2008), pasim.

[66] A good example of an early modern woman's recipe book containing recipes relating to pregnancy is that of Jane Dawson (Jane Dawson, 'Cookery Book' c.1650-1699, Perdita MS V.b.14, pp. 68-69).

[67] Roberts, 'Reading in Early Modern England', pp. 3-4.

[68] Mendelson, 'The Civility of Women', p. 119.

[69] Garthine Walker, *Crime, Gender and Social Order*, p. 211.

understanding of the law and their place within it. Female relations, friends, and neighbours no doubt discussed their legal battles, as well as those of the men and women within their social circles and local communities, in a fashion that bolstered what has already been described here as a burgeoning, popularised legal culture of practice, awareness and opinion throughout seventeenth-century England.

Sara Butler found evidence of early-modern women implying that legal knowledge, specifically surrounding the issue of coverture and the situation facing married women as a result of that legal doctrine, was 'common knowledge'. The universality of feminine experience in seventeenth-century England, for instance the fact that all married women were subject to the legal doctrine of coverture, created a culture of shared legal knowledge that meant that 'knowledgeable women were not anomalies'.[70] They were women who benefitted from being part of extensive, day-to-day, gendered social and familial networks in which women shared their experiences, universal and otherwise, as well as their knowledge to create communities of women – potential litigants – who were well equipped with a functional understanding and awareness of the law. Barbara Harris explained in her consideration of sibling relationships in 'Regional and Family Networks', how women at all stages of their expected family career as wives, mothers and widows sustained the bonds between their kin, natal and marital.[71]

Hawkes suggests throughout her work considering the place of women within the later medieval Court of Chancery that women had a working knowledge of the law that they drew upon in times of legal difficulty. Not only did she find evidence of women selecting jurisdictions that were more likely to deliver a

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[70] Sara M Butler, 'Discourse on the Nature of Coverture in the later Medieval Courtroom' in *Married Women and the Law: Coverture in England and the Common Law World* (Montreal and Kingston, London, Ithaca: McGill Queen's University Press, 2013), Eds. Tim Stretton and Krista J Kesslering, pp. 37-38.
[71] Barbara Harris, 'Regional and Family Networks: The Hidden Role of Sisters and Sisters-in-Law' in *Gender and Political Culture in Early Modern Europe, 1400-1800* Eds. James Daybell and Svante Norrhem (London and New York: Routledge, 2017), pp. 107-108.

favourable result, but also anecdotal evidence suggesting that some women 'were full participants in legal undertakings'.[72] The legal records and archival material from the Court of Chancery clearly show women as named litigants to cases, and participating in suits within the setting of the court. Within depositions, we gain rare glimpses of activity outside of the court, relating to matters at law which can serve to build a picture of how women contributed to cases on-going, outside of the court room. Hawkes presents women as crucial figures when pursuing any given case in the Court of Chancery in later medieval England; women would gather and relay information, pressure friends and neighbours, arrange legal services and pay bonds.[73] They would perform a myriad of essential tasks that helped suits within which they held a vested interest, for instance in cases involving family members, perhaps without ever appearing in the formal legal records at all.

Hawkes' suggestion that women were involved in these 'extra-curial' activities is fascinating; however, it is important to remember that her evidence is both 'piecemeal and anecdotal'.[74] Nevertheless, the concept of women being involved in legal procedure in a manner that is not immediately evident within surviving legal records is compelling, and certainly even the act of women relating and discussing legal cases in social situations indicates 'a clear grasp of complex procedures … and general knowledge of the law'.[75] What begins to emerge, then, is a far clearer picture of early-modern women's interaction with, and knowledge of, the law. Women actively engaged in undertakings associated with law suits (both inside and outside the formal space of the court room), had access to informative legal literature, and Prest informs us that a great many women of the early seventeenth century would have possessed an understanding of 'much of the conceptual apparatus and terminology of the unreformed land law'.[76]

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[72] Hawkes, 'Women's Knowledge of Common Law and Equity Courts', p. 155.
[73] Hawkes, 'Women's Knowledge of Common Law and Equity Courts', p. 159.
[74] Hawkes, 'Women's Knowledge of Common Law and Equity Courts', pp. 156-158.
[75] Hawkes, 'Women's Knowledge of Common Law and Equity Courts', pp. 156-158.
[76] Prest, 'Law and Women's Rights', p. 176.

Furthermore, the quantitative evidence available suggests women were consciously selecting specific jurisdictions, pointing to women's awareness and use of legal tactics. Indeed, some women's grasp on the laws of early-modern England that they 'exhibited a more nuanced understanding of coverture than the King's justices did'.[77] Despite gaps in our historical understanding and the ever-infuriating lack of personal records, we can fairly safely assume that a large proportion of early-modern women possessed varying yet discernible levels of legal awareness and understanding.

2.3 Quantitative Historiography

The historiography surrounding women's use of the Court of Chancery more specifically suggests that the presence of female litigants within the court was growing over the course of the early modern period. Maria Cioni suggested in her research on women in Chancery, that the number of female litigants appearing before the Lord Chancellor grew over the course of Elizabeth I's reign.[78] This conclusion was later confirmed by Amy Erickson, who found from her own sampling and statistical work that female litigants (acting as either plaintiffs or defendants) appeared in around a quarter of all the cases brought before Chancery during the reign of Elizabeth I.[79] This rose to 40 per cent by the reign of James I – a substantial increase.[80] My own sample indicates that the presence of female litigants in lawsuits, again either as plaintiffs or defendants, rose further to 44 per cent of cases brought before the Lord Chancellor by the reign of Charles II.

In other words, there is a steady and consistent increase in the presence of female litigants over the course of the sixteenth- and seventeenth centuries. By the last few decades of the seventeenth century, however, the rise in the proportion of cases involving women as litigants becomes far smaller and

[77] Butler, 'Discourse on the Nature of Coverture in the later Medieval Courtroom', p. 36.
[78] Cioni, *The Elizabethan Chancery*, p. 159.
[79] Erickson, *Women and Property*, p. 114.
[80] Stretton, *Women Waging Law*, p. 39.

slower. Indeed, an increase of only four per cent over the course of the seventeenth century is surprisingly sluggish compared to the 15 per cent (25 to 40 per cent) increase witnessed over the course of the previous century.

The judicial system of late medieval and early modern England has long been recognised as an intertwining sprawling web of courts operating as part of and under various jurisdictions. Each of these jurisdictions offered women differing statuses at law, as well as differing legal capabilities and responsibilities. Hawkes' exploration of how late medieval, Northern gentlewomen utilised the different legal avenues and courts made available to them highlights the fact that women made a conscious choice to pursue cases in the Court of Chancery more often than in common law courts, such as King's Bench and Common Pleas. Hawkes found that around five per cent of the litigants in both King's Bench and Common Pleas were women in the years 1479 to 1520. In the comparable years of 1461 to 1515, a total of 1384 bills of complaint were sent to Chancery from litigants in Yorkshire, 438 of which included women as either a named complainant or defendant, overall around 15 per cent of these litigants were women.[81] What is evident from these figures is that from the late fifteenth century to the early sixteenth century, women were far more likely to bring suit before the Lord Chancellor in Chancery than before the common law courts of King's Bench and Common Pleas, suggesting a marked female preference for equity law. Erickson found within her quantitative work, women falling away from the common law court of King's Bench and Common Pleas in later years. From a small sample, her work established a drop in the number of widows using these two common law courts in the years 1560 to 1640, from six to three per cent.[82]

Tim Stretton found that in the Court of Requests during the Elizabethan era 'women appeared as litigants in almost one third of cases', appearing as

[81] Hawkes, 'Women's Knowledge of Common Law and Equity Courts', pp. 146-151.
[82] Erickson, *Women and Property*, p. 115.

defendants in 16 per cent of cases and as plaintiffs in 20 per cent of cases.[83] Whilst the proportion of female litigants in the Court of Requests grew only slightly over the reign of Elizabeth I, unlike in Chancery where the growth was greater, there was nevertheless an increase. Women made up 12.4 per cent of litigants in the court in 1562, which rose by 1603 to 13.6 per cent, and by 1624 women made up 18 per cent of litigants and were involved in more than a third of cases.[84]

Laura Gowing performed a statistical analysis investigating the 'Changes in consistory court litigation, 1572-1623'. In this court too, there appears an increase in women bringing cases, a rise from 25.2 per cent in 1572 to 54 per cent by 1633. The number of cases of defamation sued between women rose from 7.2 per cent to 42.5 per cent over the same period. Gowing's research reveals that from the year 1590 to 1624 not only did the London population increase by nearly two thirds, but also 'the numbers of both female plaintiffs and defamation cases nearly tripled'.[85]

In other words, the presence of women in the London Consistory Court increased dramatically over the course of the later sixteenth- and early seventeenth centuries. Gowing attributes much of this increase in female litigants within the Consistory Court to an overall increase in defamation cases, 'which were themselves increasingly sued between women'.[86] However, her research also exposes the fact that London's church courts were unique with the levels of female participation in litigation increased, yes, but slower and to a lesser degree – even in defamation cases – something to bear in mind as part of this consideration of Yorkshire women bringing suit in London.

What is evident is that over the course of the sixteenth century, English women became far more involved in those courts that were by design, procedure and

[83] Stretton, *Women Waging Law*, p. 39.
[84] Stretton, *Women Waging Law*, p. 39.
[85] Gowing, *Domestic Dangers*, pp. 32-33.
[86] Gowing, *Domestic Dangers*, p. 34.

jurisdiction better suited to the needs of the female litigant – the church and equity courts. Horwitz, in his introduction to the early-modern Court of Chancery, offers various reasons as to why litigants may have felt their needs would have been better met, and the chances of them achieving their ultimate goals greater, in equity rather than at common law. Analyses of the reasons offered by Horwitz provide some useful insight into why women increasingly came to litigate before the Lord Chancellor of England and under equity. The reasons why the early-modern Court of Chancery served well as a court for the female litigant can be categorised into two key aspects of litigation: procedure and power.

The procedure of the early-modern Court of Chancery created a court that was very accessible. First of all, early-modern Chancery operated in vernacular English. A civil suit brought at common law typically started with the purchasing of a writ 'in Latin' which indicated a specific action. In Chancery, however, a suit began with a bill of complaint written 'in English', simply detailing in an informal and relatively colloquial manner the situation of the plaintiff and requesting suitable remedy. A plaintiff would, quite literally, explain their complaint.[87] This created a court that was far more accessible and easier to understand for those litigants devoid of any legal training, or even any in-depth education at all. In other words, the informal procedures of Chancery and documentation that was taken and recorded in vernacular English made for a court that did not alienate, exclude, or confuse female litigants who regularly were disadvantaged due to lack of formal education.

Furthermore, Chancery procedure required the taking of depositions. The Court of Chancery relied on the testimonies of witnesses to provide the evidence upon which a final decree and order was ultimately based. The Chancery system of asking selected deponents to answer a list of interrogatories – questions formulated before interviewing each witness on behalf of either the plaintiff or the defendant – and recording their answers as depositions meant a number of

[87] Horwitz, *Chancery Equity Records and Proceedings*, pp. 1-3.

things. Significantly for the historian, this system has resulted in the vastly informative survival of voluminous, rich and detailed court evidence, and voices, that we would otherwise have no access to, can be heard.

More significantly for the early-modern litigant, however, this system offered the valuable opportunity to interrogate multiple witnesses at length and under oath. This process was particularly adept at dealing with the problems inevitably arising from a London-centric court aimed at providing redress for litigants on a national scale. For those cases based outside of London, for example in Yorkshire, the court would commission gentlemen operating outside but as an extension of the court – typically a local official in the early seventeenth century, more often a solicitor by the eighteenth century – to conduct the taking of depositions. 'Depositions taken in the country' meant that witnesses could be interrogated all over England and thereby resolved those problems associated with the necessity of making long and often expensive trips to London for every particular of a specific suit.[88] Many litigants complained about the difficulties associated with potential deponents making trips to London, asking for depositions to be taken outside the formal space of the Chancery courtroom.

It may well have been particularly difficult for the female litigant to make regular trips to London. The ties of domestic life often bound women, with children and pregnancy keeping them within the confines of the home. Those women coming to the court alone as sole female plaintiffs or defendants (SFP/D), or those appearing in the company of only other women (JFP/D), might have perceived the trip from Yorkshire to London as unsafe and impractical. The impracticalities for women travelling from Yorkshire to London extends to the issues of cost. Female litigants pursuing or defending suit in Chancery were facing the possibility of paying not only legal fees but travel expenses too – which could be considerable. The cost of transport, accommodation, and necessary sustenance would surely have made the idea of depositions being taken within one's home county very attractive.

[88] Horwitz, *Chancery Equity Records and Proceedings*, p. 3.

Those litigants who were unable or unwilling to make the rather arduous journey from the Yorkshire cities and countryside to London were provided for by the procedural systems employed by Chancery; not only by 'Depositions taken in the country', but also by external arbitration. Arbitration outside of the formal setting was definitely one of the more attractive elements of potential Chancery procedure. Skilled arbitrators who were both perceptive and patient 'could effectively adapt equitable principles to community needs and, in so doing, enable them to participate in the functioning of the law'.[89] The flexibility of equity procedure, and the willingness of Chancery to be out and operating within the wider community on a national level, definitely served to make its jurisdiction more accessible.

The power of the early-modern Court of Chancery also served to make it an attractive option for women in need of relief at law. For example, Chancery had the power of being able to serve a binding interlocutory injunction. This meant that the court could issue an order that prevented a defendant from either continuing legal action in another court relating to the matter brought by the complainant before Chancery, or from initiating or engaging in any other action that could cause irremediable damage to the complainant.[90] The power of Chancery to enforce its rulings expanded over the course of the Elizabethan period. Gradually, the injunction was used not only to 'inhibit suits in other courts', but to ensure a fair trial within other court and jurisdictions, to restrain a violation of rights, as well as 'restore a person expelled from an estate to 'quiet possession' of lands and tenements'.[91] Typically, if applied, an injunction would remain in place until the defendant(s) in question had appeared before Chancery and given sufficient answer to the issues lodged by the plaintiff. It was because of this specific, and impressive, power held by Chancery that the historian encounters amongst the voluminous archival records many suits that discuss and are clearly linked to cases being held in other courts – such as King's Bench,

[89] Cioni, *The Elizabethan Chancery*, p. 161.
[90] Horwitz, *Chancery Equity Records and Proceedings*, pp. 2-3.
[91] Cioni, *The Elizabethan Chancery*, pp. 160-161.

Common Pleas, as well as the smaller localised courts.[92] It was a common strategy for litigants to have suits heard in multiple courts simultaneously, thereby enabling or preventing legal processes.

The Court of Chancery was practical, accessible and flexible in terms of both procedure and enforcement. The Chancellor could order documents to be produced, issue injunctions, send arbitrators and representatives out into the community, and would even refer cases to alternative courts if either the specific case was unsuitable for the equitable jurisdiction of his court or 'after Chancery had helped the litigant to secure the necessary requisites for legal action'.[93] These benefits of bringing a case before Chancery were particularly appealing to women. A court designed to assist the vulnerable and oppressed saw the position of women and worked to create a space that afforded 'some regularised course of action and rights'.[94] It was in Chancery alone that women had enforceable legal support to discover and assert their rights to property, marital status allowing, ensuring relief when and where the common law did not.

These were the advantages that attracted the early-modern woman to Chancery: not only could she benefit from the accessible and flexible nature of the court's procedure and power, but she was afforded legal rights that she found in no other institution or jurisdiction. The process of case referral had particular utility in the fact that it allowed women something of a 'dry run' in Chancery should their legal plight necessitate an appearance before the less female-friendly courts of common law.[95]

It is important to bear in mind at this juncture, however, that Chancery was not a court specifically designed to be female-friendly. The Court of Chancery existed in order to offer redress and remedy for those cases where the common law could not. Wills, trusts and settlements could not be enforced by the courts of

[92] Horwitz, *Chancery Equity Records and Proceedings*, pp. 2-3.
[93] Cioni, *The Elizabethan Chancery*, p. 161.
[94] Cioni, *The Elizabethan Chancery*, p. 159.
[95] Cioni, *The Elizabethan Chancery*, p. 161.

Kings Bench and Common Pleas because they were instruments created outside the scope of the common law, and were therefore picked up by Chancery. They were also legal instruments that allowed individuals to circumvent the common law rules on inheritance and provision for wives and families. As the use of these legal instruments became increasingly prevalent over the course of the early modern period in England, the number of people affected by them also increased, meaning that the number of people having to enter suits in Chancery for remedy also increased. Amanda Capern, for instance, points to the increased use of wills following the Statute of Wills in 1540 as a cause of the increase in the Chancery's case load over the early modern period.[96]

One must also remember that the ultimate decrees issued out of Chancery were based on the decisions of the Lord Chancellor, his decisions in turn dictated by his own conscience and conceptions of fairness which would have developed within the context of early-modern law, culture and normative social expectations. It is crucial to avoid anachronistic assessments of the outcomes of suits heard in this court. Whilst today we may think it unfair that a married woman did not control her own property, an early-modern Chancellor would have in fact taken this for granted. He would have been searching for evidence of other injustices in any given case – that a promised bequest had not been paid by a brother, or a marriage settlement had not been honoured for example.

The Court of Chancery did, however, become, certainly in theory when compared to alternative courts and jurisdictions, something of a legal haven for the early modern woman. Early-modern Chancery, then, did provide redress for women, and the purpose of this thesis is to show to what extent, and in what ways, this was the case. This court was a place where the gendered limitations placed on the female litigant – legally, socially and culturally – were, to a degree, neutralised by the intentions and processes of the Court, as well as the all-important conscience of the Lord Chancellor. Yes, the increased presence of the female litigant in early-modern Chancery was part of a wave of a general

[96] Capern, 'Emotions, Gender Expectations, and the Social Role of Chancery, 1550-1650', p. 189.

increase in Chancery business, but there were particulars of this specific court that made it an ideal court of women's redress. The female litigant knew this, and over the course of the sixteenth to eighteenth centuries she made up a growing proportion of the Chancery's clientele.

An analysis of the literature available considering women, the law, and the Court of Chancery across the late medieval and early modern periods reveals a litigious society, of which women were an integral part. Women often had impressive legal knowledge and actively participated in legal endeavours, both inside and outside of the formal space of the courtroom. This thesis builds on this knowledge, adding to the growing historiography surrounding the legal lives of seventeenth-century women, with a fine-grain investigation of the experience of women in Chancery. The contribution of this thesis, then, is to add to current knowledge of Chancery itself, the female experience of the court, and thereby further enhance our current understanding of the legal lives of women in the past.

3. Quantitative Analysis: Women in Chancery

Over the course of the early modern period, the Court of Chancery saw an increase in the number of female plaintiffs. Erickson found that the presence of female plaintiffs involved in suits brought before Chancery rose from 17 per cent of all cases in the latter half of the sixteenth century to 26 per cent in the seventeenth- and early eighteenth centuries.[1] My own quantitative sample confirms Erickson's finding, showing 26 per cent of Chancery cases naming women as plaintiffs. My own research questions, however, require a more meticulous look at the figures surrounding women's use of Chancery in the later seventeenth century. What proportion of Chancery's litigants were women? Were female litigants coming to Chancery alone, with other women, or with men? What was it that was encouraging women to bring cases into Chancery as plaintiffs, and under what circumstances, were they obliged to defend themselves? The purpose of this chapter is to analyse the data arising from the quantitative work of this research project on women litigating in the Court of Chancery from 1670 to 1710.

Up until recent years, a quantitative analysis of women's use of early-modern Chancery had been judged insuperably difficult.[2] Unprecedented early access to the now searchable TNA catalogues for C5 Bridges, the data from the original catalogues having been extracted and put online, meant that it was possible to find answers to the questions posed by this chapter. The C5 series 'is searchable by name, place and subject', with the descriptions inputted taken from printed calendar '(the work of A J Gregory) published between 1913 and 1916 as *Chancery Proceedings: Bridges Division*'.[3]

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[1] Erickson, *Women and Property*, pp. 114-115.
[2] Erickson, *Women and Property*, pp. 114-115.
[3] 'Court of Chancery: Six Clerks Office: Pleadings before 1714, Bridges', TNA Guide [http://discovery.nationalarchives.gov.uk/details/r/C3568, last accessed 22 November 2017]; Many thanks to the volunteers of the Friends of the National Archives (FTNA) for their work in inputting all the descriptions for this and other Chancery series, which was completed in February 2012.

How women used this court has been considered from a quantitative perspective before, for instance by Amy Erickson and Emma Hawkes, but never for this specific period and not to the same level of detail that the database created for this research project has allowed. By using the catalogue and creating a database from it, it has been possible to code the information held within it to see how women came to Chancery as both plaintiffs and defendants – alone (SFP/D), with other women (JFP/D), or with men (MFJP/D).[4] It has also been possible to analyse the marital status of all the named female litigants within the sample, and to categorise why they brought, or were forced to defend, a suit at Chancery. This level of analysis provides a detailed quantitative exploration of how, and under what circumstances, female litigants appeared in the court.

3.1 Plaintiffs

Based on the catalogue database, I was able to create a core sample of 1,556 cases with which it was possible to perform a quantitative analysis. The sample of 1,556 cases upon which all of the following quantitative evidence is based is a set of cases taken from the C5 Bridges series that include within the record an original bill of complaint, are based in Yorkshire, and came to the Court of Chancery some time during the years 1670 to 1710 – according to the online catalogue.[5]

Of the 1,556 cases in the quantitative sample, 687 of them (44 per cent) include a named female litigant acting in some capacity, either as a plaintiff, defendant, or both. This means that the majority of cases within the sample, 869 to be exact

[4] See 'Table 1: Codes used within the sample database, also can be used in TNA Discovery keyword search as search tools to locate records' detailing the coding used throughout the quantitative analysis, p.18.

[5] Some of the dates for records included in this sample are not precise, covering a number of years (1682-1685, for example), however they all fall within the chosen time frame. For some records catalogued with a date range of 1614-1714, it has been possible to date them more accurately, their being connected to other records, as part of a larger suit, that fall within the temporal parameters of this sample (for instance, a record for the suit Appleby v. Gascoigne), and have subsequently been included. All other suits that are dated as taking place at some point during the years 1614-1714 have been omitted from the quantitative sample.

(56 per cent), have only male named litigants. This finding demonstrates the prevalence of women in Chancery, with just under half of the cases within the sample involving women as named litigants acting in some capacity. This supports the now widely accepted historiography recognising the significant role of women in the legal courts of early-modern England.

The most straightforward way to investigate how women were bringing suits to the Court of Chancery was to apply the coding system devised that serves to indicate how a female litigant came before the court. For named female plaintiffs, for example, one can analyse whether a woman came to the court alone (SFP), in the company of other women (JFP), or as part of a larger party that included men (MFJP).[6] At first glance it would appear that the vast majority of cases involving women as plaintiffs fell into the MFJP category – 66 per cent (see Fig. 3). In other words, women mainly brought a case to Chancery in conjunction with a male co-plaintiff. However, it is important to state that this means that 34 per cent of cases involving women as plaintiffs did not have a male named plaintiff at all.

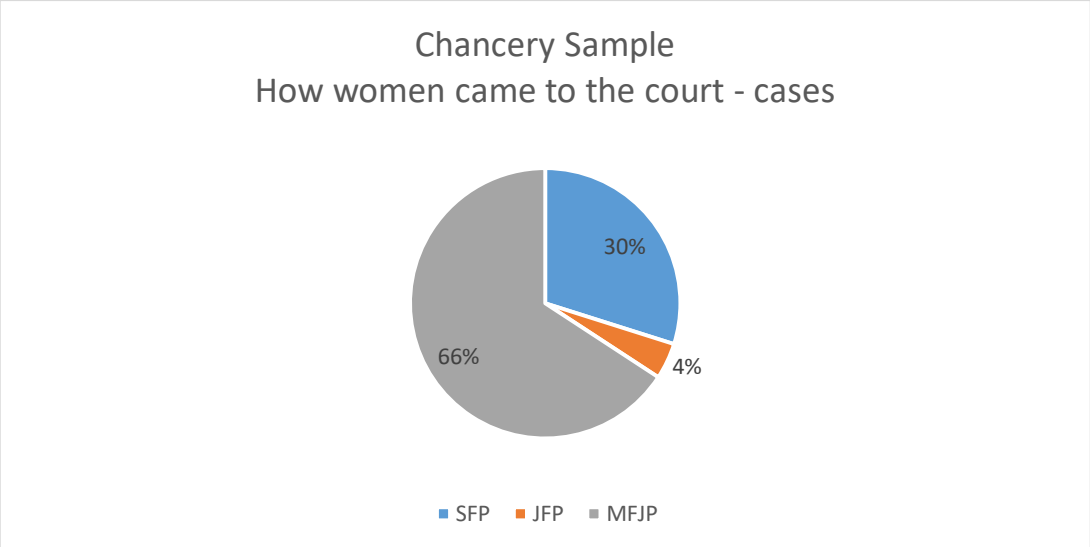

Fig. 3
The proportion of SFP, JFP, and MFJP categorised cases

[6] See 'Table 1: Codes used within the sample database, also can be used in TNA Discovery keyword search as search tools to locate records' detailing the coding used throughout the quantitative analysis, p.18.

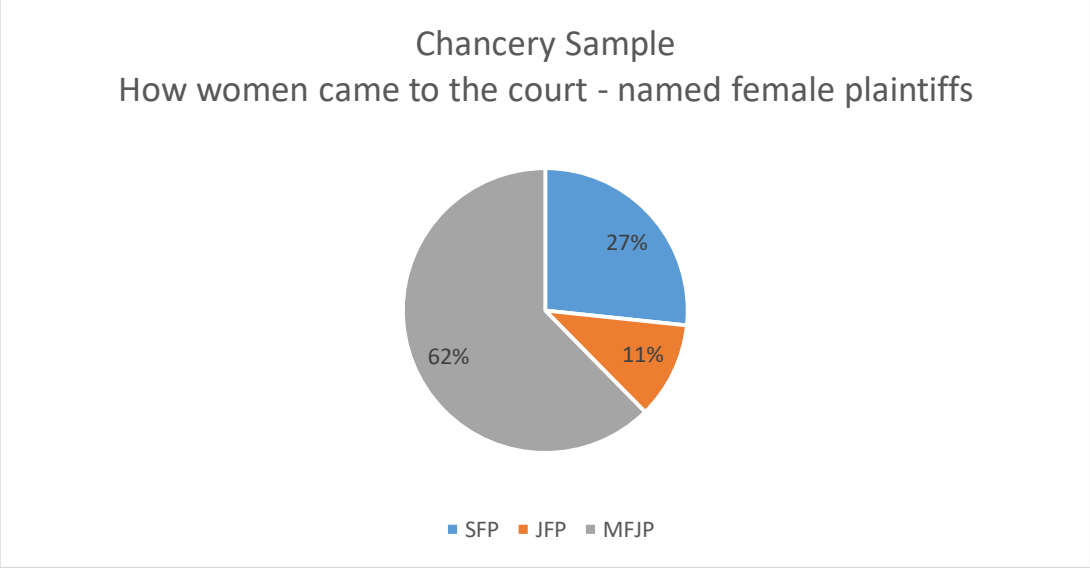

Fig. 4
The proportion of named female plaintiffs categorised as SFP, JFP, and MFJP

If we then analyse the number of named female plaintiffs - in other words the absolute numbers of women, as opposed to the number of cases involving named female plaintiffs - the significant minority of women acting without the support of named male co-plaintiffs grows further. 38 per cent of named female plaintiffs came to Chancery alone or solely in the company of other named female plaintiffs (see Fig. 4) – over a third. This clearly demonstrates that women were willing and able to act outside the patriarchal constraints of early-modern society when they needed to.

What is notable about those female plaintiffs coming to Chancery without a named male co-plaintiff is that the majority of them chose to litigate alone. Over a quarter of named female plaintiffs within my research sample came to Chancery as SFPs – 27 per cent. When we compare this to the 11 per cent of named female plaintiffs working together as JFPs, and the smaller still proportion of JFP cases (a rather measly four per cent), it becomes clear that it was rare for women to come together before the Lord Chancellor as co-plaintiffs. It is worth noting here that slight fluctuations in the proportions of cases involving female plaintiffs and the number of named female plaintiffs are to be expected. There are multiple women named, for instance, within one JFP case, which means that there are more named female plaintiffs than cases that include a named female plaintiff. Furthermore, despite these variations, the overall

picture remains much the same. The same is true for the quantitative analysis of female defendants later on in this chapter.

It is possible to analyse JFP litigants further. In total, 84 per cent of those female plaintiffs that fall into the JFP category had no recorded marital status (no MS) and are therefore within the scope of this research project are understood to be singlewomen, having never been married.[7] 16 per cent were recorded as widows, meaning that none of them were legally married at the time they came to court. These women had reverted back to *femes sole* status in the eyes of the law, but were regarded by society as 'ever-married'. From this data, one can conclude that not only was it relatively rare for female plaintiffs to enter bills of complaint into Chancery as co-litigants, but that the women who did were invariably singlewomen, *femes sole*.

Widows would enter bills of complaint into the Court of Chancery in conjunction with named female co-plaintiffs for a variety of reasons. In some instances, the widows were recently bereaved mothers looking to support and assert the rights of infant daughters (who could have been named as the female co-plaintiff). In some cases, the JFP litigants were sisters, looking to secure their mutual rights to inheritances deriving from deceased parents. However, these cases usually come to fall into the MFJP category at some point or another, as one or more of the litigants marry, their husband subsequently becoming a named litigant in their own right through their wives. In the case of Tancred v. Tancred, for example, the original pleadings brought before the Lord Chancellor were entered by the then widowed Katherine Tancred and her five single daughters, making it a JFP case. As the years went on, however, some of the litigants died and others moved into new relationships, so the case was eventually led in the court by four of the still living sisters and two men, the husbands of those sisters who went on to marry, becoming a MFJP case.[8]

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[7] Froide, *Never Married*, p. 9; For a full explanation of the use of singlewomen terminology throughout the thesis please see Chapter 4, specifically pp. 107-108.
[8] TNA C5/272/4, Tancred v. Tancred, Original Bill of Complaint.

JFP cases typically involved at least one named singlewoman plaintiff. It could well be the case that those women who had never had husbands were more likely to look to their female friends and relatives for support than their married and widowed counterparts. Singlewomen were, after all, legally inexperienced compared to wives and widows, having, for example, never made or been subject to a marriage settlement, never having lived under the doctrine of coverture, and never having had to claim for dower or jointure. Additionally, cases entered by JFP litigants were usually women who were, on some level, connected to one another; mothers needing to support infant daughters or sisters with equal rights to inheritance or portions from the estate of deceased parents.

The majority of those female plaintiffs who entered a bill of complaint into the late seventeenth-century Court of Chancery without the support of a named male co-plaintiff did so entirely alone; as SFPs. A more detailed look at the SFPs within the research sample substantiates the point made previously as part of a consideration of JFPs. Seventy-two per cent of women recorded as coming before Chancery as an SFP were identified as widows. Widows, with the experience of marriage behind them and prospect of supporting themselves, and any dependants they may have had, as well as the possibility of future marriages ahead of them were in strong positions. Their knowledge, subsequent confidence, and very practical needs made them far more likely to be both willing and able to enter into suits at equity alone. Reverting back to their *femes sole* status, widows were not afraid to wield, independently, their freshly reinstated legal rights.

Another point to consider here is whether or not widowhood commanded a degree of social authority within the early-modern community, enabling them to act alone. This argument shall be expanded and explored further and in full detail in chapter six of the thesis, 'Widows in Chancery'. Here, however, it is possible to conclude that the ever-married woman in early-modern England had a level of social clout and acceptable independence. Alongside experience and knowledge of her own legal identity, dependant as it was on her changeable marital status and practical need to support herself, the widow was uniquely

able and willing to bring suit before the Lord Chancellor in early-modern Chancery alone.

A further consideration here must surely be how, practically speaking, a woman could take forward a case in the Court of Chancery – particularly those suits that were fought out right up until the bitter end, with the Lord Chancellor issuing final decrees and orders. The historiography surrounding *femes sole* in early-modern England, singlewomen and widowed women shows how those women could earn money through employment which, not being bound by the doctrine of coverture, was entirely their own to use as they best saw fit. Some also had access to money through inheritances, and widows had access to either jointure or dower (whichever was stipulated due to her). These female litigants therefore would have potentially had access to income sufficient not only to cover legal fees associated with bringing suit before the Lord Chancellor in Chancery, but also to cover the practical cost of following suit in the London based court of law. The women considered within the scope of this research project were, after all, engaging with a court based in London all the way from distant Yorkshire.

Despite depositions being able to be taken in the country and external arbitrations – representatives of Chancery commissioned to enact the orders of the court in Yorkshire – as litigants (either plaintiff or defendant), these women would have most likely have had to make at least one trip to London in order to engage with the procedure of the court. Those women acting without a male co-litigant almost certainly would have had to make the long, costly trip. We might, therefore, expect to see fewer singlewomen than widows entering pleas alone, due to more limited opportunities to raise funds with which to bring suit as a sole litigant.

This point is further substantiated when we look at how widows came to the court, as a group for analysis. This research sample has revealed that 70 per cent of all the named female plaintiffs recorded as being widows who brought suit to Chancery, did so alone as an SFP (see Fig 5).

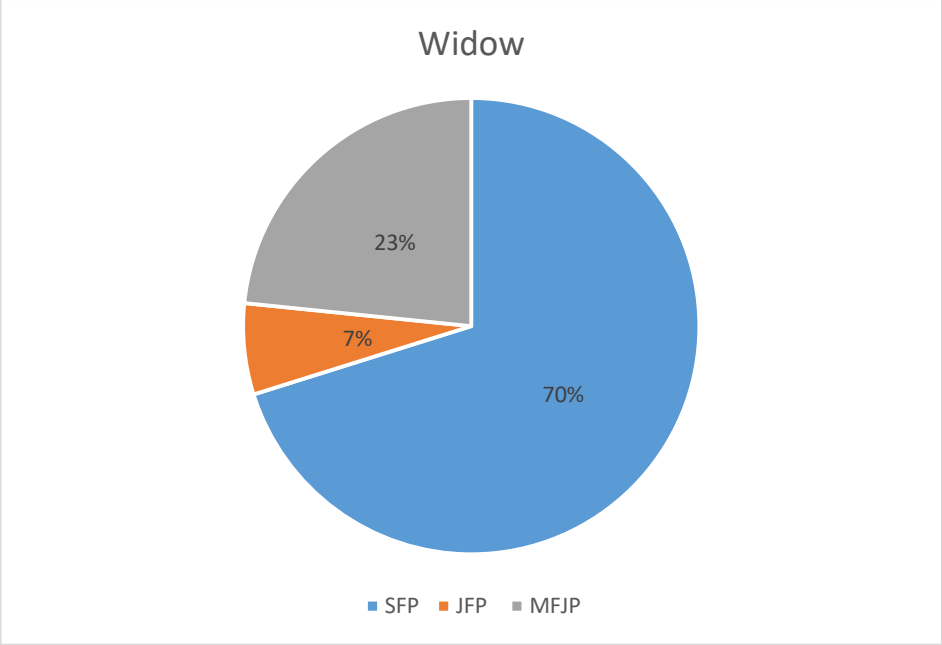

Fig. 5
How named female plaintiffs recorded as widows appeared in the Court of Chancery – SFP, JFP, or MFJP

In fact, only seven per cent of widows within the sample acted as JFPs. The early-modern widow was not, then, in the habit of depending on female co-plaintiffs, with the majority of them not requiring a co-plaintiff at all, gender immaterial. Moreover, at just under a quarter (23 per cent), the proportion of widows entering pleas into Chancery with a male co-plaintiff is the smallest when we analyse how female litigants initiated suits in the court based on their marital status – 39 per cent of singlewomen fall into the MFJP category, and 100 per cent of married women (see Fig. 6). The fact that widows were the least likely group of female named plaintiffs to bring suit into Chancery in conjunction with a co-plaintiff, of either gender, demonstrates the legal independence that was possible for the early-modern widow.

Twenty-nine per cent of SFPs were recorded with no marital status. Although these SFPs are proportionally the minority, they still make up over a quarter of all the named SFPs within the sample. It should be noted, however, that although JFPs made up a smaller proportion of women's use of Chancery as plaintiffs overall, more singlewomen were named as acting as JFPs than SFPs. Forty-three women with no recorded marital status are named as JFPs (84 per cent of all JFPs), whilst 35 women with no recorded marital status are SFPs (29 per cent of

all SFPs). This means that 34 per cent of named, singlewomen plaintiffs within the research sample came before the Lord Chancellor in the company of a fellow female co-plaintiff (see Fig. 6).

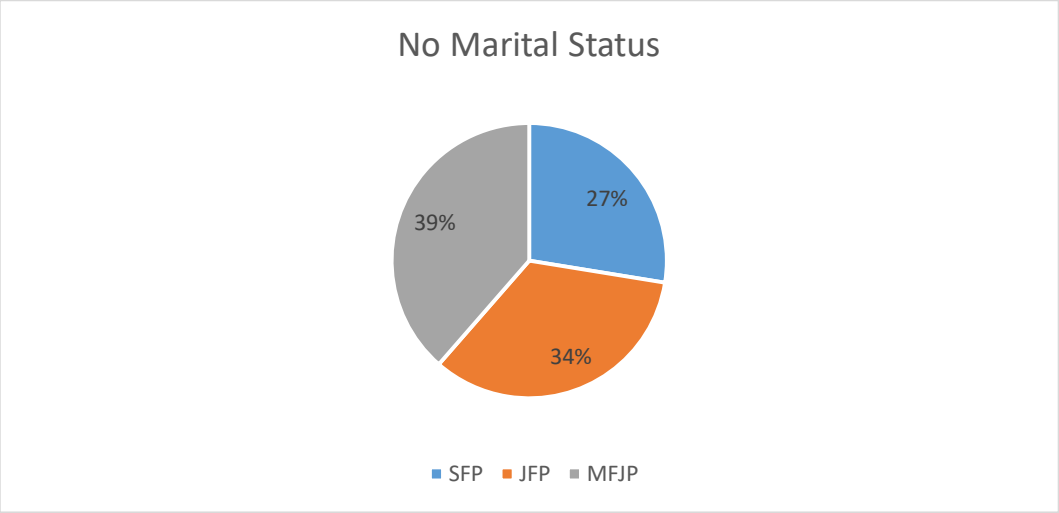

Fig. 6
How named female plaintiffs with no recorded marital status appeared in the Court of Chancery – SFP, JFP, or MFJP

Just over a quarter – 27 per cent – of all the plaintiffs with no recorded marital status came into Chancery alone as SFPs. There is less than 10 per cent difference between the proportion of singlewomen coming into Chancery as plaintiffs as SFPs and as JFPs. Although the difference is small, it remains important to note that single female plaintiffs were less likely to act alone. In other words, it was more likely for a singlewoman to appear in the company of either a male or a female co-plaintiff than alone. This points to the lack of independence experienced by singlewomen, certainly in comparison to their widowed counterparts, despite their both sharing the legal status of *femes sole*.

One way of considering the quantitative findings depicted in Fig 6, is that, overall, singlewomen named as plaintiffs were entering bills of complaint in conjunction with one or more co-plaintiff, male or female, more often than alone. Seventy-three per cent of pleas entered by singlewomen were done so with at least one co-plaintiff. Singlewomen evidently were more willing, or felt more capable, of coming to Chancery with the support of others. However, this does not suggest an overwhelming reliance on male co-plaintiffs. Bringing SFPs and

JFPs together, one can see that over half, 61 per cent, of cases initiated within Chancery by women who had never been married were done so without any male support whatsoever.

Furthermore, the singlewoman plaintiff was a more common occurrence in Chancery than their defendant counterpart. Sixty-six per cent of the female litigants within the research sample who are understood to be singlewomen were plaintiffs, leaving a comparably small 34 per cent of them acting as defendants. Women who had never been married were more likely to bring a case before the Lord Chancellor than be forced to defend themselves.

In conclusion, then, singlewomen plaintiffs were more likely to enter a plea with a co-plaintiff than alone, but they were also overall more likely to act without male support. Additionally, they were more likely to come to Chancery as a plaintiff than as a defendant. From a quantitative analysis alone it is possible to see what the singlewomen acting as plaintiffs in Chancery can reveal about their general lived experience not only legally, but, by extension, socially and culturally as well.

What is evident from all this analysis is that the singlewoman played a significant role as a plaintiff in the later seventeenth-century Court of Chancery. Women who were without husbands were not unable to participate in those spheres that were seen as traditionally 'male', such as courts of law. Over a quarter, 27 per cent, of named female plaintiffs in the later seventeenth-century Court of Chancery were singlewomen (see Fig. 7). In fact, when we look at the total number of women who were without living husbands acting as plaintiffs in Chancery, it is clear that overall they make up the majority: 55 per cent of named female plaintiffs were legally *femes sole*.

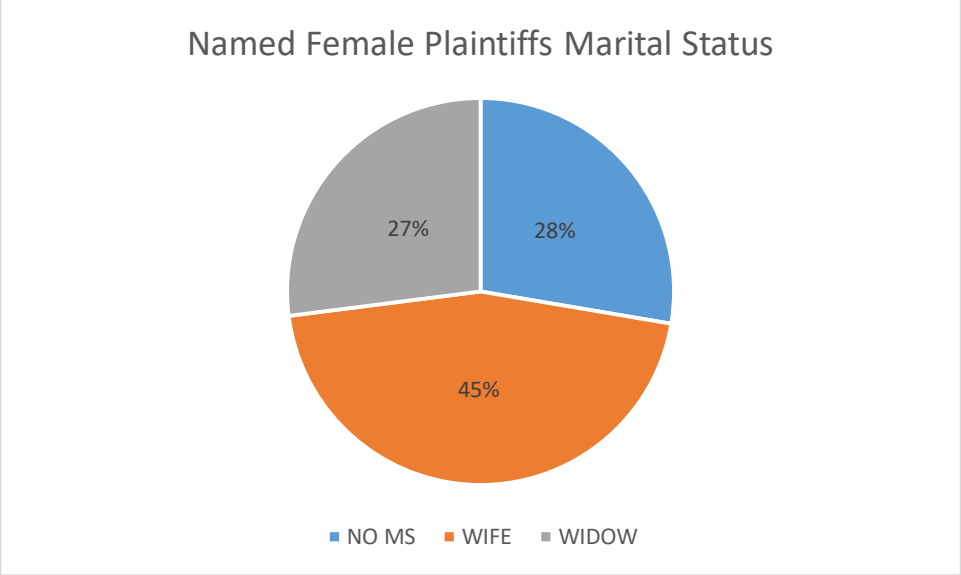

Fig. 7
The marital status of named female plaintiffs in the Court of Chancery

Forty-five per cent of named female plaintiffs are recorded as being married at the time of the initial bill of complaint (see Fig. 7). This makes the wife the single most commonly found woman (when analysing plaintiffs in terms of marital status) entering bills into Chancery. Moreover, as previously stated, every single woman recorded as a wife acted in conjunction with a male co-plaintiff and therefore falls into the MFJP category. The married woman in the Court of Chancery shall be explored more thoroughly in chapter five which covers wives and coverture, 'To Have and To Hold'. Here, however, we may conclude that the MFJP category is proportionally the largest single way in which named female plaintiffs interacted with Chancery (see Fig. 4), and whilst not all of those women making up the MFJP category were married women, all recorded married women fell into this category (see Fig. 8).

This is also true for those named female defendants who were brought into Chancery with at least one named male co-litigant. One hundred per cent of named female defendants within this sample who appeared before the Lord Chancellor whilst married did so in conjunction with a male co-defendant. This indicates that all the named female litigants who were recorded as being married, plaintiff and defendant, were brought into Chancery in conjunction with their husbands, highlighting the inability of married women to act independently at law. Again, this will be considered more thoroughly in chapter five.

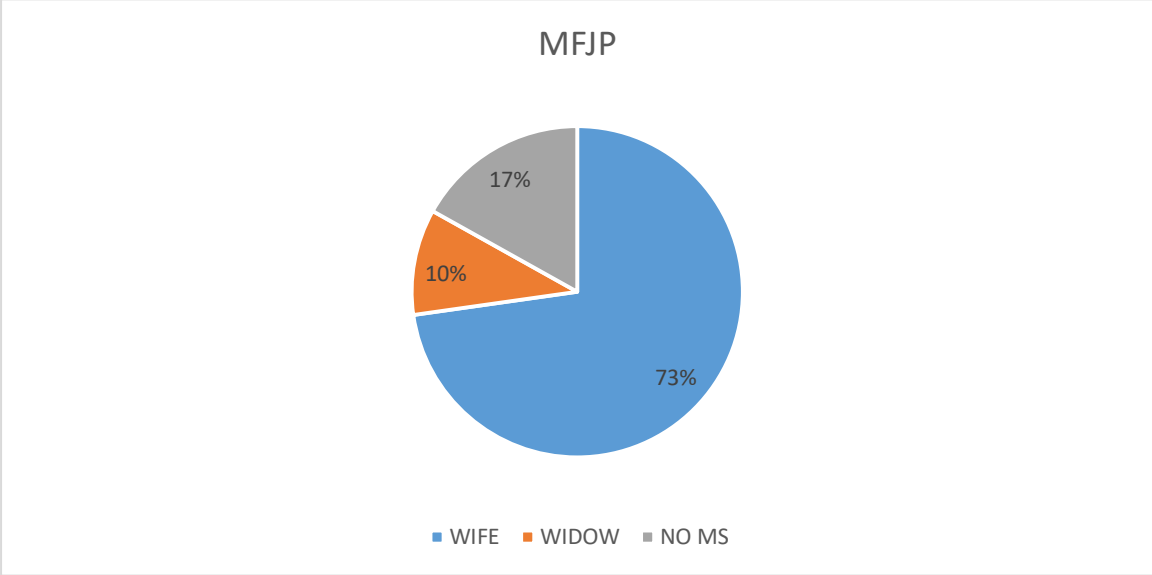

Fig. 8
The marital status of named female plaintiffs acting as MFJPs

Over a quarter, 27 per cent, of named female plaintiffs entering a plea into the Court of Chancery in conjunction with at least one named male co-plaintiff had never been or were no longer married. The majority of this group of *femes sole* bring suit before the Lord Chancellor in conjunction with a male named co-plaintiff were those women who had never been married, making up 17 per cent. This is difficult to explain for various different reasons.

First and foremost, it is hard to know without reading each individual case which party was truly the lead litigant – the man or the woman. Were singlewomen seeking male support in the form of a co-litigant to take their case before the Lord Chancellor, or were men naming women as their co-plaintiff due to their vested interest in the case at hand or because they felt it would aid their legal endeavours? The other option is that situations arose that involved men and women on some kind of equal footing – for instance, as siblings. All of these situations are possible. Furthermore, a number of these MFJP, and MFJD, cases involve multiple people, sometimes multiple marital couples alongside *femes sole* litigants (singlewomen, widows, or both). Extended families and members of a local community could come together in litigation in order to pursue a case in Chancery.

Whatever the situation, it is clear that widows were the least likely to bring a suit into Chancery with a male co-plaintiff. This finding is not surprising, given the legal experience, access to financial means and a socially and culturally approved level of independence as described earlier. However, the case seems to have been quite different for the *femes sole* who were brought before the Lord Chancellor as defendants with male co-litigants.

3.2 Defendants

Whilst TNA had some existing coding available detailing how female plaintiffs interacted with the Court of Chancery in the C5 Bridges series (SFP and JFP), there was no coding created for female defendants.[9] I therefore created defendant coding by simply replacing the 'P' (denoting plaintiff) with a 'D' (denoting defendant) in the codes used to analyse female plaintiffs. In doing so, I have been able not only to identify how, quantitatively speaking, women interacted with the later seventeenth-century Chancery as defendants, but compare the activities of women as plaintiffs and defendants – offering a more holistic analysis.

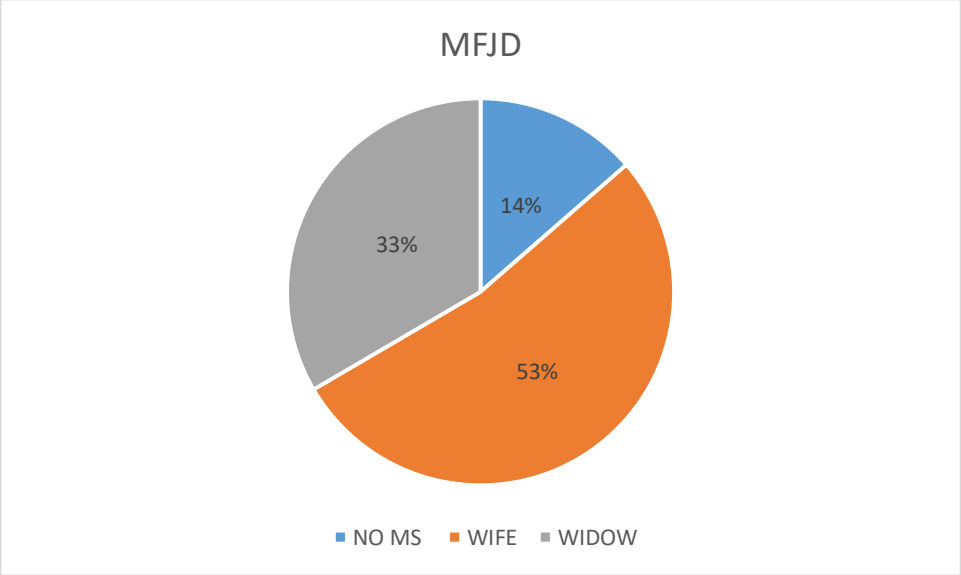

Fig. 9
The marital status of named female defendants acting as MFJDs

[9] See the TNA Guide on C5 Bridges for more on the coding available, 'Court of Chancery: Six Clerks Office: Pleadings before 1714, Bridges' [http://discovery.nationalarchives.gov.uk/details/r/C3568, last accessed 22 November 2017].

Just over half, 53 per cent, of MFJD litigants were recorded as being married at the time of the initial bill of complaint, meaning that a significant proportion of women were brought into Chancery in conjunction with a male co-defendant despite being legally *femes sole* – 47 per cent to be precise (see Fig. 9).

It is interesting to note that the woman least likely to be brought into Chancery as a defendant in conjunction with a male co-defendant was the singlewoman. This is partly due to the fact that the woman with no recorded marital status was the least frequent defendant in Chancery overall (see Fig. 10). However, I would also suggest that those early-modern women who had never been married were brought into Chancery with a male co-defendant rarely because these were precisely the women who would usually be left out of legal proceedings if they had a male relative (such as a father or brother) who could lawfully pursue matters without female involvement.

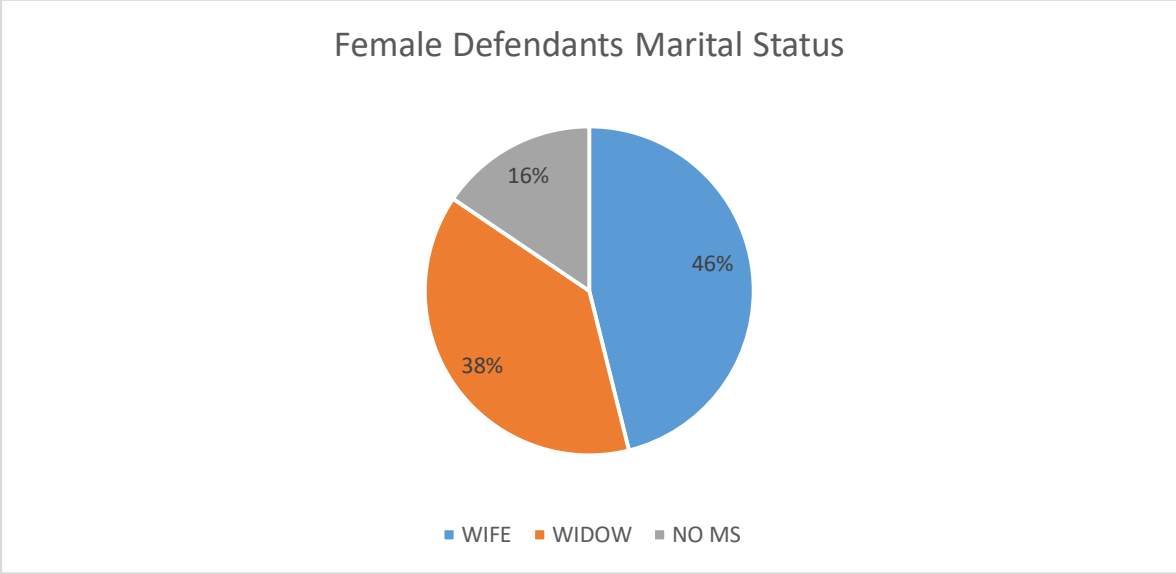

Fig. 10
The marital status of named female defendants

It is worth noting at this juncture, however, that although multiple persons could be named as defendants to one suit and therefore as co-defendants this does not automatically indicate a level of co-operation or team-work amongst the named defendants. Married women named as defendants within this sample consistently appear as MFJD litigants, and we can therefore surmise that these

women were acting alongside their husbands as 'co-defendants'. Widows and singlewomen acting as MFJD litigants (or, indeed, as JFD litigants), however, did not necessarily have to act alongside and collaborate with their co-defendants. Litigants could enter separate answers to specific bills of complaint, in order to respond to the charges left at their own personal door. This is why one sometimes find multiple answers to a single bill of complaint.

The singlewoman made up a larger proportion of the MFJP litigants than the MFJD litigants. In other words, a singlewoman was more likely to enter into Chancery in conjunction with a male co-litigant as a plaintiff than as a defendant. The most obvious explanation for this is that singlewomen, often still dependant on their natal or extended family, and simply did not commonly have complete ownership of property (moveable or real) over which others would take them to Chancery. This point is further substantiated when we look at the overall numbers relating how women interacted with Chancery as defendants based on their marital status (see Fig. 10). Singlewomen made up the smallest proportion of named female defendants, and over 10 per cent less than their plaintiff counterpart.

Widows on the other hand were far more likely to have access to property through inheritance, marriage agreements of jointure or dower, and as guardians to minors. Not only this, but widows often inherited more than property from their deceased husbands. Widows would inherit their legal strife too. As plaintiffs, widows would often take over the legal cases their spouses were pursuing at the time of their death by entering a bill of reviver and making themselves the lead named plaintiff. However, widows were brought into Chancery as defendants more often, making up 38 per cent of women named as defendants overall (see Fig. 10).

Making up 33 per cent of female, named MFJD litigants, widows made up a significant proportion of those defendants being brought before the Lord Chancellor in conjunction with men. It is important to bear in mind, at this juncture, that whilst proportionally widows were more active as defendants than

plaintiffs in the late seventeenth-century Chancery, numerically there is comparably little difference between the two. One-hundred-and-twenty-four widows appear in the sample as plaintiffs, 156 as defendants. In other words, 56 per cent of the widows named as litigants within the sample appeared as defendants. Widows were over 10 per cent more likely to enter Chancery as defendants.

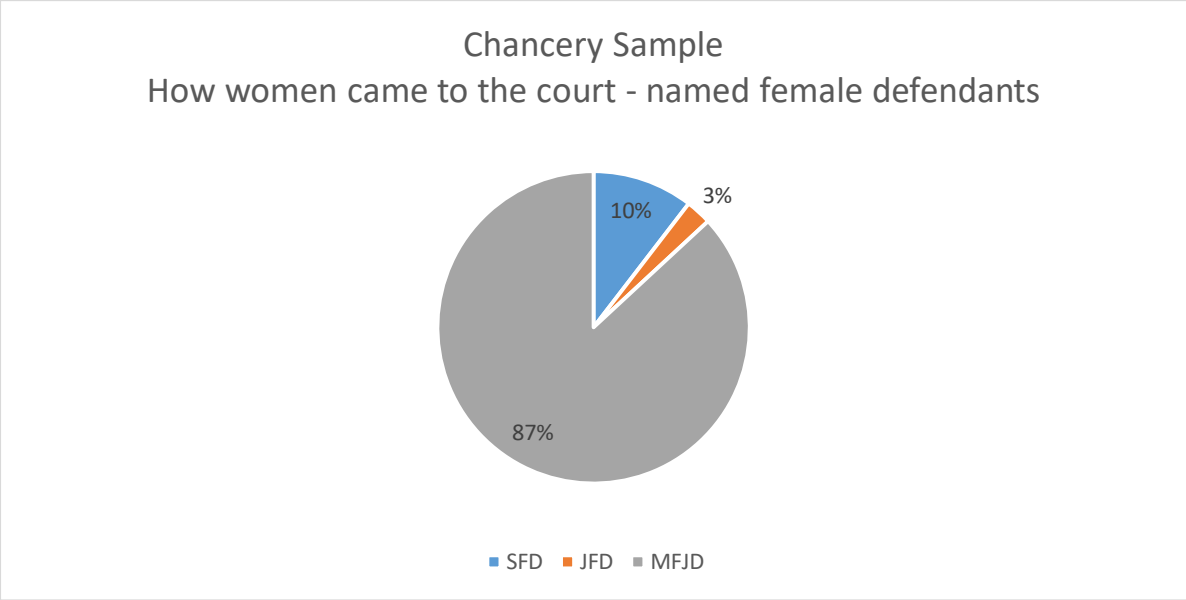

Fig. 11
The proportion of named female defendants categorised as SFD, JFD, and MFJD

If we take a more detailed look at how the widow defendant appeared in Chancery we get a very interesting picture. Not only did she make up a notable proportion of named, female MFJD litigants, she also forms a significant proportion of SFD litigants too. Ten per cent of named female defendants were brought before the Lord Chancellor alone as SFDs (see Fig 11). As with the SFPs, none of the named female defendants acting alone were married at the time they were involved in Chancery litigation. An analysis of SFDs based on marital status also yields results similar to those seen for their plaintiff counterparts. Seventy-nine per cent of SFDs were widows, thereby making up the vast majority.

SFD litigants did not, however, make up the majority of named female defendants who were widows upon being brought into Chancery. Under a quarter – 22 per cent – of all named widows acting as defendants came to

Chancery alone, as sole defendants. Despite widows being the women most likely to be brought into Chancery to defend themselves alone, just over three quarters (76 per cent) of widows in fact appeared before the Lord Chancellor in conjunction with a male co-defendant. This is, in part, a reflection of the fact that it was relatively rare for a woman to be named as the sole defendant to a suit in Chancery, whether she was a singlewoman or a widow.

It is interesting to compare how, quantitatively, widows interacted with the early-modern Court of Chancery as plaintiffs and defendants. As a plaintiff, the widow was most likely to appear in Chancery alone. As a defendant, she was most likely to appear with a male co-defendant (see Fig. 12). Why might this have been the case? This shall be explored through the analysis of qualitative data in chapter six, which covers the issue of widows in the later seventeenth-century Chancery, more thoroughly. Here, however, one may conclude that the early-modern widow was far more willing to act alone to pursue her own legal rights as a plaintiff, than others were to put the widow in the position of being sole defendant. This is a rare insight into the dichotomy of how the widow regarded herself and how she was regarded by the rest of society.

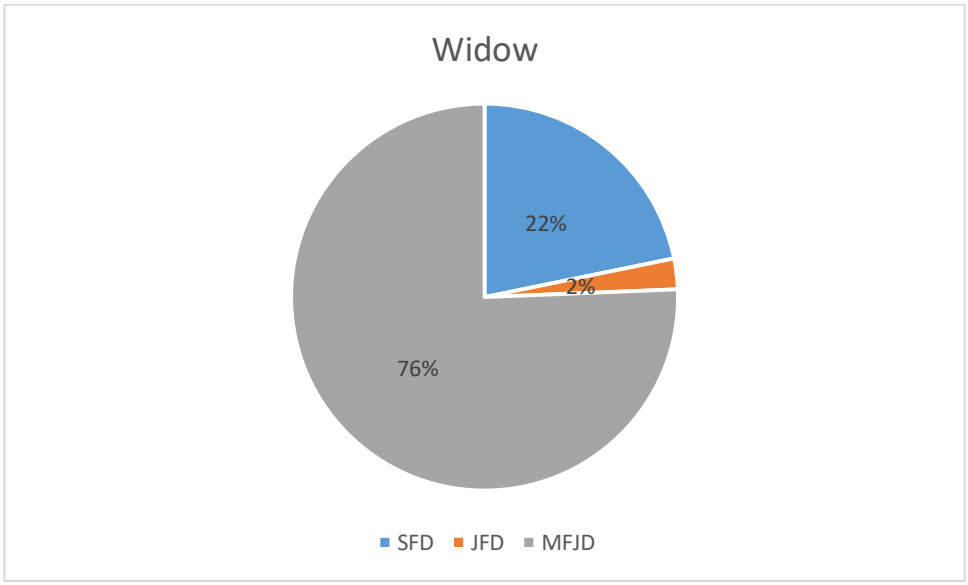

Fig 12
How named female defendants recorded as widows appeared in the Court of Chancery – SFD, JFD, or MFJD

JFDs are proportionally the smallest category of women interacting as defendants with the Court of Chancery, making up just two per cent (see Fig. 11). Made up of singlewomen and widows, JFDs, denoting women being brought together as defendants before the Lord Chancellor, were women who acted together, and did so without men. In this category, as it is for those joint named female plaintiffs, it is the singlewomen who dominate. Women with no recorded marital status make up 64 per cent of named female JFDs. This indicates that those women who had no patriarchal figure in their lives and no experience of marriage were more likely to be brought together to defend themselves.

The singlewoman as a defendant is worth considering in greater detail. Seventy-five per cent of singlewomen appeared as defendants in Chancery in conjunction with a male co-defendant (see Fig. 13). As was the case with named female defendants who were widows, singlewomen were most likely to be brought into Chancery to defend themselves with at least one male co-defendant, despite their being *femes sole*. Women operating outside the bonds of coverture were still tangibly linked to men within their immediate networks of family and community, subject to the deeply patriarchal culture of early-modern England.

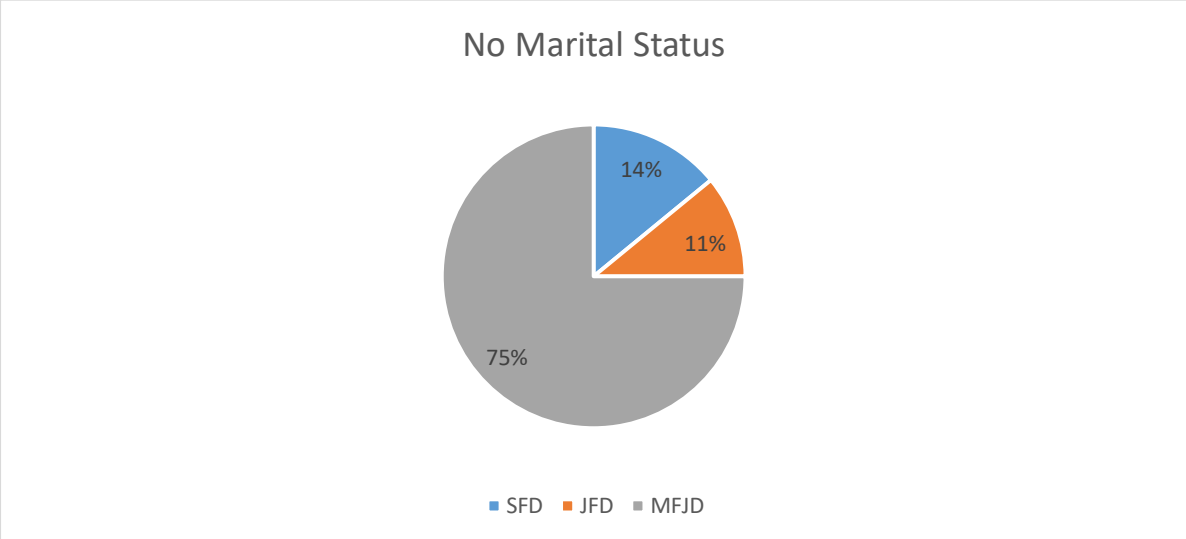

Fig 13
How named female defendants with no recorded marital status appeared in the Court of Chancery – SFD, JFD, or MFJD

A quarter, 25 per cent exactly, of women with no recorded marital status being brought into Chancery as defendants, however, did so without male co-defendants – a notable proportion. These women operated either alone as SFDs (14 per cent) or with other named female co-defendants as JFDs (11 per cent). Proportionally, it was slightly more common for singlewomen to appear before the Lord Chancellor alone, as SFDs, than in conjunction with other female defendants, as a JFDs.

Again, part of the reason why SFD litigants make up a larger proportion of named, singlewomen defendants than their JFD counterparts is because so few female defendants came into Chancery as JFD litigants overall. After all, women with no recorded marital status made up the majority of JFD litigants. The presence of singlewomen in the later seventeenth-century Chancery shall be explored more fully in the qualitatively in chapter four.

3.3 Depositions

An additional quantitative point worth exploring here, which came out of this consideration of how female litigants interacted with the early-modern Court of Chancery, relates to depositions. As explained within the methodology section of the introduction, it was decided early on in the project that cases that at least at catalogue level appeared to continue to deposition stage of Chancery procedure would be selected to read fully in order to conduct full qualitative analyses of female interaction with the court. A rigorous catalogue search was consequently conducted, and the bills of complaint making up the 1,556-case sample out of the C5 series were matched up with depositions, out of the C22 series, that had the same short title and rough dates (if provided). It was, therefore, possible to conduct a quantitative analysis investigating whether or not female involvement in a suit in the Court of Chancery impacted the likelihood of suit continuing to deposition stage of Chancery process and procedure.

Up until this point it was near impossible to move from pleadings to depositions, piecing together the individual documents to investigate a suit from beginning to end, as Erickson discovered: 'The records are extremely difficult to work with.

Initial bills of complaint and the defendants' answers are filed separately from depositions, and both are separate from decrees, so it is inordinately time-consuming to locate successive documents dealing with the same case'.[10] One of the core successes of this thesis has been bringing successive and connected documents together, and it is further possible, therefore, to quantitatively analyse whether Chancery cases involving women were more or less likely to continue to the deposition stage of this court's processes.

The sample confirms that now long-known fact that it was in fact very rare for cases brought into the early-modern Court of Chancery to proceed very much past the point of entering an original bill of complaint.[11] My own quantitative work shows that no more than 10 per cent of the cases actually reached deposition stage. It should, however, be noted that my research sample is limited geographically to Yorkshire, and the depositions that are connected to the sample are therefore invariably 'Depositions taken in the country'. Appying this same analysis to other counties within England, as well as those within the city of London, over this period would establish how representative this figure is. However, the result is far from unexpected, as we know that a great many cases brought into Chancery did not proceed past the initial stage of entering a bill of complaint.

It is possible to break this initial result down further, to create a more detailed investigation of women's involvement in Chancery cases that continued to deposition stage, by comparing them to those cases where women were absent. Fifty-five per cent of cases that continued to deposition stage within this 1,556-case sample involved women acting in some capacity as a named litigant. Although the margins are comparatively small, the sample reveals that cases involving women acting in some capacity were 10 per cent more likely to continue to deposition stage than those cases that exclusively involved male named litigants.

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[10] Erickson, *Women and Property*, p. 114.
[11] Erickson, *Women and Property*, p. 115.

What can we learn about the role of Chancery as a women's court of redress in the later seventeenth century from these figures revealing those cases that continued to deposition stage? It is clear that a woman's involvement in a suit at Chancery did not impede the case from continuing through each of the procedural stages of the court's process. At 55 per cent, the majority of cases that remained in the court past the point of entering bill and answers involved female litigants. This points to Chancery being a court that served female litigants well. More statistical investigations considering women's involvement in cases that proceed to the deposition stage of Chancery procedure need to be conducted, across a larger sample and multiple counties, in order to establish whether or not named female litigants habitually continued in their suits into the later stages of due process more often than those litigants acting entirely without formal interaction from named female litigants.

3.4 Types of Suits

Finally, the database allowed an analysis of the 'Types of Cases' that women were involved in, in the later seventeenth-century Court of Chancery. As explained in the methodology section of the introductory chapter of this thesis, the catalogue descriptions of the cases in the C5 Bridges series provide five clear subject categories by which the historical researcher can identify what a specific suit is pertaining to:

1. Property and land
2. Money matters
3. Marriage settlements and contracts
4. Personal estate
5. Other

It is important to establish at this juncture that the methodology surrounding this quantitative analysis of the 'types of suits' named female litigants were involved in is not without flaws. Whilst there is reason to take issue with Carol Wiener's assertion that 'the whims of the clerks' dictated the categorisation of women in Elizabethan indictments – a problem highlighted by Baker a year later

– there may well be something to be said about the whims of original cataloguers of legal archives.[12] The categorisations used here are in many ways artificially constructed. The online catalogue that is accessible via Discovery today is based upon the cataloguing originally conducted in the early twentieth century – and therefore has subject descriptions that were created then, which has led to a series of problems for modern-day cataloguers and legal records archivists.[13]

These categorisations are largely self-explanatory, with 'Personal estate' referring to wills for example, but 'Money Matters' requires further explanation. 'Money Matters' is only meaningful if and when it refers to a bill of complaint. If it is used to describe later, separated pleadings, it means that the wider case has been argued down to something expressed by a number, but the actual subject matter is still in fact that of the original bill. This has occurred because the original cataloguers simply worked with what they had in front of them, not linking together all the related material (a task that would have been impossible for them at that stage). Not only that, the category 'Money Matters' was simultaneously used by cataloguers when they were not sure how to classify a case or what the case was actually about – the document being difficult to read due to damage, faded ink, or particularly challenging handwriting. 'Money Matters' was used as something of a catch all term, a miscellaneous category, and is therefore lacking in its usefulness in comparison to the other categories.[14]

Furthermore, the subject matter of suits brought into Chancery can often be sorted into multiple categories. For example, the case Tancred v. Tancred has the subject description 'Manor and Rectory of Whixley, Yorkshire' and is subsequently categorised within this research project as 'property and land'. Whilst the case is about the property mentioned, it is more specifically about

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[12] Carol Z Wiener, 'Is a Spinster an Unmarried Woman?', *The American Journal of Legal History*, Vol. 20, No. 1 (January, 1976), p. 31; J H Baker, 'Male and Married Spinsters', *The American Journal of Legal History*, Vol. 21, No. 3 (July, 1977), p. 255.

[13] 'Court of Chancery: Six Clerks Office: Pleadings before 1714, Bridges' [http://discovery.nationalarchives.gov.uk/details/r/C3568, last accessed 22 November 2017].

[14] Thank you to Amanda Bevan for her insight into the original cataloguing.

who was entitled to what out the of specified land as stipulated by the last will and testament of Christopher Tancred (senior). Detailed reading of the case proves it could easily fall into the 'personal estate' category.[15]

The case of Allanson v. Allanson, on the other hand, with the subject description 'Property in Holden and Westholme, Yorkshire', has similarly been categorised here as a 'property and land' suit. However, close reading reveals that the matter at hand is actually grounded in a dispute arising from a marriage settlement that Grace Allanson claimed was not being adhered to in her widowhood.[16] The case could then feasibly be classified as a 'marriage settlement' case. Suit categorisations of Chancery cases on a cataloguing level, then, are problematic.

There appears to be no real system dictating how the original cataloguers distinguished between cases in terms of subject descriptions – these being created based on what the cataloguers could make out from the documents (which could at times have been very little) and individual judgements. An assessment of Chancery cases based on the provided subject descriptions is, therefore, flawed.

However, this is not to say that these categorisations are not useful. Aside from those instances where cataloguers logged Chancery suits as 'money matters' because they were not able to fully understand the subject matter of a case, the categorisations are indicative of the subject matter of any given case, and are therefore reliable search tools. The historian looking for marriage settlement cases in the C5 archive, for example, can reliably use that category to search for relevant cases. A search for cases described as 'property and land' will flag up appropriate suits for the historian looking to investigate property cases in the court. The categorisations alone cannot show the researcher the full contents of any given case, but they do provide that key initial insight.

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[15] TNA C5/272/4, Tancred v. Tancred, Original Bill of Complaint.
[16] TNA C5/441/57, Allanson v. Allanson, Original Bill of Complaint (16 July 1677).

Furthermore, by applying this categorisation to the cases within the database, it has been possible to conduct a quantitative analysis revealing the types of cases named female litigants in Chancery were involved in. Figure 14 demonstrates that 'Property and land' was by far the most common subject of Chancery cases, making up about two thirds of the cases at 68 per cent. Furthermore, in analysing the 'Types of Suits', it is possible to appreciate the differences between named female plaintiffs and defendants in their approaches to 'Property and Land' cases.

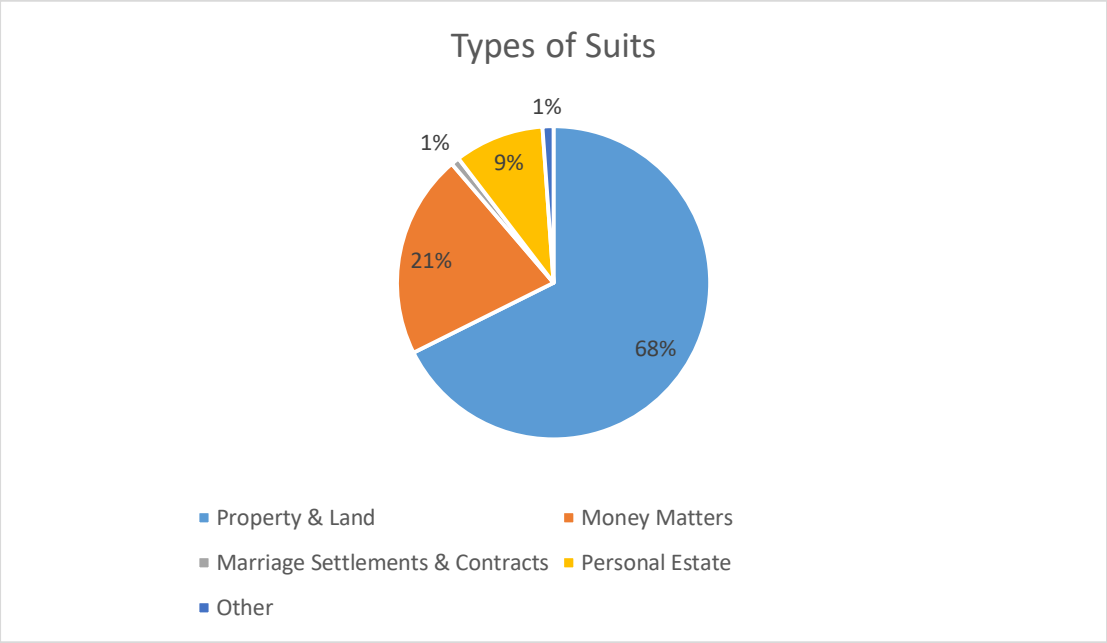

Fig. 14
The types of cases named female litigants (plaintiffs and defendants) were involved in

It is possible to break this percentage down further, to analyse the statistics based on whether the cases were involving named female litigants acting as plaintiffs or as defendants (see Fig. 15 and Fig. 16).

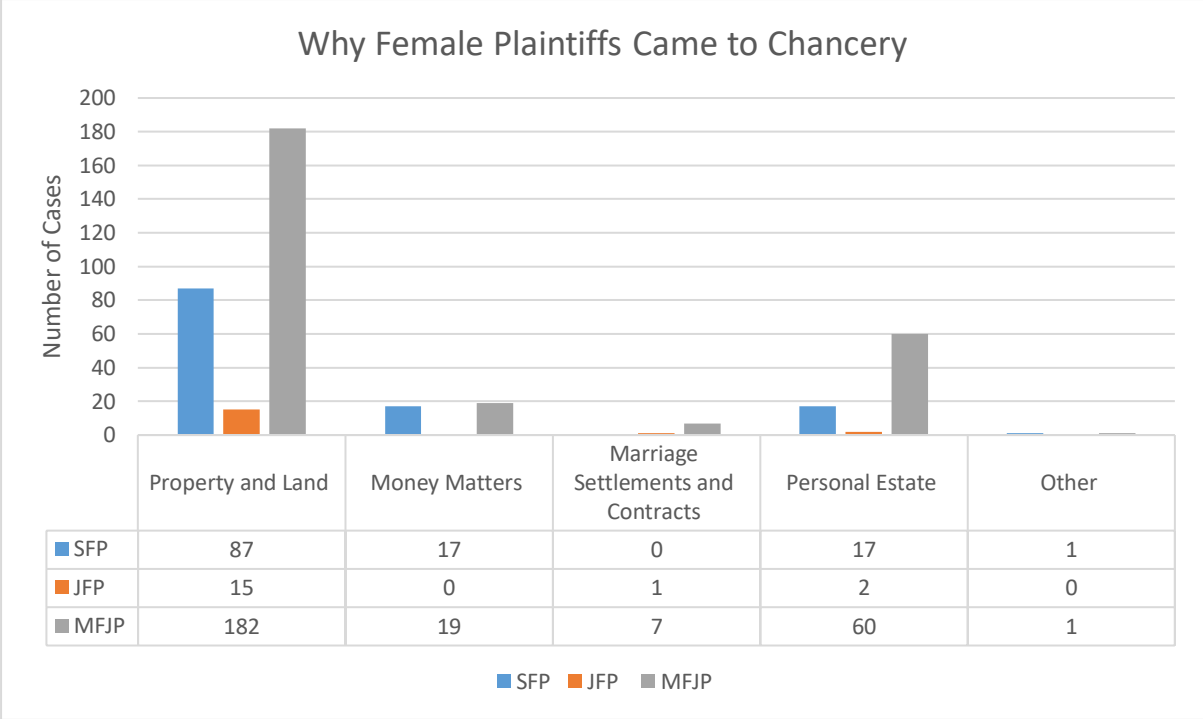

Fig. 15
What types of cases named female plaintiffs were involved in, broken down by how they appeared in the Court of Chancery – SFP, JFP, or MFJP

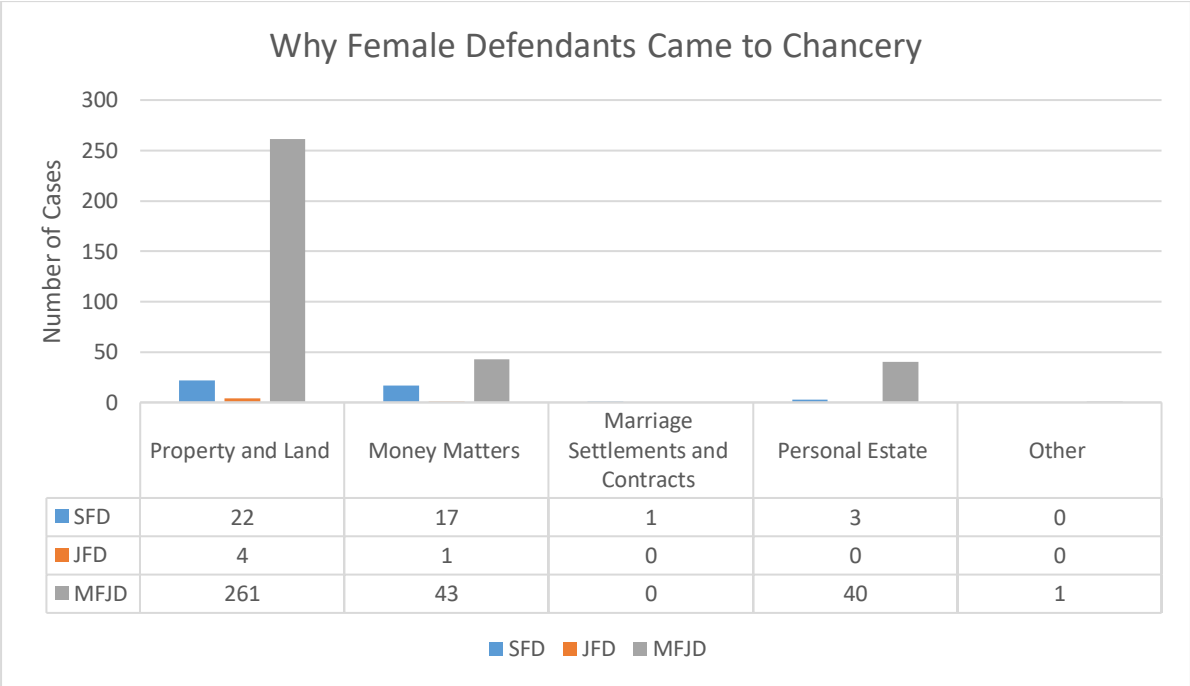

Fig. 16
What types of cases named female defendants were involved in, broken down by how they appeared in the Court of Chancery – SFD, JFD, or MFJD

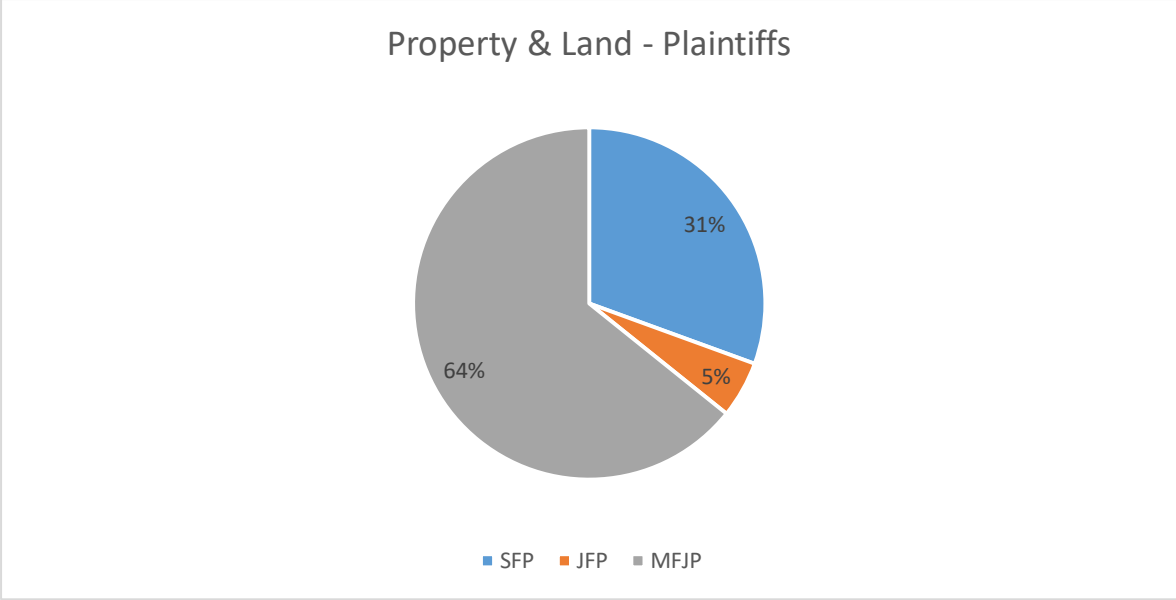

Fig. 17
How named female plaintiffs involved in 'property and land' cases appeared in the Court of Chancery – SFP, JFP, or MFJP

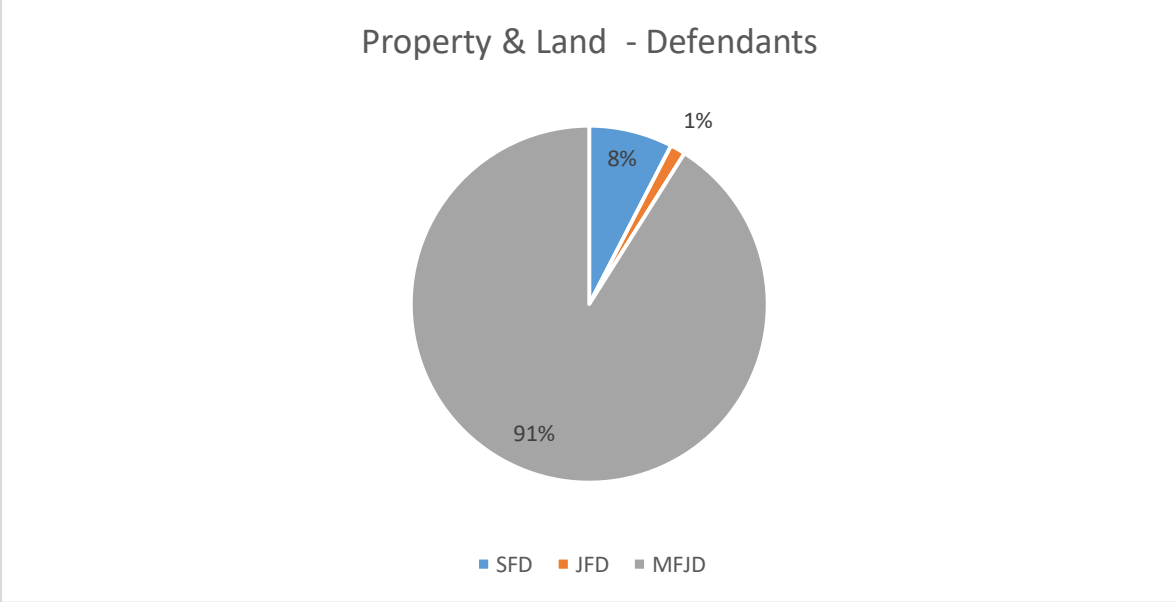

Fig. 18
How named female defendants involved in 'property and land' cases appeared in the Court of Chancery – SFD, JFD, or MFJD

Around a third, 31 per cent, of 'Property and Land' cases that involved a named female plaintiff were brought by an SFP litigant – a woman acting alone (see Fig. 17). 'Property and Land' cases involving a named female defendant, however, present a very different picture: only 8 per cent of these cases were brought by SFD litigants (see Fig. 18). In other words, it is far more common to find a named female litigant being involved in a 'Property and Land' case alone, as a sole litigant, as a plaintiff rather than a defendant.

Nevertheless, for both named female plaintiffs and defendants, the most common way in which named female litigants interacted with 'Property and Land' cases was in conjunction with a named male co-litigant – MFJP/D. This is hardly unexpected, given the overall prominence of MFJP and MFJD litigants and cases throughout the database. As plaintiffs, however, women involved with 'property and land' cases were far more likely to act without men, 36 per cent of them acting entirely without male co-litigants (five per cent of this figure being made up of JFP litigants).

What can be deduced from these figures, then, is that *femes sole* women – as those women who acted without a male co-litigant invariably were – were forced to assert their rights to property and land more often than they were forced to defend it. It also reveals that *femes sole* were not afraid to pursue those rights alone, or with other women, if they had to – making up about a third of plaintiffs bringing suit before the Lord Chancellor over matters of 'Property and Land'.

3.5 Conclusion

This quantitative analysis has led to several important findings that contribute to our understanding of women's interaction with the law in late seventeenth-century England. First of all, it is possible to confirm and expand upon the hypotheses of Hawkes, Cioni and Erickson – the proportion of women utilising the Court of Chancery over the later medieval and early modern periods was indeed increasing. By the reign of King Charles II, 44 per cent of cases held in Chancery included women acting in some formal capacity, named as litigants.

It is impossible to assess the success and failure rates of the 1,556 cases within this research sample. This is largely due to the fact that the vast majority of suits entered into the early-modern Court of Chancery did not progress through to deposition stage of court procedure, let alone reach a final decree, which would point to either the plaintiff or the defendant as the victor. Many disputes were resolved outside the physical space of the courtroom, resolutions subsequently not making their way back into the legal archive. Often, entering a bill of complaint was enough to encourage one's would-be rival at law to co-operate.

Pleas would also be entered tactically as a means of hurrying or halting suits proceeding in different courts and jurisdictions. Furthermore, Erickson quite rightly points out as part of her own analysis of Chancery, that the majority of female litigants in the court 'probably … would rather not have been there'.[17] Very often within answers to original bills of complaint there are requests to have cases dismissed. In those suits that continue for substantial periods of time, there is regularly evidence of attempted mediations outside of the court that were unsuccessful in finding resolution between those involved. This must mean, therefore, that some of the cases that fell out of the court without a formal final decree and order handed down by the Lord Chancellor, did so due to successful external arbitration. It is accepted that a great many of the cases brought before the Lord Chancellor would have been resolved informally outside of the court, and it is unlikely therefore to find out what happened.

What we do have a clearer picture of, however, is the extent to which women were involved in matters of property and business.[18] Named female litigants in this research sample are overwhelmingly concerned with matters surrounding property. Although, as previously stated, it is important to bear in mind that the five case subject categorisations used in this analysis are both artificial and simplified to the degree that they reveal nothing about the nuances of each individual case, they are very useful in terms of highlighting the significance of early-modern women's interest in land, and, more specifically, the money arising from land. With 68 per cent of the cases involving female litigants (either as plaintiffs or defendants) recorded as pertaining to issues of 'Property and Land', it is clear that not only were early-modern women involved with both property and land, but that they also had legal rights to land that were held up in equity law, whether they were singlewomen, married, or widowed.

The single largest category denoting how named female litigants interacted with the court, both as plaintiffs and defendants, was MFJP/D; women acting in conjunction with at least one named male co-litigant. Whilst Erickson found that

[17] Erickson, *Women and Property*, p. 116.
[18] Erickson, *Women and Property*, p. 116.

less than 10 per cent of female plaintiffs entered a plea into Chancery with a man who was not their lawful husband, my own sample indicates as much as 27 per cent of women who did not have husbands (being either singlewomen or widows) brought suits before the Lord Chancellor alongside a male co-plaintiff. Although it was not possible within the scope of this thesis to go through every one of these individual cases to investigate the relationship between these singlewomen and their male co-plaintiffs, a range of situations are possible. Most likely, the majority of them would have been related in some manner – whether by blood or marriage – or pertain to a guardian relationship. At the very least, the relationships would have been formed and solidified within the close, early-modern networks of local community, both parties having vested interests in the matter, the dispute, at hand.

This leads on to another key observation regarding widows, or the ever-married woman, acting in the Court of Chancery. The chances of a widow bringing a suit into Chancery as an MFJP litigant were low: only 10 per cent. Widows made up over a quarter of the named female plaintiffs bringing suit in Chancery but were, evidently, fairly unlikely to include a male co-plaintiff in their pleas. In fact, the widow makes up the largest proportion of women bringing suits alone, as SFPs, when we look at marital status. Seventy per cent of female plaintiffs who brought suit before Chancery alone were widows. Moreover, widows were unlikely to enter bill of complaint in conjunction with other named female co-plaintiffs. Eighty-four per cent of JFPs were recorded with no marital status and are therefore understood as singlewomen.

Not only was the widow the woman most likely to bring suit before the Lord Chancellor in Chancery on her own as an SFP litigant, she was also 10 per cent more likely to appear in the court as a plaintiff, rather than as a defendant. Despite this, proportionally widows were more prominent amongst named female defendants than plaintiffs, making up 38 per cent of the women named as defendants. Seventy-nine per cent of SFDs were widows, showing that not only were widowed women most likely to bring a suit to Chancery on their own, they

were also the most likely woman (based on marital status) to be brought into Chancery alone and forced to defend themselves.

The woman most likely to act alongside other women, as both plaintiff and defendant, was the singlewoman. Eighty-four per cent of those women who entered a plea into Chancery with at least one other named female co-plaintiff were recorded with no marital status, 64 per cent for the defendants; on both sides of these Chancery battles, then, the majority. *Femes sole* also appear as SFP/D and MFJP/D litigants, however they are most prominent as a single group of women in the JFP/D category.

Nearly three quarters of cases brought by singlewomen were entered into Chancery by singlewomen acting in conjunction with at least one co-plaintiff; male, female or both. We can conclude, then, that named singlewoman plaintiffs, making up 28 per cent of named female plaintiffs overall, were more likely to enter a plea with a named co-plaintiff (male or female) than without one. Women without husbands made up the majority of named female plaintiffs at 55 per cent. *Femes sole* named female plaintiffs formed a substantial proportion of early-modern Chancery's clientele.

Overall, singlewomen made up the smallest single category of women named as defendants in Chancery, at 16 per cent of the sample. Interestingly, overall *femes sole* made up nearly the exact same proportion of named Chancery female litigants as defendants as they did plaintiffs (54 and 55 per cent respectively). This coupled with the proportion of singlewomen, at over half of both defendants and plaintiffs, the *feme sole* was certainly a prominent feature amongst Chancery litigating clientele.

Based on marital status, the single most commonly found woman in the late seventeenth-century Court of Chancery, however, was the wife, the *feme covert*. This is, in itself, a fascinating feature of women's use of Chancery as a court of redress. The doctrine of coverture and the legal status of the married woman in

early-modern England needs to be revisited here if we are to understand fully the role and place of the wife in Chancery and at equity law.

What follows now, then, are a series of qualitative analyses of the female litigant in early-modern Chancery following the expected life-cycle of the early-modern woman: as singlewoman, wife, and, finally, widow. These chapters shall take the quantitative evidence presented here and build upon the findings with detailed material from a smaller sample of 30 cases that have been read fully in order to provide some explanations for the pressing questions arising from this quantitative analysis. Why is the most commonly-found woman in Chancery the wife? Why were widows most likely to act alone? Why were singlewomen the most likely group of women to act in conjunction with named female co-litigants? Through this analysis of women in the seventeenth-century Chancery via their marital status, a status that dictated so much of their lives – how they were understood at law and within society – the role of Chancery as a women's court of redress will be shown.

4. The Experience of Singlewomen in Chancery

Chastity renders them that have it worthy of Honour and Praise … 'For as … pure Chastity, is Beauty to our Souls, Grace to our Bodies, and Peace to our Desires; so contrawise, if Chastity be once lost, there is nothing left praise-worthy in a Woman' …[1]

The early-modern Chancery was distinctive. The equitable jurisdiction utilised and enforced by the court was particularly effective in its assertion of those legal rights that were extended to women in seventeenth-century England. The quantitative analysis of a sample of 1,556 Yorkshire-based cases in the later seventeenth-century Chancery reveals a robust presence of singlewomen, as both plaintiffs and defendants. Why, then, did singlewomen make up the smallest single category of women being brought before the Lord Chancellor as defendants? After all, the quantitative analysis revealed that named, single plaintiffs were just as likely to enter a bill of complaint into Chancery as ever-married female plaintiffs. Were singlewoman simply not possessed of enough property, moveable or real, to be worth taking to court? Or, was it deemed somewhat unseemly to take singlewomen, perceived as uniquely vulnerable and alone, to court? Was it simply easier to mediate matters concerning singlewomen outside of court?

4.1 Secondary Literature, Statistics and Terminologies: Singlewomen in Seventeenth-Century England

In order to answer these questions and consider the role and experience of single women in the late seventeenth-century Court of Chancery it is necessary to place them in their context. First and foremost, it is essential to examine the current evaluations and terminologies used within the historiography surrounding singlewomen in the early modern period. The work of Amy Froide and Judith Bennett has proven to be indispensable reading for the historian

[1] *The Ladies Dictionary*, p. 1.

considering the lives of singlewomen in the past.[2] Their work demonstrates the fact that pre-1800, whilst marriage between a man and a woman was normative across Europe – including England – a great many people were single, 'lived single for many years', and often reverted back to a single marital status, *feme sole*, once again as widows and widowers.[3] This is not to say, however, that those who were single having never been married and those who were single due to losing a spouse to death should be considered members of the same marital category.

One of the most fundamental contributions Judith Bennett and Amy Froide have made to the historiography surrounding the lives of singlewomen in the pre-modern past covers the basics of how we, as historians, categorise and talk about these singlewomen, their co-edited volume of essays being the first book entirely dedicated to the subject of singlewomen in pre-modern Europe.[4] It is essential to differentiate between those *femes sole* who had never been married, 'never-married', and those who had previously been married but had lost their spouse, 'ever-married'. Whilst it is true that all women shared some common experiences, marital status defined the early-modern woman, and had a hugely significant impact on her day-to-day-life.[5] In other words, the singlewoman and the widow were regarded quite differently, socially and culturally, had different lived experiences that informed their lifestyle, decisions, and behaviour, and – as this study indicates – differing experiences at law.

The most obvious distinctions can be drawn between those women who had a living husband and those who did not – the *femes covert* and the *femes sole*. As a *feme covert*, a woman's legal life was vastly restricted and her legal identity subsumed by that of her husband. Whilst all women were understood to be

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[2] Eds. Judith M Bennett and Amy M Froide, *Single Women in the European Past, 1250-1800* (Pennsylvania: University of Pennsylvania Press, 1999), passim.
[3] Judith M Bennett and Amy M Froide, 'A Singular Past' in *Single Women in the European Past, 1250-1800* (Pennsylvania: University of Pennsylvania Press, 1999), Eds. Judith M Bennett and Amy M Foide, p. 1.
[4] Amy M Froide, *Never Married: Singlewomen in Early Modern England* (Oxford: Oxford University Press, 2005), p. 5.
[5] Bennett and Froide, 'A Singular Past', p. 2.

married or soon to be married – as is articulated in the widely-cited *The Laws Resolutions of Women's Rights* – both singlewomen and widowed women enjoyed the legal status of being *sole*.[6] This meant that they had their own, individual legal identity and, subsequently, the right to seek legal remedy on their own behalf.

There are further distinctions to be drawn. Bennett and Froide use the terms 'life-cycle' and 'life-long' to differentiate between those singlewomen who had never been married because they were young and waiting for their match, who 'lived as single for only the years between childhood and marriage', and those who never married over the course of the entirety of their natural lives, remaining 'permanently single'.[7] This clear distinction is hugely important, as it dictated how singlewomen's lives differed depending on what stage of life they were at. The life-cycle singlewoman was, for instance, more tolerable to early-modern society, her usually being under the control of her family household and with time to fulfil her expected life of wife and mother. The life-long singlewoman, however, was far more troubling to the early-modern mind.

Froide provides further detail of her chosen terminologies in her later work, *Never Married*, with explanation as to the significance of specific vocabulary. For example, she uses the compound spelling 'singlewoman' that was utilised in early-modern England, and applies the term to adult women who never married. This term was deliberately chosen over other words used to describe such women by early-modern contemporaries such as 'spinster' or the less frequently found 'maid' or 'virgin'. Froide elected 'singlewoman' over 'spinster' due to the negative connotations associated with the term, as well as the discrepancies of use over the early modern period and the present day.

Froide's work here, has influenced the terminology used in this analysis of

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[6] Klein, *Daughters, Wives and Widows*, p. 32; Christine Peters, 'Single Women in Early Modern England: Attitudes and Expectations', *Continuity and Change*, Vol. 12, No. 3 (1997), p. 325.
[7] Bennett and Froide, 'A Singular Past', p. 2; see also Froide, *Never Married*, p. 9.

women in the late seventeenth-century Court of Chancery. Throughout the thesis, women who were *femes* sole due to their never having been married are referred to as singlewomen. This term includes both life-cycle and life-long singlewomen. Women who had been married but were once again regarded as *femes sole* due to the loss of a husband are referred to as widows. This provides distinction and clarity when discussing women in these two disparate marital categorisations, and correlates with the contemporary terminology. There is some brief discussion of the presence of 'Spinsters', but only in relation to those few women who are specifically described as such in the archival record.

Whilst current demographers understand a 'spinster' to be a woman over the age of 45 who never married, in early-modern England older-age had nothing to do with the ascribing of the term: 'in the seventeenth century once a female was in her mid-teens she would stop being referred to as a girl or child and start being called a 'spinster''.[8] Deborah Wilson found in Ireland, however, that the term 'spinster' had already come to have the negative connotations that we have today, women becoming seen as 'Old Maids' if still single by the age of 35.[9] In England too, by the end of the seventeenth century, Judith Spicksley found that the term 'spinster' was no longer 'being employed solely to signify an unmarried woman, but instead had become associated with a particular category of single woman'.[10] It is for this reason that a consideration of 'spinsters' in Chancery here is included as a point of discussion, as it is interesting to note those singlewomen who were specifically referred to as 'spinsters', however women who had never been married are here understood and referred to as singlewomen.

Bennett and Froide tell us that life-long singlewomen were commonplace amongst early-modern European societies. They usually accounted for

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[8] Froide, *Never Married*, pp. 8-9.
[9] Deborah Wilson, *Women, Marriage and Property in Wealthy Landed Families in Ireland, 1750-1850* (Manchester: Manchester University Press, 2008), p. 110.
[10] Judith Spicksley, 'A Dynamic Model of Social Relations: Celibacy, Credit and the Identity of the 'Spinster' in Seventeenth-Century England', in *Identity and Agency in England, 1500-1800,* Eds. Henry French and Jonathan Barry (London: Palgrave Macmillan, 2004), p. 113.

something from 10 to 20 per cent of all adult women – an overall figure of all singlewomen being significantly augmented by the addition of life-cycle singlewomen who would eventually become wives. In England more specifically, numbers of singlewomen were remarkably high over the course of the seventeenth century, falling in subsequent years.[11] From 1600 to 1750, in England the mean age of marriage for a woman was 26, 28 for a man, and since the English population was at this time 'quite youthful' a large proportion of the population were single. Furthermore, between 13 to 27 per cent of people remained single 'not just for a period of their adult life-cycle, but for their entire lives' in the years 1575 to 1700. Demographers concur, then, at least up to 20 per cent of adults in pre-modern England did not marry.[12]

This is hardly surprising, given the demographic outcomes of civil war and the loss of young male life. However, historical research has successfully established more nuanced and detailed explanations for the prominence of singlewomen despite societal pressures to marry. The impact of socio-economic background and location, for example, is significant. Pamela Sharpe found that in areas where women outnumbered men, as the case often was in urban areas, life-long singlewomen 'tended to be especially numerous', and that 'never marrying females were likely to have spent most of their lives in the town'.[13]

Singlewomen, it has been found, were also more commonplace within poorer households than the more affluent ones.[14] Sharpe tells us that 'poor women stayed single longer than their wealthier counterparts in the late seventeenth- and early-eighteenth centuries', marrying, on average, a year later than women from wealthier financial backgrounds. In fact, the mean age of marriage peaked at a far higher level for women than it did for men across the years 1600 to

[11] Bennett and Froide, 'A Singular Past', pp. 2-5.
[12] Froide, *Never Married*, p. 2.
[13] Bennett and Froide, 'A Singular Past', p. 5; Pamela Sharpe, 'Literally Spinsters: A New Interpretation of Local Economy and Demography in Colyton in the Seventeenth and Eighteenth Centuries', *The Economic History Review*, New Series, Vol. 44, No. 1 (February, 1991), p. 56.
[14] Bennett and Froide, 'A Singular Past', p. 6.

1750.[15] 'Monarchs, aristocrats and rich merchants tended to marry off their daughters at quite young ages', wanting to maximise the number of their reproductive years to ensure the successful continuation of the family. Poorer people - men and women - often postponed matrimony, or even eschewed it altogether, when they struggled to make a comfortable living: 'hard times could delay or even preclude' marriage.[16]

Similar patterns can, however, be observed in elite early-modern families. Singlewomen multiplied amongst both the landed and urban elites whenever, and wherever, marriage settlements and portions grew 'prohibitively expensive'. Bennett and Froide highlight the eighteenth century as a notable period of this occurring across Britain.[17] More specific examples can be found within the voluminous Chancery archival records. Tancred v. Tancred, for instance, is a key example of the pertinence of early-modern fears of estates becoming overstretched by the excessive marriage portions for multiple daughters.

4.2 The Case of Tancred v. Tancred

Born in 1689, Christopher Tancred was the youngest child and second son of Christopher and Katherine Tancred of Whixley, Yorkshire.[18] The Tancred's first-born son, Charles, was born in 1685 but died the following year. For the three years between the death of Charles and the birth of Christopher, then, the six Tancred sisters were the joint heirs to their father's estate. The arrival, and perhaps more crucially the survival, of Christopher in 1689 however stripped the daughters of their right to inherit Whixley Hall, to which Christopher was the sole and rightful heir upon the death of his father in 1705.[19]

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[15] Sharpe, 'Literally Spinsters', p. 55.
[16] Bennett and Froide, 'A Singular Past', p. 6.
[17] Bennett and Froide, 'A Singular Past', p. 6.
[18] More information on Whixley Hall can be found on *British Listed Buildings* [http://www.britishlistedbuildings.co.uk/101149939-whixley-hall-whixley#.WOER23eZNo4, last accessed 2 April 2017]; William Carr, 'Tancred, Christopher (1689-1754)', rev. Christopher W Brooks, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [http://www.oxforddnb.com/view/article/26957, last accessed 2 April 2017].
[19] Joseph Foster, *Pedigrees of the County Families of Yorkshire: Vol. II* (London: The Compiler, 1874), pp. 216-217

Christopher was, however, bound by the last will and testament of his father to provide his six sisters with portions arising from the estate, which turned out to be an insurmountable financial burden. He was brought before the Lord Chancellor in the Court of Chancery in 1706, and therefore aged just 17 years old, by his widowed mother Katherine Tancred and all six of his sisters – Katherine, Dorothy, Frances, Anne, Elizabeth and Ursula.[20] The women in this young man's family united against him, pressuring him to pay out the portions promised by his late father to his numerous female siblings and, then, his new dependants. Whixley Hall, however, was unable to provide the generous portions required for so many women without becoming completely ruined. Christopher grew embittered in the face of so much familial dispute, as evidenced by his own last will and testament.

Christopher, dying having never married and consequently having no heirs, male or female, of his own body, and his surviving sisters having blotted their copybook quite irrevocably, made his housekeeper Mrs Tottingham (a widow) his sole executor – his executrix – and left her a generous annuity of £60 per annum.[21] His property was settled 'in trust, in default of male heirs, to the use of the masters of Christ's and Gonville and Caius colleges, Cambridge, the president of the College of Physicians, the treasurer of Lincoln's Inn, the master of the Charterhouse, and the governors of Chelsea Hospital and the Royal Hospital, Greenwich, and their successors, for the foundation of twelve Tancred studentships, for which purpose £50 apiece was to be paid to twelve young persons of 'such low abilities as not to be capable of obtaining the education' (Yorkshire Archaeological Society, Leeds, DD160)'.[22] He was clearly determined to disinherit his sisters; the legal conflict in Chancery had created an irreconcilable rift between Christopher and the Tancred sisters.

[https://archive.org/stream/pedigreesofcount02fost#page/n215/mode/2up/search/Tancred+, last accessed 18 September 2017].
[20] TNA C5/272/4, Tancred v. Tancred, Original Bill of Complaint (1706).
[21] TNA PROB 11/836/311, The last will and testament of Christopher Tancred (14 March 1758).
[22] Carr, 'Tancred, Christopher'.

This is further evidenced not only by Christopher Tancred citing his father's will in his own, but he also referenced the conflict he had with his sisters in Chancery. He ensured that each of his six sisters received no more than a shilling each, and that they had no legal recourse to protest this:

> Whereas by my fathers last will bearing date the twentieth day of August one thousand seven hundred and five he therein provided that in case of my death without issue before the portions left to his six daughters should be paid to them he devised all his Real Estate to Marmaduke Coghill Esquire Doctor of the Civil Law in Ireland since deceased provided he should marry one of his Daughters and to the heirs of the Bodies of the said Doctor and his said Daughter to be lawfully begotten which said Devise is in law styled an Executory devise and was upon the payment of my said sisters portions Extinguished in Law as by their Release given to me for the same bearing date on or about the twenty seventh day of April one thousand seven hundred and thirteen inrolled in Chancery about the latter end of the same year … which I have purposefully inserted to shew that I have an absolute fee simple in my estate and that no Opposition can be legally made by any Persons whatsoever against this my Last Will …[23]

The will of Christopher Tancred has proved indispensable to an overall understanding of the case battled out in Chancery between him and his six sisters some 50 years prior to the signing and sealing of this, his last will and testament. Firstly, the will details the outcome of the Tancred's feud in the early eighteenth-century Court of Chancery. More significantly for this analysis however, the will adds more detail to the quarrel that raged between the siblings in the wake of their father's death – most notably, how family relations could, and did, irrevocably break down when singlewomen attempted to assert their rights in Chancery. Christopher never forgave his 'self interested and most false' sisters for their movements against him, his education and housekeeper becoming all the family he would ever support through his estate:

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[23] TNA PROB 11/836/311, The last will and testament of Christopher Tancred (14 March 1758).

> I give and bequeath to each of my sisters Catherine Dorothy Anne Elizabeth and Ursula or to such of them as shall be living at the time of my death one shilling which is all I intend any of them to receive by this my last will or out of my other Real or Personal Estates which is more than they deserve or even can reasonably expect for that they have ever been towards me the most cruel and unnatural of all sisters and I firmly believe them to be the most self interested and most false and vilest of all Women.[24]

Christopher had decided to leave his estate away from his biological family as early as June 1721. There is a later case heard in Chancery, Attorney General v. Tancred (1758), where it appears his surviving family attempted to overturn his will, or, at least, the charities attempted to have it enforced. The court ultimately upheld his will, and the charitable bequests he made (namely for the training of future students at University who were 'to be called Tancred's Students') were ruled lawful and enforceable.[25]

Tancred v. Tancred is a significant Chancery case for manifold reasons, and shall be returned to as part of a more detailed evaluation of singlewomen acting together in Chancery at a later juncture. Here, however, one may conclude that the archival records of early-modern Chancery offer the historian evidence that corroborates some of the assertions made by Bennett and Froide about single women in the pre-modern past. Portions for daughters still to be married could prove to be a terrible burden on estates and elite families. When family finances were overstretched by multiple unwed children, a few of the offspring would marry with the remainder staying single.[26] Within the Tancred family, Elizabeth married William Dobson in 1716 and Dorothy married Thomas Lambert.[27]

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[24] TNA PROB 11/836/311, The last will and testament of Christopher Tancred (14 March 1758).
[25] Charles Viner, *An Abridgment: Modern Determination in the Courts of Law and Equity, Being A Supplement to Viner's Abridgment, by Several Gentlemen in the Respective Branches of the Law. Volume 5.* (London: Printed by A Strahan, 1805) pp. 278-279.
[26] Bennett an Froide, 'A Singular Past', p. 6.
[27] Foster, *Pedigrees of the County Families in Yorkshire*, pp. 216-217.

Frances died young, and the remaining Tancred siblings all retained their singlewoman status until their eventual deaths.

There were, however, early-modern singlewomen who were not so reliant on their larger family in order to support themselves financially. It was rare for singlewomen in early-modern England to find an occupation that paid as well as the work that was available to men. Nevertheless, they did have employment options, and statistically English women married less frequently when, and where, the opportunities for women's work were more plentiful. Likewise, amongst the more elevated classes, wealthy heiresses were 'better able than other women to forgo marriage'.[28] This finding led to Bennett and Froide's tentative assertion that it may well have been the case that whilst general prosperity promoted marriage, female prosperity, more specifically, inhibited it.[29]

4.3 Independent Singlewomen

The seventeenth-century Court of Chancery certainly offers the historian examples of women who found themselves in possession of enough wealth – or means by which to generate wealth – to never marry. In the case of Moor v. Misdall (and the associated suits and litigation, including Moor v. Wentworth and Moor v. Lister), for example, one finds evidence of singlewomen being provided for by their natal families, enabling them to live independently whilst retaining a *femes sole* status as singlewomen.

The original bill of complaint for Moor v. Wentworth details the history of a plot of Yorkshire land, bought – in trust – by Katherine Finch, the Countess of Winchilsea (previously Wentworth, née Norcliffe), wife of Lord Heneage Finch, the two of them having married on the 10th August 1673.[30] Katherine had two

[28] Bennett and Froide, 'A Singular Past', p. 6.
[29] Bennett and Froide, 'A Singular Past', p. 6.
[30] The Peerage, 24378 'Heneage Finch, 3rd Earl of Winchilsea' [http://www.thepeerage.com/p2438.htm, last accessed 18 April 2017]; The Peerage, 25278 'Catherine Norcliffe' [http://www.thepeerage.com/p2528.htm#i25278, last accessed 18 April 2017].

sons from her first marriage to Sir John Wentworth, Thomas and John. Keen to provide for her sons, especially in light of her marriage to Heneage being her second and his third marriage, Katherine ensured that the land she possessed via trust was left to the children of her first marriage, guaranteeing their maintenance should anything happen to her.[31] Lady Katherine, 'with the consent and agreement of Heneage…' created an indenture in 1675 that stipulated that all the lands purchased in the names of Sir Watkinson Paylor and Sir William Middleton in trust were for 'the use and behoofe of the sd Lady Katherine during the terme of her naturall life and after her decease to the use … of the sd John Wentworth his heires and assignes'.[32] Katherine's thinking about providing for her sons after her remarriage, returning once again to a *feme covert* status, shall be covered in greater detail in the following qualitative chapters. As part of a consideration of singlewomen here, it is her two daughters that she went on to have by her second husband Heneage Finch that are of interest.

By the time Katherine Finch was finalising the legal arrangements for the land she bought in trust for the maintenance of her sons from her first marriage, she had given birth to a daughter by her second husband – Katherine (for ease of understanding, Katherine Finch the mother shall henceforth be referred to as Katherine Finch-the-elder, her first daughter as Katherine Finch-the-younger). Katherine-the-elder stipulated that her daughter was to receive a sum of money from the land settled in trust upon her sons for her maintenance. If Katherine-the-younger never received the money owing to her, then she was entitled to enter the land physically herself, take possession of the land in her own right, and take all profits from the land until she had received the full sum of money to which she had a legal claim. Upon Katherine-the-elder's death, her surviving

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[31] Sonia P Anderson, 'Finch, Heneage, third earl of Winchilsea (1627/8-1689)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, January 2008 [http://www.oxforddnb.com/view/article/9434, last accessed 18 April 2017].

[32] Moor v. Misdall, Original Bill of Complaint, TNA C5/316/39 (25 September 1700); It is possible to calculate that in 1675, at the time the indenture was drawn up, John Wentworth – Katherine's eldest son – would have been around three years old.

children decided to use the legal stipulations outlined by their mother to their mutual, collective advantage.

Lady Katherine Finch-the-elder died in the May of 1679, leaving behind her four children still in their infancy: John and Thomas Wentworth, and Katherine and Elizabeth Finch. Her youngest son, Thomas Wentworth died later, aged just fourteen years old. John Wentworth was to take possession of the Yorkshire lands left to him by his mother, and out of the lands pay no less than £1,500 to his half-sister, Katherine Finch-the-younger. Upon entering the property, however, it was soon realised that John's inheritance, bequeathed with a desire to support him, was in fact 'compromised' and of little value.

Subsequently, John deliberately refused to pay Katherine the money owed to her. This was not out of spite, but out of a desire to please both parties. One can assume that John Wentworth was decidedly uninspired by the land left to him by his well-meaning mother, the work it required and the lifestyle it provided. Katherine Finch-the-younger, however, needed means to generate money. With options limited by her gender and her status as a singlewoman, the land, it was consequently decided, would be ideal for financially supporting Katherine-the-younger. Knowing that if he failed to provide his younger half-sister with the money prescribed by their mother, that Katherine-the-younger would have legal recourse to take possession of the land, John refused to pay her, giving her free leave to enter upon the lands, supporting her in 'economic independence'.[33] There she could live as a landowner, taking the rents and profits thereof, and accordingly live comfortably and independently.

Katherine Finch-the-younger died having been seized of the lands in Yorkshire for only around six months, having never married and 'without any issue of her body'. Before her death Lady Katherine Finch-the-elder and Lord Heneage Finch had had a second child together – Elizabeth Finch. Lady Katherine-the-elder never actually named her youngest child amongst her legal writings or

[33] Peters, 'Single Women in Early Modern England', p. 339

documentation – presumably for no reason other than having had them all drawn up prior to Elizabeth's birth and dying before being able to amend them to include her youngest daughter. Nevertheless, John Wentworth extended the same courtesy to Elizabeth, his last living blood relation, as he had done Katherine-the-younger: 'Lady Elizabeth Finch, only living remaining daughter of Earle and Countesse and only sister of Katherine Finch without any interruption or disturbance from John Wentworth entered the premises'.[34]

Elizabeth Finch's agreement with her half-brother John Wentworth continued up until his death in 1689 (Heneage Finch himself died in the August of the same year leaving 16 of his 27 legitimate children still living).[35] John Wentworth – like his brother and half-sister before him – died somewhat prematurely, aged just 17 years old (or thereabouts), having never been married and without issue. The death of John left Elizabeth entirely devoid of blood relatives, making her, in accordance with the indenture, the last living heir of Lady Katherine Finch-the-elder, and so 'Elizabeth held and enjoyed the sd premises for the residue of her lifetime'.[36] Not that the residue of her lifetime was of any great length – Elizabeth died on the 10th November 1692, still an infant at law, under the age of 21.

It is unsurprising that none of Lady Katherine Finch-the-elder's children succeeded in marrying and having issue of their own, as they all died so very young. Yet her efforts in life, short as it was, were not in vain, and she was successful in providing for her children. Both her daughters, Katherine-the-younger and Elizabeth, were able – despite their age and gender – to live independently on the land she had purchased so carefully and placed in trust on behalf of her offspring. Either Katherine-the-younger or Elizabeth may well have married, had they lived long enough. It is difficult for historians to address categories, when singlewomen include those who die young, before potential marriage.

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[34] Moor v. Misdall, Original Bill of Complaint, TNA C5/316/39 (25 September 1700).
[35] Anderson, 'Finch, Heneage'.
[36] TNA C5/316/39, Moor v. Misdall, Original Bill of Complaint, (25 September 1700).

As infants, Katherine-the-younger and Elizabeth would have been understood as, and expected to be, wives in the not too distant future, kept safely under the patriarchal control of their family in the meantime. After the death of her father Heneage Finch, Elizabeth was under the guardianship of Christopher Lister (who later became defendant to this suit in Chancery). Age certainly played a significant role in how the early-modern singlewoman was understood: 'a critical factor distinguishing some singlewomen from others'.[37] As Keith Thomas commented in 1976, from the sixteenth to the mid-eighteenth century in England, whilst categories of age did not cancel out those of sex and class, age determined how people 'were treated, how they were expected to behave, and what degree of authority they enjoyed'.[38] Before the Hardwicke Marriage Act in 1753, the legal age of consent to marriage was 14 for a boy, and 12 for a girl. Bridget Hill points out, however, that marriage was often delayed until reaching the age of roughly mid-20s, or later, particularly among the labouring classes, and the majority of young people 'never looked outside their own community of their own class for marriage partners'.[39] Amongst ordinary working women, it would have been unusual to be married at the age of 12 – the Finch sisters then were by no means unusual in being still single in their teens.

Katherine-the-younger and Elizabeth Finch were provided with the means, then, to live independently, with financial security, whilst retaining their *femes sole* status, remaining single for the duration of their respective lives, death making life-long singlewomen of them both. Furthermore, their independence was achieved thanks to the efforts of their family – namely their mother and half-brother. Elizabeth Finch's economic independence was maintained when left without any blood-family of her own, her legal guardian feeling no need to disrupt her lifestyle. What is clear is that from a familial and social point of view, early-modern minds were not resolutely against young women living in a state of

[37] Bennett and Froide, 'A Singular Past', p. 8.
[38] Keith Thomas, 'Age and Authority in Early Modern England', Raleigh Lecture on History, Read 16th June 1976, The British Academy (1977), p. 205.
[39] Bridget Hill, 'The Marriage Age of Women and the Demographers', *History Workshop*, No. 28 (Autumn, 1989), pp. 130-134.

independence. Whilst this case reveals how young singlewomen could live in early-modern England, it does not reveal how they interacted with the Court of Chancery. In order to analyse further how young singlewomen came into the court we need to look to other suits, and other litigants.

'Young singlewomen were often readily accommodated within contemporary structures of adolescence' – they had the benefit of still being understood as on the road to fulfilling their womanly duty of becoming wife and mother.[40] Whilst the older singlewoman was more unusual, her experiences more diverse, young women often found their 'adolescence to be a time of exceptional autonomy'.[41] In their adolescence, women could hold land in their own right – as Katherine-the-younger and Elizabeth Finch did – and many worked, for example as servants, in order to support themselves independently. Whilst service was closely linked to single marital status, apprenticeships were an alternative option – although the vast majority of apprenticeships were taken on by young men, and the already small numbers of young female apprentices seem to have dwindled even further over the seventeenth and eighteenth centuries. Adolescence, service and apprenticeship held particular significance in the lives of young singlewomen, as they typically ended at, or just before, entering the formal union of matrimony.[42]

Adolescent women, and even younger girls, are often found in suits being pursued in the Court of Chancery. If under the age of 21, litigants were technically infants in the eyes of the law, and so are often represented or named alongside a parent or designated guardian. A good example of young, singlewomen being represented by guardians can be found in the long-running, and deeply convoluted, case Appleby v. Gascoigne. In this late seventeenth-century English Chancery suit, Thomas Appleby entered a bill into the court against his father-in-law Sir Thomas Gascoigne, naming his two daughters by his first wife Helen Appleby (née Gascoigne) – Helen and Mary Appleby – as his co-

[40] Bennett and Froide, 'A Singular Past', pp. 8-9.
[41] Bennett and Froide, 'A Singular Past', pp. 8-9.
[42] Bennett and Froide, 'A Singular Past', pp. 8-9.

plaintiffs (henceforth Helen Appleby the mother shall be referred to as Helen-the-elder, her daughter Helen being referred to as Helen-the-younger).

Both Helen-the-younger and Mary were central to the bitter dispute raging between father- and son-in-law – their grandfather and father respectively. Helen-the-younger and Mary were both named as plaintiffs in one of the original bills of complaint, joint oratrixes, yet being 'infants under the age of one and twenty' they were technically being represented by 'their father and next friend Thomas Appleby'.[43] Before one considers how, precisely, Mary and Helen-the-younger were involved in this suit at Chancery and what this tells us about young singlewomen interacting with the court, it is first necessary to explore the history of the suit and how it came to be under the purview of the Lord Chancellor.

The suit Appleby v. Gascoigne centres around a dispute had between Thomas Appleby and his father-in-law Sir Thomas Gascoigne, arising out of a quarrel concerning the marriage settlement agreed between these two men prior to Thomas Appleby marrying Helen-, then Gascoigne, the-elder. The marriage settlement had stipulated that the money Sir Thomas was to pay by way of his daughter's marriage portion was to be put towards to maintenance, education, and overall benefit of any children born out of the marriage. The two men further agreed that all the money was 'to remaine in the hands of Sir Thomas Gascoigne … In trust to be put forth at interest by Sir Thomas for the raising of portions for…' Helen-the-younger and Mary.[44] Since the birth of the two, young Appleby daughters, Helen Appleby-the-elder had died, meaning that no more children could be born out of the union between Thomas Appleby and Helen-the-elder, and that the money held by Sir Thomas Gascoigne in trust for the children was, to Thomas Appleby's mind, due to be paid.

[43] TNA C5/58/5, Appleby v. Gascoigne, Original Bill of Complaint (23rd October 1669).
[44] TNA C5/58/5, Appleby v. Gascoigne, Original Bill of Complaint (23rd October 1669).

At the time of Thomas Appleby entering this bill of complaint into the Court of Chancery, effectively through his daughters, Helen Appleby-the-elder had already been dead some 14 years. There is almost a palpable sense of urgency in the bill brought before the Right Honourable Orlando Bridgeman in Chancery.[45] Not only had Helen Appleby-the-elder been dead for nearly a decade and a half, with the money owing all that time, but more worryingly it seemed possible that Sir Thomas Gascoigne was close to death with no intention of paying the money he had held in trust for his granddaughters at all. Thomas Appleby explained that his father-in-law had 'growne a very aged and infirme man in body and not like long to live', fearing Sir Thomas had 'settled all his estate after his death upon his owne children', meaning that if the matter was 'not speedily looked into' that Helen-the-younger and Mary 'may be wholly defeated Not only of the product and interest of the sd severall sumes of money intended them by their father for their respective portions But the principal money also'.[46]

Sir Thomas Gascoigne did not, in actuality, die until 1686, some 17 years after this original bill was put before the Court of Chancery. But it is certainly true that Sir Thomas was survived by multiple children, three sons and five daughters, who he no doubt would have been eager to provide for upon the occasion of his death. What is more, Sir Thomas would have been 73 years old when this suit was brought against him, which was a mightily impressive age in the early modern period. It is hardly unsurprising that family members were on tenterhooks regarding what would come after the decease of the family patriarch from his 70s onwards – who could have predicted he would live to 90?[47]

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[45] More about Sir Orlando Bridgeman can be found on his ODNB entry: Howard Nenner, 'Bridgeman, Sir Orlando, first baronet (1609-1674)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, September 2014 [http://www.oxforddnb.com/view/article/3392, last accessed 19 April 2017].
[46] TNA C5/58/5, Appleby v. Gascoigne, Original Bill of Complaint (23rd October 1669).
[47] Stephen Porter, 'Gascoigne, Sir Thomas, second baronet (1596-1686)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [http://www.oxforddnb.com/view/article/10426, last accessed 19 April 2017].

Sir Thomas Gascoigne was certainly the ruling patriarch of his family, both nuclear and extended, over the course of his unusually long life. In response to this bill of complaint being entered into Chancery against him, Sir Thomas responded not only with an answer (which he entered in conjunction with another defendant, John Wentworth), but also a schedule detailing everything he had given his granddaughters up until that point:

> A True and just account of all moneyes whatsoever had made received and taken by this defend Sir Thomas Gascoigne for the use of the complainants Mary Appleby and Hellene Appleby – infants the daughters of Thomas Appleby Esqr and grandchildren of this defendant Sir Thomas Gascoigne And alsoe a true and just account of all disbursed charges and expenses by this defendant made for ye sd complainants Mary and Hellene Appleby in and about their maintenance educations and management of their affairs according to yr trust in him this defendant.[48]

Not only, then, was Sir Thomas Gascoigne maintaining his granddaughters financially, but he also claimed in his answer that he himself had 'beene forced to exhibit a Bill in this honoble court as Guardian of the sd complainants' in order to secure they received the money owing to them.[49]

Further in depth reading of the legal documents – of which there are many – reveals that Sir Thomas was in fact the legal guardian for his grandchildren (despite their having a living parent, Thomas Appleby being referred to as the father and 'next friend' of Mary and Helen-the-younger, as opposed to 'guardian'), deciding their futures in a manner that he saw fit. In a replication later entered by Thomas Appleby, the sole named plaintiff on the particular document in question, he freely admitted that 'Sir Thomas hath educated this Replicants two daughters with … care'.[50] He also claimed, with palpably less admiration for the actions of his father-in-law…

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[48] TNA C5/58/5, Appleby v. Gascoigne, Schedule (1669).
[49] TNA C5/58/5, Appleby v. Gascoigne, The Joint and Severall Answers of Sir Thomas Gascoigne Bart. and John Wentworth Esqr. Defendants to the Bill of Complaint of Mary Appleby and Hellen Appleby by Thomas Appleby Esqr., their father and next friend, complainants (1669).
[50] TNA C5/436/66, Appleby v. Gascoigne, The Replication of Thomas Appleby.

> …that the sd Sir Thomas about five years ago sent or caused to be sent beyond the seas this Replicants eldest daughter Mary Appleby and placed her in a Nunnery there, both without and against this Replicants consent or privity And where … the sd Mary Appleby his Daughter is now become A Religious Person or Nunne professed within a Religious House or Nunnery situate within the Suburbs of Paris of St Benets order within the Kingdom of France under the tuition of one Madame Catherine Gascoigne who is Mother Prioresse of the said Religious House whereby this Replicants Daughter Mary is now become a dead person at law…[51]

Sir Thomas Gascoigne was a staunch Catholic, becoming firmly set in his religious views in around 1604 having married the fiercely recusant Anne Gascoigne (née Ingleby), and had over his lifetime, and through the lives of his children, established strong links with Catholic communities across his home county of Yorkshire as 'beyond the seas' across Europe. No less than four of Sir Thomas and Anne Gascoigne's children became Benedictines and lived a life of pious religiosity; Catherine Gascoigne (into whose care and tutelage young Mary Appleby was entrusted) was one of the founding members of the English Benedictine convent at Cambrai, France.[52]

Helen Appleby-the-younger was married into another prominent Yorkshire, Catholic family – the Ravenscroft family. James and Mary (née Speck) Ravenscroft were Roman Catholics who outwardly conformed to Anglican faith whilst simultaneously maintaining their vilified faith in private. In the June of 1643, they sent their sons Thomas and George to the English College at Douai (a place where many English Catholics travelled to in order to pursue their faith,

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[51] TNA C5/436/66, Appleby v. Gascoigne, The Replication of Thomas Appleby; Bennett and Froide rightly point out that whilst monastic life provided a respectable alternative to marriage, we should be careful in our analysis of nuns as single women as technically speaking they were understood as 'brides of Christ' (Bennett and Froide, 'A Singular Past', p. 11).

[52] J T Rhodes, 'Gascoigne, Catherine (1601-1676)', *Oxford Dictionary of National Biography*, Oxford University Press, May 2014 [http://www.oxforddnb.com/view/article/68225, last accessed 20 April 2017]; Claire Walker, *Gender and Politics in Early Modern Europe* (New York: Palgrave Macmillan, 2003), p. 14.

including members of the Gascoigne family – Catherine Gascoigne travelled to Douai in 1623 intending to join a strict community that her brothers recommended to her), but George abandoned his training for the priesthood in 1651. In either 1670 or 1671 Helen Appleby-the-younger and George Ravenscroft were married (only a year or two after the original bill of complaint entered by Thomas Appleby on behalf of his daughters), cementing bonds between these two Catholic families, going on to have three children together.[53]

Sir Thomas Gascoigne had actively looked to and proactively utilised his offspring to maintain the Catholic faith: as, Claire Walker explains, many who made up the religious expatriate communities (such as those in Douai and Cambrai) did.[54] He was particularly conscientious in his support of the international Catholic communities he was connected to, his account book annually recording the pension he paid to the Paris Benedictines for this daughter Catherine.[55] This pattern of Sir Thomas Gascoigne reinforcing his familial involvement in the Catholic faith, on a national and international level, through his children continued, then, in his guardianship of his grandchildren. With Mary in a Catholic convent and Helen-the-younger married to a wealthy Catholic merchant and glass manufacturer, Sir Thomas not only continued to build up and strengthen his Catholic networks at home and abroad, but he also ensured that his grandchildren, and the money that was owed to them for their portions, remained steadfastly within the Catholic faith.

The Appleby sisters provide a key example of young women caught up in the perils of legal (mis)representation. They were originally brought before the Court of Chancery as named plaintiffs by their father, yet lived under the guardianship and clearly strong influence of their maternal grandfather. These young women were not unusual in their position as youthful, singlewomen

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[53] Christine MacLeod, 'Ravenscroft, George (1622/23-1683)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, January 2008 [http://www.oxforddnb.com/view/article/50661, last accessed 20 April 2017]; Rhodes, 'Gascoigne, Catherine'.
[54] Walker, *Gender and Politics in Early Modern Europe*, p. 14.
[55] Walker, *Gender and Politics in Early Modern Europe*, p. 80.

experiencing male presence and authority over the course of their day-to-day lives. The biological fathers of young singlewomen commonly fulfilled this role. In those circumstances, however, where the father was deceased or deemed unfit to meet the requirements necessary to make an adequate guardian, as was the case with Thomas Appleby who was in fact declared a 'lunatic' by his father-in-law, others would step up to fill the void.[56]

Mary and Helen Appleby-the-younger further reveal how young, singlewomen could be, and were, vulnerable to being used as pawns within their nuclear and extended families. One can surmise that Thomas Appleby was attempting to enter a suit into the later seventeenth-century Chancery in the names of his daughters, endeavouring to gain access to the money that was owed them by way of portions that was being held in trust by their grandfather, his father-in-law. Despite clearly having had very little to do with the girls following the death of his wife, his position as their father made him aware of the money owed to the sisters, as well as placing him in a position to request it (supposedly) on their behalf.

On the other hand, the sisters' guardian and grandfather also used the girls to his own advantage, further cementing through their marriages, into the Catholic church and a high-profile Catholic family respectively, his religious networks in Yorkshire and in France, ensuring the continuation of his family faith and that the money he had held and put out at interest on his granddaughters' behalf served his religious purpose. Both men, then, attempted to exploit the vulnerable position of Mary and Helen Appleby-the-younger to achieve their ultimate goals – Sir Thomas with notably more success than his rival, thanks to the latter's position as family patriarch and legal guardian.

Mary and Helen-the-younger are not the only examples of young, singlewomen experiencing possible exploitation of their vulnerable position found within Chancery archival material, and living under male guardianship. Elizabeth Finch,

[56] TNA C5/436/66, Appleby v. Gascoigne, The Replication of Thomas Appleby.

for example, of the suit Moor v. Misdall (as previously discussed) fell under the guardianship of one Christopher Lister following the death of her father Heneage Finch. Her steward, Edward Misdall, assisted her in the daily running and management of her land. Both Lister and Misdall were subsequently brought into Chancery as defendants by young Elizabeth's remaining family, accused of keeping money from the land for themselves. Misdall in fact continued to take the rents and profits of the land following the death of his young mistress – hence his being brought before the Lord Chancellor by her larger, extended family who were entitled to the land.[57]

In other instances, the historian gains insight into how male guardians aside from father's influenced or dictated the lives of early-modern English singlewomen only once we learn of them as they act as *femes sole* once again as widows. Often, when a natural father was no longer alive, brothers would take a leading role in negotiating the marriage arrangements and contracts for their sisters. In Allanson v. Allanson, for example, Grace Allanson (née Jacques) appeared in Chancery, claiming a treaty had between her brother Henry and her then-husband-to-be Charles Allanson was not being adhered to.[58] Men taking on the role and responsibility of 'guardian', potentially had a great deal of power over the lives of singlewomen, making decisions that had long-term consequences.

Though male guardians often played a large role in the lives of young, singlewomen, natural fathers or otherwise selected persons alike, this is not the only relationship we find evidence of singlewomen enjoying, or perhaps enduring, in early-modern Chancery. In Chaster v. Wheatley, for instance, we have evidence of a young singlewoman being represented by women. Isabell Chaster appears in the Court of Chancery in 1691, under the guardianship, and being legally represented by, her widowed mother Elizabeth Chaster. However,

[57] TNA C5/316/39, Moor v. Misdall, Original Bill of Complaint (25 September 1700).
[58] TNA C5/441/57, Allanson v. Allanson, Original Bill of Complaint (16 July 1677).

before the suit reached resolution – either inside the formal setting of the courtroom by way of a final decree or externally by mediated arbitration – Elizabeth Chaster died. Isabell was subsequently under the guardianship, and therefore representation, of another female figure in her family: her widowed aunt, Ann Shepley.[59] Isabell was consistently in the company, and operating under the custody, of other women over the course of the proceedings to which she was plaintiff in Chancery, relying on older, more experienced, ever-married women to aid her through the process of seeking redress at equity as a young, singlewoman litigant.

Furthermore, it is evident from the qualitative analysis that, overall, singlewomen were most often found to be acting in conjunction with at least one other co-plaintiff or co-defendant, male or female. 39 per cent of named, singlewomen plaintiffs appeared alongside a male co-plaintiff, 75 per cent of all defendants. Not all of these suits involving male and singlewomen litigants coming together before the Lord Chancellor, as either plaintiffs or defendants, however, denote father-offspring or guardian-infant relationships.

4.4 Singlewomen and Co-Litigation

Appleby v. Gascoigne and other similar cases demonstrate how young, singlewomen frequently came to court under the aegis – or even coercion – of other family members, but there are also many cases where female agency can be more clearly seen. For example, in the case Benson v. Bellasyse we find siblings, Dorothy, Elizabeth and Robert, coming together to unite against their mother and her new husband, their step-father, in order to secure their rightful inheritance. In 1669 Dorothy Jenkins married Robert Benson, her father Tobias Jenkins having reached a suitable marriage agreement with Robert beforehand.[60] Together they had three children, their youngest child, and only son, was born in the same year that Robert Benson-the-elder died – 1676 – making all three of the

[59] TNA C5/82/33, Chaster v. Wheatley, Original Bill of Complaint (3 July 1691); TNA C5/202/19, Chaster v. Wheatley, Bill of Complaint (3 January 1699).
[60] TNA C5/145/159, Benson v. Bellasyse, Original Bill of Complaint (14 March 1691).

children very young indeed when they lost their father.[61] Dorothy Benson (née Jenkins) remarried in 1680, joining in union with Sir Henry Bellasyse.[62] Eleven years following Dame Dorothy Bellasyse's second marriage her children brought suit against her and their step-father. The Benson siblings had grown concerned whilst approaching coming of legal age that they would receive what they were entitled to from their father's lands in Yorkshire, leading to them eventually joining in suit together. Dorothy, Elizabeth and Robert were still legally infants at the time of their entering suit together and were therefore represented by one William Benson who is described as being a 'merchant and friend' rather than a formal guardian, and he was not named as a formal plaintiff – the case, it is evident, was driven by the Benson siblings.[63] After all, the children were still technically and legally under the guardianship of their mother. However, the Benson siblings could hardly be represented by and litigate against the same person simultaneously, especially considering the binds of coverture that their *feme covert* mother was operating under.

Another example of young, singlewomen litigating in conjunction with their brother is Fawcett v. Fothergill. In this suit, siblings Adam, Jane and Margaret Fawcett litigated against Anthony Fothergill, to whom along with the then deceased George Fawcett their father, Martin Fawcett, had entrusted 'all his estate both real and personal' believing it would serve best for 'yor orators benefit and advantage', men who Martin, apparently mistakenly, 'tooke to be his friends and had great confidence that they would deal justly and honestly with his children.[64]

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[61] Stuart Handley, 'Benson, Robert, Baron Bingley (bap. 1676, d. 1731)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, January 2008 [http://www.oxforddnb.com/vew/article/2144, last accessed 26 April 2017]; We know from the depositions that Robert Benson the elder died in the July of 1676 (Depositions taken in the country, TNA C22/509/39 (August 1681)).
[62] TNA C5/145/159, Benson v. Bellasyse, Original Bill of Complaint (14 March 1691); Handley, 'Benson, Robert'.
[63] TNA C22/509/39, Benson v. Bellasyse, Depositions taken in the country (August 1681).
[64] TNA C5/159/22, Fawcett v. Fothergill, Original Bill of Complaint (12 February 1690).

What is interesting in Fawcett v. Fothergill, is that because Margaret was still an infant, being under the age 21 at the time the Fawcett siblings entered their joint bill of complaint, Margaret's share of the litigation was represented by her guardian, who happened to be her brother and co-plaintiff Adam. So here is evidence of an adult singlewoman, Jane, acting alongside her siblings, as well as an infant, named, singlewoman plaintiff, Margaret, acting alongside her siblings and her male guardian simultaneously.

Adam Fawcett is not the only sibling to be found within the 30-case qualitative sample who took on the guardianship of a younger sibling and consequently their representation in the Court of Chancery. Young women, as well as young men, took on this role of guardianship on occasion. In Rank v. Johnson, one finds Anne Rank, a named, singlewoman plaintiff, legally representing the needs of her co-plaintiff Robert Rank, as 'his sister and guardian'. Furthermore, as a legal guardian to one of the plaintiffs, and the eldest of the three Rank siblings (Anne, Ralph and Robert), Anne – a singlewoman – is the first named plaintiff, despite one of her brothers being of legal age, and there being a fourth male, named plaintiff acting in an official capacity, William Freeman, 'Administrator to the Chattels' of the Rank siblings deceased father; Ralph Rank-the-elder.[65]

Rank v. Johnson demonstrates that singlewomen could be, and were, treated in a manner that put them on an equal footing with their male counterparts. Not only was Anne Rank made the first named co-plaintiff to this suit, but she was entrusted with the guardianship of her youngest brother, despite having a middle brother who was old enough to legally take on the responsibility (we can assume Ralph Rank was over the age of 21, his not being under the guardianship of Anne as Robert was). Furthermore, it is also clear from a detailed reading of the suit that Ralph Rank-the-elder, late father of the Rank siblings whose estate was in dispute, intended to treat all his children equally, regardless of gender:

[65] TNA C5/543/59, Rank v. Johnson, Original Bill of Complaint (29 November 1680).

> …before his death made his last will and testament in writing and thereby … given and bequeathed the said two hundred and nynty pounds money unto yor oratrix and orators his children equally to be divided between them…[66]

This corroborates the findings of Amy Erickson in her seminal work *Women and Property*, that pre-modern children were often treated equally, regardless of gender: 'no distinction was made in the upbringing costs of girls and boys, at either middling or impoverished levels'.[67] Although it was generally accepted that eldest sons ought to be privileged, primogeniture dictating they received more than their other siblings, there was a feeling of the necessity of not favouring him too much. Younger sons and daughters were usually remembered equally, receiving equal inheritance. Erickson points out, however, that most 'willmakers' had an 'egalitarian approach', and that the very act of writing a will was, in part, done to 'modify the effects of primogeniture, which would have been imposed in case of intestacy'.[68] Ralph Rank-the-elder saw each of his three children as equals, and recognised them as such in his last will and testament.

This lack of preferential treatment for the Rank sons over the eldest child and only daughter created a familial environment of egalitarianism that enabled Anne Rank to take the lead when necessary, acting as legal guardian and first-named plaintiff. It should also be noted, that this behaviour was made possible also by her marital status. Having never-been married, Anne had no husband whose legal rights would have subsumed hers by the legal doctrine of coverture, making him the lead plaintiff over her.

It is not a rarity to find siblings acting together as litigants in Chancery. In the case of Colton v. Maltus, one finds two sisters, legally recognised as adults, working particularly closely together, despite fluctuations in marital status. In

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[66] TNA C5/543/59, Rank v. Johnson, Original Bill of Complaint (29 November 1680).
[67] Erickson, *Women and Property*, p. 59.
[68] Erickson, *Women and Property*, pp. 77-78.

February 1679 multiple plaintiffs (male and female, with William Colton being the first named plaintiff) entered an original bill of complaint into the Court of Chancery against Christopher Maltus, his wife Anne, and Anne's sister Mary Sutton. It is in the answer delivered into the court by the named defendants that we find interesting material pertaining to marital and kin relationships relevant to a consideration of the singlewoman (life-cycle and life-long) in the late seventeenth-century Chancery.

Anne and Mary explained in their answer (entered alongside Anne's husband Christopher – who takes a notable back-seat in proceedings, as is explored more fully as part of an analysis of married women in Chancery in chapter five 'To Have and To Hold') that they inherited land from their late father Richard Sutton. The land in question had been inherited by the Sutton sisters together, equally, whilst they were both singlewomen: 'the complainants … confesse they are daughters and coheirs of the said Richard Sutton and doe enjoy his said lands and tenements as coheirs'.[69] It was the profits from this inheritance that the numerous complainants claimed they rights to, as stipulated in the will of the deceased Richard Sutton.

Following Anne's marriage to Christopher Maltus, the two sisters continued to manage the land themselves much as they had done whilst they were both unwed. In this particular situation, we have insight, albeit limited, into the lives of a life-cycle singlewoman in the early stages of her marriage as well as a young woman who is potentially either a life-cycle or a life-long singlewoman – either way, Mary is at the time of this case understood as a singlewoman. The Sutton sisters inherited property together as singlewomen, managed the land in their sibling partnership, and continued to do so even when Anne married (with apparently very little interference from her husband). Though Christopher is named as a defendant to this suit, this seems to be little more than a technicality due to coverture – it is Anne and Mary who manage and defend their property.

[69] TNA C5/463/76, Colton v. Maltus, The Joynt Severall Answers of Christopher Maltus and Anne his wife and Mary Sutton (27 May 1679).

This case is fascinating as part of an analysis of singlewomen in the early-modern Court of Chancery, as well as of what the legal archival material can reveal to historians of the lives led by singlewomen – in terms of their interaction with the law, as well as their social, cultural and familial lives. The Sutton sisters inherited the land once held by their father, Richard Sutton, as equals – both being young singlewomen and the only surviving children of their parents. Anne becoming Anne Maltus upon her marriage to Christopher, however, appears to have had very little effect on this feminine, kin-based, working relationship. The women continued to work, manage, and receive the profits from their inherited land as equals, despite one of them living a very different life in terms of family, society, and the law; becoming a wife and consequently expected to be a mother sooner rather than later, being regarded differently by her peers, and society at large, by becoming a married woman, and having her legal rights altered by becoming a *feme covert*.

Tancred v. Tancred provides another example of women continuing to litigate together following changes to marital status to one or more of the litigants, therefore life-cycle and life-long singlewomen appearing before the Lord Chancellor together. Initially, each of Christopher Tancred's sisters were young, singlewomen when they entered a bill of complaint against their brother. Their original bill of complaint brought into Chancery was entered with their widowed mother as the first named plaintiff, acting as their guardian and representative. However, as the matter continued to be a source of family discord, the sisters continued to work together as litigants in their quest for redress in the court.

The infighting of the Tancred family, sisters against brother, weathered the deaths of Katherine Tancred (the elder – mother and guardian) and one of the six sisters, Frances. Even the marriages of Elizabeth (who became Elizabeth Dobson following her marriage to William Dobson) and Dorothy (who became known as Dorothy Lambert following her marriage to Thomas Lambert) was not enough to deter all the surviving sisters from pursuing what they felt they were owed from their brother's estate. Indeed, both Elizabeth and Dorothy included their respective husbands as named co-plaintiffs in the sisters' later bill of complaint.

Though it is usual for married women to involve their husbands in their legal endeavours upon being wed due to the doctrine of coverture, it is worth noting that the two sisters who did marry did not enter separate bills from their singlewomen counterparts with their spouses, they all continued to act together as one larger party of litigants.[70]

The Tancred sisters provide valuable insight into how some singlewomen - both life-long and life-cycle – interacted with the pre-modern Court of Chancery. As young singlewomen, legally infants, they were represented by a legally authoritative female figure in their mother and guardian, the widowed Katherine Tancred (there is more discussion on the impact of widowhood on the social authority and legal autonomy of the ever-married women in chapter seven 'Women's Experience in Chancery'). As they legally entered the stage of adulthood, however, they continued to work together against their brother. Much like the Sutton sisters from the previous example, the Tancred sisters persisted with their joint legal endeavours against Christopher despite their changing social and familial situations. Whilst Dorothy and Elizabeth upheld their expected role within society, marrying and therefore proving themselves to be life-cycle singlewomen, Catherine, Ann and Ursula did not, being categorised as 'spinsters' in later bills.[71]

4.5 Spinsters in Chancery

The categorisation of Catherine, Ann and Ursula Tancred as spinsters in late bills of complaint entered into the Court of Chancery following the death of their sister Frances and the marriages of Dorothy and Elizabeth raises an interesting point of consideration: the use of the term 'spinster'. Froide tells us, as previously discussed, that early-modern women who were single, having never been married, could be and often were referred to as spinsters as young girls and teens as well as when older.

[70] TNA C5/272/4, Tancred v. Tancred, Original Bill of Complaint (1706); TNA C11/1266/25, Tancred v. Tancred, Bill of Complaint and Answer (1732).
[71] TNA C11/1266/25, Tancred v. Tancred, Bill of complaint and Answer (1732).

Judith Spicksley offers a fascinating analysis of the origins of the term 'spinster' telling us that the sixteenth and seventeenth centuries bore witness to a number of changes in the English language, 'witnessing an extremely rapid increase in the number of new words, especially between the 1570s and the 1630s'.[72] The term 'spinster', first recorded in 1362, originally referred, quite literally, to a spinner, usually female but sometimes male and most commonly in relation to an individual solely or completely occupied in spinning. From the early seventeenth century, however, the term was utilised as a 'legal designation for a single woman' and was added to formal documentation to denote a woman being not yet married.[73] By 1719, the term has taken on what is now recognised as its chief meaning, referring to woman who remained single beyond 'marriageable age', and was therefore left to become an 'Old Maid'.[74]

Out of my larger quantitative sample of 1,556 cases, only two cases identified a named, singlewoman litigant as a 'spinster' at catalogue level (accreditation that upon reading of the cases has proven to be accurate, in the sense that it pertains to singlewomen). I therefore decided to read these cases in addition to my smaller 30 case qualitative sample, in an attempt to understand why these cases were catalogued as such, as well as why other cases that involved named litigants that could be labelled spinsters, and were referred to as spinsters within the main body of the documents themselves, were not. These two cases are Nelson v. Adamson and Langley v. Oates.

The case Nelson v. Adamson has one named female litigant, the defendant Grace Danby, listed as a spinster within the catalogue description. However, within the main body of the original bill of complaint the plaintiff Sarah Nelson is also described as being both a spinster and an infant under the age of 21 (she was able to enter a bill of complaint into Chancery through her guardian Henry

[72] Spicksley, 'A Dynamic Model of Social Relations', p. 108.
[73] Spicksley, 'A Dynamic Model of Social Relations', p. 108.
[74] Spicksley, 'A Dynamic Model of Social Relations', p. 108.

Shilling).[75] This suit, therefore, reveals that one cannot use the catalogue accurately without careful reading of the documents themselves.

Sarah Nelson is not the only named singlewoman litigant who is described as a spinster within the records but not the catalogue. The original bill of complaint of Wade v. Wood opens '…Mary Wade of Midgley in the county of Yorke spinster…', yet there is no evidence of this in the catalogue description of the case.[76] The same is true for Wastnesse v. Kirk: '…your oratrix Mary Wastnesse of Doncaster in the county of Yorke spinster…' Furthermore, all discussion of Sarah Wastnesse, Mary's sister and alleged co-conspirator with John Kirk, does not refer to Sarah as a spinster despite her being of the same marital status as Mary (though it should be noted that Sarah was legally an infant at the time, though quite likely simultaneously of legal marriageable age – younger than 21, older than 12).[77]

In the case Tancred v. Tancred, the plaintiff sisters were all listed simply without a marital status to their initial bill of complaint in 1706 – all of them being, at that stage, singlewomen. In 1732, however, two of the sisters had become wives and the remaining still single sisters were recorded as spinsters (although it should be noted that this later bill of complaint is found within the C11 series rather than the C5 series).[78] In the case Langley v. Oates, one finds similar discrepancies with the cataloguing of the spinster, and defendant, Phoebe Oates. In 1703 Phoebe Oates is catalogued as being both a spinster and an infant. A bill of complaint in 1704 also has her catalogued as a spinster, but a separate answer in 1704 does not list her marital status as part of the catalogue entry.[79]

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[75] TNA C5/621/33, Nelson v. Adamson, Original Bill of Complaint (1690-1700).
[76] TNA C5/572/9, Wade v. Wood, Original Bill of Complaint (21 June 1675).
[77] TNA C5/195/8, Wastenesse v. Kirk, Original Bill of Complaint and Answer (1693).
[78] TNA C5/272/4, Tancred v. Tancred, Original Bill of Complaint (1706); TNA C11/1266/25, Tancred v. Tancred, Bill and Answer (1732).
[79] TNA C5/252/8, Langley v. Oates, Answer and Schedule (1703); TNA C5/252/9, Langley v. Oates, Original Bill of Complaint (1704); TNA C5/318/34, Langley v. Oates, Answer (1704).

'Spinster' was used in the seventeenth century as a legal term to describe a singlewoman.[80] When the term is used as a title for a woman, 'it invariably referred to a singlewoman outside the usual boundaries of male authority'.[81] Based on the 30 case qualitative sample of suits that have been read in detail for this research project, as well as the additional cases of special interest, I conclude that the accreditation of certain named female litigants as 'spinsters' in the later seventeenth-century Chancery is sporadic and with little reasoning behind it. The online catalogue that is searchable online via Discovery is based on the catalogue created in the nineteenth century, and the application of the term 'spinster' seems based on little more than the whims of the cataloguers. A singlewoman can be named as a spinster in the catalogue to documentation of a suit but not within a separate document to the same suit – despite no change to her marital status. Infant women (under the age of 21) were referred to as spinsters, both within the main body of Chancery archival material as well as intermittently throughout the catalogue. What is clear, thus far, is that named female litigants with no marital status or spinster status at catalogue level were singlewomen (legally infant or otherwise, life-cycle or life-long).

4.6 Singlewomen Alone in Chancery

Not only is there evidence of life-long singlewomen litigating in conjunction with life-cycle singlewomen, married women and widows, as well as male family members or guardians, there is also evidence within Chancery archival material of adult singlewomen coming into the court alone. Mary Wastenesse entered her bill of complaint before the 'Right Honourable John Lord Sommers' in Chancery in 1693 as a sole female plaintiff.[82] She was suing the executor of the last will and testament of her late father Francis Wastnesse, John Kirk, believing him to be keeping moneys owing to her from her deceased father's estate. Francis died

[80] Spicksley, 'A Dynamic Model of Social Relations', p. 109.
[81] Spicksley, 'A Dynamic Model of Social Relations', p. 113.
[82] TNA C5/195/8, Wastnesse v. Kirk, Original Bill of Complaint (10 January 1693); For more about John Sommers and his time as Lord Chancellor see: Stuart Handley, 'Somers, John, Baron Somers (1651–1716)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004, online edn, May 2008 [http://www.oxforddnb.com/view/article/26002, last accessed 20 September 2017].

leaving a widow, Elizabeth, and multiple children – four sons, Francis, John, Hardolph and William (who actually died himself shortly after Francis-the-elder), and two daughters, Mary and Sarah.

In his will, according to Mary, Francis Wastnesse had left various legacies to his widow and elder sons Francis, John and Hardolph. The remainder of his estate was to be put towards paying off his debts, the expenses incurred at the time of his death (namely funeral costs and the expenses of John Kirk, his executor), and anything left over was to be split, with interest, evenly between his youngest three children as soon as they received the legal age of adulthood, 21:

> …all the residue of the said psonall estate he did in and by his said will give and bequeath unto William Wastnesse an other of his sons and to your oratrix Mary and to Sarah Wastnesse his two daughters equally to be divided among them which he appointed to be sold and directed the money arising by sale thereof to be put forth att interest for their best advantage by the said John Kirke who he constituted his executor and to be paid to them respectively when they attained their severall ages of twenty one years…[83]

Mary's problem, however, was not just with the executor who was meant to pay her once she reached the age of 21, John Kirk.

Mary Wastnesse believed that her sister, Sarah, was conspiring with John Kirk against her. Mary 'having some time since attained the age of twenty and one years' had been asking John Kirk to meet with her, in order to relay to her a full account of her share of the residue of her late father's estate. However, 'by confederacy and combination with Sarah your said oratrixes sister', John Kirk refused to come to 'a true account' with Mary.[84] Both John Kirk and Sarah Wastnesse sometimes claimed, according to the oratrix Mary, that Francis Wastnesse's debts were so great at the time of his death, that they 'swallowed

[83] TNA C5/195/8, Wastnesse v. Kirk, Original Bill of Complaint (10 January 1693).
[84] TNA C5/195/8, Wastnesse v. Kirk, Original Bill of Complaint (10 January 1693).

upp soe much of the said psonall estate' to the point that 'there was noe residue of the Testators estate remaining to be divided as the will intended'. Other times, 'they alleged tho untruly' that after the debts and legacies were paid out of the estate of Francis Wastnesse, the residue was 'wholly or in greate pte left soe as your oratrix can expect to reape very little or no benefit att all'.[85]Mary asserted that together John Kirk and her sister Sarah Wastnesse were lying about what was left of Francis Wastnesse's estate in order to defraud her out of what she was rightfully entitled to. Mary's relationship with her sister was, clearly, strained and not one where coming together to assert their joint claims in the Court of Chancery was a viable option – very different, then, from those of the Tancred and Sutton sisters.

The suit Wastnesse v. Kirk demonstrates the fact that not all early-modern singlewomen had the option of relying on their immediate family for assistance in seeking formal redress at the Court of Chancery. Mary Wastnesse's three elder male siblings had specific legacies bequeathed to them in their father's will, her younger siblings not yet 21 years old were unable to litigate without a formal guardian and, in any case, had no recourse to sue John Kirk as they had not yet reached the age at which they were to be paid, therefore technically had nothing yet owing to them out of their late father's estate. At legal adulthood, Mary Wastnesse had the legal autonomy needed to pursue a case independently at Chancery. With little other option – that is precisely what she did. Mary's gender, youth, and her status as a singlewoman did not hold her back in pursuing redress in the later seventeenth-century Court of Chancery.

Wade v. Wood provides further evidence of a singlewoman bringing suit before the Lord Chancellor in Chancery alone. In 1675 Mary Wade brought suit against one Joseph Wood. Mary claimed, truthfully, that Grace Whittaker, a widow, and her son James Whittaker sold the land they had inherited from their husband and father respectively, Edward Whittaker, to the said Joseph Wood. The land they had sold, however, was subject to the last will and testament of Edward

[85] TNA C5/195/8, Wastnesse v. Kirk, Original Bill of Complaint (10 January 1693).

Whittaker, which stipulated that Mary Wade and her sister Grace Wade were to receive a total £40 from the profits of the land, £20 each, upon reaching the age of 21 or, alternatively, should one of them die before reaching the required age of legal adulthood, the full sum of £40 to the survivor of them. This bequest 'was to issue out and charged upon the aforesaid Messuage or tenement lands and premises by the last will and testament of Edward Whittaker', which meant that upon the completion of the sale, Joseph Wood was liable to pay the £40, to either one or split between the Wade sisters.[86]

Once Joseph Wood became the legal owner of the land previously owned by the Whittaker family, he claimed – according to Mary Wade – that he intended to pay to £20 owing to the plaintiff:

> …hee the said Joseph Wood into the aforesaid messuage or tenement lands or premises entred and hath ever since quietly held and enjoyed all the same and received and taken the rents issues and profitts thereof and did faithfully promise and agree to satisfye and pay unto your oratrix Mary the said twenty [pounds]…[87]

However, Mary Wade had reason to believe that Joseph Wood was in fact attempting to 'defeate and defraude' her out of the money owing to her.

Around Michaelmas of the year before Wade entered her original bill of complaint into the Court of Chancery (Michaelmas 1674, then), Joseph Wood gave her a cash sum of around £5, or some such amount, 'the particular sume soe paid your said oratrix doth not nowe remember', in part payment of the full sum of money he owed her. Joseph Wood required at that time a signed receipt for this transaction, 'which your said oratrix thought fitt and reasonable to give unto him'. However, when Joseph refused to pay her any more money, Wade grew increasingly wary of Wood's true actions and intentions. The receipt Mary Wade had put her mark to was a 'ready drawne paper' which at the time she was told was nothing more than a receipt for the £5 she had received, but she later suspected was in fact a 'generall release or discharge' for the full sum of £20, that

[86] TNA C5/572/9, Wade v. Wood, Original Bill of Complaint (21 June 1675).
[87] TNA C5/572/9, Wade v. Wood, Original Bill of Complaint (21 June 1675).

Wood could then use to refuse, legally, to pay Mary Wade any of the remainder of the money to which she was in fact entitled.

Wade v. Wood brings up some very interesting points of analysis for this consideration of the way in which singlewomen interacted with the early-modern Court of Chancery. First and foremost, Wade v. Wood adds a new dimension to what Chancery archival material reveals about sister-sister relationships. In Colton v. Maltus, we find the Sutton sisters, who inherited land together on an equal footing as co-heirs. They continued to enjoy the lands together after one of them married, and litigated together to defend themselves when brought before the Lord Chancellor in Chancery. In Tancred v. Tancred, we find sisters litigating together against their brother, continuing to act as a cohesive litigating party following the deaths of their widowed mother and guardian, a sister, as well as the marriage of two other sisters. In Wastnesse v. Kirk, on the other hand, we find sisters feuding with one another; Mary accusing her sister Sarah of colluding with the executor of their late father's will to defraud her of her rightful inheritance.

In Wade v. Wood, then, one finds evidence of two sisters, Mary and Grace Wade, who may well have had a joint case, their both being due a cash sum of £20 from the defendant Joseph Wood. Mary Wade, however, entered her bill entirely on her own – a young singlewoman, *feme sole*, acting alone. It is hard to know for sure why Mary did not include her sister in her bill of complaint against Wood, as that part of the situation is never detailed – I would, however, suggest that it is down to the fact that Grace Wade had most likely not reached the required age of 21 at the time of Mary entering her bill of complaint into Chancery. This would have made Grace an infant in the eyes of the law, therefore in need of legal representation, and, furthermore, meaning that Joseph Wood was not technically in violation of his legally binding obligation to Grace – only to Mary. Nonetheless, Mary's inclusion of Grace in her description of the wrongdoings of Joseph Wood is indicative of her concern over his intentions to pay, or not to pay as she suspected, in full what he owed to her sister also. There were two young, singlewomen potentially vulnerable to exploitation by Joseph Wood.

Furthermore, the case opens up for discussion another significant aspect of this analysis of singlewomen acting in the pre-modern Court of Chancery – that of vulnerability. Mary Wade commented in her original bill of complaint that she was an 'illeterate woeman' and was therefore heavily reliant on the honesty and good nature of Joseph Wood.[88] This was a position of vulnerability that Wade suspected Wood of taking advantage of. Unable to read the receipt offered to her to sign, Wood could have quite easily tricked the young, vulnerable, *feme sole* into signing away her rights to receive money set aside for her in the will of the late Edward Whittaker, arising from lands then owned by Wood.

Mary Wade's situation of vulnerability is certainly amplified by her appearing in Chancery alone. However, she is not the only named singlewoman litigant found in the late seventeenth-century Court of Chancery archival material who demonstrates early-modern singlewomen being in a vulnerable position. Women who were legally infants being under the age of 21 and single often discuss their vulnerability in terms of their age. Generally, these litigants refer to the vulnerable youth in highly formulaic language, more often than not utilising the term 'tender'.

Mary Wastnesse, for example, established in her original bill of complaint that she, her sister and youngest brother were vulnerable at the time of John Kirk becoming executor of their late father's will and thereby responsible for their financial future: '…William your oratrix and Sarah Wastnesse who were all infants of very tender age…'[89] In her own original bill of complaint, Isabell Chaster accused the defendants to her suit of '…taking advantage of your oratrixes yet very tender years…'[90] It appears that young, singlewomen would highlight their vulnerable position being of 'tender' years, in the hope of evoking

[88] TNA C5/572/9, Wade v. Wood, Original Bill of Complaint (21 June 1675).
[89] TNA C5/195/8, Wastnesse v. Kirk, Original Bill of Complaint (10 January 1693).
[90] TNA C5/82/33, Chaster v. Wheatley, Original Bill of Complaint (3 July 1691).

some of the other attributes of 'tender' in their favour – namely 'showing gentleness and concern or sympathy'.[91]

4.7 Conclusion

A detailed consideration of singlewomen in the later seventeenth-century Court of Chancery reveals a position of inherent conflict. On the one hand, the young, singlewoman in Chancery was in a vulnerable position. Under patriarchal control and with a notable lack of familial authority, she could easily fall victim to exploitation from older, male, perhaps more knowledgeable and experienced, individuals who could seek to gain at their expense. The Appleby sisters, for instance, in Appleby v. Gascoigne were subject to the will of their grandfather, their legal guardian, whilst simultaneously being named in suits against him by their biological father – each of these men attempting to retain control of the portion money that was due to them.

On the other hand, this position of vulnerability experienced by the singlewoman litigant in Chancery could also be used as something of a legal tactic. In Wastnesse v. Kirk, for example, Mary Wastnesse was able to use her position of an 'illeterate woeman' to demonstrate how she had been tricked and taken advantage of by the defendant Joseph Wood, and therefore explain why the release she may well have put her mark to should be considered null and void. Isabell Chaster highlighted how the defendants to her suit had endeavoured to take full advantage of her 'very tender years'. This position of vulnerability, then, could in fact be, and was utilised as, a tactic to stress the wrongdoing and inequity of the actions undertaken by those in a considerably stronger position of authority – for instance, being male or older.

It should be noted, however, that this idea of the 'vulnerability' of young litigants in Chancery was by no means limited to singlewomen. Mary Wastnesse, for instance, included her youngest brother William in her appraisal of herself, her

[91] *Oxford Dictionary Online*, 'Tender' [http://en.oxforddictionaries.com/definition/us/tender, last accessed 24 April 2017].

sister, and he as 'infants of very tender age'. Furthermore, in the case Coldcall v. Smithson, William Coldcall accuses the defendants to his suit taking advantage of his in his youth, him being 'an infant … and having noe body to take care of him'.[92] Men too used the position of vulnerability associated with youth to their own advantage.

Singlewomen are the named female litigants most likely to appear in Chancery with a co-litigant. This sheds light on a myriad of early-modern relationships. Male-female and female-female relationships of fatherhood or motherhood and guardianship, to sibling ties; kin based relationships (or kin emulating legal relationships, such as guardianships) form the foundation of singlewomen appearing in the Court of Chancery with co-litigants. From litigant parties as small as two – Isabell Chaster appearing with her widowed mother and then her guardian and aunt respectively – to far larger litigant parties – the single Tancred sisters forming a group of seven with their widowed mother in their initial pleadings – one often finds the singlewoman in Chancery acting in conjunction with others.

In some cases, these women acted with others because legally they had no other option. Young women, and men, under the age of 21 legally had to be accompanied by a parent or guardian who could represent them in their legal endeavours. If a young woman was under the age of 21, but married to a man of legal adulthood, then her rights would be represented by him, her master, under the legal doctrine of coverture. Young singlewomen were legally obliged, therefore, to appear in Chancery with a co-litigant – when acting as either a plaintiff or a defendant.

There were cases in which singlewomen appeared in the Court of Chancery accompanied by a co-litigant when this was not a legal requirement – their being over the age of 21 and therefore capable of exercising their independent rights as *femes sole* alone. These adult, singlewomen had good reason for appearing in

[92] Coldcall v. Smithson, Original Bill of Complaint, TNA C5/310/24 (1667-1672).

conjunction with named co-litigants, however. More often than not, these women appeared alongside co-plaintiffs or co-defendants who shared equal portions of the matter at hand. In Rank v. Johnson, for example, each of the Rank siblings were entitled to an equal share of their late father's estate.

In Colton v. Maltus, Christopher Maltus was named as a defendant due to his being husband, and therefore master, of the defendant Anne Maltus (née Sutton), Anne's sister Mary being named as a joint-defendant as she and Anne inherited the Yorkshire land in dispute as equal co-heirs to their late father Richard Sutton. If Anne had not married, the two sisters would be the only defendants, but still joint defendants nonetheless due to their shared ownership of the land, and their egalitarian working relationship; managing and taking rents and profits of the land together.

What is interesting here, is that Mary Sutton could have legally entered an answer to the bill of complaint brought against her, her sister and brother-in-law, separate to her co-defendants. Singlewomen did after all, as *femes sole*, have the right to act alone in the Court of Chancery once they reached the age of legal adulthood, as Mary Sutton had, as is indicated by her appearance without an appointed guardian. It would seem, however, that those singlewomen who could appear in conjunction with co-litigants chose to do so. Mary Sutton had little to gain from acting independently in the suit brought against her and her family, especially considering the close relationship (familial and working) that the legal material indicates she enjoyed with her sister successfully.

Not all singlewomen were in this somewhat fortunate position of having kin support in their legal endeavours, however. In Wastnesse v. Kirk, the support Mary Wastnesse may have had in her sister – being entitled to a portion of their late father's estate equal to her own – was tarnished by her suspected collusion with the defendant John Kirk. Mary Wastnesse's older brothers had separate, specific legacies bequeathed to them in the last will of testament of their father, and so were financially and legally unaffected by their younger sister's plight – hence their lack of involvement in her suit before the Lord Chancellor in

Chancery. In Wade v. Wood, Mary Wade was unable to name her sister as a co-plaintiff, Grace being under the age of 21 and Mary not being her legal guardian. Mary Wastnesse and Mary Wade, therefore, had no one they could turn to who could join them in co-litigation, being over the age of 21 and therefore not requiring a guardian and having no one else who shared their problem, or could be realistically named as a litigant of their own free will.

Whilst it is true that a number of singlewomen who appeared in Chancery had to do so with a co-litigant acting as a representative, even those singlewomen who could exercise their *femes sole* rights independently chose to act with co-litigants wherever possible. If a would-be litigant enjoyed or was entitled to equal shares of something (money or land, for instance) with another individual, and a good relationship with that person, they invariably appeared and acted together as joint-litigants. Those singlewomen who acted alone cited – though perhaps indirectly – some reasoning behind their independent actions (for instance, their sister colluding against them), or named the individual who would be their co-litigant if the law allowed (their being under age, for example).

This is likely because the reality was that singlewomen, especially those of tender years, were vulnerable. Whilst this position of vulnerability was utilised to the advantage of the singlewoman in Chancery from time-to-time, it was only able to be successfully used because it was plausible. It was not hard for the Lord Chancellor to believe that a young singlewoman was being taken advantage of. With the support of a well-meaning guardian, or siblings that held equal shares in the matter at hand – with just as much to gain, or just as much to lose – the vulnerability of the singlewoman in Chancery was, somewhat, minimised. According to *Baron and Feme*, however, even infants were not so disabled at early-modern law as the married woman subject to coverture.

5. To Have and To Hold: The Married Woman, Coverture and Possession in the Court of Chancery

Law of Nature hath put her under the Obedience of her Husband, and hath submitted her Will to his, which the Law follows…[1]

5.1 Historiographical Context

The one aspect of the early-modern woman's life that highlights most starkly the gap between prescriptive ideals and everyday reality is, perhaps, that of becoming and living as a wife. Discussion of the issue of coverture has now long been part of the historiography surrounding the lives of early-modern women. Once a woman was married, she automatically became *feme covert* and therefore subject to the marital doctrine of coverture. Deriving from the Old French *couverture* meaning 'covering', coverture dictated, in the strictest sense, that a married woman had no identity of her own at law.[2] Once married, a man and a woman became effectively one person, and their joint, marital identity was that of the husband. Tim Stretton tells us that once a woman became a wife the doctrine of coverture removed from her 'her very legal entity'.[3] According to a much-cited treatise, *Baron and Feme*, a married woman was even weaker at law than an infant: 'A Feme Covert in our Books is often compared to an Infant, both being persons disabled in the Law, but they differ very much; an Infant is capable of doing any Act for his own Advantage; so is not a *Feme Covert*.'[4]

A married woman could not enter contract, could neither assert nor defend herself in court without the express permission of her husband, and had no right

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[1] Anon, *Baron and Feme: A Treatise of Law and Equity concerning Husbands and Wives* (London: Printed by the assigns of Richard and Edward Atkyns Esquires, for John Walthoe, and are to be sold at his shop in Vine Court, Middle Temple, 1700), p. 3/32 [accessed via *Early English Books Online* (EEBO), http://eebo.chadwyck.com/home].
[2] Natasha Korda, 'Coverture and its Discontents: Legal Fictions on and off the Early Modern English Stage' in *Married Women and the Law: Coverture in England and the Common Law World* (Montreal and Kingston, London: McGill-Queen's University Press, 2013), Eds. Tim Stretton and Krista J Kesselring, p. 48.
[3] Stretton, *Women Waging Law*, p. 22.
[4] Anon, *Baron and Feme*, p. 4.

to legal protection against her husband except in the most dire and extreme of circumstances. She could not independently inherit legacies, was unable to make a will, had no property that was legally her own – any moveable chattels she brought into her marriage went straight into the hands of her husband (though could be retrieved should she survive him and become a widow). So extreme were the limitations on a married woman's right to own property that technically, legally, she could never be in receipt of a gift, not even from her own husband.[5] In becoming a wife, a woman was giving up far more than her surname; she was completely altering her social, financial and legal identity.[6]

Despite the law clearly dictating what we today see as highly excessive and misogynistic restrictions upon the rights of married women, giving husbands 'power over the rights, property and bodies' of their wives, Erickson defines coverture as a common law fiction.[7] Writing in the 1980s, Cioni observed that 'married women … suffered from the fiction that they could have no proprietary rights'.[8] This commentary discussing the doctrine of coverture as, on some level, fictitious has since been developed and continued into far more recent scholarship. Natasha Korda, for example, asserts that whilst coverture was real in its restricting influence on the lives of early-modern married women, it was still based in a legal fiction – 'that of marital unity of person'. The law made it seem that once married the woman was completely subsumed by her husband, 'covered' by him and all the rights he retained. Whilst the doctrine of coverture was somewhat temporary - for if a wife survived her husband she regained her

[5] Stretton, *Women Waging Law*, pp. 22-23; Amy Louise Erickson, 'Common Law Versus Common Practice: The Use of Marriage Settlements in Early Modern England', *The Economic History Review*, New Series, Vol. 43, No. 1 (February, 1990), p. 24.
[6] Gowing, *Domestic Dangers*, p. 7.
[7] Stretton, *Women Waging Law*, p. 23; 'Coverture: the common law fiction that a husband and wife were one person and that one was the husband; she being figuratively covered by him, she had no independent legal identity at common law for purposes of civil, and to some extent criminal, suits' (Erickson, *Women and Property*, p. 237).
[8] Cioni, 'The Elizabethan Chancery', p. 159.

feme sole status and legal right to property upon entering widowhood - it was pervasive.[9]

The realities of everyday family life, however, made the strictest of doctrinal limitations authorised by the practice of coverture unrealistic and infeasible. It is accepted that women were, for example, active in their local communities – regardless of their marital status. Margot Finn, for instance, has published on the involvement of women in commerce over the early modern and Victorian eras. She outlines three overlapping practices through which married women were able to operate as consumers and 'evade the strictures of coverture': the ability and readiness of the wife to pledge her husband's credit in order to buy goods, the use of this tactic to garner a level of independence, and her 'active participation in the deliberations of a variety of small claims courts'.[10] Married women had to buy necessary goods over the course of their daily lives in order to fulfil their obligations to the home, their sphere of domesticity, as wife and mother. This meant exercising a degree of financial autonomy, operating within the credit based system of early-modern England.

Bernard Capp puts forward another key point relevant here, that amongst poorer families in pre-modern England, tension commonly arose when a wife required all the earnings her husband made for the most basic necessities of the family, leaving him with nothing to drink away in the alehouses. Those men who held back some of their earnings from their wives for the sake of personal enjoyment may well have been successful in avoiding confrontation and conflict, but left 'their wives literally unable to feed their families'. In situations as dire as these, a desperate wife would take it upon herself to bring in the extra money needed for her family to survive. Married women could, and did, work, either at home or out in their community at the local market, as street vendors, or in the alehouse itself – the hub of so many familial problems.[11]

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[9] Korda, 'Coverture and Its Discontents', pp. 45-46.
[10] Margot Finn, 'Women, Consumption and Coverture in England, c.1760-1860', *The Historical Journal*, Vol. 39, No. 3 (September, 1996), p. 703.
[11] Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003), p. 79.

However, Capp rightly highlights the fact that although women could earn additional money even when married, that which they earned was not technically their own. A wife's ability to retain control over the money she brought home was just as important as her ability to earn it in the first place. Those women working from home had a much harder time concealing exactly what she earned through her personal industry from their husbands. Women out in the community 'had greater opportunities to conceal earnings and spend them at their own discretion'. A shrewd wife would generally keep her money safely about her physical person, 'or locked away'. Not only, then, were married women capable of earning money when unfortunate circumstance forced them to for the sake of their families, but they made effort to keep their earnings to themselves and in their own personal possession. Capp's research 'suggests that many women regarded their savings or earnings as their own'.[12]

Korda's analysis raises questions here: '[d]id wives simply stop thinking of their property as their own during marriage?'[13] Blackstone commented that 'the very being and existence of the woman is suspended during coverture … entirely merged and incorporated in that of the husband' – but did women see it this way?[14] The transition from singlewoman to wife did indeed mean far more for a woman than losing her familial surname, but simply because the law and doctrine dictated that women upon marriage lost all proprietary rights does not mean that the new wives automatically saw themselves as without property. Recent research has discovered numerous instances of married women behaving in a manner that is indicative of a mentality that contradicts the strict rigour of coverture. For example, there exists anecdotal evidence of women inscribing personal property with an identify signature or mark prior to marriage to signify personal ownership.[15] Possessions that were considered to be notably 'feminine' often have such marks. James Daybell articulated in his consideration of early-

[12] Capp, *When Gossips Meet*, p. 79 and p. 91.
[13] Korda, 'Coverture and Its Discontents', p. 46.
[14] William Blackstone, *Commentaries on the Laws of England* (1766, reprinted 1992), p. 433.
[15] Korda, 'Coverture and Its Discontents', p. 47.

modern letters how signatures, whether signed in full, abbreviated or even just initials, 'acted as a textual representation of an individual's identity'.[16]

Recipe books are often beautiful examples of this practice of signing one's own name upon a physical object as a means of signifying ownership. Elizabeth Freke's own recipe book opens with a subscription of ownership and date that proves she owned the book after being married: 'Elizabeth Frek, her book, Given mee by my Cosin, Sep: 1684'.[17] The doctrine of coverture certainly did not stop Freke from regarding her recipe book as very much her own personal property, 'her book', nor did it prevent her from receiving and accepting gifts, in this case from her 'Cosin'. This example, and the point it makes, can be readily consolidated by many more recipe books owned by women, a notable example being the book belonging to Elizabeth Fowler.

Elizabeth Fowler inscribed her named in the opening pages of her recipe book in ink, and with such intricacy and care that the page is really something to behold. The letters are intricately detailed, and the whole remainder of the page is embellished with sweeping, swirling lines for added decoration. Not only is Elizabeth Fowler's inscription of ownership stunning, but the sheer size of it is remarkable. Fowler ensured that an entire page was dedicated exclusively to her assertion of ownership – it was that important to her (see Fig. 19).[18]

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[16] James Daybell, *The Material Letter in Early Modern England: Manuscript Letters and the Culture and Practices of Letter-Writing, 1512-1635* (London: Palgrave Macmillan, 2012), p. 95.
[17] Elizabeth Freke 'Receipt Book' (September 1684-February 1714), BL, Add. MS 45718, p. 2 [accessed via *Perdita*]; Barbara J Todd, 'Freke, Elizabeth (1642-1714)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004, online edn, January 2008 [http://www.oxforddnb.com/view/article/48931, last accessed 15 August 2016]; Charlotte Garside, 'Feminine Bonds in Early Modern England: Relationships of Friendship and Kin between Women, 1650-1750', unpublished MA thesis (University of Hull: September, 2014), p. 34.
[18] Garside, 'Feminine Bonds', pp. 34-38; Elizabeth Fowler 'Cookery Book also containing receipts, sermons, a hymn and a poem' (1684), Perdita MS V.a.468, p. 2.

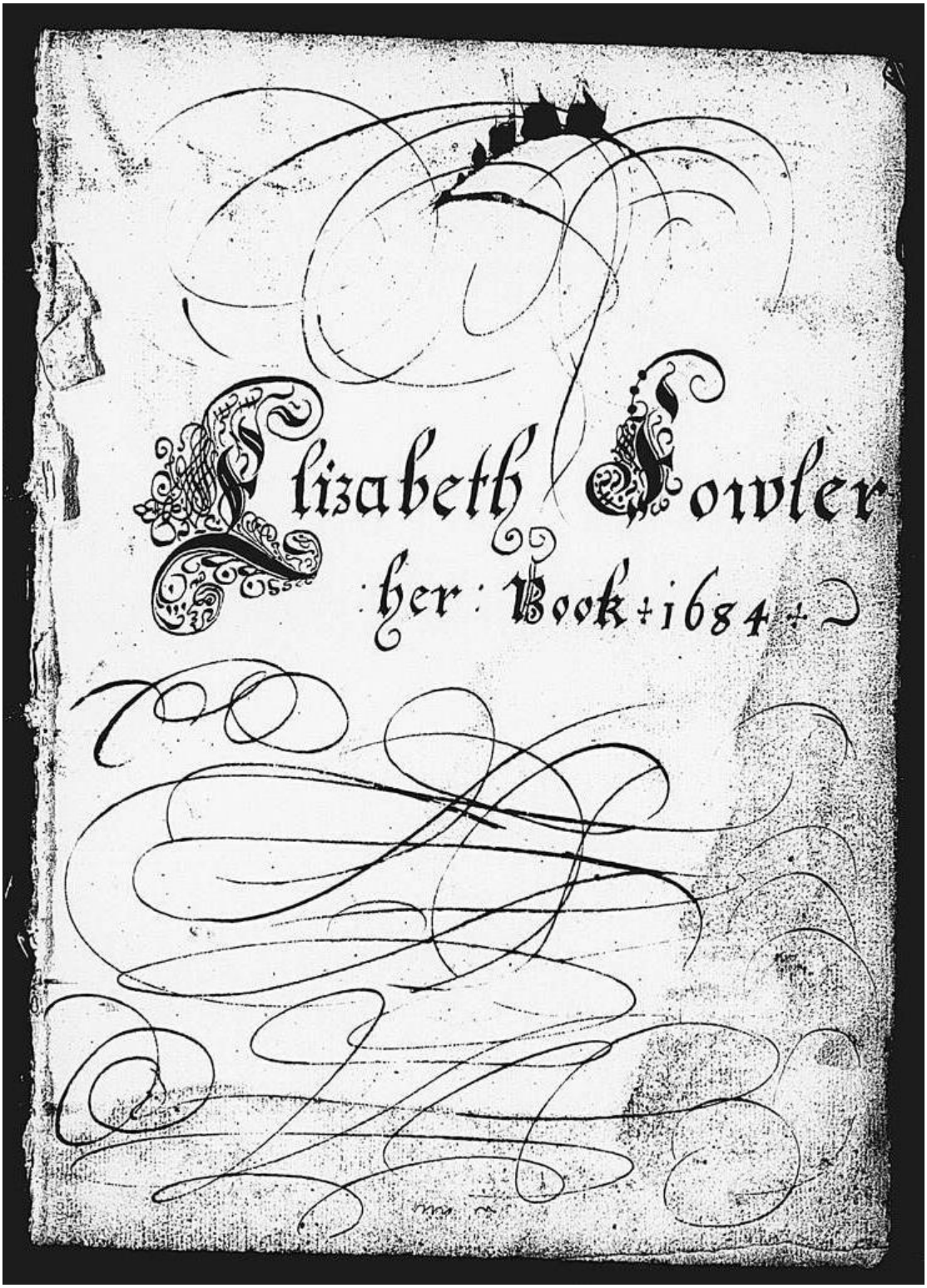

Fig. 19
Elizabeth Fowler, 'Cookery Book also containing medical receipts, sermons, a hymn and a poem' (1684), Perdita MS V.a.468, p. 2.

The issue of possession is significant here. Elizabeth Freke is used as an example by Amy Erickson to illustrate the complicated relationship between physical and legal possession of property. Freke received a gift of money from her father. Whilst she enjoyed the physical possession of the cash she could not resist writing to her estranged husband to taunt him with it. So long as he was away, and unable to take the money from her physically, it was, for all intents and purposes, her own. When, however, her husband returned she was legally unable to keep any of the money for herself and out of the hands of her husband (however much she may have wanted to), due to the constraining influence of coverture. Being unable to receive a gift personally and having no rights to property at law, everything she had was not in fact her own but belonged to her husband.[19]

The example of Elizabeth Freke reveals the way in which physical possession of property could make up nine-tenths of the law, with legal entitlement being the remaining one-tenth.[20] If a married woman enjoyed physical possession of an item or sum of money, and, by means of deception or distance, consciously kept it from her spouse (as Elizabeth Freke attempted to do), she was for all practical and effective purposes the owner of whatever she had in her possession. This is how it has been argued that women knew they were legally subject to coverture, yet still regarded themselves as entitled to property rights and as property owners. Nevertheless, at law Elizabeth Freke was like every other married woman in early-modern England in the sense that wives 'had no legal protection if the husband simply insisted on his rights'.[21] Upon seeing her husband again, Elizabeth Freke was unable to keep the money from him, forced to surrender her physical possession of the money.[22]

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[19] Amy Louise Erickson, 'Possession – and the Other One-Tenth of the Law: Assessing Women's Ownership and Economic Roles in Early Modern England', *Women's History Review*, Vol. 16, No. 3 (2007), pp. 396-370.
[20] Erickson, 'Possession – and the Other One-Tenth of the Law', p. 380.
[21] Capp, *When Gossips Meet,* p. 91.
[22] Erickson, 'Possession – and the Other One-Tenth of the Law', p. 370.

Much of the evidence that survives from early-modern England detailing marital disputes centres around the issue of women owning property as wives. Margaret Hunt found examples of men threatening and using violence against wives who, at least initially, refused to allow them access to money or property protected in their named by trust, and Gowing found that many spousal clashes occurred when wives claimed property as their own and physically kept it away from their husbands. These conflicts between man and wife were clearly far from rare, and disagreements were often the cause of serious marital strife. Women could, and did, defy the doctrine of coverture, whether by labelling material items as their own, keeping things locked up and far away from the hands of their husbands, or by utilising marriage settlements and trusts for separate estate to preserve their rights to property during marriage, and these acts of wilful defiance were often met with anger and frustration.[23]

As Garthine Walker commented in the early 1990s, then, 'the social realities of gender are often obscured by legal formulations'.[24] The doctrine of coverture would have us believe that married women in early-modern England had no independence or autonomy whatsoever. Yet we know that women had degrees of financial independence in order to run their households. We know they regarded certain types of property, typically that which they brought into the marriage or was popularly seen as feminine, as their own. We know that women, and their families, sought ways to circumvent coverture, and this legal culture of constraint' in order to protect the separate estate of married women, or, alternatively, that which they brought to the marriage so that they may enjoy it independently should they enter widowhood at a later date.[25] Marriage and coverture, then, and the legal and practical position of the married woman in

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[23] Korda, 'Coverture and Its Discontents', p. 48.
[24] Garthine Walker, 'Women, Theft and the World of Stolen Goods' in *Women, Crime and the Courts in Early Modern England* (London: UCL Press, 1994), Eds. Jenny Kermode and Garthine Walker, p. 83.
[25] Alexandra Shepard, 'The Worth of Married Women in the English Church Courts, c.1550-1730', in *Married Women and the Law in Premodern Northwest Europe*, Eds. Cordelia Beattie and Matthew Frank Stevens (Woodbridge: The Boydell Press, 2013), p. 192.

pre-modern England, was unclear: 'that united state of man and wife; whereof two persons become but one, *which still are two*'.[26]

As late as 2013, Cordelia Beattie and Matthew Frank Stevens commented that there has been 'a tendency in the historiography on women and the law to see married women as hidden from view, obscured by their husbands in the legal records'.[27] The creation of their joint edited collection was inspired, in part, with how this historiographical dialogue diverted from their own experiences of reading married women in medieval legal material. Certainly in late seventeenth-century Chancery, married women were present and although invariably accompanied by their husbands they were highly visible and clearly active participants in the legal proceedings.

5.2 The Husband and Wife in Chancery

The Court of Chancery certainly played a role in the early-modern woman's defiance of the legal doctrine of coverture. Married women were, according to Erickson, legally entitled to bring suit before the Lord Chancellor in Chancery without their husbands. She found that whilst it was 'clearly prudent' for married women to sue in conjunction with their husbands, 'it was not mandatory'.[28] This research project, however, takes issue with this assertion that married women were able to act independently of their husbands in the court. I believe that the doctrine of coverture extended into early-modern Chancery more completely than Erickson allowed for in her study of the court.

First of all, the married women that we do find litigating without their spouse named as a co-litigant in the seventeenth century appear by *prochein ami*, or 'next friend' – a selected person appearing either with or for them – and

[26] Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), p. 203.
[27] Cordelia Beattie and Matthew Frank Stevens, 'Introduction: Uncovering Married Women', in *Married Women and the Law in Premodern Northwest Europe*, Eds. Cordelia Beattie and Matthew Frank Stevens (Woodbridge: The Boydell Press, 2013), p. 1.
[28] Erickson, *Women and Property*, p. 115.

therefore they were not technically litigating independently. Jacob's Law Dictionary informs us that *prochein ami* 'Is used in Law for him that is the *next friend*, or next of Kin to a Child in his Nonage, and in that Respect is allowed to deal for the Infant in the Management of his Affairs'.[29] Despite this definition referring solely to infants at law, married women appear to have acted via a designated *prochein ami* in lieu of their spouse when necessity dictated, and it is true that women could be both married and legally an infant simultaneously.

This hypothesis is supported by Korda, who tells us that '[b]eginning in the 1590s, petitions were increasingly exhibited to Chancery by married women and their agents seeking to enforce the terms of legal instruments' such as separate estate.[30] By 'agents', it is assumed Korda is referring to *prochein ami* here, highlighting the fact that married women would not litigate in the early-modern Court of Chancery as wholly independent persons with their own legal identities.

In order to find some examples of this type of litigious behaviour, I was forced to venture outside the realms of my research sample (both the qualitative and the larger quantitative samples). Dorothy Frayne, wife of Richard Frayne, litigated against her husband Richard, amongst others, 'by Walter Lloyd merchant, of London, her next friend'. This case pertains to three parcels of land Dorothy Frayne inherited from her late mother, Jane Whitehouse. She is forced to sue her husband regarding the same due to rivalling rights that needed to be adjudicated.[31]

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[29] Giles Jacob, *A New Law-Dictionary: Containing, the Interpretation and Definition of Words and Terms used in the Law, And also the Whole Law and the Practice thereof, Under all the Heads and Titles of the same* (London, In the Savoy: Printed by E and R Nutt, and R Gosling (Assigns of E Sayer, Esq.), 1739), p. 601 [https://archive.org/details/newlawdictionar00jacouoft, last accessed 21 September 2017].
[30] Korda, 'Coverture and Its Discontents', p. 47.
[31] TNA C6/413/62, Frayne v. Slacke (1699); TNA C9/430/46, Frayne v. Whitehouse (1698); Special thanks to Amanda Bevan for her assistance in locating this suit.

Secondly, as previously alluded to, my quantitative research revealed no married women named as plaintiffs acting alone as a sole female plaintiff (SFP), without their husbands. Whilst it is true that not all the named female plaintiffs who entered a bill of complaint into Chancery in conjunction with a male co-plaintiff (MFJP) were married, it is simultaneously the case that every named female plaintiff who was recorded as being married at the time of her bringing suit into Chancery, did so in conjunction with a named male co-plaintiff; her husband (see Fig. 8). In other words, those named female plaintiffs who did have husbands invariably acted alongside them. The same is true of named female defendants recorded as being married at the time of their being brought before the Lord Chancellor to answer a plea entered against them. Whilst not every individual named female defendant who litigated alongside a named male co-defendant (MFJD) was married, 100 per cent of those female defendants who were recorded as being married were named as co-defendants with their husband (see Fig. 9).

Within the research sample created by Erickson for her work on marriage settlements in the Court of Chancery, she located one example of a married woman acting alone as a sole female plaintiff (SFP), without her husband. However, other than the line '[o]nly one woman sued as a wife on her own', Erickson reveals nothing about the case she found.[32] A focused Discovery search across all Chancery archival series revealed only four cases that appear to be married women acting alone at catalogue level: Mason v. Swyfte, Platt v. Blagge, Saintclere v. Ford and Yonge v. Egleston.[33] However, as previously mentioned, the cataloguing of Chancery cases conducted over the course of the nineteenth century (which is what is digitised and now searchable online via Discovery) is far from perfect, so these cases may well turn out to be 'next friend' cases as well.

[32] Erickson, *Women and Property*, p. 115.
[33] TNA C3/125/37, Mason v. Swyfte (1558-1579); TNA C2/Eliz/P1/13, Platt v. Blagge (1558-1603); TNA C2/Eliz/S19/61, Saintclere v. Ford (1558-1603); TNA C2/Eliz/Y2/9, Yonge v. Egleston (1558-1603); Special thanks to Amanda Bevan for her assistance in locating these suits.

The presence of the married woman plaintiff in the Court of Chancery, it has to be said, presents a rather confusing picture. In terms of marital status, the wife in Chancery makes up the single largest category of named female litigants acting as plaintiffs, making up just under half, at 46 per cent, in total. Although this means that the *feme sole* plaintiff is, overall, a more common occurrence in Chancery – singlewomen and widows together making up 54 per cent of named female litigants – the *single* most common way for a woman to bring suit before the Lord Chancellor in Chancery was as a wife, and therefore, most likely, in conjunction with her husband (see Fig. 7). The same is again true when we look at named female defendants: 46 per cent of the women who appeared in the Court of Chancery as a named female defendant were recorded as wives (see Fig. 10). In other words, whatever way one looks at the figures, the married woman made up the largest single category of named female litigants acting in the later seventeenth-century Court of Chancery overall, when analysing marital status (see Fig. 20).

Further confusion arises when one attempts to analyse the prevalence of the wife in the later seventeenth-century Court of Chancery alongside what is known about the early-modern doctrine of coverture and married women's rights and attitudes towards property. We know that women routinely acted outside the restrictive strictures of coverture, defying the legal limitations placed on their rights to property. Chancery in particular upheld what rights women did have, supporting the separate estate trust fully: 'Chancery's jurisprudence inscribed a married woman's property rights into legal precedent, and, ultimately, ascribed individual identity to the married woman'.[34] However, if Erickson is correct in her hypothesis that '[a]t common law, a married woman had to sue jointly with her husband, and it was clearly prudent to do so in Chancery too, although it was not mandatory', then why did married women not seize this opportunity?[35]

[34] Allison Anna Tait, 'The Beginning of the End of Coverture: A Reappraisal of the Married Woman's Separate Estate', *Yale Journal of Law and Feminisim*, Vol. 26, No. 2 (2014), p. 165.
[35] Erickson, *Women and Property*, p. 115.

When presented with the chance to act outside the restraints of coverture yet within the parameters of the law, why would the married woman not do so?

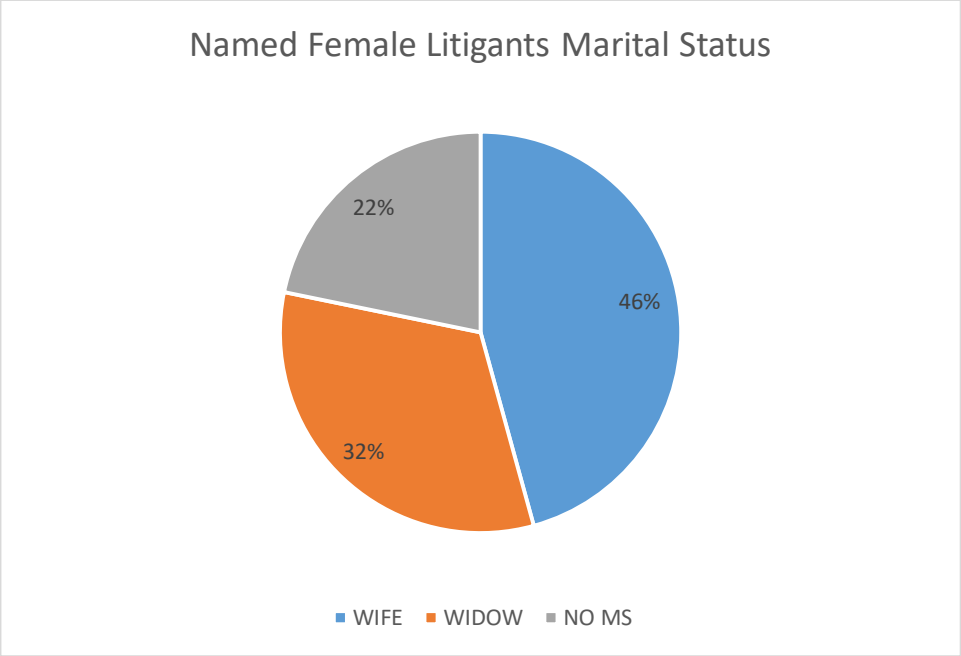

Fig. 20
The marital status of all named female litigants in the Court of Chancery, (plaintiffs and defendants)

Furthermore, in the strictest sense of coverture a married man was under no obligation to named his wife in his proceedings at law. If the ideas of coverture, that once wed man and wife assumed but one legal identity – 'the notion of an unity of person between the husband and wife' – which was that of the husband, then why, one may ask, did men so often name their wives as a co-defendant?[36] Surely, under the strictest understanding of the legal doctrine of coverture, this would compute as a husband bringing a person who is legally himself, or a part of himself, as his co-litigant into the matter, making it unnecessary.

This is not to suggest that married men always brought their wives with them into their legal battles in Chancery. Over half of the 1,556 cases within the quantitative research sample did not involve any named female litigants at all (at least at catalogue level): 56 per cent. This in turn means that 74 per cent of the cases within the sample have no named female plaintiff attached to them, and 75

[36] Blackstone, *Commentaries on the Laws of England*, p. 433.

per cent of the cases have no named female defendant attached to them. Those cases involving exclusively male litigants will have involved a great number of married men, one assumes, acting without naming their wives, or the wives of their adversaries, in formal legal proceedings as a co-litigant, either acting alone or in conjunction with other men. Unfortunately, it is not possible at this juncture to perform a quantitative analysis comparing how many men came to Chancery alone despite having a living wife with how many men came to Chancery in conjunction with their wife. To do so would require the reading of all of the 1,556 cases within the quantitative sample.

It is likely, however, that when a husband and wife litigated together in the late seventeenth-century Chancery, they did so because they were protecting her legal rights that were devolved unto him by the legal doctrine of coverture. A good example of this can be found in Colton v. Maltus. In this suit, there are in fact married women on both sides of the argument, with William Colton and his wife Elizabeth Colton as plaintiffs bringing suit against Christopher Maltus, Anne Maltus (née Sutton) his wife, and Mary Sutton, the sister of Anne. The Coltons claim in their original bill of complaint that the late Richard Sutton, father to defendants Anne and Mary, left a legacy in his will to which they were entitled. They claimed that the defendants had already paid some of the legacies stipulated in the last will and testament of Richard Sutton, but not those owing to the plaintiffs:

> … they very well know … and have pursuant to the said will payed and satisfyed the legacy of forty pounds bequeathed by the said Richard Sutton by his said will unto Thomas Sutton for ye use of his children and the legacy to Elizabeth daughter of Thomas Baines and the said legacyes demanded by yor said orators respectively are equally due and payable to yor said orators…[37]

What is interesting is that the Coltons were due a legacy from the will of Richard Sutton entirely through women. Elizabeth Colton was daughter of Jane Nottingham (née Sutton) who was sister to Richard Sutton, the named recipient

[37] TNA C5/463/76, Colton v. Maltus, Original Bill of Complaint (20 February 1679).

of his bequest.[38] As seen in the quotation above, the orators claimed that the defendants had already paid the bequest due to the children of Richard Sutton's brother Thomas, and therefore they should pay the child of his sister Jane, the oratrix Elizabeth Colton (née Nottingham), as per the will, too.

William and Elizabeth Colton claimed that, as the only children of Richard Sutton, Anne Maltus and Mary Sutton were co-heirs to his estate. After the death of her father, Anne married Christopher Maltus, and the newly married couple along with the still single Mary Sutton took possesson of the land from which the legacy for the Coltons was to be taken. The orators further claimed that they requested the payment of the legacy due to them when both the Sutton sisters were singlewomen, and again once Anne became a wife: 'yor orators have … often requested the payment thereof from the said Mary and Anne whilst they were both sole and unmarryed and since the marriage of ye said Anne'.[39]

The Coltons asserted that together Christopher Maltus, Anne Maltus, and Mary Sutton were confederates, refusing to pay the legacy they owed from the land they possessed. They pretended, according to the plaintiffs, that Richard Sutton had never made such a will and that 'if he did … he gave no such legacyes or if he did yt … the same were not changed upon his lands'.[40] Anne and Mary, however, had a different version of events, which they put forth in their joint and several answers.

Sisters Anne and Mary entered a joint answer, along with Anne's husband Christopher Maltus, in May of the same year the original bill of complaint was entered into Chancery. In their joint answer, the defendants claimed that Anne was just two years old when Richard Sutton died and Mary had not yet been born. Their mother, also named Anne, was made executrix to Richard Sutton and entrusted the money owed, as stipulated by the will of her late husband, to one

[38] TNA PROB 11/277/602, Will of Richard Sutton (30 June 1658).
[39] TNA C5/463/76, Colton v. Maltus, Original Bill of Complaint (20 February 1679).
[40] TNA C5/463/76, Colton v. Maltus, Original Bill of Complaint (20 February 1679).

Francis Calvert. Francis Calverty, 'the pson impowered and intrusted', was charged by Anne Sutton (the elder) to deliver all of the legacies created by Richard Sutton, a task which these defendants had been led to understand he had faithfully executed: 'they believe and doubt not … that the said Francis Calvert hath satisfyed the said complainants their said severall legacyes'.[41]

Finally, the sisters addressed the charge of pretence brought against them in the bill of complaint:

> … these defendants denye that they alledge or make any such pretences as in the said Bill is falsely suggested but confesse they are the daughters and coheirs of Richard Sutton and doe enjoy his said lands and tenements as coheirs of the said Richard Sutton …[42]

What is most interesting about this particular joint answer entered into Chancery is the dominance of Anne and Mary as defendants. Christopher Maltus is named as a defendant, his name appearing in the header of the document before Anne and Mary's, making him officially the first named plaintiff, yet he does not feature in the main body of the answer at all. The answer is written entirely from the perspective of the sisters as the actual problems raised in the suit involve them most directly. They were the coheirs of Richard Sutton, they knew what actions their mother took as executrix to their father and it was they who got to 'enjoy his said lands'. The answer is brimming with information on how the Sutton sisters answer, '[a]nd these defendants Anne and Mary further say that…', without any input from or even reference to their named male co-defendant Christopher.[43]

It is clear that Anne Maltus (married, and therefore subject to coverture) and Mary Sutton were the true defendants to this suit. The case was about them, their natal family, and the will of their late father. They were the equal coheirs to

[41] TNA C5/463/76, Colton v. Maltus, The Joint and Severall Answers of Christopher Malthus and Anne his wife and Mary Sutton (27 May 1679).
[42] TNA C5/463/76, Colton v. Maltus, The Joint and Severall Answers of Christopher Malthus and Anne his wife and Mary Sutton (27 May 1679).
[43] TNA C5/463/76, Colton v. Maltus, The Joint and Severall Answers of Christopher Malthus and Anne his wife and Mary Sutton (27 May 1679).

the land in question, in receipt of the rents and profits thereof, and it was they who possessed the familial knowledge required to refute the charges laid at their door. Why, then, was Christopher Maltus named as a defendant at all? Considering the lack of involvement of Christopher, and the fact that it was his wife Anne and her sister Mary who were the only defendants of consequence, if wives could act independently in Chancery, why were Anne and Mary not brought into the court alone?

Christopher Maltus was named as the lead plaintiff to this case, despite his lack of knowledge and involvement, because his position as husband gave him ultimate authority in the matter. Due to coverture, the rights, legal identity, and property of his wife had technically become vested in him at law. Anne Maltus, however, was named in the bill as a defendant, despite her legal identity supposedly being subsumed by that of her husband's, because it was she and her sister who knew the necessary detail about the land and matter at hand to deal with the case brought against them as a family. William and Elizabeth Colton entered their bill of complaint against the Coltons and Mary Sutton together, because it was through Elizabeth that they had a claim to money to be taken out of the lands inherited by the Sutton sisters when they were both singlewomen.

This evidence supports the hypothesis that husbands and wives acted together in Chancery when attempting to enforce or protect the rights of the wife that were legally vested in her husband via the doctrine of coverture. When men litigated without their wives, it was generally because the rights of their wives were not involved. Had William Colton been left a bequest by Richard Sutton in his own right and name, then he would not have brought his wife Elizabeth into proceedings as his named co-plaintiff. Since the bequest was to descend to him through Elizabeth, however, she being the beneficiary of the bequest of the late Richard Sutton, he named his wife as his co-plaintiff.

I would suggest that the presence of the wife in the later seventeenth-century English Court of Chancery presents the opportunity to look at the lived and legal experiences of the early-modern married woman anew – in light of the evidence

this court offers. Whilst, up until now, early-modern women's historians have understood coverture as a 'legal fiction', I would argue that whilst there are elements of this term that ring true, it is worth testing the term further, in light of what new evidence Chancery provides. First, I shall analyse the use of the term 'legal fiction', then consider the 'fictions' and 'realities' of the doctrine of coverture in women's legal lives as well as their everyday lived, social lives.

5.3 Coverture: A Legal Fiction?

First and foremost, there needs to be some clarity regarding the now accepted term 'legal fiction' – not just in relation to coverture, but more generally. The Oxford Dictionary defines a 'Legal Fiction' as 'an assertion that is accepted as true for legal purposes, even though it may be untrue or unproven'.[44] When discussing coverture, it is then, in part, accurate to utilise the term 'legal fiction' as it denotes a feature of life in early-modern England that for matters of the law was seen as true – the law often upheld the concept of married women having no individual legal identity – but was not in fact an everyday reality; women acted, saw themselves, and were seen as property holders and owners.

This chimes with the legal fictions used in the Elizabethan Court of Requests, as investigated by Tim Stretton. Would-be litigants to that particular court would claim poverty in order to pursue a suit there, despite the fact that many were in fact financially comfortable – Stretton noting the 'hollowness' of their cries.[45] Whilst in reality a litigant could be enjoying financial security, in law at the Court of Requests it was upheld that they were impoverished and therefore in need of aid – a fiction that was legal and, more significantly, recognised as fact at law.

But there is the need for further nuance here too. The historiography surrounding coverture reveals the dangers of a very literal, and therefore an

[44] *Oxford Dictionary Online*, 'Legal Fiction' [http://www.oxforddictionaries.com/definition/legal_fiction, last accessed 2 January 2017].
[45] Stretton, *Women Waging Law*, p. 180.

'inappropriate interpretation of the doctrine'.[46] In practice, the effects and reality of coverture was varied, and this extends to its use and understanding at law. As Garthine Walker highlights, 'the extent to which married women's legal existence was subsumed into and negated by that if their husbands … has frequently been exaggerated'.[47] Walker argues that 'common law did not wholly deny married women a legal identity of their own', but that they were held accountable at law as an individual in matters pertaining not only to criminal prosecution, but also with regard to property ownership, 'with which coverture was largely concerned'.[48] It is established that coverture did not extend to serious crimes, such as murder.[49] Walker demonstrates that, in fact, coverture only applied at law to the degree that a husband was accountable for the actions of his wife in specific circumstances. For example, if a married woman was found guilty of committing a theft, she was not protected by coverture even if she only stole as a result of the instruction or threat of her husband.[50]

It is crucial, therefore, that the historian avoids a literal understanding of 'legal fiction', as well as 'coverture'. There are nuances in the legal application of coverture, as well as in the everyday lived reality of the doctrine. In the Court of Requests, claiming poverty whilst actually enjoying financial security was a fairly blatant lie, a fiction, taken as true for the sake of procedure. Coverture and how it was understood across the courts and jurisdictions of England, on the other hand, was far more complicated. It was a doctrine that was legal, and upheld at law, but was limited. Married women were still treated in certain situations as being possessed of an individual legal identity and autonomy. Coverture was, furthermore, pervasive enough to impact the everyday lived reality of married women, yet did not prevent them from engaging in activities outside of the strictest confines of the doctrine, as the following analysis shall demonstrate.

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[46] Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), p. 76.
[47] Garthine Walker, 'Keeping It In The Family: Crime and the Early Modern Household' in *The Family in Early Modern England*, Eds. Helen Berry and Elizabeth Foyster (Cambridge: Cambridge University Press, 2007), pp. 71-72.
[48] Walker, 'Keeping It In The Family', p. 72.
[49] Walker, *Crime, Gender and Social Order*, p. 147.
[50] Walker, 'Keeping It In The Family', pp. 72-73.

In the case Appleby v. Gascoigne, there is material relating to women's interaction with property and the lived experience of coverture. One finds evidence of Helen Appleby (née Gascoigne) attempting to defy the binds of coverture. In a replication to a bill of complaint, Thomas Appleby – Helen's late husband – claimed that his late spouse had, in her lifetime, taken into her possession and gave to her father, Sir Thomas Gascoigne, 'much plate, rings and jewels to the value of two hundred pounds or thereabouts'. Appleby claimed that his wife Helen had given her father, his father-in-law, valuable chattels from their marital home 'for the use of her daughters Mary Appleby and Helen Appleby', but that nevertheless those items were legally his property. Helen had no legal right to give away any material items that were not, at law, her own property and therefore 'the plate rings and jewels so entrusted unto the said Sir Thomas hands should … come to this replicant and his assigns'.[51] As with the anecdote Erickson related about Elizabeth Freke – women taking chattels into their physical possession was one thing, but possession could be challenged at law and goods thereby returned to the owner-at-law's, the husband's, possession. This is a particularly interesting piece of anecdotal evidence for multiple reasons.

First of all, in order to make her attempts at breaking the bond and binds of coverture, Helen placed chattels taken from her marital home and placed them into the hands of the man who had previously exercised legal and patriarchal authority over her – her father. It was not enough for Helen to take these items of plate and jewellery into her own personal, physical possession. For her to have the best chance of ensuring her daughters gained access to these valuable items, she deliberately placed them into the possession of a man, the patriarch of her natal family.

This leads to the second aspect of the story that is of particular interest to the historian thinking about coverture: Helen was not thinking about herself in her attempts to rebel against coverture, but of her daughters. This leads one to think

[51] TNA C5/436/66, Appleby v. Gascoigne, Replication, TNA C5/436/66.

about coverture in a whole new light. Not only was it having immediate impact on the lives of married women, but it was having a generational impact too. For those women who did not survive their husbands leaving children, especially those with young, single daughters, the welfare of their offspring would have been of great concern – particularly if their husband was less than trustworthy, as the records indicate Thomas Appleby may well have been. Many married women would have been unable to leave their children items they may have perceived as their own – in this case plate and jewellery – making coverture an uncomfortable reality.

This is not to say, however, that it was unheard of for married women to own and dispense of property with autonomy. Blackstone tells us that a wife was at times entitled to her 'paraphernalia', a term used 'to signify the apparel and ornaments of the wife, suitable to her rank and degree'.[52] Those wives who were fortunate and married to wealthy men were often allowed pin money too, a type of personal allowance that 'was also an early modern form of married women's property known as separate estate'.[53] Thomas Appleby was evidently not overly generous with his wife, during her lifetime and afterwards, clearly believing that what Helen took from her marital home and gave to her father on behalf of her daughters exceeded what could reasonably be deemed a her 'paraphernalia'. His wife had therefore defied the common law doctrine of coverture by which she was bound, and he was perfectly within his legal rights to demand the return of his property. In some instances, however, we find marriages in the Court of Chancery that show husbands being far more willing to allow their spouses autonomy over property.

The case Moor v. Misdall, and all the associated litigation, highlights how the married woman could become a property owner in trust, with valuable assets in her own name to leave her offspring, in her own right.[54] As previously discussed

[52] Blackstone, *Commentaries on the Laws of England*, p. 433.
[53] Tait, 'The Beginning of the End of Coverture', p. 166.
[54] TNA C5/316/39, Moor v. Misdall, Original Bill of Complaint (25 September 1700).

as part of a consideration of singlewomen in Chancery, Lady Katherine Finch (Wentworth, née Norcliffe) was anxious upon her second marriage to provide for her children, having two sons from her first marriage and conscious that her new husband had many living children to provide for, and potentially more children to come should he survive her and go on to marry again. This was not an infrequent fear during the early modern period, as mortality rates meant remarriage was common for both men and women.[55]

Lady Katherine Finch consequently decided to buy some land in trust that would serve as a suitable inheritance for her sons. She purchased land in Yorkshire shortly after her second marriage. Her eldest son John was named as her heir, with stipulations made within the indenture that required he allowed his brother a substantial cash sum arising from the rents and profits of the land:

> … the messauges lands tenements and hereditaments and all other messuages lands tenements and hereditaments purchased in the names of the said Sir Watkinson Paylor and Sir William in trust for or to the use of the said Lady Katherine of Winchilsea should be and remaine and that the said trustees should stand and be seized thereof to the use and behoofe of the said Lady Katherine during the terme of her natural life and after her decease to the use and behalf of the said John Wentworth…[56]

Katherine Finch was the purchaser and owner of substantial lands in trust, then, despite being married, free to use the property as she wished throughout her lifetime, and to leave it to whomever she wished in death, in whatever manner she best saw fit.

However, the original bill of complaint very clearly and plainly states that Katherine Finch was only able to purchase these lands in trust for herself and her heirs 'with the consent and agreement of Heneage', her husband.[57] Katherine

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[55] Capp, *When Gossips Meet*, p. 80.
[56] TNA C5/316/39, Moor v. Misdall, Original Bill of Complaint (25 September 1700).
[57] TNA C5/316/39, Moor v. Misdall, Original Bill of Complaint (25 September 1700).

was only able to act as she did, with a remarkable degree of autonomy, because she had the express permission of her husband and master. Again, this case highlights the intergenerational impact of and problems associated with coverture faced by married women. If a married woman feared she would die before her husband, she was naturally inclined to want to provide for any children she left behind, willing to test the boundaries of coverture in order to do so – as Lady Katherine Finch and Helen Appleby demonstrate.

Claudia Zaher states that 'under coverture, a wife simply had no legal existence'.[58] The historiography surrounding the social and legal lives of women contradicts this assertion, and, if one looks to the pre-modern Court of Chancery, it becomes possible to problematize this declaration further still. Married women appeared before the Lord Chancellor in Chancery as litigants, both as plaintiffs and defendants. Whilst it is true that all of the married women within this research sample appeared in conjunction with, and therefore assumed as a subsidiary litigant to, their husbands, the fact that married women were named as litigants at all is significant, indicative of their having a legal existence.

Furthermore, as Colton v. Maltus demonstrated earlier, just because a husband is the first named litigant (as plaintiff or defendant, or in this case both) does not mean that it was he who was pivotal to the case. The Coltons were entitled to a legacy entirely though Elizabeth Colton and her deceased mother, not William. In addition to this, Anne Maltus and Mary Sutton were clearly the key defendants to the case, despite Christopher Maltus being first-named defendant. The case revolved almost entirely around women – what the women who survived Richard Sutton did and inherited on the basis of his will, as well as what his sister and niece were entitled to. Without these women, neither William Colton nor Christopher Maltus would have had access to the lands, or the profits derived from the lands, of the deceased Richard Sutton at all.

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[58] Claudia Zaher, 'When a Woman's Marital Status Determined her Legal Status: A Research Guide on the Common Law Doctrine of Coverture', *Law Library Journal*, Vol. 94, No. 3 (2002), p. 460.

Anne Colton (née Sutton) is not the only married woman to be found in Chancery archival material who, through her family and rights and the rights of her husband under coverture, created an heir of her spouse – in Avis v. Pilley, there is evidence of a similar situation. The bill of complaint entered into Chancery in the 1690s by 'Walter Avis and Anne his wife and John Shaw and Mary his wife complainants' pertains to money owing to Anne and Mary (née Carrington), left them in the form of annuities to each of them by their great-grandfather, Thomas Pilley, in his last will and testament.[59] It was through their wives that Walter Avis and John Shaw were entitled to money arising from land once held by Thomas Pilley.

I would suggest that this evidence, alongside those married women who appear in the archival material on a *prochein ami* basis, reveals the fact that coverture extended into the Court of Chancery to a degree far greater than suggested by Erickson in her work on the court. It seems to be highly doubtful that married women could litigate independently within this court – the strictures of coverture preventing them from doing so. Quantitatively, I have found no evidence of wives acting without being named as a subsidiary litigant to her husband. Even in those cases where rights to property and land are those of the wife transferred to the husband due to the common law doctrine of coverture, and those cases where the husband appears nowhere in the suit itself other than being named as a litigant, the wife is unable to appear in Chancery without her husband.

The Chancery archival material allows unique access to the married woman's voice – through pleadings, and the giving of depositions too. It is true, furthermore, that the realities of coverture were not as strict as the doctrine, prescriptive literature and moralists suggest, and perhaps would have preferred. Nonetheless, early-modern Chancery was not enough of an advocate for women to allow for a married woman to be named in a suit without her spouse.

[59] TNA C5/288/4, Avis v. Pilley, Original Bill of Complaint (28 November 1692).

Although I take issue with the concept of married women being able to appear in Chancery independent of their husbands in the seventeenth-century Chancery, it is still significant that we find such an abundance of wives in the records. If coverture is to be understood in the strictest sense, then the presence of the wife in the court and, consequently the archival record, could be seen as women actively engaging in a system pushing back against the strictures of this oppressive common law doctrine. Husband and wife were 'but one legal person and that one person was the husband', yet the husband and wife appeared before the Lord Chancellor, as two individuals, each telling their side of the story, in some cases with the wife telling the full story for them both.[60] There is, therefore, recognition that early-modern women led legalised lives even when married – they had rights that were devolved to their spouses, they had crucial legal and familial knowledge significant to suits at law, and they operated as owners of property throughout their day-to-day lives. Early-modern Chancery, therefore, provides nuanced examples of married women acting in a manner that both subverts the concept of coverture, whilst simultaneously demonstrating the very real effect that the common law doctrine had on the lives of married women.

To consider coverture a 'legal fiction', implies that there is a marked distinction between the social and legal lives of married women; over the course of their everyday, social lives within their local communities women not feeling the effects of coverture, but at law having those effects fully realised. My reading of coverture necessitates that historians recognise early-modern social and legal lives are best understood holistically, rather than separately. We should be very wary of regarding coverture as a 'legal reality' and a 'social fiction'. There are social and legal fictions and realities inherent in the early-modern conceptualisation of coverture.

Man and woman were understood as one at law, with a married woman's rights to property devolved unto her spouse. Yet, at the same time, wives did have a degree of legal independence, and certainly an identity of their own. They were

[60] Hawkes, 'Women's Knowledge of Common Law and Equity Courts', p. 146.

named in conjunction with their husbands at court, because they often had a crucial role in litigation. Women regarded themselves as property owners over the course of their everyday lives, but Chancery provides evidence of men denying their wives property, and demanding it back to their own possession – making coverture seem a very impactful, everyday reality for the seventeenth-century wife.

The law reflected expected and accepted social norms; that a woman should be subservient to her husband for 'this was not only the natural way of things but also God's divine intent'.[61] Early-modern law reflected strict societal expectations, and society operated under the binds and knowledge of those laws, making the two utterly indivisible. Social order could not exist without the law, and the law could not exist without a society to represent, reflect, and work for. As Marylynn Salmon said, '[l]aw is coercive as well as representative of community values'.[62] The two inform and feed off one another. It is true that married women did operate outside the binds of coverture over the course of their everyday lives; they entered contracts of credit as consumers, they worked and earned money, they received gifts and regarded property as their own, taking it into their physical possession. This is not to say, however, that the doctrine of coverture had no impact whatsoever on the daily lives of married women.

I would suggest that the way married women treated property that they perceived as their own, or physically possessed, indicates a strong and uncomfortable persistence of the knowledge and social realities of coverture. Would a married woman have felt the need to keep her earnings secretly about her person, or locked away from her husband in a chest, if coverture had not been significant? Would Lady Katherine Finch have been able to provide for her children of her first marriage had she not had the express permission of her

[61] Zaher, 'When a Woman's Marital Status Determined her Legal Status', p. 461.
[62] Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill and London: The University of North Carolina Press, 1986), p. xii.

second husband? Would Helen Gascoigne have placed valuable chattels into the possession of her father had the realities of coverture not played on her mind?

The married woman in seventeenth-century England knew that, ultimately, 'she had no legal protection if the husband simply insisted on his rights, or broke open her chests'.[63] The significance of possession to the married woman as a property owner, or possessor, indicates the realities of living under the strictures of coverture throughout her daily life.

Furthermore, the actions of the married woman detailed in the Court of Chancery legal records reveal the true, complex and nuanced nature of coverture as a common law doctrine that was taken as fact at law, yet married women nevertheless appeared as named, individual litigants acting alongside their partners in this court of equity. Coverture, then, was a doctrine that did not operate as rigidly as it prescribed, but that still had a very real impact on the everyday lives and legal experiences of women. It is in this way that coverture was, in fact, a legal reality and a legal fiction, a social reality and a social fiction – a convoluted and ever-present aspect of the married woman's life, demonstrating the fact that the women's social and legal lives were tangled and indivisible.

5.4 Marriage Settlement Cases

There were, however, legal avenues women utilised as a way to maintain property rights whilst married and therefore subject to coverture. From the 1580s onwards, there developed an established practice of women owning property whilst married through the use of trusts for separate estate.[64] Originating in the end of the sixteenth century, the separate estate trust was, 'before statutory enactments in the nineteenth century granted married women a limited set of property rights', more or less the only way in which a married

[63] Capp, *When Gossips Meet*, p. 91.
[64] Korda, 'Coverture and Its Discontents', p. 47.

woman could legally own property independent of her husband.[65] Though regarded as something of an 'ineffective vehicle for extending property rights to married women', in 2014 Allison Anna Tait published a reappraisal of the separate estate, demonstrating how this legal tool was utilised to circumvent the legal doctrine of coverture, and asserts it to have been the 'critical first step in the establishment of married women as property holders'.[66]

The separate estate was, basically, any assets set aside in a trust for the exclusive use of a woman, for her 'sole and separate use', that was utterly out of reach of her husband (or his creditors). They could be created using any form of capital (that is, personal chattels and property or real property) or an annuity and were commonly referred to as 'pin money' by the end of the seventeenth century.[67] These trusts were typically established as part of marriage settlements – just when women, and their families, came face-to-face with the realities of coverture – however they could in fact be created at any time, usually by fathers or other family members, but also by Chancery , or even women themselves (prior to their marriage, or upon regaining *feme sole* status as a widow if perhaps considering re-marriage, being unable to create such a trust once married due to the strictures of the very legal doctrine she sought to evade). Tait argues that this form of trust held real value for women, and set off a trajectory that led to the recognition of married women's right to property ownership: 'the beginning of the end of coverture'.[68]

Separate estate had several applications. Defensible only at equitable law, it preserved a married woman's interest in specified property during her marriage.[69] It could be used, however, to protect a wife's natal family, by ensuring that the familial property and wealth descended through their female kin and to her children, or to ensure that they bore no financial responsibility for

[65] Erickson, *Women and Property*, p. 103; Tait, 'The Beginning of the End of Coverture', p. 165.
[66] Tait, 'The Beginning of the End of Coverture', p. 165.
[67] Erickson, *Women and Property*, p. 103.
[68] Tait, 'The Beginning of the End of Coverture', pp. 165-167.
[69] Erickson, 'Common Law Versus Common Practice', p. 21.

their female kin should her new husband prove unthrifty or profligate. Should a woman's new husband prove to be inept at handling money, a trust for separate estate protected marital property from his debts and creditors.[70] It was through the use of separate estate that women could protect their assets as wives and widows, and fathers could protect their daughters and larger family.[71] We should, however, be cautious when assessing separate estate – it was not intended to create female autonomy or financial independence and most certainly did not result in an improvement of women's economic position. By the eighteenth century, popular opinion on separate estate was overwhelmingly negative.[72]

The majority of settlements that included separate estates were those negotiated 'by the bride on her own behalf', most likely on the occasion of leaving widowhood to enter a second marriage. Women who had already experienced first-hand the constraints of marriage, as well as the potentially liberating legal status of being a widow, were certainly better equipped than those who had not yet experienced coverture to negotiate a settlement upon which to base a marriage.[73] Often too, widows needed to protect the financial interests of any offspring begotten from her first marriage, putting additional pressure on the needs for a fair and reasonable settlement. Although separate estate was an important aspect of early-modern marriage settlements, it did not come under the term 'marriage settlement' as it was understood to the early-modern mind.

A marriage settlement in early-modern England was a specific type of document that served to protect the different aspects of property rights of a woman as a wife, which could have involved an equitable trust for separate estate or not.[74] Erickson explains that 'at least 10 per cent of ordinary women … made marriage settlements to protect their property rights', although she expects that they were far more common than this percentage indicates. Whilst it is true that the

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[70] Erickson, *Women and Property*, p. 107.
[71] Korda, 'Coverture and Its Discontents', p. 47.
[72] Erickson, *Women and Property*, p. 107.
[73] Erickson, *Women and Property*, p. 123.
[74] Erickson, *Women and Property*, pp. 103-104.

majority of these agreements were primarily concerned with the rights of women in widowhood as opposed to separate estate whilst married and subject to coverture, it was noted by Erickson that when what a woman brought to a marriage was equal to what she would be entitled to in her widowhood, the distinctions drawn between separate estate and provision for widowhood becomes somewhat blurry.[75] Women did not simply suspend their feelings of having right to and ownership of certain things for the duration of their marriage and subsequent subjection to coverture, they clearly saw some property as distinctly belonging to them personally.

As part of the quality control I conducted for the quantitative analysis of this research project, I read all of the 'Marriage Settlement' or 'Marriage Contract' cases within my larger sample (in addition to the smaller 30 case sample conducted for qualitative research). This was, in part, to try to gauge why these particular cases were catalogued as being specifically about marriage settlements as opposed to property or 'Money Matters'.[76] However, it was also conducted in order to expand our understanding of the married woman in the Court of Chancery through an analysis of cases pivoting on the legally binding contract that served as the foundation of so many early-modern marriages – the marriage settlement.

Each of the marriage settlement cases provides insight into the creation and reality of marriages in early-modern England. The marriage settlement cases of the research sample cover a diverse range of marital relationships – from the good, to the not-so-good. Capp commented that 'successful marriages are not hard to find', which may be so, but Chancery sheds rare light onto all sorts of

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[75] Erickson, *Women and Property*, p. 150.

[76] There was an additional 'Marriage Settlement' case within the sample, however it was incorrectly dated. Boynton v. Nowell (C5/593/118) was dated in the catalogue as 1679, however the date on the document looked more like 1619 or 1614 to me. Checking this against the Chancellor who was being addressed in the bill, as well as consulting with archivist Liz Hore, confirmed the bill had been created in 1614. This case was subsequently removed from my research sample, and the online catalogue was updated with the correct date.

marriages.[77] These Chancery cases offer insight into those marriages where husband and wife came together to act as a team, and those struggling with tense spousal relations. These cases were read in addition to the 30 Chancery cases read for the general qualitative analysis, although there is some overlap (for example, with the cases Appleby v. Gascoigne and Bethell v. Robinson), but have been included here due to their obvious utility and interest when considering married women in the pre-modern Court of Chancery.

Lacon v. Emmett is a key example of how suits in the Court of Chancery can reveal tension within early-modern marriage. This case, coming before the Lord Chancellor in 1686, concerns one William Lacon bringing suit against his father-in-law Thomas Emmett-the-elder, as well as Thomas Emmett-the-younger (son of Thomas Emmett-the-elder, and brother-in-law to William Lacon) and William Buck. William Lacon claimed in his case that Thomas Emmett-the-elder, having been something of a friend to William – 'neighbour and tenant to your orator and coming frequently to your orators house and often in your orators company – convinced William to marry his daughter, Ellen. Lacon claimed that Thomas Emmett-the-elder utilised 'severall persuasive arguments to persuade and induce your orator', one of which arguments was particularly enticing, that of 'a considerable marriage portion with the said Ellen to be paid upon the solemnization of the marriage'.[78]

Lacon claimed, quite ardently, throughout his bill of complaint that he was loathe to enter into marriage with Ellen Emmett. Lacon described himself as 'old and infirme' and responsibe for multiple children from his first marriage. Ellen was significantly younger than him, and therefore 'not of a suitable age for your orator'.[79] Capp's research shows that a substantial age gap between spouses, when a man married a considerably younger woman, fed into 'widespread fears about 'unsuitable' marriages'.[80] Lacon was tapping into this exact fear, as a

[77] Capp, *When Gossips Meet*, p. 70.
[78] TNA C5/87/116, Lacon v. Emmett, Original Bill of Complaint (17 May 1686).
[79] TNA C5/87/116, Lacon v. Emmett, Original Bill of Complaint (17 May 1686).
[80] Capp, *When Gossips Meet*, p. 77.

means of demonstrating to the Lord Chancellor George Jeffreys, just how reluctant he was to enter into this union with the young Ellen.

Lacon's more particular concern about entering into a union with Ellen, however, was that he had received a considerable marriage portion from the union he had enjoyed with the late mother of his children, leaving him in possession of a considerable personal estate that he was keen to leave intact for his said children. William Lacon then 'did reject and refuse the offers and proposals made by him the said Thomas Emmett-the-elder', for fear that marriage with Ellen would result in nothing more than 'prejudice and injury both to himself and his children'.[81]

Thomas Emmett-the-elder, however, was not inclined to give up on the match he desired between William Lacon and his daughter. He sent his son, Thomas Emmett-the-younger, and a clerk, William Buck, to see Lacon and continue pestering him to marry Ellen – 'they could not rest or be quiet till he had agreed to marry the said Ellen'. Finally, after the continual badgering, 'being tired and wearied' by it all, William Lacon 'much against his own inclinations' did agree to marry Ellen, strictly on the understanding that he would receive a considerable marriage portion, and that his estate would be kept intact to be inherited by his living children from his first marriage.[82]

William Lacon was, according to him, harassed into marrying a woman he did not want to be united with, and then, to add insult to injury, his father-in-law went back on his promises. Not only did Thomas Emmett-the-elder refuse to pay the marriage portion that was promised, but he also took further advantage of Lacon when he was 'very sicke and weake and not knowing well what he did'. Thomas Emmett-the-elder, at the time of Lacon's sickness, told him that he would not pay any part of the marriage portion unless Lacon agreed to settle certain of his lands 'under jointure or settlement upon the said Ellen for her life'. Thomas Emmett, upon getting Lacon to sign deeds and writings to that effect, left

[81] TNA C5/87/116, Lacon v. Emmett, Original Bill of Complaint (17 May 1686).
[82] TNA C5/87/116, Lacon v. Emmett, Original Bill of Complaint (17 May 1686).

'faithfully promising to your orator that he should have true counterpart thereof sealed and delivered to him for the satisfaction for himself and his children'. However, these counterparts never arrived, and when he had recovered from his sickness Lacon asked for the counterparts or copies he was promised, but Thomas Emmett-the-elder refused to deliver the writings and, furthermore, 'combining and confederating' with Thomas Emmett-the-younger and William Buck gave out in speeches that Lacon had 'absolutely granted and conveyed away all his right title and interest in the premises to them'.[83]

Lacon claimed that Thomas Emmett-the-elder, Thomas Emmett-the-younger and William Buck all acted together to pressure Lacon into marrying Ellen, and then used this union and his weakened state to trick him into signing away his property and therefore his children's inheritance. What is interesting about this case, particularly when considering whether or not the early-modern Court of Chancery can be considered a women's court of redress, is the role of Ellen Lacon (née Emmett) throughout the events detailed by William Lacon.

Ellen Lacon was pivotal to the proceedings of this case. It was through Ellen that Thomas Emmett-the-elder and Thomas Emmett-the-younger managed to gain access to the property of William Lacon. Nevertheless, Ellen is not named as a litigant to the case. William was unable to bring suit against a woman who was legally his wife (however begrudgingly he may have entered the union), and did not name her as a co-plaintiff acting alongside him. Poor Ellen was used by her natal family to get close to William Lacon emotionally, physically and legally, and to his valuable property. Her position and status as a woman were used by her father and brother to gain control over Lacon's property for themselves. Ellen was then used by her husband in his bill of complaint arising from these unfortunate matters, her position as Lacon's wife being used to highlight one of the ways in which he had been taken advantage of. Ellen Lacon did not use Chancery as a court of redress, but was herself used as a pawn for control of property and then for emphasising the unjust actions of others.

[83] TNA C5/87/116, Lacon v. Emmett, Original Bill of Complaint (17 May 1686).

Furthermore, this case serves as an excellent example of how Chancery proceedings can reveal the private, otherwise hidden, inner workings of personal relationships. The fact that Lacon did not name Ellen as an oratrix to the case, despite her undeniable role in the matter, speaks to the nature of this particular relationship. Lacon's resentment of his union with Ellen, his perceived unsuitability of their match, the fact he never received a marriage portion and the effect it ultimately had on his property rights and consequently his children's inheritance, was hardly subtle.

Not only this, but it is clear from this original bill of complaint that Lacon was loath to provide Ellen with property in her widowhood – a far more likely situation for Ellen given the age gap between her and her husband as well as his apparently sickly state of health, and therefore something she (and her family) would definitely have been eager to prepare for. Lacon was more concerned with providing for the children he had with his first wife, than his young second wife. Lacon's lack of compassion and affection for his new wife is embodied in his unwillingness to provide for her upon his death.

Another example of troubled marital relations manifesting in a husband proving unwilling to make provision for his wife when in her widowhood can be found in Bethell v. Robinson. In the 1690s, Charles Robinson and his wife Ruth (née Lillie) entered a joint answer to a bill brought into Chancery against them by Hugh Bethell and John Robinson (brother to Charles Robinson). As part of their answer, they detailed how John Lillie, father of Ruth, came to be married to his then widow, Ann Lillie (née Scott), who was step-mother to Ruth and step-mother-in-law to Charles. They claimed that for four or five years before John and Ann married, Ann was completely financially dependent on John Lillie – 'her whol dependence for all manner of provisions and necessities was upon the said John Lillie for her whol maintenance'. John Lillie in fact ran himself into debt in order to support Ann, and these defendants (Charles and Ruth) further stated that John 'would gladly beene quitt of her and never married her but she would

not lett him as these defendants doubt not'.[84] In other words, they outline how much of a burden Ann Lillie was to her future husband before they became man and wife, detailing how reluctant John Lillie was to marry her.

Additionally, Charles and Ruth Robinson claimed that John Lillie never received a penny in marriage portion when he did make Ann his wife. Furthermore, Charles stated that his then deceased father-in-law told him that 'he had made noe settlement on his said now widow and then wife and never intended to make any on her'.[85] In a later bill of complaint entered by Charles and Ruth Robinson against Hugh Bethell, John Robinson and Ann Lillie, they further claimed as orators that John Lillie never intended to make a settlement for his second wife, due to his desire to leave his property to Ruth. Charles claimed that before he married Ruth he had 'pressed the said John Lillie to joyne with your oratrix and his daughter … to make new settlements of the said lands', wanting to ensure Ruth's rights as his heir were realised upon his death.[86] John Lillie refused to do so however, replying that

> … his then said wife pressed him hard to make her a joynture that he had nothing to make her a joynture of for what he had was your oratrixes at his death and therfor might consider his owne peace at home for if she heard of making any such settlement or joining in any such with your oratrix he should lead an unquiett life with her …[87]

This rather farcical anecdote reveals the nature of the marriage had between John and Ann Lillie. It could almost be a classic early-modern comical ballad on bad marriages; the nagging wife wanting financial provision from a man she had already run into debt, the downtrodden husband wanting a quiet life.

John Lillie, according to his daughter and son-in-law, had good reason to be resentful towards his wife, a woman he did not even want to be married to, and

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[84] TNA C5/280/12, Bethell v. Robinson, The Joint and Severall Answers of Charles Robinson and Ruth Robinson his wife (22 May 1693).
[85] TNA C5/280/12, Bethell v. Robinson, The Joint and Severall Answers of Charles Robinson and Ruth Robinson his wife (22 May 1693).
[86] TNA C5/134/55, Robinson v. Bethell, Original Bill of Complaint (1698).
[87] TNA C5/134/55, Robinson v. Bethell, Original Bill of Complaint (1698).

consequently was disinclined to provide for in widowhood. Ann was persuasive enough to convince John Lillie to support her for many years, and even to marry her, despite his reservations, but even she could not induce an unwilling husband to disinherit his only child in order to settle a jointure upon such a demanding wife.

Ann Lillie and Ellen Lacon would have legally been entitled to dower, a third of their late husband's property, but both (or in Ellen's case, her family) wanted a specific jointure agreement and settlement (Ann Lillie wanted a particular parcel of land, a close called Shoulder of Mutton). Husbands who had limited-at-best affection for their wives, it would seem, were less inclined to concern themselves with settling significant parts of their estate upon them for their maintenance in widowhood.

What is interesting about these 'Marriage Settlement' cases in the Court of Chancery is the range of different relationships that are drawn on to paint a picture of marital discord. William Emmett himself detailed his problems with his second marriage. Charles and Ruth Robinson attacked the marriage of their mother-in-law and step-mother, respectively, in order to make their defence. In the case of Wright v. Topham, we find William Wright defaming the deceased husband of his sister, Alice Topham (née Wright) in order to recover monies owing.[88]

William Wright brought his widowed sister before the Lord Chancellor in the Court of Chancery in order to address matters relating to the action of her late husband whilst he was still living. In 1646 William Wright senior (father to the late orator William Wright and defendant Alice Topham) came to an agreement with Thomas Topham of Kingston upon Hull, and they entered a treaty 'touching a marriage to be had between Thomas Topham and Alice Wright your orators sister'. After Alice and Thomas had married, William Wright senior paid part of the marriage portion he had agreed to give Thomas, the sum of £400, bound to

[88] TNA C5/583/60, Wright v. Topham, Original Bill of Complaint (23 January 1679).

pay the remainder with interest. It transpires that some years after the marriage between Thomas and Alice, Thomas became very poor. William Wright claimed in his bill that this was due to 'his profuse lifestyle and not being able to manage his trade'. Thomas became, therefore, increasingly 'clamorous' for the remainder of the money owed him by William Wright senior, even having him arrested at one stage in his desperation. William Wright, the orator, having recently reached the age of 21 and taking over matters unresolved at the deaths of both William Wright senior and Thomas Topham, paints a picture of a profligate and reactionary man, hardly a reliable or dependable husband – a wholly unsuitable match for his sister. The fact that Alice was his sister, however, did nothing to stop William Wright from bringing suit against her for the actions of her late husband.[89] Bad marriages had the power to bring about conflict within the wider family network, creating battles at law that could continue for many years, becoming intergenerational disputes.

In Appleby v. Gascoigne (the original bill of complaint of which is catalogued as a 'Marriage Settlement' case), we find a widower and his father-in-law feuding bitterly, and consequently gain some insight into the marriage had between Thomas and the deceased Helen Appleby. As discussed previously, Helen Appleby took chattels out of her marital home and placed them in the possession of her father in an attempt to ensure those items were delivered into the possession of her two daughters on the occasion of her death. Not only did this circumvent the common law doctrine of coverture, but also speaks to the nature of Helen and Thomas Appleby's marriage. If Helen felt that the only way in which she could be assured that her daughters would receive the chattels she believed were owed to them, was to remove them from the physical possession of her husband, then it is hardly a leap to assume that we are looking at a marriage suffering a severe lack of trust.[90]

[89] TNA C5/583/60, Wright v. Topham, Original Bill of Complaint (23 January 1679).
[90] TNA C5/436/66, Appleby v. Gascoigne, Replication.

Bernard Capp's work on marriage in the early modern period tells us that second marriages were common for both men and women over the course of this period, and led to much anxiety. Men marrying women with children from previous marriages were often concerned that the widow was remarrying out of necessity, to provide for her children, rather than out of affection. A widow with living children to provide for, however, may well have been reluctant to remarry despite her need to provide, knowing full well that 'the new husband would possess ultimate control over her children'.[91] In Helen Appleby's situation, it seems likely (based on her actions) that she realised the likelihood of her dying before her husband, leaving her two young daughters in what could have been a very vulnerable position. Her relationship with her husband, then, led her to act before it was too late, to put provision in place for her children so that they were not left destitute or at the mercy of her unreliable spouse. Helen probably also realised the high chance of her spouse remarrying after her death, and wanted to ensure therefore her children were taken care of and that their needs would not be supplanted by those of any future children from any unions Thomas Appleby may enter into in years to come.

Helen Appleby was not wrong. Thomas did remarry after the death of his first wife, something that was against the wishes of his father-in-law, Sir Thomas Gascoigne, and met with disapproval.[92] As is discussed in the earlier chapter considering singlewomen in the late seventeenth-century Court of Chancery, Sir Thomas Gascoigne, following the early death of his daughter, took over the rearing and legal guardianship of young Mary and Helen-the-younger Appleby. He even declared his son-in-law a 'lunatic' at one stage to try to gain control – 'he would make this Replicant a Lunatique and to take away management of his estate from him' – despite Thomas Appleby's claims that he had 'no lawfull notice thereof nor was ever examined before the jury'.[93]

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[91] Capp, *When Gossips Meet*, p. 80.
[92] TNA C5/58/5, Appleby v. Gascoigne, Original Bill of Complaint (23 October 1669).
[93] TNA C5/436/66, Appleby v. Gascoigne, Replication.

Accusations of lunacy, taking over the raising of, and limiting his access to, his children, a begrudged second marriage – Gascoigne's treatment of Thomas Appleby makes his dislike of and distrust in him clear. This considered alongside the steps that the late Helen Appleby (née Gascoigne) took to ensure the wellbeing of her daughters in the event of her death, indicates a marriage that was deeply troubled and not grounded in mutual trust.

Not all the marriages one learns of through the reading of 'Marriage Settlement' cases brought before Lord Chancellors in Chancery were troubled, however. There are a number of marriage settlement cases that show husband and wife coming together to work as a team in order to gain access to what lawfully belonged to the husband under the binds of coverture, but would help both of them as members of the marital union.

Marriage settlement cases can provide evidence of constructive and positive marital relationships. If we return to Bethell v. Robinson, one finds evidence of a marriage in which husband and wife worked as something of a marital team. Charles and Ruth Robinson were quick to criticise the marriage of Ann and John Lillie, and appearing before the Lord Chancellor in Chancery together allude to behaviour and actions that unites them in the goal of realising their legal right to inherit the personal estate of the late John Lillie. In the original bill of complaint brought before the Lord Chancellor John Somers in Chancery, orators Hugh Bethell and John Robinson accused Charles and Ruth Robinson – the named defendants – of acting against the last will and testament of John Lillie.[94]

John Lillie died leaving only one child and heir, his daughter Ruth who was wife to Charles Robinson. As Ruth was John Lillie's named executrix, Charles and Ruth believed they should take possession of all he possessed at the time of his death.[95] Hugh Bethell and John Robinson, however, claimed that the last will and

[94] Handley, 'Somers, John'; Bethell v. Robinson, Original Bill of Complaint, TNA C5/280/12 (4 July 1692).
[95] Even when specifically named as an executrix, the *feme covert* was limited in her role due to the common law doctrine of coverture. According to *Baron and*

testament of John Lillie clearly stipulated that they were to take possession of all of his property (chattel and real) when he died. They were obligated to sell all of his property and use the money to settle all of John Lillie's debts in full, and any and all surplus money was to be given to Ruth Robinson.

John Robinson claimed that he was originally in possession of the will of John Lillie that detailed the actions to be undertaken by Hugh Bethell and himself, but gave it to his brother and husband of Ruth, Charles Robinson, at John Lillie's funeral: 'Charles Robinson … upon the day of the funeral of the said John Lillie sent for your orator John Robinson and desired hee might see the last will of the said John Lillie', which John Robinson 'readily' did, believing that 'hee the said Charles Robinson would have returned the said will to your orator John Robinson'. John Robinson wanted the will back so that he and Hugh Bethell could have 'gone on in performing the trust in them reposed in and by the said will' – namely the selling of John Lillie's estate and settling of his debts.[96]

Charles Robinson, however, did not return the will to his brother John. Instead, according to John Robinson and Hugh Bethell, he 'put the said will in his pocket and tooke the same away and now conceals the same and refuses to deliver it' back to John Robinson. Not only did Charles Robinson take the will and keep it secretly to himself, refusing to give it back to its original keeper, but 'after he had in such a rude mannour possessed himselfe of the said will gave out in speeches there was noe will and that his wife Ruth was the heire att law'.[97] Charles Robinson was, here, acting in his own best interests, knowing all too well that,

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Feme the 'Feme executrix may not give the goods of the Testator *in pios usus* without the assent of the husband' (Anon, *Baron and Feme*, p. 224).

[96] Bethell v. Robinson, Original Bill of Complaint, TNA C5/280/12 (4 July 1692).

[97] Bethell v. Robinson, Original Bill of Complaint, TNA C5/280/12 (4 July 1692); For more about this case and the theme of women and secrecy in the early modern Court of Chancery see my blog post 'Women and Secrecy' (Charlotte Garside, 'Women and Secrecy in the Late Seventeenth Century English Court of Chancery: Bethell v. Robinson', *Women Negotiating the Boundaries of Justice: Britain and Ireland c.1100-c.1750* (posted 13 March 2017) [http://womenhistorylaw.org.uk/en/blog/1/17/women-and-secrecy-in-the-late-seventeenthcentury-english-court-of-chancery-bethell-v-robinson-by-charlotte-garside, last accessed 24 September 2017]).

under the common law doctrine of coverture, any of the property that legally descended to Ruth as heir to John Lillie, would have in fact come directly to himself.

Again, the issue of possession is here notable. Because Charles Robinson had physical possession of the will, and was quite deliberately keeping it secret, he was able to assert that the will did not actually exist at all. John Robinson and Hugh Bethell were unable to refute his claims with any concrete evidence, as the only available evidence was not in their physical possession. They were therefore powerless to stop Charles and Ruth Robinson claiming their rights to the property of the deceased John Lillie, and unable to perform the tasks that they were bound to by the said last will and testament.

The matter of physically taking possession of something escalated further still, as John Robinson and Hugh Bethell accused Charles Robinson of entering upon the closes of the late John Lillie immediately after having secured the will, 'and hath ever since taken the rents and profitts thereof'.[98] They also claimed that Charles Robinson,

> … immediately after the death of the said John Lillie secretly caused the locks and doors of diverse rooms where diverse household goods of the said John Lillie and amongst them diverse deeds and evidences relating to the said closes and houses so given and bequeathed as aforesaid were secured in Kingston upon Hull and Beverley as aforesaid to bee broken open and took and carryed away the same and secrets the same and refuses to discover to your orators the contents of any such deeds or evidences soe taken…[99]

Charles physically took possession of not only the house, but also of the documents he found inside, and then used the deeds and writings he found to his own advantage. Denying John Robinson and Hugh Bethell permission to see the documents whilst claiming that they provided evidence that the property in question had upon it 'ancient intales', Charles Robinson asserted that John Lillie

[98] TNA C5/280/12, Bethell v. Robinson, Original Bill of Complaint (4 July 1692).
[99] TNA C5/280/12, Bethell v. Robinson, Original Bill of Complaint (4 July 1692).

was unable to bequeath the house and land as the orators claimed he had in his will, making his wife the undisputed heir.[100]

There is additional evidence of Charles Robinson taking physical possession of items to further aid his goal of having his wife Ruth declared the lawful and unrivalled heir to John Lillie in the depositions to this case. Barbara Winspear, a woman from Kingston upon Hull aged around 49 years old, when called upon to act as a deponent to the case of Bethell v. Robinson on behalf of Hugh Bethell claimed that both she and Charles Robinson had illicitly entered the offices of one Mr Bewley (who himself also acted as a deponent), 'having the occasion to search for some writings'. She deposed that she witnessed Charles Robinson finding a document in the office of Mr Bewley, 'which he tooke and putt into his pockett'.[101] Charles Robinson had, it would seem, something of a habit of taking written evidence into his personal, physical possession.

But where does Charles' wife, Ruth, feature in all of this? Ruth is named in the legal records of this particular case as acting as a co-litigant in conjunction with her husband, both as a defendant and as a plaintiff. It must be said that the majority of the accusations made against the couple seem to have been mainly directed towards Charles and their joint responses and own complaints (when entering bills in their own names) seem to have been from Charles' point of view. There is a sense of this in that joint answer the Charles and Ruth submitted to Chancery in response to the original bill of complaint issued by Hugh Bethell and John Robinson: 'And the other defendant Ruth for herselfe sayth that she believes it to be true in manner and forme as is above sett forth and answered by the other defendant her husband'.[102] In other words, Charles Robinson dictated what their answer to the charges brought against them should be, and Ruth simply agreed with and to all he claimed.

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[100] TNA C5/280/12, Bethell v. Robinson, Original Bill of Complaint (4 July 1692).
[101] TNA C22/510/18, Bethell v. Robinson, Depositions taken in the country (31 October 1695).
[102] TNA C5/280/12, Bethell v. Robinson, The Joint and Severall Answers of Charles Robinson and Ruth Robinson his wife (22 May 1693).

However, Ruth was by no means a passive actor in this case. Charles, for example, refutes the accusation that he forced entry into the rooms of the house of the late John Lillie, as quoted previously, by claiming it was in fact Ruth who did so:

> … this defendant supposes the other defendant his wife (though very unwillingly) was forced to change the doors of the said Rooms to be opened but did not doe the same secretly but tooke severall credible personnes along with her for witnesses to take notice of what was left there and then entered on by here in what condition the same was which was then found by her in a very ill and ruinous condition …[103]

According to Charles, it was in fact Ruth who physically forced entry onto the property of her late father John Lillie, and her actions were justifiable because she was his heir, her step-mother and had left the rooms and contents thereof in a deplorable manner, and she had credible witnesses to her actions. Moreover, she only did so because she had to, she was actually unwilling to take the actions she had.

Whether Ruth actually was quite active, as is here claimed by Charles, and concurred with by Ruth, or whether Charles was simply trying to shift the blame on to his wife we shall never know. What can be said with certainty, however, is that the fact that this anecdotal evidence is in the legal records at all, truthful or otherwise, is notable. Even if it was not wholly true, Charles and Ruth Robinson, as well as their legal counsel, thought that this part of the story could be believed to be true. It was believable that a married woman could take matters into her own hands, and force entry to property that she was legally heir to. They must have felt it would have been believed; otherwise they would not have put it before the Lord Chancellor. Capp remarks that 'strong-minded women enjoyed greater autonomy than moralists' condoned, and if Ruth felt significant enough autonomy to forcibly enter the rooms of her late father, it would surely have been due to the strength of her belief in her rights as his heir.[104]

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[103] TNA C5/280/12, Bethell v. Robinson, The Joint and Severall Answers of Charles Robinson and Ruth Robinson his wife (22 May 1693).
[104] Capp, *When Gossips Meet*, p. 83.

What is undeniably true is the pivotal role that was played by Ruth Robinson (née Lillie) throughout this case. Even before they were married, Charles was attempting to persuade his father-in-law-to-be to enter into a formal treaty with Ruth in order to ensure her inheritance rights would not be infringed upon. As a wife, Ruth was still recognised as being the heir and executrix to her father John Lillie. Although the common law doctrine of coverture meant that it was Charles Robinson who would gain 'title to the rents and profits during coverture', he would not have had access to the property of John Lillie, and the profits thereof, had it not been for Ruth.[105]

Further evidence of marital teamwork can be found in the case of Turner v. Smith. In this case we find the orators, Robert Turner and Anne Turner (née Smith) his wife, entering a bill of complaint against Anne's father William Smith. First and foremost, Robert presents himself in the bill as being a 'suitor' to Anne before they married. There is no evidence, as can be found in other cases, of William pressuring Robert into marrying his daughter. Instead, Robert simply claimed that after his intentions had been 'made knowne to the said William Smith he very well approved thereof and the more to draw on the said marriage he alleged that your oratrix was worth and he would make her worth three hundred pounds'.[106] Although William Smith did offer Robert Turner a valuable marriage portion - £300 in 1676 was worth over £50,000 in 2018 - Robert had made his interest in marrying Anne known prior to receiving this offer.[107] It could well have been the case that part of Robert's interest in Anne may have come from the fact that he believed that her family was in a position to offer a sizable marriage portion, although the fact that part of the reason he brought his father-in-law before the Court of Chancery was that after 20 years of marriage William Smith still could not pay the full marriage portion he promised suggests otherwise. Nevertheless, nothing in Robert's bill of complaint suggests a

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[105] Blackstone, *Commentaries on the Laws of England*, p. 433.
[106] TNA C5/634/98, Turner v. Smith, Original Bill of Complaint (8 May 1676).
[107] *Measuring Worth* [https://www.measuringworth.com/calculators/ppoweruk/, last accessed 9 June 2019].

reluctance to marry Anne or any pressure to do so, other than the offer of a considerable marriage portion designed to ensure the marriage did take place.

Robert Turner went on to claim that he only ever received part payments from William Smith for the marriage portion of Anne, never receiving the full sum. Furthermore, Turner claimed that both his father-in-law and his son (brother to Anne Turner) stayed in the home he shared with his wife where they enjoyed all necessary accommodations:

> … your orator and oratrix shew that of late the said William Smith coming to live in Yorkshire came with his sonne and lived and sojourned with your said orator and oratrix at theire said house in Cawood where they were welcome and civiliy treated and had all convenient accommodation and for the which dyett and lodging and all other domestique accommodation for himself and his sonne the said William Smith did affirme that he would make due satisfaction…[108]

What is interesting about this passage is not only the fact that Robert Turner welcomed his wife's family into their shared home, providing for them, despite the fact that he had never received the marriage portion due in full, but also the choice of language.

Whilst on some occasions throughout the bill of complaint Robert Turner makes it clear that he is talking about matters from his own, singular point of view – 'the said William Smith never did pay your orator above the sum of thirty pounds', 'your orator having occasion for the sume of tenn pounds did desire the said William Smith to let him have tenn pounds for the supply of his then present occasions' – here Turner talks about what he and his wife together can show happened and what actions they took together, as orator and oratrix, as man and wife. Moreover, he talks of his property as 'theire said house', acknowledging Anne's interest in the property.[109]

[108] TNA C5/634/98, Turner v. Smith, Original Bill of Complaint (8 May 1676).
[109] TNA C5/634/98, Turner v. Smith, Original Bill of Complaint (8 May 1676).

Despite assuring his son-in-law and married daughter that he would pay them back what he owed for staying at their home with his son, William Smith never did give Robert and Anne Turner money for their hospitality, nor did he give them the remainder of the original £300 owing. Instead, William Smith and his son 'suddenly departed … from your orators house without making any satisfaction'.[110] Failure to pay the full marriage portion as well as taking full advantage of their hospitality was too much for the Turners after more than 20 years of marriage, so together they brought William Smith before the Lord Chancellor in Chancery.

Robert Turner's interest in Anne before the offer of such a considerable marriage portion, the willingness to take small part payments of the portion over a 20-year period, and the extension of hospitality to a father-in-law who hitherto had done nothing except disappoint, suggests a remarkable level of tolerance, and genuine affection for Anne, from Robert. This taken alongside Robert's choice to include his wife as a named co-plaintiff as well as using language that indicates an element of togetherness of husband and wife suggests marital teamwork. Together they welcomed William Smith into their home, and together they looked upon his sudden departure as the final, rude rebuff that spurred them into legal action.

Robert Turner's acknowledgement of his interest in Anne before being offered a marriage portion is not to be taken lightly. William Lacon was by no means unusual in being approached by the father of a daughter in attempts to engineer a marriage. In the case Parker v. Busby, Thomas Parker claimed that Joseph Busby 'knowing your orator to be in good circumstance and thriving in the world applied himself to your orator and to encourage your orator to marry his said daughter'.[111] Busby offered Thomas Parker a remarkable sum of £1500 to marry his daughter Mary, as well as all of his plate, which was worth a further £200.

[110] TNA C5/634/98, Turner v. Smith, Original Bill of Complaint (8 May 1676).
[111] TNA C5/307/27, Parker v. Busby, Original Bill of Complaint (28 November 1702).

This sum of money, £1700, in 1702 is the equivalent of over £270,000 in 2018.[112] Parker was not inclined to reject such a considerable sum of money, and accepting this offer he did marry Mary (his co-plaintiff to the case), having been married to her for two years upon bringing suit against his father-in-law. Parker was frustrated at waiting for two years, a mere moment compared to the 20 years Robert Turner patiently tolerated.

Charles King, also bringing suit with his wife Mary King (née Hodgson), claimed that James Hodgson gave his 'consent and good liking' of the union between Charles and his daughter, offering him a portion of £500 'to induce your orator to agree to the said marriage'.[113] Sizeable marriage portions were offered to men in order to make sure that daughters were attractive prospects as wives. Charles King and Thomas Parker may not have been as inclined to marry their respective wives had they not been accompanied by promises of substantial portions from their natal families.

Robert Hewes (the younger), on the other hand, had no offer of a marriage portion in place when he entered into a binding union of wedlock with Alice Hewes (née Cressy):

> … Robert Hewes the younger son and heir apparent to your orator Robert Hewes the elder without the consent of your said orator to marry Alice one of the daughters of Ellingham Cressy … about half a year or some short time after the said marriage there was some discourse between your orator Robert Hewes the elder and Ellingham Cressy … touching a portion to be given with the said Alice…[114]

In this instance, however, it was not husband and wife coming to Chancery in an attempt to recover monies owing in the form of a marriage portion, but a father bringing his son to Chancery in order to resolve matters arising from his (clearly

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[112] *Measuring Worth* [https://www.measuringworth.com/calculators/ppoweruk/, last accessed 9 June 2019].
[113] TNA C5/290/84, King v. Hodgson, Original Bill of Complaint (6 July 1696).
[114] TNA C5/498/71, Hewes v. Hewes, Original Bill of Complaint (25 November 1678).

disapproved of) marriage. We can therefore assume that Robert Hewes-the-younger and Alice, without parental consent or any certainty of a marriage portion, were enticed into marriage more by love than money.

'Marriage Settlement' cases are an excellent source for uncovering some of the realities of early-modern marriage that would otherwise remain hidden. One finds discord and distrust, as well as teamwork and affection. They also highlight the circumstances under which wives were named as co-plaintiffs with their husbands, and when they were quite deliberately left out of proceedings. By utilising these cases, it is possible to trace the experience of the wife in Chancery, and some elements of her lived experience of everyday life in her marriage.

5.5 Conclusion

The quantitative analysis revealed that married women were the most commonly found named female litigant in later seventeenth-century Chancery. Was, however, the early-modern Court of Chancery a court of redress for the married woman? Ultimately, this is a question that is difficult to answer by looking at the legal records alone. The legal records are not streams of thought or consciousness, but thought-out and carefully articulated requests for redress, defences and witness statements. All that we can take from these records must, therefore, be read with an awareness of the intent of the litigants.

To get to the truth of a seventeenth-century lawsuit is simply not possible. Did Ruth Robinson really force entry into her late father's home, or was she something of a scapegoat for her husband? Was Ellen involved in the schemes of her father and brother to wrangle William Lacon's land off him? Did Anne Maltus truly have the freedom within her marriage to co-manage the land she inherited with her sister independent of Christopher despite the binds of coverture? Without access to additional, personal evidences – such as correspondence or diary entries for example – these are the burning questions that are left unanswered.

This does not mean, however, that there are not substantial findings to be taken out of an analysis of married women in this court of equity. This chapter reveals that the single most commonly found type of named female litigant in the Court of Chancery based on marital status was the married woman. She invariably acted in conjunction with her husband, which serves as an indication of the couple seeking redress for matters connected to her legal rights devolved to the husband by the common law doctrine of coverture. The way in which each wife interacted in Chancery was a reflection of both herself as a woman and her marriage, making each case in some way unique.

The married, named female plaintiff was consistently identified as a subsidiary litigant to her husband – even in those cases where the wife took on more of a leading role than her spouse throughout the main body of the suit, as in Colton v. Maltus. Nevertheless, her inclusion as a named litigant in her own right points to her pivotal role to any given case. For example, as heir and executrix to John Lillie, Ruth Robinson was actively involved and had an active interest in the suit brought against her husband, and a named co-defendant accordingly, as well as a co-plaintiff upon entering a counter-suit. Anne Turner extended her hospitality to her father alongside her husband in the home they together shared, despite him not paying her marriage portion, and was subsequently named a co-plaintiff in their joint bill of complaint against her father once those kin relations completely broke down.

The late seventeenth-century Court of Chancery was, in many ways, a court of redress for the early-modern married woman. Chancery was at the forefront of those first steps in law towards legal recognition of married women's rights to property. The court recognised women's property rights, as all courts did within the common law, but its dispensation of equity law and procedures and its advocacy of married women's separate estate, for instance, paved the way for later legislation making married women legal property owners in their own right; 'the beginning of the end of coverture'.[115]

[115] Tait, 'The Beginning of the End of Coverture', p. 165.

What is more, the very fact that married women were identified as individual litigants at all highlights the limitations of coverture. This common law doctrine prescribed that man and wife be understood as one, under a single legal identity – that of the husband. Yet in those cases in which the rights of the wife, which were legally devolved unto the husband, were in dispute and consequently pivotal to the case, in those cases where the wife had a vested interest and information to offer, the wife is found named as a individual litigant. Nonetheless, the legal doctrine of coverture still plagued the married woman in Chancery.

Despite the assertions of Erickson, the realities of women being able to act truly independently in the seventeenth-century Court of Chancery are doubtful. Any legal recourse for married women to appear as named, sole litigants in the court without their husbands was dashed by the social and legal realities of coverture. Colton v. Maltus shows that even when it was women who inherited, managed, and were best suited to answering bills entered against them, it was the husband (should there be one) who was named as the lead litigant and he was always included despite how little he may in reality had to offer proceedings. Not only this, but the married woman could be used as a tool, as one finds in Lacon v. Emmett. Through married women, men could gain or lose access to valuable property (chattels and real). Attempts made by married women to defy coverture, as we find in Appleby v. Gascoigne, could be, and were, raised as unlawful acts in need of redress.

The ultimate finding of this analysis of married women in Chancery, the most commonly-found named female litigant, boils down to three key points. First, the experience of the married woman in Chancery was unique to each woman, and to each suit. Secondly, based on the matter at hand, the nature of the marital relationship, and the personality and driving force of the woman herself; every case had the potential to be very different from one to the next. Finally, the married woman in Chancery opens space for a discussion of the true nature of coverture in early-modern England. 'Legal Fiction' is, perhaps, an overly

simplistic way to talk about a common law doctrine that had elements of fiction and reality in terms of how it was experienced by early-modern married women and families, socially and legally.

6. Widows in Chancery: Knowledge, Responsibility and Authority

[A] good widdow … always puts her special Confidence in God's Providence, as the best and surest Husband to the Widdow, and Father to the Fatherless, and therefore she seeks to keep his Love firm to her, by Prayer and a Religious Life: if she Marry again, she will not do it so hastily, or rashly, but she will take care to provide for the Children she has already, before she signs the Contract, that they may not be wronged when it may not be in her power to right them …[1]

One of the many fascinating aspects of the lives of widows in early-modern England is that of independence. Was the later seventeenth-century widow more capable of living an independent lifestyle, in what was a deeply patriarchal society, than her singlewomen sisters? And if she were, to what extent did she exercise this ability? Assessing how the ever-married woman appeared in Chancery as a named female litigant offers the opportunity to investigate this long held question further.

Over a quarter - 27 per cent - of named female plaintiffs within the research sample were widowed at the time of their bringing a suit before the Lord Chancellor (see Fig. 7). As defendants, widows made up an even larger proportion of named female litigants, at 38 per cent (see Fig. 10). This means that, overall, widows made up 32 per cent of the total named female litigant population (see Fig. 20). This finding is perhaps surprising, widows constituting a smaller proportion than one might expect overall, when one considers these findings alongside those made by Stretton investigating the presence of widows in the Court of Requests, as well as alternative courts and jurisdictions. In the Court of Requests, Common Pleas and Queen's Bench in the Elizabethan era, widows were well represented, forming almost half of the female litigant populations, and around five to six per cent of the total number of litigants in these courts. Stretton cites the work of Peter Laslett, who estimated that widows made up just under nine per cent of all women in society. If one assumes this

[1] Anon, The Ladies Dictionary, pp. 481-482.

estimate is accurate, the widow was effectively 'the only class of women whose share of litigation came near to matching (and may at times have exceeded) the level of their presence in society'.[2]

The quantitative sample created for this research project reveals that as plaintiffs both widowed and singlewomen made up just over a quarter apiece of the total number of named female plaintiffs. The widowed plaintiff, however, had a radically different experience of the later seventeenth-century Court of Chancery than her singlewoman counterpart. 70 per cent of named female plaintiffs recorded as widows at the time of their bringing suit before the Lord Chancellor entered a Bill of Complaint into the court alone, as a sole female plaintiff (SFP; see Fig. 5). Furthermore, 72 per cent of women entering pleas into Chancery as sole plaintiffs were identified as widows. This means that of all the three stages of women's 'life-cycle phenomena' – singlewoman, wife, widow – it was as a widow that a female plaintiff was most likely to act independently.[3]

The quantitative sample also reveals that the named female plaintiff entering suit into Chancery as a widow is least likely to do so in the company of one or more named female co-plaintiff, as a JFP. Only six per cent of ever-married plaintiffs in the sample appear as joint female plaintiffs. Furthermore, out all the joint female plaintiffs within the quantitative sample, only 16 per cent are widows, with singlewomen making up the remaining 84 per cent. In other words, whereas singlewomen were more likely to appear in the company of female co-plaintiffs, the widow was more likely to act independently.

Just under a quarter (24 per cent) of widowed named female plaintiffs entered a plea with one or more male co-plaintiff (MFJP; see Fig. 5). However, widows make up the single smallest category of women plaintiffs entering pleas with male co-plaintiffs, at 10 per cent. As plaintiffs, widows were the least likely women (based on marital status) to be found acting with either male or female

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[2] Stretton, *Women Waging Law*, p. 109.
[3] Ruth Mazzo Karras, *Sexuality in Medieval Europe: Doing Unto Others* (New York and London: Routledge, 2005), p. 29.

co-plaintiffs. They were far more likely to operate alone. Indeed, around two thirds of widowed, named female plaintiffs acted as sole female plaintiffs (SFPs).

As defendants, the circumstances under which the widow was brought before the Lord Chancellor in Chancery were quite different. First of all, widows made up a larger proportion of named female defendants than their plaintiff counterparts, as previously stated (38 per cent, over 10 per cent more in comparison to widowed named female plaintiffs, and only 8 per cent less than the largest single category; married women). In other words, a widow was more likely to appear in Chancery as a defendant than a plaintiff. In fact, 55 per cent of the named female widows in this research sample appeared in Chancery as defendants.

In order to unpack why this was the case it is necessary to first take a more detailed look at how named widow defendants were appearing in the court – figures which reveal still more dissimilarities between these widows and their plaintiff counterparts. Whilst, as plaintiffs, widows were most likely to come before the court alone, as defendants around three quarters (76 per cent) of widows appeared before the Lord Chancellor with at least one named male co-defendant (as MFJDs; see Fig. 12). Under a quarter (21 per cent) of named female defendants who were widows at the time of their being brought into the court had pleas entered against them alone (as SFDs). The one similarity between widows as plaintiffs and as defendants revealed by the quantitative analysis was that these women rarely acted in the company of exclusively female co-litigants.

The dichotomy, however, between the manner in which the named, female, widowed litigant appeared in Chancery as a plaintiff and as a defendant is stark. The early-modern widow would more often than not act alone as a plaintiff, with no named co-plaintiff of either gender. Is it that widows were more willing to act alone or that they had little choice but to act alone? Is the independent, ever-married plaintiff a result of a general desire to pursue reinstated legal autonomy or simply a matter of circumstance? Furthermore, why were widows coming before the Lord Chancellor as defendants more likely to be named in conjunction

with a male co-defendant than not? Could these figures be an indication of a clash between how widows saw themselves – independent, legally competent, and in need of redress – and how the male populace regarded them overall – in need of being fitted back into patriarchal norms of being subservient to a masculine figure of authority?

What follows is an extended qualitative analysis of individual cases involving widowed named female litigants, aimed at answering these core research questions. This chapter considers the roles of the late seventeenth-century's widow's familial and legal knowledge (or lack thereof as the case may be), familial responsibility and social standing. In covering these interconnected aspects of the early-modern widow's experience, this chapter explores why widows often entered pleas into Chancery alone when acting as plaintiffs, but as defendants were often accompanied by men.

6.1 A Widow's Knowledge

A number of the cases involving widows in the late seventeenth-century Court of Chancery demonstrate not only the extent of the early-modern woman's typical legal experience, but also the significance of that experience in her future legal endeavours. By the time the early-modern woman became a widow, she had lived under the patriarchal authority of her father (or some other named guardian) as a singlewoman *feme sole*, she would have – most likely – been subject to a marriage settlement outlining what she brought to the marriage and what provision was to be made for her, and any children 'lawfully begotten' by her marriage, should she survive her intended spouse. She would have lived under the doctrine of coverture as a wife, a *feme covert*, and finally have regained her legal identity and independence as *feme sole* once again upon entering her widowhood. In other words, the seventeenth-century woman would, had she fulfilled her expected roles of singlewoman, wife and mother, by the time she reached widowhood (which could, considering the demography of the period, come very early in her life) have experienced a legal life and status that was regularly, and dramatically, shifting from varying states of submission and independence.

The loss of a spouse in early-modern England was a common feature of life, as it was throughout Europe at the time. However, it was for women that this eventuality brought about the most dramatic changes. This fact is highlighted by the fact that the word 'widower' in most European languages derives from the word for 'widow', whereas the most usual pattern in gendered language is for the male designation of a word to dictate the female (for instance, the word 'princess' derives from the word 'prince'). Wiesner-Hanks tells us that the word 'widower' did not enter into common usage until the eighteenth century 'when people began to think about the loss of a spouse more as an emotional than an economic issue'.[4] The linguistic prominence of the female widow, then, is indicative of the fact that the loss of a spouse had severe and manifold implications and ramifications for the lives of women, something that was not experienced by their male counterparts in the same way.

Add to this the possibility of widows remarrying, thereby entering more marriage agreements, perhaps having more children in need of consideration, and potentially becoming a widow more than once, and the legal life of the seventeenth-century widow becomes hugely complicated – and, coincidentally, hard to trace. The question is, how did all this legal experience had by the widow manifest in her own litigation? Was the widow able to use her experience of law to her benefit as a litigant? After all, as Stretton pointed out in his consideration of widows entering the Elizabethan Court of Requests, it was in their widowhood that women often had their first experience of litigation, and it was often at the very beginning of them entering this new phase of their lives: 'widows were more likely to have dealings with the law in the first year of widowhood than at any other time'.[5]

In the case Cooper v. Baynes, Edmund Cooper brought suit against the widow of Adam Baynes, Martha Baynes, for debts owing to him by the then deceased Adam Baynes arising from the Civil War – 'the late unhappy troubles'. Cooper

[4] Wiesner-Hanks, *Early Modern Europe*, p. 65.
[5] Stretton, *Women Waging Law*, p. 117.

claimed to have been soldier and a lieutenant in an army of which Adam Baynes was captain in defence of the King, and died still owing 'great considerable sumes of money' to those soldiers he led. Cooper accused Martha Baynes of attempting to 'conceale the said personal estate' of her late husband, and avoiding paying the debts owed out of the estate – 'she finding the said bonds doth pretend the said debts were paid'.[6] Martha, however, claimed to be a complete 'stranger to the matter aforesaid', able to use her ignorance – real or tactically-imagined – as her first line of defence.[7] It could have plausibly been the case that Martha truly was ignorant of the situation and correlating charges brought against her or that she had full awareness of the situation, having deliberately attempted to avoid paying those debts owed by her late husband, falsely claiming ignorance knowing it was both believable and a good defence tactic.

In Blackburne v. Nursey, William Blackburne claimed that the widow of his later brother, Thomas Blackburne, Elizabeth Nursey (née Gill, at the time of the original bill of complaint married to her second husband Christopher Nursey) had sold lands she had inherited as a co-heir with her sister, Jane Prince (having bought her sister's share of the property from her to become to sole owner of the premises), to Thomas Blackburne prior to their marriage. Once the sale had gone through, and the land fully conveyed to Thomas Blackburne, he and Elizabeth were wed, and lived in the property in question as man and wife. Following the death of her first husband, however, Elizabeth continued to reside in the property, taking the rents and profits thereof, with her new husband Nursey. William Blackburne claimed that, as brother and therefore heir to the late Thomas, he should have possession of the land.[8]

Elizabeth Nursey, however (appearing in conjunction with her new husband Christopher), claimed that she had never conveyed the lands to her late husband,

[6] TNA C5/465/5, Cooper v. Baynes, Original Bill of Complaint (1677).
[7] TNA C5/465/5, Cooper v. Baynes, The Answer of Martha Baynes (1677).
[8] TNA C5/451/111, Blackburne v. Nursey, Original Bill of Complaint (29 May 1682).

Thomas Blackburne. Elizabeth knew that if she had not in fact conveyed her lands to her late husband, it would mean that Thomas' possession of the land was only for the duration of their marriage. The lands were therefore rightfully her own property once again as a widow, and then legally possessed by her new husband Christopher upon her once again becoming a *feme covert*.[9] Unfortunately for Elizabeth, who by the time depositions were being taken was a widow once again, her reliance on her brother-in-law being unable to prove she conveyed the land in question to her first husband prior to their marriage because he did not have access to the necessary documentation was a tactic that proved unsuccessful.

Various deponents who were called upon to provide testimony for the suit on behalf of William Blackburne concurred with the narrative of events as given by the plaintiff. The yeoman George Robinson, for example, deposed that 'Elizabeth Gill ye defendant in ye pleadings named did execute a deed with livery … to Thomas Blackburne of all ye messuages and lands in question and hee believeth it was before her intermarriage'. Thomas Smithson, another yeoman, claimed that he had had a conversation 'with Christopher Nursey the defendants late husband deceased', where they had discussed this matter being heard in Chancery. When Thomas Smithson asked about whether or not Elizabeth Nursey had 'made a deed to Thomas Blackburne … the said Nursey said yes and I have it'.[10] The depositions of knowledgeable witnesses were all it took to unravel Elizabeth Nursey's false claims of never having conveyed her lands to Thomas Blackburne, claims she only felt able to make because the deeds in question were in possession of herself and her second husband.

The Chancery archival records also offer evidence of widows proactively attempting to utilise their knowledge to improve their position at law. In Weston v. Sanderson, for instance, Dame Frances Weston entered a bill of complaint into

[9] TNA C5/451/111, Blackburne v. Nursey, The joynt and severall Answers of Christopher Nursey and Elizabeth Nursey his wife (20 June 1682).
[10] TNA C22/562/13, Blackburne v. Nursey, Depositions taken in the country (5 October 1683).

Chancery in order to have deponents make formal, legally binding statements that spoke to the good mental health of her late husband at the time of his creating his last will and testament. Dame Frances knew that her late husband's sister Elizabeth Sanderson (and her husband Isaac by means of coverture) and his nephew Edward Haulsey (an infant by a different, deceased sister), as his heirs at law, were eager to take possession of the real estate that Sir Richard Weston had owned in his lifetime, and left by his last will and testament to his wife. Dame Frances claimed that the Sanderson's and Edward Haulsey had expressed their desires and threatened 'to bring actions at law to evict yor oratrix', pretending the will was void due to Sir Richard's state of mind at the time of its creation. Dame Frances therefore desired several persons to have their witness statements, their depositions confirming Sir Richard was of sound mind when making his last will and testament, formally recorded to ensure 'their testimonyes be preserved in this Hono-ble court'.[11] Dame Frances knew that unless she could prove the validity of her husband's will that she could lawfully be evicted from the property she had inherited from her husband, and so set about formally gathering information that would bolster her claims to legally own the Yorkshire lands in dispute, in her own name. This demonstrates a remarkable degree of legal knowledge and acumen.

The position of the widow in seventeenth-century England was a precarious one due to the validity of claims that a widow could know everything or nothing of her husband's legal and financial activities and endeavours in life. A widow could claim, for instance, that she – as her husband's loving partner – had full knowledge of his dealings and was therefore confident that she was owed money from others, that debts had been fully paid off, or that others were trying to take advantage of her in some manner, in her newly *feme sole* state. She could also claim, however, to know nothing. Nothing of monies owed by her husband, nothing of rival claims to land being brought before her, nothing of the dealings of her husband in his lifetime that had the potential to impact the remainder of her natural life, and subsequently the lives of any dependents, at all.

[11] TNA C5/576/53, Weston v. Sanderson, Original Bill of Complaint (21 May 1681).

This paradigm created space for widows to utilise legal tactics. Her status as a *feme covert,* as well as knowledge of and access too important legal documentation could manifest in different situations that make it difficult for the historian to unpick and discover the truth of the past. A widow could be entirely honest in claiming to know nothing, or in claiming to know everything – using her knowledge or lack of it in the pursuit and defence of suits before the Lord Chancellor. Alternatively, she could be dishonest, claiming full, incomplete, or total lack of knowledge as best suited her situation and long-term goals. The untruthful widow could be accused, for instance, of double-dealing and lying, just as easily as the honest widow could be.[12]

The material point here, however, is that the knowledgeable widow was in a far superior position than her ignorant counterpart. She had the option of utilising her knowledge tactically if she so wished, or use what she knew honestly to pursue her rights. Furthermore, the widow was the woman who, in early-modern England, was most likely to have knowledge that was usable should she become a litigant – plaintiff or defendant. The widow often had knowledge of her family: natal, marital and extended. She had first-hand experience of her changing status at law, and understood the realities of living under coverture. She was, more often than not, the person best placed to seize documents pertaining to the estate of her late spouse, arming herself with the knowledge and evidence she would need to assert or deny in order to support herself and any other dependants.

6.2 Familial Responsibility: Duties, Dependants and Remarriage

The early-modern widow was a woman who often faced a great deal of responsibility: 'the fate of children, the future of baronial estates or artisan shops or manorial shares, plus questions of burials, of last wills and their execution, and, many times, no doubt, of how to put bread and ale on the table, were

[12] Stretton, *Women Waging Law*, pp. 115-117.

frequently items on the agenda we call getting on with life'.[13] One of the primary duties that often fell to the early-modern widow to perform was that of executing the will of their recently departed spouse. The frequency with which widows were chosen to act as executrixes to their late spouse's wills has for some time been regarded as indicative of 'the confidence men had that their wives would distribute the assets of their estates fairly and in accordance with the terms of the wills'.[14] In wills that mentioned both widows and children, it was widows who were more likely to be named as executrixes to the will. From 1650 to 1699, the percentage of male testators choosing their surviving widow to act alone as executrix to their will peaked, at 60 per cent, with a further 17 per cent of widows named joint executor with another (most commonly a child of the marriage).[15] Many of the widows appearing before the Lord Chancellor in Chancery during this period were engaging in litigation as part of their duties as executrixes and administratrixes.[16]

Those widows who accepted the responsibility of administering or executing their late partners' last will and testament often had to perform a variety of tasks, including proving the will, and the creation and entering of inventories into the ecclesiastical probate courts. The attempts of widows to tie up the loose ends of an estate left by a departed spouse – from collecting money from debtors, to satisfying creditors, or claiming ownership of assets in dispute – 'often led

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[13] Joel T Rosenthal, 'Fifteenth Century Widows and Widowhood: Bereavement, Reintegration and Life Choices' in *Wife and Widow in Medieval England*, Ed. Sue Sheridan Walker (United States of America: The University of Michigan Press, 1993), p. 35.
[14] Wall, 'Bequests to Widows', p. 222.
[15] Wall, 'Bequests to Widows', see 'Table 1: Percentage of testators choosing widow and/or child as executor', p. 225.
[16] When a husband died intestate, his widow often took on the administration of his estate, making herself the administratrix (Stretton, *Women Waging Law*, p. 110). Those women who were not made executrix or administratrix, or surrendered this power, in their widowhood were usually those widows incapacitated by age or infirmity, with their late husband's making other provisions for their care (Barbara J Todd, 'The Remarrying Widow: A Stereotype Reconsidered' in *Women in English Society: 1500-1800* (London and New York: Methuen, 1985), Ed. Mary Prior, p. 69).

them into the secular courts as well'.[17] Those widows who were named executrixes to their late husband's wills and appeared in that capacity in the Court of Chancery always introduced themselves as such within the pleas they put before the Lord Chancellor. For example, Ann Bray was the widow and 'Executrix of the last will and testament of Thomas Bray her late husband deceased'.[18]

Not all widows, however, were made the executrix of their husband's last will and testament. In the case of Robinson v. Bethell, John Lillie appointed his daughter, Grace Robinson, to execute is will rather than his widow, Anne Lillie.[19] This however, seems to have been a relatively rare course of action. In the period 1650 to 1699, only seven per cent of male testators elected their daughter to act as executrix to their will – either alone or with another, for example their recently widowed mother or a sibling.[20] If those husbands who nominated their wives to act as executrix to their last will and testament were displaying trust in the competence of their partner to execute their last requests, as Wall suggests, one can only assume that those few who appointed their children over their wife either lacked trust in their spouse, or simple trusted their children more.[21]

Executing a will was not the only potential duty facing early-modern women should they enter the state of widowhood. If a man brought a case into Chancery before the Lord Chancellor and happened to die before his suit reached resolution, his widow would enter a bill of reviver into the court. This bill would allow the widow quite literally to revive the original bill of complaint brought into the court by her late partner in her own name. Unresolved legal dealings and suits in Chancery were sometimes part of the early-modern widow's inheritance.

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[17] Stretton, *Women Waging Law*, p. 110.
[18] TNA C5/80/91, Bray v. Moseley, Bill of Reviver (31 January 1690).
[19] TNA C5/134/55, Robinson v. Bethell, Original Bill of Complaint (1698); It is worth reiterating here that Anne Lillie was not Grace Robinson's mother, and according to Grace and her husband was something of a difficult wife.
[20] Wall, 'Bequests to Widows', see 'Table 1: Percentage of testators choosing widow and/or child as executor', p. 225.
[21] Wall, 'Bequests to Widows', p. 222.

An example of a widow reviving a suit originally brought into Chancery by her late husband can be found in Barstow v. Ward. This suit was brought back into Chancery, before the Lord Chancellor John Lord Sommers, in 1699 by Alice Barstow, widow of Michael Barstow. In her bill of reviver, Alice opened her plea by explaining that her late husband had 'exhibited his Bill of Complaint in this honourable court' against one Thomas Ward. Thomas had later died before the matter had reached a resolution, and so Michael Barstow had amended his bill accordingly, bringing it instead against Anthony Ward – eldest son, heir and executor of Thomas Ward. Anthony also died some time later, leaving behind a widow of his own and a younger brother, Mary and Roger Ward. Following the death of Michael, it was against Mary Ward and her brother-in-law Roger Ward that Alice Barstow entered her bill of reviver, thereby ensuring not only that the plea was in her own name but that it was being brought against defendants who were both living and responsible for settling the debts left by Thomas and, consequently, Anthony Ward respectively (Mary being Anthony's relict, Roger being his administrator).[22]

Another example of a widow taking over the unresolved legal dealings of her late husband can be found in the suit Bray v. Moseley. Ann Bray was the widow and 'Executrix of the last will and testament of Thomas Bray her late husband deceased' Ann explained within her own plea that her late husband, Thomas, had during his lifetime 'in the year of our Lord one thousand six hundred eighty and seven exhibited this Bill of Complaint into this honourable court against the said defendants Joseph Armitage Richard Moseley and William Moseley'.[23] Since the original bill of complaint first brought before the Lord Chancellor in 1687, who was George Jeffreys at the time, Thomas Bray, Jospeh Armitage and Richard Moseley had all died.[24] This left William Moseley and the living dependants of Richard Moseley, his widow Anne Moseley and his infant son Richard Moseley

[22] TNA C5/200/3, Barstow v. Ward, Bill of Reviver (20 April 1699); TNA C5/211/12 Barstow v. Ward, The Separate Answer of Roger Ward (1699).
[23] TNA C5/80/91, Bray v. Moseley, Bill of Reviver (31 January 1690).
[24] 'Lord chancellors of England and Great Britain (1060s–2013)', *Oxford Dictionary of National Biography*, Oxford University Press. [http://www.oxforddnb.com/view/theme/92824, accessed 27 June 2017].

(who will hence forth be referred to as Richard Moseley junior), to take up the mantle and responsibility of being defendants to this suit.

William Moseley was listed as a defendant within the previous pleas entered into Chancery for this suit, and so his role as a defendant simply continued into the bill of reviver, reviving the matter at hand in the name of Thomas Bray's widow Ann. Anne Moseley and Richard Moseley's involvement in the suit was slightly less straight forward. Richard Moseley junior was the eldest son and, thereby, the heir of his late father and defendant to his suits still unsettled at the time of his death. However, at the time of this suit he was still an infant, under the age of 21, and therefore under the guardianship of his still living mother, Ann Moseley. Ann Moseley was subsequently named as a co-defendant as the representative of Richard Moseley. Ann Moseley was, after all, executrix of the last will and testament of her late husband and was further appointed administratrix of Richard Moseley's estate, that was to eventually be inherited by her son, 'during the minority of the said Richard Moseley her son'.[25] This made Ann liable for the debts incurred by her deceased husband during his lifetime, as his relict, guardian of his son and heir, and administrator of his estate, with her infant son also named as a defendant to be represented by her until he reached the legal age of adulthood and could take on legal responsibility for himself.

This case illuminates the differing levels of familial responsibility inherited by widows at the death of their spouses. Both Ann Bray and Anne Moseley inherited the legal disputes of their respective, deceased husbands. In other words, because Thomas Bray and Richard Moseley were in the midst of a law suit in the Court of Chancery at the time of their respective deaths, their spouses became litigants in the court in their own right upon entering widowhood. It was in Ann Bray's best interest to chase those debts still owing to the estate of her deceased husband – that was money she could use to support herself and any dependants she may have had (such as children). Moreover, it was one of the key familial obligations that befell early-modern women should they become widows,

[25] TNA C5/80/91, Bray v. Moseley, Bill of Reviver (31 January 1690).

especially should she be made executrix or administratrix. Stretton observed that it was 'the task of the widow … to pursue any matters that required resolution, which often meant putting obligations and other agreements in suit at common law', and fulfilling this duty brought many late seventeenth-century widows into Chancery too.[26] Anne Moseley inherited responsibility not only for her late husband's debts owing (which he had inherited from his own late father Thomas Moseley) but also the sole care and guardianship of both their son and his inheritance – the personal estate of Richard Moseley – whilst he remained legally an infant (under the age of 21). For both these women, widowhood equated to greater levels of responsibility and duties to execute – financial, legal, and familial.

Widows entering bills of reviver into the Court of Chancery following the death of the spouse resonates not only with the idea of women inheriting litigation from their late partners, but of the institution of marriage providing women with a degree of legal knowledge and aptitude, as discussed in in the previous chapter. Furthermore, widows were often obliged to deal with complex matters that had not been brought before the law during the lifetime of their late spouse, death spurring individuals to bring suit in order to find a resolution. In the case Cooper v. Baynes, for example, Edmund Cooper initiated suit against the widow Martha Baynes following the death of her husband, Adam, for the payment of outstanding debts owed him by Adam.[27]

In widowhood, women could be left dealing with matters of business and relating to businesses left them by their late husbands. In Wilson v. Lister, for example, widows Alice Wilson and Jane Lister (along with her two daughters Elizabeth and Jane, Elizabeth later marrying Benjamin Taylor, who is consequently included in the litigation as it progressed) come to legal blows over a brewery in Hull, Yorkshire. Richard Wilson, the late spouse of Alice, had entered into an agreement with one Hugh Lister, late spouse of Jane Lister, whereby he would rent the Brewhouse owned by Lister, in order to run his own

[26] Stretton, *Women Waging Law*, p. 116.
[27] TNA C5/465/5, Cooper v. Baynes, Original Bill of Complaint (1677).

business – the indenture being contracted between the two men on the 22nd December 1663. Alice claimed that her husband, and by extension she, was an exemplar tenant; paying the rent as stipulated in the indenture, keeping the premises in sufficient repair and good working order, and performing 'all other covenants of the said indenture'.[28]

Alice Wilson had decided to leave the brewing trade following the loss of her partner, and so applied herself to Jane Lister – Jane being the only acting executrix to the estate of her own late husband, her daughters and co-heirs to Hugh Lister both being minors under the age of 21 at the time of this original bill of complaint – in order to request the lease be transferred to a new tenant. Jane Lister being in agreement, Alice began treating with a Mr Bamborough, who himself agreed to pay the rent and perform the covenants outlined in the original indenture contracted between Mr Wilson and Mr Lister in order to become tenant to the property, and Jane Lister accordingly accepted him as her tenant. Alice went on to explain that Mr Bamborough officially took over the lease of the property, and even entered upon the premises, Alice sendng him various goods and vessels needed to operate a brewery business all 'in good and sufficient repaire and of good value'.[29]

Upon entering the premises, however, it seems that Mr Bamborough was wholly unsatisfied with the condition of the property. Alice Wilson accused the owners of the property she once held as a tenant, Jane Lister, her daughters Elizabeth and Mary, along with Elizabeth's new husband Benjamin Taylor, of confederating with their new tenant Mr Bamborough in an attempt to make her pay for repairs to the property, 'saying there is great damage suffered to the premises'. Alice, however, maintained that her husband in his lifetime and she had kept the premises well, in accordance with the stipulations of the original indenture, and that 'if any of the covenants were broken they were done so and property damaged by Mr Bamborough'.[30]

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[28] TNA C5/580/58, Wilson v. Lister, Original Bill of Complaint (31 July 1679).
[29] TNA C5/580/58, Wilson v. Lister, Original Bill of Complaint (31 July 1679).
[30] TNA C5/580/58, Wilson v. Lister, Original Bill of Complaint (31 July 1679).

To the bill of complaint brought against all five of these persons, they together entered their 'joynt and severall answers', to which Jane Lister was first named plaintiff, and quite obviously took the lead. Jane claimed that she had never agreed to this new tenant 'by word or writing', but that Mr Bamborough had indeed entered the premises. Though she did not know 'the state of repaire of the premises upon his entrance to them', she readily believed that the condition of the property was very bad prior to Mr Bamborough's entrance onto the premises, 'with several particulars missing and damnified'. Mr Bamborough relaying the state of the property to his new landlady, Jane sent her new son-in-law to inspect the property on her behalf, along with several workmen, to assess the damage and come to an estimate for the repair costs.[31]

As a widow, then, Jane Lister inherited important responsibilities, which she apparently took in her stride. Following the death of Hugh Lister, Jane was left with two legally infant daughters to support, their interest in the Brewhouse to represent, the task of executrix to her late spouses will, personal and real estate, not to mention the actual property he left, and the tenants thereof, to manage, and even litigation in relation to that business. The position of Jane Lister as the first named defendant, with the bulk of the answer written from her individual point of view – 'the said Jane Lyster widdow one of the defendants severally sayth that …' – and her sending her son-in-law out, with other men, to conduct business on her behalf (Jane later, for greater clarity, referring 'herself to Benjamin Taylor to whom she left the task of examining the premises'), makes the position of the widowed Jane Lister clear: one of inherent responsibility and notable authority.[32]

[31] TNA C5/580/58, Wilson v. Lister, The joynt and severall answers of Jane Lister Widow, Benjamin Taylor Gent and Elizabeth his wife, Jane Lister spinster and Thomas Bamborough (1679).
[32] TNA C5/580/58, Wilson v. Lister, The joynt and severall answers of Jane Lister Widow, Benjamin Taylor Gent and Elizabeth his wife, Jane Lister spinster and Thomas Bamborough (1679).

It was not just through their late spouses, however, that early-modern widows inherited money, land, property, business and litigation. In the case Cooke v. Lumley, it was through her sister that the widowed Alice Cooke was able to claim rights to some land in Yorkshire. In 1680, the widow Alice Cooke entered a bill of complaint into Chancery, having already entered a plea on the matter just the year before. Alice claimed that Leonard Waite of Leeds died seized of property in Yorkshire. Leonard made and published his last will and testament in 1659, in which he stipulated that his personal estate was to descend to his son and heir James Waite. James was the son of Leonard and his wife Jane Waite who was sister to the oratrix to this suit, Alice Cooke. James Waite, in turn, made his own last will and testament in 1675 in which he did 'devise unto Jane Waite (sister of him the said James Waite) and to her heires and Assignes for ever the said messuage and premises'.[33]

Although James 'settled his property by his will onto his sister Jane' there were further conditions laid out in the will. Should Jane die before she had any lawful children of her own or before reaching the age of 21 'Then and in such case hee (the said Testator James Waite) did thereby devise the premises unto the aforesaid Jane Lumley (Mother of him the said James Waite and [wife of] the said William Lumley)'. Since the death of her first husband Leonard (with whom she not only had her son James, but also a daughter also named Jane), Alice Cooke's sister Jane had remarried a man called William Lumley (Alice's sister will hence forth be referred to as Jane Lumley and her daughter from her first marriage as Jane Waite). Jane Waite did indeed die before reaching the age of 21 and before having any lawful children of her own, and so the premises once held by Leonard Waite was, according to the will of James Waite, to go to Jane Lumley.[34]

Cooke v. Lumley highlights how widows concerned with family matters were not always dealing with matters they inherited from their spouses, confirming the

[33] TNA C5/464/68, Cooke v. Lumley, Original Bill of Complaint (23 October 1680).
[34] TNA C5/464/68, Cooke v. Lumley, Original Bill of Complaint (23 October 1680).

point made by Stretton in his consideration of widows in the Elizabethan Court of Requests; 'widows litigated throughout widowhood and they did not confine themselves to litigating matters connected with their husbands' estates'.[35] Widows could, and did, inherit cases from a variety of deceased family members. Alice Cooke, in this particular suit, coming up against her brother-in-law for property in Yorkshire that would have descended to her sister had she survived. As a widow, and, she claimed, the sole heir to Jane Lumley, Alice Cooke came before the Lord Chancellor alone, as a sole female plaintiff (SFP).

One of other duties commonly facing the early-modern widow was the guardianship and rearing of children. As Bubwith v. Shaw revealed, part of Deborah Shaw's argument asserting her rights to the Yorkshire land once held by her late brother, Samuel Bubwith, was a firmly held belief that Samuel would have wanted to provide not only for her, but for her children (his nephews and nieces) too.[36] Certainly, in his will, Samuel Bubwith stipulated that should Mary Bubwith die then his possessions were to descend to his sister, or 'in case of her predecease to her … children'.[37] Despite Deborah's claims, it would seem from his will that Samuel Bubwith's desire to provide for his own widow rather than the widow of his brother-in-law and her children took precedence. What this aspect of the case does reveal, however, is the role of children in the activities of early-modern women in their widowhood, legal and otherwise.

A number of widows appearing before the Lord Chancellor in his court of equity in the later seventeenth century did so on behalf of their infant children, as both plaintiffs and defendants. When a man of property died, if he left behind a surviving wife and child, or children, it was likely that his child, or children, would be his heir(s). If still under the age of 21 and subsequently infants, however, they could not lay claim to their inheritance. If a widow, then, was fortunate enough to have inherited or succeeded to property, 'she was able to

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[35] Stretton, *Women Waging Law*, p. 117.
[36] TNA C5/205/10, Bubwith v. Shaw, The Severall Answers of Deborah Shaw (1698).
[37] TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht (1699), Translated by Andrew Little (2016).

control her independent means in her own interests and on behalf of her children'.[38] In order to best control the interests of her children, the early-modern widow appears in Chancery litigating alongside and as representatives of their infant offspring.

In the suit Chaster v. Wheatley, for example, the plaintiff to the suit was Isabell Chaster. Isabell was an infant under the age of 21 and therefore was represented in her original bill of complaint by 'Elizabeth Chaster her mother and next friend'.[39] Part of Elizabeth's familial responsibility in her widowhood was to represent her daughter at court until she reached an age where she could act either independently or by a husband. However, Elizabeth Chaster died before the suit in Chancery had reached resolution and before Isabell reached the age of 21. Consequently, a later bill of complaint was entered into Chancery by Isabell Chaster and her new guardian, the widow Ann Shepley, 'her aunt next friend and guardian'.[40] The representation of the young Isabell Chaster before the Lord Chancellor in Chancery reveals not only that widows could, and did, inherit responsibility for their children that extended into the law courts of early-modern England, but that in their widowhood women could also become responsible for children who were not their own but for whom they were a guardian. The familial responsibility widows had for children at times extended beyond their own nuclear family.

Another illuminating example of a woman representing her children in the late seventeenth-century Court of Chancery can be found in Tancred v. Tancred. The original bill of complaint for this case was brought by the widowed Katherine Tancred and her five daughters against her youngest child and only son, Christopher Tancred. This case reveals how the responsibility widows had to her children could be deeply divisive, not only amongst extended family members, but within the context of nuclear families too. Katherine's late husband had left

[38] Todd, 'The Remarrying Widow', p. 55.
[39] TNA C5/82/33, Chaster v. Wheatley, Original Bill of Complaint (3 July 1691).
[40] TNA C5/202/19, Chaster v. Wheatley, Original Bill of Complaint (3 June/January 1699).

generous portions for each of his daughters that Christopher found were prohibitively expensive upon inheriting his deceased father's estate in Whixley. Katherine was forced to pick sides in a conflict between her children (a conflict that proved to cause irrevocable damage to the sibling relationship between brother and sisters) – supporting, at least initially, her daughters and the will of her late husband ahead of the despite the exorbitant cost it would be to her son.[41] At times, then, the responsibility widows had for their children was fraught with difficult choices.

Whether or not a widow had children to represent and provide for not only impacted her likelihood of becoming, and experience of being, a litigant, but it also impacted her personal choices about how best to move forward with her life. Early-modern thought surrounding remarriage was both complicated and conflicting. Widows presented something of a 'conceptual dilemma for seventeenth century authors'. Prescriptive writings that attempted to accurately and precisely define the 'roles, rights and responsibilities' of women in each of their expected life-cycle stages of singlewoman, wife, and widow.[42]

Widows were neither singlewomen nor wives, despite having experience of being a singlewoman and once again returned to her *feme sole* status, and having had experience of being a wife, a *feme covert*, and to some regarded as forever wed to her late husband, 'ever-married' in her commitment to his memory.[43] The widow, therefore, did not readily fit into a well-ordered, idealised, gendered hierarchical society and consequently presented a problem. The theoretical discussions surrounding widowhood revolved around the core question, 'which posed more danger to a well-ordered society, widows who remarried, or widows who did not?'[44]

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[41] TNA C5/272/4, Tancred v. Tancred, Original Bill of Complaint (1706).
[42] Vivian Bruce Conger, *The Widow's Might: Widowhood and Gender in Early British America* (New York and London: New York University Press, 2009), p. 26.
[43] Conger, *The Widow's Might*, p. 26; Fraser, *The Weaker Vessel*, p. 98.
[44] Conger, *The Widow's Might*, p. 26.

There was a strain of early-modern thought concerning widows, that taught that for a widow to remarry was akin to committing bigamy, 'if a widow had two spouse dead it might be termed 'trigamy'', as if in remarrying the widow was making a cuckold of her deceased husband.[45] *The Whole Duty of the Woman*, published in the early eighteenth century, espoused that 'Love is strong, as Death … and therefore, when it is pure and genuine, cannot be extinguished by it'.[46] The remains of the lost spouse of the widow were of three parts – his body, his memory and his children. The widow would ideally show respect and kindness for her late spouse, and each of these parts, with 'honourable interment', by 'endeavouring to embalm' the memory of her husband to 'keep it from perishing' and by ensuring any children had by the marriage enjoyed 'double portions of the Mother's love … since she is to supply the Place of both Parents'.[47] Indeed, the widow's maternal need to provide for her children and ensure their future 'is inseparable from a commitment to the past, especially to the memory of her husband'.[48]

However, the widow who honoured her husband's memory by maintaining her widowed status and not entering the union of matrimony for a second time did not always present an ideal form of womanhood, or widowhood. There were a number of issues that the widowed woman who remained steadfastly single following the death of her spouse presented to wider early-modern society.

The research of Jane Whittle and Barbara Todd has revealed the occupations entered into by widows in order to support themselves and any dependants they may have had were diverse. Some widows shared the expertise of their late husbands in marriage and were subsequently able to continue in similar lines of work following the death of their partner. Others continued in their employment

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[45] Fraser, *The Weaker Vessel*, p. 99; Capern, *The Historical Study of Women*, p. 23.
[46] Anon, *The Whole Duty of Woman: Or, an infallible Guide to the Fair Sex* (London: Printed for T Read, in Dogwell-Court, White-Fruers, Fleet-Street, 1737), p. 145.
[47] Anon, *The Whole Duty of Woman*, pp. 145-147.
[48] Raymond A Anselment, 'Katherine Austen and the Widow's Might', *Journal for Early Modern Cultural Studies*, Vol. 5, No. 1 (Spring-Summer, 2005), p. 11.

they had that was distinct from the work of their husbands. Even wealthier widows became engaged in work, making 'a living from lending money to large-scale malt production'.[49]

The Chancery archival material provides evidence of widows making autonomous decisions about how to continue in their lives, in terms of occupation, following the death of a spouse. As previously detailed, in Wilson v. Lister, one finds the recently widowed Alice Lister making just such a decision – which at the time of her bill of complaint was in fact suffering something of a setback, hence her appearance in the court. Alice was the relict and executrix of her late husband Richard Wilson, with whom she had worked in the brewing trade. Following the death of her partner, Alice 'was of mind to leave the brewing trade', and so set about finding a new tenant for the Brewhouse to which her late husband had entered into an indenture to lease more than a decade previously, in order to sign over her interest in the property, leaving her free to move on to pastures new.[50] Alice Wilson shows how some widows were in fortunate positions, left with businesses they could continue in or move on from as their inclination and situation dictated.

Nevertheless, widows had the potential to become economic drains of their local communities. In early-modern England, widows were some of the neediest people in society, and they 'depended more than other needy upon poor relief'.[51] Though Beatrice Moring points out that 'we should … not exclude the possibility that some women portrayed themselves as weak and in need of help in order to

[49] Jane Whittle, 'Enterprising Widows and Active Wives: Women's Unpaid Work in the Household Economy of Early Modern England', *The History of the Family*, 19:3 (2014), pp. 283-284.
[50] Wilson v. Lister, Original Bill of Complaint, TNA C5/580/58 (31 July 1679).
[51] Anselment, 'Katherine Austen and the Widow's Might', p. 5; Barbara J Todd, 'Demographic Determinism and Female Agency: The Remarrying Widow Reconsidered … again', *Continuity and Change*, Vol. 9, No. 3 (1994), p. 427.

obtain the assistance of relatives and the wider community', the widespread reliance of widows on poor relief is difficult to ignore.[52]

Some widows relied on poor relief for substantial periods of time, 'in some cases over 30 years' in the seventeenth century.[53] Alexandra Shepard and Judith Spicksley made the point in 2011 that the median worth of widows diminished over the early modern period, 'from being above that of labourers to being on a par with female servants and single women'.[54] It may well have been the case that those widows who were less financially secure and independent were typically less likely to remarry over the course of the seventeenth century not only because their poverty rendered them an unattractive marriage partner, but because of the economic assistance made available to them. The existence of poor relief alone was not enough to actively discourage poor widows from remarrying, 'but it was one factor that weighed in the balance as a widow decided whether venturing with a poor sick man was a good option'. If a suitable prospect was available for the poorer widow – healthy, provident and financially secure – then that was one thing. But in the absences of ideal men with whom to match, the poor widow may have selected living on poor relief over remarriage; not normally the most attractive of options, but perhaps the best possible course for a number of women.[55] It is possible, in other words, that 'the increasingly systematic provision of poor relief from the late sixteenth century onwards' encouraged more widows to remain *feme sole* and avoid remarriage.[56]

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[52] Beatrice Moring, 'The Standard of Living of Widows: Inventories as an Indicator of the Economic Situation of Widows', *The History of the Family*, 12:4 (2007), p. 233.
[53] Jane Whittle, 'Inheritance, Marriage, Widowhood and Remarriage: A Comparative Perspective on Women and Landholding in North-East Norfolk, 1440-1580, *Continuity and Change*, Vol. 13, No. 1 (May, 1998), p. 63; Here Whittle is quoting the work of Tim Wales, 'Poverty, Poor Relief and the Life-Cycle: Some Evidence from Seventeenth Century Norfolk' in *Land, Kinship and Life-Cycle* (Cambridge, 1984) Ed. Richard M Smith, p. 366.
[54] Alexandra Shepard and Judith Spicksley, 'Worth, Age and Social Status in Early Modern England', *The Economic History Review*, Vol. 64, No. 2 (May, 2011), p. 522.
[55] Todd, 'Demographic Determinism and Female Agency', p. 427.
[56] Whittle, 'Inheritance, Marriage, Widowhood and Remarriage', p. 63.

In his analysis of widows in years prior to the systematic poor relief of the late sixteenth century, Peter Franklin highlights community pressure and economic need as key factors in the widow's decision to remarry. A widow's need for money in order to survive did not, after all, diminish as she got older – if anything her desperation would have intensified somewhat, age and infirmity impacting her ability to work. This coupled with a land-holding widow's need to employ male labour in a manner that was deemed socially acceptable, 'it was difficult for the community to countenance a widow living under one roof with a young man who was her servant, whereas as her husband and master he was socially acceptable', draws Franklin to conclude that widows' remarriage 'should be seen largely as a response to covert seigneurial and community pressures'. Those widows who did remarry would continue to remarry if faced with subsequent periods of widowhood, and die married women.[57]

Franklin found that many of the medieval peasant widows he researched gave indication of sharing the desires of their 'noble sisters' for independence.[58] Poor relief from the later sixteenth century onwards provided the means for some widows to retain their independence. In being so reliant, however, these poor early-modern widows were financially draining for their local communities – something that contemporaries looked upon as deeply problematic.

Another consideration that made the early-modern widow an unsettling feature of society was her potential levels of independence – 'the object of pity and charity was also commonly seen as a threat to male security and patriarchal society'.[59] A woman who entered widowhood with the means to support herself, and any dependants, quite comfortably was in a rare position of independence and subsequent autonomy. These widows were free from the constraints imposed on other women, being either singlewomen in male-headed households, or wives governed by husbands and bound by coverture, enabling some – though

[57] Peter Franklin, 'Peasant Widows "Liberation" and Remarriage before the Black Death', *The Economic History Review*, Vol. 39, No. 2 (May, 1986), pp. 198-203.
[58] Franklin, 'Peasant Widows "Liberation" and Remarriage', p. 195.
[59] Anselment, 'Katherine Austen and the Widow's Might', p. 5.

not all – to experience an independence 'recognised by both their seventeenth century contemporaries and modern scholars'. For the financially secure woman, therefore, widowhood could be a period of unprecedented freedom, 'a time of maximum female autonomy'.[60]

Indeed, those widows with children who enjoyed financial security could come to wield significant power over the lives of her offspring and beyond, 'deciding the amount of dowry for her daughter and assisting her sons in gaining positions of political influence'.[61] Independent widows consequently went against the patriarchal norm of early-modern society, being ungoverned women who ruled over their families as their late husbands had once done, representing the needs of their families in the local and wider community.[62]

The ungoverned woman was a threat to patriarchal, social order. The early-modern idea of the family as a microcosm of the state dictated the necessity for a male head of household.[63] The widow, in contradicting this ideal and theory, was threatening. Furthermore, the widow as head of her own household was not necessarily limited to those women who enjoyed financial security either. Barry Stapleton found in his study of poverty in Odiham, Hampshire, from the mid seventeenth- to the mid nineteenth centuries, that a substantial proportion, nearly 28 per cent, of the heads of pauper households would have been widows.[64] Even the poor widow, after all, 'would and could run her life as she saw fit'.[65]

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[60] Anselment, 'Katherine Austen and the Widow's Might', p. 5; Here Anselment is quoting Sara Mendelson and Patricia Crawford, *Women in Early Modern England, 1550-1720* (Oxofrd: Oxford University Press, 1998), p. 180.
[61] Wiesner-Hanks, *Early Modern Europe*, p. 65.
[62] Conger, *The Widow's Might*, p. 35.
[63] Todd, 'The Remarrying Widow', p. 55.
[64] Barry Stapleton, 'Inherited Poverty and Life-Cycle Poverty: Odiham, Hampshire, 1650-1850', *Social History*, 18:3 (1993), p. 353; see 'Table 6: Pauper Widows', p. 354.
[65] Todd, 'The Remarrying Widow', p. 55.

An overall decline in the rate of remarriage over the course of the seventeenth century has been treated as indicative of poorer widows being able to benefit from a degree of feminine agency within the patriarchal culture of early-modern England.[66] The work of Schofield and Wrigley demonstrated that in rural England in the sixteenth century around 25 to 30 per cent of people marrying were those remarrying in later life. This proportion declined to around 10 per cent by the nineteenth century. These figures were calculated by looking at both men and women, and remarriage rates for widows appear to have dropped even lower. In the seventeenth century more specifically, Jeremy Boulton found that in a relatively poor parish of London, nearly half the brides were already widows at the beginning of the century, a proportion which had reduced to around a quarter by the later years of the same century.[67] Over the course of the seventeenth century, then, widows became increasingly likely to maintain their regained *femes sole* status.

In her assessment of widows in seventeenth-century France, however, Julie Hardwick found that it was not an entirely straightforward matter, and that 'widows could not simply replace their husbands as household heads'. Widows were, for example, not automatically made guardians for their children as s widowers were (though widows were usually selected for the role by other kin members), and they may have found themselves purposefully excluded from important family events, 'confirming that women could not simply assume all the privileges and responsibilities normally associated with head of household status'.[68]

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[66] Anselment, 'Katherine Austen and the Widow's Might', p. 6.
[67] Antoinette Fauve-Chamoux, 'Revisiting the Decline in Remarriage in Early Modern Europe: The Case of Rheims in France', *The History of the Family*, 15:3 (2010), p. 286; Here Fauve-Chamoux is quoting from R Schofield and E A Wrigley, 'Remarriage Intervals and the Effects of Marriage Order on Fertility' in *Marriage and Remarriage in Populations of the Past* (London: Academic Press, 1981), Eds. J Dapâquier, E Hélin, P Laslett, M Livi-Bacci and S Sogner and Jeremy Boulton, 'London Widowhood Revisited: The Decline of Female Remarriage in the Seventeenth and Early Eighteenth Centuries', *Continuity and Change*, Vol. 5, No. 3 (1990); Todd, 'The Remarrying Widow', p. 56.
[68] Julie Hardwick, 'Widowhood and Patriarchy in Seventeenth Century France', *Journal of Social History*, Vol. 26, No. 1 (Autumn, 1992), pp. 134-136.

The position of the independent widow as head of her own household and dependents, however, was concerning enough to spark debate amongst early-modern social commentators and advisors. The possible autonomy and self-governance of a woman in her widowhood was not in-keeping with the societal ideals prescribed in the published literature of early-modern England, ideals of patriarchal communities in which women were neither drains on the resources of their local communities nor ungoverned by men.

Furthermore, one must consider the emotional turmoil of entering widowhood. It is true that, for some, widowhood presented opportunities that were enviable; independence, self-governance, the ability to dictate one's own future. However, 'widowhood began with a wrench, a sharp turn in the road of life's journey', and would have caused grief and anxiety for many. For those who did not enjoy financial security, and who mourned a much beloved spouse, facing widowhood would have been to face 'a bleak page' of isolation, vulnerability and loss. It is important not to forget the fact that widowhood was a phase of life that opened with a final closing.[69] The idea of being alone would not have held strong appeal for all early-modern widows. Indeed, Shannon McSheffrey uncovered the fascinating remarriage of Agnes Stoughton Skern following the death of her husband Robert, asserting that Agnes' mother (a widow herself) believed she 'needed to remarry quickly, as she required a husband to assist her in the legal recovery of her late husband's disputed lands'.[70] An independent widowhood was not the best option for every woman dealing with the fall-out of losing a spouse.

Widows remaining alone, then, and steadfastly loyal to the memory of their deceased spouse was not quite the perfect path for early-modern women moving forward with life after the loss of a husband. Socially, communally and

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[69] Rosenthal, 'Fifteenth Century Widows and Widowhood', p. 34.
[70] Shannon McSheffrey, 'A Remarrying Widow: Law and Legal Records in Late Medieval London' in *Worth and Repute: Valuing Gender in Late Medieval and Early Modern Europe: Essays in Honour of Barbara Todd*, Eds. Kim Kippen and Lori Woods (Toronto: Centre for Reformation and Renaissance Studies), p. 235.

individually, the idea of the lone widow was fraught with problems. Those social commentators who were disturbed by the potential 'social and economic independence' of widows felt 'the best solution might be remarriage'.[71] In an age where life expectancy was not much longer than 35 years, remarriage, 'far from being a distasteful aberration', was a common fact of life. Amongst the 'upper echelons of society', about 25 per cent of the population remarried following the loss of a spouse in the late sixteenth- and seventeenth centuries – with a further five per cent going on to marry a third time.[72]

However, 'remarriage was also troubling'.[73] Remarriage was seen by some as proof that women were unable to control their innate sexual weakness, 'barely able to contain her lust having tasted the delights of sex'.[74] Perhaps more worryingly though, the widow who remarried 'as men realised … confronted every man with the threatening prospect of his own death and the entry of another into his place'.[75] Surely an unsettling thought for women as well as men. But if the thought of someone fulfilling their marital role of husband was uncomfortable for men, the idea of another man raising and having sway over the future of their children had the potential to be quite unbearable.

One of the greatest fears surrounding remarriage was for the welfare of any and all children. Antonia Fraser asserted in her in-depth analysis of women in the seventeenth century that hypothetical second marriages threatened to damage the financial prospects of an already existing family. More than anything it was a 'question of the children's financial future – the children of the first marriage,

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[71] Wiesner-Hanks, *Early Modern Europe*, p. 65.
[72] Fraser, *The Weaker Vessel*, pp. 102-105.
[73] Wiesner-Hanks, *Early Modern Europe*, p. 65.
[74] Capern, *The Historical Study of Women*, p. 23; *The Whole Duty of Woman* also notes that the widow who openly expressed her grief at the loss of her husband dramatically by throwing herself at his body, with 'frantic Embraces and Caresses of a Carcass', was indecently betraying 'a little too much Sensuality of their Love' (Anon, *The Whole Duty of Woman*, p. 145).
[75] Todd, 'The Remarrying Widow', p. 55.

that is'.[76] It was children who could possibly lose out when their mothers entered second, or third (and so on), marriages.

The idea of second marriages, and any children born thereof, hindering the welfare of one's own children encouraged early-modern men and women to create legal contracts that ensured the welfare of their own offspring in the event of the death of a parent. In the case Gee v. Hotham, as discussed at length as part of the case study chapter, the marriage contract entered into by William Gee the elder and his first wife Rachel Parker was so detailed and comprehensive, that Gee's second wife Mary Spencer struggled to gain access to her husband's property upon his death in order to support herself and her infant children.[77] The very real and likely possibility of remarriage in the early modern period made the marriage settlement a crucial tool. After all, 'widows were among the most careful in negotiations about their own marriages. Experience had taught them the importance of property; those with children also sought to protect their inheritance'.[78]

However, the research of Barbara Todd has revealed that far from a discouragement, the widow who had children to care for was in fact more likely to remarry than her childless counterpart. In the fifteenth century 'young children were no obstacle to remarriage and perhaps even encouraged it', and almost 70 per cent of those women who became widows with young families married a second time. Though the proportional tendency of widowed mothers to remarry dropped over the course of the seventeenth century, to around 40 per cent, this group of women still continued to remarry more readily than average.[79] Fauve-Chamoux suggests that widowers, when taking a new wife, often were on the hunt for a bride younger than themselves and ideally without

[76] Fraser, *The Weaker Vessel*, pp. 105-106.
[77] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).
[78] Amussen, *An Ordered Society*, p. 72.
[79] Todd, 'The Remarrying Widow', p. 68.

children at charge – but, nevertheless, the widow who did have infants in need of care seemed to be able to find marriage partners.[80]

The depositions connected with the case Cooke v. Lumley reveal detailed information about how Jane Lumley, sister to the plaintiff Alice Cooke and widow to her first husband Leonard Waite, raised her son James Waite with her second husband William Lumley following her remarriage. Anne Corker, wife of William Corker of Leeds, for instance, claimed that Jane and William Lumley had brought up James Waite until he was 'putt outt to an apprenticeship'. Mary Dixon, a widow based in Leeds, deposed that William and Jane educated James and then paid for his apprenticeship. Not only that, but William paid for his step-son's clothing up until the day he died, and afterwards paid the full funeral costs. Susan Fanobriner, also a widow living in Leeds, stated that Jane and William had educated and brought up James to be an apprentice, providing for him with 'schooling meate drinke and apparrell'; and there are records of multiple other deponents making similar testimonies about James' upbringing.[81]

The deposition of Anne Parker, wife of Daniel Parker, detailed their treatment of Jane Lumley's daughter Jane Waite, who was 'tender and sickly'. Jane too, it would seem, was cared for 'very welle with schooling meate drinke and apparrell'. Anne Parker also commented that she believed that William Lumley had 'paid for all the funeral expences of the said Jane the daughter', and that William had bought no fewer than 12 pairs of gloves for Jane's funeral at her husband's shop in Leeds. Her testimony of Jane's upbringing was endorsed by others, the widow Susanna Falkiner, for example, stating that 'Jane Waite in her widowhood and Wm [William] Lumley after his intermarriage with her did educate and bring upp the said Jane Waite the daughter'. Susanna further commented that Jane Waite 'a very tender childe', was 'very well brought forth at her burial', and that William Lumley had paid the full funeral expenses – which

[80] Fauve-Chamoux, 'Revisiting the Decline in Remarriage in Early Modern Europe', p. 283.
[81] TNA C22/340/3, Cooke v. Lumley, Depositions Taken in the Country (1683); TNA C22/337/22, Cooke v. Lumley, Depositions Taken in the Country (1683).

she had heard and believed came to about £16 or £17.[82] The majority of the depositions taken appear to speak to a remarriage that took responsibility for the children of a previous union – William and Jane Lumley together raising and providing for Jane's children by her former husband.

The deposition of Anne Barnett, wife of Leeds butcher John Barnett, however, gives rise to doubt over the paternal role William Lumley played in the life of his step-son James. Anne claimed that she had been present 'upon a discourse … betweene the said William Lumley and Jane his wife' concerning the matter of putting James Waite through an apprenticeship. Anne claimed that William had refused to pay for the desired apprenticeship, 'William Lumley not beinge willing to pay downe any money for the said James Waite'. She also claimed that James had, in his infancy, been educated by her own mother for more than two years, and that in all that time she had never been reimbursed for her work as his educator.[83]

Save the one negative deposition statement given by Anne Barnett, however, those witnesses interrogated for the suit Cooke v. Lumley seemed to be in consensus – Jane Lumley had provided for her children by Leonard Waite in her widowhood, and both she and William Lumley continued to maintain James and Jane Waite following her remarriage. It is also possible to infer that Jane Lumley had successfully protected her son's inheritance due to him by his late father despite her remarrying, he leaving that inheritance to her (his mother) in his own last will and testament.[84] Jane Lumley's responsibility for young, and sickly, children did not prevent her from remarrying, nor providing for her offspring.

But what was to be done when widows with children did remarry without taking proper care that the financial futures of their dependants were safe and would not be encroached upon by their new spouse and any future children born out of

[82] TNA C22/337/22, Cooke v. Lumley, Depositions Taken in the Country (1683).
[83] TNA C22/337/22, Cooke v. Lumley, Depositions Taken in the Country (1683).
[84] TNA C5/464/68, Cooke v. Lumley, Original Bill of Complaint (23 October 1680).

that relationship? In the case Benson v. Bellasyse one finds the potential ramifications faced by those widows who chose to remarry without adequately providing for the children of their first marriage. Dame Dorothy Bellasyse (née Jenkins, formerly Benson) married Sir Henry Bellasyse in 1680 following the death of her first husband, and father to her three children, Robert Benson in 1676.[85] Though Robert Benson was once described by Sir John Reresby as 'a man of mean extraction and of little worth', he raised himself, prior to his death, to becoming a parliamentary candidate and was at the time of his decease worth anything from £1,500 to £3,000.[86]

More significantly, however, he left behind an estate that was inherited by the wife that survived him. Their children being still very young, their youngest child of three and only son, Robert Benson junior, being born the same year his father died, Dorothy took possession of the estate in its entirety. When Dorothy remarried, her new husband Sir Henry effectively became the owner of the property by virtue of coverture. Over the course of the marriage between Dame Dorothy and Sir Henry, the estate was improved to such a degree that it was worth considerably more than it had been when it was initially inherited by Dame Dorothy in 1676. The property was, therefore, worth more than was expected and made allowances for in the marriage settlement agreed between Robert Benson and Tobias Jenkins (father of Dame Dorothy) prior to their marriage in 1669. The children of Dame Dorothy by her first husband – Dorothy, Elizabeth, and Robert – therefore took their mother and step-father to Court in order to ensure they received what they believed to be their rightful inheritance. The children, fearing the estate of their late father would not descend to them fairly or in its entirety – it being technically the property of their step-father upon his marriage to Dame Dorothy – felt the need to have legal assurances of the validity of their rights as heirs to the late Robert Benson.[87]

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[85] TNA C5/145/159, Benson v. Bellasyse, Original Bill of Complaint (14 March 1691).
[86] Handley, 'Benson, Robert'.
[87] TNA C5/145/159, Benson v. Bellasyse, Original Bill of Complaint (14 March 1691).

Because Dame Dorothy had not taken heed of the advice offered by *The Ladies Dictionary* – 'if she Marry again, she will not do it so hastily, or rashly, but she will take care to provide for the Children she has already, before she signs the Contract, that they may not be wronged when it may not be in her power to right them' – she was forced to defend herself in Chancery from accusations brought against her by her own offspring.[88] In Lacon v. Emmett, as discussed as part of an earlier consideration of marriage settlement cases, it is the remarried widower who expresses regret over his lack of caution when marrying for a second time, fearing that his children from his first marriage would be left without their rightful inheritance thanks to the dealings of his new wife, and new father- and brother-in-law.[89] The responsibility of a surviving spouse to the children of their marriage extended into subsequent marriages, and a failure to adequately provide for children upon entering second, or third marriages could, and did, result in litigation.

There were, on the other hand, women who entered into numerous marriages without concern for children, due to their not actually having any. Through the case Blythe v. Armitage, one learns of Elizabeth Gamble, wife of Thomas Gamble who was the brother of two of the plaintiffs in the suit John Gamble and Mary Blythe (brother-in-law to Henry Blythe, Mary's husband, the third and only remaining plaintiff). After marrying Elizabeth, Thomas Gamble had left with his brother Edward Gamble for a life and career at sea. Some years after their departure, Elizabeth received word by a letter informing her that her husband had died, and thereupon she entered her (first) widowhood. Following the news of her spouse's death, Elizabeth Gamble went on to marry at least three more men – Mr Rowden, Mr Mand and Mr Pracher. There is no mention of her having any children, and certainly she did not have any by her first husband – his being 'beyond the seas' for the vast majority of their marriage.[90] Even those women, then, who did not have dependants in need of financial support and stability sought out successive husbands upon entering consecutive periods of

[88] Anon, *The Ladies Dictionary*, pp. 481-482.
[89] TNA C5/87/116, Lacon v. Emmett, Original Bill of Complaint (17 May 1686).
[90] TNA C22/327/31, Blythe v. Armitage, Depositions taken in the country (1680).

widowhood. Remarriage was not just a tool by which women could secure means to support their families. Furthermore, widowhood was not a period of autonomy and independence enjoyed by all who experienced it. Some women, like Elizabeth Gamble (then Rowden, Mand, and Pracher respectively), actively relinquished their *femes sole* status of widowhood time and time again, becoming a wife, and a *feme covert*, multiple times.

6.3 Perceptions of Self v. Society: Social Authority in Widowhood

A final point to consider in more detail regarding widows in the late seventeenth-century Court of Chancery, is what their activities within this court can reveal to the historian about the positions of the widow in society. Did the early-modern widow have a degree of social authority that was not afforded her single and wedded sisters? Was there a difference between how widows regarded themselves and how they were perceived by others within their community and throughout society more generally?

Returning to the quantitative data arising from this research project, it appears that widows as plaintiffs were most likely to litigate alone. As defendants, however, they were more often brought before Chancery in the company of at least one male named co-defendant. I would argue that this finding fits well with the current historiography surrounding early-modern widowhood. In order to better understand how widows were brought into Chancery as defendants, and why the experience for widows in Chancery was so different for plaintiffs and defendants, it is first necessary to break these figures down into greater detail.

Overall, widows were most likely to be brought into Chancery to defend themselves by men, or litigant parties made up exclusively of men. 73 per cent of cases to which widows were named as defendants were brought before the Lord Chancellor by men. If this is then added to the number of cases brought by male plaintiffs acting with at least one other named female co-plaintiff, the research sample reveals that 90 per cent of cases to which widows were defendants were brought by men and men acting in conjunction with named female co-plaintiffs. Only 10 per cent of cases where widows were named as the defendant (or one of

the defendants) were brought into Chancery by exclusively female plaintiffs (see Fig. 21).

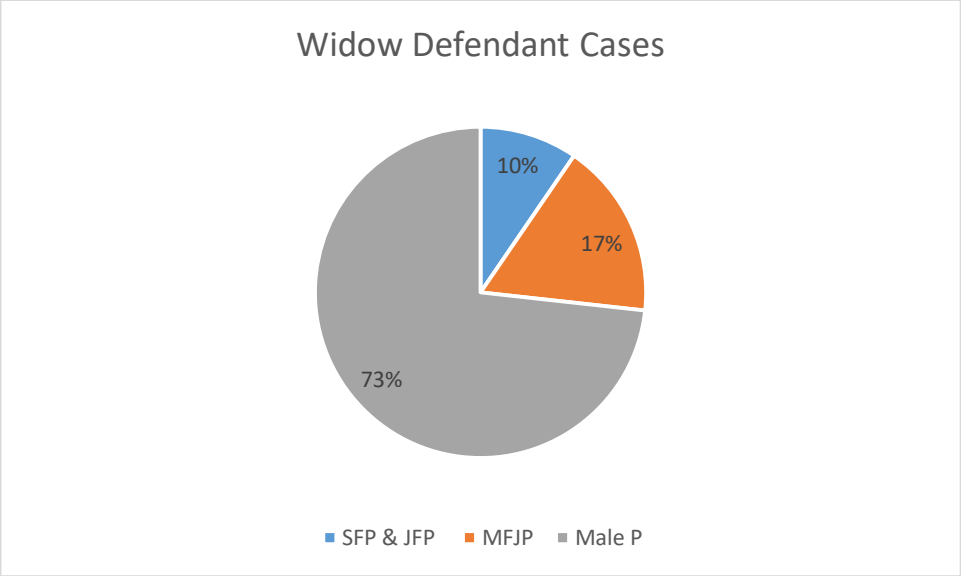

Fig. 21
How cases in which widows were named as defendants were brought into the late seventeenth century Court of Chancery; by women (SFP and JFP), men and women acting together (MFJP), or exclusively by men (Male P)

If one then narrows the volume of cases to which widows were named as defendants further, to include only those cases in which named female defendants recorded as widows acted in conjunction with a named male co-defendant, the results remain nearly exactly the same. Around three quarters, 74 per cent, of the cases were brought into the court by men, or men only larger plaintiff parties. Only nine per cent of these cases were brought in exclusively by female named plaintiffs and larger female plaintiff parties (see Fig. 22).

It is also possible to analyse how, quantitatively, men and men acting in conjunction with women as plaintiffs brought widows into Chancery as defendants before the Lord Chancellor. This examination reveals that 77 per cent of cases brought into the court by male plaintiffs, or larger plaintiff parties involving at least one named male litigant, against widows brought the widow to suit to defend herself with at least one named male co-defendant. It also indicates that male plaintiffs were more likely to bring widowed defendants into

Chancery alone (as SFDs) than in conjunction with one or more female co-defendant (as JFDs) (see Fig. 23).

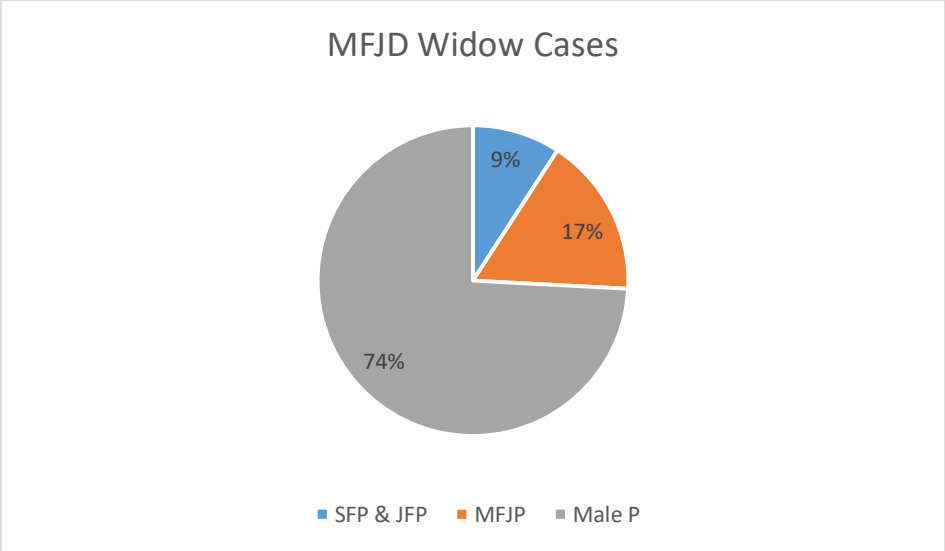

Fig. 22
How cases with named MFJD widows were brought into the late seventeenth century Court of Chancery; by women (SFP and JFP), men and women acting together (MFJP), or exclusively by men (Male P)

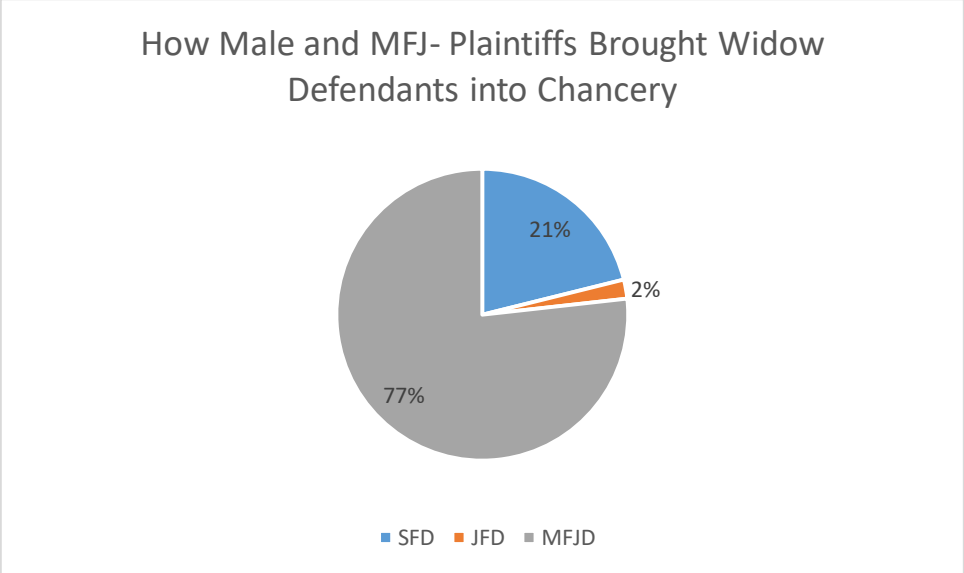

Fig. 23
How male and male and female joint (MFJP-) plaintiffs brought cases into the late seventeenth century Court of Chancery against widows; against widows in conjunction with male co-defendants (MFJD), with female co-defendants (JFD), or alone (SFD).

Overall, then, the majority of cases brought against widows in the later seventeenth-century Court of Chancery were done so by male plaintiffs. Around 10 per cent of cases were brought against widow defendants by exclusively

female plaintiffs and larger plaintiff parties. Furthermore, male plaintiffs, and larger plaintiff parties with at least one named male litigant, were most likely to bring a widow defendant into Chancery in conjunction with at least one named male co-defendant.

Sole female plaintiffs (SFPs) had a proportionally greater tendency to bring widows before the Lord Chancellor to defend themselves alone than male plaintiffs, at 29 per cent. Nevertheless, proportionally SFPs were also most likely to bring widows into Chancery to defend themselves with at least one named male co-plaintiff, at 71 per cent. Whichever way one analyses the widows as a defendant in the later seventeenth-century Chancery, then, she was most likely to appear with a male co-defendant.

What does this tell us about the position of the widow in early-modern society? When one considers these results alongside the fact that 70 per cent of named, female, widowed plaintiffs entered their pleas into Chancery alone (as SFPs), and that 72 per cent of sole female plaintiffs were recorded as being widows at the time of their initiating suit in the court, a very interesting picture starts to emerge. Late seventeenth-century widows bringing cases on their own are suggestive of women with autonomy, demonstrating the might of 'their legal capacity … experience, greater self-confidence and greater resources'.[91] In her article considering widows in the Netherlands in the early modern period, Sherrin Marshall Wyntjes found that the legal rights afforded widows, rights that were exercised both outside and within the family sphere, 'were the basis for their visible authority and power during the early modern period'.[92] Fortunate widows in early-modern England could operate in positions of influence, power, and wealth within their families and society, which no doubt would have given them the sense of confidence and self-reliance which, alongside their reinstated legal rights and experience, enabled them to act independently at court.

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[91] Stretton, *Women Waging Law*, p. 109.
[92] Sherrin Marshall Wyntjes, 'Survivors and Status: Widowhood and Family in the Early Modern Netherlands', *Journal of Family History*, Vol. 7, No. 4 (Winter, 1982), p. 396.

Amy Froide's seminal work on single women in early-modern England reveals, through its analysis of ever-married women in the period, the position of widows in society. By looking at residence, employment and poor relief, Froide concludes that 'due to their accepted roles as householders and deputy husbands' widows enjoyed far more independence and societal support of that independence – 'singlewomen did not earn such privileges'. Widows were understood to have a 'public and independent place within the patriarchal society', and the potential for them to hold and wield authority within wider society was significantly greater than their singlewomen and married counterparts.[93]

It is not surprising, then, that one finds widows singularly willing to enter litigation upon losing their spouse. Not only were widows equipped with legalised knowledge, they had the resources and often the necessity to bring suit driving them, as well as sense of social authority deriving from their status as an ever-married woman. Maria Ågren found within her already hugely important work on gender and work patterns during the early modern period, that women attained authority during marriage, due to their contribution to the marital unit, that endured into widowhood.[94] Whilst this is reflected in the numbers surrounding widows bringing suit in the later seventeenth-century Court of Chancery as plaintiffs – the fact that widows appear in Chancery more often than not accompanied with at least one male co-litigant when acting as defendants, however, indicates something quite different. Why, if widows held a place of unique autonomy, were plaintiffs in Chancery so reluctant to litigate against widows alone (as SFDs)?

To address this research question, one must turn to the qualitative evidence. It has proven to be very difficult to uncover evidence of the realities of social authority from Chancery archival material. This is, in part, due to the fact that

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[93] Froide, *Never Married*, pp. 12-17.
[94] Amanda L Capern, Review of *Making a Living, Making a Difference: Gender and Work in Early Modern European Society* by Maria Ågren (Oxford: Oxford University Press, 2017), *The Agricultural History Review*, Vol 65, No. 1 (2017), pp. 161-162.

widows in Chancery typically emphasise their pitiable position before the Lord Chancellor – hoping to prove themselves unable to find remedy to their plight everywhere other than in the Chancellor's court, requiring his legalised benevolence and good conscience. This is compounded by the fact that many litigants appearing before the Chancellor, regardless of gender, realised they could benefit from playing up a position of wretched remediless-ness. Even so, as Stretton points out, in early-modern thinking helplessness was often associated with women interacting with the law – in 'discussions of women and justice, writers often drew upon the imagery of vulnerability and sympathy'.[95]

Nevertheless, the qualitative data arising from the Court of Chancery archival material does add to the overall discussion on the realities and relevance of the social authority enjoyed by early-modern women upon entering widowhood, as well as its, inevitable, limitations. What becomes clear through the reading of the widow's experience in the later seventeenth-century Chancery is the paramount significance of communal and social reputation. The case Mawd v. Witton provides an excellent example of the significance of reputation when considering the social authority of widows.

In the December of 1690, Sarah Mawd entered a bill of complaint into the Court of Chancery. In this plea, the widow claimed that in 1688 her husband, Johnathan Mawd, had passed away leaving three children by her - two sons, John and Johnathan, and a daughter, Mary - and his own mother –Mary Mawd – still living. Sarah went on to claim that her late husband had been somewhat profligate, 'proving extravagant', and died leaving 'no manner of provision' for neither his widow nor his children – despite the real estate Sarah herself had brought into the marriage. Sarah's mother-in-law, however, was not so irresponsible. Mrs Mary Mawd, according to Sarah's original bill of complaint, created her last will and testament 'on or about the eight and twentieth day of July which was the yeare of our Lord One thousand and six hundred eighty and eight', which stipulated, alongside 'divers other legacyes and bequests', that her considerable

[95] Stretton, *Women Waging Law*, p. 50.

real estate was to be held by Richard Witton and Thomas Dobson in trust for the use and benefit of her two grandsons. Witton and Dobson, and their heirs, were to hold the lands and property on behalf of John and Johnathan Mawd who were for the following twelve years ensuing to receive from the rents and profits arising from their inheritance sufficient maintenance and education, before taking possession of the property themselves, 'for ever equally to be divided betwixt them'. Sarah asserted that her sons, then, were to eventually inherit in full the lands held by her mother-in-law, provided that they supported their mother, the oratrix here, financially:

> … should at any time after they should enter into and possess themselves of all the said premises before mentioned give or allow any sum or sumes of money for the maintenance forth of the said Reall estate or any part thereof unto yor oratrix their mother or suffer yor oratrix to dwell with them or have any relief livelihood or succour from them or either of them dureing yor oratrixes nrll [natural] life…[96]

Upon entering their inheritance, then, John and Johnathan Mawd were to ensure their widowed mother was not left destitute.

On the 7th October following the creation of Mrs Mary Mawd's will, she 'did make a cordicill [codicil] in writing'.[97] The codicil, along with confirming the contents of the original will, made provision for the third child and only daughter of Johnathan and Sarah Mawd – Mary Mawd. Young Mary was to receive the sum of £100, which was to be paid to her within a year of her two brothers taking possession of the real estate left to them, which was to be – as outlined above – after 12 years of maintenance and education for the boys, 'there being no provision in ye mean time made for the said Marys education and maintenance'.[98] Shortly after the creation of the codicil, Mrs Mary Mawd died.

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[96] TNA C5/89/61, Mawd v. Witton, Original Bill of Complaint (1690).
[97] A codicil is an addition or amendment to a legal document – Mrs Mary Mawd, having had time to think about her last will and testament, made a legally binding addition to the original document.
[98] TNA C5/89/61, Mawd v. Witton, Original Bill of Complaint (1690).

Following Mary Mawd's death, the trustees of her real estate, Witton and Dobson, entered into 'ye houses and lands so devised'. Sarah Mawd went on to claim that the two men took into their possession all the chattel and personal estate of her deceased mother-in-law, or otherwise disposed of them, taking on the execution of the will and codicil. However, to Sarah's palpable horror, Witton and Dobson sometime after the death of Mrs Mary Mawd

> … cause … John and Johnathan Mawd to be violently and after a rude manner to be taken away by force from yor oratrix and leaving yor oratirx her said daughter Mary for whom no provision or maintenance was made as aforesd yor oratrix being forced to keep and maintain her at her own charge having little or nothing left to keep and maintain either herself or child …[99]

Witton and Dobson claimed that they had sole right to the custody and tuition of the young Mawd boys, refusing to let them live with their mother in the manner to which they had been accustomed up until that point. Sarah Mawd was, then, left by the executors of her late mother-in-law's will without means by which to support either herself or her daughter, and had her other two children (and the money coming to them for their maintenance and education) forcibly removed from her custody – 'the tuition and custody of her said children which by law she ought to have she allwaies having been a kind and indulgent mother'.[100]

What is interesting here as part of a consideration of the social status of widows is that rather than defending themselves and their actions by particulars of the law, Richard Witton and Thomas Dobson instead attacked the character of Sarah Mawd in order to defend and justify their actions. In their own plea which was entered as part of their answer of the bill of complaint brought into Chancery by Sarah, Witton and Dobson claimed that Sarah was nothing more than a baker's daughter in Cambridge when she first met her late husband Johnathan Mawd, who was at the time a young scholar there, seizing upon the opportunity to better herself and position in life managed to wheedle her way 'unto his affections and got herself married unto him', without informing his parents who

[99] TNA C5/89/61, Mawd v. Witton, Original Bill of Complaint (1690).
[100] TNA C5/89/61, Mawd v. Witton, Original Bill of Complaint (1690).

were both alive at the time. According to the trustees, Mrs Mary Mawd and her husband were both 'much displeased' with their son upon his marrying Sarah, 'for they thought theire son did mightily disparage himself in marrying the complainant Sarah'. They went on to assert that Johnathan's parents were 'scarce reconciled' with Sarah for the duration of their lives.[101] Witton and Dobson directly contradicted the assertion of their rival at law, Sarah, who claimed that her parents-in-law 'were very well satisfied and pleased' with her marriage to their son.[102]

Witton and Dobson went on to insinuate that Sarah only wanted the custody of her two sons in order to enjoy 'the money designed for the education of the said infants … to help to maintain her and her daughter'. They asserted that it was in the young boys' interest to live with persons of 'knowne integrity and good estate', such as themselves, who had no intention or designs to personally benefit from the money owing them, 'which these defendants have great reason to believe is the designe of the complainant Sarah'. They went on to state that the late Mrs Mary Mawd, whose will and desires they were charged with executing, had expressly wished for her grandsons to not live with their mother, she believing as they did that the children would by 'spoiled by the ill example' set by Sarah. They even went as far as to claim that Sarah kept the company of 'soldiers and loose persons'. In a separate answer entered into Chancery by Witton and Dobson, the defendants expressed some unsubtle doubts over the validity of the marriage had between Sarah Mawd and her late husband: 'it may be true, but neither of them knoweth of their owne knowledge that the complainant Sarah was married to Johnathan Mawd deceased'.[103] The defendants therefore beseeched the court to 'have their witnesses examined who will informe this honourable court of the credit behaviour and reputation of the complainant

[101] TNA C5/89/61, Mawd v. Witton, The Plea of Richard Witton and Thomas Dobson to part and then joynt several answer to the bill of complaint of Sarah Mawd widdow and other Complainants (1690).
[102] TNA C5/89/61, Mawd v. Witton, Original Bill of Complaint (1690).
[103] TNA C8/547/130, Mawd v. Witton, The joint and severall answer of Richard Witton and Thomas Dobson (1691).

Sarah before this honourable court doe make any decree for her to have the tuition and education of the said other complainants'.[104]

This attack of the character and reputation of Sarah Mawd, however, was in fact unfounded, and consistently contested in the depositions that were insisted upon by the defendants. John Gillot, a yeoman from Halifax, for example, deposed that

> ye complainant Sarah did very honestly and chastley demeane and behave her self to her sd husband and was respectfully intreated by her husbands father and mother his relations and heard Johnathan Mawde the father … declare himselfe to be well satisfied with ye marriage …[105]

He went on to say that 'Mary Mawd seemed … to be reconciled to ye complainant Sarah', concluding that 'Sarah is as modest and chast a woman as any in England'.[106] This sentiment was echoed by further deponents. The Rector Thomas Hanson declared that 'ye complainant Sarah as well before as after her intermarriage with the sd Johnathan her husband was reputed to be a woman of good chast and modest life and conversation … also since her coming down into the country hath been and is soe reputed and Esteemed and never hear nay Imputation or blemish on her reputation either in Cambridge or in the Country'. Samuel Theraplans, a 'Doctor in Physick', acknowledged Sarah as 'a person of Good reputation amongst the neighbourhood' and the gentleman William Midgley confirmed that Sarah 'behaved her self dutifully and repectfull to her husband and his father and mother and was always reputed a very sober, modest and chast woman'.[107]

The depositions taken of female witnesses provide more emotive accounts Sarah enduring her children being forcibly removed from her maternal care. Martha

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[104] TNA C5/89/61, Mawd v. Witton, The Plea of Richard Witton and Thomas Dobson to part and then joynt several answer to the bill of complaint of Sarah Mawd widdow and other Complainants (1690).
[105] TNA C22/519/8, Mawd v. Witton, Depositions taken in the country (1692).
[106] TNA C22/519/8, Mawd v. Witton, Depositions taken in the country (1692).
[107] TNA C22/519/8, Mawd v. Witton, Depositions taken in the country (1692).

House, the wife of a farmer in Yorkshire, claimed to have been present when Mr Dobson took one of the boys, Johnathan, away from his mother:

> …this deponent was present in the month of March after the death of the old Mrs Mawd … when Mr Dobson fetched Johnathan Mawd one of the infants … to his house at Bingley from Halifax and sayth that the said complainant Sarah came from Cambridge two months after and being desirous to see her son she requested this deponents husband [James House] to goe to the sd Mr Dobson to suffer him to visit her which he did and after that the son remained with ye complainant Sarah his mother by the space of two or three weeke or more the sd Mr Dobson came to Halifax and fetched the sd Johnathan to his own house to goe to school and sayth … both ye child and ye mother wept and believe that ye mother was desirous that ye child should remaine with her …[108]

Eden Barraclough, a spinster aged 60, had been witness to a later conversation had between Sarah Mawd and Thomas Dobson, touching the matter of Johnathan Mawd being kept from his mother, stating that 'ye complainant declared her self unwilling to part with her son'. She also confirmed the fact that neither Sarah nor her son were happy about their being separated:

> … [Dobson] fetched the sd Johnathan away from his mother without her consent … and sayth ye complainant Sarah at the same time was earnest to have her son and that much sorrow was made by the mother and sonn and knows the better soe to dispose for yt the child at ye same time laboured and endeavoured by his hands and feet to get away from ye same person that soe tooke him away …[109]

The image of a weeping mother and son, the child physically attempting to resist being taken, makes for emotive reading.

In other words, all of the charges brought by Witton and Dobson against Sarah's character were refuted. Her parents-in-law did not have a life-long difficult relationship with her, she genuinely felt sorrow at having her children removed from her care and she enjoyed a good reputation within the communities and

[108] TNA C22/519/8, Mawd v. Witton, Depositions taken in the country (1692).
[109] TNA C22/519/8, Mawd v. Witton, Depositions taken in the country (1692).

neighbourhoods of both her childhood home of Cambridge and in her marital home of Halifax. What, then, does this case reveal to us about the position of widows in early-modern society?

First and foremost, it is notable that Witton and Dobson chose to attack Sarah Mawd's character as the basis of their defence before the Lord Chancellor. Instead of focusing on particulars of the law, the trustees of the estate of the late Mrs Mary Mawd chose to accuse Sarah of being an unchaste woman of ill repute, a bad mother who desired to maintain custody of her sons only to ensure her own personal access to their money in order to support herself and her daughter. A focus on the reputation of Sarah Mawd is indicative of the potential social authority enjoyed by widows – Witton and Dobson were attempting to disarm their legal opponent. If they had succeeded in damaging Sarah's reputation, they would have effectively reduced her social authority.

In order to address these charges, Sarah sought depositions from a variety of people in her local community. By receiving witness statements from deponents ranging from yeomen, to gentlemen, men who provided essential community services such as a doctor and rector, as well as fellow women, Sarah was able to demonstrate her true character as a loving mother desirous of having her own children in her care, a chaste, loyal and respectful wife, a woman who was reconciled with her parents-in-law and of good general reputation. She was even able to refute the insinuations of Witton and Dobson that she was no more than a baker's daughter, proving that her natal family was respectable and provident – her father was at times Mayor of Cambridge, and 'her mother was a person of good repute and ability', who supported her daughter in marriage by providing the couple with 'severall boxes and trunks … full of linen and cloaths to a considerable value' as well as her impoverished widowhood: 'since the death of the sd Johnathan … her sd mother without whose assistance the sd complainant … could not have soe well subsisted'.[110]

[110] TNA C22/519/8, Mawd v. Witton, Depositions taken in the country (1692).

Witton and Dobson unsuccessfully attempted to diminish the social authority of Sarah Mawd by slandering her character. Nevertheless, Thomas Dobson was able to forcibly remove Johnathan Mawd from his mother's home, custody and tuition. The social authority of Sarah as an ever-married woman, a mother and a respected, well-liked member of her local community did not prevent the physical taking away of her sons. Her sons being taken from her is described in the legal material as 'violent', and the description of the altercation provided by Eden Barraclough, of Johnathan Mawd physically struggling to escape the clutches of the man taking him away, makes the physicality of the event clear. Neither woman nor child had the physical capability to stop Dobson from exercising his will. The social authority of widows, and the power it afforded, had limitations.

This does not take away from the fact, however, that the early-modern widow did enjoy a level of social authority within her local, communal and social networks that was not afforded her single and married sisters. The qualitative sample of cases utilised for this research project has examples of widows exercising their *femes sole* status as plaintiffs, by bringing cases independent of patriarchal control, either acting entirely alone or representing dependents, such as in Gee v. Hotham, Bubwith v. Shaw, and Mawd v. Witton. However, there are also examples of widows being brought into Chancery alone as defendants.

In Coldcall v. Smithson, for example, William Coldcall brings suit against the widowed Sarah Smithson. William Coldcall (who shall henceforth be referred to as William Coldcall-the-younger) claimed that land that was his rightful inheritance was being unlawfully possessed by Sarah Smithson. William's great grandfather, also named William Coldcall (who shall henceforth be referred to as William Coldcall-the-elder), had a son called Bryan (who shall henceforth be referred to as Bryan the elder), who himself had three sons: William (who shall henceforth be referred to as Uncle William Coldcall), Bryan (who shall henceforth be referred to as Bryan Coldcall-the-younger) and Robert (father of the orator William Coldcall-the-younger). Following the death of his son Bryan the elder, William Coldcall-the-elder wanted to provide for his grandsons. He

consequently left his lands to the eldest grandson, with the idea of the property delivering maintenance for the brothers. Uncle William Coldcall, as the eldest grandson, first inherited the land. He died, leaving no heirs, and so the land then descended to Bryan Coldcall-the-younger, who took possession of the land with his wife Agnes. Bryan Coldcall-the-younger and Agnes had no male children, and so the land following Bryan's death should have descended to the youngest grandson, Robert. Robert himself died before he was able to take possession of the land, and consequently the land was rightfully to descend to his son – the orator, William Coldcall-the-younger.

However, according to William Coldcall-the-younger, Agnes did not give up the land to him upon the death of her husband as she should have. Instead, she continued in 'the possession of the premises, along with her second husband Charles Gosling, 'taking advantage of William Coldcall-the-younger being at the time 'an infant … and having noe body to take care of him'. He further claimed that the documents that would have proved his right to inherit the lands in question were 'all burnt or lost at Pontefract Castle during the time of the late unhappy wars'. Agnes and Charles Gosling went on to make 'some conveyance of the premises to one Sarah Smithson widow or to some other person or persons she claims under', in order to 'deceive yor orator'.[111]

Even those widows who acted alongside others, however, including male named co-litigants, could demonstrate notable authority. For example, in Wilson v. Lister the widow Jane Lister was the first named defendant to the suit, and throughout the main body of both the original bill of complaint and the joint answer she entered in conjunction with her named co-defendants.[112] Her position as mother to the co-heirs of the property in dispute, as executrix for the last will and testament and estate of her late husband, and as a widow gave her a

[111] TNA C5/310/24, Coldcall v. Smithson, Original Bill of Complaint (1667-1672).
[112] TNA C5/580/58, Wilson v. Lister, Original Bill of Complaint (31 July 1679); TNA C5/580/58, Wilson v. Lister, The joynt and severall answers of Jane Lister Widow, Benjamin Taylor Gent and Elizabeth his wife, Jane Lister spinster and Thomas Bamborough (1679).

remarkable degree of authority in the matter, which is evident from the archival material.

In Ashton v. Bowden, one finds another example of a widow acting in a notable position of authority in family matters. In 1679, a singlewoman, a wife (with her husband), and a widow came together as plaintiffs. Beatrix Ashton, Grace Thurgarland and Anne Allott were three of the surviving daughters of John Allott, who had stipulated in his last will and testament that the sun of £1000 was to be evenly split between each of his five daughters (Mary, Beatrix, Dorothy, Grace, and Anne), £200 a piece, by way of portions from them all, the money for which was to be raised and paid out of his real property that he left to his only son and heir John Allott (who shall henceforth be referred to as John Allott-the-younger, his father being referred to as John Allott-the-elder).[113]

Upon the death of John Allott-the-elder, John Allott-the-younger entered the land left to him, and as the eldest of his two sisters, Mary and Beatrix, each turned 21 he paid them their respective shares of the £1000 set aside for the Allott daughters' portions. Both Beatrix and Mary at the time of the original bill of complaint were widows, but Mary Wheatley (her married name) was left out of the plaintiff litigating party – and, as it turns out, for good reason.

In the meantime, before the remaining three sisters reached the legal age of adulthood and their portions therefore became due to them, John Allott-the-younger died, leaving a widow of his own and two daughters: Elizabeth Allott the elder, and young Elizabeth and Mary Allott. Since the death of her first husband, Elizabeth Allott the elder had remarried a Mr Thomas Bowden, and together with the two daughters continued in possession of the lands once held by John Allott the elder and John Allott-the-younger, respectively, refusing to raise and deliver the outstanding portions to the plaintiffs then due.

[113] TNA C5/441/15, Ashton v. Bowden, Original Bill of Complaint (20 November 1679).

Though Beatrix Ashton had in fact received her £200 upon reaching the age of 21 from her brother, her sister Dorothy had died, and therefore her £200 was to be shared between the surviving sisters, meaning Beatrix was due £50 from the lands possessed by the Bowden's. Grace Thurgarland (or more accurately her husband George Thurgarland by way of coverture) and Anne Allott were due a total of £250 each. Beatrix, Grace, George and Anne therefore brought the Bowden's into Chancery, claiming the defendants were refusing to 'rayse and pay the residue of the said one thousand pounds out of the said messuages' that was due to them. Their eldest sister, Mary Wheatley, was accused of confederating with the Bowden's, assisting them in keeping the money from the plaintiffs, her own sisters (which explains her absence from the plaintiff litigating party, instead being named as a defendant).[114]

What is particularly interesting about this case is the different roles all the widows took in the suit. Beatrix Ashton and Mary Wheatley were sisters, both of them widows, on rivalling sides of the dispute. In her capacity as plaintiff, Beatrix Ashton took on the role of first named plaintiff, effectively leading the litigant party she was a member of. Her position as eldest sister within that group, as a widow, resulted in a recognised position of authority over her younger sisters, even Grace and her husband George. This is unusual, as it would be more likely to find George Thurgarland as the first named, and consequent lead, plaintiff to the case being the only male named plaintiff. But instead of finding George Thurgarland and Grace his wife, Beatrix Ashton widow and Anne Allott, one finds 'Beatrix Ashton widow, George Thurgarland and Grace his wife and Anne Allott'.[115] This indicates the pivotal role of the sisters to the case, and the high-ranking position of authority Beatrix enjoyed in her immediate family as an elder daughter and widow.

[114] TNA C5/441/15, Ashton v. Bowden, Original Bill of Complaint (20 November 1679).
[115] TNA C5/441/15, Ashton v. Bowden, Original Bill of Complaint (20 November 1679).

Mary Wheatley's refusal, or perhaps her sisters' refusal to invite her, to become a co-plaintiff to the case, despite her being due £50 just as much as Beatrix Ashton was, is also interesting. This reveals how widows enjoyed a sense of autonomy within their own families. They were free, able, and willing to disagree with family members and were not made party to suits in a capacity that they did not agree with. In cases such as Appleby v. Gascoigne, we see how young singlewomen could be exploited by different family members, being named as plaintiffs to various suits regardless of what they really thought or wanted. Mary Wheatley, however, was a widow, and therefore enjoyed more liberty in her *feme sole* status than her singlewoman counterparts.

A further example, then, of a widow demonstrating autonomy can be found in Beatrix Allott – widow of John Allott the elder, mother of the Allott daughters – who was still alive at the time of this familial litigation. Beatrix Allott was named in the original bill of complaint, asked to deliver an answer to the bill, in order to relate what she knew of the matter at hand. She had been executrix of her late husband and was in receipt of dower from the lands then in possession of the Bowden's – so was in possession of crucial knowledge. Beatrix Allott concurred with each of the points made within the original bill of complaint brought into Chancery by the three youngest of her four surviving daughters, stating

> … true it is that Dorothy one of the complainants sisters dyed in her minority whereby her two hundred pounds share of the said one thousand pounds ought to be devided amongst the foure surviving sisters and that the said complainants as three of the said surviving sisters ought to have fifty pounds apiece thereof And this defendant believes and is advised that the said lands and premises ought to stand charged with the payment of the remainder of the said one thousand pounds and the complainants respectively ought to have such shares thereof as in the bill is for that purpose alleged And this defendant doth not nor ever did obstruxt the same … [116]

[116] TNA C5/441/15, Ashton v. Bowden, The severall answere of Beatrix Allott widdow Relict and Executrix of the last will and testament of John Allott

Beatrix Allott entered her answer separately from the wife of her late son, her new husband and children (Beatrix's granddaughters), choosing instead to defend herself and litigate alone.

Beatrix Ashton and Beatrix Allott, then, display the familial authority they enjoyed in their respective widowhoods. Beatrix Ashton led the party of plaintiffs, despite a man making up the members. Beatrix Allott, acted independently in defending herself, despite being within her rights to join forces with the family who were in possession of the lands which supplied her with her widow's thirds, which we can presume was covering her living costs. Instead, she went against the Bowden's advocating for her younger daughters, and their rights to money arising from the property in question. Mary Wheatley, for reasons that remain unclear as she did not enter an answer into Chancery to this matter, chose to defy her sisters, and her mother, aligning herself instead with her sister-in-law, Thomas Bowden, and her two young nieces.

A final point to make in this consideration of the social authority of widows in early-modern England is that ever-married women did not just inherit property from their families (natal and marital); they bought it in their own right, to own, manage, and profit from independently as *femes sole*. An example of this sort of behaviour and activity can be found in Cooke v. Shaw. Elizabeth Cooke, as a widow, bought rights to 'three closes of land meadow or pasture' from a Mr Thomas Dymond 'for the terme of a thousand yeares or some such long terme', following which 'by vertue of the Lease and demise aforesaid did Enter and Enjoy the premises peaceably and quietly without any disturbance'.[117]

Later, Elizabeth Cooke had occasion for some additional income, and she therefore 'did apply herselfe to one Benjamin Deighton' for a loan, using her lands as security – effectively mortgaging her property. Sometime after Elizabeth entered into a mortgage agreement with Deighton, she was approached by

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deceased one of the defendants to the bill of complaint of Beatrix Ashton widdow George Thurgarland gen. and Grace his wife and Anne Allott Spinster (1679).
[117] TNA C5/280/26, Cooke v. Shaw, Original Bill of Complaint (22 October 1697).

Anthony Cooper, who expressed 'a great desire to purchase the said premises soe mortgaged'. Anthony therefore entered into treaty negotiations with Elizabeth, at which point she did 'informe the said Anthony Cooper that the premises were mortgaged to the said Deighton for fifty pounds'. Anthony and Elizabeth eventually came to an agreement: 'it was agreed and concluded betweene the said Anthony Cooper and yor oratrix that he should goe to discharge the fifty pounds to Deighton and the Rest and Residue to be paid to yor oratrix'.[118]

Although Elizabeth Cooke later encountered problems with this agreement, as is clear by the very fact that she was litigating in Chancery, this suit does nevertheless reveal another dimension of the potential lived experience of the early-modern widow. Elizabeth Cooke was able in her widowhood to purchase property, which meant when she needed money she had something of value by which to secure a loan, and was later able to negotiate a deal to sell on her property. This suit, in other words, reveals an independent woman, of independent means. Elizabeth Cooke had the capital, social authority, and adequate knowledge of the options available to her (in terms of the buying and letting market of early-modern England) to act autonomously in her widowhood, purchasing property and coming to various financial agreements and settlements.

6.4 Conclusion

What does this consideration of widows in the early-modern Court of Chancery reveal about ever-married women's use of the court? One of the more interesting findings across this consideration of widows in Chancery is the fact that as plaintiffs, one finds widows acting independently, whereas when they appear in the court as defendants they are more likely to be accompanied by a named, male co-litigant. This situation is, to summarise, the result of a myriad of factors.

[118] TNA C5/280/26, Cooke v. Shaw, Original Bill of Complaint (22 October 1697).

The unique position of widows in early-modern society – as subjects of suspicion and fear as often as they were respected and privileged – enabled them to act autonomously when they needed to. Often, the widow had no choice but to act alone. Perhaps she had no living family aside from underage dependents, or had moved away from her natal family and had no one in her local community to assist her. In some cases, it was her own family bringing suit against her. As Amanda Capern points out, in Chancery 'kinship between litigants was actually a reason to sue'.[119] There are multiple situations in which the early-modern widow found herself without the family support she needed, and therefore acted alone – which extended to her actions at law, as we see in Chancery records.

There was, therefore, circumstances where the widow acting alone as a plaintiff was a necessity. Crucially, however, she also had the means. The widow was effectively the head of her own household. She owned and handled her own money. Some widows became hugely wealthy in their own right, either through solid arrangements created by her financially secure natal family, or by marrying well. She was often in control of rearing children and taking care of any assets due to them upon becoming of legal age. She had legal knowledge - thanks to her experience of a fluctuating positon at law due to her changing marital status, as well as her unique position as wife. Often, married women had unrivalled access to their husbands' legal dealings, being aware of their actions in life, and having physical access to important documentation upon his death due to her sharing his home.

Although, as this chapter has explored, society took issue with widows exercising their autonomy, being a widow was in many ways the most acceptable way in which a woman could act independently. She had fulfilled her womanly duty of being a wife, and in many cases that of being mother too. She held an elevated position in the family, as the new head of her household – temporarily or otherwise – and therefore commanded respect, not just in her family, but in her extended local community as well. It is unsurprising then, that it is during their

[119] Capern, 'Emotions, Gender Expectations and the Social Role of Chancery, 1550-1650', p. 189.

widowhood that we are most likely to find female plaintiffs acting alone. Widows alone had the means, not just in terms of finances. They experienced the social standing and, at times, the unavoidable necessity to act autonomously.

This is not to say, however, that these women did not want to act independently. It seems that the actions some women took whilst still married are strongly indicative of a desire to act independently from spouses. It is not surprising, then, to find that once women can legally handle their own business, they do so autonomously, with a marked degree of self-reliance. Ability, willingness, and circumstantial necessity to act alone brought the widow to early-modern Chancery as an SFP.

The fact that we find widows are more likely to be brought into the court in the company of at least one, named, male co-defendant highlights the stark dichotomies in the widow's lived experience. She was independent of male control, in a manner that would have been more acceptable than a singlewoman rebelling against her father or guardian, and certainly more acceptable than a wife resisting the control of her husband, but was nevertheless still a cause for concern. Plaintiffs bringing widows into Chancery with a co-litigant reflects a larger effort in early-modern society to push the dangerously independent widow back into the accepted norm of patriarchal control.

Was early-modern Chancery effective as a widow's court of redress? Yes and no. Very much like the life of the seventeenth-century widow overall, there were inherent contradictions in the widow's experience in this court. The widow was able to act autonomously when she was leading proceedings as a plaintiff. The court allowed space for these women to act independently. She could enter suit, and many displayed extraordinary legal aptitude, with some playing on concepts of vulnerability and others asserting a position of power. However, when others were in charge of how she appeared in the court, when the widow was a defendant, she was more likely to appear with a male co-litigant. This is not a reflection on Chancery, but evidence of Chancery reflecting wider society.

The Chancery records reveal the details of the widow's lived experience, and how fraught it was with ambiguities and paradoxes. The court was a space for redress for the early-modern widow in the sense that she could, and did, operate there independently. But it was in no way a court designed for the widow, nor one that made special allowances for her. The reason the court was useful to the widow was the same reason it was useful to men – it was accessible, provided a platform to voice grievances, and designed to help those with nowhere else to turn. The difference, then, in the widow's experience of the court, in comparison to her single and married sisters, was a difference rooted in her differing experience of all aspects of life.

Yet this is precisely why Chancery did become something of a legal haven for the early-modern woman. In a society that enforced so many restrictions on the lives of women – socially, culturally and legally – when seventeenth-century widows needed to assert their legal rights autonomously, and Chancery offered them the space to do so, they flocked. In reflecting the society it served, Chancery was able to tap into what widows needed, building a strong clientele of independent, ever-married women who were not afraid to pursue what they felt they were legally entitled to.

7. Women's Experience in Chancery: Two Case Studies

This final qualitative chapter covers just two suits heard in the later seventeenth-century English Chancery: Gee v. Hotham and Bubwith v. Shaw. These two cases were the most complex in the 30-case qualitative sample, but also, perhaps, the most illuminating. Both suits offer excellent examples of the sorts of cases women, in these instances widows, had in Chancery. Both are rich in source material, one offering rare access to regional records, with the other demonstrating the depth of female legal knowledge that stretched beyond the geographical boundaries of England. These elements reveal aspects of Chancery that are crucial to the legal and the women's historian.

Furthermore, these two cases cover themes that run throughout this analysis of women's use of the early-modern Chancery. Whilst both of these cases exemplify the points made in chapter six, especially in terms of the significance of the legal and familial knowledge possessed by early-modern widows, the cases speak to larger points made throughout the thesis. They uncover female litigants who were knowledgeable, capable and willing to fight for what they believed themselves to be legally entitled to. Not only this, but these two case studies show how the early-modern Chancery was particularly well-equipped to served female litigants, despite not being a court designed to serve women. It is these two cases, then, that not only have the necessary depth of source material, but that also bring the key points of this analysis together. Consequently, they have been selected as suits to explore in meticulous detail as case studies.

For Gee v. Hotham, it was possible to locate additional documentation at an archive other than TNA, creating an even more complete series of documentation for the suit than has been possible elsewhere. Joanne Bailey rightly pointed out in her consideration of tracing voices from the past in legal records that it is necessary to supplement these archival sources with additional evidence taken from 'other court records and in wills and inventories'.[1] Where

[1] Joanne Bailey, 'Voices in Court: lawyers' or litigants'?', *Historical Research*, Vol. 74, No. 186 (November, 2001) p. 408.

possible, sources outside of C5 Bridges series have been used, from other documents in different Chancery series, to wills. Through using archival sources held at the Hull History Centre (HHC) rather than simply using documentation from TNA, it has, for the Gee v. Hotham case, I have been able to explore the suit in a level of detail not possible in other suits analysed.

Bubwith v. Shaw, on the other hand, is of particular interest due to its being a case that was partially held in Holland. I was fortunate enough to have the assistance of Dr Andrew Little, in translating some of the documents associated with this suit. Without this translation, it would have been impossible to explore this case in full detail. This has resulted in the uncovering of a rich, fascinating story that offers the opportunity to think about jurisdictions across the seas, as well as the reach of English law and the early-modern English Court of Chancery.

In analysing women's use of Chancery through these two case studies, this chapter serves to reinforce the argument that the later seventeenth-century Chancery, though not specifically designed to be effective in providing redress for women, served female litigants facing unfair circumstances well. Furthermore, the case studies give additional weight to the assertion that a female litigant in Chancery was capable of being a formidable opponent.

7.1 Gee v. Hotham

Mary Gee (née Spencer) was the daughter of Richard Spencer of Kent, a royalist who spent some time in Brussels before returning to England with his family in 1653, at which point he was imprisoned and made to pay the debts he had incurred. In the 1650s, Mary became the second wife of William Gee-the-elder, an advantageous match for Gee, Mary being connected through her family to nobility (her father being the younger son of Lord Spencer Wormleighton and uncle to the Earl of Sunderland).[2] Mary's family was undoubtedly damaged by

[2] Basil Duke Henning, 'Spencer, Hon. Richard (1593-1661), of Orpington, Kent', *The History of Parliament: British Political, Local and Social History* [http://www.historyofparliament.org/volume/1660-1690/member/spencer-hon-richard-1593-1661, last accessed 10 July 2017].

their loyalty to the monarchy and unable to recoup their subsequent losses, making her a possible match for William Gee who otherwise would not have had much hope of securing a woman of her rank.

Prior to the solemnisation of their union, a marriage settlement was drawn up and agreed upon. It is from this settlement that the problems encountered by Mary Gee and her sons stemmed, for 'a treaty between the said defendant William Gee the plaintiffs [Richard and Robert Gee] father … for the marriage to be had between the said William Gee [the elder] and yr oratrix Mary then the eldest daughter of the said Richard Spencer' was left unfulfilled at the death of William Gee-the-elder leaving his widow and her children dependant on the equity and good conscience of the Chancellor in Chancery for redress.[3] Though this particular suit was discovered within the set temporal parameters of this research project, Gee v. Hotham in fact fits into a much larger, longer running set of cases that extend beyond the boundaries of this project. This takes the case, and its origins, back into the difficult years of the interregnum – when Mary Gee's natal family would have suffered their setbacks as royalists. By working on this case in detail and conducting further searches, I was able to locate at least some of the other suits connected with this case (outside the bounds of the research criteria set for this research) in order to understand more fully the circumstances under which Mary Gee came to Chancery in her widowhood.

In 1661 William Gee-the-elder entered an original bill of complaint into the Court of Chancery. Gee brought this case before the Lord Chancellor alone, without naming his then wife Mary Gee as a co-plaintiff, in relation to the marriage agreement that had been settled prior to his union with the said Mary. In this bill of complaint Gee detailed what was stipulated within the said marriage agreement, and how it had failed to have been adequately met. In his bill, William Gee cites 'a treaty' created November 1652 'had between your orator and Richard Spencer of Orpington in the county of Kent Esqr touching a marriage to be had between your orator and Mary the eldest daughter of the said

[3] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).

Richard Spencer' and a deed dated 4th March 1652/3 through which he had dealings with Sir Brockett Spencer, Sir Henry Newton, Richard Sandys and Edward Spencer.[4] Many of the Chancery cases refer to legal documentation, such as treaties, deeds and agreements, that one has little to no hope of ever discovering – being either now non-existent or long-lost in archives. In this case, however, it was possible to locate some of the original documentation cited within the Chancery litigation.

The marriage settlement mentioned in the plea entered into the Court of Chancery by William Gee-the-elder against the family of his wife Mary (née Spencer) Gee is held at the HHC.[5] The front of the folded marriage settlement reads 'This is a true copp [copy] of my sonne Gee his conveyance upon his marriage with Mrs Mary Spencer his second wife Lands at … Burton Ellerby and elsewhere [sic]'.[6] The top edge of the deed is cut in a scalloped fashion, making it an indented deed, or indenture. This was when two exact copies of the deed were written out one after another on a large sheet and then separated by the sheet being cut in some manner (usually zig-zag or scalloped), the idea being that each of the parties could retain an exact copy of the deed created for their respective records and that this would prevent fraudulent copies of the deed being produced. If a copy of the same deed was fraudulently produced, the cuts would not match making the fake known.[7] The utility of the scalloped top edge of the document aside, the deed is decorative, with the words 'The Indenture' and 'between' of the opening sentence highlighted by being both enlarged and

[4] TNA C7/465/40, Gee v Spencer, Original Bill of Complaint (February 1661).
[5] The marriage settlement held at HHC is dated 2nd March 1652/3, being a treaty between William Gee of the one part and Sir Brockett Spencer, Sir Henry Newton, Richard Sandys and Edward Spencer of the other part. Whilst the dates for this item and the deed cited by William Gee in his original bill of complaint are not a perfect match, they are of the same month and year and within a couple of days of each other. This coupled with the fact that they involve all the same relevant parties and pertain to the settlement had prior to the marriage of William Gee and Mary Spencer makes it more than likely that the document being discussed in the bill and the item at the HHC are in fact one and the same (Gee v. Spencer, Marriage Settlement, HHC UDDGE/6/25 (2 March 1652/3)).
[6] HHC UDDGE/6/25, Gee v. Spencer, Marriage Settlement (2 March 1652/3).
[7] Thank you to Amanda Bevan for first bringing this to my attention.

embellished with distinctive, ornamental swirls. Though the folds make some parts of the document difficult to distinguish, the item is in remarkable condition and written in an easily legible hand.

As a brief side note, indentures are commonly found legal tools in the Court of Chancery, with litigants relating, and therefore making part of the court record, the various indentures they had agreed to or were relevant to their case. Whilst the indenture mentioned in Gee v. Hotham is a straightforward agreement between two parties, tripartite indentures could also be created which were, as the name suggests, of three parts. The third copies of indented deeds would be cut to meet the other two parts of the indenture horizontally. Often, these indentures were still created between two parties as with the more traditional indenture, the third copy of the document to be kept by the court.[8] In the case Drake v. Briggs, however, there is evidence of a tripartite indenture in which each of the three parts is created for a party with vested interest in the matter at hand, with Marmaduke Fawcett of the first part, Christopher Wade, Christopher Dawson and Nathan and Jeremie Drake of the second part, and Joseph Drake of the third part.[9] For Maud (Magdalen) Drake, plaintiff to Drake v. Briggs, this meant that there were potentially three separate copies of the indenture, that she believed proved her rights to a specified plot of land, being held somewhere by some various persons. In Gee v. Hotham, however, there were only two, which we can be sure of due to the nature of the validating cut made at the top of the document.

The indented deed details a prior arrangement entered into by William Gee-the-elder upon the occasion of his first marriage to the deceased Rachel (née Parker) Gee: 'an indenture bearing date the sixth day of Januarie [sic] … 1645 [1645/6] …

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[8] Bradin Cormack, 'Paper Justice, Parchment Justice: Shakespeare, *Hamlet*, and the Life of Legal Documents' in *Taking Exception to the Law: Materializing Injustice in Early Modern English Literature*, Eds. Donald Beecher, Travis DeCook, Andrew Wallace and Grant Williams (Toronto, Buffalo and London: University of Toronto Press, 2015), ftnt. 18, p. 65.
[9] TNA C5/473/54, Drake v. Briggs, Original Bill of Complaint (25 November 1682).

Between the said William Gee and Rachel his said wife one of the daughters of Sir Thomas Parker'. The settlement agreed for the proposed marriage between William and Rachel was typical of agreements of this time, stipulating that Thomas Parker, father of the intended bride, was to pay a 'marriage portion … for the settling of jointure upon the said Rachel', money that was intended to support Rachel in her widowhood, should she survive William, as well as any children of the marriage. This indenture continues to explain that 'Rachel Gee is dead leaving only one son that is the Sonne and Heir of William Gee, William Gee' (who shall be referred to henceforth as William Gee junior in order to differentiate him from his father of the same name, William Gee-the-elder). William Gee-the-elder, therefore, had obligations to the son he had by his first wife Rachel, but this later indenture of 1661 is primarily concerned with provision for Mary Spencer, William Gee-the-elder's intended second wife at the time, and any children by her.[10]

The indenture goes on to state that William Gee was to receive a marriage portion for Mary Spencer (£2000) and that he was to settle some of his multiple lands and properties (which are listed at length, covering various parts of Yorkshire, including Cherrie Burton [sic], Cottingham, Kingston upon Hull, Thorngumball [Thorngumbald], and more) that were 'to his own use' upon her following the solemnization of his marriage. These lands were to descend to the use of the first-born son of William and Mary Gee: 'to the use and behoofe [sic] of the first begotten sone of the said Marie his intended wife to be begotten by the said William Gee and to the heires of the body of such first begotten sone lawfully begotten'. Should their first son die before either of his parents or as an infant under the age of 21, then their second son shall inherit, and so on.

The indenture lists this process for no fewer than 11 potential sons of the then soon-to-be married couple. The marriage settlement also ensured that any daughters born out of the marriage between William Gee-the-elder and Mary Spencer were to receive a substantial sum of money: 'the sume of three thousand

[10] HHC UDDGE/6/25, Gee v. Spencer, Marriage Settlement (2 March 1652/3).

pounds of lawfull money of England to such daughter or daughters as the said Marie shall happen to have by the said William Gee of their bodies lawfully begotten and to be begotten'. Should Mary and William Gee have no living sons, however, the lands and properties were to be inherited by the rightful heir of William Gee: 'and for want of heires male of the body of the said Mary to be begotten of the said William Gee Then the said mannors and tenements and hereditaments shall remayne be to the use and behoofe of the right heire apparent of the said William Gee', who was at this stage William Gee junior as then the only child and son of Gee-the-elder.[11]

The marriage settlement, in short, acknowledges that the proposed union was the second marriage of William Gee, that he had an already living son to provide for. It further, crucially, stipulates what William Gee-the-elder was to receive following the solemnisation of his intended marriage to Mary Spencer, which was bequeathed in a manner that ensured she was financially supported should she enter the state of widowhood, and what any children born out of the marriage were to receive in the event of his death. The significance and true meaning of this marriage settlement is clear – any potential children of Mary Spencer by William Gee-the-elder were to be provided for, and sons from this union were to benefit from the specified lands in Yorkshire, regardless of the fact that he already had a living son and heir by his former wife, Rachel. At this stage, however, William Gee was just an infant – under the legal age of adulthood of 21 – and there were no guarantees that he would survive into adulthood or that his father would predecease him.

Over 10 years later, another marriage settlement reveals that not only was William Gee junior still alive but he was to himself to be married to Elizabeth Hotham (the eldest daughter of Sir John Hotham).[12] Dated 22nd February 1663/4,

[11] HHC U DDGE/6/25, Gee v. Spencer, Marriage Settlement (2 March 1652/3).
[12] There is another later marriage settlement involving a William Gee and citing the same estates mentioned throughout the marriage settlements and Chancery cases (Burton and Ellerby) in the catalogue however involving a different woman. The item is described in the HHC online catalogue as a marriage settlement between William Gee of one part, Sir James Bradshaw of Risby and

William Gee-the-elder entered into an agreement with Sir John Hotham in order to create a mutual marriage settlement for their respective offspring: 'Articles of Agreement indented made and agreed on the 22nd day of February … 1663 Between William Gee-the-Elder of Bishop Burton … and Sir John Hotham of Scorborugh'.[13] It is through this union, and more particularly this marriage settlement, that the feud between Mary Gee, and her sons, and her step-son came to involve the Hotham family.

The marriage settlement agreed for William Gee junior and Elizabeth Hotham in 1663/4 was very detailed and precise in its particulars. The agreement stipulated that 'within 10 days after the solemnisation of the said marriage' Sir John Hotham was to give to William Gee the sum of £1,500 for the marriage portion of his daughter. It was further agreed that from the 29th September 1666 onwards, William Gee-the-elder was to pay to the young married couple during the lifetime of his son 'the cleere yearly sume' of £400, which was to be free of taxation and other charges, for their maintenance in the form of two equal, bi-annual payments, specifically on the 25th of March and 29th September (Lady Day and Michaelmas) every year.[14]

Thomas Carcroft of York of the second part and Elizabeth Ellerker of York, widow, of the third part, concerning a marriage to be had between William Gee and E.E. Though at first glance one may think William Gee junior was marrying Elizabeth Ellerker (hence E.E.), his second wife was in fact the daughter of Charles Carcroft, Elizabeth Carcroft – with whom he had three children. Unfortunately, the document cannot at this time be produced in order to be read as it is too fragile and in need of conservation. It is also worth mentioning here that William Gee junior and Elizabeth Hotham were in fact cousins, William Gee the elder being the son for John Gee (d.1627) and Frances (née Hotham) Gee (Marriage Settlement, HHC, UDDGE/6/2, 8 October 1685); Online Description of the 'Papers of the Bishop Burton Estates of the Gee and Hall-Watt Families, 1194-1931', HHC, U DDGE [http://catalogue.hullhistorycentre.org.uk/catalogue/U-DDGE?tab=description, last accessed 29 August 2017]; P A Bolton, 'Gee, William [c.1648-1718], of Bishop Burton, Yorks' in *The History of Parliament: British Political, Local and Social History* [http://www.historyofparliamentonline.org/volume/1660-1690/member/gee-william-1648-1718, last accessed 10 July 2017]).

[13] HHC U DDGE/6/27, Gee v. Hotham, Marriage Settlement (22 February 1663/4).

[14] HHC U DDGE/6/27, Gee v. Hotham, Marriage Settlement (22 February 1663/4).

The settlement also stipulated that should the marriage between William Gee junior and Elizabeth Hotham take place as intended, that the two of them were to 'jointly live' until William Gee reached the age of 21.[15] The settlement was careful, then, to ensure that the young couple would be able to maintain themselves in marriage in the present and immediate future – they were to have regular payments coming to them for their maintenance and were to live together. Crucially, for our consideration of the later widowed Mary Gee in Chancery over 10 years after this settlement, the agreement also stipulated in detail what was to happen for the young couple in the years to come – what lands the couple were entitled to by means of inheritance from William Gee-the-elder and for the jointure of Elizabeth should she survive her adolescent husband-to-be and enter widowhood.

The marriage settlement states that 'by good and sufficient conveyances and assurances' that all 'mannor of Lordships of Bishop Burton and Thorngumball with there and either of there rights members and appurtenances in the county of York' were to be settled to the use of Elizabeth Hotham for the duration of her natural life for her jointure. In order for these lands to be available for Elizabeth to use them for her jointure, should the need arise, 'all there and every of there messauges lands tenements and hereditaments in Bishop Burton and Thorngumball in the said county of York' were to be 'freed and discharges of all manner of incumbrances [sic]'. It was further agreed that should William Gee junior have reached the age of 21 by the time William Gee the elder dies, then not only would he (and by extension his wife Elizabeth, should she also still be

[15] The fact that William Gee junior and Elizabeth Hotham were so very young at the time of their proposed marriage explains why Sir John Hotham was entering an agreement with William Gee-the-elder rather than the young man who was to become his son-in-law. It also serves to explain the high level of detail in the marriage settlement, and why the young couple required so much maintenance. William Gee junior was 16 years old when he married his cousin, Elizabeth herself being only 12 (P A Bolton, 'Gee, William [c.1648-1718], of Bishop Burton, Yorks' in *The History of Parliament: British Political, Local and Social History* [http://www.historyofparliamentonline.org/volume/1660-1690/member/gee-william-1648-1718, last accessed 10 July2017]).

living) inherit the manors in Burton and Thorngumbald as already proposed, but he would also receive 'all other the mannors and lands which were heretofore conveied [conveyed] settled and assured upon the marriage of the said William Gee the elder to the first sone of his body by the said Rachel aforesaid'.[16] In other words, all the lands possessed by William Gee the elder which he came by through his first marriage to Rachel were to be passed on to Rachel's son, William Gee junior, despite his having married again, having a second marriage agreement to uphold, and potentially future children – including sons – with his second wife.

The marriage settlement concluded by stating that should the proposed marriage between William Gee junior and Elizabeth Hotham go ahead and be solemnised and he die before reaching the age of 21, 'such settlements as is by these present intended and agreed to be made as aforesaid cannot be made'. Should William Gee junior die still an infant in the eyes of the law then Elizabeth was not entitled to a jointure to be taken from the lands listed, but she was to receive the traditional widow's thirds, dower: 'she the said Elizabeth Hotham for the term of her natural life have and hold every one full third part of the whole in these parts to be divided of all and singular mannors lands tenements and hereditaments whereof and whereupon the said William Gee-the-younger is or shall be at the time during the coverture between him and Elizabeth Hotham seized'.[17] Jointures were agreed upon prior to the solemnisation of marriages, whereas dower was the inalienable right of the early-modern widow under common law. Even in those cases where financial woes saw creditors seize upon the estates of indebted deceased men, the widow's dower lands were protected, 'these lands could only be forfeited by the widow voluntarily'.[18] The articles prescribed in the marriage settlement were also to be deemed void 'and of no

[16] HHC U DDGE/6/27, Gee v. Hotham, Marriage Settlement (22 February 1663/4).
[17] HHC U DDGE/6/27, Gee v. Hotham, Marriage Settlement (22 February 1663/4).
[18] Fraser, *The Weaker Vessel*, p. 118.

effect to all intents and purposes whatsoever' should Elizabeth die before reaching the age of 15.[19]

The marriage between the minors William Gee junior and Elizabeth Hotham readily went ahead, as is evidenced by the receipt William Gee the elder gave to Sir John Hotham upon receiving the agreed sum of money in marriage portion for Elizabeth.[20] William Gee junior went on to become the MP for Hull and Beverley, and had no fewer than 11 children with Elizabeth, and a further three with his second wife. The manor in Bishop Burton was evidently inherited by William Gee junior, who in turn passed it on to his eldest son by Elizabeth, Thomas Gee (b. 1673) upon his death in 1718.[21]

The complexity of early-modern familial arrangements is evident. In fact the bill of complaint entered by Mary Gee in her own name is quite clearly a frustrated plea based on the back of not only the marriage settlements considered here, but also multiple bills of complaint entered in the names of her eldest son, Richard, and (to a lesser extent) her younger son, Robert, from 1659 onwards.[22] Mary references the first plea entered by her son in the opening section of her own bill of complaint:

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[19] HHC U DDGE/6/27, Gee v. Hotham, Marriage Settlement, (22 February 1663/4).
[20] HHC U DDHO/73/4, Gee v. Hotham, Receipt for £1,500 – William Gee-the-elder to Sir John Hotham (4 March 1663/4).
[21] Online Description of the 'Papers of the Bishop Burton Estates of the Gee and Hall-Watt Families, 1194-1931', HHC, U DDGE; P A Bolton, 'Gee, William [c.1648-1718], of Bishop Burton, Yorks' in *The History of Parliament: British Political, Local and Social History* [http://www.historyofparliamentonline.org/volume/1660-1690/member/gee-william-1648-1718, last accessed 10 July 2017].
[22] TNA C7/465/39, Gee (Richard) v. Spencer, Original Bill of Complaint and four Answers (1659); TNA C8/144/39, Gee (Richard) v. Gee (William Gee junior and Sir Brockett Spencer), Original Bill of Complaint and two Answers (1659); TNA C10/77/38, Gee v. Gee, Hotham, Durant, Akeryd (1664); TNA C10/74/40, Gee v. Gee, Hotham, Aycroyd, Butler (1664); TNA C5/84/88, Gee v. Ackroyd, Answer and Schedule (1665); William Gee-the-elder died in 1678, which could be the explanation as to why it is not until 1679 that Mary Gee becomes involved as a named co-plaintiff with her sons – all previous bills entered by Richard and Robert Gee were done so with their guardian Richard Sandys.

> … Richard Gee Esqr sonne and heire of the said Wm Gee and the said Mary Gee his mother And Robert Gee second sonne of the said Wm Gee by Mary Gee his mother and Guardian That the said Richard Gee by Sir Richard Sandys his Guardian in or about the thirteenth day of February 1659 being then an infant did exhibite his bill of complaint in this honourable court against the said William Gee and Sir Brockett Spencer…[23]

Mary Gee states, therefore, that since 1659 her sons had been acting in the Court of Chancery, by their guardian Richard Sandys, in attempts to secure what they perceived as rightfully theirs to inherit as stipulated and agreed in their mother's marriage settlement that was finalised in 1652. Why, then, was this matter still in dispute two decades after the first bill of complaint, and why had Mary Gee become personally involved as a named plaintiff in her own right?

It transpired that upon entering a marriage settlement with the family of Mary Spencer (to become Gee) prior to marrying her in 1652, just two years after the death of his first wife Rachel, William Gee the elder was confused about what he had to bargain with.[24] Gee the elder apparently was unsure what property he had in his possession that was actually free for him to settle on his new wife for her jointure and any children born out of their proposed marriage. The original treaty agreed between William Gee the elder and the family of his intended bride affirmed that he, William Gee, was 'seized of lands in Yorke' that amounted to £1070 and that £450 worth of that total estate was 'free and not settled on William Gee this defendant sonn by Rachell the daughter of Sir Thomas Parker'. In particular, the manor of Thorngumbald was believed to be free, and so William Gee the elder and Mary's father Richard Spencer agreed and contracted that land to the value of £450 'should be settled on the said Mary and her children thereof' and that Thorngumbald was to be a part of the lands making up this stipulated settlement.[25]

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[23] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).
[24] HHC, U DDGE Online Description of the 'Papers of the Bishop Burton Estates of the Gee and Hall-Watt Families, 1194-1931'.
[25] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).

However, it later emerged that the lands in Thorngumbald were not free to make up the settlement agreed to be reserved for Mary, already being settled on William Gee junior by the marriage agreement entered into by William Gee the elder prior to his first marriage. This confusion may in part have arisen from the fact that the marriage between William Gee the elder and Mary Spencer took place in Brussels where the royalist Spencer family had fled from their political, and financial, woes.[26] In her original bill of complaint, Mary Gee conceded that 'the marriage truly began in Brussels' and that her husband-to-be, Gee, informed her father 'Mr Spencer he could not yet tell which part of his lands were entended [intended] on William his sonne by his first wife'. William Gee the elder did, however, assure Mr Richard Spencer that once he was married to Mary, and had received the £1000 in marriage portion that was agreed, he would settle those lands in his possession that were not entailed upon his son on his new wife and though he did not affirm those lands he had free to be of any certain value he did assure Mr Spencer 'that Thorngumball and the other lands in the bill mentioned were not entayled'.[27] Though this agreement took place outside of England, making it impossible for William Gee to consult his records to confirm what lands he had free to settle upon his new bride for her maintenance in widowhood, he assured his soon-to-be father-in-law that he did have some lands that were free of entail, including, more specifically, Thorngumbald.

Upon returning to England with his new bride sometime after their marriage in Brussels, however, William Gee the elder discovered that the lands he had in Thorngumbald were not free at all. The lands were already settled on his son William Gee junior by the marriage agreement entered into by William Gee the elder prior to his first marriage. Interestingly, according to Mary Gee, upon realising this error William Gee the elder approached his mother-in-law, Mrs Mary Spencer, with the news:

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[26] Henning, 'Spencer, Hon. Richard (1593-1661), of Orpington, Kent', [http://www.historyofparliamentonline.org/volume/1660-1690/member/spencer-hon-richard-1593-1661, last accessed 10/07/2017].
[27] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).

> …William Gee … say he believed and confesse he did agree that such lands as were unsettled on his former marriage should be settled on his second wife and her issue by him That afterwards finding that Thorngumball was entailed on his eldest sonn he acquainted Mrs Mary Spencer wife of Richard Spencer there with …[28]

Mary goes on to claim that her late husband, having been made aware of this error, proposed that as he 'could not make good the first agreement' that his new wife, having come to him with a substantial marriage portion, the money he received 'should be laid out in lands to be settled on his second wife'.[29]

This proposal, however, was unworkable and proved unacceptable to the Spencer family. Mrs Mary Spencer, mother of the then Mary Gee, therefore suggested a feasible alternative: 'Mrs Spencer proposed that the defendant should settle an annuity' of the value of £300 a year 'upon Sir Brockett Spencer Sir Henry Newton Edward Spencer and Richard Sandyes for fifteen years of the then defendant William Gee soe long lived for maintenance and portion for such child or children as he should have by his second wife'.[30] This proposal however was just that, a proposal that never materialised.

This evidence used by Mary Gee in her original bill of complaint gives the historian some rare insight into the knowledge possessed by the early-modern woman regarding the legal discourse surrounding her marriage that she could, and did, utilise later to her own advantage in her widowhood. The discussions had between her husband and her natal family, in this case her mother specifically, were undocumented and concerned legal proposals that never came to fruition. If it were not for Mary's knowledge of this particular aspect of the matters arising from her marriage to William-Gee-the elder it may never have been brought into Chancery to be considered as part of the evidence for this suit. 'The extent of women's awareness of their husbands' dealings was a crucial issue' and by providing this anecdotal evidence of the circumstances under

[28] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).
[29] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).
[30] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).

which the marriage settlement for Mary and William Gee came to be so complicated, Mary demonstrated the level of her awareness of what was happening at the time in question.[31]

Years of back and forth and litigation over this matter ensued. Finally the right honourable Edward Hyde – who served as Lord Chancellor from 1660 to 1667 – brought the suit to a conclusion: 'yr Lordship did see fit and soe ordered and decreed that the said William Gee then the defendant at his own charge should settle the lands' worth £450 per year 'upon the plaintiff and such other children as he afte then have by his then wife yor oratrix free from all incumbrances'.[32] Mary Gee believed, at the time, that 'it was to be a final end to all suits' and that the matter was quite resolved.[33] There were though - quite predictably in a matter that concerned multiple deeds, conflicting arrangements and clashing wills not only of spouses but of children too - further frustrations to Mary receiving what Chancery had declared as rightfully belonging to her and her children in her widowhood.

Mary Gee claimed that William Gee junior, her step-son, 'combining and confederating' with multiple other persons (including his father-in-law, Sir John Hotham) sought to defy the court's ruling and keep wealth away from Mary:

> … they the said confederates do not only refuse and not only to make up or perform the said decree by settling on your orator and oratrix so much land as will make up the land already settled in provision … of the value of … [£450] … but did doe also refuse either to make performance of the said decree out of the personal estate of him the said Wm Gee …[34]

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[31] Stretton, *Women Waging Law*, p. 115.
[32] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679); For more on Lord Chancellor Edward Hyde see his entry in the Oxford Dictionary of National Biography: Paul Seaward, 'Hyde, Edward, first earl of Clarendon (1609–1674)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, October 2008 [http://www.oxforddnb.com/view/article/14328, last accessed 22 June 2017].
[33] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).
[34] It was very common and deeply formulaic for litigants appearing before the Lord Chancellor in the Court of Chancery to accuse their rivals at law, as either

William Gee junior and his co-conspirators, it would seem, were taking advantage of the still unresolved nature of the matter at the death of William Gee-the-elder to forgo paying Mary Gee and her children anything whatsoever. Mary Gee claimed that her step-son 'pretendeth that he is heir in tayle [entail] on the marriage settlement made by his father or his mother to all lands … therefore he is not nor can be obliged by the said decree out of his own lands to make up this value of the said lands he being no partye to the said decree'.[35]

The point of explaining the various deeds and suits in operation that built up to the Mary Gee case is to detail the degree of complexity that Mary was dealing with. The details were manifold – who made binding agreements with one another and when, oral exchanges that took place when agreements fell through or invalidated by prior arrangements, the detailed contents of various indentures and settlements – and this was the knowledge that Mary Gee possessed and was consequently able to bring before the Lord Chancellor to evidence her plea for provision for herself and her children in her widowhood.

Mary Gee provides a key example of the significance of widow's knowledge of the legal dealings of her late spouse in the wake of his death. Because Mary kept herself informed of her husband's legal dealings from the point of their making a marriage settlement onwards, including all the litigation in Chancery that preceded her own original bill of complaint upon first becoming a widow in early 1679, she was able to enter a plea in her own name with extensive and detailed evidence in support of her claim for redress. However, this is not to say that she had in-depth knowledge of all of the particulars of this suit. Early-modern wives, dependant on a myriad of factors from whether they physically lived with their husband to the far less tangible aspects of marriages of the past such as mutual respect and honesty, may or may not have been aware of the 'intricate details of their husbands' financial transactions, property arrangements and law suits'.[36]

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plaintiffs or defendants, of 'combining and confederating' against them; TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).
[35] TNA C5/486/5, Gee v. Hotham, Original Bill of Complaint (21 February 1679).
[36] Stretton, *Women Waging Law*, p. 114.

The knowledge Mary Gee had, I would suggest, stemmed almost entirely from her familial experiences. The knowledge she had, came either from her own, foiled, marriage settlement, from interactions had between her husband and members of her own family (her parents in particular), or from matters brought up over the course of the litigation entered by her sons (represented by their guardian Richard Sandys) prior to her widowhood and becoming a named plaintiff herself. This point shall be returned to at a later juncture considering the impact that a lack of knowledge possessed by widows had on their experiences in Chancery.

It should also be pointed out at this juncture that although Mrs Mary Spencer, mother of Mary Gee, seemed to be actively involved in ensuring the financial maintenance of her daughter should she enter widowhood, the mother-daughter relationship here seems to have been rather fraught. In the 1670s not only was Mary Gee attempting to secure her rights to jointure lands from her step-son and his marital family in the latter part of the decade, she was also in litigation against her mother attempting to secure her rights as heir to her late father. A record held by the Canterbury Cathedral Archives (CCA) details the case brought into the Court of Chancery in the later seventeenth century in which Mary Gee (with William Gee the elder named as a co-plaintiff, his still being alive at this time) and her spinster sister Elizabeth Spencer brought suit against their sister Margaret Venables, her husband John Venables, and their mother Mary Spencer. Following the death of Richard Spencer in 1661, Mrs Mary Spencer had apparently taken possession of her late husband's estate as his widow and executrix and was thereby depriving her daughters – each of them co-heirs to their father and entitled to an equal share of his estate, their brother being at this point deceased – of their rightful inheritance. Mary Gee and Elizabeth Spencer accused their mother of colluding with John Venables, and by extension his wife, their sister, Margaret Venables. They claimed that Mrs Mary Spencer had come to an agreement with her son-in-law Venables whereby she would devise to him

more than his fair share of the late Richard Spencer's estate, refusing to comply to the demands of her other daughters.[37]

This additional litigation is relevant to both our understanding of the relationships had, or perhaps, rather, endured, by Mary Gee, and the overall legal knowledge and acumen she possessed. Not only did Mary Gee possess legal awareness from her experience of being a wife but she also acted as a litigant whilst she was a wife, and in the Court of Chancery. This experience as a litigant would have no doubt shaped her understanding of Chancery, equity jurisdiction and her rights at law. Though, as previously stated, for many early-modern women it was not until they reached widowhood that they became litigants, for Mary Gee this was not the case, a fact that would have built on her legal awareness and better equipped her for the battles she would face as a widow.

Mary Gee entered her widowhood following the death of William Gee-the-elder prepared for litigation. Not only did she have previous experience of acting as a plaintiff in the Court of Chancery pursuing her rights of inheritance, but she would have known that in order to secure her rights to jointure lands equalling the amount she felt entitled to, she would have a legal battle on her hands. The experiences she had had as a wife – the failure of her original marriage settlement, the lack of resolution for that failure, and legal difficulties of her sons in pursuing their rights which perpetually clashed with those of their elder half-brother – would have almost certainly instilled in her a degree of legal understanding and aptitude, as well as an awareness that she would likely have to bring suit at some point in her own right (should she reach widowhood) to assert her rights. Certainly, Mary would not have been alone in harbouring a grudge throughout her marriage and acting as soon as she was legally independent and able to bring suit. Nor was it uncommon to find early-modern widows suing, or being sued by, heirs of their late husband's bringing them up against their own sons, 'particularly step-sons', at law.[38] Mary Gee, upon

[37] CCA CCA-DCc-ChAnt/O/108B/1, Gee and Spencer v. Spencer and Venables, Bill of Complaint (Not dated, estimated 1673-1677).
[38] Stretton, *Women Waging Law*, p. 113, p. 110.

recovering her legal capacity, had the resources, knowledge, experience, self-confidence and the need to pursue her cause – attributes that were quite singular to widows in late seventeenth-century England.[39]

7.2 Bubwith v. Shaw

Bubwith v. Shaw, much like Gee v. Hotham, reveals a woman determined to have her legal right to property recognised in her widowhood, tenaciously pursuing those rights in Chancery, in spite of difficulties. This was one of the more complicated cases I encountered over the course of my qualitative research – not helped by the fact that much of it was recorded in Dutch.[40] It is, however, a case that demonstrates the lengths women were willing to go to in order to ensure that they received what was owing to them in their widowhood, as well as what other surviving family members of a deceased husband were willing to do in order to assert their own rights of inheritance. It also demonstrates the fact that widows were not afraid of delving into matters of high theory and law in order to best argue their case. Bubwith v. Shaw, unusual in its international nature, was a case that revolved not only on rival claims to land, but on questions of nationality, citizenship, and the processes and procedures of an alternative legal system – the laws of Holland.

In 1698 Mary Bubwith entered an original bill of complaint into Chancery not from remote Yorkshire, but from even farther afield. Bubwith and her late husband lived in Holland, 'Mary Bubwith als Irish of the Citty of Dorwich als Dort [Dortrecht] in the province of Hollande [sic]', and it was from there that she initiated suit against her sister-in-law residing in Yorkshire. Mary claimed to be 'nature and subject of England Borne of English Parents and widow and Relicit of Samuel Bubwith … Parish of Rothwell County of York', and therefore able not only to bring suit at English law before the Lord Chancellor, but also to pursue her claims to jointure arising from land in Yorkshire held by her late husband during his lifetime. Asserting both her own and her late spouse's English birth,

[39] Stretton, *Women Waging Law*, p. 109.
[40] My deepest thanks to Dr Andrew Little for his professional generosity in taking the time to translate those documents that were recorded in Dutch on my behalf.

and consequent birth rights, Mary declared she was owed jointure derived from 'ye spousall messuages lands and tenements' of Yorkshire that were stipulated and agreed upon in the marriage settlement had between Samuel Bubwith and her father John Irish. She claimed that all the marital contracts were binding, having been made 'with advice of an English lawyer' and that she and her late husband had, following the agreement, been declared 'married lawfully and in presence of witnesses'. Mary Bubwith 'als Irish' also further claimed that she was the sole heir to her late husband, despite his having a living sister, and that this was outlined in his will.[41] The woman against whom Mary was entering this plea, however, had contradicting opinions on the matter.

Deborah Shaw was also a widow, and the only living sibling of Samuel Bubwith. Deborah, conceding that Mary Bubwith was the lawful wife of her late brother, began her rebuttal of the claims made by Mary to the lands held by Samuel in Yorkshire by questioning her legal nationality and therefore her rights to the land in dispute:

> … she doth not know that the complainant is a nature or subject of England or by the laws of England … capable of inheriting any Lands within the Kingdom of England either by descent or purchase nor doth know tho she hath heard that the parents of ye complainant were English but hath been informed and believe that the complainant was borne out of the Dominions of ye King of England and after her parents had long resided out of the dominions of the realm of England and submitts to this honoble court how far in such case the complainant is free citizen or an alien…[42]

By suggesting Mary Bubwith was not a free English citizen, insinuating she was an alien, Deborah – and her representatives – were creating an argument that held that Mary could not legally inherit or receive the profits of and English land

[41] TNA C5/205/10, Bubwith v. Shaw, Original Bill of Complaint (3 February 1698).
[42] TNA C5/205/10, Bubwith v. Shaw, The Severall Answers of Deborah Shaw (1698).

held by Samuel Bubwith at the time of his death, regardless of what was stipulated within their marriage agreement or, indeed, his will.

Despite Shaw's insinuation that the provisions made by any will of Samuel Bubwith's could not make Mary Bubwith legally entitled to land within England due to her nationality, her being born and living outside of the realm, Mary included a copy of the will with those depositions taken on her behalf in order to evidence her claim. The copy of the will put before the Lord Chancellor, written in Dutch and dated 3rd July 1688, was compared in 1699 (at the time of the taking of depositions) to the original by a Dordrecht official in order to judge the accuracy of the copy: 'After comparison I have found that this copy matches with the original laying with the Secretary of Dordrecht, signed P Everwyn, Secretary of the said city, 10 December 1699'.[43]

This document, having been declared an accurate and true copy of the original will created by Samuel Bubwith, made it very clear who Samuel intended as his heir:

> …And in every and each of the goods, assets and moveable and immoveable, credit and debts owing, goods, money, gold, silver cast and uncast, clothes and jewels, none ever excepted or to be reserved, such he the Testator has at all and on his death shall vacate and leave behind, so here in this country as in England or elsewhere … he the Testator has nominated and instituted as his only and sole heir, such he does by this instrument, Madam Mariia Iirisch [Mary Irish], his dear wife…[44]

Mary Bubwith (née Irish) was to inherit absolutely everything from her husband, all of which she was to regard quite as her own property: '…allowed as at her own free will, as her own free goods that she shall sell … and otherwise dispose

[43] TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht – Copy of the last will and testament of Samuel Bubwith (will created 3 July 1688, comparison and inclusion in evidences took place 10 December 1699), Translated by Andrew Little (2016).
[44] TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht – Copy of the last will and testament of Samuel Bubwith (will created 3 July 1688, comparison and inclusion in evidences took place 10 December 1699), Translated by Andrew Little (2016).

of such as her good counsel shall amount to, without contradiction or gainsay of anyone'.[45] In other words, any and all chattel Samuel possessed at the time of his death were to descend to his widow and to become entirely her own property that she could utilise and dispense at her own leisure. Samuel Bubwith evidently did not see the items he held in Holland, England, 'or elsewhere', to be restricted by the laws of different countries. His possessions belonged legally to him, wherever they lay, and were his to dispose of in death as he wished. Mary was to have equal claims to those chattels residing in England as she enjoyed to those in Holland.

The lands and 'other fixed goods' in England, however, were slightly different. The 'immoveable' estate that Samuel Bubwith held in England was described in his will as

> … First a certain town with its houses, outbuildings and further property named Roodes Hall [Red/Rhodes/Rothwell Hall?], together with all the estates belonging to it, standing and laying in the parish of Rodwell [Rothwell] in England, with the estates that he the Testator [bought] in the year 1686, and other certain houses with all … called Bubwith houses with all the adjoining estates belonging to it standing and laying … in England …[46]

The will insisted of Mary Bubwith that 'she shall take only the usufruct for the duration of her own life' from those inheritances.[47] In other words, the land in England was made available to Mary Bubwith for her to use and benefit from,

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[45] TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht – Copy of the last will and testament of Samuel Bubwith (will created 3 July 1688, comparison and inclusion in evidences took place 10 December 1699), Translated by Andrew Little (2016).
[46] Rothwell lies in Yorkshire between Leeds and Wakefield; TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht – Copy of the last will and testament of Samuel Bubwith (will created 3 July 1688, comparison and inclusion in evidences took place 10 December 1699), Translated by Andrew Little (2016).
[47] TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht – Copy of the last will and testament of Samuel Bubwith (will created 3 July 1688, comparison and inclusion in evidences took place 10 December 1699), Translated by Andrew Little (2016).

allowing her full rights to any profit arising from the land. However, she was not to sell the land, destroy or waste its substance, but to leave it in tact for any and all future heirs – and Samuel Bubwith had someone in particular in mind here: Deborah.

Samuel Bubwith's will clearly stipulated that 'after his death and … of the foresaid his wife, [here] property shall devolve … upon … Debora Bubwith wife of Henry Shaw, he the Testator's sister … or in case of her predecease to her [assembled] children, or her further descendants'.[48] It was, therefore in Deborah's interest to question Mary Bubwith's position in the eyes of the laws and law courts of England. If, as an alien, Mary was legally unable to inherit property in England as outlined in Samuel's will, this left Deborah and her children as the undisputed heirs to all of the lands mentioned in the will, which were, seemingly, substantial.

What is notable about this case are the arguments employed by these two widows to fight their respective standpoints. Both women concede that a lawful marriage took place between Mary Irish and Samuel Bubwith, and that Deborah Shaw was the only living sibling of the deceased Samuel Bubwith. Neither one of the widows accuse one another of trying to defraud the court in detailing what Bubwith was in possession of and therefore leaving his heir(s) at the time of his death. What they argued over were the particulars of the law, which were further complicated by the international nature of this case – who was subject to the law of England and who could or should, therefore, legally take possession of the said lands in Yorkshire. Were the marriage agreement and will legally binding documents in the dominions of the King of England, having been created in Holland, and therefore subject to the conscience of the King and his Lord Chancellor in Chancery?

[48] TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht – Copy of the last will and testament of Samuel Bubwith (will created 3 July 1688, comparison and inclusion in evidences took place 10 December 1699), Translated by Andrew Little (2016).

Mary Bubwith went into battle at law against her sister-in-law in England relatively well-armed. She had the benefit of residing in the place where her husband had died, thereby having access to their marital home and all possessions he had there. Inheritance law in the Dutch Republic was not uniform (the attempt of the States of Holland made in 1580 to standardise inheritance law failed). However, some general rules were the broadly accepted norm. Should there be children from any given marriage, they were considered the heirs, with daughters receiving shares equal to sons. If there were no children and no stipulations had been made prior to the death of the husband – such as a marriage settlement or will – 'a widow would not be an heir of her deceased husband, because in seventeenth-century Holland, spouses did not inherit from each other'.[49] What instead happened was that all the marital property (that brought into the relationship by both bride and groom) became part of the 'community of goods', this communal property was split into two even shares – 'as it was assumed that both spouses had brought equal portions into the marriage – with one half intended for the surviving spouse, and the remaining half forming the inheritance of the spouse who had deceased.[50]

As in England, however, this theory deviated from what commonly occurred in practice. In order to keep an estate intact, it was possible to make a marriage contract or write a will. The majority of married couples who created wills nominated the living partner as the principal heir 'or at least tried to provide for the widow(er) by leaving him or her the usufruct of all property'.[51] Those who did have children, often made bequests of cash, 'or their legitimate portions', assuming that any offspring would inherit from the surviving contingent of the marriage at a later date. It was the widow, or the widower, who was the 'prime concern' before children.[52]

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[49] Ariadne Schmidt, 'Survival Strategies of Widows and their Families in Early Modern Holland, c. 1580-1750', *The History of the Family*, 12:4 (2007), p. 272.
[50] Schmidt, 'Survival Strategies of Widows and their Families in Early Modern Holland', pp. 272-273.
[51] Schmidt, 'Survival Strategies of Widows and their Families in Early Modern Holland', p. 273.
[52] Schmidt, 'Survival Strategies of Widows and their Families in Early Modern Holland', p. 273.

The marriage contract agreed between Samuel Bubwith and John Irish, as well as Samuel's will, protected the property left by Mary's husband, ensuring everything descended to her. In Holland Mary Bubwith would not have been alone in becoming the head of her household, with Dutch cities having many female headed households (married couples heading the overall majority of homes). Thanks to an unequal sex ratio and gender specific migration patterns accounting for a 'surplus of women within city walls', the majority of these women heading households were widows.[53]

Samuel Bubwith, however, was attempting to do more through his marriage settlement and will than settle the property he held in Holland on his widow. He wanted to ensure that the property he possessed in England also descended to Mary Bubwith. This explains why, in her original bill of complaint, Mary took care to make it clear that both the legal documents on which she was reliant were drawn up 'with advice of an English lawyer'.[54] If the documents were created under the guidance of an English lawyer, logic follows that the documents would be binding and upheld under English law.

Deborah Shaw expressed her doubt over the validity of these documents under English law by suggesting in her answer that the Bubwiths had not enjoyed the benefits of English legal counsel when making their legal arrangements: 'she [Deborah] is stranger to the condition of the Citty of Dorts as also what difficultyes the sd Samuell Bubwith and John Irish laboured under for want of English councell or advice to draw or reduce into forme any marriage agreement according to the rules methods and presidents of the Law of England'.[55] Her tactic here was, we must assume, was to plant seeds of doubt in the mind of the Lord Chancellor as to whether or not the marriage settlement and will of Samuel

[53] Schmidt, 'Survival Strategies of Widows and their Families in Early Modern Holland', pp. 269-270.
[54] TNA C5/205/10, Bubwith v. Shaw, Original Bill of Complaint (3 February 1698).
[55] TNA C5/205/10, Bubwith v. Shaw, The Severall Answers of Deborah Shaw (1698).

Bubwith were created with the advice of English counsel, thereby making the contents of the documents invalid under English Law. Should this line of thought be accepted - coupled with idea of Mary Bubwith not being a citizen of England – Mary would be deemed unable to take possession of lands in England, leaving Deborah free to inherit the Yorkshire lands once held by Samuel and enjoy the profits thereof.

Mary Bubwith took it upon herself to invalidate the doubts presented by her sister-in-law and rival in Chancery over her nationality and the will of Samuel. In order to address Deborah's questioning of her English lineage, and consequently her status at English law and ability to inherit lands in England, Mary had her brother, Dudley Irish, act as a witness on her behalf. In his deposition, Dudley declared that not only was Mary his sister, but that he had 'seen the register of the English Court made at the time of recording the baptisms and marriages, and that therein it is stated that the plaintiff [Mary Bubwith] was baptised at Rotterdam on 22nd August 1642, being the daughter of the said John Irish member of the Company and of Elisabeth his wife'.[56] Mary Bubwith was thereby able to prove that she was the legitimate daughter of English parents, her father belonging to a 'fellowship of merchant adventurers' residing in Holland, as part of the English court and Church of England. Undoubtedly, it was Mary's hope that establishing her English descent and connection with the practices of England, from baptism to marriage, she would be able to prove herself subject to English law and therefore able to inherit the lands in Yorkshire as stipulated in her late husband's will.[57]

The issue with national allegiance was a complicated one: was a married woman understood to have the same allegiance as her husband due to the binds of

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[56] TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht – Copy of the last will and testament of Samuel Bubwith (will created 3 July 1688, comparison and inclusion in evidences took place 10 December 1699), Translated by Andrew Little (2016).

[57] It is worth noting here that Mary's constant inclusion of both her natal and marital surnames in her original plea, and thereby all subsequent documentation, was likely an attempt to reinforce her heritage and links to England, 'Irish' being recognisably British and not a surname of Dutch origin.

coverture? In other words, even if Mary Bubwith was not of English descent did she have an allegiance to the King of England due to her marrying an Englishman, and therefore understood to be English herself? Barbara Todd's analysis of 'Married Women's Separate Allegiance in English Law' is useful here. All women, it was understood, including women who were married, bore a personal allegiance to their sovereign under the common law. This allegiance was something individuals were born with – 'allegiance was natural it was indelible'.[58]

However, complicated questions surrounding early-modern conceptions of allegiance arose. Was the natural allegiance of an individual determined by the inclinations of their biological father or their mother, if the allegiances of the parents was indeed separate? Was a married woman's allegiance subsumed by her husband's like her legal identity? Were wives compelled by coverture to follow their husbands in their political convictions? It was not until the 1844 Aliens Act that the matter of married women's separate allegiance came to something of a formal resolution in England, with the Act asserting that 'any woman married … to a natural born subject or person naturalized' was herself naturalized.[59]

Given that Mary Bubwith was facing difficulties in asserting her right to inherit English lands from her English husband far before the Aliens Act of the mid-nineteenth century, the significance of her emphasis on her own English descent is evident. Being a woman who was born and lived all her life overseas, Bubwith was right to have been concerned that simply being married to an Englishman may not have been enough to convince Chancery of her rights before and as subject to English law. By asserting herself as English in her own right, her separate allegiance being to the King of England, Mary Bubwith was

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[58] Barbara J Todd, 'Married Women's Separate Allegiance in English Law', in *Married Women and the Law: Coverture in England and the Common Law World*, Eds. Tim Stretton and Krista J Kesselring (Montreal and Kingston, London, Ithaca: McGill Queen's University Press, 2013) passim and p. 164.
[59] Todd, 'Married Women's Separate Allegiance in English Law', pp. 172-183.

strengthening her position as a would-be subject to the laws of the English realm and therefore as the rightful heir to her late, English husband.

To address the matter of the validity of Samuel Bubwith's will, depositions taken from multiple individuals on Mary Bubwith's behalf were taken to verify the copy of the will of Samuel Bubwith that she included in her evidences. Jacobus de Vos claimed not only to know the notary who recorded Samuel Bubwith's will, but to have been a witness to the making of the same will and that 'he the witness with the said Thomas Wickham and the said notary Milanen signed the said will of the said Bubwith each with their own hand at the one and the same time'. Jacobus de Vos was, therefore, able to confirm that 'the copy shown him matched with the said original will, he the witness together with Mr John Armiger merchant here having compared the document and found it correct'.[60]

The deponents also explained, for the benefit of the Court of Chancery and presiding Lord Chancellor, the processes of drawing and archiving a will in Dordrecht in the seventeenth century. Petrus Immendorf, the doctor who cared for Samuel Bubwith up until his death on the 17th July 1688, deposed that he knew the 'practice or laws' of the city in Dordrecht prescribed that 'notaries may not issue minutes or originals of wills … but keep them and after their death have them brought into the custody of the authorities'.[61] John Armiger, also an English merchant living in Dordrecht, said that 'he knows very well that notaries keep the original of instruments that they have passed and that the same after their death come under the custody of the authorities, and that they only issue copies'. John Gay, another merchant and member of the English Court at Dordrecht, echoed these statements again. Through the careful selection of deponents and creation of interrogatories, Mary Bubwith was able to provide evidence that the

[60] TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht – Copy of the last will and testament of Samuel Bubwith (will created 3 July 1688, comparison and inclusion in evidences took place 10 December 1699), Translated by Andrew Little (2016).
[61] TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht – Copy of the last will and testament of Samuel Bubwith (will created 3 July 1688, comparison and inclusion in evidences took place 10 December 1699), Translated by Andrew Little (2016).

copy of the will was accurate in comparison with the original, and that it was commonplace Dutch legal practice to be unable to access the original will – which was kept by the notary who recorded it until the time of death of the testator, at which point it was taken to the city authorities and thereafter inaccessible.[62]

Mary Bubwith, upon her widowhood, was well versed in early-modern law and legal procedure. Not only did her knowledge benefit from having outlived her spouse, making her part of a group of women who 'tended to have more experience' anyway, but her experiences of being involved in the legal systems of two separate countries, with different rules and processes, equipped her with a unique level of understanding and awareness.[63] Living in Holland she was subject to Dutch laws of marital inheritance. Her husband's will was created and kept in a manner that was in-keeping with Dutch procedure, and designed to protect her position as his widow and heir, as was common in that part of the world in the seventeenth century. However, in Holland Mary was part of an English expatriate community. Born to English parents and married to an English man she was part of a network of English merchant adventurers who settled in Dordrecht, and thereby considered herself a subject of the Kingdom of England and consequently subject to its laws, able to bring suit before the Lord Chancellor in Chancery and enjoy lands in Yorkshire – despite living overseas. The fact that English counsel was, supposedly (Deborah clearly had some doubts as to the validity of this claim), appointed for assisting in the drawing up of her marriage settlement suggests an awareness of her father and husband, that would have passed on to her as subject to the contract, of the precarious legal position Mary inhabited – caught between two countries.

7.3 Conclusion

[62] TNA C22/509/39, Bubwith v. Shaw, Depositions taken in Dordrecht – Copy of the last will and testament of Samuel Bubwith (will created 3 July 1688, comparison and inclusion in evidences took place 10 December 1699), Translated by Andrew Little (2016).
[63] Stretton, *Women Waging Law*, p.109.

Both Mary Gee and Mary Bubwith displayed considerable levels of legal knowledge and acumen. These two widows effectively demonstrate the education women received over the course of their everyday lives. By living as singlewomen, wives, and then widows, Gee and Bubwith both acquired detailed knowledge, ranging from the construction, actions and aims of their natal, marital and extended families, to contemporary law.

That is not to say, however, that the knowledge of these two widows was entirely without gaps. They both struggled with asserting their positions as knowledgeable widows in the face difficulties surrounding issues of physical distance and possession. Mary Gee, for instance, had gaps in her knowledge of the actions of her late husband that brought about her ultimate defeat in her pursuit of his Yorkshire lands for herself and her sons.

Mary Gee admitted in her original bill of complaint that she was not present at the death of her husband. This fact she attempted to use to her advantage, by conveying the circumstance as working unfairly against her. But the fact remained that due to her absence, William Gee junior was able to take possession of the personal estate of his deceased father and was therefore in the stronger position.

Mary Bubwith, on the other hand, was even further from the property she was attempting to assert her rights to, separated by land, sea, and, consequently, days of travel. The separation from property – real, chattel or otherwise – was a real detriment to the aims of litigants. As mentioned previously, Amy Erickson tells us that possession was, after all, nine-tenths of the law.[64] Had Mary Gee been by her husband's side at the time of his death, she may have been able to take the all-important legal documents and use them to her own advantage. Had Mary Bubwith been in England at the time of her husband's death, she could have physically entered upon the land and thereby strengthened her hand.

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[64] Amy Louise Erickson, 'Possession – and the Other One-Tenth of the Law: Assessing Women's Ownership and Economic Roles in Early Modern England', *Women's History Review*, Vol. 16, No. 3 (2007), pp. 396-370.

Both of these widows, however, demonstrated remarkable levels of gumption. They were faced with a complex, legal problem and chose to march forward in pursuit of what they believed they were entitled to. They were not cowed by their inferiority based on gender, their lack of legal education or the strength of their opponents. This is what a court such as Chancery enabled early-modern women to do. Though not a court designed for women, it was a court designed for those who were vulnerable and had nowhere else to turn – it was accessible, understandable, and it provided a platform for litigants to air their individual voices, from complaints to recollections, however truthful they may or may not have been. Chancery was therefore an invaluable source of redress for women. These two case studies reveal that whatever obstacles women may have been facing – a capable and well-equipped step-son or a notable distance between plaintiff and both the court as well as the desired property – women felt able to use the Court of Chancery.

8. Conclusion: The Late Seventeenth-Century Chancery, a Court of Redress for Women?

By analysing women's use of the Court of Chancery in later seventeenth-century England both quantitatively and qualitatively, this thesis offers a comprehensive investigation of the role, as well as the experience and broader implications of, women as litigants in this important early-modern court of equity. Chancery was a court that was a hugely powerful and complex institution, and it is one that has left behind a legal archive so voluminous that it can be considered challenging to research. But hidden within formulaic phrasing and early-modern legalese are details of individuals, families, relationships, everyday events, activities, and lives that can, and do, enrich our understanding of the pre-modern past.

By following the expected life-cycle of the early-modern woman, this thesis highlights the stark impact of marital status on the experience of women before the law. The changeable marital status of women in early-modern England had huge implications. Not only did it alter a woman's position at law, but her position within her family, local community and larger society drastically. It enhanced her knowledge; she became acutely aware of her fluctuating position in the world in which she operated through her own lived experience and that of the women, some more fortunate than others, around her. This methodology also serves to highlight the fact that if one is to assess the position of early-modern women at law, it is necessary to take marriage into consideration – the two are, for seventeenth-century English women, inextricably connected.

This thesis has offered multiple findings. This is the first time, for instance, that a quantitative analysis of this detail has been conducted on Chancery pleadings, based in late seventeenth-century Yorkshire. With just under half of the 1,556 cases in my quantitative sample – 44 per cent – involving women, it was possible to conduct various lines of investigation. It was possible to ascertain, for example, at least on a very basic level, what it was that brought named female plaintiffs into the Court of Chancery, from land disputes to marriage settlement

cases. I was also able to identify how women came into the court, as both plaintiffs and defendants – were they alone, with female co-litigants or with male co-litigants?

Extensive qualitative research revealed the detailed stories of the individual women who appeared before the Lord Chancellor. The records effectively breathed new life into people from the past, everyday people simply going about their business in early-modern Yorkshire (and beyond), who otherwise we would know literally nothing about. The records highlighted the legal knowledge and aptitude of the women involved in these legal cases, and some remarkable examples of strength and autonomy, even in married women restricted by coverture.

The research also provided an opportunity to cast an eye back over issues of legal doctrine, such as coverture. The presence of married women in the court encouraged a re-evaluation of the current dialogue surrounding coverture which has here resulted in an effort to dissolve the line between the social and legal lives of women in this period. Further study of courts such as Chancery, in which women were visible and present over the course of the late medieval and early modern periods, further nuances our contemporary understanding of these legal doctrines, and, crucially, how they operated in reality not only in the setting of the law courts but in everyday life.

Ultimately, however, the question boils down to whether or not the later seventeenth-century English Court of Chancery was a women's court of redress. I would argue that whilst Chancery was a court of redress not only for women, it was a court of redress that served women effectively in later seventeenth-century England for a myriad of reasons. First of all, the quantitative analysis reveals that women were increasingly turning to Chancery over the later medieval and early modern period, and were well represented within the court by the late 1600s, suggesting that women, themselves, recognised the utility of the court. Building on Erickson's finding that women appeared in around 25 per cent of cases brought before the Lord Chancellor in Chancery, and around 40 per

cent of cases by the reign of James I, this project found that by the reign of Charles II, 44 per cent of cases in Chancery involved named female litigants.[1] This is a significant finding that not only supports the current historiography on women's involvement in this court, but further indicates a continued increase in the presence of female litigants over this period.

Whilst there are explanations for this shift towards Chancery that are not gendered, it is undeniable that the court became increasingly utilised by women. The systems in operation in Chancery were not created in aid of women, but designed to reflect the needs of the society it served. Society, in early-modern England, was deeply litigious and women were a part of this. It is unsurprising therefore that a court aimed at aiding the vulnerable became recognised as one well-positioned to aid those citizens who were universally on the back-foot in comparison to their male counterparts – women.

Secondly, the court provided space for all women, whatever their marital status, to be represented. Singlewomen were able to bring suit either alone or in the company of others. Wives were unable to bring suit autonomously, but the court's procedures still allowed for their voices to be heard. Through giving statements, being actively involved in cases and through processes such as *prochein ami*, the married woman was a very visible and proactive figure in late seventeenth-century Chancery. Widows too were very present in the court, actively exercising their independence by largely bringing suits as SFPs. Although some women are, of course, more visible than others as plaintiffs and defendants, the overall presence of women in the court was impressive.

Chancery was not a court designed to be, or become, a women's court of redress. However, in many ways, that is precisely the role it fulfilled. Women were inextricably enmeshed in the litigious nature of early-modern society. Despite the patriarchal ideals of the law being an exclusively male world, it was a world unable to function without the input of women, and likewise women at various

[1] Erickson, *Women and Property*, pp. 114; Stretton, *Women Waging Law*, p. 39.

junctures in their lives were unable to operate without becoming involved in matters of the law. One cannot separate women's every-day social lives from their legal lives.

Chancery in the later seventeenth century, as a court that aimed to assist the most vulnerable, to serve society when and where the common and ecclesiastical law courts could not, reflected the needs of early-modern society. In the wake of the civil war, legal matters involving women became increasingly complex. The development of separate estate, the increased use of wills, the move from dower to jointure, and the rising popularity of marriage settlements were just a few examples of the legal tools developed over this period that directly impacted the lives of women. With these developments picking up pace during the dismantling of the equity side of the King's Bench and after the dissolution of the Star Chamber and Court of Requests, Chancery became the court capable of mopping up all the matters, old and new, that might, in previous years, have been heard elsewhere. The presence of women in the court therefore increased over time, becoming a court that effectively served women in need of redress.

This research is a decisive step towards understanding the female experience of the late seventeenth-century Court of Chancery. It serves to highlight not only how and why women came into the court, but details the experiences of some women whilst they were there. In doing so, the research contributes to our understanding of how early-modern society, litigious as it was, operated and how women functioned within this world of law, of quarrels and resolution, despite their perceived inferiority and manifold restrictions. As legal records are increasingly used to understand social history, the research of this dissertation firmly places Chancery as a court that is central in women's history.[2]

[2] Cordelia Beattie, 'Married Women, Contracts and Coverture in Late Medieval England' in *Married Women and the Law in Premodern Northwest Europe*, Eds. Cordelia Beattie and Matthew Frank Stevens (Woodbridge: The Boydell Press, 2013), passim but particularly p. 135.

Looking to the future, I would argue two things: first, that women's use of Chancery is worth considering further using different chronologies to gain an idea of women's changing use of the court over time, and second, that this use might be compared across courts to understand the role of equity law in women's lives further still. This research has demonstrated what can now be done with the archival material left behind by this fascinating court, now that the catalogue of cases is searchable thanks to the tireless work of the archivists and FTNA at TNA. The same methodology utilised here, can be applied to different time periods, and different geographical areas. In doing so, we would be able to gain further insight into how women utilised this court nationally and over time, which can be achieved by exploring differing research parameters.

We have the figures pointing to an increase in the use of this court over the early modern period, generally and by women, but it would be illuminating to know the details of these shifts towards Chancery. Were wives increasingly brought into the court to act alongside husbands? Were widows consistently most likely to bring suits into the court independently? Did rural and urban women operate differently in Chancery? Inevitably, this research has raised more questions, and it raises the potential for further projects to analyse the way in which women utilised Chancery as a court of redress.

On a qualitative level, the stories held within the archival material, the everyday lives of women, men and children, need to be discovered and shared. There is so much within the records that historians, of all research backgrounds, can learn. It is necessary, it must be said, to take what is expressed in these documents sometimes 'with a pinch of salt'. The statements were created and delivered, after all, with a clear audience and goal in mind. As Joanne Bailey suggested back in 2001, legal documents require caution and consideration when using them to explore the social lives of people in the past. Not only did the motives of individuals in the court setting sometimes 'obscure the reality underlying their law suits', but 'the words of litigants and deponents were filtered through the

legal profession' as well.[3] Nevertheless, these documents, as demonstrated, provide rich detail of the lived human experience and are an invaluable window into the past.

The digitisation of the Chancery catalogues has opened up the records in a manner that is unprecedented for this particular court. This project has highlighted just how much material there is, how the voluminous archival sources can be used, and what there is the potential to learn and discover. Now this is done, it is necessary to incorporate the personal documents that are so important to women's and social historians – correspondence, diary entries, personally kept paperwork – into research considering women's use of this court. By bringing the contextual qualitative material to a consideration of Chancery sources, historians will be able to build an ever-richer picture of the law suits of the period, and therefore the wider social, cultural, legal and gendered histories more generally.

There are, as ever, issues surrounding the survival of sources, and the process of recovery will be sadly impossible for the vast majority of Chancery cases. The way forward in this endeavour would perhaps be best suited by employing a methodology similar to that used by Churches in her exploration of the courts of Whitehaven.[4] Focusing on a precise locality, as opposed to an entire (very large) county, would provide a tighter research parameter for the historian, enabling a more concentrated use of local archives to support findings with further, ideally personal, qualitative material. Furthermore, now that the catalogue is easily searchable, one has the happy possibility of discovering involvement of specific people in suit(s) proceeding in Chancery within non-legal documentation, perhaps due to it being discussed between friends or family members by letter, and then searching for the case in multiple archival repositories, notably the local record offices.

[3] Bailey, 'Voices in Court', p. 392.
[4] Churches, 'Putting Women in their Place', p. 51.

The concept of the king, or queen's, conscience was a powerful one, and one that women in later seventeenth-century England utilised, extensively. This reflects not only the now long-accepted fact that English society was deeply litigious during the early modern period, but that women were heavily involved in this integral part of everyday pre-modern life, society and culture. This thesis highlights the fact that it is deeply unhelpful and counterproductive to view early-modern legal and social lives as separate spheres.

The law is utterly essential to exploring the lives of women in the pre-modern past. A woman's standing, within her family, her local community and wider society, was decided by her legal status of *feme-sole* or *feme-covert*, which in turn fluctuated with her ability, or remained resolutely stable in case of her inability, to fulfil her expected life-cycle duties. Whether or not she was, or ever had been, subject to coverture impacted her daily dealings, extending into her direct dealings with the law should it be necessary for her to pursue or defend a case in court. The law informed a woman's experience, her gendered experience, and her gender more broadly. Consequently, it is impossible to understand comprehensively early-modern women's history without looking at the law, and the law courts that catered to them.

The Court of Chancery, then, is central to our understanding of pre-modern women's history. The increasing presence of named female litigants, both as plaintiffs and defendants, in the court where the systems, processes and aims were well suited to aiding women, renders the archival material essential reading for social and women's historians. For although it was not solely a court of redress for women, late seventeenth-century English Chancery was an effective court for women to use in order to seek redress, and this is reflected in the data findings of this thesis.

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